# 1NC

### OFF

#### “Antitrust laws” exclude court decisions

Kalbfleisch 61 – Kalbfleisch, District Court judge. [Paul M. Harrod Co. v. A. B. Dick Co., 194 F. Supp. 502 (N.D. Ohio 1961)]//babcii

Defendant asserts that the term ‘antitrust laws,’ as used in the above section and as defined in 15 U.S.C.A. § 12, does not include a judgment or decree entered in connection with an antitrust case filed by the Government. Plaintiff, on the other hand, asserts that ‘the violation of the earlier decree of this court in itself gives rise to an independent cause of action under Section 4 of the Clayton Act.’ 15 U.S.C.A. § 15. Plaintiff's Brief, p. 7. Plaintiff concedes that ‘as far as he has been able to ascertain, this contention raises issues which have never before been decided by any appellate court.’ Plaintiff's Brief, p. 5. In Nashville Milk Co. v. Carnation Co., 1958, 355 U.S. 373, 78 S.Ct. 352, 2 L.Ed.2d 340, the Supreme Court held that the Robinson-Patman Act, 15 U.S.C.A. §§ 13-13b, 21a, was not included among the ‘antitrust laws' defined in Section 1 of the Clayton Act (15 U.S.C.A. § 12) and that ‘the definition contained in § 1 of the Clayton Act is exclusive.’ Id., 355 U.S. at page 376, 78 S.Ct. at page 354. The definition of ‘antitrust laws' in 15 U.S.C.A. § 12, clearly embraces only the statutes described therein. Even without such a definition the term ‘antitrust laws' could not be construed as pertaining to a judgment or decree entered by a court in connection with an antitrust case filed by the Government. Such decrees do not necessarily reflect the **prohibitions** of the antitrust laws but may, by their terms, seek to dissipate the effects of the past conduct of the parties and, to this end, frequently enjoin performance of acts lawful in themselves. To permit a private party to recover damages for violation of any provision of such a decree is so obviously beyond the scope of the term ‘antitrust laws,’ as used in the statute, as to require no further discussion. Defendant's motion to dismiss that part of the complaint based on alleged violations of the 1948 consent decree in United States v. A.B. Dick Company will be sustained.

### OFF

#### The United States, through a limited constitutional convention, ought to expand the extraterritorial scope of core antitrust laws

#### Conventions can change Antitrust law – avoids the net benefit

**Berry, 87** (Mary Frances Berry, Geraldine R. Segal Professor of American Social Thought at the University of Pennsylvania and a member of the United States Commission on Civil Rights., 9-13-1987, accessed on 6-19-2021, The New York Times, "AMENDING THE CONSTITUTION; How Hard It Is To Change", https://www.nytimes.com/1987/09/13/magazine/amending-the-constitution-how-hard-it-is-to-change.html)//Babcii

The purpose of **Article V's convention** provision is to make it **possible** **for** amendments to be proposed that Congress does not want proposed, and it would be illogical indeed to assume that Congress could bind a convention's agenda. Even if the Congress decided to call a convention for the sole purpose of proposing amendments to balance the budget, and even if the convention agreed to this overall goal, the gathering **would** still **have great freedom**. The participants might decide that Congressional budgetary authority should be limited to support for the national defense. They could delete support for the general welfare from the Constitution, thus precluding such items as Social Security, Medicaid and Medicare. They could decide to amend Congressional power to regulate commerce, which now allows for such activities as environmental regulation, labor regulation **and antitrust enforcement**. This would, after all, abolish a whole series of Federal agencies and decrease the budget.

### OFF

#### The United States Federal Government should

#### - expand the extraterritorial scope of its core antitrust laws except to nations apart of the European Union

#### - clarify that it will adopt the 7th circuit’s understanding of the FTAIA for the European Union

#### Plank 2 solves their offense --- Their one link just says certainty key NOT extraterritorial good

Leonardo 16 – Lizl, J.D. Candidate, DePaul University College of Law. “A PROPOSAL TO THE SEVENTH AND NINTH CIRCUIT SPLIT: EXPAND THE REACH OF THE U.S. ANTITRUST LAWS TO EXTRATERRITORIAL CONDUCT THAT IMPACTS U.S. COMMERCE”, Depaul Law Review, Vol. 66, Issue 1, <https://via.library.depaul.edu/cgi/viewcontent.cgi?article=4008&context=law-review>, xx-xx-2017 \*FTAIA = Foreign Trade Antitrust Improvements Act

Moreover, having a more consistent approach in cases like this will strengthen and harmonize the partnership across nations. Needless to say, the cooperation between these countries can play a significant role in attaining this objective. Bilateral agreements between the countries have proven that, though challenging, implementing this stricter rule is not impossible.423 International trade rules, such as the General Agreement on Tariffs and Trade (GATT), World Trade Organization (WTO), Organization for Economic Cooperation and Development (OECD), and agreements between countries, imply the general acceptance of this proposal.424 The rapid growth in globalization has forced governments to institute and enforce policies that both protect domestic products from multinational firms and encourage the domestic firms to compete internationally, in furtherance of international trade.425 One of the partnerships the European Union (EU) and the U.S. governments are currently working on is called the Transatlantic Trade and Investment Partnership (T-TIP).426 Its aim is to further develop the strong relationship nations have and leverage that relationship to boost economic growth and international competitiveness.427 The agreement purports to provide greater transparency around trade and investment regulation while ensuring the quality of the products.428 As part of the agreement, the governments seek to eliminate all tariffs, other duties, and charges on trade in various products between the United States and the European Union.429 The proponents of T-TIP point out that the elimination of tariffs and quotas will, among other things, entail lower costs of import to each of the regions, put products from one area “on equal footing” with the products from another, create more jobs, lower the unemployment rate, increase competitiveness, and improve the overall growth of members of the agreement.430 Although the agreement seems ambitious at this time, it intends to link two of the world’s largest economies to generate a third of the world’s GDP.431 Critics argue, however, that the deregulation of several national laws—possibly resulting in lower consumer standards, as well as compromised laws covering intellectual property, food safety, privacy and data collection, and democratic legitimacy—are all steps in the wrong direction.432 Having an established rule that foreign companies’ non-import trade conduct can be subjected to U.S. antitrust laws, as long as the conduct had an “immediate consequence” on U.S. commerce, could mitigate the risks associated with the opening of U.S. and EU markets. Foreign companies that will be encouraged to invest in the United States as a result of T-TIP will have an understanding of the laws and the possible repercussions of any business transaction in which they take part. These companies do not need to determine if and how any of their strategic decisions can be subjected to either the Seventh or Ninth Circuit rulings before securing deals or signing agreements. The certainty will provide companies with notice and understanding of how the law affects their decisions, thereby making their investments less risky. In return, investments could become safer, eventually having a favorable impact on the continued development of the world economy.

### OFF

#### The United States Federal Government should expand the extraterritorial scope of its core antitrust laws only if the president determines it does not pose a direct threat to national defense or preparedness programs

#### The counterplan maintains DPA authority --- the plan eliminates it.

Michael H. Cecire and Heidi M. Peters 20. Michael H. Cecire, Analyst in Intergovernmental Relations and Economic Development Policy. Heidi M. Peters, Analyst in U.S. Defense Acquisition Policy. “The Defense Production Act of 1950: History, Authorities, and Considerations for Congress” Updated March 2, 2020. https://www.everycrsreport.com/reports/R43767.html

Authorities Under Title VII of the DPA

Title VII of the DPA contains various provisions that clarify how DPA authorities should and can be used, as well as additional presidential authorities. Some significant provisions of Title VII are summarized below.

Special Preference for Small Businesses

Two provisions in the DPA direct the President to accord special preference to small businesses when issuing contracts under DPA authorities. Section 701 reiterates89 and expands upon a requirement in Section 108 of Title I directing the President to "accord a strong preference for small business concerns which are subcontractors or suppliers, and, to the maximum extent practicable, to such small business concerns located in areas of high unemployment or areas that have demonstrated a continuing pattern of economic decline, as identified by the Secretary of Labor."90

Definitions of Key Terms in the DPA

The DPA statute historically has included a section of definitions.91 Though national defense is perhaps the most important term, there are additional definitions provided both in current law and in E.O. 13603.92 Over time, the list of definitions provided in both the law and implementing executive orders has been added to and edited, most recently in 2009, when Congress added a definition for homeland security93 to place it within the context of national defense.94

Industrial Base Assessments

To appropriately use numerous authorities of the DPA, especially Title III authorities, the President may require a detailed understanding of current domestic industrial capabilities and therefore need to obtain extensive information from private industries. Under Section 705 of the DPA, the President may "by regulation, subpoena, or otherwise obtain such information from ... any person as may be necessary or appropriate, in his discretion, to the enforcement or the administration of this Act [the DPA]."95 This authority is delegated to the Secretary of Commerce in E.O. 13603.96 Though this authority has many potential implications and uses, it is most commonly associated with what the DOC's Bureau of Industry and Security calls "industrial base assessments."97 These assessments are often conducted in coordination with other federal agencies and the private sector to "monitor trends, benchmark industry performance, and raise awareness of diminishing manufacturing capabilities."98 The statute requires the President to issue regulations to insure that the authority is used only after "the scope and purpose of the investigation, inspection, or inquiry to be made have been defined by competent authority, and it is assured that no adequate and authoritative data are available from any Federal or other responsible agency."99 This regulation has been issued by DOC.100

Voluntary Agreements

Normally, voluntary agreements or plans of action between competing private industry interests could be subject to legal sanction under anti-trust statutes or contract law. Title VII of the DPA authorizes the President to "consult with representatives of industry, business, financing, agriculture, labor, and other interests in order to provide for the making by such persons, with the approval of the President, of voluntary agreements and plans of action to help provide for the national defense."101 The President must determine that a "condition exists which may pose a direct threat to the national defense or its preparedness programs"102 prior to engaging in the consultation process. Following the consultation process, the President or presidential delegate may approve and implement the agreement or plan of action.103 Parties entering into such voluntary agreements are afforded a special legal defense if their actions within that agreement would otherwise violate antitrust or contract laws.104 Historically, the National Infrastructure Advisory Council noted that the voluntary agreement authority has been used to "enable companies to cooperate in weapons manufacture, solving production problems and standardizing designs, specifications and processes," among other examples.105 It could also be used, for example, to develop a plan of action with private industry for the repair and reconstruction of major critical infrastructure systems following a domestic disaster.

The authority to establish a voluntary agreement has been delegated to the head of any federal department or agency otherwise delegated authority under any other part of E.O. 13603.106 Thus, the authority could be potentially used by a large group of federal departments and agencies. Use of these voluntary agreements is tracked by the Secretary of Homeland Security,107 who is tasked under E.O. 13603 with issuing regulations that are required by law on the "standards and procedures by which voluntary agreements and plans of action may be developed and carried out."108 The Federal Emergency Management Agency (FEMA), which at the time was an independent agency and tasked with these responsibilities under the DPA, issued regulations in 1981 to fulfill this requirement.109 FEMA is now a part of DHS, and those regulations remain in effect.

The Maritime Administration (MARAD) of the U.S. Department of Transportation manages the only currently established voluntary agreements in the federal government, the Voluntary Intermodal Sealift Agreement (commonly referred to as "VISA") and the Voluntary Tanker Agreement. These programs are maintained in partnership with the U.S. Transportation Command of DOD, and have been established to ensure that the maritime industry can respond to the rapid mobilization, deployment, and transportation requirements of DOD. Voluntary participants from the maritime industry are solicited to join the agreements annually.110

Nucleus Executive Reserve

Title VII of the DPA authorizes the President to establish a volunteer body of industry executives, the "Nucleus Executive Reserve," or more frequently called the National Defense Executive Reserve (NDER).111 The NDER would be a pool of individuals with recognized expertise from various segments of the private sector and from government (except full-time federal employees). These individuals would be brought together for training in executive positions within the federal government in the event of an emergency that requires their employment. The historic concept of the NDER has been used as a means of improving the war mobilization and productivity of industries.112

The head of any governmental department or agency may establish a unit of the NDER and train its members.113 No NDER unit is currently active, though the statute and E.O. 13603 still provide for this possibility. Units may be activated only when the Secretary of Homeland Security declares in writing that "an emergency affecting the national defense exists and that the activation of the unit is necessary to carry out the emergency program functions of the agency."114

Authorization of Appropriations, as amended by P.L. 113-72

Appropriations for the purpose of the DPA are authorized by Section 711 of Title VII.115 Prior to the P.L. 113-172, "such sums as necessary" were authorized to be appropriated. This has been replaced by a specific authorization for an appropriation of $133 million per fiscal year and each fiscal year thereafter, starting in FY2015, to carry out the provisions and purposes of the Defense Production Act.116

Table 1 shows that the annual average appropriation to the DPA Fund between FY2010 and FY2019 was $109.1 million,117 with a high of $223.5 million in FY2013 and a low of $34.3 million in FY2011. Monies in the DPA Fund are available until expended, so annual appropriations may carry over from year to year if not expended. Recently, the only regular annual appropriation for the purposes of the DPA has been made in the DOD appropriations bill, though appropriations could be made in other bills directly to the DPA Fund (or transferred from other appropriations).

Committee on Foreign Investment in the United States118

The Committee on Foreign Investment in the United States (CFIUS) is an interagency committee that serves the President in overseeing the national security implications of foreign investment in the economy. It reviews foreign investment transactions to determine if (1) they threaten to impair U.S. national security; (2) the foreign investor is controlled by a foreign government; or (3) the transaction could affect homeland security or would result in control of any critical infrastructure that could impair the national security. The President has the authority to block proposed or pending foreign investment transactions that threaten to impair the national security.

CFIUS initially was created and operated through a series of Executive Orders.119 In 1988, Congress passed the "Exon-Florio" amendment to the DPA, granting the President authority to review certain corporate mergers, acquisitions, and takeovers, and to investigate the potential impact on national security of such actions.120 This amendment codified the CFIUS review process due in large part to concerns over acquisitions of U.S. defense-related firms by Japanese investors. In 2007, amid growing concerns over the proposed foreign purchase of commercial operations of six U.S. ports, Congress passed the Foreign Investment and National Security Act of 2007 (P.L. 110-49) to create CFIUS in statute.

On August 13, 2018, President Trump signed into law new rules governing national security reviews of foreign investment, known as the Foreign Investment Risk Review Modernization Act (FIRRMA, Title XVII, P.L. 115-235).121 FIRRMA amends several aspects of the CFIUS review process under Section 721 of the DPA.122 Notably, it expands the scope of transactions that fall under CFIUS' jurisdiction. It maintains core components of the current CFIUS process for evaluating proposed or pending investments in U.S. firms, but increases the allowable time for reviews and investigations. Upon receiving written notification of a proposed acquisition, merger, or takeover of a U.S. firm by a foreign investor, the CFIUS process can proceed potentially through three steps: (1) a 45-day national security review; (2) a 45-day maximum national security investigation (with an option for a 15-day extension for "extraordinary circumstances"); and (3) a 15-day maximum Presidential determination. The President can exercise his authority to suspend or prohibit a foreign investment, subject to a CFIUS review, if he finds that (1) "credible evidence" exists that the foreign investor might take action that threatens to impair the national security; and (2) no other laws provide adequate and appropriate authority for the President to protect national security. FIRRMA shifts the filing requirement for foreign investors from voluntary to mandatory in certain cases, and provides a two-track method for reviewing certain investment transactions. Other changes mandated by FIRRMA would provide more resources for CFIUS, add new reporting requirements, and reform export controls.

Termination of the Act

Title VII of the DPA also includes a "sunset" clause for the majority of the DPA authorities. All DPA authorities in Titles I, III, and VII have a termination date, with the exception of four sections.123 As explained in Section 717 of the DPA, the sections that are exempt from termination are

* 50 U.S.C. §4514, Section 104 of the DPA that prohibits both the imposition of wage or price controls without prior congressional authorization and the mandatory compliance of any private person to assist in the production of chemical or biological warfare capabilities;
* 50 U.S.C. §4557, Section 707 of the DPA that grants persons limited immunity from liability for complying with DPA-authorized regulations;
* 50 U.S.C. §4558, Section 708 of the DPA that provides for the establishment of voluntary agreements; and
* 50 U.S.C. §4565, Section 721 of the DPA, the so-called Exon-Florio Amendment, that gives the President and CFIUS review authority over certain corporate acquisition activities.

P.L. 115-232 extended the termination date of Section 717 from September 30, 2019, to September 30, 2025. In addition, Section 717(c) provides that any termination of sections of the DPA "shall not affect the disbursement of funds under, or the carrying out of, any contract, guarantee, commitment or other obligation entered into pursuant to this Act" prior to its termination. This means, for instance, that prioritized contracts or Section 303 projects created with DPA authorities prior to September 30, 2025, would still be executed until completion even if the DPA is not reauthorized. Similarly, the statute specifies that the authority to investigate, subpoena, and otherwise collect information necessary to administer the provisions of the act, as provided by Section 705 of the DPA, will not expire until two years after the termination of the DPA.124 For a chronology of all laws reauthorizing the DPA since inception, see Table A-4.

Defense Production Act Committee

The Defense Production Act Committee (DPAC) is an interagency body originally established by the 2009 reauthorization of the DPA.125 Originally, the DPAC was created to advise the President on the effective use of the full scope of authorities of the DPA. Now, the law requires DPAC to be centrally focused on the priorities and allocations authorities of Title I of the DPA.

The statute assigns membership in the DPAC to the head of each federal agency delegated DPA authorities, as well as the Chairperson of the Council of Economic Advisors. A full list of the members of the DPAC is included in E.O. 13603.126 As stipulated in law, the Chairperson of the DPAC is to be the "head of the agency to which the President has delegated primary responsibility for government-wide coordination of the authorities in this Act."127 As currently established in E.O. 13603 delegations, the Secretary of Homeland Security is the chair-designate, but the language of the law could allow the President to appoint another Secretary with revision to the E.O.128 The Chairperson of the DPAC is also required to appoint one full-time employee of the federal government to coordinate all the activities of the DPAC. Congress has exempted the DPAC from the requirements of the Federal Advisory Committee Act.129

The DPAC has annual reporting requirements relating to the Title I priority and allocation authority, and is also required to include updated copies of Title I-related rules in its report. The annual report also contains, among other items, a "description of the contingency planning ... for events that might require the use of the priorities and allocations authorities" and "recommendations for legislative actions, as appropriate, to support the effective use" of the Title I authorities.130 The DPAC report is provided to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services.

Impact of Offsets Report

Offsets are industrial compensation practices that foreign governments or companies require of U.S. firms as a condition of purchase in either government-to-government or commercial sales of defense articles and/or defense services as defined by the Arms Export Control Act (22 U.S.C. §2751, et seq.) and the International Traffic in Arms Regulations (22 C.F.R. §§120-130). In the defense trade, such industrial compensation can include mandatory co-production, licensed production, subcontractor production, technology transfer, and foreign investment.

The Secretary of Commerce is required by law to prepare and to transmit to the appropriate congressional committees an annual report on the impact of offsets on defense preparedness, industrial competitiveness, employment, and trade. Specifically, the report discusses "offsets" in the government or commercial sales of defense materials.131

Considerations for Congress

Enhance Oversight

Expand Reporting or Notification Requirements

Congress may consider whether to add more extensive notification and reporting requirements on the use of all or specific authorities in the DPA. These reporting or notification requirements could be added to the existing law, or could be included in conference or committee reports accompanying germane legislation, such as appropriations bills or the National Defense Authorization Act. Additional reporting or notification requirements could involve formal notification of Congress prior to or after the use of certain authorities under specific circumstances. For example, Congress may consider whether to require the President to notify Congress (or the oversight committees) when the priorities and allocations authority is used on a contract valued above a threshold dollar amount.132 Congress might also consider expanding the existing reporting requirements of the DPAC, to include semi-annual updates on the recent use of authorities or explanations about controversial determinations made by the President. Existing requirements could also be expanded from notifying/reporting to the committees of jurisdiction to the Congress as a whole, or to include other interested committees, such as the House and Senate Armed Services Committees.

Enforce and Revise Rulemaking Requirements

Congress may consider reviewing the agencies' compliance with existing rulemaking requirements. A rulemaking requirement exists for the voluntary agreement authority in Title VII that has been completed by DHS, but it has not been updated since 1981 and may be in need of an update given changes to the authority and government reorganizations since that date.133 One of the agencies responsible for issuing a rulemaking on the use of Title I authorities has yet to do so. Congress may also consider potentially expanding regulatory requirements for other authorities included in the DPA. For example, Congress may consider whether the President should promulgate rules establishing standards and procedures for the use of all or certain Title III authorities. In addition to formalizing the executive branch's policies and procedures for using DPA authorities, these regulations could also serve an important function by offering an opportunity for private citizens and industry to comment on and understand the impact of DPA authorities on their personal interests.

Broaden Committee Oversight Jurisdiction

Since its enactment, the House Committee on Financial Services, the Senate Committee on Banking, Housing, and Urban Affairs, and their predecessors have exercised legislative oversight of the Defense Production Act. The statutory authorities granted in the various titles have been vested in the President, who has delegated some of these authorities to various agency officials through E.O. 13603. As an example of the scope of delegations, the membership of the Defense Production Act Committee (DPAC), created in 2009 and amended in 2014, includes the Secretaries of Agriculture, Commerce, Defense, Energy, Labor, Health and Human Services, Homeland Security, the Interior, Transportation, the Treasury, and State; the Attorney General; the Administrators of the National Aeronautics and Space Administration and of General Services, the Chair of the Council of Economic Advisers; and the Directors of the Central Intelligence Agency and National Intelligence.

In order to complement existing oversight, given the number of agencies that currently use or could potentially use the array of DPA authorities to support national defense missions, Congress may consider reestablishing a select committee with a purpose similar to the former Joint Committee on Defense Production.134 As an alternative to the creation of a new committee, Congress may consider formally broadening DPA oversight responsibilities to include all relevant standing committees when developing its committee oversight plan.

Should DPA oversight be broadened, Congress might consider ways to enhance inter-committee communication and coordination of its related activities. This coordination could include periodic meetings to prepare for oversight hearings or ensuring that DPA-related communications from agencies are shared appropriately. Finally, because the DPA was enacted at a time when the organization and rules of both chambers were markedly different to current practice, Congress may consider the joint referral of proposed DPA-related legislation to the appropriate oversight committees.

Amending the Defense Production Act of 1950

While the act in its current form may remain in force until September 30, 2025, the legislature could amend the DPA at any time to extend, expand, restrict, or otherwise clarify the powers it grants to the President. For example, Congress could eliminate certain authorities altogether. Likewise, Congress could expand the DPA to include new authorities to address novel threats to the national defense. For example, Congress may consider creating new authorities to address specific concerns relating to production and security of emerging technologies necessary for the national defense.

#### Key to pandemic response.

J. Mark Gidley et al. 20. J. Mark Gidley chairs the White & Case Global Antitrust/Competition practice. Martin M. Toto and Sean Sigillito. “A Novel Antitrust Defense for COVID-19 Agreements: Section 708 of the Defense Production Act” <https://www.whitecase.com/sites/default/files/2020-04/novel-antitrust-defense-covid-19-agreements-section-708-defense-production-act.pdf>

There is a dire need for the assistance of private industry in developing vaccines and treatments for the SARS-CoV-2 virus, and for the manufacture and distribution of medical and other supplies to aid in the United States’ response to the COVID-19 health emergency. The Government’s recent actions indicate a desire to allow private sector companies to work together to do so quickly.

While many of the needs arising from the ongoing emergency focus specifically on medical supplies, the President’s delegation of Section 708 authority to the DHS as well as HHS potentially opens the door to voluntary agreements within broader sectors of the US economy. Under the right circumstances, and if the business combination could garner the governmental sponsor needed for the voluntary agreement, invoking the Defense Production Act’s antitrust relief provision through the enactment of voluntary agreements could allow for a more robust response to the COVID-19 pandemic.

#### Disease causes extinction and turns every impact --- it’s an *IMPACT MAGNFIER!!*

Dennis Pamlin & Stuart Armstrong 15. \*Executive Project Manager Global Risks, Global Challenges Foundation. \*\*James Martin Research Fellow, Future of Humanity Institute, Oxford Martin School, University of Oxford. February 2015, “Global Challenges: 12 Risks that threaten human civilization: The case for a new risk category,” Global Challenges Foundation, p.30-93. https://api.globalchallenges.org/static/wp-content/uploads/12-Risks-with-infinite-impact.pdf

A pandemic (from Greek πᾶν, pan, “all”, and δῆμος demos, “people”) is an epidemic of infectious disease that has spread through human populations across a large region; for instance several continents, or even worldwide. Here only worldwide events are included. A widespread endemic disease that is stable in terms of how many people become sick from it is not a pandemic. 260 84 Global Challenges – Twelve risks that threaten human civilisation – The case for a new category of risks 3.1 Current risks 3.1.4.1 Expected impact disaggregation 3.1.4.2 Probability Influenza subtypes266 Infectious diseases have been one of the greatest causes of mortality in history. Unlike many other global challenges pandemics have happened recently, as we can see where reasonably good data exist. Plotting historic epidemic fatalities on a log scale reveals that these tend to follow a power law with a small exponent: many plagues have been found to follow a power law with exponent 0.26.261 These kinds of power laws are heavy-tailed262 to a significant degree.263 In consequence most of the fatalities are accounted for by the top few events.264 If this law holds for future pandemics as well,265 then the majority of people who will die from epidemics will likely die from the single largest pandemic. Most epidemic fatalities follow a power law, with some extreme events – such as the Black Death and Spanish Flu – being even more deadly.267 There are other grounds for suspecting that such a highimpact epidemic will have a greater probability than usually assumed. All the features of an extremely devastating disease already exist in nature: essentially incurable (Ebola268), nearly always fatal (rabies269), extremely infectious (common cold270), and long incubation periods (HIV271). If a pathogen were to emerge that somehow combined these features (and influenza has demonstrated antigenic shift, the ability to combine features from different viruses272), its death toll would be extreme. Many relevant features of the world have changed considerably, making past comparisons problematic. The modern world has better sanitation and medical research, as well as national and supra-national institutions dedicated to combating diseases. Private insurers are also interested in modelling pandemic risks.273 Set against this is the fact that modern transport and dense human population allow infections to spread much more rapidly274, and there is the potential for urban slums to serve as breeding grounds for disease.275 Unlike events such as nuclear wars, pandemics would not damage the world’s infrastructure, and initial survivors would likely be resistant to the infection. And there would probably be survivors, if only in isolated locations. Hence the **risk of a civilisation collapse** would come from the ripple effect of the fatalities and the policy responses. These would include political and agricultural disruption as well as economic dislocation and damage to the world’s trade network (including the food trade). Extinction risk is only possible if the aftermath of the epidemic fragments and diminishes human society to the extent that recovery becomes impossible277 before humanity succumbs to other risks (such as climate change or further pandemics). Five important factors in estimating the probabilities and impacts of the challenge: 1. What the true probability distribution for pandemics is, especially at the tail. 2. The capacity of modern international health systems to deal with an extreme pandemic. 3. How fast medical research can proceed in an emergency. 4. How mobility of goods and people, as well as population density, will affect pandemic transmission. 5. Whether humans can develop novel and effective anti-pandemic solutions.

### OFF

#### The United States Supreme Court ought to, deploying the technique utilized in Great Northern Railway Company v. Sunburst Oil and Refining Company:

#### decline to rule that the extraterritorial scope of core antitrust laws ought to be expanded on the basis that such a decision would undermine judicial deference to reliance interest

#### announce that existing precedent in this area is no longer reliable and that relevant parties should be on notice that the reliance interests that caused it to be upheld in this case will not apply to future challenges

#### not deny certiorari in challenges on the issue

#### Solves and avoids

Faure 14 – Michael Faure, Professor of International and Comparative Environmental Law at Maastricht University and Professor of Comparative Private Law and Economics at the Rotterdam Institute of Law and Economics (RILE), Erasmus School of Law, Morag Goodwin, Associate Professor in European and International Law, Tilburg Law School, and Franziska Weber, Junior Professor for Civil Law & Law and Economics at the Institute of Law and Economics, University of Hamburg, “THE REGULATOR'S DILEMMA: CAUGHT BETWEEN THE NEED FOR FLEXIBILITY & THE DEMANDS OF FORESEEABILITY. REASSESSING THE LEX CERTA PRINCIPLE”, Albany Law Journal of Science and Technology, 24 Alb. L.J. Sci. & Tech. 283, Lexis

Prospective overruling is a judicial technique in which a [\*349] previous precedent or authority is overruled without the new ruling having retrospective effect. n386 It thus represents a departure from the fundamental notion that judicial decisions that develop or change the law necessarily have retroactive effect. n387 It is, or has been, used by a court wishing to overturn or amend bad law, but is wary of the consequences of the retrospective application of their finding. Such consequences may include the inherent unfairness that would result to an individual who had relied on the existing law in good faith n388 or because of reasons of practicality, where the decision would have sweeping consequences for the operation of the judicial system. n389 Although appearing similar, prospective overruling differs from obiter dicta in two significant ways. Firstly, while judges can use obiter dicta to declare certain rules to be bad law or to comment on the likely direction of necessary legal reform, such comments do not entail that the decision in the case before them will be inconsistent with a future case. n390 Secondly, obiter dictum, while possibly highly influential, does not benefit from stare decisis and therefore is not binding. n391

There are a number of different ways in which a court can use prospective overruling. n392 Firstly, a court can announce a new rule or standards that will apply only to future cases, i.e., not to the case before it in the instant dispute. The old rule would also govern any cases that arose from action taken prior to the [\*350] announcement of the new rule but determined after it. n393 This has been called "pure" prospective overruling. n394 A second approach would be to announce a new rule that is only applicable to future cases that arise after the announcement but, as an exception, to apply it to the instant case. n395 A third alternative is to apply the new rule not only to the case at hand but to all other cases already pending at the time of announcement. This third approach excludes those cases in which the action that motivated them predates the announcement but where proceedings had not already been commenced at the moment of declaration of the new rule. n396 Finally, a fourth possibility would be for a court to announce a new rule not having retroactive effect but to suspend the entry into force of that new rule until a future date. n397 This technique is used to allow those actors likely to be affected by the change to adapt their behavior accordingly and to give the legislature the opportunity to enact a different rule should they so wish. n398 Traynor termed this form of prospective overruling "prospective-prospective overruling." n399 In this version of prospective overruling, the new rule does not apply to the case in which it is announced, or to any other cause of action that arises before the delayed entry into force of the new rule. n400 The Court of Justice of the European Union, for example, has accepted the need to place temporal limitations on its rulings in the interests of justice, although it has declared that it does so only in exceptional circumstances. n401 A variation on this form of [\*351] prospective overruling has been suggested by Advocate General Jacobs, whereby both the retrospective and prospective effect of a ruling of the Court of Justice of the European Union could be subject to a temporal limitation; in that case until the Member State concerned has had a reasonable opportunity to consider the introduction of amending legislation. n402

In addition to the European Union, a number of jurisdictions have used or accepted the possibility, if only in principle, of prospective overruling in exceptional circumstances, including the United States, n403 India, n404 New Zealand, n405 Canada, n406 the United Kingdom n407 and Germany. n408 The European Court of Human Rights has been understood to issue prospective rulings, n409 although there is some doubt as to whether its "dynamic" approach to convention interpretation is properly classified as such; n410 however, it certainly accepts such rulings in domestic courts as compatible with the rule of law. n411 At its apogee in the United States, the United States Supreme Court ruled in the case of Linkletter v. Walker, that in both criminal and civil cases, "the accepted rule today is that in appropriate cases the Court may in the interests of justice make the rule prospective." n412 However, since the 1970s, the use of retrospective overruling in the United States has been in retreat. While it remains unclear as to whether the use of "pure" prospective overruling (where the new rule does not apply to the case at hand) has been abandoned in civil cases, n413 the Supreme Court [\*352] has overturned its earlier enthusiasm and now prohibits prospective overruling in criminal cases n414 and the use of selective prospective overruling (i.e., "non-pure") in civil cases. n415 Yet, despite the discrediting of prospective overruling as a technique in the US more than twenty years ago, it continues to attract the interest of senior common law judges. n416 In a 2005 case, In re Spectrum Plus, the House of Lords found that it was theoretically possible to overrule a judgment with prospective effect only; n417 and in 2007, two members of the New Zealand Supreme Court accepted the same possibility. n418

3. The Pros and Cons of Prospective Overruling

Given that the heyday of prospective overruling has, until recently, been behind us, what reasons are there for being suspicious of the technique? There are, it seems, two main reasons for rejecting prospective overruling in its entirety. The first has been articulated by the Australian High Court in its emphatic refusal to countenance the use of prospective overruling and concerns an understanding of the nature of judicial interpretation. In the case of Ha v. New South Wales, the Court ruled that, "it would be a perversion of judicial power to maintain in force that which is acknowledged not to be the law." n419 In this reading, where a court determines that the rule they are required to apply is bad law, i.e., that the "real law" is actually now a different standard, it is simply untenable to continue to apply the wrong standard, even where it results in a manifest injustice to one of the parties before it. n420 The notion that prospective overruling is "a perversion of judicial power" gains further credence from the commonly accepted understanding that the role of the judiciary is to interpret the law in light of the case before it, where the primary function of the courts is to [\*353] adjudicate between parties; going beyond the particular case by making a general statement about the law is seen by some as "blatantly legislative." n421 While the legislature looks forward, the proper direction of the courts' attention is backwards, applying the existing law to situations that have already happened. This view was echoed by the United States Supreme Court in Griffith v. Kentucky, in which it ruled, concurring with earlier minority opinions by Justice Harlan, that the "failure to apply a newly declared constitutional rule to criminal cases pending on direct review violates basic norms of constitutional adjudication." n422

The second reason for critics to reject prospective overruling concerns the impact upon individuals of arbitrariness to which prospective overruling gives rise. In Griffiths v. Kentucky, the United States Supreme Court stated quite simply that "selective application of new rules violates the principle of treating similarly situated defendants the same." n423 Once a rule or practice has been declared bad law or unconstitutional, it violates the central notion of equality before the law if the new rule is applied to benefit one individual but not another. n424 These concerns can be somewhat alleviated by applying the new rule to all cases stemming from action arising at or after the time of the cause of action of the case in which the new rule is announced, i.e., by limiting the normal retrospective effect of rulings only marginally, but to do so would be to reduce considerably the possible benefits of prospective overruling. n425 In effect, those parties who had relied in good faith on the previous standard in such actions would be held to a new, stricter standard and thus their legitimate expectation of and right to legal certainty would [\*354] be compromised. n426

What, then, are the benefits? In particular, would other, less dramatic, techniques do the same job without encountering the hostility that prospective overruling can inspire? Obiter dicta could be used, for example, to indicate a likely direction of legal reform without actually introducing a new rule. n427 However, it is in large part the binding nature of a prospective decision that makes it such a useful technique in balancing flexibility and foreseeability. n428 While obiter dicta could be used in a similar way, although such statements lack the ability to bind future courts, they reduce the foreseeability of parties the same way incentives for operators to adapt their behavior are reduced. Operators may instead play a waiting game in which they fail to carry out adaptations in the hope that a different court will continue to apply the existing standard. Prospective overruling, we suggest, cannot be replaced by the less controversial tool of obiter dictum. Moreover, obiter dictum would obviously only provide a solution in those legal systems where it exists, which is not the case for many civil law systems. n429

The first main benefit of prospective overruling follows from the assertion that it is a perversion of judicial power to uphold a law that is understood to be unsound. n430 Courts are rightly reluctant to overturn a precedent, even where they are convinced of the unsoundness of the rule in question, where the harm caused by retrospective change is greater than the supposed benefits. n431 Thus, Justice Traynor suggested, in his classic article on the topic, that the main benefit of the technique of prospective overruling is that it enables courts to "change[] bad law without upsetting the ... expectations of those who [have] relied upon it." n432 For Traynor, prospective overruling, in direct contrast to its critics, is a necessary tool for the proper administration of justice. n433 Allowing bad law to stand simply to overturn a [\*355] precedent would entail unacceptable and unreasonable hardship for one of the parties concerned is an equally perverse understanding of the judicial role. n434

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#### The aff is sua sponte --- Nukes court legitimacy

Milani & Smith 02 (Adam and Michael, both are Assistant Professors, Mercer University School of Law, “Playing God: A Critical Look at Sua Sponte Decisions by Appellate Courts,” 69 Tenn. L. Rev. 245, Winter, lexis)

The heart of the American legal system is the adversary process in which trained advocates present the parties’ facts and arguments to neutral decision makers. The fundamental premise of the adversary process is that these advocates will uncover and present more useful information and arguments to the decision maker than would be developed by a judicial officer acting on his own in an inquisitorial system.3 The adversary process is also said to “promote[] litigant and societal acceptance of decisions rendered by the courts”4 because a party who “is intimately involved in the adjudicatory process and feels that he has [they have] been given a fair opportunity to present his case . . . is likely to accept the results whether favorable or not.”5 Indeed, the Joint Conference on Responsibility of the American Bar Association and the Association of American Law Schools stated that “[i]n a very real sense it may be said that the integrity of the adjudicative process itself depends upon the participation of the advocate.”6 Accordingly, most lawyers probably never think about the possibility that a court will decide a case on an issue that the court itself raises and which was neither briefed nor argued by the parties. But we all know it happens. We even have a name for such a decision: [is] sua sponte. Translated from its original Latin, “sua sponte” means “on his or its own motion.”7 In the legal setting, sua sponte describes a decision or action undertaken by a court on its own motion8 as opposed to an action or decision done in response to a party’s request or argument. As such, the concept of “sua sponte” is an important exception to two basic [the] principles of our adversary system of adjudication: (1) that the parties will control the litigation, and (2) that the decision maker will be neutral and passive.9 One of the clearest manifestations of these principles is that the parties themselves, not the decision maker, determine what issues will be adjudicated. In the context of judicial decision making, a court deviates from its traditional “passive” role in the adjudicatory process when it raises an issue not identified by the parties but which it deems relevant to the legal controversy before it. Nonetheless, raising issues sua sponte is not an uncommon practice.10 In fact, legal scholars have identified several kinds of issues that are commonly raised by courts on their own. First, both trial and appellate courts often raise jurisdictional issues such as standing, subject matter jurisdiction, and mootness sua sponte.1

#### That corrodes rule of law via abdicating judicial legitimacy.

Donaldson ’17 [Michael J; Partner at Burnet, Duckworth & Palmer, LLP, Master of Laws from Columbia; 2017; “Justice in Full Is Time Well Spent: Why the Supreme Court Should Ban Sua Sponte Dismissals”; http://www.bdplaw.com/publications/justice-in-full-is-time-well-spent-why-the-supreme-court-should-ban-sua-sponte-dismissals/; Quinnipiac Law Review, Vol 36; accessed 9/15/21; TV]

There is a lot wrong with sua sponte dismissals. They are inconsistent with the adversary system, and change the judge's role from referee to contestant.85 They can undermine respect for the legal system. And they increase the likelihood of errors, leading to unnecessary appeals and a waste of judicial resources." But most importantly, they lack the very due process the courts are supposed to safeguard.

A. Failure to Provide Due Process

Sua sponte decisions are inconsistent with due process.89 Period. There is no other way to look at it. 90 Not only does a plaintiff surprised by a sua sponte dismissal not receive "due" process, she receives no process at all.91 She has no idea her lawsuit is in jeopardy of being dismissed, no idea what the reasons for that dismissal might be, and no opportunity to respond. 92 This is the case whether the court's dismissal decision is right or wrong. 93 As Allan Vestal puts it:

When [issues are] considered sua sponte both parties are taken completely by surprise and the court decides the matter on grounds not urged by either. Neither has had any opportunity to consider the matter, and both are now bound by res judicata grounded on considerations which represent not well reasoned positions for the litigants, but rather only the fortuitous decision of a 94 wayward court.

The reference to res judicata here is important. As Milani and Smith point out, the res judicata doctrine requires a party or its privy to be a participant in the former proceeding before the court can bind him to the consequences of that proceeding because, according to the Supreme Court, "The opportunity to be heard is an essential requisite of due process of law in judicial proceedings."95 If this is the standard applied to former proceedings, how can it not apply to proceedings currently before the court? Lon Fuller once wrote of sua sponte decisionmaking:

[I]f the grounds for the decision fall completely outside the framework of the argument, making all that was discussed or proved at the hearing irrelevant ... the adjudicative process has become a sham, for the parties' participation in the decision has lost all meaning.9 6

The situation is even harder to defend when there is no hearing at all. 9

B. Undermining Respect for the Legal System

The perception that the courts are regularly failing to provide due process cannot do anything but undermine respect for the legal system.9 8 Sir Robert Megarry, in the speech quoted at the beginning of this article,99 underlined the importance of sending the unsuccessful litigant away feeling as though he has had a fair hearing.' Justice Harlan was obviously cognizant of this problem in his dissent in Mapp, when he warned that the Court's sua sponte decision in that case was "not likely to promote respect ... for the court's adjudicatory process."o

This is not a farfetched concern. Offenkrantz and Lichter note that in the Second Circuit's high-profile decision to "[sua sponte remove] Judge Shira Scheindlin from further proceedings in two stop-and-frisk cases," an order which left the Judge "completely blindsided," "newspapers were reporting that appellate courts had carte blanche to raise and decide important issues in a case without ever seeking the input of any of the parties to it."' 0 2

Megarry tells a story of a client of his who had a fatal flaw in his case, but insisted on going ahead anyway.10 3 Instead of seizing on the fatal flaw at the outset, the trial judge heard the case all the way through.1 0 4 The client won on his two collateral points, but, as expected, lost on the key issue. o Megarry tells the story of what happened next:

The course taken by the judge must have prolonged the hearing by an hour or two. But the effect on the defeated tenant was striking. True, he had lost the last point and the case as a whole; but he had been victorious on the other two points. All that nonsense about the agent's lack of authority and the letter not having been received in time had been blown away by the judge. It was a pity about the wording of the letter, of course; but he had seen his case being put in full, and none of his grievances had been left unheard or unresolved.

This is as it should be. Courts must not, as Megarry puts it, give in to "the temptation of brevity."'0 o Their very legitimacy hangs in the balance. A loss of respect for the courts marks the beginning of the unraveling of the rule of law. This is simply too high of a price to pay for efficiency.

#### Extinction.

Davis and Morse ’18 [Christina and Julia; September 19; Professor of Government at Harvard University; Professor of Political Science at the University of California at Santa Barbara; International Studies Quarterly, “Protecting Trade by Legalizing Political Disputes: Why Countries Bring Cases to the International Court of Justice,” vol. 62]

Trade, Conflict, and Adjudication

We argue that countries turn to international adjudication to protect trade flows under conditions of strong economic interdependence. This argument is built on two key assumptions. First, states believe that an international dispute over territory, fishing rights, or another salient issue could harm trade. Second, states view international adjudication as an effective way to end the dispute. Given the risk of harm to economic relations and the potential for courts to contribute to conflict resolution, states with high trade value vested in a relationship will be more willing to undertake costly litigation. This section elaborates on the general conditions of our theory and then explains why the ICJ is a good venue for testing the relationship between economic interdependence and international adjudication. The Adverse Impact of Conflict on Trade The premise that conflict disrupts trade is central to the theory of commercial peace. Russett and Oneal (2001) draw on the work of philosopher Immanuel Kant to argue that interdependence deters conflict by raising its costs. According to this reasoning, war interrupts trade while peace promotes stable commerce, leading states to calculate that the gains of peace are significant compared to the costs of war.4 Other perspectives focus on the informational role of interdependence to lower uncertainty between states (Reed 2003). Gartzke, Li, and Boehmer (2001) contend economic interdependence allows states to signal their resolve through their willingness to bear the economic costs of confrontation.5 A host of empirical studies supports the idea that conflict reduces trade (Keshk, Reuveny, and Pollins 2004; Long 2008). Several potential channels connect trade and conflict, including direct damage to infrastructure and transportation resulting from actual conflict, sanctions policies, and informal discrimination by governments or private actors. Glick and Taylor (2010) find that the effect of war on trade is significant and persistent. At a lower level, political tensions may also suppress trade (Pollins 1989; Fuchs and Klann 2013). Consumer boycotts and financial market reactions in some cases have led to adverse market impact (Fisman, Hamao, and Wang 2014; Heilmann 2016; Pandya 2016). Simmons (2005) finds that territorial disputes have a sizable negative impact on trade even in the absence of militarized action. Others suggest states anticipate the potential adverse impact of conflict on trade, and therefore trade less to begin with if they think that war is likely. In such a scenario, the marginal economic costs of war should be insufficient to change a state's calculation for going to war (Morrow 1999; Barbieri 2002). Gowa and Hicks (2017) contend that trade is largely diverted through third-party channels, which compensate for having less direct trade with the adversary. We assume that leaders and business constituencies on average believe that conflict damages trade relations. Political conflict could lead governments to adopt sanctions against an adversary or to restrict financial flows. Violence likely disrupts trading routes and slows the movement of goods. The potential for adverse financial market reactions and consumer response adds further unpredictability about the risk of spillover from political disagreement into economic harm. Substitution through third parties could alleviate the harm, but this would still increase trade costs. The expected harm to trade motivates states to pursue the resolution of disputes. Adjudication as a Conflict Resolution Mechanism When states want to resolve an interstate dispute, why would they choose adjudication rather than negotiations, economic sanctions, or militarized action? In some cases, the decision follows an episode of military conflict as part of an effort to normalize relations. In other disputes, countries may turn to a legal venue to prevent a problem from ever reaching the stage that could produce serious political tensions or threats of force. The literature offers three broad types of explanations for why states pursue adjudication: legitimacy, informational benefits, and domestic obstacles to settlement. At the systemic level, international norms support peaceful conflict resolution. Some contend that rule of law has come to shape the identities of states, forming norms about appropriate action in both the domestic and international spheres (Finnemore and Sikkink (1998, 902). When international law has been established through fair procedures and offers coherent principles, it forms a legitimate source of authority in international affairs that generates an independent “compliance pull” on state behavior (Franck 1990, 65). International courts combine both legitimacy and authority as they help states solve specific disputes about how to interpret international law; the growing role for international courts in international affairs represents an important trend (Alter 2014; Alter, Helfer, and Madsen 2016). Integration with national courts has reinforced states’ use of the European Court of Justice (ECJ), which stands out for its expansive caseload and impact on state behavior (Alter 1998). The ICJ has achieved a relatively strong record of compliance with rulings (Schulte 2004; Llamzon 2007; Mitchell and Hensel 2007; Johns 2012). Legal settlement can help states coordinate policies through the provision of information. Compared to bilateral negotiations or nonbinding third-party arbitration, adjudication conveys a government's willingness to reach an agreement (Helfer and Slaughter 2005; Gent and Shannon 2010). Having taken the public step to initiate legal action, a government would appear inconsistent and incur a reputational penalty if it also took unilateral measures such as sanctions or military actions before the legal process had reached a conclusion. This shapes the diplomatic context because participants know that the matter will neither escalate into violence nor disappear through neglect. A court ruling offers a focal point amidst uncertainty about how to interpret the terms of an agreement (Ginsburg and McAdams 2004; Huth, Croco, and Appel 2011). As the record-keeper of past actions, courts support systems of tit-for-tat and reputational enforcement (Milgrom, North, and Weingast 1990; Carrubba 2005; Mitchell and Hensel 2007). In these informational theories of courts, states may comply with court rulings in the absence of coercive measures or the threat of sanctions because the reputational costs of noncompliance are too high. Rather than simply interpret law, courts coordinate expectations about enforcement. Johns (2012) models the circumstances whereby mobilization of third-party actions in support of a court ruling generates endogenous enforcement that can affect outcomes. In this way, multilateral enforcement makes an international court different from the pressure available in bilateral negotiations. International courts also offer a way for states to frame settlements to appeal to domestic audiences (Fang 2008). Simmons notes that even when the same deal could be reached in negotiations or through a court decision, a negotiated settlement could be viewed as a sign of weakness while legal resolution would be a positive signal for future cooperation (Simmons 2002, 834). This dynamic occurs because “domestic groups will find it more attractive to make concessions to a disinterested institution than to a political adversary” (Simmons 2002, 834). In research on several prominent ICJ cases, Fischer (1982, 271) emphasizes the court has helped governments to save face. Consequently, those governments unable to reach agreements over domestic opposition may find it easier to do so with the involvement of a third-party ruling. Allee and Huth (2006a) show that governments with higher levels of domestic political constraints are more likely to choose adjudication over negotiation for settling territorial disputes. Domestic political constraints also increase the probability of filing complaints at the WTO (Davis 2012). The mobilization of domestic groups plays a critical role in litigation patterns at the ECJ (Alter and Vargas 2000).a

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#### Reconciliation is on track to pass now

AP 11/6 (Associated Press, Nov. 6, 2021, “House rule vote sets stage for action on ‘Build Back Better’ bill by midmonth”, <https://www.marketwatch.com/story/house-rule-vote-sets-stage-for-action-on-build-back-better-bill-by-midmonth-01636176418>, accessed 11/6/21, DL)

In a White House statement released after midnight, Biden said he was ‘proud that a rule was voted on that will allow for passage of my Build Back Better Act in the House of Representatives the week of November 15th’ Despite the big win represented late Friday by House passage of the $1.2 trillion infrastructure bill, Democrats endured a setback when they postponed a vote on a second, larger and more ambitious, measure until later this month. That 10-year, $1.85 trillion measure bolstering health, family and climate change programs was sidetracked after moderates demanded a cost estimate on the sprawling measure from the nonpartisan Congressional Budget Office. The postponement dashed hopes that the day would produce a double-barreled win for Biden with passage of both bills. But in an evening breakthrough brokered by President Joe Biden and House leaders, the moderates later agreed to back that bill if CBO’s estimates are consistent with preliminary numbers that White House and congressional tax analysts have provided. The agreement, in which lawmakers promised to vote on the social and environment bill — known as the Build Back Better Act — by the week of Nov. 15, stood as a significant step toward a House vote that could ultimately ship it to the Senate. In a two-sentence statement, five moderates said that if the fiscal estimates raise problems, “we remain committed to working to resolve any discrepancies in order to pass the Build Back Better legislation.” The five included Rep. Josh Gottheimer of New Jersey, leader of a group of centrists who this summer repeatedly pressured House Speaker Nancy Pelosi of California to schedule earlier votes on the infrastructure bill. In exchange, progressives agreed to back the infrastructure measure, which they’d spent months effectively holding hostage in an effort to pressure moderates to back the social and environment legislation. In a White House statement released after midnight, Biden said he was “proud that a rule was voted on that will allow for passage of my Build Back Better Act in the House of Representatives the week of November 15th.” The Build Back Better Act, he said, according to the statement, represents “a once-in-a-generation investment in our people” that “will lower bills for healthcare, child care, elder care, prescription drugs, and preschool. And middle-class families get a tax cut.” Biden labeled the bill fiscally responsible and fully paid for, promising that it wouldn’t increase the federal deficit, instead “making sure the wealthiest Americans and biggest corporations begin to pay their fair share” while steering clear of any increase in tax liability “on anyone making less than $400,000 per year.” The day marked a rare détente between Democrats’ moderate and progressive wings that party leaders hope will continue this fall. The rival factions have spent recent weeks accusing each other of jeopardizing Biden’s and the party’s success by overplaying their hands and expressed a deep distrust of each other.

#### Antitrust reform decks PC and trades off with infra

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

14. Similarly, despite bipartisan murmurs about competitive issues, the potential in a closely divided Congress that any major initiatives will survive is limited at best. In part the challenge here is how the Biden administration will rank its commitments. If it were to make reform of competition law a major and primary commitment, it would have to trade off other goals, which might include health care reform or increases in the minimum wage. It is likely in this circumstance the new administration, like the Obama administration’s abandonment of the pro-competitive rules proposed under the PSA, would elect to give up stricter competition rules in order to achieve other legislative priorities.

15. Another key to a robust commitment to workable competition is the choice of cabinet and other key administrative positions. Here as well, the early signs are not entirely encouraging. In selecting Tom Vilsack to return as secretary of agriculture, the president has embraced a friend of the large corporate interests dominating agriculture who has spent the last four years in a highly lucrative position advancing their interests. Given the desperate need for pro-competitive rules to implement the PSA and control exploitation of dairy farmers through milk-market orders, the return of Vilsack is not good news. Who will head the FTC and who will be the attorney general and assistant attorney general for antitrust is still unknown, but if those picks are also centrists with strong links to corporate America the hope for robust enforcement of competition law will further attenuate!

16. In sum, this is a pessimistic prognostication for the likely Biden antitrust enforcement agenda. There is much that ought to be done. But this requires a willingness to take major enforcement risks, to invest significant political capital in the legislative process, and to select leaders who are committed to advancing the public interest in fair, efficient and dynamically competitive markets. The early signs are that the new administration will be no more committed to robust competition policy than the Obama administration. Events may force a more vigorous policy—I will cling to that hope as the Biden administration takes shape.

#### Recon solves warming - it decarbonizes and invigorates the economy by speeding up construction and the development of green tech

**McDonnell ’21**; [Tim McDonnell; a reporter covering global climate change and energy issues, based in Washington, D.C. He has worked previously for National Public Radio and Mother Jones, and spent a couple years freelancing across sub-Saharan Africa and South Asia for National Geographic, The New York Times, and other outlets. He was a Fulbright-National Geographic Storytelling Fellow and a National Geographic Explorer; 3/23/21; Quartz; “Biden’s infrastructure bill will make or break his climate legacy”; <https://qz.com/1987869/joe-bidens-new-infrastructure-bill-is-all-about-climate-change/>; accessed: 7/12/21; YS]

President Joe **Biden** is turning to his next **legislative priority,** a $3 trillion pair of **infrastructure bills** that put **climate change front and center**. As first reported in the New York Times on March 22, funding will be directed to the **electric grid**, energy-efficient affordable **housing**, electric vehicle charging stations, and other **clean energy priorities**. It follows a $1.9 trillion economic stimulus package signed earlier this month.

The infrastructure package shows that Biden is taking a different approach to the climate crisis than Barack Obama. Rather than centering his climate policy agenda on regulating greenhouse gas emissions from power plants (as Obama did, with his Clean Power Plan), Biden’s priority is to pour money into new **technologies** and **clean energy** hardware with a goal to **decarbonize the US electricity system by 2035**. The administration is betting that leading with a carrot, rather than the stick, will be the **fastest**, lowest-cost way to make a lasting dent in emissions, while breathing life in to the post-pandemic economy (new emissions regulations from the Environmental Protection Agency will likely follow).

“This could be the most **promising opportunity** to make progress on **decarbonization** across the economy that the US has had in a long time,” said John Larsen, director of climate and energy at Rhodium Group, a research firm. “And as far as getting very quick returns on investments, the power sector is the most important place to make progress.”

How **infrastructure spending** can **benefit** the climate

The last time the US saw a big clean energy spending bill was Obama’s $90 billion green stimulus in 2009, which ultimately gave a dramatic boost to solar and wind energy. Biden’s new effort is an order of **magnitude greater**: The Times reports that the package includes “nearly **$1 trillion** in spending on the **construction** of roads, bridges, rail lines, ports, electric vehicle charging stations, and improvements to the **electric grid** and other parts of the **power sector**,” as well as “one million affordable and energy-efficient **housing** units.” The remainder of the **$3 trillion** is set aside for rural **broadband connectivit**y, building and renovating schools, and job retraining for millions of workers.

As for spending on the power sector, Larsen and his colleagues laid out a few guiding principles for the Biden team in a Mar. 23 report. They recommend dramatically increasing and extending the duration of tax credits for renewables, which are currently scheduled to wind down over the next few years; create new incentives to help existing nuclear power plants stay open; and write off old federal loans made to local governments to build coal-fired power plants, so that those can close ahead of schedule.

#### Warming causes extinction.

Bill McKibben 19. Schumann Distinguished Scholar at Middlebury College; fellow of the American Academy of Arts and Sciences; holds honorary degrees from 18 colleges and universities; Foreign Policy named him to their inaugural list of the world’s 100 most important global thinkers. "This Is How Human Extinction Could Play Out." Rolling Stone. 4-9-2019. https://www.rollingstone.com/politics/politics-features/bill-mckibben-falter-climate-change-817310/

Oh, it could get very bad. In 2015, a study in the Journal of Mathematical Biology pointed out that if the world’s oceans kept warming, by 2100 they might become hot enough to “stop oxygen production by phyto-plankton by disrupting the process of photosynthesis.” Given that two-thirds of the Earth’s oxygen comes from phytoplankton, that would “likely result in the mass mortality of animals and humans.” A year later, above the Arctic Circle, in Siberia, a heat wave thawed a reindeer carcass that had been trapped in the permafrost. The exposed body released anthrax into nearby water and soil, infecting two thousand reindeer grazing nearby, and they in turn infected some humans; a twelve-year-old boy died. As it turns out, permafrost is a “very good preserver of microbes and viruses, because it is cold, there is no oxygen, and it is dark” — scientists have managed to revive an eight-million-year-old bacterium they found beneath the surface of a glacier. Researchers believe there are fragments of the Spanish flu virus, smallpox, and bubonic plague buried in Siberia and Alaska. Or consider this: as ice sheets melt, they take weight off land, and that can trigger earthquakes — seismic activity is already increasing in Greenland and Alaska. Meanwhile, the added weight of the new seawater starts to bend the Earth’s crust. “That will give you a massive increase in volcanic activity. It’ll activate faults to create earthquakes, submarine landslides, tsunamis, the whole lot,” explained the director of University College London’s Hazard Centre. Such a landslide happened in Scandinavia about eight thousand years ago, as the last Ice Age retreated and a Kentucky-size section of Norway’s continental shelf gave way, “plummeting down to the abyssal plain and creating a series of titanic waves that roared forth with a vengeance,” wiping all signs of life from coastal Norway to Greenland and “drowning the Wales-sized landmass that once connected Britain to the Netherlands, Denmark, and Germany.” When the waves hit the Shetlands, they were sixty-five feet high. There’s even this: if we keep raising carbon dioxide levels, we may not be able to think straight anymore. At a thousand parts per million (which is within the realm of possibility for 2100), human cognitive ability falls 21 percent. “The largest effects were seen for Crisis Response, Information Usage, and Strategy,” a Harvard study reported, which is too bad, as those skills are what we seem to need most. I could, in other words, do my best to scare you silly. I’m not opposed on principle — changing something as fundamental as the composition of the atmosphere, and hence the heat balance of the planet, is certain to trigger all manner of horror, and we shouldn’t shy away from it. The dramatic uncertainty that lies ahead may be the most frightening development of all; the physical world is going from backdrop to foreground. (It’s like the contrast between politics in the old days, when you could forget about Washington for weeks at a time, and politics in the Trump era, when the president is always jumping out from behind a tree to yell at you.) But let’s try to occupy ourselves with the most likely scenarios, because they are more than disturbing enough. Long before we get to tidal waves or smallpox, long before we choke to death or stop thinking clearly, we will need to concentrate on the most mundane and basic facts: everyone needs to eat every day, and an awful lot of us live near the ocean. FOOD SUPPLY first. We’ve had an amazing run since the end of World War II, with crop yields growing fast enough to keep ahead of a fast-rising population. It’s come at great human cost — displaced peasant farmers fill many of the planet’s vast slums — but in terms of sheer volume, the Green Revolution’s fertilizers, pesticides, and machinery managed to push output sharply upward. That climb, however, now seems to be running into the brute facts of heat and drought. There are studies to demonstrate the dire effects of warming on coffee, cacao, chickpeas, and champagne, but it is cereals that we really need to worry about, given that they supply most of the planet’s calories: corn, wheat, and rice all evolved as crops in the climate of the last ten thousand years, and though plant breeders can change them, there are limits to those changes. You can move a person from Hanoi to Edmonton, and she might decide to open a Vietnamese restaurant. But if you move a rice plant, it will die. A 2017 study in Australia, home to some of the world’s highest-tech farming, found that “wheat productivity has flatlined as a direct result of climate change.” After tripling between 1900 and 1990, wheat yields had stagnated since, as temperatures increased a degree and rainfall declined by nearly a third. “The chance of that just being variable climate without the underlying factor [of climate change] is less than one in a hundred billion,” the researchers said, and it meant that despite all the expensive new technology farmers kept introducing, “they have succeeded only in standing still, not in moving forward.” Assuming the same trends continued, yields would actually start to decline inside of two decades, they reported. In June 2018, researchers found that a two-degree Celsius rise in temperature — which, recall, is what the Paris accords are now aiming for — could cut U.S. corn yields by 18 percent. A four-degree increase — which is where our current trajectory will take us — would cut the crop almost in half. The United States is the world’s largest producer of corn, which in turn is the planet’s most widely grown crop. Corn is vulnerable because even a week of high temperatures at the key moment can keep it from fertilizing. (“You only get one chance to pollinate a quadrillion kernels of corn,” the head of a commodity consulting firm explained.) But even the hardiest crops are susceptible. Sorghum, for instance, which is a staple for half a billion humans, is particularly hardy in dry conditions because it has big, fibrous roots that reach far down into the earth. Even it has limits, though, and they are being reached. Thirty years of data from the American Midwest show that heat waves affect the “vapor pressure deficit,” the difference between the water vapor in the sorghum leaf’s interior and that in the surrounding air. Hotter weather means the sorghum releases more moisture into the atmosphere. Warm the planet’s temperature by two degrees Celsius — which is, again, now the world’s goal — and sorghum yields drop 17 percent. Warm it five degrees Celsius (nine degrees Fahrenheit), and yields drop almost 60 percent. It’s hard to imagine a topic duller than sorghum yields. It’s the precise opposite of clickbait. But people have to eat; in the human game, the single most important question is probably “What’s for dinner?” And when the answer is “Not much,” things deteriorate fast. In 2010 a severe heat wave hit Russia, and it wrecked the grain harvest, which led the Kremlin to ban exports. The global price of wheat spiked, and that helped trigger the Arab Spring — Egypt at the time was the largest wheat importer on the planet. That experience set academics and insurers to work gaming out what the next food shock might look like. In 2017 one team imagined a vigorous El Niño, with the attendant floods and droughts — for a season, in their scenario, corn and soy yields declined by 10 percent, and wheat and rice by 7 percent. The result was chaos: “quadrupled commodity prices, civil unrest, significant negative humanitarian consequences . . . Food riots break out in urban areas across the Middle East, North Africa, and Latin America. The euro weakens and the main European stock markets lose ten percent.” At about the same time, a team of British researchers released a study demonstrating that even if you can grow plenty of food, the transportation system that distributes it runs through just fourteen major choke-points, and those are vulnerable to — you guessed it — massive disruption from climate change. For instance, U.S. rivers and canals carry a third of the world’s corn and soy, and they’ve been frequently shut down or crimped by flooding and drought in recent years. Brazil accounts for 17 percent of the world’s grain exports, but heavy rainfall in 2017 stranded three thousand trucks. “It’s the glide path to a perfect storm,” said one of the report’s authors. Five weeks after that, another report raised an even deeper question. What if you can figure out how to grow plenty of food, and you can figure out how to guarantee its distribution, but the food itself has lost much of its value? The paper, in the journal Environmental Research, said that rising carbon dioxide levels, by speeding plant growth, seem to have reduced the amount of protein in basic staple crops, a finding so startling that, for many years, agronomists had overlooked hints that it was happening. But it seems to be true: when researchers grow grain at the carbon dioxide levels we expect for later this century, they find that minerals such as calcium and iron drop by 8 percent, and protein by about the same amount. In the developing world, where people rely on plants for their protein, that means huge reductions in nutrition: India alone could lose 5 percent of the protein in its total diet, putting 53 million people at new risk for protein deficiency. The loss of zinc, essential for maternal and infant health, could endanger 138 million people around the world. In 2018, rice researchers found “significantly less protein” when they grew eighteen varieties of rice in high–carbon dioxide test plots. “The idea that food became less nutritious was a surprise,” said one researcher. “It’s not intuitive. But I think we should continue to expect surprises. We are completely altering the biophysical conditions that underpin our food system.” And not just ours. People don’t depend on goldenrod, for instance, but bees do. When scientists looked at samples of goldenrod in the Smithsonian that dated back to 1842, they found that the protein content of its pollen had “declined by a third since the industrial revolution — and the change closely tracks with the rise in carbon dioxide.” Bees help crops, obviously, so that’s scary news. But in August 2018, a massive new study found something just as frightening: crop pests were thriving in the new heat. “It gets better and better for them,” said one University of Colorado researcher. Even if we hit the UN target of limiting temperature rise to two degrees Celsius, pests should cut wheat yields by 46 percent, corn by 31 percent, and rice by 19 percent. “Warmer temperatures accelerate the metabolism of insect pests like aphids and corn borers at a predictable rate,” the researchers found. “That makes them hungrier[,] and warmer temperatures also speed up their reproduction.” Even fossilized plants from fifty million years ago make the point: “Plant damage from insects correlated with rising and falling temperatures, reaching a maximum during the warmest periods.”

### Advantage 1

#### 1. Can’t solve --- Plan only target private sector --- Chinese Corporations are State Owned

Gatuzade 19 Amir Guluzade Chief Operating Officer, Private Wealth Institute, Ahmadoff & Co, 07 May 2019, <https://www.weforum.org/agenda/2019/05/why-chinas-state-owned-companies-still-have-a-key-role-to-play/>

China is home to 109 corporations listed on the Fortune Global 500 - but only 15% of those are privately owned. China’s SOEs are enormously bulky and therefore lack flexibility when responding to market demands.

#### 2. Zoffer says dollar heg k2 economic warfare and sanctions against NoKo --- That causes nuclear strikes against the US

Albert 18 (Eleanor Albert is a senior writer at the Council on Foreign Relations and a PhD student at George Washington University “What to Know About the Sanctions on North Korea” https://www.cfr.org/backgrounder/what-know-about-sanctions-north-korea//TU-SG)

Emboldening Kim. Tougher sanctions could have the opposite of their intended effect and add urgency to North Korea’s nuclear advancement. The young leader has already conducted more missile and nuclear tests since he took power in 2012 than his father and grandfather combined. Kim may interpret more sanctions as a threat to the survival of the North Korean regime, and could motivate him to take more belligerent actions, like moving on South Korean territory or targeting U.S. territory in Guam.

#### 3. Effective sanctions force North Korea to sell nuclear materials—nuke terror

Eleanor Albert 18, Senior Writer and Editor at the Council on Foreign Relations, 6/6/18, “North Korea’s Military Capabilities,” https://www.cfr.org/backgrounder/north-koreas-military-capabilities

Though sanctions have curtailed North Korea’s access to materials, it is difficult to enforce and regulate all international cargo deliveries. More recently, there has been a greater push to limit North Korean financial resources in a bid to stunt funds directed to military and nuclear advancements. Some experts and officials have condemned China’s earlier assistance to the North’s ballistic missile program, ongoing trade relationship with North Korea, and lackluster enforcement of sanctions.

Separately, North Korea has a record of missile sales and nuclear technology sharing with countries like Iran, Libya, Syria, Egypt, Vietnam, Yemen, United Arab Emirates, and Myanmar. It has secretly transferred “nuclear-related and ballistic-missile-related equipment, know-how, and technology.” Given North Korea’s economic constraints, fears abound that more nuclear material and knowledge could be sold, enhancing the potential for nuclear terrorism.

#### 4. Extinction

**Buis & Arguello 18** (Emiliano J. Buis – a lawyer specializing in international law. He holds a PhD from the University of Buenos Aires (UBA), a Master’s in Human and Social Sciences from the University of Paris/Panthéon-Sorbonne, and a postgraduate diploma in national defense from the National Defense School. Currently he is a professor in international law at UBA, and co-director of the UNICEN Center for Human Rights in Azul. He is also a researcher and professor at the NPSGlobal Foundation. Irma Arguello – founder and chair of the NPSGlobal Foundation, and head of the secretariat of the Latin American and Caribbean Leadership Network. She holds a degree in physics, a Master’s in business administration, and completed graduate studies in defense and security. Arguello previously worked on nuclear projects for the Argentine. <KEN> “The global impacts of a terrorist nuclear attack: What would happen? What should we do?,” February 21, 2018. DOA: 7/7/18. Bulletin of the Atomic Scientists. https://www.tandfonline.com/doi/abs/10.1080/00963402.2018.1436812?journalCode=rbul20)

The consequences of a terrorist nuclear attack Asmallandprimitive1-kilotonfissionbomb(withayield of about one-fifteenth of the one dropped on Hiroshima, and certainly much less sophisticated; cf. Figure 1), detonated in any large capital city of the developed world, would cause an unprecedented catastrophic scenario. An estimate of direct effects in the attack’s location includes a death toll of 7,300-to-23,000 people and 12,600-to-57,000peopleinjured,dependingonthetarget’s geography and population density. Total physical destruction of the city’s infrastructure, due to the blast (shock wave)andthermalradiation,wouldcoveraradiusofabout 500 meters from the point of detonation (also known as ground zero), while ionizing radiation greater than 5 Sieverts – compatible with the deadly acute radiation syndrome – would expand within an 850-meter radius. From the environmental point of view, such an area would be unusable for years. In addition, radioactive fallout would expandinanareaofabout300squarekilometers,depending on meteorological conditions (cf. Figure 2). But the consequences would go far beyond the effects in the target country, however, and promptly propagate worldwide. Global and national security, economy and finance, international governance and its framework, national political systems, and the behavior of governments and individuals would all be put under severe trial. The severity of the effects at a national level, however, would depend on the countries’ level of development, geopolitical location, and resilience. 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.

#### 5. No dollar heg impact

Stratfor 16 ("The Decline of the Dollar Is Not the Decline of the United States," 5/2/16, pg. online @ https://www.stratfor.com/analysis/decline-dollar-not-decline-united-states)

The United States' strength as a superpower rests on several pillars, including its geography, technological prowess, culture of innovation, financial and economic flexibility, relative political cohesiveness and military dominance. While any single pillar might weaken at one time, collectively, they give the United States a well-rounded foundation and lend it far more flexibility in dealing with its problems than any other nation. At the heart of U.S. power is its geography and the strategic depth that this geography provides. The nation's vast internal infrastructure is buoyed by a robust national highway system, as well as the globe's largest rail system and longest internal waterway network. Moreover, the United States is self-sufficient in almost all major industrial and agricultural commodities, with the exception of petroleum. Even then, it is the world's largest petroleum producer. The United States has no strategic threats on its immediate borders, with even further depth supported, for now, by its military and aerospace power. This geographical productivity and external security allow it to take a hands-off economic approach unmatched by most other economies. Its free economic environment cultivates a strong entrepreneurial culture and allows venture capital platforms to flourish; gives it leadership roles in innovation and research and development in all areas of technology and academia; enables a robust financial center; and creates a flexible labor market. In total, U.S. economic power is far from just a consequence of the dollar's hegemony in global finance and makes it a magnet for capital and investment accumulation. A few countries have replicated aspects of those strengths, but no single country has done so on the scale of the United States. For example, the United States sits at or near the top in every category of technological development, while other countries can only lead in some areas. On the whole, the United States can satisfy most of its economic needs, making it one of the world's few heavily industrialized countries with little trade exposure. This gives it more resilience than others to withstand downturns in global trade. No other country can take solace in this fact. Modern China emerged from a bitter internal civil war in the aftermath of Japanese occupation, compelling it to overcome its internal tension by employing a centralized economic system with strong government oversight of its corporate structure. The same is true of Japan's keiretsu and South Korea's chaebol, both closely linked corporate systems. This type of economy is also prevalent in Europe, where a high level of regulation has quashed any chance of developing an entrepreneurial tech hub on the scale of California's Silicon Valley. Despite these strengths, the U.S. approach poses risks over the next decade. The concern remains that the monetary tools used to manage these risks were blunted with the response to the last economic downturn, and that recovery from a new downturn could drag on given the current state of U.S. interest rates, possibly requiring more stimulus spending. Such spending would only exacerbate the deficit and problems underpinning it. The United States' status as global hegemon certainly does not make it immune to crises, even painful ones that force it to turn inward. So while continued economic prowess for the United States appears likely in the long term, the immediate outlook is not necessarily as rosy. There is no doubt that the United States' dominant role in the global financial system gives it outsized influence. The dollar's status as the global reserve currency, U.S. influence on multilateral financial institutions like the International Monetary Fund (IMF) and World Bank, and New York's position as the financial capital of the world gives Washington strong leverage that it uses to influence the actions of other nations. As in the case of the recently lifted sanctions that isolated Iran, even if other countries do not align with U.S. positions, they would likely capitulate to U.S. wishes so as not to lose access to U.S. financial markets. The United States still needed support from Europe for those sanctions to have a significant effect, but even without that support, the sheer size of U.S. financial markets would have given unilateral sanctions significant weight. While ETM Analytics has taken the view that the U.S. role in the global financial system is supported largely by the hegemony of the dollar, Stratfor sees the dominant dollar is just one component of a much larger mosaic supporting the long-term stability and health of the U.S. economy. A gradual decline in the dollar's role as a global reserve currency does not undermine the rest of the United States' economic strengths. Those give the United States more flexibility in dealing with any economic challenge, and that is likely to continue underwriting the stability of the U.S. economy. While the U.S. economy, like every other, certainly remains subject to periodic downturns that will no doubt be painful at times, the United States has the ability to weather them more easily than any other large country. One point that the ETM series drives home is that regardless of its intent, the Fed's actions matter on a global scale, meaning it poses a risk to the rest of world. But to Stratfor, it is not a question of whether the dollar's role in international finance is an exorbitant privilege that other nations are driven to "abhor," but rather how well the Fed walks the thin line of balancing its own monetary policy requirements with the requirements of the global economy. The Fed's mandate is to safeguard the health of the U.S. economy. However, the United States remains isolated from other global economic problems, particularly in trade. This means that the potential of the Fed's monetary policy to disrupt the global economy is diluted by natural economic buffers in the United States against external shocks. This question lies at the heart of the monetary tightening cycle that the United States began late last year. Regardless, the U.S. struggles to balance its interests with those of the global economy and its relative economic insularity give the rest of the world incentive to find ways to protect itself. Both Stratfor and ETM Analytics agree that as it stands, no single entity could easily match U.S. financial dominance, and it does not appear that one is on the way.

#### 6. No 5G race

Nilay Patel 19, J.D. from the University of Wisconsin Law School, Editor-in-Chief of The Verge, Former Acting Managing Editor for Vox, AB in Political Science from the University of Chicago, “Wait, Why The Hell Is The ‘Race To 5G’ Even A Race?”, The Verge, 5/23/2019, https://www.theverge.com/2019/5/23/18637213/5g-race-us-leadership-china-fcc-lte

I have a dumb question that no one seems capable of answering directly: Why is 5G a race?

Everyone — the wireless industry, Democrats, Republicans, the major media, you name it — frames the building of next-generation 5G networks as a “race” in which the United States needs to demonstrate “leadership.”

Here is The Washington Post declaring America has the lead in the race to 5G. Here’s CNN asking “Who’s winning the race to 5G?” Here’s AT&T CEO Randall Stephenson declaring that China isn’t beating the US to 5G “yet,” as some sort of ominous warning. Here’s T-Mobile CEO John Legere telling the House Subcommittee on Communications and Technology that merging with Sprint will let his company “win the race to 5G.” Here is an entire microsite from industry lobbying group CTIA titled “The Race to 5G.”

Let us never forget AT&T being so desperate to lead this “race” that it rolled out fake 5Ge logos on its phones.

But the stakes of this supposed race are wholly unclear. What happens if we win, besides telecom execs getting slightly richer? More importantly, what are the drawbacks to coming in second, or even third? Where is the list of specific negative outcomes of China building a 5G network a month, a year, or even five years before the United States? I’ve never seen it, and I keep asking about it.

NO ONE CAN SAY WHAT BAD THINGS WILL HAPPEN IF WE DON’T WIN THE RACE TO 5G

For example, here’s FCC Commissioner Geoffrey Starks on The Vergecast this week, when I asked why 5G is a race.

“I think it is important for us to continue to lead the race ... we obviously led to 4G and I think we get to set some of the standards that are ultimately going to be implemented worldwide, which is why there is a little bit of a race.”

Starks went on to say that China wants to be a global leader in supplying 5G equipment and that’s why Huawei has been so aggressively building and pricing its gear. But Huawei depends on American chip technology to make its products, and the US government has just put Huawei on a blacklist anyway. So... the race is so we can set some wireless standards? I suspect Apple, Google, Qualcomm, Verizon, and AT&T can fend for themselves when it comes to that process.

The other main argument for winning the “race” to 5G is that having the world’s best and fastest networks will create new economic opportunities for businesses of all kinds — we’ll enable self-driving cars and telemedicine and all the other stuff you hear about during interminable 5G slideshows at trade conferences. At a hearing before the Senate Committee on Commerce, Science, and Transportation earlier this year, Mississippi Sen. Roger Wicker confidently declared that “failing to win the race to 5G would not only materially delay the benefits of 5G for the American people, it would forever reduce the economic and societal gains that come from leading the world in technology.”

WE WON THE RACE TO LTE AND OUR LTE NETWORKS ARE AMONG THE SLOWEST AND MOST EXPENSIVE IN THE WORLD

Maybe. It is indeed true that better networks lead to better opportunities, and that widespread high-speed broadband is something everyone wants. But I sincerely doubt that all of these companies will pick up and move to China or Europe if the United States builds 5G networks slightly slower. After all, we already have some of the slowest and most expensive networks in the world, and Apple and Facebook have not yet relocated to South Korea.

The more I hear about the race, the more I don’t buy it. I think the “race” framing is there to make some big decisions seem urgent and important — to make it appear as though some serious trade-offs are worth it in order to “win.” And those trade-offs are indeed serious: 5G networks will require a serious rethinking of how we use wireless spectrum. There are incredible privacy implications around putting millions of IoT devices in a “smart city” on 5G. Investment dollars will naturally flow toward building 5G networks in cities instead of expanding our networks to rural areas, exacerbating the digital divide.

THE “RACE” IS TO THERE TO MAKE SERIOUS TRADE-OFFS SEEM WORTH IT SO WE CAN “WIN”

And once the “race” to build out 5G in big cities is “won,” the pressure to expand access to other places in the country will vanish, making that divide even worse. It is worth carefully considering all of these things before giving in to haste.

Oh, and it appears that some of the required 5G spectrum might interfere with important weather sensors, a concern raised by NASA, the Navy, and the NOAA in hearings before Congress last week. How did the wireless industry respond to these concerns? By writing a blog post accusing meteorologists from across three government agencies of “risking our 5G leadership.” The implication, of course, is that worrying about detecting major weather events could make us lose the race.

This race is imaginary bullshit. It’s being foisted on us by huge telecom companies that know internet access is fundamentally a commodity and want something new to sell at high prices instead of competing to improve service and lower prices on the networks they have. After all, the United States “won” the “race” for LTE, but it bears repeating: our LTE networks are among the slowest in the world, and our prices among the highest. What did winning that race accomplish for the millions of people across the country that still can’t get a reliable LTE signal?

#### 7. No Taiwan invasion

Thompson 20—(former US Defence Department official responsible for managing bilateral relations with China, currently a visiting senior research fellow at the Lee Kuan Yew School of Public Policy, National University of Singapore). Thompson, Drew. 2020. “Beijing Is Unlikely to Invade Taiwan During the Pandemic.” Foreign Policy, May 11, 2020. https://foreignpolicy.com/2020/05/11/china-taiwan-reunification-invasion-coronavirus-pandemic/.

Yet despite the triumphal tone in public, China is far from ready to launch an invasion of Taiwan. China’s leaders are far from confident in the Communist Party’s ability to remain in power, to the point of paranoia, and continually emphasize the threats and risks that they face, both internally and externally. China’s top think tank affiliated with the Ministry of State Security, the China Institutes of Contemporary International Relations, reportedly advised party members in an internal report to prepare for armed conflict with the United States, which is driving global anti-China sentiment in the aftermath of the COVID-19 pandemic to levels not seen since 1989. Initiating a war over Taiwan in the face of both internal and external threats is the greatest risk imaginable. Regardless of these risks, invading Taiwan would not be a cakewalk. Taiwan has been upgrading and reforming its defense over the past decade, adopting an asymmetric strategy designed to capitalize on its strengths to counter PLA power projection capabilities. U.S. President Donald Trump’s unpredictability, and his administration’s steadfast support for Taiwan, makes it impossible for Xi to believe China’s hawks who claim that the United States is unwilling to brave the costs of coming to Taiwan’s defense. Japan’s steady turn away from China also raises doubt about whether it would sit out a Taiwan contingency. An even bigger factor is the global economic impact of the pandemic and whether or not economic decline in China is long- or short-term and whether it causes persistently high unemployment, public dissatisfaction, and domestic unrest, which will focus the immediate attention of senior leaders in Beijing to these internal challenges. The uncertainty of the global economy, shifting trade and investment trends, and high debt-to-GDP ratios also argue against Beijing starting a potentially costly war.

#### 8. No Cyber impact

Lewis 20—(senior vice president and director of the Technology Policy Program at the Center for Strategic and International Studies). Lewis, James. 2020. “Dismissing Cyber Catastrophe.” Center for Strategic & International Studies. August 17, 2020. https://www.csis.org/analysis/dismissing-cyber-catastrophe.

A catastrophic cyberattack was first predicted in the mid-1990s. Since then, predictions of a catastrophe have appeared regularly and have entered the popular consciousness. As a trope, a cyber catastrophe captures our imagination, but as analysis, it remains entirely imaginary and is of dubious value as a basis for policymaking. There has never been a catastrophic cyberattack. To qualify as a catastrophe, an event must produce damaging mass effect, including casualties and destruction. The fires that swept across California last summer were a catastrophe. Covid-19 has been a catastrophe, especially in countries with inadequate responses. With man-made actions, however, a catastrophe is harder to produce than it may seem, and for cyberattacks a catastrophe requires organizational and technical skills most actors still do not possess. It requires planning, reconnaissance to find vulnerabilities, and then acquiring or building attack tools—things that require resources and experience. To achieve mass effect, either a few central targets (like an electrical grid) need to be hit or multiple targets would have to be hit simultaneously (as is the case with urban water systems), something that is itself an operational challenge. It is easier to imagine a catastrophe than to produce it. The 2003 East Coast blackout is the archetype for an attack on the U.S. electrical grid. No one died in this blackout, and services were restored in a few days. As electric production is digitized, vulnerability increases, but many electrical companies have made cybersecurity a priority. Similarly, at water treatment plants, the chemicals used to purify water are controlled in ways that make mass releases difficult. In any case, it would take a massive amount of chemicals to poison large rivers or lakes, more than most companies keep on hand, and any release would quickly be diluted. More importantly, there are powerful strategic constraints on those who have the ability to launch catastrophe attacks. We have more than two decades of experience with the use of cyber techniques and operations for coercive and criminal purposes and have a clear understanding of motives, capabilities, and intentions. We can be guided by the methods of the Strategic Bombing Survey, which used interviews and observation (rather than hypotheses) to determine effect. These methods apply equally to cyberattacks. The conclusions we can draw from this are: Nonstate actors and most states lack the capability to launch attacks that cause physical damage at any level, much less a catastrophe. There have been regular predictions every year for over a decade that nonstate actors will acquire these high-end cyber capabilities in two or three years in what has become a cycle of repetition. The monetary return is negligible, which dissuades the skilled cybercriminals (mostly Russian speaking) who might have the necessary skills. One mystery is why these groups have not been used as mercenaries, and this may reflect either a degree of control by the Russian state (if it has forbidden mercenary acts) or a degree of caution by criminals. There is enough uncertainty among potential attackers about the United States’ ability to attribute that they are unwilling to risk massive retaliation in response to a catastrophic attack. (They are perfectly willing to take the risk of attribution for espionage and coercive cyber actions.) No one has ever died from a cyberattack, and only a handful of these attacks have produced physical damage. A cyberattack is not a nuclear weapon, and it is intellectually lazy to equate them to nuclear weapons. Using a tactical nuclear weapon against an urban center would produce several hundred thousand casualties, while a strategic nuclear exchange would cause tens of millions of casualties and immense physical destruction. These are catastrophes that some hack cannot duplicate. The shadow of nuclear war distorts discussion of cyber warfare. State use of cyber operations is consistent with their broad national strategies and interests. Their primary emphasis is on espionage and political coercion. The United States has opponents and is in conflict with them, but they have no interest in launching a catastrophic cyberattack since it would certainly produce an equally catastrophic retaliation. Their goal is to stay below the “use-of-force” threshold and undertake damaging cyber actions against the United States, not start a war. This has implications for the discussion of inadvertent escalation, something that has also never occurred. The concern over escalation deserves a longer discussion, as there are both technological and strategic constraints that shape and limit risk in cyber operations, and the absence of inadvertent escalation suggests a high degree of control for cyber capabilities by advanced states. Attackers, particularly among the United States’ major opponents for whom cyber is just one of the tools for confrontation, seek to avoid actions that could trigger escalation. The United States has two opponents (China and Russia) who are capable of damaging cyberattacks. Russia has demonstrated its attack skills on the Ukrainian power grid, but neither Russia nor China would be well served by a similar attack on the United States. Iran is improving and may reach the point where it could use cyberattacks to cause major damage, but it would only do so when it has decided to engage in a major armed conflict with the United States. Iran might attack targets outside the United States and its allies with less risk and continues to experiment with cyberattacks against Israeli critical infrastructure. North Korea has not yet developed this kind of capability. One major failing of catastrophe scenarios is that they discount the robustness and resilience of modern economies. These economies present multiple targets and configurations; they are harder to damage through cyberattack than they look, given the growing (albeit incomplete) attention to cybersecurity; and experience shows that people compensate for damage and quickly repair or rebuild. This was one of the counterintuitive lessons of the Strategic Bombing Survey. Pre-war planning assumed that civilian morale and production would crumple under aerial bombardment. In fact, the opposite occurred. Resistance hardened and production was restored.1 This is a short overview of why catastrophe is unlikely. Several longer CSIS reports go into the reasons in some detail. Past performance may not necessarily predict the future, but after 25 years without a single catastrophic cyberattack, we should invoke the concept cautiously, if at all. Why then, it is raised so often? Some of the explanation for the emphasis on cyber catastrophe is hortatory. When the author of one of the first reports (in the 1990s) to sound the alarm over cyber catastrophe was asked later why he had warned of a cyber Pearl Harbor when it was clear this was not going to happen, his reply was that he hoped to scare people into action. "Catastrophe is nigh; we must act" was possibly a reasonable strategy 22 years ago, but no longer. The resilience of historical events to remain culturally significant must be taken into account for an objective assessment of cyber warfare, and this will require the United States to discard some hypothetical scenarios. The long experience of living under the shadow of nuclear annihilation still shapes American thinking and conditions the United States to expect extreme outcomes. American thinking is also shaped by the experience of 9/11, a wrenching attack that caught the United States by surprise. Fears of another 9/11 reinforce the memory of nuclear war in driving the catastrophe trope, but when applied to cyberattack, these scenarios do not track with operational requirements or the nature of opponent strategy and planning. The contours of cyber warfare are emerging, but they are not always what we discuss. Better policy will require greater objectivity.

### Advantage 2

#### 1. US-EU trade relations are strong

Reuters 21, published in Al Jazeera. (6-15-2021, "EU and US call truce in Trump-era trade war", *Al Jazeera*, <https://www.aljazeera.com/economy/2021/6/15/eu-and-us-call-truce-in-trump-era-trade-war>)

United States President Joe Biden ended one front in a Trump-era trade war when he met European Union leaders on Tuesday by agreeing to a truce in a transatlantic dispute over aircraft subsidies that has dragged on for 17 years. Quoting Irish poet WB Yeats at the start of his first EU-US summit as president, Biden also said the world was shifting and that Western democracies needed to come together. “The world has changed, changed utterly,” Biden, an Irish-American, said, citing from the poem Easter 1916, in remarks that pointed towards the themes of his eight-day trip through Europe: China’s rise, the COVID-19 pandemic and climate change. Sitting at an oval table in the EU’s headquarters with US cabinet officials, he told EU institution leaders that the bloc and the US working together was “the best answer to deal with these changes” that he said brought “great anxiety”. He earlier told reporters he had very different opinions from his predecessor. Former President Donald Trump also visited the EU institutions, in May 2017, but later imposed tariffs on the EU and promoted Brexit – the United Kingdom’s departure from the bloc. “I think we have great opportunities to work closely with the EU as well as NATO and we feel quite good about it,” Biden said after walking through the futuristic glass Europa Building, also known as The Egg, to the summit meeting room with EU institution leaders. “It’s overwhelmingly in the interest of the USA to have a great relationship with NATO and the EU. I have very different views than my predecessor,” he said. The two sides agreed to remove tariffs on $11.5bn of goods from EU wine to US tobacco and spirits for five years. The tariffs were imposed on a tit-for-tat basis over mutual frustration with state subsidies for US planemaker Boeing and European rival Airbus. “This meeting has started with a breakthrough on aircraft,” European Commission chief Ursula von der Leyen said. “This really opens a new chapter in our relationship because we move from litigation to cooperation on aircraft – after 17 years of dispute … Today we have delivered.” Biden’s summit is with von der Leyen and the European Council President Charles Michel, who represents EU governments. Biden also repeated his mantra – “America is back” – and spoke of the need to provide good jobs for European and American workers, particularly after the economic impact of COVID-19. He spoke of his father saying that a job “was more than just a paycheque” because it brought dignity. He is seeking European support to defend Western liberal democracies in the face of a more assertive Russia and China’s military and economic rise. “We’re facing a once in a century global health crisis,” Biden said at NATO on Monday evening, while adding “Russia and China are both seeking to drive a wedge in our transatlantic solidarity.” According to an EU-US draft summit statement seen by Reuters news agency and still being negotiated up until the end of the gathering, Washington and Brussels will commit to ending another dispute over punitive tariffs related to steel and aluminium. Broader agenda US Trade Representative Katherine Tai discussed the aircraft dispute in her first face-to-face meeting with EU counterpart Valdis Dombrovskis before the US-EU summit. The pair are due to speak on Tuesday afternoon. Freezing the trade conflicts gives both sides more time to focus on broader agendas such as concerns over China’s state-driven economic model, diplomats said. Biden and US Secretary of State Anthony Blinken earlier met Belgian King Philippe, Prime Minister Alexander De Croo and Foreign Minister Sophie Wilmes in Brussels’ royal palace. On Wednesday, he meets Russian President Vladimir Putin in Geneva. The summit draft statement to be released at the end of the meeting said they had “a chance and a responsibility to help people make a living and keep them safe, fight climate change, and stand up for democracy and human rights”. There are no firm new transatlantic pledges on climate in the draft summit statement, however, and both sides will steer clear of setting a date to stop burning coal. The EU and the US are the world’s top trading powers, along with China, but Trump sought to sideline the EU. After scotching a free-trade agreement with the EU, the Trump administration focused on shrinking a growing US deficit in goods trade. Biden, however, sees the EU as an ally in promoting free trade, as well as in fighting climate change and ending the COVID-19 pandemic.

#### 2. The plan blows up trade relations

Kava 19, J.D./M.B.A. Candidate, 2020, University of Maryland Francis King Carey School of Law and Johns Hopkins University Carey School of Business. (Samuel F., “The Extraterritorial Application of the Sherman Anti-Trust Act in the Age of Globalization: The Need to Amend the Foreign Trade Antitrust Improvements Act (FTAIA) & Vigorously Apply International Comity”, 15 J. Bus. & Tech. L. 135, pg. 157-159 Available at: <https://digitalcommons.law.umaryland.edu/jbtl/vol15/iss1/5>)

A. Adverse Political and Economic Effects

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

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

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

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

However, since the passage of the FTAIA in 1982, the world has witnessed a remarkable increase in globalization, such that most conduct that takes place today has a “direct, substantial, and reasonably foreseeable effect” 162 on the U.S. economy. Epitomizing the obscureness of the FTAIA, is the fact that U.S. enforcement agencies—i.e. the U.S. Department of Justice and the Federal Trade Commission—have taken an aggressive approach to pursuing international antitrust claims. In 2017, the U.S. Department of Justice (“DOJ”) and Federal Trade Commission (“FTC”) published the International Guidelines—a publication “explaining how the agencies intend to enforce U.S. antitrust laws against conduct occurring outside the United States.”163 The International Guidelines have taken the broadest approach in determining if conduct is “direct”—finding if there is a “reasonably proximate causal nexus between the conduct and the effect” conduct is “direct”—and the narrowest view that international comity bars enforcement of U.S. antitrust laws only when it is impossible for the actor to comply with both U.S. law and its foreign nation’s law.164 Thus, because the FTAIA has become ineffective and there is a risk of further expansion of the extraterritorial application of the Sherman Anti-Trust Act with Apple v. Pepper, foreign nations will almost certainly strive to adopt modern and effective blocking statutes. These blocking statutes will revitalize uncertainty in the markets, and the global economy will be adversely affected.

In addition, because our world is more integrated, compared to the time when the FTAIA was implemented, the adverse economic effects may be worse if foreign nations pursue modern blocking statutes. To hedge against judicial uncertainty, corporations will likely react by hiring more robust legal teams. By re-allocating money to legal costs, with the hopes of avoiding potential litigation and ensuring compliance with all nations’ laws, corporations would have foregone the opportunity to spend time and money on: (1) scaling its current line of products (which would decrease the price of goods for consumers), (2) enhancing the capabilities of its current line of products (which improve consumer capabilities and increase corporate profits), or (3) creating new and innovative products (which would benefit both consumers and producers). Thus, because corporations would be forced to spend more resources on avoiding litigation rather than research and development with the new blocking statutes, consumers, producers, distributors, and the economy as a whole will be adversely affected.

Overall, there is a significant risk that foreign nations will look towards blocking statutes to limit the extraterritorial application of the Act. The conflicting laws of the United States and international community will lead to judicial uncertainty, which will have an adverse impact on the global economy. Businesses will spend more time and money to avoid disputes; thus, undermining corporate profits, a customer’s ability to purchase low cost goods, and the overall health of the global economy. The only certainty is that trade will slow down as a result of trade policy uncertainty. To avoid these adverse economic effects, it would be advantageous for the United States Congress to amend the FTAIA in a way that limits the effects of the extraterritorial application of the Sherman Anti-Trust Act. Specifically, Congress should limit the effects of the extraterritorial application of the Sherman Anti-Trust Act by expressly providing courts with a robust international comity analysis.

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

**Verbeke & Buts 21** – Professor of International Business and Strategy, McCaig Chair in Management, University of Calgary; Professor at the department of applied economics of the Vrije Universiteit Brussel Alain Verbeke, Caroline Buts, “The Not So Brilliant Future of International Cartels,” Management and Organization Review, Cambridge University Press, August 2021, https://www.cambridge.org/core/journals/management-and-organization-review/article/not-so-brilliant-future-of-international-cartels/363CC718A5FD54F8BB390B9AB22150B7

 A NOT SO BRILLIANT FUTURE OF INTERNATIONAL CARTELS?

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

A key element, and perhaps a surprising one, explaining our **doubt** about the **bright future of cartels** is **four clear trends** in cartel regulation that are now **creating significant political risk for international cartel members** (admittedly not covering B&C’s benevolent cartels). First, **competition policy** is now a **priority** for policy makers around the world, as reflected in the **progress made** in **detecting**, **investigating**, and **prosecuting cartels** (OECD, 2020; OECD, 2021b). Recently published data indicate that **68% of global cartels** (with members from at least two different continents) have been **prosecuted by multiple jurisdictions**, with **average cartel fines** being **very high** at €19.3 million (OECD, 2020).

Second, the **consequences** of **being caught** as a cartel member have **gradually become more severe and far-reaching**, both for the orchestrating and the participating companies, and for the employees involved (Ordóñez-De-Hano, Borrell, & Jiménez, 2018). Depending on the jurisdiction, a **wide array of sanctions** is **now being deployed**, including **personal fines**, **trade prohibitions**, and **prison sentences** (these have **increased sevenfold** over a **recent five-year period**, OECD, 2020). After a finding of cartel-behavior from the competition authority, the legal battle usually continues in the form of lawsuits for damages whereby victims file claims and may also coordinate their actions, e.g., to recover cartel overcharges (Burke, 2019).

Third, **cartel investigations** have also **become more sophisticated**. Leniency policies – providing immunity from fines for the first player who admits to the existence of a cartel and discloses information on its functioning – are on the rise. This powerful tool serves both detection and deterrence purposes in the realm of anticompetitive behavior (Margrethe & Halvorsen, 2020; Marvão & Spagnolo, 2018; Miller, 2009). It incentivizes cartel members to become whistle blowers. Companies will be less likely to join a cartel if they know that its members may be enticed to disclose cartel operations, (Brenner, 2009; Vanhaverbeke & Buts, 2020).

#### 4. US not key --- We are a drop in the bucket, AND prosecution globally is surging!

**AAI, 17** ( AAI, American Antitrust Institute, Feb 2017, accessed on 10-31-2021, Antitrustinstitute, "American Cartel Enforcement in Our Global Era", https://www.antitrustinstitute.org/wp-content/uploads/2018/08/Cartels.pdf)//Babcii

Cartel detection rates have been rising worldwide, **particularly for international cartels** (Figure 1). In the decades prior to the mid-1990s, international cartels were rarely discovered or indicted in the United States. 20 The number of international cartels discovered annually by the Division was five times higher during the years 2000-2015 than in the 19**90s** (Figure 1).

Chart, bar chart

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The increasing number of cartels detected can be attributed to three factors. First, **the number of antitrust authorities** effectively looking for hard core cartel conduct worldwide has risen.22 This factor is **consistent with the rise in cartel detections outside of the EU and North America**. 23 Second, some believe that, owing to the introduction of corporate leniency programs beginning in the mid 1990s, the **probability of cartel detection by the world’s antitrust authorities has risen**.24 The available evidence suggests that probability of detection has remained nearly constant and very low from the 1960s to the early 2000s.25 Proof of a rise in detection rates since then awaits confirmation.26 Third, it is possible that the number of annual cartel formations is also up since the 1980s, so there simply may be more cartels to be discovered.27 Counting undiscovered cartels is a tough exercise.

Figure 2 shows that the annual rate of cartel discovery by the Division was about 4.5 times higher during the years 2005–2015 than the period before 1995.28 A particularly large jump occurred between the early and late 1990s, which may well be due to the Division’s implementation of key revisions to the leniency program in 1993. Some of the ensuing increase may be due to the enactment of the Antitrust Criminal Penalty Enhancement and Reform Act (ACPERA) in 2004, which helped encourage cartelists to self-report to the Division in order to reap the benefits of the leniency program.29 In 2007, the Division’s Deputy Assistant Attorney General for Criminal Enforcement reported that the number of leniency applications had increased greatly, owing to enhancements to the leniency program in 1993 and the introduction of the Amnesty-Plus and Penalty-Plus programs in the late 1990s.30

**Chart, bar chart

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Although the annual rate of cartel detections has increased significantly, the average number of Section 1 investigations opened by the Division has fallen over time. The Division averaged 98 investigations per year in the 1990s, then dipped to 78 in the 2000s, and then reached a low of 37 during the years 2010-2015. The pattern of grand juries empaneled shows a similar trend. On average, 93% of all price-fixing investigations during the years 1990–2015 were criminal.31

The number of criminal case filings averaged 57 per year in the 1990s, and also fell, to 30, during the years 2000-2009. However, unlike the number of investigations opened by the Division, which continued to fall during the years 2010-15, the number of criminal filings rebounded to 50 per year during the years 2010-15 (Table 1).32 One way of reconciling the differences is to analyze the proportion of investigations that yielded indictments. For the whole period, the “yield ratio” was 56%; that is, 56% of all investigations resulted in indictments. This ratio varies systematically by presidential administration. The yield ratio was highest in the first six years of the Obama Administration (141%), second highest during the George H.W. Bush Administration (85%), and lowest during the Clinton and George W. Bush Administrations (48% and 32%, respectively). That is, the Obama Administration has been relatively efficient in converting its investigations into a large number of indictments. The sprawling auto parts and FOREX cartels are pertinent examples.

The greatest decline in cartel cases filed occurred between the years 1990–94 and the years 1995–99, a 33% decline, as the Division shifted away from the small but numerous cases of construction bid rigging to larger international cases (Table 1). 33 And between the years 1995– 99 and the years 2004–06, cartel cases filed annually fell by an additional 43%. However, after 2009 price-fixing case filings rose above the 1990-2015 average.

The number of companies charged with criminal offenses likewise shows a declining trend.34 The number of corporations charged annually averaged 68 during the years 1990–94 and has fallen slowly in each subsequent period. During the years 2005–15, the number of companies charged averaged only 21. The number of individuals charged with criminal price fixing averaged 38 per year during the years 1995–2004, down from a high of 59 per year in the early 1990s. However, unlike corporate indictments, the number of individuals charged rose in the past ten years to 54 annually. Thus, the increase in total cartel cases after 2009 is due to a more assertive prosecution of individual cartelists. Again, the shift from small-scale bid rigging to bigger international cartel cases likely explains part of this trend.

Because of the major shift in emphasis between the Bush I and Clinton Administrations from localized bid rigging towards large international cartels, international cases warrant closer examination.35 During the years 1980–95, virtually no foreign firms or individuals were punished for criminal price fixing.36 Since 1994, however, 85% of the corporations fined at least $10 million have been foreign (Table 1). Although cases against foreign price fixers are more resource intensive and fraught with evidentiary difficulties, there are good public policy reasons for pursuing international cartels. Compared to domestic schemes, these cartels tend to have larger affected sales, longer duration, and higher percentage overcharges.37 For the international cartels discovered during the years 1990–2016, total U.S. affected sales exceed $20 trillion.38 The U.S. overcharges generated by these discovered cartels are projected to be approximately $4 trillion.39 The sizes and injuries of these cartels dwarf all cartels sanctioned by the Division prior to 1990.40

Perhaps because of the Division’s shift in priority towards large international cartels, which require large teams of prosecutors, a significant backlog of criminal investigations has developed since the early 2000s. The number of pending criminal cases rose from 22 in fiscal year 1999 to an average of 50 during the years 2010-2015. 41

Investigations and case development may be constrained by the limited number of professional positions in the Division and the growing pay disparity between the Division and private practice since the 1980s. Regardless, the statistical trends make clear that the resources made available to the Division should be significantly expanded so it can build upon its important work and continue to pursue optimal deterrence of cartel formation.

C. Division Activity in International Perspective

Although the **Antitrust Division** remains a leader among the world’s antitrust authorities, its **global shares of cartel discoveries**, of corporate cartelists penalized, and of cartel penalties **are shrinking**. The DOJ’s share of discoveries of all international cartels is shown in Figure 3 below. The **Division’s share peaked at about 33%** in the late 19**90s**, but its shares in subsequent semidecades have declined, **reaching 11% in recent years**.

**Chart, bar chart

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Comparative activity levels of international enforcement agencies also can be measured by counting the number of corporations indicted and penalized for price fixing.42 Figure 4 below illustrates the huge growth in the numbers of corporate cartelists from 1990 to mid-2015 and the locations of the jurisdictions indicting the firms. The U.S. number and share of corporate indictments peaked in the 1990s (143 firms, 30% of the world total), and subsequently fell to about 10% or lower in the past couple of years. On average, **the EC has convicted almost double the number of companies convicted by the DOJ**. And the EU’s National Competition Authorities (NCAs) and **the rest of the world (ROW) showed enormous growth in cartel convictions** beginning in the late 1990s. During the years 2005–2009, the NCAs accounted for 73% of corporate cartel convictions in the world, and in the latest semi-decade, ROW authorities accounted for over 30% of global indictments.

#### 5. LIO resilient

Ikenberry ’18 [John; June 28; Professor of International Relations at Princeton University; Ethics & International Affairs, “Why the Liberal World Order Will Survive,” vol. 32, no. 1]

Self-Reinforcing Characteristics of Liberal International Order

The United States has dominated the post-war international order. It is an order built on asymmetries of power; it is hierarchical. But it is not an imperial system. It is a complex and multilayered political formation with liberal characteristics— openness and rules-based principles—that generate incentives and opportunities for other states to join and operate within it.

Four characteristics reinforce and draw states into the order. First, it has integrative tendencies. Over the last century states with diverse characteristics have found pathways into its “ecosystem” of rules and institutions. Germany and Japan found roles and positions of authority in the post-war order; and after the cold war many more states—in Eastern Europe, Asia, and elsewhere—have joined its economic and security partnerships. It is the multilateral logic of the order that makes it relatively easy for states to join and rise up within the order. Second, the liberal order offers opportunities for leadership and shared authority. One state does not “rule” the system. The system is built around institutions, and this provides opportunities for shifting and expanding coalitions of states to share leadership. Formal institutions, such as the IMF and World Bank, are led by boards of directors and weighted voting. Informal groups, such as the G-7 and G-20, are built on principles of collective governance. Third, the actual economic gains from participation within the liberal order are widely shared. In colonial and informal imperial systems, the gains from trade and investment are disproportionately enjoyed by the lead state. In the existing order, the “profits of modernity” are distributed across the system. Indeed, China’s great economic ascent was only possible because the liberal international order rewarded its pursuit of openness and trade-oriented growth. For the same reason, states in all regions of the world have made systematic efforts to integrate into the system. Finally, the liberal international order accommodates a diversity of models and strategies of growth and development. In recent decades the Anglo-American model of neoliberalism has been particularly salient. But the post-war system also provides space for other capitalist models, such as those associated with European social democracy and East Asian developmental statism. The global capitalist system might generate some pressures for convergence, but it also provides space for the coexistence of alternative models and ideologies.

These aspects of the liberal international order create incentives and opportunities for states to integrate into its core economic and political realms. The order allows states to share in its economic spoils. Its pluralistic character creates possibilities for states to “work the system”—to join in, negotiate, and maneuver in ways that advance their interests. This, in turn, creates an order with expanding constituencies that have a stake in its continuation. Compared to imperial and colonial orders of the past, the existing order is easy to join and hard to overturn.

#### 6. Chemicals impact card is incomprehensible but no impact

\*biod, nitrogen, phosphorous, ag, chemicals, pollution, waste, and govs check black swans

Peter **Kareiva 18**, Institute of the Environment and Sustainability, University of California, Los Angeles. 01/2018, “Existential Risk Due to Ecosystem Collapse: Nature Strikes Back.” Futures, CrossRef, doi:10.1016/j.futures.2018.01.001.

The interesting question is whether any of the planetary thresholds other than CO2 could also portend existential risks. Here the answer is not clear. One boundary often mentioned as a concern for the fate of global civilization is biodiversity (Ehrlich & Ehrlich, 2012), with the proposed safety threshold being a loss of greater than .001% per year (Rockström et al., 2009). There is little evidence that this particular .001% annual loss is a threshold—and it is hard to imagine any data that would allow one to identify where the threshold was (Brook et al., 2013; Lenton & Williams, 2013). A better question is whether one can imagine any scenario by which the loss of too many species leads to the collapse of societies and environmental disasters, even though one cannot know the absolute number of extinctions that would be required to create this dystopia. While there are data that relate local reductions in species richness to altered ecosystem function, these results do not point to substantial existential risks. The data are small-scale experiments in which plant productivity, or nutrient retention is reduced as species number declines locally (Vellend, 2017), or are local observations of increased variability in fisheries yield when stock diversity is lost (Schindler et al., 2010). Those are not existential risks. To make the link even more tenuous, there is little evidence that biodiversity is even declining at local scales (Vellend et al 2017; Vellend et al., 2013). Total planetary biodiversity may be in decline, but local and regional biodiversity is often staying the same because species from elsewhere replace local losses, albeit homogenizing the world in the process. Although the majority of conservation scientists are likely to flinch at this conclusion, there is growing skepticism regarding the strength of evidence linking trends in biodiversity loss to an existential risk for humans (Maier, 2012; Vellend, 2014). Obviously if all biodiversity disappeared civilization would end—but no one is forecasting the loss of all species. It seems plausible that the loss of 90% of the world’s species could also be apocalyptic, but not one is predicting that degree of biodiversity loss either. Tragic, but plausible is the possibility our planet suffering a loss of as many as half of its species. If global biodiversity were halved, but at the same time locally the number of species stayed relatively stable, what would be the mechanism for an end-of-civilization or even end of human prosperity scenario? Extinctions and biodiversity loss are ethical and spiritual losses, but perhaps not an existential risk. What about the remaining eight planetary boundaries? Stratospheric ozone depletion is one—but thanks to the Montreal Protocol ozone depletion is being reversed (Hand, 2016). Disruptions of the nitrogen cycle and of the phosphorous cycle have also been proposed as representing potential planetary boundaries (one boundary for nitrogen and one boundary for phosphorous). There are compelling data linking excesses in these nutrients to environmental damage. For example, over-application of fertilizer in Midwestern USA has led to dead zones in the Gulf of Mexico. Similarly, excessive nitrogen has polluted groundwater in California to such an extent that it is unsuitable for drinking and some rural communities are forced to drink bottled water. However, these impacts are local. At the same time that there is too much N loading in the US, there is a need for more N in Africa as a way of increasing agricultural yields (Mueller et al., 2012). While the disruption of nitrogen and phosphorous cycles clearly perturb local ecosystems, end-of-the-world scenarios seem a bit far-fetched. Another hypothesized planetary boundary entails the conversion of natural habitats to agricultural land. The mechanism by which too much agricultural land could cause a crisis is unclear—unless it is because land conversion causes so much biodiversity loss that is species extinctions that are the proximate cause of an eco-catastrophe. Excessive chemical pollution and excessive atmospheric aerosol loading have each been suggested as planetary boundaries as well. In the case of these pollution boundaries, there are well-documented mechanisms by which surpassing some concentration of a pollutant inflicts severe human health hazards. There is abundant evidence linking chemical and aerosol pollution to higher mortality and lower reproductive success in humans, which in turn could cause a major die-off. It is perhaps appropriate then that when Hollywood envisions an unlivable world, it often invokes a story of humans poisoning themselves. That said, it is doubtful that we will poison ourselves towards extinction. Data show that as nations develop and increase their wealth, they tend to clean up their air and water and reduce environmental pollution (Flörke et al., 2013; Hao & Wang, 2005). In addition, as economies become more circular (see Mathews & Tan, 2016), environmental damage due to waste products is likely to decline. The key point is that the pollutants associated with the planetary boundaries are so widely recognized, and the consequences of local toxic events are so immediate, that it is reasonable to expect national governments to act before we suffer a planetary ecocatastrophe.

# 2NC

## EU PIC

### 2NC --- AT: PDCP

#### Severs “prohibit” --- Prohibitions are absolute bans without exemption.

PEDIAA 15. “Difference Between Prohibited and Restricted”. https://pediaa.com/difference-between-prohibited-and-restricted/

Main Difference – Prohibited vs. Restricted

Prohibited and Restricted are used in reference to limitations and prevention. However, they cannot be used interchangeably as there is a distinct difference between them. Prohibited is used when we are talking about an impossibility. Restricted is used when we are talking about something that has specific conditions. The main difference between prohibited and restricted is that prohibited means something is formally forbidden by law or authority whereas restricted means something is put under control or limits.

What Does Prohibited Mean

Prohibited is a variant of the verb prohibit. Prohibited can be taken as the past tense and past participle of prohibiting as well as an adjective. Prohibited means that something is formally forbidden by law or authority. When we say ‘smoking is prohibited’, it means that smoking is not allowed at all, there are no exceptions. Prohibit indicates an impossibility. This gives out the idea that it is not at all possible under any condition or circumstance. The term Prohibited goods is used to refer to items that are not allowed to enter or exit certain countries. For example, the government of South America lists Narcotic and habit-forming drugs in any form, Poison and other toxic substances, Fully automatic, military and unnumbered weapons, explosives and fireworks as prohibited goods. The following sentences will further explain the use of prohibited.

Inter-racial marriages were not prohibited by the government.

He was proved guilty of using prohibited substances.

No one was allowed to enter the grounds; entry was prohibited.

Prohibited imports are the items that are not allowed to enter a country.Difference Between Prohibited and Restricted

What Does Restricted Mean

Restrict means to put under limits or control. Restricted can be either used as the past tense of restrict or as an adjective meaning limited. When we say something is restricted, it means that limits or conditions have been added to it. It does not mean that it is completely impossible. For example, Restricted goods are allowed to enter or exit a country under certain circumstances. A written permission can help you to import or export that item. Likewise, a restricted area does not mean that people are not allowed to enter; it means that a special permission is required to enter the place. Restricted information refers to information that are not disclosed to the general public for security purposes.

The new regulations restricted the free movement of people.

The club was restricted to its members and their family members.

Only the highest military personnel had access to the restricted area.

American scientists had only restricted access to the area.Main difference - Prohibited vs Restricted

Difference Between Prohibited and Restricted

Meaning

Prohibited means banned or forbidden.

Restricted means limited in extent, number, scope, or action

Possibility

Prohibited means that there is no possibility of doing something.

Restricted means that something can be done under certain conditions.

Adjective

Prohibited functions as an adjective derived from prohibit.

Restricted functions as an adjective derived from restrict.

Past tense

Prohibited is the past tense and past participle of prohibit.

Restricted is the past tense and past participle of restrict.

#### That is the most predictable---we have the common and precise definition.

Dictionary.com “Inhibit vs. Prohibit”. https://www.dictionary.com/e/inhibit-vs-prohibit/

Prohibit is a transitive verb that means to forbid or prevent. Unlike inhibit, the word prohibit means that an action is being completely prevented. For example: “Angie’s coat was so tight, it prohibited any arm movement.” In this case, Angie isn’t able to move her arms at all. Prohibit is often used to describe the actions of authority figures. It can explain a rule or law. For example, “School rules prohibit cellphone use during class.” A street sign may say “Parking prohibited,” while a sign in a building lobby might say “Smoking prohibited by law.” All of these cases mean that cell phone use, parking in a certain area, or smoking are completely forbidden by their given authority figures, and can’t be done at all.

#### “The” before a noun means whole

Webster’s 5 (Merriam Webster’s Online Dictionary, [http://www.m-w.com/cgi-bin/dictionary](about:blank))

The

4 -- used as a function word before a noun or a substantivized adjective to indicate reference to a group as a whole <the elite>

#### “Private Sector” means all

Senate Manual 11 (Senate Document No. 112-1)//babcii

The term ``private sector'' means all persons or entities in the United States, including individuals, partnerships, associations, corporations, and educational and nonprofit institutions, but shall not include State, local, or tribal governments.112 S. Doc. 1

### 2NC --- AT: eu agrees

#### Who cares if eu applies their laws extraterritorially they don’t apply it to themselves so the plan still pisses them off

Eeckhout 21, \*Jan, PhD, ICREA Research Professor @ Universitat Pompeu Fabra, BSE Research Professor, and Professor of Economics @ University College London. Interviewed by \*\*Nicholas Shaxson, journalist. (6-22-2021 [year double-checked with carbon dating], "Europe's monopoly Problem", *The Counterbalance*, <https://thecounterbalance.substack.com/p/europes-monopoly-problem>)

NS You have painted quite a stark picture of rising market power at a global level. But if you break it down geographically, patterns emerge. Thomas Philippon’s 2019 book The Great Reversal: How America Gave up on Free Markets argued that while market concentration has increased dramatically in the United States, it had not in **Europe**. This message doesn’t ring true for us at the Balanced Economy Project, given that European antitrust authorities have almost never blocked a merger, and giant firms now dominate pretty much every sector here.

In your recent review of The Great Reversal I found a neat explanation for your difference in opinion about the US versus Europe. For Europe, Philippon used Orbis data from 2000-2014, which coincided roughly with the “China shock” after China entered the WTO in 2001, when its cheap exports pushed down prices (and markups). This flattened the graph for that particular period, giving an impression that Europe has been doing OK. For the US, older data was available, showing a longer trend of rising market power. But there is another dataset from Worldscope which now allows us to look further back in Europe, too, and this changes the picture:

JE Well, as I said in that review, Thomas’ book is a remarkable piece of research and I agree with 99 percent of it.

But you can see that from about 2000-2010, there is a flatness on the [above] graphs, with a sharp increase in markups before and after that time, for both Europe and the United States. We cannot conclude from this that there is a difference between the United States and Europe.

We also have some differences in emphasis, in terms of what has driven these changes. Thomas emphasises lax antitrust as the dominant explanation, whereas I think that technological change has also been important, in addition to lax antitrust. The shift of economic activity towards high markup, ‘superstar’ firms is driven by both factors, in my opinion. Globalisation is also part of that.

## Advantage 2

### 2NC --- O/V

#### Swamps the aff internal link --- US-EU trade is key to global trade

Wright 18, PhD, MA, Assistant Professor of Economics @ the University of California, Merced. (Greg, 7-18-2018, "The US is a whole lot richer because of trade with Europe, regardless of whether EU is friend or 'foe'", *The Conversation*, <https://theconversation.com/the-us-is-a-whole-lot-richer-because-of-trade-with-europe-regardless-of-whether-eu-is-friend-or-foe-99829>)

President Donald Trump recently questioned the value of the long-standing United States-Europe alliance. When asked to identify his “biggest foe globally,” he declared: “I think the European Union is a foe, what they do to us in trade.” This view is consistent with his recent turn against trade with Europe but ignores the immense benefits that Americans have reaped due to the strong economic and military alliance between the U.S. and Europe – benefits that include nothing less than unprecedented peace and prosperity. As such, Trump’s trade war with Europe and his hostility toward broader Western alliances such as NATO portend a future of diminished standards of living – as a direct result of less trade – and greater global conflict – indirectly due to reduced economic integration. In the words of columnist Robert Kagan, “things will not be ok.” Some of my research focuses on the impact of increased international trade on U.S. standards of living, which I show are causally linked during the late 20th century. Most of the trade in this period occurred among rich nations and was dominated by the U.S.-Europe relationship. Unbiased. Nonpartisan. Factual. By calling Europe a “foe,” Trump makes clear that he simply doesn’t understand why rich countries trade with one another, which, to be fair, is something that also puzzled economists for many years. Trump and one of his ‘foes.’ Reuters/Jack Taylor Why rich countries trade Though in some ways it seems obvious why the U.S. and Europe trade with one another – some might enjoy Parmigiana from Italy, while others prefer Wisconsin cheddar – economists initially had trouble explaining exactly why there was so much trade among rich countries. Surely, they thought, the U.S. can produce good quality cheese at a cost that is similar to producers in Italy, and vice versa, so why would we need to go abroad to satisfy our palettes? In 1979, economist Paul Krugman provided a clear answer that would eventually win him the Nobel Prize in economics. The first part of his answer was simple but important and boils down to the fact that consumers benefit from having a wide range of product varieties available to them, even if they are only small variations on the same item. For instance, in 2016 the top U.S. exports to the EU were aircraft (US$38.5 billion), machinery ($29.4 billion) and pharmaceutical products ($26.4 billion). The top imports from the EU seem almost identical: machinery ($64.9 billion), pharmaceutical products ($55.2 billion) and vehicles ($54.6 billion). Although the product categories clearly overlap, there are important differences in the types of pharmaceuticals and machinery that are sold in each market. Consumers benefit from having all these options available to them. The second part of Krugman’s answer was that, by producing for both markets, companies in Europe and the U.S. could reap greater economies of scale in production and lower their prices as a result. This has been found to indeed be what happens when countries trade. And more recent research has shown that increased foreign competition can also lower domestic prices. These benefits have been quantified. For instance, the gains to the U.S. from new foreign product varieties and lower prices over the period 1992 to 2005 were equal to about one percent of U.S. GDP – or about $100 billion. In short, Krugman’s answer emphasized the extent to which international trade between equals increases the overall size of the economic pie. And no pie has ever grown larger than the combined economies of the U.S. and Europe, which now constitute half of global GDP. Largest trading partner The European Union is the largest U.S. trading partner in terms of its total bilateral trade and has been for the past several decades. Overall, the U.S. imported $592 billion in goods and services from the EU in 2016 and exported $501 billion, which represents about 19 percent of total U.S. trade and also represents about 19 percent of American GDP. A key feature of this trade is that almost a third of it happens within individual companies. In other words, it reflects multinational companies shipping products to themselves in order to serve their local market, or as inputs into local production. This type of trade is critical as it serves as the backbone of a vast network of business investments on both sides of the Atlantic, supporting hundreds of thousands of jobs. It is also a network that propels the global economy: the EU or U.S. serves as the primary trading partner for nearly every country on Earth. Shipping and new institutions The U.S.-Europe trade relationship also laid the groundwork for the modern system of international trade via two distinct innovations: new shipping technologies and new global institutions. On the technological front, the introduction of the standard shipping container in the 1960s set off the so-called second wave of globalization. This under-appreciated technology was conceived by the U.S Army during the 1950s and was perfected over Atlantic shipping routes. In short, by simply standardizing the size and shape of shipping containers, and building port infrastructure and ships to move them, massive economies of scale in shipping were realized. As a result, today container ships the size of small cities are routed via sophisticated logistics to huge deepwater ports around the world. These routes eventually made it profitable for other countries to invest in the large-scale port infrastructure that could handle modern container ships. This laid the groundwork for the eventual growth of massive container terminals throughout Asia, which now serve as the hubs of the modern global supply chain. At the same time that these new technologies were reducing the physical costs of doing business around the world, the U.S. and Europe were also creating institutions to define new international rules for trade and finance. Perhaps the most important one was the post-war General Agreement on Trade and Tariffs, which eventually became the World Trade Organization, creating the first rules-based multilateral trade regime. A large body of research shows that these agreements have increased trade and, more importantly, raised incomes around the world. Overall, these advancements contributed to the subsequent enrichment of hundreds of millions of workers in Asia, Latin America and Africa by helping to integrate them into the global economy. And when the world gets richer, the U.S. also benefits for many of the same reasons noted above: demand for U.S. products increases as incomes rise around the world, as does the variety of products the U.S. can import, and the prices of these goods typically fall. Taking the long view But it appears that President Trump sees the U.S. on the losing end of a failed relationship. It is unsurprising that tensions with Europe have come to the forefront over perceived imbalances in trade, particularly for a president who is not afraid to take long-time allies to task. This is because U.S. trade policy has arguably been overly optimistic in recent years, particularly with respect to China, whose accession to the WTO proved to be much more disruptive to labor markets around the world than was predicted. Previous U.S. administrations preferred patience over confrontation, leading to a perhaps inevitable backlash that has spilled into other relationships, such as the one with Europe. However, the U.S. relationship with Europe is clearly different, primarily because it is longstanding and has been largely one of equals. But also because their shared values mean that there are many non-economic issues — such as the spread of liberal democracy and the promotion of human rights — that get advanced by the close economic ties. It’s important to not underestimate what is at stake if the U.S.-Europe alliance is allowed to falter. Americans are likely in the midst of the most peaceful era in world history, and global economic integration, led from the beginning by the U.S. and Europe, has been a key contributing factor. Global extreme poverty is also at its lowest point ever, again in large part due to globalization. These are the byproducts and legacies of seven decades of expanding international trade and should not be taken for granted.

#### AND US-EU trade relations k2 open internet

Moghior, 21 (Cosmina Moghior, Cosmina is a Denton Fellow with the Transatlantic Leadership program at the Center for European Policy Analysis (CEPA)., 8-11-2021, accessed on 9-6-2021, CEPA, "Protectionism Threatens To Torpedo The Transatlantic Technology Alliance | CEPA", https://cepa.org/protectionism-threatens-to-torpedo-the-transatlantic-technology-alliance/)//Babcii

Europe similarly is **determined to build its own tech** capacities. It promotes the concept of [digital sovereignty](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/651992/EPRS_BRI(2020)651992_EN.pdf) aimed at providing the continent the capacity to make “autonomous technological choices.” Several projects promote domestic production of critical technologies ranging from next-generation mobile phone production to quantum computing. Public funds already are being spent on the European cloud computing project GAIA-X aims to break the U.S. stranglehold on cloud computing. While Europe insists that its actions are not protectionist, designed instead to promote and safeguard European values, GAIA-X aims to ensure data protection and limit access of U.S. intelligence to European data. U.S. tech giants including Amazon, Google, and Microsoft have been invited to join, but are banned from joining the board. The **U.S.** is home to the world’s largest Internet companies and **fears that European regulatory measures will discriminate against them**. Plans for a European “digital” tax – put on hold to secure a global corporate tax reform – would disproportionately impact American companies that provide digital services in Europe. A separate Digital Markets Act proposal under consideration at the European Parliament addresses unfair practices of the so-called “gatekeepers,” that operate “core platform services.” Most of the targeted companies will likely be American, beginning with giants Google, Apple, Facebook, and Amazon. Europe and the U.S. **need to step back from pursuing their protectionist instincts**, which threatens to allow [China’s increasing inroads into the digital market](https://www.brookings.edu/research/untangling-the-web-why-the-us-needs-allies-to-defend-against-chinese-technology-transfer/). **Beijing is making** [**investments**](https://www.aei.org/china-global-investment-tracker/) **on all continents** on projects ranging from education to [critical infrastructure](https://pure.diis.dk/ws/files/727852/DIIS_RP_2016_8_WEB.pdf). Many **countries are turning to China for support** and guidance on technological development while the U.S. and the EU focus on their domestic anxieties and ambitions. A transatlantic tech **alliance could provide the blueprint for offering a viable alternative to** Chinese inroads in **the developing world**. Europe and the U.S. need to coordinate against the export of authoritarian practices on the Internet. They can only do this by **dropping the push for** Buy American and **European Digital Sovereignty.**

#### Extinction

- Disease, natural disasters, state collapse and limits of growth

Eagleman 10 (David Eagleman is a neuroscientist at Baylor College of Medicine, where he directs the Laboratory for Perception and Action and the Initiative on Neuroscience and Law and author of Sum (Canongate). Nov. 9, 2010, “Six ways the internet will save civilization,”  
 <http://www.wired.co.uk/magazine/archive/2010/12/start/apocalypse-no>)//Babcii

Many great civilizations have fallen, leaving nothing but cracked ruins and scattered genetics. Usually this results from: **natural disasters, resource depletion, economic meltdown, disease,** poor information flow and corruption. But we’re luckier than our predecessors because we command a technology that no one else possessed: a rapid communication network that finds its highest expression in the internet. I propose that there are six ways in which **the net** has vastly **reduced the threat of societal collapse. Epidemics can be deflected by telepresence** One of our more dire prospects for collapse is an infectious-disease epidemic. Viral and bacterial epidemics precipitated the fall of the Golden Age of Athens, the Roman Empire and most of the empires of the Native Americans. The internet can be our key to survival because the ability to work telepresently can inhibit microbial transmission by reducing human-to-human contact. In the face of an otherwise devastating epidemic, businesses can keep supply chains running with the maximum number of employees working from home. This can reduce host density below the tipping point required for an epidemic. If we are well prepared when an epidemic arrives, we can fluidly shift into a self-quarantined society in which microbes fail due to host scarcity. Whatever the social ills of isolation, they are worse for the microbes than for us. The **internet will predict natural disasters** We are witnessing the downfall of slow central control in the media: news stories are increasingly becoming user-generated nets of up-to-the-minute information. During the recent California wildfires, locals went to the TV stations to learn whether their neighbourhoods were in danger. But the news stations appeared most concerned with the fate of celebrity mansions, so Californians changed their tack: they uploaded geotagged mobile-phone pictures, updated Facebook statuses and tweeted. The balance tipped: the internet carried news about the fire more quickly and accurately than any news station could. In this grass-roots, decentralised scheme, there were embedded reporters on every block, and the news shockwave kept ahead of the fire. This head start could provide the extra hours that save us. If the Pompeiians had had the internet in 79AD, they could have easily marched 10km to safety, well ahead of the pyroclastic flow from Mount Vesuvius. If the Indian Ocean had the Pacific’s networked tsunami-warning system, South-East Asia would look quite different today. Discoveries are retained and shared Historically, critical information has required constant rediscovery. Collections of learning -- from the library at Alexandria to the entire Minoan civilisation -- have fallen to the bonfires of invaders or the wrecking ball of natural disaster. Knowledge is hard won but easily lost. And information that survives often does not spread. Consider smallpox inoculation: this was under way in India, China and Africa centuries before it made its way to Europe. By the time the idea reached North America, native civilisations who needed it had already collapsed. The net solved the problem. New discoveries catch on immediately; information spreads widely. In this way, societies can optimally ratchet up, using the latest bricks of knowledge in their fortification against risk. Tyranny is mitigated **Censorship of ideas** was a familiar spectre in the last century, with state-approved news outlets ruling the press, airwaves and copying machines in the USSR, Romania, Cuba, **China**, Iraq **and elsewhere**. In many cases, such as Lysenko’s agricultural despotism in the USSR, it **directly contributed to** the **collapse** of the nation. Historically, **a more successful strategy has been** to confront **free speech** with free speech -- and the internet allows this in a natural way. It democratises the flow of information by offering access to the newspapers of the world, the photographers of every nation, the bloggers of every political stripe. Some posts are full of doctoring and dishonesty whereas others strive for independence and impartiality -- but all are available to us to sift through. Given the attempts by **some governments to build firewalls**, it’s **clear** that this benefit of **the net requires constant vigilance**. Human capital is vastly increased Crowdsourcing brings people together to solve problems. Yet far fewer than one per cent of the world’s population is involved. We need expand human capital. Most of the world not have access to the education afforded a small minority. For every Albert Einstein, Yo-Yo Ma or Barack Obama who has educational opportunities, uncountable others do not. This squandering of talent translates into reduced economic output and a smaller pool of problem solvers. **The net** opens the gates education to anyone with a computer. A motivated teen anywhere on the planet can walk through the world’s knowledge -- from the webs of Wikipedia to the curriculum of MIT’s OpenCourseWare. The new human capital **will serve us well when we confront existential threats** we’ve never imagined before. Energy expenditure is reducedSocietal collapse can often be understood in terms of an **energy budget**: when energy spend outweighs energy return, collapse ensues. This has taken the form of **deforestation or soil erosion**; currently, the worry involves **fossil-fuel depletion**. The internet addresses the energy problem with a natural ease. Consider the massive energy savings inherent in the shift from paper to electrons -- as seen in the transition from the post to email. Ecommerce reduces the need to drive long distances to purchase products. Delivery trucks are more eco-friendly than individuals driving around, not least because of tight packaging and optimisation algorithms for driving routes. Of course, there are energy costs to the banks of computers that underpin the internet -- but these costs are less than the wood, coal and oil that would be expended for the same quantity of information flow. The tangle of events that triggers societal collapse can be complex, and there are several threats the net does not address. But vast, networked communication can be an antidote to several of the most deadly **diseases threatening civilisation**. The next time your coworker laments internet addiction, the banality of tweeting or the decline of face-to-face conversation, you may want to suggest that the net may just be the technology that saves us.

#### Turns the aff ---

#### 1. US-EU trade k2 chemical industry

**ACC, 18** (ACC, The American Chemistry Council (ACC) represents the leading companies engaged in the business of chemistry. Learn more at: https://www.americanchemistry.com/chemistry-in-america/news-trends/press-release/2018/acc-testifies-on-us-chemicals-industry-priorities-for-potential-us-eu-trade-agreement, 12-13-2018, accessed on 11-1-2021, American Chemistry Council, "ACC Testifies on U.S. Chemicals Industry Priorities for Potential U.S.-EU Trade Agreement", https://www.americanchemistry.com/chemistry-in-america/news-trends/press-release/2018/acc-testifies-on-us-chemicals-industry-priorities-for-potential-us-eu-trade-agreement)//Babcii

WASHINGTON (December 14, 2018) – The American Chemistry Council (ACC) on Friday shared its recommendations for a successful U.S. trade agreement with the European Union, one of the U.S. chemical industry’s most significant trading partners with more than $45 billion in two-way trade in 2017. A majority of that trading volume is between related parties: 58 percent of U.S. chemicals exports to the EU and 80 percent of U.S. chemicals imports, according to ACC analysis. “The significant volume of trade between related parties is due to the highly integrated and efficient nature of the U.S. and EU chemical manufacturing supply chains,” Ed Brzytwa, ACC director of international trade, said in testimony before the Office of the United States Trade Representative (USTR) on Friday. “Removing both tariff and non-tariff barriers to the free flow of chemicals between the U.S. and EU would yield significant cost savings to ACC members and our downstream customers.”

#### 2. Protectionism silo’s the ILO

Steven S. Nam, Distinguished Practitioner, Center for East Asian Studies, Stanford University, ’18, Our Country, Right or Wrong: The FTC Act's Influence on National Silos in Antitrust Enforcement, 20 U. PA. J. Bus. L. 210 (2018).

National antitrust silos are not a novel phenomenon. Former European Commissioner for Competition Joaquin Almunia warned of them years ago, 5 2 and scholarship touching upon the furtherance of nationalist goals by various antitrust agencies dates back decades. 53 However, a creeping loss of public confidence in open markets-coupled with the obstacles to coherent global antitrust enforcement that bear the FTC Act's influence, as illustrated in this Article-risks amplifying the problem. As anti-free trade agendas continue to garner more mainstream popularity for formerly counter-establishment parties, a proliferation of protectionist silos could tempt even governments that, for the most part, had moved past them. Why, American officials may ask, should the U.S. continue championing the liberal international economic order when an illiberal China or an ostensibly liberal South Korea bends regulatory rules to disadvantage American companies, workers, and consumers? Skepticism towards a liberal democratic "end of history"'54 in general, and failures of economic liberalism in particular, are threatening to motivate political circles accordingly. Even perennial norms and conventions of the U.S. competition regime which evolved to safeguard regulator independence at home are no longer above disruption; the ambiguous statutory articulations that carried over abroad to empower strong executives are likewise playing a paper tiger role domestically of late.'55 Protectionist policies designed to compromise market competition-for all its documented excesses and inadequacies-would sap its creative vitality and the concurrent liberal peace 5 6 often taken for granted. Economic liberalism ails not so much from the intrinsic failings of core tenets, but from their more egregious nation-state and corporate violators. Proposals for greater accountability and harmonization have ranged from presumption of an underlying coordination scheme in antitrust investigations of a culpable country's companies,157 to an international competition regime binding on member states in at least some areas of antitrust.158 Each has associated costs, but their very debate harnesses polycentric dialogue lacking in nationalist regulatory agendas and calls for "our country, right or wrong" protectionist silos. It should be emphasized to policymakers and politicians collectively that lasting convergence in antitrust enforcement is unachievable without global coherence in regulator autonomy, and the FTC Act's formative influence is not above scrutiny or reproach. Still-elusive realization of the liberal economic international order's intended form will require an expanded constellation of independent competition regulators empowered to enforce antitrust laws consistently.

#### 3. US-EU trade k2 check Chinese tech

Mulligan 20, managing director for national security and international policy at the Center for American Progress. She previously worked in the national security division at the U.S. Department of Justice, where she provided legal and policy advice on a broad range of national policies. Jordan Link is the China policy analyst at the Center for American Progress. Laura Edwards is the China program coordinator at the Center for American Progress. (Katrina, 11-18-2020, “THE ROAD TO A SUCCESSFUL CHINA POLICY RUNS THROUGH EUROPE,” *War on the Rocks*, <https://warontherocks.com/2020/11/the-road-to-a-successful-china-policy-runs-through-europe/>)

European nations also have a crucial role to play on tech issues. The European Union has already demonstrated leadership on technology governance, and the United States is beginning to follow. Together, the United States and the European Union can collaborate on common technology governance standards, offering a democratic alternative to China’s digital authoritarianism. To do so, the administration should develop a new digital technology strategy within its first 100 days. This strategy should be coordinated with allies and partners like the European Union to promote liberal governance values, push back against increasing disinformation, and combat digital authoritarianism. The next administration should also convene an international technology forum for like-minded democracies to develop common approaches to challenges posed by emerging technologies. Beijing will no doubt be hostile to a united democratic approach to technology governance. For example, the Chinese ambassador to Germany recently threatened that “the Chinese government will not stand idly by” if Germany bans Huawei 5G telecoms equipment. But that makes it even more important that the United States and the European Union coordinate on tech together. Human Rights and Democratic Values Another area in which the United States and Europe can exert pressure on China is human rights — in particular, holding China accountable for abuses in Hong Kong and Xinjiang. Europe is already toughening its stance on China’s human rights violations. European leaders pressed Xi on these issues during the E.U.-Chinese virtual summit in September, expressing grave concerns over the treatment of minorities and human rights advocates in a conversation that was reportedly “quite intense.” European Council President Charles Michel stated, “We reiterated our concerns over China’s treatment of minorities in Xinjiang and Tibet, and the treatment of human rights defenders and journalists.” The European Union also requested that China allow independent observers to visit the Xinjiang region to investigate internment camps. During the meeting, European leaders raised concerns with Xi about Hong Kong’s new national security law, which effectively severed China’s agreement to abide by the “One Country Two Systems” governance structure. The United States should join Europe in demanding better. The U.S. Congress has already worked to highlight China’s abuses. The United States should push the European Union further to turn recent soft rhetoric into broader collaborative action. The next administration can take immediate steps to demonstrate support for democratic norms and aid victims of China’s egregious human rights violations. Possible actions include granting temporary protected status and special immigration status to the people of Hong Kong and announcing new U.S. sanctions against individuals and entities connected to the repression of the Uighurs in Xinjiang. The administration should also invite Uighur activists to the White House to bring greater attention to the atrocities that Beijing is carrying out in Xinjiang. Trade On trade, the United States should shift away from the transactional trade policy of the last four years to focus on addressing China’s most egregious economic and trade behavior jointly with Europe. As German Foreign Minister Heiko Maas has said, “Europe and U.S. alike have expectations towards China: fair conditions for trade and investment, observance of international treaties and obligations.” To implement this shift, the next administration on day one should announce an end to President Trump’s misguided trade war with the European Union. While all disputes will not be settled within 100 days, a productive dialogue to lower trade barriers is a key step in repairing transatlantic relations. Reducing trade tensions will create space for Washington and Brussels to coordinate on other issues related to China. Further, the next administration should take collective action at the World Trade Organization by filing a nullification and impairment case against Beijing. These actions will set the stage to develop a more multilateral trade approach with buy-in from Europe on China. Looking Ahead Policymakers in European capitals are watching the United States to gauge opportunities to join forces. The Biden administration must get that outreach right in order to course-correct a failed China strategy. It will be critical for the next administration to collaborate with the European Union on common interests such as climate change, technology policy, human rights and democracy, and trade issues in order to form a more coherent coalition to face challenges presented by Beijing. Without coordinated action on these critical fronts, Beijing will continue to challenge global norms while seeking to alter the rules that govern the international system. Together, the United States and the European Union can overcome this challenge. Now more than ever, there is a clear path towards a reinvigorated transatlantic partnership: The road to a successful policy towards China runs through Europe.

#### 4. Protectionism nukes dollar heg

**Dave, 20** (B Dave, Member Postal Services Board, India),PGPPM(2004-06) from IIMB. Doctorate from SardarPatel University, Anand (Gujarat)., Feb 2020, accessed on 11-1-2021, Ii4journal, "International Trade War--- The future of DollarHegemony and the WTO", http://www.ii4journal.org/Admin/issue/International%20Trade%20War---%20The%20future%20of%20Dollar%20Hegemony%20and%20the%20WTO.pdf)//Babcii

The current **trade war started by the US** by imposing tariffs on the imports coming from China and other countries with an objective of reducing or wiping out the trade deficit of US and to revive the shutdown factories in the US has large reaching ramifications. It is almost 2 years into the war and the resultant effects are becoming visible in the form of global slow down. As the **imports into US will come down, dollar may depreciate** and the value of FOREX reserves held by countries will come down. Resultantly, **the demand of USD may come down whereby the pivotal position held by dollar as vehicle currency will get diluted**. Similarly, with the violation of the market and rule-based trading among nations, the WTO may lose its relevance in the present form. The dispute settlement mechanism of the WTO needs to be revamped

### 2NC --- UQ

#### Trade breakthroughs put the US and Europe in lockstep.

Burwell 21, \*Frances G. Burwell, distinguished fellow at the Atlantic Council; \*\*Kenneth Propp, nonresident senior fellow at the Atlantic Council. (6-21-2021, "The U.S. and EU Need to Get Serious About Transatlantic Tech", *National Interest*, <https://nationalinterest.org/feature/us-and-eu-need-get-serious-about-transatlantic-tech-188235>)

Wheels are up on President Joe Biden’s first international trip. As Biden jets back from his flurry of Summits with the G7 Summit, NATO, the European Union (EU), and finally with Russian president Vladimir Putin, his message was clear: America is back and intent on rebuilding its alliances. The successful summit tour was a welcome signal in transatlantic affairs, especially for the European Union, whose relationship with the United States suffered under the Trump administration. Yet these positive trends should not distract from the very real challenges that will define the U.S.-EU relationship in the digital arena. Talking Trade and Tech Following Biden’s meeting with European Commission President Ursula von der Leyen and Council President Charles Michel in Brussels, they made all the right signals about a restored U.S.-EU relationship. Both sides recommitted to resolving steel tariffs and broke ground on subsidies for aircraft manufacturers. The other agreements notwithstanding, one announcement stands out as a notable and a positive sign—Biden and the EU leadership launched a Trade and Technology Council (TTC) as a forum for high-level coordination on a wide range of digital issues, including artificial intelligence, cybersecurity, innovation and research, and transatlantic standards for emerging technologies. First proposed by the European Commission, the TTC intends to boost cooperation between two major digital markets. But another impetus for the launch of the TTC is Beijing. In recent years, U.S. and EU decisionmakers have gradually converged in their growing concerns about China’s efforts at technology and supply chain dominance across vital European economic sectors. China’s use of advanced surveillance technology to control its own people and the West’s reliance on Chinese-made critical medical supplies during the coronavirus pandemic have heightened these concerns. As strategic discourse in the United States and Europe has shifted back towards the traditional focus on great-power competition, an array of detailed digital policy questions—from artificial-intelligence regulation and data flows to global standard-setting—have increasingly come to the fore. Enter the TTC as part of a strategic transatlantic response toward China. As Biden’s national security advisor Jake Sullivan put it, the transatlantic allies should make sure “democracies and not anyone else, not China or other autocracies are writing the rules for trade and technology for the twenty-first century.” A focus on China and emerging technologies with yet-to-evolve regulatory frameworks certainly can bring new energy, new players, and a new sense of mission to the transatlantic table.

### 2NC --- Link

#### 1. Extraterritorial enforcement breaks down trade negotiations.

Hogue 16, senior associate in White & Case’s Global Competition Group. (J. Franck, “Recalling First Principles: The Importance of Comity in Avoiding Antitrust Imperialism”, 73 Wash. & Lee L. Rev. 533, pg. 535-537, <https://scholarlycommons.law.wlu.edu/wlulr/vol73/iss1/12> 535-537)

I would add a somewhat less apocalyptic source of conflict that may hamper the operation of global commerce: the overzealous extraterritorial application of antitrust laws. Each of the countries that supplied a part of Mr. Friedman’s computer have their own laws and regulations that govern the conduct of companies doing business within their borders, among them competition laws that delineate what is and what is not permissible.11 These regulations reflect the legal and commercial traditions unique to particular jurisdictions, and embody the differing choices made by these states. And, of course, the United States has its own innumerable laws that govern the conduct of commerce within its own borders.12 These are the product of the U.S. and Western commercial heritage. As to all of the countries, it has long been established in international law that principles of sovereignty permit these nations to apply their laws to conduct occurring within their territory.13 But conflict and friction in the international commercial system can occur when one nation seeks to apply its own laws to conduct that takes place within the borders of another nation.14 The extraterritorial application of antitrust regulations is a potent example. Conflict is particularly possible when it is American antitrust law that is urged to reach foreign commerce and conduct.15 **[BEGIN FOOTNOTE 15]** 15. See F. Hoffmann–La Roche Ltd. v. Empagran S.A., 542 U.S. 155, 164 (2004) (“No one denies that America’s antitrust laws, when applied to foreign conduct, can interfere with a foreign nation’s ability independently to regulate its own commercial affairs.”); Motorola Mobility, 775 F.3d at 824 (stating that increasing “the global reach of the Sherman Act” would “creat[e] friction with many foreign countries”). **[END FOOTNOTE 15]** While such an application can be permissible in certain circumstances, there are constraints on the extraterritorial application of American antitrust laws to alleviate such friction.16 One such constraint, but certainly not the only one, is the Foreign Trade Antitrust Improvements Act (FTAIA).17

#### AND touches off mutual retaliation

Bradford 12, Henry L. Moses Distinguished Professor of Law and International Organization at the Columbia Law School. (Anu, “Antitrust Law in Global Markets”, Research Handbook on the Economics of Antitrust Law, Einer Elhauge, Ed., Edward Elgar Publishing, pg. 300-301, Available at: <https://scholarship.law.columbia.edu/faculty_scholarship/1976>

Enforcement conflicts also increase tensions among antitrust regulators. The McDonnell Douglas controversy escalated into a political battle where the US administration considered a range of actions against the Europeans in response to the European Commission’s threat to enjoin the merger, including the possibility of limiting transatlantic flights, imposing retaliatory tariffs on European aircrafts, and challenging the Commission’s decision before the WTO.116 The criticism was no less ~~muted~~ after the negative GE/ Honeywell decision. The US Secretary of the Treasury, Paul O’Neil, described the decision as being ‘off the wall’, adding that the Commission was ‘the closest thing you can find to an autocratic organization that can successfully impose their will on things that one would think are outside their scope of attention’.117 Similarly, when the European Court of First Instance handed down its judgment in the Microsoft case, Tom Barnett, the Assistant Attorney General for Antitrust at the time, criticized the judgment vocally, accusing the Europeans of ‘chilling innovation and discouraging competition’.118

#### 2. Courts will overrule foreign resistance---that leads to judicial turf wars that collapse relations

Park 17, Career in Law Teaching Fellow, Columbia Law School; Adjunct Professor of Law, Georgetown Law Center; Of Counsel, Kobre & Kim LLP. (S. Nathan, “Equity Extraterritoriality”, *Duke Journal of Comparative & International Law*, Vol 28:99, pg. 147-148, <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1515&context=djcil>)

B. First Problem of Equity Extraterritoriality: Problem of Extraterritoriality

By allowing U.S. courts to reach beyond U.S. borders, Equity Extraterritoriality causes problems usually associated with extraterritoriality, which may be categorized into three interrelated types: (1) interference with the interest of a foreign sovereign; (2) strife in diplomatic relations; and (3) conflicting legal obligations.

1. Interference with Foreign Sovereign Interest

Equity Extraterritoriality may infringe upon the interests of a foreign sovereign proper. U.S. courts regularly issue extraterritorial orders directly against foreign sovereigns. The Argentina bond litigation, of course, is the famous example.224 In another recent example, the federal court for the District of Maryland issued an anti-suit injunction directly against the Republic of Korea, prohibiting it from pursuing litigation in the Korean courts against a U.S. defense contractor regarding a contract to upgrade Korea’s F-16 fighter jets.225 When foreign sovereigns refuse to comply with a U.S. court’s Equity Extraterritoriality orders, the courts have held the foreign sovereigns in contempt. The federal court for the District of Columbia, for example, held the Russian government in contempt for failing to return religious books and artifacts, located in Russia, to a Jewish religious organization in New York.226

More commonly, Equity Extraterritoriality infringes upon a foreign sovereign’s regulatory or adjudicatory interests. A foreign sovereign, for example, may have an interest in protecting data and information originating from its territory. There is a significant amount of governmental interest in prescribing the extent to which sensitive personal data, such as medical or financial information, becomes available to third parties. Accordingly, a number of countries passed laws concerning bank secrecy and data privacy.227 Some countries passed “blocking statutes” specifically to express their disapproval of the U.S.-style extraterritorial discovery.228Yet the U.S. law on extraterritorial discovery does not merely disregard the foreign law regarding bank secrecy or data privacy, but overrules them as illegitimate.229 In doing so, the U.S. law all but made a dead letter out of a multilateral Hague Evidence Convention that the United States bargained for and signed—a “truly unprecedented attack on the basic mechanism of international treaties.”230 Another example is anti-suit injunctions issued by a U.S. court, which deprive the jurisdiction of a foreign court over the same matter, and sometimes lead to “inter-jurisdictional judicial warfare.”231

#### 3. Extraterritoriality causes diplomatic strife.

Park 17, Career in Law Teaching Fellow, Columbia Law School; Adjunct Professor of Law, Georgetown Law Center; Of Counsel, Kobre & Kim LLP. (S. Nathan, “Equity Extraterritoriality”, *Duke Journal of Comparative & International Law*, Vol 28:99, pg. 148-150, https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1515&context=djcil)

2. Strife in Diplomatic Relations

Because Equity Extraterritoriality infringes upon a foreign sovereign’s interest, it frequently causes diplomatic strife. The Argentina bond case, litigated before a New York federal court, provided anti-American fodder to Argentina’s politicians.232 Reporters for the Restatement have noted the level of friction and acrimony caused by extraterritorial discovery orders.233 Extraterritorial orders issued pursuant to U.S. antitrust laws have “provoked the loudest and most consistent foreign protests.”234 Discussing American antitrust laws, a Canadian government official did not mince words: “For one government to seek to resolve the conflict in its favor by invoking its national law before its domestic tribunals is not the rule of law but an application, in judicial guise, of the principle that economic might is right.”235 Foreign governments would file amicus curie briefs objecting to U.S. extraterritoriality, but the U.S. court’s deference to such views is not consistent. The In re Uranium Antitrust Litigation opinion is an example of hostility, in which the Seventh Circuit called the governments of Australia, Canada, South Africa, and the United Kingdom “surrogates” of the foreign corporation defendants who “subversively presented for them their case.”236 The Uranium court’s hostility toward the foreign states prompted the State Department to inform the court that the opinion “has caused serious embarrassment to the United States in its relations with some of our closest allies.”237

It is a significant problem that the unelected judiciary, which is often a state court or a federal court applying state law, is effecting foreign policy consequences. When a court issues an extraterritorial order, it is conducting an indirect type of diplomacy against its constitutional mandate.238 The problem is worse when a state law is involved. Territoriality principles prohibit a state law from being applied beyond state borders, much less beyond U.S. borders.239 Yet under Equity Extraterritoriality, a state law may be applied anywhere in the world, causing diplomatic strife with foreign sovereigns.

### 2NC – AT: first and bush

#### Card is about how they weren’t happy and concedes that retaliation is possible

**First and Bush 19** [Harry First is the Charles L. Denison Professor of Law, New York University School of Law and Darren Bush is the Leonard B. Rosenberg Professor of Law, University of Houston Law Center, “Antitrust Analysis of NOPEC Legislation”, Volume 32, Issue 1, Article 4 of Loyola Consumer Law Review, https://lawecommons.luc.edu/cgi/viewcontent.cgi?article=2044&context=lclr]

In the past, **foreign countries** have **not always** been **happy** about the **U**nited **S**tates **applying** its **antitrust laws** to **cartels formed** or operated in their **countries**. Early **efforts to resist** that enforcement, however, **have largely given way to foreign countries embracing competition**, **engaging in** law **enforcement against international cartels**, **and** even **accepting** the **imprisonment** of their **nationals** in **U.S. jails**. **While** asymmetric **retaliation** from foreign countries outside the competition law system is certainly **possible**, **there is no history of** such **retaliation against U.S. antitrust enforcement**, even in the context of the private litigation brought directly against OPEC and state-owned oil companies. **Consequently**, **concerns** with **retaliation** as a **result of antitrust action** by the United States **are misplaced.**

### 2NC --- AT: Sweeney

**Sweeney is garbo – not specific to EU and just says that the squo is stable that’s a neg arg**

Brendan **Sweeney 07**. BCom, LLB (Melbourne); PhD (Monash); Barrister and Solicitor of the Supreme Court of Victoria; Senior Lecturer, Department of Business Law and Taxation, Faculty of Business and Economics, Monash University. "Combating Foreign Anti-Competitive Conduct: What Role for Extraterritorialism?" [2007] MelbJlIntLaw 2; (2007) 8(1) Melbourne Journal of International Law 35. http://www.austlii.edu.au/au/journals/MelbJIL/2007/2.html#fn1

In the past 15 years, the level of hostility has **reduced considerably** due to a number of factors.[325] First, a growing number of **states now recognise that anti-competitive activities** — most notably hard core cartels, which until recently made up most of the international cases — **are bad for their own economies**.[326] This growing recognition has produced a rush of **new competition regimes**. It has also **fostered a spirit of cooperation**, resulting in a number of collaborative initiatives, including positive comity.[327] Second, a number of states have indicated that they are prepared to **apply their competition laws extraterritorially**; this has tended to **mute complaints by those states against US extraterritorialism.** Third, US antitrust authorities and, more recently but to a lesser degree, US courts, have become more sensitive to the legitimate concerns of other states.[328] The consequence is that competition law extraterritorialism is no longer necessarily just a matter of aggressive unilateralism. **It can, and often does, operate in a cooperative environment; it is no longer just a US phenomenon.**

### 2NC --- !/D --- Chemicals

#### 2. No defo !

Bailey 14 Ronald Bailey is a science correspondent at Reason magazine and author of Liberation Biology, Reason Magazine, August 1, 2014, “Predictions of a Man-Made Sixth Mass Extinction May Be Exaggerated”, <http://reason.com/archives/2014/08/01/predictions-of-a-man-made-sixth-mass-ext> \*\*cites FAO’s State of the World’s Forest Report

Since most species live in forests, chiefly tropical forests, we should take a look at global forest cover trends. Happily, the deforestation rate is slowing. The Food and Agriculture Organization's State of the World's Forests 2012 report notes that the global rate of deforestation slowed from 0.2 percent per year between 1990 and 2000 to 0.14 percent between 2005 and 2010. Between 2000 and 2010, a total of 130 million hectares were cut, but 78 million hectares returned to forests. So globally, forests declined on average by 5.2 million hectares per year – at which rate, the report notes, "It will take 775 years to lose all of the world's forests." It adds, "This would seem to provide enough time for actions to slow or stop global deforestation." And indeed, researchers in 2006 found that more and more countries are passing through a "forest transition" in which their forest area starts expanding. Roger Sedjo, a forest ecologist at Resources for the Future, predicts that by 2050 most of the world's industrial wood will be grown on forest plantations covering only 5 to 10 percent of the extent of today's global forests.

#### 3. US not key to Nano

**Carafano, et al, 7** - Assistant Director of the Kathryn and Shelby Cullom Davis Institute for International Studies and Senior Research Fellow for National Security and Homeland Security in the Douglas and Sarah Allison Center for Foreign Policy Studies at The Heritage Foundation (James, "Competitive Technologies for National Security,” <http://www.policyarchive.org/handle/10207/bitstreams/13534.pdf>)

Nanotechnology is an emerging transformational technology that promises wide and dual-use applications in many fields, particularly national security. The United States is the world’s acknowledged leader in nanoscience, but stiff international competition is narrowing America’s lead. **Many other countries, specifically European nations and China, have large, established nanotechnology initiatives**. Most commercial applications of nanotechnology are still nascent.

## Advantage 1

### 2NC --- Private Sector

#### If they are targeted --- Xi will just take them over

McGregor 19 Richard McGregor reporter for The Guardian, How the state runs business in China, <https://www.theguardian.com/world/2019/jul/25/china-business-xi-jinping-communist-party-state-private-enterprise-huawei>

When Xi Jinping took power in 2012, he extolled the importance of the state economy at every turn, while all around him watched as China’s high-speed economy was driven by private entrepreneurs. Since then, Xi has engineered an unmistakable shift in policy. At the time he took office, private firms were responsible for about 50% of all investment in China and about 75% of economic output. But as Nicholas Lardy, a US economist who has long studied the Chinese economy, concluded in a recent study, “Since 2012, private, market-driven growth has given way to a resurgence of the role of the state.”

### 2NC --- !/D --- Dollar

#### Dollar heg resilient---weaknesses would be short-term and resolvable.

B Prasanna 10-27. Financial reporter for NBC. "The Quandary around Dollar hegemony." cnbctv18. https://www.cnbctv18.com/views/the-quandary-around-dollar-hegemony-7308611.htm

The sharp 10 percent depreciation in the value of the US Dollar (measured in terms of Dollar Index) over the past six months had again led to a concern that the greenback is on its way out as the premier global reserve currency. This debasement theory has gained momentum as US debt zoomed past 100 percent of GDP, the Fed monetized more than $3 trillion in new debt issued in 2020 and more recently adopted flexibility to its long-held inflation target of 2 percent by advocating an average inflation targeting framework.

A peek into history reveals that the US Dollar has remained an anchor currency for the global economy in the post-World War II period. The initial Dollar weakness following the collapse of the Bretton Woods' system in the early 1970s which led a transition to a floating exchange rate system had only increased the dominant role of the US Dollar in the global economy. The Dollar recent weakness is largely driven by shorter-term cyclical factors and is unlikely to overpower in the long run.

The US dollar plays a central role in the international monetary and financial system. First and foremost, around half of international trade is invoiced in US dollars

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and 40 percent of international payments are executed in dollar terms. Around 85 percent of all foreign exchange transactions occur against the US dollar.

Moreover, the deep and vibrant Dollar funding market plays a pivotal role in cross-border loans and international debt securities. The amount of outstanding international debt securities and cross-border loans that are denominated in US dollars is $22.6 trillion as of Q4 2019, or 26 percent as a share of world GDP, corresponding to about 50 percent of all outstanding international debt securities and cross-border loans. Given such share of Dollar funding in the global bank’s balance sheet as well as the increasing length and complexity of global supply chains, the spillovers of US monetary policy to the rest of the world has only strengthened over past few decades.

Second, in part because of its prominence in trade and financial transactions, the dollar is also the main currency of intervention for central banks. The US Dollar accounts for 61 percent of the official foreign exchange reserve of $12 trillion among various economies. Not surprisingly, given its dominance, most of the central banks aim to stabilize their own currency with respect to Dollar value.

Overall, the role of the dollar as both an intervention currency and an anchor currency helps propagate US monetary policy impulses from the center to the periphery and provides a common component to the global monetary environment.

Third, the dollar is viewed as the safest currency not only because the US has – by far – the world’s most liquid bond market, but mostly because investors trust the US system: its rule of law, protection of property rights and the independence of technocratic institutions. It is evident that at the time of financial and economic crises, the demand for dollar safe assets rises.

The simple reality is that we live in a dollar world –on the real side, where dollar invoicing is dominant, on the financial side, where dollar funding is important to global banks and non-financial corporations, and on the policy side, where dollar anchoring and the dollar reserves are prevalent. If anything, this dominance of the dollar has increased over time.

# 1NR

## Sua Sponte DA

### O/V

#### Turns solvency they said certainty key --- the ruling is perceived as illegitimate.

Luke Ryan, Summer 2017 [J.D., 2017, Fordham University School of Law “How The Party Presentation Rule Limits Judicial Discretion” St. Thomas journal of Complex Litigation <https://www.stu.edu/Portals/law/docs/academics/student-orgs/jcl/volumes/Volume%204/RyanLuke-EssayThePartyPresentationRule.pdf> //DMcD]

The party presentation rule—also known as the “norm against judicial issue creation” or “norm against sua sponte decision-making”—flows out of a judge’s neutral role in the adversarial system as one “who does not (as an inquisitor does) conduct the factual and legal investigation himself, but instead decides on the basis of facts and arguments pro and con adduced by the parties.” 15 While outside factual research is highly controversial and strongly discouraged because it raises evidentiary and due process concerns and infects the trial record that is vital on an appeal,16 outside legal research is not per se discouraged because of the judge’s unique responsibility to know the law and apply it to the facts correctly.17 Outside legal research and sua sponte decision-making becomes controversial, however, when judges disregard party autonomy and raise new legal arguments that were intentionally or accidentally omitted by the litigants.18 Such unilateral actions have the effect of helping one party at the expense of another and feed into the damaging narrative that “courts are more likely to raise an issue sua sponte if they think a case is really important or if the judges really want to reach a particular result.” 19 While most judges and legal scholars agree that sua sponte decision-making is not justified when used to help one side in an adversarial proceeding or to promote a judge’s personal agenda, many judges (and some legal scholars) believe the party presentation rule does not prohibit judicial creation of new legal arguments that support a litigant’s existing claims.20 Federal judges (and the federal courts21) have two important roles. First, in their “dispute resolution” capacity, judges are required to resolve concrete conflicts, between individual parties, involving particularized facts.22 Second, in their “law pronouncement” or “public values” role, judges are required “to make accurate statements about the meaning of the law that govern beyond the parameters of the parties and their dispute.” 23 Courts are usually able to perform each function without conflict, but tensions arise when an individual dispute that is poorly or insufficiently litigated has the potential to have an impact on precedent. In such circumstances, legal scholars, judges, and litigants will sometimes disagree about which role is supreme.24 The dispute resolution capacity provides the strongest justifications for an absolute party presentation rule. When viewing a judge’s responsibilities from this vantage, the rule preserves the essential and unique roles adversarial litigants and neutral judges play in the American legal system.25 “[J]udges are more likely to reach the ‘right’ legal answer when two parties, each with a stake in the matter, compete to present the most persuasive case to the court.” 26 Absolute preservation of the adversarial roles also creates buy-in by the parties and results in greater acceptance of a final judgment because the parties believe that they received a fair opportunity before the court.27 A second justification rests on principles of due process by ensuring that the parties have notice and an opportunity to respond to all issues and arguments considered by the judge.28 Here again, an absolute rule helps avoid the one-sided inconsistency that occurs when courts refuse to consider a party’s arguments that were not raised at the first opportunity, but remain free to entertain their own post-briefing ideas.29 Finally, the rule has beneficial practical effects to dispute resolution by conserving scarce judicial resources, preventing judicial activism and agenda setting, and ensuring efficient resolution of cases by identifying all relevant matters early in the litigation.30

#### Court legitimacy is key to effectively combat terrorism

Shapiro 3 (Jeremy, Nonresident Senior Fellow at the Brookings institute - Foreign Policy, Center on the United States and Europe, Project on International Order and Strategy, 3-1-2003, “French Lessons: The Importance of the Judicial System in Fighting Terrorism”, The Brookings Institute, https://www.brookings.edu/articles/french-lessons-the-importance-of-the-judicial-system-in-fighting-terrorism/)

The unique nature of terrorism means that maintaining the appearance of justice and democratic legitimacy will be much more important than in past wars. The terrorist threat is in a perpetual state of mutation and adaptation in response to government efforts to oppose it. The war on terrorism more closely resembles the war on drugs than World War II; it is unlikely to have any discernable endpoint, only irregular periods of calm. The French experience shows that ad-hoc anti-terrorist measures that have little basis in societal values and shallow support in public opinion may wither away during the periods of calm. In the U.S., there is an enormous reservoir of legitimacy, established by over 200 years of history and tradition, in the judiciary. That reservoir represents an important asset that the U.S. government can profit from to maintain long-term vigilance in this type of war.

#### Nuclear terrorism causes extinction

Hellman 8 (Martin, emeritus prof of engineering @ Stanford, “Risk Analysis of Nuclear Deterrence” SPRING 2008 THE BENT OF TAU BETA PI, http://www.nuclearrisk.org/paper.pdf)

The threat of nuclear terrorism looms much larger in the public’s mind than the threat of a full-scale nuclear war, yet this article focuses primarily on the latter. An explanation is therefore in order before proceeding. A terrorist attack involving a nuclear weapon would be a catastrophe of immense proportions: “A 10-kiloton bomb detonated at Grand Central Station on a typical work day would likely kill some half a million people, and inflict over a trillion dollars in direct economic damage. America and its way of life would be changed forever.” [Bunn 2003, pages viii-ix]. The likelihood of such an attack is also significant. Former Secretary of Defense William Perry has estimated the chance of a nuclear terrorist incident within the next decade to be roughly 50 percent [Bunn 2007, page 15]. David Albright, a former weapons inspector in Iraq, estimates those odds at less than one percent, but notes, “We would never accept a situation where the chance of a major nuclear accident like Chernobyl would be anywhere near 1% .... A nuclear terrorism attack is a low-probability event, but we can’t live in a world where it’s anything but extremely low-probability.” [Hegland 2005]. In a survey of 85 national security experts, Senator Richard Lugar found a median estimate of 20 percent for the “probability of an attack involving a nuclear explosion occurring somewhere in the world in the next 10 years,” with 79 percent of the respondents believing “it more likely to be carried out by terrorists” than by a government [Lugar 2005, pp. 14-15]. I support increased efforts to reduce the threat of nuclear terrorism, but that is not inconsistent with the approach of this article. Because terrorism is one of the potential trigger mechanisms for a full-scale nuclear war, the risk analyses proposed herein will include estimating the risk of nuclear terrorism as one component of the overall risk. If that risk, the overall risk, or both are found to be unacceptable, then the proposed remedies would be directed to reduce which- ever risk(s) warrant attention. Similar remarks apply to a number of other threats (e.g., nuclear war between the U.S. and China over Taiwan). his article would be incomplete if it only dealt with the threat of nuclear terrorism and neglected the threat of full- scale nuclear war. If both risks are unacceptable, an effort to reduce only the terrorist component would leave humanity in great peril. In fact, society’s almost total neglect of the threat of full-scale nuclear war makes studying that risk all the more important. The cosT of World War iii The danger associated with nuclear deterrence depends on both the cost of a failure and the failure rate.3 This section explores the cost of a failure of nuclear deterrence, and the next section is concerned with the failure rate. While other definitions are possible, this article defines a failure of deterrence to mean a full-scale exchange of all nuclear weapons available to the U.S. and Russia, an event that will be termed World War III. Approximately 20 million people died as a result of the first World War. World War II’s fatalities were double or triple that number—chaos prevented a more precise deter- mination. In both cases humanity recovered, and the world today bears few scars that attest to the horror of those two wars. Many people therefore implicitly believe that a third World War would be horrible but survivable, an extrapola- tion of the effects of the first two global wars. In that view, World War III, while horrible, is something that humanity may just have to face and from which it will then have to recover. In contrast, some of those most qualified to assess the situation hold a very different view. In a 1961 speech to a joint session of the Philippine Con- gress, General Douglas MacArthur, stated, “Global war has become a Frankenstein to destroy both sides. … If you lose, you are annihilated. If you win, you stand only to lose. No longer does it possess even the chance of the winner of a duel. It contains now only the germs of double suicide.” Former Secretary of Defense Robert McNamara ex- pressed a similar view: “If deterrence fails and conflict develops, the present U.S. and NATO strategy carries with it a high risk that Western civilization will be destroyed” [McNamara 1986, page 6]. More recently, George Shultz, William Perry, Henry Kissinger, and Sam Nunn4 echoed those concerns when they quoted President Reagan’s belief that nuclear weapons were “totally irrational, totally inhu- mane, good for nothing but killing, possibly destructive of life on earth and civilization.” [Shultz 2007] Official studies, while couched in less emotional terms, still convey the horrendous toll that World War III would exact: “The resulting deaths would be far beyond any precedent. Executive branch calculations show a range of U.S. deaths from 35 to 77 percent (i.e., 79-160 million dead) … a change in targeting could kill somewhere between 20 million and 30 million additional people on each side .... These calculations reflect only deaths during the first 30 days. Additional millions would be injured, and many would eventually die from lack of adequate medical care … millions of people might starve or freeze during the follow- ing winter, but it is not possible to estimate how many. … further millions … might eventually die of latent radiation effects.” [OTA 1979, page 8] This OTA report also noted the possibility of serious ecological damage [OTA 1979, page 9], a concern that as- sumed a new potentiality when the TTAPS report [TTAPS 1983] proposed that the ash and dust from so many nearly simultaneous nuclear explosions and their resultant fire- storms could usher in a nuclear winter that might erase homo sapiens from the face of the earth, much as many scientists now believe the K-T Extinction that wiped out the dinosaurs resulted from an impact winter caused by ash and dust from a large asteroid or comet striking Earth. The TTAPS report produced a heated debate, and there is still no scientific consensus on whether a nuclear winter would follow a full-scale nuclear war. Recent work [Robock 2007, Toon 2007] suggests that even a limited nuclear exchange or one between newer nuclear-weapon states, such as India and Pakistan, could have devastating long-lasting climatic consequences due to the large volumes of smoke that would be generated by fires in modern megacities. While it is uncertain how destructive World War III would be, prudence dictates that we apply the same engineering conservatism that saved the Golden Gate Bridge from collapsing on its 50th anniversary and assume that preventing World War III is a necessity—not an option.

### 2AC --- Test Case

#### A similar case is not a perfect case – which means the court will have to decide it sua sponte

Krimbel, 89 – JD at Chicago-Kent College of Law (Rosemary, 65 Chi.-Kent L. Rev. 919, “REHEARING SUA SPONTE IN THE U.S. SUPREME COURT: A PROCEDURE FOR JUDICIAL POLICYMAKING,” lexis)  
Indeed, the Court hears only a small proportion of the thousands of cases that request Supreme Court review. n159 Which cases the Court chooses to decide indicates its policies and priorities as well as the extent of its influence upon the political discourse both in our government and among citizens. Despite this considerable discretion, the Court is still limited to the cases and issues which the litigants choose to present. This limitation assures that an activist Court may not reach out and decide just any issue of its choice. In other words, even an activist Court must bide its time waiting for the "perfect" case. This control of the issues by the litigants is central to our adversarial system of law. The Constitution embodies the adversarial system in section two of Article III which extends the judicial power to all "Cases" or "Controversies." n160 It does not extend the power to all "issues of interest to the Justices." In addition to this constitutional constraint on the Court's jurisdiction, the Court has created rules of self-restraint, including the doctrine of advisory opinions, ripeness, standing, and mootness. n161 Both the constitutional limitation of case or controversy and the [\*942] judicially created doctrines comport with the Court's duty to avoid constitutional questions unless necessary. n162

#### Issue creation undermines judicial legitimacy – eliminates perception of impartiality

Miller, 98 – JD, University of Chicago (Eric, “Should Courts Consider 18 USC § 3501 Sua Sponte?.” 65 U. Chi. L. Rev. 1029, Summer, lexis)

Third, it may be unseemly for a court actively to seek out its own issues to consider. n116 This is perhaps what then-Judge Scalia  [\*1051]  meant when he referred to "the premise of our adversarial system," thereby inviting comparison to other systems in which judges are much more active. n117 The legitimacy of the antimajoritarian power of judicial review, for example, depends in part on the fact that judges typically exercise the power only as it is necessary to decide disputes between litigants. This legitimacy could be eroded if judges were perceived as pursuing their own agendas by seeking out issues to consider. Viewed in this way, the refusal to make sua sponte consideration a routine practice is an important doctrine of judicial restraint.

### 2AC --- Under Radar

#### 2. The Plan would be unprecedented

Thomas ’10 (Jerry D; J.D. from the Chicago-Kent College of Law, Ph.D. in Political Science from the University of Kentucky, former Professor of Government at Eastern Kentucky University, Professor of Political Science at the University of Wisconsin Oshkosh; 2010; “Chapter 2: Law and Ideology in Judicial Decisionmaking”; Law and Ideology in the U.S. Courts of Appeals: Judicial Review of Federal Agency Decisions; pp. 19; accessed 4/3/18; TV)

Since the federal court system in the U.S. is an adversarial one, courts are limited to reviewing the real controversies that litigants bring before the courts. Courts are unable to review agency actions unless citizens or agencies themselves make an appeal to an appropriate reviewing court. While there are few real constraints on a federal court‘s ability to do so, there is little evidence that the Supreme Court strikes down agency actions sua sponte (of their own volition) without review being requested by litigants (Howard and Segal 2004).

#### **3. The Court avoids issue creation by requiring litigants to strictly adhere to the unique facts of cases**

Baird 9 (Vanessa, Associate Professor of Political Science – UC-Boulder and Tonja, Professor of Law – Northwestern University, “How the Dissent Becomes the Majority: Using Federalism to Transform Coalitions in the U.S. Supreme Court”, Duke Law Journal, November, 59 Duke L.J. 183, Lexis)

But why do Justices need to signal for cases in the future? If the Justices did not need new case facts, they could simply transform the issue in the initial case into one involving federalism, without needing new litigation. There are instances when Justices can manipulate the issues without waiting for litigants to frame new cases appropriately. Professors Epstein and Shvetsova note examples of this, showing that the Chief Justice can have some impact on which issues are taken into consideration on the merits. [87](http://www.lexis.com/research/retrieve?_m=e2be8268ea5ab912f8de4cce2742a8eb&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAA&_md5=45df09c4d44394ec2b1545244b9dee01" \l "n87" \t "_self) Moreover, Professors Ulmer [88](http://www.lexis.com/research/retrieve?_m=e2be8268ea5ab912f8de4cce2742a8eb&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAA&_md5=45df09c4d44394ec2b1545244b9dee01" \l "n88" \t "_self) and  [\*207]  McGuire and Palmer [89](http://www.lexis.com/research/retrieve?_m=e2be8268ea5ab912f8de4cce2742a8eb&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAA&_md5=45df09c4d44394ec2b1545244b9dee01" \l "n89" \t "_self) provide evidence that Justices, because they prefer some issues over others, create issues that were not presented before them - a phenomenon called "issue fluidity," whereby Justices address legal questions in their opinions that were not presented in the legal briefs. [90](http://www.lexis.com/research/retrieve?_m=e2be8268ea5ab912f8de4cce2742a8eb&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAA&_md5=45df09c4d44394ec2b1545244b9dee01" \l "n90" \t "_self) The response to this counterargument is that Justices may not always be as willing or able to address issues that the litigants did not present. Professors Epstein, Segal, and Johnson argue that some Justices consider issue fluidity inappropriate; it violates a norm they consider important. [91](http://www.lexis.com/research/retrieve?_m=e2be8268ea5ab912f8de4cce2742a8eb&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAA&_md5=45df09c4d44394ec2b1545244b9dee01" \l "n91" \t "_self) By the time a case reaches the Supreme Court, it has a well-developed record that is often difficult to ignore. In fact, even before a sympathetic judge, an outcome may depend not simply on the fact that a litigant makes a federalism argument, but may require a particular form of that argument. Because litigants need to choose carefully the arguments they make before the Court - due to opportunity costs created by time constraints and judicial impatience with litigants who throw every possible argument into a brief - effective signaling will often require new litigation, and will not be amenable to fact or issue manipulation. Holding all else equal, Justices are likely to prefer cases with facts amenable to particular legal arguments, rather than cases in which they have to create the issue themselves. And if the initial case facts do not lend themselves to being framed on the basis of federal-state power, the Justices will require new case facts to generate different legal arguments. In this situation, litigants have an incentive to find (or create) new case facts and bring new litigation that allows dissenting Justices to persuade their previously unsympathetic colleagues to join them in their opinion.

#### 4. A sua sponte decision would permanently erode judicial legitimacy.

Hills ’20 [Blake R; Prosecuting Attorney in Utah, former appellate clerk for the Tennessee Court of Criminal Appeals; 2020; “Sua Sponte Dismissals: Is Efficiency More Important than Procedural Fairness?”; <https://heinonline.org/HOL/Page?handle=hein.journals/umkc89&div=14&g_sent=1&casa_token=>; UMKC Law Review; accessed 9/15/21; TV]

In addition to violating due process, sua sponte dismissals reduce respect for judicial decisions. This is because "[a]ppearances matter tremendously in court. The legal system shouldn't just be fair, it should also appear to be fair."77 As stated by Lord Chief Justice Heward in the Sussex Justice case, "justice should not only be done, but should manifestly and undoubtedly be seen to be done."1 78

The principle that the legal system must be fair and must be seen to be fair is known as "procedural justice."1 79 This principle is important because research has shown that "the manner in which disputes are handled by the courts has an important influence upon people's evaluations of their experience in the court system."180 Indeed, "[t]hey accept 'losing' more willingly if the court procedures used to handle their case are fair."' 8 ' A fair proceeding is one in which all litigants have the opportunity to present their argument and have it considered by the court. 8 2 Under this principle, sua sponte dismissals do not have the appearance of fairness because the litigants do not have the opportunity to respond to dispositive issues and have their arguments considered by the court.

The adversary system is built on the premise that allowing litigants to address the court on dispositive issues both increases the accuracy of the decision and "increases the parties' sense that the court's process and result are fair.". 3 As stated by the Supreme Court, "[f]airness can rarely be obtained by secret, onesided determination of facts decisive of rights.... No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it." 84

Sua sponte dismissals reduce "societal acceptance of courts' decisions because the losing party will feel that he has not been given a fair opportunity to present his case when he had neither notice of, nor the chance to present, arguments on the issue that the court found determinative. " As one commentator has noted: "If the grounds for the decision fall completely outside the framework of the argument, making all that was discussed or proved at the hearing irrelevant-the adjudicative process has become a sham, for the parties' participation in the decision has lost all meaning." 186 This is a real problem:

Indeed, one study revealed that even lawyers who won a case based on an issue decided sua sponte did not like the practice: "[T]hey said the cases should have been decided on issues they had argued. Perhaps they felt it did not reflect well on their advocacy." A lawyer who lost a case on a sua sponte decision was more blunt: "The case became somewhat personal to me. I felt, one, [the client] got screwed. Two, I got screwed. He got screwed, that's pretty bad. Me getting screwed, that's an imposition up with which I shall not put."187

The bottom line is that courts should recognize that there are negative consequences that result from sua sponte dismissals. Whatever the situation may have been in the past, courts currently operate "in an environment in which people have generally lower levels of trust and confidence in all forms of governmental authority."188 Modern courts should "care about the public appearance of their actions because abstract truth is not the criterion of legitimacy for legal obligations; legal obligations must be justified as authentic."1 89 There is an easy way to do this:

[Courts] can provide evidence that they are listening to people and considering their arguments by giving people a reasonable chance to state their case, by paying attention when people are making that presentation, and by acknowledging and taking account of people's needs and concerns when explaining their decisions. This is true even if the [courts] cannot accept those arguments and give people what they feel they deserve.190

In sum, courts must recognize that they cannot dismiss cases sua sponte without causing the public to lose respect for those decisions.

### 2AC --- Thumpers

#### The Texas decision/shadow docket put legitimacy on the brink. Future overruling of precedent will confirm it’s dead.

Hull ‘9/1 [Gordon; Associate Professor of Philosophy and Public Policy at UNC Charlotte; 9/1/21; “When does the Supreme Court lose its legitimacy?”; <https://www.newappsblog.com/2021/09/when-does-the-supreme-court-lose-its-legitimacy.html>; New Apps; accessed 9/15/21; TV]

And what does that mean? Now is a good time to ask. The Court has let stand a 5th Circuit decision upholding a Texas law that is plainly unconstitutional under current SCOTUS jurisprudence (it bans abortion at 6 weeks) and involves an enforcement mechanism that comes straight from Stalin’s playbook (it allows individuals to sue people they suspect of assisting a woman of obtaining an abortion). This piece on Vox runs through how deeply perverse the Texas law in question in, how thoroughly Trump has corrupted the 5th Circuit, and how alarming SCOTUS inaction is.

In Planned Parenthood v. Casey – which, along with Roe is apparently being overruled in Texas without a hearing and without a reasoned opinion – the Court favorably cites earlier opinion to the effect that the Court is supposed to give reasons when it overturns its precedent:

"A basic change in the law upon a ground no firmer than a change in our membership invites the popular misconception that this institution is little different from the two political branches of the Government. No misconception could do more lasting injury to this Court and to the system of law which it is our abiding mission to serve"

Justice O’Connor adds:

“The root of American governmental power is revealed most clearly in the instance of the power conferred by the Constitution upon the Judiciary of the United States and specifically upon this Court. As Americans of each succeeding generation are rightly told, the Court cannot buy support for its decisions by spending money and, except to a minor degree, it cannot independently coerce obedience to its decrees. The Court's power lies, rather, in its legitimacy, a product of substance and perception that shows itself in the people's acceptance of the Judiciary as fit to determine what the Nation's law means and to declare what it demands. The underlying substance of this legitimacy is of course the warrant for the Court's decisions in the Constitution and the lesser sources of legal principle on which the Court draws. That substance is expressed in the Court's opinions, and our contemporary understanding is such that a decision without principled justification would be no judicial act at all. But even when justification is furnished by apposite legal principle, something more is required. Because not every conscientious claim of principled justification will be accepted as such, the justification claimed must be beyond dispute. The Court must take care to speak and act in ways that allow people to accept its decisions on the terms the Court claims for them, as grounded truly in principle, not as compromises with social and political pressures having, as such, no bearing on the principled choices that the Court is obliged to make. Thus, the Court's legitimacy depends on making legally principled decisions under circumstances in which their principled character is sufficiently plausible to be accepted by the Nation” (emphasis added)

O’Connor adds that if “the Court decides a case in such a way as to resolve the sort of intensely divisive controversy reflected in Roe” that “only the most convincing justification under accepted standards of precedent could suffice to demonstrate that a later decision overruling the first was anything but a surrender to political pressure, and an unjustified repudiation of the principle on which the Court staked its authority in the first instance.”

The Court’s so-called “shadow docket” – consequential decisions rendered in orders for cases not heard, as for example prioritizing religious claims over public health – has been on the rise over the last couple of years, and commentators have worried about the damage this does to the rule of law as an institution. In the case of abortion, the Court has a case on the docket that would give it the opportunity to overturn Roe; it could have waited until then (and avoided the need to validate Texas’ enforcement mechanism). You could argue that the Court didn’t “decide” anything last night, but it was faced with a clearly erroneous 5th Circuit decision that it let stand. I don’t see how last night’s failure to enjoin the Texas law doesn’t utterly gut its legitimacy in the sense articulated in Casey. Texas just banned abortion, and SCOTUS offered no justification at all in letting the law stand.

Again, Casey: “to overrule under fire in the absence of the most compelling reason to reexamine a watershed decision would subvert the Court's legitimacy beyond any serious question.” Court legitimacy is important:

“It is true that diminished legitimacy may be restored, but only slowly. Unlike the political branches, a Court thus weakened could not seek to regain its position with a new mandate from the voters, and even if the Court could somehow go to the polls, the loss of its principled character could not be retrieved by the casting of so many votes. Like the character of an individual, the legitimacy of the Court must be earned over time. So, indeed, must be the character of a Nation of people who aspire to live according to the rule of law. Their belief in themselves as such a people is not readily separable from their understanding of the Court invested with the authority to decide their constitutional cases and speak before all others for their constitutional ideals. If the Court's legitimacy should be undermined, then, so would the country be in its very ability to see itself through its constitutional ideals. The Court's concern with legitimacy is not for the sake of the Court, but for the sake of the Nation to which it is responsible.”