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#### 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.

#### The plan is huge and requirements massive investment

Manne 13, a distinguished fellow at Northwestern University Center on Law, Business, and Economics. (Geoffrey, THE PRICE OF CLOSING THE GOOGLE SEARCH ANTITRUST CASE: QUESTIONABLE PRECEDENT ON PATENTS, https://laweconcenter.org/resource/the-price-of-closing-the-google-search-antitrust-case-questionable-precedent-on-patents/)

In its own 2011 Report on the “IP Marketplace,” the FTC acknowledged the fluidity and ambiguity surrounding the meaning of “reasonable” licensing terms and the problems of patent enforcement. While noting that injunctions may confer a costly “hold-up” power on licensors that wield them, the FTC nevertheless acknowledged the important role of injunctions in preserving the value of patents and in encouraging efficient private negotiation: Three characteristics of injunctions that affect innovation support generally granting an injunction. The first and most fundamental is an injunction’s ability to preserve the exclusivity that provides the foundation of the patent system’s incentives to innovate. Second, the credible threat of an injunction deters infringement in the first place. This results from the serious consequences of an injunction for an infringer, including the loss of sunk investment. Third, a predictable injunction threat will promote licensing by the parties. Private contracting is generally preferable to a compulsory licensing regime because the parties will have better information about the appropriate terms of a license than would a court, and more flexibility in fashioning efficient agreements. \* \* \* But denying an injunction every time an infringer’s switching costs exceed the economic value of the invention would dramatically undermine the ability of a patent to deter infringement and encourage innovation. For this reason, courts should grant injunctions in the majority of cases.… Consistent with this view, the European Commission’s Deputy Director-General for Antitrust, Cecilio Madero Villarejo, recently expressed concern that some technology companies that complain of being denied a license on FRAND terms never truly intend to acquire licenses, but rather “want[] to create conditions for a competition case to be brought.” But with the Google case, the Commission appears to back away from its seeming support for injunctions, claiming that: Seeking and threatening injunctions against willing licensees of FRAND-encumbered SEPs undermines the integrity and efficiency of the standard-setting process and decreases the incentives to participate in the process and implement published standards. Such conduct reduces the value of standard setting, as firms will be less likely to rely on the standard-setting process. Reconciling the FTC’s seemingly disparate views turns on the question of what a “willing licensee” is. And while the Google settlement itself may not magnify the problems surrounding the definition of that term, it doesn’t provide any additional clarity, either. The problem is that, even in its 2011 Report, in which FTC noted the importance of injunctions, it defines a willing licensee as one who would license at a hypothetical, ex ante rate absent the threat of an injunction and with a different risk profile than an after-the-fact infringer. In other words, the FTC’s definition of willing licensee assumes a willingness to license only at a rate determined when an injunction is not available, and under the unrealistic assumption that the true value of a SEP can be known ex ante. Not surprisingly, then, the Commission finds it easy to declare an injunction invalid when a patentee demands a (higher) royalty rate in an actual negotiation, with actual knowledge of a patent’s value and under threat of an injunction. As Richard Epstein, Scott Kieff and Dan Spulber discuss in critiquing the FTC’s 2011 Report: In short, there is no economic basis to equate a manufacturer that is willing to commit to license terms before the adoption and launch of a standard, with one that instead expropriates patent rights at a later time through infringement. The two bear different risks and the late infringer should not pay the same low royalty as a party that sat down at the bargaining table and may actually have contributed to the value of the patent through its early activities. There is no economically meaningful sense in which any royalty set higher than that which a “willing licensee would have paid” at the pre-standardization moment somehow “overcompensates patentees by awarding more than the economic value of the patent.” \* \* \* Even with a RAND commitment, the patent owner retains the valuable right to exclude (not merely receive later compensation from) manufacturers who are unwilling to accept reasonable license terms. Indeed, the right to exclude influences how those terms should be calculated, because it is quite likely that prior licensees in at least some areas will pay less if larger numbers of parties are allowed to use the same technology. Those interactive effects are ignored in the FTC calculations. With this circular logic, all efforts by patentees to negotiate royalty rates after infringement has occurred can be effectively rendered anticompetitive if the patentee uses an injunction or the threat of an injunction against the infringer to secure its reasonable royalty. The idea behind FRAND is rather simple (reward inventors; protect competition), but the practice of SEP licensing is much more complicated. Circumstances differ from case to case, and, more importantly, so do the parties’ views on what may constitute an appropriate licensing rate under FRAND. As I have written elsewhere, a single company may have very different views on the meaning of FRAND depending on whether it is the licensor or licensee in a given negotiation—and depending on whether it has already implemented a standard or not. As one court looking at the very SEPs at issue in the Google case has pointed out: [T]he court is mindful that at the time of an initial offer, it is difficult for the offeror to know what would in fact constitute RAND terms for the offeree. Thus, what may appear to be RAND terms from the offeror’s perspective may be rejected out-of-pocket as non-RAND terms by the offeree. Indeed, it would appear that at any point in the negotiation process, the parties may have a genuine disagreement as to what terms and conditions of a license constitute RAND under the parties’ unique circumstances. The fact that many firms engaged in SEP negotiations are simultaneously and repeatedly both licensors and licensees of patents governed by multiple SSOs further complicates the process—but also helps to ensure that it will reach a conclusion that promotes innovation and ensures that consumers reap the rewards. In fact, an important issue in assessing the propriety of injunctions is the recognition that, in most cases, firms would rather license their patents and receive royalties than exclude access to their IP and receive no compensation (and incur the costs of protracted litigation, to boot). Importantly, for firms that both license out their own patents and license in those held by other firms (the majority of IT firms and certainly the norm for firms participating in SSOs), continued interactions on both sides of such deals help to ensure that licensing—not withholding—is the norm. Companies are waging the smartphone patent wars with very different track records on SSO participation. Apple, for example, is relatively new to the mobile communications space and has relatively few SEPs, while other firms, like Samsung, are long-time players in the space with histories of extensive licensing (in both directions). But, current posturing aside, both firms have an incentive to license their patents, as Mark Summerfield notes: Apple’s best course of action will most likely be to enter into licensing agreements with its competitors, which will not only result in significant revenues, but also push up the prices (or reduce the margins) on competitive products. While some commentators make it sound as if injunctions threaten to cripple smartphone makers by preventing them from licensing essential technology on viable terms, companies in this space have been perfectly capable of orchestrating large-scale patent licensing campaigns. That these may increase costs to competitors is a feature—not a bug—of the system, representing the return on innovation that patents are intended to secure. Microsoft has wielded its sizeable patent portfolio to drive up the licensing fees paid by Android device manufacturers, and some commentators have even speculated that Microsoft makes more revenue from Android than Google does. But while Microsoft might prefer to kill Android with its patents, given the unlikeliness of this, as MG Siegler notes, [T]he next best option is to catch a free ride on the Android train. Patent licensing deals already in place with HTC, General Dynamics, and others could mean revenues of over $1 billion by next year, as Forbes reports. And if they’re able to convince Samsung to sign one as well (which could effectively force every Android partner to sign one), we could be talking multiple billions of dollars of revenue each year. Hand-wringing about patents is the norm, but so is licensing, and your smartphone exists, despite the thousands of patents that read on it, because the firms that hold those patents—some SEPs and some not—have, in fact, agreed to license them. The inability to seek an injunction against an infringer, however, would ensure instead that patentees operate with reduced incentives to invest in technology and to enter into standards because they are precluded from benefiting from any subsequent increase in the value of their patents once they do so. As Epstein, Kieff and Spulber write: The simple reality is that before a standard is set, it just is not clear whether a patent might become more or less valuable. Some upward pressure on value may be created later to the extent that the patent is important to a standard that is important to the market. In addition, some downward pressure may be caused by a later RAND commitment or some other factor, such as repeat play. The FTC seems to want to give manufacturers all of the benefits of both of these dynamic effects by in effect giving the manufacturer the free option of picking different focal points for elements of the damages calculations. The patentee is forced to surrender all of the benefit of the upward pressure while the manufacturer is allowed to get all of the benefit of the downward pressure. Thus the problem with even the limited constraints imposed by the Google settlement: To the extent that the FTC’s settlement amounts to a prohibition on Google seeking injunctions against infringers unless the company accepts the infringer’s definition of “reasonable,” the settlement will harm the industry. It will reinforce a precedent that will likely reduce the incentives for companies and individuals to innovate, to participate in SSOs, and to negotiate in good faith. Contrary to most assumptions about the patent system, it needs stronger, not weaker, property rules. With a no-injunction rule (whether explicit or de facto (as the Googlesettlement’s definition of “willing licensee” unfolds)), a potential licensee has little incentive to negotiate with a patent holder and can instead refuse to license, infringe, try its hand in court, avoid royalties entirely until litigation is finished (and sometimes even longer), and, in the end, never be forced to pay a higher royalty than it would have if it had negotiated before the true value of the patents was known. Flooding the courts and discouraging innovation and peaceful negotiations hardly seem like benefits to the patent system or the market. Unfortunately, the FTC’s approach to SEP licensing exemplified by the Google settlement may do just that. In her dissent in Google, Comissioner Ohlhausen articulates the problems with the FTC’s settlement. First, writes Commissioner Ohlhausen, [T]he majority says little about what “appropriate circumstances” may trigger an FTC lawsuit other than to say that a fair, reasonable, and non-discriminatory (“FRAND”) commitment generally prohibits seeking an injunction. By articulating only narrow circumstances when the Commission deems a licensee unwilling (limitations added since Bosch), and not addressing the ambiguity in the market about what constitutes a FRAND commitment, the Commission will leave patent owners to guess in most circumstances whether they can safely seek an injunction on a SEP. As Commissioner Ohlhausen points out, the FTC’s treatment of Apple as a “willing licensee” betrays the complexity of such issues and the confusion this settlement may engender. While the FTC acknowledges that injunctions are appropriate when a patentee is faced with a licensee who is unwilling to license its patents at a reasonable rate, if even Apple is here considered a “willing licensee,” then such an acknowledgement is a null set. As Ohlhausen points out, in treating Apple as a willing licensee, the Commission [D]isregard[s] a federal judge’s decision that Apple revealed itself as unwilling on the eve of trial. As the judge wrote: “[Apple’s intentions] became clear only when Apple informed the court . . . that it did not intend to be bound by any rate that the court determined.” The judge further concluded Apple was trying to use the FRAND rate litigation simply to determine “a ceiling on the potential license rate that it could use for negotiating purposes.…” The Order allows Google to seek injunctive relief if a party “has stated in writing or in sworn testimony that it will not license the FRAND Patent on any terms”—as Apple did in federal district court. But the Complaint attempts to skirt this issue by vaguely claiming that “[a]t all times relevant to this Complaint, these implementers [including Apple] were willing licensees.… ” I believe it is quite “relevant” that Apple told a federal judge after years of negotiation and litigation with Motorola that it would only abide by the court-determined royalty rates to the extent it saw fit. I cannot endorse characterizing this conduct as that of a willing licensee. This sort of strategic behavior by licensees is precisely why injunctions are necessary and appropriate in such cases. To turn them into antitrust violations seriously threatens to undermine the licensors’ appropriate bargaining power and the efficient functioning of SEP licensing. Perhaps most significant, the Commission’s settlement continues the agency’s recent trend of making a hash of its Section 5 authority. As Commissioner Ohlhausen has noted once before (in dissenting from the Commission’s settlement in the Bosch case)—on the same day, as it happens, that Berin Szoka and I did—the FTC is charting a dangerously unprincipled course on Section 5, particularly with respect to its interpretation of its unfairness jurisdiction. In his Separate Statement in Google, Commissioner Rosch sounds a similar concern about the absence of “limiting principles” on the scope of the Commission’s authority to bring Section 5 cases under the Act’s unfair methods of competition prong. In the Google case, the Commission asserts unfairness jurisdiction without even the minimal limitations the agency itself has adopted. As Commissioner Ohlhausen notes: [T]he Commission gives no principled basis for expanding liability beyond an unfair method of competition to include an “unfair act or practice” on what is essentially the same conduct here as in Bosch. This expansion of liability sows additional seeds of confusion as to what can create liability and even the statutory basis of that liability. \* \* \* The allegations in the complaint that Google and Motorola’s conduct constitutes an “unfair act or practice” fail this agency’s unfairness standard. To show an unfair act or practice, the Commission must prove that the challenged conduct “causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.” In this matter, we are essentially treating sophisticated technology companies, rather than end-users, as “consumers” under our consumer protection authority.… Further, the unfairness count in the complaint alleges merely speculative consumer harm, at best, and thus fails to comply with the Commission’s Unfairness Statement. Summing up, Commissioner Ohlhausen writes: In sum, I disagree with my colleagues about whether the alleged conduct violates Section 5 but, more importantly, believe the Commission’s actions fail to provide meaningful limiting principles regarding what is a Section 5 violation in the standard-setting context, as evidenced by its shifting positions in N-Data, Bosch, and this matter. Ohlhausen is correct that, with the Google settlement, the FTC continues to operate in this realm without meaningful limits—a problem that some in Congress have begun to notice, as well, as Berin and I point out. A significant problem with the SEP settlement as configured by the FTC is that it seems to make illegal the use of injunctions even to enforce perfectly reasonable royalty rates. Motorola has, since before it was purchased by Google, sought a royalty rate of 2.25% for its SEPs—an amount well in-line with rates charged by others with SEPs that read on the same standards. In its litigation with Microsoft, it is precisely this royalty that Motorola was seeking to enforce—and Microsoft was refusing to pay. There is a legitimate dispute over how that amount is to be calculated, but this is the very definition of a contract dispute, and both Motorola’s past practice as well as overall industry practice suggest it is perfectly consistent with Motorola’s FRAND obligation to seek such royalties. To turn Motorola’s effort to receive a reasonable royalty for its patents by means of an injunction against a willing—but not willing enough—licensee into an antitrust problem seems directly to undermine the standard-setting process. It also seems to have no basis in law.

#### Fraud funds terror operations

Tierney 18, George & Mary Hylton Professor of International Relations; Director Global Research Institute (GRI) (Michael, “#TerroristFinancing: An Examination of Terrorism Financing via the Internet,” International Journal of Cyber Warfare and Terrorism, vol. 8, no. 1, 01/2018, pp. 1–11)

2. TERRORIST FINANCING AND THE INTERNET

As mentioned, terrorists’ use of the internet has become a major concern for security officials across the world in recent years. Like many other users, terrorists have found that the internet is an invaluable tool to share information quickly, in order to disseminate ideas and link up with likeminded individuals (Jacobson, 2010; Okolie-Osemene & Okoh, 2015). In this manner, terrorists use the internet for a variety of purposes, including recruitment, propaganda, and financing. As scholars have also noted, the internet is an attractive option for extremists due to the security and anonymity it provides (Jacobson, 2010). Yet while there have been a growing number of studies completed on the ways in which terrorist organizations use the internet to recruit and indoctrinate others, there has been relatively little focus on the methods by which terrorists finance themselves through online activities. Some researchers have attempted to fill gaps in this area by broadly studying internet aspects of terrorism financing. However, research on this particular aspect of terrorism financing still appears to be lacking, with little focus on new methods of terrorist financing via the internet or a marrying of strategies to combat online financing trends available to practitioners in the field.

For instance, Sean Paul Ashley (2012) assessed the mobile banking phenomenon, which is prevalent in regions such as the Middle East and Africa, and provides extremists with the ability to easily connect to the internet and remit funds around the world. The decentralization of this kind of banking, due to the fact that brick-and-mortar facilities are not needed to conduct transactions, has allowed terrorist financiersto more efficiently move funds while avoiding detection from authorities. Other researchers,such as MichaelJacobson (2010), have studied the waysin which terrorists engage in cyber-crime to raise and move funds. For example, Jacobson (2010) found that online credit card fraud was a fairly major source of terrorist financing. By stealing a victim’s private credit information, terrorists are able to co-opt needed funds and provide support to themselves or their counterparts. Yet as James Okolie-Osemene and Rosemary Ifeanyi Okoh (2015) note, the internet is mostly used to augment and assist activities which occur in the physical world. In this way, it would appear that the internet is far more useful as a means to move funds globally in support of terrorism, rather than simply as a method to raise funds.

#### 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]

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#### “The scope” requires removing an existing exemption

ABA 15 – (American Bar Association, Handbook on the Scope of Antitrust Law, ABA Section of Antitrust Law, Chicago: ABA Publishing, 2015, p. 9-12) ISBN: 978-1-63425-054-2

Next, the language of the federal antitrust laws imposes several scope limits. Each of the major antitrust statutes applies only to "trade or commerce,"39 and that phrase has been held to exclude gratuitous or charitable conduct and other conduct not involving the exchange of goods or services for consideration.40 The Sherman Act likewise applies only to "persons," and while that term is construed broadly under the Sherman Act, it has some exceptions, notably for the federal government and its instrumentalities.41 Stricter limits appear in the Clayton, Robinson-Patman, and Federal Trade Commission Acts (FTC Act), and these limits are quite complex. The Robinson-Patman Act and two of the Clayton Act's substantive provisions, the limit on tying and exclusive dealing arrangements in section 3 and the limit on interlockin§ directorates in section 8, apply only to persons "engaged in comrnerce.',4 The Federal Trade Commission Act is subject to a few special peculiar Scope limits of its own Finally, in several distinct ways the language of other federal statutes can limit the scope of the federal antitrust laws. First, approximately three dozen statutes explicitly limit antitrust as it would otherwise apply in particular contexts. Statutory exemptions tend to concern either ( 1) industries that are already regulated by some agency, like insurers excepted by the McCarran-Ferguson Act, by virtue of their being regulated by state insurance commissioners,44 or ocean shipping firms regulated by the Federal Maritime Com.mission,45 or (2) specific kinds of conduct that Congress has chosen from time to time to favor with special freedom to collaborate, like technological research and development, 46 the graduate medical resident program,47 or production joint ventures among competing newspapers.48

#### Those must be expressly Congressional

Krattenmaker 4, US Federal Trade Commissioner, (Antitrust Enforcement in Regulated Sectors Working Group , International Competition Network, https://centrocedec.files.wordpress.com/2015/07/limits-and-constraints-intervening-in-regulated-sectors-2004.pdf)

A. Congress’s will prevails. – The national antitrust laws and the national regulatory statutes are creatures of Congress. They mean whatever Congress wants them to mean and conflicts between them must be ironed out according to the will of Congress, as best as that intent can be ascertained. So, if Congress has spoken clearly to the issue, its resolution governs. For example, in United States v. Philadelphia National Bank, 374 U.S. 321 (1963), the Supreme Court was confronted with an antitrust challenge to a bank merger. The banks argued that a recent statute, the Bank Merger Act of 1960 repealed by implication the application of antitrust law to block bank mergers. The Court found that Congress had not intended such a result. But what if Congress has not clearly spoken? Then other principles come into play. B. Full compliance is the norm. – Generally speaking, one must comply with both the dictates of the antitrust laws and the requirements of the regulatory regime. Thus, for example, mergers between telecommunications firms are subject to review under both federal antitrust law and the provisions of the Federal Communications Act. Telecommunications firms, then, may not merge unless they have cleared both antitrust and Federal Communications Commission review. Permission from one does not entail permission from the other. Denial by one is therefore sufficient, but legally does not constitute denial by the other. Of course, if there is a clear conflict – so that one federal statute commands an act that another one forbids and that conflict cannot be resolved by statutory interpretation – then the later expression of Congressional will governs. (See, for example, the case of Gordon v. New York Stock Exchange, discussed below, in which fear of conflict led the Court to imply an antitrust immunity.)

Exemptions from the antitrust laws are not lightly inferred. – Sometimes, compliance with antitrust may be possible, but difficult or arguably not consistent with the policies underlying the regulatory scheme. Firms may argue that the regulatory scheme should be understood to act as granting an implied exemption from antitrust. Federal courts rarely accept this argument. The general rule is that, to obtain an exemption from antitrust, one must get it directly and explicitly from the legislature, not from courts. The Philadelphia National Bank case, discussed above, is an example of the Court’s general refusal to find antitrust exemptions without express direction from Congress. Similarly, in an important case establishing the per se rule against price fixing, United States v. Socony-Vacuum Oil Co., Inc., 310 U.S. 150 (1940), the Court gave short shrift to the defendants’ claim that their conduct was “consistent with the general objectives and ends sought to be obtained under the National Industrial Recovery Act,” which was in place when the conduct began. This was because the conduct, illegal under the antitrust laws, “lack[ed] Congressional sanction.” Even though the Federal Energy Regulatory Commission has extensive powers over interconnection and interconnection prices, the Court refused to imply an antitrust immunity in a challenge to a refusal to interconnect and provide electricity in Otter Tail Power Co. v. United States, 410 U.S. 366 (1973). On very rare occasions, the Supreme Court will find an implied immunity. In Gordon v. New York Stock Exchange, 422 U.S. 659 (1975) the plaintiffs challenged agreements by which New York Stock Exchange brokers fixed commission charges. These agreements were allowed under New York Stock Exchange rules, but the U.S. Securities and Exchange Commission had statutory authority to alter the rules and in fact exercised supervisory authority over them. On these facts, the Court found an immunity necessary to prevent conflicts between instructions from the Commission and from antitrust courts to the Exchange.44

#### They violate — they don’t modify or remove a congressional exemption — at BEST they are just an implied, judicial exemption

#### Vote NEG---eliminating Congressionally enshrined exemptions and immunities provides a limited AND predictable basis for prep, and focuses debates on the balance between antitrust and regulation, ensuring conceptual unity.

### 1NC — CP

#### The United States federal government should —

#### Establish tax credits to incentivise climate action

#### Create a United States State Department Office of Subnational Diplomacy

#### Announce and enforce a nationally determined contribution of achieving emissions reductions 50% below 2005 levels by 2030

#### Disclose climate risks to investors

#### Aid in financing climate goals in developing countries

#### In coordination with the U.K. government, advance campaigns for sector-focused decarbonization

#### Fund research and development of green technology.

#### Solves climate — the counterplan’s key to global modelling.

Hultman & Gross 21 — Nathan; Director of the Center for Global Sustainability and Associate Professor at the University of Maryland School of Public Policy. Samantha; fellow and director of the Energy Security and Climate Initiative. (“How the United States can return to credible climate leadership” Brookings Institute. March 1, 2021. <https://www.brookings.edu/research/us-action-is-the-lynchpin-for-successful-international-climate-policy-in-2021/>)

POLICY RECOMMENDATIONS

Against this backdrop, the United States can and should re-engage fully with the international community to support global action. To do so, it must act in five linked ways.

Embed climate action into U.S. society. The core project for the United States this year, and for years to come, is [to develop and implement a national climate strategy that brings to bear all possible areas of policy action](https://www.americaisallin.com/wp-content/uploads/2021/02/all-in-national-climate-strategy.pdf). In many ways the U.S. is playing catch-up, but one important advantage developed during the Trump years. As the federal government dismantled its climate efforts, the subnational community substantially increased its climate commitments. As a result, the United States has highly motivated and experienced actors outside the federal government. Federal action to catalyze and encourage these local efforts will be a key part of a bottom-up climate strategy, enabling more robust policy through oscillating political cycles at the national level.

Subnational actions are key, but some actions must take place at the federal level. New legislation is a first potential contributor. Given the current makeup of Congress, actions rooted in tax credits, investment, and stimulus are likely to have some traction in the near term. Other policies will have to be evaluated in light of their potential support. A second possible contributor is administrative actions that can be implemented by the executive branch, including regulatory actions under existing laws. Such administrative actions are less durable than legislative outcomes, but remain on the table as options.

Advance subnational diplomacy. While not all countries are structured like the United States, bottom-up leadership and implementation are central to success in some form in all countries. The United States can use its non-federal actors in its diplomatic efforts to support and bolster climate action around the world. For this, U.S. cities, states, and businesses can collaborate with their counterparts in other countries to discuss opportunities and strategies, supported by the U.S. diplomatic effort. Such efforts could take place through a [U.S. State Department Office of Subnational Diplomacy](https://www.brookings.edu/research/partnership-among-cities-states-and-the-federal-government-creating-an-office-of-subnational-diplomacy-at-the-us-department-of-state/), as recommended by Anthony F. Pipa and Max Bouchet in their brief for this series.

Announce an ambitious yet credible U.S. nationally determined contribution. As a central pillar of the Paris Agreement, countries around the world regularly offer their NDCs and report on progress. Each country’s NDC is viewed as an indicator of the country’s overall climate ambition. The U.S. target will likely have an outsized impact on overall global action this year. [President Biden has committed to offer the next U.S. NDC at a leaders’ meeting](https://www.eenews.net/stories/1063723747) that he will host on Earth Day, April 22. In parallel with developing the national climate strategy, Washington [will be undertaking an assessment of the possible emissions reductions](https://www.brookings.edu/research/building-an-ambitious-and-robust-us-climate-target/) associated with such a strategy. International perception of the U.S. domestic commitment is important; the commitment must be seen as sufficiently ambitious to unlock the other diplomatic opportunities available to the United States. The goal of achieving emissions reductions of approximately 50% below 2005 levels by 2030 is receiving a great deal of attention, but is highly ambitious for the United States. Achieving such a target would be a challenge, but the whole-of-society approach described above could improve the probability of reaching such a goal.

Revisit U.S. domestic financial regulations and international climate finance. Mobilizing new sources of finance to support a rapid economic and technological transition is central to addressing climate change. Here too, the United States provides an important link between domestic and international actions. Domestically, the U.S. financial system leads the world, but [U.S. financial regulations do a poor job of requiring disclosure of climate-related risk](https://www.brookings.edu/research/flying-blind-what-do-investors-really-know-about-climate-change-risks-in-the-u-s-equity-and-municipal-debt-markets/), including the physical risks associated with climate change. Recent movement toward addressing these issues can be accelerated. For example, the Federal Reserve recently joined the Network for Greening the Financial System and Treasury Secretary Janet Yellen made clear in her confirmation hearing that she believes climate change is a risk to the financial system. Through its outsized influence on the global financial system, the United States can encourage greener investment. Greater disclosure of climate risks would allow investors to direct funds to low-carbon and resilient assets, potentially moving the needle in areas where policy lags behind.

The United States must also exercise leadership in marshalling the financing that developing countries, especially the larger emitters, will need to raise their climate ambition, and to help poor and vulnerable countries adapt to the already evident impacts of climate change. This includes ensuring that developed countries live up to their commitment to mobilize $100 billion per year in climate finance, a central tenet of the climate accords. For the United States, meeting its commitment to the Green Climate Fund, established under the U.N. climate framework a decade ago, will be an immediate litmus test. The United States must also play a leadership role in unleashing the potential of the International Monetary Fund and the multilateral development banks in supporting more ambitious climate action. These institutions can play a role beyond their own financing by [catalyzing private investment](https://view.flipdocs.com/?ID=10025597_345534#370) through reducing and sharing risk. The COVID-19 pandemic provides an opportunity to “build back better” by tackling the interrelated challenges of job growth, climate change, pollution, and [biodiversity](https://www.brookings.edu/research/preventing-pandemics-through-biodiversity-conservation-and-smart-wildlife-trade-regulation/).

Support international efforts and national strategies. The United States can employ its substantial foreign policy apparatus to engage with key countries, partners, and allies around the world. In doing this, the United States can first communicate how it will achieve its own ambitious goals, then seek to understand how other countries anticipate delivering on their own goals and work with them bilaterally or multilaterally to support their national climate strategies. Finally, it can work with partners around the world to ensure that there is broad support for a strong outcome at the climate conference later this year.

Fundamentally, the climate challenge requires pushing the technological frontier in a dozen key sectors, from electricity to cars to building materials. [In every sector the challenge is different](https://www.brookings.edu/research/accelerating-the-low-carbon-transition/), and in every sector there are different arrays of international partners, such as national and subnational governments and pioneering firms. The United States should ally with the U.K. government as it advances key “campaigns” that reflect this sector-focused approach to deep decarbonization. The effort should identify a few sectors, such as cars and electricity, where the United States is at the frontier and can particularly shape the global effort.

#### We aren’t solving WTO because we have impact turned it

### 1NC — K

#### The 1AC is a perpetuation of colonial empire-building — IPRs and licenses benefit the wealthy while dispossessing the Global South

PHI 21, (8,24,21, International Humanist Party: “Industrial property is theft”, https://www.pressenza.com/2021/08/international-humanist-party-industrial-property-is-theft/

Industrial property grants two types of rights: the first is the right to use the invention, design or distinctive sign, and the second is the right to prohibit a third party from doing so. The right to prohibit (Ius prohibendi) is the most prominent part of industrial property and allows the right holder to request payment of a licence fee, also called royalty. The two most important international agreements on industrial property are the Paris Convention for the Protection of Industrial Property of 1883 and the Agreement on Trade-Related Aspects of Intellectual Property Rights of 1994, the latter of which also served as the basis for the creation of the World Trade Organisation (WTO). Although the official discourse indicates that industrial property protection was originally intended to stimulate the creativity of companies and individuals, in practice patent legislation had already existed in colonial systems since the 15th century as mechanisms (which openly discriminated against the colonies in relation to the metropolis) for granting and protecting the use of technologies. In many colonies, patent regimes complementary to the metropolitan patent system were established; they were an instrument of technological policy with the aim of establishing new industries, but they were also economic models that emphasised mercantilism, to justify a more efficient exploitation of the wealth of the colonised peoples, with an extractivist and monopolistic mentality. By emphasising economic liberalism, they sought to eradicate trade and industrial restrictions. For example, in many countries there were patents of introduction, also known as patents of importation, which was a form of protection recognised in Spain and its overseas territories. The aim of this legislation was to encourage the imitation of foreign technologies, regardless of whether or not the patent applicant was the original inventor. Today, the charging of licenses for the use of patents continues to be an extractivist colonialist device that serves to perpetuate the theft and the artificial increase in the cost of productive processes, for the investment in knowledge or industrial property whose payment is largely cancelled. The territorial and nationalist colonialism of modernity has led to a post-modern, global and deterritorialised colonialism.

#### The alternative is to reject and interrogate the colonial assumptions of the 1AC — plan focus distracts from crucial conservations about epistemic violence, accepting colonial erasure as a tragic but inevitable byproduct of policymaking

Stein 16, Professor of Education with a focus on decolonial studies @ University of British Columbia. PhD (Sharon, Rethinking the Ethics of Internationalization: Five Challenges for Higher Education, *Interactions: UCLA Journal of Education and Information Studies*, 12(2))

Many humanist efforts are specifically humanitarian in nature, in which individual students seek to ‘give back’ in recognition of their relative advantage in existing systems. In the context of internationalization, this framing may be preferable to market-driven approaches, yet its construction of relationality maintains the student in a position of benevolence and enlightenment vis-à-vis those they are understood to be ‘helping’ (Jefferess, 2008). In this ethical formation, students from the Global North are generally situated as those with superior knowledge, values, and experiences that they generously grant to the ‘less fortunate.’ Within this paternalistic dynamic, the student is rarely prompted to question the underlying systems or causes of inequality or to consider how they benefit from and perpetuate these systems. Rather, the Other becomes a vehicle for affirming their exceptionalism and moral ‘goodness’ – potentially as a means to justify their own privilege. Gaztambide-Fernández and Howard (2013) point out that this investment in “Being good and having moral standing is a social outcome that is premised on the unequally distributed ability to do certain things, to enact certain roles, and to mobilize particular discourses” (p. 2). This framing then forecloses the opportunity for students to examine their own complicity, and may be understood as an example of what Tuck and Yang (2012), drawing on Malwhinney, describe as “moves to innocence,” through which an individual seeks to assuage their guilt, deny responsibility, preserve a positive self-image, and maintain their existing investments in harmful desired futures.

Thus, despite their important differences, both market-driven and humanist approaches to internationalization are often premised on developmental notions of humanity, and are shaped by a “convenient amnesia” of colonial histories and current structures of harm (Thobani as cited by Stone-Mediatore, 2011, p. 49). Questions that therefore arise include: Why does encountering difference in the context of internationalization often reproduce rather than disrupt assumptions about the supremacy of Western knowledge and society? How might humanitarian efforts abroad function as a means to avoid addressing local injustices? How do developmental logics limit the possibility of engaging in relationships premised on solidarity and self-implication rather than instrumentalization for affirmation of a benevolent self? What might prompt students to see their own material comforts as part of the cause of inequity? What might interrupt our satisfactions with existing formulations of self/subject and other/object, and is it possible to imagine an approach to ethics that begins and ends with neither?

Conclusion: Im/possible Ethical Demands

There is a danger that our critical approaches to the ethics of internationalization may be circularly repeating the very violence that we seek to disrupt. In order to make visible the ways that colonial categories and capitalist imperatives are reproduced, scholars of higher education need to historicize the deep entanglements of our institutions and our subjectivities with empire, trace the origins of our dearest concepts, face our own investments in the false promises of universal humanity and linear progress, and consider how all of these frame and thereby limit available ethical and educational possibilities. As Unterhalter and Carpentier (2010) note, “Global higher education seems uniquely well placed to serve the interests of redressing inequality, enhancing participatory debate and deliberation. But to do this requires higher education institutions recognizing problems of their past and present in order to contribute to ideas of justice for our future” (p. 29). Decolonial analysis, as I have offered in this paper, is just one means of doing this work.

However, analysis itself is insufficient. Having identified the depth of the problems we face, it is common to promptly begin the search for concepts and plans of action that can renew our hope and that we believe will lead to something better. This desire for guaranteed alternatives may be in part related to the fact that conversations about internationalization tend to be, as Waters (2012) suggests, “dominated and driven by educational practitioners – education institutions, state level policy makers and public bodies, as well as private, commercial enterprises – with a vested interest in the ultimate success of internationalising initiatives” (p. 127). The imperative toward immediate improvement and assured success is also a deeply embedded dimension of Western thought, which constantly seeks to reduce complexity and eliminate uncertainty in order to smoothly engineer the future. And there is good reason for seeking solutions; harmful practices and policies do not stop producing harm when we name them. Every critique therefore begs the follow-up questions: “So what? Now what?” (Andreotti, 2011, p. 227).

These questions are important, and answering them is one essential element of our responsibility as researchers and educators to contribute to the reduction of ongoing harm. There is a strong need to produce practical, accessible, and impactful resources for use in higher education classrooms, policy reforms, training for administrators, and social justice programming for students and staff. At the same time, these solutions often create their own unforeseen problems. Furthermore, desires for coherence, consensus, and guaranteed futures have all contributed to the reproduction of significant harms as certain experiences, individuals, and even entire communities are sacrificed or silenced in order to achieve these goals. Although we cannot live and act in a space of uncertainty and ambivalence at all times, the immediate search for practical action and answers can also foreclose difficult but necessary conversations and questions that have no easy resolution. We also need to learn to sit in this space of uncertainty and discomfort to consider questions with either no answer, or too many answers to count; to lay out on the table the contradictory elements of all possible answers to our ‘so what, now what’ questions; and to ask self-implicated questions about our own deep investments in a harmful system.

### 1NC — T

#### Private sector means all non-governmental persons or entities, including non-profits

Senate Report 95 (Senate Report. 104-1, “UNFUNDED MANDATE REFORM ACT OF 1995,” https://www.congress.gov/congressional-report/104th-congress/senate-report/1 , date accessed 9/10/21)

"Private sector" is defined to cover all persons or entities in the United States except for State, local or tribal governments. It includes individuals, partnerships, associations, corporations, and educational and nonprofit institutions.

#### Topical affs must change a universally-applied standard, like the CWS [Consumer Welfare Standard]

Phillips 18, commissioner on the Federal Trade Commission. (Noah J. November 1, 2018, Before the Federal Trade Commission, “Competition and Consumer Protection in the 21st Century,” https://www.ftc.gov/system/files/documents/public\_events/1415284/ftc\_hearings\_session\_5\_transcript\_11-1-18\_0.pdf)

Our second topic today is the consumer welfare standard. And I think most folks even out in the public know, this is the standard that we use across the board, mergers and conduct in courts and at agencies, to judge anticompetitive conduct. It is not only a standard that we in the U.S. apply, it is a standard that is used by competition agencies around the world. It is an economically-grounded standard, and it requires that there be harm to consumers for conduct to be condemned. Mere harm to competitors is considered insufficient. So let me repeat that again. There has to be harm to consumers, not just competitors. The reason that is so, the reason harm to competitors is considered insufficient is because sometimes a less-efficient firm losing sales or market share to a cheaper, more innovative or efficient rival, can be and often is consistent with vibrant competition and with outcomes that benefit consumers. Courts and agencies have embraced this standard for decades. Today, there are two very important discussions going on about the consumer welfare standard, and they are happening simultaneously. And I think it is important that we understand that there are two conversations going on. One is a continuing discussion about how we apply the standard, regarding whether enforcement is at the appropriate level, whether it is properly targeted. This is an introspective question on some level, in which scholars, economists, practitioners, and enforcers all ask ourselves, are we bringing the right kinds of cases? Are we using the right kinds of evidence? Should we be doing more or less in certain places? The antitrust bar, the business community, and others benefit from this ongoing and active analysis. The second discussion happening now, and the one on which today’s consumer welfare standard panels will focus, is whether the standard is itself the right metric we ought to use in antitrust enforcement and in antitrust law; some argue that enforcement under the consumer welfare standard has failed because of the law, and accordingly, that we should reform the law.

#### Violation: the aff applies exclusively to conduct in a specific segment of the private sector.

#### Vote neg:

#### FIRST---limits and ground---the number of potential subsets is infinite---any industry, product, single companies, individuals---undermines clash. Only big affs have link uniqueness.

#### SECOND----precision---our interp has intent to define, exclude and is in legislative context.

## 1NC — TRIPS

### 1NC — AT: TRIPS Advantage

#### Solvency evidence is a joke—It’s not about licensing climate tech—it’s about access to covid drugs, rule changes and fishing subsidy talks at current negotiations. It’s not about unilateral concessions by the US on climate [KU HW reads yellow]

Okonjo-Iweala 21 (Ngozi Okonjo-Iweala, director-general of the World Trade Organization, 3-2-2021, Ngozi Okonjo-Iweala: WTO members must intensify co-operation, Financial Times, <https://www.ft.com/content/0654600f-92cc-47ad-bfe6-561db88f7019>, MAM)

On Monday I became the first woman and the first African to lead the World Trade Organization. Now we must roll up our sleeves and get to work. The WTO already faced acute challenges, and they have been **amplified by Covid-19.** The pandemic has wreaked havoc on the global economy, affecting supply chains and disrupting transport and travel. The crisis has upended trade and economic activities, leading to job losses and reduced incomes around the world. It has erased years of economic gains made by developing countries and even decades of growth in some low income and least-developed countries. There is hope on the horizon. The WTO expects world merchandise trade to rebound strongly this year. The IMF forecasts an 8 per cent growth in global trade volumes in 2021 and a 6 per cent growth in 2022. It estimates global gross domestic product to rebound from falling 4.4 per cent in 2020 to growing 5.5 per cent in 2021. However, for the global economy to return to sustained growth, we must intensify co-operation to ensure equitable and affordable access to vaccines, therapeutics and diagnostics. The WTO can and must play a more forceful role in encouraging members to minimise or remove export restrictions and prohibitions that hinder supply chains for medical goods and equipment. WTO members have a further responsibility to reject vaccine nationalism and protectionism while co-operating on promising new treatments and vaccines. We must find a “third way” on intellectual property that preserves the multilateral rules **that encourage research and innovation while promoting licensing agreements** to help scale-up manufacturing of medical products. Some pharmaceutical companies such as AstraZeneca, Johnson & Johnson and the Serum Institute of India are already doing this. More broadly, WTO members agree that the organisation needs reforms. But a lack of trust means they do not agree on what changes are needed or their sequencing. If we are to restore the WTO's credibility, we must set aside our differences and agree on reforms when trade ministers meet later this year. We must contribute to ocean sustainability by agreeing to eliminate harmful fisheries subsidies which lead to too many vessels chasing too few fish. A robust deal will signal that **the WTO is back** and that it can conclude a multilateral agreement vital for future generations. The WTO cannot afford to stumble over this; the negotiations have been going on for 20 years. This is far too long. Absent an agreement, there will be no fish left over which to argue. The dispute settlement system has been central to the security and predictability of multilateral trade. But it needs reform and ministers need to agree this year on the nature of these reforms and how to make them. The WTO rule book must be updated to take account of 21st-century realities such as the digital economy. The pandemic has accelerated the use of ecommerce, enabling women and small and medium-sized enterprises to participate in international trade. But we must bridge the digital divide that makes some developing countries reluctant to join the ecommerce negotiations. Negotiations among some WTO members on facilitating investment and removing regulatory red tape in services trade have continued fairly intensively despite the pandemic. Participants need to broaden the support for these initiatives and attract interest from developing countries with the aim of concluding talks by the end of the year. More can be done to ensure the WTO addresses the nexus between **trade and climate change**. Members should reactivate and broaden **the negotiations** on environmental goods and services. But climate-related restrictions cannot become disguised restrictions on trade, and we must assist developing countries as they transition to the use of more environmentally friendly technologies. The WTO’s work in new or innovative areas does not mean that we have forgotten traditional topics such as agriculture. Improving market access for export products and dealing with trade-distorting farm subsidies remain of paramount importance to developing and least-developed countries. One area ripe for early agreement involves the removal of export restrictions on farm products purchased for humanitarian purposes by the World Food Programme. Ensuring that government support for state-owned industrial enterprises does not distort competition is also a top priority for many WTO members. The WTO faces numerous tricky challenges, but **they are not insurmountable**. There is hope if we work together in a manner that builds trust and builds bridges.

#### Covid waiver thumps and outweighs

Meyer 21, Senior Writer at Fortune Magazine. (David, 6/18/21, The WTO’s survival hinges on the COVID-19 vaccine patent debate, waiver advocates warn, <https://fortune.com/2021/06/18/wto-covid-vaccines-patents-waiver-south-africa-trips/>) The World Trade Organization knows all about crises. Former U.S. President Donald Trump threw a wrench into its core function of resolving trade disputes—a blocker that President Joe Biden has not yet removed—and there is widespread dissatisfaction over the fairness of the global trade rulebook. The 164-country organization, under the fresh leadership of Nigeria's Ngozi Okonjo-Iweala, has a lot to fix. However, one crisis is more pressing than the others: the battle over COVID-19 vaccines, and whether the protection of their patents and other intellectual property should be temporarily lifted to boost production and end the pandemic sooner rather than later. According to some of those pushing for the waiver—which was originally proposed last year by India and South Africa—the WTO's future rests on what happens next.

#### WTO can’t agree on Covid waiver

Farge 10/4/21, Reporter for Reuters. (Emma, A year after COVID vaccine waiver proposal, WTO talks are deadlocked, https://www.reuters.com/business/healthcare-pharmaceuticals/year-after-covid-vaccine-waiver-proposal-wto-talks-are-deadlocked-2021-10-04/)

A year after South Africa and India introduced a novel proposal to temporarily waive intellectual property rights on COVID-19 vaccines and therapies at the World Trade Organization, negotiations are deadlocked and directionless, trade sources said on Monday after a meeting on the topic. More than 100 countries backing the waiver say it will help save lives by allowing developing countries to produce COVID-19 vaccines. But a handful of countries, including some hosting major pharmaceutical firms such as Switzerland, remain opposed. Washington threw its weight behind the proposal in May, raising expectations of a breakthrough that has so far failed to materialise. At a closed-door TRIPS Council meeting on the waiver on Monday, Norway's Dagfinn Sorli seemed frustrated and asked delegates: "Where do we go from here?," according to three trade sources who attended. He urged delegates to come forward quickly with advice on next steps, the sources added. "I definitely need your advice," he told them. China in the same meeting described the discussions as circular, with no real progress achieved, according to one of the sources attending. India's delegate said that some members had done everything in their power to avoid meaningful engagement, the source added.

#### Single victories cannot restore credibility—The WTO rules are structurally failures

European Commission 21, (REFORMING THE WTO: TOWARDS A SUSTAINABLE AND EFFECTIVE

MULTILATERAL TRADING SYSTEM, https://trade.ec.europa.eu/doclib/docs/2021/february/tradoc\_159439.pdf)

Although the WTO cannot regain its credibility and effectiveness without modernising its rules, it is abundantly clear after 25 years that such modernisation cannot be achieved through multilateral agreements based on a single undertaking. In parallel, a great number of bilateral or regional trade agreements are being negotiated, including on issues for which the WTO has so far failed to produce multilateral outcomes, for example on digital trade or on stateowned enterprises. The most positive development in recent years has been the interest of a growing number of countries to develop such rules in the WTO framework through open, plurilateral negotiations. If no effective formula is found to integrate plurilateral agreements in the WTO, there would be no other option than developing such rules outside the WTO framework. The WTO Agreement provides for plurilateral agreements to be incorporated into the legal architecture of the WTO in Article X:9, whereby the Ministerial Conference may decide by consensus to add trade agreements concluded by a group of WTO members to the list of WTO plurilateral agreements in Annex 4. However, Article X:9 has not been used since the WTO’s establishment. Reaching consensus on adding a plurilateral initiative to Annex 4 has been perceived to be an insurmountable difficulty, even if the rights of non-participants were not diminished by the plurilateral commitments taken by a group of WTO members. The methodology used to integrate plurilateral agreements in the WTO architecture so far has been for every participant to incorporate the additional commitments unilaterally into their schedule of commitments, as was done for the Understanding in Financial Services Commitments and the Reference Paper on Telecommunications. However, this has its drawbacks. Not every additional commitment fits neatly into a schedule of commitments. In addition, non-participants could bring dispute settlement proceedings against a participant for breach of these additional commitments, even if they, as non-participants, are not bound by such commitments.

#### No solvency—their ev assumes an agreement negotiated through the WTO—no ev for a domestic US policy only on climate tech licenses.

### 1NC — AT: WTO

#### WTO does not stop conflict and makes war more likely

Qian 14, MA in Global Security Studies at Johns Hopkins Univ, (Joseph, THE EFFECT OF TRADE, RESOURCES, AND MIGRATION ON CONFLICT. https://jscholarship.library.jhu.edu/bitstream/handle/1774.2/37270/QIAN-THESIS-2014.pdf)

The WTO states that membership implies mutual assurance as agreements are negotiated by signatories and ratified by member parliaments. This thereby reduces trade friction and the risk of disputes spilling into political and military sphere.60 Indeed, all the countries examined in the case study are signatories but it seems that WTO membership does not preclude a state from potentially entering into conflict. Martin stated that multilateral trade often increases the likelihood for conflict due to the reduction of opportunity costs and weakens the incentive to make concessions during negotiations. His study is supported by the fact that a number of WTO members have directly been involved in military conflicts with each other on multiple occasions such as the participants of the Congo Wars as well as the Kargill War between India and Pakistan.

#### Their studies are just false

Miller 14 – Charles Miller, lecturer at Australian National University’s Strategic and Defence Studies Centre, April 7th (“Globalization and war,” Available online at http://www.aspistrategist.org.au/globalisation-and-war/)

John O’Neal and Bruce Russett’s work is perhaps the best known in this regard—and Steven Pinker cites them approvingly in his book The Better Angels of Our Nature. Analysing trade and conflict data from the nineteenth to the twenty-first centuries, they found that trade flows do have a significant impact in reducing the chances of conflict, even when taking a variety of other factors into account. But their conclusions have in turn been questioned by other scholars. For one thing, their model failed to take three things into account. First, it’s quite possible that peace causes trade rather than the other way around—no company wants to start an export business to another country if it anticipates that business linkages will be cut off by war further down the line. Second, conflict behaviour exhibits what’s called ‘network effects’— if France and Germany are at peace, chances are Belgium and Germany will be too. And third, both the likelihood of conflict and the level of trade are influenced by the number of years a pair of countries has already been at peace—because prolonged periods of peace increase mutual trust. Take any of these factors into account, and studies have shown (here and here) that the apparent relationship between trade flows and peace disappears. Perhaps, though, conceiving of globalisation solely in terms of trade flows is mistaken. Alternative indicators of globalisation include foreign direct investment, financial openness and the levels of government intervention in economic relations with the rest of the world. Data on those variables is less extensive than on trade flows, usually dating back only to the post World War II period. But some analysts, such as Patrick McDonald and Erik Gartzke, have argued that a significant correlation can be found between them and a reduction in the probability of conflict. Those findings, newer than O’Neal and Russett’s, haven’t yet been subjected to the same intense scrutiny, so may in turn be qualified by future research. What does all that mean for the policy-maker? The statistical evidence certainly doesn’t tell us that globalisation has made war in East Asia impossible. ‘Cromwell’s law’ counsels us that a logically conceivable event should never be assigned a probability of zero. The most we could conclude is that globalisation has made such an occurrence much less likely. There’s some hopeful numerical evidence that globalisation does indeed have that effect, but the evidence isn’t so compelling that we can substitute an economic engagement policy for a security policy. By all means, let’s continue to promote trade in the Asia-Pacific. But we should also continue to be prepared for scenarios which are unlikely but would be hugely damaging if they were to occur.

### 1NC — AT: “Refusal”

#### Terminal plan flaw — the aff only makes it a violation to REFUSE a license — companies can comply by negotiating for years but NEVER come to an agreement — takes out any tech diffusion

Contreras 21, professor at the University of Utah's S.J. Quinney College of Law. (Jorge, A Framework For Evaluating Willingness Of FRAND Licensees - Law360, <https://dc.law.utah.edu/cgi/viewcontent.cgi?article=1299&context=scholarship>)

What, then, is a willing licensee? At the most basic level, it is an implementer that is prepared to enter into an SEP license on FRAND terms. But what criteria, beyond the parties' self-serving statements, exist to assess whether a particular implementer is willing or unwilling in this regard? As noted above, the Federal Circuit in Apple v. Motorola offered two examples of conduct suggesting that an implementer is not a willing licensee: (1) unilateral refusal of a FRAND royalty, and (2) unreasonable delay of negotiations to the same effect. The first of these examples (unilateral refusal) is straightforward only if the royalty offered by the SEP holder is already known to be FRAND (e.g., through a prior adjudication in the relevant jurisdiction). If not, then the implementer may legitimately dispute whether or not the royalty demanded by the SEP holder is, indeed, FRAND. Given prominent examples in which SEP holders have sought to charge royalties many times above adjudicated FRAND rates, such skepticism may not be unwarranted.[5] The second example of unwillingness — an implementer's "unreasonable delay of negotiations" is even more difficult to assess objectively. Patent licensing negotiations can be complex and resource-intensive, often taking months or years to conclude.

## 1NC — Climate

### 1NC — Trade Secrets

#### Antitrust enforcement of refusal to license would cause a shift to use of trade secrets instead of patents to circumvent requirements

DOJ 7, ( U.S. Dep't of Justice & Fed. Trade Comm'n, Antitrust Enforcement and Intellectual Property Rights: Promoting Innovation and Competition, https://www.justice.gov/atr/antitrust-enforcement-and-intellectual-property-rights-promoting-innovation-and-competition)

If a unilateral refusal to license patents were found to violate the antitrust laws, one appropriate remedy likely would entail compulsory licensing. Some panelists argued that the courts and Agencies are not well-equipped to determine appropriate licensing terms and conditions and, as a result, compulsory licensing would be problematic.(55) Another panelist noted that compulsory licensing might not work because transfer of some technologies requires not only a patent license, but also the transfer of related know-how, and it may be difficult for courts to enforce a requirement that this know-how be transferred.(56) Moreover, if compulsory licensing is a generally available remedy for unconditional, unilateral refusals to license patents, this panelist argued, firms may shift their strategies away from filing patents and toward reliance on trade secrets. Such an outcome would be unfortunate, he said, because patents enable more effective disclosure of knowledge and therefore make licensing easier.(57)

#### A shift to trade secrets crushes all solvency

Lewis 15, Osgoode Hall Law School, PhD Candidate. (Leslyn, THE APPLICABILITY OF TRIPS FLEXIBILITIES TO THE DEVELOPING WORLD FOR CLIMATE CHANGE MITIGATION AS A PUBLIC GOOD IN GREEN ENERGY PROJECTS, Asper Review Volumn XV)

While the "Waiver" is available and has been utilized in the affordable medicines case involving Rwanda and Canada, its application to climate control may prove to be impractical. Since the Rwandan-Canadian case, there has not been another attempt to use the Waiver provision to export medicines for humanitarian purposes. Apotex, the generic company that exported HIV/AIDS medication to Rwanda, has commented on the process, stating that is extremely frustrating because the Canadian Patent Act 134 was not crafted in a way to effectively operationalize TRIPS.1 35 By its very nature, green energy technology requires some local manufacturing or technological interaction. Moreover, unlike pharmaceutical products that can be imported and distributed, renewable energy products such as solar panels require continued cooperation of the patent holder and manufacturer for installation and maintenance. Even in cases where the requisite local legislations are in place, developing nations endure immense pressures from wealthier governments to not utilize compulsory licensing. The case of climate change technology differs substantially from affordable medicines in a number of ways. The technology has to be transplanted in the non-enabling country. The cost of this technology transfer is exorbitant and requires funding from foreign investors for various local energy projects. The royalty required to access a patent through compulsory licensing is not a viable option for green technology patents. Many climate control technologies are subject to multiple patents and processes, which would make the cost of accessing them prohibitive. In addition, unlike health problems no one singular technology "will be necessary or sufficient on its own to solve climate change."' 36 Meeting the test of "national" urgency may also pose a problem for green technology transfer pursuant to Article 31. Climate change may not qualify as a national urgency such that it satisfies the urgency component under Article 31. Climate control mitigation is not confined to national urgency issues, but encompasses the concern and public good of the entire planet. The subject matter of climate control is more complexly tied to multinational rather than solely national concerns. Aside from the general application of TRIPS to climate change mitigation, the issue of green technology transfer through compulsory licensing remains unresolved. Consequently, even if a Declaration were invoked that relaxed the Article 3 1(f) prohibition against issuing a compulsory license for an export market, the very nature of climate control technology necessitates that the product be produced and installed locally. Unlike pharmaceutical products that disclose the steps required to make a medicine, green technologies like solar panels are often made in the country of origin and shipped for assembly. Many of these products are off-patent but have been improved via trade secrets that are retained by the inventing corporation. Thus, assembling green technologies like solar panels requires technical knowledge to accompany patents. This knowledge may not be within the public domain and may be protected by trade-secrets. Similar impediments encountered under the Waiver for pharmaceutical products will be present for green technology transfer. This includes proving that the need qualifies as a national urgency, requesting a voluntary license and, finally, obtaining a compulsory license. Even if a compulsory license is obtained, the solar panel patent may be so out-dated that it would not be financially viable to utilize that product. Technologies change and improve so rapidly that, quite often, new patents are not filed and enhancements are contained in trade secrets. A fundamental problem rests with the fact that neither TRIPS nor the patent regimes of industrialized nations require the disclosure of trade secrets.

#### Compulsory licensing can’t solve—Trade secrets crush solvency

Lewis 15, Osgoode Hall Law School, PhD Candidate. (Leslyn, THE APPLICABILITY OF TRIPS FLEXIBILITIES TO THE DEVELOPING WORLD FOR CLIMATE CHANGE MITIGATION AS A PUBLIC GOOD IN GREEN ENERGY PROJECTS, Asper Review Volumn XV)

While compulsory licensing is an option available under Article 31 of TRIPS to gain access to various technologies, the need for technological "know-how," an existing technological base and sufficient human capital compromises its effectiveness as a practical alternative in the renewable energy sector. Blueprints, test protocols and various "know-hows" are required to actualize the technology. Recall that revealing trade secrets and "know-how" is not a requisite part of complying with the treaty. In general, TRIPS sets out a number of flexibilities that could be adopted in order to facilitate technology transfer in furtherance of climate control. Article 40 empowers countries to label certain practices as anti-competitive and invoke TRIPS as a means to "prevent and control" such practices. 47 Article 40 is particularly important in the field of renewable energy as many of the patents have expired and what remains proprietary are the enhancements and technological "know-how." For this reason, trade secrets as discussed in Article 39 are an essential element in technology transfer and climate change mitigation. Bronwyn Hall and Christian Helmers' article, "The Role of Patent Protection in (Clean/Green) Technology Transfer," summarizes the reality of undisclosed improvements on off-patent technology: A large range of different technologies can achieve emission reductions, and for a significant share of these green technologies, the underlying technology is mature and in the public domain. Most technological progress is expected to come from incremental improvements of existing off-patent technologies. While such incremental innovation may be patentable, it leaves ample scope for competing technologies and therefore limits the role specific patents may play for technological progress in this area. 8 Thus, while many patents in renewable technology are in the public domain, the existence of trade secret data may make it difficult to utilize them. 149 With a requirement to comply to minimum standards, and given the exorbitant cost of financing solar projects, TRIPS alone, without the infusion of foreign investments would not remove the impediment to technology transfer.

### 1NC — No Impact

#### No impact to warming

Kerr 19 (Dr. Amber Kerr, Energy and Resources PhD at the University of California-Berkeley, known agroecologist, former coordinator of the USDA California Climate Hub. Dr. Daniel Swain, Climate Science PhD at UCLA, climate scientist, a research fellow at the National Center for Atmospheric Research. Dr. Andrew King, Earth Sciences PhD, Climate Extremes Research Fellow at the University of Melbourne. Dr. Peter Kalmus, Physics PhD at the University of Colombia, climate scientist at NASA’s Jet Propulsion Lab. Professor Richard Betts, Chair in Climate Impacts at the University of Exeter, a lead author on the Fourth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) in Working Group 1. Dr. William Huiskamp, Paleoclimatology PhD at the Climate Change Research Center, climate scientist at the Potsdam Institute for Climate Impact Research. (Amber, “Claim that human civilization could end in 30 years is speculative, not supported with evidence,” series of posts from scientists compiled by editor Scott Johnson, *Climate Feedback*, <https://climatefeedback.org/evaluation/iflscience-story-on-speculative-report-provides-little-scientific-context-james-felton/>)

Scientists who reviewed IFLScience’s story found that it failed to provide sufficient context for this report—differentiating, for example, between speculative claims and descriptions of peer-reviewed research. In particular, the story’s headline (“New Report Warns ‘High Likelihood Of Human Civilization Coming To An End’ Within 30 Years”) misrepresents the report as a likely projection rather than an exploration of an intrinsically unlikely worst case scenario.

See all the scientists’ annotations in context.

REVIEWERS’ OVERALL FEEDBACK

These comments are the overall assessment of scientists on the article, they are substantiated by their knowledge in the field and by the content of the analysis in the annotations on the article.

Amber Kerr, Researcher, Agricultural Sustainability Institute, University of California, Davis:

The content of the IFLScience article is mostly an accurate representation of the contents of the Breakthrough report, but the article tends to gloss over important caveats and probabilities that are given in the report. The least accurate part of the IFLScience article is the headline, which is an outright misrepresentation of the report. The article title states that there is, overall, a “high probability” of human civilization coming to an end in 30 years. This is extremely misleading. What the Breakthrough report actually says is that, in the most unlikely, “long-tail” biophysical scenario where climate feedbacks are much more severe than we expect, THEN there is a high likelihood of human civilization coming to an end. But the report authors explicitly state that this “high-end scenario” is beyond their capacity to model or to quantitatively estimate.

Daniel Swain, Researcher, UCLA, and Research Fellow, National Center for Atmospheric Research:

The article uncritically reproduces claims from a recent report released by an Australian thinktank regarding the purported “end of human civilization” due to climate change over the next 30 years. While there is plenty of scientific evidence that climate change will pose increasingly existential threats to the most vulnerable individuals in society and to key global ecosystems, even these dire outcomes aren’t equivalent to the “annihilation of intelligent life,” as is claimed in the report.

Andrew King, Research fellow, University of Melbourne:

The report this article is based on describes a scenario which is unlikely, but several aspects of what is included in the report are likely to worsen in coming decades, such as the occurrence of deadly heatwaves. The conclusion of a high likelihood that human civilisation will end is false, although there is a great deal of evidence that there will be many damaging consequences to continued global warming over the coming decades.

Peter Kalmus, Data Scientist, Jet Propulsion Laboratory:

I don’t think it’s so easy to discount the essential warning of this report. However, it would have been stronger if the authors were more careful not to mention the unsupported concept of near-term human extinction, and the unsupported probabilistic claim that there is a “high likelihood” of their 2050 scenario which includes the collapse of civilization. I do not understand why non-scientist writers (neither report author is a scientist) feel a need to exaggerate sound scientific findings, when those findings are already quite alarming enough. I feel that humanity should undertake urgent climate action just as the report authors do, but I feel that misrepresenting the science is unhelpful and unnecessary.

Richard Betts, Professor, Met Office Hadley Centre & University of Exeter:

This is a classic case of a media article over-stating the conclusions and significance of a non-peer reviewed report that itself had already overstated (and indeed misrepresented) peer-reviewed science – some of which was already somewhat controversial. It appears that there was not a thorough independent check of the credibility of the message.

Notes:

[1] See the rating guidelines used for article evaluations.

[2] Each evaluation is independent. Scientists’ comments are all published at the same time.

ANNOTATIONS

The statements quoted below are from the article; comments are from the reviewers (and are lightly edited for clarity).

New Report Warns “High Likelihood Of Human Civilization Coming To An End” Within 30 Years

Richard Betts, Professor, Met Office Hadley Centre & University of Exeter:

The headline overstates the conclusions of the report (which is already overdoing things). The reports says it presents a scenario, and under that scenario and all the assumptions within it, the report claims that there is a “high likelihood of human civilization coming to and end” – but even then, the report itself does not give the end of civilisation within 30 years. The process supposedly leading ultimately to collapse begins around 2050 but takes a long time to take effect. Also the processes themselves are not well-grounded in science, as they over-interpret published work.

A new report has warned there’s an existential risk to humanity from the climate crisis within the coming decades, and a ‘high likelihood of human civilization coming to an end’ over the next three decades unless urgent action is taken.

Andrew King, Research fellow, University of Melbourne:

This is hyperbole. The scenario constructed in this report does not have a “high likelihood” of occurring in part because it requires a confluence of circumstances coming together. While it’s certainly true that climate change will be damaging to society and the environment and many of the consequences will be severe this does not equate to a high likelihood of civilisation coming to an end.

Richard Betts, Professor, Met Office Hadley Centre & University of Exeter:

The “report” is not a peer-reviewed scientific paper. It’s from some sort of “think tank” who can basically write what they like. The report itself misunderstands / misrepresents science, and does not provide traceable links to the science it is based on so it cannot easily be checked (although someone familiar with the literature can work it out, and hence see where the report’s conclusions are ramped-up from the original research).

This requires us to work towards avoiding catastrophic possibilities rather than looking at probabilities, as learning from mistakes is not an option when it comes to existential risks.

Andrew King, Research fellow, University of Melbourne:

The report focuses on possible scenarios very much on the extreme end of what could happen but then claims there’s a “high likelihood” of human civilisation ending. These two statements don’t fit together.

With that in mind, they propose a plausible and terrifying “2050 scenario” whereby humanity could face irreversible collapse in just three decades.

Peter Kalmus, Data Scientist, Jet Propulsion Laboratory:

Not to downplay the seriousness of what humanity is facing, but the report in fact doesn’t make this claim. While scientists do expect many of the changes to the Earth system due to global heating to be “irreversible,” and while this should be extremely concerning to any reasonable person, it is different than “irreversible human collapse” which, if you think about it, needs unpacking.

Their analysis calculates the existential climate-related security risk to Earth through a scenario set 30 years into the future.

Richard Betts, Professor, Met Office Hadley Centre & University of Exeter:

No, the report’s authors have merely read (or possibly seen without actually reading) a few of the scariest papers they could find, misunderstood (or not read properly) at least one of them, and presented unjustified statements.

posing permanent large negative consequences to humanity that may never be undone, either annihilating intelligent life or permanently and drastically curtailing its potential.

Daniel Swain, Researcher, UCLA, and Research Fellow, National Center for Atmospheric Research:

As I climate scientist, I am unaware of any scientific research that suggests changes in Earth’s climate capable of “annihilating intelligent life” over the next 30 years.

There is plenty of evidence that climate change will pose increasingly existential threats to the most vulnerable individuals in society; to low-lying coastal cities and island nations; to indigenous cultures and ways of life; and to numerous plant and animal species, and perhaps even entire ecosystems.

Such consequences are well-supported by the existing evidence, are already starting to emerge in certain regions, and should be of paramount concern. But even these very dire outcomes aren’t equivalent to the “end of human civilization,” as is claimed in the report.

Peter Kalmus, Data Scientist, Jet Propulsion Laboratory:

There is no scientific basis to suggest that climate breakdown will “annihilate intelligent life” (by which I assume the report authors mean human extinction) by 2050.

However, climate breakdown does pose a grave threat to civilization as we know it, and the potential for mass suffering on a scale perhaps never before encountered by humankind. This should be enough reason for action without any need for exaggeration or misrepresentation!

A “Hothouse Earth” scenario plays out that sees Earth’s temperatures doomed to rise by a further 1°C (1.8°F) even if we stopped emissions immediately.

Peter Kalmus, Data Scientist, Jet Propulsion Laboratory:

This word choice perhaps reveals a bias on the part of the author of the article. A temperature can’t be doomed. And while I certainly do not encourage false optimism, assuming that humanity is doomed is lazy and counterproductive.

Fifty-five percent of the global population are subject to more than 20 days a year of lethal heat conditions beyond that which humans can survive

Richard Betts, Professor, Met Office Hadley Centre & University of Exeter:

This is clearly from Mora et al (2017) although the report does not include a citation of the paper as the source of that statement. The way it is written here (and in the report) is misleading because it gives the impression that everyone dies in those conditions. That is not actually how Mora et al define “deadly heat” – they merely looked for heatwaves when somebody died (not everybody) and then used that as the definition of a “deadly” heatwave.

North America suffers extreme weather events including wildfires, drought, and heatwaves. Monsoons in China fail, the great rivers of Asia virtually dry up, and rainfall in central America falls by half.

Andrew King, Research fellow, University of Melbourne:

Projections of extreme events such as these are very difficult to make and vary greatly between different climate models.

Deadly heat conditions across West Africa persist for over 100 days a year

Peter Kalmus, Data Scientist, Jet Propulsion Laboratory:

The deadly heat projections (this, and the one from the previous paragraph) come from Mora et al (2017)1.

It should be clarified that “deadly heat” here means heat and humidity beyond a two-dimension threshold where at least one person in the region subject to that heat and humidity dies (i.e., not everyone instantly dies). That said, in my opinion, the projections in Mora et al are conservative and the methods of Mora et al are sound. I did not check the claims in this report against Mora et al but I have no reason to think they are in error.

1- Mora et al (2017) Global risk of deadly heat, Nature Climate Change

The knock-on consequences affect national security, as the scale of the challenges involved, such as pandemic disease outbreaks, are overwhelming. Armed conflicts over resources may become a reality, and have the potential to escalate into nuclear war. In the worst case scenario, a scale of destruction the authors say is beyond their capacity to model, there is a ‘high likelihood of human civilization coming to an end’.

Willem Huiskamp, Postdoctoral research fellow, Potsdam Institute for Climate Impact Research:

This is a highly questionable conclusion. The reference provided in the report is for the “Global Catastrophic Risks 2018” report from the “Global Challenges Foundation” and not peer-reviewed literature. (It is worth noting that this latter report also provides no peer-reviewed evidence to support this claim).

Furthermore, if it is apparently beyond our capability to model these impacts, how can they assign a ‘high likelihood’ to this outcome?

While it is true that warming of this magnitude would be catastrophic, making claims such as this without evidence serves only to undermine the trust the public will have in the science.

Daniel Swain, Researcher, UCLA, and Research Fellow, National Center for Atmospheric Research:

It seems that the eye-catching headline-level claims in the report stem almost entirely from these knock-on effects, which the authors themselves admit are “beyond their capacity to model.” Thus, from a scientific perspective, the purported “high likelihood of civilization coming to an end by 2050” is essentially personal speculation on the part of the report’s authors, rather than a clear conclusion drawn from rigorous assessment of the available evidence.

Richard Betts, Professor, Met Office Hadley Centre & University of Exeter:

So there is only a “high likelihood” in the scenario that the report’s authors have constructed here. They do not say that their scenario itself is “highly likely” (in fact they say it is a “sketch”) – so the headline of this article is not justified.

The most recent IPCC report lays out a future if we limit global heating to 1.5°C instead of the Paris Agreement’s 2°C.

Peter Kalmus, Data Scientist, Jet Propulsion Laboratory:

The article doesn’t mention it, but it’s worth pointing out that the underlying report criticizes the IPCC for being too “reticent” and gives an erroneous example: it claims that mean global temperatures will accelerate beyond the IPCC’s projections since human greenhouse gas emissions are themselves accelerating. Emissions ARE accelerating exponentially, leading to exponential CO2 atmospheric fraction increase, but exponential growth in CO2 fraction leads to linearly increasing global mean temperature.

By 2050 there’s a scientific consensus that we reached the tipping point for ice sheets in Greenland and the West Antarctic well before 2°C (3.6°F) of warming

Richard Betts, Professor, Met Office Hadley Centre & University of Exeter:

This is somewhat unclear phrasing from the report. Although studies have shown it is possible that the threshold for the Greenland Ice Sheet tipping point may be lower than 2C global warming (relative to pre-industrial), there is not currently a scientific consensus that this is where the threshold is. It seems to authors’ scenario is that scientists living in 2050 have reached the consensus that the tipping point has been passed by that time, but that’s different – again it’s part of the scenario and does not support the “end of civilisation by 2050” headline.

### 1NC — AT: Licensing

#### Zero solvency--A host of structural barriers prevent widespread use of green technologies even if licensing happens

Pearson 11, Top Rated Intellectual Property Litigation Attorney in Washington, DC. (Douglas, Potential Threats to Patent Rights in Climate-Friendly Technologies European Journal of Risk Regulation : EJRR; Berlin Vol. 2, Iss. 2, (2011): 247-254.)

So what are the barriers to the transfer of clean technologies? Some of the barriers to the transfer of clean technologies to developing countries have already been identified above, but additional discussion is warranted to provide a fuller context on the issue. In no particular order, the following obstacles are among those that have been identified (other than IPRs) as barriers to the transfer of clean technologies to developing countries: - lack of resources including financial resources; - poor credit access; - inadequate infrastructure required by certain technologies; - inadequate laws and regulations; - unpredictable commercial law; - inadequate legal protection for trade secrets and fear of losing control over proprietary technologies; - lack of skilled workers; - ignorance of technology issues; - high cost of certain technology agreements; - problems created by equipment suppliers; - trade barriers including tariffs; - investment policy barriers; - limited market size; - high transaction costs; - lack of effective governance; - political uncertainty; - regulatory hurdles; - subsidies for the consumption of fossil fuels; - business limitations including risk aversion.52 This is a long list, and yet there are probably other barriers as well. The list reflects the multi-faceted complexity of the barriers that stand in the way of transferring clean technologies to developing countries. In light of this multitude of barriers, it makes little sense to restructure existing international agreements on IPRs to curtail patent rights, particularly when the evidence discussed above reflects that IPRs are not a barrier and instead likely facilitate diffusion of clean technologies to developing countries. It is not surprising that diffusion of clean technologies to developing countries is proceeding slowly when, for example, developing countries face a lack of skilled workers and a lack of financial resources, impose significant tariffs on clean technologies, and heavily subsidize the consumption of fossil fuels, which reduce incentives to move to cleaner technologies. IPRs are not to blame for such difficulties.

#### Shortages of skilled workers prevents effective use of green technology in other countries

Olawuyi 18, Associate Professor of Law at HBKU Law School. (Damilola, From technology transfer to technology absorption: addressing climate technology gaps in Africa, Journal of Energy & Natural Resources Law; London Vol. 36, Iss. 1, (Feb 2018): 61-84.)

The importance of climate technology absorption, as a key element of a holistic climate technology diffusion plan, is fourfold. First, being in a position to deploy new technological innovations depends to a great extent on the accumulation of relevant knowledge from the source of the technology.26 For example, most entities or countries that rely on climate technology transfer do so because required technologies are either scarce or unavailable domestically, or when available, they could be too expensive to acquire at home. This unavailability often also means that the skill set and experience necessary to deploy such technologies are not readily available internally. A lot will therefore depend on how much knowledge is acquired from the source of the technologies. Importation or availability of new technologies is not enough; without the required human capacity, such facilities may deteriorate due to limited use or may be sub-optimally deployed.27 For example, in the 2013 climate technology needs assessment report of the UNFCCC, all the 11 participating African countries - Cote d'Ivoire, Ethiopia, Ghana, Kenya, Mali, Mauritius, Morocco, Rwanda, Senegal, Sudan, Zambia - identified the lack of in-country capacity to deploy climate technology as a key barrier to effective climate action.28 Ghana, for example, reported that inadequately skilled personnel, at community and local (district) levels, to keep transferred water technologies functional is a key reason for ineffective deployment of climate technologies in the country's water and agricultural sector.29 Furthermore, climate technologies that have been transferred to Ghana as part of the effort to promote sustainable water and agricultural management practices have been sub-optimally deployed due to lack of capacity to utilise and manage the technologies.30 The lack of capacity to deploy and maintain clean technologies has also been identified as a technical barrier to climate action in the energy and aviation sectors in Ethiopia, Kenya, Nigeria and South Africa.31 Similarly, with respect to deploying clean technology for sustainable aviation, the dearth of skilled personnel in African countries has been identified as one of the barriers to low carbon aviation on the continent.32 According to the International Civil Aviation Organization (ICAO), a considerable number of institutions in Africa that have been training pilots, air traffic controllers and mechanics for decades do not possess the critical mass of resources needed to meet the growing capacity development demands of transitioning to low carbon aviation systems.33 Furthermore, efforts to deploy solar home systems in Kenya have been stifled by a lack of required capacity and expertise.34 These examples show that technology transfer alone, without a sufficient pool of skilled and trained officers to deploy and maintain climate technologies,

[marked]

cannot effectively address Africa's climate technology needs. A holistic technology diffusion plan for Africa must incorporate skill transfer and knowledge assimilation as its core component.

# 2NC

## T — Private Sector

#### Here’s just a short-list of the most notable industries (that certainly have advocates)

Select USA No Date (“INDUSTRIES”, <https://www.selectusa.gov/industries> , date accessed 9/11/21)

The United States is home to the most innovative and productive companies in the world, forming a diverse and competitive group of industry sectors. The U.S. industries highlighted here are exceptionally dynamic and represent key opportunities for global growth and success.

Aerospace

Agribusiness

Automotive

Biopharmaceuticals

Chemicals

Consumer Goods

Energy

Environmental Technology

Financial Services

Logistics and Transportation

Machinery and Equipment

Media and Entertainment

Medical Technology

Professional Services

Retail Trade

Software and IT Services

Textiles

Travel, Tourism, and Hospitality

#### There are 32 million businesses in the US

FedCommunities 9/9 (“Small-business owners: Share your experiences with credit access this past year” , <https://fedcommunities.org/data/2021-take-federal-reserve-small-businesses-credit-survey/> , September 9, 2021, date accessed 9/11/21)

There are 32.5 million small businesses in the

United States. That’s 32.5 million stories of small-business ownership. Representative data drawn from these stories can shed light on more universal experiences.

#### Antitrust prohibitions can be global

Hamer et al 16 (Mark H. Hamer is a partner in Baker & McKenzie's Washington, DC office and Chair of the Firm’s North American Antitrust and Competition Practice Group. Celina Joachim is a partner in Baker McKenzie's Houston office and certified in labor and employment law by the Texas Board of Legal Specialization. She represents management in all aspects of labor and employment law, including employment arbitration, litigation, counseling, and traditional labor law. Cynthia Jackson is a partner in the Compliance Group in Baker & McKenzie's Palo Alto office. “US Federal Agencies Issue Joint Guidance for HR Professionals Warning of Criminal Liability for Wage-Fixing and No-Poaching Agreements” , <https://www.globalcompliancenews.com/2016/11/15/us-issues-guidance-for-hr-professionals-wage-fixing-20161110/> , NOVEMBER 15, 2016, date accessed 9/5/21)

US antitrust prohibitions can apply to global conduct when there is a negative effect on competition in the United States. For instance, agreements between non-US companies, or transactions driven outside of the US, that include US compensation data, wage or benefit sharing, and/or no-hire / no poach or wage fixing agreements which impact US workforces will be in violation of this new guidance and constitute unlawful antitrust agreements. Multinational employers should therefore be mindful of sharing data or entering into such restrictive agreements where they involve US workforces.

#### And cover specific products

Markham 11 (Jesse W. Markham, Jr-\* Marshall P. Madison Professor of Law, The University of San Francisco School of Law. “LESSONS FOR COMPETITION LAW FROM THE ECONOMIC CRISIS: THE PROSPECT FOR ANTITRUST RESPONSES TO THE “TOO-BIG-TO-FAIL” PHENOMENON” , FORDHAM JOURNAL OF CORPORATE & FINANCIAL LAW, Vol. 16, Issue 2, <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1281&context=jcfl> , 2011, date accessed 9/11/21)

A merger is not the only setting in which antitrust champions scale efficiencies. At the retail level, economies of scale constitute a legitimate reason for a manufacturer to limit intrabrand competition by imposing vertical restraints.92 Antitrust law also generally tolerates combinations of competitors into joint ventures to achieve economies of scale, with the presence of such efficiencies removing a challenge from the application of per se condemnation and establishing a facially plausible justification for the concerted activity.93 Removing conduct from per se illegality comes close to legalizing it, given the rarity of plaintiff successes in challenging the conduct under the rule of reason.94

[[BEGIN FOOTNOTE 94]]

94. One rare successful challenge under the rule of reason is found in Polygram Holding, Inc. v. FTC, 416 F.3d 29 (D.C. Cir. 2005), a case that is indicative of the difficulties plaintiffs face under Post-Chicago School antitrust rules. In that case the FTC challenged an agreement between competing record companies to suspend advertising and discounting of two record albums temporarily during the launch period for a jointly-produced recording. The court affirmed the FTC’s application of the rule of reason to the challenged agreement, even though it involved competitors agreeing not to put specific products on sale for a period of time – a collusive restriction on price and advertising that in an earlier era probably would have met with per se condemnation.

[[END FOOTNOTE 94]]

#### Other parts of the US code concur

US Code 96 (United States Code, 2 U.S. Code § 658 – Definitions, <https://www.law.cornell.edu/uscode/text/2/658#9> , Section effective Jan. 1, 1996, date accessed 9/10/21)

(9) Private sector

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

#### The consumer welfare standard is the heart of antitrust—it’s an entire topic’s worth of literature

Dorsey 20 (Elyse Dorsey-At the time of publication: Counsel to the Assistant Attorney General, Antitrust Division @ U.S. Department of Justice; Adjunct Professor @ George Mason University - Antonin Scalia Law School. “Antitrust in Retrograde: The Consumer Welfare Standard, Socio-Political Goals, and the Future of Enforcement”. , The Global Antitrust Institute Report *on the Digital Economy 4*, <https://gaidigitalreport.com/wp-content/uploads/2020/11/Dorsey-Antitrust-in-Retrograde.pdf> , date accessed 9/11/21)

Judge Richard A. Posner famously described the consumer welfare standard as the “lodestar that shall guide the contemporary application of the antitrust laws” in 1986.1 In the decades since, the antitrust community readily embraced the “lodestar” denomination.2 The consumer welfare standard is indeed the focal point of modern antitrust analysis, guiding decisions and informing the rules and standards antitrust law imposes. But this is not the consumer welfare standard’s only function as lodestar. It is both guide and tether. It serves as the linchpin tying antitrust law to economic concepts and reasoning. Its guidance illuminates both what antitrust law is and—just as important, what it is not. The consumer welfare standard provides the basis for distinguishing between those concerns that antitrust law appropriately considers and those that it rightly omits. In doing so, the consumer welfare standard ensures a common language is spoken across antitrust matters today.

Antitrust law did not always operate with a common language. For many decades following the passage of the Sherman Act in 1890, antitrust lacked a unifying, consistent language. It was a cacophonous area of law, where decisions could be—and often were— premised upon vastly different reasoning from one to another, leading to numerous inconsistencies and internal tensions. This resulted in a general confusion as to how any given case would be decided. But more fundamentally, to questions regarding the very goals of antitrust law.

The consumer welfare standard, with its economic underpinning, has come to represent a robust language defining antitrust discourse today. For the last several decades, courts and enforcers, economists and practitioners, and other experts have developed this language. The analysis today is far more comprehensive than it was when the courts first embraced the consumer welfare standard 40 years ago. Experts have continued to investigate and seek out theories of harm; to develop economic tools for empirically investigating conduct; and to analyze numerous other components factoring into antitrust analysis, such as potential efficiencies.

Of late, the consumer welfare standard—and antitrust law more broadly—has come under renewed criticism. Criticisms come in various forms, but largely follow a similar thread, cataloguing its purported limitations: That it myopically focuses upon the short term and only upon price effects; that it omits consideration of important sociopolitical goals; that it is incapable of identifying and condemning problems endemic in the modern economy. While some of the criticisms ring true (the consumer welfare standard does not permit consideration of socio-political factors), others do not (the consumer welfare standard addresses far more than short term price effects). And many miss the mark because they overlook the history of how and why we arrived at the current understanding.

Indeed, a common characteristic of the current criticism, often referred to as the Neo-Brandeisian movement, is that it bears remarkable resemblance to those populist movements that came before it. Today, antitrust critics make nearly the exact same arguments regarding the proper goals of antitrust law—any number of socio-political ends such as protecting small businesses and preventing “bigness”—that similar movements throughout the 20th century (and the late 19th century) espoused.3 Antitrust law did, in fact, embrace a more socio-political approach, which explicitly purported to serve just such values, for much of the 20th century.

## CP — Advantage

## Advantage — TRIPS

#### Trade and globalization causes global conflict and power-grabbing

MARTIN et al 7, [Philippe Martin](http://www.voxeu.org/index.php?q=node/105) Professor of Economics at Université Paris1-Panthéon Sorbonne and CEPR Research Fellow, [Thierry Mayer](http://www.voxeu.org/index.php?q=node/352) Professor of Economics at the University of Paris 1 Panthéon-Sorbonne and member of the Paris School of Economics. CEPR Research Affiliate , [Mathias Thoenig](http://www.voxeu.org/index.php?q=node/353)Mathias Thoenig is Professor of Economics at the University of Geneva and associate researcher at Paris School of Economics. CEPR Research Fellow, Does globalisation pacify international relations? <http://www.voxeu.org/index.php?q=node/354>

So what went wrong? Why is it that globalisation, interpreted as trade liberalisation at the global level, has not lived up to its promise of decreasing the prevalence of violent interstate conflicts? Since 1970, the occurrence of military inter-state conflicts has remained constant, whereas global trade as a percentage of world GDP has more than doubled. Looking at a larger time span, figure 1 suggests that during the 1870-2001 period, the relation between trade openness (the ratio of trade to GDP at the world level) and war[<!--[if !supportFootnotes]-->[1]<!--[endif]-->](http://www.voxeu.org/index.php?q=node/354" \l "_ftn1#_ftn1" \o ") is nothing but simple. The first era of globalisation, at the end of the 19th century, was a period of rising trade openness and of multiple military conflicts, culminating with World War I. Then, the interwar period was characterised by a simultaneous collapse of world trade and of conflicts. After World War II, world trade increased rapidly while the number of conflicts decreased (although the risk of a global conflict was obviously high). But again, since 1970 trade flows increased dramatically, but there is no evidence of a lower prevalence of military conflicts – even taking into account the increase in the number of sovereign states. To go further, we have tried to understand the reason why the logic of pacifying trade seems to work at the bilateral or regional level but cannot be simply extended at the global level.[<!--[if !supportFootnotes]-->[2]<!--[endif]-->](http://www.voxeu.org/index.php?q=node/354" \l "_ftn2#_ftn2) Our conclusion, based on extensive empirical work using a large dataset of military conflicts on the 1950-2000 period, and taking into account many other possible determinants of conflicts, is that the intuition that trade is good for peace is only partially true. The part that is true is that two countries that trade more bilaterally indeed have a lower probability of a bilateral conflict. The intuition is that bilateral trade generates economic gains that are put into danger if a dispute between two countries escalates into a military conflict. We indeed check that the destruction of bilateral trade following bilateral conflicts is large and persists for twenty years. Hence, higher bilateral trade flows are a measure of the opportunity cost of such a conflict and create an incentive to accept concessions to avoid military escalation. However, it is wrong to take the seemingly logical next step and conclude that globalisation leads to more peaceful relations between countries. In fact, we find that countries that are more open to trade with the rest of the world are more inclined to military conflicts. Another way to put it is that two countries that trade more with each other pacify their bilateral relations but make it more likely that a conflict will arise with a third country. The interpretation of this seemingly provocative result is that when two countries are very open to trade, the bilateral economic dependence and therefore the opportunity cost of a bilateral conflict are lowered. The incentive to make concessions in order to avert escalation is weakened when globalisation provides economic insurance during bilateral conflicts by diversifying trade partners. Globalisation is by construction an increase in both bilateral and multilateral trade flows. What then was the net effect of increased trade since 1970? We find that it generated an increase in the probability of a bilateral conflict by around 20% for those countries separated by less than 1000kms, the group of countries for which the risk of disputes that can escalate militarily is the highest. The effects are much smaller for countries which are more distant.

#### The WTO increases global militarization

DEL ROSARIO-MALONZO 2 Jennifer, A special report prepared by IBON Foundation, an independent research think-tank <http://www.bulatlat.com/news/2-13/2-13-ibon1.html>

What do Boeing and other defense corporations get from sponsoring the WTO meeting? So much more than the amount they shelled out. Weapons makers are interested in the WTO agenda because they are becoming more dependent on exports to boost profits and are willing to enter into joint ventures, partnerships, and even mergers with companies in other countries. It s not surprising that Boeing, which makes $13 billion annually selling missiles, combat aircraft, and other weapons systems ($3 billion in arms exports), would be a prime sponsor of the WTO meeting. Boeing has been a strong advocate of WTO membership for China, which provides a huge market for the company’s airliners. And the Aerospace Industries Association (AIA), of which Boeing is a member, has been pressing for normal trade relations with China. Under the WTO system, arms corporations derive a double benefit. Not only do they profit from the elimination of environmental, health, and labor standards under the WTO, but their own activities in the military domain including massive research and export subsidies from their home governments are exempt from challenge under the WTO’s security exception. This security exception gives governments incentive to invest in the military sector at the expense of civilian projects.

#### AND it independently turns advantage 2 — it destroys climate change efforts

GLOBALIZATION MONITOR 08 Globalization Monitor is a non-profit organization based in Hong Kong <http://www.globalmon.org.hk/en/WTO%20&%20Globalisation/20080706callcationtodoha.html>.

Ministers from dozens of countries, including the U.S., EU, Brazil, India, Indonesia, Philippines, South Africa, Kenya and Egypt, will meet in Geneva on July 21 to attempt to push through the conclusion of the WTO’s Doha Round. After years of negotiations, failed Ministerials, and re-starts, this is their “last chance” before President Bush leaves office. The Ministers areseeking to conclude this faltering round while pushing aside key global priorities like the food crisis, fuel prices, global warming, global poverty and debt.   If concluded, the expansion of the WTO will benefit large corporations – but will have profoundly negative impacts on workers, farmers, women, consumers, and the environment. Falsely labeled a “Development Round” the real consequences would be:   Job loss, de-industrialization, and the foreclosing of development space for decades to come. Rich countries are demanding that developing countries provide “new market access,” meaning slashing protective tariffs on manufactured goods and natural resources. Farmers’ livelihoods, food security, and rural development would come under even greater pressure. The United States and Europe continue to subsidize their agribusiness exporters, while at the same time fighting against key protections for millions of farmers in developing countries. This is outrageous in the face of a global food crisis. Increased privatization and deregulation of services, including in key sectors such as finance and energy. Recent instability in global markets demonstrates the need for increased intervention in and oversight of global financial and other markets, not more deregulation. Global efforts to tackle climate change may be curtailed by the WTO expansion.The poorest countries will be the biggest losers. Economic projections of a potential Doha deal, by several think tanks and even the World Bank, show that the costs of lost jobs, reduced policy space, and lost tariff revenues far outweigh supposed “benefits” of the so-called “Development” Round.   We cannot risk allowing the Doha Round to conclude. Social movements and civil society organizations across the world must unite to oppose the corporate agenda of the WTO Doha Round.

## Advantage — Climate

# 1NR

## DA — FTC Tradeoff

#### FTC has sufficient resources now to fight fraud. But they are stretched to capacity.

Soto et al. 21, American attorney and Democratic politician from Kissimmee, Florida, who is the U.S. Representative for Florida's 9th district; Lina Khan is Chair at the FTC; Noah Joshua Phillips is Commissioner at the FTC; Rohit Chopra is Commissioner at the FTC; Christine S. Wilson is Commissioner at the FTC, (Darren, “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>)

Noah Joshua Phillips (5:06:17): Thank you, Congressman, I'd just start with the fact that when I began, our budget was about 309 million, I think, something like that, and the latest congressional budget justification has us at 389. So there's been a substantial increase in the ask, including some funding from Congress. So I think it's important to track how those resources are used. But I do think we can do more with more. That's, that's certainly a true thing. But I think it's important to take care in how we spend what we have.

Darren Soto (5:06:46): Thank you. Commissioner Chopra.

Rohit Chopra (5:06:48): Sir, I think - I know every agency says that they need more resources. But just looking at the data, we are stretched completely to capacity and the rubber band is snapping. And if we need to effectively enforce the law, we need the resources. There are so many laws that Congress has recently passed, whether it's relates to opioids or so many other topics, that the FTC has not brought a single law enforcement action on. That's not just resources. That's also Commissioner accountability. But resources will certainly help.

Darren Soto (5:07:25): Commissioner Slaughter.

Christine Williams (5:07:30): Commissioner Slaughter had to leave, but Commissioner Wilson is here. And I would say that our hard working staff have been even harder working during the last 18 months. They are teleworking but they are working incredibly hard to stay on top of the increase in mergers as well as the increase in COVID scams. And I agree with Commissioner Phillips, it's important to understand how we are spending additional appropriations. But I also know that there are many different areas of the economy where Congress has expressed interest in our being very active and aggressive. And it is difficult to do that unless we have the appropriate resources to do that.

#### FTC dedicating resources to fighting fraud now. Status quo rulemaking heightens penalties.

FTC 12-16-2021 (“FTC Launches Rulemaking to Combat Sharp Spike in Impersonation Fraud,” <https://www.ftc.gov/news-events/press-releases/2021/12/ftc-launches-rulemaking-combat-sharp-spike-impersonation-fraud>)

The Federal Trade Commission launched a rulemaking today aimed at combatting government and business impersonation fraud, a pernicious and prevalent problem that has grown worse during the pandemic. Impersonators use all methods of communication to trick their targets into trusting that they are the government or an established business and then trade on this trust to steal their identity or money. The COVID-19 pandemic has spurred a sharp spike in impersonation fraud, as scammers capitalize on confusion and concerns around shifts in the economy stemming from the pandemic. Incorporating new data from the Social Security Administration, reported costs have increased an alarming 85 percent year-over year, with $2 billion in total losses between October 2020 and September 2021. Notably, since the pandemic began, COVID-specific scam reports have included 12,491 complaints of government impersonation and 8,794 complaints of business impersonation. “It is reprehensible that scammers are preying on people during this pandemic by pretending to be someone they can trust,” said Samuel Levine, Director of the FTC’s Bureau of Consumer Protection. “The sharp spike in impersonation scams has cost our country billions and undermined response and relief efforts. The FTC is prepared to use every tool in our toolbox to deter government and business impersonation fraud, penalize wrongdoers, and return money to those harmed.” Government and business impersonators can take many forms, posing as, for example, a lottery official, a government official or employee, or a representative from a well-known business or charity. Impersonators may also use implicit representations, such as misleading domain names and URLs and “spoofed” contact information, to create an overall net impression of legitimacy. These scammers are fishing for information they can use to commit identity theft or seek monetary payment, often requesting funds via wire transfer, gift cards, or increasingly cryptocurrency. Government impersonators typically assert an air of authority to stage their scam. These impersonators sometimes threaten their target with severe consequences such as a discontinuation of benefits, enforcement of tax liability, and even arrest or prosecution. Government impersonators have also been known to deceive consumers into paying for services that would otherwise be free, or to lure them with promises of government grants, prizes, or loan forgiveness. Business impersonators typically get consumers’ attention with emails, telephone calls or text messages about suspicious activity on consumers’ accounts or computers or supposed good news about a refund or prize in hopes of gaining trust and receiving personal information. The harm is substantial, as people who lose money on the leading business impersonator scams report an individual median loss of $1,000. In the Advance Notice of Proposed Rulemaking (ANPR), the FTC is seeking comment from the public on a wide range of questions about these schemes. The ANPR outlines the extensive data the Commission has collected related to these types of impersonation scams, drawn largely from the FTC’s Consumer Sentinel Network database of fraud reports, and its law enforcement experience in this area. The FTC has brought numerous cases against government and business impersonation schemes through the years under its existing authorities, but the ANPR notes that the Commission’s authority to seek consumer redress or civil penalties in these cases is currently very limited. The provisions related to impersonation under the Telemarketing Sales Rule and Mortgage Assistance Relief Services Rule cover only specific sectors or methods of scams. This is the first rulemaking initiated under the Commission’s streamlined rulemaking procedures. A potential rule resulting from the ANPR could allow the FTC to seek strong relief for consumers across a broad array of government and business impersonation cases, which is especially important following the Supreme Court’s ruling in AMG Capital Management LLC v. FTC. If, after reviewing the public comments in response to the ANPR, the Commission decides to proceed with proposing such a trade regulation rule, its next step would be to issue a notice of proposed rulemaking.

#### The FTC is tentatively committed to fighting fraud now. But it’s under the radar.

Kaufman 12-21-2021, JD (Daniel, “What Is a Rule-A-Palooza – Another Public Federal Trade Commission Meeting,” JD Supra, <https://www.jdsupra.com/legalnews/what-is-a-rule-a-palooza-another-public-1946261/>)

Commissioner Slaughter discussed scammers who impersonated her when she was acting chair in an effort to steal COVID-19 relief funds from consumers. Commissioner Phillips noted that he has been concerned that the agency was turning away from fraud enforcement and also noted the recent decline in complaints being issued from the agency. And Commissioner Wilson made it clear that although this rule is worthy of being initiated, the broad “rule-a-palooza” described in the Statement of Regulatory Priorities is hugely problematic. And she asked folks to check out her dissent, linked above. Chair Khan noted that government and business impersonation schemes have “skyrocketed during the pandemic” and were targeting seniors, communities of color and small businesses. And I would be remiss if I didn’t have at least a few words to say about the public comment portion of the show, and of course the continued rigorous oversight of time limits by the FTC’s awesome head of public affairs. (And I know that sounds absolutely sarcastic, but I swear it isn’t intended as such – she is the best.) A smaller-than-usual number of participants addressed issues including impersonation fraud and the FTC’s recently launched supply chain study. And for my closing thoughts, I will reiterate Commissioner Phillips’ point. I too have been concerned that, up until now, the new FTC leadership has been pretty quiet about the agency’s fraud work, causing many to wonder whether the agency would decrease its traditional fraud focus. It remains to be seen, but I certainly hope agency leadership realizes how important it is for the agency to continue to be a leader in tackling fraud. But let’s set expectations about this rulemaking: despite the controversial streamlining of FTC rulemaking, there is a long, long road ahead for this rulemaking. And if you are interested in the rulemaking, you can find background information and questions that will help frame the issues here. And trust me – your comments in rulemakings are reviewed closely by FTC staff.

#### Under the radar priorities are most likely to get cut during resource triage

McCabe 18, covers technology policy from The Times' Washington bureau, formerly of Axios (David, “Mergers are spiking, but antitrust cop funding isn't,” Axios, <https://www.axios.com/antitrust-doj-ftc-funding-2f69ed8c-b486-4a08-ab57-d3535ae43b52.html>)

The number of corporate mergers has jumped in recent years, but funding has stagnated for the federal agencies that are supposed to make sure the deals won’t harm consumers. Why it matters: A wave of mega-mergers touching many facets of daily life, from T-Mobile’s merger with Sprint to CVS’s purchase of Aetna, will test the Justice Department's and Federal Trade Commission’s ability to examine smaller or more novel cases, antitrust experts say. What they’re saying: “You have finite resources in terms of people power, so if you are spending all of your time litigating big mergers … there might be some investigations where decisions might have to be made about which investigations you can pursue,” said Caroline Holland, who was a senior staffer in DOJ’s Antitrust Division under President Obama and is now a Mozilla fellow. What's happening: More mergers are underway now than at any point since the recession. The total number of transactions reported to the federal government in fiscal year 2017, and not including cases given expedited approval or where the agencies couldn't legally pursue an investigation, is 82% higher than the number reported in 2010 and 55% higher than the number reported in 2012. Funding for antitrust officials who weigh the deals hasn’t kept pace. The funding for the Department of Justice’s antitrust division has fallen 10% since 2010, when adjusted for inflation. That's in line with the broader picture: not adjusting for inflation, the Department's overall budget increased just slightly in 2016 and 2017. Funding for the FTC has fallen 5% since 2010 (adjusted for inflation). An FTC spokesperson declined to comment on funding levels and Antitrust Division officials didn't provide a comment. Driving the news: Merger and acquisition activity is up 36% in the United States compared to the same time last year, according to Thomson Reuters data from April. Several deals under government review have gotten national attention, including Sinclair’s purchase of Tribune's TV stations or T-Mobile’s deal with Sprint, which stands to reduce the number of national wireless providers from four to three. Meanwhile, the Justice Department is awaiting the ruling on its lengthy legal effort to block AT&T’s proposed $85 billion purchase of Time Warner. Yes, but: It’s not the attention-grabbing mega-mergers that advocates worry will get less of a close look thanks to a shortage of funds. Instead, some say budget limitations are likely to matter when officials are deciding which smaller or "borderline" deals to investigate further. “Sometimes there’s nothing there,” said Holland of the agency's early investigations. “Other times, it might be, ‘This is kind of a close call, and we’ve got three or four close calls and we need to pick one of them.’" "It could mean settlements get accepted that otherwise wouldn’t, or deals that should be challenged aren’t," said Michael Kades of the Washington Center for Equitable Growth, an antitrust-enforcement-friendly think tank that has done extensive research on the topic, in an email

#### The FTC will have to use extensive resources to monitor all of the licensing negotiations

Fischer 9, Attorney and Partner with Jones Day, (Michelle, Antitrust Risks in Settling Patent Cases: The FTC and Congress Continue the Attack, While the Courts Continue To Be Unimpressed, https://www.jonesday.com/en/insights/2009/02/antitrust-risks-in-settling-patent-cases-the-ftc-and-congress-continue-the-attack-while-the-courts-continue-to-be-unimpressed)

The FTC has not taken this well. In 2007, it asked Congress to do something it has never done before: to declare per se illegal a specific practice (settlements with payments) in a specific industry (pharmaceuticals). There is no precedent for a federal antitrust agency seeking to enact its policy choices by statute when it has been unable to demonstrate that it has a competitive rationale for doing so. The bill that Congress has before it, moreover, would ban all Hatch-Waxman settlements that convey "anything of value" to the generic filer. The exceptions are so narrowly drawn that they would likely disqualify the bulk of Hatch-Waxman settlements whether or not they contain actual cash payments. The intent appears to be to severely limit the number of settlements overall and to convert the FTC into a close regulator of what settlements may or may not occur. In the meantime, the FTC has employed its administrative power to achieve its goals even without judicial support. The FTC staff thus continues to monitor all such patent settlements, effectively ending the use of reverse payments through the threat of expensive and burdensome "investigation." Even in the absence of cash, moreover, the FTC will often characterize the other terms of a settlement (such as cross-licensing other products, or even making the generic an exclusive licensee) as a "reverse payment" subject to condemnation.

#### Trying to determine if a company refused to license is incredibly complex and resource intensive

Gilbert 96, Professor of Economics at UC Berkeley. (Richard, with Carl Shapiro,

An economic analysis of unilateral refusals to license intellectual  property, https://www.pnas.org/content/93/23/12749 It should be noted that in Data General Corp. v. Grumman Systems Support Corp., the court analyzed Data General’s refusal to deal as a violation of section 2 (monopolization) without applying the conditions that have been specified in other courts as determinative of an essential facilities claim. Had the court done so, it might well have concluded that Data General’s software could not meet the conditions of an essential facility because it could be reasonably duplicated. The purpose of patent and copyright law is to discourage such duplication so that inventors have an incentive to apply their creative efforts and to share the results with society. In this respect, compulsory licensing is fundamentally at odds with the goals of patent and copyright law and should be countenanced only in extraordinary circumstances. Despite the adverse incentives created by a refusal to deal, whether for intellectual or other forms of property, courts appear to view with suspicion a flat refusal to deal, even while they are wary of engaging in price regulation under the guise of antitrust law. The fact remains, however, that the courts cannot impose a duty to deal without inevitably delving into the terms and conditions on which the monopolist must deal.t This is a typically a hugely complex undertaking. The first case in the United States that ordered compulsory access, United States v. Terminal R. R. Ass’n, 224 U.S. 383 (1912) and 236 U.S. 194 (1915), required a return visit to the Supreme Court to wrestle with the terms and conditions that should govern such access (26).u The dimensions of access are typically so complex that ensuring equal access carries the burden of a regulatory proceeding. F. Warren-Boulton, J. Woodbury, G. Woroch (unpublished work) and P. Joskow (unpublished work) consider alternative institutional arrangements for markets with essential facilities, such as structural divestiture and common ownership of bottleneck facilities. However, none of these institutional alternatives is without significant transaction and governance costs that are difficult to address even in a regulated environment.

#### The link is massive—There would be thousands of patent negotiations to monitor

Spulber 21, Distinguished Professor of International Business and Professor of Strategy, Kellogg School of Management, Northwestern University Daniel, Antitrust Policy Toward Patent Licensing: Why Negotiation Matters, 22 MINN. J.L. SCI. & TECH. 83 (2021). : https://scholarship.law.umn.edu/mjlst/vol22/iss1/5)

Intermediated transactions in the market for patent license contracts typically involve negotiation. Intermediaries reduce transaction costs and offer the convenience of one-stop shopping.127 Intermediaries may achieve greater transaction efficiencies and bargaining power in patent licensing negotiation than individual patent holders.128 Hagiu and Yoffie observe “[t]he patent market consists mainly of bilateral transactions, either sales or cross-licenses, between large companies. Such deals are privately negotiated and might involve hundreds or thousands of patents.”129 An FTC study of “Patent Assertion Entities” (PAEs) found substantial reliance on negotiation.130

#### Monitoring agreements is time intensive

Hickey et al 18, chief IP counsel for Cummins Inc. (Toni, with William J. Barrow is an associate and Charles E. Harris II is a partner at Mayer Brown LLP, 8/13/18, The Pros And Cons Of Licensing Technology, https://www.mayerbrown.com/-/media/files/perspectives-events/publications/2018/08/the-pros-and-cons-of-licensing-technology/files/the-pros-and-cons-of-licensing-technology/fileattachment/the-pros-and-cons-of-licensing-technology.pdf

As noted above, there are also potential drawbacks to licensing out IP. Businesses should understand and assess these disadvantages, as they can easily outpace the benefits described above. For instance, the considerable resources required to create a licensing program may be a potential downside for businesses. Launching a sophisticated program requires many time-consuming steps, such as: auditing the company’s existing IP, identifying the IP to license out and creating a licensing strategy, pursuing potential licensees, negotiating and drafting license agreements, and subsequently monitoring the licensed IP. Accomplishing these tasks can require a significant investment of time from corporate stakeholders, in-house and outside legal counsel, and other outside consultants.

#### The FTC is an international fraud-fighter

CB 16 (City Bank, “The FTC fights international scams,” <https://www.city.bank/fraud-and-security/news/fraud-and-security/2016/11/01/the-ftc-fights-international-scams>)

The FTC aggressively sues scammers who operate across borders and target people in the US with imposter schemes. For example, a federal court recently temporarily shut down and froze the assets of a tech support operation that directed people to call a boiler room in India for computer help, then pressured them to spend $200 to $400 for useless repair services. That case was one of a dozen similar cases brought by the FTC. The FTC also works with agencies worldwide to boost cooperation against cross border scams. Next month, staff from the Commission’s Office of International Affairs will meet for the fifth time with industry, trade groups, law enforcement and tech experts to continue efforts to thwart fraudsters operating in India. A recent police raid on nine call centers in India shows the benefit of collaboration.

#### Backlash— Big wins against big players cause FTC wing-clipping

Hyman 14, Workman Chair in Law and Professor of Medicine, University of Illinois, and former special Counsel at the Federal Trade Commission (David A., and William E. Kovacic, Hyman is H. Ross & Helen; Kovacic is Global Competition Professor of Law and Policy, The George Washington University Law School, “Can’t Anyone Here Play This Game - Judging the FTC’s Critics The FTC at 100: Centennial Commemorations and Proposals for Progress: Essays,” George Washington Law Review, 83.6)

The ABA Commission set out three basic guidelines for the FTC's future antitrust work:

(1) Forsake trivia in favor of economically significant matters;123

(2) Emphasize cases involving complex, unsettled questions of competition economics and law, and leave per se cases to the DOJ;124 and

(3) Replace voluntary commitments with binding, compulsory orders. 12 5

Each of these changes certainly sounds sensible, particularly when taken one at a time. After all, who could be against the forsaking of trivia? But, each change involved a shift from a safer law enforcement strategy to a riskier one. The pursuit of economically significant matters galvanizes tougher opposition in litigation and motivates firms to seek out legislative assistance in backing down the agency. Focusing on complex and unsettled areas of the law involves greater litigation risk (because the cases are on the edges of existing doctrine) and exposes the agency more broadly to claims that it is engaged in unprecedented enforcement or sheer adventurism. The pursuit of tougher remedies arouses a stronger defense by respondents and, again, increases efforts to enlist Congress to discipline the FTC. Although the ABA Commission noted the importance of political support and a vigorous chairman who would "resist pressures from Congress, the Executive Branch, or the business community," 1 26 it paid almost no attention to the predictable consequences of having the FTC occupy the risk-heavy end of the spectrum of all possible enforcement matters. The political science literature before 1969 had emphasized the political dangers inherent in the Commission's expansive norms-creation mandate and its broad information-gathering and reporting powers.1 27 For example, Pendleton Herring's study in the mid-1930s about the political hazards facing economic regulatory bod-ies said the agency's mandate placed it in "a precarious position" from the start: The parties coming within [the FTC's] jurisdiction were often very powerful. The more important the business, the wider its ramifications, and the more numerous its allies and subsidiaries, the closer it came within the commission's responsibility. To review the firms with which this agency has had official contacts, especially in its early years, is to go down the roster of big business in this country. Making political enemies was soon found to be an incident in the routine of administration. The discharging of official duties meant interfering with business and often "big business."128 Had it read and absorbed the teaching of the available political science literature, the ABA panel would have had to confront deeper, harder questions about the causes of the FTC's performance. The panel missed (or underestimated) the big issue of politics. Like many blue ribbon studies of government performance, the ABA Report was long on demands for bold action and short on practical suggestions about how to cope with the crushing political backlash that boldness can breed.129 B. The Posner Dissent Posner argued that the FTC would not be able to deliver on the ABA Commission's ambitious agenda because the FTC's leaders and staff lacked the necessary incentives to do so. 130 In his view, FTC Commissioners deliberately avoided confrontation with powerful eco- nomic interests that could frustrate reappointment or deny the board member a suitable landing place in the private sector upon leaving the agency.131 Similarly, FTC staff saw little upside (and considerable downside) to being overly aggressive in enforcing the law.1a2 Posner's assessment was certainly plausible. Government service disproportionately attracts people who plan to stay, and keeping your head down is an excellent way of doing that. "Don't make waves" becomes the default strategy of the lifers, and those who are tempera-mentally unsuited to that approach either self-select out, or are ac- tively encouraged to depart. 33 But matters are not so simple. Regulators that create or adminis- ter a program that threatens major commercial interests can leave government and monetize their expertise by guiding firms through the regulatory shoals.1 34 The prosecution of big cases attracts media at- tention and raises the prominence of the officials who set them in mo- tion. This publicity often translates into attractive offers for post- government employment. Posner also overlooked the emergence of attractive career paths for aggressive enforcement officials outside the private sector. A reputation for toughness would prove to be an asset, not a barrier, for those aspiring to join university faculties, think tanks, or advocacy groups that wanted to add high visibility officials to their ranks. III. SOME LESSONS AND A FEW MODEST SUGGESTIONS People like morality tales. The conventional morality tale in- spired by the ABA Report goes like this: In 1969, the FTC had a long history of existence, but almost nothing else to recommend it.1" The ABA Report accurately diagnosed the problems and laid out a clear agenda for the FTC to redeem itself.136 The FTC followed the recom- mendations in the ABA Report, and the agency was saved. All hail the ABA Commission, and the wisdom of those who served onit.13 Of course, life is more complicated. Unambiguous morality tales are more common in children's books than in real life. 38 A close reading of the record indicates that the pre-1969 FTC was not as aw-ful, and the ABA Report was not as good, as the conventional wisdom would indicate.1 39 We consider the lessons that should be drawn and offer four "modest suggestions that may make a small difference" the next time we encounter a similar situation.140 A. Be Careful What You Demand (Or Wish For) The ABA Commission wanted the FTC to be a fierce and aggressive enforcer/regulator, and it generated a detailed list of all the things the agency had to do to justify its continued existence.141 The FTC responded aggressively to the challenge-but in so doing, it became significantly overextended. In other work, we consider a number of factors that appear to be associated with good agency performance.14 2 One of the most important factors is whether the agency has the capacity and capability to perform the tasks that it has been given (or for which it has assumed responsibility).143 An agency that is overextended will find itself engaged in a constant process of regulatory triage-meaning it is unlikely to do a good job on any of the tasks within its portfolio of responsibilities. It is one thing to launch a single bet-the-agency case and entirely another to launch a half-dozen of those cases and an equal number of significant rulemaking projects simultaneously-let alone staff each case and rulemaking project so as to maximize the likelihood of good outcomes across the entire portfolio.144 The ABA Commission set a high bar for the FTC to clear if it was to remain in business-and the FTC responded with the enforcement equivalent of building and launching an armada of 1,000 ships.145 Little thought was given by the ABA Commission (or by top FTC management) as to whether the agency was up to the task of waging the functional equivalent of multiple land wars in Asia. 146 In particular, the ABA Commission gave no attention to the time it would take the agency to build the highly skilled teams of professionals it would need to perform the ambitious agenda it had recommended. There should have been an express caution that building this capability would take time. Instead, the ABA Report's "one last chance" admonitionl47 led the FTC to take on a daunting agenda before it had the ability to deliver. This consequence arguably is one of the ABA Commission's most unfortunate legacies. The remarkable thing is that the FTC managed to do as well as it did-notwithstanding the Herculean list of labors handed to it by the ABA Commission. B. Leadership Incentives Matter Posner did not think the FTC leadership would ever be able to rouse itself from its stupor.14 8 He also could not envision a set of in- centives that would motivate the FTC to become an activist presence on the regulatory scene. 149 As detailed above, Posner's assessment on both of these issues was wrong.150 But, it does not follow that the FTC's leadership (or the leader- ship of any other agency) is subject to an optimal set of incentives. Agency leadership always faces a choice between consumption and investment-and the stakes are systematically skewed toward con- sumption (in the form of launching new high-profile cases) by the short duration of any given leader's tenure.'51 As one of us noted in another article, the case-centric approach to evaluating agency per- formance-which is what the ABA Commission effectively embraced and encouraged-has a critical vice: It accords no credit to long-term capital investments. It gives decisive weight to the initiation of new cases. This incentive system can warp the judgment of incumbent political appoin- tees who typically serve terms of only a few years. The per- ceived imperative to create new cases can create a serious mismatch between commitments and capabilities, as the si- rens of credit-claiming beckon today's manager to overlook the costs that improvident case selection might impose on the agency in the future, well after the incumbent manager has departed. It is a common aphorism in Washington that agency leaders should begin by picking the low-hanging fruit.... What is missing in the lexicon of Washington poli- cymaking is an exhortation to plant the trees that, in future years, yield the fruit.1 52 [FOOTNOTE 152 BEGINS] 152 Kovacic,supra note 144, at 922; see also Kovacic, supra note 151, at 189 ("[A] short-term perspective may incline the manager to launch headline-grabbing initiatives with inadequate regard for the matter's underlying merits or the ultimate cost to the agency, in resources and reputation, in litigating the case. If the case goes badly, the manager responsible for the take-off rarely is held to account for the crash landing. He can hope the passage of time will dim memories of his involvement, he can blame intervening agents for their poor execution of his good idea, or he can shrug his shoulders and say he was making the best of the fundamentally bad situation that policymakers encounter in the nation's capital."); Timothy J. Muris, Principlesf or a Successful Competition Agency, 72 U. CHi. L. REV. 165, 166 (2005) ("An agency head garners great attention by beginning 'bold' initiatives and suing big companies. When the bill comes due for the hard work of turning initiatives into successful regulation and proving big cases in court, these agency heads are often gone from the public stage. Their successors are left either to trim excessive proposals or even to default, with possible damage to agency reputation. The departed agency heads, if anyone in the Washington establishment now cares about their views, can always blame failure on faulty implementation by their successors."). [FOOTNOTE 152 ENDS] Thus, if anything, the ABA Commission's "do something" recommendations encouraged (and hyper-charged) precisely the wrong incentives. C. Don't Forget About Politics Perhaps the largest failing of the ABA Commission was its failure to anticipate the political risks associated with its recommendations. Academics and do-gooders will enthusiastically lecture all and sundry about how the government exists to promote the general public interest-but decades of research on political economy make it clear that there is not much of a constituency for that mission.153 Indeed, an agency that seeks to promote the general public interest is an agency without any constituency.1 54 Thus, the ABA Commission wound up and sent into battle an agency without any real constituency or political backing, to wage war against a large and politically powerful collection of firms in every sector of the economy. There is no question that the FTC was unlucky, in that many of its most enthusiastic supporters were being voted out of office at the same time the FTC was picking fights with everyone and their brother.155 But, luck aside, if you were trying to create a "coalition of the willing" determined to clip the wings of the FTC, you would be hard-pressed to pick a better strategy than the one selected by the ABA Commission.15 6

#### **Enforcement against multiple companies magnifies the link.**

Sutner 20, News Director @ TechTarget. (Shaun, 12-15-2020, "Efforts to break up big tech expected to continue under Biden", *SearchCIO*, <https://searchcio.techtarget.com/news/252493702/Efforts-to-break-up-big-tech-expected-to-continue-under-Biden>)

Biden pushed on antitrust

Antitrust activists, though, are optimistic about the prospects of a Biden administration clamping down on big tech -- an outcome they argue is long overdue, with decades of light enforcement of antitrust laws. They are pushing Biden toward aggressive antitrust policy. Thirty-three antitrust, consumer and progressive groups in a letter on Nov. 30 urged Biden to reject the influence of big tech vendors and to exclude big tech executives, lobbyists, lawyers and consultants from his administration. Prominent among the signatories was Public Citizen, the liberal consumer advocacy group that has called for Biden to triple the FTC's annual funding, from $400 million to $1.2 billion. "At the front end we want these investigations to be pressed. There are supposed to be investigations of Amazon and Apple and we believe there are cases to be brought there," said Alex Harman, competition policy advocate at Public Citizen and former chief legal counsel to Sen. Mazie Hirono (D-Hawaii). "It's a lot to bring big antitrust cases against multiple companies, and that requires resources," Harman said. "As a lawyer, I don't want to say 'Biden does this,' but we want results that structurally change these companies. We don't want quick resolutions and quick settlements."

## Advantage — Climate

#### No warming impact.

Shellenberger 19, Founder of the Breakthrough Institute, Time Magazine “Hero of the Environment,” Green Book Award Winner, and author; citing the IPCC. (Michael, 11/25/19, "Why Apocalyptic Claims About Climate Change Are Wrong", *Forbes*, <https://www.forbes.com/sites/michaelshellenberger/2019/11/25/why-everything-they-say-about-climate-change-is-wrong/#226a30e612d6>)

With that out of the way, let’s look whether the science supports what’s being said.

First, no credible scientific body has ever said climate change threatens the collapse of civilization much less the extinction of the human species. “‘Our children are going to die in the next 10 to 20 years.’ What’s the scientific basis for these claims?” BBC’s Andrew Neil asked a visibly uncomfortable XR spokesperson last month.

“These claims have been disputed, admittedly,” she said. “There are some scientists who are agreeing and some who are saying it’s not true. But the overall issue is that these deaths are going to happen.”

“But most scientists don’t agree with this,” said Neil. “I looked through IPCC reports and see no reference to billions of people going to die, or children in 20 years. How would they die?”

“Mass migration around the world already taking place due to prolonged drought in countries, particularly in South Asia. There are wildfires in Indonesia, the Amazon rainforest, Siberia, the Arctic,” she said. But in saying so, the XR spokesperson had grossly misrepresented the science. “There is robust evidence of disasters displacing people worldwide,” notes IPCC, “but limited evidence that climate change or sea-level rise is the direct cause” What about “mass migration”? “The majority of resultant population movements tend to occur within the borders of affected countries," says IPCC.

It’s not like climate doesn’t matter. It’s that climate change is outweighed by other factors. Earlier this year, researchers found that climate “has affected organized armed conflict within countries. However, other drivers, such as low socioeconomic development and low capabilities of the state, are judged to be substantially more influential.”

Last January, after climate scientists criticized Rep. Ocasio-Cortez for saying the world would end in 12 years, her spokesperson said "We can quibble about the phraseology, whether it's existential or cataclysmic.” He added, “We're seeing lots of [climate change-related] problems that are already impacting lives."

That last part may be true, but it’s also true that economic development has made us less vulnerable, which is why there was a 99.7% decline in the death toll from natural disasters since its peak in 1931.

In 1931, 3.7 million people died from natural disasters. In 2018, just 11,000 did. And that decline occurred over a period when the global population quadrupled.

What about sea level rise? IPCC estimates sea level could rise two feet (0.6 meters) by 2100. Does that sound apocalyptic or even “unmanageable”?

Consider that one-third of the Netherlands is below sea level, and some areas are seven meters below sea level. You might object that Netherlands is rich while Bangladesh is poor. But the Netherlands adapted to living below sea level 400 years ago. Technology has improved a bit since then.

What about claims of crop failure, famine, and mass death? That’s science fiction, not science. Humans today produce enough food for 10 billion people, or 25% more than we need, and scientific bodies predict increases in that share, not declines.

The United Nations Food and Agriculture Organization (FAO) forecasts crop yields increasing 30% by 2050. And the poorest parts of the world, like sub-Saharan Africa, are expected to see increases of 80 to 90%.

Nobody is suggesting climate change won’t negatively impact crop yields. It could. But such declines should be put in perspective. Wheat yields increased 100 to 300% around the world since the 1960s, while a study of 30 models found that yields would decline by 6% for every one degree Celsius increase in temperature.

Rates of future yield growth depend far more on whether poor nations get access to tractors, irrigation, and fertilizer than on climate change, says FAO.