# 1NC

## 1NC — Off

### 1NC — P

#### The plan is written backwards. A protection *FOR* an export cartel is something that protects cartels *NOT* something that protects consumers *FROM* cartels…

Merriam Webster N/D — “For”; https://www.merriam-webster.com/dictionary/for

for preposition

1a—used as a function word to indicate purpose

a grant for studying medicine

b—used as a function word to indicate an intended goal

left for home

acted for the best

c—used as a function word to indicate the object or recipient of a perception, desire, or activity

now for a good rest

run for your life

an eye for a bargain

2a: as being or constituting

taken for a fool

eggs for breakfast

b—used as a function word to indicate an actual or implied enumeration or selection

#### What they INTEND the plan to do is apply in nations without laws protecting *FROM* export cartels. They want to fill a legal vacuum, but they didn’t.

#### Vote negative on presumption. The plan doesn’t address the advantage.

#### Being written backwards causes 2 impacts

#### 1---Turns ad2. It causes other countries to STEP UP protection of cartels to AVOID US laws. That turns advantage 2 because it INCREASES CARTELS.

#### 2---Turns ad3. the plan immediately triggers trade tension. It’s seen as retaliatory [KU is yellow]

1AC Kwok 15 – (Tiffany Kwok, PhD Candidate @ University of Birmingham; published 2015, Edinburgh Student Law Review 2, no. 4, “Export Cartels: Analysing the Gap in International Competition Law and Trade,” doa: 6-9-2021) url: <https://heinonline.org/HOL/P?h=hein.journals/edinslr2&i=474&a=dW1uLmVkdQ>

If an export cartel affects the imports of the foreign country to which the cartel is exporting, the importing country may be tempted to take retaliatory action.

For instance, industries in the importing country may form a buyers' cartel in order to offset the effects of any export association. 24 Jurisdictions with established competition law regimes can also apply their laws extra-territorially and prosecute cartels exporting into their territories. These instances of litigation can create significant trade tension and in any event, cases where an export cartel is challenged by an importing country are seldom successful.

In the Daishowa case, a group of U.S. wood pulp exporters formed an export cartel as permitted by the exemptions in their domestic antitrust laws. 25 Japanese wood pulp importers took retaliatory action through the formation of an import cartel in order to boycott American wood pulp production. At the same time, they sought to challenge the validity of the U.S. export cartel under U.S. antitrust laws, alleging price fixing and refusal to supply. The U.S. exporters counter sued the Japanese importers through the extraterritorial application of their antitrust laws. A federal district court held that under U.S. domestic laws, the American export cartel was exempted from antitrust law but the Japanese import cartel was not. Damages were subsequently awarded to the U.S. exporters. Unsurprisingly, this decision was perceived as decidedly unfair by the Japanese and triggered an international diplomatic incident. 26

B. EXPORT CARTELS AND COMPETITION LAW

Despite evidence of negative effects on domestic and foreign markets, most competition and antitrust law systems explicitly or implicitly exempt export cartels from their cartel sanctions. These exemptions are employed for a number of reasons. The United States has long argued that explicit exemptions for export cartels are necessary in order to support smaller firms. The EU's implicit approach on the other hand exempts most export cartels from scrutiny on the basis that they have no direct effect on the common market.

(1) Export Cartels in the United States

The U.S. Export Trading Company Act of 1982 (ETC Act) provides exemptions for American export cartels through the issuance of certificates of review by the Secretary of Commerce. The certificate provides immunity from criminal and civil actions brought by the government for conduct covered in it.27 In order to obtain such a certificate an application must be submitted to the Secretary of Commerce containing any information that was relevant to the overall market in which the export cartel would be operating. The Secretary of Commerce would then publish a notice in the Federal Register announcing an application for a certificate of review had been submitted with the names of each person submitting the applications, and the conduct for which the application was submitted. These measures were intended to ensure greater transparency and certainty for firms seeking to obtain exemptions from the application of antitrust laws for their export cartels. However, despite the ambitious expectations Congress had of the ETC Act, it failed to generate the results that were initially predicted at its inception.

### 1NC — K

#### Antitrust is capitalist----vote neg for a collective working-class struggle that solves the case

Winant 20, assistant professor of history at the University of Chicago. (Gabriel Winant, 1-21-2020, "Is Anti-Monopolism Enough?", *The Nation*, <https://www.thenation.com/article/culture/goliath-monopoly-and-democracy-matt-stoller-review/)---language> edited

It is clear from the outset of Goliath that Stoller very evidently wishes for a more just and equal world, and many of his solutions—breaking up and regulating the big banks and tech companies, for example—would be far preferable to the status quo. But he does not explain any of the reasons an anti-monopoly politics might win or achieve any staying power. If all of American history is defined by the struggle between the great heroes of anti-monopoly democracy and the avarice of Mellonism, then why would powerful and greedy [people] men not machinate once more against antitrust laws? Why wouldn’t disdainful intellectuals conspire against the people’s cause yet again? If the prevalence of monopoly, as Stoller insists, bears no relation to the larger social and economic environment and is purely a voluntary choice, then there’s no reason to believe that anti-monopoly can produce a stable resolution to the problem of corporate power. From where might antitrust politics draw social and political power with a mass base of farmers, craftsmen, and small businessmen long gone? What might bind the people as a whole together to confront their overlords? By way of employment in some cases, low prices or convenience in others, the monopolies that he detests have sunk their roots into large sections of society. Come after Amazon, and you come after its tens of millions of users too.

The socialism that Stoller dismisses emerged precisely in answer to these problems. It contends that capitalism gives rise—not once but repeatedly—to a potentially coherent and antagonistic social force capable of collective action. This is the working class. Because capitalism produces a larger population over time that cannot survive from its own property and therefore joins many of these people at sites of collective labor, it makes it possible for them to organize and then to exercise leverage and political leadership over other sectors of society. (This is the reason that the most exciting intellectual work in antitrust is being done by scholars who work on market power specifically in employment, such as Sanjukta Paul, Suresh Naidu, and Marshall Steinbaum.) One may criticize the socialist’s faith in the working class as politically naive or empirically inaccurate. But in any case, socialism (and beneath it Marxism as well) contains a theory of politics—a definite account of friends and enemies and why each is what it is—whereas Stoller’s populism does not. This is why socialists have proved to be so much less prone to deviations into jingoism and conspiracy theory than their populist peers.

One might also add that socialism and anti-monopoly are not necessarily opposed; In recent history, as well in the New Deal era, the two have blended in a combined opposition to the current economic and political order. For both sides, this blending together has been both opportunistic and fruitful. The presence in the presidential race of candidates who approximately represent each ideology illustrates the dynamic of this marriage of convenience. The socialist who speaks of class war allows the anti-monopolist to leverage her plans for fixing it into popularity; in turn, the plan maker must mimic the socialist’s positions in order for her gambit to succeed, thus validating his ideas. Each gets to obfuscate usefully through the presence of the other and because they share enemies: Wall Street and its political representatives.

But Stoller’s book also demonstrates some of the underlying differences. Anti-monopolists oppose the economic elite but not the social system that gave rise to it. Likewise, between socialism and anti-monopoly lies a vast difference in analysis about the nature of the state and, indeed, power itself. For the anti-monopolist, the state is a shield for the people against their plutocratic enemies; power inheres in the state, and it is only a question of whether the people capture it through elections. The anti-monopolist agenda is therefore to put the good expert into office, where she may wield the regulatory power of the state for the common good. For the socialist, on the other hand, the state is not neutral. Its purpose and nature are to serve the interests of the ruling class. If it can be remade to serve the working class, this project cannot be achieved without enormous social conflict, and this change can come only from below, not just through elections but through sustained attacks on authority at every level: in workplaces, schools, families, neighborhoods, and beyond. Friendly elements within the state may lend important support to such struggles, and this is one of the reasons socialists seek state power. But socialism cannot be achieved solely by means of such power.

Which of these analyses you believe (and which diagnosis you accept) is, in part, the result of the different historical narratives that we tell. If you think the problem we face is something like “crony capitalism” or “money in politics,” then there is one weird trick that will fix it: reining in the too-powerful corporations—often by using laws already on the books—in order to get back to the people’s business. This program, often presented as structural change, nonetheless represents an explicitly superficial approach: the idea that our economy has acquired a predatory, parasitic stratum at its top that needs to be stripped off, allowing the underlying system to work as intended. Explicitly or not, it’s the promise of a return to a lost utopia of markets, a society without fundamental antagonisms. If, on the other hand, you think our problems are deeper, woven more fundamentally into the structure of how we live together—which things and people we value and which we discard, who must wear the saddle and who gets to ride—then there’s no going back. If the problem lies with capitalism as a system and not specific malicious capitalists, then we’ve got to embark on an adventure of a different kind, one that leads us not back to the comforts of midcentury America but somewhere wild and new. Goliath will not help us find the way.

#### Capitalism causes extinction.

Robinson 16, professor of sociology, global studies and Latin American studies at U.C. Santa Barbara. (William I., “Sadistic Capitalism: Six Urgent Matters for Humanity in Global Crisis,” *Truth-out*, April 12, 2016, http://www.truth-out.org/opinion/item/35596-sadistic-capitalism-six-urgent-matters-for-humanity-in-global-crisis)

In these mean streets of globalized capitalism in crisis, it has become profitable to turn poverty and inequality into a tourist attraction. The South African Emoya Luxury Hotel and Spa company has made a glamorized spectacle of it. The resort recently advertised an opportunity for tourists to stay "in our unique Shanty Town ... and experience traditional township living within a safe private game reserve environment." A cluster of simulated shanties outside of Bloemfontein that the company has constructed "is ideal for team building, braais, bachelors [parties], theme parties and an experience of a lifetime," read the ad. The luxury accommodations, made to appear from the outside as shacks, featured paraffin lamps, candles, a battery-operated radio, an outside toilet, a drum and fireplace for cooking, as well as under-floor heating, air conditioning and wireless internet access. A well-dressed, young white couple is pictured embracing in a field with the corrugated tin shanties in the background. The only thing missing in this fantasy world of sanitized space and glamorized poverty was the people themselves living in poverty. The “luxury shanty town” in South Africa is a fitting metaphor for global capitalism as a whole. Faced with a stagnant global economy, elites have managed to turn war, structural violence and inequality into opportunities for capital, pleasure and entertainment. It is hard not to conclude that unchecked capitalism has become what I term “sadistic capitalism,” in which the suffering and deprivation generated by capitalism become a source of aesthetic pleasure, leisure and entertainment for others. I recently had the opportunity to travel through several countries in Latin America, the Middle East, North Africa, East Asia and throughout North America. I was on sabbatical to research what the global crisis looks like on the ground around the world. Everywhere I went, social polarization and political tensions have reached explosive dimensions. Where is the crisis headed, what are the possible outcomes and what does it tell us about global capitalism and resistance? This crisis is not like earlier structural crises of world capitalism, such as in the 1930s or 1970s. This one is fast becoming systemic. The crisis of humanity shares aspects of earlier structural crises of world capitalism, but there are six novel, interrelated dimensions to the current moment that I highlight here, in broad strokes, as the "big picture" context in which countries and peoples around the world are experiencing a descent into chaos and uncertainty. 1) The level of global social polarization and inequality is unprecedented in the face of out-of-control, over-accumulated capital. In January 2016, the development agency Oxfam published a follow-up to its report on global inequality that had been released the previous year. According to the new report, now just 62 billionaires -- down from 80 identified by the agency in its January 2015 report -- control as much wealth as one half of the world's population, and the top 1% owns more wealth than the other 99% combined. Beyond the transnational capitalist class and the upper echelons of the global power bloc, the richest 20 percent of humanity owns some 95 percent of the world's wealth, while the bottom 80 percent has to make do with just 5 percent. This 20-80 divide of global society into haves and the have-nots is the new global social apartheid. It is evident not just between rich and poor countries, but within each country, North and South, with the rise of new affluent high-consumption sectors alongside the downward mobility, “precariatization,” destabilization and expulsion of majorities. Escalating inequalities fuel capitalism’s chronic problem of over-accumulation: The transnational capitalist class cannot find productive outlets to unload the enormous amounts of surplus it has accumulated, leading to stagnation in the world economy. The signs of an impending depression are everywhere. The front page of the February 20 issue of The Economist read, "The World Economy: Out of Ammo?" Extreme levels of social polarization present a challenge to dominant groups. They strive to purchase the loyalty of that 20 percent, while at the same time dividing the 80 percent, co-opting some into a hegemonic bloc and repressing the rest. Alongside the spread of frightening new systems of social control and repression is heightened dissemination through the culture industries and corporate marketing strategies that depoliticize through consumerist fantasies and the manipulation of desire. As "Trumpism" in the United States so well illustrates, another strategy of co-optation is the manipulation of fear and insecurity among the downwardly mobile so that social anxiety is channeled toward scapegoated communities. This psychosocial mechanism of displacing mass anxieties is not new, but it appears to be increasing around the world in the face of the structural destabilization of capitalist globalization. Scapegoated communities are under siege, such as the Rohingya in Myanmar, the Muslim minority in India, the Kurds in Turkey, southern African immigrants in South Africa, and Syrian and Iraqi refugees and other immigrants in Europe. As with its 20th century predecessor, 21st century fascism hinges on such manipulation of social anxiety at a time of acute capitalist crisis. Extreme inequality requires extreme violence and repression that lend to projects of 21st century fascism. 2) The system is fast reaching the ecological limits to its reproduction. We have reached several tipping points in what environmental scientists refer to as nine crucial "planetary boundaries." We have already exceeded these boundaries in three areas -- climate change, the nitrogen cycle and diversity loss. There have been five previous mass extinctions in earth's history. While all these were due to natural causes, for the first time ever, human conduct is intersecting with and fundamentally altering the earth system. We have entered what Paul Crutzen, the Dutch environmental scientist and Nobel Prize winner, termed the Anthropocene -- a new age in which humans have transformed up to half of the world's surface. We are altering the composition of the atmosphere and acidifying the oceans at a rate that undermines the conditions for life. The ecological dimensions of global crisis cannot be understated. "We are deciding, without quite meaning to, which evolutionary pathways will remain open and which will forever be closed," observes Elizabeth Kolbert in her best seller, The Sixth Extinction. "No other creature has ever managed this ... The Sixth Extinction will continue to determine the course of life long after everything people have written and painted and built has been ground into dust." Capitalism cannot be held solely responsible. The human-nature contradiction has deep roots in civilization itself. The ancient Sumerian empires, for example, collapsed after the population over-salinated their crop soil. The Mayan city-state network collapsed about AD 900 due to deforestation. And the former Soviet Union wrecked havoc on the environment. However, given capital’s implacable impulse to accumulate profit and its accelerated commodification of nature, it is difficult to imagine that the environmental catastrophe can be resolved within the capitalist system. “Green capitalism” appears as an oxymoron, as sadistic capitalism’s attempt to turn the ecological crisis into a profit-making opportunity, along with the conversion of poverty into a tourist attraction. 3) The sheer magnitude of the means of violence is unprecedented, as is the concentrated control over the means of global communications and the production and circulation of knowledge, symbols and images. We have seen the spread of frightening new systems of social control and repression that have brought us into the panoptical surveillance society and the age of thought control. This real-life Orwellian world is in a sense more perturbing than that described by George Orwell in his iconic novel 1984. In that fictional world, people were compelled to give their obedience to the state (“Big Brother”) in exchange for a quiet existence with guarantees of employment, housing and other social necessities. Now, however, the corporate and political powers that be force obedience even as the means of survival are denied to the vast majority. Global apartheid involves the creation of "green zones" that are cordoned off in each locale around the world where elites are insulated through new systems of spatial reorganization, social control and policing. "Green zone" refers to the nearly impenetrable area in central Baghdad that US occupation forces established in the wake of the 2003 invasion of Iraq. The command center of the occupation and select Iraqi elite inside that green zone were protected from the violence and chaos that engulfed the country. Urban areas around the world are now green zoned through gentrification, gated communities, surveillance systems, and state and private violence. Inside the world's green zones, privileged strata avail themselves of privatized social services, consumption and entertainment. They can work and communicate through internet and satellite sealed off under the protection of armies of soldiers, police and private security forces. Green zoning takes on distinct forms in each locality. In Palestine, I witnessed such zoning in the form of Israeli military checkpoints, Jewish settler-only roads and the apartheid wall. In Mexico City, the most exclusive residential areas in the upscale Santa Fe District are accessible only by helicopter and private gated roads. In Johannesburg, a surreal drive through the exclusive Sandton City area reveals rows of mansions that appear as military compounds, with private armed towers and electrical and barbed-wire fences. In Cairo, I toured satellite cities ringing the impoverished center and inner suburbs where the country's elite could live out their aspirations and fantasies. They sport gated residential complexes with spotless green lawns, private leisure and shopping centers and English-language international schools under the protection of military checkpoints and private security police. In other cities, green zoning is subtler but no less effective. In Los Angeles, where I live, the freeway system now has an express lane reserved for those that can pay an exorbitant toll. On this lane, the privileged speed by, while the rest remain one lane over, stuck in the city's notorious bumper-to-bumper traffic -- or even worse, in notoriously underfunded and underdeveloped public transportation, where it may take half a day to get to and from work. There is no barrier separating this express lane from the others. However, a near-invisible closed surveillance system monitors every movement. If a vehicle without authorization shifts into the exclusive lane, it is instantly recorded by this surveillance system and a heavy fine is imposed on the driver, under threat of impoundment, while freeway police patrols are ubiquitous. Outside of the global green zones, warfare and police containment have become normalized and sanitized for those not directly at the receiving end of armed aggression. "Militainment" -- portraying and even glamorizing war and violence as entertaining spectacles through Hollywood films and television police shows, computer games and corporate "news" channels -- may be the epitome of sadistic capitalism. It desensitizes, bringing about complacency and indifference. In between the green zones and outright warfare are prison industrial complexes, immigrant and refugee repression and control systems, the criminalization of outcast communities and capitalist schooling. The omnipresent media and cultural apparatuses of the corporate economy, in particular, aim to colonize the mind -- to undermine the ability to think critically and outside the dominant worldview. A neofascist culture emerges through militarism, extreme masculinization, racism and racist mobilizations against scapegoats. 4) We are reaching limits to the extensive expansion of capitalism. Capitalism is like riding a bicycle: When you stop pedaling the bicycle, you fall over. If the capitalist system stops expanding outward, it enters crisis and faces collapse. In each earlier structural crisis, the system went through a new round of extensive expansion -- from waves of colonial conquest in earlier centuries, to the integration in the late 20th and early 21st centuries of the former socialist countries, China, India and other areas that had been marginally outside the system. There are no longer any new territories to integrate into world capitalism. Meanwhile, the privatization of education, health care, utilities, basic services and public land are turning those spaces in global society that were outside of capital's control into "spaces of capital." Even poverty has been turned into a commodity. What is there left to commodify? Where can the system now expand? With the limits to expansion comes a turn toward militarized accumulation -- making wars of endless destruction and reconstruction and expanding the militarization of social and political institutions so as to continue to generate new opportunities for accumulation in the face of stagnation. 5) There is the rise of a vast surplus population inhabiting a "planet of slums," alienated from the productive economy, thrown into the margins and subject to these sophisticated systems of social control and destruction. Global capitalism has no direct use for surplus humanity. But indirectly, it holds wages down everywhere and makes new systems of 21st century slavery possible. These systems include prison labor, the forced recruitment of miners at gunpoint by warlords contracted by global corporations to dig up valuable minerals in the Congo, sweatshops and exploited immigrant communities (including the rising tide of immigrant female caregivers for affluent populations). Furthermore, the global working class is experiencing accelerated "precariatization." The "new precariat" refers to the proletariat that faces capital under today’s unstable and precarious labor relations -- informalization, casualization, part-time, temp, immigrant and contract labor. As communities are uprooted everywhere, there is a rising reserve army of immigrant labor. The global working class is becoming divided into citizen and immigrant workers. The latter are particularly attractive to transnational capital, as the lack of citizenship rights makes them particularly vulnerable, and therefore, exploitable. The challenge for dominant groups is how to contain the real and potential rebellion of surplus humanity, the immigrant workforce and the precariat. How can they contain the explosive contradictions of this system? The 21st century megacities become the battlegrounds between mass resistance movements and the new systems of mass repression. Some populations in these cities (and also in abandoned countryside) are at risk of genocide, such as those in Gaza, zones in Somalia and Congo, and swaths of Iraq and Syria 6) There is a disjuncture between a globalizing economy and a nation-state-based system of political authority. Transnational state apparatuses are incipient and do not wield enough power and authority to organize and stabilize the system, much less to impose regulations on runaway transnational capital. In the wake of the 2008 financial collapse, for instance, the governments of the G-8 and G-20 were unable to impose transnational regulation on the global financial system, despite a series of emergency summits to discuss such regulation. Elites historically have attempted to resolve the problems of over-accumulation by state policies that can regulate the anarchy of the market. However, in recent decades, transnational capital has broken free from the constraints imposed by the nation-state. The more "enlightened" elite representatives of the transnational capitalist class are now clamoring for transnational mechanisms of regulation that would allow the global ruling class to reign in the anarchy of the system in the interests of saving global capitalism from itself and from radical challenges from below. At the same time, the division of the world into some 200 competing nation-states is not the most propitious of circumstances for the global working class. Victories in popular struggles from below in any one country or region can (and often do) become diverted and even undone by the structural power of transnational capital and the direct political and military domination that this structural power affords the dominant groups. In Greece, for instance, the leftist Syriza party came to power in 2015 on the heels of militant worker struggles and a mass uprising. But the party abandoned its radical program as a result of the enormous pressure exerted on it from the European Central Bank and private international creditors. The Systemic Critique of Global Capitalism A growing number of transnational elites themselves now recognize that any resolution to the global crisis must involve redistribution downward of income. However, in the viewpoint of those from below, a neo-Keynesian redistribution within the prevailing corporate power structure is not enough. What is required is a redistribution of power downward and transformation toward a system in which social need trumps private profit. A global rebellion against the transnational capitalist class has spread since the financial collapse of 2008. Wherever one looks, there is popular, grassroots and leftist struggle, and the rise of new cultures of resistance: the Arab Spring; the resurgence of leftist politics in Greece, Spain and elsewhere in Europe; the tenacious resistance of Mexican social movements following the Ayotzinapa massacre of 2014; the favela uprising in Brazil against the government's World Cup and Olympic expulsion policies; the student strikes in Chile; the remarkable surge in the Chinese workers’ movement; the shack dwellers and other poor people's campaigns in South Africa; Occupy Wall Street, the immigrant rights movement, Black Lives Matter, fast food workers' struggle and the mobilization around the Bernie Sanders presidential campaign in the United States. This global revolt is spread unevenly and faces many challenges. A number of these struggles, moreover, have suffered setbacks, such as the Greek working-class movement and, tragically, the Arab Spring. What type of a transformation is viable, and how do we achieve it? How we interpret the global crisis is itself a matter of vital importance as politics polarize worldwide between a neofascist and a popular response. The systemic critique of global capitalism must strive to influence, from this vantage point, the discourse and practice of movements for a more just distribution of wealth and power. Our survival may depend on it.

### 1NC — DA

#### FTC fraud prevention is funded now---unexpected demands trade off

Bilirakis et al. 21 (Gus Michael Bilirakis is an American lawyer and politician serving as the U.S. Representative for Florida's 12th congressional district since 2013; Hon. Noah Joshua Phillips is a Commissioner at the Federal Trade Commission; Hon. Lina Khan is the Chair of the Federal Trade Commission, “Transforming the FTC: Legislation to Modernize Consumer Protection,” *Committee on Energy and Commerce*, 6/28/21, <https://energycommerce.house.gov/committee-activity/hearings/hearing-on-transforming-the-ftc-legislation-to-modernize-consumer>)

Gus Bilirakis (3:12:44): Thank you. Our committee has worked extensively in a bipartisan manner to protect consumers from fraud and scams. Mr. Carter's Combating Pandemic Scams Act was enacted at the beginning of the year thanks to all of our leadership here. Representive Blunt Rochester's Fraud and Scam Reduction Act, as well as Representative Kelly's Protecting Seniors from Emergency Scams Act both cleared our chamber with bipartisan support this year. My bill, HR 2672, the FTC Reports Act, would require the FTC to report on fraud against our seniors. Commissioner Philips, how important is the work the FTC staff does to protect Americans from scams? Noah Josuha Phillips (3:13:33): Congressman, thank you for your question. The work we do to protect American consumers against frauds and scams, is our bread and butter as an agency. There is no work that makes me feel better as a commissioner, when we watch our ability to find bad guys, or taking money from American consumers, dipping into their life savings, and get that money back to them. So the work that you have done on the committee to provide funding, to provide tools for us to go after scam artists, is critical. And I think that needs to continue with the agency. Gus Bilirakis (3:14:05): Thank you, and Chair Khan, again, as you pursue other initiatives, when staff and resources be shifted away from the fraud program, which is so essential in preventing bad actors from harming our constituents? That's the question, please. Lina Khan (3:14:22): Sorry, could you repeat the question - when should services be shifted... Gus Bilirakis (3:14:26): Yes, of course. As you pursue other initiatives, when staff and resources be shifted away from your fraud program, which is so essential in preventing bad actors from harming our constituents? Lina Khan (3:14:40): Well, of course, we're always limited by the appropriations bills when it comes to thinking through how we're delegating resources across the agency. In certain instances, I think there are exigent needs that can arise in certain aspects. Gus Bilirakis (3:14:54): But you don't anticipate moving money from the fraud program, is that correct? Lina Khan (3:15:00): Not especially, but I mean, I think overall, we are trying to look through the prism of managerial efficiency and trying to understand how we can best use our resources, especially given some of the exigent circumstances and so we'll be continuing to make those determinations. Gus Bilirakis (3:15:15): I suggest that you not because this is such a very important program. Commissioner Wilson, can you elaborate on why the FTC Reports Act would also prove beneficial to increasing much needed transparency and the flow of information within the commission?

#### Unplanned expanded enforcement drains finite resources from existing priorities

Dafny 21, Professor of Business Administration at the Harvard Business School and the John F. Kennedy School of Government, and former Deputy Director for Healthcare and Antitrust in the Bureau of Economics at the Federal Trade Commission. Professor Dafny’s research focuses on competition in health care markets, and the intersection of industry and public policy. (Leemore, “The Covid-19 Pandemic Should Not Delay Actions to Prevent Anticompetitive Consolidation in US Health Care Markets,” *Pro Market*, <https://promarket.org/2021/06/10/covid-pandemic-consolidation-pandemic-monopoly/>)

However, as Commissioner Rebecca Slaughter, the current acting FTC chair has noted, these efforts have “faced resistance, with two of these recent victories only coming after district court setbacks.” Blocking a horizontal merger, even when it appears to be an “open and shut” case to a layperson, requires extraordinary resources, including large investigation and litigation teams, as well as economic and other subject matter experts who must analyze the transaction, lay out the case for blocking the merger, and rebut arguments advanced by Defendants’ attorneys and experts. To pick a recent example, consider the proposed merger of two hospital systems in the Memphis area, which the FTC filed to block in November 2020. Based on the FTC’s complaint, the merger would have reduced the number of competing systems from four to three and created a system with over a 50 percent market share. In the face of litigation, the parties abandoned the deal—consistent with this being a straightforward case. Although the FTC prevailed without a trial, it took nearly a year from the merger announcement to the abandonment. Over that period, the FTC likely devoted thousands of staff hours to the investigation and lawsuit and expended substantial taxpayer resources on expert witnesses. The higher the payoff from the merger for the merging parties—and the payoff in the case of an increase in market power can be substantial—the greater the incentive for defendants to invest extraordinary resources to fight a merger challenge. Even if there is only a middling (and in some cases, small) chance of getting a merger through, it may well be in the parties’ interest to see if they can prevail, absorbing the agencies’ (i.e., DOJ and FTC’s) scarce resources in that attempt and preventing them from devoting those resources to investigate other transactions or anticompetitive practices. The substantial resources required to challenge transactions, paired with stagnating enforcement budgets, may explain why authorities have elected not to challenge some horizontal transactions they would likely have challenged in previous eras. Using data on a wide range of industries, antitrust scholar John Kwoka documents that enforcers rarely raise concerns about changes in market structure that used to draw scrutiny—that is, mergers that yield five or more market participants.

#### Countering fraud is central to every element of terror operations

Perri 10, J.D., CFE, CPA(Frank, “The Fraud-Terror Link: Terrorists are Committing Fraud to Fund Their Activities,” Fraud Magazine, <https://www.fraud-magazine.com/article.aspx?id=4294967888>)

The threat of terrorism has become the principal security concern in the United States since 9/11. Some might perceive that fraud isn’t linked to terrorism because white-collar crime issues are more the province of organized crime, but that perception is misguided. Terrorists derive funding from a variety of criminal activities ranging in scale and sophistication – from low-level crime to organized narcotics smuggling and fraud. CFEs need to know the latest links between fraud and terror. Credit card fraud, wire fraud, mortgage fraud, charitable donation fraud, insurance fraud, identity theft, money laundering, immigration fraud, and tax evasion are just some of the types of fraud commonly used to fund terrorist cells. Such groups will also use shell companies to receive and distribute illicit funds. On the surface, these companies might engage in legitimate activities to establish a positive reputation in the business community. Financing is required not just to fund specific terrorist operations but to meet the broader organizational costs of developing and maintaining a terrorist organization and to create an enabling environment necessary to sustain their activities. The direct costs of mounting individual attacks have been relatively low considering the damage they can yield. “Part of the problem is that it takes so little to finance an operation,” said Gary LaFree, director of the University of Maryland’s National Consortium for the Study of Terrorism and Responses to Terrorism.2 For example, the 2005 London bombings cost about $15,600.3 The 2000 bombing of the USS Cole is estimated to have cost between $5,000 and $10,000.4 Al-Qaida’s entire 9/11 operation cost between $400,000 and $500,000, according to the final report of the National Commission on Terrorist Attacks Upon the United States.5 Terrorist groups require significant funds to create and maintain an infrastructure of organizational support, sustain an ideology of terrorism through propaganda, and finance the ostensibly legitimate activities needed to provide a veil of legitimacy for their shell companies.6 However, don’t think that only large operations are needed for terrorists to carry out attacks; small semi-autonomous cells in many countries are often just as capable of conducting disruptive activities without extensive outside financial help – they just conduct smaller-scale frauds.7 Even though the nexus between fraud and terrorism is undisputed, there’s concern at state and local levels that law enforcement professionals lack specialized knowledge on how to detect the fraud-terror link because they’re more apt to investigate and prosecute violent crimes.8 A critical lack of awareness about terrorists’ links to fraud schemes is undermining the fight against terrorism. Fraud analysis must be central, not peripheral, in understanding the patterns of terrorist behavior.9

#### Nuclear war---cash is key

Hayes 18, Executive Director of the Nautilus Institute for Security and Sustainability, Ph.D. in Energy and Resources from the University of California-Berkeley, Professor of International Relations at RMIT University (Dr. Peter J., “Non-State Terrorism and Inadvertent Nuclear War”, NAPSNet Special Reports, 1/18/2018, <https://nautilus.org/napsnet/napsnet-special-reports/non-state-terrorism-and-inadvertent-nuclear-war/>)

The critical issue is how a nuclear terrorist attack may “catalyze” inter-state nuclear war, especially the NC3 systems that inform and partly determine how leaders respond to nuclear threat. Current conditions in Northeast Asia suggest that multiple precursory conditions for nuclear terrorism already exist or exist in nascent form. In Japan, for example, low-level, individual, terroristic violence with nuclear materials, against nuclear facilities, is real. In all countries of the region, the risk of diversion of nuclear material is real, although the risk is likely higher due to volume and laxity of security in some countries of the region than in others. In all countries, the risk of an insider “sleeper” threat is real in security and nuclear agencies, and such insiders already operated in actual terrorist organizations. Insider corruption is also observable in nuclear fuel cycle agencies in all countries of the region. The threat of extortion to induce insider cooperation is also real in all countries. The possibility of a cult attempting to build and buy nuclear weapons is real and has already occurred in the region.[15] Cyber-terrorism against nuclear reactors is real and such attacks have already taken place in South Korea (although it remains difficult to attribute the source of the attacks with certainty). The stand-off ballistic and drone threat to nuclear weapons and fuel cycle facilities is real in the region, including from non-state actors, some of whom have already adopted and used such technology almost instantly from when it becomes accessible (for example, drones).[16]

Two other broad risk factors are also present in the region. The social and political conditions for extreme ethnic and xenophobic nationalism are emerging in China, Korea, Japan, and Russia. Although there has been no risk of attack on or loss of control over nuclear weapons since their removal from Japan in 1972 and from South Korea in 1991, this risk continues to exist in North Korea, China, and Russia, and to the extent that they are deployed on aircraft and ships of these and other nuclear weapons states (including submarines) deployed in the region’s high seas, also outside their territorial borders.

The most conducive circumstance for catalysis to occur due to a nuclear terrorist attack might involve the following nexi of timing and conditions:

1. Low-level, tactical, or random individual terrorist attacks for whatever reasons, even assassination of national leaders, up to and including dirty radiological bomb attacks, that overlap with inter-state crisis dynamics in ways that affect state decisions to threaten with or to use nuclear weapons. This might be undertaken by an opportunist nuclear terrorist entity in search of rapid and high political impact.
2. Attacks on major national or international events in each country to maximize terror and to de-legitimate national leaders and whole governments. In Japan, for example, more than ten heads of state and senior ministerial international meetings are held each year. For the strategic nuclear terrorist, patiently acquiring higher level nuclear threat capabilities for such attacks and then staging them to maximum effect could accrue strategic gains.
3. Attacks or threatened attacks, including deception and disguised attacks, will have maximum leverage when nuclear-armed states are near or on the brink of war or during a national crisis (such as Fukushima), when intelligence agencies, national leaders, facility operators, surveillance and policing agencies, and first responders are already maximally committed and over-extended.

At this point, we note an important caveat to the original concept of catalytic nuclear war as it might pertain to nuclear terrorist threats or attacks. Although an attack might be disguised so that it is attributed to a nuclear-armed state, or a ruse might be undertaken to threaten such attacks by deception, in reality a catalytic strike by a nuclear weapons state in conditions of mutual vulnerability to nuclear retaliation for such a strike from other nuclear armed states would be highly irrational.

Accordingly, the effect of nuclear terrorism involving a nuclear detonation or major radiological release may not of itself be *catalytic* of *nuclear* war—at least not intentionally–because it will not lead directly to the destruction of a targeted nuclear-armed state. Rather, it may be catalytic of non-nuclear war between states, especially if the non-state actor turns out to be aligned with or sponsored by a state (in many Japanese minds, the natural candidate for the perpetrator of such an attack is the pro-North Korean General Association of Korean Residents, often called Chosen Soren, which represents many of the otherwise stateless Koreans who were born and live in Japan) and a further sequence of coincident events is necessary to drive escalation to the point of nuclear first use by a state. Also, the catalyst—the non-state actor–is almost assured of discovery and destruction either during the attack itself (if it takes the form of a nuclear suicide attack then self-immolation is assured) or as a result of a search-and-destroy campaign from the targeted state (unless the targeted government is annihilated by the initial terrorist nuclear attack).

It follows that the effects of a non-state nuclear attack may be characterized better as a *trigger* effect, bringing about a *cascade* of nuclear use decisions within NC3 systems that shift each state increasingly away from nuclear non-use and increasingly towards nuclear use by releasing negative controls and enhancing positive controls in multiple action-reaction escalation spirals (depending on how many nuclear armed states are party to an inter-state conflict that is already underway at the time of the non-state nuclear attack); and/or by inducing concatenating nuclear attacks across geographically proximate nuclear weapons forces of states already caught in the crossfire of nuclear threat or attacks of their own making before a nuclear terrorist attack.[17]

### 1NC — PIK

#### The United States federal government should expand the scope of its core antitrust laws by substantially increasing prohibitions on export cartels that operate in international nations without protections for export cartels.

#### The affirmative plan linguistically affirms the “foreign” and “domestic” as ways of depicting the world—it is a terministic screen that imports the baggage of otherization

Hill 2 Cheryl Lynn Wofford Hill, 2002 Lawyer, JD Oklahoma City University Law School, Master of Divinity from Southern Methodist University ("Restating International Jurisprudence in Inclusive Terms: Language as Method in Creating a Hospitable Worldview," 27 Oklahoma City University Law Review 297)

Awareness of "Foreign" as Misplaced, Hostile Other and Outsider The terms "neighbor" and "foreigner" communicate different concepts. "Neighbor" communicates a dichotomy of other as opposed to self. In other words, this term creates the sense that a neighbor is one not in the same household or group as the speaker. The neighbor tends to be a welcomed insider in contrast to outsiders named with terms like "alien" or "foreigner." Although clearly a member of a different group, "neighbor" signals insider status because of linguistic connotations. On the other hand, the terms "foreign," "foreigner," or "alien" communicate otherness with stranger and outsider status. The phrase "neighboring nation" describes a less threatening concept than the phrase "foreign country." People have been culturally conditioned to fear unknown people residing outside familiar territorial boundaries. William Polk explains why he believes that fear of strangers is innate: Getting along with foreigners note , as the media constantly remind us [?], is the most dangerous problem of our [?] age. . . . [\*339] Fear of the foreigner note arises not just from a reading of his [?] pronouncements or an analysis of his [?] politics. It is not just conceptual or intellectual; it is visceral and inbred. Polk explains that the term "foreigner" is a word that has been equated with the term "enemy" in ancient, medieval, and modern societies. Polk suggests that fears of unknown neighbors "are a mixture of rational and irrational impulses so pervasive and deep-seated as to transcend individual experience or even historical memory." 143Link to the text of the note This fear, Polk asserts, is "directed not just toward identified enemies but toward all aliens note." 144Link to the text of the note Polk argues that since unknown neighbors cannot be eliminated, 145Link to the text of the note relationships with strangers should be improved. Many people use the term "foreign" without realizing its negative connotations. Developing an awareness of the negative impact of the term "foreign" to describe world neighbors will help to inspire more people to evaluate the effectiveness of language in international relationships. D. The Advantage of Naming Others as Friends Rather Than as Foes Christine Chinkin recognizes that the building of strategies for the development of greater world peace has not been given enough attention in international discourse. 146 One method of achieving greater peace among nations is through recognizing the advantage in naming others with words that communicate a sense of community rather than a sense of hostility. Words like "neighbors" and "friends" have more positive and peaceful connotations than words like "enemies, " "foreigners," "aliens," and "foes." William Polk expresses a desire to help "broaden the concept of foreign note affairs." 147 Since the word "foreign" has a historical use with roots in the United States Constitution and with its use pervasive in the language of law, even Polk, who recognizes the importance of getting along [\*340] with neighbors, uses the historical and masculine phrase "foreign affairs." This phrase, however, is composed of two words that have negative connotations; "foreign" can carry a connotation of the dangerous other, and "affair" can carry a connotation of inappropriate sexual relationships with an identified or secret other. The use of terms with positive connotations will foster greater respect and cooperation among nations. In a critique of United States relationships on the international level, Leon V. Sigal recognizes the importance of cooperation: The trouble with American foreign note policy since the end of the Cold War is that the United States has been unwilling to use military force, or so the prevailing orthodoxy goes. American influence abroad is said to have waned because its threats are no longer credible. Yet that orthodoxy ignores another source of foreign note policy failure--American unwillingness to cooperate with strangers. . . . . . . . Cooperation works. Sigal criticizes the United States' policies in dealing with neighboring nations, especially North Korea. Sigal recognizes that too often neighboring countries are treated as enemies rather than as friends, resulting in a reluctance of the United States to cooperate with other countries. A foreign note policy establishment that emphasizes military might to the detriment of other ends and means of American engagement in the world may feed isolationism. The establishment must be more willing to try cooperation. Cooperation means talking with strangers and listening to what they [?] have to say. It means making promises, not just threats. Cooperation is often thought of as the norm with allies, not foes. [\*341] When language patterns create an assumption that neighbors are friends rather than enemies, relationships among nations may change. Rather than the term "neighbor" indicating a proximate entity, it refers to nations as members of a global neighborhood. When language is used as a method in constructing more hospitable relationships within international law, a more egalitarian global society will begin to emerge. This is a vision inspired by feminist method. Such a vision has been generally advanced by Margarita Chant Papandreou: The feminist movement has a vision. We [?] understand, first of all, that we [?] have but one earth, shared by one humanity. This globe is home to all--all people, all life, all laughter, all love, all music, all art. We [?] will make it a woman's world, not in the sense of control, or power, or dominance, but in the sense of the revolutionary vision that we [?] have--a revolution of the human spirit. Those values that we [?] call women-centered values--caring and gentleness, equality, justice, dignity, compassion--will be diffused throughout society. . . .

#### Differentiating between that which is “foreign” and that which is “domestic” endorses a logic which leads to dehumanization and genocide

Jarmoszko 17 Stanisław Jarmoszko Prof. University of Natural Sciences and Humanities, Faculty of Humanities, ISSN (e): 2545-3335/ISSN (p): 2544-2082 The Voice of Security Awareness (VoSA) Vol. I, Issue I (1) (January-June 2017) www.awl.edu.pl 53 A FOREIGNER AS AN ENEMY ... AT OUR BORDERS AND ERECTED WALLS (anthropological reflections)

The breakdown into "ours" and "foreigners" results in accentuation, that is, highlighting differences between members of own group and members of "foreign" groups as well as the so-called ultimate attribution error (Diagram 1) consisting in attributing successes of " foreigners" to external factors (independent of them), and their failures to internal own ones, while in the case of "ours" we do the opposite [40]. Members of a given group recognize themselves as better than others and at the same time can be convinced that only they have all the necessary qualities that make them human, while the foreigners’ humanity is more flawed, closer to animal nature. Infrahumanizing " foreigners" can be a mechanism that prepares a fertile ground for their subsequent dehumanization, delegitimization, and in extreme cases annihilation and extermination. It is also an important mechanism for strengthening the group’s internal power [18]. The consequence of such mechanisms and actions is the dehumanization of newcomers, placing them in the category Homini sacri, which means people stripped of both religious and secular meaning and values. Dehumanization paves the way for the exclusion of these people from the circle of beings who have human rights, and leads to (tragic) shifting the migration problem from the sphere of ethics to the sphere of security, crime prevention, punishment, defense of order, etc. Even the prohibition of harming another human being is a common component of ethical or religious systems, "many ideologies postulate the need to exclude some groups of people from the normal validity of moral norms, which leads to dehumanization of victims. 'Heretics', 'infidels', 'subhumans', 'class enemies' - each of these labels meant hundreds of thousands or millions of victims murdered in accordance with a suitably cut scope of validity of moral norms" [46].

#### Counterplan solves

Hill 2 Cheryl Lynn Wofford Hill, 2002 Lawyer, JD Oklahoma City University Law School, Master of Divinity from Southern Methodist University ("Restating International Jurisprudence in Inclusive Terms: Language as Method in Creating a Hospitable Worldview," 27 Oklahoma City University Law Review 297)

The word-coining of new terms proposed here concerns the revision of terms that create insider and outsider groups. These groups are often unintentionally created through implicit inference or through explicit terms. Terms like "foreign," "foreigner," and "alien" create the implicit insider status of the speaker or author while creating an outsider status for the antecedent group. Insider groups may not be aware of the effect of such language, but outsider groups often experience this language as creating an environment that is more hostile than hospitable. Particular fields of legal study offer distinct possibilities for creating a hospitable worldview in international communications. International relationships will improve when international legal scholars build a strategy for reconstructing language to reflect hospitality in referring to people, entities, and property beyond national frontiers. In an effort to inspire the needed reconstruction, a model strategic plan follows. First, the strategy for word-coining begins with language in the place where lawyers' minds are shaped and trained: the law school. In choosing words for conversation, students have the opportunity to shape language patterns in the classroom. For example, when United States Constitutional Law classes are exploring the functions of the executive branch, a student with a hospitable worldview refers to "international policy" rather than to "foreign affairs" in classroom discussion. "Foreign Coin" is "national currency other than U.S. currency," or "the currency of other nations." In Immigration Law classes, "resident aliens" become "legal permanent residents," and "illegal aliens" are "undocumented visitors." University organizations that were once called "Foreign Student Associations" are now usually called "International Student Organizations." Students have the opportunity to introduce new phrases and expressions to professors and classmates and to communicate injury resulting from inhospitable terms. Law school professors have an opportunity to participate in hospitable word-coining within classroom conversation and discourse. Professors have [\*344] power to shape language patterns when preparing lectures and in preparing textbooks for study in the law school classroom. Hospitable phrases such as "international" rather than "foreign" will often keep the syntax and meaning of the original phrase undisturbed. On other occasions, "international" refers to a collection of nations, while "foreign" refers to a particular nation. When "international" will not suffice as a substitute, one solution is to name the country in place of the term "foreign": "French currency" or "Russian ruble" rather than "foreign coin," for example. In the Legal Research and Writing classroom, The Bluebook, 159Link to the text of the note a style manual for lawyers, shapes language styles. In a hospitable worldview, Bluebook Rule 19's title, "Foreign Materials" becomes "Materials in Languages Other than English." 160Link to the text of the note Rule 19.4(a)'s title, "Foreign Constitutions in English" becomes "Constitutions in English." The deletion of "Foreign" in no way affects the understanding of the rule, since Rule 11 requires U.S. federal and state constitutions to be cited by country or state. 161Link to the text of the note A person with a hospitable worldview would refer to Table 2, currently called "Foreign Jurisdictions" 162Link to the text of the note as "Jurisdictions Beyond the United States." Second, legal scholars are encouraged to use hospitable terminology in legal writing. In a hospitable worldview, exact terminology is appropriate to use when quoting titles and the language of other scholars which include exclusive terms such as "foreign." However, in rephrasing ideas, authors with hospitable worldviews will notice concepts that have traditionally been expressed in exclusive terms. 163Link to the text of the note Legal scholars with a hospitable worldview will craft hospitable phrases and will carefully avoid the use of normative pronouns and assumed nouns. Third, nationally recognized legal organizations have power to transform international relationships. Members of the American Bar [\*345] Association, the American Law Institute, the National Conference of Commissioners on Uniform State Laws, and other agencies are encouraged to become aware of exclusive language and draft future revisions of model codes, restatements, and other legal standards with more hospitable phrases. 164Link to the text of the note Fourth, individuals within law-making and adjudicatory positions have power to introduce hospitable language styles. Legislators are encouraged to rename acts of Congress that contain exclusive language. Attention to statutory language will result in the revision of statutes where this is possible. New statutes will be constructed with hospitable language. Judges can help to construct a hospitable world by using inclusive language in judicial opinions. Finally, governmental agencies and international organizations can amend language to reflect hospitality toward world neighbors. Referring to a community of nations will foster greater cooperation. "Foreign policy" can easily become "international policy."

## 1NC — Modelling

### 1NC — Turn — EU Alignment

#### We will concede the front level link to the advantage — other countries are modeling the EU now and the aff makes them shift to modelling the US by removing backlash against the US — we are straight turning this advantage —

#### ASEAN alignment with the EU is happening now and is key to being perceived as an honest broker, which is the only way to prevent US-China war

Bitas 3/16/22, former Associate Professor of Law at the Singapore Management University, where he taught Comparative Legal Systems, the Economic Analysis of Law, and Business Ethics and Social Responsibility. (Basil, 3/16/22, The EU answer to great power competition, <https://www.eastasiaforum.org/2022/03/16/the-eu-answer-to-great-power-competition/?utm_source=rss&utm_medium=rss&utm_campaign=the-eu-answer-to-great-power-competition>)

ASEAN has emerged as an astute regional player and potential beneficiary of great power development initiatives, with its interests aligning with the European Union on the creation of a stable, open and neutral space. Accordingly there is scope for ASEAN and the EU to pool their strengths in a constructive manner. The BRI and the US Indo-Pacific strategy are dual-use initiatives, encompassing both economic development and geostrategic dimensions. In a crowded Indo-Pacific theatre, how will Europe’s soft power earn it a seat at the table as an honest broker? The current great power infrastructure competition has been framed as one of disparate values and approaches. Section 1411 of the BUILD Act specifically aims to ‘provide countries a robust alternative to state-directed investments by authoritarian governments’. The text does not take account of ongoing Chinese efforts to promote greater transparency, financial viability and sustainability in the planning and execution of BRI projects. With the BRI, the BUILD Act and the Global Gateway in play, the current task is to harness their unique attributes to promote regional development while mitigating the underlying ideological frictions. To cement its position as a moderating force amid China–US rivalry, the European Union’s obvious partner is ASEAN, which is also seen in many quarters as an honest broker whose development goals dovetail with those of the EU. The two groupings also have complementary experiences and approaches to integration and security. The EU supra-national model has used law as the primary lever for promoting integration. ASEAN’s state-centric approach has focused on consensus to promote a more organic form of economic integration even as it displays increasing recourse to normative, rules-based instruments. The EU brings years of managing great power politics, participating in a balance of power that has promoted stability in Europe and opened the way to explosive economic growth. ASEAN brings essential local knowledge in managing disparate cultural dimensions and latent border disputes to promote a stable regional identity. Despite disparate perceptions of national interest among certain member states in response to escalating China–US competition, ASEAN continues to pursue its overriding organisational goals of regional ‘centrality’ and balanced economic development. The possibility of a type of ‘stability compact’ — building on the EU–ASEAN Strategic Partnership of 2020 — exists. Such an understanding would entail the pursuit of openness, development and modernity. But it must be supported by a meaningful financial contribution from the EU that goes beyond existing foreign direct investment and official development assistance commitments. The EU will have to assess whether its initial Global Gateway sum of US$343 million will be sufficient to transform noble aspirations into concrete realisation. The Global Gateway offers a framework for deploying resources in a focused manner, giving the EU a unitary development identity in the Indo-Pacific. The Global Gateway could become somewhat analogous to the BRI by providing a ‘branded’ umbrella for EU infrastructure projects in the region. Specifically, EU expertise in environmental and sustainability issues could form the basis of a ‘green’ partnership consistent with both regional development goals and the general aims of the European Fund for Sustainable Development. The melding of the EU’s external resources and ASEAN’s regional knowledge presents a salutary, cooperative paradigm to a region fraught with great power competition. European soft power hardened with financial resources and targeted expertise — and buttressed by an operational partnership with ASEAN — defines a forward-looking vision for managing regional development amid strategic competition.

#### BUT ASEAN modelling of the US would scare China — increased fear of US cultural influence in the region makes them perceive US encirclement

Henrick 22, Associate Research Fellow at the Regional Security Architecture Programme at the Institute of Defence and Strategic Studies (IDSS), (Tsjeng, originally published 11/5/21 but Updated 1/10/22, IP21013 | China’s Vision for Southeast Asia: The Struggle to Create a “Friendly Backyard”, https://www.rsis.edu.sg/rsis-publication/idss/ip21013-chinas-vision-for-southeast-asia-the-struggle-to-create-a-friendly-backyard/#.YjLkKnrMI2w)

Yet another key target of China’s vision is regional US military, economic and socio-cultural influence. The United States’ view of China’s vision as antithetical to the international order, and its suspicions that Beijing seeks to supplant its dominant role, have fuelled US actions to counter any increase in Chinese influence. As such, Chinese actions in Southeast Asia are also aimed at reducing US influence in the region, so that Southeast Asian states, or even ASEAN itself, will never be used by the United States or other hostile external powers to counter China’s regional influence. Most importantly, the number of multilateral partnerships which, from the point of view of Beijing are targeted against a rising China, is steadily growing. Frameworks like the Indo-Pacific concept and the Quadrilateral Security Dialogue (the Quad) have only heightened China’s fears of encirclement by hostile external powers. The most recent is the newly minted Australia-United Kingdom-United States (AUKUS) defence pact, which China has denounced. ASEAN’s Divided Response A key issue, however, is how ASEAN responds. ASEAN countries do not have a coherent, let alone unified, stance about how to address mounting Chinese influence in a comprehensive and strategic manner. ASEAN countries generally welcome Chinese economic ties, which have proven beneficial for their economic development. In particular, Laos and Cambodia, both recipients of large amounts of Chinese investment and financial aid, have progressively moved closer to Beijing as its influence on their economies has increased. However, not every ASEAN member state is fully on board with burgeoning Chinese influence in their respective countries. Other ASEAN countries, notably Vietnam, the Philippines and Malaysia, have territorial spats with China over the South China Sea, with incidents in disputed areas causing tensions to flare up. Additionally, China’s own reclamation of maritime features into military bases within its claimed waters in the “nine-dash line”, as well as its refusal to accept the rulings of the Permanent Court of Arbitration that declared its claims in the South China Sea invalid, have undermined China’s efforts to reassure Southeast Asian nations, particularly South China Sea claimants, of China’s peaceful intentions. ASEAN countries are also divided on how to deal with the wider China-United States rivalry. This is best encapsulated by the divergent responses of ASEAN countries towards AUKUS. While Malaysia and Indonesia have raised concerns about the dangers of an arms race, Singapore, Vietnam and the Philippines have been generally more accommodating of the agreement. China’s Strategy: Keep ASEAN Divided A divided ASEAN may not necessarily best serve Chinese interests, even if it is to ASEAN’s detriment. Certain ASEAN countries still prefer that the United States maintain its military presence in Southeast Asia, or seek to balance their relations between Washington and Beijing. This means, from Beijing’s perspective, that a part of Southeast Asia could potentially still be used by the United States to counter China’s regional influence. China’s vision of a “friendly backyard” free of US influence would simply be impossible in the short to medium term. A divided ASEAN, however, could help China by ensuring that ASEAN would never be able to form a cohesive bloc that acts against Beijing’s interests in the region. Rather than turning the whole of ASEAN into its “friendly backyard”, China has been ensuring that ASEAN remains divided, and sowing more divisions whenever it can. Beijing has done this by focusing on improving its relations with countries that are relatively more dependent on Chinese economic clout, while behaving assertively and even coercively whenever any state performs actions deemed to be detrimental to Chinese interests. The combination of both approaches is most evident in Malaysia, where Chinese economic largesse has resulted in Putrajaya being relatively more muted on the South China Sea issue except more recently, precisely due to assertive Chinese actions in Malaysia’s claimed exclusive economic zone off the coast of Sarawak and Sabah.

#### That triggers miscalculation

Wirth 14, a research fellow at Australia’s Griffith University Asia Institute,. (Christian interviewed by Anthony Fensom, Analyst: China’s Encirclement Could Spark War, <https://thediplomat.com/2014/10/analyst-chinas-encirclement-could-spark-war/>)

Containment as it happened during the Cold War was different to what we’re seeing now – there’s no real or de facto containment, but that doesn’t really matter. What matters is the Chinese view on the current security environment. When leading think tank experts tell you: “Look there’s fires all around us, what are we supposed to do?”, then, that is not a good sign. I think that’s the real danger – when you have the leadership of a country feeling encircled, isolated, that’s where rationality calculations change. You will see more assertiveness, aggressiveness even. Leaders will be prone to miscalculations because they can’t see the overall situation.

#### The EU model brings stability and unity to ASEAN because it is a model for cooperation across independent countries uniting — that’s something the US cannot offer

Velockava 15, Research intern at EU Centre in Singapore. (EU COMPETITION LAW: A ROADMAP FOR ASEAN?, <http://aei.pitt.edu/97414/1/WP25-EU-Competition-Law.pdf>)

While recognizing that the supranational EU model of competition regime may not be entirely suitable for ASEAN, the EU’s experience in trying to create a more level playing field through harmonizing regulations or mutual recognition could offer some template for ASEAN’s own experimentation with a competition regime that can serve the region well. Currently, there are four main weaknesses in competition law and policy within ASEAN: (i) lack of an appropriate institutional framework, (ii) lack of an enforcement mechanism, (iii) governments’ unwillingness to let state enterprises be subject to same competition law, and (iv) asymmetries between consumer lobbies and business power (Briguglio, 2012). It is worth analyzing them in more detail as they seem instrumental for a well functioning competition law and policy. Regarding institutions and enforcement mechanism, as have already been discussed above, nine AMS have developed overarching competition acts, but contrary to the EU, ASEAN does not have a highly skilled competition directorate and a well developed judicial framework. Briguglio (2012) argues that successful competition law and policy that strengthens the common market requires a strong institutional framework. While creation of an efficient centralized entity with the power of enforcement is highly improbable for the time being, AMSs could seek inspiration in the European Competition Network. The latter significantly facilitates the work of national competition authorities on cross-border issues while promoting a culture of information-sharing. This could serve as an inspiration for deepening cooperation among competition authorities of different AMS.[ASEAN Member States] Apropos of exclusion from compliance by government authorities and state enterprises, according to the Article 106-1 TFEU, government authorities and state enterprises in the EU are subject to the same legal provisions as private undertakings. The logic behind is that public undertakings may negatively affect competition and thus the same legal provisions apply to private and public undertakings. There are some exceptions, for instance if the state undertaking is providing a service of general economic interest,25 but the EC applies the case by case analysis in order to prevent abuses by public companies that may distort competition within the EU. However, according to Article 3.5.4 of the ASEAN Competition Guidelines, government authorities and state enterprises may not be considered as economic players to be constrained by competition law.26 This might contribute to the restriction of market access. Finally, Briguglio (2012) argues that ASEAN could learn from the EU that laws and regulations must be supported by strong advocacy and empowerment of civil society, which is not the case in all AMS, especially those with no or only recently created overarching competition act. Civil society is important as it can offer countervailing pressure to business interests. However, he observes that consumer groups tend not to be well organized in some AMS and the business milieu does not always incline towards competition culture because of vested interests, corruption, lack of transparency, or weak and nonindependent judicial system. The EU has promoted an ingrained competition culture and put in place strong enforcement arrangements to reduce possible business vested interest, such as leniency policy27 in the case of cartels. Within ASEAN, only two AMS (Singapore and Malaysia) have leniency provisions so far. Consequently, it is important to work on the advocacy and empowerment of civil society because as John Davies (Head, Competition Committee, OECD, Paris) highlighted: “The 2015 deadline brings some formal convergence but success in catching and deterring cartels depends on so much more than just having a law.”

#### That promotes countries uniting, while adopting the US model pushes division and competition, weakening and dividing countries around the world, including ASEAN

Fox 2K, Professor of Trade Regulation, New York University School of Law, (Eleanor, ANTITRUST AND REGULATORY FEDERALISM: RACES UP, DOWN, AND SIDEWAYS, NEW YORK UNIVERSITY LAW REVIEW Vol 75, https://www.nyulawreview.org/wp-content/uploads/2018/08/NYULawReview-75-6-Fox.pdf)

But let us flip the paradigm for, as indicated, in the world antitrust community there is no agreement on what is the top ("good" law) and what is the bottom. This Essay thus far has assumed that law designed to promote efficiency, that gives firms freedom to do that which will lower their own costs, is at the antitrust top. There is another conception. Take as an example the abuse-of-dominance law of the European Union4 ' and of the many countries of the world (most countries with antitrust law) that adopt the E.U. model. In these jurisdictions, dominant firms abuse their dominance if they unfairly exclude or exploit smaller firms. This Essay assumes that countries that choose the E.U. model do so because for them it is the top.42 From this perspective, U.S.-style antitrust law could trigger a race to the bottom, that is, pressure on the European Union and others to degrade their law so as not to disadvantage their own businesses in world competition. Here is a scenario, through the eyes of a hypothetical European who embraces European-style competition law: E.U. abuse of dominance law is good for society. It maintains the right economic, fairness, and governance values, which are good for Europe and good for the world. But given the globalization of markets, Europe cannot maintain this system unless the United States adopts it too. Otherwise European businesses will pay higher costs than do American firms, American firms will outcompete European firms, and investment will gravitate to American shores. Europe might be forced to downgrade its law to the American standard soulless, short-term aggregate efficiency based on assumptions of well-functioning markets. To the extent that Europe stands its ground, the competition it faces from lower-cost American firms is unfair competition. Perhaps this perspective is neither hypothetical nor entirely altruistic. The European Union has a policy to require hopeful E.U. members to adopt (to "approximate"), more or less, into their national legal systems, the major bodies of law of the European Community, prominently including competition law.43 The policy is designed to create common conditions of competition at high standards44 and equalize (i.e., raise outsiders') costs. Thus, the European Commission explains: Another reason for legislating at the Community level has been the need to create and maintain equal conditions for economic operators. Competition could be distorted if undertakings in one part of the Community had to bear much heavier costs than in another and there would be a risk of economic activity migrating to locations where costs were lower.... The implementation of high common standards of protection is among the Union's objectives and at the same time helps to ensure this "level playing field."'45

#### Independently, the US model causes a race to the bottom and destroys global economies

Fox 2K, Professor of Trade Regulation, New York University School of Law, (Eleanor, ANTITRUST AND REGULATORY FEDERALISM: RACES UP, DOWN, AND SIDEWAYS, NEW YORK UNIVERSITY LAW REVIEW Vol 75, https://www.nyulawreview.org/wp-content/uploads/2018/08/NYULawReview-75-6-Fox.pdf)

In the above version of "high standard" antitrust, this Essay assumed that deviation from a U.S. efficiency model is explained by nonefficiency goals, e.g., fairness in protecting smaller firms from abusive domination. But the United States does not have a monopoly on defining "efficiency." 47 Deviation from the U.S. model might be attributable to nations' different requirements or strategies for creating and maintaining efficient markets. For example, as Polish, Hungarian, Indonesian, and South African officials have said, their countries need to "grow" competition. They need to create hospitable environments for building systems of competition on the merits. They especially need hospitable environments for the entry and growth of small and medium-sized firms. In these nations, capital may be hard to get, capital markets may not function well, and the risk of an entrepreneur's failure or setback (e.g., by cronyism, renationalization, or new grants of special privilege) in connection with new or renewed entry is likely to be higher than it is in mature, stable market economies. Thus, the U.S. rules on laissez-faire price predation or market foreclosure may not be the efficient rules for non-U.S. countries48 In this context we may find a stronger claim that the U.S. model induces a race to the bottom. If the forces of globalization put pressure on countries to adopt austere U.S.-style antitrust law (a plaintiff virtually never wins a U.S. price predation case because low prices are competition and crushed competitors are not in themselves a concern), this pressure may force non-U.S. countries to accept the U.S. model in order to enhance their established firms' competitiveness and thus may undermine the ability of a developing or reindustrializing nation to create an efficient economy-especially an efficient economy that includes its citizens among the players.49

#### AND EU modelling is key to it’s soft power

Bradford 20, the Henry L. Moses Distinguished Professor of Law and International Organization at the Columbia Law School. (Anu, The Brussels Effect: How the European Union Rules the World, pp. 24 )

Finally, being able to set norms globally allows the EU to prove to its critics that it remains relevant as a global economic power. Embracing the role of a regulatory hegemon reinforces the EU’s identity and enhances the EU’s global standing even in the times of crises where its effectiveness and relevance are constantly being questioned. If the EU wants to exert influence, it must do so with the means available to it. Lacking traditional means of power, the EU’s greatest global influence is accomplished through the norms that it has the competence to promulgate. In the absence of military power or unconstrained economic power, the EU can exercise genuine unilateral power most effectively by fixing the standards of behavior for the rest of the world.80 In the world where the United States projects hard power through its military and engagement engagement in trade wars, and China economic power through its loans and investments, the EU exerts power through the most potent tool for global influence it has—regulation.

#### Extinction

Colom et al. 21, Prof. Jordi Bacaria Colom, Professor of Applied Economics, Autonomous University of Barcelona (UAB); Dr. Péter Balázs, Professor Emeritus of Central European University (CEU); Dr. Rosa Balfour, Director, Carnegie Europe; Dr. Emil Brix, Director of the Diplomatic Academy in Vienna; Jim Cloos, Secretary-General of TEPSA, former Deputy Director General for General and Institutional Policy at the General Secretariat of the Council of the European Union; Steven Erlanger, Chief Diplomatic Correspondent in Europe for The New York Times, “The Time for EU’s Common Foreign Policy is Now,” GLOBSEC, March 2021, <https://www.globsec.org/wp-content/uploads/2021/03/GLOBSEC-The-Time-for-EUs-Common-Foreign-Policy-is-Now.pdf>

The EU – and the world more generally - is currently facing numerous foreign policy challenges, some of them latent for a long time and many the consequence of actions or inactions of the past (e.g. climate change and the pandemic). Though not all problems will be easy to solve in the short-term, EU foreign policy officials should, nonetheless, focus on five priority areas in 2021 (not all may, however, be realistic given the timetable).

The first (realistic to achieve) concerns the need to recompose relations with the US on trade, climate change (Paris Agreement), NATO reform and the Iran agreement. Improving political dialogue with Russia should be a second aim (not realistic to achieve but it is necessary to retain it). Progress will largely depend on the US position. The EU, moreover, must establish its security agenda on the European stage. A third goal (realistic with cooperation with the US) rests on the EU asserting a strong and unified position towards China and enforcing rules and addressing competitive inequality with Beijing. If agreed, WTO reforms, fourthly, should serve to aid in resolving disputes and concentrate needed action on digital trade, technology and climate change. Finally (not very realistic in the short term), the EU should develop an assertive foreign policy to promote security and economic growth in the Mediterranean space and the Middle East. Turkey is an essential piece to this puzzle.

There are several internal and external challenges the EU will be tasked with facing to advance its foreign policy priorities in 2021. Regarding the former, they include: achieving unanimity among EU Member States on foreign policy objectives; triggering effective implementation of the Next Generation EU recovery instrument to improve the confidence of European citizens in EU public actions; fostering inclusive growth for social cohesion to prevent radicalism and political populism that erode democracy and social stability.

On external challenges, meanwhile, they encompass: protecting critical EU value chains; ensuring the safety of supplies of all raw materials that are produced abroad and essential to developing clean energy; avoiding absolute external dependencies on health and food products.

To overcome the challenges identified above, the EU should intensify its diplomacy and use second track diplomacy by conducting outreach to civil society organizations; promote investments in infrastructure and inclusive education in strategic regions; take a precautionary approach towards introducing economic sanctions in response to political situations in other countries as they may prove to be ineffective and counterproductive.

If the EU wants to bolster its strategic ambition in the world, it should, foremost:

⊲ Strengthen its alliances.

⊲ Prioritize multilateralism.

⊲ Pursue and complete the Transatlantic Trade and Investment Partnership (TTIP), enhance the North Atlantic alliance and balance the effects of Asian integration and the Regional Comprehensive Economic Partnership (RCEP).

⊲ Improve relations with Latin American countries through support for initiatives including on climate change, health and social cohesion.

⊲ Use trade as an instrument for bolstering relations with ASEAN countries, South Korea and Japan. The EU must be present in Asia as part of its moves to rebalance foreign policy.

⊲ The EU must speak to and support Africa. Land grabs and the exploitation of critical minerals, oil and natural resources are a current reality of global geopolitics. Through multilateralism, however, the EU must cooperate with other countries to devise rules to protect populations.

“EU foreign policy should not merely be a facsimile of member state foreign policy but be highly targeted towards select partners, actions and issues”

by Dr. Péter Balázs

Professor Emeritus of Central European University (CEU)

The normativity and continuity of EU foreign policy should be maintained at a time when two key pillars, Germany and France, face important upcoming elections (Bundestag in September 2021, French Presidency in 2022).

The most important change that 2021 will bring concerns President Joe Biden and the return of the US to transatlantic cooperation and multilateral deals and organisations. This is an opportunity for Europe to forge unity internally and intensify relations with the US and the G7 on important strategic questions.

The expansion of China in Europe should be curtailed - “17+1” meetings indeed represent an open intrusion into the internal affairs of the EU. The new US administration, in fact, achieved what the EU has not previously been able to accomplish, successfully persuading some member states from participating at the highest level of a 17+1 meeting with the Chinese President. Major projects of member states with China (e.g. the Budapest-Belgrade railway) should be suspended if they are contrary to or in competition with EU programmes.

On Russia, meanwhile, ‘sticks and carrots’ work. The West will, sooner or later, be faced with swallowing Moscow’s belligerent occupation of Crimea. Russia, nevertheless, should pay a particularly high price for its transgression focused towards, among other topics, promoting human rights and finding a solution to protracted conflicts. In a new détente, some Eastern Partnership projects could be extended to Russia as confidence building gestures (e.g. environmental protection, transport networks, the war on terrorism).

In the Western Balkans, more transparency is needed on future enlargements. EU member states should be provided a road map on the process and candidates should also be presented with clearer scenarios bound to gradual conditionality. Turkey, furthermore, should be provided enticements to encourage the country to cooperate more with the EU and NATO and pull the country away from Russia’s orbit.

EU foreign policy should not merely serve as a facsimile of member state level foreign policy. Rather than necessarily addressing the entire world, it should be highly targeted towards select partners including the most prominent countries and organizations (e.g. ASEAN) and the most pressing global problems (Covid-19, climate change, terrorism etc.).

The EU should, moreover, deploy foreign policy activities where member states are fervently convinced that common action will prove more successful than individual national efforts.

“The EU’s foreign policy priorities need to be grounded in a deeper understanding of global challenges”

by Dr. Rosa Balfour

Director, Carnegie Europe

The international context is so troubled that any list of foreign policy priorities would resemble the Christmas tree that Javier Solana, former EU High Representative for foreign policy, used to complain about. EU disunity has made its foreign policy an aggregation of disjointed national priorities. This process undergone little change over the past twenty years. The precariousness of Europe’s future, meanwhile, is apparently not impetus enough to galvanise European capitals to agree on a common agenda.

EU foreign policy priorities for 2021 thus need to be grounded in a deeper understanding of global challenges - how and with whom these can be addressed is the next step. The climate crisis and the technological revolution, in particular, are two developments that will critically shape the future. And they will play out amid three significant and interconnected challenges: the US-China rivalry, the state of democracy and the post-pandemic recovery.

The US-China rivalry, which is politically dividing the world, impinges on all policy areas. The EU’s ambivalence on this issue reflects divisions among member states and misconceived hopes that Europe can be a neutral or equidistant party. Secondly, the state of democracy in Europe and the EU’s inability to prevent its deterioration are a weakness vis-à-vis geopolitical rivalries. These democratic shortcomings reveal Europe’s vulnerabilities, which are, in turn, exploited by actors seeking to further undermine the EU’s global clout, its position in the multilateral system, and the security of its societies. Finally, steering the post-pandemic recovery on both health and the economy will absorb considerable time and energy from political leaders. But it is, nonetheless, crucial that its reach be international and not just focused on Europe.

The EU recovery plan identified the recipe: marrying green and digital to make the economy fit for the future. The EU priority should now be to craft its foreign relations around these goals by supporting other countries in this transformative effort. Doing so will require investing resources and expending diplomatic effort towards existing partnerships and alliances. This cooperation can contribute in reformulating institutional global governance to make it responsive to the emerging world, pushing back against detractors of democracy and making our societies more resilient. In the more pragmatic world of policy, this translates into five priorities for 2021.

⊲ Reboot the US relationship. The EU cannot reject Washington’s call to discuss the challenge posed by China. The EU need not entirely align itself with US views on China but it needs to prove itself trustworthy and reliable if it wants to be listened to in Washington. Rather than join a race to the bottom, European capitals can play a role in de-escalating tensions where possible. To be credible, this will, however, necessitate standing firm on principles.

⊲ Counter geopolitics through inclusive multilateralism and openness. The US return to multilateral institutions provides a once in a generation opportunity to reform multilateralism to make it more effective – designing/crafting global solutions to global problems - and more inclusive – involving multiple state and non-state actors from all corners of the world.

⊲ Invest in democracy at home and abroad by strengthening institutions and practices to counter authoritarianism and the democratic pitfalls of the technological revolution.

⊲ Support other countries and actors in addressing the post-pandemic recovery and greening their economies.

⊲ Address the multitude of foreign policy challenges on the EU’s doorstep including, among others, Libya, Turkey and Russia. Through the above lenses – working with partners, defusing geopolitical tensions, investing in diplomacy and bolstering the commitment to universal principles – Europe can succeed.

“A “constitutional moment” needed to bolster the EU’s international strategic ambitions”

by Dr. Emil Brix

Director of the Diplomatic Academy in Vienna

Why is EU foreign policy taking centre stage during ongoing discussions on the geopolitical position and role of the European Union (EU)? This is, in fact, a direct consequence of both real and perceived changes in unstable geopolitical power relations. The notion that the bloc needs to learn “the language of power” to defend its interests and those of its member states on the global stage has indeed become commonplace in the EU. Josep Borrell, High Representative/Vice-President for foreign affairs and security policy, in particular, has advocated for this type of approach in EU relations with third countries and in addressing global challenges (from migration to climate change to cyber threats).

The EU’s global strength and influence, however, are now in jeopardy amid the continued economic rise of China, the departure of the UK from the EU and growing confrontations with Russia. Despite these headwinds, wake-up calls agitating for greater “strategic autonomy” of the EU are not yet prevalent enough to create the necessary momentum for large-scale reform of governance. Without an EU “constitutional moment”, it is unlikely that foreign policy activities can decisively bolster international strategic ambitions. Further piecemeal engineering, therefore, remains the most realistic approach to foreign policy priorities in 2021. This would entail:

⊲ Using the window of opportunity of the renewed US commitment to multilateral institutions to develop common EU proposals for a more up-to-date and “effective multilateralism”.

⊲ Continuing to make headway on a comprehensive EU-China strategy.

⊲ Not relenting on the ambition to establish a common EU-migration policy.

⊲ Re-activating the accession process of the Western Balkans.

⊲ Bolstering all other EU policy areas in making better use of the major global strengths of the EU, including trade and the setting of standards, on a wider scale. This, in fact, ranks as the most ambitious and important priority.

“The EU as a global player: a must”

by Jim Cloos

Secretary-General of TEPSA, former Deputy Director General for General and Institutional Policy at the General Secretariat of the Council of the European Union

In a world where a more assertive China is rapidly rising, the United States is becoming less predictable, the UK is going its own path, neighbors like Russia and Turkey are difficult and at times hostile and Africa is struggling to find its way, the EU must raise its game and become a stronger global player. There are indeed important lessons to be drawn from the COVID-19 pandemic and other crises that have befallen the EU and the world over the past twelve years.

This changing context, as evidenced in the Strategic Agenda adopted in June 2019 and various conclusions adopted in recent years, is increasingly recognized by the European Heads of State and Government. The EU’s tone has, in fact, become more assertive and voluntarist, with the European Council more frequently holding strategic debates on important third country partners.

A global player must perceive itself as one and adopt a language and demeanor that reflect this stance. A global player, moreover, sees the world as it is, not as the one it would like it to be. The EU, rightly, prides itself on being a strong promoter of multilateralism and a defender of values. And it should certainly continue pressing these priorities. But if other players are choosing not to play that game, then the EU must adapt and give itself the means to defend its interests in a more hard-headed way.

A global player also develops its own strategic autonomy, conferring it the possibility to help shape the world, defend its interests and make its own choices as to its place in the world. The EU should, notably, not orient itself towards protectionism or autarky, which would be folly on the part of the largest trading bloc in the world and an actor deeply integrated in the world. It is also paramount that the concept be defined in a broad and comprehensive manner: this is not just about foreign policy and security but also trade, the internal market, the economy, the digital world, climate change and energy policy.

A strong global player, finally, clearly envisions its place on the global stage. There is a need for a new and more equal partnership with the US and a clear understanding of how the bloc fits into a US-China-EU triangle. The EU must also resolve its future relations with the UK, devise a more stringent policy towards Russia and Turkey that, nevertheless, keeps the door open for more constructive dialogue and reinvent its relationship with Africa.

A few general principles to follow if the EU is to become a global actor:

⊲ Strong European Council leadership.

⊲ A “Team Europe” of institutional leaders.

⊲ Closer link between EU and national policies and the effective use of all available resources.

⊲ Use of reinforced cooperation where necessary.

⊲ A fresh review of EU governance.

“More realism and less fantasy about what the EU is and can be globally”

by Steven Erlanger

Chief Diplomatic Correspondent in Europe for The New York Times

The priorities for EU foreign and security policy must begin with the EU itself. A necessary starting point, in particular, rests on bringing Germany, France, Italy and Poland on board on key issues. EU foreign policy is too often limited to the lowest common-denominator or is merely rhetorical. We should stop thinking overly hard about a common EU foreign policy, especially on key bilateral relationships like those with Washington, Moscow and Beijing. The High Representative should rather spend more time coordinating relations with these crucial countries than worrying about consensus at 27, which is nearly impossible to attain on pressing or important issues, not least in a timely fashion. It is worth remembering that EU statements tend to come after France and Germany have made their positions known (not speaking now about the UK, which also often issued its own statements).

Americans like to talk about “Europe” -- but what and where is this mystical unified “Europe”? It is largely derived from the power that comes from EU competences on trade. But it will never rule on foreign policy and qualified majority voting is unlikely in this area, too. Nor will there be any sort of European “army” given that commanders and political control would be necessary. Who would be commander-in-chief? What type of democratic mandate would such a person have? What about parliamentary mandates, as in Germany? And what large country would allow its troops to go into combat under some unelected European command?

## 1NC — Trade

### 1NC — AT: Trade Advantage

#### Their impacts are empirically denied — two acts they cite as the “death of free trade” are decades old

Jensen-Ericksen 13, University of Helsinki, The Department of Philosophy, History, Culture and Art Stu- Dies, (Niklas, A Potentially Crucial Advantage: Export Cartels as a Source of Power for Weak Nations Revue économique , Novembre 2013, Vol. 64, No. 6, ECONOMIC COOPERATION (Novembre 2013), pp. 1085-1104 https://www.jstor.org/stable/42772285

Since the end of the Second World War, most industrialised countries have introduced laws that ban cartels and similar restrictive practices or at least li- mit drastically their activities. Export cartels, alliances of producers from one country, which aim to limit competition and promote co-operation between them in foreign markets, have mostly been exempted from the scope of tough com- petition laws. The United States, which created the first tough, anti-cartel (or anti-trust) law, was also the first country that explicitly argued that its companies could form alliances to promote their activities in foreign markets. The famous Webb-Pomerene Act of 1918 gave blanket antitrust immunity to companies that formed joint export associations, as long as their activities did not cover the do- mestic market. Although attitudes towards other restrictive practices hardened during the second half of the 20th century, the US Congress passed the Export Trading Company Act in 1982, which made it even easier for the companies to form export alliances.19 As the other industrialized countries began to introduce their own competition laws after the Second World War, they usually tended to follow the US exam- ple. Some governments explicitly decreed that companies could form export associations as long as they did not harm domestic consumers, while others gave implicit permission by stating that their competition laws applied only to activi- ties in their domestic markets.20 The European Economic Community (EEC, the predecessor of the current European Union) banned cartels that distorted trade between member countries or within the community, but not those that affected exclusively EEC's export trade.21

#### Their link evidence is from 2015 and 2019 — that empirically denies their impacts because it is predicting the end of free trade from exemptions THEN

#### COVID puts them in a double bind — either it has irreparably thumped free trade, and disproves the impact

Kampf 20, senior PhD fellow at the Center for Strategic Studies at The Fletcher School. (David, 6/16/20, “How COVID-19 Could Increase the Risk of War”, *World Politics Review*, https://www.worldpoliticsreview.com/articles/28843/how-covid-19-could-increase-the-risk-of-war)

The coronavirus pandemic immediately elicited further calls to reduce dependence on other countries, with Trump using the opportunity to pressure U.S. companies to reconfigure their supply chains away from China. For its part, China made sure that it had the homemade supplies it needed to fight the virus before exporting extras, while countries like France and Germany barred the export of face masks, even to friendly nations. And widening economic inequalities, a consequence of the pandemic, are not likely to enhance support for free trade.

This assault on open trade and globalization is just one aspect of a decaying liberal international order, which, its proponents argue, has largely helped to preserve peace between nations since World War II. But that old order is almost gone, and in all likelihood isn’t coming back. The U.N. Security Council appears increasingly fragmented and dysfunctional. Even before Trump, the world’s most powerful country ratified fewer treaties per year under the Obama administration than at any time since 1945.

Trump’s presidency only harms multilateral cooperation further. He has backed out of the Paris Agreement on climate change, reneged on the Iran nuclear deal, picked fights with allies, questioned the value of NATO and defunded the World Health Organization in the middle of a global health crisis. Hyper-nationalism, rather than international collaboration, was the default response to the coronavirus outbreak in the U.S. and many other countries around the world.

#### OR it proves trade can rebound from any hit, meaning there is zero risk of an impact

#### No hypocrisy link—Extraterritorial antitrust enforcement is very narrow and rarely used

Buretta 22, Attorney with Cravath, Swaine & Moore LLP, (John, with John Terzaken, The Cartels and Leniency Review: USA, https://thelawreviews.co.uk/title/the-cartels-and-leniency-review/usa)

Foreign Trade Antitrust Improvements Act (1982) The FTAIA limits the extraterritorial reach of the antitrust laws by excluding from antitrust review all foreign conduct except that involving import commerce, or conduct having a 'direct, substantial, and reasonably foreseeable' effect on US commerce. The FTAIA was once commonly assumed to impose limits on the subject-matter jurisdiction of the US courts to consider claims involving non-US commerce,29 but more recent cases have revisited this view,30 and courts now treat the FTAIA as creating a substantive requirement for stating a claim on the merits under the Sherman Act.31 Courts reason that the FTAIA serves to clarify the text of the Act, which reaches trade 'among the several States, or with foreign nations'.32 This has important consequences in the criminal context. As a substantive element of the offence, the government must adequately allege that the foreign conduct involves either import commerce or a 'direct, substantial, and reasonably foreseeable' effect on US commerce when bringing an indictment.33 Outside the pleading context, courts must also take a plaintiff's or government's allegations as true for the purposes of deciding a motion to dismiss, and the plaintiff or government will have to prove the FTAIA's requirements at trial to the finder of fact. Foreign Sovereign Immunities Act (1976) Under US law, foreign sovereigns and their 'instrumentalities' (which importantly may include companies owned or controlled by the state) are presumptively immune from the jurisdiction of US federal and state courts. The Foreign Sovereign Immunities Act (FSIA)34 is the sole basis through which US courts can obtain jurisdiction over these entities. A defendant seeking to establish FSIA immunity bears the initial burden of demonstrating that it qualifies as a foreign sovereign, after which the burden shifts to the plaintiff to prove that an exception applies. For antitrust purposes, the most important FSIA exception applies to commercial activity.35 Immunity does not extend to suits based on commercial activity having a sufficient tie to US commerce. Commercial activity is 'either a regular course of commercial conduct or a particular commercial transaction or act', the character of which is determined 'by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose'.36 The question is not one of motive but of whether the actions in question are akin to those undertaken by a private party engaged in trade or commerce. The act of state doctrine In some foreign jurisdictions, companies may still be subject to regulatory requirements that put them at risk of violating US law. The act of state doctrine dictates that the US courts must decline jurisdiction over a case when to decide that case might entail the court's refusal to give effect to the official act of a foreign sovereign. Despite its name, the act of state doctrine may be invoked by both state and non-state actors. The pivotal issue is that the US court must confront the validity of the official act of a foreign sovereign to adjudicate the case.37 The act of state doctrine is based on concerns about judicial branch interference with foreign policy, which is the domain of the executive and legislative branches. Thus, while the FSIA is principally concerned with protecting the dignity of foreign sovereigns, the closely related act of state doctrine is founded upon US constitutional principles of separation of powers.38 Foreign sovereign compulsion Foreign sovereign compulsion is a narrow doctrine that is invoked only when a defendant can demonstrate that it was actually compelled by a foreign sovereign to violate US law, such that there was no way that it could possibly have complied with the law of both jurisdictions.39 What constitutes compulsion is likely to be a fact-specific inquiry, but compulsion is probably demonstrated when the defendant can show that its failure to comply with the directive of the foreign sovereign would have resulted in penal or other severe sanctions. In two cases based on roughly analogous facts,40 the district court in In re Vitamin C Antitrust Litigation found that the Chinese company arguing that it had been compelled to follow export regimes created by the Chinese Ministry of Commerce could not demonstrate compulsion when it appeared to have engaged in 'consensual cartelization'.41 However, in In re Vitamin C, the Second Circuit overturned this conclusion, on comity grounds.42 The Second Circuit gave great weight to a formal proffer by the Chinese government that its laws compelled the challenge of coordination. However, the Supreme Court vacated and remanded the Second Circuit decision, holding that, while domestic courts should give respectful consideration to a foreign government's submission, judges are not 'bound to accord conclusive effect to the foreign government's statements'.43 Comity International comity is a flexible, somewhat fluid doctrine under which the federal courts sometimes abstain from exercising jurisdiction over a legal matter where to do so might impinge upon the laws or interests of another nation. Comity therefore overlaps with the act of state and foreign sovereign compulsion doctrines in its concern with the extraterritorial effects of US judicial action, but, because it is more flexible, it is perhaps more potent in antitrust as an informal recognition of the need for cooperation in dealing with conduct that has transnational effects than as a formal limitation on the jurisdiction of the US courts over cases having an extraterritorial dimension. The Second Circuit's decision in In re Vitamin C and the Supreme Court's subsequent remand offer a rare illustration of an application of comity principles and underscore the value of a direct appearance of a foreign sovereign.44

### 1NC — Turn — Antidumping

#### 1AC Papa concedes a major solvency deficit and turn — lobbyists will push for protectionist policies, and Europe proves that when export cartels empirically lose their antitrust exemption, they shift to antidumping law

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Populist protectionist rhetoric is increasingly being heard around the globe. The US President, Donald J Trump, blames globalization for the loss of jobs and rising economic insecurity in the US.21 It was no surprise that in January 2017, the US issued a formal notice formally withdrawing from the Trans-Pacific Partnership discussions.22 In March 2017, his administration released a Trade Policy Agenda premised on the American people’s supposed frustration with the old trade policies of the US government, and their failure to see clear benefits from international trade agreements. The Agenda espoused a new approach of expanding trade ‘in a way that is freer and fairer for all Americans’,23 which includes the use of ‘all possible sources of leverage to encourage other countries to open their markets to U.S. exports of goods and services’, negotiating better trade deals, such as the North American Free Trade Agreement (NAFTA), and withdrawing from the same if such renegotiations were unsuccessful.24 In the US–China Summit held in April 2017, then US Secretary of State Rex Tillerson emphasized that the ‘chief goal of [US] trade policies is the prosperity of the American worker. To that end, [the US] will pursue economic engagement with China that prioritizes the economic well-being of the American people’.25 Populist protectionism has likewise been blamed for the UK’s withdrawal from the EU.26 Consequently, the UK’s 2018 trade policy indicated ‘widespread concern about the benefits of free trade and how evenly these are spread across the whole of the UK’.27 The World Bank warned that even isolated protectionist policies by large economies could be met with retaliatory responses and result in ‘wide-ranging negative effects’ for the rest of the world.28 Bouët and Laborde expressed the same concern about the global tariff wars that will arise from protectionist measures, predicting prejudice to all countries and to the world economy in general.29 Despite the general agreement about the damage caused by trade restrictions, the pressure for more ‘protectionist’ policies persists. Fouda explains: Those who gain from ‘protectionist’ laws are special-interest groups, such as some big corporations, unions, and farmers’ groups … all of whom would like to get away with charging higher prices and getting higher wages than they could expect in a free marketplace. These special interests have the money and political clout for influencing politicians to pass laws favorable to them. Politicians in turn play on the fears of uninformed voters to rally support for these laws.30 Cartelists also may be the ones pushing for or benefiting from the populist protectionist measures. Messerlin, for example, studied the interaction between anti-dumping measures and the formation of cartels in the polyvinyl chloride (PVC) and low-density polyethylene (LdPE) industries of the European Community in the early 1980s.31 Evidence from the cartel investigations revealed that sometime in the middle of 1980, major firms producing LdPE and PVC in Western Europe (Western Europe producers) formed a cartel which agreed on market sharing and price practices in the European Community. These firms were facing competition from chemical products coming from Czechoslovakia, East Germany, Hungary and Romania (EEP). In an attempt to address the competition, the Western Europe producers asked the European Commission for an exemption from competition rules on the basis of a crisis cartel,32 arguing that there was an overcapacity of LdPE production in Western Europe. When this effort failed, the Western Europe producers turned to anti-dumping actions against the EEP.33 Messerlin found that the anti-dumping actions were a way to enforce the cartel strategy and give members oxygen to survive. Following the imposition of anti-dumping measures, imports from EEP declined while prices of the products rose. Messerlin concluded that the relief from foreign competition that anti-dumping laws provided helped entrench the Western Europe cartel. The firms involved in the Western Europe cartel ‘obtained large net benefits from anti-dumping measures’, outweighing the heavy fines imposed by the anti-cartel office.34 The latter example is of fundamental importance in understanding the link between trade and competition policies and in showing how these policies need to be coordinated.35 Indeed, that was the basis for the formation of the former WTO Working Group on Trade and Competition in 1996 after the WTO Singapore Ministerial Conference, which was disactivated by July 2004.36 One of the obstacles that the Competition Policy faced at the WTO negotiations was precisely that the WTO Dispute Settlement Understanding was made to be triggered by member states (governments) and not private actors. In the case study provided by Messerlin above, the Western Europe producers hijacked the procedure for anti-dumping duties that was intended to be available to governments. In addition, a WTO platform could not be an appropriate forum for an international competition law regime because of the inherent conflict between national competition legislation and international trade principles.37 This is the case for export cartels being a national trade measure exercised nationally, which could be lawful under WTO rules but in the end may facilitate collusion or any other anticompetitive behaviour in the markets.38

#### Shifting to anti-dumping means they consistently win cases with the ITC

Cho 9, IIT Chicago-Kent College of Law. (Sungjoon, Anticompetitive Trade Remedies: How Antidumping Measures Obstruct Market Competition, 87 N.C. L. Rev. 357 (2009). https://scholarship.kentlaw.iit.edu/fac\_schol/734)

In sum, an antidumping regime is a legalistic reincarnation of protectionism. It stigmatizes otherwise legitimate business practices under the label of "unfair trade," and, based on such label, it imposes penalties resembling the remedies available for the torts of deceptive conduct or patent violations.127 Fair trade rhetoric serves as a facade of legitimacy, which conceals the protectionist nature of antidumping duties.'28 Once a group of domestic producers feel threatened by cheap foreign imports, they accuse foreign producers of dumping, and the ITC, in approximately eighty percent of all cases, issues an affirmative preliminary ruling that dumped imports have caused or threaten to cause injury to the petitioner.129

#### That turns the aff — the shift to antidumping is a net worse form of protectionism

Nagaoka 2k, Professor of economics at Tokyo Keizai University, (Sadao, International Trade Aspects of Competition Policy, https://www.nber.org/system/files/chapters/c8477/c8477.pdf)

It is important to note that the abolition of export cartels does not necessarily improve welfare, given the presence of contingent protection, to the extent that such cartels are used to prevent the use of contingent protection. In particular, antidumping measures can result in stronger restriction of trade since the duties ordered are often prohibitively high. As shown by a recent U.S. International Trade Commission report (1995), antidumping measures often result in very large reductions in exports or in their complete abolition, so that the trade-restraining effect of such measures can be much larger than the monopolistic reduction of exports.’O Thus reform of antidumping measures is necessary to ensure that the international restriction of export cartels leads to welfare gains.

### 1NC — AT: Impact

#### Trade doesn’t solve war.

White 13, Emeritus Professor of Strategic Studies at the Strategic and Defence Studies Centre of the Australian National University. (Hugh, “China: Power and Ambition,” *The China Choice: Why We Should Share Power*, pg. 51-53, Oxford University Press)

Certainly, the more countries trade and invest with one another, the greater the economic cost of conflict and the stronger the incentive to keep the peace. America and China today are more interdependent economically than any two comparably powerful states have ever been before, and this will certainly restrain ambition and rivalry on both sides. The question is whether the restraints will prove stronger than the pressures going the other way. If interdependence does trump strategic and political ambition, we should be seeing it happening between the United States and China now – but we have not seen much evidence of that yet. So far the two countries seem to be acting very much as strong states in the past have acted as relative power shifts from one to the other. Pessimists like John Mearsheimer and Niall Ferguson remind us that before war broke out in 1914, the great powers of Europe had grown more economically interdependent than they had ever been before, and than they would be again for almost a century.12

The lesson to draw is that interdependence increases the incentive for leaders to subordinate political ambitions and ignore nationalist sentiments, but it does not remove the need for them to take these bold and [politically] politicaly risky steps. The hard choices still have to be made. It is easy for leaders to see that economic interests require them to compromise their countries’ aspirations for international status and power, but it is harder for them to acknowledge that to their people, and harder still to put their economic interests ahead of strategic and political ones when a choice has to be made. In fact, most often people see it as shameful to put economic concerns first when issues of power and status are engaged. What president would tell the American people that their country will compromise its position on an issue like Taiwan in order to protect America’s economic interests? What Chinese leader could make the same argument to the Chinese people? When a choice has to be made, especially when it has to be made in the glare of an international crisis, it is very hard to put economics first.

In some ways the obvious importance of economic interdependence increases rather than limits the risk that rivalry will escalate, because of the way it can affect one country’s view of the other’s priorities. There seems to be a pattern here: each side believes that the imperatives of interdependence will press more heavily on the other. That inclines both governments to assume that the other will compromise to protect the economic relationship, so they do not have to do so. In Washington they expect China to back down from its challenge to America once Beijing understands the economic risks of rivalry. In Beijing they think America will blink. That makes both of them less inclined to compromise their own position – which makes escalation more likely.

Ultimately, faith in the power of interdependence boils down to faith in the power of money to trump other emotions and motivations. That is a risky proposition. We cannot assume that Chinese leaders will always choose rationally to maximise China’s objective benefits. They are no less liable than the leaders of any other country to allow what may be, or may seem to us to be, irrational desires for status and influence to trump the rational calculations of national interest.

Economics is important, but money isn’t everything. Countries, like people, want to be rich, but they also want to be safe and to feel good about themselves. For countries, as for individuals, aspirations for security and identity often compete with material interests, and often win. America’s and China’s divergent visions touch on very deep issues of national identity in both countries, which can easily seem to outweigh economic imperatives when the crunch comes. And there is always something a little strange about the assumption, implicit in the interdependence argument, that our economic desires will suppress the urge to strategic and political competition when our desire to avoid the horrors of war will not.

## 1NC — Resources

### 1NC — AT: Minerals Advantage

#### Their internal link makes zero sense — there is no link to export cartels in the US and mineral control in other countries — the plan doesn’t increase enforcement against international cartels —

#### Preston takes out solvency — the non-highlighted portions says the major problem is not cartels but a host of other problems the aff can’t solve AND says the EU is key — KU reads yellow

1AC Preston 14 - (\*Jaakko Kooroshy \*\*Felix Preston and \*\*\*Siân Bradley \*Head of Data & Methodologies & Sustainable Investing @ FTSE Russell, Research Fellow @ Chatham House, Executive Director @ Goldman Sachs \*\*senior research fellow and deputy research director in the Energy, Environment and Resources Department @ Chatham House \*\*\*Senior Research Fellow in the Energy, Environment and Resources Department @ Chatham House; December 2014, Chatham House, The Royal Institute for International Affairs, " Cartels and Competition in Minerals Markets: Challenges for Global Governance," doa: 6-9-2021) url: https://www.chathamhouse.org/sites/default/files/field/field\_document/20141219CartelsCompetitionMineralsMarketsKooroshyPrestonBradleyFinal.pdf

Maintaining open, orderly and well-functioning global metals and minerals markets remains a major challenge for global resource governance. Despite the demise of formal collusive arrangements, the threat of attempts by producer governments and companies to increase prices, restrict supplies or carve up markets remains real. State-backed private cartels that restrict supplies in potash markets, the questionable warehousing practices on the LME that affect the price of aluminium, and the 2014 price spike in nickel caused by contentious Indonesian export restrictions are three recent examples.

With complex global supply chains and blurred boundaries between physical and financial markets, the threat has shifted from producer-country cartels to much more subtle, yet potentially equally damaging practices. Opaque pricing mechanisms and weakly governed market platforms are vulnerable to manipulation by powerful market participants, including trading houses, major producers and financial institutions. The ongoing debates and litigation around the manipulation of pricing mechanisms for precious metals demonstrate this point.

Combating such practices is an urgent task for policy-makers, not only to avert the substantial adverse economic impacts of these distortions, but also to prevent the international tensions to which they can give rise. The effects of market distortions and disruptions for metals and minerals are publicly much less visible than those for other key resources such as fossil fuels or agricultural products. But the limited evidence that is available points to billions of dollars in damages to consuming industries, which eventually are passed down supply chains. In many cases market distortions can also contribute to bilateral tensions or trigger acrimonious trade disputes.

While the different types of anti-competitive practices have similar impacts – higher prices for consumers, supply constraints or market inefficiencies – successful policy responses require a case-bycase approach that takes key actors and specific political economy dynamics into account. The options for responding to export restrictions imposed by sovereign states, for example, look very different from those designed to improve regulation of transnational trading platforms.

In all cases, however, interconnected markets mean that collaboration across borders is key to improve regulation and address distortions. At present mineral markets receive limited attention from many governments, and where governments engage they are often pursuing a narrow national agenda. For example, anti-trust enforcement in metals markets remains piecemeal, and anti-competitive market structures are often only assessed when regulators are required to approve major mergers or acquisitions.

Working together, there are significant opportunities for large consuming countries to exert joint leverage in global markets and international institutions to catalyse reform in key areas. Costs and inefficiencies resulting from anti-competitive practices ultimately affect companies and consumers in all countries, but it is the major mineral importers, such as the EU and China, which are worst affected. Enhanced cooperation among these actors would, however, require looking beyond existing raw materials-related trade tensions, particularly around steel and speciality metals such as rare earths.

#### Their IEA evidence says the problem is governments not having clear plans — that’s the “acting now and together” solvency assumes

#### The turns on the other advantages turn this one — a shift to antidumping makes their impacts inevitable and the EU is better suited to solve

# 2NC

## Plan Flaw

#### Assume the worst, any vagueness guts compliance

OECD 6, The OECD Competition Committee debated remedies in abuse of dominance cases in June 2006. This document includes an executive summary and the documents from the meeting: an analytical note by Mr. Jeremy West of the OECD, written submissions from Canada, the Czech Republic, the European Commission, France, Germany, Indonesia, Japan, Korea, Norway, Romania, Spain, Chinese Taipei, Turkey, Switzerland, the United Kingdom, and the United States, as well as a paper from BIAC. An aide-memoire of the discussion is also included. (*Remedies and Sanctions in Abuse of Dominance Cases*, https://www.oecd.org/competition/abuse/38623413.pdf)

All prohibitory and mandatory remedy provisions must be clear enough so that the dominant firm, its rivals, and the administering agency all know whether particular conduct complies with the provisions.12 Provisions merely reciting general statutory language are pointless,13 and vague provisions are unlikely to induce effective compliance without extensive further proceedings.

#### Monopolists would eat the plan alive!

Teachout 21, associate professor of law at Fordham Law School. She is the author of Break ’Em Up: Recovering Our Freedom From Big Ag, Big Tech, and Big Money. (Zephyr, “Why Judges Let Monopolists Off the Hook,” *The Atlantic*, <https://www.theatlantic.com/ideas/archive/2021/10/antitrust-facebook-congress-sherman-act/620539/>)

A basic principle of the rule of law is that laws should be clear, well publicized, stable, and fair, which means we typically do not ask judges to make consequentialist decisions about whether a particular action is “worth it”; we ask them to enforce the decided-upon rules. Imagine if criminal prosecutors had to prove that an embezzler’s victim had a more economically valuable use for the money than the embezzler, or if the defense team in a bribery case could prove that the bribe increased economic efficiency. Imagine if judges not only had to decide whether a restaurant violated health codes, but also had to evaluate reports from economic consultants claiming that the violation actually increased the safety of the restaurant.

Judges are poorly equipped to make those decisions and tend to defer to economists, and any would-be monopolist can typically find at least one analyst who can justify its behavior as pro-competitive. Even though Congress never voted to subject antitrust cases to today’s prevailing standard—which reflects an economic ideology that treats economies as self-healing—judges have mostly stopped blocking mergers or punishing abuses. The more complex and drawn-out the fight, the greater the advantage to monopolists who can afford to spend a lot more than the government. And as big companies get bigger, the even-bigger companies engage in ever more outrageous behavior.

#### Given ambiguities, the court will defer to the accused

Decker 2, Professor of Law @ Depaul (John, “Addressing Vagueness, Ambiguity, and Other Uncertainty in American Criminal Laws,” *80 Denv. U. L. Rev. 241*, Lexis)

Less confusing is another concern that can plague criminal legislation, namely, ambiguity. A relative of vagueness, ambiguity appears where otherwise understandable legislation lends itself to two or more equally plausible interpretations. When faced with ambiguity, the reviewing court will usually (although not necessarily) plug in a doctrine that gives the accused the advantage. In other words, whatever interpretation is most beneficial to the accused is the one that wins out. Having said that, however, does not mean that identifying an uncertainty in legislation as an ambiguity, as opposed to a problem of vagueness, is necessarily a simple task. For example, at what point is it permissible to conclude the legislation contains sufficient specificity that it can be described as ambiguous rather than vague? Or, at what point can there be agreement that the law in question lends itself to two equally possible interpretations?

#### Turns the cartelization advantage --- states would RAMP UP their state-led protection FOR export cartels to avoid litigation. This causes rampant cartelization. This isn’t just hypothetical, it’s China’s stated legal response.

Baruzzi, 21 is an Editorial Research Assistant with Dezan Shira & Associates, an AmCham China Corporate Partner Program member. (Sofia Baruzzi “China Promulgates New Extraterritorial Jurisdiction Measures” accessed online 9/17/2021 <https://www.china-briefing.com/news/china-promulgates-new-extraterritorial-jurisdiction-measures/>)

On January 9, 2021, the Ministry of Commerce (“MOFCOM”) released the Measures for Blocking Improper Extraterritorial Application of Foreign Laws and Measures (“Measures”), with immediate effect. The Measures state that Chinese citizens, legal entities, and organizations (hereafter collectively referred to as “PRC persons”) must report to the competent authority in China, any inappropriate application of foreign measures or laws that are designed to bar economic, trade, and related activities between China and other countries. The competent authority has the power to issue an injunction allowing the reporter not to recognize, implement, or comply with the said foreign norms, as well as to file a lawsuit in China claiming for losses’ compensation. What is the reason behind the adoption of the Measures? As further explained below, the Measures provide a retaliation clause remarking that China is ready to take the necessary countermeasures against any improper extraterritorial application of foreign laws and measures. In this way, China is sending a message to the entire world, warning foreign countries to stop unjustly prohibiting or restricting Chinese people or companies from doing business. With the decision to promulgate such type of measures, China reasserts that, if Chinese businesses are not treated equally and allowed to carry out their business in a lawful and regular manner, then the Chinese government is ready to intervene. It is worth noting that while the Measures do not mention any specific foreign country, they will likely serve as countermeasures to the US restrictions and bans – for instance, the ban against Tik Tok and WeChat, the measures adopted against Huawei’s chips, or the exclusion of China Unicom, China Telecom, and China Mobile from the stock exchange – that heavily impact doing business with Chinese companies and individuals. Considering the recent change in US administration, China’s move might be interpreted as an attempt to change the direction of US-China relations, in the hope that such Measures will deter President Joe Biden’s administration from maintaining (or exacerbating) the regulations implemented during Trump’s administration. Hence, how China will relate itself with the US – and consequently how global companies will be impacted by the Measures – really depends on the Biden administration’s approach. (In a recent interview, Biden said that his administration would be ready for “extreme competition” with China but based within the scope of international rules.) The same type of logic shall apply to any other foreign country, in other words, if it wants to maintain a good and smooth relationship with China – it will have to evaluate whether to modify (or remove) the policies and regulations that prevent or restrict PRC persons from performing economic, trade, and related activities.

## Trade Advantage

#### The threshold for the link is extremely low — lobbyists can win antidumping cases no matter what

Showalter 21, a fellow at the American Economic Liberties Project where he researches concentration policy and antitrust law. He is also currently an associate with the Kanter Law Group, (Reed, 8/25/21, Democracy for Sale: Examining the Effects of Concentration on Lobbying in the United States, https://www.economicliberties.us/our-work/democracy-for-sale/)

The bigger companies get, the more powerful they become. A large majority of Americans distrust concentrated economic power, and criticism of the world’s largest companies is a regular part of discourse within America’s political parties and around the world. Research has borne out the power of money in politics. Baumgartener et al. demonstrated that policy outcomes favor the interest group with the most lobbying resources.[1] Gilens and Page, for example, show that lobbying groups disproportionately represent business interests compared to more democratic interests and that these business lobbying groups are, dollar for dollar, twice as influential as other groups.[2] It is no surprise then that business interests employ more lobbyists, dispatch more lobbyists per issue, lobby on more issues, and spend more money compared to other interest groups.[3] Corporate lobbying works. A number of studies show that the amount spent on lobbying positively impacts a firm’s equity returns [4] and market share.[5] Firms that engage in lobbying also appear to have lower effective tax rates than those that do not.[6] Moreover, a growing body of scholarship suggests that lobbying can directly benefit individual firms or subindustries through tax breaks[7] or government contracts.[8] In many instances, companies receive exorbitant returns on this type of lobbying, like Boeing, which reportedly received a return of $7,250 for every $1 spent.[9] Other studies show companies directly avoiding applicable regulations in their industry. Firms that spend more money lobbying under antidumping laws can, for example, obtain favorable protection from foreign competition even when that competition is fair.[10] More troubling for antitrust enforcement, one study shows that lobbying allows firms to “receive favorable antitrust review outcomes.”[11]

#### Even Their author says Anti-dumping is worse than export cartels — decimates the other advantages

Murray 19—(Loyola Law School, Los Angeles, Juris Doctor, May 2019). Allison Murray. 2019. "Given Today's New Wave of Protectionism, Is Antitrust Law the Last Hope for Preserving a Free Global Economy or Another Nail in Free Trade's Coffin?". Loyola of Los Angeles International and Comparative Law Review, vol. 42, no. 1. HeinOnline. Accessed 9/4/21.

Anti-dumping policies are the antitrust topic that receives the most frequent and stark criticism. Anti-dumping policies allow governments to “impose duties [(e.g., fines on a company)] whenever goods are sold in export markets at less than their fair [(e.g., market)] value.”53 The policies are intended to “prevent firms from price discriminating between markets,” especially national ones.54 Similar to the above protectionist arguments about antitrust laws on the whole, critics often argue that antidumping laws “induce more distortions in the market than they resolve.”55 What sets antidumping apart from the rest of antitrust policy? Why is antidumping a riper target for criticism? Although all competition laws address market distortions, anti-dumping is the only measure among them that does not merely act to eliminate anti-competitive behavior of a firm; rather, anti-dumping is punitive in nature.56 A successful antidumping claim results in relief that is more severe than a mere injunction or making the injured party whole.57 Anti-dumping cases result in the imposition of fines and high tariffs on the anticompetitive party, even to the extent that the fines or tariffs dramatically affect the party’s ability to continue its current and future business dealings.58 For this reason, certain countries, like Japan, share the view that anti-dumping measures are the most easily abused antitrust tool and a great threat to the preservation of free market competition.59 Anti-dumping legislation gained popularity after the Second World War, perhaps unsurprisingly coinciding with the declining popularity and use of tariffs.60 Today, over ninety countries have adopted anti-dumping laws; nearly every country that has antitrust laws has anti-dumping laws as well.61 Some experts argue that trade liberalization and anti-dumping laws have spurred the rise of anti-dumping measures. These experts point to agreements that have eliminated trade tariffs as the cause of these adoptive anti-dumping measures.62 See Figure 1 below. Even against the “we want free trade” public backdrop of the 1980s and 1990s, countries attempted to protect themselves from overt anticompetitive behavior, like price dumping.64 Any alternative risked losing public support for trade liberalization at the first sign of abuse in the market.65 One can imagine the public outcry that would ensue if a country was unable to respond to anticompetitive behavior. Even the U.S., which had traditionally been a staunch advocate for free trade, “imposed more than 600 antidumping measures and nearly 300 anti-subsidy duties since 1980,” each of which were “aimed at correcting what the U.S. government deemed to be unfair trade.”66 A key criticism of anti-dumping policy is that it is used inconsistently to serve special political interests.67 In the U.S., steel is an “emblem of [the] country’s descent from greatness.”68 American steelmakers have lobbied for decades to preserve and protect the domestic industry.69 Today, the U.S. makes “half as much as 50 years ago and employs just a third of the workers.”70 Past U.S. Presidents made it part of their political platforms to initiate trade policies that would limit the importation of competing steel products, especially from Europe and Japan.71 The Trump Administration appears to be no exception. Although Trump recently resorted to imposing tariffs, he first used anti-dumping measures to protect the American steel industry.72 The first trade case brought by the U.S. government during the Trump Administration was an anti-dumping case alleging that producers from other countries (Brazil, Norway, and Australia) deliberately sold silicon metal (a raw material required to produce steel) “at artificially low prices in the U.S.”73 The alleged dumping margins were 134.9%, 45.7%, and 52.8% respectively.74 After an affirmative ruling in favor of the U.S. in October of 2017, the U.S. Department of Commerce (“DOC”) made final affirmative determinations in February of 2018.75 Additionally, on November 28, 2017, the DOC self-initiated an antidumping case against China alleging that China exported common alloy aluminum sheets at a low price in order to materially injure the domestic industry for that product in the U.S.76 This self-initiation is highly unusual and has not been done in more than twenty-five years.77 In its initial evaluation, the U.S. estimated that the illegal prices being set were between 48 to 100 percent less than the fair market value.78 These are only a few examples of antidumping cases that have affected the darlings of American industry. According to the DOC, “enforcement of U.S. trade law is a prime focus of the Trump administration. From January 20, 2017, through February 26, 2018, the Department of Commerce initiated 102 antidumping and countervailing duty investigations—a 96% increase from 52 in the previous period. The Commerce Department currently maintains 424 antidumping and countervailing duty orders which provide relief to American companies and industries impacted by unfair trade.”79 Of course, the hope remains that the U.S. process continues to be impartial and unmoved by political interests. Fairness is an integral part of our justice system and serves as the cornerstone justification for the imposition of otherwise unacceptable tariffs on foreign parties. However, such need for impartiality (in perception or otherwise) has not dissuaded special interest groups and political figures from publicly lobbying the U.S. Government to make certain rulings. As to the self-initiated case against China referenced above, Congressmen, CEOs, labor union leaders, and other politically powerful individuals created a spectacle of their public lobbying efforts, citing the importance of “protecting” the U.S. constituents from “trade practices . . . threatening U.S. jobs.”80 The perception that the law is susceptible to manipulation based on special political interests is partly what made Boeing’s 2017 filings against Bombardier for anti-dumping violations, and the preliminary findings of the U.S. International Trade Commission (“ITC”) in favor of Boeing, so controversial.81 Essentially, Boeing brought an action against Bombardier, a smaller competitor, alleging that Bombardier had been offering passenger jet products at well below its own costs.82 Boeing, a U.S. company, was ridiculed in the press and accused of filing the suit merely to obliterate a smaller foreign competitor’s growing foothold in a product market where Boeing already had strong market power.83 Boeing was perceived as a bully and a whiner, while Bombardier, the party alleged to have engaged in the improper and anticompetitive conduct, was portrayed as a victim. The U.S. Government made its preliminary ruling that Bombardier had engaged in anticompetitive conduct and recommended the application of hefty duties (~300%) against Bombardier as punishment.84 The preliminary ruling suggested that Boeing was well within its rights to bring the claim, despite being the larger and more powerful market player. Even still, the international and domestic press toward Boeing and the U.S. was pointedly negative. High profile national leaders, including British Prime Minister Theresa May, threatened trade wars against the U.S. and warned Boeing that continued action could jeopardize its contracts.85 Ultimately, the U.S. International Trade Commission (“USITC”) reversed its position and issued a decision against Boeing.86 The surprise ruling, which was contrary to their initial recommendation, calls into question whether the USITC succumbed to the immense political pressure surrounding the issue.87 Critiques aside, the benefit of anti-dumping policies is that they can be effective even without a supranational system of power. Much like a country’s standard trade tariff systems, the duties are imposed by that country without requiring any coordination or cooperation from other countries.88 However, unlike standard trade tariff systems, anti-dumping measures are still an acceptable application of a country’s power because they are not precluded by trade agreements.89 In light of the recent economic struggles of the Western world and resulting protectionist views, there seems to be no incentive for countries to subvert the trend toward increased anti-dumping enforcement.

## Modelling Advantage

#### 1 — the EU solves cartels globally — solves Minerals and Trade

Bradford 20, the Henry L. Moses Distinguished Professor of Law and International Organization at the Columbia Law School. (Anu, The Brussels Effect: How the European Union Rules the World, pp. 56-7)

“Legal non-divisibility” refers to legal requirements and remedies as drivers of uniform standards. It typically manifests itself as a spillover effect that follows from the corporation’s compliance with the laws of the most stringent jurisdiction. Global mergers provide an illustrative example in that they cannot be consummated on a jurisdiction-by-jurisdiction basis. Instead, the most stringent competition jurisdiction gets to determine the worldwide fate of the transaction.186 For example, when the EU requires the company to spin off an asset as a condition for approving a merger—like ordering a divestiture of a production plant—such a divestiture cannot be consummated in the EU only. For the same reason, whenever the EU prohibits an anticompetitive merger, the transaction is banned worldwide. Facing the EU prohibition, the only way to proceed with the merger would require the parties to carve out enough assets from the transaction to strip the EU of jurisdiction over the merger. Given the importance of the EU market, such restructuring of the deal would often require a complete withdrawal from the EU market, removing the business rationale for the merger. This makes it all but impossible to circumvent the EU jurisdiction in practice. Cartel remedies often have a similarly global effect. Leniency programs designed to destabilize cartels by incentivizing cartel participants to act as whistle-blowers often dissolve the cartel across all jurisdictions.187 Thus, even if the European Commission implemented a leniency program aimed at seizing collusion that affects prices in Europe, cooperation with the Commission is likely to also unravel the collusion in other markets. This is because the trust sustaining the cartel among participating firms dissipates with such a defection. Similarly, if the Commission detects and pursues a cartel following its own investigation (as opposed to following a leniency application), the cartel participants likely abandon collusion worldwide. The cartel participants know that the Commission investigation will likely alert foreign authorities to the possibility of collusion in their markets as well, making the operation of the cartel in practice non-divisible whenever a major jurisdiction such as the EU proceeds to dismantle it. While not manifesting a pure form of legal non-divisibility, legal risks associated with compliance errors induce companies to adopt internal policies that govern the company’s global operations. These company-wide policies typically reflect the legal standards prevailing in the most demanding jurisdiction. For example, even if price fixing remains remains unregulated and hence potentially beneficial in some markets, most companies refrain from colluding even in those markets. Multinational corporations typically maintain a global compliance manual that prohibits discussion of prices with competitors regardless of the jurisdiction involved. This ensures that noncompliance does not accidentally spill into company practices in markets that maintain stringent regulation on price fixing, exposing the company to legal liability. When the management can monitor internally consistent company policies across all the markets in which the company operates, the risk-adjusted compliance costs are lower. This need to minimize compliance errors is even greater for listed companies because the stock price is not affected only by the legal risks materializing in the listing jurisdiction. Instead, the prospect of legal liability in any jurisdiction can destabilize a company’s operations worldwide, adversely affecting its stock price.

#### EU bans cartels

Rodriguez 22, Attorney with Shearman & Sterling LLP, (Elvira, EU business rules are followed globally—companies voluntarily comply to access the EU market, <https://iclg.com/practice-areas/cartels-and-leniency-laws-and-regulations/european-union#:~:text=The%20cartel%20prohibition%20is%20enshrined,have%20as%20their%20object%20o>)

The cartel prohibition is enshrined in EU law under Article 101 of the Treaty on the Functioning if the EU (TFEU) which prohibits ‘all agreements between undertakings, decisions by associations of undertakings, and concerted practices which may affect trade between Member Staes and which have as their object or effect the prevention, restriction or distortion of competition within the internal market. This applies to undertakings only, i.e., any natural or legal person, provided they are engaged in economic or commercial activity.

#### EU business rules are followed globally—companies voluntarily comply to access the EU market

Nielsen & Chistophersen 19, Senior Director and Senior Advisor for TENECO, (Jacob & Poul, Europe in the World: From Soft Power to Rule-Maker, <https://www.teneo.com/europe-in-the-world-from-soft-power-to-rule-maker/>)

Today, the void left by a weak World Trade Organization (WTO) is being filled by Europe. Where the WTO fails to deliver, the EU embarks on bilateral or plurilateral trade agreements. Over recent years, it has concluded agreements with Japan, Korea, Singapore, Vietnam, Canada, MERCOSUR (Brazil, Argentina, Paraguay and Uruguay) and is in the process of modernizing its agreements. Where the U.S. steps back from promoting free trade in relation to the North Atlantic Free Trade Agreement and the aborted plan for the Pacific Partnership Agreement, the EU steps in. EU norms and standards are becoming trans-European, as they apply not only to EU’s member states, but also extend to Norway, Iceland, Lichtenstein and Switzerland. The same is the case for countries East of the EU’s border, where the internal market standards are gradually being introduced in the Ukraine,Moldova and Georgia through the ambitious Association Agreements. The Balkan countries are also included. This makes the European Internal Market by far the largest in the world – population wise twice as big as the U.S. ‘Third countries’ that want to export to this area have to conform to EU norms. EU’s modern trade agreements with third countries are increasingly being used to promote European norms and standards, not just for exports to the EU, but also internally in the contracting countries, including in areas like environment and climate. Global industry shows an interest in conforming to EU standards, even where they are not forced to do so by law, or international treaties. European standards tend to be higher than in most other countries. By conforming to the ambitious EU standards, producers around the world avoid double production lines. If they are EU-conformed they automatically fulfil the less demanding requirements of others. This is particularly the case for industries that are a smaller part of the wider global supply chains. Moreover, the EU’s trade policy increasingly incorporates recognition of regulatory standards, which effectively exports these norms to the rest of the world. Successful examples of such exports include the General Data Protection Regulation (GDPR), the Markets in Financial Instruments Directive (MiFID) and the Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH).

#### 2 — it spurs global cooperation to solve climate change — solves the terminal to minerals

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Environmental protection and climate change are by far the hottest topics in contemporary competition policy. The European Green Deal, signed by the EU 27, sets out to make Europe the first climate-neutral continent by 2050, where economic growth is decoupled from resource use. In order to reach this goal, new approaches have been and are being developed by regulators and competition authorities at national and EU level in order to create a legally secure basis for sustainable cooperation agreements. We take a closer look at the debate and some of the solutions proposed. How can competition rules support green goals in the first place? In fact, sustainability and competition often go hand in hand. Just as competition fosters innovation in the form of new or improved products and processes for consumers, it can also stimulate innovation with regard to sustainability. Such innovations are usually most effective when as many companies as possible participate in them. While the unilateral pursuit of public welfare objectives by companies is generally unproblematic under antitrust law, agreements on measures for sustainable economic activity between two or more undertakings must be measured in accordance with antitrust law and can cause a conflict of objectives with the antitrust regulatory regime. Art 101 TFEU (or the national equivalents thereof) prohibits agreements between companies which restrict competition. All companies should compete for the most favorable and best solution for customers. However, if there is a restriction of competition, e.g. because several undertakings cooperate to jointly achieve environmental objectives, this may be exempted under Art 101(3) TFEU. For the exemption to apply, the agreements must – among other conditions – lead to an increase in efficiency with appropriate consumer participation. One problem here is that competition authorities have so far tended to include in their calculations only efficiency gains that can be valued in monetary terms and that affect the same market on which the restriction of competition has its effect. However, this is not possible in the case of a large number of sustainability agreements. In light of this issue, new approaches have been and are being developed in order to create a legally secure basis for sustainable cooperation agreements which cannot be measured by the above standard. While the EU legislator is still busy deciding how to regulate these kind of agreements, Austria has chosen a national approach and will exempt certain sustainable cooperation agreements from the prohibition of restrictive agreements in the future. In CEE countries, the debate on the potential of competition law in helping to achieve sustainability objectives seems to have only moderately arisen. It is, however, expected that the national competition authorities will follow the example of the EU Commission and other, in this regard more progressive, member states.

#### Modeling U.S. antitrust increases perception of U.S. influence in the region

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US economic and political power sometimes also directly supports the influence of US antitrust law. Th ese issues are seldom discussed, but their influence can be extensive. One form of power is governmental. The US government has actively sought to influence the development of foreign systems. Sometimes this is overt and well-publicized, as, for example, during the early 1990s when the US government pressured the government of Japan to increase enforcement of its antitrust laws, thereby hoping to increase the access of US fi rms to the Japanese market. More commonly, pressure is exerted in the context of aid and technical assistance programs, where a country can expect to gain US support and/or assistance by conforming its conduct to the wishes of the US authorities.

#### U.S. sources have a vested interest in claiming the U.S. model is better

Gerber 12, Distinguished Professor of Law at Chicago-Kent College of Law. (David, Global Competition: Law, Markets, and Globalization, KU Library)

Private power and influence play somewhat similar, less obvious, but potentially more pervasive roles. Here there is no direct use of governmental power. Instead, the power is ‘soft’—ie the capacity to induce others without coercion to make decisions that correspond to the interests of the private parties involved.⁵¹ One forum for this exercise of soft power is the international competition law conferences that have become increasingly common since the mid-1990s. Th ese conferences provide fora where lawyers, economists and public officials present their views and experiences make contacts and often seek to influence each other. In these contexts, US officials and lawyers have played leading roles. They often host the most prestigious of these conferences, and they are often featured speakers.⁵² As a group, their prominence is based on many factors, including their experience in international competition law matters, the richness of US scholarship, and the practical importance of US antitrust enforcement throughout the world. US lawyers and economists also benefit from the weight and influence of the institutions with which they are associated. Especially since the 1990s, very large international law fi rms have formed, primarily to provide services to large, internationally-structured business fi rms. These firms often commit significant resources to influencing foreign decision makers to favor the interests of their clients. This creates incentives for lawyers, officials and economists from other countries to seek contacts with them for their own benefit, eg through the potential for client referrals and so on. Large multinational corporations represent a potentially significant source of income for lawyers and consultants in the competition law field. These factors can also influence the literature of antitrust.