# 1NC

## 1NC — Off

### 1NC — DA

#### The West is unified in response to Russia---but, successful response relies on maintaining strong relations and close economic coordination with allies. Putin exploits any divisions.

Daalder 3-1-2022, President of the Chicago Council on Global Affairs and served as U.S. Ambassador to NATO from 2009 to 2013 (Ivo, “The Return of Containment,” Foreign Affairs)

To succeed, the new containment policy must be embraced by all Western allies—in Europe, in North America, and even in Asia. Russia, like the Soviet Union before it, is keen to exploit divisions within and between democracies. It has interfered in elections for years and supported far right politics in Europe and beyond. It has used bribes and Western energy dependence to divide Europe. Putin saw the divisions within NATO sown by U.S. President Donald Trump during his four years in office, and the disagreements over Afghanistan and submarine sales to Australia that occurred since, as evidence that the West was weak and divided. Now, he likely thought, was the time to strike.

Putin was wrong. The West has been remarkably unified in its response. Even before Russia’s attack, Western unity within NATO and beyond had solidified. The Biden administration, perhaps learning from its Afghanistan stumbles, did a superb job of bringing its allies together by sharing information, consulting frequently, and demonstrating tough, determined leadership. The result has been significant: strong sanctions, bolstered deterrence, and total political solidarity with Ukraine.

To preserve this unity, the United States, which has once again emerged as a leader of the West, will need to carefully listen to allies and be willing to change course to keep everyone on board. There will be times when internal divisions will raise questions about the solidity of the coalition. During the Cold War, NATO seemed to be in perpetual crisis—except when it mattered most.

An important difference between the Cold War era and today is the status of China. No longer a bit player on the global scene, Beijing has emerged as the Washington’s biggest competitor and largest geopolitical challenger in the Indo-Pacific and beyond. The Ukraine crisis emerged at a moment when the relationship between Russia and China has become particularly close. Their leaders have met 38 times since Xi Jinping became president of China in 2012, including most recently at the opening of the Winter Olympics. There, they issued a joint statement noting that their partnership had “no limits.” Far from condemning Russia’s invasion of Ukraine, Beijing has blamed the United States and NATO for taking insufficient account of Russia’s security interests.

Beijing’s pronouncements, however, contained an undercurrent of unease with Putin’s moves. The joint statement was notably silent on Ukraine, and official statements have consistently stressed China’s principled commitment to sovereignty, territorial integrity, and noninterference in the internal affairs of other nations. China abstained on a UN Security Council Resolution condemning Russia, rather than joining Moscow in voting against. And Beijing has never recognized Russia’s annexation of Crimea, suggesting it may keep an open mind on the future of Ukraine. There is scope, therefore, for quiet diplomacy to gauge whether Beijing might be persuaded to help put pressure on Russia.

Even if Beijing has its doubts, however, it is hardly in its interest to help the United States against Russia. Indeed, Chinese leaders no doubt welcome the U.S.’s renewed preoccupation with security in Europe because it gives Beijing more freedom of maneuver in its own region. China is also likely to help alleviate some of the economic consequences of sanctions for Russia, though there are limits to how much it can do, especially on the financial side, where transactions largely remain the domain of western currencies from which Russia has now been banned.

Containing Russia will therefore require paying attention to China. One way to increase the West’s leverage over Beijing would be to strengthen the political, economic, and military ties between the advanced democracies in Asia, Europe, and North America. An expanded G-7, for example, could include Australia and South Korea as well as the involvement of the heads of the EU and NATO. These nations and organizations will need to devise common strategies and policies not only to contain Russia but also to compete effectively with China.

February 24 was a turning point in history. Democratic powers of the West are once again called upon to defend a rules-based order that has been violently uprooted. Fortunately, the Western powers possess the innate strength necessary to contain Russia and outcompete China for influence across the globe. The only real question is whether they have the will and determination to do so in unison.

#### The plan collapses that delicate balance by alienating key allies

Desautels-Stein ’8 [Justin; Associate Professor of Law, University of Colorado; Emory International Law Review; “Extraterritoriality, Antitrust, and the Pragmatist Style,” vol. 22, p. 499-570]

The other major problem with this interpretation of the FTAIA allowing for any claim under the Sherman Act to get a plaintiff into U.S. courts, as explained in the Empagran decision, is that such an action would violate the 267 comity principle in international law. The policy implications of such a move, also as described in the amici briefs, would be to destabilize an assumption common to the international community, namely, the right of a state to govern its nationals and territory in accordance with its own norms and customs. 2 68 An expansion of U.S. extraterritoriality would threaten the pattern of interdependence upon which the international community is predicated.269 Ultimately, settled expectations on the part of foreign governments would come under serious pressure as to whether the U.S. policy of extraterritoriality over matters of private international law was still party to that central, if unspoken, contract.

#### The impact is nuclear world war 3

Dailey and Farwell 1-26-2022, \* commanded numerous special operations units in peacetime and wartime. As an ambassador, he headed the Department of State’s counterterrorism efforts, \*\*has advised U.S. Special Operations and the Department of Defense. An Associate Fellow in the Dept. of War Studies, King’s College, University of London, he is the author of Information Warfare (Quantico: Marine Corps U. Press, 2020) and The Corporate Warrior (Brookfield: Rothstein Publishing, 2022). (Dell and James, “Will the Ukraine Crisis Spark World War III?,” *National Interest*, <https://nationalinterest.org/feature/will-ukraine-crisis-spark-world-war-iii-199893>)

Will the Ukraine Crisis Spark World War III?

All parties owe it to themselves, their citizens, and the world to avoid an armed conflict that could accidentally escalate into World War III. Time is growing short.

Vladimir Putin’s rhetoric demands another Munich with Joe Biden capitulating, but Biden can’t and won’t oblige. But then the president predicted armed conflict. These smart leaders are better than that, and both need to avert an avoidable war. What both sides need is a grand strategy that redefines relations between the West and Russia, gives each what its pride and security interests require, and averts a conflict that could escalate into World War III. A key aspect of the U.S. posture is to stop reacting to Putin’s threats and shift to a pro-active posture to resolve the crisis, proposing actionable ideas that work for all sides. The talk is about deterrence, but the United States wants action from Russia that advances U.S. security interests just as Russia wants to advance its own. What plausible strategies might work for all the parties? Here are areas to consider for where the parties might find common ground and avoid war. If one characterized Dwight Eisenhower’s grand strategy as “containment,” this one seems to qualify as “equilibrium.” That notion doesn’t view Russia as a friend or ally. Let’s move beyond personalities and strike a balance for a stable order in Europe rooted in longer-term state-to-state relationships. Containment grasped that the Soviet Union had expansionist ambitions. Ike rightly rejected co-existence and worked to defeat communism. Russia wants to revive its Soviet sphere of influence, but it offers no ideology, and while seeking global influence as a great power, lacks communist imperial ambitions. A realistic coexistence rooted in strength makes sense for a united West, led by the United States, NATO—with its military focus—and the European Union—with its political focus. Achieving that goal will enable the West to direct fuller attention to its main challenges, particularly those posed by China’s ambitions. Russia Nationalism and hubris drive Putin to regain Russia’s influence and control over its former sphere. Putin views the Maidan Revolution that overturned a pro-Russian government in Ukraine as a U.S.-sponsored color revolution forming part of a scheme to oust him from power. Regime preservation is always Putin’s number one goal. While misguided, his fears help explain his tactics. Putin’s perception of the facts, not the facts themselves, governs Russian actions. A stable framework between Russia and the West might embrace the following ideas: First, assurances that neither Ukraine nor Georgia will become members of NATO. These nations enjoy no right to join NATO; membership is invitation only. Western security interests don’t require making them NATO members, and the West need not insinuate them so closely that Russia feels the relationship amounts to membership. Ukraine could accept a status similar to Austria’s. Austria is a democracy that does business with all sides and maintains its independence. Such status won’t harm the West, and would remove the threat that Putin most complains about. Ukraine needs to be a part of that negotiation. Second, some believe that Putin fears a successful democracy in Ukraine will spur knock-on consequences in Russia that undermine his regime. Unless he wants a real war, Putin is going to have to get real about this politically. He’s popular at home and may remain so unless Russians see lots of body bags coming home. That’s a more serious threat along, potentially, with Russia’s inept response to Covid-19. Third, Putin wants the United States to avoid meddling in Russian internal politics. Let’s be realistic. The United States rightly hit the roof over Russian meddling in U.S. elections. Putin has angered Europe by using weaponized social media and other hybrid warfare tactics to create political disruption and undercut NATO and the EU. But as Russia points out, no nation meddles in other countries’ politics as much as the United States does. One way forward may lie in a mutual agreement that the West and Russia will each stop meddling in one another’s internal affairs. Fourth, Putin would like to turn back the clock. He’s going to have to get real about that. Corruption and the failure of communism defeated the Soviet Empire, not the West. He led Russia to economic progress for the first part of his tenure. He needs to recognize that this record lights his way ahead, not armed conflict. Finally, Putin wants respect as a great power equal. One sore point for him is history. He feels that the West refuses to acknowledge that Russia fought most of the ground war against Germany during World War II and suffered the most casualties. He’s quite emotional about the issue. Addressing pride and nationalism is a matter of diplomacy. Working that out may not be easy, but the goal is achievable. In the meantime, if Putin wants more credit for Russia, Russian historians need to translate their work into English and publish in the West. The West The United States should require quid pro quos from Russia. First, as noted above, both sides must commit to cease meddling in one another’s politics or internal affairs. Second, Russia must commit to avoiding using the Nord Stream II as political leverage to influence European politics. Diplomacy must work out what that means in practice. Third, Russia must recognize that the West is acting with a united front through the United States, NATO, the EU, and the parties. The United States must make clear the West will do whatever is required to honor NATO’s Article V obligations. That includes boosting current military strength in Europe, especially airpower, which can be strategically positioned fairly rapidly. We feel clear lines of communication with Russia can help avoid confusion or cause miscalculation. Issues such as missile deployments have to be negotiated. Fourth, Russia must gain control over and crackdown on criminal cyber hacking in the West by the Russian state, its proxies, so-called “patriotic hackers,” and transnational criminal groups operating from Russia. Moscow’s attempts to disclaim such groups are nonsense and the West shouldn’t give credence to such efforts. Finally, and this is a matter for diplomacy that would take time to play out, Russia and the West should try to find common ground that recognizes the existential threat posed by China’s ambition to establish global military and economic supremacy by 2049. China’s achieving that ambition would pose an existential threat to both sides. Russia won’t join the West in an alliance against China, but the West can also influence Russia against allying with China against it. From the Western perspective, any deal has to stick. President Ronald Reagan once said that in dealing with Russia, “trust but verify.” That was a Russian proverb. If Russia plays fast and loose with a deal or breaks it, all bets are off and the West should move aggressively to protect its security interests, politically and militarily. That includes providing Ukraine with essential military support for defense. Matters are obviously more complicated and nuanced, but these ideas seem common sense and may help inform a framework for negotiation. For the United States, the Biden administration should seek bipartisan consultation and support so that the United States can present a unified front. We feel Russia perceives strategic weakness in the polarization evident in U.S. politics, and unity on Russia would strengthen the U.S. hand in dealing with Russia. All parties owe it to themselves, their citizens, and the world to avoid an armed conflict that could accidentally escalate into World War III. Time is growing short. It’s time to move out.

### 1NC — CP

#### The United States federal government ought to initiate prior and binding consultation with the EU on whether to increase prohibitions on anticompetitive business practices by the private sector by at least expanding the extraterritorial private right of action of its core antitrust laws and abide by the results of the consultation.

#### Antitrust without prior consultation forecloses US-EU alignment---stops a slew of threats.

Bhatia 21, JD @ Columbia, Vice-President, Government Affairs and Public Policy @ Google, member of the World Economic Forum’s Global Future Council on International Trade & Investment, former Deputy U.S. Trade Representative. (Karan, 4-1-2021, "The case for a US and European trade and technology council", *World Economic Forum*, <https://www.weforum.org/agenda/2021/04/us-europe-eu-trade-technology-council/>) \*\*typo corrected on brackets

The European Commission recently proposed an EU-US Trade and Technology Council (TTC). The United States should accept the invitation — and build on it. An expedited high-level trade dialogue on technology issues is critical to avoid unilateral approaches on pressing issues like data flows that are essential to commerce, regulation of digital platforms that we all use every day, and other essential components of a modern economy. A TTC could also prevent divergence on emerging areas like artificial intelligence and other advanced technologies and promote cooperation on third-country technology challenges.

Of course a TTC needs to be set up for success. When entering trade negotiations, each side typically avoids preemptive or unilateral actions that might foreclose meaningful alignment. In entering a TTC, both sides should commit to meaningful consultation before taking any further actions harming transatlantic tech trade. The U.S. should not enact new privacy or technology trade control regulations without consulting with the EU; the EU should pursue bilateral consultation to ensure technology initiatives like the Digital Markets Act reflect the EU-U.S. values-based alliance. Quickly forming a TTC can help drive a consistent and non-discriminatory approach on these challenging new areas of technology regulation.

### 1NC — T

#### Interpretation---“prohibition” means affirmatives must forbid anticompetitive business practices by government authority.

Supreme Court of California 76 (SULLIVAN-judge. Opinion in Bright v. Los Angeles Unified Sch. Dist., 556 P.2d 1090, 18 Cal. 3d 450, 134 Cal. Rptr. 639 (1976). Google scholar caselaw. Date Accessed 7/13/21).

\*462 It is therefore opportune at this point to set forth the sharply divergent positions of the parties with respect to the meaning of section 10611. Plaintiff argues that a consideration of the historical background of the statute, which we have just detailed, together with its declared objective, compels the conclusion that the Legislature intended to reject any system of prior restraint. Since the Rowe court and the State Board of Education employed the word "prohibited" to mean a system rejecting prior censorship, the Legislature's use of the word in section 10611, she argues, is highly indicative of a similar intention. Moreover, plaintiff points out, there is nothing to suggest that the Legislature intended anything different.

Defendants on the other hand argue that by its use in section 10611 of the phrase "shall be prohibited" (see fn. 1, ante) the Legislature clearly intended that the types of expression falling within the exceptive language should not be disseminated on high school campuses. The word "prohibit," they argue, although having two meanings, should be construed here to mean "prevent." Noting that words are to be given their ordinary meaning, they insist that the ordinary and only reasonable interpretation of the phrase "shall be prohibited" is that the excepted expression by students is to be forbidden distribution altogether.

We agree with plaintiff. We observe that the word "prohibit" is defined as follows: "(1) to forbid by authority or command: ... 2.a: to prevent from doing or accomplishing something...." (Webster's Third New Internat. Dict. (1963 ed.) p. 1813.) Either of the above meanings suggests a determination that dissemination of material in the objectionable categories may be halted. Neither meaning conclusively indicates the time of the prohibition — that is whether the word "prohibit" means to forbid by terminating distribution once it has begun and imposing a sanction for such activity, or means to prevent distribution by precluding it beforehand. To put it another way, the word itself supports either meaning and excludes neither. However, we are of the view that the section when considered in the light of the legislative history detailed above, can be more reasonably construed as not authorizing prior restraint but rather as authorizing the stopping of such distribution once begun and the imposition of sanctions against those students responsible for such distribution. Moreover, since "[a]ny system of prior restraint ... `comes to this Court bearing a heavy presumption against its constitutional 463\*463 validity.' Bantam Books, Inc. v. Sullivan, 372 U.S. at 70...." (Southeastern Promotions Ltd. v. Conrad (1974) 420 U.S. 546, 558 [43 L.Ed.2d 448, 459, 95 S.Ct. 1239]; see also Wilson v. Superior Court (1975) 13 Cal.3d 652, 656-657 [119 Cal. Rptr. 468, 532 P.2d 116]) and since former sections 9012 and 9013 for which section 10611 was a replacement had just been declared unconstitutional by the Rowe court because they purported to permit prior restraints on the free expression of secondary school students, it is difficult to conceive that the Legislature in enacting section 10611 intended to resurrect a system of prior restraint without specifically so stating. We think this is so especially in view of the fact that the Legislature was aware of the sensitive and complicated constitutional problems in this area as evidenced by the federal court litigation dealing with attempts to control underground newspapers.

#### Violation---the aff expands the pool of litigants that can sue for forbidden practices, but doesn’t increase prohibitions.

#### Vote negative:

#### 1---limits---justifies affs about presumptions, liability, standing, class status, etc.

#### 2---ground---they don’t necessarily decrease anticompetitive conduct which kills DA uniqueness and CP solvency.

### 1NC — PIC

#### The United States federal government should substantially increase prohibitions on anticompetitive business practices by the private sector by at least expanding the extraterritorial private right of action of its core antitrust laws, with the exception of ocean carrier alliances.

#### Global ocean carrier cartels are currently exempt from private antitrust lawsuits

O’Shea 17, an attorney who works on transportation and infrastructure issues, (Sean, October 3, 2017, Congress Must Stop Foreign Ocean Carriers From Harming U.S. Economy, https://morningconsult.com/opinions/congress-must-stop-foreign-ocean-carriers-from-harming-u-s-economy/)

Currently, U.S. ports and shippers are exposed to foreign ocean carrier cartels that band together to protect their financial interests while squashing port profits and stifling competition. Over the past several years, these ocean carriers have largely consolidated into three alliances that represent such a large share of the market that they can threaten to steer substantial amounts of cargo away from U.S. ports that balk at fees the alliance offers. Under normal circumstances, the whole scheme likely would run afoul of the Sherman Anti-Trust Act, which Congress adopted at the end of the 19th century in response to oil, steel and sugar trusts that attempted this same kind of market manipulation. But in the Shipping Act of 1916, Congress created an exemption from antitrust laws for alliances approved by the Federal Maritime Commission. When Congress revisited the law in 1984, it added a provision that allows a carrier alliance to go into effect automatically, providing antitrust immunity to its member lines, unless the FMC obtains a court injunction within 45 days. Even then, the only acceptable grounds for issuing an injunction are when a proposed alliance will impair shippers. The court cannot consider the potential harm to ports, dock workers or other waterfront service providers. The law further says that only the FMC, and not the Department of Justice, may file such lawsuits, and private parties are expressly barred from intervening in any case the FMC does bring. This special treatment in the current law gives foreign containership lines a virtual antitrust immunity when dealing with U.S. marine terminals, stevedores, tug and towing companies, and other equipment and service providers. This has created an environment in which U.S. laws favor the interests of big foreign vessel operators at the expense of American port terminal companies, shippers and workers. Today, exactly zero U.S. ship owners participate in the three ocean carrier alliances recognized by the FMC. This means our laws now do more to shield foreign carriers from being sued for antitrust violations than it does to promote the domestic shipping industry.

#### Alliances are necessary to global trade — otherwise, it causes massive shocks that decimates global supply chains

Vinyard 19, Reporter for Universal Cargo. (Jared, June 20, 2019, SeaIntelligence Says End of Shipping Alliances Would Skyrocket Freight Rates, <https://www.universalcargo.com/seaintelligence-says-end-of-shipping-alliances-would-skyrocket-freight-rates/>)

What would happen if ocean freight carrier alliances were brought to an end? Many shippers would cheer as they’re currently seeking to make such an outcome a reality. But would it really be good news for shippers? SeaIntelligence Consulting’s CEO, Partner Lars Jensen says no. As much as shippers may see carrier alliances as a way shipping lines are skirting antitrust laws (and there’s reason for distrust with recent price-fixing investigations into carriers, even some charges resulting in a K-Line executive pleading guilty to price fixing in 2014 and an NYK exec pleading guilty of price fixing in 2015), it’s the vessel sharing agreements, under which carriers work together, being broken up that shippers should really worry about. That according to Mr. Jensen, who says an end to carrier alliances will cause freight rates to skyrocket. In an article for the Loadstar, Gavin van Marle reports remarks Mr. Jensen made on Tuesday (June 18th, 2019) at the TOC Container Supply Chain event in Rotterdam: Shipper opposition to deepsea liner shipping alliances may be dangerously misplaced, delegates at the TOC Container Supply Chain event in Rotterdam heard yesterday. Lars Jensen, chief executive and partner of SeaIntelligence Consulting, said efforts by some to bar container lines from operating in alliances, claiming they have become anti-competitive, would result in freight rates “skyrocketing”. Mr. van Marle makes it clear the impetus for Mr. Jensen’s words is the European Commission’s regulators assessing whether or not to extend EU’s Block Exemption Regulation (BER) for five years. The BER is the EU’s legislation that covers vessel-sharing agreements (VSAs), which are commonly referred to as carrier alliances, essentially exempting these agreements from being antitrust law violations. BER does not give carriers a carte blanche when it comes to antitrust rules. Carriers, for example, are not allowed to communicate and cooperate in regards to freight rate points. VSA cooperation is supposed to be strictly limited to ship sharing matters. Of course, shippers have been suspicious from the start of carrier alliances that cooperation bleeds into price point sharing and reduces competition between carriers. Because shippers see VSAs or carrier alliances as a reduction in carrier competition, potentially exacerbating the poor quality of customer service carriers are notorious for and increasing freight rates, there are shippers attempting to persuade regulators not to extend the BER. Obviously, Mr. Jensen argues shippers will not get what they’re hoping for if they succeed in keeping the BER from getting extended. In his Loadstar article, Mr. van Marle continues to quote Mr. Jensen as the SeaIntelligence CEO explains why ending the BER will be expensive for shippers: Mr Jensen said: “If the anti-trust exemption isn’t extended, it doesn’t necessarily mean shipping lines can’t run alliances. It may well just mean the lines have higher hoops to jump through, and I doubt that they will do that. “But it will mean a lot of legal costs and the carriers will have to recoup those costs and the only [way] they can do that is through higher rates,” he added. “However, if shipping alliances are outlawed altogether, then freight rates will skyrocket, because alliances are the only way that carriers can operate ultra-large container vessels (ULCVs) effectively.” I have long had mixed feelings about carrier alliances, myself. Yes, they are a reduction of carrier competition in the international shipping industry, and I’m not a fan of shrinking that competition. Smaller competition (in any industry) usually means higher prices and lower service. However, the incredible financial losses carriers have suffered over the last many years (and, yes, I would argue those losses are largely by their own doing) and the very tight profit margins carriers seem to be working within has made carrier alliances basically a necessity in reducing costs and keeping these big shipping companies from sinking like Hanjin did a few years back. There is also the argument that VSAs create more ability and flexibility for carriers to offer more sailings, so that’s a case where carrier alliances could increase service instead of decreasing it. Overall, I’ve considered carrier alliances a necessary evil in the ocean freight sector. I’m actually of the opinion that if the carrier alliances ended suddenly today, several carriers would have trouble competing with the top dogs of the industry like Maersk and suffer the same fate as Hanjin or at least be forced into mergers or buyouts. We possibly might even eventually reach Maersk’s prediction of carrier competition shrinking to only 3 global companies. Such a low competition situation would almost certainly mean higher freight rates for shippers. While my position on the situation of carrier alliances is not as extreme as Mr. Jensen’s, whose final quote in the Loadstar article is, “So I am of the opinion that shippers should pray the lines are allowed to continue to operate alliances,” I do think the sudden disbanding of VSAs would not be in the overall interest of shippers.

#### Trade caps nuclear war

Dr. Michael F. Oppenheimer 21. Clinical Professor at the Center for Global Affairs at New York University, Senior Consulting Fellow for Scenario Planning at the International Institute for Strategic Studies, Former Executive Vice President at The Futures Group, The Foreign Policy Roundtable at the Carnegie Council on Ethics and International Affairs, and The American Council on Germany, “The Turbulent Future of International Relations,” in The Future of Global Affairs: Managing Discontinuity, Disruption and Destruction, eds. Ankersen and Sidhu, p. 23-30.

Four structural forces will shape the future of International Relations: globalization (but without liberal rules, institutions, and leadership)1; multipolarity (the end of American hegemony and wider distribution of power among states and non-states2); the strengthening of distinctive, national and subnational identities, as persistent cultural differences are accentuated by the disruptive effects of Western style globalization (what Samuel Huntington called the “non-westernization of IR”3); and secular economic stagnation, a product of longer term global decline in birth rates combined with aging populations.4 These structural forces do not determine everything. Environmental events, global health challenges, internal political developments, policy mistakes, technology breakthroughs or failures, will intersect with structure to define our future. But these four structural forces will impact the way states behave, in the capacity of great powers to manage their differences, and to act collectively to settle, rather than exploit, the inevitable shocks of the next decade.

Some of these structural forces could be managed to promote prosperity and avoid war. Multipolarity (inherently more prone to conflict than other configurations of power, given coordination problems)5 plus globalization can work in a world of prosperity, convergent values, and effective conflict management. The Congress of Vienna system achieved relative peace in Europe over a hundred-year period through informal cooperation among multiple states sharing a fear of populist revolution. It ended decisively in 1914. Contemporary neoliberal institutionalists, such as John Ikenberry, accept multipolarity as our likely future, but are confident that globalization with liberal characteristics can be sustained without American hegemony, arguing that liberal values and practices have been fully accepted by states, global institutions, and private actors as imperative for growth and political legitimacy.6 Divergent values plus multipolarity can work, though at significantly lower levels of economic growth-in an autarchic world of isolated units, a world envisioned by the advocates of decoupling, including the current American president. 7 Divergent values plus globalization can be managed by hegemonic power, exemplified by the decade of the 1990s, when the Washington Consensus, imposed by American leverage exerted through the IMF and other U.S. dominated institutions, overrode national differences, but with real costs to those states undergoing “structural adjustment programs,”8 and ultimately at the cost of global growth, as states—especially in Asia—increased their savings to self insure against future financial crises.9

But all four forces operating simultaneously will produce a future of increasing internal polarization and cross border conflict, diminished economic growth and poverty alleviation, weakened global institutions and norms of behavior, and reduced collective capacity to confront emerging challenges of global warming, accelerating technology change, nuclear weapons innovation and proliferation. As in any effective scenario, this future is clearly visible to any keen observer. We have only to abolish wishful thinking and believe our own eyes.10

Secular Stagnation

This unbrave new world has been emerging for some time, as US power has declined relative to other states, especially China, global liberalism has failed to deliver on its promises, and totalitarian capitalism has proven effective in leveraging globalization for economic growth and political legitimacy while exploiting technology and the state’s coercive powers to maintain internal political control. But this new era was jumpstarted by the world financial crisis of 2007, which revealed the bankruptcy of unregulated market capitalism, weakened faith in US leadership, exacerbated economic deprivation and inequality around the world, ignited growing populism, and undermined international liberal institutions. The skewed distribution of wealth experienced in most developed countries, politically tolerated in periods of growth, became intolerable as growth rates declined. A combination of aging populations, accelerating technology, and global populism/nationalism promises to make this growth decline very difficult to reverse. What Larry Summers and other international political economists have come to call “secular stagnation” increases the likelihood that illiberal globalization, multipolarity, and rising nationalism will define our future. Summers11 has argued that the world is entering a long period of diminishing economic growth. He suggests that secular stagnation “may be the defining macroeconomic challenge of our times.” Julius Probst, in his recent assessment of Summers’ ideas, explains:

…rich countries are ageing as birth rates decline and people live longer. This has pushed down real interest rates because investors think these trends will mean they will make lower returns from investing in future, making them more willing to accept a lower return on government debt as a result.

Other factors that make investors similarly pessimistic include rising global inequality and the slowdown in productivity growth…

This decline in real interest rates matters because economists believe that to overcome an economic downturn, a central bank must drive down the real interest rate to a certain level to encourage more spending and investment… Because real interest rates are so low, Summers and his supporters believe that the rate required to reach full employment is so far into negative territory that it is effectively impossible.

…in the long run, more immigration might be a vital part of curing secular stagnation. Summers also heavily prescribes increased government spending, arguing that it might actually be more prudent than cutting back – especially if the money is spent on infrastructure, education and research and development.

Of course, governments in Europe and the US are instead trying to shut their doors to migrants. And austerity policies have taken their toll on infrastructure and public research. This looks set to ensure that the next recession will be particularly nasty when it comes… Unless governments change course radically, we could be in for a sobering period ahead.12

The rise of nationalism/populism is both cause and effect of this economic outlook. Lower growth will make every aspect of the liberal order more difficult to resuscitate post-Trump. Domestic politics will become more polarized and dysfunctional, as competition for diminishing resources intensifies. International collaboration, ad hoc or through institutions, will become politically toxic. Protectionism, in its multiple forms, will make economic recovery from “secular stagnation” a heavy lift, and the liberal hegemonic leadership and strong institutions that limited the damage of previous downturns, will be unavailable. A clear demonstration of this negative feedback loop is the economic damage being inflicted on the world by Trump’s trade war with China, which— despite the so-called phase one agreement—has predictably escalated from negotiating tactic to imbedded reality, with no end in sight. In a world already suffering from inadequate investment, the uncertainties generated by this confrontation will further curb the investments essential for future growth. Another demonstration of the intersection of structural forces is how populist-motivated controls on immigration (always a weakness in the hyper-globalization narrative) deprives developed countries of Summers’ recommended policy response to secular stagnation, which in a more open world would be a win-win for rich and poor countries alike, increasing wage rates and remittance revenues for the developing countries, replenishing the labor supply for rich countries experiencing low birth rates.

Illiberal Globalization

Economic weakness and rising nationalism (along with multipolarity) will not end globalization, but will profoundly alter its character and greatly reduce its economic and political benefits. Liberal global institutions, under American hegemony, have served multiple purposes, enabling states to improve the quality of international relations and more fully satisfy the needs of their citizens, and provide companies with the legal and institutional stability necessary to manage the inherent risks of global investment. But under present and future conditions these institutions will become the battlegrounds—and the victims—of geopolitical competition. The Trump Administration’s frontal attack on multilateralism is but the final nail in the coffin of the Bretton Woods system in trade and finance, which has been in slow but accelerating decline since the end of the Cold War. Future American leadership may embrace renewed collaboration in global trade and finance, macroeconomic management, environmental sustainability and the like, but repairing the damage requires the heroic assumption that America’s own identity has not been fundamentally altered by the Trump era (four years or eight matters here), and by the internal and global forces that enabled his rise. The fact will remain that a sizeable portion of the American electorate, and a monolithically pro- Trump Republican Party, is committed to an illiberal future. And even if the effects are transitory, the causes of weakening global collaboration are structural, not subject to the efforts of some hypothetical future US liberal leadership. It is clear that the US has lost respect among its rivals, and trust among its allies. While its economic and military capacity is still greatly superior to all others, its political dysfunction has diminished its ability to convert this wealth into effective power.13 It will furthermore operate in a future system of diffusing material power, diverging economic and political governance approaches, and rising nationalism. Trump has promoted these forces, but did not invent them, and future US Administrations will struggle to cope with them.

What will illiberal globalization look like? Consider recent events. The instruments of globalization have been weaponized by strong states in pursuit of their geopolitical objectives. This has turned the liberal argument on behalf of globalization on its head. Instead of interdependence as an unstoppable force pushing states toward collaboration and convergence around market-friendly domestic policies, states are exploiting interdependence to inflict harm on their adversaries, and even on their allies. The increasing interaction across national boundaries that globalization entails, now produces not harmonization and cooperation, but friction and escalating trade and investment disputes.14 The Trump Administration is in the lead here, but it is not alone. Trade and investment friction with China is the most obvious and damaging example, precipitated by China’s long failure to conform to the World Trade Organization (WTO) principles, now escalated by President Trump into a trade and currency war disturbingly reminiscent of the 1930s that Bretton Woods was designed to prevent. Financial sanctions against Iran, in violation of US obligations in the Joint Comprehensive Plan Of Action (JCPOA), is another example of the rule of law succumbing to geopolitical competition. Though more mercantilist in intent than geopolitical, US tariffs on steel and aluminum, and their threatened use in automotives, aimed at the EU, Canada, and Japan,15 are equally destructive of the liberal system and of future economic growth, imposed as they are by the author of that system, and will spread to others. And indeed, Japan has used export controls in its escalating conflict with South Korea16 (as did China in imposing controls on rare earth,17 and as the US has done as part of its trade war with China). Inward foreign direct investment restrictions are spreading. The vitality of the WTO is being sapped by its inability to complete the Doha Round, by the proliferation of bilateral and regional agreements, and now by the Trump Administration’s hold on appointments to WTO judicial panels. It should not surprise anyone if, during a second term, Trump formally withdrew the US from the WTO. At a minimum it will become a “dead letter regime.”18

As such measures gain traction, it will become clear to states—and to companies—that a global trading system more responsive to raw power than to law entails escalating risk and diminishing benefits. This will be the end of economic globalization, and its many benefits, as we know it. It represents nothing less than the subordination of economic globalization, a system which many thought obeyed its own logic, to an international politics of zero-sum power competition among multiple actors with divergent interests and values. The costs will be significant: Bloomberg Economics estimates that the cost in lost US GDP in 2019- dollar terms from the trade war with China has reached $134 billion to date and will rise to a total of $316 billion by the end of 2020.19 Economically, the just-in-time, maximally efficient world of global supply chains, driving down costs, incentivizing innovation, spreading investment, integrating new countries and populations into the global system, is being Balkanized. Bilateral and regional deals are proliferating, while global, nondiscriminatory trade agreements are at an end.

Economies of scale will shrink, incentivizing less investment, increasing costs and prices, compromising growth, marginalizing countries whose growth and poverty reduction depended on participation in global supply chains. A world already suffering from excess savings (in the corporate sector, among mostly Asian countries) will respond to heightened risk and uncertainty with further retrenchment. The problem is perfectly captured by Tim Boyle, CEO of Columbia Sportswear, whose supply chain runs through China, reacting to yet another ratcheting up of US tariffs on Chinese imports, most recently on consumer goods:

We move stuff around to take advantage of inexpensive labor. That’s why we’re in Bangladesh. That’s why we’re looking at Africa. We’re putting investment capital to work, to get a return for our shareholders. So, when we make a wager on investment, this is not Vegas. We have to have a reasonable expectation we can get a return. That’s predicated on the rule of law: where can we expect the laws to be enforced, and for the foreseeable future, the rules will be in place? That’s what America used to be.20

The international political effects will be equally damaging. The four structural forces act on each other to produce the more dangerous, less prosperous world projected here. Illiberal globalization represents geopolitical conflict by (at first) physically non-kinetic means. It arises from intensifying competition among powerful states with divergent interests and identities, but in its effects drives down growth and fuels increased nationalism/populism, which further contributes to conflict. Twenty-first-century protectionism represents bottom-up forces arising from economic disruption. But it is also a top-down phenomenon, representing a strategic effort by political leadership to reduce the constraints of interdependence on freedom of geopolitical action, in effect a precursor and enabler of war. This is the disturbing hypothesis of Daniel Drezner, argued in an important May 2019 piece in Reason, titled “Will Today’s Global Trade Wars Lead to World War Three,”21 which examines the pre- World War I period of heightened trade conflict, its contribution to the disaster that followed, and its parallels to the present:

Before the First World War started, powers great and small took a variety of steps to thwart the globalization of the 19th century. Each of these steps made it easier for the key combatants to conceive of a general war. We are beginning to see a similar approach to the globalization of the 21st century. One by one, the economic constraints on military aggression are eroding. And too many have forgotten—or never knew—how this played out a century ago.

…In many ways, 19th century globalization was a victim of its own success. Reduced tariffs and transport costs flooded Europe with inexpensive grains from Russia and the United States. The incomes of landowners in these countries suffered a serious hit, and the Long Depression that ran from 1873 until 1896 generated pressure on European governments to protect against cheap imports.

…The primary lesson to draw from the years before 1914 is not that economic interdependence was a weak constraint on military conflict. It is that, even in a globalized economy, governments can take protectionist actions to reduce their interdependence in anticipation of future wars. In retrospect, the 30 years of tariff hikes, trade wars, and currency conflicts that preceded 1914 were harbingers of the devastation to come. European governments did not necessarily want to ignite a war among the great powers. By reducing their interdependence, however, they made that option conceivable.

…the backlash to globalization that preceded the Great War seems to be reprised in the current moment. Indeed, there are ways in which the current moment is scarier than the pre-1914 era. Back then, the world’s hegemon, the United Kingdom, acted as a brake on economic closure. In 2019, the United States is the protectionist with its foot on the accelerator. The constraints of Sino-American interdependence—what economist Larry Summers once called “the financial balance of terror”—no longer look so binding. And there are far too many hot spots—the Korean peninsula, the South China Sea, Taiwan—where the kindling seems awfully dry.

## 1NC — Supply Chains

### 1NC — AT: Cartels

#### Status quo solves---cartels are dying out.

Verbeke 21 – (\*Alain Verbeke and \*\*Caroline Buts \*Professor of International Business and Strategy and holds the McCaig Research Chair in Management @ Haskayne School of Business @ University of Calgary \*\*Professor at the department of applied economics @ Vrije Universiteit Brussel; published 2021, Management and Organization Review, “The Not So Brilliant Future of International Cartels,” doa: 9-4-2021) url: https://www.cambridge.org/core/journals/management-and-organization-review/article/not-so-brilliant-future-of-international-cartels/363CC718A5FD54F8BB390B9AB22150B7

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

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

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

#### BUT Extra-territorial application doesn’t solve cartels, because other countries block

Kava 19, JD/MBA Candidate @ JU (Samuel, “The Extraterritorial Application of the Sherman Anti-Trust Act in the Age of Globalization,” *15 J. Bus. & Tech. L. 135*, Lexis)

Before the FTAIA was enacted, in 1982, many of the United States’ closest allies were disgruntled by the U.S. courts’ expansive extraterritorial application of the Sherman Anti-Trust Act.152 These nations confided in the territorial principle, and believed it “axiomatic that in anti-trust matters the policy of one state may be to defend what it is the policy of another state to attack.”153 The United Kingdom, one of the most outspoken allies against the United States’ “attempt[] to impose [its] domestic laws on persons and corporations who are not U.S. nationals and who are acting outside the territory of the United States,” viewed the extraterritorial application of the Sherman Anti-Trust Act as ironic given the fact “the United States was founded by those who took exception to little matters of taxation being imposed extraterritorially.”154 Thus, in an attempt to “protect their nationals from criminal [and civil] proceedings in foreign courts where the claims to jurisdiction [were] excessive and constitute[d] an invasion of sovereignty,” foreign nations enacted blocking statutes to resist the extraterritorial application of the Sherman Act.155 The blocking statutes of each nation varied, but all served to “block the discovery of documents located in their countries and bar the enforcement of foreign judgements.”156 The United Kingdom achieved these goals with the Protection of Trading Interests Act, France with the French Blocking Law, Canada with the Foreign Extraterritorial Measures Act, and Australia with the Foreign Proceedings Act.157 The conflicting laws between the United States and its foreign counterparts created tremendous uncertainty regarding what nation’s laws would be applied in the event of a cross-border dispute. According to Nuno Limáo and Giovanni Maggi, economists from the University of Maryland and Yale University, “as the world becomes more integrated, the gains from decreasing trade-policy uncertainty should tend to become more important relative to the gains from reducing the levels of trade barriers.”158

#### Other countries block extra-territorial application in the name of sovereignty

McNeill 98 – B.S. (Business Administration), M.S. (Business Administration), San Diego State University, J.D., California Western School of Law

James S. McNeill, “Extraterritorial Antitrust Jurisdiction: Continuing the Confusion in Policy, Law, and Jurisdiction,” California Western International Law Journal, Vol. 28, No. 2, 1998, https://scholarlycommons.law.cwsl.edu/cgi/viewcontent.cgi?article=1316&context=cwilj

The history of court opinions, enforcement policies, and antitrust statutes clarifies the reason behind international mistrust of United States antitrust enforcement: inconsistency.237 One significant result of this confusion is the suspicion of United States antitrust actions by the international community.238 Foreign states take various measures specifically to defeat the effect of United States enforcement, allowing those foreign governments to give their resident trading entities predictability in their United States commercial interactions.239 Allowing avoidance of treble damage awards240 via "claw-back" provisions241 and discovery or judgment blocking242 are just a few examples of how governments have hindered United States antitrust enforcement. At the root of these efforts is resentment of what is perceived as an invasion of sovereignty, namely the United States extending its law to adjudicate foreign commerce disputes affecting foreign interests.243

#### Keeping the US out allows indigenous antitrust to develop. That solves cartels.

Murray ’17 [Sean; November 17; Fordham University School of Law (J.D.); Fordham International Law Journal; “With a Little Help from my Friends: How a US Judicial International Comity Balancing Test Can Foster Global Antitrust Redress,” <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2690&context=ilj>; KS]

Lastly, worldwide governments have expressed concern that US antitrust extraterritoriality stunts the growth of their own antitrust regimes due to the allure of treble damages.109 For example, competition authorities have argued that improper extraterritorial application of US antitrust law is likely to substantially undermine the effectiveness of other countries’ leniency programs, which are successful tools in discovering unlawful cartel activity, and thus will interfere with those countries’ overall antitrust enforcement, including private enforcement.110 Additionally, broad availability of US treble damage recovery to non-US litigants attracts away cases that might otherwise be litigated in non-US courts, thereby depriving those jurisdictions the development of the substantial body of jurisprudence that is necessary to facilitate the private enforcement of antitrust claims.111 An example of underdeveloped jurisprudence can be demonstrated in Israel, where the Israeli Supreme Court has not yet been required to decide whether Israel’s antitrust statute provides for indirect purchaser recovery.112 Other countries with underdeveloped private recovery doctrine, such as South Africa and Denmark, have seen little private litigation to fine-tune their private enforcement schemes, though activity is on the rise.113

### 1NC — AT: Space

#### No space col ever.

Dvorsky 19, senior staff reporter @ Gizmodo, citing astronautics engineer Louis Friedman. (George, 7-30-2019, "Humans Will Never Colonize Mars", Gizmodo, <https://gizmodo.com/humans-will-never-colonize-mars-1836316222>)

The suggestion that humans will soon set up bustling, long-lasting colonies on Mars is something many of us take for granted. What this lofty vision fails to appreciate, however, are the monumental—if not intractable—challenges awaiting colonists who want to permanently live on Mars. Unless we radically adapt our brains and bodies to the harsh Martian environment, the Red Planet will forever remain off limits to humans.

Mars is the closest thing we have to Earth in the entire solar system, and that’s not saying much.

The Red Planet is a cold, dead place, with an atmosphere about 100 times thinner than Earth’s. The paltry amount of air that does exist on Mars is primarily composed of noxious carbon dioxide, which does little to protect the surface from the Sun’s harmful rays. Air pressure on Mars is very low; at 600 Pascals, it’s only about 0.6 percent that of Earth. You might as well be exposed to the vacuum of space, resulting in a severe form of the bends—including ruptured lungs, dangerously swollen skin and body tissue, and ultimately death. The thin atmosphere also means that heat cannot be retained at the surface. The average temperature on Mars is -81 degrees Fahrenheit (-63 degrees Celsius), with temperatures dropping as low as -195 degrees F (-126 degrees C). By contrast, the coldest temperature ever recorded on Earth was at Vostok Station in Antarctica, at -128 degrees F (-89 degrees C) on June 23, 1982. Once temperatures get below the -40 degrees F/C mark, people who aren’t properly dressed for the occasion can expect hypothermia to set in within about five to seven minutes.

Mars also has less mass than is typically appreciated. Gravity on the Red Planet is 0.375 that of Earth’s, which means a 180-pound person on Earth would weigh a scant 68 pounds on Mars. While that might sound appealing, this low-gravity environment would likely wreak havoc to human health in the long term, and possibly have negative impacts on human fertility.

Yet despite these and a plethora of other issues, there’s this popular idea floating around that we’ll soon be able to set up colonies on Mars with ease. SpaceX CEO Elon Musk is projecting colonies on Mars as early as the 2050s, while astrobiologist Lewis Darnell, a professor at the University of Westminster, has offered a more modest estimate, saying it’ll be about 50 to 100 years before “substantial numbers of people have moved to Mars to live in self-sustaining towns.” The United Arab Emirates is aiming to build a Martian city of 600,000 occupants by 2117, in one of the more ambitious visions of the future.

Sadly, this is literally science fiction. While there’s no doubt in my mind that humans will eventually visit Mars and even build a base or two, the notion that we’ll soon set up colonies inhabited by hundreds or thousands of people is pure nonsense, and an unmitigated denial of the tremendous challenges posed by such a prospect.

Pioneering astronautics engineer Louis Friedman, co-founder of the Planetary Society and author of Human Spaceflight: From Mars to the Stars, likens this unfounded enthusiasm to the unfulfilled visions proposed during the 1940s and 1950s.

“Back then, cover stories of magazines like Popular Mechanics and Popular Science showed colonies under the oceans and in the Antarctic,” Friedman told Gizmodo. The feeling was that humans would find a way to occupy every nook and cranny of the planet, no matter how challenging or inhospitable, he said. “But this just hasn’t happened. We make occasional visits to Antarctica and we even have some bases there, but that’s about it. Under the oceans it’s even worse, with some limited human operations, but in reality it’s really very, very little.” As for human colonies in either of these environments, not so much. In fact, not at all, despite the relative ease at which we could achieve this.

After the Moon landings, Friedman said he and his colleagues were hugely optimistic about the future, believing “we would do more and more things, such as place colonies on Mars and the Moon,” but the “fact is, no human spaceflight program, whether Apollo, the Space Shuttle Program, or the International Space Station,” has established the necessary groundwork for setting up colonies on Mars, such as building the required infrastructure, finding safe and viable ways of sourcing food and water, mitigating the deleterious effects of radiation and low gravity, among other issues. Unlike other fields, development into human spaceflight, he said, “has become static.” Friedman agreed that we’ll likely build bases on Mars, but the “evidence of history” suggests colonization is unlikely for the foreseeable future.

#### No space elevators. Assumes graphene.

* Assumes Graphene Internal – Cost deters usage because of volume needed
* National and international politics
* Weather, orbital degree, structural insafety

Williams 21, writer for Universe Today, and the curator of their Guide to Space section. (Matthew S. “Engineers Are Creating a Real Space Elevator. Can They Succeed?” September 11, 2021. https://interestingengineering.com/can-engineers-create-a-real-space-elevator)

Challenges

Unfortunately, we cannot reap any of these benefits until we resolve a slew of challenges, and not all of them have to do with engineering (though they are legion!) Historically, the greatest challenge has been how to keep the tether taught while also ensuring that the mass is kept below a certain threshold.

While progress has been made in this area (thanks to the discovery of carbon nanotubes), there are still several stumbling blocks. For starters, researchers still can't create nanotubes that are particularly long and have high tensile strength. The current record for single tubes still stands at just under [20 inches (50 cm) and 5.5 inches (14 cm)](https://newatlas.com/materials/longest-carbon-nanotube-forests-record/) for "forests" of them.

Second, the very thing that makes carbon nanotubes so strong (their [hexagonal covalent bonds](https://gizmodo.com/why-well-probably-never-build-a-space-elevator-5984371)) also poses a major problem in constructing a tether. When loaded to an extreme degree, these bonds become unstable and come apart, which would cause the tether to fray in the same way a stocking would.

Graphene and diamond nanothreads are a possible solution since their structure is [not susceptible to fraying](https://www.engineering.com/story/3-challenges-for-engineering-a-space-elevator), and they present less of a problem when it comes to [mass production](https://www.nature.com/articles/nmat4088). However, producing enough to compose a tether that reaches an altitude of about 22,236 mi (35,786 km) or beyond would be a very costly venture.

Second, there's also the matter of the titanic forces the structure will have to deal with, like wind shear, storms, and hurricanes at lower altitudes, and micrometeoroids, and the Sun and Moon's gravitational influence at higher altitudes. Add to that the stress of regularly sending pod cars up and down the tether, and the result could be oscillations that eventually turn violent.

Third, there's the matter of [orbital debris](https://www.esa.int/Safety_Security/Space_Debris/Space_debris_by_the_numbers), which is already a considerable problem. The ESA estimates that there are currently 34,000 objects bigger than ~4 inches (10 cm) in diameter, 900,000 that measure between 0.4 to 4 inches (1 cm to 10 cm), and 128 million objects 0.4 to 0.04 inches (1 mm to 1 cm). Since objects in Earth's orbit move at a velocity of ~4.8 mi/s  (7.8 km/s) -  17,000 mph; 28,000 km/h — even the tiniest bit of debris can pose a high risk.

And of course, there's the issue of cost, which is beyond the capacity of any one nation to build. The only way we could afford to create a space elevator in the foreseeable future is if the wealthiest nations of the world came together and committed to a multi-generational effort to build one and could agree on a common framework for administering and using it.

This raises the equally sticky issue of national sovereignty. The elevator would need to be built in neutral territory and protected at all times by an international body to protect it from terrorists attempting to sabotage it while also preventing anyone from seizing control or having exclusive access to it.

#### There are no “graphene cartels,” BUT the tech will never get off the ground regardless

Burgess 19, editor @ FT. (Kate, 7-20-2019, "Graphene is less wonderful as an investment material", *Financial Times*, https://www.ft.com/content/1605a2aa-a971-11e9-b6ee-3cdf3174eb89)

Is there no end to what graphene can do? It makes golf balls go further, concrete stronger, and clothing and batteries last longer. It is a pity that just 1g of graphene goes a very long way.

Last week, Versarien, one of the many graphene producers floated on London’s junior market in the past six years, said ”revenues of any material amount have yet to be achieved” from its graphene-making division. Group losses before nasties such as tax and depreciation had widened to £1.1m. That is in spite of Versarien’s more mature side which sells hard metallic coatings to the oil and gas industry. Currently the group sells 100 grammes of graphene here and a kilo there to be tested by possible customers with whom it has signed umpteen collaborative agreements.

Chief executive Neill Ricketts is confident that one day the group will break even and hopeful it can increase graphene production capacity to 30 tonnes a year in time. Meanwhile, he is trying to raise funds from the Beijing Institute of Graphene Technology in return for a 15 per cent stake.

Graphene was discovered in 2004 by a couple of Manchester University scientists. They realised that this one atom-thick sheet of carbon was a million times thinner than a human hair and has 200 times the strength of steel. Enthusiasts soon began declaring the ultra-thin, mega-flexible and superconductive material would do for Manchester what silicon did to a valley in California. Graphene would revolutionise electronics, computers, energy, biotechnology and transport, they cried.

But it is taking decades to turn graphene to good, commercial use. Versarien is just one of very many companies trying to work out how to make money from it.

Versarien explodes or “exfoliates” lumps of graphite — a relatively ubiquitous commodity — to turn it into graphene.

#### No warming impact.

Ord 20, research fellow at the Future of Humanity Institute at Oxford University, has advised the World Health Organization, the World Bank, the World Economic Forum, and the UK Prime Minister’s Office and Cabinet Office. (Toby, “4. Anthropogenic Risks”, *The Precipice: Existential Risk and the Future of Humanity*, Oxford)

Major effects of climate change include reduced agricultural yields, sea level rises, water scarcity, increased tropical diseases, ocean acidification and the collapse of the Gulf Stream. While extremely important when assessing the overall risks of climate change, none of these threaten extinction or irrevocable collapse.

Crops are very sensitive to reductions in temperature (due to frosts), but less sensitive to increases. By all appearances we would still have food to support civilization.85 Even if sea levels rose hundreds of meters (over centuries), most of the Earth’s land area would remain. Similarly, while some areas might conceivably become uninhabitable due to water scarcity, other areas will have increased rainfall. More areas may become susceptible to tropical diseases, but we need only look to the tropics to see civilization flourish despite this. The main effect of a collapse of the system of Atlantic Ocean currents that includes the Gulf Stream is a 2°C cooling of Europe—something that poses no permanent threat to global civilization.

From an existential risk perspective, a more serious concern is that the high temperatures (and the rapidity of their change) might cause a large loss of biodiversity and subsequent ecosystem collapse. While the pathway is not entirely clear, a large enough collapse of ecosystems across the globe could perhaps threaten human extinction. The idea that climate change could cause widespread extinctions has some good theoretical support.86 Yet the evidence is mixed. For when we look at many of the past cases of extremely high global temperatures or extremely rapid warming we don’t see a corresponding loss of biodiversity.87

So the most important known effect of climate change from the perspective of direct existential risk is probably the most obvious: heat stress. We need an environment cooler than our body temperature to be able to rid ourselves of waste heat and stay alive. More precisely, we need to be able to lose heat by sweating, which depends on the humidity as well as the temperature.

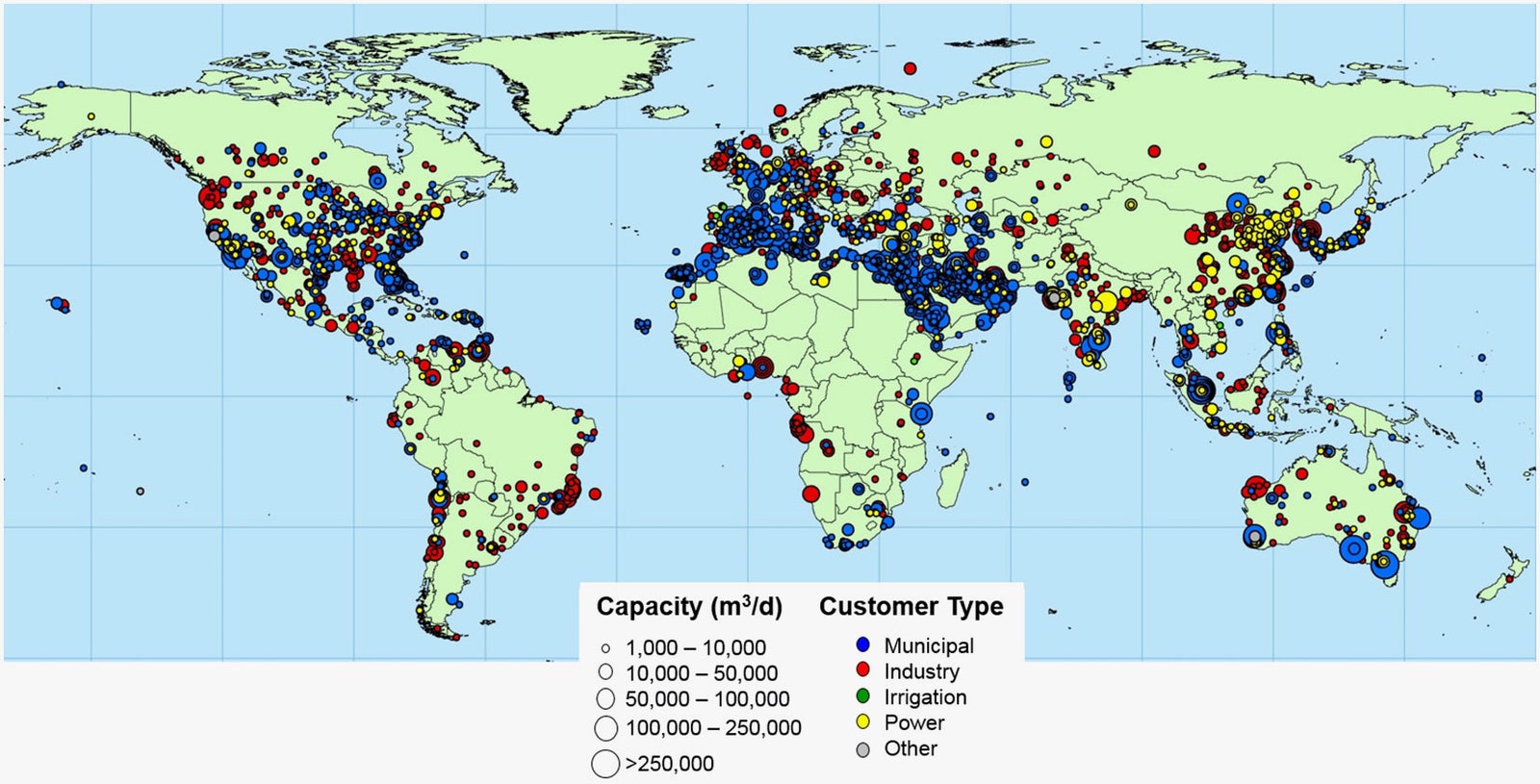
A landmark paper by Steven Sherwood and Matthew Huber showed that with sufficient warming there would be parts of the world whose temperature and humidity combine to exceed the level where humans could survive without air conditioning.88 With 12°C of warming, a very large land area—where more than half of all people currently live and where much of our food is grown—would exceed this level at some point during a typical year. Sherwood and Huber suggest that such areas would be uninhabitable. This may not quite be true (particularly if air conditioning is possible during the hottest months), but their habitability is at least in question.

However, substantial regions would also remain below this threshold. Even with an extreme 20°C of warming there would be many coastal areas (and some elevated regions) that would have no days above the temperature/humidity threshold.89 So there would remain large areas in which humanity and civilization could continue. A world with 20°C of warming would be an unparalleled human and environmental tragedy, forcing mass migration and perhaps starvation too. This is reason enough to do our utmost to prevent anything like that from ever happening. However, our present task is identifying existential risks to humanity and it is hard to see how any realistic level of heat stress could pose such a risk. So the runaway and moist greenhouse effects remain the only known mechanisms through which climate change could directly cause our extinction or irrevocable collapse.

### 1NC — AT: Desalination

#### Double bind — either desalination is inevitable — insert this map

Simon 19 — Matt Simon (Science journalist, WIRED); “Desalination Is Booming. But What About All That Toxic Brine?;” WIRED; January 14th, 2019; https://www.wired.com/story/desalination-is-booming-but-what-about-all-that-toxic-brine/



#### OR their impacts are inevitable because if the 16,000 plants that exist now aren’t sufficient, then nothing the aff does will be either

#### BUT it decimates the environment and reverberates throughout the food chain

Doyle 19 — Alister Doyle (Reuters Environment Correspondent); “Too much salt: water desalination plants harm environment: U.N.;” Reuters; January 14th, 2019; https://www.reuters.com/article/us-environment-brine/too-much-salt-water-desalination-plants-harm-environment-u-n-idUSKCN1P81PX

[TITLE]: Too much salt: water desalination plants harm environment: U.N.

OSLO (Reuters) - Almost 16,000 desalination plants worldwide produce bigger-than-expected flows of highly salty waste water and toxic chemicals that are damaging the environment, a U.N.-backed study said on Monday.

Desalination plants pump out 142 million cubic meters (5 billion cubic feet) of salty brine every day, 50 percent more than previous estimates, to produce 95 million cubic meters of fresh water, the study said.

About 55 percent of the brine is produced in desalination plants processing seawater in Saudi Arabia, the United Arab Emirates and Qatar, according to the study by the U.N. University’s Canadian-based Institute for Water, Environment and Health (UNU-INWEH).

The hyper-salty water is mostly pumped into the sea and, over a year, would be enough to cover the U.S. state of Florida with 30 cms (one foot) of brine, it said of the fast-growing and energy-intensive technology that benefits many arid regions.

Brine, water comprising about five percent salt, often includes toxins such as chlorine and copper used in desalination, it said. By contrast, global sea water is about 3.5 percent salt.

Waste chemicals “accumulate in the environment and can have toxic effects in fish”, said Edward Jones, the lead author at UNU-INWEH who also works at Wageningen University in the Netherlands.

Brine can cut levels of oxygen in seawater near desalination plants with “profound impacts” on shellfish, crabs and other creatures on the seabed, leading to “ecological effects observable throughout the food chain”, he said.

Vladimir Smakhtin, director of UNU-INWEH, said the study was part of research into how best to secure fresh water for a rising population without harming the environment.

### 1NC — AT: REMs

#### No REM shortages---stockpiles, new deposits, and recycling.

Lovins 17, Cofounder and Chairman Emeritus of Rocky Mountain Institute, energy advisor to major firms and governments in 70+ countries for 45+ years, has written 31 books and more than 600 papers, advised major firms and governments worldwide, and received 12 honorary doctorates and many international awards. (Amory, 5-23-2017, "Clean energy and rare earths: Why not to worry", *Bulletin of the Atomic Scientists*, https://thebulletin.org/2017/05/clean-energy-and-rare-earths-why-not-to-worry/)

Rare earths’ uses are highly specialized but diverse. These elements are used in mobile phones, superstrong magnets and hence advanced motors and generators, some oil-refinery catalysts, certain lasers and fluorescent-lamp or flat-screen phosphors, some batteries and superconductors, and other technologies important to modern life. Some rare earths are particularly useful in energy applications. Around 2010, some articles and commentators warned that shortages of rare earths, or China’s near-monopoly on them, could choke off the West’s shift to renewable energy and other clean technologies. This was never true—but the myth persists.

Bubble and burst. Rare earths concerned only specialists until about 2009–10. In the mid-1990s, China had consolidated its control over most of the global rare-earth market, and the last US mine and mill, once the world’s dominant producer, closed in 2002 because it was unprofitable. China began imposing export quotas in 2006, and limited exports to Japan (a major user of rare earths for high-tech miniature motors) during a diplomatic spat in 2009–10, so global prices and anxieties soared. US government agencies published urgent reports about the rare-earth crisis and its threat to national security. Could China’s control of these crucial elements—roughly 97 percent at the time—block Washington’s ability to produce Tomahawk missiles, F-35 jets, and night-vision goggles, as some military writers warned, never mind electric vehicles and wind-power turbines?

As a technologist who had advised major mining companies, written two books on metal mining and a 445-page text on efficient motor systems, done rare-earth physics experiments at MIT Lincoln Laboratory, and consulted for MIT’s Francis Bitter Magnet Laboratory, I knew enough to be unconvinced by rare-earth alarm bells. It all felt like a commodity bubble, based more on a shortage of understanding—of rare earths, economic geology, and resource efficiency and substitution—than on a shortage of rare earths.

Sure enough, the debate was heavy on the supply of rare earths but light and often misinformed on the demand side. The few observers who focused more on demand suspected that rare earths’ price spike wouldn’t last long, whether or not it reflected mining-stock hype. I called the coming crash, to general ridicule, in 2010. Rare-earth prices soared through spring 2011—when a rare-earth bonanza was fondly predicted for Helmand Province in Afghanistan—but then plummeted.

US supplier Molycorp reopened its California rare-earth mine in 2012, but went broke in 2015 when low world prices wouldn’t support its high costs. By 2015, MIT Technology Review asked, “What Happened to the Rare-Earths Crisis?” It misleadingly called rare earths “crucial to the permanent magnets used in wind turbines and motors in hybrid or electric cars,” and concluded that worries about them had “seemingly dissipated without much fanfare” as “demand fell more than expected,” but never connected the dots by asking why demand did that. By 2016–17, the market was in the doldrums, with China planning to limit annual production to 140,000 metric tons beginning in 2020 to try to raise prices again. An investor in the rare-earth industry in 2007 would have lost 81 percent of her portfolio value after a classic decade-long boom-and-bust wild ride (see the chart at the top of this article from buyupside.com).

This is not how a durably scarce and valuable commodity behaves. What happened? Just what you’d expect of a thin market influenced by ignorance but ultimately tamed by reality. When prices soared, stockpiles rose, idle mines reopened, explorers sought and found new deposits, and recycling increased (for example, cerium in glass polishing). Most important, as customers from General Electric to Toyota to Ford sought to cut costs and boost performance, the costlier materials were used more frugally and often replaced with cheaper, better solutions—all as I’d predicted in 2010. Prices fell accordingly.

#### Grid resilient.

Niiler 19, citing a study by the Electric Power Research Institute. (Eric, 4-30-2019, "The Grid Might Survive an Electromagnetic Pulse Just Fine", *Wired*, https://www.wired.com/story/the-grid-might-survive-an-electromagnetic-pulse-just-fine/)

The study, by the Electric Power Research Institute, a utility-funded research organization, finds that existing technology can protect various components of the electric grid to buffer it from the effects of solar flares, lightning strikes, and an EMP from a nuclear blast all at the same time: a three-for-one surge protector. “We have a strong technical basis for what the impacts [of an EMP] might be,” says Randy Horton, EPRI project manager and author of the report being released today. “That is one thing that didn’t exist before.”

Horton says that EPRI technicians worked with experts at the Department of Energy labs at Los Alamos and Sandia to simulate some effects of an EMP on substations and distribution systems. They also did real-world testing of electrical equipment at an EPRI laboratory in Charlotte, North Carolina. The study, which took three years to complete, looks at the effects of three kinds of energy spawned by a nuclear detonation.

The first high-energy wave occurs in just a few nanoseconds and is called an E1. The second wave, called an E2, lasts up to a second and can fry electric systems the way a lightning strike does, unless they are properly grounded. Effects of an E2 wave on the grid are expected to be minimal. The third kind of wave can last for tens of seconds and is similar to what utility operators might expect from a low-frequency, long-duration solar flare or geomagnetic storm. The report says that the combination of an E1 and E3 would cause the most damage over the widest area.

Horton says simulations and testing by EPRI contradicts earlier findings that an EMP would wipe out the US grid. “You could have a regional voltage collapse, but you wouldn’t damage a large number of bulk power transformers immediately,” Horton says. “That was the difference in our finding. There were some studies that said you could damage hundreds of transformers. We just didn’t find it.”

## 1NC — Uncertainty

### 1NC — AT: Private Action

#### The Plan is JUST private. Only criminal enforcement solves cartelization

Kolasky 4, JD, now practicing attorney (William, “Criminalising cartel activity: Lessons from the US experience,” https://www.wilmerhale.com/-/media/files/wilmerhale\_shared\_content/files/editorial/publication/kolasky\_criminalisingcartelactivity.pdf

Our experience in the United States has taught us that criminal sanctions are absolutely essential to effective cartel enforcement. There is no more effective deterrent to cartel behaviour than the knowledge that, if caught, the individuals involved will have to serve jail time. Almost as importantly, there is no other effective way to persuade lower level employees to cooperate in an investigation and to supply evidence that will incriminate their superiors, their employers and their co-conspirators. The ability to offer a participant in a cartel either immunity from prosecution or a reduced sentence in exchange for testimony is the prosecutor’s single strongest weapon in cartel enforcement. Without that weapon, most employees would be unwilling, either for reasons of loyalty or because of fear of retaliation or of being ostracised, to ‘fink’ on their fellow executives and co-conspirators.

#### Damages fail

#### A-It punishes the firm, employees leave the firm

Crane 10, Professor of Law @ U Mich (Daniel, “Optimizing Private Antitrust Enforcement,” Vanderbilt Law Review)

In light of these facts, it is difficult to see how the threat of a future damages judgment disciplines managerial decisionmaking. When managers plan conduct that brings immediate large profits but only potential liability at some future date, the extent to which the future liability deters them from choosing immediate profits is a function of their implicit discount rate for the potential damages award. The longer the perceived time until judgment day, the more likely it is that managers will discount the threat of damages. If managers believe that they are unlikely to be employed by the firm at the distant judgment day, they will tend to disregard the threat of future liability altogether.

### 1NC — AT: China

#### Aff doesn't solve the internal link - says the only solution is stop offshoring jobs and bolster domestic manufacturing.

#### Imports are inevitable — cheaper resources and jobs, etc. Ev says it didn’t impact manufacturing, just raised costs of all imports

#### Beckley doesn’t have a terminal impact

#### COMPETEs Act solves

#### **No US-China war & decoupling is impossible**

Lei 20, PhD and MA in International Politics, associate research fellow with the China Institute of International Studies. (Cui, 7-24-2020, "Despite heated talk, risk of a US-China hot war is small", *South China Morning Post*, https://www.scmp.com/comment/opinion/article/3094121/why-risk-us-china-hot-war-small-despite-heated-talk)

Many observers are pessimistic about deteriorating US-China relations and believe the two countries are heading towards a cold war. Even worse, some argue that the situation might be more dangerous than the US-Soviet Union Cold War, and that a hot war might break out between the two. This argument is unconvincing. First of all, deterrents to a flare-up are much stronger in US-China relations than in US-Soviet relations. Although economic and people-to-people ties between China and the US are declining, they are still close compared to US-Soviet ties. It is hard to decouple two closely intertwined economies and societies. Take two examples. China is expected to become the world's largest consumer market, a temptation hard to resist for exporters, including those from the US. And in education, more than 300,000 Chinese students study in the US, bringing in huge revenues for the US education industry. Many universities go to great lengths to woo international students. Recently Harvard and the Massachusetts Institute of Technology even sued the government over its new visa restrictions, now aborted, on international students. Second, even if there is decoupling, the pain would not be too great and can be kept out of the national security sphere if properly handled. In fact, for national security reasons, a modest degree of isolation will make both sides more secure and comfortable. For instance, if China’s information technology equipment cannot capture Western markets, the US will be more relaxed. If China cannot get advanced technologies from the US and its technological progress slows down, the US will be less anxious. In the same vein, China feels assured knowing that if the Trump administration does impose a travel ban on Communist Party members, it would be abandoning one of the tools available to the US to promote “peaceful evolution” in China. Economic decoupling is undeniably more painful for China than for the US. But unlike Japan during WWII, which was hit hard by the US oil embargo because of its lack of natural resources, China has no such problems. Given its large domestic market, losing the US as a major customer is not a disaster for China, and can be compensated through more dynamic economic activities at home. China can also make up for being freezed out of technological exchanges by turning to indigenous innovation. As for the US, it can import goods from other developing countries, albeit less cheaply. The relative loss is acceptable when weighed against the heightened perception of economic independence and security. Third, the ideological confrontation between China and the US is less intense than that during the Cold War. Unlike the obsession with ideology in those days, the line between capitalism and socialism is blurred today. The market economy has become universally recognised as the best way to promote economic growth and, politically, many countries have embraced democracy. Even North Korea calls itself the Democratic People’s Republic of Korea. Although ideological hawks in the US still long for the day when the beacon of freedom will light up the world, after many years of fighting bloody wars overseas, most American people are not interested in promoting democracy abroad. Meanwhile, China just wants to preserve its political system and has no interest in exporting it to other countries, as the Soviet Union did. Thus, ideological antagonism in China-US relations can easily be eased by calculations of realistic interests, which create conditions for compromise and cooperation. Fourth, both China and the US have many options other than war to achieve their policy goals. While they have no allies to serve as a buffer, given the nature of the potential conflict in the South China Sea or Taiwan Strait, both countries are adept at operating in grey zones and fighting psychological, public opinion or diplomatic warfare below the threshold of war. The forced closure of the Chinese consulate in Houston by the US government is just the latest act of brinkmanship. In addition, given China’s huge economic and financial interests in the US, the latter can wield the stick of sanctions when use of force is highly risky or not worth it. When both sides have many tools and options, why would they rush to war to achieve their goals? Last but not least, the imbalance of power will act as a deterrent. Some say the US and Soviet Union did not fight a hot war because they were evenly matched. It was not the case, actually. At the beginning of the Cold War, the Soviet Union was at a relative military disadvantage. Moreover, a country needs the will to fight before going to war, even if it is stronger militarily than its adversary. Having fought years of meaningless wars, the US is weary of war. China, too, abhors war. Having a clear understanding of US strength, especially when its own economy is slowing down and it is facing various domestic challenges, China would not wish to recklessly start a war with the US. In summary, the possibility of a hot war between China and the US is very small. The greatest danger for China is not a cold or hot confrontation with the US, but policymakers’ interpretation of the momentary hostility towards Beijing of a portion of the American population and the larger world. An erroneous interpretation could end China’s march to further opening up, and see it turn instead towards self-isolation.

## 1NC — Illinois Brick

### 1NC — AT: AI

#### They didn’t read an impact. The “laundry list” part of their card is after like 7 paragraphs of shrunken test, and none of them are terminals. When they read an impact we will read defense.

#### Cross-apply diplomacy links. They’re all straight turns.

#### US-EU regulation is strong and coordinated.

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

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

#### The aff blows up US-EU trade relations — any extraterritorial application kills relations

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

A. Adverse Political and Economic Effects

Before the FTAIA was enacted, in 1982, many of the United States’ closest allies were disgruntled by the U.S. courts’ expansive extraterritorial application of the Sherman Anti-Trust Act.152 These nations confided in the territorial principle, and believed it “axiomatic that in anti-trust matters the policy of one state may be to defend what it is the policy of another state to attack.”153 The United Kingdom, one of the most outspoken allies against the United States’ “attempt[] to impose [its] domestic laws

[marked]

on persons and corporations who are not U.S. nationals and who are acting outside the territory of the United States,” viewed the extraterritorial application of the Sherman Anti-Trust Act as ironic given the fact “the United States was founded by those who took exception to little matters of taxation being imposed extraterritorially.”154 Thus, in an attempt to “protect their nationals from criminal [and civil] proceedings in foreign courts where the claims to jurisdiction [were] excessive and constitute[d] an invasion of sovereignty,” foreign nations enacted blocking statutes to resist the extraterritorial application of the Sherman Act.155

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

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

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

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

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

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

# 2NC

## T — Prohibition

#### Prohibition must mean forbidding by authority — the alternative renders the language meaningless

Georgia Court of Appeals 64 (FRANKUM, Judge. Opinion in Andrews v. GEORGIA MUTUAL INS. CO., 137 S.E.2d 746, 110 Ga. App. 92 (Ct. App. 1964). Google scholar caselaw. Date accessed 7/13/21).

1. Chapter 56-24 of the present Insurance Code is applicable to all insurance policies. Code Ann. § 56-2402 provides: "`Policy' means the written contract of or written agreement for or effecting insurance, and includes all clauses, riders, endorsements and papers attached or issued and delivered for attachment thereto and a part thereof." Code Ann. § 56-2419 provides: "Every insurance contract shall be construed according to the entirety of its terms and conditions as set forth in the policy and as amplified, extended, or modified by any rider, endorsement, or application made a part of the policy." "`Insurance contracts are governed by the same rules of construction or interpretation, for the purpose of ascertaining the intention of the parties, as apply to other contracts. Code § 56-815; Golden v. National Life & Accident Insurance Co., 189 Ga. 79 (2), 87 (5 SE2d 198, 125 ALR 838). Where the terms and conditions of an insurance policy are unambiguous, the court must declare the contract as made by the parties. Penn Mutual Life Insurance Co. v. Marshall, 49 Ga. App. 287 (1) (175 SE 412). Where the meaning is plain and obvious, it should be treated as literally provided therein. Daniel v. Jefferson Standard Life Insurance Co., 52 Ga. App. 620 (2) (184 SE 366).' Genone v. Citizens Ins. Co. of N. J., 207 Ga. 83, 86 (1) (60 SE2d 125)." Queen Ins. Co. v. Nalley Discount Co., 215 Ga. 837, 838 (1) (114 SE2d 21). Code Ann. § 56-3201 provides in part: "No policy of fire insurance covering property located in Georgia shall be made, issued or delivered unless it conforms as to all provisions and the sequence thereof with a standard or uniform form prescribed by the [Insurance] Commissioner, . . ." The plaintiff concedes that the standard form or fire policy prescribed by the Insurance Commissioner contains the clause 95\*95 quoted in the statement of facts, but contends that the provisions of the rider or endorsement attached to the policy sued upon with respect to the prohibition against other insurance is null and void and against public policy. We do not agree with this contention. The word "prohibit" means to "forbid by authority." 34 Words & Phrases 458, and cits. It would render meaningless the language contained in the standard policy to the effect that "other insurance may be prohibited by endorsement" to hold that such endorsement prohibiting other insurance could not carry with it the "authority" to enforce its provisions by providing for forfeiture of the policy for violations of such prohibition. The rider or endorsement which forms a part of the policy is not prohibited by law, is not in conflict with any provision required to be included in the policy, is unambiguous, and is a part of a binding contract between the parties to the policy. When the plaintiffs procured fire insurance from Cotton States Mutual Insurance Company in violation of the provisions of the policy sued upon, such action by the plaintiffs nullified and abrogated the policy in question.

#### If the plan allows a court to inquire into the effects of certain conduct, then they’re forbidding the effect, NOT the conduct. Only a declaration of illegality without weighing consequences is topical.

Kalintiri 20, Lecturer in Competition Law at King’s College London. (Andriani, “Analytical Shortcuts in EU Competition Enforcement: Proxies, Premises, and Presumptions”, *Journal of Competition Law & Economics*, 16(3), pg. 406-417, <https://heinonline.org/HOL/P?h=hein.journals/nylr95&i=1618>)

Firstly, normative assertions and economic propositions are what gives shape to the otherwise vague letter of the antitrust and merger provisions. Arguably, those provisions do not immediately reveal what is prohibited and are in need of elaboration to become operational. In this process, varying perceptions about the goals of the discipline may completely shift the focus of the analysis.45 For example, if competition law is to be enforced with a view to protecting small- and medium-sized enterprises or employment—as opposed or in addition to, say, promoting consumer welfare—then different effects in the market may become relevant.46 On the other hand, economic premises about the procompetitive or anticompetitive nature of the conduct at hand typically inform the choice between the application of a ‘rule’ or a ‘standard’.47 The prohibition, for instance, of cartels as ‘by object’ violations of antitrust law rests on the economic premise that conduct of this kind lacks any efficiency justification and thus a rule of prima facie illegality is not liable to chill procompetitive behaviour.48 Conversely, the treatment of quantity rebates as prima facie lawful is grounded in the idea that this type of discount reflects the cost savings achieved by the undertaking in question.49 In the same vein, the ‘by effect’ analysis of exclusive dealing under Article 101(1) TFEU is explained by the economic insight that behaviour of this kind may entail efficiencies.50 Accordingly, normative and economic premises are instrumental in the construction of competition law. It is worth noting at this point that in the EU the ‘by object’ test has been occasionally portrayed as a presumption of actual or likely anticompetitive effects. Arguably, the language employed by the EU Courts is partly to blame for this.51 In Cartes Bancaires, for instance, the Court of Justice explained that ‘certain collusive behaviour, such as that leading to horizontal price-fixing by cartels, may be considered so likely to have negative effects (...), that it may be considered redundant ( ... ) to prove that they have actual effects on the market’, since ‘experience shows that such behaviour leads to falls in production and price increases, resulting in poor allocation of resources to the detriment, in particular, of consumers’.52 This wording though is confusing, insofar as it may create the misimpression that a finding of ‘by object’ violation rests on a presumption—in the technical sense of the word—of the existence of actual or likely anticompetitive effects in the circumstances at hand. Considering that presumptions shift the burden of proof, in this case it should be open to undertakings to challenge such a finding by showing that their cartel agreement, for instance, was never implemented or that the presumed negative effects are unlikely to occur. Nevertheless, the EU Courts’ jurisprudence demonstrates that such arguments may not reverse a finding of ‘by object’ liability.53 Consequently, to speak of a presumption of actual or likely anticompetitive effects is incorrect. Secondly, premises also play a fundamental role in the design of administrative priorities—that is, the identification of cases on which the authority will choose to expend its limited resources to maximize the return on taxpayers’ money. For instance, if the goal is to promote consumer welfare, then it of course makes sense to prioritize investigations into practices which may have a bigger impact on it. Economic premises are critical in this screening exercise, since they can guide administrative agencies in detecting the most but also least ‘problematic’ types of behaviour in view of the pursued objective. For example, the prioritization of cartel enforcement worldwide rests on the economic insight that cartel conduct is among the most harmful for competition and consumers. Conversely, the development of ‘safe harbours’ setting out the circumstances where an authority is unlikely to intervene is grounded in the idea that competition is not liable to be impaired in the absence of a degree of market power. The Commission Guidelines on agreements of minor importance, for instance, explain that arrangements entered into between parties whose market shares do not exceed certain thresholds will be considered not to appreciably restrict competition in the meaning of Article 101(1) TFEU.54 Similar pronouncements may be located in the Commission Guidelines on horizontal cooperation agreements or in the Commission Guidelines on horizontal and nonhorizontal mergers.55 While these ‘safe harbours’ are often presented as ‘presumptions of lawfulness’, strictly speaking they are simply illustrations of the authority’s policy and understanding of the law.56 Last but not least, premises have a third important function in competition enforcement—they form part of the backdrop against which the standard of proof inquiry is conducted. The reason for this is that the process of determining whether the available evidence is sufficient to surpass the requisite level of conviction or probability for a decision to be lawfully adopted is informed—among others—by normality considerations, which allow us to make sense of the evidence and to ‘connect the dots’. Generally, our perception of ‘usual’ and ‘unusual’ is shaped by past experience and common sense.57 In competition enforcement though, economic premises may also determine what is ‘normal’ and what is not.58 For instance, because cartels are deemed to harm competition, claims and evidence of plausible explanations and efficiencies will be evaluated against this default idea. Likewise, the insight that ‘the effects of a conglomerate-type merger are generally considered to be neutral, or even beneficial, for competition’ led the General Court to emphasize in Tetra Laval that ‘the proof of anticompetitive conglomerate effects of such a merger calls for a precise examination, supported by convincing evidence, of the circumstances which allegedly produce those effects’.59 Therefore, premises inform not only the construction of the law and the design of policy but also fact-finding, insofar as they provide ‘rules of thumb’ and baselines for drawing inferences from the evidence.60 B. The Construction and Deconstruction of Normative and Economic Premises Premises are not set in stone though. Because they embody contemporary norms and values as well as current knowledge, they may—and do—evolve over time. Societal and political shifts and advances in economics may lead to the emergence of new premises or the critical revisiting of old ones. The construction and deconstruction of normative and economic premises in competition enforcement occur in an incremental and cumulative manner predominantly outside but also within the legal system. Outside the legal system, scholarly works exposing the thinking underlying competition enforcement and challenging its theoretical and empirical foundations, as well as its consistency, play a pivotal role in this regard. This is hardly surprising—by promoting evidence-based dialogue and allowing for the fermentation of ideas, academic debates may result in the elimination of weak propositions, the emergence of consensus positions, and the creation of new knowledge. This process though is a constant work in progress, which partly explains why many of the disputes concerning competition enforcement resurface now and again. The recently reignited conversation about the goals of the discipline is a good example of this—after the espousal by many of efficiency and consumer welfare as the main aims of competition law, the issue has again been brought into the spotlight by commentators advocating for the pursuit of broader social and political objectives.61 Economic premises are not immune to challenges either. As the currently ongoing discussion around the low levels of vertical merger enforcement illustrates, even well-established propositions—such as the idea that nonhorizontal concentrations generally benefit competition and generate efficiencies—may be questioned and potentially overturned.62 Finally, academic works exposing inconsistencies in the legal treatment of various categories of conduct may also cast doubt on the convincingness of the premises underlying the applicable tests.63 Within the legal system, the construction and deconstruction of premises naturally occur during the development of policy and in the context of specific cases. Indeed, on several occasions the emergence of new knowledge or changes in the prevailing circumstances have prompted competition authorities to reflect on—and update, where necessary—the premises driving their enforcement activities. In the EU, for instance, the heavy criticisms against the Commission’s early formalistic approach to the legal treatment of various practices led the authority to rethink its policy in different areas—from vertical agreements to horizontal arrangements to mergers and unilateral conduct. The replacement of old premises with new ones culminated in the publication of several soft law documents, which were seen as signalling a ‘more economic’ approach to EU competition enforcement.64 More recently, the challenges of the digital economy have impelled several authorities to commission expert reports and to launch task forces or strategies with a view to ascertaining what normative and economic premises should drive antitrust and merger policy in that context.65 By contrast, courts are naturally more cautious against regular or radical changes in the law as a result of contemporary developments due to the need to preserve legal certainty and stability.66 Nevertheless, the normative and economic propositions underpinning competition enforcement may be exposed or challenged in the context of judicial proceedings, too. Leegin is probably among the best examples of a drastic overhaul of the law in judicial acknowledgment of an evolution in current thinking. Noting that ‘economics literature is replete with procompetitive justifications for a manufacturer’s use of resale price maintenance’, the US Supreme Court overturned Dr Miles and dismissed the per se illegality test in favour of a rule of reason analysis.67 In the EU, the Courts have frequently spelt out the premises behind their interpretation of the law. While many have survived the passage of time relatively unscathed, for example, the idea that pricing below average variable costs is generally irrational for an undertaking or the insight that certain restraints are necessary in selective distribution or franchising,68 others have been tested—for instance, the idea that exclusivity rebates offered by a dominant firm are inherently harmful for competition and consumers.69 Over the years, such challenges have provided EU judges with the opportunity to incrementally clarify and elaborate on the main ideas driving the enforcement of the antitrust and merger rules.70 C. Economic Premises and Evidence Rules Most, if not all, premises, in particular economic ones, have at least some empirical grounding, and their ‘truth’ or ‘validity’ may thus be contested, as just noted. To the extent that they underpin the construction of the competition provisions and their application to specific practices and may be challenged in the context of judicial proceedings, it is necessary to briefly consider whether they are subject to the evidence rules. Are economic propositions to be established to the standard of proof before being endorsed by the court? If there is disagreement between the parties about the ‘correct’ premise, say, for instance, regarding the competitive effects of exclusive dealing by dominant firms or the relationship between market structure and innovation, is this to be resolved in accordance with the rules on the burden of proof? And are judges exclusively dependent on parties to produce the relevant information, or can they engage in independent research? These queries go to the heart of a rather old, yet highly important problem— that of the integration of social science in law.71 To the extent that the construction and the application of the legal rules hinge on ‘knowledge’ derived from social science, including economics, is this to be treated as ‘fact’ or as ‘law’ or perhaps as something else? Scholars have approached this question in different, albeit not fundamentally conflicting, ways. On the one hand, it has been suggested that so-called legislative facts—that is, facts that ‘inform (...) a court’s legislative judgment on questions of law and policy’— must be distinguished from adjudicative facts, that is, facts about ‘what the parties did, what the circumstances were, what the background conditions were’, and that the evidence rules apply only to the latter.72 On the other hand, it has been argued that social science may be treated both as ‘law’ and as a ‘fact depending on its use: it is akin to ‘law’ when it provides the basis for law-making or is employed to establish background knowledge and general methodology, while it is akin to ‘fact’, when it is applied to case-specific issues or to produce case-specific research findings.73 With these remarks in mind, when economic premises are employed for the purpose of determining the optimal legal test—that is, whether a conduct should be subject to a rule or a standard (in EU terminology, the ‘by object’ or the ‘by effect’ test)—they arguably escape the application of the evidence rules. In the EU this conclusion is further reinforced by the exclusive competence of the EU Courts to provide authoritative guidance on the meaning of EU law.74 Accordingly, conduct-specific economic premises, that is, generalized propositions pertaining to the economics of different practices—say, tying or price discrimination or refusal to supply—need not be established to the standard of proof to be accepted by EU judges as the motivation behind their choice of legal test. By contrast, where economic premises are employed as ‘background knowledge’ or even ‘rules of thumb’ for the purpose of making sense of the evidence, the answer is not as straightforward. As noted earlier, in this context economic premises may enable judges to draw inferences from the available pieces of information. Inevitably though, the strength of the inference is partly correlated with the strength or relevance of the economic premise. If either is prima facie challenged, then in principle the party with the burden of persuasion should explain why the inference should still be drawn. V. PRESUMPTIONS AS ANALYTICAL SHORTCUTS IN EU COMPETITION ENFORCEMENT A. A Brief Account of the Existing Presumptions Somewhat ironically, considering the popularity of the term in competition scholarship, there are not many presumptions in the technical sense in EU competition law. Indeed, the examination of the EU Courts’ jurisprudence reveals the existence of only five (Table 1).75 These effectively correspond to different elements of the antitrust rules that the Commission must prove to adopt a prohibition decision. The first presumption pertains to the notion of ‘undertaking’ against which Articles 101 and 102 TFEU are addressed.76 As explained in Höfner and Elser, the concept comprises ‘any entity engaged in an economic activity, regardless of the legal status of that entity and the way in which it is financed’.77 Further elaborating on this in Hydrotherm, the Court stressed that the term ‘undertaking’ must be understood as designating an economic— rather than a legal—unit.78 In this regard, the existence of distinct legal entities is immaterial; what matters is—as elucidated in Shell—that there is a ‘unitary organisation of personal, tangible and intangible elements which pursues a specific economic aim on a long-term basis and can contribute to the commission of an infringement’.79 In the case of parent companies and subsidiaries in particular, such an economic unit will exist where ‘the subsidiary does not decide independently upon its own conduct on the market, but carries out, in all material respects, the instructions given to it by the parent company’; according to settled jurisprudence, in these circumstances the anticompetitive conduct of the subsidiary may be imputed to the parent company.80 In Akzo the Court of Justice confirmed that ‘where a parent company has a 100% shareholding in a subsidiary (...) there is a rebuttable presumption that the parent company does in fact exercise decisive influence over the conduct of its subsidiary’.81 Ever since its first affirmation, the Akzo presumption has been reiterated multiple times and is now solidly rooted in the Courts’ jurisprudence. In any event, to find a violation of Article 101(1) TFEU in particular, the Commission must also demonstrate that the undertaking participated in a collusive arrangement—be it a concerted practice or an agreement.82 Showing the existence of a concerted practice in principle entails proving three elements: concertation, subsequent market conduct, and causal connection between the two. In Hüls and in Commission v Anic Partecipazioni, however, the Court clarified that ‘subject to proof to the contrary, which it is for the economic operators concerned to adduce, there must be a presumption that the undertakings participating in concerting arrangements and remaining active on the market take account of the information exchanged with their competitors when determining their conduct on that market’.83 Ever since, the Anic presumption—as is often called—has become firmly embedded in the Courts’ case law.84 While it was initially developed in connection with concerted practices—that is, collusive arrangements falling short of an agreement—this presumption soon provided the basis for the emergence of another one, that of participation in a cartel upon evidence that the undertaking has attended a meeting with an anticompetitive object. Indeed, as confirmed for the first time in Aalborg Portland, ‘it is sufficient for the Commission to show that the undertaking concerned participated in meetings at which anticompetitive agreements were concluded, without manifestly opposing them, to prove to the requisite standard that the undertaking participated in a cartel’, the presumption being that its will concurs with that of the other attendants.85 At any rate, to adopt a prohibition decision, the Commission must also establish the duration of the antitrust violation and of the undertaking’s involvement in it. This can be a daunting task—especially in complex infringements extending over longer periods of time. In recognition of this challenge, the EU Courts have eased the authority’s burden of proof in two ways. Firstly, they have developed the doctrine of single, continuous or repeated infringement, according to which there is one infringement—rather than several—where a series of acts form part of an unlawful ‘overall plan’.86 The latter may be deduced ‘from the identical nature of the objectives of the practices at issue, of the goods concerned, of the undertakings which participated in the collusion, of the main rules for its implementation, of the natural persons involved on behalf of the undertakings, and lastly, of the geographical scope of those practices’.87 Secondly—and most importantly, for the purposes of this work, the EU Courts have adopted a presumption of continuity, whose foundations originate in Dunlop. According to the latter, ‘if there is no evidence directly establishing the duration of an infringement, the Commission should adduce at least evidence of facts sufficiently proximate in time for it to be reasonable to accept that that infringement continued uninterruptedly between two specific dates’.88 Finally, the case law arguably points at the existence of one more presumption—that is, if a conduct lacks any plausible explanation, it is intrinsically capable of harming competition.89 Premises about the economics of the practice at hand and any ‘objective justifications’ raised by the parties will be crucial to ascertaining whether, on the facts, there is no legitimate ground for it.90 In this case, the anticompetitive potential of the practice is automatically inferred and needs not be proved ad hoc, unless the undertaking concerned produces evidence to the contrary, and a ‘by object’ violation will be considered established, provided that the other elements of Article 101 TFEU or Article 102 TFEU have been sufficiently demonstrated. In the context of Article 101 TFEU, the Court of Justice explained in T-Mobile that ‘the distinction between “infringements by object” and “infringements by effect” arises from the fact that certain forms of collusion between undertakings can be regarded, by their very nature, as being injurious to the proper functioning of normal competition’.91 As the Court elaborated, ‘in order for a concerted practice to be regarded as having an anticompetitive object, it is sufficient that it has the potential to have a negative impact on competition’; in this case, there is no need for the Commission to consider its effects.92 Nevertheless, Football Association Premier League clarifies that undertakings may ‘put forward any circumstance within the economic and legal context’ of the arrangement in question, which would justify the finding that it is ‘not liable to impair competition’.93 A similar presumption is visible in the context of Article 102 TFEU, as well. Indeed, the judgment of the Court of Justice in Intel implies that practices, which lack a plausible explanation, are presumed to be capable of harming competition, unless the dominant undertaking challenges this conclusion ‘on the basis of supporting evidence’.94

#### Federal prohibitions forbid practicecs

PTI No Date (Post-Tensioning Institute, “Antitrust Policy” “Legal Limitation on Discussions at PTI Meetings and Events” , <https://www.post-tensioning.org/membership/membershipoverview/antitrust.aspx> ,

It is for these reasons that PTI provides you with a reminder that certain areas of formal and informal communication between competitors or between manufacturers and their suppliers and customers must be avoided, as posing potential antitrust problems. The Sherman Antitrust Act, the Clayton Act, the Federal Trade Commission Act, and the Robinson-Patman Act comprise the basic federal antitrust laws, which set forth the broad areas of conduct considered illegal as restraints of trade. In general, agreements or understandings between competitors that operate as an impediment to free and open competition are forbidden. Federal antitrust prohibitions forbid any "agreement or understanding...to substantially lessen competition or tend to create a monopoly in any line of commerce." An important point to keep in mind is that communications and discussions between competitors or between sellers and customers, about matters which may be considered anti-competitive, often comprise the evidence from which courts infer antitrust violations. It is the policy of the Post-Tensioning Institute that such agreements, understandings or communications shall not be tolerated at any formal or informal meetings or social events of the Institute.

#### “By” refers to the agent that prohibits.

United States District Court for the Southern District of New York 1 (Mason Tenders Dist. Council Welfare Fund v. Thomasen Constr. Co., 164 F. Supp. 2d 379, Lexis)

Finally, while Thomsen's name appears nowhere in the contract, he is simply referred to as "Employer," Mason Tenders correctly points out that his name was written into the contract directly below his signature. Pl. Mem. at 5. The signature line first calls for the company's name. Thomsen's signature appearing below that, follows the word "by." Underneath that signature line, appears Thomsen's printed name followed by a hyphen and the word "president." HN5 "In legal parlance, the employment of the word 'by' means 'through the means, act, agency, or instrumentality of, particularly when it is used preceding a signature.'" Lerner, 938 F.2d at 5-6 (internal citation omitted). Further, the fact that Thomsen printed the word "president" next to his name is more evidence that he was signing the contract in his official capacity. Id. at 6; Salzman Sign Co. v. Beck, 10 N.Y.2d 63, 67, 217 N.Y.S.2d 55, 176 N.E.2d 74 (1961) (stressing the "great danger in allowing a single sentence in a long contract to bind individually a person who signs only as a corporate officer"). [\*\*9] [\*383] Accordingly, the Court finds that Thomsen is not personally liable under the contract. Judgement is therefore ordered for Thomsen.

#### USFG is the three branches

USLegal 9(definitions.uslegal.com/u/united-states-federal-government, September 23 2009, DA 6/21/11,)

The United States Federal Government is established by the US Constitution. The Federal Government shares sovereignty over the United Sates with the individual governments of the States of US. The Federal government has three branches: i) the legislature, which is the US Congress, ii) Executive, comprised of the President and Vice president of the US and iii) Judiciary. The US Constitution prescribes a system of separation of powers and ‘checks and balances’ for the smooth functioning of all the three branches of the Federal Government. The US Constitution limits the powers of the Federal Government to the powers assigned to it; all powers not expressly assigned to the Federal Government are reserved to the States or to the people.

## Advantage 1

#### ---can’t reproduce.

Dvorsky 19, senior staff reporter @ Gizmodo; citing neuroscientist Rachael Seidler from the University of Florida. (George, 7-30-2019, "Humans Will Never Colonize Mars", Gizmodo, <https://gizmodo.com/humans-will-never-colonize-mars-1836316222>)

And that’s assuming humans could even reproduce on Mars, which is an open question. Casting aside the deleterious effects of radiation on the developing fetus, there’s the issue of conception to consider in the context of living in a minimal gravity environment. We don’t know how sperm and egg will act on Mars, or how the first critical stages of conception will occur. And most of all, we don’t know how low gravity will affect the mother and fetus.

Seidler, an expert in human physiology and kinesiology, said the issue of human gestation on Mars is a troublesome unknown. The developing fetus, she said, is likely to sit higher up in the womb owing to the lower gravity, which will press upon the mother’s diaphragm, making it hard for the mother to breathe. The low gravity may also “confuse” the gestational process, delaying or interfering with critical phases of the fetus’ development, such as the fetus dropping by week 39. On Earth, bones, muscles, the circulatory system, and other aspects of human physiology develop by working against gravity. It’s possible that the human body might adapt to the low-gravity situation on Mars, but we simply don’t know. An artificial womb might be a possible solution, but again, that’s not something we’ll have access to anytime soon, nor does it solve the low-gravity issue as it pertains to fetal development (unless the artificial womb is placed in a centrifuge to simulate gravity).

A strong case can be made that any attempt to procreate on Mars should be forbidden until more is known. Enforcing such a policy on a planet that’s 34 million miles away at its closest is another question entirely, though one would hope that Martian societies won’t regress to lawlessness and a complete disregard of public safety and established ethical standards.

For other colonists, the minimal gravity on Mars could result in serious health problems over the long term. Studies of astronauts who have participated in long-duration missions lasting about a year exhibit troubling symptoms, including bone and muscle loss, cardiovascular problems, immune and metabolic disorders, visual disorders, balance and sensorimotor problems, among many other health issues. These problems may not be as acute as those experienced on Mars, but again, we simply don’t know. Perhaps after five or 10 or 20 years of constant exposure to low gravity, similar gravity-related disorders will set in.

Seidler’s research into the effects of microgravity suggests it’s a distinct possibility.

“Yes, there would be physiological and neural changes that would occur on Mars due to its partial-gravity environment,” she told Gizmodo. “It’s not clear whether these changes would plateau at some point. My work has shown an upward shift of the brain within the skull in microgravity, some regions of gray matter increases and others that decrease, structural changes within the brain’s white matter, and fluid shifts towards the top of the head.”

#### ---disease, hunger, thirst.

Dvorsky 19, senior staff reporter @ Gizmodo; citing Briony Horgan, assistant professor of planetary science at Purdue University. (George, 7-30-2019, "Humans Will Never Colonize Mars", Gizmodo, <https://gizmodo.com/humans-will-never-colonize-mars-1836316222>)

And these are the health issues we think might be a problem. A host of other problems are likely to exist, giving rise to Martian-specific diseases affecting our brains, bodies, and emotional well-being. The human lifespan on Mars is likely to be significantly less than it is on Earth, though again, we simply don’t know.

Finally, there’s the day-to-day survival to consider. Limited access to fundamental resources, like food and water, could place further constraints on a colony’s ability to grow and thrive.

“Establishing stable resources to live off for a long period of time is possible, but it’ll be tough,” said Horgan. “We’ll want to be close to water and water ice, but for that we’ll have to go pretty far north. But the further north you go, the rougher the conditions get on the surface. The winters are cold, and there’s less sunlight.”

Colonists will also need stable food sources, and figure out a way to keep plants away from radiation. The regolith, or soil, on Mars is toxic, containing dangerous perchlorate chemicals, so that also needs to be avoided. To grow crops, colonists will likely build subterranean hydroponic greenhouses. This will require specialized lighting, genetically modified plants designed specifically for Mars, and plenty of water, the latter of which will be difficult to source on Mars.

“People don’t realize how complicated this is,” said Horgan. “Trying to think about establishing colonies to point of what we would consider safe will be a big challenge.”

#### ---life on Mars would be miserable. No one would go.

Dvorsky 19, senior staff reporter @ Gizmodo; citing Briony Horgan, assistant professor of planetary science at Purdue University. (George, 7-30-2019, "Humans Will Never Colonize Mars", Gizmodo, <https://gizmodo.com/humans-will-never-colonize-mars-1836316222>)

Until such time, an un-terraformed Mars will present a hostile setting for venturing pioneers. First and foremost there’s the intense radiation to deal with, which will confront the colonists with a constant health burden.

Horgan said there are many big challenges to colonizing Mars, with radiation exposure being one of them. This is an “issue that a lot of folks, including those at SpaceX, aren’t thinking about too clearly,” she told Gizmodo. Living underground or in shielded bases may be an option, she said, but we have to expect that cancer rates will still be “an order of magnitude greater” given the added exposure over time.

“You can only do so much with radiation protection,” Horgan said. “We could quantify the risks for about a year, but not over the super long term. The problem is that you can’t stay in there [i.e. underground or in bases] forever. As soon as you go outside to do anything, you’re in trouble,” she said.

Horgan pointed to a recent Nature study showing that radiation on Mars is far worse than we thought, adding that “we don’t have the long-term solutions yet, unless you want to risk radiation illnesses.” Depending on the degree of exposure, excessive radiation can result in skin burns, radiation sickness, cancer, and cardiovascular disease.

Friedman agrees that, in principle, we could create artificial environments on Mars, whether by building domes or underground dwellings. The radiation problem may be solvable, he said, “but the problems are still huge, and in a sense anti-human.”

Life in a Martian colony would be miserable, with people forced to live in artificially lit underground bases, or in thickly protected surface stations with severely minimized access to the outdoors. Life in this closed environment, with limited access to the surface, could result in other health issues related to exclusive indoor living, such as depression, boredom from lack of stimulus, an inability to concentrate, poor eyesight, and high blood pressure—not to mention a complete disconnect from nature. And like the International Space Station, Martian habitats will likely be a microbial desert, hosting only a tiny sample of the bacteria needed to maintain a healthy human microbiome.

Another issue has to do with motivation. As Friedman pointed out earlier, we don’t see colonists living in Antarctica or under the sea, so why should we expect troves of people to want to live in a place that’s considerably more unpleasant? It seems a poor alternative to living on Earth, and certainly a major step down in terms of quality of life. A strong case could even be made that, for prospective families hoping to spawn future generations of Martian colonists, it’s borderline cruelty.

# 1NR

## DA — Coordination

#### Turns advantage 2 — Failure to check Russia leads to Chinese takeover of Taiwan

Walsh 2-26-2022 (Bryan, “The war in Ukraine could portend the end of the “long peace”,” Vox, <https://www.vox.com/2022/2/26/22951016/russia-ukraine-long-peace-nuclear-weapons-global-development>)

That was implicit in Russia’s decision to exercise its strategic nuclear forces in the leadup to the invasion, in Putin’s absurd casus belli claim that Ukraine was going to develop its own nuclear weapons, in his threat that countries that interfered with Russian actions would face “consequences you have never seen.” As Roger Cohen pointed out in the New York Times, Putin’s speech “seemed to come closer to threatening nuclear war than any statement from a major world leader in recent decades.” The irony is that one of the reasons Ukraine was vulnerable to a Russian invasion is that it does not possess nuclear weapons. It agreed in 1994 to give up Soviet nukes that had been left in its territory after the USSR’s breakup in exchange for an agreement that the US, the UK, and Russia would guarantee its security. And one of the reasons that Putin could invade knowing that international opposition would be largely limited to diplomatic and financial tools was that Russia still possesses the world’s largest nuclear arsenal. It has also retained strategic ambiguity about just when and why it would use those weapons, including the possibility it would threaten a nuclear strike if it were on the losing side of a conventional conflict with NATO. As Vox’s Zack Beauchamp writes, what we’re seeing is an illustration of the “stability-instability paradox” of nuclear weapons. As the chance of nuclear conflict declines, the theory holds, the risk of conventional war increases, and as the likelihood of nuclear conflict increases, the risk of conventional war declines. That in turn helps explain another paradox: why the decades following the introduction of nuclear weapons — weapons that, in their most maximalist effect, could conceivably bring an end to human civilization — also saw a historic fall in the number of war-related deaths around the world. These decades go by another name: “the long peace.” The name can be a bit misleading — for much of the world, these years have been anything but peaceful, with the number of discrete conflicts beginning to rise in the 1960s and staying high ever since. These ranged from large conflicts like America’s decade in Vietnam and the 1980s Iran-Iraq war to countless small skirmishes, often conflicts within countries, that barely penetrated the international media. But compared to the blood-stained decades that marked the first half of the 20th century — which saw more than 100 million deaths in World Wars I and II combined — let alone humanity’s tremendously violent past, these years have indeed been a holiday from history. And if the invasion of Ukraine marks a decisive end to that holiday, as some experts have suggested, we risk losing far more than peace. The wages of peace When Future Perfect was launched in 2018, Vox’s Dylan Matthews laid out a founding question: “What topics would we write about if our only instruction was to write about the most important stuff in the world?” The years that followed provided some of the answers: the battle against global poverty and the common diseases that still kill too many of the world’s poorest; the growth of effective altruism and the rigorous movement to do the most good per dollar; the expansion of moral concern from tribe and nation to all of humanity and even non-human species; and yes, occasionally, the existential threat of superintelligent AI. What these topics have in common is that they all flourish best in peace. The last half-century or more hasn’t just seen a historic reduction in the casualties of war. It’s also witnessed an unprecedented expansion in human prosperity, as measured in health, wealth, and education. It’s an expansion that is far from perfect and far from complete, but one that has opened the door, even just a crack, to a future that truly could be perfect. That progress, I would argue, depends on peace. Unchecked war is the great destroyer of human value. One estimate from 2019 put the economic impact of violence and conflict at $14.4 trillion that year, equivalent to more than 10 percent of gross global GDP. But dollar figures are only one way of counting the destruction. A world where borders can once again be remade with force, where countries and their citizens no longer feel secure from better-armed neighbors, is one where the broader goals Future Perfect covers (and values) will be harder to achieve, where the circle of moral concern could shrink rather than grow. It is a return to barbarity. Fighting back Understanding the value of peace doesn’t mean the world should do nothing as Russian troops and arms pour into Ukraine — far from it. A Russian takeover of Ukraine at the point of a gun doesn’t merely destabilize its European neighbors; it potentially opens the door for other increasingly authoritarian countries to take what they can by force. Today Kyiv, tomorrow Taipei.

#### Russian victory in Ukraine shreds EU capacity and leadership

Fix 2-18-2022, Resident Fellow at the German Marshall Fund, in Washington, D.C. MICHAEL KIMMAGE is Professor of History at the Catholic University of America and a Visiting Fellow at the German Marshall Fund. From 2014 to 2016, he served on the Policy Planning Staff at the U.S. Department of State, where he held the Russia/Ukraine portfolio. (Liana and Michael Kimmage, “What if Russia Wins?,” *Foreign Affairs*, <https://www.foreignaffairs.com/articles/ukraine/2022-02-18/what-if-russia-wins>)

If Russia achieves its political aims in Ukraine by military means, Europe will not be what it was before the war. Not only will U.S. primacy in Europe have been qualified; any sense that the European Union or NATO can ensure peace on the continent will be the artifact of a lost age. Instead, security in Europe will have to be reduced to defending the core members of the EU and NATO. Everyone outside the clubs will stand alone, with the exception of Finland and Sweden. This may not necessarily be a conscious decision to end enlargement or association policies; but it will be de facto policy. Under a perceived siege by Russia, the EU and NATO will no longer have the capacity for ambitious policies beyond their own borders. The United States and Europe will also be in a state of permanent economic war with Russia. The West will seek to enforce sweeping sanctions, which Russia is likely to parry with cyber-measures and energy blackmailing, given the economic asymmetries. China might well stand on Russia’s side in this economic tit for tat. Meanwhile, domestic politics in European countries will resemble a twenty-first-century great game, in which Russia will be studying Europe for any breakdown in the commitment to NATO and to the transatlantic relationship. Through methods fair and foul, Russia will take whatever opportunity comes its way to influence public opinion and elections in European countries. Russia will be an anarchic presence—sometimes real, sometimes imagined—in every instance of European political instability. Eastern member states would have NATO troops permanently on their soil. Cold War analogies will not be helpful in a world with a Russianized Ukraine. The Cold War border in Europe had its flash points, but it was stabilized in a mutually acceptable fashion in the Helsinki Final Act of 1975. By contrast, Russian suzerainty over Ukraine would open a vast zone of destabilization and insecurity from Estonia to Poland to Romania to Turkey. For as long as it lasts, Russia’s presence in Ukraine will be perceived by Ukraine’s neighbors as provocative and unacceptable and, for some, as a threat to their own security. Amid this shifting dynamic, order in Europe will have to be conceived of in primarily military terms—which, since Russia has a stronger hand in the military than in the economic realm, will be in the Kremlin’s interest—sidelining nonmilitary institutions such as the European Union.

#### Russia’s on the brink of a nuclear war

Hill 2-28-2022, senior fellow @ Brookings, former official at the U.S. National Security Council specializing in Russian and European affairs. She was a witness in the November 2019 House hearings regarding the impeachment inquiry during the first impeachment of Donald Trump (Fiona, “‘Yes, He Would’: Fiona Hill on Putin and Nukes,” interviewed by Maura Reynolds, a senior editor @ Politico, *Politico Magazine*, <https://www.politico.com/news/magazine/2022/02/28/world-war-iii-already-there-00012340>)

Reynolds: And then there’s the nuclear element. Many people have thought that we’d never see a large ground war in Europe or a direct confrontation between NATO and Russia, because it could quickly escalate into a nuclear conflict. How close are we getting to that? Hill: Well, we’re right there. Basically, what President Putin has said quite explicitly in recent days is that if anybody interferes in Ukraine, they will be met with a response that they’ve “never had in [their] history.” And he has put Russia’s nuclear forces on high alert. So he’s making it very clear that nuclear is on the table. Putin tried to warn Trump about this, but I don’t think Trump figured out what he was saying. In one of the last meetings between Putin and Trump when I was there, Putin was making the point that: “Well you know, Donald, we have these hypersonic missiles.” And Trump was saying, “Well, we will get them too.” Putin was saying, “Well, yes, you will get them eventually, but we’ve got them first.” There was a menace in this exchange. Putin was putting us on notice that if push came to shove in some confrontational environment that the nuclear option would be on the table. Reynolds: Do you really think he’ll use a nuclear weapon? Hill: The thing about Putin is, if he has an instrument, he wants to use it. Why have it if you can’t? He’s already used a nuclear weapon in some respects. Russian operatives poisoned Alexander Litvinenko with radioactive polonium and turned him into a human dirty bomb and polonium was spread all around London at every spot that poor man visited. He died a horrible death as a result. The Russians have already used a weapons-grade nerve agent, Novichok. They’ve used it possibly several times, but for certain twice. Once in Salisbury, England, where it was rubbed all over the doorknob of Sergei Skripal and his daughter Yulia, who actually didn’t die; but the nerve agent contaminated the city of Salisbury, and anybody else who came into contact with it got sickened. Novichok killed a British citizen, Dawn Sturgess, because the assassins stored it in a perfume bottle which was discarded into a charity donation box where it was found by Sturgess and her partner. There was enough nerve agent in that bottle to kill several thousand people. The second time was in Alexander Navalny’s underpants. So if anybody thinks that Putin wouldn’t use something that he’s got that is unusual and cruel, think again. Every time you think, “No, he wouldn’t, would he?” Well, yes, he would. And he wants us to know that, of course. It’s not that we should be intimidated and scared. That’s exactly what he wants us to be. We have to prepare for those contingencies and figure out what is it that we’re going to do to head them off.

#### Miscalc absent quick resolution

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

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

#### Courts prioritizing comity now

Masingill ‘18 [Megan; 2018; Senior Staff Member, American University Law Review, J.D. Candidate at American University Washington College of Law; American University Law Review; “Extraterritoriality of Antitrust Law: Applying the Supreme Court's Analysis in RJR Nabisco to Foreign Component Cartels,” vol. 68, iss. 2, https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=2083&context=aulr]

The RJR Nabisco decision is analogous to, and instructive on, the analysis of extraterritoriality of U.S. antitrust law relating to the FTAIA. The Seventh Circuit’s interpretation of the scope of the FTAIA, as it relates to component cartels, is in line with this recent Supreme Court decision. Though non-binding, the Court’s interpretation of the federal RICO statute provides insight into the proper way to interpret the FTAIA.175

A. Analogizing RICO and the FTAIA

Drawing the analogy between RICO and the FTAIA is possible because the Supreme Court does so itself in RJR Nabisco by relying on antitrust law and previous decisions it has made regarding the extraterritorial reach of federal statutes.176 The Court saw a similarity between the two issues—racketeering and antitrust law—in the RJR Nabisco case and relied on antitrust law and its precedent to determine the extraterritoriality of another federal statute (RICO).177 Though the Court declined to apply the broad application found in the Clayton Act regarding a private right of action, it did so to balance against strong concerns of “international friction” and to rule in accordance with more recent congressional decisions to “reign in” the reach of such laws.178 By not prescribing the scope of the Clayton Act, the Court acknowledged that the purpose of enacting laws like the FTAIA was to narrow the scope of U.S. antitrust law, and that to allow a foreign plaintiff’s recovery would go against current extraterritoriality jurisprudence.179 Accordingly, the Court found that the enactment of the FTAIA, while not independently limiting on RICO, nonetheless discouraged using Sherman Act principles to discern the scope of RICO.180 The Court’s holding to deny a private action for foreign injury from racketeering activity in RJR Nabisco reflects this analysis.181

Additionally, the similarities between RICO and the Sherman Act, to which the FTAIA limits, are apparent—both are federal statutes aimed at counteracting corrupt activity at home and abroad having significant impacts on the commerce of the United States. Further, the relevant discussion surrounding both these statutes centers around the extraterritoriality of a federal U.S. law regarding corrupt practices, whether it be racketeering or price-fixing.182 It is true that the two statutes pertain to separate issues—the RICO statute deals with racketeering activity and the FTAIA with antitrust violations.183 Reducing the laws to their differences, however, is an oversimplified comparison. When reviewing the extraterritoriality of U.S. law, the analysis is the same in every situation, requiring the court to run through the same two-steps outlined in RJR Nabisco.184 Further, in both statutes, the conduct at issue is not the focus of that analysis, but rather the impact of the conduct—the effect on U.S. commerce.185 In fact, the laws do prohibit overlapping conduct, such as conspiracy, and both require a substantive showing that the conduct at issue had a requisite effect on domestic commerce.186

#### *RJR Nabisco* is reigning in extraterritoriality in antitrust to maintain comity

Masingill 18 [Megan L. Masingill; 2019; J.D. Candidate, Senior Staff Member, American University Law Review, American University Washington College of Law; American University Law Review; “Extraterritoriality of Antitrust Law: Applying the Supreme Court's Analysis in RJR Nabisco to Foreign Component Cartels,” vol. 68, iss. 2, https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=2083&context=aulr]

Current law cautions against the extraterritorial application of federal statutes as reflected in the recent Supreme Court decision, RJR Nabisco, which is instructive on the extraterritoriality and scope of other federal laws, including U.S. antitrust laws. To bring jurisprudence inline with this reasoning, courts should look to the decision in Motorola when deciding whether the arm of antitrust law extends to reach certain foreign injuries from component cartel price-fixing schemes.

In making the analogy to antitrust law, the Court stressed that the analysis of extraterritoriality applies to all federal statutes and therefore, determining the scope of one law (RICO) will be relevant to the scope of another (FTAIA). Courts must look to the same twostep analysis outlined in RJR Nabisco, to determine the statute’s reach when the claim is a private right of action by a foreign plaintiff for recovery from foreign injury. To do otherwise would be against current extraterritoriality doctrine, which advises the “reigning in” of foreign application of U.S. laws out of a concern for international comity.250

#### The plan alienates our closest allies

Kava 19, JD/MBA Candidate @ JU (Samuel, “The Extraterritorial Application of the Sherman Anti-Trust Act in the Age of Globalization,” *15 J. Bus. & Tech. L. 135*, Lexis)

Before the FTAIA was enacted, in 1982, many of the United States’ closest allies were disgruntled by the U.S. courts’ expansive extraterritorial application of the Sherman Anti-Trust Act.152 These nations confided in the territorial principle, and believed it “axiomatic that in anti-trust matters the policy of one state may be to defend what it is the policy of another state to attack.”153 The United Kingdom, one of the most outspoken allies against the United States’ “attempt[] to impose [its] domestic laws on persons and corporations who are not U.S. nationals and who are acting outside the territory of the United States,” viewed the extraterritorial application of the Sherman Anti-Trust Act as ironic given the fact “the United States was founded by those who took exception to little matters of taxation being imposed extraterritorially.”154 Thus, in an attempt to “protect their nationals from criminal [and civil] proceedings in foreign courts where the claims to jurisdiction [were] excessive and constitute[d] an invasion of sovereignty,” foreign nations enacted blocking statutes to resist the extraterritorial application of the Sherman Act.155 The blocking statutes of each nation varied, but all served to “block the discovery of documents located in their countries and bar the enforcement of foreign judgements.”156 The United Kingdom achieved these goals with the Protection of Trading Interests Act, France with the French Blocking Law, Canada with the Foreign Extraterritorial Measures Act, and Australia with the Foreign Proceedings Act.157 The conflicting laws between the United States and its foreign counterparts created tremendous uncertainty regarding what nation’s laws would be applied in the event of a cross-border dispute. According to Nuno Limáo and Giovanni Maggi, economists from the University of Maryland and Yale University, “as the world becomes more integrated, the gains from decreasing trade-policy uncertainty should tend to become more important relative to the gains from reducing the levels of trade barriers.”158

#### Extraterritoriality causes diplomatic strife.

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

2. Strife in Diplomatic Relations

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

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

#### Specifically---the plan will be used as a justification for sovereignty violations

Murray 17, J.D., 2017, and Stein Scholar, Fordham University School of Law; B.A., 2010, Vassar College (Sean, “With a Little Help from my Friends: How a US Judicial International Comity Balancing Test Can Foster Global Antitrust Redress,” <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2690&context=ilj>)

With nowhere else to go, private litigants have naturally flocked to the United States for remedial assistance, creating an issue for developing antitrust regimes.12 Several implications attend foreign plaintiffs seeking recovery in the United States. American courts have recognized the importance of allowing foreign plaintiffs to bring claims in the United States under the Sherman Act.13 Before 2004, there was a significant chance that parties injured abroad by global cartels that directly harmed the United States would be able to sue in US courts to recover their losses.14 But, as illustrated above, private litigants applying US antitrust law for redressing harm that occurred abroad create tensions over sovereignty with other countries.

Start FN 15

15. See, e.g., Joseph P. Griffin, Extraterritoriality in U.S. and EU Antitrust Enforcement, 67 ANTITRUST L.J. 159, 160-61 (1999) (discussing that aggressive extraterritorial application of the Sherman Act brought “considerable backlash from foreign governments”); Mark S. Popofsky, Extraterritoriality in U.S. Jurisprudence, in 3 ISSUES IN COMPETITION LAW AND POLICY 2417, 2423 (2008) (describing the controversy associated with US antitrust law extraterritoriality with US trading partners). See also infra § III

End FN 15

## Advantage 3