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PTX

#### USICA will pass, it’s TOA, new priorities trade off. It key to tech leadership

Mattingly 1-28-2021, analyst @ CNN (Phil, “Biden builds toward a much-needed bipartisan Capitol Hill victory -- on China,” *CNN News*, https://www.cnn.com/2022/01/28/politics/china-us-semiconductor-chips-joe-biden/index.html)

After months of frustration, White House officials are suddenly looking at a rare opportunity on Cxapitol Hill -- the chance to pass something important with the support of both Democrats and Republicans. A sweeping, roughly $250 billion proposal to bolster US competitiveness with China has moved to the top of their legislative agenda, carrying policy and political benefits that tie directly to some of the most pressing issues President Joe Biden's administration faces. "We have momentum now, there's no doubt about it -- you can feel it," Commerce Secretary Gina Raimondo, one of the administration's point people on the bill, told CNN in an interview. "It's a sea change in momentum." The White House is leading the effort, with the support of Senate Majority Leader Chuck Schumer and Speaker Nancy Pelosi, and has been privately pressing Democrats to elevate the proposal as a priority, multiple people familiar with the effort said. White House officials view the proposal as an opportunity for a substantive bipartisan legislative victory that would address a series of clear domestic issues, ranging from bolstering manufacturing to easing pervasive price increases, ahead of a critical election year. It also serves as a critical element of Biden's efforts to directly respond to a rising China at a time when the relationship between the two countries has grown increasingly tense amid a series of actions, particularly related to Taiwan, that are viewed as intentionally aggressive by the administration. The bill comes at a time when Biden and his White House are looking for an opportunity to turn the page on a disappointing end to his first year in office. The potential bipartisan legislative win -- when combined with the promise to pick the nation's first Black female Supreme Court Justice to replace the retiring Stephen Breyer, strong economic growth statistics released Thursday and decreasing Covid-19 cases -- could signal a turnaround the President desperately needs ahead of November's midterm elections. On the policy side of things, it addresses a series of urgent issues, most notably the global shortage in semi-conductor chips, that Biden has consistently highlighted throughout his first year in office. On the political front, it neatly aligns with what Biden framed as the core of his economic policy -- an emphasis on domestic manufacturing and a clear and unmitigated effort to directly bolster US economic and technological advances to counter a rising China. The moment arrives as Biden's highest-profile legislative goals have run into a brick wall. Biden's cornerstone $1.75 trillion economic and climate package has been frozen in place due to the opposition of West Virginia Democratic Sen. Joe Manchin, with the centrist Democrat collapsing the arduous, months-long process to pass the bill in December. A few weeks later, Senate Republicans unanimously opposed Biden's voting reform push -- and Manchin joined with Sen. Kyrsten Sinema, an Arizona Democrat, to reject the Biden-backed effort to change the Senate filibuster rule to pass the measure with a simple majority. The twin defeats laid bare the reality of Biden's precarious political position, wrestling with the slimmest of congressional majorities and searching for a path forward at the very moment he entered a midterm election year with his lowest poll numbers of his time in office. The result drew no shortage of concern and complaints from Democrats both inside and outside of Washington. White House officials stress that they plan to take another run at a scaled back -- if still sweeping -- Build Back Better package. There's also cautious optimism that the bipartisan group of senators working to reform the Electoral Count Act could lead to an outcome Biden would support, even as officials have kept their distance from the effort and take pains to note it's not a substitute for their voting reform efforts. Yet neither of those is viewed inside the White House as imminent, with both likely weeks away from taking legislative center stage. A February 18 government funding deadline remains the most pressing issue on the calendar, but talks on a broader funding agreement, while progressing, have been plodding, indicating another short-term extension may prove necessary. 'The sweetest of political sweet spots' Therein lies the long-awaited opening for action. As Democrats sought to retrench amid the setbacks, they didn't have to look far for a proposal to move to the forefront -- one that had already passed the Senate with significant bipartisan support and that White House officials see as carrying significant policy and political benefits. At the core of the bill is $52 billion to turbocharge US semiconductor development and manufacturing, an area of palpable -- and growing -- economic and national security concern for administration officials. The effort would mark dramatic expansion of federal investment in manufacturing, new technologies and research and development, marking a dive into industrial policy designed to spur innovation and private sector follow-on that could dramatically reshape the US posture in what has become a strident technological rivalry with China. "Let's do it for the sake of our economic competitiveness and our national security," Biden said as he pressed lawmakers to act on the proposal last week at the White House. "Let's do it for the cities and towns all across America working to get their piece of the global economic package." "We need not have confrontation, but we have a stiff economic and technological competition," Biden added, speaking of China, which has served as a -- if not the -- animating element of Biden's foreign and domestic policy efforts. The pervasive shortage of chips, which are critical components in everything from cars and washing machines to phones and electrical grids, has been perhaps the most acutely painful of a myriad of pandemic-driven supply chain issues that have contributed to inflation that sits at a year-over-year 39-year high. Some manufacturers that rely on semiconductors are down to less than five days' worth of inventory, according to a report released Tuesday by the Commerce Department. "It's China, it's national security, it's inflation, it's manufacturing, it's bipartisan," one Democratic lawmaker who has pushed to move the bill for several months told CNN. "Beyond the policy necessity, it's the sweetest of political sweet spots." That a single bill could directly address some of the most significant issues facing the country is not lost on a White House -- or frontline House Democrats -- looking for a win. "There's not a member of Congress who is going into their district and not hearing about inflation, supply chain, chips," Raimondo said. A 'Sputnik moment' Yet for all of its political salience, supporters view the proposal as broadly transformational. Biden, when talking about the effort, has framed it through his oft-mentioned lens of the world facing an existential moment where democracies must confront the challenge of rising autocratic regimes. Sen. Todd Young, the Indiana Republican who has spearheaded the effort and successfully shepherded the measure through the Senate along with Schumer, the lead Democratic author, has compared the measure to a "Sputnik moment." In the place of the Soviet Union's technological advancements of last century, Young has pointed to China's vast investment in research and technology driving the USpublic and private sector response. White House officials view the measure as a vehicle not just for economic and technological advancement, but societal as well. One White House official outlined how design of the effort can re-attach the now disparate elements of local communities -- where things like regional technology hubs can serve as drivers for university researchers and corporations to align with workers and labor unions and philanthropic and community organizations. Taken together, they are lofty -- and, to a degree, hard to quantify -- ambitions for a single piece of legislation. But they also underscore sheer scale of what would mark the largest industrial policy effort in recent history. Despite suggestions by some lawmakers that the semiconductor piece be split off and moved separately, White House officials and key sponsors repeatedly rejected the idea, knowing separating the most urgent component would likely doom its other parts. The package, for it to have its full effect, needed to stay intact, they said. Yet for months the critical, if underappreciated, element of Biden's legislative checklist sat in limbo, stuck behind high-profile Democratic priorities, and weighed down by a handful of substantive policy disputes. "The biggest stumbling block to getting this done has just been distraction," Young said in an interview with Punchbowl News, citing the White House and congressional Democratic focus that, for months on end, centered on finding a path for Biden's Build Back Better Act. White House officials note Biden's focus on the core elements has been consistent throughout, with a bipartisan meeting to highlight the issue in February, followed by an executive order that laid the groundwork for the administration's focus on supply chain resilience -- with a clear focus on semiconductor chips. The Senate process was largely driven by lawmakers, with the White House providing technical advice and consultation, and those conversations have continued in the months that followed. Still, officials acknowledge that an almost all-consuming Democratic focus other agenda items played a role in a timeline that has remained ambiguous for months. A clear shift emerges But over the course of the last week, a series of intentional moves have underscored a clear shift. Biden highlighted the need for the legislation at a White House event, Pelosi listed the proposal in a memo to House Democrats as a top priority for House consideration and the Commerce Department released a report highlighting the severity of the current semiconductor shortage -- data Raimondo described as "truly alarming." In the most critical step, House Democrats released their long-awaited 3,000-page version of the bill. "We are hopeful about that process moving forward quickly, and the President would certainly like to sign it as soon as possible," White House press secretary Jen Psaki told reporters Wednesday. There remain significant hurdles, even as the White House throws its weight behind quick action. House Republicans have already made clear they largely plan to oppose the House Democratic proposal after their top committee members felt cut out as Democratic leaders moved to release the bill text. Administration officials, including Raimondo, have been pressing to line up the votes the last several days. The House bill diverges in several critical areas from its Senate counterpart, laying the groundwork for a complex conference process after House passage. Resolving those differences, particularly on differing trade provisions, between powerful House Democratic chairs and Senate authors who can point to a significant bipartisan vote in their favor is certain to create complications. The window for action, even though it's clearly open at the moment, may be fleeting as other priorities bubble in the background -- something underscored by the surprise addition of a looming Supreme Court confirmation battle to the Senate agenda Still, Biden's advisers have strategically mapped out ways to keep the issue on the front burner. Biden will highlight the bill, and the need to get it to his desk, once again when he travels to Pittsburgh on Friday. There will be an intensive focus on its necessity, not just for the near term, but also in laying the groundwork for a US. competitive advantage for years in the future. A sustained public and private focus is planned in the weeks ahead, officials said, as House Democrats move on their version of the legislation and then both chambers work to reconcile differences to get a final version to Biden's desk. The economic and national security risks, after all, aren't going away, even if it's taken longer than some lawmakers would have liked to finally lay out the path to the finish line. "Our challenge is to show leadership and not get tied up in any one particular red-line and miss the forest for the trees, which is: We have a semiconductor crisis," Raimondo said. "It's a national security crisis. It's an economic security crisis. And so, we just have to try to keep folks really focused on that."

#### Antitrust reform trades off with other legislative priorities

Carstensen 21, JD and MA @ Yale, Former Chair of U-W Law School, Senior Fellow of the American Antitrust Institute (Peter, “THE “OUGHT” AND “IS LIKELY” OF BIDEN ANTITRUST,” <https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en>)

14. Similarly, despite bipartisan murmurs about competitive issues, the potential in a closely divided Congress that any major initiatives will survive is limited at best. In part the challenge here is how the Biden administration will rank its commitments. If it were to make reform of competition law a major and primary commitment, it would have to trade off other goals, which might include health care reform or increases in the minimum wage. It is likely in this circumstance the new administration, like the Obama administration’s abandonment of the pro-competitive rules proposed under the PSA, would elect to give up stricter competition rules in order to achieve other legislative priorities. 15. Another key to a robust commitment to workable competition is the choice of cabinet and other key administrative positions. Here as well, the early signs are not entirely encouraging. In selecting Tom Vilsack to return as secretary of agriculture, the president has embraced a friend of the large corporate interests dominating agriculture who has spent the last four years in a highly lucrative position advancing their interests. Given the desperate need for pro-competitive rules to implement the PSA and control exploitation of dairy farmers through milk-market orders, the return of Vilsack is not good news. Who will head the FTC and who will be the attorney general and assistant attorney general for antitrust is still unknown, but if those picks are also centrists with strong links to corporate America the hope for robust enforcement of competition law will further attenuate! 16. In sum, this is a pessimistic prognostication for the likely Biden antitrust enforcement agenda. There is much that ought to be done. But this requires a willingness to take major enforcement risks, to invest significant political capital in the legislative process, and to select leaders who are committed to advancing the public interest in fair, efficient and dynamically competitive markets. The early signs are that the new administration will be no more committed to robust competition policy than the Obama administration. Events may force a more vigorous policy—I will cling to that hope as the Biden administration takes shape.

#### US tech leadership solves nuclear war

Kroenig & Gopalaswamy 18, \*Associate Professor of Government and Foreign Service at Georgetown University and Deputy Director for Strategy in the Scowcroft Center for Strategy and Security at the Atlantic Council \*\*Associate Professor of Government and Foreign Service at Georgetown University and Deputy Director for Strategy in the Scowcroft Center for Strategy and Security at the Atlantic Council (\*Matthew Kroenig \*\*Bharath Gopalaswamy, 11-12-2018, "Will disruptive technology cause nuclear war?," Bulletin of the Atomic Scientists, <https://thebulletin.org/2018/11/will-disruptive-technology-cause-nuclear-war/>)

Recently, analysts have argued that emerging technologies with military applications may undermine nuclear stability (see here, here, and here), but the logic of these arguments is debatable and overlooks a more straightforward reason why new technology might cause nuclear conflict: by upending the existing balance of power among nuclear-armed states. This latter concern is more probable and dangerous and demands an immediate policy response. For more than 70 years, the world has avoided major power conflict, and many attribute this era of peace to nuclear weapons. In situations of mutually assured destruction (MAD), neither side has an incentive to start a conflict because doing so will only result in its own annihilation. The key to this model of deterrence is the maintenance of secure second-strike capabilities—the ability to absorb an enemy nuclear attack and respond with a devastating counterattack. Recently analysts have begun to worry, however, that new strategic military technologies may make it possible for a state to conduct a successful first strike on an enemy. For example, Chinese colleagues have complained to me in Track II dialogues that the United States may decide to launch a sophisticated cyberattack against Chinese nuclear command and control, essentially turning off China’s nuclear forces. Then, Washington will follow up with a massive strike with conventional cruise and hypersonic missiles to destroy China’s nuclear weapons. Finally, if any Chinese forces happen to survive, the United States can simply mop up China’s ragged retaliatory strike with advanced missile defenses. China will be disarmed and US nuclear weapons will still be sitting on the shelf, untouched. If the United States, or any other state acquires such a first-strike capability, then the logic of MAD would be undermined. Washington may be tempted to launch a nuclear first strike. Or China may choose instead to use its nuclear weapons early in a conflict before they can be wiped out—the so-called “use ‘em or lose ‘em” problem. According to this logic, therefore, the appropriate policy response would be to ban outright or control any new weapon systems that might threaten second-strike capabilities. This way of thinking about new technology and stability, however, is open to question. Would any US president truly decide to launch a massive, bolt-out-of-the-blue nuclear attack because he or she thought s/he could get away with it? And why does it make sense for the country in the inferior position, in this case China, to intentionally start a nuclear war that it will almost certainly lose? More important, this conceptualization of how new technology affects stability is too narrow, focused exclusively on how new military technologies might be used against nuclear forces directly. Rather, we should think more broadly about how new technology might affect global politics, and, for this, it is helpful to turn to scholarly international relations theory. The dominant theory of the causes of war in the academy is the “bargaining model of war.” This theory identifies rapid shifts in the balance of power as a primary cause of conflict. International politics often presents states with conflicts that they can settle through peaceful bargaining, but when bargaining breaks down, war results. Shifts in the balance of power are problematic because they undermine effective bargaining. After all, why agree to a deal today if your bargaining position will be stronger tomorrow? And, a clear understanding of the military balance of power can contribute to peace. (Why start a war you are likely to lose?) But shifts in the balance of power muddy understandings of which states have the advantage. You may see where this is going. New technologies threaten to create potentially destabilizing shifts in the balance of power. For decades, stability in Europe and Asia has been supported by US military power. In recent years, however, the balance of power in Asia has begun to shift, as China has increased its military capabilities. Already, Beijing has become more assertive in the region, claiming contested territory in the South China Sea. And the results of Russia’s military modernization have been on full display in its ongoing intervention in Ukraine. Moreover, China may have the lead over the United States in emerging technologies that could be decisive for the future of military acquisitions and warfare, including 3D printing, hypersonic missiles, quantum computing, 5G wireless connectivity, and artificial intelligence (AI). And Russian President Vladimir Putin is building new unmanned vehicles while ominously declaring, “Whoever leads in AI will rule the world.” If China or Russia are able to incorporate new technologies into their militaries before the United States, then this could lead to the kind of rapid shift in the balance of power that often causes war. If Beijing believes emerging technologies provide it with a newfound, local military advantage over the United States, for example, it may be more willing than previously to initiate conflict over Taiwan. And if Putin thinks new tech has strengthened his hand, he may be more tempted to launch a Ukraine-style invasion of a NATO member. Either scenario could bring these nuclear powers into direct conflict with the United States, and once nuclear armed states are at war, there is an inherent risk of nuclear conflict through limited nuclear war strategies, nuclear brinkmanship, or simple accident or inadvertent escalation. This framing of the problem leads to a different set of policy implications. The concern is not simply technologies that threaten to undermine nuclear second-strike capabilities directly, but, rather, any technologies that can result in a meaningful shift in the broader balance of power. And the solution is not to preserve second-strike capabilities, but to preserve prevailing power balances more broadly. When it comes to new technology, this means that the United States should seek to maintain an innovation edge. Washington should also work with other states, including its nuclear-armed rivals, to develop a new set of arms control and nonproliferation agreements and export controls to deny these newer and potentially destabilizing technologies to potentially hostile states. These are no easy tasks, but the consequences of Washington losing the race for technological superiority to its autocratic challengers just might mean nuclear Armageddon.

### X

Advantage CP

#### The United States federal government should fully financially induce ASEAN members to harmonize competition law in consultation with the People’s Republic of China.

#### funded via the provisions outlined in the McCabe evidence.

#### The counterplan raises a bajillion dollars

Mccabe 18 (Joshua T. McCabe is Assistant Dean of Social Sciences and Assistant Professor of Sociology at Endicott College. citing the cbo. Joshua, <https://www.niskanencenter.org/top-10-reform-options-from-the-cbo/>, EM)

The independent Congressional Budget Office recently [released a report](https://www.cbo.gov/publication/54667) offering 121 options for reducing spending or increasing revenues. It’s a cornucopia of fiscal responsibility. Whether your goal is reducing unsustainable deficits, strengthening existing social programs, or saving the planet, there’s something for everyone. Here’s my top 10 list (in no particular order):

1). Eliminate Itemized Deductions

Estimated revenue change: $1.312 trillion over 10 years

Itemized deductions are one of the main reasons the federal tax code looks like Swiss cheese. Eliminating deductions such the state and local tax deduction and mortgage interest deduction, which are regressive and distortionary, would be the more efficient way to reduce the deficit without raising marginal tax rates.

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2). Increase Individual Tax Rates Across the Board

Estimated revenue change: $905.4 billion over 10 years

Nobody likes to see their taxes go up but a broad-based increase of 1 percentage point across the board would be one of the more sustainable deficit reduction strategies. It would have minimal impact on most taxpayers and leave the overall tax-burden distribution unchanged.

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3). Introduce 5 percent Federal Value Added Tax

Estimated revenue change: $2.97 trillion over 10 years

Beginning with the revenue slowdowns of the 1970s, the value added tax (VAT) has been the revenue booster of choice for every English-speaking country with the exception of the United States. It’s less distortionary than income taxes and its regressive structure can be easily offset with progressive spending or refundable tax credits.

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4). Properly Fund the IRS

Estimated revenue change: $35.3 billion over 10 years

In terms of total revenue increases, better enforcement of current tax laws isn’t a money machine. In terms of getting the most bang for the buck while buttressing the rule of law, it’s a no-brainer.

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5). Reform Unemployment Insurance Taxes

Estimated revenue change: $18.1 billion over 10 years

Because it hasn’t been indexed for inflation, the tax base for unemployment insurance has steadily shrunk over the years. “Broaden the base, lower the rates” is a tried and true tax reform strategy that applies just as well in this case. This option would broaden the taxable wage base for unemployment insurance from $7,000 to $40,000 while lowering the net tax rate from 0.6 percent to 0.167 percent.

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6). Expand the Wage Base for Social Security taxes

Estimated revenue change: $758.1 billion over 10 years

Expanding Social Security’s taxable wage base to 90 percent of an individual’s wages would restore it to what it was under President Reagan’s 1983 reforms and make it a bit more fiscally sustainable in the long run.

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7). Fix the FMAP Formula

Estimated revenue change: $794 billion over 10 years

The Federal Medical Assistance Percentages  formula is supposed to subsidize states based on their fiscal capacities, but the minimum funding rates of 50 percent for all programs and 90 percent for the Medicaid expansion favor wealthy states over poor states. Eliminating both would save a total of $794 billion over 10 years, as we can see by adding up the figures in CBO’s chart, below. Plowing the savings back into an enhanced FMAP formula based solely on fiscal capacity would make it vastly more equitable without adding a penny to the deficit.

Calendar

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8). Eliminate Head-of-Household Filing Status

Estimated revenue change: $165.3 billion over 10 years

The standard deduction for a head of household is an inefficient way to help single parents and those taking care of elderly parents because it is regressive and creates marriage penalties. Eliminating it and plowing the savings back into an expanded child tax credit or family credit would be a progressive and pro-family reform.

A picture containing table

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9). Increase the Gas Tax and Index It

Estimated revenue change: $514.9 billion over 10 years

Everyone is talking about funding much-needed infrastructure spending. The gas tax was last raised in 1993 and has been eroded by inflation every year since because it was left unindexed. Raising it by 35 cents and indexing it would go a long way toward sustainably funding infrastructure and still leave the United States with the lowest rate of any rich democracy.

Table

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10). Introduce a Carbon Tax

Estimated revenue change: $1.099 trillion over 10 years

The Paris Accords and “green New Deal” proposals are window dressing when it comes to fighting climate change. There will never be a better option than simply directly taxing carbon emissions. Use the revenues for progressive spending offsets, growth-inducing tax cuts, deficit reduction, or all three.

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### X

T-Per Se

**Only per se illegality is a prohibition.**

**Seita and Tamura 94** (Alex Y. Seita, Professor of Law, Albany Law School of Union University. B.S. 1973, California Institute of Technology; J.D. 1976, M.B.A. 1980, Stanford University, & Jiro Tamura, Associate Professor of Law, Keio University. B.A. 1981, M.A. 1983, Keio University; LL.M. 1985, Harvard University, [“The Historical Background of Japan's Antimonopoly Law,” 1994 U. Ill. L. Rev. 115, 177-178](https://advance.lexis.com/api/document/collection/analytical-materials/id/3S3T-WD60-00CW-508X-00000-00?page=177&reporter=8130&cite=1994%20U.%20Ill.%20L.%20Rev.%20115&context=1516831))

Upon the elimination of the restriction on undue substantial disparities in bargaining power, for example, economic concentration of power in and of itself was no longer a problem for business. The elimination of the prohibition against certain concerted activities meant that cartel behavior was no longer illegal per se. Most significantly, the authorization of depression and rationalization cartels under the Antimonopoly Law, with JFTC permission, legalized cartels under certain conditions. 418 Thus the rule of reason, rather than per se illegality, now governed cartel behavior. 419

#### The rule of reason is not a prohibition.

Skoczny 01 – Professor of law, Holder of the Jean Monnet Chair on European Economic Law at the Warsaw University Faculty of Management

Tadeusz Skoczny, “Polish Competition Law in the 1990s - on the Way to Higher Effectiveness and Deeper Conformity with EC Competition Rules,” European Business Organization Law Review, Vol. 2, Issue 3-4, September 2001, LexisNexis

Most importantly, the new Act departed from the relativity of the prohibition of dominant position abuses; as in Article 82 EC Treaty, it is now a general prohibition which does not allow for exemptions on the basis of a rule of reason. Also new is the prohibition of the abuse of dominant position by groups of undertakings, which will allow to effectively control the state and the development of competition on oligopolistic markets. The Act also eliminated the distinction between monopolistic and dominant position; in theory and in practice, it was difficult to justify the maintenance of this distinction. Therefore, the Act relates only to a dominant position, the definition of which however has been changed. According to the new Article 4 point 9, dominant position means a position "which allows [the undertaking] to prevent effective competition on the relevant market thus enabling [the undertaking] to act to a significant degree independently from its competitors, contracting parties and consumers". It is easy to notice that this definition is based on the United Brands and Hoffmann La-Roche standards. It must nevertheless be emphasised that such understanding of dominance was introduced by the AMC already in 1993; it considered dominance as the capacity to act "to a large extent independently of the competitors and clients, thus also the consumers". Thanks to the AMC's judgements also the relevant product and geographical markets are defined on the basis of the criteria of "close commodity substitutability" and "homogenous competition conditions".

#### Vote neg---limits and ground---rule of reason exemptions zero topic DAs and explode the topic to any law review. Per se is the only shot at unique links.

### X

T-Ceiling

#### Interpretation: Every plank of the plan must in a vacuum be topical. That means every plank must increase prohibitions, because that is the ceiling of the resolution.

#### Violation: “expanding enforcement resources for…its core antitrust laws” does not increase prohibitions.

#### Their plan is written confusingly for a reason, you should think of it as three parts

The United States federal government should

* Expand enforcement resources for its core antitrust laws
* Expand the scope of its core antitrust laws
* Increase prohibitions on domestic export cartels that operate in foreign nations without protections for export cartels

#### The plan may make enforcement more effective, but does not increase prohibitions. If the plan text were only “expanding enforcement resources for…its core antitrust laws” it would universally lose on T-prohibit. That should apply equally in this case.

#### Increase means to make greater in size or number

Supreme Court of Kentucky 21 (Chief Justice MINTON decision in JEFFERSON COUNTY SHERIFF'S OFFICE v. Kentucky Retirement Systems, No. 2019-SC-0315-DG (Ky. June 17, 2021). Google Scholar Caselaw, date accessed 7/18/21)

Creditable compensation is defined under KRS 61.510, in the simplest terms for our purposes, as an employee's gross annual compensation, a numerical figure that typically appears on an employee's W-2 form each year.[6] But a related word increase was left undefined in its statutory context. So the meaning of the term increase under KRS 61.598 must derive its meaning implicitly from its context and legislative intent. We ascribe an ordinary meaning to the word.[7] Merriam-Webster defines increase as a verb, "to make greater in size, amount, or number," and as a noun, "something added (as by growth)."[8] Some common synonyms of the word include "augment, enlarge, or multiply."[9] Consistent with these definitions, the term increase appears to be used under KRS 61.698 to refer to an upward change in creditable compensation between fiscal years. In neither its ordinary use as a verb or noun do we find JCSO increased Duncan's pay or that the change between FY12 and FY13 constituted an increase. For KRS 61.598 to apply, there must be an increase in gross compensation, not merely a change.

#### Prohibit means forbid

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.

#### **Anticompetitive practices are practices that restrict competition**

CTC 7 (Published by the Competition and Tariff Commission, “Zimbabwe: Introduction to Competition Law” , *AllAfrica,* 19 JULY 2007, <https://allafrica.com/stories/200707190109.html> , date accessed 9/4/21)

Restrictive business practices, also known as anti-competitive practices, refer to a wide range of business practices in which a firm or a group of firms may engage in order to restrict inter-firm competition so as to maintain or increase their relative market position and profits without necessarily providing goods or services at lower cost or of higher quality to the consumer.

#### They’ll say that “at least” justifies extra-topical action. But that mistakes floor and ceiling. The first half of the resolution requires that every element of the plan increase prohibitions. It doesn’t provide free reign for actions beyond prohibition, otherwise literally any action would be topical.

#### VOTE NEG:

#### FIRST---Plan spikes. Adding extra and non-topical planks moot core disads. Resource tradeoff, confirmation DAs, politics, and courts DAs --- all are nullified by 8 words in the plan. Topicality is the reciprocal cost to that benefit.

#### SECOND---Extraneous advantages. Non-topical planks produce unpredictable advantages. If you give a 2a an inch, they’ll take a mile. Assume the worst because they have no incentive to preserve neg victories.

### X

#### “The” refers to the entire group as a whole

Kentucky Supreme Court 3 (Opinion in Kotila v. Com., 114 SW 3d 226 - Ky: Supreme Court 2003. Google scholar caselaw, date accessed 9/26/21)

Whether a conviction under this statute requires possession of all (as opposed to any) of the chemicals or equipment necessary to manufacture methamphetamine under some manufacturing process is a matter of statutory construction. First, we examine the language of the statute, itself. United States v. Health Possibilities, P.S.C., 207 F.3d 335, 338-39 (6th Cir.2000) ("The starting point in a statutory interpretation case is the language of the statute itself."). Obviously, the multiple manufacturing methods and the availability of a broad range of readily available chemicals and equipment necessary for each manufacturing process militates against itemizing within the statute all of the possible chemical and equipment combinations by which methamphetamine could be manufactured. Nevertheless, KRS 218A.1432(1)(b) does not read "[p]ossesses chemicals or equipment," or "[p]ossesses some of the chemicals or equipment," or "[p]ossesses any of the chemicals or equipment." It reads "[p]ossesses the chemicals or equipment for the manufacture of methamphetamine." The presence of the article "the" is significant because, grammatically speaking, possession of some but not all of the chemicals or equipment does not satisfy the statutory language. "The" is "[u]sed as a function word before a plural noun denoting a group to indicate reference to the group as a whole." Webster's Third New International Dictionary 2369 (1993).

In decisions spanning three different centuries, the appellate courts of this Commonwealth have found use of the word "the" to have a significant effect upon meaning. See Revenue Cabinet v. Hubbard, Ky., 37 S.W.3d 717, 719-20 (2000) ("[U]se of the definite article `the' indicates that the statute refers to the entire body and not to discrete parts or components ...."); Cardwell v. Haycraft, Ky., 268 S.W.2d 916, 918 (1954) (the trial court's contributory negligence instruction was erroneous in that it contained the definite article "the" before the words "proximate cause" and "such language indicates that `the sole' rather than `a contributing' cause was meant."); Schardein v. Harrison, 230 Ky. 1, 18 S.W.2d 316, 319 (1929) ("[I]f the makers of the Constitution had intended to qualify the word `office' [in Ky. Const. § 161] they would have inserted the definite article `the' before `office.'") (quotation omitted); Sheriff of Fayette v. Buckner, 11 Ky. (1 Litt.) 126, 128 (1822) (holding that legislative act referencing "the clerk of the court" intended a particular clerk of court referenced elsewhere in the legislation). For similar interpretations by other jurisdictions, see, e.g., State Farm Fire & Cas. Co. v. Old Republic Ins. Co., 466 Mich. 142, 644 N.W.2d 715, 718 (2002); Patricca v. Zoning Bd. of Adjustment, 527 Pa. 267, 590 A.2d 744, 751 (1991); McClanahan v. Woodward Constr. Co., 77 Wyo. 362, 316 P.2d 337, 341-42 (1957); Williams v. McComb, 38 N.C. (3 Ired. Eq.) 450 (1844) ("[G]rammatically speaking, `The,' is a definite article before nouns, which are specific or understood, and is used to limit or determine their extent."). We are directed by the General Assembly to construe our statutes "according to the common and approved usage of language." KRS 446.080(4). Following that directive, we construe "the chemicals or equipment" to mean all of the chemicals or all of the equipment necessary to manufacture methamphetamine.

#### The ‘private sector’ means all non-government entities.

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

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

#### Violation---the aff doesn’t prohibit a practice done by all non-government entities.

#### Vote neg---limits and ground---subsets aren’t controversial and explode the topic.

### X

#### The United States federal government should increase regulatory prohibitions on domestic export cartels that operate in foreign nations

#### Solves, competes, and avoids the enforcement DA.

Shelanski 18, Professor of Law @ Georgetown (Howard, “Antitrust and Deregulation,” Yale Law Journal)

A. Antitrust and Regulation as Policy Alternatives A variety of institutions can govern economic competition. Decentralized, capitalist economies generally rely on markets themselves to provide the incen- tives and discipline necessary to keep prices low, output high, and innovation moving forward.8 But sometimes market forces alone cannot ensure efficiency and economic welfare—for example, when the market structure has changed due to mergers or the rise of a dominant firm, or when the market is an oligopoly susceptible to parallel conduct or collusion. In such cases, governance of competition by a nonmarket institution might be warranted. Because concentrated markets or even monopolies can arise for good reasons related to efficiency, in- novation, and consumer preference, the governance of competition more often involves vigilance than liability or injunctions. Then-Judge Stephen Breyer, long a leading scholar of antitrust and regulation, described the best situation as being an unregulated, competitive market in which “antitrust may help maintain com- petition.”9 Antitrust law aims to prevent the improper creation and exploitation of market power on a case-by-case basis while avoiding the punishment of commercial success justly earned through “skill, foresight and industry.”10 Thus, competition authorities like the FTC and the DOJ’s Antitrust Division review mergers, inves- tigate single-firm conduct, and prosecute collusion.11 Private plaintiffs can pur- sue civil antitrust liability through suits in the federal courts.12 To win their claims, enforcement agencies and private plaintiffs bear the burden of showing that the effect of a firm’s activity is “substantially to lessen competition, or to tend to create a monopoly,”13 or to constitute a “contract, combination, . . . or conspir- acy” in restraint of trade,14 or to “monopolize, or attempt to monopolize” any line of business.15 Antitrust is not, however, the only institution through which government addresses competition concerns and market failures. Congress can give regulatory agencies authority to intervene where they see the need to address competition and market structure—and Congress has often done so. With such statutory authority, “[i]n effect, the agency becomes a limited-jurisdiction enforcer of antitrust principles.”16 For example, the Department of Transportation (DOT) has jurisdiction to approve transfers of routes between airlines carriers, giving it a role in reviewing airline mergers.17 The 1992 Cable Act gave the FCC authority to limit the share of the national cable market that a single operator could serve, thereby giving the agency some control over the industry’s market structure.18 The FCC has long regulated market entry and, through its control over license transfers, reviewed mergers and acquisitions in several sectors of the telecom- munications industry. More recently, the FCC issued,19 and then repealed, 20 “network neutrality” regulations intended to preserve ease of entry and a level playing field for digital services. The Food and Drug Administration (FDA), Securities and Exchange Commission (SEC), Department of Energy, and numerous other federal agencies have various powers that directly affect competition.21 State regulation can be important as well in governing competition, particularly in the insurance and healthcare industries.22 In contrast to the case-by-case approach of antitrust, regulation typically im- poses ex ante prohibitions or requirements on business conduct. The Telecommunications Act of 1996, for example, required incumbent local telephone com- panies to grant new competitors access to parts of their networks and prohibited incumbents from refusing to interconnect calls from their customers to custom- ers of competing networks.23 With the rule in place, the FCC bore no burden of proving that a specific instance of network access was necessary for competition, or that a specific denial of interconnection would harm competition. In contrast to antitrust, where the burden of proving liability is on the agency, under a regulatory regime the burden of seeking a waiver from regulation or challenging an agency’s enforcement decision is usually on the regulated party. Antitrust and regulation therefore present alternative approaches to governing competition and addressing market failures.24 The government can review individual mergers under the antitrust laws, as it does in most markets, or it can set rules that impose clear, ex ante limits on the extent of concentration, as the FCC did for media ownership under the Communications Act.25 Government can investigate under the antitrust laws whether a firm has monopoly power that it has “willful[ly]” acquired or maintained other than “as a consequence of a su- perior product, business acumen, or historic accident.”26 Alternatively, with au- thority from Congress an agency can regulate how much of a market a single firm can serve, as the FCC tried to do with cable companies,27 or require firms to dispose of key assets in order to promote competition in a relevant market, as the DOT has done with airline slots.28

### X

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

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

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

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

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

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

#### AND--- Big wins cause FTC wing-clipping

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

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

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

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

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

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

#### Fraud funds terror operations

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

2. TERRORIST FINANCING AND THE INTERNET

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

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

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

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

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

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

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

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

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

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

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

### X

States CP

#### The 50 United States and relevant subnational entities should increase prohibitions on domestic export cartels that operate in foreign nations without protections for export cartels.

#### State antitrust is enforceable and solvent.

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Although much attention recently has been focused upon debates in Congress, potential legislative changes to U.S. antitrust law are not limited to proposals at the federal level. Many states are considering changes to their own antitrust laws, which usually can be enforced by state attorneys general and private plaintiffs. Importantly, New York legislators have introduced two bills that propose sweeping changes to the State’s antitrust law, the Donnelly Act, building on measures introduced in New York’s last legislative session.

These proposals, if enacted, would make New York’s single firm conduct statutory provisions the most aggressive in the United States and would give the New York Attorney General a more prominent role in reviewing transactions—including by creating a first-of-its-kind state merger notification requirement. These changes would allow New York’s antitrust law to reach a range of conduct not actionable under any existing federal or state antitrust law, and would introduce European-style antitrust standards to New York. Accordingly, this reform would create considerable new compliance challenges and risk for companies potentially subject to New York antitrust law, whether or not those companies are located in New York.

Other U.S. states and territories are considering antitrust law changes, but the New York proposals are the most significant. Although much of the conversation concerning developments in antitrust law has focused on “Big Tech” companies, these proposals would affect businesses across all sectors of the economy. This alert discusses these legislative proposals and key implications for businesses.

## Ad1

#### Zero reverse causal evidence--- even if cartels caused protectionism, there’s no motivation for removing trade barriers

#### Tons of alt causes kill free trade

Alden 21, \*Edward Alden is an American journalist, author, and the Bernard L. Schwartz senior fellow at the Council on Foreign Relations; (July 20th, 2021, “Free Trade Is Dead. Risky Managed Trade Is Here”, https://foreignpolicy.com/2021/07/20/free-trade-dead-managed-carbon-border-tax-climate-tariffs-trade-war-protectionism-esg-biden-trump-eu-china/)

But the nondiscrimination principle is now under the most sustained assault it has ever faced. On issues from national security to labor rights to the environment, the world’s largest economies are deciding that nondiscrimination—the bedrock principle of free trade and globalization—must take a back seat to more pressing concerns. The most dramatic abandonment is about to hit: Last week, the European Union unveiled its “[Fit for 55](https://www.forbes.com/sites/siladityaray/2021/07/14/fit-for-55-heres-what-to-expect-as-the-eu-unveils-its-ambitious-new-climate-legislation/?sh=453215bb5ad6)” plan to reduce carbon emissions by 55 percent from 1990 levels by the end of this decade and to reach carbon neutrality by 2050—which will require the most sustained economic upheaval since the Industrial Revolution. Central to the EU’s plan is a carbon border tax, under which Europe plans to charge higher tariffs on imports of products made in ways that generate higher emissions than European producers will be permitted to generate for the same goods. The scheme will start by targeting carbon-intensive sectors such as concrete, steel, aluminum, and fertilizer. The U.S. Congress is developing a similar plan to [tax carbon-intensive imports](https://www.nytimes.com/2021/07/14/climate/border-carbon-tax-united-states.html) as part of the coming budget reconciliation package—although the details are still murky. Other new trade restrictions being imposed or considered on both sides of the Atlantic Ocean are based on compliance with labor protections, human rights, and other criteria. For many traded goods, nondiscrimination will become a quaint relic.

Most of these measures are eminently defensible, perhaps even critically necessary, but together, they are leading to an increasingly balkanized global economy—one divided by ideology, social values, and environmental commitments. It will be a less efficient world, one in which companies will need to tailor both investments and production decisions to the values of the countries they wish to sell to. And it will cause more economic conflict. The more these exceptions to the principle of nondiscrimination become entrenched, the easier it becomes to expand those exceptions in the future. As the world moves down this road to closely managed trade, it will need to step cautiously to avoid going too far—and slide back into damaging protectionism.

The dilemma is the line between legitimate humanitarianism or environmentalism and selfish protectionism can be vanishingly thin.

Nondiscrimination has been the foundation of global trade since the 1947 creation of the General Agreement on Tariffs and Trade (GATT), the forerunner of the World Trade Organization (WTO). [Article 1.1 of the GATT agreement](https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm)—the founding constitution for modern trade—directs that “any advantage, favour, privilege or immunity” given to the products of any GATT member “shall be accorded immediately and unconditionally” to the same products from any other member. In those years, of course, much of the world remained outside the system, in particular the Soviet bloc of communist countries; China withdrew in 1950. But for GATT members, which, by the mid-1990s, included most of the world, there were very few exceptions to nondiscrimination. Having learned from the wreckage of the 1930s, when high tariff walls killed off much of the world’s trade and deepened the global depression, the founders of the GATT wanted nondiscrimination to be a largely inviolate principle, a bulwark against the descent back into senseless trade wars.

Unfortunately, the exceptions were still large enough to erode that bedrock commitment. Decades of preferential trade agreements and regional trade zones, from the original European Community to the North American Free Trade Agreement (NAFTA) and beyond, offered favorable treatment for countries inside those arrangements at the expense of nonmembers. Some of these arrangements gave preferences to certain outside countries but not others—for decades, the European Community gave special privileges to France’s former colonies. Mexico’s proximity to the large U.S. consumer market and its special access under NAFTA turned it into a manufacturing powerhouse. The GATT system also permits countries to slap tariffs on goods deemed “unfairly traded” due to government subsidies or predatory pricing. Many global steelmakers especially have faced such duties for decades. Critics argue “unfair” and “predatory” can be squishy criteria, subjectively applied to ward off competition.

Recently, these exceptions have mushroomed. Former U.S. President Donald Trump cited national security—[a narrow but permitted GATT exception](https://www.cato.org/policy-analysis/closing-pandoras-box-growing-abuse-national-security-rationale-restricting-trade)—to raise taxes on imports of steel and aluminum from some countries. U.S. President Joe Biden is making similar arguments when he insists goods like semiconductors, advanced electric batteries, pharmaceuticals, and critical minerals [be produced primarily in the United States](https://foreignpolicy.com/2021/06/18/biden-bidenomics-economy-america-first-trump-trade-supply-chains-industrial-policy-china-reshoring-protectionism/). Washington has threatened to block goods deemed environmentally damaging and is currently pursuing a case against Vietnam over its exports of furniture and other wood products made from timber alleged to have been [illegally harvested](https://crsreports.congress.gov/product/pdf/IF/IF11683). The European Union, the United States, Britain, and Canada recently imposed trade sanctions targeted at imports from China’s Xinjiang region to protest Beijing’s treatment of the region’s Uyghur Muslims.

Each exception to the nondiscrimination principle has many defenders. No country, quite reasonably, would let its desire for open global trade threaten its national security. Defenders of U.S. trade restrictions on China argue China’s admission to the WTO and the explosion in trade and investment that followed allowed Beijing to grow richer and advance technologically to the point that it poses a significant security threat. A correction was long overdue. Countries, quite understandably, want their economic policies to reflect their values—who would now argue that trade policies should be blind to deforestation in the Amazon or the exploitation of workers? And climate change is now an existential threat to the planet.

The dilemma with each of these measures is the line between legitimate humanitarianism or environmentalism and selfish protectionism can be vanishingly thin. The goals of the EU carbon tax are twofold. First, to encourage other countries to make similarly ambitious climate commitments by threatening the loss of European market access while also equalizing competitive conditions for the EU producers who will pay higher costs for switching to clean energy. The latter goal is dauntingly complex. The EU fears what it calls “carbon leakage,” in which companies would increasingly abandon the EU and shift production abroad to take advantage of looser rules in other countries. The new border tax is intended to “[equalise the price of carbon](https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_3661) between domestic products and imports.”

The EU has worked hard to try to ensure the new mechanism does not violate WTO rules, but implementation will be messy at best. The means for assessing the carbon content of imports remain unclear, and EU firms are certain to lobby for the highest possible tariffs to protect their competitive edge. In the United States, which has not set a domestic price for carbon, the danger of protectionist discrimination through import tariffs may be even higher. It’s easy to imagine the next step: Targeted countries and companies will complain they’re being treated unfairly, retaliatory tariffs will ensue, and a trade conflict will start that will be difficult to control given the intensity of the societal and political convictions involved.

The same dynamics are in play on other measures, such as labor rights. For decades, U.S. administrations have pushed for tougher labor standards in trade agreements, partly motivated by the desire to see working conditions improve abroad but mostly in response to domestic labor unions that fear being undercut by cheaper foreign workers. The debate over whether lower wages are an integral part of the competitive advantage of developing economies or a pernicious feature of a global race to the bottom remains unresolved. But the advanced economies have become more aggressive in blocking imports over labor rights. The new United States-Mexico-Canada Agreement, for example, allows for [import tariffs to be targeted](https://crsreports.congress.gov/product/pdf/IF/IF11308) at a single company’s products if that company is deemed to be wrongly impeding union organizing.

There is much to support in all of this. For too long, trade has been blind to most values other than maximizing wealth and corporate profits. However important the pursuit of profit has been in lifting hundreds of millions of people out of misery and destitution in the developing world, there are other values that matter as much, not least the survival of the planet in the face of climate change.

As the world enters a new era of closely managed trade, countries must ensure enlightened discrimination does not become a cover for ruinous protectionism.

But as they abandon the old trade order in pursuit of these laudable goals, the EU and the United States, in particular, would be wise to remind themselves repeatedly of another standard enshrined in the WTO: the “less trade-restrictive” principle. Trade negotiators have grappled for decades with the trade implications of national regulations designed to protect human health and safety, from car crash testing standards to drug and food quality regulations. Such regulations are the proper sovereign authority of nations—but they’re also easily abused to keep out foreign competition or applied for political reasons alone, such as Europe’s fears of certain U.S. food exports.

The compromise has been that while countries must be free to take regulatory measures to protect their people, those measures “[shall not be more trade-restrictive](https://www.wto.org/english/tratop_e/tbt_e/tbt_info_e.htm) than necessary to fulfill the legitimate objective.” A series of WTO dispute cases in the 1990s on issues like U.S. air quality standards for gasoline and the U.S. requirement that the fishing industry protect sea turtles provided sensible standards. The panels in those cases found that although such environmental measures were legitimate under trade rules, they must be implemented in an even-handed way that does not disproportionately harm foreign countries, and those countries must be given time to adapt to the new rules. The panels called for negotiated compromises to resolve disagreements wherever possible.

Although weaker, to be sure, a commitment to less trade-restrictive responses and compromises would provide some needed guardrails against sliding down the proverbial slippery slope. As the world enters a new era of closely managed trade, countries must ensure enlightened discrimination does not become a cover for ruinous protectionism.

### 1NC---UQ/D---Trade

#### OR it’s resilient--- Covid and China trade war prove

Tett 20, chair of the editorial board and editor-at-large of the US Financial Times. (Gillian, 12-3-2020, "Reports of globalisation’s death are greatly exaggerated", Financial *Times*, https://www.ft.com/content/4ab21d78-270f-4c92-b9ce-4adf75041005)

I would hazard a cautious bet that 2021 turns into a year when globalisation enjoys a rebound — in spite of all the recent signals to the contrary. To understand why, take a look at a set of metrics compiled each year by the logistics company DHL and New York University‘s Stern Business School.

The latest report, which was released on Thursday, shows that 2020 has indeed tipped globalisation into retreat — at least in the short run. Taking 2000 as a baseline of 100, the index hit 126 in 2017, 122 in the past two years and is provisionally projected to have slipped to somewhere in the range of 111 and 121 this year (sensibly, it is presented as a band in the report).

However, even with this reversal, the index is expected to stay above the low of 111 it hit in 2008 and the details of the report indicate it will almost certainly rebound next year. That might seem self-interested: DHL is a logistics company whose fortunes rely on globalisation.

But the reasons for optimism rest with a crucial point: there are several aspects to globalisation and these do not always move in tandem.

The DHL/NYU survey tracks the movement of four things: people, money, goods and ideas. In the first category, people, globalisation has collapsed this year to levels last seen in 1990. No surprise, given national lockdowns.

Money flows have also slowed, after trending sideways since the 2008 financial crisis. Trade flows have followed a similar pattern: while there was a sharp rise in cross-border trade in the late 20th century, as western companies created global supply chains, trade globalisation has trended slightly down in recent years, depressed by developments such as the US-China trade war. Unsurprisingly, it tumbled during the coronavirus economic shock this spring.

Dig into the trade picture, though, and the pattern looks more complex. Since the spring, activity has rebounded more dramatically than many economists initially expected. Indeed it is running just 3 to 4 per cent below pre-pandemic level and the World Trade Organization now thinks that total global trade volume will “only” drop 9.2 per cent in 2020. That is less dire than the 12.9 per cent decline it projected in April.

This rebound might fizzle out, since the WTO thinks it partly reflects restocking. Or maybe not. What is particularly striking is that companies are not reformatting and reshoring supply chains quite as some doomsayers expected.

There are certainly signs that top executives are worried about cross-border risks: a recent HSBC survey of 10,000 global companies shows that 93 per cent are worried about their supply chains, due to risks from political unrest and protectionism.

A separate report from McKinsey also shows that companies now expect a month-long disruption to hit their supply chains once — on average — every 3.7 years, be that from climate change, cyber attacks, political unrest or trade wars. The Covid-19 disruption, in other words, is not regarded as a one-off.

That has prompted some companies to bring some activities back “home” — as protectionist politicians such as US president Donald Trump have demanded. But most are doing something else: diversifying into multiple locations, instead of relying on just one supply chain, the McKinsey and HSBC reports suggest. Hedging is all the rage.

Even if supply chains are being reformatted into more flexible shapes, goods will still keep whizzing across borders. This helps to explain another detail of the HSBC survey: the executives expect trade to be strong in 2021.

The DHL/NYU survey also tracks a fourth aspect of globalisation: information flows. This metric has surged in recent years due to the internet, and the pandemic has intensified the dash to digital. Cross-border internet traffic jumped 48 per cent from mid-2019 to mid-2020, twice the annual rate seen in the previous three years.

In theory, this might undercut the need for physical links as video calls replace some travel. In reality, the globalisation of information fuels global ecommerce, making cross-border supply chains more flexible — and boosting collaboration in areas such as vaccine research. Protectionism remains a risk. China’s curbs on the internet are a case in point. But even that seems unlikely to tip this fourth aspect of globalisation into overall retreat; at least not anytime soon.

So the next time a politician (or voter) rails against “globalisation”, ask which aspect of the “g” word is under attack. After all, you are probably reading about anti-globalisation on the global internet, which illustrates my point. Covid-19 has caused globalisation to mutate, but not killed it off. Indeed, 2021 might yet deliver a surprising recovery.

### 1NC---!D---Trade

#### AND doesn’t solve war.

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

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

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

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

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

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

## Ad2

### Internals

#### Alt causes---foreign, not American cartels are responsible, and the plan explicitly does not prosecute them. KU

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

(4)) Qualitative Effects of Export Cartels on Foreign Markets

Export cartels can also have qualitative effects on the market in addition to the heavy economic burden already sustained, particularly in developing countries. For instance, Canada's potash export cartel, which was in operation for forty years, faced significant criticism from the media and academics alike. PotashCorp used its jointly owned subsidiary Canpotex in order to coordinate sales with American companies Mosaic Co. and Agrium Inc. into export markets beyond North America. 14 Uralkali, Russia's largest producer of fertiliser quickly followed with a similar strategy of price fixing and production cuts. These cartels accounted for approximately 70% of the global trade in potash. 15 Due to the nature of potash itself, the geographical supply is highly concentrated, with Canada owning 52% of the world's known reserves, Russia owning 21%, Belarus owning 9% and Germany owning 8.4%.16 Therefore, countries without such reserves would be more heavily dependent on imports from other countries in order to meet their needs. This is problematic as potash is essential in the production of fertiliser used in the agricultural industry.

During a period of eighteen months, between January 2008 and October 2009 while the cartel was active, the price of potash increased by more than 400%.7 In order to maintain these high prices, both PotashCorp and Uralkali announced temporary production cuts in January 2012.18 These decisions had a devastating effect on developing countries such as India and China, who rely on imports in order to sustain their demands and are one of the largest consumers of potash in the world.

In 2011, Feng Mingwei, the deputy general manager of Sinofert Holdings Limited, the largest fertiliser importer in China stated, 'our dependence on imported potash fertiliser is a threat to our national food security.' 19 The issue with China's food supply was attributed to the monopolisation of the international exporters and the resultant increases in the international prices of potash.

Frederic Jenny identified three factors that an export cartel in the agricultural industry could contribute directly to food shortages in developing countries.20 First, higher incomes in developing economies, such as China and India, necessitate an increased demand in food consumption. Second, global population will increase from seven billion to more than nine billion by 2050, resulting in a further increase in demand for food. Third, due to industrial development, the amount of land available for agricultural purposes is steadily shrinking, placing a greater burden on the remaining farmland. This is especially problematic for developing countries as agricultural yields are typically much lower than those in developed countries. The problem is further exacerbated by the fact that potash has no convenient substitutes and therefore, in the long run, demand is fairly inelastic. 21

It follows therefore that if consumers of potash in developing countries are forced to pay a higher price on potash imports, they may not be able to afford the quantities of potash needed in order to sustain their food supply.

In response to the potash export cartel, India temporarily ceased its imports in 2009 and threatened to do so again in 2010.22 However, the country is entirely dependent on potash imports in order to meet the food needs of its population. As a result, its withdrawal from importation had little effect on the potash producers given their awareness that India could not sustain it for long without endangering its own crops. In such a situation, imposing Indian competition law and sanctioning the potash cartel would likely have created more problems than solutions. Export cartel members may have reacted to such a strategy by raising export prices to India in order to recover any monetary fines that may be imposed on them. It is also difficult to guarantee that sanctioning one export cartel will prevent cartelists from employing similar anticompetitive behaviours in India in the future. 23

### !D---Indopak

#### India-Pakistan won’t go nuclear---empirics.

Ganguly 19, Distinguished Professor of Political Science and Rabindranath Tagore Chair in Indian Cultures and Civilizations at Indiana University, Bloomington. (Sumit, 3-5-2019, "Why the India-Pakistan Crisis Isn’t Likely to Turn Nuclear", *Foreign Affairs*, https://www.foreignaffairs.com/articles/india/2019-03-05/why-india-pakistan-crisis-isnt-likely-turn-nuclear)

THE LESSONS OF HISTORY

No one can say for sure, but history suggests that there is cause for optimism. During the Kargil War, India worked to contain the fighting to the regions around Pakistan’s original incursions and the war concluded with no real threat of nuclear escalation.

Less than two years later, the two countries plunged into crisis once again. In December 2001, five terrorists from the Pakistan-based groups Lashkar-e-Tabia and Jaish-e-Mohammed attacked the parliament building in New Delhi with AK-47s, grenades, and homemade bombs, killing eight security guards and a gardener. In response, India launched a mass military mobilization designed to induce Pakistan to crack down on terrorist groups. As Indian troops deployed to the border, terrorists from Pakistan struck again. In May 2002, three men killed 34 people in the residential area of an Indian army camp in Kaluchak, in Jammu and Kashmir. Tensions spiked. India seemed poised to unleash a military assault on Pakistan. Several embassies in New Delhi and Islamabad withdrew their nonessential personnel and issued travel advisories. The standoff lasted for several months, but dissipated when it became apparent that India lacked viable military options and that the long mobilization was taking a toll on the Indian military’s men and materiel. The United States also helped ease tensions by urging both sides to start talking. India claimed victory, but it was a Pyrrhic one, as Pakistan failed to sever its ties with a range of terrorist organizations.

Other nuclear states have also clashed without resorting to nuclear weapons. In 1969, China, then an incipient nuclear weapons state, and the Soviet Union, a full-fledged nuclear power, came to blows over islands in the Ussuri River, which runs along the border between the two countries. Several hundred Chinese and Soviet soldiers died in the confrontation. Making matters worse, Chinese leader Mao Zedong had a tendency to run risks and dismissed the significance of nuclear weapons, reportedly telling Indian Prime Minister Jawaharlal Nehru that even if half of mankind died in a nuclear war, the other half would survive and imperialism would have been razed to the ground. Yet despite Mao’s views, the crisis ended without going nuclear, thanks in part to the efforts of Soviet Prime Minister Alexei Kosygin, who took the first step by travelling to Beijing for talks.

There’s reason to believe that the current situation is similar. Pakistan’s overweening military establishment undoubtedly harbors an extreme view of India and determines Pakistan’s policy toward its neighbor. The military, however, is not irrational. In India, although Prime Minister Narendra Modi has a jingoistic disposition, he, too, understands the risks of escalation, and he has a firm grip on the Indian military.

Another source of optimism comes from what political scientists call the “nuclear revolution,” the idea that the invention of nuclear weapons fundamentally changed the nature of war. Many strategists argue that nuclear weapons’ destructive power is so great that states understand the awful consequences that would result from using them—and avoid doing so at all costs. Indian and Pakistani strategists are no different from their counterparts elsewhere. Even Pakistani Prime Minister Imran Khan, a political neophyte, underscored the dangers of nuclear weapons in his speech addressing the crisis last week. And Modi, for all his chauvinism, has scrupulously avoided referring to India’s nuclear capabilities.

The decision by India and Pakistan to allow their jets to cross the border represents a major break with the past. Yet so far both countries have taken only limited action. Their principal aim, it appears, is what the political scientist Murray Edelman once referred to as “dramaturgy”—theatrical gestures designed to please domestic audiences. Now that both sides have gone through the motions, neither is likely to escalate any further. Peering into the nuclear abyss concentrates the mind remarkably.

### 1NC---Defense---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.

### 1NC---Thumper---REMs

#### COVID thumps.

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As the Covid-19 pandemic has pushed many countries into some form of lockdown and hit mining operations across the globe, the risks around clean energy supply chains, including those of minerals, have come into sharper focus. Peru’s copper-mining activities, which are responsible for 12% of global production, ground to a halt because of the country’s confinement measures. South Africa’s lockdown disrupted 75% of the global output of platinum, a key material in many clean energy technologies and emissions control devices, although the country later allowed mines to operate at 50% capacity. Although prices for many important minerals have fallen as global demand has slumped, recent developments have highlighted a number of reasons why the world should not take secure supplies for granted.

### 1NC---!D---Warming

#### No warming impact.

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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.

## Ad3

### Internals

#### 1---Resource shortages are an alt cause to ASEAN antitrust. 2---Their evidence normatively says ASEAN should adopt American antitrust, not that they will post aff. KU

Manne 21—(\*distinguished fellow at Northwestern University Center on Law, Business, and Economics, JD from University of Chicago; \*\*Senior Fellow in Law & Economics at the International Center for Law & Economics, PHD in Competition Law from Université de Liège). \*Geoffrey A. Manne, \*\*Dirk Auer, and Sam Bowman. March 30, 2021. “Should ASEAN Antitrust Laws Emulate European Competition Policy?” Singapore Economic Review. <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3709730>. Accessed 12/24/21.

VI. Conclusion: Insights for ASEAN policymakers

As we have argued throughout this paper, the question of what constitutes the ideal competition regime is complex. While commentators in academic and policy circles often cite the European model as paragon of efficient competition enforcement, this paper suggests that such an assertion is far from self-evident.

Indeed, the light-touch approach that has iteratively emerged from the US judiciary has numerous strengths that are all too often ignored by scholars. As we have explained, these notably include: a single unifying goal that has led to a more consistent body of law with, arguably, fewer contradictions; an error-cost framework and, largely, effects-based analysis that enable US antitrust law to rapidly adapt to evolving economic findings; and a regime that is less vulnerable to the political whims of antitrust agencies, notably because they are afforded less discretion by courts.

In addition to these high-level strengths, the US system also has two features that are often, wrongly, portrayed as weaknesses in policy discussions. For a start, US antitrust law has proved a much weaker tool for policymakers to attack the conduct of large tech companies. However, as we have shown, those “big tech” cases that have been enabled by the European competition rules are anything but models of impartial enforcement. The fact that US antitrust rules have largely prevented plaintiffs from bringing effective cases of this sort might thus be a strength rather than a weakness of the US model of antitrust enforcement. To be more precise, our assertion here is not that the behavior of Big Tech firms is unquestionably beneficial to society, but rather that competition enforcement is likely the wrong tool to address the sorts of antitrust-irrelevant issues that were alleged in the European Facebook and Google. 210 In short, the European approach to competition enforcement in digital markets is expedient, buts its costs—notably in the form of excessive regulatory discretion and an untethering from economic analysis—often lead authorities towards pyrrhic victories. Much of the same applies to claims that US antitrust law has been ineffective at preventing the consolidation of industries.

Of course, while these advantages of the US system are certainly worth considering, they are not dispositive. In that respect, it is worth questioning whether the idiosyncrasies of the ASEAN economy are better suited to the EU approach, the US approach, or something else. In that regard, we see at least three important reasons why the US model might indeed serve as a useful blueprint to further develop the burgeoning ASEAN competition regimes.

A. Growth is key

Boosting growth is perhaps the most important argument in favor of implementing a more restrained competition regime—such as that which exists in the US—throughout the ASEAN nations. One of the important objectives of ASEAN integration, as well as the adoption of competition laws more generally, is to promote economic growth and innovation. As the ACAP makes clear:

These goals are designed to allow ASEAN to work towards the overarching vision of a competitive, innovative, and dynamic ASEAN with effective and enforceable competition policies and laws.211

Many ASEAN nations may not have the means, or the inclination, to provide their competition authorities with similar resources to those of the European Commission. Given this resource constraint, it is essential that these nations focus their enforcement efforts on those areas that provide the highest return on investment, notably in terms of increased innovation.

This raises an important point. A recent empirical study by Ross Levine, Chen Lin, Lai Wei and Wensi Xie argues that competition enforcement does indeed promote innovation. However, one of the study’s findings is more surprising: unlike other areas of competition enforcement, the strength of each jurisdiction’s “abuse of dominance” intervention does not correlate with increased innovation.212 Furthermore, jurisdictions that allow for so-called “efficiency defenses” in unilateral conduct cases also tend to produce more innovation.213 The authors thus conclude that:

Dividing Abuse of Dominance into its components highlights a potential explanation for why the overall Abuse of Dominance index is not strongly correlated with innovation: Exploiting the dominant position created by a patent might be one mechanism that firms use to maximize the returns from innovation, so that limiting such “abuse” could reduce investment in innovation and hence future patenting. From the perspective of maximizing patent-based innovation, therefore, a legal system that allows firms to exploit their dominant positions based on efficiency considerations could boost innovation.214

If these findings are correct, then policing unliteral conduct infringements should likely be lower on authorities’ priority list than other areas of enforcement. This is particularly true for the ASEAN trade bloc, given its stated ambition to strengthen the IP regimes of member states. 215 Indeed, competition enforcement, particularly in unilateral conduct cases, often conflicts with IP protection.216 This tends to conform with the US model of enforcement where successful (attempted) monopolization cases are much rarer than in the EU.

These findings also cut in favor of another facet of US antitrust enforcement. While US antitrust law is resolutely focused on maximizing consumer welfare (i.e. increased economic output), 217 European enforcers often pay more attention to the distributional aspects of competition policy. This choice appears less than desirable in light of the aforementioned study, which suggests that reducing monopoly rents through competition policy may potentially lead to reduced innovation.

Another important consideration for ASEAN policymakers is that the European model of competition enforcement is closer to precautionary principle-type reasoning than the error-cost framework endorsed by US courts.218 ASEAN policymakers thus need to decide whether the tail risks that might potentially stem from laxer competition enforcement—notably in digital markets—justify the EU’s precautionary approach. If not, then the areas of EU competition enforcement that resort to precautionary reasoning needlessly harm growth with no countervailing benefit to consumers.

In short, the US antitrust law’s focus on consumer welfare and relatively limited enforcement in the area of unilateral conduct may be good match for ASEAN nations that want competition regimes which maximize innovation under relatively important resource constraints.

B. Heterogeneous economic and political conditions

A second important observation is that members of the ASEAN trade bloc have incredibly diverse economic and political profiles. These divergences are neatly summarized in a report published by McKinsey & Company:

ASEAN is a diverse group. Indonesia represents almost 40 percent of the region’s economic output and is a member of the G20, while Myanmar, emerging from decades of isolation, is still a frontier market working to build its institutions. GDP per capita in Singapore, for instance, is more than 30 times higher than in Laos and more than 50 times higher than in Cambodia and Myanmar; in fact, it even surpasses that of mature economies such as Canada and the United States. The standard deviation in average incomes among ASEAN countries is more than seven times that of EU member states. That diversity extends to culture, language, and religion. Indonesia, for example, is almost 90 percent Muslim, while the Philippines is more than 80 percent Roman Catholic, and Thailand is more than 95 percent Buddhist. Although ASEAN is becoming more integrated, investors should be aware of local preferences and cultural sensitivities; they cannot rely on a one-size-fits-all strategy across such widely varying markets.219

A harmonized ASEAN competition regime would need to function in a variety of economic and political contexts. In turn, these environments affect the respective costs and benefits of the European and US models of competition enforcement.

Take the discretion afforded to antitrust authorities. Giving authorities wide powers with limited judicial oversight might be, relatively, less problematic in countries where government has a track record of self-restraint. However, the consequences of regulatory discretion may be far more dramatic in jurisdictions where authorities routinely overstep the mark and where the threat of corruption is very real.

While this is an assessment that only the ASEAN member states can make, a rapid survey does suggest that some of the ASEAN nations are at higher risk of misapplying the powers that accompany the European model of competition enforcement. For instance, the “ease of doing business” index published by the World Bank suggests that countries like Singapore and Malaysia have particularly strong traditions of letting businesses operate without excessive government interference (ranking n° 2 and 12 in the world, respectively).220 The human freedom index published by the Cato Institute echoes these findings, with both countries ranking very highly in terms of economic freedom.221

However, other ASEAN nations, including Laos and Myanmar, for example, rank much less favorably. Further increasing the government’s power with wide-reaching competition laws might merely compound existing problems in these cases.

Outright corruption is also a real problem in several ASEAN nations. For instance, a piece recently

published in the Financial Times concluded that:

Much less impressive is Asean’s record dealing with corruption, that other “invisible enemy”. With the exception of Singapore, Brunei and Malaysia—whose 1MDB scandal has still cast a cloud—member countries languish around the middle (Indonesia, Vietnam, Thailand) or in the bottom half (the Philippines, Laos, Myanmar, Cambodia) of Transparency International’s Corruption Perception Index.222

At a more granular level, eyebrows were raised in Indonesia when Nadiem Makarim (the CEO and co-founder of Gojek, one of the most successful online platforms in Indonesia) joined the cabinet of Joko Widodo, the country’s current president.223 While there is nothing inherently problematic about corporate leaders entering the political sphere, it is more worrying when it occurs in countries with weak institutions that are not sufficiently shield from outside interference—for instance by strong judicial oversight.

The specter of corruption thus militates in favor of establishing competition regimes with sufficient checks and balances, so as to prevent competition authorities from being captured by industry or political forces. In that regard, the US model, along with the consumer welfare standard, seems far more robust. Indeed, as we have argued throughout this paper, the US model limits competition authorities’ discretion by subjecting their decisions to a single unifying standard, rather than allowing them to justify idiosyncratic decisions by choosing from a plethora of competing goals.

Much the same can be said about the resources that antitrust authorities have at their disposal. For example, if one looks at government spending as a percentage of GDP, it is apparent that the ASEAN nations have markedly different profiles.224 At one end of the spectrum, countries like Vietnam and Brunei have government expenditures that reach roughly 30% of GDP—not that far from some Western nations. However, other countries, like Singapore, Indonesia, and Laos have much lower government spending. These differences are even starker when one accounts for the fact that all of these countries have very different GDP levels to start with: Singapore is one of the richest countries in the world, Laos is one of the poorest.

These disparities have implications for competition policy. The ASEAN nations exhibit extremely diverse policies regarding the role of government in the economy. Put simply, some of the ASEAN nations seem ill-suited to the far-reaching technocracy that almost inevitably flows from adopting the European model of competition enforcement. Others might simply not have sufficient resources to staff agencies that could, satisfactorily, undertake the type of far-reaching investigations that the European Commission is famous for.

In short, many the ASEAN nations might find it optimal to focus their limited enforcement resources on the most harmful categories of anticompetitive conduct, widely accepted to be cartels and mergers to monopoly. The more permissive and politicized EU model is less likely to lead to this outcome, however.

C. Different legal traditions and competition regimes

The implications of diversity apply as well when it comes to the legal traditions of the ASEAN nations, including their competition regimes. In short, there are stark differences between the laws in place in each ASEAN member country, likely more so than is the case between EU member states or US states. These differences tend to cut in favor of minimal—but achievable—harmonization rather than broad reforms that would be unworkable in many of the ASEAN nations.

The most obvious difference concerns the widely differing traditions of competition enforcement found throughout the ASEAN trade bloc. A quick snapshot of competition enforcement throughout the 2000-10 decade brings these differences to light. According to the Competition Law Index (CLI). 225 some ASEAN countries (Brunei and Cambodia) had no competition enforcement before 2010, while others (notably Singapore) had particularly strong regimes:

The above numbers can easily be explained. Brunei enacted its first competition law in 2015, 226 as did Myanmar, 227 while Cambodia is still drafting its competition legislation.228 At the other end of the spectrum, Singapore’s competition law reform of 2005, which created the Competition Commission of Singapore, intended to mimic the European model. 229 This might explain its particularly high subsequent CLI ranking.

What do these numbers tell us about efforts to harmonize competition law throughout the ASEAN Economic Community? For one thing, it is illusory to think that there is currently a single competition regime that could perfectly fit the diverse needs of all the ASEAN nations. It will take at least years, and probably decades, for countries that do not yet have competition laws in place to develop the type of sophisticated regimes that prevail in the US, the EU, or Singapore. More to the point, any harmonization should likely start with the most uncontroversial areas of enforcement—which likely also exhibit the highest returns relative to enforcement costs (areas like cartels and horizontal mergers)— rather than more complex efforts to police unilateral conduct cases. These two factors tend to cut in favor of harmonized competition laws that are closer to the US model, where unilateral conduct and vertical agreement cases are much less common.

At a more general level, the ASEAN nations also exhibit very different legal traditions. Indeed, some of the ASEAN legal regimes are firmly anchored in the common law tradition (e.g., Singapore), while others have civil law roots (e.g., Indonesia), and others still exhibit a diverse range of legal influence (the Philippines, for instance, has Spanish legal roots with civil and common law influences). 230

Although we do not want to overstate the impact of these differences, it seems reasonable to assume that each of the ASEAN nations may have different views about the way in which their competition regimes should evolve, whether through iteration by the judicial branch or by continuing legislative developments. In our opinion, this militates in favor of a minimal, standards-based initial harmonization, leaving it up to each nation to further develop its competition enforcement regime in the manner that it sees fit. Arguably this approach conforms better to the US model—with an overarching and unspecified adherence to a discernible economic principle (the consumer welfare standard)— than to the EU’s far more detailed and multi-faceted regime.

The US regime’s adherence to the consumer welfare standard—informed by economic theory, empirical evidence, and the error-cost framework—aligns legal theories of harm with economic theories, and introduces rigor and predictability into the antitrust enforcement process. This approach provides a coherent framework for analyzing allegedly anticompetitive conduct—and specifically for distinguishing between procompetitive and anticompetitive conduct—without prejudging specific market structures or mandating particular doctrinal rules. The result is overall coherence of outcomes, but a flexibility in implementation that would likely serve the diverse ASEAN countries well.

#### Modelling and harmonization fails. ASEAN antitrust regulators make decisions based on localized needs, not harmonization.

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Even if Asean antitrust regulators share similar notes this week, it is unlikely they’ll find common answers, because — as various stakeholders have pointed out — there are significant differences in each of the region’s markets.

“There's no guarantee that if you win in Singapore, you're going to win the rest of the region,” Chan said. He said this dynamic is evident in the ongoing competition — and seemingly failed merger talks — between Singapore-based Grab, which leads in most markets it operates in, and Indonesian decacorn Gojek, which reigns in the largest market in the region.

The vast differences in each Asean country’s potential market size also affect how much regulatory restriction investors would be willing to tolerate.

“If Singapore makes it too restrictive, whether it be for data privacy issues or competition law issues, it makes it less attractive to bring these [digital] services to Singapore,” Chan said.

There are also key differences in what each country’s government is aiming for.

Whereas Indonesia is currently concerned about how to regulate online marketplaces like Shopee to make sure its SMEs can compete against Chinese vendors, the Philippine government is more focused now on attracting Big Tech investments — which means going easy on regulatory restrictions that could turn them off.

“We are actually positioning the Philippines as an artificial intelligence center of excellence, and we are targeting Facebook, Google, Amazon, Microsoft to locate their artificial intelligence and research and development activities in the country,” Rafaelita Aldaba, the undersecretary for competitiveness and innovation of the Philippines’ Department of Trade and Industry, said in a Philippine forum.

Still, industry players are hoping Asean regulators can at least find a common approach or framework. Because, as Chan pointed out, their experience with different data protection rules in different Asean countries has already proven to be a big compliance headache.