# 1NC

# 1NC

### 1nc- T

#### Interpretation

#### Increase means to make something greater than it exists as currently – it adds to what is pre-existing

Buckley 06 (Jeremiah, Legal Counsel. Amicus Curiae Brief, Safeco Ins. Co. of America et al v. Charles Burr et al, <http://supreme.lp.findlaw.com/supreme_court/briefs/06-84/06-84.mer.ami.mica.pdf>)

First, the court said that the ordinary meaning of the word “increase” is “to make something greater,” which it believed should not “be limited to cases in which a company raises the rate that an individual has previously been charged.” 435 F.3d at 1091. Yet the definition offered by the Ninth Circuit compels the opposite conclusion. Because “increase” means “to make something greater,” there must necessarily have been an existing premium, to which Edo’s actual premium may be compared, to determine whether an “increase” occurred. Congress could have provided that “ad-verse action” in the insurance context means charging an amount greater than the optimal premium, but instead chose to define adverse action in terms of an “increase.” That def-initional choice must be respected, not ignored. See Colautti v. Franklin, 439 U.S. 379, 392-93 n.10 (1979) (“[a] defin-ition which declares what a term ‘means’ . . . excludes any meaning that is not stated”).

Next, the Ninth Circuit reasoned that because the Insurance Prong includes the words “existing or applied for,” Congress intended that an “increase in any charge” for insurance must “apply to all insurance transactions – from an initial policy of insurance to a renewal of a long-held policy.” 435 F.3d at 1091. This interpretation reads the words “exist-ing or applied for” in isolation. Other types of adverse action described in the Insurance Prong apply only to situations where a consumer had an existing policy of insurance, such as a “cancellation,” “reduction,” or “change” in insurance. Each of these forms of adverse action presupposes an already-existing policy, and under usual canons of statutory construction the term “increase” also should be construed to apply to increases of an already-existing policy. See Hibbs v. Winn, 542 U.S. 88, 101 (2004) (“a phrase gathers meaning from the words around it”) (citation omitted).

#### Prohibition is a law or order forbidding an action –

Oxford Languages Dictionary No Date (https://languages.oup.com/google-dictionary-en/)

Prohibition n. forbidding an act or activity. A court order forbidding an act is a writ of prohibition, an injunction, or a writ of mandate (mandamus) if against a public official.

#### Anti-competitive business practices are those practices that do harm to businesses or consumers – the affirmative had to add something to the list

Gibbs Law Group No Date (Anticompetitive Practices. https://www.classlawgroup.com/antitrust/unlawful-practices/)

Federal and state antitrust laws prohibit anticompetitive behavior and unfair business practices that harm other businesses and consumers.

Examples of these unlawful, anticompetitive practices include:

Price Fixing – an agreement among competitors to raise, fix, or otherwise maintain the price at which their goods or services are sold.

Pay-for-Delay – an agreement between a brand drug manufacturer and a would-be generic competitor to delay the release of a generic version of the branded drug, depriving consumers of lower-priced generics.

Bid-Rigging – competitors agree in advance who will submit the winning bid during a competitive bidding process. As with price fixing, it is not necessary that all bidders participate in the conspiracy.

Monopolization – one or more persons or companies totally dominates an economic market.

Unfair Competition – an attempt to gain unfair competitive advantage through false, fraudulent, or unethical commercial conduct.

Market Division – an agreement between competitors not to compete within each other’s geographic territories.

Group Boycotts – two or more competitors agree not to do business with a specific person or company.

Exclusive Dealing Arrangements – an agreement that a buyer will only buy exclusively from the supplier.

Price Discrimination – charging different prices to similarly situated buyers. Certain types of price discrimination may be illegal under the Robinson-Patman Act.

Tying – when a company makes the purchase of an item conditioned on buying a second item.

#### Violation – The rez requires the affirmative to substantively add to antitrust law, not just broaden enforcement of whats already on the books - Plan just applies existing antitrust law to shipping– that doesn’t increase prohibitions or expand the scope of core antitrust law because it only applies to the shipping industry

#### Reasons to Prefer and Vote Negative

#### Limits – This topic is already and the deal the death blow to negative research burden – Negs are forced to play an unwinnable game of whack-a-mole as affirmatives jump from sector to sector each debate, enforcing existing law to cover new situations—shipping is the worst example of limits explosion

#### Ground – The aff decimates our ground – they take away the floor for what the affirmative has to do which is increase prohibitions Lose all politics, agency, innovation and other core topic links. We also lose any enforcements CPs which should be core negative ground

#### Vote neg

### 1NC- DA PTX

#### The COMPETES Act has passed the House and Biden is moving quickly to strike a deal in the Senate – negotiations will be difficult but it passes now

Marianna Sotomayor 2-4-22 (Washington Post. China competitiveness bill will test whether Democrats and Republicans can strike substantive deal in election year. <https://www.washingtonpost.com/politics/2022/02/04/china-competes-act-house/>)

The House’s passage Friday of a bill aimed at making the United States more economically competitive with China sets up potentially tricky negotiations with Senate Republicans as the Biden administration hopes to quickly strike a bipartisan deal over spending to boost the nation’s manufacturing and research capabilities. The 222-to-210 House vote on the $250 billion America Competes Act fell mostly along party lines. Republicans argued that the legislation was not tough enough on China, while Democrats hailed it as a major step toward improving U.S. industrial policy as tensions with Beijing grow in the economic and national security spheres. “The America Competes Act will ensure that America’s preeminence in manufacturing, innovation and economic strength … can outcompete any nation,” House Speaker Nancy Pelosi (D-Calif.) said before the vote. “Hundreds of members of Congress have been involved in putting this legislation together, overwhelmingly bipartisan in its development, regardless of how the Republicans choose politically to vote today.” Rep. Adam Kinzinger (Ill.) was the only Republican to vote for the bill, while Rep. Stephanie Murphy (Fla.) was the sole Democrat to oppose the measure. She said her objection was based on the trade section of the legislation, which she said includes “problematic, poorly-vetted provisions and excludes sensible, bipartisan provisions that were part of the Senate-passed version of the bill.” Neither lawmaker is seeking reelection. Attention now turns to negotiations with the Senate, where a similar bipartisan bill passed last year with the support of 18 Republicans. Biden administration officials and Democratic lawmakers have expressed optimism that a deal can be struck, sending the legislation to President Biden for his signature this spring. The Senate Republicans who supported the bill have been more cautious in their comments about the upcoming negotiations, saying several changes will need to be made to the House bill. “Last year the Senate passed a bipartisan bill to restore chip manufacturing in US so we can compete with China. Sadly, House Dems abandoned this bill in favor of their own, partisan goals. But we need to move quickly to get a good bill passed into law,” Sen. John Cornyn (R-Tex.) tweeted Friday. The House’s America Competes Act keeps key tenets of the Senate bill, including $52 billion in subsidies to incentivize construction of factories to produce computer chips, which are in short supply globally. That shortfall has led automakers and other chip users to slash production of their products, which in turn has caused a spike in car prices that is fueling inflation. The House bill would go further than the Senate measure by allotting millions to help end the supply chain crisis, which during the pandemic has exposed the U.S. reliance on other nations for critical goods. Hanging over the upcoming negotiations is the question of whether Senate Republicans will be swayed by their House counterparts’ stiff resistance to finding common ground with Democrats and Biden. Last year, House Republicans rejected a bipartisan infrastructure bill hammered out in the Senate, and many joined former president Donald Trump in denouncing senators and the handful of House Republicans who supported the $1.2 trillion package, which was signed into law in November. What’s in the $1.2 trillion infrastructure law Partisan tensions have only increased since then with the midterm elections fast approaching, putting pressure on Senate Republicans to take a hard line in negotiations over the Competes Act. House Democrats, meanwhile, will have to be careful not to strip out too many provisions that are priorities for liberal lawmakers, whose votes will be needed to get any final deal through the House. There were several liberal holdouts ahead of Friday’s vote who cited concerns over such things as corporate subsidies and human rights abroad, according to three aides familiar with the negotiations who spoke on the condition of anonymity to discuss private deliberations. But amendments included before the vote helped head off any Democratic defections at a time when the majority party can’t afford to lose more than four votes to pass any bill. House Republicans have made clear that there is little chance they will support whatever bill comes out of the House-Senate negotiations. While individual measures in the House package, such as reauthorizations for the National Science Foundation, passed through the chamber with bipartisan support, House Republicans soured on the entirety of the legislation. Some amendments authored by Republicans were added to the legislation Thursday evening, including one by Rep. Jim Banks (Ind.) concerning whether certain companies involved in the manufacturing of solar panels should be sanctioned for allegedly using the forced labor of Uyghurs in China. But the adoption of these GOP amendments was not enough to overcome Republicans’ broader opposition to the measure. “I voted NO on Pelosi’s America COMPETES Act today because this bill would help China and hurt Americans. Democrats are using the China issue which has broad, bipartisan public support as a cover to pass their liberal agenda,” Banks said in a statement. Senate Republicans also expressed concerns about the House bill, saying it is filled with partisan “poison pills” on issues such as trade and climate change. “I think unfortunately their product is going to be dead over here,” Sen. John Thune (R-S.D.) said Thursday. But Senate Republicans have remained open to finding a compromise if the House bill is pared down considerably during the negotiations. Sen. Todd C. Young (R-Ind.), who was a lead proponent of the Senate bill, said the House measure would have to undergo large changes for a deal to be struck.

#### Antitrust reform requires significant investments of political capital and forces legislative tradeoffs

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

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

#### Key to solve climate change

Walker 21 (Senior Vice President for Global Affairs and Chief Legal Officer at Google, Seizing the moment - A framework for American innovation, <https://blog.google/perspectives/kent-walker/seizing-moment-framework-american-innovation/>)

Decades of government investment in R&D led to scientific breakthroughs that gave us the tools we use every day, and public-private partnerships have sparked innovations from the microchip to the internet. Government R&D investment has led to economic growth, jobs and new startups. As just one example, some of Google’s earliest work was made possible, in part, by the Digital Library Initiative, funded by the National Science Foundation. But if you fast forward to today, the U.S. government investment in tech has moved to the slow lane. Government-funded research in the U.S. has fallen by 60% as a percentage of GDP — from 1.9% of GDP in 1964 to just 0.7% today. Many countries around the world are investing significantly in research and development. For example, China has said that it will be increasing government R&D funding by 7% annually and recently announced a five-year plan to invest an additional $1.4 trillion in developing next-generation technologies. As a nation we now have a historic opportunity to put aside partisanship and come together on an issue that will determine our future competitiveness. The United States must seize the moment to cultivate science and technology by setting out a national innovation strategy, and we commit to doing our part. Senators Schumer and Young have introduced the bipartisan Endless Frontier Act — an important step in putting to work America’s strengths in science and technology to tackle some of the biggest issues of our time, from climate change to global health. Legislative proposals to increase funding for the National Science Foundation will accelerate innovation in the technologies of the future — including quantum computing, AI, biotech and genomics, advanced wireless networks, and robotics — and strengthen the U.S. innovation ecosystem through regional hubs spread throughout the country.

#### Impact is extinction

Alexander-Sears 21, PhD Candidate in Political Science at The University of Toronto, former Professor of International Relations at the Universidad de Las Américas (Nathan, “Great Powers, Polarity, and Existential Threats to Humanity: An Analysis of the Distribution of the Forces of Total Destruction in International Security,” Conference Paper: *International Studies Association, 2021 Annual Conference*, Research Gate)

Humanity faces existential risks from the large-scale destruction of Earth’s natural environment making the planet less hospitable for humankind (Wallace-Wells 2019). The decline of some of Earth’s natural systems may already exceed the “planetary boundaries” that represent a “safe operating space for humanity” (Rockstrom et al. 2009). Humanity has become one of the driving forces behind Earth’s climate system (Crutzen 2002). The major anthropogenic drivers of climate change are the burning of fossil fuels (e.g., coal, oil, and gas), combined with the degradation of Earth’s natural systems for absorbing carbon dioxide, such as deforestation for agriculture (e.g., livestock and monocultures) and resource extraction (e.g., mining and oil), and the warming of the oceans (Kump et al. 2003). While humanity has influenced Earth’s climate since at least the Industrial Revolution, the dramatic increase in greenhouse gas emissions since the mid-twentieth century—the “Great Acceleration” (Steffen et al. 2007; 2015; McNeill & Engelke 2016)— is responsible for contemporary climate change, which has reached approximately 1°C above preindustrial levels (IPCC 2018). Climate change could become an existential threat to humanity if the planet’s climate reaches a “Hothouse Earth” state (Ripple et al. 2020). What are the dangers? There are two mechanisms of climate change that threaten humankind. The direct threat is extreme heat. While human societies possesses some capacity for adaptation and resilience to climate change, the physiological response of humans to heat stress imposes physical limits—with a hard limit at roughly 35°C wet-bulb temperature (Sherwood et al. 2010). A rise in global average temperatures by 3–4°C would increase the risk of heat stress, while 7°C could render some regions uninhabitable, and 11–12°C would leave much of the planet too hot for human habitation (Sherwood et al. 2010). The indirect effects of climate change could include, inter alia, rising sea levels affecting coastal regions (e.g., Miami and Shanghai), or even swallowing entire countries (e.g., Bangladesh and the Maldives); extreme and unpredictable weather and natural disasters (e.g., hurricanes and forest fires); environmental pressures on water and food scarcity (e.g., droughts from less-dispersed rainfall, and lower wheat-yields at higher temperatures); the possible inception of new bacteria and viruses; and, of course, large-scale human migration (World Bank 2012; Wallace-Well 2019; Richards, Lupton & Allywood 2001). While it is difficult to determine the existential implications of extreme environmental conditions, there are historic precedents for the collapse of human societies under environmental pressures (Diamond 2005). Earth’s “big five” mass extinction events have been linked to dramatic shifts in Earth’s climate (Ward 2008; Payne & Clapham 2012; Kolbert 2014; Brannen 2017), and a Hothouse Earth climate would represent terra incognita for humanity. Thus, the assumption here is that a Hothouse Earth climate could pose an existential threat to the habitability of the planet for humanity (Steffen et al. 2018., 5). At what point could climate change cross the threshold of an existential threat to humankind? The complexity of Earth’s natural systems makes it extremely difficult to give a precise figure (Rockstrom et al. 2009; ). However, much of the concern about climate change is over the danger of crossing “tipping points,” whereby positive feedback loops in Earth’s climate system could lead to potentially irreversible and self-reinforcing “runaway” climate change. For example, the melting of Arctic “permafrost” could produce additional warming, as glacial retreat reduces the refractory effect of the ice and releases huge quantities of methane currently trapped beneath it. A recent study suggests that a “planetary threshold” could exist at global average temperature of 2°C above preindustrial levels (Steffen et al. 2018; also IPCC 2018). Therefore, the analysis here takes the 2°C rise in global average temperatures as representing the lower-boundary of an existential threat to humanity, with higher temperatures increasing the risk of runaway climate change leading to a Hothouse Earth. The Paris Agreement on Climate Change set the goal of limiting the increase in global average temperatures to “well below” 2°C and to pursue efforts to limit the increase to 1.5°C. If the Paris Agreement goals are met, then nations would likely keep climate change below the threshold of an existential threat to humanity. According to Climate Action Tracker (2020), however, current policies of states are expected to produce global average temperatures of 2.9°C above preindustrial levels by 2100 (range between +2.1 and +3.9°C), while if states succeed in meeting their pledges and targets, global average temperatures are still projected to increase by 2.6°C (range between +2.1 and +3.3°C). Thus, while the Paris Agreements sets a goal that would reduce the exis 6 - tential risk of climate change, the actual policies of states could easily cross the threshold that would constitute an existential threat to humanity (CAT 2020)

### 1nc—DA

BizCon

#### Plan creates an abrupt shift and doctrinal instability in antitrust that spills over throughout the economy—it’s impossible to distinguish specific industries because it’s enforced in generalist common law which dries up capital flows

Rogerson 20 (William, Professor of Economics at Northwestern University, “Antitrust Enforcement, Regulation, and Digital Platforms”, University of Pennsylvania Law Review, 168 U. Pa. L. Rev. 1911, June 2020)

Antitrust statutes are primarily enforced in court, usually through the adjudication of specific cases or settlement against the backdrop of court-made antitrust doctrine. Indeed, despite statutory authority for the FTC to issue competition rules, and despite the technical complexity of many antitrust cases, antitrust enforcement and policy in the United States has evolved primarily through precedent developed by generalist courts, not specialized agencies. 18To be sure, the Department of Justice and the FTC influence policy through the investigations they pursue and the consent decrees they reach with parties. The FTC itself adjudicates some cases, although it does so largely according to law developed in the federal courts, to which parties can appeal any FTC decision. 19Academics and other commentators have also affected the evolution of antitrust in the United States, from supporting an economic, notably price-focused framework for U.S. competition policy to sparking a rethinking of that framework in contemporary debates. As the courts have absorbed such learning, antitrust doctrine has evolved over the decades through the push and pull of precedent across the United States judicial circuits, with the Supreme Court periodically stepping in to correct, clarify, or resolve differences among the lower federal courts. Commentators often cite antitrust as a rare example of "federal common law" in the U.S. system. 20 The adjudicatory model for implementing antitrust enforcement has several key attributes, which in turn have both advantages and disadvantages. We put aside for now the question of who is adjudicating--whether it be an expert tribunal or a court of general jurisdiction, for example--and focus on three characteristics of antitrust adjudication itself. A. Case-by-Case, Fact-Specific Approach Complexity of underlying issues aside, adjudication is well suited to settings in which applicability of the law is contingent on case-specific facts. With the exception of the limited conduct that the antitrust laws prohibit per se, courts review most business activities through a rule of reason, under which some conduct that is illegal in one set of circumstances is allowable in [\*1918] another. 21The inquiry into liability goes beyond whether particular conduct in fact occurred (which is the extent of the inquiry into conduct that is illegal per se) and extends into a balancing of the conduct's likely effects on competition. 22The more that liability is contingent on such case-specific facts, the more difficult it is to determine liability in advance of the conduct's having taken place. Adjudication typically occurs when conduct either is imminent or has already occurred, at which point the relevant facts as to the effects of the conduct are, in principle, more readily measured. 23Such "ex post" mechanisms of enforcement can reduce the risk of over-enforcement when compared to alternative approaches, like some forms of regulation, that spell out more comprehensively in advance what conduct is illegal. 24Reducing false positives, however, may or may not be a virtue--that calculation depends on the extent to which particular adjudicative institutions and processes under-enforce by allowing harmful conduct or transactions to slip through the liability screen. B. Slow, Usually Predictable Doctrinal Development A second attribute of the American adjudicatory process for antitrust is stability. While antitrust doctrine has occasionally swerved abruptly over the past century, the common-law process through which antitrust law has developed usually provides clear notice that a change is coming. As a recent example, the Supreme Court's shift in *Leegin Creative Leather Products, Inc. v. PSKS. Inc*. 25from per se liability to a rule of reason for resale price maintenance likely caught few observers by surprise. 26 Antitrust adjudication's stability, like its suitability for fact-dependent situations, is potentially double-edged. Antitrust jurisprudence can be slow to adjust to changes in economic learning or changes in the underlying economy that alter the effects of a particular kind of business conduct. For [\*1919] example, nearly thirty years ago the Supreme Court in Brooke Group v. Brown & Williamson Tobacco Corp. 27required that plaintiffs claiming predatory pricing show not only prices below some measure of incremental cost, but also that the defendant could recoup its losses. 28No plaintiff has prevailed in a predatory pricing case in a U.S. federal court since. 29That outcome might not be of concern were it the case that the Supreme Court's test accurately captures the incidence of predatory pricing. 30Economic research demonstrates, however, that predatory conduct does occur and does not depend on either below-cost pricing or recoupment. 31Predation is just one area in which court-made doctrine appears out of step with relevant economic facts and knowledge. To be sure, other forces could accelerate the common-law process of doctrinal development. For example, Congress could legislate changes to the scope, presumptions, and other parameters of antitrust law in ways that would immediately alter precedent and bind the courts going forward. 32 In practice, however, such intervention is rare and unlikely, making significant lags in doctrine a reality of antitrust adjudication in the courts. C. Market-Driven Case Selection In the United States, most adjudicative bodies do not select the cases that come before them. To be sure, courts have jurisdictional limitations that prevent them from hearing certain kinds of cases, and doctrines exist that allow courts to reject weak or poorly conceived complaints. Beyond those mechanisms, however, independent parties decide when and whether to pursue litigation as method of relief. One potential virtue of this separation between decisionmaking and case selection is that the market can drive the focus of judicial attention. Assuming the most widespread and most troublesome anticompetitive conduct will receive the greatest investment of litigation resources, that conduct will in turn receive the most adjudication and doctrinal development. [\*1920] Unfortunately, the separation between adjudication and case selection will not necessarily lead to an efficient match between judicial attention and the most pressing antitrust violations. In practice, even conduct that is clearly prohibited can persist when offenders think detection is difficult; one only has to look at the consistently high number of civil and criminal price fixing cases that wind up in court, even though that conduct has clearly been illegal per se for nearly a century. 33The most widespread anticompetitive conduct might not therefore be the conduct most in need of doctrinal development--it can be just the opposite, as the persistence of cartels demonstrates. 34Moreover, if the courts develop doctrine that needs revisiting, but that deters the government or private plaintiffs from filing cases, 35then the market for judicial attention to antitrust conduct will not work well dynamically; once doctrine is settled, there may be no mechanism outside of legislation or regulatory intervention to drive doctrinal change. We return to this issue below. D. Generalists versus Industry Experts Returning to an issue we put aside earlier, who is doing the adjudication can matter for substantive outcomes. In U.S. antitrust law, that adjudication has occurred, at least ultimately, in generalist federal courts. That institutional locus might well make sense given the wide variety of conduct, industries, and factual circumstances that antitrust cases present. However, as specific industries come to pose particular challenges for antitrust enforcement, the case for more specialized enforcement decisionmakers becomes stronger. Traditionally, where detailed, industry-specific knowledge is required to make sound competition policy decisions, Congress has assigned authority over those decisions, at least in part, to industry-specific regulatory agencies. Thus, the Securities and Exchange Commission has authority over competitive conduct in key financial sectors. 36The FCC has parallel authority with the Department of Justice (DOJ) over telecommunications mergers and sole authority to establish terms for competitive entry into various telecommunications markets. 37State [\*1921] regulators govern entry into hospital markets through Certifications of Public Need. 38The federal courts have increasingly safeguarded the domain of industry specific regulators over competition issues even when agency decisions might be in tension with antitrust law. 39 As antitrust enforcement focuses on distinct challenges posed by a particular industry, whether digital platforms, pharmaceuticals, or something else, expert and specialized knowledge becomes even more essential to making good enforcement decisions. Under current law and enforcement frameworks, there is no systematic way to bring such specialization into the ultimate adjudication of antitrust cases in industries not already covered by specific, competition-related, regulatory statutes. To be sure, the FTC and DOJ have divisions that specialize in various industrial sectors in which they have considerable expertise. Those divisions bring that expertise into their review of conduct and transactions, but neither the FTC nor DOJ has ultimate adjudicative authority over the cases they choose to litigate. The DOJ must go to federal court to seek enforcement. The FTC can opt for an administrative enforcement mechanism with the Commission itself sitting in appellate review of initial adjudication by an administrative law judge. The Commission's decision is, however, subject to review by federal appellate courts, which have not hesitated to reverse the agency's decisions. 40 The result is that, even when agencies have brought specific industry expertise into antitrust enforcement, doctrinal application and resolution still proceeds through the common-law process of adjudication by generalist judges. E. Tradeoffs Inherent in the Adjudicatory Approach to Antitrust As the foregoing discussion suggests, the ex post case-by-case approach, slow doctrinal evolution, and case selection mechanism of antitrust adjudication have potential advantages and disadvantages. The tradeoffs become particularly clear through the interaction of those three characteristics. [\*1922] Adjudication may mitigate the rate of false positives or false negatives obtained through enforcement, as proceeding case-by-case is less likely to bring about those results than are general rules that impose limits on business conduct in advance, regardless of specific circumstances. Broad ex ante specifications could prohibit beneficial or harmless conduct, and narrow ex ante specifications could fail to prevent anticompetitive practices. As a decisionmaking process moves from strict ex ante prescription to pure case-by-case adjudication, particular facts and circumstances increasingly predominate over generic categorization of conduct. 41In principle, the movement along that spectrum enables the decisionmaker to avoid under-inclusiveness or over-inclusiveness of categorical rules. 42 The extent to which an adjudicator actually succeeds in reducing enforcement errors in either direction depends on the doctrine and precedent through which it evaluates the case-specific evidence. Doctrine and precedent will determine how a court allocates burdens, prioritizes facts, and weighs presumptions in evaluating the legality of conduct. If precedent provides mistaken guidance on those factors, case-specific adjudication might do no better a job than ex ante prohibitions in avoiding errors or bias toward either under or over-enforcement. For this reason, the evolutionary pace of doctrinal development through antitrust adjudication is very important. Where that evolution has been toward convergence with state-of-the-art analysis and evidence as to the effects of conduct, doctrinal stability is a virtue. Reasonable people disagree over the Supreme Court's movement from per se illegality to rule of reason treatment of vertical price restraints, as Justice Breyer's dissent in Leegin demonstrates. 43 The decision in that case nonetheless drew on a body of legal and economic analysis that, over decades, had continually narrowed the application of per se rules to vertical conduct and led logically (even if some might argue incorrectly) to the majority's conclusion. 44Many commentators might therefore say Leegin is a good example of where the evolution of doctrine through adjudication worked well: stakeholders had notice and the doctrine moved in an internally consistent direction. While it is debatable whether the per se rule against restraints on [\*1923] intra-brand competition has in recent years led to over-enforcement, there is a good case that it had done so in the past, 45so that the doctrine plausibly moved in an error-reducing direction. However, where doctrine gets on the wrong track, the application of precedent will perpetuate rather than reduce enforcement errors. In the case of predation, for example, there is a good argument that, in the light of current economic knowledge, the Brooke Group decision has led to underenforcement. 46The potential case-by-case advantages of adjudication are lost where judicial precedent renders important facts and circumstances irrelevant. In such cases, the relatively slow process of doctrinal correction through common law evolution is harmful to sound antitrust enforcement. The discussion above shows that the error-reducing potential of a case-by-case, adjudicatory approach to antitrust enforcement depends heavily on the actual doctrine courts apply and on the process by which that doctrine evolves. Similarly, whether case selection in an adjudicatory approach in fact directs judicial attention to the conduct that most warrants oversight depends on existing doctrine and precedent. It may well be that the conduct doing the most harm is also the conduct for which the courts impose the highest burdens of proof on plaintiffs. The deterrent effect of those burdens likely leads to fewer cases than the conduct's actual effects warrant. 47Similarly, doctrine that too readily imposes liability could have the opposite effect: lower barriers for plaintiffs would lead to too many cases and more devotion of judicial resources than the conduct deserves. 48Like error-reduction, the distribution of antitrust cases brought for adjudication depends heavily on the state of the doctrine and on the ability of the common law process to correct course where necessary. The potential disadvantages of antitrust adjudication by generalist courts raise the question of whether a different approach might be preferable, specifically with regard to digital platforms. Digital platforms present relatively novel challenges. Considering the tenuous fit between some [\*1924] potential theories of harm and current antitrust doctrine, the complexity of the underlying technical issues in antitrust cases, and the interrelatedness of those issues and adjacent policy goals, a more informed, comprehensive approach coordinated by an expert regulatory agency might foster more advantages than does the exclusive resort to traditional antitrust adjudication. However, before we turn to the form such regulation might take, we briefly identify some general principles for such regulation.

#### Overall growth is decked by the aff and unpredictable shifts ruin business confidence

Cambon 21 (Sarah Chaney Reporter on The Wall Street Journal's Economics Team, BA in Business Journalism from the University of North Carolina-Chapel Hill, “Capital-Spending Surge Further Lifts Economic Recovery”, Wall Street Journal, 6/27/2021, https://www.wsj.com/articles/capital-spending-surge-further-lifts-economic-recovery-11624798800)

Business investment is emerging as a powerful source of U.S. economic growth that will likely help sustain the recovery. Companies are ramping up orders for computers, machinery and software as they grow more confident in the outlook. Nonresidential fixed investment, a proxy for business spending, rose at a seasonally adjusted annual rate of 11.7% in the first quarter, led by growth in software and tech-equipment spending, according to the Commerce Department. Business investment also logged double-digit gains in the third and fourth quarters last year after falling during pandemic-related shutdowns. It is now higher than its pre-pandemic peak. Orders for nondefense capital goods excluding aircraft, another measure for business investment, are near the highest levels for records tracing back to the 1990s, separate Commerce Department figures show. “Business investment has really been an important engine powering the U.S. economic recovery,” said Robert Rosener, senior U.S. economist at Morgan Stanley. “In our outlook for the economy, it’s certainly one of the bright spots.” Consumer spending, which accounts for about two-thirds of economic output, is driving the early stages of the recovery. Americans, flush with savings and government stimulus checks, are spending more on goods and services, which they shunned for much of the pandemic. Robust capital investment will be key to ensuring that the recovery maintains strength after the spending boost from fiscal stimulus and business reopenings eventually fades, according to some economists. Rising business investment helps fuel economic output. It also lifts worker productivity, or output per hour. That metric grew at a sluggish pace throughout the last economic expansion but is now showing signs of resurgence. The recovery in business investment is shaping up to be much stronger than in the years following the 2007-09 recession. “The events especially in late ’08, early ’09 put a lot of businesses really close to the edge,” said Phil Suttle, founder of Suttle Economics. “I think a lot of them said, ‘We’ve just got to be really cautious for a long while.’” Businesses appear to be less risk-averse now, he said. After the financial crisis, businesses grew by adding workers, rather than investing in capital. Hiring was more attractive than capital spending because labor was abundant and relatively cheap. Now the supply of workers is tight. Companies are raising pay to lure employees. As a result, many firms have more incentive to grow by investing in capital. Economists at Morgan Stanley predict that U.S. capital spending will rise to 116% of prerecession levels after three years. By comparison, investment took 10 years to reach those levels once the 2007-09 recession hit. Company executives are increasingly confident in the economy’s trajectory. The Business Roundtable’s economic-outlook index—a composite of large companies’ plans for hiring and spending, as well as sales projections—increased by nine points in the second quarter to 116, just below 2018’s record high, according to a survey conducted between May 25 and June 9. In the second quarter, the share of companies planning to boost capital investment increased to 59% from 57% in the first. “We’re seeing really strong reopening demand, and a lot of times capital investment follows that,” said Joe Song, senior U.S. economist at BofA Securities. Mr. Song added that less uncertainty regarding trade tensions between the U.S. and China should further underpin business confidence and investment. “At the very least, businesses will understand the strategy that the Biden administration is trying to follow and will be able to plan around that,” he said.

#### Economic decline causes nuclear war

Maavak 21 (Matthew, PhD in Risk Foresight from the Universiti Teknologi Malaysia, External Researcher (PLATBIDAFO) at the Kazimieras Simonavicius University, Expert and Regular Commentator on Risk-Related Geostrategic Issues at the Russian International Affairs Council, “Horizon 2030: Will Emerging Risks Unravel Our Global Systems?”, Salus Journal – The Australian Journal for Law Enforcement, Security and Intelligence Professionals, Volume 9, Number 1, p. 2-8)

Various scholars and institutions regard global social instability as the greatest threat facing this decade. The catalyst has been postulated to be a Second Great Depression which, in turn, will have profound implications for global security and national integrity. This paper, written from a broad systems perspective, illustrates how emerging risks are getting more complex and intertwined; blurring boundaries between the economic, environmental, geopolitical, societal and technological taxonomy used by the World Economic Forum for its annual global risk forecasts. Tight couplings in our global systems have also enabled risks accrued in one area to snowball into a full-blown crisis elsewhere. The COVID-19 pandemic and its socioeconomic fallouts exemplify this systemic chain-reaction. Onceinexorable forces of globalization are rupturing as the current global system can no longer be sustained due to poor governance and runaway wealth fractionation. The coronavirus pandemic is also enabling Big Tech to expropriate the levers of governments and mass communications worldwide. This paper concludes by highlighting how this development poses a dilemma for security professionals. Key Words: Global Systems, Emergence, VUCA, COVID-9, Social Instability, Big Tech, Great Reset INTRODUCTION The new decade is witnessing rising volatility across global systems. Pick any random “system” today and chart out its trajectory: Are our education systems becoming more robust and affordable? What about food security? Are our healthcare systems improving? Are our pension systems sound? Wherever one looks, there are dark clouds gathering on a global horizon marked by volatility, uncertainty, complexity and ambiguity (VUCA). But what exactly is a global system? Our planet itself is an autonomous and selfsustaining mega-system, marked by periodic cycles and elemental vagaries. Human activities within however are not system isolates as our banking, utility, farming, healthcare and retail sectors etc. are increasingly entwined. Risks accrued in one system may cascade into an unforeseen crisis within and/or without (Choo, Smith & McCusker, 2007). Scholars call this phenomenon “emergence”; one where the behaviour of intersecting systems is determined by complex and largely invisible interactions at the substratum (Goldstein, 1999; Holland, 1998). The ongoing COVID-19 pandemic is a case in point. While experts remain divided over the source and morphology of the virus, the contagion has ramified into a global health crisis and supply chain nightmare. It is also tilting the geopolitical balance. China is the largest exporter of intermediate products, and had generated nearly 20% of global imports in 2015 alone (Cousin, 2020). The pharmaceutical sector is particularly vulnerable. Nearly “85% of medicines in the U.S. strategic national stockpile” sources components from China (Owens, 2020). An initial run on respiratory masks has now been eclipsed by rowdy queues at supermarkets and the bankruptcy of small businesses. The entire global population – save for major pockets such as Sweden, Belarus, Taiwan and Japan – have been subjected to cyclical lockdowns and quarantines. Never before in history have humans faced such a systemic, borderless calamity. COVID-19 represents a classic emergent crisis that necessitates real-time response and adaptivity in a real-time world, particularly since the global Just-in-Time (JIT) production and delivery system serves as both an enabler and vector for transboundary risks. From a systems thinking perspective, emerging risk management should therefore address a whole spectrum of activity across the economic, environmental, geopolitical, societal and technological (EEGST) taxonomy. Every emerging threat can be slotted into this taxonomy – a reason why it is used by the World Economic Forum (WEF) for its annual global risk exercises (Maavak, 2019a). As traditional forces of globalization unravel, security professionals should take cognizance of emerging threats through a systems thinking approach. METHODOLOGY An EEGST sectional breakdown was adopted to illustrate a sampling of extreme risks facing the world for the 2020-2030 decade. The transcendental quality of emerging risks, as outlined on Figure 1, below, was primarily informed by the following pillars of systems thinking (Rickards, 2020): • Diminishing diversity (or increasing homogeneity) of actors in the global system (Boli & Thomas, 1997; Meyer, 2000; Young et al, 2006); • Interconnections in the global system (Homer-Dixon et al, 2015; Lee & Preston, 2012); • Interactions of actors, events and components in the global system (Buldyrev et al, 2010; Bashan et al, 2013; Homer-Dixon et al, 2015); and • Adaptive qualities in particular systems (Bodin & Norberg, 2005; Scheffer et al, 2012) Since scholastic material on this topic remains somewhat inchoate, this paper buttresses many of its contentions through secondary (i.e. news/institutional) sources. ECONOMY According to Professor Stanislaw Drozdz (2018) of the Polish Academy of Sciences, “a global financial crash of a previously unprecedented scale is highly probable” by the mid- 2020s. This will lead to a trickle-down meltdown, impacting all areas of human activity. The economist John Mauldin (2018) similarly warns that the “2020s might be the worst decade in US history” and may lead to a Second Great Depression. Other forecasts are equally alarming. According to the International Institute of Finance, global debt may have surpassed $255 trillion by 2020 (IIF, 2019). Yet another study revealed that global debts and liabilities amounted to a staggering $2.5 quadrillion (Ausman, 2018). The reader should note that these figures were tabulated before the COVID-19 outbreak. The IMF singles out widening income inequality as the trigger for the next Great Depression (Georgieva, 2020). The wealthiest 1% now own more than twice as much wealth as 6.9 billion people (Coffey et al, 2020) and this chasm is widening with each passing month. COVID-19 had, in fact, boosted global billionaire wealth to an unprecedented $10.2 trillion by July 2020 (UBS-PWC, 2020). Global GDP, worth $88 trillion in 2019, may have contracted by 5.2% in 2020 (World Bank, 2020). As the Greek historian Plutarch warned in the 1st century AD: “An imbalance between rich and poor is the oldest and most fatal ailment of all republics” (Mauldin, 2014). The stability of a society, as Aristotle argued even earlier, depends on a robust middle element or middle class. At the rate the global middle class is facing catastrophic debt and unemployment levels, widespread social disaffection may morph into outright anarchy (Maavak, 2012; DCDC, 2007). Economic stressors, in transcendent VUCA fashion, may also induce radical geopolitical realignments. Bullions now carry more weight than NATO’s security guarantees in Eastern Europe. After Poland repatriated 100 tons of gold from the Bank of England in 2019, Slovakia, Serbia and Hungary quickly followed suit. According to former Slovak Premier Robert Fico, this erosion in regional trust was based on historical precedents – in particular the 1938 Munich Agreement which ceded Czechoslovakia’s Sudetenland to Nazi Germany. As Fico reiterated (Dudik & Tomek, 2019): “You can hardly trust even the closest allies after the Munich Agreement… I guarantee that if something happens, we won’t see a single gram of this (offshore-held) gold. Let’s do it (repatriation) as quickly as possible.” (Parenthesis added by author). President Aleksandar Vucic of Serbia (a non-NATO nation) justified his central bank’s gold-repatriation program by hinting at economic headwinds ahead: “We see in which direction the crisis in the world is moving” (Dudik & Tomek, 2019). Indeed, with two global Titanics – the United States and China – set on a collision course with a quadrillions-denominated iceberg in the middle, and a viral outbreak on its tip, the seismic ripples will be felt far, wide and for a considerable period. A reality check is nonetheless needed here: Can additional bullions realistically circumvallate the economies of 80 million plus peoples in these Eastern European nations, worth a collective $1.8 trillion by purchasing power parity? Gold however is a potent psychological symbol as it represents national sovereignty and economic reassurance in a potentially hyperinflationary world. The portents are clear: The current global economic system will be weakened by rising nationalism and autarkic demands. Much uncertainty remains ahead. Mauldin (2018) proposes the introduction of Old Testament-style debt jubilees to facilitate gradual national recoveries. The World Economic Forum, on the other hand, has long proposed a “Great Reset” by 2030; a socialist utopia where “you’ll own nothing and you’ll be happy” (WEF, 2016). In the final analysis, COVID-19 is not the root cause of the current global economic turmoil; it is merely an accelerant to a burning house of cards that was left smouldering since the 2008 Great Recession (Maavak, 2020a). We also see how the four main pillars of systems thinking (diversity, interconnectivity, interactivity and “adaptivity”) form the mise en scene in a VUCA decade. ENVIRONMENTAL What happens to the environment when our economies implode? Think of a debt-laden workforce at sensitive nuclear and chemical plants, along with a concomitant surge in industrial accidents? Economic stressors, workforce demoralization and rampant profiteering – rather than manmade climate change – arguably pose the biggest threats to the environment. In a WEF report, Buehler et al (2017) made the following pre-COVID-19 observation: The ILO estimates that the annual cost to the global economy from accidents and work-related diseases alone is a staggering $3 trillion. Moreover, a recent report suggests the world’s 3.2 billion workers are increasingly unwell, with the vast majority facing significant economic insecurity: 77% work in part-time, temporary, “vulnerable” or unpaid jobs. Shouldn’t this phenomenon be better categorized as a societal or economic risk rather than an environmental one? In line with the systems thinking approach, however, global risks can no longer be boxed into a taxonomical silo. Frazzled workforces may precipitate another Bhopal (1984), Chernobyl (1986), Deepwater Horizon (2010) or Flint water crisis (2014). These disasters were notably not the result of manmade climate change. Neither was the Fukushima nuclear disaster (2011) nor the Indian Ocean tsunami (2004). Indeed, the combustion of a long-overlooked cargo of 2,750 tonnes of ammonium nitrate had nearly levelled the city of Beirut, Lebanon, on Aug 4 2020. The explosion left 204 dead; 7,500 injured; US$15 billion in property damages; and an estimated 300,000 people homeless (Urbina, 2020). The environmental costs have yet to be adequately tabulated. Environmental disasters are more attributable to Black Swan events, systems breakdowns and corporate greed rather than to mundane human activity. Our JIT world aggravates the cascading potential of risks (Korowicz, 2012). Production and delivery delays, caused by the COVID-19 outbreak, will eventually require industrial overcompensation. This will further stress senior executives, workers, machines and a variety of computerized systems. The trickle-down effects will likely include substandard products, contaminated food and a general lowering in health and safety standards (Maavak, 2019a). Unpaid or demoralized sanitation workers may also resort to indiscriminate waste dumping. Many cities across the United States (and elsewhere in the world) are no longer recycling wastes due to prohibitive costs in the global corona-economy (Liacko, 2021). Even in good times, strict protocols on waste disposals were routinely ignored. While Sweden championed the global climate change narrative, its clothing flagship H&M was busy covering up toxic effluences disgorged by vendors along the Citarum River in Java, Indonesia. As a result, countless children among 14 million Indonesians straddling the “world’s most polluted river” began to suffer from dermatitis, intestinal problems, developmental disorders, renal failure, chronic bronchitis and cancer (DW, 2020). It is also in cauldrons like the Citarum River where pathogens may mutate with emergent ramifications. On an equally alarming note, depressed economic conditions have traditionally provided a waste disposal boon for organized crime elements. Throughout 1980s, the Calabriabased ‘Ndrangheta mafia – in collusion with governments in Europe and North America – began to dump radioactive wastes along the coast of Somalia. Reeling from pollution and revenue loss, Somali fisherman eventually resorted to mass piracy (Knaup, 2008). The coast of Somalia is now a maritime hotspot, and exemplifies an entwined form of economic-environmental-geopolitical-societal emergence. In a VUCA world, indiscriminate waste dumping can unexpectedly morph into a Black Hawk Down incident. The laws of unintended consequences are governed by actors, interconnections, interactions and adaptations in a system under study – as outlined in the methodology section. Environmentally-devastating industrial sabotages – whether by disgruntled workers, industrial competitors, ideological maniacs or terrorist groups – cannot be discounted in a VUCA world. Immiserated societies, in stark defiance of climate change diktats, may resort to dirty coal plants and wood stoves for survival. Interlinked ecosystems, particularly water resources, may be hijacked by nationalist sentiments. The environmental fallouts of critical infrastructure (CI) breakdowns loom like a Sword of Damocles over this decade. GEOPOLITICAL The primary catalyst behind WWII was the Great Depression. Since history often repeats itself, expect familiar bogeymen to reappear in societies roiling with impoverishment and ideological clefts. Anti-Semitism – a societal risk on its own – may reach alarming proportions in the West (Reuters, 2019), possibly forcing Israel to undertake reprisal operations inside allied nations. If that happens, how will affected nations react? Will security resources be reallocated to protect certain minorities (or the Top 1%) while larger segments of society are exposed to restive forces? Balloon effects like these present a classic VUCA problematic. Contemporary geopolitical risks include a possible Iran-Israel war; US-China military confrontation over Taiwan or the South China Sea; North Korean proliferation of nuclear and missile technologies; an India-Pakistan nuclear war; an Iranian closure of the Straits of Hormuz; fundamentalist-driven implosion in the Islamic world; or a nuclear confrontation between NATO and Russia. Fears that the Jan 3 2020 assassination of Iranian Maj. Gen. Qasem Soleimani might lead to WWIII were grossly overblown. From a systems perspective, the killing of Soleimani did not fundamentally change the actor-interconnection-interaction adaptivity equation in the Middle East. Soleimani was simply a cog who got replaced.

### 1nc—DA

Court Clog

#### Antitrust litigation is uniquely complex and resource-intensive---a spike in cases trades-off with judicial functioning in other key areas

Warren 15 (Daniel, JD from the Boston University School of Law, BS from Ohio State University, “Stress Fractures: The Need to Stop and Repair the Growing Divide in Circuit Court Application of Summary Judgment in Antitrust Litigation”, Review of Banking and Financial Law, 35 Rev. Banking & Fin. L. 380, Lexis)

A. Summary Judgment Can Cut Short Extreme Costs

Antitrust litigation can involve enormous discovery costs, particularly when antitrust litigation overlaps with class action litigation. Due to the wide scope of many antitrust claims, discovery can implicate a broad range of documents, records, interrogatories, and depositions. In fact, "[s]trategically minded" plaintiffs can take advantage of antitrust law's "onerous discovery costs" by requiring the defendant "to respond to wide-ranging interrogatories, produce documents, and prepare for and defend depositions" with only a "facially plausible allegation" of an antitrust violation. These costs can take a very large toll on both large and small businesses. The legal hours necessary to answer and address discovery challenges can also impose extreme costs.

Plaintiffs can often use discovery costs as a weapon against defendants in antitrust litigation. The Seventh Circuit Court of Appeals stated that "antitrust trials often encompass a great deal of expensive and time consuming discovery and trial work" in explaining that the "very nature" of antitrust litigation should encourage summary judgment. The court's language here supports [\*389] the idea that in antitrust litigation, summary judgment has a special value, greater even than its normal use in other areas of the law. Summary judgment can be used to cut short lengthy litigation where parties have already accrued extreme costs from discovery and one party still cannot produce a genuine issue of material fact.

In antitrust litigation, the value of summary judgment to mitigate discovery costs through shortening litigation is elevated to a special importance even greater than normal for three reasons. First, antitrust litigation normally involves large organizations, which magnifies the costs of those firms going through the discovery process. Large firms have a great number of involved employees and departments, all of which would likely be subject to the broad discovery that is characteristic of antitrust litigation. Summary judgment, though normally considered after discovery, is a procedural weapon available at nearly any point in this process, as "a party may file a motion for summary judgment at any time until 30 days after the close of all discovery." The existence of a stay for extension of discovery shows that summary judgment need not automatically wait for discovery's completion, and thus can be an invaluable safeguard against otherwise incredibly costly discovery. This safeguard allows summary judgment to be a powerful tool to radically lower discovery time and costs without "railroad[ing]" the other party.

Second, antitrust litigation is normally a slow process that takes a great deal of time. The amount of time necessary to process and review evidence produced by discovery leads to incredible legal costs, often disproportionately placed on the defendant firm. The plaintiff has the advantage over the defendant in deciding the scope of discovery costs, and may often tailor its claim in such a way as to avoid the discovery costs that a defendant's counterclaim may reflect [\*390] back on the plaintiff. These lengthy trials can be effectively truncated by summary judgment, and thus summary judgment's normal value is even greater in the world of antitrust litigation where protracted trials are the norm.

Finally, the vast amount of evidence necessary to prove the elements of an antitrust claim contribute to the large discovery costs tied to antitrust litigation by overwhelming judges' ability to reign in discovery costs. Currently, we rely on judges to limit the range of discovery requested, but in the context of antitrust litigation, judges have difficulty dealing with the broad variety of evidence that may be called for. One analysis of the power of discovery described it as a costly and potentially abusive force, and determined judges' abilities to limit discovery costs on their own as "hollow" at best:

A magistrate supervising discovery does not--cannot--know the expected productivity of a given request, because the nature of the requester's claim and the contents of the files (or head) of the adverse party are unknown. Judicial officers cannot measure the costs and benefits to the requester and so cannot isolate impositional requests. Requesters have no reason to disclose their own estimates because they gain from imposing costs on rivals (and may lose from an improvement in accuracy). The portions of the Rules of Civil Procedure calling on judges to trim back excessive demands, therefore, have been, and are doomed to be, hollow. We cannot prevent what we cannot detect; we cannot detect what we cannot define; we cannot define "abusive" discovery except in theory, because in practice we lack essential information. Even in retrospect it is hard to label requests as abusive. How can a judge distinguish a dry hole (common in litigation as well as in the oil business) from a request that was not justified at the time?

[\*391] Summary judgment can also reduce costs to both parties by reducing time and discovery costs to the parties, and to the judicial system itself, by cutting short lengthy litigation. Both sides often incur costs from employing experts in various areas, researching and producing evidence necessary to prove or disprove elements of antitrust actions, and in the great many legal hours necessary for both plaintiffs and defendants--not to mention costs to the state--during lengthy litigation that is often fruitless due to an "incentive to file potentially equivocal claims." Antitrust law is structured in such a way as to have a "special temptation" for what would otherwise be frivolous litigation. As antitrust law is, by its very nature, between competitors, there is significant motivation to force costs on to other firms, perhaps even through frivolous legal claims or intentionally imposing other large legal costs. Costs can also multiply in antitrust litigation because antitrust actions are often combined with other particularly complex areas of law, such as patent law or class actions. Class actions particularly in the antitrust context can make trials "unmanageable." Combining two already complex areas of law is a recipe for large legal costs and prolonged litigation. The value of cutting costs short cannot be overstated, as antitrust litigation takes place in the arena of business competition. This means that firms are already engaged in close competition for antitrust cases to be relevant, and thus unnecessary costs can further distort the market.

#### Efficient court review is key to patent based innovation—that solves nuclear war

Rando 16 (Robert, Founder and Lead Counsel of The Rando Law Firm P.C., Fellow of the Academy of Court-Appointed Masters, Treasurer for the New York Intellectual Property Law Association, Chair of the Federal Bar Association Intellectual Property Law Section, “America’s Need For Strong, Stable and Sound Intellectual Property Protection and Policies: Why It Really Matters”, IP Insight, June 2016, p. 12-14 [language modified] [abbreviations in brackets]

Robert F. Kennedy’s speech, which includes his reference to the oft-quoted “interesting times” curse, applies throughout history in many contexts and, indeed, with both negative and positive connotation. While he focused on the struggles for freedom and social justice, the requisite ascendancy of the individual over the state, and the institution and integration of those ideals for the greater good, he also promoted the goals of greater global unity, cooperation and communication, which were, and could be, achieved by advances in technology. And, as noted in the excerpt, he championed “the creative energy of men.” Intellectual Property in “Interesting Times” It is beyond question that starting with the last decade of the twentieth century and throughout the first two decades of the twenty-first century, when it comes to matters relating to intellectual property, we have been living in “interesting times.” Some may interpret these interesting times as defined by the curse and others may view it by the ordinary meaning of “interesting.” In either case, those of us that toil in the fields of patents, copyrights, trademarks, trade secrets, and privacy rights have experienced an unprecedented sea change in the way those rights are procured, protected and enforced. Likewise, and perhaps more importantly, even those of us that do not practice in these areas of law, as well as the general public, have been, and continue to be, impacted by the consequences of these changes (both positive and negative). The Changes In Intellectual Property Law Examples of some of the changes in intellectual property law are: the sweeping 2011 legislative changes to the patent laws under the America Invents Act (AIA), which impact is only beginning to be fully appreciated; the various proposals for patent law reform, on the heels of the AIA, beginning with the 113th and 114th Congress; the copyright laws Digital Millennium Copyright Act (DMCA) and numerous 114th Congressional proposed copyright law changes; the recently enacted federal trade secret law (Defend Trade Secrets Act of 2016 (DTSA))2; the impact of the internet, domain names and globalization on Trademark law; the intellectual property law harmonization requirements included in various global/regional trade agreements; and the proliferation of devices (both invasive and non-invasive) that defy any rational basis for believing we can still adhere to the republic’s libertarian understanding of the right to privacy. Without engaging in “chicken and egg” analysis, it is sufficient to observe that technological advancement, societal needs, globalization, existential threats, economic realities, and political imperatives (or what James Madison referred to in the Federalist Papers No. 10 as factious governance), have combined to create the “interesting times” for the United States [IP] intellectual property laws. What was said by Bobby Kennedy in 1966 remains true today. We live in dangerous and uncertain times. Many of the existential threats remain the same (nuclear war and proliferation, [genocides] ~~genocidal maniacs~~ and natural disease) and some are new ([hu]manmade disease, greater awareness of environmental changes and possibly human interrelationship factors, and the unintended consequences of genetic manipulation and robotic technologies). The danger and uncertainty that pervades changes in intellectual property laws, though not an existential threat of the same manner and kind, correlates with the threat and remains “more open to the creative energy of man than any other time in history.” Apropos the creative energy of man, there is a non-coincidental congruence and convergence of activity across and among the three branches of government, occurring almost simultaneously with the congruence and convergence of the rapid developments of technological innovation across various scientific disciplines and the information age, reflected in the transformation of the [IP] intellectual property laws in the United States. Patents The passage of the AIA was a culmination of efforts spanning several years of Congressional efforts; and the product of a push by the companies at the forefront of the twenty-first century new technology business titans. The legislation brought about monumental changes in the patent law in the way that patents are procured (first inventor to file instead of first to invent) and how they are enforced (quasi-judicial challenges to patent validity through inter-party reviews at the Patent Trial and Appeals Board (PTAB)). The 113th and 114th Congress grappled with newly proposed patent law reforms that, if enacted, may present additional tectonic shifts in the patent law. Major provisions of the proposals include: fee-shifting measures (requiring loser pays legal fees - counter to the American rule); strict detailed pleadings requirements, promulgated without the traditional Rules Enabling Act procedure, that exceed those of the Twombly/Iqbal standard applied to all other civil matters in federal courts, and the different standards applicable to patent claim interpretation in PTAB proceedings and district court litigation concerning patent validity. The Executive and administrative branch has also been active in the patent law arena. President Obama was a strong supporter of the AIA3 and in his 2014 State Of The Union Address, essentially stated that, with respect to the proposed patent law reforms aimed at patent troll issues, we must innovate rather than litigate.4 Additionally, the USPTO has embarked upon an energetic overhaul of its operations in terms of patent quality and PTO performance in granting patents, and the PTAB has expanded to almost 250 Administrative Law Judges in concert with the AIA post-grant proceedings’ strict timetable requirements. The Supreme Court, not to be outdone by the Articles I and II branches of the U.S. government, has raised the profile of patent cases to historical heights. From 1996 to the 2014-15 term there has been a steady increase in the number of patent cases decided by the SCOTUS5. The 2014-15 term occupied almost ten percent of the Court’s docket. Prior to the last two decades, the Supreme Court would rarely include more than one or two patent cases in a docket that was much larger than those we have become accustomed to from the Roberts’ Court6. While the SCOTUS activity in patent cases is viewed by some as a counter-balance to the perceived Federal Circuit’s pro-patent and bright line decisions, it can just as assuredly be viewed as decisions rendered by a Court of final resort which does not function in a vacuum devoid of the social, economic and political winds of the times. In recognition of the effect new technologies have on the patent law, the politicization of intellectual property law matters, especially patent law (through factious governing principles of the political branches of the government), and the maturation of the Federal Circuit patent law jurisprudence, the SCOTUS has rendered opinions in cases that impact, and perhaps are/were intended to mitigate the concerns regarding, some of the vexing issues confronting the patent community today (e.g., non-practicing entities or in the politicized parlance “patent trolls,” the intersection of patent and antitrust laws in Hatch-Waxman so called “pay-for-delay” settlements between Branded and Generic pharma companies, and the fundamental tenets that comprise the very heart of what is patent eligible subject matter). Copyrights The advent and ubiquity of the internet, social media and digital technologies (MP3s, Napster, Facebook, YouTube, and Twitter) represents the impetus for changes in the Copyright laws. The DMCA addressed the issues presented by these advances or changes in the differing media and forms of artistic impressions. The proliferation of digital photos, graphic designs and publishing alternatives, as well as adherence to globalization harmonization have given rise to changes in the statutory law and jurisprudence in this area of intellectual property law. Additionally, there is an overlap of patent rights and copyrights for software driven by the ebb and flow of the strength of each respective intellectual property protection. Notably, the Patent and Copyright Clause7, in addition to Author’s writings, has been viewed as discretely applying to two different types of creativity or innovation. When drafted the “sciences” referred not only to fields of modern scienctific inquiry but rather to all knowledge. And the “useful arts” does not refer to artistic endeavors, but rather to the work of artisans or people skilled in a manufacturing craft. Rather than result in ambiguity or confusion, perhaps the Framers were either quite prescient or, just coincidentally, these aspects of the Patent and Copyright Clause have converged. For example, none other than the famous Crooner, Bing Crosby, benefited from both protections. Well-known as a prolific and popular recording artist he also benefited from his investments in the, then innovative, recording technologies. Similarly, the Beatles, Beach Boys, as well as many other rock and roll artists, experimental efforts in music performance, recording and production, helped to transform the music industry in both copyrightable artistic expression and patentable inventions. Similarly, film, literary and digital arts reap benefits at the crossroads of both copyright and patent protections. Trademarks Trademark laws have been impacted by numerous changes in the business landscape. They include the internet, Domain names, international rights in a global economy, different venues and avenues for branding, marketing and merchandising, global knock-offs from nations that have a less than stellar respect for intellectual property rights, and international trade agreements. More recently, politicization (or perhaps political correctness) has creeped into the trademark law arena pitting branding rights and protections against first amendment rights. Trade Secrets As with Copyright and Trademark law, trade secrets law includes some of the same issues related to trade agreements. TRIPS required members to have trade secret protection in place. Initially, the United States compliance with this requirement has relied upon the trade secret law of the individual states. That compliance may be supplanted by the recently enacted DTSA. Similarly, the Trans Pacific Partnership (TPP) trade agreement contains intellectual property rights provisions that will trigger required changes to United States statutory Intellectual Property Laws. The proposed trade secret legislation also gives rise to several concerns. For instance, there is an absence of a specific definition for trade secret, as well as potential issues of federalism, conflict with state law precedent (despite no preemption), remedies, and the impact on employer/employee relations. There is also a real concern that the strengthening of trade secret protection in conjunction with the perceived weakening of patent protection (e.g., high rate of invalidating patents in post-grant proceedings before the PTAB and strict limitations on what is patent eligible subject matter) may very-well have the unintended consequence of contravening the purpose behind the Patent and Copyright Clause: “to promote the progress of the sciences and the useful arts.” Moreover, the incentive to innovate may very well be usurped by the advantage of withholding patent law disclosure of highly beneficial scientific advancements that directly affect the human condition, alter life expectancies and the evolution of the human species (rather than by mere “natural selection”), and what is the very essence of a human being (for better or worse). Thus, crippling innovation and the progress of the sciences and useful arts. Privacy Rights It is increasingly more difficult to function “off the grid.” The invasive and non-invasive attributes of the internet, the reliance upon the multitude of devices, social media, and information age technologies, and access to big data, all contribute to the decrease in and dilution of the right to privacy. Wittingly or otherwise, the strong libertarian roots of the republic have been replaced by dependence upon these modes of an information-age life. Commentary on the benefits and deficits of this reality are beyond the subject and purpose of this writing. Suffice to acknowledge that the right to privacy has been significantly reduced. The laws that protect these rights are in a constant struggle to maintain those rights while yielding to the demands of the lifestyle and security concerns. Laws that relate to cybersecurity in the global and domestic space create interplay with privacy rights. Legislation, trade agreements and jurisprudence all impact this area of intellectual property. Cross-border theft of trade secrets, competitor espionage, and loss of control over personal data are all implicated in the intellectual property law arena. America’s Need For Strong Intellectual Property Protection The need for strong protection of intellectual property rights is greater now than it was at the dawn of our republic. Our Forefathers and the Framers of the U.S. Constitution recognized the need to secure those rights in Article 1, Section 8, Clause 8. James Madison provides insight for its significance in the Federalist Papers No. 43 (the only reference to the clause). It is contained in the first Article section dedicated to the enumerated powers of Congress. The clause recognizes the need for: uniformity of the protection of IP rights, securing those rights for the individual rather than the state; and, incentivizing innovation and creative aspirations. Underlying this particular enumerated power of Congress is the same struggle that the Framers grappled with throughout the document for the new republic: how to promote a unified republic while protecting individual liberty. The fear of tyranny and protection of the “natural law” individual liberty is a driving theme for the Constitution and throughout the Federalist Papers. For example, in Federalist No. 10, James Madison articulated the important recognition of the “faction” impact on a democracy and a republic. In Federalist No. 51, Madison emphasized the importance of the separation of powers among the three branches of the republic. And in Federalist No. 78, Alexander Hamilton, provided his most significant essay, which described the judiciary as the weakest branch of government and sought the protection of its independence providing the underpinnings for judicial review as recognized thereafter in Marbury v. Madison. All of these related themes are relevant to the Patent and Copyright Clause and at the center of the intellectual property protections then and now. The Federalist Papers No. 10 recognition that a faction may influence the law has been playing itself out in the halls of congress in the period of time leading up to the AIA and in connection with the current patent law reform debate. The large tech companies of the past, new tech, new patent-based financial business model entities, and pharma factions have been the drivers, proponents and opponents of certain of these efforts. To be sure, some change is inevitable, and both beneficial and necessary in an environment of rapidly changing technology where the law needs to evolve or conform to new realities. However, changes not premised upon the founding principles of the Constitution and the Patent and Copyright Clause (i.e., uniformity, secured rights for the individual, incentivizing innovation and protecting individual liberty) run afoul of the intended purpose of the constitutional guarantee. Although the Sovereign does not benefit directly from the fruits of the innovator, enacting laws that empower the King, and enables the King to remain so, has the same effect as deprivation and diminishment of the individual’s rights and effectively confiscates them from him/her. Specifically, with respect to intellectual property rights, effecting change to the laws that do not adhere to these underlying principles, in favor of the faction that lobbies the most and the best in the quid pro quo of political gain to the governing body threatens to undermine the individual’s intellectual property rights and hinder the greatest economic driver and source of prosperity in the country. It is also important to recognize that the social, political and economic impact of strong protections for intellectual property cannot be overstated. In the social context, the incentive for disclosure and innovation is critical. Solutions for sustainability and climate change (whether natural, man-made or mutually/marginally intertwined) rely upon this premise. Likewise, as we are on the precipice of the ultimate convergence in technologies from the hi-tech digital world and life sciences space, capturing the ability to cure many diseases and fatal illnesses and providing the true promise of extended longevity in good health and well-being, that is meaningful, productive, and purposeful; this incentive must be preserved. In similar fashion, advancements in technologies related to the global economy and communications will enhance the possibilities for solutions to political and cultural conflicts that arise around the globe. Likewise, the United States economy has always benefited when it is at the forefront of innovation and achieves prosperity from its leadership role in technological advancements. Conclusion As was the case in 1966, how we move forward today, to solve the many problems facing our country and the broader global community in these “interesting times,” both within and without the laws affecting intellectual property rights, depends upon the “creative energy of man” which must prevail. An achievable goal, dependent on the strong, stable and sound protection of intellectual property rights.

### 1nc- CP EU

#### The European Union should remove its shipping competition exemption and pursue antitrust enforcement including tort liability with treble damages against Shipping alliances.

#### The EU removing its exemption can deter misconduct in shipping

Merk et al 18 Associate Professor at the Urban School of the Institute for Political Science (Sciences Po) in Paris and leader of port and shipping work at the International Transport Forum (ITF) of the Organisation for Economic Co-operation and Development (OECD). (Olaf, with Lucie Kirstein and Filip Salamitov, 2018, The Impact of Alliances in Container Shipping, <https://www.itf-oecd.org/sites/default/files/docs/impact-alliances-container-shipping.pdf>.)

Liner shipping does not have unique characteristics that justify exemptions from competition law, either for conferences or for alliances. In line with the global long-term trend to dismantle sector-specific exemptions from competition law and in line with OECD regulatory principles, generic antitrust rules should apply to all agreements between liner shipping companies, as for any other industry, with regard to the cooperation that is allowed. Countries where “conferences” are still allowed should reconsider their position. In light of the longer-term trend toward the removal of block exemptions in the shipping industry, the European Commission should carefully consider allowing the EU Consortia Block Exemption Regulation to expire in April 2020, as currently scheduled, rather than extending it. A repeal of block exemptions is unlikely to result in the termination of current and future alliances, as these could still be authorised under competition law on a case by case basis. However, it would ensure greater scrutiny of individual alliances and thus more effectively deter any anticompetitive conduct in the sector. In order to maintain legal certainty, the European Commission could provide temporary guidelines on how to treat liner shipping in EU antitrust law. If the block exemption is extended, its scope should be limited, in particular by introducing a provision to consult maritime transport stakeholders and by excluding joint purchasing by alliances.

#### The exemption allows the alliances to exist AND that is the internal link to collusion / supply chains — cooperation allows for it — that’s sufficient to solve

Tirschwell ’18 — Peter Tirschwell; “Regulatory pressure on container lines builds;” JOC.com; November 16th, 2018; https://www.joc.com/maritime-news/container-lines/threat-container-alliances-rise\_20181116.html

Container shipping has been gradually deregulated over the years to the point where pricing today reacts seamlessly to changes in supply and demand. The collective activities of carriers on the operating side — engaging in vessel-sharing agreements (VSAs) — were allowed to continue by government regulation. That could soon change.

It was not a big deal by itself when the European Commission announced in September that it was “inviting comments on the legal framework [exempting liner shipping consortia from EU antitrust rules](https://www.joc.com/maritime-news/container-lines/european-commission-review-ocean-carrier-block-exemption_20180613.html) that prohibit anti-competitive agreements between companies.” The rule allowing consortia in European trades expires on April 25, 2020, and just as it did when expiring in earlier occasions going back to the mid-1990s, it would be customary for Brussels to solicit comments on the renewal.

The difference now in terms of factors that Brussels will consider is how significantly the use of consortia by carriers has expanded in the past 10 years, with consortia dominating the east-west trades to a much greater extent than in the past.

“If we go back 10 years, you had 20 carriers with 70 percent of the market and the top three carriers not engaged in alliances of any kind,” said Mary Brooks, a specialist on liner competition policy and professor emeritus at Dalhousie University in Halifax. “You go forward to today, and you have three big alliances, all of which have a large share, and all of the top carriers are in alliances. It is a huge change.”

In a [study](https://www.itf-oecd.org/impact-alliances-container-shipping) published on Nov. 2 that called for the elimination of the consortia antitrust exemption, the International Transport Forum (ITF) of the OECD pointed out the expanded use of consortia by container carriers, saying they were responsible for [the proliferation of mega-ships](https://www.joc.com/special-topics/mega-ships) that have imposed burdens on ports and slowed down shipper supply chains: “Whereas the early generations of global alliances that emerged in the mid-1990s provided a vehicle for cooperation between smaller carriers, alliances are nowadays cooperation tools for the largest container lines — the three global alliances (2M, Ocean, and THE Alliance) that are operational since the April 2017 regroup of the eight largest container carriers of the world. These three alliances represent around 80 percent of overall container trade and operate around 95 percent of the total ship capacity on east-west trade lanes where the major containerized flows occur.”

#### The alliances is the internal link to supply chains — breaking them up solves

Savvides 21, Reporter for The Loadstar. (Nick, Jan 8, 2021, Box lines ignore contracts and 'collude' to force shippers onto inflated spot market, https://theloadstar.com/colluding-box-lines-are-exploiting-shippers-claims-bco-in-formal-complaint/)

MCS argues that “foreign-owned” shipping lines have: “Unjustly and unreasonably exploited customers, vastly increasing their profitability at the expense of shippers and the US public generally, which bears increased freight cost in the form of inflation.” According to the suit, beneficial cargo owners (BCOs) operating to and from the US ordinarily pay for the shipments of cargo through bilaterally negotiated contracts with shipping lines, while spot rates are reserved for smaller shippers or one-time cargo movements. However, MCS claims that, with the onset of the Covid-19 pandemic, shipping lines began to collude to manipulate the market. The shipper told the FMC: “Global ocean carriers began taking parallel and strikingly similar actions to prop up ocean carriage pricing and improve their profitability at the expense of shippers and the public.” These actions, it added, included blanking sailings, which had the effect of reducing capacity by creating an “artificial scarcity and boosting prices on the spot market” as demand increased. Moreover, MCS claims that even as demand returned, the carriers did not return to pre-pandemic methods of working, but rather “doubled down” on the “manipulation” of the market, artificially keeping prices high. A container load shipped from China to the US west coast in 2019 would have cost $2,700, but today that same container voyage would be priced in excess of $15,000, said MCS. The shipper alleges it has first-hand experience of carrier “misconduct”, with the lines refusing to discuss these issues when approached by MCS. The filing claims: “In a stark break from pre-pandemic practice, several ocean carriers refused to negotiate or provide service contracts to MCS, and those that did provide such service contracts, including the respondents named herein, refused to provide more than a fraction of the cargo capacity that MCS requested and needs, despite the fact that the respondents overall have continued to operate at or near pre-pandemic capacity.” According to MCS, Cosco offered just 1.6% of the capacity it was contractually obliged to make available, while MSC fared better, offering 35% of contracted cargo space. “By definition, the service contracts required respondents to “commit to a certain rate or rate schedule and a defined service level, such as assured space, transit time, port rotation, or similar service features,” says the complaint. And, in an alleged escalation of their failure to meet their contractual obligations, the shipping lines, including Cosco and MSC, then “forced” MCS to buy space on the vastly inflated spot market. The carriers were able to renege on their contracts, claims MCS, because the lines were able to organise themselves into alliances which control 90% of the transpacific trade, and it is this alliance structure which allowed carriers to act in unison, forcing shippers onto more expensive spot rates, rather than transporting cargo at much lower, contracted rates. According to MCS the shipping lines have “obliterated” the stable structure of the ocean freight transport industry. In a first reaction to the news that MCS had filed a formal complaint, Global Shippers’ Forum executive James Hookham said the organisation would be “watching the developments closely”, and the case would “test the mettle” of the FMC and the regulatory structure in the US. He went on to say that parties would consider whether the action revealed any gaps in proposed amendments to the Shipping Act. In addition, the fact that MCS would have to act alone in the bringing of this case would also come under scrutiny. According to Mr Hookham, current legislation prevents shippers from entering into a powerful class action agreement that would bring in other complainants.

#### The federal government is the central government in DC

Encarta Online 5 http://encarta.msn.com/encyclopedia\_1741500781\_6/United\_States\_(Government).html#howtocite

United States (Government), the combination of federal, state, and local laws, bodies, and agencies that is responsible for carrying out the operations of the United States. The federal government of the United States is centered in [Washington, D.C.](http://encarta.msn.com/encyclopedia_761576320/Washington_D_C.html)

### 1nc- CP Incentives

#### The USFG should establish positive incentives that encourage competitive business practices [in the area of the aff]

#### This solves best – it establishes a culture of compliance that aligning corporate interests with public good

Ristaniemi 20 [Michael, VP of Sustainability at Metsa Group, acting as competition counsel, nominated for the 2019 Antitrust Writing Awards, “Rewarding Competition Compliance – Its Societal Value and How Policy Alignment Can Help, Liikejuridiikka - Finnish Business Law Journal, JCR]

I believe that – in order to reach its objective of increasing welfare – effective competition policy should place more focus on preventing anticompetitive conduct. Traditional thinking of bringing about avoidance of anticompetitive conduct has emphasised deterrence through negative incentives, such as the threat of penalties. Regimes adopt administrative corporate fines and – depending on the jurisdiction – criminal sanctions, combined with related enforcement by the national competition authority (NCA). Fines intend to neutralise negative externalities by forcing the infringer to internalise the related cost. This is a good principle, but not fully useful as long as detection rates of anticompetitive conduct are only partial. Moreover, as Riley & Sokol argue, fines do not truly address the morality of a competition infringement, but mainly just assign a price to be paid for noncompliance.51 The argument of fines acting as compensation of sorts for certain (unwanted) conduct finds backing in empirical research.52 Also, fines exert a negative externality of their own – in the form of collateral damage to those of the fined firm’s employees that were uninvolved in the infringement. Policymakers and enforcers should be more focused on how to discourage and prevent anticompetitive conduct, instead of merely relying on assumed deterrence through ex post enforcement and fining. The objective of competition law is arguably not to levy fines just for the sake of it. Being open-minded about additional measures in which prevention efficacy can be increased bears inherent societal value. Geradin states that increasing fines is not a good way of further improving deterrence and that an alternative way would instead be to emphasise compliance programs.53 Further, Riley & Sokol suggest that effective competition enforcement should be more about “changing normative values within organizations” than merely fining, a goal which however requires creativity from policymakers.54 Inter alia, former EU Commissioner Almunía has emphasised the importance of fostering a culture of competition compliance and that the objective is that there would be no need for fining at all.55 Thus, there appears to be a demand for improvement. Also, the European Parliament has stated that firm conduct is ‘motivated not only by penalties but also by encouraging compliance’ and that effective competition policy should encourage compliance, while also being an effective deterrent.56 Governance theory points to a shift in general public governance towards so-called co-governance or interactive governance where other actors in society are given a more pronounced role, as opposed to more hierarchical, state-driven governance.57 There are wide-ranging policy choices made under this umbrella, starting with privatisation and deregulation, some of which link to neoliberal thought.58 Other examples are linked to the idea of responsive regulation, where authorities begin with a persuasive and collaborative approach and escalate towards more unilateral and punitive measures only where needed.59 However, concurrently and irrespectively, co-governance presents a framework in which competition policy could question whether the main actors in competitive markets – firms – could play a greater role also in furtherance of competition enforcement than thus far. Given the statutory profit-seeking purpose of firms worldwide, positive incentives could be beneficial in enabling them to better act as partners of government – and for their part ensuring that markets remain competitive. The International Chamber of Commerce (ICC) has conducted a comparative study on how competition compliance is encouraged by certain key NCAs60. It concludes that a common feature of sophisticated antitrust jurisdictions is the use of multiple tools to influence corporate competition compliance.61 Several key jurisdictions offer guidance as to recommend features for a compliance program and some authorities even offer certifications for programs that meet their criteria.62 This is a form of government nudging. All in all, the study shows that competition authorities acknowledge that compliance programs can be helpful in improving compliance. What is largely lacking, however, are real incentives for truly encouraging it in a preventive fashion. Firms are primarily motivated to comply with competition law based on the risk associated with non-compliance, based on an OECD study.63 This risk likely consists both a risk of sanctions as well as of a loss of reputation, i.e. negative consequences as a whole. This is natural, given that negative incentives are the main tool using which competition policy objectives are implemented. What could be interesting is to understand how different the result may have been in a system that has instituted supplementary positive incentives. At the firm level, competition compliance often ties in with other compliance efforts.64 However, resourcing is not necessarily on equal footing, given that other areas requiring regulatory compliance may offer better incentives to encourage such efforts.65 Wils discusses this question and comes to the conclusion that other regulatory areas are misguided by offering firms positive incentives to encourage certain conduct.66 Whether this is the case, the point remains that by incentivising ex ante efforts towards competition compliance less, risk exists of resulting less effort and, thus, likely more anticompetitive conduct. Root argues that current policy approaches result in a regime of “piecemeal compliance” that lacks coordination and thereby loses enforcement potential.67 Greater policy coherence would surely benefit firms in helping guide compliance efforts. Infringement is a result of both a lack of awareness and deliberate conduct. Key causes for noncompliance were the (perceived or actual) lack of commitment within management of the firm, based on a study conducted by the then-UK Office of Fair Trading.68 Certainly, some breaches are deliberately mandated by top management. However, this is not the case for all. It is argued that competition law breaches also occur due to organisational failure rather than top management’s profit seeking.69 In such cases, lack of awareness may well play a role. In other cases, harmful internal social norms may actually contribute towards non-compliance. This might particularly be the case when management prioritises profit-making at the expense of other considerations, such as societal values and morality. Individuals might receive rewards for reaching targets that inherently may require anticompetitive behaviour to reach.70 Further, it is noteworthy that psychological research shows that leadership which emphasises and promotes ethical conduct is able to shape an organisation’s conduct as a whole.71 Leniency programs are currently the primary ‘carrot’ in the toolbox of NCAs. However, leniency programs do not prevent cartels and other competition restrictions – they merely facilitate enforcement and detection of already-occurred conduct. A study conducted by Bigoni et al. has shown that although leniency does increase deterrence, it also stabilises existing cartels, and that while leniency might increase the volume of detected cartels, appropriate rewards are likely to be still more effective in improving prevention of anticompetitive conduct.72 Further, it has also been suspected that cartels revealed through leniency applications are often likely past their peak and making only limited profits at such time.73 One could even argue that in light of what has been mentioned above, leniency is too generous in relation to its benefits. This argument gains traction when put into perspective – few NCAs have other substantial rewards that aim at steering corporate conduct. Rewards promised by policymakers need to be relevant enough to be discussed in the corporate boardroom. Measures taken by firms have the potential to trickle down within the organisation, raise awareness, and contribute to creating a culture of compliance, as alluded to in Section 2. The aggregate impact of these cumulative effects can easily be underestimated. While it is challenging to quantify exactly, they should – in any case – help improve the preventive impact of current competition policy in deterring anticompetitive misconduct from occurring. There has been surprisingly limited focus by NCAs and policymakers on how positive incentives could be used in the context of fulfilling the goals of competition policy. A notable exception is the near-universal protection of intellectual property – a clear reward for prospective authors and inventors in exchange for their innovative efforts. There are a number of concrete proposals for positive incentives in the context of competition compliance that could help with preventing anticompetitive conduct. The following subsections will discuss two specific avenues where the author finds rewards to be particularly worthy of consideration. They are not the only ones.74 The purpose of the following examples is to both illustrate the potential of positive incentives through concrete examples, as well as bring forward actual proposals.

## ADV 1

#### Cant solve supply chain and alt causes to FMC failures—no funding, GU reads green

Brown 1/4

Hannah Story Brown (Hannah Story Brown (she/her) is a Researcher with the Revolving Door Project. She holds a BA in English from Columbia University, and her writing spans a variety of critical and creative mediums. Her past work experience includes environmental writing and legal, political, and historical research. Environmental justice and systemic accountability are among the ideas which animate her research, writing, and artistic practice.), 1-4-2022, "Amidst a Record Supply Chain Crisis, What is the Federal Maritime Commission’s Capacity?", Revolving Door Project, https://therevolvingdoorproject.org/amidst-a-record-supply-chain-crisis-what-is-the-federal-maritime-commissions-capacity/ jt

One tiny federal agency with 116 full-time employees and a $28.9 million dollar budget is in charge of regulating the global marine economy, which contributes $397 billion to the US GDP annually and accounts for 80 percent of goods shipped worldwide. That’s not just an apples and oranges discrepancy—that’s like an apple versus Apple. The budget for the military’s marching bands is fifteen times greater than the Federal Maritime Commission’s budget; the Marines alone have five times more musicians than the Commission has staff. Meanwhile, for months now, aerial views of America’s biggest ports have shown dozens of massive container ships backed up for miles, blotting the ocean as far as the eye can see. Billions of dollars of imported goods sit idly on the water for weeks, depreciating in value, while trucks face over 24-hour waits outside of port gates. The logjam is terrible for people’s health, too—the California Air Resource Board estimates that the sitting ships’ increased pollution is equivalent to adding an obscene 5.8 million cars and 100,000 big rig trucks to the area. The complex and interconnected web of the global supply chain is in a crisis that defies simple solutions. But addressing that crisis is made more difficult by decades-old deregulation of the ocean shipping industry, and the fact that a few powerful global entities are making billions of dollars from its continued dysfunction. Three alliances of the nine biggest shipping container lines control 83 percent of the global shipping market and 95 percent of critical East-West trade lanes.They are on track to make an eye-watering $150 billion dollars in 2021—more than 25 times their 2019 profit. Terminal operators are also turning a profit, as most terminals are operated by U.S. subsidiaries of those same foreign container lines. It’s worth noting that the top 25 container lines are all foreign companies; the US’s largest container line, Matson, holds only a 0.3 percent share of the market. These three carrier-operator alliances are effectively holding the global supply chain hostage in order to milk as much money as they can from heightened demand and stifled supply. These alliances have no economic incentive to increase supply. Their incentive is to continue to reap windfall profits. Yet significant investment in supply is precisely what the public complaining about inflation and shortages requires, and what the industry’s regulator ought to be demanding on behalf of the people. And who is that regulator? The pea-sized Federal Maritime Commission, squashed under the industry’s gigantic mattress. The Federal Maritime Commission is like David up against the shipping line Goliaths, if David voluntarily put down his slingshot and tied his hands behind his back. For being the only federal agency in charge of regulating a behemoth industry, the Commission is markedly anti-regulation. “I have never seen a regulation I liked,” said Commissioner Rebecca Dye, now in her nineteenth year at the agency. The Commission voluntarily embraced Trump’s 2017 “eliminate two existing regulations for every new regulation” Executive Order, and reviewed its own regulations for potential repeals. The Commission’s deregulatory spirit dates back more than two decades, to the passage of two laws: the Shipping Act of 1984, and the Ocean Shipping Reform Act of 1998. Both of these laws substantially lessened the Commission’s authority. The Federal Maritime Commission’s regulatory authority stems from the handful of maritime laws that it enforces. (These include the Shipping Act of 1984 and the Ocean Shipping Reform Act of 1998, as well as Section 19 of the 1920 Merchant Marine Act, the Foreign Shipping Practices Act of 1988, and sections 2 and 3 of Public Law 89-777.) At the time of its founding in 1961, the Commission’s responsibilities were outlined by the Shipping Act of 1916, which granted the agency a lot of authority. Under the 1916 Act, it was mandatory for carriers to file all tariffs (official rates) and agreements with the Commission. The Commission would review and approve all agreements before they came into effect. Approved agreements were exempt from U.S. antitrust laws. To streamline what had become a time-consuming approval process, the Shipping Act of 1984 changed this procedure so that once agreements are filed with the Commission, they are automatically approved after 45 days unless the Commission moves to block them. Tariffs were also no longer required to be filed with the Commission, just published publicly. Then, the Ocean Shipping Reform Act of 1998 took industry autonomy several steps further. The 1998 Act allowed carriers and shippers to negotiate confidential contracts for the first time. These agreements are still filed with the Commission, but their terms are otherwise secret. The importance of publicly reported tariffs rapidly diminished, now that prices can be negotiated and set in private. And through all this, carriers retained their antitrust immunity. This deregulatory push was in the name of “competition” and the “marketplace,” but its effect was to crush smaller competitors and encourage monopolistic alliances, while preventing public scrutiny and most antitrust intervention in the industry. Over the past two decades, every sector of the ocean shipping industry has consolidated. Not only do three alliances of nine carriers now control 83 percent of container ship capacity, but three Chinese manufacturers produce 83 percent of all new containers, and five companies control 82 percent of container leasing. Smaller ports have suffered as the big carriers buy bigger ships; a capital-intensive strategy for cutting costs that excludes smaller carriers, and forces costly adaptations upon ports. Larger ships initially provided greater efficiency and cost-savings for carriers, but now, with many mega-ships larger than the Empire State Building, their increasing diseconomies of scale read as a monopolistic tool to force the industry to operate on their terms. This is why we see megaships stuck for days at port; they’re not profitable to sail unless they’re entirely full, and it takes a long time to load and empty them. Meanwhile, ocean carriers and marine terminal operators can charge demurrage and detention fees to the shippers, intermediaries and truckers when things get behind schedule. Where the Commission Comes In All of that explains why importers, exporters, intermediaries, and truckers have repeatedly asked the Commission to become more involved, while carriers and terminal operators have argued that the Commission lacks authority to do so. Such a dispute broke out over the Commission’s 2020 interpretive rule clarifying what constitutes reasonable demurrage and detention fees. The Commission’s commentary on this rule and the controversy it generated illuminates how the Commission perceives its own role and authority. While the Commission acknowledged that “one purpose of the Shipping Act is to minimize government intervention,” it countered that that “does not mean that the Commission may abandon its duty to prevent unreasonable practices.” So while the laws the Commission is in charge of administering expressly put limits on its power, the Commission still has regulatory responsibilities it must fulfill. While the Commission claims that it “prefers commercial solutions to demurrage and detention problems,” the Commission’s investigation found that “commercial solutions are only adequate from the perspective of ocean carriers and marine terminal operators.” In other words, when left to their own “free market” devices, carriers and operators bulldozed the other industry parties, forcing a reluctant Commission to intervene. By the 2010s, the ocean supply chain’s vulnerability and inefficiencies were already visible. The Commission’s response, spearheaded by Commissioner Rebecca Dye, was to bring together various industry stakeholders in conversation. The 2017 Report of this “Supply Chain Innovation Teams initiative” offers further insight into the Commission’s view of its responsibilities and, perhaps, capacity. Dye reports that industry participants “indicated that they had little appetite for governmental prescriptions or requirements,” and adds that “from the outset, the Commission recognized that additional government regulations were not the answer.” It is alarming to see a regulatory agency renege its chief function. The Commission decided to serve instead as “a catalyst for stakeholder-identified commercial solutions” (emphasis in original). Is this decision evidence of corporate capture, or the result of an agency whose resources are dwarfed by its mandate, still striving to make an impact? Whatever the cause of the Commission’s reluctance to advance regulation, it appears that both the White House and a bipartisan coalition of lawmakers see regulation as the best path out of our current quagmire. While the Commission’s response to the supply chain crisis continues to emphasize “commercial solutions,” and includes the creation of a new National Shipper Advisory Committee, convening major shippers like Walmart, Tyson Foods, Amazon and DuPont to advise the Commission on ocean shipping policy, Congress is looking to the proposed Ocean Shipping Reform Act of 2021 for answers. The House of Representatives agreed to suspend the usual rules (which they do for noncontroversial bills) and passed the Ocean Shipping Reform Act of 2021 in a bipartisan 364-60 vote on December 8. The bill has already been sent to the Senate, read twice, and referred to committee. The 2021 Act would give the Federal Maritime Commission more authority to crack down on bad practices by carriers and terminal operators, including discriminating and retailiating against shippers, making false certifications, and imposing unreasonable demurrage and detention fees. It would leave to the Commission’s discretion whether and when it is reasonable for carriers to refuse US agricultural exports when it is more profitable to send empty containers back to China. The White House, meanwhile, has directed the Federal Maritime Commission to “​​use all of the tools at its disposal to ensure free and fair competition.” This includes the Commission’s unique ability to intervene on antitrust issues: “while the alliances between the carriers receive statutory immunity from antitrust laws, the FMC can challenge those agreements if they ‘produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost or … substantially lessen competition.’” In reality, though the Commission has labored to avoid stepping on industry toes, it has substantial authority to enforce antitrust laws when shipping agreements—the confidential agreements that only the Commission gets to read—reduce competition and damage supply chain resilience. An encouraging sign that the Commission recognizes its antitrust capacity comes in the form of a Memorandum of Understanding with the Department of Justice’s Antitrust Division this summer, committing the two agencies to cooperate on “the enforcement of antitrust and other laws related to the Industry.” While the Federal Maritime Commission’s singular discretion when it comes to challenging shipping agreements for antitrust violations may be its sharpest tool, it has a broad mandate to monitor all parties in the US-international ocean shipping industry to ensure “just and reasonable practices.” It is also the Commission’s job to facilitate “alternative dispute resolution” when problems crop up between parties, and to seek remedies when necessary. The Commission has the authority to conduct investigations and hold legal proceedings overseen by the Commission’s Administrative Law Judges, and prosecuted by its Bureau of Enforcement. Yet despite audible discontent within the industry, the Commission has found that “few private parties have filed complaints seeking reparations,” in part because shippers and truckers fear retaliation. While the Commission is taking steps to minimize barriers to private party complaints, the prohibitive cost of retaliation is indicative of the container lines’ tight grip on the industry. Fully tapping into these powers, old and new, to take a more leading role in resolving the international supply chain crisis, will almost certainly require that the Commission receive a bigger budget and more staff. Like many federal agencies, the number of Commission employees has been waning when it should be waxing. In 1998, the Federal Maritime Commission had 139 full-time employees. By 2006, the Commission had 121 full-time employees, and by 2020, only 111. Likewise, accounting for inflation, its budget has essentially remained flat over the past decade, rising nominally from $24 million in 2012 to $27.4 million in 2020. In contrast, the transport volume of ocean trade has steadily increased over the past thirty years, from 4 billion tons annually in 1990 to over 10 billion tons in 2020. Likewise, the world’s fleet of merchant ships has doubled in size since 1990, even while the US share of the global fleet has shrunk from 16.9 percent in 1960 to 2.7 percent in 1990 to only 0.4 percent in 2019. As it is both the Federal Maritime Commission’s responsibility to support the development of a US liner fleet, and to combat unfair practices by foreign carriers, the Commission’s responsibility for regulating a growing industry has increased even as its capacity has shrunk. The Commission monitors an ever-growing number of rates, agreements, alliances and disputes in the international shipping industry. Per its annual report, in 2020 the Commission was continuously monitoring over 300 cooperative agreements, and received 45,164 new service contracts and 779,884 contract amendments. The Commission accepted 375 new and 273 amended ocean transportation intermediary (OTI) applications, and 285 OTI licenses were revoked or surrendered. Through the Commission’s informal conflict resolution program, it resolved 241 ombud matters, and responded to 1,730 queries from the public (a 52 percent increase from 2019). If the Commission is to take on additional enforcement responsibilities, it should bring on more staff to avoid information overload. While the Commission’s leaders do not set their own budget, they can help to influence funding levels by highlighting these gaps. In recent years, however, their requests have been seemingly inadequate to fill them. In its 2022 budget request, the Commission set a goal of 128 employees, only a modest increase over current staffing levels. Commission leadership can also work directly with the Office of Personnel Management (OPM) to streamline its hiring processes to ensure its budget, at whatever level, is put to efficient use onboarding new staff. A majority of the Commission’s positions fall under the General Schedule, meaning that hiring for them involves a number of procedures that can slow the process. The Commission should consider requesting hiring flexibilities from OPM to expedite this process, in addition to exploring ways to improve recruitment. If the Commission’s current leadership proves unwilling to rise to the challenge, Biden has the opportunity to fill two of five Commissioner seats. His challenge will be to find a labor-minded Republican (as the agency requires partisan balance) to enact the bold regulatory agenda that the moment demands. Elsewhere in the agency, the bright side of hiring amidst the supply chain crisis would be that new Commission employees may be less invested in preserving the status quo. The proposed Ocean Shipping Act of 2021 would provide the Federal Maritime Commission with a moderate increase in funding, from $29.6 million in 2021 to $32.6 million in 2022 and $35.8 million in 2023. But overall, the 2021 Act bestows more new requirements upon the Commission than new powers. Increasing an already skeptical agency’s obligations without substantially increasing their resources is an effort destined to fall short. Many snarls in the supply chain web remain outside of the Commission’s purview and go unaddressed by the bill, from the chassis shortage to the comparatively limited operating hours of American ports, leaving its impact unknown.

#### No trade escalation

Spaniel and Malone 3/5/19 [William Spaniel, Department of Political Science, University of Pittsburgh. Iris Malone, Department of Political Science, Stanford. The Uncertainty Tradeoff: Re-Examining Opportunity Costs and War. March 5, 2019. <https://wjspaniel.files.wordpress.com/2019/03/uncertainty-tradeoff-final.pdf>]

This paper’s main contribution is to identify the precise conditions under which the probability of war increases despite rising opportunity costs. We show that, unlike other mechanisms, rising opportunity costs may counter-intuitively make war more likely because it also increases the difference between reservation points for unresolved versus resolved opponents. As a result, these informational asymmetries can lead states to screen their opponents and risk war. This new finding reshapes our understanding about the relationship between opportunity costs and war. It introduces a more nu-anced mechanism about when and how this relationship operates, sometimes contrary to expectations.

Our work advances economic interdependence theories of war in several ways. First, it provides new insight on the causes of war at odds with traditional cases where opportunity costs increased, yet conflict still erupted. Second, it demonstrates how and when competing effects of economic instruments predominate, driving changes in the probability of conflict. In contrast to previous work, we identify specific conditions under which increasing opportunity costs shifts the probability of conflict, consistent with the empirical evidence. Finally, it demonstrates the important, but subtle, effects of changing instruments, like trade flows, in the presence of uncertainty. The model advances a growing line of research that various sources of uncertainty have disparate effects on crisis bargaining.

This paper has more general implications for trade-conflict research. It complements growing calls to disaggregate the effects of instruments like trade (Martin et al. 2008). Empirical analyses must carefully trace what precisely parties do not know about each other to draw the correct inference. It also suggests states should be careful in interpreting how other states value or benefit from mutual trade flows. A free trade agreement championed by one state may be perceived as relatively less beneficial in another state. This uncertainty may undermine the credibility to abide by the agreement in the long-run.

We also highlight the need for future research to consider screening incentives in trade deals themselves. Although the proposer benefits from greater trade—both from the direct economic benefit and indirect ability to steal more surplus from the receiver— trade can harm unresolved receivers and incentivize screening. This could generate some constraints in the deals a state is willing to sign, in fear that the rearranged incentives under uncertainty could hurt its ability to effectively bluff later. A more unified approach to trade and crisis negotiations would yield additional interesting insights.

#### Moving forward, the results speak to other lines of research in international relations theory predicated on changing costs of conflict. We couched our results in the interdependence literature due its clear application. However, the comparative static speaks to cases where the receiver’s costs increase more generally.23 Framed this way, the results have clear implications for other literatures. For example, standard nuclear deterrence theory argues that possessing nuclear weapons increases the costs of war for potential challengers due to the risk of a retaliatory nuclear response (Morgenthau 1961, 280; Gilpin 1983, 213-219). The logic of alliance formation similarly relics on the assumption that entering these pacts induces peace by raising an opponent’s costs of conflict (Morrow 1994). Together, these mechanisms assume raising the costs of war should decrease conflict. Our results demonstrate this effect is likely more conditional than previously realized. We find increased costs of conflict can exacerbate issues with uncertainty over resolve even if both states possess destructive weaponry. This promises to shed new insights into how raising costs affects deterrence and coercive bargaining in other contexts

#### Cant solve clean tech—cant get around semiconductor shortages which make supply chain barriers inevitable—Gonzaga reads green

Short and Mancini ’21 (Mike Short and James Mancini, Mike Short serves as C.H. Robinson’s President of Global Forwarding. Jim Mancini, Vice President of North American Surface Transportation, oversees the services and technology for our renewable energy customers, “Overcoming the 5 Supply Chain Barriers that Threaten the Growth of Renewable Energy”, <https://www.chrobinson.com/blog/overcoming-the-5-supply-chain-barriers-that-threaten-the-growth-of-renewable-energy/>, June 28, 2021)

Renewables are expected to account for 90% of new power generation globally through 2022. But the world’s demand for clean energy is running up against some hard realities in the global supply chain and one of the most erratic transportation markets in history. Here are the five key project logistics challenges we’re seeing in renewable energy and how to overcome them. Tighter budgets for renewable energy projects The cost of wind and solar energy has been declining relative to fossil fuels for years, making it more attractive to more investors. That’s good news for climate change, but some new factors could throw that trend off track. The shortage of semiconductors plaguing the auto industry has become a problem for the renewables sector as well, because semiconductors are needed to convert wind and solar into electricity. Scarcity of steel is driving up prices for wind turbines and the mounting systems that point solar panels toward the sun. Polysilicon, an essential building block for solar panels, is the world’s second most abundant element but the cost has recently quadrupled. Rising material costs and historically high freight rates can eat into the profitability of your renewable energy project. That makes it even more important to avoid unexpected costs in your project logistics. The supply chain for wind and solar farms is vast and complex, starting in precious-metal mines and culminating in some of the most remote places on Earth. To make sure you come in on budget, choose a project logistics provider that has deep and specific industry knowledge. When you’re renting a crane for $100,000 a day, you can’t afford for the wind turbines to be three days late. Every county those will travel through requires a permit, which is typically granted for just a few days. If you miss that window, those permits must be renewed in every county. Meanwhile, you’re paying the installation crew to wait. These projects have too many moving parts and variables to try to piece it together yourself, and it exposes you to too much financial risk to count on the disparate processes of multiple vendors. An experienced provider can deliver end-to-end project logistics. That includes making sure manufacturers upstream of your project can reliably get raw materials. That includes anticipating every possible contingency to mitigate disruptions in shipping. That includes technology to track every piece of equipment’s path to the installation site. Renewable energy logistics has been a specialty of C.H. Robinson’s for more than a decade. That expertise helps you avoid the unexpected costs that can easily erase your project’s profit margin. Unpredictability in shipping The majority of solar equipment manufacturers are in China, Vietnam, Thailand, and Malaysia. Four companies dominate more than half the manufacturing of wind turbines, with most production in Asia. Five years ago, the movement of containerized goods out of Asia was high volume, low cost and consistent. For breakbulk cargo, you could call to book space on a vessel for next week. That world—where you could plan week-to-week—is gone. Now, ship capacity is scarce and exponentially more expensive because of the contraction of shipping lines and a global container shortage. Port congestion is making it hard to know when incoming ships will be able to berth. It’s gotten to the point where schedule reliability has dropped from about 80% at this time last year to 5%. New disruptions can make it even more challenging to get everything for your renewable energy project where it needs to be when it needs to be. Congestion at China’s Port of Yantian is a case in point, creating massive backlogs of shipments to North America, Latin America, Europe, and Oceania that could take months to clear.

#### Cracking down on shipping alliances turns the aff —Restricting alliances will explode shipping rates

Van Marle 19, Managing Editor and Journalist at The Loadstar. (Gavin, June 19, 2019, 'An end to shipping alliances would see freight rates skyrocket', <https://theloadstar.com/an-end-to-shipping-alliances-would-see-freight-rates-skyrocket/>)

Shipper opposition to deepsea liner shipping alliances may be dangerously misplaced, delegates at the TOC Container Supply Chain event in Rotterdam heard yesterday. Lars Jensen, chief executive and partner of SeaIntelligence Consulting, said efforts by some to bar container lines from operating in alliances, claiming they have become anti-competitive, would result in freight rates “skyrocketing”. The EU’s Block Exemption Regulation (BER), the de facto legislation covering liner alliances and vessel-sharing agreements (VSAs) on container trades to and from Europe, is set to expire on 25 April next year, and EC regulators are assessing whether to extend it for five years. Mr Jensen said: “If the anti-trust exemption isn’t extended, it doesn’t necessarily mean shipping lines can’t run alliances. It may well just mean the lines have higher hoops to jump through, and I believe that they will do that. “But it will mean a lot of legal costs and the carriers will have to recoup those costs and the only they can do that is through higher rates,” he added. “However, if shipping alliances are outlawed altogether, then freight rates will skyrocket, because alliances are the only way that carriers can operate ultra-large container vessels (ULCVs) effectively.” He explained that, on its own, Maersk Line could only run two Asia-Europe services a week, and even then it would have a much more limited port rotation than under its 2M alliance with MSC. “I think you would see these services calling at just three Chinese export ports and three main European port calls. And MSC is in the same situation. “Now, if you are shipping from Shanghai’s container yard to Rotterdam’s, then that’s fine, rates will stay relatively low. But for any other origin or destination you will have to use far more transhipment than currently, and shippers would be faced with an enormous jump in freight rates. “So I am of the opinion that shippers should pray the lines are allowed to continue to operate alliances,” he said.

#### High prices are caused by the pandemic

Lloyds List 21 Maritime Intelligence Publication, ( Container lines: Profiting or profiteering? <https://lloydslist.maritimeintelligence.informa.com/LL1135325/Container-lines-Profiting-or-profiteering)>)

High freight rates and equipment shortages are a consequence of the pandemic, not market manipulation, Recent complaints by shippers have seen regulators showing an interest in box carriers again. But is there really any case to answer? RECENT complaints from shippers in China, Europe and the US have again raised questions over the performance and practices of container lines. It is easy to see why cargo owners’ hackles are raised. Freight rates are rocketing, with the Shanghai Containerised Freight Index last week reporting rates of over $4,000 per teu on Asia-Europe trades for the first time. Alongside the high rates are a severe shortage of equipment and delays at ports and in inland distribution, all of which are causing additional costs. Shippers and forwarders are not a happy lot, and with good reason. Laying the blame for the current crisis at the feet of container lines is convenient. They, after all, are the ones calling the shots and asking for the rates, even if much of the problem, such as overcrowded warehouses and congested ports, is beyond their control. Some have gone as far as to say lines are profiteering from the crisis, making undue amounts of money from the suffering inflicted by the pandemic. The calls for investigations and control of the lines seek to rein in their power and suggest that they are acting unfairly to take advantage of customers. While the past decade of consolidation has seen the number of truly global container lines shrink to fewer than 10, grouped in just three major alliances, every previous investigation into carrier practices has failed to prove any collusion, price setting or market manipulation. When carriers took capacity out of the market at the start of the pandemic, it was not to increase rates, but to survive. As one line pointed out, a 20% fall in volumes in a month reflects a $200m loss of revenue. And blankings were being done at a time when cargo owners were frantically trying to cancel orders and seek storage in transit. The rebound in demand in the second half of the year surprised everyone, but lines were quick to restore capacity. By the third quarter, deployed capacity was higher than it had been in 2019. Even now, blankings in the lead up to Chinese New Year are virtually non-existent. Layups are at near record lows and charter rates at record highs as all available ships are pressed into service. That is hardly the way to manipulate a market. There is no doubt that carriers have benefited from the surge in demand; third-quarter results for 2020 were the best in many years. But that is a simple outcome of the laws of supply and demand and a basic tenet of capitalism. If there is an excess demand for a limited supply, those who want the supply most will pay more for it. And having a few profitable quarters needs to be put in the context of having a decade of unprofitable quarters. Since the global financial crisis, carriers have struggled to pay for the cost of their capital, far less provide returns for their investors. A stable, and profitable, container shipping sector should be welcomed. One doesn’t need too long a memory to remember the carnage that came out of the collapse of Hanjin Shipping in 2016. If carriers are to continue to invest in services and in new, environmentally friendly ships, they need to be able to pay for those. Some perspective is also needed. Shippers balking at $4,000 per teu freight rates will remember that last October the SCFI spot rate to Europe was less than $1,100 per teu. In 2015, it went below $250 per teu. In the five years to the end of 2020, the average SCFI figure has been below $900 per teu. Rates like these add only pennies to the price of goods when they get to shops, a remarkable benefit of containerisation. Moreover, the current high spot rates cover just a portion of the cargo shipped, with the majority going under contract arrangements. Shippers allege that carriers are ignoring these commitments, but if market conditions were going in the opposite direction, with spot rates falling below contract rates, carriers would be accusing shippers of breaking their contract terms. Lines have been trying for years to make container shipping less commoditised, and to have greater price predictability, but it takes both sides to achieve that. The current crisis is just that: a crisis. This is the first time in the history of containerisation that the industry has faced a global pandemic. It is a mark of the maturity of the sector that, for the most part, goods are still being delivered. As with all crises, this too shall pass.

#### Independently, protectionist action like the aff sends a shockwave throughout global trade

Murray ‘19 [Allison; 2019; JD from the Loyola Law School, Los Angeles Law School, BS in Business Administration from the University of Redlands, Judicial Law Clerk at the U.S. Bankruptcy Courts, Former Corporate Paralegal at Boeing, Degree in Economics and Management from the University of Oxford Loyola of Los Angeles International and Comparative Law Review, “Given Today's New Wave of Protectionism, Is Antitrust Law the Last Hope for Preserving a Free Global Economy or Another Nail in Free Trade's Coffin?,” p. 117-119]

INTRODUCTION

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. 1They 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. [\*118] 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. 3So, 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. 4To 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 [\*119] that could counteract that progress. 6Presidential 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.

## ADV 2

**Plan doesn’t solve- alt causes and lack of money – Zags in yellow**

**Greenwood and Miletello 11/4** (Jeremy Greenwood and Emily Miletello, Federal Executive Fellow - The Brookings Institution, Coast Guard Fellow - U.S. Army Center for Law and Military Operations, THE Brookings Institute, “To expand the Navy isn’t enough. We need a bigger commercial fleet.”, <https://www.brookings.edu/blog/order-from-chaos/2021/11/04/to-expand-the-navy-isnt-enough-we-need-a-bigger-commercial-fleet/>, November 4, 2021)

With the United States drawing down in the Middle East and starting to realize the long-awaited “pivot to the Pacific,” **Chinese naval expansion and the troubling practices of Chinese distant-water fishing fleets have risen to the top of the list of global and national security concerns plaguing our top strategists. And while much has been written on Chinese military ambitions at sea, we seem to have forgotten Beijing’s commercial maritime activity, which has also increased dramatically, in terms of both shipbuilding and investments in port infrastructure around the globe.** **At the same time, the number of U.S. vessels engaged in global commerce has never been smaller. In the words of a senior official responsible for America’s sealift capability, this is no less than a “screaming national security vulnerability.”** America’s commercial fleet is languishing In the midst of negotiations surrounding one of the largest infrastructure spending bills in decades, there has been almost no serious discussion about the need to enhance our commercial sealift capabilities or to increase American shipbuilding capacity. Instead, America’s maritime infrastructure continues to be overlooked and our commercial fleet continues to fall behind those of our maritime competitors. **We have been prolific in building U.S. Navy warships, but have failed to invest even modestly in the civilian maritime industries that will support our warfighting capabilities.** Jeremy Greenwood Jeremy Greenwood The United States is an inherently maritime nation. Yet, U.S. flagged vessels make up only 0.4% of the world’s vessels (yes, that’s 0.4%, not 4%). As of July 2021, that’s about 180 ships out of a global fleet of more than 43,000. If you’ve ever sailed on a cruise ship, you likely were on a vessel registered in the Bahamas, Panama, or Liberia. **If you’ve ever looked out at any of America’s largest ports, you probably only saw vessels flying the flag of Panama, Marshall Islands, Hong Kong (which maintains a separate registry for now), or more than ever – China. Why many American ships don’t fly U.S. flags “Open registries” — a concept unique to global shipping — allow any ship owner to register its vessel in a nation with which it has practically no ties, to take advantage of low taxes, less regulation, and cheap labor. In the high-stakes and competitive world of global shipping, seeking out a cheaper flag state — often referred to as a “ flag of convenience” — can save a company millions. Starting with the first wave of globalization after World War II, “flags of convenience” quickly became a standard business practice in the shipping industry, removing almost any incentive to build and operate an American ship outside of the small market of those required to conduct domestic trade (the “Jones Act” fleet, which must, with limited exception, be U.S. crewed, owned, and registered). A consequence of this shift is that our nation lost much of its industrial capability to build, maintain and repair large ocean-going vessels, and with it, the large-scale training and education of U.S. Merchant Mariners.** The role of U.S. commercial ships in national security **Even with the world’s most dominant Navy, access to a U.S. flagged commercial fleet is critical to our national security. In a 1989 National Security Directive on Sealift (“sealift” is the use of cargo ships for military transport), the White House outlined the importance of maintaining a U.S.-flagged fleet, calling it “essential both to executing this country’s forward defense strategy and to maintaining a wartime economy” and necessary to build surge capacity to “ensure that sufficient military and civil maritime resources will be available to meet defense deployment and essential economic requirements in support of our national security strategy.” Related Books** Yet today, the agency in charge of managing our nation’s maritime sealift capability, the Maritime Administration (or MARAD), is woefully underfunded and managing an aging fleet of vessels that may not be up to the job of moving and sustaining our Armed Forces in an increasingly competitive Asia-Pacific theater of operations. Let’s remember that any conflict in the Pacific will not be sustained by the Navy alone. Our land forces rely on military and civilian sealift capability to fight abroad, and it is not clear that we could sustain a land force in the Pacific with our current sealift capability. Recognizing the defense imperative of sealift capabilities, the combatant command responsible for coordinating the military’s overseas transportation requirements recently announced that buying foreign vessels and re-flagging them under the U.S. flag is its top priority. But while buying used foreign ships from allies is a good start, it is not a solution or a long-term strategy. It’s clear we need a more permanent investment in our maritime infrastructure. In congressional testimony last year, then MARAD Administrator Rear Adm. Mark Buzby (ret.) noted that in the 1990s there were seven large shipyards in the United States building commercial vessels. Since then, three of the yards have closed. Of the remaining four, only one builds commercial vessels and the others do only repairs and maintenance. China’s rising maritime power Meanwhile, China is rapidly expanding its maritime reach through both naval and commercial enterprises. The size and growth of the Chinese navy, coast guard, and long-distance fishing fleets (including the so-called “ maritime militia”) has been well documented. However, Chinese investment in civilian shipbuilding and in strategic port and maritime infrastructure around the world is less well known. China builds over 40% of large ocean-going vessels manufactured globally each year ( over 1,000 per year, compared to approximately 10 per year in the U.S.). Not only that, but Beijing also registers a significant number of these vessels under the Chinese flag ( 4,569 as of January 1, 2020). As of 2021, China maintains an ownership stake in at least 30 of the 50 largest container ports in the world, and has been taking advantage of pandemic-related economic challenges to establish footholds in some of the hardest hit economies, like Panama, whose economy shrunk by about 18% in 2020. Considering that the U.S. is the primary user and beneficiary of the Panama Canal, (over 60% of goods transiting the canal are destined for U.S. ports) increased Chinese control over port infrastructure surrounding the canal could constitute a serious threat to our supply chain. This economic investment comes with strings attached. Not coincidentally, after signing a memorandum of agreement with the Panama Canal Authority in 2017, Panama dropped its diplomatic recognition of Taiwan. In short, China seems to have learned a lesson from American naval strategist Admiral Alfred Mahan that America seems to have forgotten: “[C]ontrol of the sea, by maritime commerce and naval supremacy, means predominant world influence.” Why the lack of U.S. commercial ships presents a security risk **With the withdrawal from Afghanistan complete, the long-awaited pivot to the Pacific might actually be taking shape. The AUKUS submarine agreement most recently highlighted the critical state of the maritime theater of operations in maintaining a “ free and open Indo-Pacific.” However, we can’t be so naïve as to think that a military buildup alone will win in this new era of strategic competition. Increasing shipbuilding capability and investing in the American commercial fleet would not only mitigate threats to our supply chain, but would also serve as an important hedge to China’s increasingly pervasive and aggressive maritime ambitions. As it stands now, our reliance on foreign vessels for critical trade is a national security risk both in terms of our inability to engage in sustained conflict abroad should that become necessary, but also in terms of supply chain vulnerabilities that will continue to plague us at home. We need not, and of course cannot, end globalization to protect our supply chain. But we can drastically increase the number of U.S. flagged merchant vessels sailing the world’s oceans and strengthen our domestic shipbuilding base to preserve our freedom of action in times of crisis. Without the ability to move and sustain our forces by sea wherever and whenever needed — a major deterrent against aggression — the U.S. (and its allies) will lose the capacity to ensure regional stability and peace. This maritime nation should not outsource its maritime needs. Continuing to do so requires that we rely on flag states that are increasingly vulnerable to the influence of foreign adversaries, most notably China. We must invest in our Merchant Marine and shipbuilding capability now, and undertake meaningful legislative efforts to make the U.S., at the very least, a less inconvenient flag state.**

#### Cant solve naval power—plan doesn’t modernize the navy or civilian fleets—their ev—GU reads green

Hanacek ’18 (Lieutenant Hanacek, a surface warfare officer, currently is pursuing a master’s degree in systems engineering analysis at the Naval Postgraduate School. He previously served as the electronics materiel officer/communications officer on board the USS Jackson (LCS-6) and as strike and combat information center officer on board the USS Lake Champlain (CG-57), “Presence Is Not Deterrence”, <https://www.usni.org/magazines/proceedings/2018-04/presence-not-deterrence>, April 2018)

Deterrence is hard to quantify. There are too many variables, too many unknown factors, to say with certainty that one event did not occur because another event did. Even so, deterring future conflict is a fundamental and worthwhile national objective, and it remains critical that the armed forces play their part in achieving it. To deal with this contradiction, the United States historically has relied on an aspect of military operations defined by historian Edward Luttwak as “armed suasion.” In his essay, “The Political Uses of Sea Power: The Theory of Suasion,” Luttwak defines armed suasion as “all reactions, political or tactical, elicited by all parties—allies, adversaries, or neutrals—to the existence, display, manipulation, or symbolic use of any instrument of military power, whether or not such reactions reflect any deliberate intent of the deploying party.” Fundamentally, he seeks to explain the range of effects military forces have on the world. These effects exist on both a tactical military-to-military level, such as the way a submarine getting under way causes adversary forces to start tracking it, to the broader political level, wherein a government may or may not be influenced by such military activity depending on the circumstances. For example, a Soviet submarine traveling to Cuba in 1957 likely would have been a minor footnote in briefing the President on global events, but five years later during the Cuban Missile Crisis, that same tactical maneuver would have been of the utmost importance. Beyond the tactical and political levels, armed suasion can be divided between latent and active suasion. Latent suasion is the way all parties involved in a situation perceive a set of military assets and capabilities as either potential threats or potential sources of support. For example, an Arleigh Burke-class destroyer positioned off the coast of Taiwan could be viewed by Taiwan as a source of potential defensive support on a tactical level and political solidarity on a political level. To China, however, it would be a tactical threat capable of targeting Chinese assets, and would represent a political infringement on what China views as its sphere of influence. Active suasion, on the other hand, would be an outright declaration on the part of the United States—a so-called line in the sand—that certain actions by others will be met with a direct response. For example, to dissuade Syria from conducting chemical warfare, the United States could threaten to conduct air strikes against Syrian military facilities. To make this threat a viable deterrent, it must be deemed by the Syrians to be credible and also significant enough to influence their decision making. Essentially, latent suasion leaves the matter to the various participants to interpret a physical situation, where active suasion is a declaration of intent that interested parties may believe or not believe. The reason these delineations are significant is that as a foreign policy asset, the U.S. Navy is being used almost solely as a force of latent suasion. The current construct of global naval deployment primarily is based on the forward nature of our submarines, ships, and aircraft. As a crude estimate, the United States is capable of bringing consequential levels of military force to bear on any potential enemy within a day’s time. This “24-hour rule” should be taken into consideration by any would-be enemy of the United States, whether individual actor, terrorist group, or organized state. Unfortunately, from the Chinese dynasties’ inability to deter nomadic tribes with their massive armies to the mighty British Empire’s failure to deter colonial rebellions and peer-level competitors, history has shown that power projection, the raw ability to conduct military operations, is insufficient to prevent conflict. The existence and extent of potential opposition, military or otherwise, is only one among many factors that influence the decision making of individuals, organizations, and governments. Clausewitz was right in his determination that war is politics by other means, and the ability of military forces to influence an event is likewise constrained by the political realities at hand. These political realities range from international alliances and agreements, which might prevent the outright use of force, to the moral calculus that balances the loss of innocent lives to collateral damage against the potential gain of eliminating hostile forces. To deter actions detrimental to its interests, the United States must be able to identify and overcome those competing influences through use of the full range of hard and soft power tools at its disposal. The limits of latent The U.S. Navy today is worn thin by perpetual overtasking, underfunding, and misuse. From the perspective of latent suasion, the problem at hand is immense. The U.S. Navy is responsible for maintaining an active presence in European waters to counteract a resurgent Russia. In the Middle East and Africa, it is committed to maintaining regional stability and conducting a perpetual “war on terror,” primarily through the maintenance of a rapid response capability. In the Western Pacific, ballistic missile defense requirements to rein in a rogue North Korea, and increasing presence requirements around the first and second island chains (to match the growing naval capacity of China’s Navy), have amounted to a race to maintain local tactical superiority. The current size, structure, and funding levels of the Navy are insufficient to provide the appropriate level of force in relative proximity to all the potential problems it faces.

#### No impact to Naval power

Hooda 18 [DS Hooda, Lt. Gen., former Northern Commander, Indian Army, under whose leadership India carried out surgical strikes against Pakistan in 2016. Navy, Air Force Are Key But Land Power Will Decide Victory in Future Wars, Writes Lt Gen DS Hooda. July 25, 2018. https://www.news18.com/news/opinion/opinion-navy-and-air-force-key-fronts-but-land-power-will-decide-indias-victory-in-future-wars-writes-lt-gen-ds-hooda-1822721.html]

In September 2017, speaking at a seminar, Army Chief General Bipin Rawat said that the “supremacy and primacy” of the Army must be maintained. “The Navy and Air Force will play a very major role in support of the Army which will be operating on the ground, because no matter what happens, we may be dominating the area or the air, but finally war will be won when we ensure territorial integrity of the nation,” he explained.

This kicked up a stormy debate that the Army, in seeking primacy, does not understand the transformation in the nature of warfare. There are today five equally important dimensions – land, sea, air, space and cyberwarfare, which will contribute to success in war. The emphasis in future will be on non-contact warfare and the clash between large armies is a thing of the past.

Looking at China, our main strategic competitor, it is argued that the main focus on warfighting must switch to the Indian Ocean, through which flow 80 percent of China’s energy supplies. The Chinese “Malacca Dilemma” must be fully exploited. Along the land borders, the Himalayan barrier precludes large-scale land operations and reliance must be on the air force. In fact, one expert has recently stated that the air force and not the army would lead the land war against China.

None of these arguments are completely incorrect, but in questioning the primacy of land power, they ignore both history and geography, as well as the psychological aspect of warfare. There is no example in military history where a major conflict between strong powers has been decisively won only on the basis of a naval or air campaign.

The Allied strategic bombing campaign against Germany in World War 2 was unprecedented in scale. According to The United States Strategic Bombing Survey, published after the war, almost 2,700,000 tons of bombs were dropped, with more than 1,440,000 bomber sorties and 2,680,000 fighter sorties being flown. An estimated 300,000 civilians were killed and 780,000 wounded while almost 7,500,000 were rendered homeless. However, as the survey pointed out, “The mental reaction of the German people to air attack is significant…Their morale, their belief in ultimate victory or satisfactory compromise, and their confidence in their leaders declined, but they continued to work efficiently as long as the physical means of production remained.” Ultimately it required a ground offensive for Germany to capitulate.

There is a similar trend in the employment of naval power. For Alfred Mahan, the imposition of a blockade to choke a country’s economy was the ultimate manifestation of sea power. However, as John J. Mearsheimer points out in his book The Tragedy of Great Power Politics, “First, blockades alone cannot coerce an enemy into surrendering. The futility of such a strategy is shown by the fact that no belligerent has ever tried it…Second, blockades rarely do much to weaken armies, hence they rarely contribute in important ways to the success of a ground campaign.”

Julian Corbett, a famous British naval strategist, reinforces this view when he writes, “Since men live upon the land and not upon the sea, great issues between nations at war have always been decided…either by what your army can do against your enemy’s territory and national life, or else by the fear of what the fleet makes it possible for your army to do.”

There are two more domains of modern warfare, space and cyber. While important, these are by themselves are not sufficient to force victory. Non-contact warfare is a good term to use, and while countries would like to win victories without much cost, it would be poor strategy to plan our force structure on this assumption.

War is essentially a human endeavour and a clash of wills between two adversaries. Past campaigns have shown that air or sea power has rarely impacted morale of the population to an extent that they force the government to submit. It is only when territories are conquered, and population subjugated that governments surrender. Mearsheimer makes a critical observation, “Armies are of paramount importance in warfare because they are the main military instrument for conquering and controlling land, which is the supreme political objective in a world of territorial states. Naval and air forces are simply not suited for conquering territory.”

## ADV 3

#### Cant solve cyberattacks—plan can’t make companies improve their infrastructure—GU reads green

Merk et al. 18

Olaf Merk (Olaf Merk leads the work on ports and shipping at the International Transport Forum (ITF) of the Organisation for Economic Co-operation and Development (OECD). As such, he directs policy-relevant studies on maritime transport and the ports sector. Olaf Merk is the author of more than fifty OECD publications including “The Impact of MegaShips” and “The Competitiveness of Global Port-Cities”.), Lucie Kirstein (Scientific Advisor at National Academy of Science and Engineering) and Filip Salamitov (Policy analyst for the IFT), 2018, "The Impact of Alliances in Container Shipping", International Transport Forum, https://www.itf-oecd.org/sites/default/files/docs/impact-alliances-container-shipping.pdf jt

Consumers can be expected to want resilient maritime transport chains, so that the delivery of their goods will not be disrupted. Various indicators highlighted above, such as schedule reliability, delays, increased transit times related to less direct port connections, seem to suggest that containerised maritime transport chains could indeed run more smoothly. In addition, global alliances pose risks for system resilience, due to the limited possibilities for risk diversification, and to the extent that they have contributed to vertical integration between carriers and terminal operators. Risk diversification by shippers is rendered complicated by alliances. The nightmare of shippers (and shoppers) is to lose cargo or not get cargo at its destination before a crucial time, e.g. Christmas. In order to mitigate risks, shippers have traditionally spread their cargo over different carriers. The dominance of alliances means that containers from different carriers can end up on the same ship. In doing so, alliances have reduced the possibilities for risk diversification. Most shippers now take this into account and use back-up options from carriers that are not in the same alliance, but the choice wears thin. The lack of supply chain visibility is not helping efforts to diversify risk. An example of the limited visibility is the lack of transparency on what alliance services are and their characteristics. Almost none of the carriers indicate clearly if their services are operated by the carriers themselves, either as sole operator, through a vessel sharing agreement with competitors, or if the service is a slot charter operated entirely by their competitors. Shippers have in most cases no way to know who will move their cargo and it is often not clear which of the alliance members are operating an underlying service. Moreover, carriers rarely use the same service names across alliances, vessel sharing agreements and slot charter services, making cross-carrier comparisons difficult for shippers, possibly on purpose. The exception is THE Alliance where alliance members all use common service names. Finally, there is no standard for the information provided, e.g. different definitions and codes for ports and terminals, different calculations for transit times etc. (SeaIntel, 2018; 364). Due to this limited visibility, shippers are frustrated in their efforts to design diversification in their supply chains. In addition to alliances, vertical integration risks also reduce system resilience. Integration of shipping, terminal handling and hinterland transport could mean that whole transport chains are in the hand of just a few players, creating huge leverage for cyber-attacks, especially if parts of the chain are digitally connected. This became painfully evident during the NotPetya attack that hit Maersk ships and terminals (Box 7). Vertical integration could be considered to be related to the emergence of alliances. As service differentiation for the sea-leg is difficult in alliances – as the product is basically the same – one of the few remaining possibilities for individual carriers to differentiate is via vertical integration. Box 7. Cyber security and risks associated to vertical integration On 27 June 2017, a major cyber-attack began hitting firms mainly in France, Germany, Italy, Poland, Russia, Ukraine, the United Kingdom, and the United States. The attack is suspected to have started when hackers compromised the update server of Ukrainian tax accounting software company M.E.Doc so that it would distribute a malware referred to as “NotPetya” throughout its network. The malware further propagated itself notably via an exploit using a vulnerable Microsoft Windows network protocol. After analysis of the encryption routine of the malware, experts from Kaspersky came to the conclusion that the attack, although appearing as a ransomware attack, did not allow victims to recover their data even after paying the ransom, and the aim was therefore suspected to be directed at major disruption instead of financial gain for hackers (Ivanov and Mamedov, 2017). The carrier Maersk was presumably contaminated by this malware via software used by one of its offices in Ukraine. Maersk was forced to shut down many of its operating systems to stop the attack from spreading. The company was unable to process new orders and cranes were operated manually at some of its 76 container ports. The disruption caused major delays and led to rerouting of several vessels to ports not, or less, affected (Odell et al./FT, 2017). At least 17 terminals operated by APMT got infected by Maersk’s central IT infrastructure (Reuters, 2017). A number of terminals were unable to identify which shipment belonged to whom and therefore needed to clear cargo manually. The largest Indian port JNPT operated by Maersk’s APMT was forced to shut down and the terminal Maasvlakte II in Rotterdam stopped operations completely for a full week, which led to a highly congested service level. According to Maersk’s annual report for 2017, the attack mainly impacted Maersk Line, APM Terminals and Damco. The effect on profitability was estimated to be around USD 250-300 million, with the vast majority of the impact related to Maersk Line in the third quarter (Maersk, 2018). Maersk estimated a 20% drop in volume and lost out on carrying 70 000 40-foot containers within the two weeks of the attack. Besides lost revenue, the attack also involved high costs of rebuilding its IT infrastructure. At the moment of the cyber-attack, Maersk did not own any cyber risk insurance. The company reported that 4 000 new servers, 45 000 new PCs, and 2 500 applications had to be reinstalled (Chirgwin/The Register, 2018). Actual impacts on Maersk’s performance could be higher than reported and probably stretch beyond the second half of 2017 (Porter/Lloyd’s List, 2017a). In April 2018, analysts speculated that the attack could have cost Maersk group over USD 500 million in expenses and lost profit. Others situate the cost between USD 400-500 million because the effect from the attack continued in the fourth quarter of 2017 and led Maersk to make investments in new infrastructure and insurances. Furthermore, the cyber-attack could have had an extended impact on market shares until the first quarter of 2018 (Beck/ShippingWatch, 2018). Although for most affected terminals it took a few days before they could resume operations completely, shippers were affected by delays of up to two months, because Maersk reportedly had difficulties in allocating new slots and tracking and assigning correct data to containers. The impact was widely felt by interviewed shippers and Lloyd’s List reported a similar observation that nearly two months after the attack, Maersk was still dealing with containers in transit at the time of the attack (Porter/Lloyd’s List, 2017b). One of the interviewed shippers reports having received additional demurrage invoices due to complications and delays caused by the cyber-attack, which suggests the carrier might have tried to shift part of the costs of the attack to their consumers. Maersk’s global coverage, as well as strong horizontal and vertical integration in the sector further facilitated the knock-on effect of the cyber-attack. Companies who are reliant upon common IT infrastructure will logically suffer business interruption simultaneously when that infrastructure is compromised. Since supply chains are highly interconnected and even more so with increasing automation and digitalisation, this can result in an insecure operating environment even for those firms that make cyber security a priority. However, there is not only interdependence in IT infrastructure, but also in the utilisation of common assets. According to SeaIntel analysis, 20 other carriers transported containers on-board Maersk vessels around the time of the cyber-attack (SeaIntel, 2017; 319). MSC was the most affected with 23 vessel sharing agreements and four slot-charters, followed by Safmarine and Hamburg Süd. The most affected outside the 2M alliance and Maersk ownership was CMA CGM, with six vessel sharing agreements and four slot charter agreements with Maersk. The shipping sector is the backbone of international trade and ports are a vital part of every country’s infrastructure. Any major disruptions in supply chains can therefore have impacts on the overall economy. The scale of the cyber-attack and the many interconnections that exist vertically and horizontally in this industry could transform the collateral and rather accidental damage on a firm that was presumably not directly targeted, into a systemic risk for global trade.

#### No cyber impact.

Lewis 20, PhD, a senior vice president and director of the Technology Policy Program at the Center for Strategic and International Studies in Washington, D.C. (James Andrew, 8-17-2020, "Dismissing Cyber Catastrophe", *CSIS*, https://www.csis.org/analysis/dismissing-cyber-catastrophe)

A catastrophic cyberattack was first predicted in the mid-1990s. Since then, predictions of a catastrophe have appeared regularly and have entered the popular consciousness. As a trope, a cyber catastrophe captures our imagination, but as analysis, it remains entirely imaginary and is of dubious value as a basis for policymaking. There has never been a catastrophic cyberattack.

To qualify as a catastrophe, an event must produce damaging mass effect, including casualties and destruction. The fires that swept across California last summer were a catastrophe. Covid-19 has been a catastrophe, especially in countries with inadequate responses. With ~~man-made~~ actions, however, a catastrophe is harder to produce than it may seem, and for cyberattacks a catastrophe requires organizational and technical skills most actors still do not possess. It requires planning, reconnaissance to find vulnerabilities, and then acquiring or building attack tools—things that require resources and experience. To achieve mass effect, either a few central targets (like an electrical grid) need to be hit or multiple targets would have to be hit simultaneously (as is the case with urban water systems), something that is itself an operational challenge.

It is easier to imagine a catastrophe than to produce it. The 2003 East Coast blackout is the archetype for an attack on the U.S. electrical grid. No one died in this blackout, and services were restored in a few days. As electric production is digitized, vulnerability increases, but many electrical companies have made cybersecurity a priority. Similarly, at water treatment plants, the chemicals used to purify water are controlled in ways that make mass releases difficult. In any case, it would take a massive amount of chemicals to poison large rivers or lakes, more than most companies keep on hand, and any release would quickly be diluted.

More importantly, there are powerful strategic constraints on those who have the ability to launch catastrophe attacks. We have more than two decades of experience with the use of cyber techniques and operations for coercive and criminal purposes and have a clear understanding of motives, capabilities, and intentions. We can be guided by the methods of the Strategic Bombing Survey, which used interviews and observation (rather than hypotheses) to determine effect. These methods apply equally to cyberattacks. The conclusions we can draw from this are:

Nonstate actors and most states lack the capability to launch attacks that cause physical damage at any level, much less a catastrophe. There have been regular predictions every year for over a decade that nonstate actors will acquire these high-end cyber capabilities in two or three years in what has become a cycle of repetition. The monetary return is negligible, which dissuades the skilled cybercriminals (mostly Russian speaking) who might have the necessary skills. One mystery is why these groups have not been used as mercenaries, and this may reflect either a degree of control by the Russian state (if it has forbidden mercenary acts) or a degree of caution by criminals.

There is enough uncertainty among potential attackers about the United States’ ability to attribute that they are unwilling to risk massive retaliation in response to a catastrophic attack. (They are perfectly willing to take the risk of attribution for espionage and coercive cyber actions.)

No one has ever died from a cyberattack

#### Grid’s resilient AND no cascades.

Larson 18 [Selena, Cyber Threat Intelligence Analyst at Dragos, Inc., “Threats to Electric Grid are Real; Widespread Blackouts are Not”, 8/6/2018, https://dragos.com/blog/industry-news/threats-to-electric-grid-are-real-widespread-blackouts-are-not/]

The US electric grid is not about to go down. Though it’s understandable if someone believed that. Over the last few weeks, numerous media reports suggest state-backed hackers have infiltrated the US electric grid and are capable of manipulating the flow of electricity on a grand scale and cause chaos. Threats against industrial sectors including electric utilities, oil and gas, and manufacturing are growing, and it’s reasonable for people to be concerned. But to say hackers have invaded the US electric grid and are prepared to cause blackouts is false. The initial reporting stemmed from a public Department of Homeland Security (DHS) presentation in July on Russian hacking activity targeting US electric utilities. This presentation contained previously-reported information on a group known as Dragonfly by Symantec and which Dragos associates to activity labeled DYMALLOY and ALLANITE. These groups focus on information gathering from industrial control system (ICS) networks and have not demonstrated disruptive or damaging capabilities. While some news reports cite 2015 and 2016 blackouts in Ukraine as evidence of hackers’ disruptive capabilities, DYMALLOY nor ALLANITE were involved in those incidents and it is inaccurate to suggest the DHS’s public presentation and those destructive behaviors are linked. Adversaries have not placed “cyber implants” into the electric grid to cause blackouts; but they are infiltrating business networks – and in some cases, ICS networks – in an effort to steal information and intelligence to potentially gain access to operational systems. Overall, the activity is concerning and represents the prerequisites towards a potential future disruptive event – but evidence to date does not support the claim that such an attack is imminent. The US electric grid is resilient and segmented, and although it makes an interesting plot to an action movie, one or two strains of malware targeting operational networks would not cause widespread blackouts. A destructive incident at one site would require highly-tailored tools and operations and would not effectively scale. Essentially, localized impacts are possible, and asset owners and operators should work to defend their networks from intrusions such as those described by DHS. But scaling up from isolated events to widespread impacts is highly unlikely.

# 2NC

## CP

### AT Domestic Only Not Solve

#### Positive incentives solve best – key to overcome international barriers to enforcement

Ristaniemi 20 [Michael, VP of Sustainability at Metsa Group, acting as competition counsel, nominated for the 2019 Antitrust Writing Awards, “Rewarding Competition Compliance – Its Societal Value and How Policy Alignment Can Help, Liikejuridiikka - Finnish Business Law Journal, JCR]

This article argues that firms have an underutilised societal role in competition law enforcement. There is inherent societal value in compliance efforts when ensuring the functioning of competitive markets, and a broader palette of measures to impact firm conduct that help prevent anticompetitive conduct could potentially benefit society at large. Ideas of responsive regulation and shared governance have promoted a framework that has become increasingly common in other policy areas and made regulatory approaches more collaborative and nuanced. Improving firms’ motivation to self-police by adopting an approach that embraces positive incentives allows them to act as an extension to the efforts of competition authorities and takes pressure off the capacity restrictions of formal enforcement. Rewarding firms for their compliance efforts should not be a question of whether infringers are granted a ‘cheap insurance policy’, but rather about how society can implement measures to improve the competitiveness of its markets in an optimal cost-benefit balance. Since the pay-out would occur in only seldom cases vis-à-vis the broad preventive impact, the competition community would be wise to look beyond its immediate enforcement cases at hand and the associated fining. In addition to creative ways of rewarding compliance efforts, as such, another example of potential positive incentives concerns reporting. Establishing an obligation for firms to report their competition compliance efforts would also be helpful as an additional incentive. The EU intends to review its NFR Directive during 2020 as part of its strategy to strengthen the foundations for sustainable investment.129 This would be a prime opportunity to extend it to concern competition compliance, which would also increase policy coherence. Most importantly – however – is conceptual understanding of the necessary complementary function firm-level compliance efforts have in ensuring functioning markets. Competition law scholarship is not sufficient to design an adequate approach to competition compliance.130 While economics is emphasized in competition policy, understanding corporate conduct and how policymakers can influence it requires lending research also from other fields, such as psychology, and sociology. While some may wish to consider competition compliance to be an area sui generis, I am reluctant to such notions. Forward-looking policymakers would be wise to see what approaches are taken in other areas of regulatory compliance with an aim to learn from them. From a firm perspective, whose task is to comply with a wide array of regulation, policy coherence has significant value. Taking a broad viewpoint, an international, multilaterally accepted way forward that encourages and incentivises companies to avoid anticompetitive conduct could benefit us all. And, in any case, promoting such measures has the potential of bringing about improvements, while leaving national sovereignty – the usual sticking point in developing international antitrust – untouched. As long as anticompetitive conduct continues to occur, all tools that can improve the functioning of competitive markets are worth considering. A bit of creativity and open-mindedness can go a long way in improving national deterrence as well as the coherence of international antitrust. A shift towards an ‘enabling environment’ in competition policy – appreciating the partnership role of firms – could be useful, and added focus towards incentivising preventive measures has merit as a tool in doing so.

#### Solves international antitrust

Ristaniemi 20 [Michael, VP of Sustainability at Metsa Group, acting as competition counsel, nominated for the 2019 Antitrust Writing Awards, “Rewarding Competition Compliance – Its Societal Value and How Policy Alignment Can Help, Liikejuridiikka - Finnish Business Law Journal, JCR]

Developing competition compliance incentives presents significant opportunities for improving the state and coherence of international antitrust. This is due to the reality of diverging volume and quality of competition law enforcement. Most nations have competition laws on paper, but enforcement is often inconsistent or otherwise lacking. An increased emphasis should arguably thus be placed on improving enforcement standards and practices. Enforcement gaps may result from a number of reasons. Whether it is a lack of resources, experience or formal jurisdiction, it is clear that all competition authorities are not equally up to their enforcement tasks. An improved impetus for firms to maintain robust compliance programs, self-police and to be transparent about their actions could help make up for part of the deficit. Doing so could, in turn, partially decrease other fragmentation within international antitrust – such as deriving from extraterritorial application by nations with more vigorous competition enforcement. Reduced fragmentation arguably increases predictability from a business perspective. Many developing countries suffer from inefficient markets, and an approach that could help markets function better would inevitably benefit local economies and consumers. Not to mention that cooperating in building standards in relation to competition compliance incentives could help build both trust between the developing world and the EU and the US, the traditional leaders in competition matters, and also confidence in competition policy, in general. In terms of form, international hard law in competition matters has been very challenging to agree upon, for a number of reasons, and it is unclear whether it would even be desirable.125 Soft law, in the form of voluntary frameworks and recommendations, has a much more positive track record. Several multilateral efforts have resulted in best practices recommendations that have arguably not been insignificant. The differentiating factors between the two emanating from the voluntary, nonbinding nature, which have allowed nations to build trust and cooperate in areas that suit their preferences, and arguably with lower cost.126 Particular de facto significance can be assigned to those produced within the ICN, given its broad and varied mix of participating competition agencies and experts. One could thus beg the question of whether soft law approaches concerning positive incentives – inter alia reporting – could also be of use in a competition context, similarly like in the case of ESGs. An initiative by the ICN, the OECD or by another relevant supranational organisation would be welcomed in the area of encouraging adopting positive incentive based approaches to complement existing forms of deterrence. This could perhaps be modelled similarly to the recently created ICN Framework for Competition Agency Procedures, which is an opt-in multilateral framework for national competition agencies and which seems as a rather promising instrument in form.127 Alternatively something akin to a OECD Competition Division Recommendation, which is a more conventional manifestation of a best practice soft law instrument, could be useful and, while less ambitious an instrument, it should at least not be beyond reach.12

### AT “Positive Incentives Fail”

#### Deterrence fails – positive incentives for self-regulation are key to solving antitrust

Ristaniemi 20 [Michael, VP of Sustainability at Metsa Group, acting as competition counsel, nominated for the 2019 Antitrust Writing Awards, “Rewarding Competition Compliance – Its Societal Value and How Policy Alignment Can Help, Liikejuridiikka - Finnish Business Law Journal, JCR]

The current approach in competition law towards deterrence of anticompetitive conduct is through ex post sanctions, including related enforcement, and is insufficient. There is inherent societal value in better encouraging competition law compliance by firms. Added focus should be placed on creative complementary measures that do so, including rewarding desired conduct using positive incentives. Firms should be seen not only as potential infringers, but also as valuable partners in ensuring competitive markets. Compliance tools used in relation to competition policy focus less on preventive measures than some other areas of regulatory compliance, such as environmental protection, anti-bribery, and corporate sustainability, which provide useful points of learning. Improved self-enforcement by firms could moreover help improve the state of international antitrust by narrowing the enormous disparity between various national competition authorities’ resources and capacity.

#### Corporate decision-makers are not solely motivated by profit and public policy can align incentives with the public good to influence corporate behavior. Empirical data proves.

Ristaniemi 20 [Michael, VP of Sustainability at Metsa Group, acting as competition counsel, nominated for the 2019 Antitrust Writing Awards, “Rewarding Competition Compliance – Its Societal Value and How Policy Alignment Can Help, Liikejuridiikka - Finnish Business Law Journal, JCR]

Understanding the role of ethics in influencing corporate conduct is key. Rational choice theory presupposes that firms and their executives are rational actors, conducting cost-benefit analyses and then deciding accordingly in line with what maximises utility. In such cases deterrence will vary based on the ‘price’ of misconduct relative to anticipated gains.20 However, such decision-making has actually in many cases been shown to be quite pluralist – taking into consideration social and normative motives in addition to purely economic ones.21 In addition, Kahnemann and Tversky have shown us, decision-making in both the C-suite as well as managerial conduct below are affected by a number of biases.22 Langevoort summarizes the key idea by explaining that when presented with “…temptations to cheat, most human beings cheat less than they could, but more than they should.”23 Put differently, firm directors and managers do have a desire to ‘do the right thing’, but that the likelihood of the right thing happening could be amplified with support by, eg., better public policy initiatives. This implies that there might be yet-unseized potential of positive incentives in competition law and its enforcement. Psychological literature states the importance of employees’ subjective feeling of trust and a perception of legitimacy towards compliance efforts.24 As such, purely formal or top-down approaches or systems emphasizing employee monitoring are usually not perceived as very persuasive in corporate environments and will, thus, likely fail on achieving their objectives.25 Vaughan argues that culture is the mediating link between exchanges formal management structure and agency, ie. the decisions and actions of individual employees or managers.26 Further, Langevoort argues that despite monitoring and control, there will inevitably be ‘hiding places’ within firm structures for noncompliance to take place – unless the firm’s employees share a proper culture of integrity and compliance.27 Finell argues that internal attitudes towards compliance and ethics are strongly informed also by the ethical atmosphere beyond the firm. Since firms operate as part of value chains, the attitudes of their key customers and investors will likely have an impact on their attitudes.28 Moreover, in addition to the framework created by policymakers and regulators, broader values within a firm’s industry and in society by and large have an impact on its corporate culture.29 In any case, public policy choices have an important role in steering a company’s compliance efforts and emphasis. For example, the United States (US) Sentencing Guidelines do just that. They ‘offer incentives to organizations to reduce and ultimately eliminate criminal conduct by providing a structural foundation from which an organization may self-police its own conduct through an effective compliance and ethics program’.30 This approach specifically addresses criminal conduct, but does not otherwise prioritise areas requiring compliance over others. In addition to hard regulation, policymakers are in a position to legitimise self-regulation by developing voluntary standards as well as jointly developing criteria for such standards with private actors and endorse them when connected to public procurement or investment.31 Promoting the role of firms as an extension of policymakers and enforcers has an established track record. Ayres & Braithwaite have brought forward a theory of so-called responsive regulation as a way to undertake this. Responsive regulation refers to the government, first, listening to and cooperating with firms and consequently choosing from various regulating strategies those which best suit each respective situation.32 Applications of the theory they put forward on engaging firms as partners of the government has been tested several times and the subsequent data provides an interesting backdrop. In short, enforcement strategies that utilise a mixture of approaches and which have a cooperative element have been shown to bring positive results.33 More broadly, such notions form a part of social constructionist theories of the essence of “compliance” and “regulation” which sees them more as network interactions of various interrelated actors.34 This complexity is relevant to identify, as it allows for an appreciation for utilising a variety of tools to achieve a specific policy goal.

## ADV 1

### 2NC- No solvency

#### FMC won’t and can’t enforce – they have been captured by the industry

Brown 22 [Hannah, “Amidst a Record Supply Chain Crisis, What is the Federal Maritime Commission’s Capacity?” 1/29/22, https://therevolvingdoorproject.org/amidst-a-record-supply-chain-crisis-what-is-the-federal-maritime-commissions-capacity/]

One tiny federal agency with 116 full-time employees and a $28.9 million dollar budget is in charge of regulating the global marine economy, which contributes $397 billion to the US GDP annually and accounts for 80 percent of goods shipped worldwide. That’s not just an apples and oranges discrepancy—that’s like an apple versus Apple. The budget for the military’s marching bands is fifteen times greater than the Federal Maritime Commission’s budget; the Marines alone have five times more musicians than the Commission has staff. Meanwhile, for months now, aerial views of America’s biggest ports have shown dozens of massive container ships backed up for miles, blotting the ocean as far as the eye can see. Billions of dollars of imported goods sit idly on the water for weeks, depreciating in value, while trucks face over 24-hour waits outside of port gates. The logjam is terrible for people’s health, too—the California Air Resource Board estimates that the sitting ships’ increased pollution is equivalent to adding an obscene 5.8 million cars and 100,000 big rig trucks to the area. The complex and interconnected web of the global supply chain is in a crisis that defies simple solutions. But addressing that crisis is made more difficult by decades-old deregulation of the ocean shipping industry, and the fact that a few powerful global entities are making billions of dollars from its continued dysfunction. Three alliances of the nine biggest shipping container lines control 83 percent of the global shipping market and 95 percent of critical East-West trade lanes.They are on track to make an eye-watering $150 billion dollars in 2021—more than 25 times their 2019 profit. Terminal operators are also turning a profit, as most terminals are operated by U.S. subsidiaries of those same foreign container lines. It’s worth noting that the top 25 container lines are all foreign companies; the US’s largest container line, Matson, holds only a 0.3 percent share of the market. These three carrier-operator alliances are effectively holding the global supply chain hostage in order to milk as much money as they can from heightened demand and stifled supply. These alliances have no economic incentive to increase supply. Their incentive is to continue to reap windfall profits. Yet significant investment in supply is precisely what the public complaining about inflation and shortages requires, and what the industry’s regulator ought to be demanding on behalf of the people. And who is that regulator? The pea-sized Federal Maritime Commission, squashed under the industry’s gigantic mattress. The Federal Maritime Commission is like David up against the shipping line Goliaths, if David voluntarily put down his slingshot and tied his hands behind his back. For being the only federal agency in charge of regulating a behemoth industry, the Commission is markedly anti-regulation. “I have never seen a regulation I liked,” said Commissioner Rebecca Dye, now in her nineteenth year at the agency. The Commission voluntarily embraced Trump’s 2017 “eliminate two existing regulations for every new regulation” Executive Order, and reviewed its own regulations for potential repeals. The Commission’s deregulatory spirit dates back more than two decades, to the passage of two laws: the Shipping Act of 1984, and the Ocean Shipping Reform Act of 1998. Both of these laws substantially lessened the Commission’s authority. The Federal Maritime Commission’s regulatory authority stems from the handful of maritime laws that it enforces. (These include the Shipping Act of 1984 and the Ocean Shipping Reform Act of 1998, as well as Section 19 of the 1920 Merchant Marine Act, the Foreign Shipping Practices Act of 1988, and sections 2 and 3 of Public Law 89-777.) At the time of its founding in 1961, the Commission’s responsibilities were outlined by the Shipping Act of 1916, which granted the agency a lot of authority. Under the 1916 Act, it was mandatory for carriers to file all tariffs (official rates) and agreements with the Commission. The Commission would review and approve all agreements before they came into effect. Approved agreements were exempt from U.S. antitrust laws. To streamline what had become a time-consuming approval process, the Shipping Act of 1984 changed this procedure so that once agreements are filed with the Commission, they are automatically approved after 45 days unless the Commission moves to block them. Tariffs were also no longer required to be filed with the Commission, just published publicly. Then, the Ocean Shipping Reform Act of 1998 took industry autonomy several steps further. The 1998 Act allowed carriers and shippers to negotiate confidential contracts for the first time. These agreements are still filed with the Commission, but their terms are otherwise secret. The importance of publicly reported tariffs rapidly diminished, now that prices can be negotiated and set in private. And through all this, carriers retained their antitrust immunity. This deregulatory push was in the name of “competition” and the “marketplace,” but its effect was to crush smaller competitors and encourage monopolistic alliances, while preventing public scrutiny and most antitrust intervention in the industry. Over the past two decades, every sector of the ocean shipping industry has consolidated. Not only do three alliances of nine carriers now control 83 percent of container ship capacity, but three Chinese manufacturers produce 83 percent of all new containers, and five companies control 82 percent of container leasing. Smaller ports have suffered as the big carriers buy bigger ships; a capital-intensive strategy for cutting costs that excludes smaller carriers, and forces costly adaptations upon ports. Larger ships initially provided greater efficiency and cost-savings for carriers, but now, with many mega-ships larger than the Empire State Building, their increasing diseconomies of scale read as a monopolistic tool to force the industry to operate on their terms. This is why we see megaships stuck for days at port; they’re not profitable to sail unless they’re entirely full, and it takes a long time to load and empty them. Meanwhile, ocean carriers and marine terminal operators can charge demurrage and detention fees to the shippers, intermediaries and truckers when things get behind schedule. Where the Commission Comes In All of that explains why importers, exporters, intermediaries, and truckers have repeatedly asked the Commission to become more involved, while carriers and terminal operators have argued that the Commission lacks authority to do so. Such a dispute broke out over the Commission’s 2020 interpretive rule clarifying what constitutes reasonable demurrage and detention fees. The Commission’s commentary on this rule and the controversy it generated illuminates how the Commission perceives its own role and authority. While the Commission acknowledged that “one purpose of the Shipping Act is to minimize government intervention,” it countered that that “does not mean that the Commission may abandon its duty to prevent unreasonable practices.” So while the laws the Commission is in charge of administering expressly put limits on its power, the Commission still has regulatory responsibilities it must fulfill. While the Commission claims that it “prefers commercial solutions to demurrage and detention problems,” the Commission’s investigation found that “commercial solutions are only adequate from the perspective of ocean carriers and marine terminal operators.” In other words, when left to their own “free market” devices, carriers and operators bulldozed the other industry parties, forcing a reluctant Commission to intervene. By the 2010s, the ocean supply chain’s vulnerability and inefficiencies were already visible. The Commission’s response, spearheaded by Commissioner Rebecca Dye, was to bring together various industry stakeholders in conversation. The 2017 Report of this “Supply Chain Innovation Teams initiative” offers further insight into the Commission’s view of its responsibilities and, perhaps, capacity. Dye reports that industry participants “indicated that they had little appetite for governmental prescriptions or requirements,” and adds that “from the outset, the Commission recognized that additional government regulations were not the answer.” It is alarming to see a regulatory agency renege its chief function. The Commission decided to serve instead as “a catalyst for stakeholder-identified commercial solutions” (emphasis in original). Is this decision evidence of corporate capture, or the result of an agency whose resources are dwarfed by its mandate, still striving to make an impact?

#### FMC already has the authority to do the plan, and Biden has given them the green light. They just won’t do it.

Brown 22 [Hannah, “Amidst a Record Supply Chain Crisis, What is the Federal Maritime Commission’s Capacity?” 1/29/22, https://therevolvingdoorproject.org/amidst-a-record-supply-chain-crisis-what-is-the-federal-maritime-commissions-capacity/]

The White House, meanwhile, has directed the Federal Maritime Commission to “​​use all of the tools at its disposal to ensure free and fair competition.” This includes the Commission’s unique ability to intervene on antitrust issues: “while the alliances between the carriers receive statutory immunity from antitrust laws, the FMC can challenge those agreements if they ‘produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost or … substantially lessen competition.’” In reality, though the Commission has labored to avoid stepping on industry toes, it has substantial authority to enforce antitrust laws when shipping agreements—the confidential agreements that only the Commission gets to read—reduce competition and damage supply chain resilience. An encouraging sign that the Commission recognizes its antitrust capacity comes in the form of a Memorandum of Understanding with the Department of Justice’s Antitrust Division this summer, committing the two agencies to cooperate on “the enforcement of antitrust and other laws related to the Industry.”

### 2nc- COllusiobn

#### 2NC – A2 Collusion

#### There is no collusion and even if there is it can’t be proven

Pico 21 (Soren, Reporter for ShippingWatch which is part of WatchMedia, 9-17-21, Authorities find no evidence of collusion between container carriers, ShippingWatch, https://shippingwatch.com/carriers/Container/article13295061.ece)

The overheated container market is driven solely by unprecedented demand and not collusion between carriers, conclude authorities in the US, China and the EU, according to media.

No proof has been found in the investigations of possible market manipulation between container carriers or the three major alliances to push up pricing, concludes maritime authorities in the EU, the US and China, according to Daniel B. Maffei, Chair of US Federal Maritime Commission (FMC).

In an interview with Lloyd’s List, Maffei explains that the maritime authorities have reached similar conclusions. The carriers, he says, have artificially reduced capacity to make pricing go up. Instead, the increases have been fueled by market forces.

#### BUT, even if, collusion is already allowed to be prosecuted — plan text in a vacuum means the aff does nothing — vote neg on presumption

Van Merle 20, Reporter for The LoadStar (Gavin, FMC fires 'collusion' warning shot across the bows of transpacific carriers, https://theloadstar.com/fmc-fires-collusion-warning-shot-across-the-bows-of-transpacific-carriers/)

US ocean regulator the Federal Maritime Commission (FMC) has fired a warning shot across the bows of container shipping lines, saying it will head to the courts if there is evidence of collusion on the transpacific trades. Freight rates between Asia and the east and west coast of the US have reached record highs in recent months and, following a closed meeting of FMC commissioners yesterday, the regulator said it was looking into possible infringements of competition law. “If there is any indication of carrier behaviour that might violate the competition standards in section 6(g) of the Shipping Act, the commission will immediately seek to address these concerns with the carriers. “If necessary, the FMC will go to federal court to seek an injunction to enjoin further operation of the non-compliant alliance agreement,” it said, adding that it had “heightened its scrutiny of markets, individual ocean carriers, and the three global carrier alliances in response to the unusual circumstances and challenges created by the Covid-19 pandemic”. It said it had received “detailed reports that addressed trends in spot rates, longer-term service contracts, utilisation of equipment, blanked sailings, revenue trends, the policies of individual carriers and global alliances for service changes, as well as what notice must be provided to the FMC when there are blanked, cancelled or amended voyages. “The FMC is actively monitoring for any potential effect on freight rates and transport service levels, using a variety of sources and markers, including the exhaustive information that parties to a carrier agreement must file with the agency,” it added. While carriers have continued to restrict capacity, the transpacific trade has seen a surge in demand over the summer. Last week, Hackett Associates’ Global Port Tracker recorded US ports handling 1.92m teu in July, which although being down 2.3% year on year, was up 19.3% on June, “and significantly higher than the 1.76m teu forecast a month ago”. And it currently forecasts August’s throughput at 2.06m teu, which would be 6% higher than August last year and represent the highest monthly throughput on record, “beating the previous record of 2.04m teu set in October 2018”. Data from the port of Los Angeles supports this – it said this week that August container throughput was its highest ever, at 961,833 teu, which was up 12% year on year, and saw loaded imports breach the 500,000 teu mark for the first time. Meanwhile headhaul spot rates continue at historic highs: today’s World Container Index (WCI) from Drewry recorded a Shanghai-Los Angeles spot rate of $3,922 per 40ft, which Drewry said was 2% up on last week and a staggering year-on-year 182% increase. It is a similar situation on the Asia-US east coast trade, with today’s WCI Shanghai-New York reading $,716 per 40ft, up 3% week on week and 94% year on year. However, it appears carriers have begun to heed warnings from the FMC and China’s ministry of transport. This week, Ocean Alliance member OOCL announced it was reinstating six of nine previously announced blanked sailings on the transpacific slated to take place around the Golden Week holidays.

#### Alliances are essential in shipping without them shipping rates would skyrocket — turns trade

Vinyard 19, Reporter for Universal Cargo. (Jared, June 20, 2019, SeaIntelligence Says End of Shipping Alliances Would Skyrocket Freight Rates, <https://www.universalcargo.com/seaintelligence-says-end-of-shipping-alliances-would-skyrocket-freight-rates/>)

What would happen if ocean freight carrier alliances were brought to an end? Many shippers would cheer as they’re currently seeking to make such an outcome a reality. But would it really be good news for shippers? SeaIntelligence Consulting’s CEO, Partner Lars Jensen says no. As much as shippers may see carrier alliances as a way shipping lines are skirting antitrust laws (and there’s reason for distrust with recent price-fixing investigations into carriers, even some charges resulting in a K-Line executive pleading guilty to price fixing in 2014 and an NYK exec pleading guilty of price fixing in 2015), it’s the vessel sharing agreements, under which carriers work together, being broken up that shippers should really worry about. That according to Mr. Jensen, who says an end to carrier alliances will cause freight rates to skyrocket. In an article for the Loadstar, Gavin van Marle reports remarks Mr. Jensen made on Tuesday (June 18th, 2019) at the TOC Container Supply Chain event in Rotterdam: Shipper opposition to deepsea liner shipping alliances may be dangerously misplaced, delegates at the TOC Container Supply Chain event in Rotterdam heard yesterday. Lars Jensen, chief executive and partner of SeaIntelligence Consulting, said efforts by some to bar container lines from operating in alliances, claiming they have become anti-competitive, would result in freight rates “skyrocketing”. Mr. van Marle makes it clear the impetus for Mr. Jensen’s words is the European Commission’s regulators assessing whether or not to extend EU’s Block Exemption Regulation (BER) for five years. The BER is the EU’s legislation that covers vessel-sharing agreements (VSAs), which are commonly referred to as carrier alliances, essentially exempting these agreements from being antitrust law violations. BER does not give carriers a carte blanche when it comes to antitrust rules. Carriers, for example, are not allowed to communicate and cooperate in regards to freight rate points. VSA cooperation is supposed to be strictly limited to ship sharing matters. Of course, shippers have been suspicious from the start of carrier alliances that cooperation bleeds into price point sharing and reduces competition between carriers. Because shippers see VSAs or carrier alliances as a reduction in carrier competition, potentially exacerbating the poor quality of customer service carriers are notorious for and increasing freight rates, there are shippers attempting to persuade regulators not to extend the BER. Obviously, Mr. Jensen argues shippers will not get what they’re hoping for if they succeed in keeping the BER from getting extended. In his Loadstar article, Mr. van Marle continues to quote Mr. Jensen as the SeaIntelligence CEO explains why ending the BER will be expensive for shippers: Mr Jensen said: “If the anti-trust exemption isn’t extended, it doesn’t necessarily mean shipping lines can’t run alliances. It may well just mean the lines have higher hoops to jump through, and I doubt that they will do that. “But it will mean a lot of legal costs and the carriers will have to recoup those costs and the only [way] they can do that is through higher rates,” he added. “However, if shipping alliances are outlawed altogether, then freight rates will skyrocket, because alliances are the only way that carriers can operate ultra-large container vessels (ULCVs) effectively.” I have long had mixed feelings about carrier alliances, myself. Yes, they are a reduction of carrier competition in the international shipping industry, and I’m not a fan of shrinking that competition. Smaller competition (in any industry) usually means higher prices and lower service. However, the incredible financial losses carriers have suffered over the last many years (and, yes, I would argue those losses are largely by their own doing) and the very tight profit margins carriers seem to be working within has made carrier alliances basically a necessity in reducing costs and keeping these big shipping companies from sinking like Hanjin did a few years back. There is also the argument that VSAs create more ability and flexibility for carriers to offer more sailings, so that’s a case where carrier alliances could increase service instead of decreasing it. Overall, I’ve considered carrier alliances a necessary evil in the ocean freight sector. I’m actually of the opinion that if the carrier alliances ended suddenly today, several carriers would have trouble competing with the top dogs of the industry like Maersk and suffer the same fate as Hanjin or at least be forced into mergers or buyouts. We possibly might even eventually reach Maersk’s prediction of carrier competition shrinking to only 3 global companies. Such a low competition situation would almost certainly mean higher freight rates for shippers. While my position on the situation of carrier alliances is not as extreme as Mr. Jensen’s, whose final quote in the Loadstar article is, “So I am of the opinion that shippers should pray the lines are allowed to continue to operate alliances,” I do think the sudden disbanding of VSAs would not be in the overall interest of shippers.

### Deglobalization

#### SQUO SOLVES- Higher global freight costs causing reshoring and reinvigoration of US manufacturing – stabilizes supply chain and enhances competitiveness

Moser & Tucker 21 [Harry, founder and president of the Reshoring Initiative, Reginald, manging editor of FCNews, “Q&A: Reshoring movement takes on greater urgency,” 05/03/21, <https://www.fcnews.net/2021/05/qa-reshoring-movement-takes-on-greater-urgency/>]

Response to the shipping woes. In the wake of the current backlogs at the nation’s critical shipping ports, many floor covering retailers and distributors who still rely on imported flooring products are having a difficult time fulfilling customer orders. Instead of canceling customer orders amid the long delivery delays, retailers are encouraging their distributors and manufacturing partners to provide local, U.S.-made alternatives, including domestically produced laminate flooring, hardwood, luxury vinyl tiles or planks and, where appropriate, ceramic tile. Unintended consequences of trade wars. Many proponents of the Made-in-the-USA movement say the previous administration’s firm position on China had a net positive effect on U.S. manufacturing by forcing companies that previously outsourced product from China to reshore manufacturing activities here at home. However, some U.S.-based companies merely shifted production from China to other Asian countries, namely Vietnam, Cambodia and Taiwan, as a means to circumvent the tariffs. President Biden’s policy approach to China. The previous administration was known for its tough stance on China, citing everything from what it called a lopsided trade imbalance, unfair trade practices, copyright infringement and alleged dumping, to name a few. The strained relationship between the U.S. and China culminated in a protracted trade war and the imposition on a host of bilateral tariffs. Some of those tariffs—particularly on imported SPC/WPC/LVT flooring products—are still in place today. Following are excerpts of the interview. Do you view the current predicament at the shipping ports as an incentive or a ‘wake-up’ call for companies to either establish and/or expand manufacturing facilities here in the U.S.? Yes, absolutely. In the last 20 years, we have experienced international incidents and natural disasters, including: the Fukishima nuclear accident in Japan; Thai floods; LA dock strike; COVID-19; the Suez Canal blockage; and general shipping delays. It should be clear across all industries that long supply chains are riskier. It should be especially clear in industries with high shipping costs vs. labor content. We’ve seen a dramatic increase in reshoring by U.S. companies, and out of those cases between March 2020 in the end of 2020, 0% of the suppliers mentioned COVID-19 as one of the causes for them to bring it back. Roughly half of what was produced in China was actually COVID-19-related things such as masks, gowns, gloves, penicillin and ventilators—the things we couldn’t get here in the States. But there were some U.S. companies who got spooked and said, “Oh, I see what’s happened to the medical industry. They got screwed because they were too dependent on other places, especially China.” Executives said, “I’m not going to let that happen to us. So let’s bring some, but not all, of the manufacturing back to the U.S.” What some companies discovered, as a result of the pandemic and the ensuing shipping issues, was they went too lean in their manufacturing over the years. It’s my opinion that many didn’t go lean enough. For instance, if you consider the basic tenets of lean manufacturing—which is to eliminate waste and only do what brings value to the customer—shipping stuff halfway around the world does not bring value to the customer. A truly lean company would import almost nothing and handle almost all of its production here. The logic being: if they produced the bulk of what they manufacture here in the U.S., then they would only have small inventories that they could replenish quickly. Within a week they could get more from the factory, instead of two months from the factory overseas. Therefore, they wouldn’t have run out. Also, when you shorten your supply chain and keep your inventories low, you can use the savings to help pay the incremental cost difference of sourcing locally. Freight rates are currently two to four times the level they were just a year ago. Are there any statistics you’ve seen—anecdotal or otherwise—that suggest more U.S.-based companies are merely shifting sources of supply to other Asian countries vs. bringing the bulk of production back to the U.S.? Some production moved from China to Vietnam and Cambodia in order to avoid the tariffs, but you can’t ignore the trends. We saw record reshoring in 2020—109,000 jobs returned to the U.S., up from 41,000 in 2019. Furthermore, a Sequential Thomas survey showed increasing rates of companies bringing work back to America. And according to a BDO Board Pulse survey, 24% of companies said they intend to relocate factories to another country, with 22% preferring the U.S. A Yahoo Finance survey showed 82% of U.S. companies currently outsourcing are looking to bring production home. It is up to us to show the companies that they can bring back millions of jobs without increasing prices or losing profitability if they do the math. It’s going to come down to the trade-offs. Probably the only thing that’s intrinsically more expensive here in the U.S. is the labor. Land is about the same, but electricity is often cheaper here. Energy in general is cheaper. With wood flooring, U.S. producers typically ship materials to China and they mill it over there. Why not mill it here? The raw material wood is cheaper here because it doesn’t have to be shipped so far. So, the only real, major difference is labor. And so it comes down to how do all the other costs and risks stack up relative to the difference in labor. It boils down to determining what the labor costs are in the U.S. as a percentage of total manufacturing costs. Bottom line: It is becoming clear that shorter supply chains are stronger and often more competitive. Repeated surveys show a high percentage of original equipment manufacturers (OEMs) are localizing—producing and sourcing more in the market. Rising offshore wages and recognition of total cost drove the reshoring surge from 2010 to 2017 (see chart). In 2021, the momentum is surging again with China tariffs, dramatically higher freight costs and, more importantly, COVID-19, which revealed grave shortages of products due to overdependence on imports.

#### Cant solve clean tech—cant get around semiconductor shortages which make supply chain barriers inevitable—Gonzaga reads green

Short and Mancini ’21 (Mike Short and James Mancini, Mike Short serves as C.H. Robinson’s President of Global Forwarding. Jim Mancini, Vice President of North American Surface Transportation, oversees the services and technology for our renewable energy customers, “Overcoming the 5 Supply Chain Barriers that Threaten the Growth of Renewable Energy”, <https://www.chrobinson.com/blog/overcoming-the-5-supply-chain-barriers-that-threaten-the-growth-of-renewable-energy/>, June 28, 2021)

Renewables are expected to account for 90% of new power generation globally through 2022. But the world’s demand for clean energy is running up against some hard realities in the global supply chain and one of the most erratic transportation markets in history. Here are the five key project logistics challenges we’re seeing in renewable energy and how to overcome them. Tighter budgets for renewable energy projects The cost of wind and solar energy has been declining relative to fossil fuels for years, making it more attractive to more investors. That’s good news for climate change, but some new factors could throw that trend off track. The shortage of semiconductors plaguing the auto industry has become a problem for the renewables sector as well, because semiconductors are needed to convert wind and solar into electricity. Scarcity of steel is driving up prices for wind turbines and the mounting systems that point solar panels toward the sun. Polysilicon, an essential building block for solar panels, is the world’s second most abundant element but the cost has recently quadrupled. Rising material costs and historically high freight rates can eat into the profitability of your renewable energy project. That makes it even more important to avoid unexpected costs in your project logistics. The supply chain for wind and solar farms is vast and complex, starting in precious-metal mines and culminating in some of the most remote places on Earth. To make sure you come in on budget, choose a project logistics provider that has deep and specific industry knowledge. When you’re renting a crane for $100,000 a day, you can’t afford for the wind turbines to be three days late. Every county those will travel through requires a permit, which is typically granted for just a few days. If you miss that window, those permits must be renewed in every county. Meanwhile, you’re paying the installation crew to wait. These projects have too many moving parts and variables to try to piece it together yourself, and it exposes you to too much financial risk to count on the disparate processes of multiple vendors. An experienced provider can deliver end-to-end project logistics. That includes making sure manufacturers upstream of your project can reliably get raw materials. That includes anticipating every possible contingency to mitigate disruptions in shipping. That includes technology to track every piece of equipment’s path to the installation site. Renewable energy logistics has been a specialty of C.H. Robinson’s for more than a decade. That expertise helps you avoid the unexpected costs that can easily erase your project’s profit margin. Unpredictability in shipping The majority of solar equipment manufacturers are in China, Vietnam, Thailand, and Malaysia. Four companies dominate more than half the manufacturing of wind turbines, with most production in Asia. Five years ago, the movement of containerized goods out of Asia was high volume, low cost and consistent. For breakbulk cargo, you could call to book space on a vessel for next week. That world—where you could plan week-to-week—is gone. Now, ship capacity is scarce and exponentially more expensive because of the contraction of shipping lines and a global container shortage. Port congestion is making it hard to know when incoming ships will be able to berth. It’s gotten to the point where schedule reliability has dropped from about 80% at this time last year to 5%. New disruptions can make it even more challenging to get everything for your renewable energy project where it needs to be when it needs to be. Congestion at China’s Port of Yantian is a case in point, creating massive backlogs of shipments to North America, Latin America, Europe, and Oceania that could take months to clear.

### 2NC- High Prices ! Extension

#### Price fixes turn- Alliances are essential in shipping without them shipping rates would skyrocket — turns trade

Vinyard 19, Reporter for Universal Cargo. (Jared, June 20, 2019, SeaIntelligence Says End of Shipping Alliances Would Skyrocket Freight Rates, <https://www.universalcargo.com/seaintelligence-says-end-of-shipping-alliances-would-skyrocket-freight-rates/>)

What would happen if ocean freight carrier alliances were brought to an end? Many shippers would cheer as they’re currently seeking to make such an outcome a reality. But would it really be good news for shippers? SeaIntelligence Consulting’s CEO, Partner Lars Jensen says no. As much as shippers may see carrier alliances as a way shipping lines are skirting antitrust laws (and there’s reason for distrust with recent price-fixing investigations into carriers, even some charges resulting in a K-Line executive pleading guilty to price fixing in 2014 and an NYK exec pleading guilty of price fixing in 2015), it’s the vessel sharing agreements, under which carriers work together, being broken up that shippers should really worry about. That according to Mr. Jensen, who says an end to carrier alliances will cause freight rates to skyrocket. In an article for the Loadstar, Gavin van Marle reports remarks Mr. Jensen made on Tuesday (June 18th, 2019) at the TOC Container Supply Chain event in Rotterdam: Shipper opposition to deepsea liner shipping alliances may be dangerously misplaced, delegates at the TOC Container Supply Chain event in Rotterdam heard yesterday. Lars Jensen, chief executive and partner of SeaIntelligence Consulting, said efforts by some to bar container lines from operating in alliances, claiming they have become anti-competitive, would result in freight rates “skyrocketing”. Mr. van Marle makes it clear the impetus for Mr. Jensen’s words is the European Commission’s regulators assessing whether or not to extend EU’s Block Exemption Regulation (BER) for five years. The BER is the EU’s legislation that covers vessel-sharing agreements (VSAs), which are commonly referred to as carrier alliances, essentially exempting these agreements from being antitrust law violations. BER does not give carriers a carte blanche when it comes to antitrust rules. Carriers, for example, are not allowed to communicate and cooperate in regards to freight rate points. VSA cooperation is supposed to be strictly limited to ship sharing matters. Of course, shippers have been suspicious from the start of carrier alliances that cooperation bleeds into price point sharing and reduces competition between carriers. Because shippers see VSAs or carrier alliances as a reduction in carrier competition, potentially exacerbating the poor quality of customer service carriers are notorious for and increasing freight rates, there are shippers attempting to persuade regulators not to extend the BER. Obviously, Mr. Jensen argues shippers will not get what they’re hoping for if they succeed in keeping the BER from getting extended. In his Loadstar article, Mr. van Marle continues to quote Mr. Jensen as the SeaIntelligence CEO explains why ending the BER will be expensive for shippers: Mr Jensen said: “If the anti-trust exemption isn’t extended, it doesn’t necessarily mean shipping lines can’t run alliances. It may well just mean the lines have higher hoops to jump through, and I doubt that they will do that. “But it will mean a lot of legal costs and the carriers will have to recoup those costs and the only [way] they can do that is through higher rates,” he added. “However, if shipping alliances are outlawed altogether, then freight rates will skyrocket, because alliances are the only way that carriers can operate ultra-large container vessels (ULCVs) effectively.” I have long had mixed feelings about carrier alliances, myself. Yes, they are a reduction of carrier competition in the international shipping industry, and I’m not a fan of shrinking that competition. Smaller competition (in any industry) usually means higher prices and lower service. However, the incredible financial losses carriers have suffered over the last many years (and, yes, I would argue those losses are largely by their own doing) and the very tight profit margins carriers seem to be working within has made carrier alliances basically a necessity in reducing costs and keeping these big shipping companies from sinking like Hanjin did a few years back. There is also the argument that VSAs create more ability and flexibility for carriers to offer more sailings, so that’s a case where carrier alliances could increase service instead of decreasing it. Overall, I’ve considered carrier alliances a necessary evil in the ocean freight sector. I’m actually of the opinion that if the carrier alliances ended suddenly today, several carriers would have trouble competing with the top dogs of the industry like Maersk and suffer the same fate as Hanjin or at least be forced into mergers or buyouts. We possibly might even eventually reach Maersk’s prediction of carrier competition shrinking to only 3 global companies. Such a low competition situation would almost certainly mean higher freight rates for shippers. While my position on the situation of carrier alliances is not as extreme as Mr. Jensen’s, whose final quote in the Loadstar article is, “So I am of the opinion that shippers should pray the lines are allowed to continue to operate alliances,” I do think the sudden disbanding of VSAs would not be in the overall interest of shippers.

## ADV 2

### 2nc – navy

#### Naval deterrence fails and is unsustainable. Answers all of their internal links

van Hooft 21, senior strategic analyst at The Hague Centre for Strategic Studies, the co-chair of its Initiative on the Future of Transatlantic Relations, and a former postdoctoral fellow at the Security Studies Program at Massachusetts Institute of Technology. (Paul, 2-23-2021, "Don’t Knock Yourself Out: How America Can Turn the Tables on China by Giving Up the Fight for Command of the Seas", *War on the Rocks*, https://warontherocks.com/2021/02/dont-knock-yourself-out-how-america-can-turn-the-tables-on-china-by-giving-up-the-fight-for-command-of-the-seas/)

The United States should give up its quest for command of the maritime commons in the Western Pacific. The struggle is based on a false premise — that if the United States loses command of the seas, China will step in the fill the vacuum. In fact, even if the United States loses command of the maritime commons, China is not positioned to gain it. However, by positioning China as an existential threat, the United States is boxing itself in politically. The United States courts disaster when it overextends itself by seeking military primacy in the region. There is one fundamental reason: the tyranny of distance. The maritime nature of American power is a double-edged sword, specifically when it comes to its competition with China. American command over the maritime commons allows the U.S. military to project power globally, but when that power is projected at a great distance from U.S. shores, as in the Western Pacific, U.S. forces are particularly vulnerable to measures designed to raise the costs of access. First, a strategy of maintaining command of the maritime commons in the face of anti-access measures exposes U.S. dependence on allied territory to support deployed forces through basing, infrastructure, and logistics. Second, as the costs and risks of maintaining access increase, the asymmetrical stakes become more constraining for the United States than for China. Overcommitment has historically been endemic to U.S. grand strategy, but it is especially dangerous now that China is capable of inflicting heavy costs upon the United States. Instead, the United States should, together with its allies and partners, focus on denying China command of the Pacific maritime commons. It is cheaper and easier to deny command of the seas than to exercise it. If China cannot gain command of the seas, the Western Pacific will remain a contested environment — one that China cannot break out of. China would either be forced to accept the status quo or make a first move in which it overextends itself. While giving up command of the seas may seem unpalatable, it need not be fatal to the United States and its allies and partners’ collective goal to maintain the regional balance of power. The alternative is unlikely to end well for them.

#### No leadership impact.

Fettweis 20, Associate Professor of Political Science at Tulane University. (Christopher J., 6-3-2020, "Delusions of Danger: Geopolitical Fear and Indispensability in U.S. Foreign Policy", *A Dangerous World? Threat Perception and U.S. National Security*, <https://www.cato.org/publications/publications/delusions-danger-geopolitical-fear-indispensability-us-foreign-policy>)

Like many believers, proponents of hegemonic stability theory base their view on faith alone.41 There is precious little evidence to suggest that the United States is responsible for the pacific trends that have swept across the system. In fact, the world remained equally peaceful, relatively speaking, while the United States cut its forces throughout the 1990s, as well as while it doubled its military spending in the first decade of the new century.42 Complex statistical methods should not be needed to demonstrate that levels of U.S. military spending have been essentially unrelated to global stability.

Hegemonic stability theory’s flaws go way beyond the absence of simple correlations to support them, however. The theory’s supporters have never been able to explain adequately how precisely 5 percent of the world’s population could force peace on the other 95 percent, unless, of course, the rest of the world was simply not intent on fighting. Most states are quite free to go to war without U.S. involvement but choose not to. The United States can be counted on, especially after Iraq, to steer well clear of most civil wars and ethnic conflicts. It took years, hundreds of thousands of casualties, and the use of chemical weapons to spur even limited interest in the events in Syria, for example; surely internal violence in, say, most of Africa would be unlikely to attract serious attention of the world’s policeman, much less intervention. The continent is, nevertheless, more peaceful today than at any other time in its history, something for which U.S. hegemony cannot take credit.43 Stability exists today in many such places to which U.S. hegemony simply does not extend.

Overall, proponents of the stabilizing power of U.S. hegemony should keep in mind one of the most basic observations from cognitive psychology: rarely are our actions as important to others’ calculations as we perceive them to be.44 The so‐​called egocentric bias, which is essentially ubiquitous in human interaction, suggests that although it may be natural for U.S. policymakers to interpret their role as crucial in the maintenance of world peace, they are almost certainly overestimating their own importance. Washington is probably not as central to the myriad decisions in foreign capitals that help maintain international stability as it thinks it is.

The indispensability fallacy owes its existence to a couple of factors. First, although all people like to bask in the reflected glory of their country’s (or culture’s) unique, nonpareil stature, Americans have long been exceptional in their exceptionalism.45 The short history of the United States, which can easily be read as an almost uninterrupted and certainly unlikely story of success, has led to a (perhaps natural) belief that it is morally, culturally, and politically superior to other, lesser countries. It is no coincidence that the exceptional state would be called on by fate to maintain peace and justice in the world.

Americans have always combined that feeling of divine providence with a sense of mission to spread their ideals around the world and battle evil wherever it lurks. It is that sense of destiny, of being the object of history’s call, that most obviously separates the United States from other countries. Only an American president would claim that by entering World War I, “America had the infinite privilege of fulfilling her destiny and saving the world.“46

Although many states are motivated by humanitarian causes, no other seems to consider promoting its values to be a national duty in quite the same way that Americans do. “I believe that God wants everybody to be free,” said George W. Bush in 2004. “That’s what I believe. And that’s one part of my foreign policy.“47 When Madeleine Albright called the United States the “indispensable nation,” she was reflecting a traditional, deeply held belief of the American people.48 Exceptional nations, like exceptional people, have an obligation to assist the merely average.

Many of the factors that contribute to geopolitical fear — Manichaeism, religiosity, various vested interests, and neoconservatism — also help explain American exceptionalism and the indispensability fallacy. And unipolarity makes hegemonic delusions possible. With the great power of the United States comes a sense of great responsibility: to serve and protect humanity, to drive history in positive directions. More than any other single factor, the people of the United States tend to believe that they are indispensable because they are powerful, and power tends to blind states to their limitations. “Wealth shapes our international behavior and our image,” observed Derek Leebaert. “It brings with it the freedom to make wide‐​ranging choices well beyond common sense.“49 It is quite likely that the world does not need the United States to enforce peace. In fact, if virtually any of the overlapping and mutually reinforcing explanations for the current stability are correct, the trends in international security may well prove difficult to reverse. None of the contributing factors that are commonly suggested (economic development, complex interdependence, nuclear weapons, international institutions, democracy, shifting global norms on war) seem poised to disappear any time soon.50 The world will probably continue its peaceful ways for the near future, at the very least, no matter what the United States chooses to do or not do. As Robert Jervis concluded while pondering the likely effects of U.S. restraint on decisions made in foreign capitals, “It is very unlikely that pulling off the American security blanket would lead to thoughts of war.“51 The United States will remain fundamentally safe no matter what it does — in other words, despite widespread beliefs in its inherent indispensability to the contrary.

# 1NR

### 2nc impact ov

#### Collapse causes terrorism, civil wars, and diversion that go global—outweighs the aff

Liu 18 (Quian, Tsinghua University, the Chinese Academy of Social Sciences and Fudan University, “The Next Economic Crisis Could Cause A Global Conflict. Here's Why”, World Economic Forum, 11/13/2018, https://www.weforum.org/agenda/2018/11/the-next-economic-crisis-could-cause-a-global-conflict-heres-why

The next economic crisis is closer than you think. But what you should really worry about is what comes after: in the current social, political, and technological landscape, a prolonged economic crisis, combined with rising income inequality, could well escalate into a major global military conflict. The 2008-09 global financial crisis almost bankrupted governments and caused systemic collapse. Policymakers managed to pull the global economy back from the brink, using massive monetary stimulus, including quantitative easing and near-zero (or even negative) interest rates. But monetary stimulus is like an adrenaline shot to jump-start an arrested heart; it can revive the patient, but it does nothing to cure the disease. Treating a sick economy requires structural reforms, which can cover everything from financial and labor markets to tax systems, fertility patterns, and education policies. Policymakers have utterly failed to pursue such reforms, despite promising to do so. Instead, they have remained preoccupied with politics. From Italy to Germany, forming and sustaining governments now seems to take more time than actual governing. And Greece, for example, has relied on money from international creditors to keep its head (barely) above water, rather than genuinely reforming its pension system or improving its business environment. The lack of structural reform has meant that the unprecedented excess liquidity that central banks injected into their economies was not allocated to its most efficient uses. Instead, it raised global asset prices to levels even higher than those prevailing before 2008. In the United States, housing prices are now 8% higher than they were at the peak of the property bubble in 2006, according to the property website Zillow. The price-to-earnings (CAPE) ratio, which measures whether stock-market prices are within a reasonable range, is now higher than it was both in 2008 and at the start of the Great Depression in 1929. As monetary tightening reveals the vulnerabilities in the real economy, the collapse of asset-price bubbles will trigger another economic crisis – one that could be even more severe than the last, because we have built up a tolerance to our strongest macroeconomic medications. A decade of regular adrenaline shots, in the form of ultra-low interest rates and unconventional monetary policies, has severely depleted their power to stabilize and stimulate the economy. If history is any guide, the consequences of this mistake could extend far beyond the economy. According to Harvard’s Benjamin Friedman, prolonged periods of economic distress have been characterized also by public antipathy toward minority groups or foreign countries – attitudes that can help to fuel unrest, terrorism, or even war. For example, during the Great Depression, US President Herbert Hoover signed the 1930 Smoot-Hawley Tariff Act, intended to protect American workers and farmers from foreign competition. In the subsequent five years, global trade shrank by two-thirds. Within a decade, World War II had begun. To be sure, WWII, like World War I, was caused by a multitude of factors; there is no standard path to war. But there is reason to believe that high levels of inequality can play a significant role in stoking conflict. According to research by the economist Thomas Piketty, a spike in income inequality is often followed by a great crisis. Income inequality then declines for a while, before rising again, until a new peak – and a new disaster. Though causality has yet to be proven, given the limited number of data points, this correlation should not be taken lightly, especially with wealth and income inequality at historically high levels. This is all the more worrying in view of the numerous other factors stoking social unrest and diplomatic tension, including technological disruption, a record-breaking migration crisis, anxiety over globalization, political polarization, and rising nationalism. All are symptoms of failed policies that could turn out to be trigger points for a future crisis. Voters have good reason to be frustrated, but the emotionally appealing populists to whom they are increasingly giving their support are offering ill-advised solutions that will only make matters worse. For example, despite the world’s unprecedented interconnectedness, multilateralism is increasingly being eschewed, as countries – most notably, Donald Trump’s US – pursue unilateral, isolationist policies. Meanwhile, proxy wars are raging in Syria and Yemen. Against this background, we must take seriously the possibility that the next economic crisis could lead to a large-scale military confrontation. By the logic of the political scientist Samuel Huntington , considering such a scenario could help us avoid it, because it would force us to take action. In this case, the key will be for policymakers to pursue the structural reforms that they have long promised, while replacing finger-pointing and antagonism with a sensible and respectful global dialogue. The alternative may well be global conflagration.

#### And econ collapse turns every impact

Kemp 10 (Geoffrey, Director of Regional Strategic Programs at The Nixon Center, Served in the White House Under Ronald Reagan, Special Assistant to the President for National Security Affairs and Senior Director for Near East and South Asian Affairs on the National Security Council Staff, Former Director, Middle East Arms Control Project at the Carnegie Endowment for International Peace, 2010, The East Moves West: India, China, and Asia’s Growing Presence in the Middle East, p. 233-234

The second scenario, called Mayhem and Chaos, is the opposite of the first scenario; everything that can go wrong does go wrong. The world economic situation weakens rather than strengthens, and India, China, and Japan suffer a major reduction in their growth rates, further weakening the global economy. As a result, energy demand falls and the price of fossil fuels plummets, leading to a financial crisis for the energy-producing states, which are forced to cut back dramatically on expansion programs and social welfare. That in turn leads to political unrest: and nurtures different radical groups, including, but not limited to, Islamic extremists. The internal stability of some countries is challenged, and there are more “failed states.” Most serious is the collapse of the democratic government in Pakistan and its takeover by Muslim extremists, who then take possession of a large number of nuclear weapons. The danger of war between India and Pakistan increases significantly. Iran, always worried about an extremist Pakistan, expands and weaponizes its nuclear program. That further enhances nuclear proliferation in the Middle East, with Saudi Arabia, Turkey, and Egypt joining Israel and Iran as nuclear states. Under these circumstances, the potential for nuclear terrorism increases, and the possibility of a nuclear terrorist attack in either the Western world or in the oil-producing states may lead to a further devastating collapse of the world economic market, with a tsunami-like impact on stability. In this scenario, major disruptions can be expected, with dire consequences for two-thirds of the planet’s population.

### 2nc uq—at antitrust coming

#### AND there’s no significant antitrust enforcement now

Folio 21 (Joseph, Lawyer at Morrison Forrester, and Lisa M. Phelan Co-chair Global Antitrust Law Practice Group at Morrison Forrester, Jeff Jaeckel, Co-chair Global Antitrust Law Practice Group at Morrison Forrester, and Alexander Paul Okuliar, Co-chair Global Antitrust Law Practice Group at Morrison Forrester, “Antitrust Update: Up and Down the Avenue”, 3/22/2021, https://www.mofo.com/resources/insights/210322-atr-update.html)

Are the stars aligning for antitrust reform? President Biden is filling key positions in the White House (Timothy Wu, National Economic Council) and at the FTC (Lina Khan, nominee for commissioner) with lawyers who have advocated for increased antitrust enforcement, especially against “big tech.” In Congress, the House antitrust subcommittee concluded a year-long investigation in October 2020 and found bipartisan agreement on discrete areas for reform. With Democrats now in control of both houses of Congress, antitrust legislation seems close. But not so fast. The House and Senate antitrust subcommittees have held four hearings since February 25, 2021, but it is crucial to view these recent developments in their proper context. Even when politicians and enforcers appear to agree on a goal, it can still be a long and winding road to actual policy reform. Two to go Although antitrust reform advocates cheered President Biden’s initial appointments, two of the most consequential antitrust positions—the assistant attorney general (AAG) for antitrust and the FTC chair—remain open. Both the AAG and FTC chair wield tremendous authority; they approve cases, guide investigations, and will decide how to proceed with ongoing litigation. It is unlikely that the Biden administration will make any significant decisions, or support any particular legislation, before its key personnel are firmly in place. And that can take time. Former AAG Makan Delrahim was nominated in March 2017 but not confirmed until September 2017. Interestingly, the pressure to nominate like-minded antitrust reformers for these two positions is coming from multiple angles. One public interest group recently sent a letter to White House chief of staff Ron Klain and, after “highly commend[ing]” the nomination of Ms. Khan to be an FTC commissioner, warned against the influence of certain White House and DOJ officials over the AAG and FTC chair nominations because of their links to “big tech” companies.[1] Additionally, many in the press have been critical of the level of tech enforcement activity during the Obama administration and want to avoid a replay of those years.[2]

### 2nc at: bizcon metric

2018 + ratio

Our internal link specific – means businesses either move elsewhere to avoid more regulation or circumvent

### 2nc link extension

#### Doctrine—plans immediate enshrinement into law creates a doctrinal shift which has a chilling effect

#### antitrust applies to all industries, so there’s no way to limit the plan’s scope AND firms and lawyers are risk-averse and think this is true---the result is fear of liability that scales back investment

Nachbar 19 (Thomas, Professor of Law at the University of Virginia School of Law, JD from the University of Chicago Law School, AB in History and Economics from the University of Illinois, “Book Review: Heroes and Villains of Antitrust”, The Antitrust Source, 18-6 Antitrust Src. 1, June 2019, Lexis)

Since Adam Smith, the argument of so-called free-market intellectuals has not been that markets are perfect but rather that they are comparatively better at solving problems than governments. Part of the argument is that, in most cases, market forces will drive a firm that has adopted an inefficient practice to shift to a more efficient one, lest it lose more business than it gains from the practice. But if antitrust law outlawed a practice, there is no potential for the market to correct--the practice once outlawed would remain outlawed. n54 And because antitrust law applies to all industries, a practice outlawed for one firm or industry would be outlawed for all firms in all industries, or be interpreted as such by risk-averse firms and their risk-averse lawyers--not to mention the treble damages that the liable antitrust defendant would have to pay. [FOOTNOTE] n55 See Credit Suisse Sec. (USA) LLC v. Billing, 551 U.S. 264, 284 (2007) ("In sum, an antitrust action in this context is accompanied by a substantial risk of injury to the securities markets and by a diminished need for antitrust enforcement to address anticompetitive conduct."); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 546 (2007) ("It is one thing to be cautious before dismissing an antitrust complaint in advance of discovery, but quite another to forget that proceeding to antitrust discovery can be expensive.") Verizon Commc'ns, Inc. v. Law Offices of Curtis V. Trinko, LLP, 540 U.S. 398, 414 (2004) ("Mistaken inferences and the resulting false condemnations 'are especially costly, because they chill the very conduct the antitrust laws are designed to protect.'") (quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 594 (1986)). [END FOOTNOTE]

### 2nc at no spillover

#### Abrupt expansion of antitrust common-law generates major uncertainty that disrupts business planning

Abbott 21 (Alden, Senior Research Fellow at the Mercatus Center of George Mason University, J.D. from Harvard Law School and M.A. in Economics from Georgetown University, “Competition Policy Challenges for a New U.S. Administration: Is The Past Prologue?”, Concurrences: Antitrust Publications & Events, February 2021, https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en)

12. But recent suggestions put forth in an October 2020 House Judiciary Subcommittee on Antitrust majority report (HJSMR) [12] and in a November 2020 report by the Washington Center for Equitable Growth (WCEGR) [13] (coauthored by various prominent critics of Trump administration antitrust enforcement who served in the Obama administration) would go far beyond application of existing antitrust law to big digital platforms. In particular, the HJSMR proposes taking a highly regulatory approach to digital platforms, including imposing “[s]tructural separations and prohibitions of certain dominant platforms from operating in adjacent lines of business.” [14] The WCEGR also endorses the use of rulemaking (and, in particular, FTC rulemaking) to tackle significant problems of competition. [15] Rushing into rulemakings on platforms (especially without a clear showing of market failure) poses major risks, however, including, in particular, the creation of disincentives to invest in platform-specific innovation; and the interference with potential efficiency-seeking transactions by platform operators and suppliers of complements (in light of inevitable government second-guessing of platform-related business decision-making). The JBA antitrust team may wish to keep such potential costs in mind in setting competition policy vis-à-vis digital platforms. 13. To address the perceived growth and abuse of market power that are said to afflict the American economy, the HJSMR and WCEGR have also proposed to amend and thereby “toughen” the core antitrust statutes, to alter burdens of proof in litigation, and to bestow a substantial increase in resources on federal antitrust enforcers. [16] The problem of scarce agency resources has long been highlighted by enforcement agency leadership, and certainly merits attention. The call for dramatic systemic change in antitrust enforcement norms, however, should be approached cautiously, with a jaundiced eye. In our common-law-based antitrust system, a major disruption to long-familiar statutory schemes would generate major uncertainty regarding antitrust enforcement principles and substantially disrupt business planning for an indeterminate amount of time. Many welfare-enhancing transactions could be sacrificed. The harm to consumer and producer welfare due to lost socially beneficial business initiatives would be hard (if not impossible) to measure, but nonetheless real. It is certainly possible that such losses would outweigh (perhaps substantially) whatever welfare gains might flow from statutory enforcement “reform.” In other words, it should not casually be assumed that “more and different” antitrust would be an unalloyed benefit. As in all other areas of law enforcement, likely costs as well as purported benefits should be central to the antitrust public policy calculus. (Costs would include, of course, the likelihood and magnitude of “false positives” under the new enforcement regime, not just the reduction in socially beneficial transactions.)