# NDT—Doubles—JCCC BB v NU DF

## 1AC

### 1AC --- Adv --- China

#### Contention 1 is CHINA:

#### The supreme court decision in Vitamin C greatly expanded the scope of antitrust by limiting deference to foreign nations BUT didn’t go far enough because it didn’t clarify transparency requirements

Qingxiu Bu, Commercial Law @ University of Sussex, formerly professor of transnational business @ Georgetown Law Center, ’20, ‘“Respectful Consideration, but Not Deference: Chinese Sovereign Amici in the US Supreme Court Vitamin C Judgment” Journal of European Competition Law & Practice, Vol. 11, No. 5–6

The Supreme Court’s decision **clarifies** that the Sherman Act can be used to address anticompetitive behaviours that were supposedly compelled by foreign law.54 Vitamin C makes it clear that federal courts have significant discretion in assigning weight to the selective materials.55 It was held that a ‘federal court should accord respectful consideration to a foreign government’s submission, but is **not bound** to accord conclusive effect to the **foreign government’s statement**.’56 The Court vacated the Second Circuit’s opinion and remanded for revaluating its holding pursuant to its substantial-but not-conclusive deference standard.57 Under the new respectful consideration standard, the Supreme Court’s opinion **identifies** five ‘[r]elevant considerations’ to guide future analyses of a foreign government’s interpretation of its domestic law: (i) the statement’s ‘clarity, thoroughness and support’; (ii) the statement’s ‘context and purpose’; (iii) **the ‘transparency of** the foreign **legal system’**; (iv) the ‘role and authority of the entity or official offering the statements’; **and**. (v) the statement’s consistency with the foreign government’s **past positions.**58 The above criteria would similarly be considered ‘any relevant material or source’ under FRCP Rule 44.1. Despite the lack of a bright line, there is prima facie potential for them to be conducive to predictable, and efficient decision-making.59

This Vitamin C case marks the first time in history that the Chinese government has appeared before the US Supreme Court.60 It raises delicate political, economic, and legal issues about how US courts should treat foreign companies that argue their conduct was mandated by a foreign government. It is notable that the Supreme Court, for the first time, articulated a test that district courts must use in the application of Rule 44.1 to deal with choice of foreign law. Despite the qualitative analysis of the extent to which a federal court should defer to a foreign sovereign’s interpretation, the Supreme Court has not clarified what exactly international comity **abstention entails**.61 It opened the door for US courts to consider a long list of non-exhaustive relevant considerations. The appropriate weight in each case will depend on the circumstances,62 of which each case may dictate how a court will weigh a foreign sovereign’s interpretation of its own law.63

IV. Equitable analysis Given substantial state intervention in the ‘unlevel playing field,’ a one-sided emphasis on comity principles may not efficiently address global anticompetitive behaviours. A foreign sovereign could abuse a position of absolute deference, leaving plaintiffs unable to secure relief in US courts. A conclusive-deference approach would encourage foreign sovereigns to manipulate outcomes by filing legal briefs that support local interests. The Supreme Court’s ruling in Vitamin C defines the role foreign governments can play in US litigation and guide courts on how to deal with foreign governments that attempt to shield ‘their’ companies from US litigation.64 As such, a court need to consider the countervailing interests and policies.65

A. Neutrality, accuracy, and consistence

A foreign sovereign would unlikely be wholly impartial and could be liable to make false or inconsistent representations to federal courts.66 One of the possible risks is that it may not be neutral, which results from a strong incentive to shield its domestic entities from antitrust liability abroad.67 In Vitamin C, MOFCOM may have been motivated to shield domestic firms from treble damages.68 As Sweeney observed, the gains from the uncompetitive behaviour would accrue to their home state, while the victims are foreign purchasers.69 This is reflected in the Chinese government’s allegedly inconsistent position regarding its regulation of Vitamin C exports in front of the World Trade Organisation (WTO).70 China’s submission directly contradicted previous statements it had made about its competition law to theWTO.71 It is inferred that MOFCOM’s position was a post hoc attempt to shield the Chinese defendants’ conduct from antitrust scrutiny.72 Being inconsistent and self-serving, MOFCOM’s statement is due limited deference.73 The **lack of consistency** with earlier positions is not dispositive; however, it **can compromise** the **reliability** of the litigants’ position. As Godi said: ‘In fact, when a foreign government wishes to intervene as a third party to a dispute, its objective is rather clear: self-interest.’74 Opening the door to this kind of manipulation of American lawsuits would be self evidently unwise.75 **The Court should assess** the extent to which the foreign sovereign’s litigation position is **consistent with the positions it has taken in earlier briefs.**76

#### Specifically, the lack of a transparency requirement led the 2nd circuit to exempt Chinese cartels based on post-hoc statements

Wesley, 21 (Richard C. Wesley is a Judge of the United States Court of Appeals for the Second Circuit. At the time of his appointment in 2003, he was a Judge of the New York Court of Appeals. Judge Wesley received his B.A. degree summa cum laude from the State University of New York at Albany in 1971, and his J.D. degree from Cornell Law School in 1974., 8-10-2021, accessed on 11-29-2021, Cases.justia, "Animal Sci. Prods. v. Hebei Welcome Pharma. Co. Ltd. 2021 Dissenting Opinion", <https://cases.justia.com/federal/appellate-courts/ca2/13-4791/13-4791-2021-08-10.pdf?ts=1628605810)//Babcii>

Did “Chinese law require[] the Chinese sellers’ conduct[?]” Animal Sci. Prods., Inc. v. Hebei Welcome Pharm. Co., 138 S. Ct. 1865, 1875 (2018). **The majority never** really **answers. Instead, it improperly applies** the doctrine of **international comity to avoid a finding it cannot contest: that Chinese law did not require the defendants to fix prices** above the minimum of $3.35/kg, which is what Hebei and NCPG (the “defendants”) did. Because it was not impossible for the defendants to comply with both Chinese and U.S. law, this case should not be dismissed on international comity grounds. See Hartford Fire Ins. Co. v. California, 509 U.S. 764, 799 (1993). Section 1 of the Sherman Act prohibits “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several [s]tates, or with foreign nations.” 15 U.S.C. § 1. “[P]rice-fixing agreements are unlawful **per se** under the Sherman Act.” Arizona v. Maricopa Cty. Med. Soc., 457 U.S. 332, 345 (1982). It is well established that § 1 proscribes only concerted, not unilateral, action. See Fisher v. City of Berkeley, Cal., 475 U.S. 260, 266 (1986). “Even where a single firm’s restraints directly affect prices and have the same economic effect as concerted action might have, there can be no liability under § 1 in the absence of agreement [with another, separate entity].” Id. As a threshold matter, the plain text of the regulations and agency charter demonstrates Chinese law did not require the defendants to coordinate vitamin C prices and quantities at all. The 2002 Notice establishing the Price Verification and Chop (“PVC”) system stated “the relevant chambers must . . . submit to [Customs] information on industry-wide negotiated prices.” Sp. App’x 302. The 2003 Announcement explained “the Chambers shall . . . affix the . . . chop . . . to the export contracts at the blocks where the prices and quantities are specified” and “verify the submissions by the exporters based on the industry agreements.” Id. at 310. The Vitamin C Subcommittee, “a self-disciplinary trade organization jointly established on [a] voluntary basis” to, inter alia, “coordinate and guide vitamin C import and export business,” expressly gave members “[f]reedom to withdraw from the Subcommittee” in its amended 2002 Charter. Id. at 325–26. The 2003 Announcement acknowledged **membership was optional**, instructing the Chambers to “give [non-member exporters] the same treatment as to member exporters.” Id. at 311. In other words, under the PVC regime, the defendants were not legally required to engage in any concerted action. They could have complied with Chinese law without violating the Sherman Act by resigning from the Subcommittee and thereby independently setting their prices at or above the industry-coordinated minimum price, abstaining from any “meeting of the minds” to agree on price.1 See Fisher, 475 U.S. at 267. The Ministry and defendants do not dispute this conclusion. The Ministry explicitly agreed that “[u]nder the [Vitamin C Subcommittee’s] 2002 Charter . . . [Subcommittee] membership was no longer necessary to export vitamin C.” Ministry’s Letter Br. at 5. Its argument that “through the PVC system . . . the Chamber . . . ensured that each manufacturer complied with the industry’s price and volume restrictions,” id., does not amount to a violation of the Sherman Act. See Fisher, 475 U.S. at 267 (holding that “the mere fact that all competing property owners must comply with the same provisions of the [city’s rent control] [o]rdinance is not enough to establish a conspiracy among landlords”). The defendants concede members were able to freely resign, but contend they could not because they were members of the executive “Council” elected to four-year terms. See Appellants’ Letter Br. at 3. However, there is no indication their status impeded their legal right to resign. Their argument they could not as “a practical matter,” id., is inapposite; we are concerned only with what Chinese law required. Despite recognizing that members could resign from the Subcommittee, the Ministry avers that the PVC regime required the defendants to violate the Sherman Act. I do not think the Ministry’s submissions merit deference under the Supreme Court’s five-factor test. See Animal Sci. Prods., 138 S. Ct. at 1873. They lack sufficient “clarity, thoroughness, and support,” id., as they conflate China’s 2002 PVC regime with its 1997 regime and fail to address salient issues such as the “suspension provision” of the 2002 Notice permitting “the customs and chambers [to] suspend export price review,” Sp. App’x 302, and the right under the 2002 Charter to freely resign from the Vitamin C Subcommittee. The “context and purpose” factor, Animal Sci. Prods., 138 S. Ct. at 1873, cuts strongly against the Ministry; I do not see how this being the Chinese government’s first official appearance in a U.S. court mitigates the fact that the Ministry has only taken this ––as the majority recognizes––**self-serving position** for the first time in the context of this litigation. See Maj. Op. at 47–48. Its view conflicts with China’s public representation to the World Trade Organization (“**WTO**”) in 2002 **that it “gave up export administration of . . . vitamin C**,” noted under the heading “any restrictions on exports through non-automatic licensing or other means . . . .” World Trade Organization, Transitional Review under Art. 18 of the Protocol of Accession of the People's Republic of China, G/C/W/438, at 2–3 (2002) (some emphasis omitted). Upon careful and respectful consideration, these deficiencies prevent me from finding the submissions worthy of deference. Moreover, the record makes clear that Chinese law did not require the defendants to agree on prices above the minimum of $3.35/kg, which is what the defendants did. In a 2003 Notice informing “member enterprises” of the “industry[-]agreed export prices,” the Chamber asserted “[t]he agreed prices are the minimum prices. We put the limit on the floor prices but not the ceiling prices.” App’x 1934 (emphases added). Wang Qi, an executive of one of the original defendants that settled before trial, testified: Question: And when the minimum price for verification and chop was $3.35, the Chamber of Commerce did not care if your company sold Vitamin C at a price higher than $3.35; isn’t that right? Answer (Qi): Correct. That is like a minimum price. Question: You were free to decide about prices above $3.35 when that was the minimum price? Answer (Qi): Yes, when it’s over they don’t care. . . . Question: And no one ordered you outside of your company to charge prices higher than $3.35 when that was the minimum price? . . . [(Qi asks to clarify question)] Answer (Qi): No. Id. at 1709–10 (emphases added). Qi’s testimony is consistent with the Ministry’s and defendants’ accounts. The Ministry described the PVC regime as “the minimum export price rule,” explaining that “Chinese law imposed minimum price thresholds via PVC,” Ministry’s Letter Br. at 2, 4 (emphasis added), and “[i]f the price was at or above the minimum acceptable price set by coordination through the Chamber, the Chamber affixed a . . . ‘chop,’ on the contract,” App’x 164 (emphasis added). This accords with the Ministry’s consistent contention that China adopted the PVC system to “avoid anti-dumping sanctions imposed by foreign countries on China’s exports,” id., also identified as a goal in the 2002 Notice. See also Appellants’ Letter Br. at 4 (“The prices agreed on were up to the companies so long as they exceeded anti-dumping minima.”). As a result, even if Chinese law required vitamin C exporters to coordinate in setting a price, it was only a minimum price; to collude on prices above that was the defendants’ choice, not their legal obligation. The majority acknowledges that “the [Subcommittee] members were able to exercise some discretion in determining actual market prices by consensus,” Maj. Op. at 36, and that “the PVC regime’s enforcement scheme appears to have required only the [minimum price of $3.35/kg],” id. at 47 n.33. Yet it surmises that “the additional price and volume coordination” above the minimum was “still clearly mandated by the Chinese government,” without any support.2 Id. Neither the defendants nor the majority proffer any evidence suggesting vitamin C exporters needed to agree on every price rather than just the minimum price. Instead, the defendants argue that “the price level established does not matter” because the Sherman Act prohibits price fixing per se. Appellants’ Letter Br. at 6. However, international comity does not work that way. International comity is a careful balancing act.3 It requires “tak[ing] into account the interests of the United States, the interests of the foreign state, and those mutual interests the family of nations have in just and efficiently functioning rules of international law.” In re Maxwell Commc'n Corp., 93 F.3d 1036, 1048 (2d Cir. 1996). Accordingly, “[w]hen there is a conflict, a court should seek a reasonable accommodation that reconciles the central concerns of both sets of laws.” Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Ct. for S. Dist. of Iowa, 482 U.S. 522, 555 (1987) (Blackmun, J., concurring). China’s purpose in enacting the PVC regime, as characterized by the Ministry, was to “transition from a Statecontrolled economy” as it entered the WTO and to avoid anti-dumping sanctions. Ministry’s Letter Br. at 3. Even accepting for argument’s sake that Chinese law required the defendants to coordinate on a minimum price to achieve its concern about anti-dumping claims, applying comity for agreements **above the minimum** goes above and beyond **accommodating the central interests of the foreign state**. Nothing in the international comity precedents implies a true conflict exists where only part of the defendants’ conduct was required under foreign law. As the Supreme Court held in Hartford Fire, there is no true conflict if foreign law did not “require[] [defendants] to act in some fashion prohibited by the law of the United States” or if the defendants’ “compliance with the laws of both countries” was possible. 509 U.S. at 799. The phrase “act in some fashion” does not direct courts to ignore whether there exists a true conflict as to the defendants’ actual conduct at issue. Indeed, as the majority recites repeatedly, the comity analysis looks to the “degree of conflict with foreign law,” not simply whether there is any conflict period. See Timberlane Lumber Co. v. Bank of Am., N.T. & S.A., 549 F.2d 597, 614 (9th Cir. 1976) (emphasis added).4 Accordingly, even if the PVC regime required the defendants to agree on a minimum price and the defendants could not have complied with the Sherman Act because it prohibits price fixing per se, comity does not demand that we set aside examining if their actual price-fixing conduct was required under Chinese law. The defendants could have complied with Chinese law and the Sherman Act by: (1) exercising their legal right to resign from the Subcommittee and not participating in any conspiracy to set prices, or (2) not colluding on prices above the minimum, the only price needed to receive a chop. Given the “virtually unflagging obligation of the federal courts to exercise the jurisdiction given them,” Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 817 (1976), this is not the “rare” case presenting “extraordinary circumstances” that warrants dismissal on the basis of comity, see Brief for U.S. Gov’t as Amicus Curiae, Animal Sci. Prods., 138 S. Ct. 1865 (No. 16-1220), at 19. I would affirm the judgment of the district court.5

#### The post-hoc nature of the defense opens the door for inconsistency in international trade and antitrust law

Wang, 12 (Dingding Tina Wang, J.D. Candidate 2012, Columbia Law Vol. 112, No.5 , June 2012, Accessed 11-12-21, “WHEN ANTITRUST MET WTO: WHY U.S. COURTS SHOULD CONSIDER U.S.-CHINA WTO DISPUTES IN DECIDING ANTITRUST CASES INVOLVING CHINESE EXPORTS” https://www.jstor.org/stable/23238449) //Babcii

2. Interplay of Antitrust Law and WTO Law. — **WTO law and antitrust law share the common goal of ensuring competition**, whether between domestic and foreign producers or among producers in general.79 But the WTO did not standardize an international form of antitrust law, and antitrust law remains cleaved along national lines.80 A **member country** generally cannot sue another member country in the WTO for anticompetitive **conduct by private actors**.81 Some scholars have argued that there is little incentive for a country to sign onto an international antitrust agreement because the advantage of export cartels for the exporting country is that losses typically fall to foreign consumers and gains accrue to domestic producers.82 National governments have an incentive to set up, encourage, or tolerate export cartels as a way to prop up domestic producers and externalize the costs of doing so to foreign markets,83 though at the risk of provoking trade tensions.84 Overall, WTO law continues to **focus on state conduct while antitrust** law mostly **targets private anticompetitive conduct**. But national antitrust law and WTO law interact and are **likely to conflict** when private anticompetitive conduct is mixed with state conduct. As a prime example, the recent U.S.-China WTO dispute over China's export restraints on certain raw materials closely tracks the pending antitrust cases in U.S. courts, but the U.S. government and U.S. plaintiffs made contradicting claims: The U.S. government argued in the WTO that the Chinese government directed the export restraints, while the U.S. private parties argued in U.S. courts that the Chinese government did not direct the export restraints.85 If China's price restraints are public in nature, the producers may be **immune from U.S. antitrust** li ability, due to available common-law foreign-sovereignty-related defenses, but the country should be vulnerable to WTO liability. If the price restraints are private in nature, **China should avoid WTO liability** but the private antitrust cases should proceed on the merits, because the foreign sovereignty-related defenses would fail.86 **There is** the risk of **theoretical inconsistency**, in which both the foreign country and its private producers are held liable, and the resulting "double whammy" for the foreign country of both treble damages from U.S. antitrust liability and trade sanctions from WTO liability.87 As one antitrust treatise notes, WTO and national antitrust cases "when taken together raise fascinating possibilities for the interaction between competition policy and international trade law."88 The DOJ and FTC also observe, "There has always been a close relationship between the international application of the antitrust laws and the policies and rules governing the international trade of the United States. II. Chinese Exports: A Tale of Three Judicial Approaches to the U.S.-China WTO Dispute This Part explores the interaction between three domestic antitrust actions and the parallel WTO dispute. Part II.A describes the unprecedented Chinese government participation in the vitamin C case in the Eastern District of New York and describes the court's treatment of the Chinese government's representations to the court. Part II.B shows how the U.S.-China WTO dispute interacts with the vitamin C case, particularly through the U.S. government's extensive use, in its WTO filings, of the Chinese government's statements in the vitamin C case. Part II.C compares the approaches that the three district courts have taken in re sponse to the existence of the U.S.-China WTO dispute. Part II.C.l de scribes the Western District of Pennsylvania's constitutional and prag matic rationales for issuing a stay of its case pending resolution of the WTO dispute. Part II.C.2 explores the District of New Jersey's use of the U.S. executive branch's position in the WTO dispute to help it make fac tual and legal findings. Part II.D.l provides the broader context of U.S. courts' treatment of decisions by international tribunals, and, in particu lar, the Federal Circuit's refusal to accord legal deference to WTO rul ings in its interpretation of U.S. trade law. The section notes that the precedent leaves room for ways that WTO cases can factually inform courts' application of other areas of U.S. law, such as antitrust. Part II.D.2 describes a line of trade-remedy cases in which courts still acknowledge that WTO decisions can be informative or persuasive and argues that this approach can be extended to domestic antitrust cases. A. Vitamin C Case: The Chinese Government Speaks In the vitamin C case discussed in Part I.B, the Chinese government, apparently for the first time ever, filed an amicus brief in U.S. court.90 China's Ministry of Commerce, a government body under the direction of the State Council (China's equivalent of the U.S. Cabinet) that regulates China's foreign trade, sought to bolster the Chinese vitamin C producers' **defenses of act of state, foreign sovereign compulsion, and international comity**. The Ministry first submitted a **brief** to the district court in 2006 explaining that, under China's export regulatory regime, the Chinese government, through an affiliated trade chamber, **directed** defendants to coordinate export **price** floors **among themselve**s.91 To counter the plaintiffs' argument that the defendants' trade association, CCCMHPIE, was a private organization, the Ministry stated that the chamber "is an entity under the Ministry's direct and active supervision"92 and that it authorized the creation of the chamber's vitamin C subcommittee to which the Chinese defendants belonged. **The Ministry did not directly set prices** but ordered the subcommittee members to attend price discussion meetings, vote on price floors, and comply with those price floors, under penalty of having their export allowances reduced or their export licenses revoked.93 In response, the plaintiffs pointed to the Chinese government s past public statements extolling the independence of trade chambers to support the plaintiffs' position that the chamber is a private actor. The Ministry of Commerce then filed a statement with the court in 2008 emphasizing that its 2006 amicus brief, rather than the past public statements, represented the Ministry's official position.94 The Ministry stressed that China's chambers of commerce do not fit the U.S. conception of a chamber of commerce: "[P] lain tiffs trivialize China's organs of regulation where those organs differ in structure or function from ones more familiar to the plaintiffs."95 Finally, the Ministry appealed to respect for sovereignty and reliance on diplomacy: [T]he Chinese government respectfully submits that, to the extent the plaintiffs take issue with the Chinese government's sovereign actions over the conduct solely of its own citizens, that issue should not be addressed in the courts of the United States but rather through bilateral trade negotiations conducted by the executive branches of the respective sovereign nations . . . .96 This argument echoed the judicial reasoning behind the act of state doctrine, with its concern for preserving the role of the executive branch in conducting foreign policy. Nonetheless, the district court allowed the action to proceed past the motion to dismiss stage, stating it was still **unclear whether the Chinese vitamin C producers' actions were compelled or voluntary**.97 While professing deference to the Ministry's arguments, the court em phasized that the trade association's own documents, including its public website, portrayed the exporters as reaching a "self-regulated agreement" in which they would "voluntarily control" the price and quantity of ex ports and take "self-restraint measures."98 But it also noted the Ministry's argument that terms such as exporters' "voluntary self-restraint" and "self-discipline" used in the chamber's documents should not be taken at "face value" or for their literal translations but should be placed in the context of China's regulatory system.99 In support of the defendants' mo tion for summary judgment, the Ministry submitted a statement to the court in 2009 in response: This [self-discipline] system has a long history in China and has been well known to, and complied with by, Chinese companies. Self-discipline does not mean complete voluntariness or self conduct. In effect, self-discipline refers to a system of regulation under the supervision of a designated agency acting on behalf of the Chinese government.100 These Ministry statements in U.S. court would come in handy when the United States sued China under the WTO, as discussed in the next sec tion. Nevertheless, the district court (this time under a different judge) eventually ruled against the Chinese defendants' summary judgment mo tion, finding that as a matter of law the Chinese government did not compel defendants to fix export prices.101 The court found that there was no evidence, on the face of the government directives and the trade as sociation's documents, that the Ministry of Commerce required, rather than merely encouraged, the exporters' price and output agreements.102 It found that even if some compulsion existed, the Chinese government only compelled exporters to avoid below-cost pricing and foreign anti dumping charges, not to set specific price levels that were above those necessary to achieve the government's goals.103 The court settled on ac cepting the so-called "plain language" of government regulations and trade association documents that emphasized the exporters' system of "self-discipline" and "voluntary" cooperation, and rejected the Chinese defendants' and Chinese government's insistence that such language be placed in the context of China's regulatory culture.104 It also found that **the Ministry of Commerce's amicus brief and statements105 to the court reflected a "carefully crafted and phrased litigation position" that was a "post-hoc" attempt to shield the exporters from liability.**106

#### Those inconsistencies create incentives for China to game the system

Fox and Janow, 12 (Eleanor Fox and Merit Janow, Walter J. Derenberg Professor of Trade Regulation at New York University School of Law, l Professor, Columbia University, 2012, accessed on 2-8-2022, Its.law.nyu, "China, the WTO, and Statesponsored export cartels: Where trade and competition ought to meet ", https://its.law.nyu.edu/faculty/profiles/representiveFiles/fox%20-%20China\_%20the%20WTO\_%20and%20Statesponsored%20export%20cartels\_FED2F0A6-A495-4641-11BC016851056F31.pdf)//Babcii

Has China lit its candle at both ends? We consider the hypothetical case of China sponsored hard core export restraints, which could in theory be carried out either by the state or by firms under the control of the state. We examine their legitimacy, both under WTO treaty obligations and under antitrust law. In so doing, we are struck by the opportunities for nations to **play** one **system** (trade) **against the other** (competition). At the end of this essay, we suggest a modality for bringing the systems and their fact-finding into greater coherence or at least awareness. We concentrate principally on one particular ongoing litigation, the US antitrust case against four Chinese firms for fixing prices of vitamin C into the United States (the firms admit the price-fixing and attribute it to China),1 as compared with a hypothetical proceeding in the World Trade Organization against China for sponsoring the export cartel. In the pending US antitrust case, Vitamin C, the Chinese firms defend that their cartel was lawful; that it was in fact China’s cartel; and they argue that the price-fixers are shielded from liability by the foreign sovereign compulsion defense. In the Vitamin C case, China’s Ministry of Commerce has, exceptionally, filed an amicus brief taking ownership of the cartel.2 Some years earlier, in the process of joining the WTO, **China undertook** extensive market-opening accession commitments. These  commitments included China’s undertaking to **allow the market to set prices** “in every sector” **except in areas specified**.3 Vitamins were not among the reserved items. China’s commitments reinforce a number of WTO provisions. For example, Article XI of the GATT speaks to the elimination of quantitative restrictions on imports and exports,4 Article 7.2 of China’s Protocol states its commitment not to “introduce, reintroduce or apply non-tariff measures;”5 Article 11 of the Safeguards Agreement prohibits voluntary export restraints, orderly marketing arrangements and other similar export measures... 6 What if China were exonerated in notional **WTO proceedings** against it for ordering a **vitamin C cartel** on grounds that the evidence was too ambiguous to conclude that the government itself ordered the output and price restrictions (a measure that would be reachable under some facts under China’s protocol and GATT Article XI7 ), **and** if the Chinese vitamins firms were **exonerated in the US court proceedings** on grounds that China did order the restrictions? We pose this possibility to examine two larger questions. 1) What is the appropriate perspective on the right of the state to take measures that impose costs on the trading system, and what is the appropriate perspective on the right of firms to invoke state action in defense of their export cartel? 2) What modalities can minimize the gaming and can nudge the systems towards coherence, both on fact-finding (what did Chinese officials say to whom?) and on the narrative: Did China adopt a governmental measure ordering the cartel within the meaning of its WTO undertakings; did it order the cartel within the meaning of the antitrust foreign sovereign compulsion defense? Did it order the cartel and also the terms of it, and does that matter?8 Should “order” mean the same thing in WTO language and in antitrust language? What are the consequences if the default perspectives for trade and for competition are not aligned? What are the consequences if WTO obligations are construed to give more policy space to China, and if the antitrust defense is construed to disfavor exceptions from the antitrust rule against cartels (as it is)? The appropriate perspective? We have a view: Trade and competition are two sides of the same coin. Trade and competition rules sympathetic to markets are important in today’s world of deep economic globalization. The financial crisis and its aftermath has increased tendencies of nations to draw inwards and to be attracted to more narrowly self-interested measures in the hope that nationalism might solve their problems. Often, the opposite is true. A perspective of openness and regard for the larger community is likely to enhance economic welfare, in general to produce more harmony, and to take an edge off conflicts in the world. We therefore prefer an approach in which commitments are interpreted strictly when construing undertakings by nations to forsake export restraints or export cartels. The counterpart to a state commitment to play by rules of free trade (not to restrain exports) is the private firm commitment to play by the rules of competition (not to cartelize). The anticartel rule is strong and stronger than it ever has been in the history of the world. Why? Because more and more nations appreciate the value of markets; they are in search of growth, and they are committed to building environments in which their producers can flourish and in which consumers can get fair deals. All antitrust nations of the world recognize that hard core cartels are heinous; cartels rob the people; they degrade competition, chilling the incentives that lead firms to invent and produce, create jobs and create wealth. There is no international law of competition, but there is one principle of antitrust law that can be found in all national antitrust regimes: No hard core cartels.9 Why, then, does the law of the US and other nations allow a foreign sovereign compulsion defense to a hard core cartel? There are two reasons: 1) Deference to sovereignty. If the state has a right to take certain measures (restrain exports), then should it not be allowed to use its firms as the means to do so? 2) Fairness to the commanded firms. Should a firm be punished merely for following the command of its state? If indeed China undertook not to order export cartels, then there would be no need for a foreign sovereign compulsion defense in order to respect the sovereignty space of China, for China would have forsaken just such policy space in return for the greater benefits of the world trading system.10 If, further, the defendant vitamin C firms had the choice not to price fix into the United States as far as China was concerned, either because China did not issue an order or the order was objectively invalid as contrary to China’s obligations, it would not be unfair to the firms to hold them to account. Indeed, even if the firms perceived that they were following the policy of their country, one could make a rather convincing argument that it is more unfair to the overcharged consumers for a court to refuse to apply the anti-cartel law than it is unfair to the profiteering cartelists to apply the US law.11 And if China (MOFOM) ordered the firms to collaborate on production to avoid dumping lawsuits and the firms proceeded to agree to an elevated price far above what any objective avoidance would require (plaintiffs allege that price rose almost 200%, from $2.50 to $7.00 per kilogram), again, fairness may not lie on the side of the firms.12 Thus, depending on the facts, neither the privilege of the sovereign nor equity to firms may require an antitrust defense, let alone a wide one. But still, our hypothetical may **come to pass**. The reach of international trade rules over state sponsored export cartels is **not well established**, we are just beginning to see cases litigating the scope of applicable rules. Moreover, both **China’s** governmental measures and the WTO obligations are not without ambiguity. The WTO could uphold the state as fulfilling its WTO commitments and the US federal court could uphold the firms’ submission that their conduct was compelled.13 Or conversely, there could be state liability at the WTO and private liability in antitrust. What might be done to avert such possibilities, or at least to avert **gaming by the litigants**?

#### Antitrust and certainty are key to preventing corporate adventurism

Martyniszyn, 12 (Marek Martyniszyn, PhD Candidate, Ad Astra Scholar, University College Dublin School of Law, 2012, accessed on 1-3-2022, Queens University, "Export Cartels: Is it Legal to Target your Neighbour? Analysis in Light of Recent Case Law", https://pureadmin.qub.ac.uk/ws/portalfiles/portal/13701517/SSRN\_id2012838\_1.pdf)//Babcii

VI. Conclusion The **creativity of the corporate world seems unlimited**. There is no reason to believe that businesses around the world would refrain from taking advantage of the present **regulatory system allowing for export cartels**. The absence of empirical data should not lead to the conclusion that the issue is nonexistent. The unique treatment accorded to export cartels at the moment, as compared to other types of cartels, by their tolerance or encouragement, and the immunity from domestic antitrust laws, is not a beneficial policy in the long-run. The recent case law illustrates the deficiencies of the present regulatory framework. The lack of an international mechanism addressing export cartels forces targeted states to rely on extraterritorial application of national competition laws. In general this unilateral route, from a practical perspective, requires expertise and resources, which are scarce in many jurisdictions. As the Indian ANSAC case shows, the lack of an explicit legal basis in national legislation providing for extraterritoriality may hinder such actions. It also underlines that when binding international mechanisms in competition law are lacking, the matter will be addressed through trade policy when important economic interests are at stake. It suggests that it is in the best interest of the less powerful states who are interested in legal resolution of controversies arising from transnational anticompetitive conduct and who lack trade muscle, to work towards international consensus in this area. At the same time, the South African case shows that when competition law is free to take its course unobstructed, extraterritoriality may lead to positive outcomes and may be a useful tool in the fight with export cartels. It is noteworthy that both cases concerned the same officially registered and publicly known export cartel, which was earlier challenged in a developed competition law regime. This seems to be the only case of this nature. **The Chinese**/US **cases**, in general, point out that export **cartels** may come also from the global South. If this development **become**s **a large**r **phenomenon**, it could, in principle, reframe the discussion on export cartels in terms of possible tradeoffs. Some economists suggested tying a general prohibition of export cartels in developed countries227 with market access concessions on behalf of and transfers from developing world as a form of reciprocation.228 Were export cartels to become more widespread in the global South, any such ‘package deal’ would require reconsideration. Moreover, the Chinese export cartel cases show that government’s **involvement** in transnational anticompetitive conduct, like export cartels, **poses a challenge to antitrust regimes**. If the bulwark of sovereignty proves to provide a **shelter** in such scenarios, then there is a risk that state-protected **export cartels become more prevalent, undermining** not only the **competition** laws, but also the **rules of international trade, by according** entities engaged in such anticompetitive conduct **a comparative advantage**. This perspective may in fact incentivize international community to look for a solution to the issue of both private and public, state(s)-driven, export cartels. While it is unlikely to reach a compromise prohibiting public export cartels dealing with natural resources,229 this as such should not restrain us from placing them on the international agenda as well, looking for a mutually beneficial solution with an intention to tighten up the gaps in the current regulatory framework.

#### China’s attempts to “game” the system undermine the transnational legal process (TLP)

Shen, 20 (Weimin Shen, L.L.M, J.S.D., Washington University School of Law, 8-2-2020, accessed on 11-24-2021, Papers.ssrn, "The Role of Transnational Legal Process in Enforcing WTO Law and Competition Policy", https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3785688)//Babcii

“Export cartel” refers to a collusive behavior between exporting firms “to charge a specified export price or to divide export markets among themselves.”1 The purpose is often to enhance domestic firms’ welfare at the expense of foreign consumers. 2 **Antitrust and** the World Trade Organization (“**WTO**”) are mutually exclusive remedies when dealing with an **export cartel**. The difference is that a successful antitrust proceeding depends on showing the **absence of government involvement**. In contrast, a WTO proceeding’s success depends on showing **the State’s participation** in export restraints. Lately, **the lines have blurred when certain export cartels wind their way through U.S. courts.** In such cases, the extent to which U.S. courts should enforce antitrust laws against foreign export cartels has been controversial, as defendants often invoke foreign-sovereignty-related defenses. This issue has become more prominent than ever with involved litigants who are at times unable to apply their antitrust laws extraterritorially to international cartels because of the difficulty of obtaining evidence that is located outside of their jurisdiction. Similarly, litigants at the WTO complained about the government’s role in the administrative and judicial system, including the use of verbal demands and informal notices on export cartels. This intervention undermines the ability to show that a WTO-inconsistent measure exists. Several recent U.S. antitrust litigations involving Chinese export cartels highlight this challenge. In **In re Vitamin C** Antitrust Litigation (“Vitamin C”),3 the Chinese defendants moved to dismiss the complaint of price-fixing on the ground that Chinese law required them to fix the price and quantity of vitamin C exports, **shielding them from liability under U.S. antitrust law.** The defendants invoked comity, sovereign compulsion, and the act of state doctrines.4 The Chinese **Ministry of Commerce** (“Ministry”) took the unprecedented step of intervening as amicus curiae in the proceeding. The Ministry explained that the China Chamber of Commerce of Medicines & Health Products Importers & Exporters (“CCCMHPIE”) is a “Ministry-supervised entity authorized by the Ministry to regulate vitamin C export prices and output levels.”5 Thus, the Chinese defendants were compelled under Chinese law to collectively set a price for vitamin C exports.6 Two similar antitrust cases were brought in the U.S. courts against Chinese export cartels. In Resco Products, Inc. v. Bosai Minerals Group,7 private litigants alleged price-fixing and other anti-competitive behavior by certain Chinese exporters of bauxite. As the members of the China Chamber of Commerce of Metals Minerals & Chemicals Importers & Exporters (“CCCMC”), the Chinese defendants relied on the amicus brief filed by the Ministry in Vitamin C and argued that CCCMC was a government entity that directed them to coordinate their price.8 Similarly, in Animal Science Products, Inc. v. China National Metals and Minerals Import and Export Corp,9 private litigants alleged price-fixing and other anti-competitive behavior by certain Chinese exporters of magnesite in a separate U.S. court proceeding. The defendants asserted that their trade chamber, CCCMC, was an instrument of the Chinese government to regulate export trade.10 On June 23, 2009, with the blessings of the Obama Administration, the U.S. government requested WTO consultations with China regarding China’s export restraints on several raw materials.11 In its first written submission, the U.S. government cited the above three cases, arguing that based upon representations already made by the Chinese Ministry, “the European understands that the CCCMC’s export-price related functions and responsibilities . . . are attributable to China.”12 On December 21, 2009, the Dispute Settlement Body (“DSB”) established a single panel to examine the complaints.13 The above **case**s fostered a **perception that** antitrust and WTO meet when private anticompetitive conduct is mixed with state conduct. Emblematic of this viewpoint is Professor Eleanor M. Fox and Professor Merit E. Janow’s argument that “[t]rade and competition rules sympathetic to markets are important in today’s world of deep economic globalization.”14 Both of the scholars were astonished by the **opportunities for nations to play one system** (trade) **against the other** (competition). They also cautioned that U.S. **courts** involved with foreign export cartels need to flexibly interact with the international regime to form a coherent approach to legal challenges over foreign regulatory systems.15 What academics and other commentators have missed is that the involved U.S. courts and the executive branch’s stance in the above litigations perfectly illustrates a pervasive Transnational Legal Process. The U.S. not only **represents all antitrust nations’ interests** when it is anti-cartel. The **transnational actors generated interactions that led to WTO law** and competition policy interpretations that become internalized, thereby binding under domestic law (in this Article, China law). This Article assesses the roles of Transnational Legal Process by examining transnational actors engaged in antitrust litigation and evaluating their relationship to transnational actors participating in the WTO litigation. My central thesis is that essential **synergies exist** between trade and competition, in which Transnational Legal Process will largely prove a positive role in constraining state-sponsored export cartels and international cartels. To avert gaming by the litigants due to ambiguous factual evidence in cartel cases, U.S. courts and the executive branch should become active transnational actors. They therefore stimulate each other to **participate in a dynamic process of Transnational Legal Process**. Under the condition that cartel action is attributable to State in the antitrust proceeding, as defendants invoke foreign-sovereignty-related defenses, transnational actors in the competition system promote WTO obedience by sending a strong signal to the executive branch. Under the condition that **cartel action is attributable to private parties** in the WTO proceeding, transnational actors in **the competition system** should perform a gap-**filling rol**e that the WTO system **precludes**. 16 The resulting tendency is to suggest **a synergistic relationship** between transnational actors to play by rules of free trade (not to restrain exports) and competition (not to cartelize). Having described the most basic features of Transnational Legal Process, my Article partly confirms that Transnational Legal Process **could** somewhat fix the potentially worrying issue of nations’ opportunities to **play one system** (trade) **against the other** (competition). This Article is organized as follows: Part II explores the treatment of cartels and important synergies that exist between WTO law and competition law. Part III details the theory of Transnational Legal Process and explores its potential role where the antitrust system and the WTO system meet. Part IV examines the role of Transnational Legal Process in enforcing WTO law and competition policy in the Chinese context.17 I examine the chief factors behind China’s economic transition that have shaped its current antitrust economic conditions. I then discuss the relationship between trade associations and the government under the hybrid nature of China’s regulatory environment. Part V explores relevant cases, focusing on U.S. transnational actor involvement. These cases support the basic premises that U.S. courts as part of Transnational Legal Process have successfully stimulated other participants (in this Article, the United States Trade Representative (“USTR”)). The key point is that Transnational Legal Process is active and significantly affected China’s WTO internalization and competition policy convergence.18 The last Chapter stresses the future of Transnational Legal Process, free trade, and competition. I suggest that the WTO plays a central role in framing the issues at play in the U.S.-China **trade dispute**. Meanwhile, I argue Transnational Legal Process needs to discern the means to champion **transformation in other facets, such as human rights**, before internalizing international trade laws. Or, given the **high stakes**, it needs to learn how to **leverage trade cooperation to internalize other domains of laws and regulations as a part of Transnational Legal Process**. On the surface, it may appear that faith in Transnational Legal Process has collapsed in the domain of international trade. Critics argued that the world is experiencing a new situation where there is no international law to apply, or the existing WTO law may not **precisely cover this new situation**. I contend, however, that the influence of Transnational Legal Process is still at work, even **as the world experiences its longest-ever trade tensions**. Transnational Legal Process remains standing in good faith among the opportunities **for the U**nited **S**tates to strengthen free **trade** and competition—by translating the spirit and **intent of existing law to govern it.**

#### It's the core test for overall legitimacy of the process --- Success spills over to other domains

Shen, 20 (Weimin Shen, L.L.M, J.S.D., Washington University School of Law, 8-2-2020, accessed on 11-24-2021, Papers.ssrn, "The Role of Transnational Legal Process in Enforcing WTO Law and Competition Policy", https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3785688)//Babcii

Nevertheless, the influence of **T**ransnational **L**egal **P**rocess is still very much **at work**, even as the world is experiencing its worst “slowbalisation.” 299 What is at stake is that the success experienced in the international trade regime **did not replicate itself in other international law domains**. In particular, when this theory comes to human rights, the government would block them out. As such, having secured the legal certainty and economic benefits of most-favored-nation treatment through WTO accession, the failed internalization parts embarked on a mission to ensure that the economic transformation would not upend its political control. V. CONCLUSION This article seeks to explore the roles of Transnational Legal Process in the realm of trade and competition systems. It is mainly focused on how US courts and the executive branch in a synergistic relationship enforce WTO obedience and **competition policy** convergence as part of **Transnational Legal Process**. I have given concrete examples of Transnational Legal Process actively working and reforming China’s industry to comply with rules of free trade and competition. Transnational Legal Process is a wise strategy to negotiate with China through a combination of self-interest and legal process, which could contribute to long-term national obedience with international law. **A spirit of openness** and regard for the broader community is likely to promote **economic welfare** as a whole, create **more harmony**, and take an edge off the world’s **conflicts**. Time will tell whether Transnational Legal **Process can meet this challenge**. What is certain, though, is that the unique nature of the Chinese economy creates new tensions for interpreting **WTO law and the roles of Transnational Legal Process**. In the future, Transnational Legal Process may need to discern the means to champion transformation in other facets, such as human rights, before internalizing international trade laws. Or, given the **high stakes**, it may need to learn how to leverage **trade** cooperation to internalize **other domains of laws** and regulations **in the process** of Transnational Legal Process. In any event, the U.S. is not the only proponent of Transnational Legal Process. All allies should support the system of global governance and address the real problems of the world.

#### That’s key to an effective strategy to combat transnational threats

Shen, 20 (Weimin Shen, L.L.M, J.S.D., Washington University School of Law, 8-2-2020, accessed on 11-24-2021, Papers.ssrn, "The Role of Transnational Legal Process in Enforcing WTO Law and Competition Policy", https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3785688)//Babcii

From this perspective, I have already argued that **transnational actors** (in this Article, U.S. courts and the USTR) **preserved international law** by participating in **Transnational Legal Process** by **working together** and **encouraging** each other through a complex **norm internalization**. They were not only spurred by self-interest; more importantly, these transnational actors also promoted WTO law compliance and competition policy convergence. In the next section, I propose transnational actors’ suggestions that together would constitute positive next steps for this critical economic relationship. The core is to avoid fostering a relationship shaped only by competition and identifying where mutually beneficial outcomes are possible. As the U.S. Department of Defense has pointed out, while China is a critical long-term strategic competitor, “competition does not mean conflict is inevitable, or preclude cooperation with China on areas of mutual interest.”276 B. What’s at Stake: Transnational Legal Process, Free Trade, and Competition The **cooperation of the 21st century was dominated by international organizations** created by formally negotiated and legally binding treaties.277 To maintain this structure of global cooperation, **the U**nited **S**tates supported the creation of an elaborate **legal framework to constrain illiberal actions** and encourage the notion of using global collaboration to solve global problems, such as **war** crimes, **trade** imbalances, **climate change**, immigration, and refugees. As the primary pioneer of liberal internationalism, this approach adopted by the United States was simple: **more diplomacy, more human rights, more democracy, and more legal process**.278 For example, the Paris Deal about climate change was negotiated under the auspices of the United Nations Framework Convention on Climate Change (“UNFCCC”), a treaty with 196 state parties to which the U.S. Senate gave its consent in 1992. Indeed, the evolution of the Paris Deal “graphically illustrated the engage-translate-leverage framework.”279 This deal also allows the U.S. to engage with countries around the world, such as G-20 members, members of the Major Economies Forum (“MEF”), and members of BASIC (Brazil, South Africa, India, and China) to frame the global deal. As Professor Koh commented: Instead of treating **climate change** as an area without law, the United States translated from **norms** inchoate in the rigid, legally binding, top-down Kyoto architecture, which specified internationally negotiated emissions targets that applied only to developed countries, to a much more informal, politically binding, bottom-up Copenhagen blueprint infused with stronger norms and with greater symmetry between the duties of developed and developing nations. 280 Likewise, the theory of Transnational Legal Process is significant in trade domains as well.281 The world is in a system of international commercial transactions that operates mostly with the hope of more and more market opening and less governmental intervention. The WTO is the only multilateral set of agreed-upon rules and norms of behavior to evaluate the Chinese economic structure’s impact on the international level. Seeing the WTO in this way **grants the U.S. authority** to confirm where China fails to comply with **existing commitments** and indicate where WTO laws are unable to discipline China on unfair trade practices and where bilateral or unilateral action may be necessary.

#### Transnational threats result in extinction

Nagan ’14 [Winston; April 20; Professor of Law at the University of Florida, LL.M. from Duke University, J.D. from Yale University, M.A. from Oxford University; Cadmus, “The Crisis of the Existing Global Paradigm of Governance and Political Economy,” vol. 2]

Abstract This article seeks to underline the central challenges to world order that are outcomes of our current system of global, social, power and constitutional processes. The article outlines these major problems which it is suggested represent a crisis for the future trajectory of human survival and well-being. The paper then uses the problem of the emergence of transnational criminal activity in order to underline the limits of the current global paradigm of governance. In effect, in the criminal law context the jurisdiction of sovereign states to attack the problem of transnational crime is hedged with severe limitations. The most important of these limitations is the fact that the jurisdiction over crimes by sovereigns is limited by the territorial character of the definition of sovereignty. Thus a sovereign has a limited capacity to control and police criminal activity whose main locus of operation is generated outside of the territorial reach of the sovereign state. This essentially means that the element of global governance generates a juridical vacuum which permits organized crime to flourish outside of the boundaries of the state but at the same time, having the capacity to penetrate and corrupt the social, political and juridical processes of the sovereign state. The article explores the effort of the UN to provide some form of response to this crisis in the form of an international agreement. The most important global expectation about global governance is reflected in the Preamble of the UN Charter and it is authorized by “we, the people” of the earth/space community. That expectation includes the high priority humanity gives to international peace and security; the reaffirmation of faith and fundamental human rights, in the dignity and worth of the human person, and equal rights for men and women and nations of whatever size. It also underscores the importance of the global rule of law as well as the promotion of social progress, better standards of life, and expanding freedoms. That is the promise. However, at the practical level the institutions of global governance have been to a large extent a captive of their own history. That history emerged with scholars in the late 1500s and early 1600s (Bodin and Hobbes) and later was given a juridical imperator in the Treaty of Westphalia (1648). In the early 19th century Bodin, Hobbes, and Westphalia were given a powerful juridical imprimatur when John Austin published his influential book The Province of Jurisprudence Determined. In effect, from Bodin to Austin we have the developments from scholarship, to political agreement to creation of a jurisprudential foundation for the notion of the territorially organized sovereign state. The sovereign state became the currency of international relations, diplomacy, international law, as well as a powerful limitation on the force and efficacy of both international law and constitutional law. In the 20th century the sovereignty idea contained no obvious constraints that could limit a drift into a global war (WWI). Moreover, the creation of the League of Nations system and the Covenant of the League was itself limited in a context of facilitating international peace and security by state claims to sovereign absolutism. At the end of WWII the victorious powers adopted the Charter of the United Nations. The Charter reflected ambiguity of its authority resting in “we, the people” and the residual strength and ambition of sovereign state powers, claiming frequently the competence to trump activities challenging their ambitions and interests. The current paradigm is thus responsible for generating problems that now seem to challenge the survivability of humanity, as well as undermine the prospect of global policy and practice that moves in a trajectory that secures humanity's wellbeing for the future. We list several of the most obvious scenarios where the state/sovereign-centered paradigm is limited in its capacity to respond effectively to the crisis of humanity’s future survivability and wellbeing. These are listed as follows: 1. The crisis of the global war system. States no longer have an effective monopoly on war making. States have been involved in privatizing the functions of the military with unforeseeable consequences. There continues to be the emergence of mercenary-like forces for hire in the global environment. The proliferation of the flow of arms and armaments in the global arms market remains significantly unregulated. The existence of weapons of mass destruction (nuclear, chemical and biological) still represents a major crisis regarding the acquisition of the technologies and assets of these weapons systems falling into the hands of terrorists groups or organized crime cartels.1 2. The growth of civil society deviance may threaten world order when it develops into forms of apocalyptic terrorism, state terrorism, organized crime, human trafficking, global drug production and distribution, and trading in small arms and/or components of mass destruction. 3. Global political economy of radical inequality. Conventional economic theory seems to lead a global race to the bottom. More wealth is produced than ever before and greater inequality is produced as well. Greater wealth concentrations often result in plutocracy which favors the wealthy and greater alienation for the impoverished. What is needed is an economic paradigm that is not confined to a single state or sovereign but a paradigm that functions within the context of a global, social and political process and responds to the problems that emerge from this process from a global inclusive perspective. 4. The depreciation of a human right to development, a depreciation that undermines the value potentials of human capital for the improvement of the human prospect. Clearly, the right to development is a human right of global dimensions and requires a global solution to effectively respond to it. The solution here is beyond the parochialism of national sovereignty. 5. The importance of a viable ecosystem for the survival of humanity requires policy making that is beyond the nation states’ competence. In short, global warming and climate change are matters of inclusive global concern. All must participate because all have a stake in preserving a viable ecosystem for all. 6. Human demographics and human survivability. The radical population increases raise the question of whether food security and accessibility to clean healthy water may be put at risk when earth’s population exponentially increases. Demographic growth may well challenge eco-social and economic capacity of the earth to indefinitely sustain such increases without important radical innovations in birth control, food production, and water conservation. These issues transcend any particular nation state. 7. The global capacity to respond to natural catastrophes (tsunamis, earthquakes, hurricanes, asteroid collisions). It’s now well accepted that such catastrophes require global action because the capacity of any particular sovereign is limited in this regard. 8. The global health crisis (AIDS, malaria, TB, Ebola, etc). It is clear today that any emergent global pandemic will be beyond the capacity of any single sovereign state. Such health threats are really beyond the current paradigm.

#### The plan is key to global trade --- Otherwise perceived Chinese illiberalism will rip it apart

Petit, 16 (Nicolas Petit, Nicolas Petit is Joint Chair in Competition Law at the Department of Law and at the Robert Schuman Centre for Advanced Studies. He is also invited Professor at the College of Europe in Bruges. Prof at and phd from University of Liege, 6-21-2016, accessed on 7-8-2021, Papers.ssrn, "Chinese State Capitalism and Western Antitrust Policy", https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2798162)//Babcii

II. MORAL IMPERATIVE The moral case for an antitrust reaction is easier to lay out. In recent years, public confidence in open markets that bring in foreign competition has been **fraying at the seams**. The growing opposition to ongoing trade partnership negotiations in the West is **a visible symptom** of this. The increasing political **clout** of anti-establishment and populist parties with anti-free trade agendas is another indicator of the public’s diminishing confidence in open markets. Chinese competition in Western markets has likely **meant distortions** in the level playing field, engineered by systemic subsidization, currency manipulation and extractive labor market relations.50 This has **eroded the political capital of the West’s “open door” trade policies**. A widespread realization that doing **business with China means** opening the door to a syndicate of firms, coordinated backstage by the CCP, could be **the final nail in the coffin for our current free trade system**. The collateral damage of doing business with the Chinese supertrust could indeed fuel further demands for a blanket abandonment of free and competitive **trade across the board**, including with nations which, unlike China, do have effective market governance institutions. This would in practice deny Western citizens the benefits of legitimate competitive imports. The risk of a backlash reinforces the pressing **need for antitrust** attention to the CCP-led supertrust, and may help forestall the emergence of an even **greater anti-free trade** platform than we presently observe. After all, the core raison d'être of antitrust regimes is reflective of Western societies’ moral commitment to promote competition in all of its forms. The **objection that this is a trade issue is** in our view **irrelevant**. As George Stigler wrote in a paper titled “The Economists and the problem of monopoly”: “**Free trade is** a sort of international **antimonopoly program in itself**”

#### Covid is a warning, the problem is structural --- Chinese mercantilism undermines resilience of free trade

Sally, 20 (Razeen Sally, Visiting Associate Professor, Lee Kuan Yew School of Public Policy, National University of Singapore. Sally taught at the London School of Economics, where he received his PhD., Sep-24-2020, accessed on 11-19-2021, Hinrich Foundation, "Deglobalization and the new mercantilism | Hinrich Foundation", <https://www.hinrichfoundation.com/research/article/us-china/deglobalization-new-mercantilism/)//Babcii>

Three eras of international trade preceded the present pandemic. The first – the quarter-century until the GFC – was an era of unprecedented liberalisation and globalisation. The second – the near-decade after the GFC – saw globalisation stall, though not reverse, and trade growth stagnate alongside [“creeping” protectionism](https://www.ft.com/content/4ee2d69a-6aa3-11e4-bfb4-00144feabdc0). The third, [starting in early 2017](https://www.china-briefing.com/news/the-us-china-trade-war-a-timeline/), was triggered by President Trump, partly to retaliate against increasing Chinese protectionism. It centred on a US-China trade war but rippled out into copycatting protectionism by other countries. Protectionism went from creeping to galloping. This **pandemic has triggered the worst deglobalisation since 1945**. International trade may shrink by up to a third, foreign direct investment by up to 40 per cent, and international remittances by 20 per cent, this year. The trade outlook is worse than it was during the GFC in two ways. Now economic contraction is synchronised around the world; during and after the GFC, fast growth in emerging markets, [**led by China**](https://www.bbc.com/news/business-45493147)**,** cushioned the fall in trade and enabled a recovery. Now services trade is suffering even more than goods trade; travel and tourism have collapsed. The GFC, in contrast, hit goods trade hard but services trade was more resilient, especially fast-growing travel and tourism. Now there are signs of a protectionist upsurge, starting with export bans on medical equipment, with new restrictions on foreign ownership in the pipeline. What is the medium-term – post-vaccine – trade outlook? First, protectionism is likely to increase as a spillover of domestic state – particularly industrial-policy – interventions that last beyond the present crisis. Crisis-induced subsidies will be difficult to reverse wholesale and will **have trade-discriminating effects**. New screening requirements might have a chilling effect on foreign investment. These and other **interventions to protect domestic sectors** and national champions have a home-production bias. **The list of “strategic” sectors to protect** on “national security” grounds **against foreign competition will likely expand**. There will probably be more restrictions on migration and the cross-border movement of workers. Two precedents are relevant: the “new protectionism” of the 1970s and ‘80s, which partly resulted from bigger, more interventionist government in domestic markets; and, more perniciously, the expansion of government after the first world war, which empowered interest groups to lobby effectively for restricted imports, foreign investment and immigration. Second, national unilateralism – this time “illiberal unilateralism” – will likely expand and make effective regional and global policy cooperation more difficult. It bodes ill for the WTO, APEC and the G20, also for regional organisations such as ASEAN, and will cramp the liberalising effects of stronger preferential trade agreements. This only increases the prospect of tit-for-tat retaliation, starting with the Big Three (the US, EU and China), and **copycatting protectionism that will spread around the world.** Third, the reorientation of global value chains will accelerate. Western multinationals will relocate parts of their **production from China** to other countries on cost grounds, as they have been doing, but increasingly **on political-risk and security grounds** as well. There will be a combination of onshoring, near-shoring and regionalisation of value chains, which will vary widely by sector. But the **overall effect will be to raise costs for producers and consumers.** Fourth, international trade will be hit harder by a more fractured and conflictual geopolitical environment, especially US-China rivalry, but not helped either by an inward-looking and divided EU. It will be squeezed between more unstable geopolitics and the recalibration of states and markets – more “state” and less “market” – domestically. All the above points to a new mercantilist trade order that might be more malign than benign, echoing the “new protectionism” of the 1970s and early ‘80s, or, even more worryingly, the 1920s and ‘30s. My ideal world is a classical-liberal one: limited government, free markets and free trade, underpinned by appropriate domestic and international rules. I would add political liberalism and legally protected individual freedoms. The post-1945 global order was some distance from this classical-liberal ideal, but it was liberal enough to deliver unprecedented freedom and prosperity. From this vantage point, the new mercantilist order, with emerging malign characteristics, is alarming – bad economics, politics and international relations; bad for individual freedoms and global prosperity. As a realist, however, I must take the world “as it is” rather than indulge in wishful thinking. To improve the world, principled liberalism must be combined with practical realism. I believe **the two biggest threats to global order are rising illiberal populism in the West**, endangering the West’s adherence to its own liberal values, **and the increasingly aggressive illiberalism of the Chinese party-state**. Both have mercantilist features that spill over the border into protectionism and restricted globalisation. Both feed off each other in a global negative-sum game. Hence both must be resisted: naivety and complacency should apply to neither. China under Xi Jinping, with its mix of authoritarianism, a state-directed market economy and external assertiveness, is **becoming a classic mercantilist power**, like Germany and Japan in the late nineteenth century and early twentieth century. Its external power projection, especially in the last decade, looks quite different to that of the US in the Pax Americana. Of course, at times, here and there, the US threw its weight about unilaterally and arbitrarily. But the essence of US leadership was to provide public goods for a stable, **open and prosperous world order**. It did so by organising concerts of international and regional cooperation. **In international trade,** that took the form of the GATT, later the WTO, and the multilateral rules it administers. **China**, in contrast, prioritises a combination of unilateral and bilateral **action to expand and entrench its power**. That subsumes the expansion of the PLA Navy in the East China Sea, South China Sea and Indian Ocean; and tight, asymmetric bilateral relations with smaller, weaker states in a twenty-first century recreation of the ancient tributary system. The Belt and Road Initiative should be seen in this frame: a network of hub-and-spoke bilateral relationships in which China wields power over dependent states. This is classic mercantilism. It privileges discretionary power, exercised unilaterally and bilaterally, over plurilateral and multilateral rules that constrain such power. **China** – meaning the Chinese Communist party state – **presents a pressing challenge to the liberal world order**. Dealing with this challenge will require some trade, technological and investment restrictions, and **limited supply-chain decoupling**. But that could easily descend into an all-round mercantilist and deglobalisation spiral. Hence China must be engaged at the same time, not least to preserve existing links that are mutually beneficial. Engagement and strategic decoupling need not be mutually exclusive. Still, this will prove an incredibly difficult, perhaps elusive, balancing act.

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

Kampf ’20 [David; June 16; PhD Fellow at the Center for Strategic Studies at The Fletcher School, MA in International Affairs from Columbia University; World Politics Review, “How COVID-19 Could Increase the Risk of War,” https://www.worldpoliticsreview.com/articles/28843/how-covid-19-could-increase-the-risk-of-war]

But that overlooked the ways in which the risk of interstate war was already rising before COVID-19 began to spread. Civil wars were becoming more numerous, lasting longer and attracting more outside involvement, with dangerous consequences for stability in many regions of the world. And the global dynamics most commonly cited to explain the falling incidence of interstate war—democracy, economic prosperity, international cooperation and others—were being upended. If the spread of democracy kept the peace, then its global decline is unnerving. If globalization and economic interdependence kept the peace, then a looming global depression and the rise of nationalism and protectionism are disconcerting. If regional and global institutions kept the peace, then their degradation is unsettling. If the balance of nuclear weapons kept the peace, then growing risks of proliferation are disquieting. And if America’s preeminent power kept the peace, then its relative decline is troubling. Now, the pandemic, or more specifically the world’s reaction to it, is revealing the extent to which the factors holding major wars in check are withering. The idea that war between nations is a relic of the past no longer seems so convincing. The Pessimists Strike Back More than any other individual, it was cognitive scientist Steven Pinker who popularized the idea that we are living in the most peaceful moment in human history. Starting with his 2011 bestseller, “The Better Angels of Our Nature: Why Violence Has Declined,” Pinker argued that the frequency, duration and lethality of wars between great powers have all decreased. In his 2019 book, “Enlightenment Now: The Case for Reason, Science, Humanism, and Progress,” he wrote that war “between the uniformed armies of two nation-states appears to be obsolescent. There have been no more than three in any year since 1945, none in most years since 1989, and none since the American-led invasion of Iraq in 2003.” Optimists like Pinker held that, rather than the world falling apart, as a quick glance at headline news might suggest, the opposite was true: Humanity was flourishing. More regions are characterized by peace; fewer mass killings are occurring; governance and the rule of law are improving; and people are richer, healthier, better educated and happier than ever before. In their book, “Clear and Present Safety: The World Has Never Been Better and Why That Matters to Americans,” Michael A. Cohen and Micah Zenko argued that the evidence is so overwhelming that it is difficult to argue against the idea that wars between great powers, and all other interstate wars, are becoming vanishingly rare. Even when wars do break out, they tend to be shorter and less deadly than they were in the past. John Mueller, a senior fellow at the Cato Institute, also reasoned that the idea of war, like slavery and dueling before it, was in terminal decline, while Joshua Goldstein, an international relations researcher at American University, credited the United Nations and the rise of peacekeeping operations for helping win the “war on war.” But in recent years, a range of critics have begun to poke holes in these arguments. Tanisha M. Fazal, an international relations professor at the University of Minnesota, contends that the decline in war is overstated. Major advances in medicine, speedier evacuations of wounded soldiers from the field of battle and better armor have made war less fatal—but not necessarily less frequent. Fazal and Paul Poast, who is at the University of Chicago, further assert that the notion of war between great powers as a thing of the past is based on the assumption that all such conflicts resemble World War I and II—both are historical anomalies—and overlooks the actual wars fought between great powers since 1945, from the Korean War and the Vietnam War to proxy wars from Afghanistan to Ukraine. Meanwhile, Bear F. Braumoeller, an Ohio State political science professor, analyzed the same historical data on conflicts used by Pinker, Mueller and Goldstein, and found no general downward trend in either the initiation or deadliness of warfare over the past two centuries. What’s more, Braumoeller contends that the so-called “long peace”—the 75 years that have passed without systemic war since World War II—is far from invulnerable, and that wars are just as likely to escalate now as they used to be. Just because a major interstate war hasn’t happened for a long time, doesn’t mean it never will again. In all probability, it will. And by focusing solely on interstate wars, the optimists miss half the story, at least. Wars between states have declined, but civil wars never disappeared—and these internal conflicts could easily escalate into regional or global wars. The number of conflicts in the world reached its highest point since World War II in 2016, with 53 state-based armed conflicts in 37 countries. All but two of these conflicts were considered civil wars. To make matters worse, new studies have shown that civil wars are becoming longer, deadlier and harder to conclusively end, and that these internal conflicts are not really internal. Civil wars harm the economies and stability of neighboring countries, since armed groups, refugees, illicit goods and diseases all spill over borders. Some 10 million refugees have fled to other countries since 2012. The countries that now host them are more likely to experience war, which means states with huge refugee populations like Lebanon, Jordan and Turkey face legitimate security challenges. Even after the threat of violence has diminished in refugees’ countries of origin, return migration can reignite conflicts, repeating the brutal cycle. A Yugoslav Federal Army tank. Perhaps most importantly, recent research indicates that civil wars increase the risk of interstate war, in large part because they are attracting more and more outside involvement. In a 2008 paper, researchers Kristian Skrede Gleditsch, Idean Salehyan and Kenneth Schultz explained that, in addition to the spillover effects, two other factors in civil wars increase international tensions and could possibly provoke wider interstate wars: external interventions in support of rebel groups and regime attacks on insurgents across international borders. Immediately after the Cold War, none of the ongoing civil wars around the world were internationalized. According to the Uppsala Conflict Data Program, there were 12 full-fledged civil wars in 1991—in Afghanistan, Iraq, Peru, Sri Lanka, Sudan, and elsewhere—and foreign militaries were not active on the ground in any of them. Last year, by contrast, every single full-fledged civil war involved external military participants. This is due, in part, to the huge growth in U.S. military interventions abroad into civil conflicts, but it’s not only the Americans. All of today’s major wars are in essence proxy wars, pitting external rivals against one another. Conflicts in Syria, Yemen and Libya are best understood not as civil wars, but as international warzones, attracting meddlers including the United States, Russia, Saudi Arabia, Turkey, Iran, France and many others, which often intervene not to build peace, but to resolve conflicts in a way that is favorable to their own interests. These internationalized wars are more lethal, harder to resolve and possibly more likely to recur than civil wars that remain localized. It is not that difficult to imagine how these conflicts could spark wider international conflagrations. Wars, after all, can quickly spiral out of control. As Risks Increase, Deterrents Decline To make matters worse, most of the global trends that explained why interstate war had decreased in recent decades are now reversing. The theories that democracy, prosperity, cooperation and other factors kept the peace have been much debated—but if there was any truth to them, their reversals are likely to increase the chance of war, irrespective of how long the coronavirus pandemic lasts. Democracy is often considered a prophylactic for war. Fully democratic countries are less likely to experience civil war and rarely, if ever, go to war with other democracies—though, of course, they do still go to war against non-democracies. While this would be great news if democracy and pluralism were spreading, there have now been 14 consecutive years of global democratic decline, and there have been signs of additional authoritarian power grabs in countries like Hungary and Serbia during the pandemic. If democracy backslides far enough, internal conflicts and foreign aggression will become more likely. Other theories posit that economic bonds between countries have limited wars in recent decades. Dale Copeland, a professor of international relations at the University of Virginia, has argued that countries work to preserve ties when there are high expectations for future trade, but war becomes increasingly possible when trade is predicted to fall. If globalization brought peace, the recent wave of far-right nationalism and populism around the world may increase the chances of war, as tariffs and other trade barriers go up—mostly from the United States under President Donald Trump, who has launched trade wars with allies and adversaries alike. The coronavirus pandemic immediately elicited further calls to reduce dependence on other countries, with Trump using the opportunity to pressure U.S. companies to reconfigure their supply chains away from China. For its part, China made sure that it had the homemade supplies it needed to fight the virus before exporting extras, while countries like France and Germany barred the export of face masks, even to friendly nations. And widening economic inequalities, a consequence of the pandemic, are not likely to enhance support for free trade. This assault on open trade and globalization is just one aspect of a decaying liberal international order, which, its proponents argue, has largely helped to preserve peace between nations since World War II. But that old order is almost gone, and in all likelihood isn’t coming back. The U.N. Security Council appears increasingly fragmented and dysfunctional. Even before Trump, the world’s most powerful country ratified fewer treaties per year under the Obama administration than at any time since 1945. Trump’s presidency only harms multilateral cooperation further. He has backed out of the Paris Agreement on climate change, reneged on the Iran nuclear deal, picked fights with allies, questioned the value of NATO and defunded the World Health Organization in the middle of a global health crisis. Hyper-nationalism, rather than international collaboration, was the default response to the coronavirus outbreak in the U.S. and many other countries around the world. It’s hard to see the U.S. reluctance to lead as anything other than a sign of its inevitable, if slow, decline. The country’s institutionalized inequalities and systemic racism have been laid bare in recent months, and it no longer looks like a beacon for others to follow. The global balance of power is changing. China is both keen to assert a greater leadership role within traditionally Western-led institutions and to challenge the existing regional order in Asia. Between a rising China, revanchist Russia and new global actors, including non-state groups, we may be heading toward an increasingly multipolar or nonpolar world, which could prove destabilizing in its own right. Finally, the pacifying effect of nuclear weapons could be waning. While vast nuclear arsenals once compelled the United States and the Soviet Union to reach arms control agreements, old treaties are expiring and new talks are breaking down. Mistrust is growing, and the chance of an unwanted U.S.-Russia nuclear confrontation is arguably as high as it has been since the Cuban missile crisis. The theory of nuclear peace may no longer hold if more countries are tempted to obtain their own nuclear deterrent. Trump’s decision to abandon the Iran nuclear deal, for one thing, has only increased the chance that Tehran will acquire nuclear weapons. It’s almost easy to forget that, just a few short months ago, the United States and Iran were one miscalculation or dumb mistake away from waging all-out war. And despite Trump’s efforts to negotiate nuclear disarmament with Kim Jong Un’s regime in Pyongyang, it is wishful thinking to believe North Korea will give up its nuclear weapons. At this point, negotiators can only realistically try to ensure that North Korea’s nuclear menace doesn’t get even more potent. In other words, by turning inward, the United States is choosing to leave other countries to fend for themselves. The end result may be a less stable world with more nuclear actors. If leaders are smart, they will take seriously the warning signs exposed by this global emergency and work to reverse the drift toward war. If only one of these theories for peace were worsening, concerns would be easier to dismiss. But together, they are unsettling. While the world is not yet on the brink of World War III and no two countries are destined for war, the odds of avoiding future conflicts don’t look good. The pandemic is already degrading democracies, harming economies and curtailing international cooperation, and it also seems to be fostering internal instability within states. Rachel Brown, Heather Hurlburt and Alexandra Stark argue that the coronavirus could in fact sow more civil conflict. If this proves accurate, the increase in civil wars is likely to lead to more external meddling, and these next proxy wars could soon precipitate all-out international conflicts if outsiders aren’t careful. With the usual deterrents to conflict declining around the world, major wars could soon return

#### Recent, robust studies prove our impact

Julian Adorney 20, Contributing Writer at the Hinrich Foundation, Young Voices Advocate, Senior SEO Analyst for Colorado SEO Pros, Writing Appeared at The Federalist, Fox Nation, The Hill, and the Mises Institute, BA from the University of Colorado, Boulder, “Want Peace? Promote Free Trade”, Hinrich Foundation for Advancing Sustainable Free Trade, 9/10/2020, https://www.hinrichfoundation.com/research/tradevistas/sustainable/trade-and-peace/

Why does protectionism lead to conflict and why does free trade help prevent it? Learn about the connection between peace and free trade.

Frédéric Bastiat famously claimed that “if goods don’t cross borders, soldiers will.”

Bastiat argued that free trade between countries could reduce international conflict because trade forges connections between nations and gives each country an incentive to avoid war with its trading partners. If every nation were an economic island, the lack of positive interaction created by trade could leave more room for conflict. Two hundred years after Bastiat, libertarians take this idea as gospel. Unfortunately, not everyone does. But as recent research shows, the historical evidence confirms Bastiat’s famous claim.

To trade or to raid

In “Peace through Trade or Free Trade?” professor Patrick J. McDonald, from the University of Texas at Austin, empirically tested whether greater levels of protectionism in a country (tariffs, quotas, etc.) would increase the probability of international conflict in that nation. He used a tool called dyads to analyze every country’s international relations from 1960 until 2000. A dyad is the interaction between one country and another country: German and French relations would be one dyad, German and Russian relations would be a second, French and Australian relations would be a third. He further broke this down into dyad-years; the relations between Germany and France in 1965 would be one dyad-year, the relations between France and Australia in 1973 would be a second, and so on.

Using these dyad-years, McDonald analyzed the behavior of every country in the world for the past 40 years. His analysis showed a negative correlation between free trade and conflict: The more freely a country trades, the fewer wars it engages in. Countries that engage in free trade are less likely to invade and less likely to be invaded.

Trading partners

The causal arrow

Of course, this finding might be a matter of confusing correlation for causation. Maybe countries engaging in free trade fight less often for some other reason, like the fact that they tend also to be more democratic. Democratic countries make war less often than empires do. But McDonald controls for these variables. Controlling for a state’s political structure is important, because democracies and republics tend to fight less than authoritarian regimes.

McDonald also controlled for a country’s economic growth, because countries in a recession are more likely to go to war than those in a boom, often in order to distract their people from their economic woes. McDonald even controlled for factors like geographic proximity: It’s easier for Germany and France to fight each other than it is for the United States and China, because troops in the former group only have to cross a shared border.

The takeaway from McDonald’s analysis is that protectionism can actually lead to conflict. McDonald found that a country in the bottom 10 percent for protectionism (meaning it is less protectionist than 90 percent of other countries) is 70 percent less likely to engage in a new conflict (either as invader or as target) than one in the top 10 percent for protectionism.



#### Protectionist fragmentation causes secondary risks --- Extinction

Dr. Suzanne Fry 21, Director of the Strategic Futures Group at the National Intelligence Council (NIC), Ph.D. in Politics from New York University, B.A. in Government and International Studies from the University of Notre Dame, Member of the Council on Foreign Relations, et al., “Global Trends 2040: A More Contested World”, A Publication of the National Intelligence Council, March 2021, https://www.dni.gov/files/ODNI/documents/assessments/GlobalTrends\_2040.pdf

In 2040, the world is fragmented into several economic and security blocs of varying size and strength, centered on the United States, China, the European Union (EU), Russia, and a few regional powers, and focused on self-sufficiency, resiliency, and defense. Information flows within separate cyber-sovereign enclaves, supply chains are reoriented, and international trade is disrupted. Vulnerable developing countries are caught in the middle with some on the verge of becoming failed states. Global **problems**, notably climate change, are spottily addressed, if at all. HOW WE GOT THERE By the early 2030s, cascading global challenges from decades of job losses in some countries in part because of globalization, heated trade disputes, and health and terrorist threats crossing borders prompted states to raise barriers and impose trade restrictions to conserve resources, protect citizens, and preserve domestic industries. Many economists thought that economic decoupling or separation could not really happen because of the extensive interdependence of supply chains, economies, and technology, but security concerns and governance disputes helped drive countries to do the unthinkable, despite the extraordinary costs. Countries with large domestic markets or sizeable neighbors successfully redirected their economies, but many developing economies with limited resources and market access were hit hard as both import and export markets dried up. Economic stagnation fostered widespread insecurity across Africa, the Middle East, and South Asia, fueling a retreat to subnational ethnic and religious identities, **strained societies, fragmented states**, and spreading instability. New waves of migrants headed to the developed world hoping to escape poverty, poor governance, and increasingly harsh environmental conditions. Their hopes were dashed when political pushback prompted destination countries to block most migration. As physical barriers went up, dependence on digital commerce and communications **soared**, but a combination of information management **challenges** and repeated data security breaches led those states with strong cyber controls, like China and Iran, to reinforce their **cyber barricades**. Then states that once advocated for an open Internet set up new closed, protected networks to **limit threats** and screen out unwanted ideas. By 2040, only the United States and a few of its closest allies maintained the semblance of an **open Internet** while most of the world operated behind strong firewalls. With the trade and financial connections that defined the prior era of **globalization disrupted**, economic and security blocs formed around the United States, China, the EU, Russia, and India. Smaller powers and other states joined these blocs for protection, to pool resources, and to maintain at least some economic efficiencies. Advances in AI, energy technologies, and additive manufacturing helped some states adapt and make the blocs economically viable, but **prices** for consumer goods rose dramatically. States unable to join a bloc were **left behind and cut off**. Security links did not disappear completely. States threatened by powerful neighbors sought out security links with other powers for their own protection or accelerated their own programs to develop **nuclear weapons**, as the ultimate guarantor of their security. Small **conflicts occur**red at the edges of these new **blocs**, particularly over scarce resources or emerging opportunities, like the **Arctic** and **space**. Poorer countries became increasingly unstable, and with no interest by major powers or the United Nations in intervening to help restore order, **conflicts became endemic**, exacerbating other problems. Lacking coordinated, multilateral efforts to mitigate emissions and address climate changes, little was done to slow **greenhouse gas emissions**, and some states experimented with geoengineering with disastrous consequences.

#### Lack of cartel deterrence enables weaponized interdependence

Scissors, 16 (Derek Scissors, Derek Scissors is a resident scholar at the American Enterprise Institute (AEI), where he focuses on the Chinese and Indian economies and on US economic relations with Asia. He is concurrently serving on the US-China Economic and Security Review Commission. Dr. Scissors was a senior research fellow in the Asian Studies Center at the Heritage Foundation and an adjunct professor of economics at George Washington University. He has worked for London-based Intelligence Research Ltd., taught economics at Lingnan University in Hong Kong, and served as an action officer in international economics and energy for the US Department of Defense. Dr. Scissors has a bachelor’s degree from the University of Michigan, a master’s degree from the University of Chicago, and a doctorate from Stanford University., 9-21-2016, accessed on 5-23-2021, American Enterprise Institute - AEI, "An American court prioritizes China | American Enterprise Institute - AEI", <https://www.aei.org/foreign-and-defense-policy/asia/an-american-court-prioritizes-china/)//Babcii>

\*Edited for ableist language

A US federal **court decision** to [throw out a price-fixing judgment](http://www.wsj.com/articles/u-s-court-throws-out-price-fixing-judgment-against-chinese-vitamin-c-manufacturers-1474391092) against Chinese vitamin C makers may be sound on highly technical legal grounds. But it definitely **puts the US on weak**er economic **grounds**. If the US legal system will not act, American policymakers must. Chinese firms breaking US law should not be allowedto participate in the American market. The court’s argument is effectively that the **companies involved cannot be held liable** **because they were required** by the Chinese government to violate US law. The violations took the form of predatory pricing – undercutting competitors to drive them out of the market in order to then be able to charge monopoly prices and harm consumers. While vitamin C hardly seems to warrant a strong policy response, it’s the tip of a very **large iceberg**. Elements of the Chinese government have over time directed firms in many industries to take economically (if perhaps not legally) **similar steps as** the **vitamin C** makers, examples ranging from [rare earth elements](http://peakoil.com/generalideas/underpriced-rare-earth-metals-from-china-have-created-a-supply-crisis) in 2009 to [low-end steel](http://www.reuters.com/article/us-china-steel-idUSKCN0WX0X9) in 2016. These **actions** do not always help China, but they typically **harm trade** partners. More important, they are a natural outgrowth of a [long-term development model](https://www.foreignaffairs.com/articles/china/2009-05-01/deng-undone-0) that guarantees widespread [overproduction within China](http://www.bbc.com/news/business-37415202). The domestic oversupply makes predatory pricing in foreign markets appealing. Chinese **firms** in industries ranging from auto parts to zinc smelting are candidates for directives from Beijing that would **undermine competition in the US**. They also undermine competition in other markets, harming US firms seeking to do business overseas. The court just **insisted** antitrust laws that protect American consumers may not be used in response. The **message** to Chinese companies is that ostensibly **unlawful attempts** to win monopoly status in the US are **no-risk** endeavors. It’s thus almost certain **more will try**, if not otherwise prevented. And, unless it is **discouraged**, the Chinese government will become **more active in enabling** them. If firms are guilty of violating US antitrust law and cannot be subject to legal remedy, they and their subsidiaries should be banned as a matter of policy. Heading them off is simple in principle. Chinese companies exist only at the sufferance of the Communist Party and cannot resist state edicts. The Party itself is not interested in law, American or Chinese. The US, however, should be under no obligation to permit such state-directed companies to do business here, whether shipping underpriced goods or investing to establish operations to then seek monopoly. If firms are guilty of violating US antitrust law and cannot be subject to legal remedy, they and their subsidiaries should be banned as a matter of policy. There are important practical questions to be faced: what documentation of anti-competitive behavior is sufficient, what agencies will be responsible, what punishments are suitable for specific, state-directed and anti-competitive actions? It is **crucial to do all of** this well **in order to** simultaneously **reassure** law-abiding **foreign** firms, since their **trade and investment activities** are beneficial. But the idea that the **Chinese** Communist Party can order American markets be undermined and American consumers harmed, even if tenable in US **court, is nothing short of (asinine)** ~~insane~~ as US policy. While it would be reassuring if the World Trade Organization could help prevent this, the US must not wait for or rely on any external body. Congress and the President should begin immediately to create the necessary tools to deter and, if necessary, punish this behavior.

#### Weaponized interdependence elicits quick modernization and nuclear escalation

Collins, 16 (Michael Collins, Michael P. Collins is President of MPC Management, was Vice President and General Manager of two divisions of Columbia Machine in Vancouver, Washington. He has more than 35 years of experience in Manufacturing., 6-13-2016, accessed on 6-9-2021, Industry Week, "It is Time to Stand Up to China", <https://www.industryweek.com/the-economy/trade/article/21974236/it-is-time-to-stand-up-to-china)//Babcii>

The U.S. has been an **enabler** to China’s approach. **China continually** challenges the U.S. by **ignoring** free-market **rules** and doing whatever it takes to **capture market share.** Meanwhile, the U.S. **looks the other way** when China breaks the rules, thus encouraging them to do it again. The most recent example is the steel industry. According to The American Steel and Iron Institute, American steel mills have had to layoff 13,500 employees because China has been **dumping** steel **in the U.S.** The Chinese steel companies can sell steel at below-market prices because they are state-owned and, by definition, are subsidized by the government. [[The U.S. in May affirmed that China had been dumping cold-rolled steel;](http://www.industryweek.com/competitiveness/us-affirms-266-dumping-margin-cold-rolled-steel-imports-china) the International Trade Commission will make public its ruling on the case on June 30.] Further, a recent lawsuit by [United States Steel Corp. (IW500/91)](http://www.industryweek.com/resources/us500/2016/United-States-Steel) charges China with price fixing, stealing the company’s trade secrets, and shipping steel to the U.S. through other countries so buyers won’t know the country of origin. China is not a market economy, much less a free-market economy. Still, the U.S. continues to treat China as a free-market economy, with the hope that it will somehow encourage them to begin playing by the same rules governing the rest of the world. But, alas, it's not happening. Here is a short list of some of China's strategies. Currency Manipulation – China manipulates its currency to keep the U.S. dollar value high, so that Chinese companies have a 30% to 40% cost advantage. This undervaluation is illegal and should be considered to be a direct export subsidy, yet the Commerce Department has refused to treat currency undervaluation as actionable under the law. State-Owned Enterprises (SOE) – China owns and subsidizes many companies, as in the steel industry example, above. Through the subsidized companies, China can target a market with low-cost products, capture market share and drive competitors out of business. Technology Theft – China knows that technology and innovation is what can make them the No. 1 manufacturer in the world, and they are prepared to get it any way they can. They have been accused of using espionage, counterfeiting and buying American technology companies as standard strategies. According to the [US-China Economic Panel Security Commission](https://www.industryweek.com/the-economy/trade/article/21974236/US-China%20Economic%20Panel%20Security%20Commission)’s [2015 report to Congress,](http://www.uscc.gov/Annual_Reports/2015-annual-report-congress) “China’s government conducts and sponsors a massive cyber espionage operation aimed at stealing trade secrets and intelligence from U.S. corporations and the government.” This includes blocking U.S. company websites, revoking business licenses and censoring the internet. Technology Transfer - As a condition of accessing the Chinese markets, China requires U.S. companies that build plants in China to create joint ventures with local companies—and share with them their latest technologies. [Testimony to Congress by Patrick A. Mulloy](https://books.google.com/books?id=rkbfsgEACAAJ&dq=%22Across+the+Pond+U.s.+Opportunities+and+challenges+in+the+Asia+Pacific&hl=en&sa=X&ved=0ahUKEwi-lL_ui9jMAhVN4GMKHX5fCAAQ6AEIHDAA) asserts that we are slowly losing the Advanced Technology Products industries to China. Advanced technology products includes the more advanced elements of the computer and electronics industry as well as life sciences, biotechnology, aerospace and nuclear technology, all of which are central to U.S.'s own innovation strategy. In 2014, the U.S. trade deficit with China in advanced technology products was $123 billion. Research & Development Facilities - China requires foreign companies with plants in China set up R&D facilities in China. As a result, foreign companies have built more than 1,000 R&D labs in China. The Results of China's Unfair Trade Practices & U.S.'s Weak Response So what are the results of China's unfair trade practices? First, by now, everyone knows that trade agreements do not benefit all citizens; there are winners and losers. The **winners are** the multinational corporations who have plants in **China**. The losers are American small businesses and workers. The initial promotion of China trade promised that consumers would be better off because of the cheap imported products. However, China trade created a $**3.6 trillion deficit**, which eliminated **jobs** and stagnated **wages**. It is part of the reason the rich have gotten richer and the poor poorer. Second, the **economic strength** built upon these practices has helped China **grow** its **military might**. According to the U.S.-China Commission, China continues to modernize its forces "... creating additional challenges for the United States and its allies. Most notably, China conducted its first test of a new **hypersonic** missile vehicle, which could enable China to conduct kinetic strikes anywhere in the world within minutes to hours, and performed its second flight test of a new **road-mobile intercontinental missil**e that will be able to strike the entire continental United States and could carry up to 10 independently maneuverable warheads. “China is making **big investments** in modern **submarines, ships** and combat **aircraft**. For the first time, its Navy began combat patrols in the Indian Ocean. Its first aircraft carrier has conducted a long-distance deployment. China is exerting force to control its claims in the **East and South China Seas**. "Perhaps of most concern is Beijing's apparent **willingness to provoke incidents** at sea and in the air that could lead to a **major conflict** as China's maritime and air forces expand their operations beyond China's immediate periphery."

#### It also undermines the liberal coop

Brands, 20 (Hal Brands, Hal Brands is a senior fellow at the American Enterprise Institute, where he studies US foreign policy and defense strategy. Concurrently, Dr. Brands is the Henry A. Kissinger Distinguished Professor of Global Affairs at the Johns Hopkins School of Advanced International Studies (SAIS). Dr. Brands graduated from Yale University with a PhD, MA, and MPhil in history. He also received a BA in history and political science from Stanford University., 10-30-2020, accessed on 3-25-2022, American Enterprise Institute - AEI, "To compete with China, we need the liberal international order | American Enterprise Institute - AEI", <https://www.aei.org/op-eds/to-compete-with-china-we-need-the-liberal-international-order/)//Babcii>

In May, 2020, Senator Josh Hawley (R-Mo.) introduced a joint resolution to pull the United States out of the World Trade Organization. For a quarter-century, the **WTO** has represented the **apotheosis** of progress toward a more integrated, cooperative global economy. Yet Hawley, who has been positioning himself for leadership of the post-Trump Republican Party, argued that the organization had merely empowered America’s most dangerous challenger. China had exploited the market access its WTO membership provided to pursue a predatory trade policy at Washington’s expense, he [wrote](https://www.hawley.senate.gov/senator-hawley-introduces-joint-resolution-withdraw-wto): “International organizations like the WTO have enabled the rise of China and benefited elites around the globe while hollowing out American industry.” Withdrawing from the WTO, and rediscovering the virtues of economic self-reliance, were prerequisites to defending American interests in an age of rivalry. Hawley’s proposal parallels the Trump administration’s [assault](https://www.politico.com/story/2019/07/26/trump-world-trade-organization-1623192) on the WTO over the past four years, an attack meant to make the organization irrelevant by preventing it from performing its crucial dispute resolution function. Hawley’s argument also reflects the key intellectual themes of Trump-era foreign policy. The administration and its supporters have advanced a two-fold argument: first, that the United States must shift toward competition with China; and second, that doing so requires moving away from the “liberal international order” that Washington has cultivated for decades. Like many ideas underpinning Trump’s statecraft, the argument is narrowly correct, in the sense that calling a halt to progressively deeper engagement with China was an overdue prerequisite to confronting the challenge it poses to U.S. interests. Yet the argument also misses a larger strategic truth, which is that America cannot compete effectively with China if it abandons the **liberal order** that **China’s behavior threatens.** The “liberal international order” is shorthand for the strategic [project](https://press.princeton.edu/books/paperback/9780691156170/liberal-leviathan) that America undertook after World War II and has pursued in various forms for 75 years. That project was embodied, economically, in institutions and agreements that promoted **free commerce** and discouraged mutually immiserating trade wars. It reflected an emphasis, albeit an imperfect one, on human rights and democratic values. It featured unprecedented, if inconsistent, multilateral cooperation through institutions such as the World Bank, International Monetary Fund, and World Health Organization. The **entire order was anchored by American power** and a network of U.S.-led alliances and strategic partnerships that circled the globe. The liberal order is now caricatured by critics as a manifestation of a strategic idealism. Yet it was rooted in the [sad realism](https://www.amazon.com/Lessons-Tragedy-Statecraft-World-Order/dp/030023824X) that emerged from Great Depression and World War II—the realization that the world would surely descend into anarchy or worse absent enlightened leadership by its most powerful nation, and that America could secure its narrow national interests only through the creation of a larger international society that was itself healthy, stable, and prosperous. Over the subsequent decades, the American-led order proved remarkably [effective](https://www.amazon.com/Jungle-Grows-Back-America-Imperiled/dp/0525521658) in suspending the normal rhythms of power politics within the non-Communist world, and thereby forging a geopolitical community whose successes exerted excruciating strategic and ideological pressure on the Communist world. After the Cold War, America’s strategic horizons expanded: Washington would exploit the collapse of the Soviet Union and its ideological challenge to enlarge and entrench the liberal system. NATO expanded into Eastern Europe to hedge against a resurgence of Russian power and encourage the consolidation of political and economic reforms. The United States promoted the freer flow of goods, capital, and information on an increasingly global scale. Washington also aimed to bring potential spoilers, notably China, into the expanding order, through economic integration that would, in theory, ultimately exert a geopolitically pacifying and politically liberalizing effect on Beijing. It is undeniable that certain aspects of this program went [awry](https://www.tandfonline.com/doi/full/10.1080/00396338.2018.1470755). American officials underestimated the determination of China’s rulers to hang onto power amid a global wave of democratization, as well as their resourcefulness in doing so. Washington probably overestimated the extent to which a party that was rooted in Leninist principles could be induced to accept a positive-sum vision of international affairs. The **engagement policy** of the 1990s and 2000s ended up hastening the rise of a competitor that became more, not less, truculent and authoritarian. It also created, as COVID underscored, **dependencies** on an autocratic **rival** for key goods ranging from **munitions** components to **pharmaceuticals**. The single most important strategic insight of the Trump administration has thus been that ending the engagement paradigm, and limiting American integration with China, are vital to containing the influence of a country that is using its centrality in the global economy as a source of strategic leverage. Regardless of whether Trump or Joe Biden wins the presidency, America must build greater **resilience** against China’s **coercive power**, which implies reducing—preferably in a targeted, selective fashion—the dependence of democratic societies on **Chinese** money, **markets, and strategically important goods**. Unfortunately, the administration and its supporters have turned this insight into a broader hostility towards the liberal order. Trump, of course, has distinguished himself with his [antipathy](https://www.amazon.com/American-Grand-Strategy-Age-Trump/dp/0815732783) to alliances, trade agreements, and international institutions; he theatrically withdrew from the WHO rather than compete vigorously for influence there. The president’s National Security Strategy put an intellectual spin on this antipathy by [condemning](https://www.whitehouse.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf) post-Cold War foreign policy as an exercise in geopolitical naiveté. It paired an unvarnished description of the Chinese challenge with a striking lack of emphasis on the relatively peaceful and cooperative order that Beijing is challenging. Former officials and leading intellectuals have [argued](https://muse.jhu.edu/chapter/2696579) that America can win “Cold War II” only by [breaking](https://www.foreignaffairs.com/articles/americas/2020-08-11/end-american-illusion) with the liberal international order that helped it win Cold War I. This is where the argument **jumps the tracks**, for three reasons. First, this approach risks turning the U.S.-China competition into a struggle over power alone. The reason that the United States has traditionally found it comparatively easy to rally allies is that it has been committed to a broader concept of international order that benefits so many countries. The contrast with Beijing, which has tended to consume global publics goods—freedom of the seas, for example—provided by others while aggressively pursuing its own economic and territorial interests, ought to be obvious. But if the United States rejects the liberal order, then its competition with China is really just an effort to defend its own primacy. It isn’t clear why countries around the world—except those most tangibly menaced by Chinese military might—would join America in that effort. If America becomes less committed to the international order it created, expect many of its friends, particularly other democracies, to become less committed to supporting American leadership. Second, for smaller countries that lack the power to **slug it out with Beijing**, economically or militarily, the liberal order is a **critical** means of self-protection. It provides international norms, standards, and processes that [lesser powers](https://www.foreignaffairs.com/articles/asia/2020-06-04/lee-hsien-loong-endangered-asian-century) can use to hold greater powers to account. The **WTO** is undoubtedly flawed, but it nonetheless offers a forum in which a Singapore or a Malaysia can **lodge complaints** against mercantilistic Chinese trade practices. If that **organization** becomes a **dead letter**, or if America becomes an agent of destruction vis-à-vis international law and institutions, we will enter a **might-makes-right world** that will seem quite congenial to Beijing. Finally, the only way to compensate for selective decoupling from rivals is through deeper integration with friends. It is all well and good to say that America and other democracies should not rely on China for pharmaceuticals or components of precision-guided munitions. But autarky isn’t a feasible solution, even for the United States, and Washington can’t surrender the benefits of specialization and comparative advantage while still hoping to [compete](https://www.brookings.edu/research/preparing-the-united-states-for-the-superpower-marathon-with-china/) with a technologically sophisticated nation of 1.4 billion people. It will require [more](https://www.bloomberg.com/opinion/articles/2020-03-26/coronavirus-and-the-g-20-globalization-is-the-best-medicine?sref=nmVx3tQ5), not less, economic cooperation with like-minded nations to succeed in competition with China, which requires strengthening the order that binds America to its allies and partners. The problem with Trumpism is not that it is devoid of good ideas, but that it often blends them with dangerously self-destructive ones. When Trump’s presidency ends, whether in a few months or a few years, the challenge will be to appropriate the former while jettisoning the latter. The paradigm of strategic competition with China should, and likely will, persist. But prevailing in that rivalry will require reinvesting in, rather than undermining, **the liberal order** Trump has scorned.

#### That causes numerous existential risks

Yuval Noah Harari 18, Professor of History at Hebrew University of Jerusalem, 9/26/18, “We need a post-liberal order now,” The Economist, <https://www.economist.com/open-future/2018/09/26/we-need-a-post-liberal-order-now>

The second thing to note about this vision of friendly fortresses is that it has been tried—and it failed spectacularly. All attempts to divide the world into clear-cut nations have so far resulted in war and genocide. When the heirs of Garibaldi, Mazzini and Mickiewicz managed to overthrow the multi-ethnic Habsburg Empire, it proved impossible to find a clear line dividing Italians from Slovenes or Poles from Ukrainians. This had set the stage for the second world war. The key problem with the network of fortresses is that each national fortress wants a bit more land, security and prosperity for itself at the expense of the neighbors, and without the help of universal values and global organisations, rival fortresses cannot agree on any common rules. Walled fortresses are seldom friendly. But if you happen to live inside a particularly strong fortress, such as America or Russia, why should you care? Some nationalists indeed adopt a more extreme isolationist position. They don’t believe in either a global empire or in a global network of fortresses. Instead, they deny the necessity of any global order whatsoever. “Our fortress should just raise the drawbridges,” they say, “and the rest of the world can go to hell. We should refuse entry to foreign people, foreign ideas and foreign goods, and as long as our walls are stout and the guards are loyal, who cares what happens to the foreigners?” Such extreme isolationism, however, is completely divorced from economic realities. Without a global trade network, all existing national economies will collapse—including that of North Korea. Many countries will not be able even to feed themselves without imports, and prices of almost all products will skyrocket. The made-in-China shirt I am wearing cost me about $5. If it had been produced by Israeli workers from Israeli-grown cotton using Israeli-made machines powered by non-existing Israeli oil, it may well have cost ten times as much. Nationalist leaders from Donald Trump to Vladimir Putin may therefore heap abuse on the global trade network, but none thinks seriously of taking their country completely out of that network. And we cannot have a global trade network without some global order that sets the rules of the game. Even more importantly, whether people like it or not, humankind today faces three common problems that make a mockery of all national borders, and that can only be solved through global cooperation. These are nuclear war, climate change and technological disruption. You cannot build a wall against nuclear winter or against global warming, and no nation can regulate artificial intelligence (AI) or bioengineering single-handedly. It won’t be enough if only the European Union forbids producing killer robots or only America bans genetically-engineering human babies. Due to the immense potential of such disruptive technologies, if even one country decides to pursue these high-risk high-gain paths, other countries will be forced to follow its dangerous lead for fear of being left behind. An AI arms race or a biotechnological arms race almost guarantees the worst outcome. Whoever wins the arms race, the loser will likely be humanity itself. For in an arms race, all regulations will collapse. Consider, for example, conducting genetic-engineering experiments on human babies. Every country will say: “We don’t want to conduct such experiments—we are the good guys. But how do we know our rivals are not doing it? We cannot afford to remain behind. So we must do it before them.” Similarly, consider developing autonomous-weapon systems, that can decide for themselves whether to shoot and kill people. Again, every country will say: “This is a very dangerous technology, and it should be regulated carefully. But we don’t trust our rivals to regulate it, so we must develop it first”. The only thing that can prevent such destructive arms races is greater trust between countries. This is not an impossible mission. If today the Germans promise the French: “Trust us, we aren’t developing killer robots in a secret laboratory under the Bavarian Alps,” the French are likely to believe the Germans, despite the terrible history of these two countries. We need to build such trust globally. We need to reach a point when Americans and Chinese can trust one another like the French and Germans. Similarly, we need to create a global safety-net to protect humans against the economic shocks that AI is likely to cause. Automation will create immense new wealth in high-tech hubs such as Silicon Valley, while the worst effects will be felt in developing countries whose economies depend on cheap manual labor. There will be more jobs to software engineers in California, but fewer jobs to Mexican factory workers and truck drivers. We now have a global economy, but politics is still very national. Unless we find solutions on a global level to the disruptions caused by AI, entire countries might collapse, and the resulting chaos, violence and waves of immigration will destabilise the entire world. This is the proper perspective to look at recent developments such as Brexit. In itself, Brexit isn’t necessarily a bad idea. But is this what Britain and the EU should be dealing with right now? How does Brexit help prevent nuclear war? How does Brexit help prevent climate change? How does Brexit help regulate artificial intelligence and bioengineering? Instead of helping, Brexit makes it harder to solve all of these problems. Every minute that Britain and the EU spend on Brexit is one less minute they spend on preventing climate change and on regulating AI. In order to survive and flourish in the 21st century, humankind needs effective global cooperation, and so far the only viable blueprint for such cooperation is offered by liberalism. Nevertheless, governments all over the world are undermining the foundations of the liberal order, and the world is turning into a network of fortresses. The first to feel the impact are the weakest members of humanity, who find themselves without any fortress willing to protect them: refugees, illegal migrants, persecuted minorities. But if the walls keep rising, eventually the whole of humankind will feel the squeeze.

### 1AC --- Plan

#### The United States federal government should increase its prohibitions on anticompetitive business practices by the People’s Republic of China’s private sector by expanding the scope of its core antitrust laws to restrict exemptions under foreign sovereign compulsion, international comity, and act of state where the private party and foreign sovereign did not affirmatively disclose their intent to act in an anti-competitive nature

### 1AC --- Solvency

#### Contention 2 is SOLVENCY:

#### The plan institutes a transparency requirement that smokes out gaming attempts while retaining fairness

Fox and Healey, 14 (Eleanor Fox and Deborah Healey, Eleanor Fox is Walter J. Derenberg Professor of Trade Regulation at New York University School of Law, Deborah Healey is Associate Professor on the Faculty of Law at the University of New South Wales, Austra, 2014, accessed on 11-15-2021, ABA - Antitrust Law Journal, Vol. 79, No. 3, "WHEN THE STATE HARMS COMPETITION—THE ROLE FOR COMPETITION LAW on JSTOR", https://www.jstor.org/stable/43486966)//Babcii

In terms of the defense, which if allowed would validate the state action, we might frame the principal choice in broad terms: **Should private parties**, acting anticompetitively, **be accorded a broad or a narrow state action defense**? Under a broad defense, private parties could defend their anticompetitive behavior if a state policy **merely encouraged it. Under a narrow defense** private **parties** would be responsible for their behavior **unless the state specifically ordered it** or the state clearly expressed a policy that depended upon the anticompetitive behavior and closely supervised the private anticompetitive acts. (The latter conditions are akin to those required by U.S. law.) The European Union has a very narrow defense: the private **party must have had no autonomy to act competitively.** A yet narrower defense could in theory **require** one more condition - **transparency**. Let us suppose that the offense was price fixing. Contemporaneously with its agreeing to fix prices the implicated firm could be **required to make a public disclosure: "I have just agreed to fix the price of x. The state required me to do it**." This condition would not only provide transparency but would **smoke out latter-day contrived contentions**: "The state made me do it." A narrow defense favors more **market**, less state. A broad defense favors more state, less market. A **broad defense has significant costs.** It errs on the side of vested interests. It would give private firms generous leeway to act **anticompetitively** for their private benefit, which may be **far beyond** what the state contemplated and not remotely needed by the state for its public objectives, as the uranium firms attempted to do in carrying out their cartel in the late 1970s.153 But what costs might a narrow defense impose upon state autonomy? Might it chill the adoption of programs that are (according to the state) good for the people and that the state cannot effectively execute by itself? China made such a claim in an international context in litigation in a U.S. court charging Chinese **vitamin C** makers with price fixing of vitamin C for sale into the United States. China argued that the pharmaceutical trade associations - which became the forum for the private price fixing - were infused with a governmental character, and that China ordered the price fixing of vitamin C in order to shield its firms from dumping claims and to ease them into a market economy.154 **We prefer a narrow defense**. The state can almost always carry out its desired state policy efficiently without enlisting private firms in otherwise **illegal conduct**, and the gains from a broad defense are almost always private. We now turn to fairness. If a defendant firm followed the policy of its state and could not have known that it was doing wrong, there would be a fairness concern. That situation will be rare. If unfairness would occur - e.g., treble damages liability for following an apparent command of the state - **it could normally be addressed in the remedy**. The court could issue an injunction against future price fixing, and perhaps (if allowed by law) could limit damages to the amount of the price fixers' windfall profits. The needs of the state, not the fairness claims of defendants, would lead the search for a wise rule.

#### That solves by ensuring an effective strategy to ensure political responsibility under international trade law

Brunell and Stutz, 18 (Richard Brunell and Randy Stutz, Richard Brunell previously served as the General Counsel of the American Antitrust Institute. In 2012-13, he served as Senior Advisor for Competition Matters in the chairman’s office at the Federal Trade Commission. graduate of Swarthmore College and the Harvard Law School, Randy M. Stutz is Vice President of Legal Advocacy at the American Antitrust Institute. Stutz is a graduate of Washington University in St. Louis and the Catholic University Columbus School of Law., 3-5-2018, accessed on 11-18-2021, Antitrust institute, "BRIEF FOR THEAMERICAN ANTITRUST INSTITUTEAS AMICUS CURIAE INSUPPORT OF PETITIONERS", <https://www.antitrustinstitute.org/wp-content/uploads/2018/09/16-1220-tsac-AmericanAntitrustInst.pdf)//Babcii>

C. The Lack of Transparency of a Foreign Government’s Law is Grounds for Less, Not More, Deference The Second Circuit thought the fact that “‘Chinese law is not as transparent as that of the United States’” made it particularly important to defer to the Ministry’s interpretation. Pet. App. 29a (quoting district court). But the opposite is true. A lack of **transparency** should be grounds to call into question a **post hoc statement** that price fixing of exports has been compelled. To facilitate its entry into the WTO, China made representations to the world trading body **that it “gave up export administration” of vitamin C** and many other products. JA 319; see also 2001 WTO Report ¶¶ 50, 56, 62, at 10-12 (China represented that it had sharply reduced the number of products subject to government price control—identifying those products in an annex—and that “price controls would not be used for purposes of affording protection to domestic industries”). **Then, in this case, MOFCOM claimed to have directed its exporters to fix prices** and restrict the supply of vitamin C. The district court concluded that China’s **representations to the WTO “appear to contradict** the Ministry’s position in the instant litigation,” which was a further reason not to defer to the Ministry’s position. Pet. App. 120a-121a. More generally, the very fact that China’s minimum export price **system is “largely opaque**” and “highly non-transparent,” according to the U.S. Trade Representative,9 is itself grounds for affording less deference. Cf. Int’l Guidelines § 4.2.2 n.124 (ambiguous statements regarding compulsion not given dispositive weight). As in the state-action context, it is important that foreign sovereigns that mandate anticompetitive export restraints “**accept political responsibility** for actions they intend to undertake” **in the worldwide trading arena**. Fed. Trade Comm’n v. Ticor Title Ins. Co., 504 U.S. 621, 636 (1992). A foreign government should “**make clear that [it] is responsible for the price fixing** it has sanctioned and undertaken to control.” Id. at 633. Its **failure to do so** militates against affording conclusive **deference** to its post hoc statements. D. Weakening Deterrence Is Unwise in an Era of Rampant International Cartels International cartels are a scourge of the global economy. Known international cartels have been estimated to cost consumers around the globe more than $1.5 trillion since 1990, with North American consumers paying more than $400 billion.10 The Justice Department has prosecuted dozens of international cartels, obtaining fines of over $12 billion, and jail time for over 88 foreign nationals.11 See generally Minn-Chem, Inc. v. Agrium Inc., 683 F.3d 845, 860 (7th Cir. 2012) (“Foreign cartels . . . have often been the target of either governmental or private litigation.”). But despite stepped up U.S. and foreign anti-cartel enforcement, international cartels continue to proliferate. See Connor at 22-23 (75 discovered per year); Scott D. Hammond, Deputy Ass’t Attorney General, The Evolution of Criminal Antitrust Enforcement Over the Last Two Decades 1, 3 (Feb. 25, 2010) (50 DOJ investigations open at a time). Deterrence remains insufficient. See John M. Connor & Robert H. Lande, Cartels as Rational Business Strategy: Crime Pays, 34 Cardozo L. Rev. 427, 429 (2012). Conclusive deference, by making it easier to prove a foreign sovereign compulsion or “true conflict” defense, will only **undercut deterrence**, making cartels that harm U.S. consumers **more likely. “The host country** for the cartel will often **have no incentive to prosecute it”** and “would logically be pleased to reap the economic rents from other countries . . . [that] their exporters collect.” Minn-Chem, 683 F.3d at 860. The same **incentive may lead foreign governments to lend their support to export cartels** when challenged in U.S. courts. And even if such support is not forthcoming, deterrence is lessened if foreign **firms believe that they can immunize their** export **cartels** under U.S. law by obtaining a statement from their government that their conduct was compelled.

#### The most comprehensive studies prove the plan successfully deters cartels and induces compliance

Putnam 16 – Tonya L. Putnam is a Research Scholar at the Arnold A. Salzman Institute of War and Peace Studies at Columbia University. From 2007 to 2020 she was a member of the Political Science at Columbia University. Tonya’s work engages a variety of topics related to international relations and international law with emphasis on issues related to jurisdiction and jurisdictional overlaps in international regulatory and security matters. “Extraterritoriality in the Absence of Agreement: International Antitrust.” Chapter. In Courts without Borders: Law, Politics, and US Extraterritoriality, 101–51. Cambridge: Cambridge University Press, 2016. doi:10.1017/CBO9781316480304.004.

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.

#### Lenient and uncertain applications of antitrust hamstring deterrence --- Only the plans clear and certain hardline solves

Wu, 18 (Bangyu Wu, Independent author for SSRN.com, practices law at [Guangdong Guangyue Law Firm](http://credit.gdla.org.cn/front/indexFront/orgDetail?orgId=102080), 4-18-2018, accessed on 3-2-2022, Papers.ssrn, "The 'Foreign Compulsion' Defense in U.S. Anti-Trust Law---A Possible Rectified Unification of its Current Divergence", https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3165165)//Babcii

C. Criticism To the Lax Approach The Lax Approach in Vitamin C might be the most **outlandish** approach an U.S. **court** could take. Under this approach, the “True conflict” test satisfied the minimum compulsion that a country could perform. In terms of the “priority problem” by introducing the “balancing test” in Timberlane, the essence of the “balancing test” is to compare which country has greater interests to decide whether the court should abstain or not, therefore it is a complete test. The problem of this approach, however, is that it is **over lenient** and **unpredictable**. It basically **leaves United States interests at the mercy of a foreign government**, and attempts to reach a neutral ruling that beyond a domestic court’s capacity. 1. The Overstated Comity Concern The dominating rationale for the Second Circuit’s judgment is comity, or to be more specifically, the prescriptive comity. Mr. Doge in his paper International Comity in American Law made a clear distinction of comity as a principle that plays different roles in U.S. legal system, among them, the “prescriptive comity” is employed by U.S. courts as the ground for restraining extraterritorial judicial power60, i.e., “to avoid unreasonable interference with the sovereign authority of other nations.”61 In Hartford Fire, the Supreme Court realized that it is possible for the court to abstain from exercising jurisdiction “under the principle of international comity”62. However, the importance of comity should not be overstated in Anti-trust law FSC situation, there are at least two reasons for this: First, the extraterritorial application of Anti-trust law itself has weaken the importance of comity concern. One of the most important approaches for prescriptive comity to restrain United States judicial power is to apply the almost unconditional presumption against extraterritorial application of U.S. law63, but under the Anti-trust law, this presumption has already been overcome, therefore one can naturally reach a assumption that the legislators/interpreters of Anti-trust law would foresee the possibility of the conflict between U.S. law and foreign law, yet they still chose to apply the Anti-trust law extraterritorially, which indicates the comity issue is not the primary concern, otherwise the Anti-trust statute would not overcome the presumption in the first place. Congress has long recognized the extraterritorial application of Anti-trust law, but has rarely chosen to limit such an application by courts64, which can also justify such an inclination. Second, realizing international comity should not sacrifice the reasonable interests of United States. Prescriptive comity refuses unreasonable exercise of jurisdiction to promote a state’s interests65. But with the development of global consensus over the harm of anti-competition action, three major anti-trust extraterritorial regions-United States, China, and EU have adopted their own version of extraterritorial application of domestic anti-trust law, and all of those regions’ statutes adopted “effect test” that derived from the United States Anti-trust law66. The importance of competition for a country’s market economic cannot be overstated, moreover, it is well-established that a country has the right of regulating the economic affairs within its own border67, therefore, applying the anti-trust law to a foreign corporation that intend to and indeed has substantial effect to U.S. economic should be deemed as protecting United States reasonable interests, this should also be the foreign corporation’s expectation when they are doing business in United States. Once we understand United States shares the equally reasonable interests of protecting its economy from harmful anti-competition action, a fair question would be: Could the comity be stated to the extent of sacrificing United States legitimate interests? The author believes not. Comity itself has never been interpreted as an absolute obligation for a court to fulfill, especially when facing a situation where the reasonable domestic interests would be hurt by such a comity doctrine, as the Court in Laker Airways dictated: “The central authority quoted, Hilton v. Guyot, recognizes that comity never obligates a national forum to ignore ‘the rights of its own citizens or of other persons who are under the protection of its laws.’” 68 Moreover, the Restatement (Third) of Foreign Relations Law § 403 expressed the idea that when two states are both reasonable to exercise conflicting jurisdiction over a person or activity, the state with “clearly” greater interests would prevail69. In an Anti-trust law FSC situation, both states have reasonable interests of regulating its domestic economic, it is **hard to say** whose interest is “clearly” **greater than the other**. Indeed, it is technically necessary to examine this on a case-by-case ground, for example, if a country’s revenue is overwhelmingly based on its exportation of certain product, without certain price-fixing policy the people in that country would starving, then one can tell that state’s interests is “clearly” greater because survival is almost always the priority concern, but an empirical and reasonable conclusion would be, such a situation is too rare to justify comity’s superiority as a general rule under Anti-trust law. Therefore, the comity concern should not be the general dominating factor in FSC defense under Anti-trust Law. 2. Misplayed Role of US Court Another criticism to the **Lax Approach** is also related to the **comity** issue. The Second Circuit in Vitamin C tried to employ the **“balancing test”** to compare which country’s interest is greater over the Anti-trust issue, but such an attempt demands an U.S. court to **play a neutral role that** not only too demanding, but also **results in uncertainty** The “balancing test” requires the court to consider which country has greater interests over the contesting issue to decide whether to abstain or not. However, such an inquiry is dubious from its beginning. The United States court is not an international dispute resolving forum like WTO panel, no matter how developed the country’s law is, it is still a domestic court, its law’s primary purpose is, of course, protecting its own interests. The judge sitting on the bench is immersed in the faith to its own country, paid by its own people, take an oath to its own Constitution, as the Court in LakerAirways pointed out: The courts of most developed countries follow international law only to the extent it is not overridden by national law. Link to the text of the note Thus, courts inherently find it difficult neutrally to balance competing foreign interests to the text of the note. When there is any doubt, national interests will tend to be favored over foreign interests.70 The “balancing test” that requires the court to consider “relative importance of the alleged violation of conduct here compared to that abroad”71, but how should a court siting in its own country, designed to enforce its own law to give up its own position to favor the contradicting foreign law? In what way could the court get rid of its “prejudice” to consider the importance of the issue to the foreign country? Is there any universal standard to decide what is “important”? Even if there is somehow, is such an approach desirable for a domestic court? Those questions almost answered themselves. In fact, in **Timberlane** and Mannington **Mills**, courts only identified the interests need to be considered, but left the question of “**which state** has greater interests” **unsolved**, later courts’ attempt in balancing test were not satisfying, neither72. Scholars’ criticism echoed this criticism after the creation of the “balancing test” 73. The most conspicuous flaw in Second Circuit’s ruling also demonstrates this criticism, in Vitamin C, the Second Circuit identified Chinese government’s interest in vitamin C regulation is “assist China in its transition from a state-run command economy to a market-driven economy, and the resulting price-fixing was intended to ensure China remained a competitive participant in the global vitamin C market and to prevent harm to China's trade relations” 74 . After this, the Court draw a conclusion: “Recognizing China's strong interest in its protectionist economic policies and given the direct conflict between Chinese policy and our antitrust laws, we conclude that China's ‘interests outweigh whatever antitrust enforcement interests the United States may have in this case as a matter of law.’” 75 The United States interests in maintaining a competitive market is missing, and there is **no way to know with what standard the court reached its conclusion**. The Court’s silent in the process of comparison is not surprising, simply because **it is impossible** to **weigh things** with a **scale** that has **no marks**. Moreover, the Lax Approach makes the balancing test **dominates** FSC **analysis** while almost abandoning the compulsion concern will **bring more uncertainty**. Since there is a **significant lack of** the specific and practicable **standard** in courts’ **practice**, if comity is to be the dominating concern in FSC defense, the **defendant cannot adjust its future behavior** accordingly because the anti-trust law **might be set aside** almost **randomly** by the discretion of the court. In author’s view, such an **unpredictability should be avoided**, as it is almost as terrible as the conflicting laws defendant is facing.

#### Antitrust is the only solution to induce liberal reform

Shen, 20 (Weimin Shen, L.L.M, J.S.D., Washington University School of Law, 8-2-2020, accessed on 11-24-2021, Papers.ssrn, "The Role of Transnational Legal Process in Enforcing WTO Law and Competition Policy", https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3785688)//Babcii

V. THE IMPLICATIONS OF TRANSNATIONAL LEGAL PROCESS FOR TRADE AND COMPETITION There are potential implications of Transnational Legal Process for WTO compliance. Suppose a WTO member country moves in a legally noncompliant direction. In that case, other member countries can legally challenge that country in a WTO dispute and generate an interaction that yields a settlement (interpretation) that the government defendant must then obey as a matter of domestic law (internalization).252 I already discussed how US **courts** and both **governmental** and non-governmental **actors** were part of the Transnational Legal Process. In this Chapter, I examine important normative questions **via Transnational Legal Process**. I argue that Transnational Legal Process has laid the groundwork for China’s **economic transition**. What is at stake is that the international trade regime’s success did not replicate itself in other international law domains. The appropriate solution, in my view, remains Transnational Legal Process. I then apply Transnational Legal Process to current international trade, focusing particularly on the trade war rages between the US and China. As we shall see, Transnational Legal Process remains alive and significant opportunities exist for US transnational actors if they remain active **participants**. A. The Fruits of Transnational Legal Process There are at least three practical reasons that Transnational Legal Process can be robust, even in a place where judicial institutions are weak and governmental openness limited.253 First, the heart of effective internalization depends on the degree to which particular rules are or are not internalized into the domestic legal structure, instead of the particular domestic legal system in question.254 Second, Transnational Legal Process is a constructivist process by which it serves to reorder not just national interests but even national identity. 255 Third, Transnational Legal Process actually could help to explain why nations obey and why nations do not obey. 256 The United States has encouraged the Chinese agencies to enforce the Anti-monopoly Law (“AML”) to work with Chinese regulatory agencies with sectoral responsibilities to **emphasize** the importance of trade associations refraining from engaging in **conduct that would violate antitrust** law.257 On 30 August 2007, **China promulgated** the **AML**, shortly after antitrust class actions brought against Chinese defendants.258 The AML delineates the legal framework for the prohibition of cartels. Article 11, for example, stated that “[t]rade associations shall tighten their selfdiscipline, give guidance to the undertakings in their respective trades in lawful competition, and maintain the market order in competition.”259 Article 16 makes explicit that trade associations may not make arrangements for undertakings within their respective trades to engage in monopolistic practices.260 Article 46 increases the maximum fines imposable on trade associations from 500,000 yuan to 5 million yuan.261 The same article also stated that if the circumstances are serious, the administrative department for the registration of public organizations may cancel the registration of the trade association per the law.262 Since the initial implementation of the AML in 2008, several price-related investigations involving trade associations were conducted by the country’s antitrust agencies, including fields of papermaking, sea sand, gold jewelry, construction equipment, insurance, brick manufacturing, tourism and so on.263 Action accompanied the commitment that China will implement its DSB rulings and recommendations on May 2, 2015.264 According to State Councilor Wang Yong: “The separation of industry associations and chambers of commerce from the government represents a major reform measure that China is currently carrying out.”265 On July 8, 2015, the General Office of the Central Committee of the Communist Party of China and the General Office of the State Council released the “Overall Plan for the Decoupling of Chambers of Commerce of Industry Associations and Administrative Organs” to promote the decoupling of industry associations from administrative agencies. 266 The plan is considered to be a first step for the Chinese government to formally clarify the functional boundaries between administrative agencies and industry association chambers of commerce. 267 It includes 1) cancellation of the sponsorship, supervisory, and affiliation relationship between the administrative organ (including subordinate units) and the industry associations and the chamber of commerce; 2) clarification of the functions of the industry associations and the chamber of commerce, including removing the existing administrative functions of the industry associations and the chamber of commerce, except as otherwise provided by laws and regulations; 3) separation of assets and finance, and standardization of property relations; and 4) separation the personnel management of these industry associations and the chamber of commerce from the government, and define their relationship regarding personnel; and 5) separation Communist Party of China affairs and international exchanges of these organizations from the government and define their relationship regarding administration.268 By the end of 2018, 422 national-based industry associations had been decoupled from administrative agencies, which exceeded 50% of the total number.269 On June 14, 2019, the Central Office announced the decoupling of the remaining 373 national-based industry associations.27 All the above changes show that the government delineated a robust enforcement system against protectionist and other abusive government restraints. In fact, the fruits of Transnational Legal Process are visible on the streets of any major Chinese metropolis. With the WTO accession and **Transnational Legal Process** application, **thousands of Chinese laws and regulations were rewritten**. 271 Chinese legal scholars, international lawyers, law students, and government officers acquired knowledge about the rules necessary for their country to **reengage with the global trade regime**. They, in turn, widely disseminated this knowledge internally.272 Yet it would be **incorrect to assume that Transnational Legal Process is always perfect**. As many scholars argued, the enforcement powers of the AML are so **weak** as to nearly undermine the effort.273 **Nevertheless**, it is essential to step back and be clear that China is currently the United States’ largest merchandise trading partner, its third-largest export market, and its most significant source of imports. The economic costs of the bilateral economic relationship are genuine. Meanwhile, the **WTO** is the only international body dealing with trade rules between the U.S. and China that reflect core U.S. values. It “**form[s]** a baseline . . . to build **global support** to **critique** and **push back** against **Chinese** economic **practices**.” 274 In the context of comprehensively addressing China’s challenges, **the WTO is** still a **central** system, and subject to the strong leadership of the U.S. Viewed through the optic of a Transnational Legal Process, legal internalization occurs when an international norm is incorporated into the domestic legal system and becomes domestic law through executive action, judicial interpretation, legislative action, or some combination of the three.275 That is, the U.S. should take a comprehensive approach to the negotiations based on market-oriented solutions, **strengthening the global trading system and the rule of law.** Progressing on China’s **WTO commitments** will be most **effective** where the U.S. is also complying with its WTO commitments.

#### No DA’s --- Even a full rejection of deference to China would be within the world welfare

\* No Econ DA --- The defense was a massive risk that companies assumed they would lose  
\* No Trade DA --- It’s not a jurisdictional question, controversy isn’t derived from the “direct” question in the FTAIA

Fox, 19 (Eleanor M. Fox, Walter J. Derenberg Professor of Trade Regulation, New York University School of Law. , 2019, accessed on 11-12-2021, Awards.concurrences, "ANTITRUST: UPDATING EXTRATERRITORIALITY", https://awards.concurrences.com/IMG/pdf/4.\_updating\_extraterritoriality.pdf55787/361912bf66b468d8848477187d73628b861dbf86)//Babcii

4. CHINESE VITAMIN C EXPORT CARTEL: CAN A FOREIGN SOVEREIGN IMMUNIZE ITS COMPANIES FROM THE IMPORTING NATION’S ANTI-PRICEFIXING LAW? A limited foreign sovereign compulsiondefense is available under US **antitrust law**. Defendants can defend that they did the violative act solely on their own soil, they had to do it because their government ordered them to do it, and the penalties they faced from violating the order were so great that they could not afford to violate the order. 29 There is also the possibility of dismissal of a private action on comity grounds. It is unclear and much debated as to whether this ground is available in antitrust cases where the anticompetitive effects in the U.S. are direct, substantial and foreseeable, and indeed the intended and the only harm is local.30 Comity is a domestic law concept and, if available, is intended to be applied where foreign interests outbalance US interests and assertion of the US interests will interfere with the foreign relations of the United States.31 The Chinese vitamin C makers fixed the export price of vitamin C to the United States. They admitted it. The price fixing took place within the Chinese trade association, the Association of Importers and Exporters of Medicines and Health Products. Trade associations in China were infused with the presence of government officials, who typically guided the firms in the interests of China.32 US direct buyers sued. The defendants pled foreign sovereign compulsion and comity. The Chinese Ministry of Commerce (MOFCOM) told the federal district court that it ordered the firms to fix their export prices. MOFCOM explained: The firms needed to adjust to a market economy, and MOFCOM wanted them to avoid a US antidumping action. Did MOFCOM really order the firms to fix prices? The jury found that it had not; a Chinese notice invited industry self-regulation, and the notice did not appear to be an order. The jury returned a large award to the overcharged buyers. The Court of Appeals for the Second Circuit reversed. It held that comity required the court to accept China’s word (China’s interpretation of its notice) and that the Chinese interests outweighed the US interests, and it dismissed the case. The Supreme Court vacated the decision and remanded the case because the appellate court improperly treated as conclusive China’s declaration to the court that it ordered the cartel.33 The Vitamin C case—also called Animal Science—**is not about extraterritorial jurisdiction**. There was **clearly jurisdiction**. The case is about an **alleged** clash of sovereigns. The analysis applicable to the cases of extraterritoriality is equally applicable to resolve the clash. 1. Were the effects of the price-fixing direct, substantial and reasonably foreseeable? The answer is, yes, without question. 2. Was the US enforcement proportionate to the interests of the United States? Again, yes, without question.34**\*\*\*FOOTNOTE BEGINS\*\*\*** 34 Moreover, enforcing the price-fixing **law would create no business uncertainty**. The Chinese firms would surely have known of the strict US law and the uncertainty of a foreign sovereign compulsion defense, and must have taken the risk. If they did not want to take the risk, **they could have** refrained or (if really compelled) **asked for a business review letter rather than keeping their conduct secret**. In a credible case for China’s overriding interest, a favorable business review letter should issue; transparency would facilitate the process of clarifying the law. **\*\*\*FOOTNOTE ENDS\*\*\*** 3. Where did the world welfare interests lie? **This was a naked export cartel**—to the US and the other countries as well. **World welfare lay with the enforcement**. 4. How should the conflict of sovereigns be resolved? China wanted to shield its firms from the US antitrust system. But so did Saskatchewan and maybe Canada (in the potash situation), and so did Korea and Taiwan (in LCD panels); they just did not claim that they said to their firms: “I order you to cartelize.” Why should a country’s order to its firms (let alone its claim that it ordered its firms) to violate the regulating country’s law be enough to differentiate the Potash case (where the US harming conduct was not even as direct) and to immunize the price-fixers? What gives China a greater interest in shielding its firms from the US anti-price-fixing law than the US interest in enforcing its world-standard law against pricefixing?35 If China did order its firms to fix prices in violation of US law and in violation of **the principles of all antitrust jurisdictions including its own internal market rules**, this was a frontal assault on US law and **world norms**. China’s own domestic law not only prohibits pricefixing but even prohibits government officials from ordering firms to price-fix.36 Even if there was a clash of sovereigns in Vitamin C, **the US and world interests easily outweigh China’s**, in the view of this author37 (albeit not in the view of the Court of Appeals of the Second Circuit, which is now reconsidering the case on remand from the Supreme Court).38

#### BUT they are also thumped --- The Supreme court’s previous expansion of antitrust smashed deference AND ensures infinite uncertainty

Bu, 20 (Qingxiu Bu, Commercial Law @ University of Sussex, formerly professor of transnational business @ Georgetown Law Center, 4-30-2020, accessed on 11-30-2021, Oxford University Press, "Respectful Consideration, but Not Deference: Chinese Sovereign Amici in the US Supreme Court Vitamin C Judgment", https://academic.oup.com/jeclap/article-abstract/11/5-6/274/5827020)//Babcii

VI. Conclusion

The US Supreme Court’s **Vitamin C** ruling clarifies that international **comity does not require a court to give binding deference** to a foreign sovereign’s interpretations of its own laws **has far-reaching and significant consequences**. The Supreme Court certified only a narrow question, and offered several (non-exhaustive) criteria the courts should consider. The standard of **respectful consideration** leaves open the possibility that federal courts may reach decisions that completely or partially **reject positions of foreign governments, and that they may do so on inconsistent grounds.** The ruling is focused more on qualitative analysis, there is no much difference in procedures though. Such a multipronged balancing approach **casts more uncertainty for litigants**. Although it addresses the long-standing split in the deference level, this ruling will not change the federal court’s practice dramatically. In this vein, the ruling does not constitute a significant departure from the current approaches by the federal court. It is not a revolution, but a milestone of the evolution of the deference standard.

## 2AC

### China adv

### Solvency

### T CWS

#### ‘Scope’ is the extent of the area dealt with or relevant to the core laws

Oxford Languages ND, “scope,” shorturl.at/wCDY3

scope

the extent of the area or subject matter that something deals with or to which it is relevant.

"we widened the scope of our investigation"

#### It’s bounded by exemptions and immunities

Kruse et al. 19, Layne E. Kruse, Co-Chair; Melissa H. Maxman, Co-Chair; Vittorio Cottafavi, Vice Chair; Stephen M. Medlock, Vice Chair; David Shaw, Vice Chair; Travis Wheeler, Vice Chair; Lisa Peterson, Young Lawyer Representative; all on the Exemptions and Immunities Committee of the ABA Antitrust Section, “Long Range Plan, 2018-19,” American Bar Association, 3/18/19, https://www.americanbar.org/content/dam/aba/administrative/antitrust\_law/lrps/2019/exemptions-immunities.pdf

D. Top 3 Accomplishments Since Last Long Range Plan in 2015

(1) Publications. In addition to our Annual ALD Updates, we are set to publish an update to the Noerr-Pennington Handbook, which should be out in 2019. We also published a new version of the State Action Handbook in 2016. The Handbook on the Scope of the Antitrust Laws was published in 2015.

(2) Commentary on Legislative and Regulatory Proposals. The Committee has been very active in supporting Section commentary on proposed legislation, regulations, and other policy issues.

For instance, in March 2018, the E&I Committee assisted former E&I Chair John Roberti in composing his article, “The Role and Relevance of Exemptions and Immunities in U.S. Antitrust Law”, presented to the DOJ Antitrust Division Roundtable on behalf of the ABA Antitrust Section.

In January 2018, in response to a request from the Section Chair, we submitted Section comments along with the Legislative and State AG Committees, addressing the proposed Restoring Board Immunity Act legislation that would impact the post-NC Dental exemptions and immunity climate. Previously, we commented on the Professional Responsibility Act.

(3) Spring Meeting Programs. We have sponsored or co-sponsored a program at every Spring Meeting since our last long range plan. In 2019 we will chair Sham Litigation after FTC v. AbbVie The FTC v. AbbVie decision – calling for the disgorgement of $448 million on the basis of sham patent litigation. In addition, we will co-sponsor in 2019 with the Trade, Sports & Professional Associations Committee, a program on “Antitrust Law's Anomalous Treatment of Sports,” addressing how US courts have shown broad deference to the "rules of the game," including near-immunity status for concepts such as "amateurism."

II. Major Competition/Consumer Protection Policy or Substantive Issues Within Committee’s Jurisdiction Anticipated to Arise Over Next Three Years

A. Issue #1: Will Certain Exemptions Be Eliminated or Expanded?

A goal of the current DOJ Antitrust Division is to streamline antitrust laws, and in particular, take a hard look at exemptions and immunities. This is in the wheelhouse of our Committee’s fundamental policy issue: How much of the economy has opted out of our antitrust system? Is that a problem or are ad hoc exemptions acceptable ways to fine tune the application of the antitrust laws?

We anticipate, therefore, that efforts to enact or to repeal existing statutory exemptions and immunities will continue. In recent years, there have been efforts to repeal the exemptions for railroads and (at least in part) the McCarran-Ferguson insurance exemption. The Section and the Committee has generally supported efforts to repeal statutory exemptions. Given that repeal issues are very political it is unlikely that we will see many exemptions actually repealed.

On the other hand, proposals for new exemptions and immunities will continue to be introduced in Congress. The Committee will improve on a template for use in assisting the Section in drafting comments to Congress on newly proposed exemptions and immunities.

One development that may continue in the health care area are issues over a "COPA" or "Certificate of Public Advantage" at the state level. A COPA is a state statutory mechanism that provides certain collaborations in the health care community with immunity from private or government actions under the antitrust laws by invoking the state action doctrine. The FTC has generally opposed such efforts at the state level, but several states have used them to immunize health care mergers. This is a major development that should be monitored.

Through programs, newsletters, and Connect entries, the Committee intends to educate its members about Congressional and other efforts to repeal, or introduce new, exemptions and immunities, as well as the application of existing statutory exemptions and immunities in the courts. The Committee’s Handbook on the Scope of Antitrust Law, published in 2015, addresses developments in the statutory immunities area. It built on the prior publication, Federal Statutory Exemptions from Antitrust Law Handbook in 2007. Our Scope book will need to be updated within the next three years.

B. Issue #2: Will There Be Legislative Solutions to State Action Issues at State and Federal Levels?

The FTC’s case against the North Carolina Board of Dental Examiners put the "active supervision" prong of the state action test front and center. North Carolina State Board of Dental Examiners v. Federal Trade Commission, 135 S.Ct. 1101 (2015). The Court agreed with the FTC’s position that state occupational licensing boards comprised of market participants must satisfy the active supervision requirement. This spurred additional suits against other types of state boards involving regulated professionals. Moreover, every State had to reassess its boards to determine if there is "active supervision." Courts and state legislatures are addressing those issues. We also expect the proper framing of the clear articulation prong of the state action doctrine will be addressed. The Supreme Court spoke to the clear articulation test in FTC v. Phoebe Putney Health System, Inc., 133 S.Ct. 1003 (2013), narrowing the foreseeability test to cover only situations in which the anticompetitive conduct is the “inherent, logical, or ordinary result of the exercise of authority delegated by the state legislature.” How this test has played out in the lower courts will be of particular interest to the Committee and its membership. The COPA issues, at the state level, as previously mentioned, will impact this area.

The Committee expects to address these issues through updates to Connect, newsletters, Spring Meeting programs, committee programs, its contributions to the Annual Review of Antitrust Law Developments. The State Action Practice Manual addresses these issues, as well as the Committee’s Handbook on the Scope of Antitrust Law.

C. Issue #3: Will Noerr Be Restricted or Expanded?

The Noerr-Pennington doctrine is an exemption issue that is frequently litigated. In particular, the most likely area of further development is in the pharma industry. Alleged misrepresentations to government agencies has caught the attention of some courts. In addition, there may be more development on the pattern exception, which raises the issue of whether each act of petitioning in a pattern must satisfy the objectively and subjectively baseless requirements for sham petitioning. The Committee’s new Handbook on Noerr (forthcoming) and its earlier Handbook on the Scope of Antitrust Law addresses developments in the Noerr law.

III. Specific Long Term Plans to Strengthen Committee

The Committee provides important services to the membership of the Section through publications, drafting ABA Antitrust Section comments to proposed regulation and international competition proposed immunities, and programming. The goals of the Committee include: (1) to provide policy comments on key questions about the scope of the antitrust laws for legislation and policy-making; (2) produce a mix of publications and programming that provides relevant and useful information to our members; (3) to ensure that the Committee remains valuable to our members’ practices; and (4) to make the most productive use of electronic communications to deliver the Committee’s work product.

A. Potential Modifications to Charter: What is the Role of this Committee?

The Committee’s current charter accurately characterizes its purview—that is, addressing the scope of the antitrust laws. That scope, of course, is defined primarily in terms of exemptions and immunities (both statutory and non-statutory). The Committee, however, has dealt with other doctrines, such as preemption and primary jurisdiction. These areas may not necessarily be viewed as traditional exemptions or immunities, but they nonetheless directly affect the application and extent of the antitrust laws. In addition, the Committee expends significant efforts to address international issues, including statutory exclusions from the U.S. antitrust laws, including the FTAIA; the related doctrines of act of state, sovereign immunity, and foreign sovereign compulsion; and industry-specific exemptions and exclusions from non-U.S. antitrust laws, including blocking exemptions.

#### 1 --- Precision --- ABA is premier

Jonathan B. Baker 19, Research Professor of Law, American University Washington College of Law, “Market Power in an Era of Antitrust,” The Antitrust Paradigm: Restoring a Competitive Economy, 2019, pp. 11–31

Antitrust norms, especially the objection to collusive conduct, are consistently endorsed and upheld by enforcers and courts, regardless of political affiliation.12 These norms have spread throughout the world, particularly since the 1990s, with the aid of a growing global antitrust community. Annual attendance at the spring meeting of the American Bar Association’s Section of Antitrust Law— the premier gathering in the field— now exceeds 3,000, a threefold increase over the low ebb in the late 1980s. Several new academic journals dedicated to antitrust law, economics, and policy were launched in the last decade.

#### 2 --- It’s core of the topic.

Barak Orbach 14, Professor of Law, The University of Arizona College of Law, “The Implied Antitrust Immunity,” 7/1/14, https://awa2015.concurrences.com/IMG/pdf/ssrn-id2447718.pdf

Introduction

An important question antitrust courts have always been grappling with, is whether a federal regulatory scheme regulating a business activity impliedly precludes the application of antitrust law.2 [FOOTNOTE 2 BEGINS] 2 See, e.g., Donald F. Turner, The Scope of Antitrust and Other Economic Regulatory Policies, 82 HARV. L. REV. 1207, 1207 (1969) (“A pervasive and overriding issue of domestic economic regulatory policy is when and to what extent we should rely on free competitive markets and antitrust, and when and to what extent we should resort instead to regulation.”) [FOOTNOTE 2 ENDS] The argument, first introduced shortly after the enactment of the Sherman Act,3 is that the mere existence of a special regulatory scheme impliedly precludes the application of antitrust law. The persistent use of the argument contributed to the rise of the “implied antitrust immunity” doctrine, which in the past was also known as the “implied repeal doctrine” and today is also known as the “implied preclusion doctrine.”4

During its first seven decades, the implied immunity doctrine was largely an application of the presumption against implied repeals, which treats lawmaking as a rationalizable process and attempts to reconcile inconsistencies between statutes. 5 In the early 1960s, with no meaningful changes in its framing, the antitrust immunity departed from canon of statutory construction replacing the deference to legislative choices with a commitment to competition policy. In Philadelphia National Bank (“PNB”), Justice William Brennan’s clerk, Richard Posner, 6 gave new life to the immunity using the traditional wording of the presumption but stressing that the existence of “broad [regulatory] powers to enforce of the competitive standard” is the key criterion courts should consider when they evaluate “plain repugnancy.”7

During the five decades that have followed PNB, the implied immunity has considerably evolved, transforming from a presumption against implied repeals of antitrust law into a flexible evaluative framework whose underlying premises tilt its outcomes toward preclusion of antitrust law. Offering immunity from antitrust laws to regulated industries, the implied immunity is exceptionally important. Its interpretation influences the scope of antitrust law, giving courts the power to strike the balance between antitrust and other national economic policies. Notwithstanding, the doctrine, its transformation, and applications by courts are poorly understood. 8 This Article seeks to clarify the functions of the implied immunity, its structure, premises, and flaws.

### T priv sector

#### 1. China has a “private sector”

Chandrasekhar 17 – C. P. Chandrasekhar is currently Professor at the Centre for Economic Studies and Planning, Jawaharlal Nehru University, New Delhi. He has published widely in academic journals. August 2017, “How Large is China’s Private Sector?” https://www.networkideas.org/wp-content/uploads/2017/08/China\_Private\_Sector.pdf

It is a truism that economic reform in China has meant a substantial expansion in the role of private initiative in economic activity. The dismantling of communes and collectives, the encouragement of foreign investment, the recognition of the private sector initially as a “supplement to the state-owned economy” and subsequently as an “important component of the socialist market economy”, the closure, restructuring and disinvestment of shares of enterprises in the state-owned sector, the opening of Communist Party of China (CPC) membership to entrepreneurs and businesspersons, the sale of equity in leading state-owned banks and most recently the decision to make all state-held shares in the1,300 listed companies publicly traded, have all contributed to a substantial expansion in the role of the private sector, and continue to do so.

#### ‘Antitrust’ is broad and includes any instrument designed to make markets more competitive.

D. L. Rubinfeld 15, Professor of Law at New York University, International Encyclopedia of the Social & Behavioral Sciences, Second Edition, p. 553

Antitrust Policy

The term antitrust, which grew out of the US trustbusting policies of the late nineteenth century, developed over the twentieth century to connote a broad array of policies that affect competition. Whether applied through US, European, or other national competition laws, antitrust has come to represent an important competition policy instrument that underlies many countries' public policies toward business. As a set of instruments whose goal is to make markets operate more competitively, antitrust often comes into direct conflict with regulatory policies, including forms of price and output controls, antidumping laws, access limitations, and protectionist industrial policies.

#### The private sector includes subsets---refers to many different actors.

Waler and Hofstetter 16 (Katharina Walker is Advisor for vocational skills development and Helvetas’ youth focal person. Sonja Hofstetter joined Swisscontact in Cambodia in July 2016. She is the Quality Assurance Manager and Deputy Team Leader of the Skills Development Programme. “ Study on Agricultural Technical and Vocational Education and Training (ATVET) in Developing Countries” Federal Department of Foreign Affairs FDFA, Swiss Agency for Development and Cooperation SDC, Global Programme Food Security, 25.1.2016, <https://www.shareweb.ch/site/Agriculture-and-Food-Security/focusareas/Documents/ras_capex_ATVET_Study_2016.pdf> , date accessed 7/19/21)

In many developing countries, the private sector1 [[BEGIN FOOTNOTE 1]] 1 The private sector is not perceived as a homogenous mass even though the terminology might suggest this to be the case. In this study, the term “private sector” is used to circumscribe the various actors such as small and medium sized companies, large companies, sectorial associations, business associations, chambers of commerce, etc.[[END FOOTNOTE 1]] faces challenges in finding adequately skilled employees. This also holds true for sectors linked to agriculture, e.g. processing, distribution, marketing, etc. The development of ATVET from a purely productivity-oriented approach to provide broader and more specialised skills sets along agricultural value chains is likely to raise the interest of private sector actors. This incentive can result in a stronger and more sustainable financial and conceptual engagement of employers in ATVET.

#### It includes country specific as well

Collins Dictionary, ND (Collins Dictionary, No Date, accessed on 2-24-2022, HarperCollins Publishers Ltd, "Definition of private sector", https://www.collinsdictionary.com/us/dictionary/english/private-sector)//Babcii

The **private sector is the part of a country's economy** that consists of industries and commercial companies that are not owned or controlled by the government.

#### That’s any private enterprise

Hess et al 17 (Janto S. Hess-Institute for Risk and Disaster Reduction at University College London, Earth System Governance Project. Ilan Kelman-Institute for Risk and Disaster Reduction at University College, Institute for Global Health, University College London, University of Adger. “Tourism Industry Financing of Climate Change Adaptation: Exploring the Potential in Small Island Developing States” <https://discovery.ucl.ac.uk/id/eprint/1567003/1/cddj-vol02-iss2-4.pdf> , Received: 12 November 2016 / Accepted: 17 July 2017 / Published online: 25 July 2017, date accessed 7/19/21)

After the initial pledge to provide USD 100 billion annually by 2020, private sector involvement in adaptation finance was increasingly highlighted (UNEP, 2016; Pauw & Pegels, 2013; Atteridge, 2011). In this article, the term ‘private sector’ is primarily understood as any privately-owned enterprise. The private sector will likely have to adapt, and in many cases already adapts, to climate change through exploiting new business opportunities and managing climate-related risks (Pauw, 2015; Surminski, 2013). Tracking private finance in adaptation is a major challenge due to scarcity of information (Pauw, 2015; Agrawala et al., 2011).

#### “Antitrust laws” is primarily extraterritorial --- Also core of the topic

Knebel 17 (Donald E. Knebel—Adjunct Professor and Senior Advisor; Of Counsel. “Extraterritorial application of U.S. antitrust laws: principles and responses.” Jindal Global Law Review (2017) 8(2):181–202. Published online: 14 September 2017, DOI 10.1007/s41020-017-0047-x)

According to a recent report by the United States Department of Justice, about 90 percent of fines of $10 million for criminal violations of U.S. antitrust laws since 1999 have been levied against non-U.S. defendants for conduct occurring outside the U.S. U.S. Dept. of Justice.1 Twenty-eight percent of those fines have been in excess of $100 million, with the largest, a fine of $650 million, levied in 2017.2 About sixty percent of fines in excess of $10 million have been levied against Asian companies.3

As these statistics indicate, U.S. authorities are aggressively enforcing U.S. antitrust laws against conduct occurring entirely outside the United States. Individuals and companies that have never set foot in the United States can find themselves involved in litigation in the U.S., potentially leading to severe fines and even prison terms. The high percentage of large fines levied against non-U.S. companies may well indicate that the companies outside the U.S. are not aware of how their activities can run afoul of U.S. law and how they can become subject to those laws. As a result, it is important for anyone involved in international trade to understand the principles of extraterritorial enforcement of U.S. antitrust laws.

### Chevron

#### Perm do the CP --- “core” includes FTC

FTC No Date—“The Antitrust Laws.” 2013. Federal Trade Commission. June 11, 2013. https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws.

Congress passed the first antitrust law, the Sherman Act, in 1890 as a "comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade." In 1914, Congress passed two additional antitrust laws: the Federal Trade Commission Act, which created the FTC, and the Clayton Act. With some revisions, these are the three core federal antitrust laws still in effect today.

The antitrust laws proscribe unlawful mergers and business practices in general terms, leaving courts to decide which ones are illegal based on the facts of each case. Courts have applied the antitrust laws to changing markets, from a time of horse and buggies to the present digital age. Yet for over 100 years, the antitrust laws have had the same basic objective: to protect the process of competition for the benefit of consumers, making sure there are strong incentives for businesses to operate efficiently, keep prices down, and keep quality up.

#### Congress AND Sherman key to certainty

Derrian Smith 19. J.D., 2019, Indiana University Maurer School of Law; B.A., 2016, Indiana University - Indianapolis. "Taming Sherman's Wilderness." Indiana Law Journal, vol. 94, no. 3, Summer 2019, p. 1223-1246. HeinOnline.

CONCLUSION

The Sherman Act, by its vague and sweeping language, is a broad delegation of authority to the Supreme Court. Congress sent us into the wilderness-law students and generalist judges alike. In light of swelling desire for the antitrust laws to be more effective against modern-day competition foes, Congress should update the Sherman Act. The common-law approach has not achieved the stability one would expect of a statute levying hefty criminal sanctions, and the Court appears to approximate agency rulemaking on an increasingly frequent basis. Delegating rulemaking authority to an antitrust agency may be a viable solution. But there are some draw backs-namely constitutional objections to which the Sherman Act may be vulnerable, especially if an agency delegation were not accompanied by some level of additional statutory clarity. Even if the agency solution proves unworkable, Congress should address head-on the growing need for clarity,

**5. Agencies create more confusion**

Alexander Paul **Okuliar et al. 21**. Morrison & Foerster LLP. "FTC Lays Groundwork For Rulemakings: Are New Substantive Competition Rules Coming?". No Publication. 3-25-2021. https://www.mondaq.com/unitedstates/antitrust-eu-competition-/1067906/ftc-lays-groundwork-for-rulemakings-are-new-substantive-competition-rules-coming

**The FTC's foray into rulemaking could lead to** a period of **uncertainty and legal challenges in** those **areas touched by a new agency rule. There is likely to be significant debate over the scope of** the FTC's **authority, the particulars of the rulemaking process, the substance** of any proposed rules, and**, when tested in court, the extent of** Chevron **deference** to which the agency is entitled. Substantive FTC competition rules could also create potential divergence in enforcement policy or activity between the DOJ and FTC brought about by the new rules.

#### 6. Courts shut it down and Congress backlashes

Alison Jones 20 and William E. Kovacic. Alison Jones, King’s College London, London, United Kingdom. William E. Kovacic, King’s College London, George Washington University, and United Kingdom Competition and Markets Authority, "Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy". SAGE Journals. 3/20/2020. https://journals.sagepub.com/doi/10.1177/0003603X20912884

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

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

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

#### 7. The FTC doesn’t have the expertise

Kaye 10/21 (Kate Kaye, Reporter, 10-21-2021, "The FTC just lost key tech and data privacy leaders," Digiday, <https://digiday.com/media/as-the-ftc-takes-aim-at-tech-giants-the-regulator-just-lost-key-tech-and-data-privacy-leaders/>) //HKM

The U.S. Federal Trade Commission has big ambitions to answer the cries from members of Congress and consumer privacy advocates to rein in big tech. However, the agency — which has just nine technologists — does not seem to be having much luck attracting and retaining the staff to make that happen. Three recent departures could stymie its hiring goals. As it repeatedly requests additional funding to hire more tech-savvy staff to assist in data privacy-related investigations, the FTC was hit with a setback last week with the departure of its top technologist, Erie Meyer, who left the agency after coming on board in June. “The FTC has struggled to bring on a lot of technologists for years,” said Justin Brookman, director of privacy and technology policy at Consumer Reports, who has served as policy director in the regulator’s Office of Technology Research and Investigation. “They don’t have enough privacy lawyers, they don’t have enough technologists, they don’t have enough anything.” Meyer has returned to the Consumer Finance Protection Bureau, an agency now led by former FTC commissioner Rohit Chopra, to serve as its chief technologist. According to a CFPB announcement about her return, she had also served as Chopra’s Technology Advisor while he was still at the FTC. During her brief stint with the FTC, Meyer highlighted its tech-related hiring aspirations. Stephanie Nguyen, former deputy chief technologist, is currently serving as acting chief technologist in Meyer’s place. Nguyen’s work has involved user design interfaces including research on deceptive design elements known as dark patterns. In two more blows, a pair of longtime members of the FTC’s consumer protection bureau are also out to join law firms. Daniel Kaufman, former deputy director of the Consumer Protection Bureau left this month to join BakerHostetler’s digital assets and data management practice group. Maneesha Mithal, associate director of the FTC’s privacy division inside the bureau, is set to leave at the end of this week for Wilson Sonsini, which has represented Google for several years. Kaufman’s and Mithal’s exits were first reported by Politico. An FTC spokesperson confirmed the departures but declined to comment for this story. Brookman called the departures “a big deal,” and said of the FTC, “They are going to be in a holding pattern on privacy for a little bit.” The FTC is knee-deep in tech industry cases that require tech knowledge, including its antitrust case against Facebook, which it has revised to put more emphasis on data and privacy related issues. Who’s on tech and privacy The FTC has nine technologists including Nguyen. In general, technologists working for the FTC support investigations as well as other efforts, including work not related to data privacy. They might evaluate code associated with a company’s technology or determine whether assertions made in a legal complaint are technically sound, for example. Some might assist in efforts related to data privacy enforcement inside the Division of Privacy and Identity Protection, which is often referred to DPIP or “D-Pip” and is part of the FTC’s Consumer Protection Bureau. Others assist legal staff in research and market studies for competition-related investigations and are not involved in enforcement. Lerone Banks joined the FTC in 2013 and leads data privacy and security technical investigations as a technologist inside DPIP. According to Banks’s LinkedIn profile, “While his name rarely appears on legal documents, his fingerprints are on every significant technical matter facing the FTC’s Bureau of Consumer Protection, including investigations into Apple, Amazon, Google, Facebook, LifeLock, Equifax, Ashley Madison, and Zoom.” Being one of the few technologists at the FTC can be lonely, said Jessica Rich, former director of the FTC’s Consumer Protection Bureau. She said the FTC has had a hard time competing with the salaries and career advancement potential of corporate tech. “If the FTC had the funds and authority to hire multiple technologists, that would also make it a more appealing place to work,” she told Digiday in August. “You don’t want to be the one technologist in the privacy division who everyone is coming to for everything; you want to be part of a professional cadre of technologists.” It is unclear exactly how many technologists or other FTC staff focus on data and privacy issues. The FTC’s budget request for 2022 shows that it has had a total of 63 privacy and identity protection staff in 2021. But the number of FTC staffers focused on data and privacy issues could be even lower. Former FTC chair Joseph Simons told Congress in 2019 that the agency had 40 full-time employees handling data and privacy work. The FTC’s report to Congress on data privacy and security this September also gave that ballpark figure of 40 to 45 people in DPIP. The FTC’s privacy and tech-related staffing requests As part of its larger 2022 budget increase request, the FTC asked for $18.5 million to fund 110 total additional staff. Among those 110 new people, it asked for 13 additional staff in its Consumer Protection Bureau to address privacy, data security and emerging tech use in marketing in addition to conducting compliance monitoring. The agency also aims to add 36 additional people in its Competition Bureau to identify and challenge anticompetitive mergers and conduct in “increasingly pervasive technology markets.” Funding to “holistically address privacy abuses” FTC chairwoman Lina Khan reaffirmed the budget requests to fund more staff in an Oct. 1 statement on the FTC’s website that noted her mission to align privacy and antitrust enforcement more closely in recognition that large digital platforms build market power by collecting and monetizing data. “Even absent these increases, however, we must update our approach to keep pace with new learning and technological shifts,” she wrote. Khan’s statement mirrored what was written in the agency’s September privacy report to Congress, which said the FTC would use increased funding to support hiring more tech experts to “holistically address privacy abuses” as well as specific data-centric tech such as algorithmic financial services and healthcare apps and tech for targeted advertising. Legislators have tried to get the FTC more funding and resources, often writing it into various competition and data privacy related bills, including in a bipartisan package of tech-focused antitrust bills introduced in June in the U.S. House of Representatives. The boldest move yet to get the agency more funding came in September through an amendment to President Biden’s still-pending Build Back Better Act that would give the FTC $1 billion to use over a ten-year period. The funds would help the agency create a new bureau addressing unfair or deceptive data privacy and security abuses. However, its fate is subject to congressional negotiation mired in political morass over the legislation. Brookman said of the possible $1 billion funding, “It would be great, but that’s by no means a done deal.” Not stacking up to EU counterparts In an effort to justify more money for the FTC, legislators such as Rep. Jan Schakowsky, the Illinois Democrat who proposed the billion-dollar cash injection, have measured the agency’s limited data and privacy staffing against that of data protection bodies in Europe, where regulators enforce the EU’s General Data Privacy Regulation. In contrast with the FTC’s 40-60 some data privacy staff, many of whom are lawyers rather than tech specialists, European Data Protection Authorities are better resourced, according to a recent report from the Irish Council for Civil Liberties. FTC: 9 technologists, 40-60 data privacy staff Germany: 99 tech specialists/745 other personnel France: 30 tech specialists/195 other personnel Ireland: 28 tech specialists/155 other personnel Spain: 30 tech specialists/139 other personnel Source: Irish Council for Civil Liberties Although Europe’s data protectors have more dedicated staff and technologists than the FTC, the Irish Council for Civil Liberties — a membership organization that gets funding from human rights and civil liberties groups as well as the European Commission — argued that the FTC’s European counterparts need more resources, too. “Europe’s DPAs are not configured for the digital era, and continue to lack the capacity to investigate and understand what tech companies do with people’s data,” noted the report. Lack of career path In addition to lack of funding, when it comes to hiring staff with tech expertise, the FTC has had a hard time competing with the salaries and career advancement potential that tech companies can offer, said Rich. “There hasn’t been a career path for technologists,” she said. “So, you can’t attract people who want to make a career at the FTC, and so eventually they leave so they can have a better career.” The FTC has another way to bring fresh tech specialists on board who are not paid through congressional budgeting, though. It aims to hire part-time and full-time remote technologists skilled in an array of fields including ad tech, content management and misinformation, social media platforms and AI through the Intergovernmental Personnel Act Mobility Program. The program allows people to work for the FTC while being paid by their current employer for up to two years.

#### 8. no impact to ai – consensus

Baum 15 Seth D., executive director of the Global Catastrophic Risk Institute and Research Scientist @ the Blue Marble Space Institute of Science and an Affiliate Researcher @ the Columbia University Center for Research on Environmental Decisions, *Environment, Systems, and Decisions*, May 4th, “Risk and Resilience For Unknown, Unquantifiable, Systemic, and Unlikely/Catastrophic Threats,” http://sethbaum.com/ac/2015\_RiskResilience.pdf

3.2 More Examples: AI and Extraterrestrials∂ Two ongoing threats that come closer to being actually unknown are AI and extraterrestrials, or∂ rather certain AI and extraterrestrials scenarios. For AI, the relevant scenarios are those in which∂ a potential future “superintelligent” AI outsmarts humanity and takes over the world (Good∂ 1965; Eden et al. 2013; Bostrom 2014). Similarly, for extraterrestrials, the relevant scenarios are∂ those in which humanity encounters extraterrestrials that are more powerful than itself, and the∂ extraterrestrials take over the world (Michaud 2007; Baum et al. 2011a). Both scenarios are∂ somewhat speculative, which makes them good examples of relatively unknown threats.∂ For both scenarios, increasing resilience is of little use. If humanity loses control of the∂ planet, then traditional means of increasing resilience—such as creating redundant networks,∂ stockpiling resources, or planning to adapt and recover—do not help humanity retain its critical∂ functionality. This holds for any reasonable definition of humanity’s critical functionality:∂ humanity’s population, its civilization, and even its very existence are all threatened. The∂ situation here is much like the situation of those many species on Earth now extinct due to their∂ encounter with the vastly more powerful human species, or the situation of those species that∂ would now be extinct except that humanity chose to keep them alive. For all such species,∂ resilience does not help. So too for humanity in the face of vastly more powerful AI or∂ extraterrestrials.∂ Both threats are poorly known, even if they are not completely unknown. At this time, it is∂ not known whether it is possible to build such an AI, let alone which AI will be built and what∂ that AI would be like. Some leading AI researchers express skepticism that such AI is possible∂ (e.g., Horvitz and Selman 2009). Expert surveys indicate widely varying and conflicting∂ 4∂ projections about if and when such an AI would occur, and what the consequences would be∂ (Baum et al. 2011b; Armstrong and Sotala 2012; Müller and Bostrom forthcoming). The threat∂ of extraterrestrials may be even less well known. It is not known whether extraterrestrials exist,∂ or, if they do exist, whether it is possible for humanity to encounter them. It is likewise not∂ known which extraterrestrials humanity would encounter and what those extraterrestrials would∂ be like. All that is known is that no extraterrestrial encounter has previously occurred. Many∂ explanations have been proposed for why no extraterrestrial encounter has previously occurred,∂ the so-called Fermi paradox (Webb 2002). Likewise, speculations abound on what would happen∂ if an extraterrestrial encounter occurs, though there is limited basis for assessing which of these∂ are most likely (Michaud 2007; Baum et al. 2011a).∂ The examples of AI and extraterrestrials are threats that are relatively unknown, yet they may∂ not warrant a response of increasing resilience. Instead, the only viable response is to decrease∂ the probability of the threat manifesting. For AI, this can be done by abstaining from building∂ potentially dangerous types of AI (Joy 2000) or by seeking to build AIs that would not harm∂ humanity (Yudkowsky 2011). For extraterrestrials, this can be done by abstaining from∂ transmitting messages towards parts of the galaxy likely to house extraterrestrials (Brin undated;∂ Haqq-Misra et al. 2013) or, eventually, by abstaining from traveling around outer space. These∂ various response options would all decrease the risk from these relatively unknown threats, even∂ though they do not increase resilience.

### ITC

#### Federal courts strike the CP --- If they fiat around this than it requires the aff

\* Winning an ITC case against cartels requires “antitrust injury” which Vitamin C immunized

Kieff 18 [F. Scott Kieff is the Fred C. Stevenson Research Professor at George Washington University Law School and Senior Fellow at Stanford University’s Hoover Institution, “Private Antitrust at the U.S. International Trade Commission”, 2018, https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2597&context=faculty\_publications] IanM

Nevertheless, at least one recent high-profile dispute shows there is at least one significant barrier that may **stand** as a practical obstacle to a **private litigant** **bringing** an **antitrust claim** under the **Section 337** portion of the ITC’s docket: the **doctrine** that federal courts developed called “antitrust injury,”10 During the **initial** **phases** of such a case recently brought against Chinese importers of steel by the domestic US steel industry, with support from both companies and unions, the ALJ dismissed the antitrust complaint for **lack of antitrust injury** in an initial determination that was then reviewed by the Commission. 11 This paper explores some reasons why the **antitrust** injury doctrine from federal court may **not** be a **good fit for investigations** brought under Section 337 at the ITC.

#### 5. Deterrence --- ECD case proves ITC is insufficient to stop Chinese cartels

McMickle, 17 (John McMickle, a founding principal of North South Government Strategies. From 1995-2001, John served as Counsel to the Senate Judiciary Committee where he advised Chairman Grassley (R-IA) on an array of policy matters under the committee's jurisdiction, including the last comprehensive re-write of the nation's bankruptcy laws. After leaving the Hill, Mr. McMickle served for a decade as a partner in the government affairs department of a major international law firm and then as President of a boutique public strategies consulting firm. Mr. McMickle received a B.A. from the University of Tennessee in 1989 and a J.D. from American University, Washington College of Law in 1994., 7-26-2017, accessed on 5-22-2021, TheHill, "Beef up antitrust law to fight Chinese price-fixing schemes", https://thehill.com/blogs/pundits-blog/economy-budget/343878-beef-up-antitrust-law-to-fight-chinese-price-fixing-schemes?rl=1) //Babcii

Chinese companies, in connection with the Chinese government, have successfully used federal courts to hide possible evidence of an illegal price fixing conspiracy that has resulted in serious harm to American manufacturers. In a [court case denied review in the Supreme Court earlier this year](http://www.scotusblog.com/case-files/cases/energy-conversion-devices-liquidation-trust-v-trina-solar-limited/), China escaped punishment under American antitrust laws and, incredibly, hid behind so-called protective orders and federal court rules to seal damning evidence of misconduct. Access to these sealed documents are in the national public interest and should be reviewed by Congress and the public to determine the full extent of any possible illegality and to inform federal policies aimed at ensuring a fair playing field for United States manufacturers. A bit of background is in order. **In 2012**, the **I**nternational **T**rade **C**ommission found that Chinese solar panel manufacturers were “**dumping**” solar panels in the United States by selling below cost. As a result, the ITC imposed duties in order to level the playing field for American businesses. **Unfortunately, the ITC decision does not provide a remedy for American businesses already harmed by the anticompetitive conduct**. Subsequent evidence seemed to reveal that Chinese solar panel manufacturers colluded with each other and the Chinese government in order to drive American companies out of the solar panel manufacturing business. The fate of Energy Conversion Devices (ECD), the Michigan company that sought review in the Supreme Court, is a case in point. Once the world’s largest maker of flexible solar panels, ECD [was forced into bankruptcy](https://www.greentechmedia.com/articles/read/The-End-Arrives-For-ECD-Solar-) as a result of this illegal price-fixing scheme. ECD, in an attempt to recoup some of its losses, created a trust and filed suit in federal court to force Chinese manufacturers to pay damages resulting from an alleged price-fixing conspiracy. In other words, the litigants in the recent Supreme Court case **tried to use American antitrust laws to compensate** a U.S. manufacturer for harm suffered as a result of conduct that had already been deemed illegal by the federal government. **Lower courts dismissed the ECD case and that dismissal is now final**.

#### 6. The CP fails to induce compliance and collapses trade

Corey and Atkinson, 20 (Nigel Corey and Robert Atkinson, Nigel Cory is an associate director covering trade policy at the Information Technology and Innovation Foundation. Cory holds a master’s degree in public policy from Georgetown University and a bachelor’s degree in international business and commerce from Griffith University in Brisbane, Australia., Atkinson holds a Ph.D. in city and regional planning from the University of North Carolina, Chapel Hill, where he was awarded the prestigious Joseph E. Pogue Fellowship. He earned his master’s degree in urban and regional planning from the University of Oregon, which named him a distinguished alumnus in 2014., 1-13-2020, accessed on 6-13-2021, Itif, "Why and How to Mount a Strong, Trilateral Response to China’s Innovation Mercantilism", https://itif.org/publications/2020/01/13/why-and-how-mount-strong-trilateral-response-chinas-innovation-mercantilism)//Babcii

The Need to Differentiate Between **Protectionism and Prosecution**

**Trade enforcement** and other tools should be used to fight protectionism in China, and **not be a** tool to reduce competitive pressures on firms in the United States, Japan, and the European Union. The goal of the three parties should not be to withdraw from the global trading system **and emulate the mercantilists**, thereby defending their companies from uncomfortable foreign competition. In other words, **enforcement** should be used to contest Chinese protectionism that is damaging the global trade system, not simply as a tool to make any or all of the three parties more competitive—or to provide shelter to certain sectors from the rigors and turmoil of global competition. This may sound like a semantic difference, and indeed, most in the Washington trade establishment refuse to accept the difference—seeing both as “protectionism”—but there is in fact a **difference**, and it’s a **critical** one.

The goal here is not permanent “protectionist” policies against China, but rather an array of policies to be used as tools to pressure China into at least significantly **reducing its use of mercantilist policies**. Should China do that, the three parties should remain open to China’s enterprises, and trade and investment between them and China. Indeed, the three parties should pursue a “selective” prosecution whereby China should be rewarded when it plays by the rules and progress is clearly visible, but be met with resolute action when it does not play by the rules. Blanket, punitive **trade taxes** against China will likely not prove productive in getting China to change; a trilateral strategy in response to China’s mercantilism will have to be more **nuanced**.

### Econ DA

#### growth might be high but will slow RAPIDLY and SOON – predictive evidence

Rugaber 3-31 (Christopher Rugaber – economics reporter at AP, 3-31-22, "U.S. economic growth strong but expected to slow – The Examiner," Examiner, https://www.examiner.net/2022/03/31/u-s-economic-growth-strong-but-expected-to-slow/)//bp

Looking ahead, however, growth is likely to slow sharply this year, particularly in the first three months 2022. Higher inflation will likely weigh on consumer spending as Americans take a dimmer view of the economy. Home sales have fallen as the Federal Reserve has started pushing up borrowing costs, leading to a sharp increase in mortgage rates. Exports may weaken as overseas economies are disrupted by Russia’s invasion of Ukraine. For the January-March quarter of this year, the biggest drag will be a sharp reduction in the amount of goods businesses restock on their shelves and warehouses. In last year’s fourth quarter, companies engaged in a huge buildup of inventories, in an effort to get ahead of supply chain problems for the winter holidays. That inventory restocking added nearly six percentage points to fourth quarter growth, a boost that wasn’t repeated in the first three months of this year. And solid consumer spending likely pulled in more imports in the first quarter, economists forecast, while a stronger dollar and slower growth overseas reduced U.S. exports. The combination should also weaken the economy in the first quarter. Economists forecast that growth could fall to as low as 0.5% in the first three months of the year and may even slip into negative territory.

#### No chance it hurts confidence

Fox, 19 (Eleanor M. Fox, Walter J. Derenberg Professor of Trade Regulation, New York University School of Law. , 2019, accessed on 11-12-2021, Awards.concurrences, "ANTITRUST: UPDATING EXTRATERRITORIALITY", https://awards.concurrences.com/IMG/pdf/4.\_updating\_extraterritoriality.pdf55787/361912bf66b468d8848477187d73628b861dbf86)//Babcii

The United States would handicap itself, as well as the big needy populations in developing countries, and would undermine world welfare, by choosing a narrow construction of “direct.” Saskatchewan’s interest in supporting Saskatchewan’s taxpayers by export cartel profits should be entitled to no weight. Canada’s implicit support for the cartel was a frontal assault on competition itself (Canada has laws against cartels and applies them when Canada is injured). **Enforcement** in the US **is proportionate** to US interests and is important to exonerate those interests. The desire for cartel profits is not a legitimate justification, especially in a country that prohibits cartels at home. The world welfare interest is clearly on the side of the US enforcement.

Since every antitrust nation has an anti-cartel law, **allowing US jurisdiction does not impair certainty regarding how firms should conduct their businesses**; and allowing, even expecting, harmed nations to condemn the cartel does not interfere with the exporting nation’s right to regulate its own economy

#### 6. Business formation is useless for the general economy

Bagrie, 18 (Cameron Bagrie, Cameron Bagrie is the Managing Director of Bagrie Economics. Cameron has been an economist for 20 years. For over 11 years he was the Chief Economist at ANZ. He has also worked as an economist at the National Bank, Treasury and Statistics New Zealand., 8-9-2018, accessed on 8-21-2021, The Spinoff, "Business confidence is a hopeless indicator. But that doesn’t mean the economy isn’t in trouble", <https://thespinoff.co.nz/business/09-08-2018/business-confidence-is-bullshit-but-that-doesnt-mean-the-economy-isnt-in-trouble/)//Babcii>

The economy is headed for recession if you believe the readings from business confidence. Thankfully we can largely ignore business confidence readings. We can’t ignore other survey measures though that are saying growth has slowed and the official statistics are showing the same. The last three quarterly GDP prints have been 0.6, 0.6 and 0.5% and we only have data up to March 2018. That’s annualised growth in the low 2’s and a dip below 2% now looks likely. We have the potential for a growth pothole. That is becoming a concern as the wheels of the economy need to be turning and tax revenue coming in the door for social agenda demands to be met. A whopping net 45% of firms are pessimistic about the general economy according to the ANZ Business Outlook survey. That’s a level last seen around the global financial crisis. Of course, no one really believes things are that bad. We can’t blame the global scene as other countries would be seeing massive falls in confidence too if that was a key factor. Other countries are not. The New Zealand Institute of Economic Research (NZIER) is showing weak readings for business confidence within their Quarterly Survey of Business Opinion (QSBO) too. The good news is that business confidence is hopeless as an economic indicator. The correlation with economic growth is poor and I largely ignore business confidence readings. Changes in direction can provide some insightful information – whether things are picking up or slowing down, but not the levels. Businesses tend to be more upbeat regarding general confidence about the economy under a blue flag as opposed to a red one. Business confidence averaged minus 18 between 2000 and 2007. The economy (measured by real gross domestic product) grew on average by more than 3.5% per year. Yep, confidence was negative, but growth was positive. So, we ignore business confidence as an economic indicator. This is nothing new. It’s surprising headline business confidence figures receive so much attention.

### Iran DA

#### Iran deal fails --- causes quicker prolif and terrorism

Brookes, 22 (Peter Brookes, 2-22-2022, accessed on 4-3-2022, The Heritage Foundation, "4 Reasons Why Returning to Iran Nuclear Deal Is Bad Idea", <https://www.heritage.org/middle-east/commentary/4-reasons-why-returning-iran-nuclear-deal-bad-idea)//babcii>

Ukraine isn’t the only foreign policy crisis the U.S. is facing. After months of negotiations, the Biden administration may be on the verge of restoring the [Joint Comprehensive Plan of Action](https://www.dailysignal.com/2021/09/20/atomic-ayatollahs-up-the-ante-on-biden-administration/) (aka the Iran nuclear deal), with no chance of replacing it with a “longer and stronger” deal, [as the administration promised](https://www.heritage.org/middle-east/commentary/us-enters-multilateral-minefield-indirect-nuclear-talks-iran). Doing so is a really bad idea. The 2015 Obama-era agreement with the Iranian regime is [seriously flawed](https://www.heritage.org/middle-east/report/irans-nuclear-humpty-dumpty-the-jcpoa-should-not-be-put-back-together-again), and returning to it will—at best—only postpone, but not end, Tehran’s potential nuclear threat to the U.S., its allies, and partners, including Israel. The Trump White House rightfully left the agreement in 2018 due to its many serious shortcomings, but we apparently need to remind ourselves—and the Biden administration—of those flaws once again before the die is cast 1) Sunset Provisions: The Joint Comprehensive Plan of Action didn’t end Tehran’s nuclear program. It only slowed it down. The pact was more of a speed bump than a stop sign. A striking example is that most major restrictions on uranium enrichment—the key process used in making a weapon—begin to “sunset,” or expire, after 2025 and permit Tehran to expand enrichment to an industrial scale after 2030. That essentially means that under the deal, Iran would eventually be free to produce more bomb-making material more quickly, which would facilitate a nuclear [breakout](https://www.dailysignal.com/2021/09/20/atomic-ayatollahs-up-the-ante-on-biden-administration/) or “sneakout.” 2) Ballistic Missiles: The Iran nuclear deal also didn’t capture Tehran’s determined development of ballistic [missiles](https://www.dailysignal.com/2021/03/01/dont-forget-about-irans-missile-program/)—which are, by the way, a perfect delivery vehicle for a nuclear weapon. Tehran currently has the largest ballistic missile [arsenal](https://www.dailysignal.com/2021/03/01/dont-forget-about-irans-missile-program/) in the Middle East, and its so-called civilian [space](https://www.dailysignal.com/2021/06/30/what-irans-failed-satellite-launch-likely-signals/) program, which could support the building of intercontinental-range military missiles capable of reaching the U.S, is very active. 3) Inspection Regime: The Joint Comprehensive Plan of Action strangely doesn’t allow for [“anytime, anywhere”](https://www.reuters.com/article/us-iran-nuclear-iaea-explainer/u-s-risks-reversing-iran-nuclear-deals-inspection-gains-idUSKBN1I425L) inspections. Essentially, International Atomic Energy Agency inspectors aren’t allowed to visit undeclared facilities without permission. On top of that, Tehran has put its [military bases](https://iranprimer.usip.org/blog/2017/sep/11/report-iran%E2%80%99s-military-sites-and-nuclear-deal) off-limits to inspections, which clearly improves Iran’s ability to hide any nuclear work that violates the agreement. Considering Iran’s record of denial and deception on nuclear matters over the years, this is deeply unsettling—and no way to verify Iran’s compliance with the deal. 4) Possible Military Dimensions: As part of the nuclear deal, Iran was supposed to reveal to the International Atomic Energy Agency all military aspects of its earlier nuclear weapons work in order to facilitate oversight of the pact. Not surprisingly, [Tehran](https://www.iaea.org/newscenter/news/iaea-board-adopts-landmark-resolution-on-iran-pmd-case) hasn’t cooperated on this issue. Of course, thanks to Israel’s [exfiltration](https://www.nytimes.com/2018/07/15/us/politics/iran-israel-mossad-nuclear.html) of secret Iranian nuclear documents from Tehran, we now know [Iran](http://isis-online.org/isis-reports/detail/summary-of-report-the-plan-irans-nuclear-archive-shows-it-planned-to-build/8) planned to build five nuclear weapons for delivery by ballistic missile. So, it’s clear that Iran must be transparent on this issue. Indeed, why should we believe that Iran’s atomic aspirations have changed one iota, considering its ongoing anti-American, anti-Israeli views and its desire for hegemony over its Arab neighbors in the Middle East? Though not part of the Joint Comprehensive Plan of Action, one misguided expectation of the Obama administration was that the nuclear agreement would moderate Iran’s belligerent behavior by reducing its international isolation—and increasing its international engagement. It hasn’t. Iran is still the world’s foremost state sponsor of [terrorism](https://www.state.gov/reports/country-reports-on-terrorism-2020/iran/). Iran’s Islamic Revolutionary Guard Corps, which controls key parts of the nuclear program, also coordinates Iran’s terrorist network, working closely with Hezbollah, Hamas, radical [Iraqi militias](https://www.dailysignal.com/2021/11/09/iranian-drones-cast-intimidating-shadow-over-iraq/), Yemen’s [Houthi rebels](https://www.dailysignal.com/2022/01/27/iran-backed-militias-escalate-attacks-on-us-united-arab-emirates/), and Syria’s Bashar Assad regime, another state sponsor of terrorism. Unfortunately, permanently lifting punitive economic sanctions on Iran under the Joint Comprehensive Plan of Action in exchange for short-term restrictions on Iran’s uranium-enrichment program will put money in the regime’s pockets that it will undoubtedly use for troubling purposes, as it did following the [2015 nuclear deal](https://www.heritage.org/middle-east/report/the-dangerous-regional-implications-the-iran-nuclear-agreement).

#### Iran deal fails to solve Iran prolif BUT it collapses US signaling

Stephens, 22 (Bret Stephens, Bret Louis Stephens is a Pulitzer Prize-winning American conservative journalist, editor, and columnist. He began working as an opinion columnist for The New York Times in April 2017 and as a senior contributor to NBC News in June 2017, 3-22-2022, accessed on 4-3-2022, The New York Times, "Opinion | A New Iran Deal Leaves Us Meeker and Weaker", <https://www.nytimes.com/2022/03/22/opinion/iran-nuclear-deal-biden.html>)//Babcii

What does President Biden think he will get out of a new nuclear deal with Iran?

A year ago, the answer seemed reasonably clear to the administration: Tehran had responded to Donald Trump’s decision to walk away from the original 2015 deal — known as the Joint Comprehensive Plan of Action, or J.C.P.O.A. — by enriching uranium to ever-higher levels of purity, bringing it increasingly close to a nuclear bomb, or at least the capability to build one quickly. Barring a new deal that put limits on enrichment, Iran seemed destined to cross the nuclear finish line sooner rather than later. Hence the urgency of a deal.

But **today we live in a different world**. It’s a world in which Russia and China — parties to both the J.C.P.O.A. and the current negotiations — are definitely **not our well-wishers**, and a world in which Saudi Arabia and the United Arab Emirates [wouldn’t answer Joe Biden’s phone calls](https://thehill.com/homenews/administration/597436-saudi-uae-leaders-declined-calls-with-biden-amid-ukraine-conflict)in the midst of the greatest geopolitical crisis of the 21st century. Maybe the administration needs to think through the broader implications of a new deal a little more carefully before it signs on again.

So far, that isn’t happening. The deal is said to be mostly finalized, barring last-minute haggling over whether the United States will remove the Islamic Revolutionary Guards Corps — which Washington has said is [responsible for killing hundreds of Americans](https://www.wsj.com/articles/iran-nuclear-deals-final-hurdle-is-lifting-terrorism-sanctions-on-revolutionary-guards-11647864073) — from the list of sanctioned foreign terrorist organizations.

Asked earlier this month whether Russia’s invasion of Ukraine would affect **the nuclear negotiations**, Antony Blinken was definitive: “These things are totally different and are just, are not, in any way, linked together,” the secretary of state told Margaret Brennan of CBS.

But **they are linked together, in ways large and small, tactical and strategic**. The United States isn’t even negotiating directly with Tehran — the Iranians wouldn’t allow the Americans into the room, and the administration, incredibly, agreed — but is instead relying on its intermediaries.

And how are those intermediaries doing? “I am absolutely sincere in this regard when I say that Iran got much more than it could expect, much more,” Mikhail Ulyanov, the top Russian diplomat at the negotiations, [said earlier this month](https://twitter.com/polarisnatsec/status/1500466439018491905?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1500466439018491905%7Ctwgr%5E%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fwww.realclearpolitics.com%2Fvideo%2F2022%2F03%2F06%2Frussian_diplomat_iran_got_much_more_than_expected_in_new_nuclear_deal_about_to_be_finalized.html) in an interview. “Our Chinese friends were also very efficient and useful co-negotiators.”

Maybe Ulyanov was exaggerating. But with or without the deal, Moscow will be **able**[**to build nuclear power**](https://www.wsj.com/articles/russia-softens-iran-demands-re-opening-way-for-nuclear-deal-11647382224)**plants in Iran**, irrespective of the sanctions over the war in Ukraine. And Beijing — which in 2021 signed a 25-year, $400 billion strategic partnership with Tehran — will be able to conduct a **lucrative business** in Iran with little concern for U.S. sanctions.

Combined with February’s “no limits” friendship pact between Vladimir Putin and Xi Jinping, an **Iran deal represents another step toward a new antidemocratic Tripartite Pact**.

But what about the nuclear deal’s upside? Last year, Blinken promised an agreement that would be “longer and stronger,” hinting that it would seek to extend some of the J.C.P.O.A.’s sunset provisions that were set to expire in the next decade, as well as place limits on Iran’s testing of ballistic missiles.

It **isn’t clear the new deal will meet either goal**, but at a minimum it will likely extend Iran’s “breakout time” — the time it needs to acquire sufficient enriched uranium for a bomb — from as little as three weeks to about six months, establish an intrusive nuclear-inspection regime, give future diplomacy more time to work, and forestall, for now, a nuclear crisis in the Middle East while the world’s attention is engaged elsewhere.

This is not nothing, and — should the deal go through — the administration will work hard to make the case that this is a good-enough answer for a problem to which every other solution is worse. It will also stress that “all options are on the table” should Iran choose to go for a bomb.

Except **nobody in the region seems to believe that line or any other U.S. security assurances** — [hence the phone call snub](https://www.wsj.com/articles/a-crisis-in-u-s-arab-relations-russia-china-uae-defense-iran-oil-drone-attacks-response-11647893535?mod=opinion_lead_pos5). Reaching a kick-the-can-down-the-road agreement may seem like a diplomatic victory to the State Department. But **it’s a strategic defeat** when it does little more than delay a crisis for the future in exchange for strengthening our adversaries in the present. Tehran [attacked Iraq with ballistic missiles](https://www.nytimes.com/2022/03/16/world/middleeast/iran-israel-attack-drone-site.html) earlier this month and (through its Houthi proxies) launched missile and drone strikes on Abu Dhabi in January. What can Iran’s neighbors expect from it when its coffers are refreshed with tens of billions in oil revenues, free from sanctions?

Though the administration and its friends will fiercely deny it, the principal geopolitical challenge the United States faces today is the **perception**, shared by friends and foes alike, that we are weak — diffident, distracted and divided. The heroic resistance that Ukraine has put up against Russia, bolstered by American military aid and the power of our sanctions, has helped shift that perception, at least somewhat. But we are still **far from achieving any kind of victory** there, much less gaining the upper hand against the new axis of autocracy.

The **Biden administration urgently needs to telegraph strength**. An Iran deal that leaves us even **weaker** and meeker than the previous deal accomplishes the opposite at a moment when we can’t afford another reversal.

### Litigation DA

#### Courts clogged now

**Witte, 21** (Griff Witte, Griff Witte is a national correspondent for The Washington Post. He has previously served as the paper’s deputy foreign editor and as bureau chief in Berlin, London, Jerusalem, Islamabad and Kabul., 12-18-2021, accessed on 1-3-2022, The Washington Post, "Long after the courts shut down for covid, the pain of delayed justice lingers", https://www.washingtonpost.com/national/covid-court-backlog-justice-delayed/2021/12/18/212c16bc-5948-11ec-a219-9b4ae96da3b7\_story.html)//Babcii

When the coronavirus struck American shores in early 2020, the red-brick courthouse that has stood sentry on Main Street in Newport, Vt., since the late 19th century abruptly shut down. So did courthouses nationwide. But unlike most, the one in Newport — a small, lakeside community nestled a short drive from the Canadian border — has never fully reopened. With jury trials still suspended, **cases are being dismissed by the dozen**. Defendants live with charges they can’t shake. And Dick Collier lies awake at night, wondering if he will die before the man accused of killing his daughter faces justice. “That’s my fear,” said Collier, 81, and in precarious health. “That I might not live long enough to see him go to trial.” Nearly two years after the American justice system was ~~paralyzed~~ (harmed) by a pandemic, the **repercussions continue to radiate** through communities nationwide, from tiny towns to the largest cities. District attorneys face some of **the longest case backlogs in living memory**. Defendants languish in jails that have become breeding grounds for the coronavirus. Others are set free — and, some prosecutors say, may be contributing to a spike in violent crime that is only compounding the pileup. Although the shutdown in Newport is extreme — most courthouses are back in action, even if **they are not yet at their pre-pandemic capacity** — legal officials from coast to coast say justice **delay**ed by covid-19 will continue to be a feature of the American landscape for several years to **come. And that’s assuming the courts don’t have to shut down again** for omicron or another new variant. “This is a three-year project to get the number of pending cases back to what it was. And I’m an optimist,” said Dan Satterberg, prosecuting attorney in King County, Wash., which includes Seattle. “It’s a historic challenge that we’re facing right now.” The backlogged system has had deadly consequences, officials say. In Wisconsin, Darrell Brooks was set to stand trial this year for allegedly firing a gun at his nephew. Prosecutors were ready, as was the defense. But there was no courtroom available. With the system unable to deliver the speedy trial that Brooks had requested — and that the state was required to deliver — he was released on $500 bail. While out, court records show, the 39-year-old allegedly tried to use his car to run over the mother of his child and was arrested once more. But an overburdened junior prosecutor juggling a jury trial and two dozen other felony cases set his new bail at $1,000 — an amount the district attorney would later call “a mistake” — and Brooks was released again. Just days later, on Nov. 21, prosecutors say Brooks plowed his car into the Christmas parade in the Milwaukee suburb of Waukesha, hitting 60 people — and killing six. This time, his bail was set at $5 million. While critics have focused on the low bail amounts, Milwaukee District Attorney John Chisolm said the case was better understood as the tragic consequence of when courts can’t keep up. “This is a system issue right now, and it’s only going to get worse,” Chisholm told reporters this month. “These **backlogs aren’t going to magically disappear.”** Delays in the U.S. court system are nothing new, of course. Long before the coronavirus, America stood out among its industrialized peers for the extensive wait times from charges filed to verdict delivered.

#### 2. There’s zero empirical support for the link.

Levy 13 [Marin, Assoc Prof of Law @ Duke, "Judging the Flood of Litigation," https://uchicagolawjournalsmshaytiubv.devcloud.acquia-sites.com/sites/lawreview.uchicago.edu/files/02\_Levy\_0.pdf]

Beginning with the purely empirical component, the preceding discussion reveals that the justices often invoke floodgates arguments without much support for why they believe a large number of cases will come. In Bivens, Justice Blackmun suggested that the Court’s decision would “open[ ] the door for another avalanche of new federal cases” on the theory that “[w]henever a suspect imagines, or chooses to assert, that a Fourth Amendment right has been violated, he will now immediately sue the federal officer in federal court”331 and nothing more. In Solem, Chief Justice Burger claimed that the Court’s decision to hold the petitioner’s sentence unconstitutional would lead to a “flood” of new cases with no additional support.332 Of course, it can be easy to hide one’s claims behind this kind of hyperbole—and there is reason to suspect that parties and justices have invoked this language at times precisely because, in the words of Justice Powell, a “‘floodgates’ argument can be easy to make and difficult to rebut.”333 But if a particular decision is made to avoid an influx of cases that could harm a coordinate branch of government or state court, then it should be based on something more than the suggestion that an “avalanche” or “flood” is imminent. Forecasting the number of cases that will follow a decision is no easy task and may be near impossible in some cases. For example, if one of the justices had been willing to accept the basic principle of President Clinton’s argument in Jones, that justice then would have needed to show why a decision by the Court not to stay civil litigation against the President would “spawn” a host of new litigation334—a particularly difficult undertaking given the sui generis nature of the case. But outside of a unique case such as Jones, we should expect the justices to have some extended discussion about why they think a flood is likely to come. This reasoning could be based on past experience with the same kind of claims, as in Michigan Academy of Family Physicians335 and Skinner,336 or experience with comparable claims, as in Bivens.337 Now to be clear, the point of this prescription is not to encourage the justices to become empiricists (an important caveat given that there will certainly be skepticism about the ability of the Court to make these kinds of forecasts even outside the most challenging cases 338). Rather, the point is that if claims about increases in litigation are to influence at least some decisions, the justices need to provide support for those claims—both for each other and for the public.

#### 3. They are diverting massive resources to China enforcement in the squo

Scarborough 19, JD, antitrust attorney (Michael, “Between a Rock and a Hard Place: Vitamin C and the Future of U.S. Antitrust Enforcement Against Chinese Companies,” <https://www.sheppardmullin.com/media/publication/1786_Legal%20500%20PDF.pdf>)

This doubt went effectively unchallenged until the so-called Vitamin C case–which has been pending for 14 years and is still working its way through U.S. courts. There, Chinese Vitamin C makers argue they are immune from U.S. antitrust liability because they are state-owned enterprises and their conduct was required by the Chinese government, arguments that the Chinese government has confirmed in its own court filings. Through many twists and turns, the case has now come to focus on the question of whether the U.S. court should accept the Chinese government’s declaration of what its own laws require. Most recently, the U.S. **Supreme Court** issued a unanimous **decision** that U.S. courts are not required to accept the Chinese government’s statements regarding Chinese law, and must make their own determinations of what Chinese law actually requires in a particular case. The Court remanded the case back to a lower appellate court with instructions to make that determination as to the Vitamin C defendants. Because the lower court in Vitamin C has already acknowledged some skepticism about the Chinese government’s statements, there is a real possibility that it will reject the Vitamin C defendants’ immunity arguments. Regardless of the ultimate resolution of the Vitamin C case, the **new legal landscape**—where U.S. courts have discretion to reject the Chinese government’s statements regarding its own laws—could open the floodgate to U.S. antitrust litigation against Chinese defendants. These cases will not be decided in a vacuum, but in the midst of an escalating trade war between China and the United States, at a time when elements of the U.S. government are openly hostile to various Chinese businesses and their products. It is probably unavoidable that political realities will inform the filing and resolution of future cases and the ongoing development of U.S. law in this area. U.S. **enforcers and plaintiffs** have long been **eager to bring cases** against Chinese companies they believe are openly engaging in conduct that violates U.S. antitrust laws. Many of these enforcers and plaintiffs will view the **Vitamin C case as their invitation to proceed**. And it is now a very real possibility that not even the pronouncements of the Chinese government itself will be enough to stop them.

#### 4. The plan solves --- The plans hardline makes litigation less likely and easier to solve in the future --- That’s WU and

Bu, 20 (Qingxiu Bu, Commercial Law @ University of Sussex, formerly professor of transnational business @ Georgetown Law Center, 4-30-2020, accessed on 11-30-2021, Oxford University Press, "Respectful Consideration, but Not Deference: Chinese Sovereign Amici in the US Supreme Court Vitamin C Judgment", https://academic.oup.com/jeclap/article-abstract/11/5-6/274/5827020)//Babcii

3. A concomitant hierarchal issue from the consideration of **transparency** The **transparency** of the **foreign legal system** is one of the **variables** in evaluating the substance of **foreign law**.167 The Supreme **Court lists ‘transparency** of the foreign legal system’ **as a factor**,168 but provides **no indication** as to whether the weight accorded to a foreign sovereign varies dependent upon the **degree** of transparency of its regime.169 A subsequent inquiry arises as to whether more **transparency** of a foreign legal system would entail **more deference** to the foreign sovereign’s representations.170 Due to the lack of **clarity** surrounding how to apply the transparency factor, a new challenge is whether a federal court should treat different countries differently based on the nature of their legal systems.171 It likely leads to **inconsistent results** due to the lack of indication of its relative weight compared with other criteria.172 Examining the level of transparency in a country’s regulatory regime potentially creates a hierarchy based on the ease of interpretation of foreign legal regimes.173 This inevitably results in a concomitant **hierarchy** in the deference offered to a foreign government statement, which further disturbs principles of **international comity**.174 The hierarchy may systematically advantage the effect given to western legal rules merely because they are **more familiar** to American courts.175 The limb of the Supreme Court decision is intended to address the concerns by those unallied countries. European Commission interventions might be procedurally subject to the same test, while it will not substantially change the status quo in this scenario. In practice, the US courts would be likely to be more respectful of Commission submissions on EU law than submissions from Chinese government agencies on Chinese law. As discussed above, the degree of the respectful deference is based on the deep-rooted recognition of rule of law and judicial independence of the US counterparts. As a landmark case to deal international deference, it will inevitably influence EU courts when they deal with comity issues, despite the divergency between the civil and common law systems. The common law rules and equitable principles enshrined in this case would play a complementary role in EU’s judicial practice, which may be imperceptible though. In certain circumstances, a mismatch resulting from different social, political and cultural settings constitutes a substantial challenge of evaluating factors relating to foreign judicial systems.176 As Gardner observed that: ‘It leaves a court trying to evaluate factors that do not fit the problem under process resulting in more of a Rorschach test than an analytical guide.’177 Admittedly, this is a normal ecology of jurisprudence given that Congress is unlikely to draw **clear** jurisdictional **lines** ex ante. 178 There is potential risk that US courts will reach **inconsistent** and even **contradictory** decisions resulting from their broad exercise of discretion.179 C. Catalyse China’s legal reform and transform Chinese MNCs’ behavioural changes Vitamin C has important repercussions for any transnational business undertaken across jurisdictions.180 The Supreme Court’s fact-specific analysis for determining the weight to accord a foreign sovereign’s interpretation of its own laws underscores the uncertainty Chinese MNCs face when doing business in the USA.181 This holds particularly true in the Chinese context where division between public and private sectors are often **blurred**

#### 6. Patents tubed and courts not key.

Quinn ’19 [Gene; July 9; Patent Attorney and Editor and President & CEO of IP Watchdog, Inc; IP Watchdog, “It May Be Time to Abolish the Federal Circuit,” <https://www.ipwatchdog.com/2019/07/09/may-time-abolish-federal-circuit/id=111122/>]

The state of patent law in America is this: You might as well appeal because if you get lucky and draw the right panel you will win. And like it or not, that is precisely what our patent justice system has become under the Federal Circuit. A crapshoot. And we all know it to be true.

The current state of utter disarray at the Federal Circuit, with panels doing whatever they want, judges not agreeing on anything, and ignoring en banc decisions as if they never happened isn’t what the Federal Circuit is meant to have become. The Federal Circuit is a disaster and the collective unwillingness of the judges to come together is making a mockery of an institution that is a critical piece in the U.S. innovation system. Indeed, the fact that the Federal Circuit is absent and unwilling to provide predictability and certainty, which literally was their only job, is why so many people are turning to Congress to solve the problems of the patent system.

The Federal Circuit is the entity within our system that the patent community has turned to for help since 1982, but they are not present currently. The Federal Circuit is so afraid of being overturned by the Supreme Court that they have lost their ability to distinguish even easily distinguishable cases. After all, Mayo dealt with an exceptionally poor claim where the Supreme Court took a shortcut using 101 instead of using 102 or 103. In Alice, they were told by the patentee’s attorney it was a trivial piece of software that could be coded over a weekend by a college student. These cases are easily distinguishable from any life sciences innovation of consequence or something like artificial intelligence or autonomous driving, for example. Yet, the Federal Circuit has expansively read these cases despite the explicit language of the Supreme Court telling them to narrowly read the cases lest all of patent law would be swallowed.

## 1AR

### Case

### T

### ITC

### Litigation

#### AND it spills over outside of antitrust

Bu, 20 (Qingxiu Bu, Commercial Law @ University of Sussex, formerly professor of transnational business @ Georgetown Law Center, 4-30-2020, accessed on 11-30-2021, Oxford University Press, "Respectful Consideration, but Not Deference: Chinese Sovereign Amici in the US Supreme Court Vitamin C Judgment", https://academic.oup.com/jeclap/article-abstract/11/5-6/274/5827020)//Babcii

2. Impact on **Chinese** MNCs’ behavioural change The weight the US court should give MOFCOM’s views is pivotal to determining whether the Vitamin C manufacturers can escape liability for their anticompetitive conduct.193 The case has set the ground rules for a **broad range** of cross-border **disputes**.194 **The** implications of the Supreme Court’s decision reach well **beyond** the confines of **antitrust** doctrine.195 The ruling will have far-reaching implications on many **other** cross-border **disputes**, since similar issues of foreign deference in Vitamin C always arise in a wide context. Vitamin C sheds light on the Supreme Court’s stance on the application of the doctrine of international comity.196 Such presumption of jurisdictional obligation applies squarely to other kinds of transnational **litigation** as well.197 It does not necessarily mean that the adoption of respectful consideration would increase the exposure of Chinese firms to US liability. The decision is likely to have an **enormous impact** on the way Chinese MNCs make business decisions on their access to the US markets.

### Ptx

#### No prolif and long timeframe

Kahl ’12 (Colin H. Kahl 12, security studies prof at Georgetown, senior fellow at the Center for a New American Security, was Deputy Assistant Secretary of Defense for the Middle East, “Not Time to Attack Iran”, January 17, <http://www.foreignaffairs.com/articles/137031/colin-h-kahl/not-time-to-attack-iran?page=show>

Kroenig argues that there is an urgent need to attack Iran's nuclear infrastructure soon, since Tehran could "produce its first nuclear weapon within six months of deciding to do so." Yet that last phrase is crucial. The International Atomic Energy Agency (IAEA) has documented Iranian efforts to achieve the capacity to develop nuclear weapons at some point, but there is no hard evidence that Supreme Leader Ayatollah Ali Khamenei has yet made the final decision to develop them. In arguing for a six-month horizon,Kroenig also misleadingly conflates hypothetical timelines to produce weapons-grade uranium with the time actually required to construct a bomb. According to 2010 Senate testimony by James Cartwright, then vice chairman of the U.S. Joint Chiefs of Staff, and recent statements by the former heads of Israel's national intelligence and defense intelligence agencies, even if Iran could produce enough weapons-grade uranium for a bomb in six months, it would take it at least a year to produce a testable nuclear device and considerably longer to make a deliverable weapon. And David Albright, president of the Institute for Science and International Security (and the source of Kroenig's six-month estimate), recently told Agence France-Presse that there is a "low probability" that the Iranians would actually develop a bomb over the next year even if they had the capability to do so. Because there is no evidence that Iran has built additional covert enrichment plants since the Natanz and Qom sites were outed in 2002 and 2009, respectively, any near-term move by Tehran to produce weapons-grade uranium would have to rely on its declared facilities. The IAEA would thus detect such activity with sufficient time for the international community to mount a forceful response. As a result, the Iranians are unlikely to commit to building nuclear weapons until they can do so much more quickly or out of sight, which could be years off.

#### Deal produces regional instability

Cook, 2/17 (Steven A. - Eni Enrico Mattei senior fellow for Middle East and Africa studies at the Council on Foreign Relations, “A New Iran Deal Means Old Chaos”, Foreign Policy, 2022, [https://foreignpolicy.com/2022/02/17/iran-deal-jcpoa-israel-saudi-emirates-houthis/, s](https://foreignpolicy.com/2022/02/17/iran-deal-jcpoa-israel-saudi-emirates-houthis/,%20s)hae)

The regional changes that many hoped the JCPOA would catalyze seemed promising, but the reality turned out to be—as everyone now knows—quite different. Israel was alarmed at the deal, which it believed put too much faith in Iranian compliance and the abilities of United Nations inspectors. To leaders in Jerusalem, the agreement gave Iran official license to proliferate. The fact that the agreement left Iranian nuclear facilities at military sites off limits to inspection only heightened these concerns. The Arab states in the Persian Gulf were equally unhappy—but not as much over the legitimacy granted to Iran’s nuclear program as over sanctions relief. Leaders in Saudi Arabia, the United Arab Emirates, and other countries were convinced Iran’s new access to money would be used to fund proxies around the region, further destabilizing the Middle East. For their part, Iran’s leaders felt compelled to prove that despite consummating a deal with the United States (and other world powers), they were not knuckling under pressure from the “Great Satan.” And so rather than contributing to the stability of the region, the JCPOA created the opposite dynamics. Iran’s proxies stepped up their operations, and the Israelis fought the Iranians wherever they could find them—whether in Syria, Europe, Iran itself, or, later, Iraq. At the same time, the Saudis and Emiratis began taking regional matters into their own hands, regardless of U.S. wishes or interests.

#### Middle East Instability destroys the economy and draws in global powers

Dervis 17 [Kemal, Senior Fellow in the Global Economy and Development program, and the Edward M. Bernstein Scholar. He was Vice President and Director of the program from April 2009 to November 2017. Formerly head of the United Nations Development Programme and Minister of Economic Affairs of Turkey, he focuses on global economics, emerging markets, European issues, development and international institutions. "Is another debt crisis on the way?" 2017. https://www.brookings.edu/opinions/is-another-debt-crisis-on-the-way/]

That said, geopolitical risks should not be discounted. While markets tend to shrug off localized political crises and even larger geopolitical challenges, some dramas may be set to spin out of control. In particular, the North Korean nuclear threat remains acute, with the possibility of a sudden escalation raising the risk of conflict between the U.S. and China. The Middle East remains another source of serious instability, with tensions in the Gulf having intensified to the point that hostilities between Iran and Saudi Arabia and/or turmoil within Saudi Arabia are not unthinkable. In this case, it is Russia that might end up clashing with the U.S. Even barring such a major geopolitical upheaval, which would severely damage the global economy’s prospects in the short run, serious medium- and long-term risks loom. Rising income inequality, exacerbated by the mismatch between skills and jobs in the digital age, will impede growth, unless a wide array of difficult structural reforms are implemented, including reforms aimed at constraining climate change.

#### Nuclear terrorism causes global nuclear wars

Arguello and Buis, 18 – \*Irma, Founder and Chair of the NPSGlobal Foundation (Non-proliferation for Global Security), degree in Phyisics Science from the University of Buenos Aires, Master degree in Business Administration from IDEA/Wharton School, Defense and Security studies (Master level) at the Escuela de Defensa Nacional, Argentina; \*\*Emiliano, lawyer and associate professor of public international law, international humanitarian law, international law of disarmament, and the origins of international law in antiquity (Irma Arguello & Emiliano J. Buis, **“**The global impacts of a terrorist nuclear attack: What would happen? What should we do?,” *Bulletin of the Atomic Scientists*, 2018, https://doi.org/10.1080/00963402.2018.1436812)

Global security and regional/national defense schemes would be strongly affected. An increase in global distrust would spark rising tensions among countries and blocs, that could even lead to the brink of nuclear weapons use by states (if, for instance, a sponsor country is identified). The consequences of such a shocking scenario would include a decrease in states’ self-control, an escalation of present conflicts and the emergence of new ones, accompanied by an increase in military unilateralism and military expenditures. Regarding the economic and financial impacts, a severe global economic depression would rise from the attack, likely lasting for years. Its duration would be strongly dependent on the course of the crisis. The main results of such a crisis would include a 2 percent fall of growth in global Gross Domestic Product, and a 4 percent decline of international trade in the two years following the attack (cf. Figure 3). In the case of developing and less-developed countries, the economic impacts would also include a shortage of high-technology products such as medicines, as well as a fall in foreign direct investment and a severe decline of international humanitarian aid toward low-income countries. We expect an increase of unemployment and poverty in all countries. Global poverty would raise about 4 percent after the attack, which implies that at least 30 million more people would be living in extreme poverty, in addition to the current estimated 767 million. In the area of international relations, we would expect a breakdown of key doctrines involving politics, security, and relations among states. These international tensions could lead to a collapse of the nuclear order as we know it today, with a consequent setback of nuclear disarmament and nonproliferation commitments. In other words, the whole system based on the Nuclear Non- Proliferation Treaty would be put under severe trial. After the attack, there would be a reassessment of existing security doctrines, and a deep review of concepts such as nuclear deterrence, no-firstuse, proportionality, and negative security assurances. Finally, the behavior of governments and individuals would also change radically. Internal chaos fueled by the media and social networks would threaten governance at all levels, with greater impact on those countries with weak institutional frameworks. Social turbulence would emerge in most countries, with consequent attempts by governments to impose restrictions on personal freedoms to preserve order – possibly by declaring a state of siege or state of emergency – and legislation would surely become tougher on human rights. There would also be a significant increase in social fragmentation – with a deepening of antagonistic views, mistrust, and intolerance, both within countries and towards others – and a resurgence of large-scale social movements fostered by ideological interests and easily mobilized through social media.

**Yes we get the impact card --- We said emboldenment causes war this is just a warrant for it --- Emboldenment goes nuclear**

**Grygiel and Mitchell, 16** – Jakub Grygiel is associate professor of international relations at the Catholic University of America, Senior Fellow at the Center for European Policy Analysis, and has a PhD from Princeton. A. Wess Mitchell is the President of the Center for European Policy Analysis. Mitchell holds a doctorate in political science from the Otto Suhr Institut für Politikwissenschaft at Freie Universität in Berlin, a master’s degree from the Center for German and European Studies at Georgetown University’s Edmund A. Walsh School of Foreign Service (A. Weiss and Jakub Grygiel, “Predators on the Frontier” The American Interest, 2/12, <http://www.the-american-interest.com/2016/02/12/predators-on-the-frontier/>

Revisionist powers are on the move. ‎From eastern Ukraine and the Persian Gulf to the South China Sea, large rivals of the United States are modernizing their military forces, grabbing strategic real estate, and threatening vulnerable U.S. allies. Their goal is not just to assert hegemony over their neighborhoods but to rearrange the global security order as we have known it since the end of the Second World War. We first wrote about these emerging dynamics in 2010, and then in TAI in 2011. We argued three things. First, that revisionist powers were using a strategy of “probing”: a combination of assertive diplomacy and small but bold military actions to test the outer reaches of American power and in particular the resilience of frontier allies. Second, we argued that the small, exposed allies who were the targets of these probes were likely to respond by developing back-up options to U.S. security guarantees, whether through military self-help or accommodation. And third, we argued that that **China and Russia were learning from one another’s probes** in their respective regions, and that allies themselves were drawing conclusions about U.S. deterrence in their own neighborhood from how America handled similarly situated allies elsewhere. Five years later, as we argue in a new book released this month, these dynamics have intensified dramatically. Revisionist powers are indeed probing the United States, but their methods have become bolder, more violent—and successful. Allies have grown more alert to this pressure, amid the steady whittling away of neighboring buffer zones, and have begun to pursue an array of self-help schemes ranging from arms build-ups to flirtations with the nearby revisionist power. It has become harder for the United States to isolate security crises to one region: Russia’s land-grabs in Eastern Europe provide both a model and distraction effect for China to accelerate its maritime claims in the South China Sea; Poland’s quest for U.S. strategic reassurance unnerves and spurs allies in the Persian Gulf and Western Pacific. By degrees, the world is entering the path to war. Not since the 1980s have the conditions been riper for a major international military crisis. Not since the 1930s has the world witnessed the emergence of **multiple large, predatory states** determined to revise the global order to their advantage—if necessary by force. At a minimum, the United States in coming years could face the pressure of managing several deteriorating regional security spirals; at a maximum, it could be confronted with a **Great Power war** against one, and possibly two or even three, **nuclear-armed peer competitors**. In either case, the U.S. military could face these scenarios without either the presumption of technological overmatch or favorable force ratios that it has enjoyed against its rivals for the past several decades. How should the United States respond to these dynamics? As our rivals grow more aggressive and our military edge narrows, we must look to other methods for waging and winning geopolitical competitions in the 21st century. The most readily available but underutilized tool at our disposal is alliances. America’s frontline allies offer a mechanism by which it can contain rivals—indeed, this was the original purpose for cultivating security linkages with small states in the world’s rimland regions to begin with. In coming years, the value of strategically placed allies near Eurasia’s large land powers will grow as our relative technological or numerical military strength shrinks. The time has come for the United States to develop a grand strategy for containing peer competitors centered on the creative use of frontline allies. It must do so now, before geopolitical competition intensifies. Predatory Peers Probing has been the strategy of choice for America’s modern rivals to challenge the existing order. Over the past few years, Russia, China, and, to a degree, Iran have sensed that the United States is retreating in their respective regions—whether out of choice, fatigue, weakness, or all three combined. But they are unsure of how much remaining strength the United States has, or of the solidity of its commitments to allies. Rather than risking direct war, they have employed low-intensity crises to test U.S. power in these regions. Like past revisionists, they have focused their probes on seemingly secondary interests of the leading power, either by humbling its weakest allies or seizing gray zones over which the United States is unlikely to fight. These probes test the United States on the outer rim of its influence, where the revisionist’s own interests are strongest while the U.S. is at its furthest commitments and therefore most vulnerable to defeat. Russia has launched a steady sequence of threatening military moves against vulnerable NATO allies and conducted limited offensives against former Soviet satellite states. China has sought out low-intensity diplomatic confrontations with small U.S. security clients, erected military no-go zones, and asserted claims over strategic waterways. When we wrote about this behavior in The American Interest in 2011, it was composed mainly of aggressive diplomacy or threatening but small military moves. But the probes of U.S. rivals are becoming bolder. Sensing a window of opportunity, in 2014 Russia upped the ante by invading Ukraine—the largest country in Eastern Europe—in a war that has so far cost 7,000 lives and brought 52,000 square kilometers of territory into the Russian sphere of influence. After years of using unmarked fishing trawlers to harass U.S. or allied naval vessels, China has begun to militarize its probes in the South China Sea, constructing seven artificial islands and claiming (and threatening to fight over) 1.8 million square kilometers of ocean. Iran has recently humiliated the United States by holding American naval vessels and broadcasting photos of surrendering U.S. sailors. In all cases, revisionist powers increased the stakes because they perceived their initial probes to have succeeded. Having achieved modest gains, they increased the intensity of their probes. The strategic significance of these latest probes for the United States is twofold. First, they have substantially increased the military pressure on frontline allies. The presence of a buffer zone of some sort, whether land or sea, between allies like Poland or Japan and neighboring revisionist powers, helped to reduce the odds of sustained contact and confrontation between allied and rival militaries. By successfully encroaching on or invading these middle spaces, revisionists have advanced the zone of contest closer to the territory of U.S. allies, increasing the potential for a deliberate or accidental military clash. Second, the latest probes have significantly raised the overall pressure on the United States. As long as Russia’s military adventures were restricted to its own southern periphery, America could afford to shift resources to the Pacific without worrying much about the consequences in Europe—an important consideration given the Pentagon’s jettisoning of the goal to be able to fight a two-front war. With both Ukraine and the South China Sea at play (and with a chaotic Middle East, where another rival, Iran, advances its reach and influence), the United States no longer has the luxury of prioritizing one region over another; with two re-militarized frontiers at opposite ends of the globe, it must continually weigh trade-offs in scarce military resources between geographic theaters. This disadvantage is not lost on America’s rivals, or its most exposed friends. Frontier Frenzy The intensification of probing has reverberated through the ranks of America’s frontline allies. In both Europe and Asia, the edges of the Western order are inhabited by historically vulnerable small or mid-sized states that over the past seven decades have relied on the United States for their existence. The similarities in the geopolitical position and strategic options of states like Estonia and Taiwan, or Poland and South Korea, are striking. For all of these states, survival depends above all on the sustainability of U.S. extended deterrence, in both its nuclear and conventional forms. This in turn rests on two foundations: the assumption among rivals and allies alike that the United States is physically able to fulfill its security obligations to even the smallest ally, and the assumption that it is **politically willing to do so**. Doubts about both have been growing for many years. Reductions in American defense spending are weakening the U.S. military capability to protect allies. Due to cuts introduced by the 2009 Budget Control Act, the U.S. Navy is smaller than at any point since before the First World War, the U.S. Army is smaller than at any point since before the Second World War and the U.S. Air Force has the lowest number of operational warplanes in its history. Nuclear force levels are static or declining, and the U.S. technological edge over rivals in important weapons types has diminished. The Pentagon in 2009 announced that for the first time since the Second World War it would jettison the goal of being able to conduct a two-front global war. At the same time that U.S. capabilities are decreasing, those of our rivals are increasing. Both Russia and China have undertaken large, multiyear military expansion and modernization programs and the technological gap between them and the United States is narrowing, particularly in key areas such as short-range missiles, tactical nuclear weapons, and fifth-generation fighter aircraft. Recent American statecraft has compounded the problem by weakening the belief in U.S. political will to defend allies. The early Obama Administration’s public questioning of the value of traditional alliances as “alignments of nations rooted in the cleavages of a long-gone Cold War” shook allied confidence at the same time that its high-profile engagement with large rivals indicated a preference for big-power bargaining over the heads of small states. The U.S.-Russia “reset” seemed to many allies both transactional and freewheeling, and left a lasting impression of the suddenness with which U.S. priorities could shift from one Administration to the next. This undermined the predictability of patronage that is the sine qua non of effective deterrence for any Great Power. As the revisionists’ probes have become more assertive and U.S. credibility less firm, America’s frontier allies have started to reconsider their national security options. Five years ago, many frontline states expressed security concerns, began to seek greater military capabilities, or looked to offset risk by engaging diplomatically with revisionists. But for the most part, such behavior was muted and well within the bounds of existing alliance commitments. However, as probing has picked up pace, allied coping behavior has become more frantic. In Europe, Poland, the Baltic States, and Romania have initiated military spending increases. In Asia, littoral U.S. allies are engaged in a worrisome regional arms race. In both regions, the largest allies are considering offensive capabilities to create conventional deterrence. Their willingness to build up their indigenous military capabilities is overall a positive development, but it carries risks, too, spurring dynamics that were absent over the past decades. The danger is that, absent a consistent and credible U.S. overwatch, rearming allies engage in a chaotic acquisition strategy, poorly anchored in the larger alliance. Fearing abandonment, such states may end up detaching themselves from the alliance simply by pursuing independent security policies. There is also danger on the other side of the spectrum of possible responses by frontline allies. Contrary to the hopeful assumptions of offshore balancers, not all frontline allies are resisting. Some are choosing strategies of accommodation. Bulgaria, Hungary, and Slovakia in Europe and Thailand and Malaysia in Asia are all examples of nominal U.S. allies that are trying to avoid antagonizing the stronger predator. Worsening regional security dynamics create domestic political pressures to avoid confrontation with the nearby revisionist power. Full-fledged bandwagoning in the form of the establishment of new alliances is not yet visible, but hedging is. Seeds of Disorder The combination of intensifying probes and fragmenting alliances threatens to unravel important components of the stability of major regions and the wider international order. Allowed to continue on their current path, security dynamics in Eastern Europe and the Western Pacific could lead to negative or even catastrophic outcomes for U.S. national security. One increasingly likely near-term scenario is a simmering, simultaneous security competition in major regions. In such a scenario, rivals continue probing allies and grabbing middle-zone territory while steering clear of war with the United States or its proxies; allies continue making half-measure preparations without becoming fully capable of managing their own security; and the United States continues feeding greater and greater resources into frontline regions without achieving reassurance, doggedly tested and put in doubt by the revisionists. Through a continued series of probes, the revisionist powers maintain the initiative while the United States and its allies play catch up. The result might be a gradual hardening of the U.S. security perimeter that never culminates in a Great Power war but generates many of the negative features of sustained security competition—arms races, proxy wars, and cyber and hybrid conflicts—that **erode the bases of global economic growth**. A second, graver possibility is war. Historically, a lengthy series of successful probes has often culminated in a military confrontation. One dangerous characteristic of today’s international landscape is that not one but two revisionists have now completed protracted sequences of probes that, from their perspective, have been successful. If the purpose of probing is to assess the top power’s strength, today’s probes could eventually convince either Russia, China, or both that the time is ripe for a more definitive contest. It is uncertain what the outcome would be. Force ratios in today’s two hotspots, the Baltic Sea and South China Sea, do not favor the United States. Both Russia and China possess significant anti-access/area denial (A2AD) capabilities, with a ten-to-one Russian troop advantage in the Baltic and massive Chinese preponderance of coastal short-range missiles in the South China Sea. Moreover, both powers possess nuclear weapons and, in Russia’s case, a doctrine favoring their **escalatory use for strategic effect**. And even if the United States can maintain overwhelming military superiority in a dyadic contest, war is always the realm of chance and a source of destruction that threatens the stability of the existing international order. Having failed a series of probes, the United States could face the prospect of either a short, sharp **war that culminates in nuclear attack** or an economically costly protracted two-front conflict. Either outcome would definitely alter the U.S.-led international system as we know it. A third, long-term possibility is a gradual eviction of the United States from the rimland regions. This could occur either through a military defeat, as described above, or through the gradual hollowing out of U.S. regional alliances due to the erosion of deterrence and alliance defection—and therefore this scenario is not mutually exclusive of the previous two. For the United States, this would be geopolitically disastrous, involving a loss of position in the places where America must be present to prevent the risk of hemispheric isolation. Gaining a foothold in the Eurasian rimlands has been a major, if not the most important, goal of U.S. grand strategy for a century. It is through this presence that the United States is able to shape global politics and avoid the emergence of mortal threats to itself. Without such a presence, America’s largest rivals would be able to steadily aggrandize, building up enlarged spheres of influence, territory, and resources that would render them capable of sustained competition for global primacy. Unlike in the 20th century, current A2AD and nuclear technology would make a military reentry into these regions difficult if not impossible.

#### Iran Deal bolsters the Russian invasion of Ukraine.

Schoen and Stein, 3/30 (Douglas Schoen, Andrew Stein, “Biden says Ukraine is a battle for the free world — which is why he shouldn’t sign an Iran deal”, NY Post, <https://nypost.com/2022/03/30/biden-shouldnt-sign-an-iran-deal-to-keep-world-free-of-danger/>, shae)

That’s exactly why he mustn’t re-enter the Iran nuclear deal, which would be disastrous in every possible way for the cause of world peace and stability. Biden said the fight against Russian President Vladimir Putin and “the darkness that drives autocracy” won’t be easy but must be waged “for the flame of liberty that lights the souls of free people everywhere.” His tone was spot on. This conflict is much bigger than Russia versus Ukraine, which is one battle in the broader global war between democracy and autocracy. Since the war began, the United States and Europe have imposed necessarily harsh sanctions on Russia and supplied Ukraine with billions of dollars in aid and advanced weapons. The time has come to tighten the noose on the Kremlin even further. A Russian win would set the West back in our mission to ensure the endurance of democracy globally. But a renewed nuclear deal would sabotage Western interests, too, allowing two rogue powers to work together against America, with Russia leveraging Iran for relief from Western-imposed sanctions in exchange for Russia helping Iran do the same. It simply strains credulity for the United States to impose debilitating sanctions against Putin vis-à-vis Ukraine while also entering a deal with Russia and another undemocratic state — Iran — that includes porous sanctions, provides these two countries with billions of dollars and creates a framework allowing Iran to become a nuclear power, thus further jeopardizing the free world.

#### Absent resolution, Ukraine-Russia war goes nuclear

Nichols 2-24-2022, contributing writer at The Atlantic and the author of its newsletter Peacefield (Tom, “How Ukraine Could Become a Nuclear Crisis,” The Atlantic, <https://www.theatlantic.com/ideas/archive/2022/02/how-ukraine-could-become-nuclear-crisis/622915/>)

There are countless opportunities for such errors in the chaos now overtaking Ukraine. The Russians might shoot at NATO aircraft after misidentifying them. Or they might incorrectly believe that Russian aircraft have been attacked by NATO forces. They might suffer a misfire or a targeting error of some kind that puts Russian ordnance on NATO territory. Europe’s a crowded continent, and no place for a jumpy trigger finger, but accidents are an unavoidable part of warfare. Any one of these mishaps could lead the Russians, or the United States, or both, to increase the alert status of their nuclear arsenals. This would mean that nuclear weapons and their crews—in some cases, with missiles that are already capable of being launched in 15 or 20 minutes—would heighten their vigilance and readiness to proceed with their missions. Such alerts are rare, and for good reason: They move us one step closer to nuclear conflict. Finally, there is the frightening possibility that Putin will increase the alert status of his nuclear forces for his own reasons, leaving the Americans no choice but to raise their alert status. The invasion of Ukraine was preceded by the Russian Grom (meaning “thunder”) drills, a regular exercise held by Russia’s strategic nuclear forces. The timing was no accident; Putin relies on Russia’s nuclear deterrent as one of its last claims to superpower status, and he could activate another such exercise, or call for a heightened alert condition, if he thinks things are going poorly for Russia. Perhaps Russian forces, for example, end up taking more casualties than Putin expected, and he wants to blame the West rather than admit the incompetence or errors of his own commanders. He might then use nuclear signaling as a way of creating a narrative for his people that the West is somehow threatening Russia and that he is determined to stand up to Washington. Or he may be paranoid enough to believe that the U.S. and NATO are planning to send forces in to aid the Ukrainians. Or he may simply decide on such an alert merely to bare his teeth if he thinks it might stop the supply of arms and aid to Ukraine. Such tit-for-tat signaling has happened before. In 1973, when the Soviet Union threatened to send troops into the middle of the Yom Kippur War to save Egyptian forces from destruction by the Israelis, the United States raised its level of nuclear preparedness, its DEFCON, or “defense condition,” as a way of indicating American resolve to prevent a Soviet intervention. The Soviets and the Americans for decades poisoned the air and oceans with nuclear tests that were meant to show strength and determination. In an escalating-alert-level scenario, each side will start watching the other intensely for evidence of an impending attack. All of the gremlins of error and miscalculation that are already on the loose in Ukraine now will become existential hazards until the crisis—which at that point will be about the United States and Russia, instead of Ukraine—is somehow sorted out.