## 1AC 1.0

### Relations---1AC

#### Advantage 1: Relations

#### Relations are collapsing across the board---the plan uses mutual leverage to resolve tension

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It saddens me to see how Sino-US relations are heading towards divorce as tensions continue to escalate on a host of issues ranging from the trade imbalance between the two countries to passing the buck on the COVID-19 pandemic and the passage of the Hong Kong National Security Law. As an avid reader of both US and Chinese newspapers, I find their polar opposite stances quite unsettling. Neither side is listening to the other, and neither side is being heard.

Is it possible to salvage what is left of the Sino-US marriage? I firmly believe so, if the two sides are willing to gain a deeper appreciation of their differences and commonalities. As elaborated in this book, the sources of Chinese exceptionalism are deep-seated in the distinctness of Chinese institutions, which often reflect the weaknesses and inherent contradictions of the Chinese regime. Although Chinese institutions have been moving in the right direction towards more openness and transparency, changes occur very slowly. The institutional inertia that surfaced after the series of reform has largely contributed to discontent and anxiety over the way China regulates and is regulated. Yet these institutional problems have little to do with Chinese communist ideology. It is thus a serious mistake to perceive China as an existential threat that wants to overtake the West and completely subvert their existing governance framework. Above all, the current Sino-US strategic rivalry fundamentally lacks aspects of a pervading ideological conflict analogous to the Cold War.3 Moreover, given how deeply China is embedded in the global supply chain, any attempt to completely disentangle the US economy from China would seem unimaginable. It may also backfire. As I have repeatedly emphasized here, the Chinese state is hardly monolithic, and policy-making is often a pluralistic process involving government departments with overlapping and divergent missions. Furthermore, growing US hostilities against China and Chinese companies are stirring nationalistic fever, giving hardline officials an upper hand, as evident in China’s increasingly aggressive ‘wolf warrior’ foreign policy.4 This will have the unintended consequences of undermining efforts of the more progressive bureaucratic departments and unwinding some of China’s promising institutional reforms. Indubitably, the rising Sino-US geopolitical tensions have resulted in profound mistrust between the two countries. But I remain hopeful that future cooperation remains possible, as long as China and the United States stay patient and far-sighted and continue to maintain significant leverage against each other. The Sino-US marriage does not necessarily need to have a tragic ending.

#### Economic integration through conflictual cooperation is key---the alternative is a new cold war with China

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But is this really the best strategy? Clearly, the recent US measures to isolate China through restrictive deals with major US trading partners is damaging the global economy. The hefty US tariffs imposed on Chinese goods have dealt a blow to the Chinese economy and brought about significant harm to US consumers and exporters. The US government’s travel ban on Chinese nationals in its attempt to suppress the COVID-19 pandemic has proven futile as well. At the time of writing, the number of confirmed COVID-19 cases in the United States has far surpassed that of China. Just like many countries around the globe that have sought out advice and resources from China to combat the pandemic, the United States also needs to cooperate with China, which has the capacity to produce face masks as well as the other protective gear that America so desperately needs. The coronavirus has forced us to accept the reality that China is now deeply embedded in the highly interconnected global system and it is simply too costly and unrealistic to disengage China. In fact, the current degree of global interdependence is exactly what distinguishes the present Sino-US tensions from Soviet–US tensions during the Cold War.7 As Noah Feldman presciently observes, we are now entering a new global era of a ‘cool war’, where cooperation and conflict must simultaneously coexist.8

#### Containment and decoupling causes full blown war, the plan’s hostage-based interdependence prevents escalation

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The substantial exchange of hostages between the East and the West, which has the prospect of facilitating positive changes in the Chinese regime, should therefore give us hope for peace. It is precisely for this reason that I advocate greater economic integration. Economic interdependence raises the costs of conflict and increases the incentives for countries to cooperate.13 Indeed, a pre- ponderance of economic evidence has shown that trade can reduce conflict among countries.14 Tus, the expansion of Chinese firms into foreign markets should not be seen as something to be blocked but should be welcomed as an important step towards a more prosperous and peaceful relationship between China and the rest of the world.15 Conversely, if Chinese firms are discouraged from entering or even cut off from Western markets, as some politicians are calling for these days, then foreign governments will hold less leverage over China. In fact, the Western policy of decoupling the Chinese economy from Western economies, while a seemingly straightforward response to rising political tensions, is eroding trust and making conflict more likely.16 In recent years, Western hostilities directed towards China and Chinese firms have triggered strong nationalistic sentiments in China, making it difficult for a substantial minority of Chinese policy-makers to push for reforms that would allow for greater democracy and freedom at home.17 Worryingly, policies of disengagement and containment will turn China into a more isolated, self-reliant, and inward-looking country, further heightening the risk of a full-blown war.

Certainly, my proposal to foster economic interdependence does not imply a laissez-faire approach. It is perfectly understandable that host countries want to stay vigilant about Chinese infuence.18 Thus, a pragmatic and flexible legal framework must be put in place to allow the host countries to retain significant regulatory leverage over Chinese firms, while avoiding too much red tape and undue regulatory burden on businesses. This is not an easy balance to strike but it is also the new normal that today’s foreign policy-makers should be prepared for given China’s rise. Antitrust lawyers and academics should also abandon the utopian ideal that antitrust law analysis is completely immune from political influence. It cannot be. As clearly illustrated by the EU’s latest proposal to tackle foreign state subsidies, the fine lines between competition law, trade law, and national security are becoming increasingly blurred. In a similar vein, the US Supreme Court’s decision to accord high deference to the Executive in the Vitamin C case means that politics will inevitably play a role in affecting future judicial decision-making in export cartel cases.

#### Extinction---competition based cooperation solves China rise from escalating to nuclear war

Yan 10 "The Instability of China–US Relations" Xuetong Yan - Professor and Dean of Institute of Modern International Relations, Tsinghua University The Chinese Journal of International Politics, Vol. 3, 2010, 263–292

Clarifying their political relationship as political competitors would avoid unexpected conflicts on bilateral or multilateral political matters. On the political level, China and the United States have more mutually unfavourable than favourable interests that disenable the two nations from being friends. To reduce unexpected conflicts, therefore, each should clearly define the other as political competitor. Most important is that they need to clarify their competitiveness as that between a rising super power and one with super power status. The United States aims to maintain its global dominance, and China to resume its world leading position. This structural conflict makes political competition between them inevitable. As long as the Chinese economy grows faster than that of the United States, the competition between them to offer the best development model is also inevitable. Clarifying their political relationship as competitors would stabilize China–US political relations in several respects. First, they could consider an agreement towards maintaining peaceful political competition. Second, each could get used to the other’s unfavourable policy and restrict any retaliation to within mutual expectations. Although this would not improve bilateral political relations, it would prevent any worsening of already unfriendly political relations. A stable unfriendly political relationship would be healthier than a fluctuating superficial friendship for both China and the United States during China’s rise.

Defining their security relationship as military adversaries would reduce the danger of military clashes between China and the United States and provide better conditions for preventative cooperation. China and the United States have more mutually unfavourable interests than favourable ones as regards military security. China is still under the sanction of the US arms embargo, a fact that signifies strong suspicions between the two countries. Defining the China–US military relationship as rivalry might be overstating the case, because Chinese military capability will be no match for that of the United States for the next 10 years. There is hence no substantial competition between them as regards military capability. But as their military interests are mutually confrontational, both would benefit in several respects from acknowledging their military relationship as adversarial. First, lower expectations of cooperation and good will would limit disappointments over one or the other’s unfavourable, or even unfriendly, security policy. Second, they could establish a crisis-management mechanism to prevent escalation of unforeseen military clashes arising from their differences. Third, taking as read one another’s military opacity and reconnaissance would mean fewer rhetoric wars between the two countries. Fourth, the military adversary identity would amplify the credibility of mutual military deterrence, which would help stabilize strategic relations and prevent them from deteriorating to the point of return.

Owing to the complicity of their relations, China and the United States should define their general strategic relationship as that of positive competition and preventative cooperation. The world would benefit from competition between China and the United States since competition is an engine for social progress. Competition between China and the United States could provide the world with two models of development, both constantly improving by virtue of each country’s efforts to provide a model more advanced than that of their competitor. Competing to present the best model of development would bring benefits to the peoples of both nations and to countries that learn from their expertise. China and the United States should compete to provide better world leadership. Expanding their international influence by expanding economic aid and taking international responsibilities could bring enormous global benefits, as could the two countries’ competitive scientific research towards technical advances. Competition between China and the United States for the higher moral ground on climate control would also motivate global reductions of CO2 emissions. When competition is peaceful it can be globally beneficial rather than detrimental. And as long neither of them can win a nuclear war, their competition will not escalate into war but a better world leadership.

Preventative security cooperation between China and the United States would help maintain world peace. As China is a rising power and the United States has super power status, their contrasting status makes it difficult to formulate strategic cooperation mainly founded on common threats or common interests. China needs to prevent war between itself and the United States in the interests of maintaining a durably peaceful environment in which to proceed with its economic construction. The United States also fears war against another nuclear power. Both sides, therefore, need to cooperate to keep conflicts and competition at a peaceful level. Although passive, this kind of cooperation is crucial to the world. As long as China and the United States do not go to war against each other, the world today is safe from outbreaks of major war, because other than China and Russia, all major powers are American military allies. China and Russia are semi-allies, but as Russia has neither the real nor potential capability that China possesses to challenge US hegemony, China is the only major power with the potentiality to challenge US global domination. World peace is thus guaranteed if the danger of war between China and the United States can be eliminated, and peoples of the world would benefit from the two countries’ preventative security cooperation.

#### US-China war goes nuclear---no constraints.

Joshua Rovner 17. John Goodwin Tower Distinguished Chair in International Politics and National Security, Southern Methodist University. “Two kinds of catastrophe: nuclear escalation and protracted war in Asia.” *Journal of Strategic Studies* 40(5): 696-730. Emory Libraries.

But suppose that leaders have no intention of using nuclear weapons. It is one thing to develop impressive technologies, but quite another to use them, and policymakers may blanch at the real prospect of authorizing first use. Even in these cases, there are several theoretical pathways to escalation. The first is psychological. Cognitive biases may cause leaders to misperceive rival intentions, mistaking signals of restraint for signs of danger. Prewar expectations strongly influence how individuals interpret new information, and they will ignore or reframe dissonant information so it fits into their existing beliefs. Misperceptions intensify after the shooting starts, when information is ambiguous and incomplete. Carl von Clausewitz dwelt on the problem in the aftermath of the Napoleonic Wars, noting that intelligence reports were often contradictory and unreliable “in the thick of fighting.” Despite advances in intelligence and communications, the fog of war remains an enduring problem. Organized violence is an iterative process, and each side has incentives to hide its actions and deceive its adversary. Violence also unleashes intense emotions that obscure the material effects of battle. Commanders may not understand whether they are winning or losing, and in lieu of reliable intelligence they are likely to let passion overtake good judgment. “In short,” Clausewitz concluded, “most intelligence is false, and the effect of fear is to multiply lies and inaccuracies.” 9 Wartime leaders are prone to attribution bias, or the belief that their counterparts are inherently evil. Leaders in conflict are likely to assume the worst about their rivals or else they would not have picked a fight in the first place. Attribution bias causes them disregard the notion that their enemies have limited goals and are willing to accept partial victories. They are also prone to reject peace overtures as meaningless gestures at best, or as efforts to lull them into passivity before escalating the conflict.10 Finally, prospect theory tells us that individuals will fight harder to avoid losing a possession than they will to gain something new. If leaders equate settling with losing, then they will be tempted to risk escalation. All of these psychological pressures are exacerbated under stress and tight time constraints.11 Domestic pressures might lead to escalation if one or both governments fear that regime change will be the political penalty for battlefield failure. Escalation is also possible if the issues at stake are wrapped up in nationalism or ideologies that inflate the value of the object. Leaders will be hard pressed to accept defeat in such cases, especially if military outcome is particularly lopsided and humiliating. Leaders who depend on particularly hawkish constituencies to remain in power are especially likely to take new risks even against long odds. Rather than negotiating an end to the war, they might gamble for resurrection by escalating to the nuclear level.12 Such a move would not necessarily be irrational. Instead, resurrection succeeds by shifting the war towards the balance of interests rather than the balance of capabilities. A retreating combatant, battered in the early stages of a conflict, may still affect the enemy’s calculation by taking extraordinary risks. Escalation signals a willingness to fight to the finish and a reminder that it has powerful interests at stake. Such a strategy is admittedly risky, but it may be effective, especially if the escalating state is fighting to defend its own territory against a distant rival. Transforming a conflict into a test of resolve makes sense when a state is failing the test of arms.13 Finally, inadvertent escalation may occur when conventional attacks put the adversary’s nuclear force at risk. Under these conditions, the target state might reasonably worry that the attack is only the first phase of a larger war. There may be no way to offer credible reassurances that it is not. Fearing the destruction or incapacitation of its nuclear deterrent, the target state might face a “use it or lose it” dilemma. Inadvertent escalation is especially likely if key command and control nodes are vulnerable or if conventional and nuclear target sets are indistinguishable. The danger also increases if military organizations indulge organizational preferences for offensive action. This encourages planners to err on the side of attacking all available targets. While it might sense to allow the adversary to retain some capabilities in order to reduce the incentives for escalation, planners may bridle at the thought of consciously allowing the enemy to retain the capacity for attack.14 In recent years, China has invested heavily in capabilities that will complicate US maritime operations and threaten US bases in Japan and Guam. Equipped with a range of anti-access capabilities, China may be able to deter the United States from intervening in the case of a regional war. If it does intervene, China may attempt to damage or destroy US assets or force carrier groups to operate at prohibitively long distances from the mainland. Chinese doctrine for using these weapons has lagged behind acquisition.15 Nonetheless, the appearance of its new “anti-access/area denial” (A2AD) systems caused concern in Washington. US officials subsequently unveiled Air–Sea Battle (ASB), an operational concept for integrating naval and air assets in order to overcome the entire range of anti-access capabilities. The concept was announced in spring 2011 by the then Secretary of Defense Robert Gates, and responsibility for developing the concept fell to the Air–Sea Battle Office in the Pentagon. In January 2015, the Department of Defense changed the name of ASB to the Joint Concept for Access and Maneuver in the Global Commons, but there is no indication that the substance has changed.16 And because ASB has influenced the debate about a hypothetical US–China conflict, I will continue to use the term here. The Air–Sea Battle Office released some information about the concept, and leaders from the Navy and Air Force wrote about it in service publications. The most comprehensive treatment, however, came in the form of a monograph from the Center for Strategic and Budgetary Assessments (CSBA). Although it may be ahead of the Department of Defense (DOD) concept, the CSBA analysis is broadly consistent with official descriptions.17 ASB envisions two broad phases in a war against countries like China with advanced anti-access capabilities. The first is a blinding attack on key facilities, including long-range weapons that could target US bases and carrier groups, as well as the radar systems needed to cue them. Kinetic and electronic attacks would also target Chinese satellites and anti-satellite weapons. According to the CSBA report, attacks on Chinese space assets, along with land-based radars and other intelligence, surveillance, and reconnaissance (ISR) and communications platforms, would “severely limit China’s space-based situational awareness.” 18 China would struggle to organize forces after such an attack. Prompt strikes on Chinese missile launchers and C2 nodes would be equally important. “Countering or thinning the PLA offensive missile threat is a principle AirSea Battle line of operation,” the report continues. Not only would the United States regain the advantage, but ASB would also deny China any chance of a rapid and decisive victory. “Success is critical in preventing China from achieving a quick ‘knock-out blow.’”19 The second phase would seek to deny a Chinese naval breakout. Because of the vast distances involved in moving forces across the Indian and Pacific Oceans, these attacks would be required to allow time for US forces to arrive in theater.20 This is an appealing conventional approach, but it has never been tested against a great power with nuclear weapons. The danger is that ASB increases the risk that China will use them. In fact, it opens all three pathways to escalation. ASB deliberately seeks to create confusion at the start of the war, making it very hard for the adversary to understand signals of restraint and declarations of limited intent. Coercion requires not only threats but also credible assurances that the target will not be punished if it complies. There is little reason to comply absent such promises.21 In addition, all of the psychological problems described above would be activated if the United States implemented ASB. In addition to the danger of misperceptions in the confusing aftermath of a blinding attack, attribution bias would almost surely cause the Chinese leadership to suspect the worst about the United States. Prospect theory would also likely kick in because China would suddenly fear losing an object of great national value, especially if the war is fought over Taiwan and the result is independence and permanent separation from the mainland. ASB would exacerbate the domestic problem for the Chinese Communist Party, creating political incentives to use nuclear weapons. The Communist Party of China (CCP) long ago gave up its ideological mandate, replacing communism with a combination of nationalism and economic growth. In the event of an economic slowdown, the CCP will only have nationalism to fall back on. In these circumstances, the party might become more risk-acceptant, especially if it is fighting over a core national interest like Taiwan.22 If it stands on the edge of a monumentally humiliating loss, the CCP might well escalate the war rather than risking the end of its regime. ASB promises such a loss. It is hard to imagine a more humiliating outcome than being blinded and befuddled, forced to wait as the United States slowly husbands naval power offshore. Finally, ASB runs the risk of inadvertent escalation. China has been steadily moving towards a posture of assured retaliation. It seems to believe it can deter other powers with a relatively small number of nuclear weapons, but only if it can assure the survivability of its arsenal.23 ASB may remove that sense of security. The targets in the hypothetical first strike would include China’s ballistic missiles and launchers, as well as space- and ground-based facilities for targeting and guidance. This means that the United States would target elements of the People’s Liberation Army Rocket Force (PLARF), which oversees both nuclear armed and conventional missiles. It also means targeting China’s intelligence and C2 networks, making it harder for leaders to determine whether their nuclear force is at risk. China has not published a detailed and authoritative statement on its nuclear doctrine, though its defense white papers offer clues. Historically, it has chosen to enhance deterrence through ambiguity and mobile launchers in place of high numbers of warheads, obscuring its capabilities to guard what it calls a “lean and effective” force. While this might plant a seed of doubt in potential attackers, it also increases the danger of mistaken targeting, and some analysts believe the line between conventional and nuclear capabilities is getting fuzzier.24 Moreover, different variants of China’s land-based DF-21 are equipped with both conventional and nuclear warheads. In the words of a recent open-source assessment of China’s arsenal, “This potentially dangerous mix of nuclear and conventional missiles increases the risk of misunderstanding, miscalculation, and mistaken nuclear escalation in a crisis.” 25 Analysts disagree about the level of overlap, however, and there is evidence that China has taken steps to separate nuclear and conventional missiles while protecting its retaliatory force from preemptive attack. A recent survey of Chinese open sources finds that the majority of missiles are not co-located. Conventional and nuclear brigades answer to separate commands, and China has invested in more secure and redundant command and control. That said, both kinds of brigades may utilize the same C2 infrastructure, and the Central Military Commission, which commands nuclear forces, can take command of conventional forces “under special circumstances.” Finally, Chinese officials may view an attack on conventional missile brigades as proof that the United States has the capacity to destroy nuclear ones.26 The expansion of US missile defense capabilities may also affect China’s beliefs about the security of its deterrent force. The United States currently fields a modest national missile defense capability, with 30 interceptors deployed against intercontinental ballistic missile attacks. This offers some protection against small nuclear powers like North Korea but not against larger ones like Russia and China. Adding more advanced interceptors might make it harder to make this distinction. China has expressed particular concern about advances that blur the line between national and theater missile defenses, thus creating additional doubt about its second-strike capability.27 Despite these concerns, some US planners might have faith that China will continue to honor its long-standing no-first-use (NFU) nuclear declaratory policy, especially if they can conspicuously avoid certain targets as a way of reassuring Chinese leaders.28 Some launch brigades only fire nuclear missiles, and US leaders could make it clear that these are off-limits.29 Avoiding China’s emerging class of ballistic missile submarines might also signal US restraint.30 The problem is that Chinese officials might not understand the signal or believe US promises. They might not have the time to assess whether the United States is carefully discriminating conventional from nuclear forces, given its stated preference for rapid strikes against key enemy installations. Moreover, because initial strikes would also deliberately target China’s C4ISR networks, Beijing would not be able to do a quick damage assessment or communicate the results to deployed forces. Under these conditions, the US emphasis on blinding attacks, which are designed to slow down enemy operations, would actually speed up the decision to go nuclear.31

### Competition---1AC

#### Advantage 2: Competition

#### The presumption against extraterritoriality prevents any effective remedies to anti-competitive Chinese business practices

Fox 19 – Eleanor Fox is Walter J. Derenberg Professor of Trade Regulation, New York University School of Law, 2019, “ANTITRUST: UPDATING EXTRATERRITORIALITY” https://awards.concurrences.com/IMG/pdf/4.\_updating\_extraterritoriality.pdf?55787/361912bf66b468d8848477187d73628b861dbf86

Updating Extraterritoriality argues that a global economy requires extraterritorial reach, and that nations have been too timid in restraining themselves from condemning international cartels on grounds of indirectness of effects. The article poses five sets of reallife fact problems, analyzes what is or is not a legitimate outreach of national law, and proposes that, in cases of world consensus principles, notably hard core cartels, the national and world interest in a global economy free of restraints of competition (the world commons of competition) should be a factor in deciding whether jurisdiction lies. The article examines how to reflect world welfare more cautiously in other cases. 1. INTRODUCTION Markets are global but there is no global competition law or framework. Nations apply their own laws to conduct or transactions that hurt them, with different degrees of outreach and restraint. The dominant norm is a presumption against extraterritoriality, and jurisdictional restraint.2 But is this always the right norm in the age of a global economy when international cartels are rampant, global value chains are frequent, companies are bigger than nations, and nations and multinationals play strategic games to put themselves above the law?3 In areas of substantive conflict and no international consensus, restraint is needed.4 But a large portion of international antitrust litigation concerns hard core cartels, which are world-consensus wrongs, and strategic games to by-pass the importing country’s law Our norms of restraint are generally traceable to rules from a different era before global effects of routine transactions were the norm. What rules and conventions would we adopt if we start from the baseline of the world today? This essay reexamines appropriate reach and restraint of national law and enforcement in the age of a global economy.5 The principal contribution of this essay concerns the area of substantive consensus among nations – notably, for antitrust, hard core cartels. That is the category in which benefits of global vision can outweigh costs of nation-to-nation conflict. The essay argues that traditional analysis is outdated in five respects, and suggests a paradigm fitting for the 21st century. First, traditional analysis contains a presumption against extraterritorial reach of the law. This essay contends that, in the many areas in which the effects of acts are global, the presumption is anachronistic and unhelpful. Second, traditional analysis assigns to separate silos what is essentially the same problem – extraterritorial jurisdiction, foreign sovereign compulsion, and treatment of foreign firms. These are sister problems, and this essay applies the same analytical framework. Third, in many litigations, traditional analysis sees the private firms as the principal stakeholders whose interests are centrally invoked to determine the reach of the law. This essay argues that the proper vantage for considering reach-of-law issues is the state as opposed to private party defendants; that deference to the interests of private litigants may get in the way of reaching the wisest resolution. Fourth, traditional analysis invokes a laundry list of factors to balance in the case of conflict. Laundry lists fail to prioritize and they give undifferentiated weight to all factors, both critical and trivial. This paper jettisons the laundry list in favor of a structured rule. Fifth, traditional antitrust sees the sovereignty problem (disparate interests of sovereigns) as a two-player game. This paper identifies a super national concept—the “global commons of competition.” It treats the global commons as a player on issues of world consensus that certain conduct is wrong; notably, hard core cartels.6 From the earliest days, the extraterritorial problem was seen as involving a universe of two sovereign players; for example, Turkey and France (the Lotus),7 or the United States and the UK (British Airways/Laker).8 It is fitting at last to recognize the global commons of competition. The world has an interest in preserving the global commons, unclogged by undue public or private restraints. The old standby comity cases Timberlane9 and Mannington Mills10 both literally and figuratively miss the bigger picture;11perhaps understandably for they were decided before the modern reality of relatively open world trade and commerce as embedded in the rules of the World Trade Organization, and before the adoption of global governance in areas of law rife with externalities where solely national regulation is no longer efficient.12 My methodology is to work from ground up, looking closely at fact-sets and considering national interests and world interests, in order to assess the legitimacy of national enforcement against off–shore acts. Because the exercise needs a structure, I suggest standards for the analysis. I derive four standards from a common or evolving understanding (1) that nations have the right to protect themselves from economic harms to their citizens, and when other nations’ legitimate interests are at stake nations must apply their regulation proportionately so as not to intrude unreasonably on the other nations’ legitimate interests to regulate their own economies, and, (2) in a global economy and interdependent world with many possibilities for externalities, analysis at world community level is necessary to help maximize the common good of the nations. I pose five fact problems. I test each against my four standards. Based on the analysis, I suggest a new framework for assessing legitimacy of national enforcement of economic law in the presence of international impacts. Here are the four standards: (1) The law of a jurisdiction may appropriately reach conduct or transactions that emanate from abroad that harm its citizens. To prevent harm to other jurisdictions where there is a threat of jurisdictional clash, the conduct or transaction regulated must have a reasonably direct, not insubstantial, foreseeable effect on its territory or its citizens and residents. (2) The enforcement action and relief should not be disproportionate to the interests of the enforcing state.13 (3) When (1) and (2) are satisfied, the enforcement and relief are presumptively legitimate. A complaining nation has the burden to prove the contrary.14 (4) When the subject matter of the enforcement action is one in which there is a world common interest and there is consensus as to what is harmful to competition, as in commonly desired eradication of private firm world cartels, we should recognize a global commons of competition and a worldwelfare interest in its preservation. In such a case, any particular controversy before national courts is greater than the sum of the interests of the parties (or nations) in the dispute. The world welfare interest is appropriately considered as a referent in determining appropriate reach and limits of national law. I apply these four principles to the five following problem sets: potash, input cartels, the Chinese vitamin C export cartel, the European Intel case and its Lenovo/Acer incidents, and China’s enforcement: the Chinese AntiMonopoly litigation against Qualcomm and China’s merger clearance conditionalities. The values of business certainty and sovereigns’ interests in regulating their own commercial affairs are taken into account in the analysis. The potash fact set and the component-input fact set concern whether the anticompetitive cause is sufficiently close to the anticompetitive effect. This problem is commonly encapsulated by the word “direct” and the question what “direct” means. The Vitamin C problem concerns when foreign interests may be sufficiently strong to override domestic enforcement against conduct that has clear direct effects in the enforcing jurisdiction. In the European Union Intel problem, there is clear jurisdiction over a foreign firm that does multinational business and whose exclusionary strategies hurt European consumers, and the question is whether pieces of the picture that harm the European market derivatively from harming the world market must be shaved out of the case on grounds that the effects of that incident are not direct (or in the European terminology, immediate). The China problems ask whether industrial policy can justify extraterritorial antitrust remedies, and they raise issues of legitimacy based on alleged discrimination and lack of due process. In all of these analyses we are considering when and whether a nation oversteps its bounds by a particular extraterritorial reach, and whether there is a world welfare component that may support and even encourage a flexible reach of the law. Because this article is an exploration of what is good law and policy, it does not engage with existing legislation such as the United States’ Foreign Trade Antitrust Improvement Act of 1982.15

#### Chinese anticompetitive business practices uniquely undermine US 5G tech leadership---the plan is the best middle ground

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\*yes the federalist society is sus but the authors are some of the most qualified individuals when it comes to effects of US antitrust law\*

Overly Aggressive Antitrust Enforcement Hinders American Technological Leadership and Threatens National Security As companies from around the world develop the technology and standards for 5G mobile devices and networks, American companies are under threat by aggressive antitrust enforcement that ultimately redounds to the benefit of these foreign companies, which are economic competitors in countries that are also military competitors of the U.S. Over the past five years, foreign governments, particularly in Asia, have subjected U.S. companies to antitrust investigations that failed to follow basic norms of the rule of law, such as providing basic due process protections.14 These antitrust investigations were a thinly-disguised effort by these countries to force the transfer of U.S. patented technology to their own domestic companies, or to insulate their domestic companies from American competition. In recent years, Chinese, Korean, and Taiwanese antitrust authorities have brought nearly 30 investigations against 60 foreign companies across a range of industries, including manufacturing, life sciences, and technology.15 Antitrust challenges undermine intellectual property rights by forcing companies to license their products on non-market-based terms. One prominent example in U.S. history is when the Department of Justice wrung a concession from AT&T to license royalty-free the entire portfolio of 8,600 patents held by Bell Labs in a 1956 antitrust consent decree with the company.16 Today, the White House Office of Trade and Manufacturing Policy has observed that “China uses the Antimonopoly Law of the People’s Republic of China not just to foster competition but also to force foreign companies to make concessions such as reduced prices and below-market royalty rates for licensed technology.”17 Companies have also complained about poor policy guidance and procedural protections under China’s competition laws.18 Others have complained about China’s use of its competition laws to promote policy objectives rather than protect competition and advance consumer welfare.19 In one example, companies raised concerns with Article 7 of China’s State Administration of Industry Commerce (SAIC) 2015 Rules on the Prohibition of Conduct Eliminating or Restricting Competition by Abusing Intellectual Property Rights.20 Under this provision, intellectual property constitutes an “essential facility,” which could allow parties to raise abuse of intellectual property rights claims against patent owners for a unilateral refusal to license their patents.21 Predatory antitrust enforcement actions threaten the ability of U.S. companies to continue to be leaders in 5G technological development. China and other nations with similarly restrictive regulatory frameworks can weaken the ability of the United States to compete in global markets by exacting high monetary penalties from U.S. intellectual property owners or forcing the transfer of their intellectual property to domestic commercial rivals. As a penalty for violations of its competition laws, China can impose exorbitant fines that range up to 10% of a foreign company’s entire revenue in the prior year.22 This is not a legal rule observed in the breach; it has already resulted in fines just shy of $1 billion.23 Another way in which courts in China and other foreign countries are harming U.S. companies is through the use of anti-suit injunctions. One example of this is in the recent patent infringement lawsuit brought by InterDigital, an American high-tech company that has developed key technologies in wireless telecommunication, against Chinese company Xiaomi. In June 2020, Xiaomi filed a lawsuit in the Wuhan Intermediate Court in China requesting that the court set global licensing rates for InterDigital’s patents on standardized technologies. In July 2020, InterDigital sued Xiaomi in India for infringement of InterDigital’s Indian patents. The Wuhan Intermediate Court then ordered InterDigital to stop its lawsuit with its request for an injunction in India. The Chinese court further prohibited InterDigital from suing Xiaomi and requesting an injunction or damages in the form of reasonable licensing rates, or even to enforce a previously-issued injunction, in any other country. If InterDigital does not comply with this worldwide injunction against pursuing legal relief for the violation of its patents in any other country, the company faces a significant fine in China. The type of judicial order issued by the Wuhan court is known as an anti-suit injunction and its purpose is to force an intellectual property dispute to play out solely in a Chinese court at the behest of the Chinese government. These court orders demonstrate China’s desire to become the source of 5G innovation and to dictate the licensing terms of the technology, and the anti-suit injunctions hamstring U.S. companies like InterDigital from enforcing their intellectual property rights anywhere in the world. The unfair use of antitrust enforcement and related legal actions like anti-suit injunctions to weaken U.S. intellectual property rights around the world risks diminishing U.S. global competitiveness in critical technologies like 5G, and further empowers China and others to expand their influence over the evolving 5G technological ecosystem. To the extent the U.S. cedes its dominance in 5G standards development, China will continue its focused efforts to fill that void. Huawei, a China-based company, has increased its R&D spending while growing its share of patents on the standardized technologies comprising 5G.24 The President’s Council on Science and Technology issued a report concluding that Chinese actions in the semiconductor industry, which include a range of policies backed by over $100 billion in government funds, threaten U.S. leadership in the industry and present risks to U.S. national security.25 China’s “Made in China 2025” plan called for China to become a leader in 5G technology, including in the development of the standards for the technology, by 2020.26 The plan expressly favors Chinese domestic producers, calling for raising the domestic content of core components in high-tech industries like 5G to 70% by 2025.27 This issue, however, extends far beyond simply the ability and willingness of U.S. companies to engage in the requisite R&D to participate in the 5G race. Reduced U.S. influence on 5G standard-setting would force the U.S. government to rely on untrusted foreign companies for its 5G product supply. The Department of the Treasury has expressed concern about the “well-known” U.S. national security risks posed by Huawei and other Chinese telecommunications companies.28

#### 5G capabilities are key for readiness in the 21st century – 5G implementation is zero sum with China

Borghard 19 – Erica D. Borghard is an Assistant Professor at the Army Cyber Institute at West Point. Shawn W. Lonergan is a U.S. Army Reserve officer assigned to 75th Innovation Command and a Research Scholar at the Army Cyber Institute, 4-25-2019, "The Overlooked Military Implications of the 5G Debate," Council on Foreign Relations, https://www.cfr.org/blog/overlooked-military-implications-5g-debate

Last week, the U.S. Defense Innovation Board released a report outlining the risks and opportunities for the United States in the global race to develop 5G. This followed a damning report published by the United Kingdom’s Huawei Cyber Security Centre Oversight Board detailing how the Chinese telecom giant’s 5G products, particularly its software, contained significant vulnerabilities and that the company had failed to remedy persistent poor security practices. 5G network architecture uses high frequency spectrum to enable significantly faster speeds to process larger amounts of data with lower latency and greater device connectivity. While much attention has been paid to economic and espionage implications of a potential Chinese lead in developing and operating 5G infrastructure, there are important military implications that remain largely overlooked. There are economic implications for which entities can secure the greatest global market share of 5G technology. Technological innovation drives economic growth, job creation, and global economic influence. Huawei may have a long-term market advantage over U.S and Western telecoms because the former has been able to offer 5G products at far cheaper rates than the latter. Furthermore, there are also concerns that Chinese-built 5G technology is likely to contain backdoors that could be used to enable Chinese economic or national security espionage. It is unlikely that Beijing would actively monitor all of the content of the data that comes across Huawei owned or operated infrastructure (although it may collect and analyze metadata). However, it is conceivable that Huawei would get a proverbial “tap on the shoulder” from Beijing to share pertinent information in specific instances. This may include individually targeting senior corporate executives, which is enabled by the millimeter wave frequency that 5G networks employ. The military applications of 5G technology have vital strategic and battlefield implications for the U.S. Historically, the U.S. military has reaped enormous advantages from employing cutting edge technology on the battlefield. 5G technology holds similar innovative potential. Perhaps most obviously, the next generation of telecommunications infrastructure will have a direct impact on improving military communications. However, it will also produce cascading effects on the development of other kinds of military technologies, such as robotics and artificial intelligence. For instance, artificial intelligence and machine learning capabilities, such as those used in the Department of Defense’s Project Maven, could be greatly enhanced when leveraging the data processing speeds made possible through 5G infrastructure. As an era of great power competition emerges between the United States and China, the United States has a compelling strategic interest in being at the forefront of these new technologies. The United States and its allies must also consider the tactical and operational implications on the battlefield of conducting conventional or counterinsurgency operations in an area with Chinese owned or operated 5G infrastructure. This concern stems from the nature of the relationship between Huawei, an ostensibly private company, and the Chinese Communist Party (CCP). While Huawei’s founder and CEO, Ren Zhengfei proclaimed in a February 2019 interview on CBS This Morning that the company never has and never would provide information to the Chinese government, many experts are skeptical. Under China’s 2017 National Intelligence Law, the CCP has the authority to monitor and investigate domestic and international companies as well as direct organizations to assist with government espionage efforts. As such, it is conceivable that Huawei will be required to hand over its data to the Chinese government for collection and analysis. Due to this reality, the United States must consider and be prepared to conduct overseas contingency or counterterrorism operations in areas where Chinese telecommunications infrastructure is widely proliferated, thus restricting the United States’ ability to rely on indigenous telecoms. As noted by US AFRICOM Commander General Thomas Waldhauser, this has already become an issue in Africa where Chinese telecommunications companies are poised to dominate. The integrity of U.S. military communications systems that rely on 5G networks could be undermined at key phases of an operation. For example, if the United States is conducting a military operation in an area of interest to China, it is plausible that the Chinese government could leverage Huawei to intercept or even deny military communications. Furthermore, Chinese telecom infrastructure dominance in a theater of operations may limit the U.S. military’s ability to conduct precision targeting that leverages signals intelligence collection on 5G telecommunications networks. The strategic and battlefield implications of who owns and operates 5G infrastructure around the world underscores the national security importance of 5G. The U.S. government and its allies should more systematically assess both the opportunities and risks associated with conducting future military operations in environments that rely on Chinese technology. To date, the U.S. government has devoted significant energy to persuading its allies and partners to follow the United States in prohibiting Chinese telecoms, particularly Huawei, from building and/or operating 5G infrastructure. However, its diplomatic approach has been met with varying degrees of success. While some countries such as Australia and Japan have fallen in line with the U.S. stance on Huawei, many others have not. The European Commission’s recent 5G recommendations for member states dismissed a ban on Chinese telecoms. British intelligence has reportedly maintained that the security risks associated with Huawei can be sufficiently managed, and New Zealand, after initially bandwagoning with the United States in December 2018, abruptly reversed course in February 2019. This is concerning for the United States because New Zealand and the UK are members of the Five Eyes intelligence-sharing alliance. Many allies have refused an outright ban of Huawei because of the company’s ability to offer 5G products at far cheaper rates than Western telecoms. It is clear that U.S. diplomatic efforts are not working. The reality is that the bottom line is largely driving decision-making. Therefore, rather than take a purely negative approach, the United States should consider using positive inducements to make its 5G products more appealing. While the United States should not strive to mirror China’s top-down approach to innovation, it should work with allies to use market incentives to make U.S.- and Western-developed 5G infrastructure and products more competitive. Furthermore, the U.S. military needs to anticipate that its use of native telecommunications infrastructure in a future operating environment may be compromised, limited, or denied. The U.S. military will inevitably need greater bandwidth on the tactical edge and this should be an imperative that drives investment in research and development to address this challenge. Technological innovation was at the crux of the United States’ comparative military and economic advantage in the twentieth century. In this contemporary great power competition, U.S. failure to innovate at the scientific and technological frontier will have direct (and deleterious) effects for the United States on the distribution of power in the international system over the long term.

#### Nuclear war

Dowd 15 – Alan Dowd, Senior Fellow at the Sagamore Institute for Policy Research, Contributing Editor for the American Legion Magazine, “Shield & Sword: The Case for Military Deterrence”, Providence Magazine, Fall, https://providencemag.com/2015/12/shield-sword-the-case-for-military-deterrence/

It’s a paradoxical truth that military readiness can keep the peace. The Romans had a phrase for it: Si vis pacem, para bellum. “If you wish for peace, prepare for war.” President George Washington put it more genteelly: “There is nothing so likely to produce peace as to be well prepared to meet an enemy.” Or, in the same way, “We infinitely desire peace,” President Theodore Roosevelt declared. “And the surest way of obtaining it is to show that we are not afraid of war.” After the West gambled civilization’s very existence in the 1920s and 1930s on hopes that war could somehow be outlawed, the men who crafted the blueprint for waging the Cold War returned to peace through strength. Winston Churchill proposed “defense through deterrents.” President Harry Truman called NATO “an integrated international force whose object is to maintain peace through strength…we devoutly pray that our present course of action will succeed and maintain peace without war.”[iii] President Dwight Eisenhower explained, “Our arms must be mighty, ready for instant action, so that no potential aggressor may be tempted to risk its own destruction.” President John Kennedy vowed to “strengthen our military power to the point where no aggressor will dare attack.” And President Ronald Reagan steered the Cold War to a peaceful end by noting, “None of the four wars in my lifetime came about because we were too strong.” Reagan also argued, “Our military strength is a prerequisite for peace.”[iv]

Even so, arms alone aren’t enough to deter war. After all, the great powers were armed to the teeth in 1914. But since they weren’t clear about their intentions and treaty commitments, a small crisis on the fringes of Europe mushroomed into a global war. Neither is clarity alone enough to deter war. After all, President Woodrow Wilson’s admonitions to the Kaiser were clear, but America lacked the military strength at the onset of war to make those words matter and thus deter German aggression. In other words, America was unable to deter. “The purpose of a deterrence force is to create a set of conditions that would cause an adversary to conclude that the cost of any particular act against the United States of America or her allies is far higher than the potential benefit of that act,” explains Gen. Kevin Chilton, former commander of U.S. Strategic Command. It is a “cost-benefit calculus.”[v] So, given the anemic state of America’s military before 1917, the Kaiser calculated that the benefits of attacking U.S. ships and trying to lure Mexico into an alliance outweighed the costs. That proved to be a grave miscalculation.

In order for the adversary not to miscalculate, a few factors must hold.

First, consequences must be clear, which was not the case on the eve of World War I. Critics of deterrence often cite World War I to argue that arms races trigger wars. But if it were that simple, then a) there wouldn’t have been a World War II, since the Allies allowed their arsenals to atrophy after 1918, and b) there would have been a World War III, since Washington and Moscow engaged in an unprecedented arms race. The reality is that miscalculation lit the fuse of World War I. The antidote, as alluded to above, is strength plus clarity.

A second important factor to avoid miscalculation: The adversary must be rational, which means it can grasp and fear consequences. Fear is an essential ingredient of deterrence. It pays to recall that deterrence comes from the Latin dēterreō: “to frighten off.”[vi] Of course, as Churchill conceded, “The deterrent does not cover the case of lunatics.”[vii] Mass-murderers masquerading as holy men and death-wish dictators may be immune from deterrence. (The secondary benefit of the peace-through-strength model is that it equips those who embrace it with the capacity to defeat these sorts of enemies rapidly and return to the status quo ante.)

Third, the consequences of military confrontation must be credible and tangible, which was the case during most of the Cold War. Not only did Washington and Moscow construct vast military arsenals to deter one another; they were clear about their treaty commitments and about the consequences of any threat to those commitments. Recall how Eisenhower answered Soviet Premier Nikita Khrushchev’s boast about the Red Army’s overwhelming conventional advantage in Germany: “If you attack us in Germany,” the steely American commander-in-chief fired back, “there will be nothing conventional about our response.”[viii] Eisenhower’s words were unambiguously clear, and unlike Wilson, he wielded the military strength to give them credibility.

Discussing military deterrence in the context of Christianity may seem incongruent to some readers. But for a pair of reasons it is not.

First, deterrence is not just a matter of GDPs and geopolitics. In fact, scripture often uses the language of deterrence and preparedness. For example, in the first chapter of Numbers the Lord directs Moses and Aaron to count “all the men in Israel who are twenty years old or more and able to serve in the army.” This ancient selective-service system is a form of military readiness. Similarly, I Chronicles 27 provides detail about the Israelites’ massive standing army: twelve divisions of 24,000 men each. II Chronicles 17 explains the military preparations made by King Jehoshaphat of Judah, a king highly revered for his piety, who built forts, maintained armories in strategically located cities “with large supplies” and fielded an army of more than a million men “armed for battle.” Not surprisingly, “the fear of the Lord fell on all the kingdoms of the lands surrounding Judah, so that they did not go to war against Jehoshaphat.” In the New Testament, Paul writes in Romans 13 that “Rulers hold no terror for those who do right, but for those who do wrong…Rulers do not bear the sword for no reason.” Again, this is the language of deterrence. Those who follow the law within a country and who respect codes of conduct between countries have nothing to fear. Those who don’t have much to fear. Likewise, to explain the importance of calculating the costs of following Him, Jesus asks in Luke 14, “What king would go to war against another king without first sitting down to consider whether his 10,000 soldiers could go up against the 20,000 coming against him? And if he didn’t think he could win, he would send a representative to discuss terms of peace while his enemy was still a long way off.” In a sense, both kings are wise—one because he recognizes that he’s outnumbered; the other because he makes sure that he’s not. Put another way, both kings subscribe to peace through strength. Again, as with the Centurion earlier, Jesus could have rebuked the martial character of these kings, but he did not. This is not just description but commendation. We ignore their example at our peril.

Secondly, it is not incongruent if we understand military deterrence as a means to prevent great-power war—the kind that kills by the millions, the kind humanity has not endured for seven decades. We know we will not experience the biblical notion of peace—of shalom, peace with harmony and justice—until Christ returns to make all things new. In the interim, in a broken world, the alternatives to peace through strength leave much to be desired: peace through hope, peace through violence, or peace through submission. But these options are inadequate.

The sheer destructiveness and totality of great-power war testify that crossing our fingers and hoping for peace is not a Christian option. Wishful thinking, romanticizing reality, is the surest way to invite what Churchill called “temptations to a trial of strength.”

Moreover, the likelihood that the next great-power war would involve multiple nuclear-weapons states means that it could end civilization. Therefore, a posture that leaves peer adversaries doubting the West’s capabilities and resolve—thus inviting miscalculation—is not only unsound, but immoral and inhumane—unchristian. “Deterrence of war is more humanitarian than anything,” Gen. Park Yong Ok, a longtime South Korean military official, argues. “If we fail to deter war, a tremendous number of civilians will be killed.”[ix]

Peace through violence has been tried throughout history. Pharaoh, Caesar and Genghis Khan, Lenin, Hitler, Stalin and Mao, all attained a kind of peace by employing brutal forms of violence. However, this is not the kind of “peace” under which God’s crowning creation can flourish; neither would the world long tolerate such a scorched-earth “peace.” This option, too, the Christian rejects.

Finally, the civilized world could bring about peace simply by not resisting the enemies of civilization—by not blunting the Islamic State’s blitzkrieg of Iraq; by not defending the 38th Parallel; by not standing up to Beijing’s land-grab in the South China Sea or Moscow’s bullying of the Baltics or al-Qaeda’s death creed; by not having armies or, for that matter, police. As Reagan said, “There’s only one guaranteed way you can have peace—and you can have it in the next second—surrender.”[x]

The world has tried these alternatives to peace through strength, and the outcomes have been disastrous.

After World War I, Western powers disarmed and convinced themselves they had waged the war to end all wars. By 1938, as Churchill concluded after Munich, the Allies had been “reduced…from a position of security so overwhelming and so unchallengeable that we never cared to think about it.”[xi] Like predators in the wilderness, the Axis powers sensed weakness and attacked.

In October 1945—not three months after the Missouri steamed into Tokyo Bay—Gen. George Marshall decried the “disintegration not only of the Armed Forces, but apparently…all conception of world responsibility,” warily asking, “Are we already, at this early date, inviting that same international disrespect that prevailed before this war?”[xii] Stalin answered Marshall’s question by gobbling up half of Europe, blockading Berlin, and arming Kim Il-Sung in patient preparation for the invasion of South Korea.[xiii] The U.S. military had taken up positions in Korea in 1945, but withdrew all combat forces in 1949.[xiv] Then, in 1950, Secretary of State Dean Acheson announced that Japan, Alaska and the Philippines fell within America’s “defensive perimeter.”[xv] Korea didn’t. Stalin noticed. Without a U.S. deterrent in place, Stalin gave Kim a green light to invade. Washington then reversed course and rushed American forces back into Korea, and the Korean peninsula plunged into one of the most ferocious wars in history. The cost of miscalculation in Washington and Moscow: 38,000 Americans, 103,250 South Korean troops, 316,000 North Korean troops, 422,000 Chinese troops and 2 million civilian casualties.[xvi] The North Korean tyranny— now under command of Kim’s grandson—still dreams of conquering South Korea. The difference between 2015 and 1950 is that tens of thousands of battle-ready U.S. and ROK troops are stationed on the border. They’ve been there every day since 1953.

The lesson of history is that waging war is far more costly than maintaining a military capable of deterring war. As Washington observed, “Timely disbursements to prepare for danger frequently prevent much greater disbursements to repel it.” Just compare military allocations, as a percentage of GDP, during times of war and times of peace:

In the eight years before entering World War I, the United States devoted an average of 0.7 percent of GDP to defense; during the war, U.S. defense spending spiked to 16.1 percent of GDP. In the decade before entering World War II, the United States spent an average of 1.1 percent of GDP on defense; during the war, the U.S. diverted an average of 27 percent of GDP to the military annually.

During the Cold War, Washington spent an average of 7 percent of GDP on defense to deter Moscow; it worked.

Yet it seems we have forgotten those hard-learned lessons. In his book The World America Made, Robert Kagan explains how “America’s most important role has been to dampen and deter the normal tendencies of other great powers to compete and jostle with one another in ways that historically have led to war.” This role has depended on America’s military might. “There is no better recipe for great-power peace,” Kagan concludes, “than certainty about who holds the upper hand.”[xvii]

### Comity---1AC

#### Advantage 3: Comity

#### The court has transformed the presumption against territoriality as a weapon to constrict congress

Gardner 16 “RJR Nabisco and the Runaway Canon” Maggie Gardner - Assistant Professor of Law at Cornell School of Law, OCT 22, 2016, 102 Va. L. Rev. Online 134, Volume 102, <https://www.virginialawreview.org/articles/rjr-nabisco-and-runaway-canon/>

In last term’s RJR Nabisco, Inc. v. European Community,[1] the U.S. Supreme Court held that the private remedy in the Racketeer Influenced and Corrupt Organizations Act (“RICO”)[2] does not extend to foreign injuries, even if those injuries were caused by a U.S. company operating within the United States.[3] In doing so, the Court finished transforming the presumption against extraterritoriality from a tool meant to effectuate congressional intent into a tool for keeping Congress in check. The presumption against extraterritoriality has become a means for judges (particularly Justices) to override Congress in defining the proper scope of litigation in U.S. courts.

The RJR Nabisco case, like many transnational cases, was both global and local in scope. The European Community and twenty-six of its member states had been investigating major tobacco companies for their role in cigarette trafficking and money laundering into and through Europe.[4] While other tobacco companies eventually reached settlements with the European Commission, RJR Nabisco did not and continued—according to the European Community’s complaint—to engage in illegal activity,[5] specifically by scheming “to sell cigarettes to and through criminal organizations and to accept criminal proceeds in payment for cigarettes.”[6] This conduct was causing harm in Europe, but the European Community believed it was “directed and controlled” by “[h]igh-level managers and employees” from RJR Nabisco’s headquarters in the United States.[7]

The Supreme Court threw out the lawsuit after invoking the presumption against extraterritoriality. That canon of statutory interpretation instructs judges to assume “that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.”[8] In applying the presumption in RJR Nabisco, however, a majority of four Justices[9] rejected multiple indications that Congress intended RICO’s private right of action to extend abroad[10] while raising the bar on what Congress must do to make its extraterritorial expectations clear.[11]

Besides the worrisome implications for separation of powers, the majority’s opinion was also disappointing on practical grounds. By applying the presumption too aggressively, the Court missed an opportunity to provide much-needed guidance to judges on how to interpret statutes that rebut the presumption. For despite the Court’s recent wariness of extraterritorial laws,[12] Congress does sometimes intend its statutes to apply abroad.[13] Those extraterritorial statutes nonetheless have limits—but the Court has not clearly explained how judges are to identify them.[14] Without such guidance, judges may be tempted to cling too tightly to the presumption in order to avoid the doctrinal black hole on the other side.

#### This relies on the court’s interpretation of comity that redefines respect for sovereign nations as respect for international markets---that erodes congressional will and separation of powers, while politicizing the court

Paul 8 “The Transformation of International Comity” Joel R. Paul - Professor, University of California Hastings College of the Law, 71 LAW & CONTEMP. PROBS. 19, 2008, <https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1628&context=faculty_scholarship> \*language modified

In his dissenting opinion in Hartford Fire Insurance, Justice Scalia conceded that "it is now well established that the Sherman Act applies extraterritorially."" However, Scalia asserted that according to the Charming Betsy canon of statutory construction, an act of Congress should never be construed as violating international law if any other possible interpretation is available.' To ensure that international law is not violated, Scalia argued that extraterritorial jurisdiction must be tempered by considerations of international comity."n In other words, Justice Scalia treated comity as a binding rule of international law, and he equated the comity analysis with the requirement in the Restatement (Third) of Foreign Relations Law of the United States that the exercise of prescriptive jurisdiction must be "reasonable.' ' .. According to the Restatement, courts are obligated to consider the connections and degree of interests of all the affected states.' 2 Given that the relevant activities occurred in the United Kingdom, the defendants were British, and Britain has a comprehensive set of regulations for the reinsurance industry, he concluded that the United States clearly did not have a sufficient connection or interest in the transaction to warrant the exercise of legislative jurisdiction. 3

Justice Scalia's dissent carried the day in the Supreme Court's 2004 decision in F. Hoffman-La Roche, Ltd. v. Empagran, S.A.'' Foreign plaintiffs brought a class action suit under the Sherman Antitrust Act against foreign defendants who had conspicuously conspired to fix prices in the worldwide market for bulk vitamins. 5 Relying in part on the Charming Besty canon, the Court opined that the statute had to be read consistently with the principle of comity to avoid offending foreign sovereigns."° Accordingly, it held that the plaintiffs had no cause of action when the admittedly significant effect on U.S. commerce was independent of the effect on foreign commerce.' 7 Writing for the majority, Justice Kennedy asserted that this

rule of statutory construction cautions courts to assume that legislators take account of the legitimate sovereign interests of other nations when they write American laws. It thereby helps the potentially conflicting laws of different nations work together in harmony-a harmony particularly needed in today's highly interdependent commercial world. 08

The Court read Congress's intention in light of the interests of the interdependent world market. Whereas Charming Betsy required courts to assume that Congress intended to legislate consistent with international law, the principle of international comity, at least as understood in the United States, was never a rule of international law. Comity as applied in U.S. courts was a uniquely American common-law doctrine reflecting our concerns about separation of powers and our particular historical experience. Foreign courts in both common-law and civil-law jurisdictions have not recognized comity as private international law."° Indeed, most foreign courts would agree with Cheshire and North that deciding when to apply foreign law according to the doctrine of comity "is incompatible with the judicial function, for comity is a matter for sovereigns, not for judges.."

Key to the Court's justificatory rhetoric is the image of the "highly interdependent" global market."' Similarly, the Court in Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc. enforced a choice-of-law provision out of "sensitivity to the need of the international commercial system for predictability." 2 Again, in The Bremen v. Zapata Off-Shore Co. the Court cautioned that "[w]e cannot have trade and commerce in world markets and international waters exclusively on our terms, governed by our laws, and resolved in our courts.. 3 And in Scherck v. Alberto-Culver Co. the Court stressed the damage that "a parochial refusal by the courts" to enforce a foreign arbitration agreement would do to "the fabric of international commerce and trade. ' "4 In each of these cases the Court sacrificed an important U.S. public policy embodied in U.S. statutes to the requirements of the global market. Similarly, in the Empagran decision, the Court failed to reinforce U.S. prohibitions against price fixing (by affording a remedy to the foreign plaintiffs) in deference to the global market."'

Those who appeal to a globalized market as a justification for limiting domestic jurisdiction assert that the United States depends on foreign commerce in a way that limits our autonomy. The Empagran decision assumes that we are no longer masters of our economic destiny; we are merely competitors in a global marketplace, and as such market forces require us to adjust our legal environment to encourage cross-border investment and commerce. Comity demands not merely respect for foreign sovereigns, the executive, or even for the autonomy of private parties; comity demands respect for the market itself. The Empagran judgment seems to treat the market as if it possesses its own autonomous will, much as courts once referred to the sovereign's will. In this globalized economy, courts serve a higher master and the sovereign's will must yield to the will of the market.

V

CONCLUSION

Over four centuries, the doctrine of international comity has proved to be remarkably elastic and adaptive. What began in nineteenth-century U.S. jurisprudence as an assertion of the primacy of the forum's own law morphed into an obligation to apply foreign law. In the shadow of the Cold War, comity broadened to become a general principle of deference and a justification for limiting domestic jurisdiction to prescribe, adjudicate, or enforce. Deference to foreign sovereigns became deference to the executive or to the power of contracting parties to select their own law and forum. As the threat of the Cold War receded, comity once again is adapting to the new realities of globalization. The Court's decision in Empagran suggests that comity may have found a new object of deference: the Market.

If Empagran signals the next incarnation of comity, it is a dangerous and ironic formulation. Deference to the Market has nothing to do with respect for foreign law or private parties. Treating the Market as if it were an autonomous being with a will of its own is ~~delusional~~ [misguided] .1'6 When courts sacrifice the forum's public policy to suit the market, they are substituting their own ideological preference for markets for the policy choices that legislators have exercised. In so doing courts are frustrating policies that are the product of a democratic process.

The mere possibility that the application of domestic jurisdiction may be burdensome or even hostile to international commerce hardly seems a basis for courts to refuse to exercise jurisdiction. Comity was conceived originally as mutual respect between sovereigns. The rule of Empagran disrespects sovereigns. It suggests that courts may arrogate to themselves the power that comity acknowledged rests exclusively in the hands of the sovereign. Courts, out of respect for the separation of powers, as well as respect for foreign sovereigns, should apply jurisdiction as the lawmakers intended it to be applied and leave the interest-balancing to the political process.

#### Specifically, extraterritorial congressional oversight solves effective foreign policy---including foreign assistance

Wright 18 (ANDREW MCCANSE WRIGHT, Associate Professor, Savannah Law School, EXTRATERRITORIAL CONGRESSIONAL OVERSIGHT, 64 Wayne L. Rev. 227, y2k)

Congress has a myriad of legitimate interests in oversight that transcend national boundaries and extend to U.S. interests all over the world. Such interests can even reach as far as a foreign sovereign's stewardship of U.S. resources. Extraterritorial congressional oversight and investigations present a number of practical, legal, and diplomatic challenges. In this Article, I consider those challenges and offer some practical reforms Congress could undertake to enhance its ability to project its power of inquiry overseas.

Text

[\*228] I. INTRODUCTION

Congress has conducted legislative oversight of American foreign policy and overseas military activities since its founding. 1 American emergence as a global superpower further increased congressional oversight interests in overseas activities. Now, amidst multinational corporate consolidation, transnational national security threats, and technological revolution, Congress finds itself investigating fraud, waste, and abuse of U.S. resources in foreign jurisdictions. This Article focuses on jurisdictional and diplomatic issues implicated by congressional investigations that are not purely domestic in character. 2

[\*229] Extraterritorial congressional investigations present a number of unique diplomatic, jurisdictional, and practical challenges. A congressional investigation of the activities of a multilateral international institution that has received federal funds will raise issues of domestic law, federal jurisdiction, foreign relations law, and diplomatic norms. Similarly, United States contractors operating overseas also surface a range of such issues.

In this article, I propose practical legislative provisions that would facilitate Congress's legitimate oversight interests abroad. Many articles address the extraterritorial reach and limitations on criminal and civil litigation. Others examine the diplomatic sensitivities and international law associated with cross-border litigation. This Article offers a systematic analysis of congressional investigative interests in overseas activities and actors. 3

II. EXAMPLES OF CONGRESS'S OVERSEAS OVERSIGHT INTERESTS

Congress's broad oversight power informs its legislative powers, which naturally lead its inquiries to foreign jurisdictions. This section offers some illustrative examples of U.S. government activities and other policy questions that give rise to congressional oversight and investigations.

A. Congressional Oversight Power and Scope

Congress's oversight power is grounded in its constitutional grant of "[a]ll legislative Powers." 4 In McGrain v. Daugherty, 5 the Supreme Court observed that "the power of inquiry--with process to enforce it--is an essential and appropriate auxiliary to the legislative function." 6 While not unlimited, the scope of congressional oversight power is extremely broad because it covers review of the efficacy and administration of previously enacted laws as well as information that could serve as the basis of future legislative action. 7 Congress formulates [\*230] legislative policy and provides appropriations for the military, intelligence community, diplomatic corps, and foreign aid officers. Congress naturally, then, has myriad legitimate oversight interests that run overseas.

B. U.S. Government Operations Overseas

The United States conducts operations supported by military, 8 diplomatic, 9 and other U.S. government facilities 10 all over the world. Executive Branch officials stationed in the United States regularly travel overseas, incurring costs and presenting policy questions. Fiscal integrity, physical plant, personnel, and substantive policy issues abound in the U.S. footprint in foreign countries. Congress has the same legitimate oversight interests in U.S. facilities and operations abroad as it does domestically. 11

[\*231] C. U.S. Foreign Assistance to Foreign Governments and Multilateral Organizations

The United States is the largest foreign assistance donor in the world. 12 Of the $ 48.57 billion in foreign assistance authority provided by Congress: 43% supported bilateral economic or political development programs, 35% for military and security assistance, 16% for humanitarian activities, and 6% funded multilateral organizations. 13 Assistance takes many forms, some of which operate at the program level and others at the national level. 14

#### Effective security assistance solves extinction---oversight solves miscalculated wars

Bergman 21 (Max Bergmann is a senior fellow at American Progress, A Plan To Reform U.S. Security Assistance, 3-9, <https://www.americanprogress.org/issues/security/reports/2021/03/09/496788/plan-reform-u-s-security-assistance/>, y2k)

A new security assistance system, centralized and coordinated within the State Department, would allow the United States to wield its security assistance more effectively and responsibly in today’s competitive geopolitical environment. Arms transfers, training, and support could also better support U.S. foreign policy goals, in particular bolstering democratic partners and emerging democracies, making them stronger U.S. partners to counter threats from authoritarian actors. Empowering the State Department to oversee and manage security assistance would also ensure that aid is used to advance a values-based foreign policy that respects and supports human rights.3 It would also give U.S. diplomats greater clout and leverage and potentially create greater coherence to the provision of foreign assistance overall. The result would be to strengthen a key tool in the U.S. foreign policy toolbox and increase the clout and authority of America’s diplomats, which is badly needed in this new era of geopolitical competition. The strategic case for security assistance reform Security assistance is foreign aid. Providing weapons, training, and support to a foreign country is, by law, a foreign policy responsibility and therefore has historically been directed by the secretary of state. This is for a simple reason: Providing arms to a partner nation is a foreign policy act, a responsibility codified into law through the 1961 Foreign Assistance Act.4 Nevertheless, the provision of arms to a partner is also a military act, and, following 9/11, with the onset of the so-called war on terror and the wars in Afghanistan and Iraq, an operational argument was made for the DOD to gain expanded authorities to provide military assistance to partners. But the DOD authorities soon expanded and grew such that the operational intent of DOD assistance faded, and the purpose of its assistance became indistinguishable from the purpose of State Department assistance. During this period, as the DOD gained authorities and resources, the State Department’s assistance programs remained stifled by lack of funding, excessive congressional earmarks, and legacy commitments. As a result, as the United States sought to provide more security assistance to partners, it did so through the DOD. This has created a bifurcated bureaucratic structure for administering security assistance that marginalizes the State Department. The current system is both inefficient and ill-suited for the present foreign policy environment. The new era of great power competition and today’s threats of climate change, pandemics, and other nontraditional challenges demand a new and more integrated, agile, and wholistic approach to U.S. assistance efforts. The foreign policy environment has shifted greatly over the last decade. Today’s security assistance system emerged in the 9/11 era and was built for counterterrorism and counterinsurgency, with a focus on confronting threats from nonstate actors.5 This was encapsulated in the “building partnership capacity” strategy, outlined by then-Secretary of Defense Robert Gates in 2010, which called for increasing the capabilities of developing states to better police and patrol their neighborhoods and to close off space for insurgent groups.6 U.S. aid was often provided to nondemocratic states or partners that violated human rights but were considered critical partners in the “war on terror.” Decisions were viewed as primarily operational, and aid was provided as needed to help partners tackle imminent terrorist or insurgent threats. Almost all U.S. security aid provided year over year is driven by a strategic rationale that is centered on building better counterterrorism partners. Today, U.S. decisions to provide weapons or support tie American officials to how that support is used—whether they like it or not—as the case of U.S. support to the Saudi-led coalition in Yemen demonstrates. Today, U.S. aid to build up a partner’s military should be viewed through the lens of competition between states, in addition to the ongoing counterterrorism concerns and state fragility challenges, with much higher stakes for U.S. foreign policy and national interests. This renewed geopolitical competition is at its core an ideological competition between states. China’s rise and Russia’s resurgence require the United States to realign its foreign policy toward strengthening relations and bolstering democratic states. Security assistance is a tool to do so: It strengthens America’s closest partners and fosters closer relationships with other states. When a country accepts U.S. military equipment or enters into a long-term procurement or acquisition of U.S. defense equipment, they are tying their country to the United States. The U.S. decision, for instance, to provide military aid to the United Kingdom through the lend-lease program in the 1940s was not a simple military consideration but a foreign policy consideration with enormous consequences.7 Today, U.S. decisions to provide weapons or support tie American officials to how that support is used—whether they like it or not—as the case of U.S. support to the Saudi-led coalition in Yemen demonstrates. Moreover, countries that receive U.S. military systems are not just buying equipment off the shelf; they are entering into a longer-term relationship with that country for training, maintenance, and sustainment. This is similar to when a consumer buys a smart phone, as they are not simply buying a piece of hardware; they are reliant on the company to access its broader ecosystem of apps and software and trusting the company to safeguard important data. Over time, a consumer becomes locked in and dependent on a particular provider. Similarly, when a state commits to expanding military-to-military ties—often the most sensitive area for a country—they are making a diplomatic bet on that country. As they base their military on U.S. equipment and U.S. training and engagement, they similarly become locked in to the United States. This sets the ground for more productive American partnerships to tackle a range of geopolitical challenges. For example, U.S. security assistance has been key to building ties with Vietnam after the war between the two countries. American assistance provided to clear unexploded ordnance has helped repair diplomatic relations between Hanoi and Washington, while the recent provision of a retired Coast Guard ship to the Vietnam military can help strengthen military ties and potentially open the door to more U.S. assistance and security cooperation, which will further strengthen bilateral relations.8 There are several reasons that today’s security assistance system must change: Current security policy decision-making perpetuates the status quo. The current system perpetuates an ineffective status quo, whereby the United States often fails to effectively exert significant diplomatic leverage that it has through security assistance because the bureaucratic structure to administer it—both within the State Department and between the State Department and the DOD—is not designed to advance diplomatic efforts but merely to administer appropriated funds.9 This makes it challenging to change security assistance programs given shifting foreign policy dynamics or changes in a partner’s behavior that may make them a less suitable recipient of U.S. security aid, such as democratic backsliding or a pattern of human rights abuses. U.S. engagement with partners could be dominated by military issues if foreign officials turn to DOD counterparts instead of diplomats for assistance resources. Because the DOD controls its own security assistance accounts, other foreign policy concerns may get trumped if partners go around the State Department to get aid from the Pentagon. Sen. Ben Cardin (D-MD) worried at a 2017 Senate Foreign Relations Committee hearing that the shift to increasing DOD authorities could “send a fundamental message that the United States considers security relationships over all other U.S. foreign policy objectives or concerns, including human rights or good governance.”10 Under the current framework, the State Department’s ability to put the brakes on security assistance or military cooperation under DOD authorities is highly limited because the State Department does not control implementation and can often only approve or disapprove of DOD proposals. While State Department officials and ambassadors can and sometimes do halt or temper problematic efforts, doing so requires exerting significant political capital that is in short supply.11 Centralizing control at the State Department would help to fix this bureaucratic imbalance between diplomacy and the Pentagon. Defense priorities often undervalue democratic and human rights concerns. Compared with the State Department, the DOD is less equipped to effectively weigh human rights concerns in its decision-making. This makes it harder to leverage U.S. military cooperation for economic or political concessions or changes that might bolster democratic goals. For example, U.S. military objectives to counter terrorist groups in Somalia called for continuously supplying Uganda with U.S. assistance despite growing human rights and democracy concerns.12 Putting the State Department in charge would make it easier to realign U.S. security assistance toward democratic states and effectively consider human rights issues in every security assistance decision. Security assistance in a tense era of great power competition is extremely sensitive and can increase tension and lead to miscalculation. The risk in today’s geopolitical environment is that providing sensitive and potentially provocative assistance will not receive the same scrutiny from policymakers and will become the norm for the administering agency, the DOD. In the last era of great power competition, the Cold War, security assistance often stoked tension between the United States and the Soviet Union and led to spiraling commitments. For instance, Soviet provision of nuclear missiles to Cuba led to a nuclear standoff, while U.S. military support for Vietnam led to deepening U.S. engagement. As competition with China and Russia increases, security assistance could once again prove a major source of tension and cause miscalculation. Providing aid in this environment is not a mere technical military matter, but ultimately a political and diplomatic concern that is highly sensitive. Yet today, it is the DOD that is driving assistance to countries such as Ukraine and regions such as Southeast Asia.13 When Russia invaded Ukraine in 2014, the National Security Council became significantly involved in policymaking and limited types of assistance that could be provided, including lethal aid.14 Such unique scrutiny was warranted because there was a crisis involving a U.S. partner and a nuclear-armed state. But the nature of White House intervention was necessary in large part because the security assistance process—for both decision-making and for providing assistance—was broken. A military-led response can overprioritize military engagement and could unintentionally steer American engagements into high-risk confrontations. Without careful calibration and understanding of broader political context, there is real concern that the DOD could get ahead of U.S. policy or drive it in a more military-centric direction. For example, China could interpret the DOD’s provision of some security assistance through the agency’s Southeast Asia Maritime Security Initiative as an act of aggression if it is not carefully and effectively calibrated against broader political concerns in the region.15 Given the political sensitivities of great power competition, responsibility and oversight for security assistance decisions should rest with the agency most in tune with broader U.S. foreign policy concerns and diplomatic developments: the State Department.

### Plan---1AC

**Plan: The United States federal government should rescind its presumption against extraterritoriality because of comity in antitrust cases involving anticompetitive business practices by the private sector in the People’s Republic of China.**

### Solvency---1AC

#### Solvency:

#### The Trade-War has caused the US and China to take economic hostages – using the plans antitrust enforcement the US influences the PRC into cooperating with competition norms

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Aside from the strategy of disengaging and containing China, are there any feasible solutions to diffuse the conflict between China and Western liberal democracies? I hope this book provides evidence that a peaceful resolution remains possible. The answer, counterintuitively, lies in the use of hostages. The hostages here are not chained men or women but rather businesses such as the multinationals topping the Fortune Global 500 List. They are not just leading household names in America and Europe but also massive Chinese SOEs with high market capitalizations. After earning enormous profits in the Chinese market, the bargaining power of foreign firms has gradually declined over the years. China’s antitrust enforcement provides an excellent opportunity to scrutinize the hardships foreign companies face as they adapt to an increasingly hostile regulatory environment in China. Foreign companies have, inadvertently, become ‘hostages’ of the Chinese government. But globalization is not a one-way street, and Chinese companies, venturing overseas, have also been held hostage by Western regulators. These Chinese behemoths, developed and nurtured in a state-led economy, lack the independent decision-making power of those operating in free market economies. Hence, the lingering thought in the back of every foreign policy-maker’s mind is that all Chinese firms, regardless of formal ownership, are ultimately controlled by the Chinese Communist Party. As such, Chinese companies have been especially vulnerable to Western regulatory attacks; the antitrust challenges I discussed in this book are some of their latest struggles in acclimatizing to Western regulatory compliance. No-one wants to be held hostage, of course. Hostages, however, have played a vital role in peace-making for centuries. In the absence of centralized law enforcement mechanisms, ancient powers, warlords, and gangsters frequently took hostages to ensure cooperation.9 From the Egyptian Pharaohs who abducted the heirs to the throne of the areas they conquered, to Julius Caesar who seized a massive number of hostages from defeated tribes, to the Italian Mafia that has swapped family members during negotiations, the practice of hostagetaking to make peace continues to be a frequent practice to this day.10 Giving hostages signals the willingness to commit to a promise while simultaneously curbing opportunism, given that the life of the hostage is at stake.11 Indeed, when the Chinese government tried to circumvent international trade rules by leveraging its administrative discretion to put pressure on foreign firms to lower their prices and impose technology transfer, it received great backlash from Washington. The trade war launched by the Trump Administration is a reminder to the Chinese government that deviating from global trade rules and norms carries great risks, even if executed under the pretence of administrative law enforcement. Meanwhile, Chinese state-backed firms, ranging from sovereign wealth funds such as China Investment Corporation to leading telecom makers like Huawei, need to adapt to the foreign rules and regulations as they venture overseas. On their path to becoming global industry leaders, these Chinese companies have come to realize that one of the biggest impediments they face is their Chinese identity. Although these national champions hold good prospects of thriving in foreign markets, they must accept that a degree of their success depends on the evolving political landscape and the shifting relationship between China and Western countries. TikTok, a widely popular social media app owned by ByteDance, a Chinese company, is the latest company caught in the middle of escalating Sino-US tensions. Soon after President Trump’s vocal threat to ban TikTok and other Chinese social media apps on national security grounds, Chinese technology entrepreneurs began lobbying the Chinese government to remove the great firewalls of Internet control in China. As James Liang, the founder of Ctrip argues, this bold move would improve China’s global image and delegitimatize the US restrictions on Chinese social media firms.12 Viewed in this light, China’s greater integration with the global economy could become an endogenous force prompting China to reform and change. Of course, the Chinese government is unlikely to tear down the great firewall overnight, but for Chinese tech giants to be welcomed overseas the Chinese government needs to do more at home by levelling the playing field between domestic and foreign firms operating in the country. In 2019, China passed a Foreign Investment Law aimed at improving the legal protection for foreign investors in China. Simply improving the laws on paper, however, is not enough. China has made remarkable law-making progress and Chinese laws have grown considerably more sophisticated over the years, but even with these laudable legislative achievements Chinese law enforcement still lags behind. The recent administrative law reform is a case in point. The amendment of the Administrative Litigation Law in 2015 has made it significantly easier for plaintiffs to appeal administrative decisions, with Chinese courts experiencing a surge of administrative appeals. But despite these encouraging improvements, few corresponding changes have been observed in antitrust enforcement. Businesses are still very reluctant to sue for fear of agency reprisal and the potential reputational sanction that might be inflicted by the administration. The amendments to the administrative law therefore have little relevance to many businesses as they do not really bargain in the shadow of the law. A more ambitious institutional reform is thus needed to inject more transparency into the administrative approval process, while ensuring there is due process in decision-making. In addition, the curbing of agency discretion is essential to prevent agency retaliation, and strict measures must be imposed to bar antitrust agencies from strategically using media disclosure to shame firms under investigation. As I illustrate in this book, public shaming has become a powerful deterrent on firms, making them subservient to government agencies The substantial exchange of hostages between the East and the West, which has the prospect of facilitating positive changes in the Chinese regime, should therefore give us hope for peace. It is precisely for this reason that I advocate greater economic integration. Economic interdependence raises the costs of conflict and increases the incentives for countries to cooperate.13 Indeed, a preponderance of economic evidence has shown that trade can reduce conflict among countries.14 Thus, the expansion of Chinese firms into foreign markets should not be seen as something to be blocked but should be welcomed as an important step towards a more prosperous and peaceful relationship between China and the rest of the world.15 Conversely, if Chinese firms are discouraged from entering or even cut off from Western markets, as some politicians are calling for these days, then foreign governments will hold less leverage over China. In fact, the Western policy of decoupling the Chinese economy from Western economies, while a seemingly straightforward response to rising political tensions, is eroding trust and making conflict more likely.16 In recent years, Western hostilities directed towards China and Chinese firms have triggered strong nationalistic sentiments in China, making it difficult for a substantial minority of Chinese policy-makers to push for reforms that would allow for greater democracy and freedom at home.17 Worryingly, policies of disengagement and containment will turn China into a more isolated, self-reliant, and inward-looking country, further heightening the risk of a full-blown war. Certainly, my proposal to foster economic interdependence does not imply a laissez-faire approach. It is perfectly understandable that host countries want to stay vigilant about Chinese influence.18 Thus, a pragmatic and flexible legal framework must be put in place to allow the host countries to retain significant regulatory leverage over Chinese firms, while avoiding too much red tape and undue regulatory burden on businesses. This is not an easy balance to strike but it is also the new normal that today’s foreign policy-makers should be prepared for given China’s rise. Antitrust lawyers and academics should also abandon the utopian ideal that antitrust law analysis is completely immune from political influence. It cannot be. As clearly illustrated by the EU’s latest proposal to tackle foreign state subsidies, the fine lines between competition law, trade law, and national security are becoming increasingly blurred. In a similar vein, the US Supreme Court’s decision to accord high deference to the Executive in the Vitamin C case means that politics will inevitably play a role in affecting future judicial decision-making in export cartel cases. For sure, some external pressure on China to reduce state interference in the economy is beneficial. However, there is a danger that the current Western trend of politicizing antitrust enforcement, if carried too far, can evolve into a double-standard used against Chinese firms. The appearance of this hypocrisy would then severely undercut the ability of EU and US enforcers to convince their Chinese counterparts that antitrust analysis should be grounded in legal and economic analysis, free of political considerations. The trend may even backfire if China retaliates against foreign firms Such an outcome would be quite ironic. With the SAMR assuming a leadership role over the new antitrust bureau, Chinese antitrust enforcement is expected to become more legalized and professional. Yet as China is moving towards the law, the rest of the world seems to be moving away from it. As the Trump Administration continues to launch aggressive legal assaults on Chinese technology companies, China has fallen back on its vast market access by wielding its antitrust law against US technology giants. The emerging transatlantic consensus against China and the ensuing nationalist fury are drowning the voices of progressive Chinese reformists advocating for a freer and more equitable China. In fact, Western efforts to contain China will have the unintended consequences of regressing Chinese legal reforms to the detriment of foreign firms operating in China.

#### Applying China specific game theory proves that China will acquiesce in the face of US pressure

Shih and Huang 20 – Chih-yu Shih Department of Political Science, National Taiwan University, and Chiung-chiu Huang National Cheng-chi University. 2020. “Competing for a Better Role Relation: International Relations, Sino-US Rivalry and Game of Weiqi.” Journal of Chinese Political Science 25 (1): 1–19. doi:10.1007/s11366-019-09638-7

Conclusion In fact, the chess player has role relations in mind at all times, despite the fact that their immediate responses are always confrontational, containing, and even militarily prepared for escalation. Consider, for example, the delight of the US to see smaller South China Sea claimants looking to the US for security support. This attests a pursuit of good role relations. Equally noticeable has been the warning that China's foot in Africa and Latin America is exploitative and neo-colonialist. This warning is designed to sabotage China's role relations. The metaphor of weiqi is a particularly useful heuristic device because simultaneous engagements and mutual invasion are typical characteristics of the second stage of weiqi. The second stage begins roughly at a point when the alternative ways in which the board will be divided begin to surface, after the earlier arranged stones show their potentials for further connection. The players at this stage will begin to plan where and how to defend and invade in more detail. During such an invasion, it is more challenging to decide where else and how to start another event, such that subsequent events can later merge into a macro-force that either consolidates one's initial advantage or reverses a disadvantage. In the process, some events can turn into a burden, and the player faces the difficult decision as to whether to rescue their stones or cut their losses. The twenty-first century almost exactly resembles the second stage of weiqi in the following sense. China's early engagement in Africa, South Asia, Central Asia, and Latin America shows a macro-force that may establish China as the most welcome (read: least threatening) player on the world stage. The US' rebalance to Asia is an invasion in the weiqi perspectives. Vietnam, India, Australia, Taiwan, and Japan all line up. Two weiqi strategies ensue. First, in typical weiqi fashion, when neither side aims towards confrontation, China cycles through phases of defense, squeezing, and disengagement on the South China Sea. The timing of each strategy is contingent on how China evaluates the space it already considers taken, however. Specifically, it is dictated by how secure China perceives its hold on that space to be. Secondly, disengagement becomes China's main theme once the country perceives that rivalry will prevail over friendship. Disengagement allows China to focus on competing for acceptance elsewhere, instead of satisfying the expectations of a friend. An increasingly popular quote by Mao — "you fight in your way and I fight in mine" — reflects this lack of mutual expectations, or what we might call a "thin" role relation between China and the US. The same applies to the US presence in Taiwan. The principle is to squeeze the opponent and crowd the space just enough to leave no room for them to build two eyes. China's behavior in its role as a rival contradicts the assumptions of mainstream IR, namely that rivals will oppose each other. Instead, China will focus on its own bidding for an enhanced role relation on the world stage. After all, acceptance elsewhere is the way to enact rivalry in the long run. Instead of confronting US power directly, weiqi advises that China move into areas where the US does not have any investment. For a weiqi player, these seemingly marginal spaces on the board can become valuable in the future, even though IR analysts would not recognize such spaces as having any natural appeal. However, one also needs to make sense of China's alternation between disengagement and engagement, and the strategic cycles of assertiveness and harmonious behavior in tenser regions, such as East Asia and Southeast Asia, where the US pivots. As the role of the rival is discursively inaccessible in a culture of harmony, China's strategic wisdom remains hidden. That wisdom suggests that this strategy involves striving for acceptance and harmony elsewhere through gift-giving, while allowing the opponent to enjoy perceived victories in local battles through disengagement. The expectation that the US has of a rival is that this rival will come to square with its rules, and will try to reduce the rivalry through shared commitment to global governance. If this does not happen with China, then the US will immediately frame China as a typical chess rival. The cliché of the China threat is so intuitively plausible because China reluctantly cooperates in, and even sabotages, many global governance issues through its bilateral efforts. These include collaborations with different failing states, but also China's uncompromising military expansion, which allegedly bullies its neighbors. In the eyes of the US, China's squeezing on the sea against the US is too cyclical and inconsistent to engender the image of a weak power. This is why the US will continue to stress the ultimate importance of military strength, even though this is only part of the truth: a weiqi player does not try to force a solution where none is apparent. Defense of the status quo is already sufficient for the purpose of preserving energy for exploration elsewhere. In faraway lands, China enhances its connections by showing good will. On the one hand, and somewhat ironically, China does not aim to replace the US, even as the latter expects an upcoming, vehement competition. On the other hand, China is not militarily unready, even though it avoids escalation, but the US may mistake this reluctance for weakness. A final note on the notion of space is in order. Space in the current literature is exclusively territorial. In practice, though, space is open for influence and can be constructed and reconstructed. Therefore, in the same territory, there can be multiple orders, such that politics and security do not dominate the agenda of a seemingly fixed population. Schools, families, and companies thus provide access points that allow actors to make nuanced future connections in academia, society, and finance, allowing them to sporadically influence governmentality in those spheres. The same dynamic can be said to take place in other fields, like culture, religion, transportation, migration, technology, law, etc. Stylistically, the quest for influence can be achieved through either sophisticated maneuvering or annoying interference. Consequently, all actors have direct and indirect stakes in all matters that concern China, making up for China's initial disadvantages with regard to a few noticeable agendas. The liberal order, which is based upon individualized rationality, revealed preference, and multiple parallel modes of governmentality, was once considered to need no further management. In practice, China may continue participating in this liberal order, except that China's encircling of previously safe areas has already reconstituted this rationality, and the preferences of the population everywhere.

#### Tit for tat negotiation is the perfect middle ground for US-China relations---soft and hardline stances make dispute resolution impossible---prefer game theory to empirical analysis

Zhang 21 (a different Zhang) “How Game Theory Impact International Relations” Hongji Zhang - Beijing Normal University-Hong Kong Baptist University United International College, Advances in Social Science, Education and Humanities Research, volume 569

3. CHINA'S INTERNATIONAL RELATIONS UNDER THE "PRISONER'S DILEMMA" OF THE ROLE OF GAME THEORY

Taking into account the above arguments on how game theory plays its role, the value of game theory in the field of international relations should be affirmed. The following is an example of the classical game theory model applied to the decision-making of China's foreign policies, the whole process illustrates the usefulness of game theory for the study of China's international relations [6].

3.1. Analysis of the Role of the “Prisoner's Dilemma”

A political scientist at the University of Michigan (Robert Axelrod) proposed a strategy scenario in which he designed a two-person prisoner's dilemma game tournament. Game theorists from around the world submitted their strategies in the form of a computer program. Two people were paired in one group and played the Prisoner's Dilemma game 150 times over. All participants have their total score. The winner was Anatol Rapoport, a mathematics professor at the University of Toronto, whose winning strategy was a "tit for tat", which surprised Axelrod, who conducted another tournament, this time with more scholars. Rapoport continued to use his "tit for tat" strategy and won the highest scores again.

The idea of the competition is very simple: anyone who wants to participate in this computer competition plays the role of a prisoner in the Prisoner's Dilemma case, and they start playing the Prisoner's Dilemma game, each having to choose between cooperation and betrayal. The key issue is that they do not just play the game once, but hundreds of times over, in what is the so-called "repeated prisoner's dilemma," It is more realistically reflects the relational interaction between the two. This is another noteworthy condition; the simplest model of the prisoner's dilemma is a one-time game, and this is what exacerbates the prisoner's determination to come clean [7].

The results of the test surprised Axelrod, because the strategy adopted by the winner of the competition was not difficult at all: it was also called tit for tat. The Chinese call it "beat someone at their own game". In fact, the so-called tit for tat strategy is the principle of the carrot and stick approach. It insists on never betraying the other side in the first place, and believing everyone is well-intentioned. It will reciprocate its opponent's previous cooperation in the next round (even if this opponent had betrayed it before). In this sense it is forgiving. But it will take a betrayal action to punish the opponent for the previous betrayal, and in this sense it is tough. As the saying goes, "We will not attack unless we are attacked ". Therefore, the analysis shows that the country that has the following characteristics will always win: 1. goodwill; 2. tolerance; 3. toughness; 4.having simple and clear intentions. Another explanation is that modern diplomacy differs from the traditional old-style diplomacy, which relied on the sophisticated and complex manipulations of politicians, so that in the game of modern diplomacy, clear intentions often bring the hoped-for results.

3.2. The "Prisoner's Dilemma" in China's International Relations Game

Just as classical realists argue that it is difficult to build trust between countries, due to it is a one-time game. As in the case of China and the United States relations, the game is generally repeated, and extensive cooperation on various international issues has been conducted after mutual exchange. And then their trust in each other will increase to varying degrees, because they have the opportunity to repeat the game, and there are countless opportunities to do "beat someone at their own game"[8].

In the relations between China and other countries, especially the United States, for example, according to Robert Axelrod's experiments, the victory also always goes to countries that are well-meaning, tolerant, tough, and simple and clear. Conversely, malicious, caustic, weak, and complex countries are doom to lose. Therefore, the principle of gaining diplomatic victory game should be:

First, treat other countries with kindness rather than malice. This truth is simple and obvious. Second, treating other countries with tolerance rather than harshness. Each country pursues its own national interests to the greatest extent possible, so the key to managing relations with other countries is to be able to tolerate each other, and even to tolerate their occasional, not very serious injuries. Countries that treat others harshly and refuse to accommodate occasional harm, like the United States, tend to make too many enemies, which will eventually lead to a much higher threat to domestic security, several times panic, and eventually suffer serious harm. For major countries who carry significant weight in the world economy, it is all the more necessary for them to take into full consideration the impact of their macroeconomic policies on others and increase the transparency of their policy-making process. Third, treating other countries toughly rather than softly should be done on the premise of being kind or beating someone at their own game. This, of course, requires people to do it appropriate manner. Sometimes it requires extremely strong sensitivity and quick feedback, for example, what China has done on the Taiwan problem makes people feel the Chinese government is just talking the talk, but never walking the talk. The problem in the past is that they talk too often but make little progress, all this make Taiwan and the US take those for a grant. The key to retaliation is that you must make the other side believe that you really want to take strong action and not just talk about it. Fourthly, the bottom line of your side in diplomatic issues should be clearly and simply stated. Axelrod's experiment proves that in the game process, overly complex strategies make it difficult for the opponent to understand and don’t know what to do, thus making it difficult to establish a stable cooperative relationship. In fact, in the complex non-zero-sum game environment of international relations, "deep and rigid" and "not tired of deception" are definitely not the best strategy. On the contrary, a clear personality, concise style, and honesty hold the key to victory [9]. To let the other side understand what you are talking about, do not let the other side guess your intention, due to it is very easy to cause misunderstandings. The reason why there is a "China threat theory" is that, in the face of China's rise, the outside world does not see clearly what kind of role China will become in the future? What does China want? Because we have been adhering to Deng Xiaoping's principle of keeping a low profile and honoring our promises, with less empty talk in the international arena. However, the lack of simplicity and clarity eventually led to the misunderstanding of the outside world, which is why we later had to propose our own "peaceful rise" to regain the right to speak. The above example is a good illustration of the usefulness of game theory. We can see that game theory as a basic research tool is indeed beneficial for the study of international relations and foreign policy, and ensures its rationality [10].

4. CONCLUSION

In terms of China's international relations and foreign policy-making research, policy continuity, political culture, leaders' will, and ideological influence undoubtedly provide explanations form the view of the traditional research methods; however, from a scientific point of view, the possibility of strategic action provides another more intuitive and objective explanation. Game theory has been widely applied to the analysis of international politics and foreign policy decisions in the United States. But in China, given the different ideological characteristics and research processes in the study of international relations, the application of game theory to the analysis of international relations and foreign policy decisions is still relatively rare. For example, most of the existing studies on China's foreign policy decisions are empirical studies and post-verification analyses. Such analysis can be learned from historical lessons, but it is difficult to propose scientific countermeasures in the face of urgent real-world problems. Then, on the one hand, we should pay attention to the instrumental value of game theory, apply the theory with rigorous logical reasoning to foreign policy-making, and provide another way of thinking for foreign policy-making, so that China's foreign policy-making can be more scientific. On the other hand, trying not to fall into the deep terminology and complicated arithmetic of game theory, it is important to start from the basic principle of game theory, especially strategic thinking. It is worthwhile to combine the quantitative research method of behavioral science and the traditional qualitative research method of social science. This is how we can better promote the integration of game theory and Chinese international relations research.

#### Studies conclude aff – extraterritorial antitrust enforcement through the courts is effective

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In maintaining a legal and institutional capacity to apply U.S. law extraterritorially on the basis of U.S. effects, U.S. courts have prompted a broad spectrum of private entities – American and foreign – to give U.S. rules substantial weight in their transnational operations. Of course, foreign governments can block their own domestic institutions from enforcing unwelcome U.S. court judgments, which restricts the efficacy of U.S. courts to situations where the United States has independent enforcement power. Foreign governments also retain the option to engineer legal grounds for defendants in U.S. litigation to claim “sovereign compulsion” by enacting laws expressly requiring private entities inside their territories to take actions that violate U.S. law. In many instances, however, taking such steps would narrow options for private actors in foreign jurisdictions in ways that would have large commercial and economic downsides (as, for example, if the Swiss government had changed its laws to require, rather than merely to permit, domestic watchmakers to restrict the production and sale of watch parts). In sum, the ability and willingness of U.S. courts to apply U.S. antitrust laws extraterritorially has shaped not only the incentives of private entities but also the menu of domestic legal options available to foreign governments whose citizens have U.S. ties. In contrast, the legal and administrative tools for effects-based extraterritoriality have existed in German, British, and EEC law since the 1950s and have been used at a modest but growing rate since the late 1960s. Over this period, European competition rules and practices, particularly with respect to anti-cartel policies, have increasingly come to resemble those of the United States.200 Economic integration achieved through the EEC, and now the EU, correspondingly, has given European regulators and courts an enforcement capacity analogous to that of the United States. However, this equality of capacity has not yet translated into extraterritorial regulatory claim-making on a scale approaching that of the United States. A key reason why is that the power to initiate competition enforcement in Europe remains, in many practical respects, under the near-exclusive control of EU and member state regulators. The hypothesis that U.S. extraterritoriality influences private strategic behavior in the antitrust realm is further confirmed by other empirical work that focuses on firm behavior. One study, by Julian Clarke and Simon Evenett (2003), examines the effects of international anti-cartel enforcement on the decisions of private entities about whether and on what level to engage in legally prohibited activities in particular settings. Their approach uses a gravity trade model and data from the World Trade Analyzer database to measure actual trade flows for a specific commodity (vitamins) for nine countries on three continents. They then compare those results with estimated benchmarks in the absence of a cartel constructed from OECD budget and enforcement records. Overall Clarke and Evenett find that robust enforcement of antitrust rules has deterrent effects on international cartel activity. Another study by John M. Connor (2007) compares the effectiveness of U.S., Canadian, and EU anti-cartel enforcement in the period between 1990 and 2008 along two dimensions. The first is the likelihood of detecting illegal behavior. The second concerns the harshness of penalties. Connor finds the U.S. system both more likely to detect wrongdoing and more likely to produce a swift and harsh response when wrongdoing is identified, for example, by imposing large corporate fines or individual criminal penalties. Among the observable ways in which this affects private strategic behavior is in the selection of locations for cartel meetings. Connor finds that conspirators generally avoid U.S. territory, preferring instead to meet “in Switzerland, Mexico, Japan, Hong Kong, and several EU cities that were regarded as less risky.” 201 Still more to the point, he finds that, although the U.S. and EU economies have become roughly equal in terms of GDP, 62 percent of the enterprises that were the target of criminal antitrust enforcement during his study were headquartered in Europe, and only 16 percent were headquartered in the United States. This implies a high degree of awareness among U.S. enterprises about the outer limits of U.S. antitrust rules and a healthy respect for U.S. enforcement power. To summarize, U.S. government regulators and many key private constituencies inside the United States stand to gain little from a more internationally centralized approach to antitrust enforcement. As Europeans have edged ever closer to U.S.-style antitrust rules and practices, EU regulators and those in Europe’s larger states have learned to wield the effects doctrine to their advantage. At the same time, the integration of European markets has given those regulators increasing leverage to use it effectively. European extraterritorial enforcement, however, has been, with few exceptions, limited in comparison to U.S. practice. If this were to change substantially in the future with the growth of private enforcement in Europe, the result could be an increase in clashes over the authority and appropriateness of extraterritorial regulation and the erosion of the long-standing U.S. preference for unilateralism in international antitrust enforcement.

## 2AC

### 2AC Relations

**Blocking statutes don’t affect the plan or trade---compliance inevitable**

**Zhang 21 –** “The dangerous legal war posing a new threat to China-US relations” Angela Huyue Zhang is an associate professor at the Faculty of Law at the University of Hong Kong. An expert in Chinese law, Angela has written extensively on Chinese regulatory issues. Angela is a four-time recipient of the Concurrence Antitrust Writing Award, which selects the best articles published globally in the field of antitrust law each year. Angela frequently speaks at prestigious antitrust conferences in the United States, Europe, and Asia. And she regularly contributes commentaries to popular press including Project Syndicate, Nikkei Asia Review and Bloomberg. Angela has broad research interests in the areas of law and economics, particularly in transnational legal issues bearing on businesses. She is currently working on a few projects pertaining to platform governance and regulation, trade and investment, as well as the Chinese political economy. Angela also serves as the Director of the Centre for Chinese Law at the University of Hong Kong, which promotes legal scholarship with the aim to develop a deeper understanding of China and facilitate dialogue between East and West. Before joining the University of Hong Kong, Angela taught at King’s College London and practiced law for six years in the United States, Europe, and Asia. She worked as a bankruptcy lawyer at Debevoise & Plimpton in New York and as an antitrust attorney at Cleary Gottlieb Steen & Hamilton in Brussels. Angela was admitted to the New York Bar in 2009. Angela received her LLB from Peking University, and her LLM, JD and JSD from the University of Chicago Law School. She wrote her doctoral dissertation under the supervision of former Judge Richard A. Posner, February 1, 2021, https://asia.nikkei.com/Opinion/The-dangerous-legal-war-posing-a-new-threat-to-China-US-relations

For one thing, these types of countermeasures have severe limitations. Take the example of the blocking statute. China can only invalidate the effects of U.S. law within its domestic jurisdiction. And although businesses are promised protection in China, they are still subject to penalties for noncompliance with U.S. sanctions in other overseas jurisdictions.

More importantly, the penalty for violating U.S. sanctions not only includes hefty fines and restricted access to the U.S. market, but also potential criminal liability for business executives. Thus, for many global companies, succumbing to U.S. pressure -- no matter how difficult -- is probably the only rational choice of action.

This was what happened to European businesses when the European Union amended its blocking statute in response to the U.S. reimposing sanctions on Iran in 2019. Having no choice but to quietly concede, many European companies complied with the U.S. sanctions law by winding down operations in Iran without explicit reference to the U.S. sanctions. This will likely be the approach that foreign multinationals with a significant presence in China will adopt in trying to fulfill demands under both U.S. and Chinese sanction rules.

### 2AC Comity

**Covid TRIPS fight thump**

**Meyer 6-18** David Meyer, 6-18-2021, "The WTO’s survival hinges on the COVID-19 vaccine patent debate, waiver advocates warn – Fortune," Fortune, https://fortune.com/2021/06/18/wto-covid-vaccines-patents-waiver-south-africa-trips/amp/, EH and brett

The World Trade Organization knows all about crises. Former U.S. President Donald Trump threw a wrench into its core function of resolving trade disputes—a blocker that President Joe Biden has not yet removed—and there is widespread dissatisfaction over the fairness of the global trade rulebook. The 164-country organization, under the fresh leadership of Nigeria’s Ngozi Okonjo-Iweala, has a lot to fix. However, **one crisis is more pressing than the others**: the battle over COVID-19 vaccines, and whether the protection of their patents and other **i**ntellectual **p**ropertyshould be temporarily lifted to boost production and end the pandemic sooner rather than later. According to some of those pushing for the waiver—which was originally proposed last year by India and South Africa—the WTO’s future rests on what happens next. “The credibility of the WTO will depend on its ability to find a meaningful outcome on this issue that truly ramps-up and diversifies production,” says Xolelwa Mlumbi-Peter, South Africa’s ambassador to the WTO. “Final nail in the coffin” The Geneva-based WTO isn’t an organization with power, as such—it’s a framework within which countries make big decisions about trade, generally by consensus. It’s supposed to be the forum where disputes get settled, because all its members have signed up to the same rules. And one of its most important rulebooks is the Agreement on Trade-Related Aspects of Intellectual Property Rights, or TRIPS, which sprang to life alongside the WTO in 1995. The WTO’s founding agreement allows for rules to be waived in exceptional circumstances, and indeed this has happened before: its members agreed in 2003 to waive TRIPS obligations that were blocking the importation of cheap, generic drugs into developing countries that lack manufacturing capacity. (That waiver was effectively made permanent in 2017.) **Consensus is the key here**. Although the failure to reach consensus on a waiver could be overcome with a 75% supermajority vote by the WTO’s membership, this would be an unprecedented and seismic event. In the case of the COVID-19 vaccine IP waiver, it would mean standing up to the European Union, and Germany in particular, as well as countries such as Canada and the U.K.—the U.S. recently flipped from opposing the idea of a waiver to supporting it, as did France. It’s a dispute between countries, but the result will be on the WTO as a whole, say waiver advocates. “If, in the face of one of humanity’s greatest challenges in a century, the WTO functionally becomes an obstacle as in contrast to part of the solution, I think it could be the **final nail in the coffin**” for the organization, says Lori Wallach, the founder of Public Citizen’s Global Trade Watch, a U.S. campaigning group that focuses on the WTO and trade agreements. “If the TRIPS waiver is successful, and people see the WTO as being part of the solution—saving lives and livelihoods—it could create goodwill and momentum to address what are still daunting structural problems.” Those problems are legion.

**WTO resilient – countries comply with DSM**, no China ruling, 08 proves**.**

**Bown 18 –** Chad P., Reginald Jones Senior Fellow at the Peterson Institute for International Economics, former lead economist at the World Bank and tenured professor at Brandeis, “Is the Global Trade System Broken?” Opening Remarks, 5-7, https://piie.com/commentary/op-eds/global-trade-system-broken

**The WTO has not failed**. No one has requested its judges rule on whether these latest Chinese policies are breaking the system. On the dozens of earlier occasions when asked to intervene over different policies, the WTO has largely ruled against China. And **China has complied**. When deployed properly, the WTO dispute-settlement system has succeeded.

President Trump could bring to Geneva a new set of sweeping legal challenges. His Section 301 investigation into China's allegedly unfair trade practices could result in unprecedented transparency, putting Chinese policies under the spotlight for the world to judge.

Even other WTO members' response to Mr. Trump's questionable trade actions—his steel and aluminium tariffs in particular—leaves room for optimism. The European Union established an early template, announcing plans to respond to Mr. Trump's unconventional behavior **within the WTO**'s framework. China followed the European Union's example, making a similar WTO argument that served to constrain its own retaliation. And other countries have not given up on the WTO dispute settlement—some have even announced their intentions to formally challenge Mr. Trump's tariffs.

The WTO has proven resilient before. **Despite** the synchronised global downturn of 2008–09—which also included a trade collapse and the Great Recession—the system held strong, with no return to the trade policy of the 1930s.

While the WTO is not broken, the debate over a "broken" trading system could be referring to one that is "in despair." To that line of argumentation, I am much more sympathetic.

### 2AC WTO Deference CP

**China won’t comply or will circumvent the ruling**

**USTR 21 –** United States Trade Representative, January 2021, “2020 Report to Congress On China’s WTO Compliance” https://ustr.gov/sites/default/files/files/reports/2020/2020USTRReportCongressChinaWTOCompliance.pdf

World Trade Organization The United States actively participated in meetings at the WTO addressing China and its adherence to its WTO obligations, such as the numerous China specific Transitional Review Mechanism meetings from 2002 through 2011. However, China consistently approached these meetings in ways that frustrated WTO members’ efforts to secure a meaningful assessment of China’s compliance efforts. The United States has also raised, and continues to raise, China-related issues at regular meetings of WTO committees and councils, including the WTO’s General Council. During meetings in 2020, the United States repeatedly highlighted how China’s trade-disruptive economic model works, the costs that it exacts from other WTO members and the benefits that China receives from it. While these efforts have raised awareness among WTO members, they have not led to meaningful changes in China’s approach to trade. In addition to these efforts, **the United States has actively pursued WTO dispute settlement cases** **against China**. To date, as further explained in the Enforcement section below, the United States has brought nearly two dozen WTO cases against China **and has routinely prevailed** in these disputes. However, as has become clear, the dispute settlement mechanism is of only limited value in addressing a situation where a WTO member is dedicated to a state-led trade regime that prevails over market forces. The WTO’s dispute settlement mechanism is designed to address good faith disputes in which one member believes that another member has adopted a measure or taken an action that breaches a WTO obligation. This mechanism is not designed to address a trade regime that broadly conflicts with the fundamental underpinnings of the WTO system. No amount of WTO dispute settlement by other WTO members **would be sufficient to remedy this systemic problem**. Indeed, many of the most harmful policies and practices being pursued by China are not even directly disciplined by WTO rules. In theory, the WTO membership could adopt new rules requiring members like China to abandon nonmarket economic systems and state-led, mercantilist trade regimes. For several reasons, however, it is unrealistic to expect success in any negotiation of new WTO rules that would change China’s current approach to the economy and trade in a meaningful way. First, **new WTO rules** disciplining China **would require agreement among all WTO members, including China**. China has shown no willingness at the WTO to consider fundamental changes to its economic system or trade regime, and it is therefore highly unlikely that China would agree to new WTO disciplines targeted at its trade policies and practices. Indeed, in connection with ongoing discussions at the WTO relating to needed WTO reform, China has stated that it would not alter its non-market economic system. Second, China has a long record of not pursuing ambitious outcomes at the WTO. Past agreements, even relatively narrow ones, have been difficult to achieve, and when an agreement is achieved, it is significantly less ambitious because of China’s participation. In the United States’ view, like-minded WTO members should focus their efforts on developing and implementing effective strategies for fixing the unique and very serious problems posed by China and its trade regime. Given the limits of the current WTO rules and mechanisms, these strategies initially must include actions not currently set out in the WTO agreements, given the serious trade distortions and harm currently being caused by China’s approach to the economy and trade. Until the United States and other WTO members are **able to successfully persuade China** to make the needed fundamental changes to its trade regime, the serious harm caused by China’s approach to the economy and trade will persist and grow. In sum, as we have made clear in prior reports, it is unrealistic to believe that actions at the WTO alone would be sufficient to force or persuade China to make fundamental changes to its trade regime. The WTO system was designed for countries that are truly committed to market principles, not for an enormous country determined to maintain a stateled, non-market system. No matter how many cases are brought at the WTO, **China can always find a way** to engage in market-distorting practices. Furthermore, given the extent to which China has benefited from the current state of affairs, it is not likely to agree to effective new WTO disciplines on its behavior. Indeed, China has been using its WTO membership to develop rapidly. In 2001, when China acceded to the WTO, China’s economy was the sixth largest in the world. China’s economy is now four times larger than it was in 2001, and it is the second largest economy in the world. In addition, China rose to become the largest goods trader among WTO members. There can be no doubt that China has benefited enormously from its WTO membership even though it has not sought to transform its economic system or its trade regime as had been expected, and it has never fully complied with WTO rules. Given these facts, relying solely on the WTO and its mechanisms to address China’s unfair trade practices **is a recipe for failure.**

**Congressional action alone fails to overcome court interpretation---court doctrine change is key**

**Gardner 16** “RJR Nabisco and the Runaway Canon” Maggie Gardner - Assistant Professor of Law at Cornell School of Law, OCT 22, 2016, 102 Va. L. Rev. Online 134, Volume 102, <https://www.virginialawreview.org/articles/rjr-nabisco-and-runaway-canon/>

B. Raising the Bar

In rejecting both statutory incorporation and statutory modeling as indications of congressional intent, the RJR Nabisco majority made it harder for Congress to efficiently rebut the presumption against extraterritoriality. Nor did the majority indicate any preferable alternative, short of a clear statement of extraterritoriality. At the same time, it introduced a new requirement that Congress reiterate its extraterritorial intent in every provision of a statute, whether jurisdictional, substantive, or remedial.[61] Even if the Court’s view of congressional intent (and ability) were realistic, **it keeps moving the goal further down the field. The result is not a search for congressional intent, but an effort to put the brakes on what Congress can do**.[62]

The Court seems to presume that it is not difficult for Congress to state its extraterritorial intent, but that ignores several realities. First there is the difficulty of the drafting process itself (and the inertia for amending misinterpreted statutes).[63] Professors Abbe Gluck and Lisa Bressman have also shown that congressional staffers are simply not aware of such judicially required clear-statement rules.[64] And then there is the possibility of introducing more unintended errors the more that Congress does say explicitly. For example, Congress tried to overturn in part the Court’s narrowly territorial interpretation of the **S**ecurities **E**xchange **A**ct in Morrison v. National Australia Bank, Ltd.,[65] but there is some question whether its amendment to the Securities Exchange Act was phrased and framed correctly to achieve this purpose.[66] After all, providing the clear statement that the Court seems to want is not as simple as stating “this provision applies extraterritorially.” Drafters have to account for the limits on U.S. extraterritorial jurisdiction under international law, limits that courts may sometimes be better situated to interpret and apply through the Charming Betsy canon.

Further, the Court’s new insistence that judges seek such clear extraterritorial intent in every provision is ill-advised (and one is to hope short-lived). As Professor Bill Dodge has cogently argued, applying the presumption to jurisdictional provisions would be deeply disruptive, as well as irreconcilable with the Court’s reasoning in other recent cases—including other portions of RJR Nabisco itself.[67] It also cannot possibly reflect existing congressional intent, as Congress has not been in the habit of writing extraterritoriality into the separate jurisdictional and remedial provisions of statutory schemes that are unarguably intended to be extraterritorial in scope. As Professors Hannah Buxbaum and Pam Bookman have noted, for example, when Congress overrode the Supreme Court’s narrow interpretation of Title VII in Aramco by revising the law to clarify its extraterritorial reach, it did not separately clarify the extraterritorial reach of the law’s remedial provisions.[68] If RJR Nabisco were applied strictly, then, that clear congressional intent behind the Civil Rights Act of 1991 would be nullified.

In short, the presumption has run away from its stated purpose of effectuating congressional intent. Instead it is generating an ever-growing **series of hoops through which Congress must jump** if it wants its laws to extend beyond U.S. borders.[69] In applying this transformed presumption, the Supreme Court poses as a faithful agent of congressional intent, but it is in fact a disciplinarian of Congress’s global aspirations.

### 2AC Exec Deference CP

**The CP is Trump’s trade war – it failed because China just traded with other countries instead**

**Elegant 21 –** Naomi Xu Elegant writer and researcher for Monocle magazine in Hong Kong, previously Fortune magazine, 2-9-2021, "The centerpiece of Trump’s trade deal with China ‘failed spectacularly’," Fortune, https://fortune.com/2021/02/09/trump-china-trade-deal-exports-failed-spectacularly/

The landmark trade deal that the U.S. and China signed last year **was in large part “a failure,”** and the disruptive economic impact of the COVID-19 pandemic was only partially to blame, according to a new report from the Peterson Institute for International Economics (PIIE). The U.S. and China signed the “phase one” trade agreement in January 2020, and its “centerpiece” was China’s pledge to purchase $200 billion more in U.S. goods and services in 2020 and 2021, according to the PIIE report. By that measure, the deal flopped: The U.S. **trade-deal–related exports to China last year fell more than 40% short of the target amount.** “U.S. exports of phase one products to China in 2020 failed spectacularly,” the PIIE report said. Even without accounting for the COVID-19 pandemic’s hit to the global economy, “China was never on pace to meet that commitment.” The U.S. exported more goods to China in 2020 than it had in 2019, but one reason for the increase was that in 2019 China exports were “extraordinarily low,” thanks to retaliatory trade war tariffs. The export target outlined in the phase one deal set 2017’s trade flows as the baseline for the proposed $200 billion increase. U.S. exports to China missed the mark for a number of reasons. For instance, China’s crude oil exports reached only 45% of the trade deal commitment. That shortfall was likely the result of 2020’s unprecedentedly low oil prices and the U.S. oil industry’s inadequate production capacity. China’s imports of U.S.-made goods such as autos and trucks, agricultural goods, and coal and crude oil missed their targets too. But not every sector came up short: The pandemic pushed U.S. medical product sales to China to 111% of the trade deal goal. Another reason Chinese imports didn’t reach the levels set out in the trade deal? Most of the high tariffs imposed during the trade war remained in place, as did the lower tariffs China implemented for other countries to make up for the U.S. tariff hikes. China maintained its tariffs on American lobster after the trade deal and wound up importing 18% less lobster in 2020 than in 2017. Meanwhile, China’s lobster imports from Canada and other non-U.S. countries **increased almost 250% in 2020 compared with 2017.** The economic slowdown caused by the coronavirus did play a part in the shortfall—in April 2020, China’s imports fell 14.2% year on year—but China’s economy recovered relatively quickly, with imports returning to pre-pandemic levels by June. When the phase one agreement was signed, experts heralded it as the first big step in ending a two-year trade war between the world’s largest economies that had sown uncertainty in global markets, disrupted supply chains, and caused steep tariffs that upended century-old export industries and threatened livelihoods. Markets rallied after the deal was finalized; analysts told Fortune at the time that the deal was “a very good start” and “allow[ed] companies to breathe a sigh of relief.” Parts of the phase one trade deal are worth preserving and enhancing, the PIIE report said, like China’s pledge to strengthen enforcement against intellectual property law violations and its vow to expand opportunities for foreign investment in markets like financial services. In response to a question about the trade deal, White House press secretary Jen Psaki said on Jan. 29 that the Biden administration is reviewing “everything that the past administration has put in place,” without going into more detail about the current administration’s plans for the trade deal. But the report encouraged the Biden administration to scrap the previous administration’s goal of reducing the bilateral trade deficit with China, which it said was the “heart of Trump’s phase one deal.” **The report described that objective as “self-defeating from the start.”** “Trump’s approach of starting a trade war and **then settling it with a demand for purchase commitments backfired**,” the report said. PIIE estimates that U.S. exports to China in 2020 would have been **around 19% higher** than the actual figure if the U.S.-China trade war had never taken place; the U.S. wouldn’t have seen the export losses it did, and U.S. taxpayers wouldn’t have had to fund tens of billions of dollars’ worth of farm subsidies. “A handful of sectors and workers may have benefited [from the trade war], but the overall damage to the U.S. economy was inarguable,” the report said.

**Paul says the aff is key to politicization of the court---that Turns Legitimacy and backlash to the court**

**Clark 09** Tom S. Clark, Assistant Professor of Political Science at Emory, “The Separation of Powers, Court Curbing, and Judicial Legitimacy” American Journal of Political Science

That the Court has preferences over policy outcomes is an uncontroversial claim resting on a large body of empirical scholarship, the paradigmatic example of which is Segal and Spaeth (2002).Moreover, **that courts have preferences for institutional legitimacy is similarly well demonstrated in the literature** (Baum 2006; Caldeira 1987; Caldeira and Gibson 1992, 1995; Carrubba 2009; Hausseger and Baum 1999; Lasser 1988; Rogers 2001; Staton 2006; Stephenson 2004;Vanberg 2005). This study departs from the literature on institutional legitimacy in an important way—I argue that **congressional hostility towards, and attacks on, the judiciary indicate a lack of judicial legitimacy and public prestige**. In particular, the justices believe that legislative attacks on the Court are signals about a lack of public support for the Court. **Thus, while the justices have their own information about public opinion and the Court, they can, and do, update their beliefs by observing political activity concerning the Court**. In an interview, one Supreme Court justice commented, “The Court is pretty good about knowing how far it can go. . . . Congress is better than we are, especially the House. They really have their finger on the pulse of the public.” Similarly, **another justice commented, “We read the newspapers and see what is being said—probably more than most people do. . . .We know if there is a lot of public interest; we have to be careful not to reach too far,” a sentiment echoed by numerous other Court insiders.** Further, considerable evidence demonstrates that the Court is concerned about political criticism. **Research on the importance of institutional legitimacy for judicial power provides evidence that the Court is sensitive to how it is perceived by the public and members of the bar** (Baum 2006; see also Epstein and Knight 1998, chap. 5; Klein and Morrisroe 1999; Staton 2006), **while other scholarship demonstrates that the Court has an incentive to protect its institutional legitimacy by avoiding institutional confrontations and acts on that incentive** (Caldeira 1987; Carrubba 2009; Hausseger and Baum 1999; Lasser 1988; Stephenson 2004; Vanberg 2005; see also Marshall 1989, 2004). The scholarly literature distinguishes between diffuse support and specific support for the Court. Whereas diffuse support refers to broad institutional support for the Court as an institution (possibly despite unpopular rulings), specific support refers to public support for a particular decision. **Court curbing may simply be a signal of a loss of specific support, but that is important information for the Court, because continued losses of specific support may have a deleterious effect on the Court’s diffuse support in the aggregate**. **One Supreme Court justice commented, “Once the public ceases to believe that the Court is not a political institution, they will no longer support the Court.” Another justice observed that the Court’s being “perceived as acting legitimately. . .[is] predicated on whether the public understands that we are a court and act [in] a legitimate way.” Indeed, the scholarly literature similarly shows that when public support for the Court declines, the public will increasingly support efforts to politically sanction the Court and restrict judicial power** (Caldeira and Gibson 1995; Gibson and Caldeira 1995, 1998, 2003; Gibson, Caldeira, and Baird 1998). For example, Caldeira and Gibson claim that individuals who have no diffuse support, or institutional loyalty, for the Court will be willing to “accept, make, or countenance major changes in the fundamental attributes of how the high bench functions or fits into the U.S. constitutional system” (1992, 638). Using the rubric of “rational anticipation,” McGuire and Stimson suggest **“a Court that strays too far from the broad boundaries imposed by public mood risks having its decisions rejected**” (2004, 1019). Mondak and Smithey summarize the point nicely: “**A disgruntled public may not only refuse to cooperate with a Supreme Court decision but may also pressure elected officials to resist implementation of judicial orders**” (1997, 1114). That is, **the judiciary is given no positive powers and depends heavily upon political will to give effect to its decisions. The Court is therefore faced with an implementation problem**. Scholars of the courts cite diffuse support as a resource necessary for overcoming this implementation problem (Caldeira 1986; Murphy and Tanenhaus 1990; Stephenson 2004;Weingast 1997; see also Carrubba 2009). As such, despite the Supreme Court’s nominal insulation from the American people, the justices have strong incentives to be concerned with their public standing. They recognize that erosion of public support and institutional legitimacy has negative consequences for the Court’s power and institutional integrity. **The justices themselves corroborate the claim that a loss of public support leads to an erosion of institutional legitimacy that negatively affects the Court’s efficacy as a governing institution**. Speaking at a conference on judicial independence in 2003, former Chief Justice William **Rehnquist** (2003) **noted that past preservation of the independence and integrity of the Court has been “dependent upon the public’s respect for the judiciary” and that “[t]he degree to which that independence will be preserved will depend again in some measure on the public’s respect for the judiciary.”** Indeed, historical examples suggest the Court does at times recognize the limits of its independence and exercises self-restraint for fear of acting without public support and inflicting irreparable institutional damage. Notable examples include the Supreme Court’s reluctance to consider the constitutionality of antimiscegenation laws inthewakeof Brown v.Board of Education (Klarman2004, 321) and its continued reluctance to address widespread prayer in public schools, despite the Court’s declaration that such practices violate the constitution. This point is made generally by Lasser (1988), who argues that the historical pattern has in fact been one of judicial self-restraint precisely at those times when it is aware that the political situation is too perilous. For my purposes here, though, it is important not that the Court has at any point lost public support but rather that the justices behave in anticipation of a lack of public support. **The historical record suggests the Court has at times been reluctant to forge ahead with its policy agenda for fear of acting outside of the broad contours of public support**. Thus, while justices have preferences over policy outcomes, they also have a preference for institutional legitimacy. **Importantly, members of the Court believe that political attacks on the judiciary evince an erosion of public support and a decline in the Court’s institutional efficacy. For this reason, political attacks on the Court serve as signals of a lack of specific support for the Court, which in turn indicates that further judicial recalcitrance will not be tolerated and that the Court will not be able to effectively set policy**. **The mechanisms by which this may take place are** several, but, primarily, **continued judicial recalcitrance could lead to the impeachment of justices, the reluctance of lower court judges to heed Supreme Court precedent, or the refusal of elected officials to implement judicial decisions.** For example, for fear of electoral reprisal, an elected official would find it in her interest to disregard a judicial decision perceived as illegitimate by the public.

### 2AC Protectionism DA

**No chance of modeling**

**Goldsmith 19** “Sovereign Difference and Sovereign Deference on the Internet” Jack Goldsmith - Henry L. Shattuck Professor of Law at Harvard Law School, THE YALE LAW JOURNAL FORUM, MARCH 18, 2019, https://www.yalelawjournal.org/pdf/Goldsmith\_1mjtvg2i.pdf

Woods says in passing that deference via comity “may encourage reciprocity from the courts of foreign sovereigns.”27 He doesn’t rest much weight on this argument; most of his analysis assesses the effect of judicial comity doctrines on the actions of foreign governments, not foreign courts. But it might be worth emphasizing why **reciprocity from foreign courts is unlikely**.

Actual cooperation—mutual restraint in order to achieve larger reciprocal benefits—is really hard for nations to achieve.28 In the treaty context, it takes painstaking negotiations about how each nation will restrain itself, written specifications about what restraints each side assumes, penalties for noncompliance, verification mechanisms, and the like. And even then, nations often fail to achieve or sustain cooperation.

Courts that exercise comity doctrines have no way of communicating with foreign counterparts on any of these issues other than through their decisions. Assuming a foreign court wants to cooperate (a very big undefended assumption), how often or carefully does it pay attention to what other nations’ courts are doing? Assuming it pays attentions and cares, how does it identify an act of restraint by the U.S. court, and how will it know how to reciprocate? Unless the parties to a cooperative scheme have a clear sense of what counts as cooperation and what counts as defection, the scheme will break down if the parties are rational.29 And of course the problem of cooperation in this sense is significantly harder when we move from a bilateral to a multilateral context, which encompasses a lot of digital litigation.30

**No spillover---precedent and conservative court**

**Hall et al 18** “US courts retreat from applying major federal statutes to extraterritorial activity” Thomas J. Hall - Co-Head of Dispute Resolution and Litigation at Norton Rose Fulbright, New York, Seth M. Kruglak - Partner at Norton Rose Fulbright, Thomas J. McCormack - Co-Head of Commercial Litigation, United States at Norton Rose Fulbright, December 2018, https://www.nortonrosefulbright.com/en-ca/knowledge/publications/ae5cfa02/us-courts-retreat-from-applying-major-federal-statutes-to-extraterritorial-activity

Multinational businesses frequently engage in activities that may, however circumscribed, touch the US One concern of non-US parties is whether conduct that touches the US in a de minimis manner is enough for a US court to apply its law to those actions. Recent US Supreme Court cases have marked a reversal from the historic trend of expanding the scope of US law. Indeed, the Court has recently stated that “**U**nited **S**tates law governs domestically but does not rule the world.” To that end, the Court now presumes that a statute does not apply extraterritorially unless the text clearly shows the US Congress intended such a result. With President Trump solidifying a conservative block in the Supreme Court’s majority for the foreseeable future, this trend will likely continue unabated. Commercial disputes practitioners should be familiar with this significant trend in US law.

**More evidence**

**Hall et al 18** “US courts retreat from applying major federal statutes to extraterritorial activity” Thomas J. Hall - Co-Head of Dispute Resolution and Litigation at Norton Rose Fulbright, New York, Seth M. Kruglak - Partner at Norton Rose Fulbright, Thomas J. McCormack - Co-Head of Commercial Litigation, United States at Norton Rose Fulbright, December 2018, https://www.nortonrosefulbright.com/en-ca/knowledge/publications/ae5cfa02/us-courts-retreat-from-applying-major-federal-statutes-to-extraterritorial-activity

The Supreme Court’s presumption against extraterritoriality stems from the conservative majority’s strict adherence to the principle that “legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.” Morrison v Nat’l Australia Bank Ltd., 561 US 247, 255 (2010). Accordingly, “unless there is the affirmative intention of the Congress clearly expressed to give a statute extraterritorial effect,” the Court will “presume it is primarily concerned with domestic conditions.” If a statute has no clear, affirmative indication that it applies extraterritorially, the Court will then examine the statute’s “focus” to determine whether the application of the statute in the case at hand involves a domestic application of the statute in question. RJR Nabisco, Inc. v European Cmty., 136 S. Ct. 2090, 2101 (2016).

**Vitamin C thumps**

**Bu 20** “Respectful Consideration, but Not Deference: Chinese Sovereign Amici in the US Supreme Court Vitamin C Judgment” Qingxiu Bu - University of Sussex, Journal of European Competition Law & Practice, Volume 11, Issue 5-6, May-June 2020, Pages 274–286, April 30, 2020, https://academic.oup.com/jeclap/article-abstract/11/5-6/274/5827020

V. Reshaping he landscape of deference practice?

US courts should show appropriate respect to foreign governments, but how much deference will depend on the circumstances. A foreign sovereign’s interpretation of its laws is not automatically entitled to conclusive deference, but still carry signifcant weight.105 The Supreme Court’s ruling does not provide an absolute rule of udicial obligation, but immense discretion for a federal court to determine foreign law.106 Due to the ill-defned con cept of respectful consideration, it remains uncertain as to how the newly established standard will be applied. Adoption of the less deferential approach would create greater uncertainty as to whether the views expressed by a foreign government will be accepted by US courts.107 Furthermore, in discerning the meaning and credibility of a foreign law, the transparency of the foreign legal system is one relevant consideration in evaluating the foreign sovereign’s interpretation.108 This inevitably creates a de facto hierarchy between foreign legal regimes. 109 **The Supreme Court’s ruling could heighten the current tensions,** which could also facilitate more sophisticated laws to mitigate future litigation risks.110

A. Potential reciprocal concern in the context of trade war

It is reciprocity that makes comity work. As Weinberg said: ‘if comity is reciprocal, both states are better of than they would have been if each simply applied its own law.’ 111 The US Supreme Court is less ulnerable to the politics of foreign relations than the other US government branches.112 Its decision in Vitamin C is a reassertion of US judicial sovereignty to afrm that a fed eral court reserves the right to disregard foreign regimes’ characterisation of their law as it sees fit. 113 **The ruling itself raised considerable controversy** in declining to defer to MOFCOM’s interpretation. The decision may have implications of reciprocity for the USA when appearing before a foreign court. It may impact international liti gation as well as US foreign relations **for many years to come.** 114 In addition, the Supreme Court leaves open an inquiry of whether foreign courts’ interpretation of their nations’ laws will be diferentiated from those interpreted by their governmental agencies.

1. A variable of foreign relations

The Vitamin C ruling has broader ramifications, since the Supreme Court provided less than full deference to China’s interpretations of its own laws. The application of the standard of respectful consideration may be detrimental to the US foreign relations,115 which could have serious consequences.116 Foreign law could compel the very conduct that US law prohibits, and udicial inter ference may infringe on the executive function to handle international relations. 117 Inevitably, there is an impact on foreign diplomacy and trade relations.118 As Eichensehr observed:

‘it would be a mistake for the Court to iew the brief as a representation that disagreement with the foreign sovereign’s iew of international law would provoke serious foreign policy consequences for the United States.’119

**extraterritorial sanctions thump**

**Hagemejer et al 20** “Extraterritorial sanctions on trade and investments and European responses” Jan Hagemejer - University of Warsaw, Chair of Macroeconomics and International Trade Theory Phd, Tobias Stoll, Steven Blockmans - University of Amsterdam, Christopher Hartwell - Zurich University of Applied Sciences, November 2020, https://www.researchgate.net/publication/346626455\_Extraterritorial\_sanctions\_on\_trade\_and\_investments\_and\_European\_responses

Economic sanctions have been widely used without much discussion about their legality. This changed, when the US introduced measures, which affect third States and their businesses, and which have been labelled as„extraterritorial“, or „secondary“ sanctions. They met which harsh criticism by the UN and various States, which prominently questioned their conformity with international law. As will be seen, such measures can indeed hardly be justified under the international law rules on the proper exercise of sovereign powers.

Sanctioning measures may also conflict with the manifold treaty obligations, which exist in view of economic activities and human rights. As the earlier complaint of the EU against the Helms-Burton legislation in WTO dispute settlement indicates, obligations under WTO law may be at stake, particularly after recent WTO jurisprudence clarified that „national security“ exceptions can hardly be seen as a „carte blanche“, which would allow States to „self-judge“ their measures. This is particularly true, if it comes to measures directed against WTO members, which are not the target of such measures. As will be seen, this does not only apply to obligations under the WTO but is also true for various other international agreements, to which the US is a party. The legality of sanctions can be challenged by the EU, its Member States and EU businesses in a number of international courts and tribunals and before national courts. The EU and the Member States could also encourage their businesses to do so. Also, clear statements by the EU and Member States are essential with a view to the further development of customary law, as a means to take position in international discourse and to partner up with other affected States.

Ultimately, the EU and Member States have the option to take countermeasures against foreign sanctions, which are not in conformity with international law.

Beyond challenging and remedying such sanctions, the EU has options at hand to neutralize the legal effects of foreign sanctions by way of the „blocking state“. Furthermore, Measures to reduce the economic vulnerability of the EU economy and EU businesses are at hand.

**China is already taking US firms hostage---balancing the playing field helps the US and China come to a mutual agreement**

**Garofalo and Zhang 7/13** “Why the rise of China’s antitrust policy against tech companies? Interview with Angela Zhang (Chinese law expert)” Luigi Garofalo, interviewing Angela Zhang, July 13, 2021, https://www.key4biz.it/why-the-rise-of-chinas-antitrust-policy-against-tech-companies-interview-with-angela-zhang-chinese-law-expert/368524/

**Key4biz.** In your book, you talk about a clear interdependence between how China regulates and how China is regulated. Is Beijing going to soon compete with Washington and Brussels in setting the rules for global businesses? Can we hope for a future regulatory alignment between the three?

**Angela Zhang.** The first question is whether Beijing is going to compete with the US and the EU in setting global standards for businesses. At this point, I see this is quite unlikely. In her new book The Brussels Effect, Columbia Law professor Anu Bradford argues that the EU is setting up the regulatory standards which are emulated by many different jurisdictions. I see the China model to be unlikely to be adopted by other countries, because of the Chinese unique institutional setting, because of the power imbalances between the government and businesses. In China, the government is very powerful and is a dominant player in the whole regulatory process, whereas in the US you see that businesses have more of an equal footing vis-à-vis the government, because they fiercely defend themselves in confronting the government and the US judiciary plays a very important role in constraining agencies’ actions as well. So I do not see that the Chinese regulatory model is going to be replicated very easily in other jurisdictions, particularly in Western democracies. As of whether we can be hopeful for future regulatory alignment between the three, in my book I did end with a hopeful note; while China can hold hostage foreign companies using its antitrust law or other regulatory control, foreign governments can similarly hold hostage Chinese companies; and we have already seen that in the past few years. Both the EU and US have tightened their control over Chinese tech companies. The fact that the two sides can exchange hostage is actually a good thing, because this exchange can facilitate cooperation between the two sides and make peace more likely.

**Resource wars are fake**

Emily **Meierding 16,** assistant professor at the Naval Postgraduate School in Monterey, Calif., 5-19-2016, "Oil wars: Why nations aren’t battling over resources," Washington Post, https://www.washingtonpost.com/news/monkey-cage/wp/2016/05/19/oil-wars-why-nations-arent-battling-over-petroleum-resources/?utm\_term=.b334c10dbcbd

The confrontation died down, but a critical question remains: Do countries fight over oil resources? The question isn’t just pertinent to the South China Sea. The Arctic, Caspian, East China Sea and eastern Mediterranean have all been identified as potential “hot spots” for international oil conflicts. Numerous conflicts, including Iraq’s invasion of Kuwait, Japan’s invasion of the Dutch East Indies in World War II, Germany’s attacks against the Russian Caucasus in the same war, the Iran-Iraq War, the Chaco War between Bolivia and Paraguay, and even the Falklands War, have been described as international “oil wars.” However, contrary to the conventional wisdom, **the risk of international oil wars is slim.** Although oil is an exceptionally valuable strategic and economic resource, fighting for it does not pay. The belief that countries fight for oil rests on a flawed foundational assumption: Countries reap the same benefits from foreign oil resources as from domestic oil resources. In reality, **profiting from oil wars is hard.** Countries face at least four sets of obstacles that discourage them from fighting for oil: invasion costs, occupation costs, international costs and investment costs. Invasion costs are the damage that wars inflict on oil fields and infrastructure. Occupation costs arise from local resistance to foreign occupation, which can target oil industry infrastructure and personnel. International costs are imposed by the international community, which can respond to oil grabs with economic sanctions and military interventions. Investment costs are the challenges of attracting foreign capital and technical expertise to occupied oil fields. Collectively, these four sets of costs dramatically reduce the payoffs of fighting for oil and the appeal of oil wars. When the many other costs of war, including manpower and materiel, are taken into account, fighting for oil becomes even less attractive. **From a purely rational standpoint, countries shouldn’t launch oil wars.** But, countries don’t always act rationally. To test the oil war hypothesis, we have to take another look at historical so-called oil wars. **Closer examination shows that oil has not been the fundamental cause of any international wars**. The Falklands War in 1982 was triggered by national pride and Argentine officials’ fear that their window of opportunity for retaking the islands was closing. Rather than fight over oil, Britain and Argentina tried to use it as a catalyst for cooperation. In the 1970s and 1990s, they tried to jointly develop the Falklands’ oil resources. The Iran-Iraq War, from 1980 to 1988, was also not an oil war. Iraq initially aimed only to gain control over the Shatt al-Arab waterway and 130 square miles of contested territory. In the early stages of the war, Iraq repeatedly offered to withdraw from Iran, if Tehran would accept those demands. However, Iranian officials accused the Iraqis of fighting for oil in order to discredit them internationally. The Chaco War, from 1932 to 1935, was also launched for other reasons. Bolivia and Paraguay knew that oil discoveries in the Chaco region were unlikely. They fought because of national pride and to avoid further territorial dismemberment, after major losses in the 19th century. The oil explanation didn’t appear until the war bogged down, when leaders tried to transfer responsibility for the devastating conflict onto international oil companies. On three occasions, countries have launched major military campaigns targeting oil resources. However, these **were fundamentally wars for survival, not for oil**. In World War II, Japan invaded the Dutch East Indies and Germany attacked the Russian Caucasus because leaders realized that, without more oil, their regimes would collapse. Japan would have to withdraw from China, which was “tantamount to telling us to commit suicide,” as Japanese Foreign Minister Togo Shigenori put it. Hitler was even more succinct: “Unless we get the Baku oil,” he stated, “the war is lost.” Iraq’s invasion of Kuwait in 1990 was a war for survival. Contrary to popular beliefs, Saddam Hussein was not attempting to greedily grab more oil resources. Instead, he was afraid that the United States was trying to overthrow his regime. The United States had supported the Kurds’ rebellion in the 1970s, perpetrated the Iran-Contra scandal in the 1980s, and by 1990, seemed to be squeezing Iraq economically. According to Hussein, the United States was driving down oil prices by directing Kuwait to exceed its OPEC production quota. Hussein believed that seizing Kuwait offered the only means of eluding the United States’ hostile designs. By controlling his neighbor, Hussein could raise oil prices, escape his economic crisis and regain domestic support. He knew that the maneuver was a long shot. Regime records show that Hussein expected the United States would try to force him out of Kuwait. Still, it was either that or regime collapse. As Hussein’s deputy, Tariq Aziz, said after the war, “You will either be hit inside your house and destroyed, economically and militarily. Or you go outside and attack…” Japanese, German and Iraqi leaders believed that they were fighting wars for survival. Participants in other so-called oil wars were fighting for additional reasons, like national pride. None of the conflicts were driven by oil ambitions. This is good news for contemporary international relations. Oil competition in areas like the South China Sea is not a serious threat to international security. Countries may engage in minor oil spats, like China and Vietnam’s rig confrontation, to reinforce their resource claims. **However, these incidents will not escalate into international wars.** There is also little risk of oil imperialism. Countries like China will not satisfy their oil needs by seizing foreign oil fields. Historically, leaders have only initiated oil grabs when they believed that their survival depended on it. **This condition is exceedingly rare, even in wartime**. And, it’s unrelated to the price of oil. The United States considered grabbing Middle Eastern oil in 1975, after the first energy crisis drove up prices. However, the Ford administration refrained, because the costs of aggression were too high. **Lastly, oil won’t inspire great power wars**. The United States and China may eventually come to blows. Some of their military campaigns may target oil resources, if controlling them seems necessary for regime survival. However, oil will not be the fundamental cause of a Sino-American conflict. It’s not worth fighting for.

### 2AC Budget Politics

**Hard on china now and its popular**

**Bade 9/1** “Corporate America fights uphill battle against anti-China push” GAVIN BADE – reporter at politico, graduate of Georgetown University, 09/01/2021, https://www.politico.com/news/2021/09/01/business-us-china-trade-508239

Republicans have either cheered Biden’s tough line on China or pushed him to go further. That’s got some lobbyists turning to the only folks left in the room: progressives.

In recent months, the U.S.-China Business Council, which represents more than 250 American firms that do business in China, has reached out to aides for Sen. Bernie Sanders (I-Vt.) and anti-war groups like Justice is Global, one of scores of groups that endorsed letters urging Congress to pump the brakes on anti-China provisions and prioritize climate change cooperation with Beijing.

The U.S. can hold Beijing accountable for human rights and trade abuses, the groups and progressives argue, without closing down commerce or cooperation.

“We’ve tried to message that national security obviously has to be tended to and prioritized,” said Anna Ashton, the council’s vice president for advisory services and government affairs. “That may change some of the parameters of commercial engagement with China, but at the end of the day our economy has benefited enormously by being able to [trade] with China.”

Efforts from the corporate lobbyists seek to blunt the rising economic aggression toward Beijing emanating from Congress and the Biden administration that’s seen the president retain most of his predecessor’s aggressive trade policies, much to industry’s chagrin.

The White House in recent months has issued new trade restrictions and sanctions on Chinese firms while refusing to lift tariffs imposed by former President Donald Trump, insisting they are still under review.

Meanwhile, the House and Senate have advanced separate measures that would spend hundreds of billions of dollars to confront China economically and, in the Senate’s case, increase military surveillance and assistance to regional allies.

**Biden guidance causes court action on antitrust now**

Tara **Lachapelle 21**. Lachapelle is a Bloomberg Opinion columnist covering the business of entertainment and telecommunications, as well as broader deals. She previously wrote an M&A column for Bloomberg News. “

As President Joe **Biden pushes for more aggressive antitrust enforcement** — an effort spearheaded by legal scholar Lina Khan, his controversial pick to lead the FTC — **the agency is running up against practical limitations**. It’s working with very limited resources for a very large number of deals. How large? So far this year, nearly 10,000 U.S. companies agreed to be acquired for a combined deal value of $1.25 trillion, data compiled by Bloomberg show. That’s already surpassed last year’s sum and may even be on track for a record. Not all of those tie-ups will require regulatory approval but in July alone, 343 transactions filed premerger notifications and are awaiting review, compared with 112 in July 2020, according to the FTC.

These filings start a 30-day clock for regulators to decide whether to further investigate a deal. If that waiting period expires without any action, a company would typically take that to mean that it’s free to complete the transaction. But now the FTC says it can’t get to its backlog fast enough and that inaction on its part doesn’t signal permission to proceed. In warning letters sent to filers this month, the agency said companies that go ahead anyway do so at their own risk because the FTC might later decide a deal violates antitrust laws and sue to undo it — and what a mess that would create for buyers and sellers. And yet, if the agency thought such an aggressive move might discourage mergers, it was wrong.

“To my mind, it is a completely hollow threat and makes the agency look weak,” Joel Mitnick, a partner in the antitrust and global litigation groups at law firm Cadwalader, Wickersham & Taft LLP, said in a phone interview. “They’re saying they’re going to ignore the statutory time limits on them whenever they feel like it and continue to investigate transactions until they’re satisfied. But it’s very difficult for the agency to sue to unwind the transaction once the eggs are scrambled.”

Merger reviews traditionally involve some give and take. Companies will often give regulators more time if they think it will increase the odds of winning approval. If that cooperative attitude is being tossed out the window, though, dealmakers are ready to reassess and embrace a more adversarial process.

For M&A lawyers, it’s a disturbance to an equilibrium that existed under other administrations, and they fear a reversion to the merger-hostile environment of the 1960s. Of course, folks in Khan’s camp would say it wasn’t an equilibrium at all, but rather an often overly cozy relationship between regulators and companies that were given too much leeway in recent years.

In any case, businesses are understandably frustrated by what would seem to be an unreasonable ask. Waiting indefinitely to close a deal is costly and full of risks. At least one acquirer isn’t having it. Last week, Illumina Inc. finalized an $8 billion purchase of cancer-testing startup Grail even though U.S. and European authorities haven’t completed their probes. Even as the FTC began this week its attempt to unwind the deal, other dealmakers may decide they like their chances, too.

The FTC “better be ready to litigate,” said David Wales, a partner in the antitrust and competition group at law firm Skadden, Arps, Slate, Meagher & Flom LLP and former acting director of the agency’s Bureau of Competition. “I’ve seen first-hand the resource constraints at the FTC,” he said. “They can’t sue everybody. They can’t block every deal. They will have to be strategic about it.”

Already, **regulators have two major cases sucking up resources**. The FTC last week refiled its monopoly lawsuit against Facebook Inc., alleging its takeovers of Instagram and WhatsApp violated antitrust laws. (Its deal last year for Giphy also employed a sneaky maneuver to avoid showing up on regulators’ radars, and now they’re looking to close that loophole.) **The Justice Department is pursuing its own case against Google**. And **what was initially seen as a narrow effort to reel in dominant tech**nology companies **has since expanded to other industries in light of a sweeping executive order from** President **Biden**. Even more obscure areas such as ocean shipping are facing new scrutiny.

**Courts shield the link**

Keith E. **Whittington 5**, Cromwell Professor of Politics – Princeton University, ““Interpose Your Friendly Hand”: Political Supports for the Exercise of Judicial Review by the United States Supreme Court”, American Political Science Review, 99(4), November, p. 585, 591-592

Political leaders in such a situation will have reason to support or, at minimum, tolerate the active exercise of judicial review. In the American context, the presidency is a particularly useful site for locating such behavior. The Constitution gives the president a powerful role in selecting and speaking to federal judges. As national party leaders, presidents and presidential candidates are both conscious of the fragmented nature of American political parties and sensitive to policy goals that will not be shared by all of the president’s putative partisan allies in Congress. We would expect political support for judicial review to make itself apparent in any of four fields of activity: (1) in the selection of “activist” judges, (2) in the encouragement of specific judicial action consistent with the political needs of coalition leaders, (3) in the **congenial reception** of judicial action after it has been taken, and (4) in the public expression of generalized support for judicial supremacy in the articulation of constitutional commitments. Although it might sometimes be the case that judges and elected officials **act in** more-or-less **explicit** **concert** to shift the politically appropriate decisions into the judicial arena for resolution, it is also the case that judges might act independently of elected officials but nonetheless in ways that elected officials find congenial to their own interests and are **willing** and able **to accommodate**. Although Attorney General Richard Olney and perhaps President Grover Cleveland thought the 1894 federal income tax was politically unwise and socially unjust, they did not necessarily therefore think judicial intervention was appropriate in the case considered in more detail later (Eggert 1974, 101– 14). If a majority of the justices and Cleveland-allies in and around the administration had more serious doubts about the constitutionality of the tax, however, the White House would hardly feel aggrieved. We should be equally interested in how judges might exploit the political space open to them to render **controversial decisions** and in how elected officials might anticipate the utility of future acts of judicial review to their own interests.¶ [CONTINUES]¶ There are some issues that politicians cannot easily handle. For individual legislators, their constituents may be sharply divided on a given issue or overwhelmingly hostile to a policy that the legislator would nonetheless like to see adopted. Party leaders, including presidents and legislative leaders, must similarly sometimes manage deeply divided or cross-pressured coalitions. When faced with such issues, elected officials may actively seek to turn over controversial political questions to the courts so as to **circumvent a paralyzed legislature** and **avoid the political fallout** that would come with taking direct a ction themselves. As Mark Graber (1993) has detailed in cases such as slavery and abortion, elected officials may prefer judicial resolution of disruptive political issues to direct legislative action, especially when the courts are believed to be sympathetic to the politician’s own substantive preferences but even when the attitude of the courts is uncertain or unfavorable (see also, Lovell 2003). Even when politicians do not invite judicial intervention, strategically minded courts will take into account not only the policy preferences of well-positioned policymakers but also the willingness of those potential policymakers to act if doing so means that they must assume responsibility for policy outcomes. For cross-pressured politicians and coalition leaders, **shifting blame** for controversial decisions to the Court and obscuring their own relationship to those decisions may preserve electoral support and coalition unity without threatening active judicial review (Arnold 1990; Fiorina 1986; Weaver 1986). The conditions for the exercise of judicial review may be relatively favorable when judicial invalidations of legislative policy can be managed to the electoral benefit of most legislators. In the cases considered previously, fractious coalitions produced legislation that presidents and party leaders deplored but were unwilling to block. Divisions within the governing coalition can also prevent legislative action that political leaders want taken, as illustrated in the following case.

**Issues are compartmentalized, and pc doesn’t overcome ideology**

**Siewert ’14** [Markus. Prof Poli Sci Goethe University (Germany). “WHEN POTUS DOES (NOT) GET WHAT HE WANTS – A FUZZY-SET QUALITATIVE COMPARATIVE ANALYSIS OF PRESIDENTIAL SUCCESS ON THE SUBSTANCE OF LEGISLATION” August 2014, SSRN//GBS-JV]

The fortunes of the president in the legislative arena are in large parts determined by the political context in Congress (seminal works are Edwards 1989; Bond/Fleisher 1990; Peterson 1990). **Party control** in Congress is one – if not **the main** – **single explanatory factor for the level of presidential legislative success**. Presidents receive more of what they want under the condition of unified government than under divided party control of the branches of government mainly due to the fact that electoral incentives and policy goals overlap to a greater extent between the president and his own party in Congress compared to the opposition party (Rudalevige 2002; Barrett 2005; Barrett/Eshbaugh-Soha 2007; Beckmann 2010). Because of that the president should be able to draw more support for his legislative agenda from his fellow partisans than from the other side of the aisle. Furthermore, the flow of information, the coordination of legislative tactics and strategies and the wheeling and dealing in negotiations on both ends of Pennsylvania Avenue is much easier and smoother within the same partisan camp than across party lines (Beckmann 2008). But not only do the numbers of co-partisans matter; so does the majority party status itself. The majority party controls the procedural rules within both chambers of Congress – even though the supermajoritarian and individualistic nature of the Senate limits the powers of the majority party (Aldrich/Rohde 2000; Monroe et al. 2008). The powers of the majority party enable their leadership to steer the legislative process via the allocation of agenda space, through the assignment to committees or via setting the rules for final votes. On the one hand, this makes the congressional leadership a strong ally to the president that can guard the president’s legislative preferences at different stages of legislation. Under divided government, on the other hand, the majority leadership becomes a **powerful opponent to the president** that can **hinder his legislative agenda** in manifold ways (Edwards/Barrett 2000; Sinclair 2013; Covington et al. 1995).¶ Another contextual factor that shapes the president’s success on the substance of legislation is **the distribution of ideological preferences** in Congress. Over the last decades, **parties in Congress have increasingly polarized**; this means, on the one hand, that they have become **internally more ideologically homogeneous**, and on the other hand, **ideologically diverged further apart** from each other (Aldrich/Rohde 2000; Theriault 2008). Both the inter-party dimension as well as the intra-party dimension impact the president’s position in the legislative arena. First, with congressional parties ideologically drifting apart, it is more **difficult to find common ground** on policy issues, which also **affects the president’s odds to score** on the substance of legislation. The wider the ideological space between the president, pivotal legislators and party leaders in Congress, the more concessions he has to make on his legislative preferences (Rudalevige 2002; Beckmann 2010; Villalobos 2013). Second, the process of intra-party homogenization triggers the disappearance of cross-pressured and moderate members of Congress leading to greater unity within both parties. Especially in times of divided government moderates from the other party are the first contact points for the White House as partners for bargaining, log-rolling and horse-trading. As a consequence if Congress and the presidency are controlled by two different parties **the White House loses attractive targets for deal-making**. On the other hand, the internal homogenization helps his party under unified government because the caucuses consist of fewer possible dissenters (Andres 2005; Fleisher/Bond 2004; Theriault 2003). However, the Senate’s supermajoritarian rules limit the positive effects polarized parties have on the position of the president in the legislative arena. Regardless of unified government or divided government usually 60 votes are needed to pass a bill in the Senate. Therefore, the positive effects of polarized parties in Congress unfold only if the majority of the president’s party approximates the filibuster threshold (Fleisher et al. 2012). Besides the partisan and ideological setting in Congress the president’s **standing within the public** is a third factor contributing to his legislative success. Although empirical findings on the effects of public support on presidential success are mixed, the Washingtonian political community – politicians and staffers in the White House and the Capitol, lobbyists and journalists – as well as the constituents in the country **perceive public support as a decisive element of the president’s political capital**. Especially on salient issues public approval of the president job performance serves as a cue for legislators. Theoretically, members in Congress are reluctant to vote against a popular president shying away from electoral consequences of their opposition. On the other side, if he ranks low in public support members in Congress are less prone to vote in accordance with him (for an overview see Edwards 2009b). High public approval ratings unfold their effects in combination with other factors like party and ideology. High presidential approval ratings affect first and foremost those legislators that are already inclined to support him either because they are members of the same party or they share the same ideological orientations. Beyond that members of Congress from contested districts – which likely also have a moderate ideological disposition – are receptive to presidential approval ratings (Canes-Wrone/de Marchi 2002; Bond et al. 2003; Lebo/O’Geen 2011; Edwards 2009a; Peterson 1990). Neustadt also points at the asymmetric effect of presidential support because his “popularity may not produce a Washington response but public disapproval hardens Washington’s resistance” (Neustadt 1991: 90). **Party control, ideological proximity, and public support constitute the institutional and political environment of the legislative arena which is largely beyond the president’s control**. Over the last years an **academic consensus has emerged** that **party and ideology are the single most important parameters for the president** while presidential factors only matter “at the margins” (seminal Edwards 1989; Fleisher/Bond 1990). This perspective **contrasts with** numbers of journalistic and **anecdotic comments**, and also with a large body of (historical) case studies which facilitate the narrative of presidents shaping their legislative fate via their special bargaining skills. While earlier studies focused on personal traits or the presidents’ reputation as skilled or unskilled (Lockerbie/Borelli 1989; Fleisher/Bond 1990; Rudalevige 2002, Greenstein 2009), a new strand of empirical research focuses on the question how presidents can strategically increase their success through their involvement during the legislative process. For example, they demonstrate that presidents are more successful if they prioritize issues (Peterson 1990, Edwards/Barrett 2000), and if they actively lobby legislators on Capitol Hill (Beckmann 2010; Beckmann/Kumar 2011a; Covington 1987). Additionally, presidents are more successful in the legislative arena if they go public on a given bill (Canes-Wrone 2001; Barrett 2004; Eshbaugh-Soha 2006). However, the necessity of presidential lobbying or going public strategies as well as their effects on his success on the substance of legislation **varies with the political contexts**. The presidents’ need to negotiate intensively with legislators or to speak out to the public is higher if he is confronted with less favorable political conditions than if he faces a positive environment in Congress (Kernell 2007; Eshbaugh-Soha/Miles 2011). Furthermore, we can theorize that both approaches unfold their effect in combination with high levels of public support for the president’s position (Canes-Wrone 2001).

**Litany of thumpers – abortion rights, disaster relief, eviction moratorium, infrastructure package.**

Sahil **Kapur, 9-7**-2021, "'A train wreck': Congress faces a daunting September as deadlines pile up," NBC News, https://www.nbcnews.com/politics/congress/train-wreck-congress-faces-daunting-september-deadlines-pile-n1278565

"The question is whether the muscle memory of fighting Republicans on the debt limit and the rest of the policy cliff helps paper over the party's divisions and heal intramural wounds," he added. "Either way, it's the biggest inflection point left in what might be the last fruitful year of the Democratic trifecta."

In addition to all that, Pelosi last week [put a bill on the schedule](https://www.nbcnews.com/politics/congress/democrats-face-few-options-preserve-abortion-rights-after-supreme-court-n1278364) to enshrine protections for abortion rights into federal law after the Supreme Court [refused to block](https://www.nbcnews.com/politics/elections/texas-law-could-flip-script-abortion-politics-democrats-eying-gains-n1278303) a new law in Texas that bans the vast majority of abortions.

And the devastation wrought by Hurricane Ida, from Louisiana to New York, could spark a debate about authorizing new relief funding.

There are also calls from progressive Democrats to extend the lapsed eviction moratorium, as well as unemployment benefits that expired over the recess, but neither appears to have the votes to pass.

Democrats' ability to handle these grueling tasks in September will shape their prospects to [maintain control of Congress in the midterm elections next year](https://www.nbcnews.com/politics/politics-news/early-indicators-suggest-democrats-house-majority-jeopardy-n1276703), as history favors the party out of power to make gains.

Party elites want to campaign on the multitrillion-dollar safety net package, which includes new benefits that voters could feel quickly in the form of Medicare expansion, paid leave and a direct cash allowance for raising children.

"It's crunch time for Washington Democrats. Their odds of holding the House in the midterms are long, and campaign season will begin soon," said Michael Steel, a former House GOP leadership aide. "They have the slimmest margin possible and no room for error."

**Compromises mean their impact may be eliminated, underfunded to ineffectiveness, or delayed for years**

David Dayen, 9-14-2021, executive editor, "Infrastructure Summer: The Sophie’s Choice of the Reconciliation Bill," American Prospect, https://prospect.org/infrastructure/building-back-america/infrastructure-summer-sophies-choice-of-the-reconciliation-bill/

THIS HOBSON’S CHOICE, figuring out whether to live with less on every policy in the Build Back Better Act, or to jettison some and make sure the policies remaining actually work and are politically potent, is agonizing for advocates and members of Congress. In a better world, this choice wouldn’t exist; the policies reflect critical human needs, and deciding to punt on them yet again should be unacceptable. But the axis of Sens. Joe Manchin (D-WV) and Kyrsten Sinema (D-AZ) has decided that they must have a cap on both spending and revenues, which is forcing these difficult conversations.

Adding to the frustration is the sheer number of policies in the legislation. When you put all your priorities as a party into one bill, you draw in every member who’s been fighting for one part or another for years. But when the overall toplines get cut, nobody wants to take out their pet project. The only other option is to cut everything across the board, which can lead to a slew of ineffective half measures.

We’re seeing this play out in several ways. Some programs, like HCBS, are just being cut. Others, like the dental benefit in Medicare, are being delayed for several years. This makes it look cheaper within the ten-year budget window.

**Biden’s green infrastructure is *too weak* to solve warming and *increases emissions***

**Aronoff, 21** (Kate Aronoff is a staff writer at The New Republic, She is the co-author of A Planet To Win: Why We Need A Green New Deal, a fellow at the Type Media Center and a contributing writer to the Intercept, January 26 2021 “The Fossil Fuel Industry Thinks It Will Have a Good Year Under Biden” The New Republic, <https://newrepublic.com/article/161048/fossil-fuel-oil-biden-stimulus>) MULCH

But the business press and industry analysts have presented a rather different story. Oilfield services companies are cautiously optimistic, after a rash of bankruptcies last year. The combined prospects of an economic stimulus and infrastructure package—**both of which will boost fossil fuel demand—spell a more prosperous 2021 and 2022 for the world’s biggest polluters**. Even Biden’s aspirations to “Build Back Better” with green jobs, Oslo-based energy consultancy Rystad Energy predicted last week, may well be welcome news to oil and gas producers. **“Any ‘green’ focus of the infrastructure bill,”** a company press release read, “will be mostly additive to overall short-term oil products demand due to construction activity, with risks mostly limited to medium-term oil demand, depending on the scope and success of the projects.” **Stimulus measures, in other words, will increase energy demand in general.** At least for now, **that means more demand for fossil fuels**. They call it the “Biden boost,” predicting an extra 350,000 barrels per day (bpd) for 2021 and 900,000 bpd for 2022, should he follow through on his promises. They do also note that new environmental rules, if carried out, could cause oil demand to start to fall toward the **end of the 2020s.** This may seem counterintuitive given Biden’s campaign promises. The mechanism isn’t complicated, though: There’s a stubborn link between growth in gross domestic product and greenhouse gas emissions. Even the greenest of recoveries is likely to boost both growth and emissions in the near term by putting people back to work and boosting consumer spending. Unless economic recovery policy includes sweeping, rapid changes to electrify and decarbonize the country and actively curtail fossil fuel production, even a stimulus that’s green on many other fronts could help emissions climb for years to come. **Savvy U.S. polluters, of course, could still flourish even with new regulations.** Federal lands—on which Biden has issued his two-month pause on new drilling leases and permits, allowing a select few Department of Interior officials to approve exceptions—are now home to just 14 percent of active land rigs. A recently released analysis by Morgan Stanley expects that large, diversified companies can simply reallocate all of their new drilling and planned investment to nonfederal land. While the bank predicts political pressure will put any permanent ban on leasing off the table, it projects tighter rules on everything from methane emissions to environmental reviews going forward. **For many companies, that wouldn’t be a bad thing.** “In effect,” Oil & Gas Journal writes of the bank’s findings, a Biden administration placing more climate-focused policy constraints on the industry “is constructive for the oil and gas macro—constraining supply and putting upward pressure on the marginal cost of shale production without impacting short-term demand.” Smaller firms that do a lot of business on federal land face big risks, of course. Yet larger and more integrated U.S. oil majors like Chevron are well insulated against even sweeping restrictions and “could benefit to the extent President Biden’s policies tighten the supply/demand balance for global oil & gas markets.”

## 1AR

### 1AR WTO CP

**We’ve tried the CP 23 Times – it takes years and China doesn’t comply in order to shield domestic competition**

**USTR 19 –** United States Trade Representative February 2019, “2018 Report to Congress On China’s WTO Compliance” https://ustr.gov/sites/default/files/2018-USTR-Report-to-Congress-on-China's-WTO-Compliance.pdf

CHINA’S RECORD OF COMPLIANCE WITH WTO RULES

While China appeared to revise numerous laws and regulations to bring them into conformity with its WTO obligations in the first few years after its WTO accession, China’s trade regime nevertheless generated many WTO compliance concerns. Too often, WTO members have had to resort to the WTO’s dispute settlement mechanism to change problematic Chinese policies and practices. The United States, for example, **has brought 23 challenges at the WTO** against China covering a wide range of important policies and practices. Among other matters, these cases have taken on the following WTO-inconsistent activities pursued by China: (1) local content requirements in the automobile sector; (2) discriminatory taxes in the integrated circuit sector; (3) hundreds of prohibited subsidies in a wide range of manufacturing sectors; (4) inadequate intellectual property rights (IPR) enforcement in the copyright area; (5) significant market access barriers in copyright-intensive industries; (6) severe restrictions on foreign suppliers of financial information services; (7) export restraints on numerous raw materials; (8) a denial of market access for foreign suppliers of electronic payment services; (9) repeated abusive use of trade remedies; (10) excessive domestic support for key agricultural commodities; (11) the opaque and protectionist administration of tariff-rate quotas for key agricultural commodities; and (12) discriminatory regulations on technology licensing. Even though the United States has routinely prevailed in these WTO disputes, **they take years to litigate**, consume significant resources and often **require further efforts when China resists complying** with panel or Appellate Body rulings. One conspicuous ongoing example of noncompliance involves electronic payment services. China still blocks **major U.S. suppliers** such as Visa and MasterCard from its market despite the fact that (1) it committed to open its market to foreign suppliers by 2006 and (2) a WTO dispute settlement panel confirmed this commitment in a case brought by the United States. As has become clear, China’s industrial policy objective is to protect its national champion, China Union Pay, **from competition in China so that it can use the revenues from a captive domestic market to fund its own global expansion**. This non-market behavior, which is ongoing, harms U.S. companies and their workers. China has been a particularly bad actor when it comes to trade remedies. While the use of trade remedies in a manner consistent with WTO rules is an important tool for protecting domestic industries from unfair and injurious trade practices, China has made a practice of launching antidumping (AD) and countervailing duty (CVD) investigations that appear designed to discourage its trading partners from the legitimate exercise of their rights under WTO rules. This type of retaliatory conduct is not typical of WTO members, nor is it a legitimate basis for seeking AD and CVD relief. Moreover, when China has pursued AD and CVD investigations under these circumstances, it appears that its regulatory authorities have tended to move forward with the imposition of duties regardless of the strength of the underlying legal claims and evidence. The United States’ three successful WTO cases challenging the duties imposed by China on imports of U.S. grainoriented electrical steel (GOES), U.S. chicken broiler products and U.S. automobiles offer telling examples of this problem. Indeed, **China’s poor behavior does not always stop after an adverse WTO ruling**. In two of the three WTO cases brought by the United States on trade remedies, China did not comply with the WTO’s rulings, and the United States was forced to bring Article 21.5 compliance proceedings to secure China’s compliance. China’s retaliatory use of trade remedies highlights another unique issue that WTO members face when dealing with China – the threat of reprisal. It is no secret that foreign companies are hesitant to speak publicly, or to be perceived as working with their governments to challenge China’s trade policies or practices, because **they fear retaliation from the Chinese state**. A study by one U.S. industry association noted that foreign companies confidentially have reported receiving explicit or implicit threats from Chinese government officials – typically made orally rather than in writing – about possible retaliatory actions that could have severe repercussions for a company’s business prospects in China. At the same time, it also is no secret that China threatens more vulnerable WTO members to dissuade them from speaking publicly against China. A further persistent problem is China’s inadequate regulatory transparency. China disregards many of its WTO transparency obligations, which places its trading partners at a disadvantage and often serves as a cloak for China to conceal unfair trade policies and practices from scrutiny. For example, for years, China failed to notify its fellow WTO members of any sub-central government subsidies, despite the fact that most subsidies in China emanate from provincial and local governments. In fact, **it took China 15 years** before it notified its first sub-central government subsidy, and even then its notification was confined largely to subsidies that China had terminated after the United States had challenged them in a WTO case. The magnitude and significance of this problem is illustrated by the five WTO cases that the United States has brought challenging prohibited subsidies maintained by China. While those cases involved hundreds of subsidies, most of the subsidies were provided by sub-central governments. The United States was able to bring those cases only because of its own extensive investigatory efforts to uncover China’s opaque subsidization practices. Of course, most other WTO members lack the resources to conduct the same types of investigations.

**Enforcement is impossible because of China’s bureaucratic labyrinth of a government**

**Webster 14** – Timothy Webster, Director of East Asian Legal Studies & Assistant Professor of Law, Case Western Reserve University, “PAPER COMPLIANCE: HOW CHINA IMPLEMENTS WTO DECISIONS”, Michigan Journal of International Law, Spring, 35 Mich. J. Int'l L. 525, Lexis

Second, China has found ways to resist WTO rulings and norms. Inconsistent regulations remain in effect. In the three cases discussed above - DS 362 (intellectual property enforcement), DS 363 (trading rights for publications) DS 373 (financial information services) - inconsistent regulations either continue in effect or were revised so as not to effectuate [\*573] the purpose of the ruling. This lacuna could be a function of **institutional capacity**. China's capacious bureaucratic institutions produce reams of regulations; it is unclear whether many of them keep close tabs on the various regulations they produce, and quite definite that some of them have not repealed regulations found to be inconsistent. Or there may be a more sinister explanation: China wants to keep the inconsistent regulations in place, and understands that its **regulatory maze** may be **too labyrinthine** for other WTO members to navigate. Whether by design or neglect, a number of inconsistent regulations continue to plague China's compliance record. Moreover, **local and provincial-level regulations** often amplify the effects of inconsistent national regulations. In cases such as DS 363 and DS 373, lower-level government agencies have promulgated policies that reference regulations that were either revoked or found inconsistent. This means that WTO-inconsistent regulations will cast a **regulatory afterglow** at various levels of the Chinese legal system.

### 1AR WTO DA on Comity

**Violate WTO rules**

**Hagemejer et al 20** “Extraterritorial sanctions on trade and investments and European responses” Jan Hagemejer - University of Warsaw, Chair of Macroeconomics and International Trade Theory Phd, Tobias Stoll, Steven Blockmans - University of Amsterdam, Christopher Hartwell - Zurich University of Applied Sciences, November 2020, https://www.researchgate.net/publication/346626455\_Extraterritorial\_sanctions\_on\_trade\_and\_investments\_and\_European\_responses

It must not be forgotten that economic sanctions might also contravene the USA’s treaty obligations. Economic sanctions target businesses and business conduct, by refusing visa, freezing assets and blocking transactions. All these activities are covered and regulated by various international agreements to which the US and the EU and its Member States are parties, including WTO law, other economic agreements and human rights instruments. The law of the WTO, which consists of a set of interconnected treaties, is of particular importance in the case of economic sanctions, as it sets out a number of commitments concerning international trade between WTO members.

At the outset, Members of the WTO, including the USA, have committed to refrain from quantitative restrictions on imports as well as of exports by virtue of Art. XI of the General Agreement on Tariffs and Trade (GATT). The refusal of export licenses as envisaged by US sanctions legislation, such as CAATSA, conflicts with this obligation. As far as trade in services are concerned, WTO members must allow for the movement of natural persons in diverse service sectors regarding which they have assumed special commitments67 (Art. XVI(1) GATS and its footnote 8). Furthermore, under Art. XI GATS, a Member shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments in the areas of trade in services. The freezing of assets and the blocking of financial transactions are likely to be in conflict with this obligation. As they target the trade in goods and services with specific other members of the WTO, US sanctions are also likely to additionally conflict with the obligation to grant most-favored-nation treatment as enshrined in Art. I:1 GATT and Art. II GATS.

**Wrong about uniqueness - The presumption against extraterritoriality prevents effective executive action**

**Dodge 18 –** William S. Dodge is the John D. Ayer Chair in Business Law and Martin Luther King Jr. Professor of Law. Professor Dodge is a leading expert on international law, international transactions, and international dispute resolution. He served as Counselor on International Law to the Legal Adviser at the U.S. Department of State from 2011 to 2012 and as Co-Reporter for the American Law Institute’s Restatement (Fourth) of Foreign Relations Law from 2012 to 2018. He is currently a member of the State Department’s Advisory Committee on International Law and an Adviser to the American Law Institute’s Restatement (Third) of the Conflict of Laws. North Carolina Law Review(Vol. 95, Issue 4), May 2017, “Chevron Deference and Extraterritorial Regulation,” Accessible via Gale Academic Onefile

Sometimes, courts have no choice but to interpret the geographic scope of federal statutes for themselves. The presumption against extraterritoriality gives courts a tool to avoid unnecessary conflict with foreign interests, while considering the focus of congressional concern. The Supreme Court's two-step framework provides significant guidance to courts on how to apply the presumption. But courts need not always go it alone. Many statutes with potential extraterritorial applications are administered by federal agencies. These agencies bring expertise to questions of geographic s**cope that courts lack**. Agencies are better at understanding the purposes of the statute, the range of regulatory options available to effectuate those purposes, and the potential conflicts with other nations that each of these options presents. Moreover, agencies may adopt more fine-grained regulatory schemes that maximize the achievement of statutory purposes while minimizing conflicts with other nations. HSR, Regulation S, and the Volcker Rule offer just three examples of detailed regulatory schemes that courts would never have attempted to fashion on their own. Of course, the fact that an agency has interpreted the geographic scope of a statute does not mean that courts have no role to play. A court must review an agency's interpretation **to make sure that it is reasonable under Chevron** or persuasive under Skidmore. In doing so, a **court should not require that the agency itself apply the presumption against extraterritoriality** as a court would do. But a court should require that the agency consider the normative values that underlie the presumption, particularly the need to avoid unnecessary conflicts with foreign nations, taking into account both the statutory purposes and the regulatory options. Courts should consider whether an agency's interpretation of a provision's geographic scope is reasonable even if the statute contains a clear indication of extraterritoriality. Extraterritorial regulation is often complex and sensitive. Courts should not give agencies a blank check. But courts should also not presume that they are better positioned than agencies to make the many complex judgments that extraterritorial regulation requires. Appropriate deference to administrative agencies may well require courts to accept interpretations of geographic scope that depart from those a court would reach--or has already reached--by applying the presumption against extraterritoriality.

**Aff increases the power of the executive**

**Zhang 21** – Angela Huyue Zhang is an associate professor at the Faculty of Law at the University of Hong Kong. An expert in Chinese law, Angela has written extensively on Chinese regulatory issues. Angela is a four-time recipient of the Concurrence Antitrust Writing Award, which selects the best articles published globally in the field of antitrust law each year. Angela frequently speaks at prestigious antitrust conferences in the United States, Europe, and Asia. And she regularly contributes commentaries to popular press including Project Syndicate, Nikkei Asia Review and Bloomberg. Angela has broad research interests in the areas of law and economics, particularly in transnational legal issues bearing on businesses. She is currently working on a few projects pertaining to platform governance and regulation, trade and investment, as well as the Chinese political economy. Angela also serves as the Director of the Centre for Chinese Law at the University of Hong Kong, which promotes legal scholarship with the aim to develop a deeper understanding of China and facilitate dialogue between East and West. Before joining the University of Hong Kong, Angela taught at King’s College London and practiced law for six years in the United States, Europe, and Asia. She worked as a bankruptcy lawyer at Debevoise & Plimpton in New York and as an antitrust attorney at Cleary Gottlieb Steen & Hamilton in Brussels. Angela was admitted to the New York Bar in 2009. Angela received her LLB from Peking University, and her LLM, JD and JSD from the University of Chicago Law School. She wrote her doctoral dissertation under the supervision of former Judge Richard A. Posner, 2-8-2021, "Commentary: China is leaning into antitrust regulation to stay competitive with the U.S.," Fortune, https://fortune.com/2021/02/08/china-antitrust-tech-alibaba-tencent-billionaires/

Chinese antitrust exceptionalism is manifested not just in the way China regulates but also in the way it is regulated. Over the past decade, the overseas expansion of Chinese companies, particularly those backed by the state, has created significant challenges for Western antitrust enforcers. Baffled by the inextricable relationship between the Chinese government and Chinese state owned enterprises (SOEs), EU competition **regulators are starting to view Chinese SOEs as part of a massive China, Inc**. Meanwhile, Chinese exporters have tried to evade accusations of cartel formation by claiming that they had been compelled by the Chinese government to collude. When reviewing these cartel cases, **US judges**, like their European counterparts, have struggled to discern the extent to which Chinese firms are independent from the state. In both cases, the elusiveness of the state influence over Chinese firms has made EU and US regulators increasingly jittery. But when these regulators tried to apply their existing antitrust legal framework to scrutinize the ‘China Inc.’, they realized that such a legalistic approach could lead to a paradoxical outcome jeopardizing their jurisdiction over other cases involving Chinese firms. Now faced with this regulatory dilemma, the European Union and its Member States are in a hurry to revamp their foreign investment control rules, with the latest regulatory proposal aimed at tackling Chinese state-backed acquisitions. The US judges presiding over these cases, on the other hand, adopted **a highly deferential approach to the Executive**, affording the latter more flexibility in formulating strategies to deal with Chinese export cartels.