# 1AC

### 1AC---Alliances

#### Advantage 1 is Alliances:

#### The Shipping Act creates immunity for vessel sharing agreements

UNCTAD 18, UN Conference on Trade and Development – Report of Intergovernmental Group of Experts on Competition Law and Policy, (Challenges faced by developing countries in competition and regulation in the maritime transport sector, https://unctad.org/system/files/official-document/ciclpd49\_en.pdf

The Federal Maritime Commission [FMC] is the independent regulatory agency responsible for the regulation of seaborne transportation in the foreign commerce of the United States for the benefit of United States exporters, importers and the United States consumer. 25 Its mission is to ensure competitive and efficient maritime transportation services for shippers, by monitoring agreements among carriers and service contracts with regard to their effects on prices and services. The amendment of the Shipping Act (1916) in 1961 established the Commission and gave it the power to disapprove agreements between liner shipping carriers that were not in the public interest. In this regard, a violation of antitrust laws would be considered against the public interest. The Shipping Act (1984) removed both the public interest clause and the requirement for approval by the Commission for agreements between liner shipping carriers. Vessel-sharing agreements and other cooperative agreements are also permitted under the Act. 23. The United States has a statutory antitrust exemption for liner conferences. The Shipping Act, as amended by the Ocean Shipping Reform Act (1998), provides an alternative competition enforcement regime and includes limited antitrust immunity for agreements between liner shipping carriers from competition law. The Act introduced reforms that ended the authority of liner conferences to regulate the service contracts of members. In addition, the Act allows conference members to negotiate independent confidential service contracts with shippers and prohibits other members from retaliating against shippers or carriers that do so. Prior to the Act, such contracts had to be made public, potentially reducing the incentive for participants to enter into them. The annual report of the Commission in 2014 stated as follows: “Conference or price-fixing agreements have become largely irrelevant to United States liner shipping. No new carrier conference agreements have been filed with [the Commission] since fiscal year 2000. The remaining three conferences cover only government cargoes.” 26 All conduct that does not fulfil antitrust exemption requirements is subject to competition law and investigated by the Department of Justice if it involves cartel-like practices, including price fixing, bid rigging and market allocation.

#### Agreements allow acquisition of large megaships

O’Connor 14, Cozen O'Connor Law Firm, (A New Era For Vessel Sharing Agreements – FMC Allows P3 and G6 Alliances To Go into Effect https://www.jdsupra.com/legalnews/a-new-era-for-vessel-sharing-agreements-23682/)

Perhaps the first true vessel sharing agreement was called, appropriately enough, The Vessel Sharing Agreement (which led to use of the term “VSA” to describe such arrangements) among Sea-Land Service, Inc., Nedlloyd Lijnen, B.V., and P&O Containers, Ltd. This agreement was intended to maximize the utilization of the then very large and fuel efficient containerships (the so-called Econships) that Sea-Land had acquired from the estate of the bankrupt U.S. Lines. The P3 and G6 agreements have a similar purpose — maximizing utilization of large, efficient vessels as a means to reduce carrier costs. In other words, some of the basic reasons lines enter into VSAs have remained unchanged over the years. The use of space charter and vessel sharing agreements increased through the late 1980s and early 1990s, although the vast majority of these agreements were (like the original VSA) often focused on a single trade lane. During this period, relatively few lines were considered “global” carriers and those that were often offered service through a combination of stand-alone strings that did not involve partners, trade-specific vessel sharing agreements, and space charter arrangements. As world trade increased and the phenomenon of globalization emerged, carriers sought to meet the transportation needs of their increasingly global customer base. Hence, carriers moved to geographically broader cooperations that the FMC labeled “global alliances,” most notably The Grand Alliance, The New World Alliance, and the CKYH alliance. These agreements, although not truly global, were often broader in geographic scope and involved a more integrated, long-term cooperation than many of their predecessors. However, the objective was still the same: to provide a service superior to that which could be offered alone while reducing operational costs and capital risks. In many respects, the P3 and G6 agreements represent the next logical step in the evolution of carrier agreements: geographically broader, more operationally integrated, long-term vessel sharing arrangements that come closer to being truly global. As in the past, these arrangements help carriers hedge against the risk of the investment required to build the large, fuel-efficient ships necessary to provide service at a competitive cost. They also allow improved utilization, a key to achieving cost savings. The difference between these agreements and past VSAs is primarily one of degree rather than kind — the cost advantage offered by new tonnage is necessary to remain competitive, but the size and cost of new ships has reached the point where it may no longer be feasible for carriers to operate outside an alliance that helps reduce the risk of such an investment to the point that it is acceptable. Indeed, some are questioning whether it is possible for a line to remain competitive on a global scale following a 1990s model of offering a patchwork of stand-alone and cooperative services rather than being a member of a global alliance.

#### Megaships size are about to explode

---TEUs are “twenty-foot equivalent unit”

Fickling 21, Reporter for The Print. (David, March 30, 2021, Get ready for future, giant next-gen cargo vessels will make ‘Ever Given’ look like bath toy, <https://theprint.in/opinion/get-ready-for-future-giant-next-gen-cargo-vessels-will-make-ever-given-look-like-bath-toy/630839/>)

If you think the ultimate reason the Suez Canal got blocked last week is because container ships are getting too big, get ready for the future. The next few generations of cargo vessels are going to make the Ever Given look like a bath toy. Big enough to carry 20,124 twenty-foot equivalent units, or TEUs — the standard measure for cargo, representing a single shipping container — the Ever Given was one of the world’s largest such vessels when it was launched in 2018. The first container ship to break the 20,000 TEU mark had been at sea for less than a year. One famed 1999 study, written at a time when the largest boats carried less than 8,000 TEUs, argued it would prove impossible to build craft bigger than 18,000 TEUs. The Ever Given, finally floating on its way again, is now distinctly in the second class of mega freighters. There are nearly 100 ships carrying more than 20,000 TEUs on the seas or under construction, and the bigger vessels being assembled in Chinese and South Korean shipyards are mostly around the 24,000 TEU mark. A quarter of the capacity moved by the world’s largest container line, AP Moller-Maersk A/S, is on boats above the 17,500 TEU mark. That’s unlikely to be the end of it. Chinese shipyard Hudong-Zhonghua Shipbuilding Group Co. has already registered designs for a 25,000 TEU vessel, and it has become relatively commonplace to predict that 30,000 TEU monsters will be plowing the oceans before the decade is out. Such enormous hulls may cause problems that will put the Ever Given’s mishap into the shade. At Rotterdam, the largest ships already have to arrive at high tide to ensure there’s enough clearance for them to get through the channel, according to a 2019 study by Nam Kyu Park of South Korea’s Tongmyong University. Larger vessels will soon be unable to berth at Shanghai, Busan and Hong Kong even at high tide, unless channels are dredged out further, Park wrote. There are similar problems with infrastructure on dry land. Modern ports are astonishingly efficient at unloading, and can turn around a fully laden 20,000 TEU vessel in a couple of days. But the time spent waiting for a berth can cut deep into the wafer-thin economics of a container line. Longer quays may have to be built to accommodate the larger ships, as well as cranes that can reach across wider decks, larger loading yards for tens of thousands of containers, and faster rail and road terminals to take cargo to its next destination. Current vessels are already at the limits of what can fit along major shipping lanes. The Ever Given is too bulky to squeeze through the Panama Canal, where boats must be lifted over its mountainous spine with massive lock gates. At 24 meters (79 feet) deep, the Suez Canal has more capacity — but it’s roughly as deep as the Straits of Malacca and Singapore, so dredging it further to accommodate bigger ships won’t help much. The binding constraint on East-West trade at this point isn’t engineering, but geology. Extending 15.7 meters below the water line, the Ever Given shouldn’t, on paper, have trouble making it through any of those channels, which typically require 3.5 meters of clearance from the bottom. Next-generation ships with a 20-meter draught, on the other hand, would be at constant risk of grounding. How have container ships managed to defy expectations that their size would hit fundamental limits? A large part of it is because the economies of scale are so compelling. Bigger vessels use more fuel, but relative to the number of boxes stacked on their decks they’re far more efficient. They can also turn around a larger number of containers at a time and serve a wider array of feeder ports, ensuring they can defray their massive capital costs quicker. There’s little sign that this is about to change. New International Maritime Organization regulations against the burning of sulfur-intensive fuel oil introduced last year mean current ships are using costlier diesel, putting more pressure on naval architects to come up with yet more efficient designs. Beyond that, the IMO now has plans to reduce carbon dioxide emissions by 40% in 2030 compared with 2008, and by 70% by 2050. Even with a switch to cheaper, less polluting liquefied natural gas as the main fuel, that’s going to mean further drastic improvements in efficiency, not to mention propulsion technologies that don’t exist yet. To date, the best way to chip away at fuel consumption and emissions is by increasing size. It’s hard to know how the industry is going to cope with this. Perhaps Suez, Malacca and Singapore can be dredged to accommodate even bigger vessels. Perhaps shipyards will find ways to squeeze a few more inches out of existing channels. If not, alternative routes around the Cape of Good Hope and through the deeper Straits of Sunda and Lombok between Indonesia’s islands may prove the only viable way to accommodate such massive boats. Should that happen, those economies of scale will have to be drastically larger to make up for the longer sailing time. We’ve seen container ships leap from 10,000 TEUs to 24,000 TEUs. Don’t be shocked to see 50,000 TEU vessels plying the sea in your lifetime.

#### 1---Megaships require port dredging which wrecks biodiversity

Chua 21, Charmaine Chua is Assistant Professor of Global Studies at the University of California, Santa Barbara. (Charmaine, The Ever Given and the Monstrosity of Maritime Capitalism, Boston Review, <https://bostonreview.net/class-inequality-politics/charmaine-chua-ever-given-and-monstrosity-maritime-capitalism>)

From Megaships to Megaports These monstrous ships are perhaps most perverse in the way they meet their victims on shore. As more and more megaships lumber through the world’s oceans, more infrastructure is required to cope with mounting cargo on land. When companies such as Evergreen make new megaship orders, they rarely consult with port authorities, rail carriers, or other actors along the supply chain. Terminals originally built to discharge cargo from an earlier era of ship sizes (5,000 TEUs and under) now struggle to handle cargo with capacities five times as large. Shippers used to select ports on the basis of their strategic geographical location (as was the case in the establishment of the port of Aden, Malta, and other colonial entrêpots at key points in imperial trade routes). But ports today increasingly act as substitutes for each other, pawns in a game of commerce that is global in scale. All ports fear being replaced by the quicker, more efficient passage, so they invest heavily in upgrading their fixed infrastructure. Building a megaport is a mammoth task, both financially and spatially. Construction requires empty, flat land and expensive outlays of public finance. Channels must be dredged to make way for a deepwater harbor—not only once, but endlessly, to counter the tides and currents. Cranes must be raised or replaced by larger ones altogether. Dockyards must expand to support the higher volumes of containers. In the hinterland, highways and railroad corridors must support the concentration of cargo entering the city. These infrastructural modifications, made repeatedly as megaships have continued to grow, require the massive dispossession and manipulation of environments and ecologies. As Khalili details, there is something “extravagantly modernist” about shaping the ecologies and geologies of land and sea to suit the circuits of market exchange. The god-like desire to manipulate space, to extract and excavate without regard to geological impediments, reflect what Alfred Sohn-Rethel calls the “absolute historical timelessness and universality” of exchange, according to which “the entire empirical reality . . . by which one moment and locality of time and space is distinguishable from one another is wiped out.” Khalili recalls visiting the port of Khor Fakkan and talking to a British terminal manager. Pointing to a hill in the distance, he said plaintively that he could “move that mountain” if he needed. For him, Khalili reflects, “shaping the land, reclaiming it or flattening it, or whittling away at it, was no matter.” The ecological effects of such human hubris have been devastating. When the Suez Canal joined the Red Sea to the Mediterranean in 1869, marine species migrated along the waterway, allowing invasive species from venomous jellyfish to rabbitfish to make their way north, causing untold damage to biodiverse eco-systems. So significant were these effects that they have been termed “Lessepsian” after the developer of the canal, Ferdinand de Lesseps. As massive infrastructural developments chase giant ships, they destroy entire ecosystems, and ports and canals have come to epitomize the intensification and expansion of capital’s supply lines, cutting gashes across the earth to chase supply chain profits.

#### Biodiversity loss causes extinction

Joe McCarthy 18, a Staff Writer at Global Citizen, Nov 8 2018, "Humans Could Face Extinction if We Don't Protect Biodiversity: UN", Global Citizen, <https://www.globalcitizen.org/en/content/biodiversity-loss-human-extinction/>

As the sixth mass extinction event accelerates around the world, engulfing thousands of animal and plant species, humans risk facing a similar fate unless drastic interventions are made, according to Cristiana Pașca Palmer, the United Nations biodiversity chief, who recently spoke with the Guardian. Palmer said that within the next two years, countries have to develop an ambitious plan to conserve land, protect animals, and stop practices that are harming wildlife. This effort is equally as urgent as the Paris climate agreement’s goal of mitigating climate change, she said. “The loss of biodiversity is a silent killer,” she told the Guardian. “It’s different from climate change, where people feel the impact in everyday life. With biodiversity, it is not so clear but by the time you feel what is happening, it may be too late.” Next month, countries will meet in Sharm el Sheikh, Egypt, to begin mapping out what such a plan would like. Palmer hopes that a final version will be formalized in Beijing in 2020. If a binding global treaty fails to materialize, then humanity faces an uncertain future, she said. Past efforts to stop the loss of biodiversity have not proved successful, according to the Guardian. In recent years, evidence of this staggering loss has begun accumulating. Wild animal populations have declined by 60% since 1970, more than 26,000 plants and animals are close to extinction, nearly two-thirds of the world’s wetlands and half of all rainforests have been destroyed, more than 87% of the world’s ocean area is dying, and the planet needs an estimated 5 million years to recover from the biodiversity loss it has already sustained. “We are sleepwalking towards the edge of a cliff,” Mike Barrett, executive director of science and conservation at WWF, recently told the Guardian. “If there was a 60% decline in the human population, that would be equivalent to emptying North America, South America, Africa, Europe, China, and Oceania. That is the scale of what we have done.” “This is far more than just being about losing the wonders of nature, desperately sad though that is,” he said. “This is actually now jeopardising the future of people. Nature is not a ‘nice to have’ — it is our life-support system.” The benefits of biodiversity are hard to overstate. The food chain, climate systems, atmospheric conditions, natural resources, and much more depend on the delicately structured interactions of ecosystems around the world. The truly wild places in the world, meanwhile, are crucial to generating, cleaning, and distributing water around the world, and could help to mitigate the looming water crisis. These landscapes and marine environments also clean the air and act as carbon sinks, stabilize the global environment, and protect countries from natural disasters.

#### 2---Megaships cause slow growth

Levinson 20, is an economist and historian at Princeton and City University in New York. (Marc, 10-22-2020, “The Megaships That Broke Global Trade,” The Wall Street Journal, https://www.wsj.com/articles/the-megaships-that-broke-global-trade-11603384311)

On August 16, 2006, five tugboats dragged Emma Maersk from a Danish shipyard and towed her backward to the sea. The length of four soccer fields, her keel nearly a hundred feet below her deck, Emma was far larger than any container ship ever before ordered and by far the most expensive. She was a bet on globalization: By transporting a container more cheaply than any other vessel afloat, she and her six sister ships were expected to stimulate even faster growth in international trade, lowering the cost of moving goods through the supply chains that had reshaped the global economy and turned China into the world’s workshop. The opposite occurred. Though supremely efficient at sea, Emma and the even larger ships that followed in her wake became a nightmare. By making freight transportation slower and less reliable than it had been decades earlier, they helped to stifle the globalization of manufacturing well before Brexit, Donald Trump and Covid-19 came along. Container ships are the workhorses of globalization. Operating on regular schedules—such that an identical vessel departs Shanghai every Wednesday, stops in Singapore nine days later and arrives in Antwerp five weeks hence, with tight connections to barges and freight trains—intermodal container transport gave manufacturers and retailers the confidence to plan tightly organized long-distance supply chains. Before Emma, each new generation of ships since the dawn of the container age in 1956 had been slightly larger than the one before. The rationale was straightforward: On a per-container basis, a larger vessel cost less to build and operate than a smaller one, allowing the owner to undercut competitors’ cargo rates and still earn a healthy profit. Their size was expected to give Emma and her sister ships an immense cost advantage on the most important route in shipping, the roughly 14,000-mile haul between China and northern Europe. Maersk forecast in 2006 that a global trade boom would double the demand for container shipping by 2016. Its concern was having enough ships to handle all that cargo. The major ship lines, almost all of which were state run or family controlled, felt compelled to follow Maersk’s lead. Megaship mania took hold, and orders for ships even larger than Emma flooded Asian shipyards. With the help of low interest rates and generous shipbuilding subsidies from the Chinese and South Korean governments, ships were to be had for far less than the true cost of building them. But the expected trade boom never occurred. Instead, international trade collapsed amid the financial crisis in 2008-09, and when it picked up again, its growth was far weaker than before. In the decade before the crisis, trade had expanded by 78%. In the decade after 2008, it increased less than half as much. Merchandise trade—exports plus imports—came to 51% of the world’s economic output in 2008, but hasn’t reached that share again. By the early 2010s, there simply weren’t enough container loads to fill all the new capacity. Had the U.S. imported as much in 2016 as it did in 2011, relative to GDP, an additional half-trillion dollars of imports would have entered the country in a single year. The trade slump wiped out the cost advantages of larger vessels. Freight rates fell so low that revenue didn’t cover operating costs, flooding the oceans with red ink. Some carriers folded. Others found merger partners. The survivors sought shelter in alliances with competitors, in hopes that several ship lines working together could generate sufficient cargo to fill their ships. The megaships themselves, though, played a role in slowing the growth of trade. As ship lines trimmed capacity by anchoring vessels and canceling services, a box filled with time-sensitive merchandise might have to sit longer at the port before it could be loaded aboard ship. Discharging and reloading the vessel took longer as well, and not only because there were more boxes to put off and on. The new ships were much wider than their predecessors, so each of the giant shoreside cranes needed to reach a greater distance before picking up an inbound container and bringing it to the wharf, adding seconds to the average time required to move each box. Thousands more boxes multiplied by more handling time per box could add hours, or even days, to the average port call. Delays were legion. Once, container ships would have been able to make up those delays en route. But that was, and is, no longer possible. To save fuel and reduce greenhouse gas emissions, recent generations of vessels are uniformly designed to steam more slowly than their predecessors. Instead of 24 or 25 knots, they travel at 17 or 18, adding several days to a long ocean voyage. And where earlier ships were able to speed up if required to get back on schedule, the megaships cannot. By 2018, 30% of the ships leaving China departed late. The land side of international logistics was scrambled as well. At the ports, it was feast or famine: Fewer vessels called, but each one moved more boxes off and on, leaving equipment and infrastructure either unused or overwhelmed. Mountains of boxes stuffed with imports and exports filled the patios at container terminals. The higher the stacks grew, the longer it took the stacker cranes to locate a particular box, remove it from the stack and place it aboard the transporter that would take it to be loaded aboard ship or to the rail yard or truck terminal for delivery to a customer. Freight railroads staggered under the heavy flow of boxes into and out of the ports. Where once an entire shipload of imports might be on its way to inland destinations within a day, now it could take two or three. Queues of diesel-belching trucks lined up at terminal gates, drivers unable to collect their loads because the ship lines had too few chassis on which to haul the arriving containers. And often enough, the partners in one of the four alliances that came to dominate ocean shipping didn’t use the same terminal in a particular port, requiring expensive truck trips just to transfer boxes from an inbound ship at one terminal to an outbound ship at another. Today, much of the world’s trade moves in vessels far larger even than Emma Maersk, each able to carry more freight than 10,000 full-size trucks. After a prolonged rate war, consolidation has finally allowed the carriers to push up cargo rates by idling ships, but hidden costs have soared. Governments have picked up many of those costs, subsidizing international trade by funding higher bridges, deeper harbors, stronger wharves and larger cranes to accommodate megaships, as well as the vessels themselves. Shippers have borne a considerable burden as well. To reduce the risk that goods won’t arrive on time, businesses are keeping more inventory, shipping via multiple routings and producing in multiple factories rather than in giant sole-source plants. Such measures, reversing a decades-long focus on minimizing production, transportation and inventory costs, don’t flatter the bottom line. With proper accounting, the globalization of manufacturers’ supply chains no longer seems such a bargain, regardless of whether populists and pandemics are raging.

#### Anticompetitive shipping behavior has global and long-term economic implications

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Realizing handsome profits overall, the one sector which did unexpectedly well in 2020 was liner (container) shipping. The market leader, Maersk Line, reported record profits for Q3 of 2020 and again in Q4. The company reported another record pre-tax profit for Q1 of 2021 that was only just below the value achieved for the whole of 2020 (Baker 2021). Anecdotal evidence suggests that North American and European shippers may be presently paying rates five to ten times more than what they would normally pay, and many of them may have to wait for weeks, if not months, to secure a slot on a ship, or find a container to bring their orders from Asia (Attinasi et al. 2021). Judging on the basis of their shipbuilding program, it would appear that the overall positive perspective on 2021 described above is a vision shared by container carriers. As reported by Chambers (2021a), as of 5 March 2021, a total of 147 boxships have been ordered since October 2020 (most of which are in the largest size categories), compared with just 40 ships ordered in the period January to September 2020. The order book as of that date already amounted to more than 360 ships, or 12% of deployed capacity, representing a remarkable level of gross capital formation, and a leading indicator, from an industry which is rather good at adjusting its supply to demand.2 In parallel to this trend, container manufacturers in China are struggling to cope with a very high demand for container production, due to a notable worldwide shortage which is driving up freight rates and the cost of transport (Youd 2021). Liner shipping had been quick to adjust supply to demand in H2 2020. Contrasting starkly with the current trend towards building new containerships, this was achieved with the ‘withdrawal’ of shipping capacity (20–30%) from the main trade lanes, something that has come to be known as blank sailings. By October 2020, blank sailings overall during the year had reached the impressive number of 515. Port calls were thus cancelled; frequency, connectivity and quality of service declined; call sizes increased; and the volume of laid-up tonnage rose as well, reaching record levels in H1 2020; by May 2020, it amounted to 11.6% of the deployed cellular container fleet. To further reduce supply, additional measures were adopted by carriers, such as slower speeds and longer routes, via the Cape of Good Hope rather than the Suez Canal for example; in May 2020, containership transits of the Suez Canal had fallen by 32% year-on-year, to settle at an all-time low of 330 passages (BIMCO 2020). These actions, but particularly blank sailings, allowed carriers to sustain freight rates at impressively profitable levels. As a result, shippers and international transport associations started to publicly express their discontent over carrier behaviour during the COVID-19 crisis. Complaints were naturally addressed to the competition authorities responsible for the regulation of international shipping in the world’s largest trade lanes, i.e. in the EU, USA (Federal Maritime Commission, FMC), China and Australia. The concerns expressed related to capacity management strategies; reduced levels of service; capacity withdrawals (blank sailings), lower schedule reliability; rolled containers; additional surcharges; equipment shortages, etc. Blank sailings, coupled with a burgeoning demand for liner shipping services can easily explain the surging freight rates and carrier profits which have continued to rise at a rapid pace, hitting record levels, as reflected in movements in the value of the Drewry Composite World Container Index (WCI). In the second week of December 2020, for example, a weekly change in the WCI of 23% (USD 793) was registered, or USD 4244 for a 40 ft. container. This was 166.6% higher than that of the same period in 2019. On 31 December, the WCI reached USD 4359, escalating to USD 5221 in the first week of 2021 (an increase of 185% year-on-year). In the same week, the annual changes in the individual freight rates reported to calculate the composite WCI for 40 ft. containers rose by 212% on Shanghai–Genoa (USD 8380); 282% on Shanghai–Rotterdam (USD 8882); 148% on Shanghai–New York (USD 6385); and 134% on Shanghai–Los Angeles (USD 4194). Meanwhile, the Transatlantic route New York–Rotterdam saw an increase of 31% (USD 690), while Rotterdam–New York decreased by 14% (USD 2185). Price inflation continues apace in 2021; at the time of writing (at the end of H1 2021), the WCI stands at a record value of USD 8061 per forty-foot equivalent unit (FEU), representing an increase of 332% above the previous year’s figure (Drewry 2021). The deus ex machina: Global Shipping Alliances Of course, there would be nothing wrong with the ‘capacity management’ strategies of carriers,3 were it not for the ‘coordinated’ manner in which they are implemented, amongst the members of consortia and alliances that, to a large extent, are exempted from antitrust regulation (Tang and Sun 2018). Concentration as well as vertical integration along the supply chain have been remarkable in liner shipping.4 In 1998, five alliances and three large independent shipping companies (MSC, CMA-CGM and Evergreen) co-existed. Ten years later, in 2008, the EU removed the exemption from competition law (effectively, antitrust immunity) which had been granted for years to liner shipping conferences.5 As a direct result of this, and amidst the negative impacts of the financial crisis, MSC and CMA-CGM ceased to remain independent, forming a new alliance in 2009. A few years later, in 2015, Maersk and Evergreen joined their respective alliances (2M and Ocean Alliance). In this way, the process of horizontal integration through alliances evolved to the current situation, whereby the top ten shipping companies, grouped in three alliances, control more than 90% of the transoceanic container traffic. Interestingly, no large independent carrier exists at present, while in the period 2005–2016 the top ten shipping companies controlled only 60% of the total fleet capacity. As such, there is a clear rationale for questioning both the competitiveness and contestability of the market (Hirata 2017). Although regulatory bodies, like the FMC in the USA, under pressure from shippers, have started to take a look at the causes of liner shipping profitability in the midst of a pandemic, it is unlikely that anything of substance will emerge from these inquiries. Indeed, there may be some good reasons for the leniency of the regulator: the shippers’ criticisms of global shipping alliances (GSA) have failed to recognize the crucial point that unfettered competition in declining cost industries (or industries of ‘increasing returns to scale’) pushes prices down to marginal costs – which are always below average costs – and competition under such circumstances will then become destructive. This is the main motivation behind the (conditional) exemption of GSAs from antitrust laws, and it is exactly this same reasoning that has allowed the continued operation of price-fixing liner conferences in countries where they can still operate legitimately (mainly in and around the continent of Asia). The only difference between the two systems, alliances and conferences, is that the former primarily seek to achieve profitability through cost control, while the latter do so through price-fixing. Finally, although blank sailings have helped carriers sustain rates, this is not without costs, given that laid-up ships (or their beneficial owners) still have to pay the bank, or the K/G investors who have to absorb the losses. Go to: Impact on container ports Many major ports with a strong gateway function saw their container throughput plunge in H1 2020. Notable examples included Rotterdam (−7%), Shanghai (−6.8%), Los Angeles (−17.1%), Hamburg (−14.7%), Le Havre (−29%), Barcelona (−20.5%) and Valencia (−9.1%). Only four major ports saw their volumes increase: Gioia Tauro (+52.5%), Tangier Med (+22%), Port Said-SCCT (+23.5%) and Antwerp (+0.4%).6 However, the spectacular revival of demand in H2 2020 translated immediately to increased demand for port services, with many ports reporting record throughput volumes in September, October and November 2020. To a certain extent, the rise in demand related to large-scale restocking, taking place first in North America in Q3 2020, and later in Europe in Q4 2020. As an example of this, the port of Los Angeles registered a historic surge in throughput of nearly 50% in H2 2020, and in the week before Christmas the port handled 94% more throughput than in the same week the year before (Port of Los Angeles 2021). This has been followed by another record period in Q1 2021, where throughput was 122% higher than in the previous year (Watkins 2021). Port and transport networks were caught unprepared for such a fast transition in demand, and as a result, supply chains suffered from shortages in equipment (chassis), truck drivers and dock labour; the latter due to quarantines and constraints on personal mobility due to COVID-19. Congestion and long turnaround times have been the result, with the build-up continuing into 2021. At the time of writing, the situation has improved to some extent but, as of 1 February 2021, there were a record 40 containerships in anchorage in the San Pedro Bay area, waiting to berth at the container terminals of Los Angeles and Long Beach (Miller 2021). Congestion at these two Californian ports has been so severe that, in order to avoid becoming embroiled in it, ships have been known to offload containers, impromptu, at Oakland, 600 km to the north (Chambers 2021b). However, as ships are stowed with a certain ship rotation in mind, such decisions are a stowage planner’s worst nightmare, and they tend to worsen the problem rather than solving it (Chou & Fang 2021).

#### Slow growth goes nuclear---unravels interdependence, hastens multipolarity, and invigorates nationalism.

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The rise of nationalism/populism is both cause and effect of this economic outlook. Lower growth will make every aspect of the liberal order more difficult to resuscitate post-Trump. Domestic politics will become more polarized and dysfunctional, as competition for diminishing resources intensifies. International collaboration, ad hoc or through institutions, will become politically toxic. Protectionism, in its multiple forms, will make economic recovery from “secular stagnation” a heavy lift, and the liberal hegemonic leadership and strong institutions that limited the damage of previous downturns, will be unavailable. A clear demonstration of this negative feedback loop is the economic damage being inflicted on the world by Trump’s trade war with China, which— despite the so-called phase one agreement—has predictably escalated from negotiating tactic to imbedded reality, with no end in sight. In a world already suffering from inadequate investment, the uncertainties generated by this confrontation will further curb the investments essential for future growth. Another demonstration of the intersection of structural forces is how populist-motivated controls on immigration (always a weakness in the hyper-globalization narrative) deprives developed countries of Summers’ recommended policy response to secular stagnation, which in a more open world would be a win-win for rich and poor countries alike, increasing wage rates and remittance revenues for the developing countries, replenishing the labor supply for rich countries experiencing low birth rates. Illiberal Globalization Economic weakness and rising nationalism (along with multipolarity) will not end globalization, but will profoundly alter its character and greatly reduce its economic and political benefits. Liberal global institutions, under American hegemony, have served multiple purposes, enabling states to improve the quality of international relations and more fully satisfy the needs of their citizens, and provide companies with the legal and institutional stability necessary to manage the inherent risks of global investment. But under present and future conditions these institutions will become the battlegrounds—and the victims—of geopolitical competition. The Trump Administration’s frontal attack on multilateralism is but the final nail in the coffin of the Bretton Woods system in trade and finance, which has been in slow but accelerating decline since the end of the Cold War. Future American leadership may embrace renewed collaboration in global trade and finance, macroeconomic management, environmental sustainability and the like, but repairing the damage requires the heroic assumption that America’s own identity has not been fundamentally altered by the Trump era (four years or eight matters here), and by the internal and global forces that enabled his rise. The fact will remain that a sizeable portion of the American electorate, and a monolithically pro-Trump Republican Party, is committed to an illiberal future. And even if the effects are transitory, the causes of weakening global collaboration are structural, not subject to the efforts of some hypothetical future US liberal leadership. It is clear that the US has lost respect among its rivals, and trust among its allies. While its economic and military capacity is still greatly superior to all others, its political dysfunction has diminished its ability to convert this wealth into effective power.13 It will furthermore operate in a future system of diffusing material power, diverging economic and political governance approaches, and rising nationalism. Trump has promoted these forces, but did not invent them, and future US Administrations will struggle to cope with them. What will illiberal globalization look like? Consider recent events. The instruments of globalization have been weaponized by strong states in pursuit of their geopolitical objectives. This has turned the liberal argument on behalf of globalization on its head. Instead of interdependence as an unstoppable force pushing states toward collaboration and convergence around market-friendly domestic policies, states are exploiting interdependence to inflict harm on their adversaries, and even on their allies. The increasing interaction across national boundaries that globalization entails, now produces not harmonization and cooperation, but friction and escalating trade and investment disputes.14 The Trump Administration is in the lead here, but it is not alone. Trade and investment friction with China is the most obvious and damaging example, precipitated by China’s long failure to conform to the World Trade Organization (WTO) principles, now escalated by President Trump into a trade and currency war disturbingly reminiscent of the 1930s that Bretton Woods was designed to prevent. Financial sanctions against Iran, in violation of US obligations in the Joint Comprehensive Plan Of Action (JCPOA), is another example of the rule of law succumbing to geopolitical competition. Though more mercantilist in intent than geopolitical, US tariffs on steel and aluminum, and their threatened use in automotives, aimed at the EU, Canada, and Japan,15 are equally destructive of the liberal system and of future economic growth, imposed as they are by the author of that system, and will spread to others. And indeed, Japan has used export controls in its escalating conflict with South Korea16 (as did China in imposing controls on rare earth,17 and as the US has done as part of its trade war with China). Inward foreign direct investment restrictions are spreading. The vitality of the WTO is being sapped by its inability to complete the Doha Round, by the proliferation of bilateral and regional agreements, and now by the Trump Administration’s hold on appointments to WTO judicial panels. It should not surprise anyone if, during a second term, Trump formally withdrew the US from the WTO. At a minimum it will become a “dead letter regime.”18 As such measures gain traction, it will become clear to states—and to companies—that a global trading system more responsive to raw power than to law entails escalating risk and diminishing benefits. This will be the end of economic globalization, and its many benefits, as we know it. It represents nothing less than the subordination of economic globalization, a system which many thought obeyed its own logic, to an international politics of zero-sum power competition among multiple actors with divergent interests and values. The costs will be significant: Bloomberg Economics estimates that the cost in lost US GDP in 2019- dollar terms from the trade war with China has reached $134 billion to date and will rise to a total of $316 billion by the end of 2020.19 Economically, the just-in-time, maximally efficient world of global supply chains, driving down costs, incentivizing innovation, spreading investment, integrating new countries and populations into the global system, is being Balkanized. Bilateral and regional deals are proliferating, while global, nondiscriminatory trade agreements are at an end. Economies of scale will shrink, incentivizing less investment, increasing costs and prices, compromising growth, marginalizing countries whose growth and poverty reduction depended on participation in global supply chains. A world already suffering from excess savings (in the corporate sector, among mostly Asian countries) will respond to heightened risk and uncertainty with further retrenchment. The problem is perfectly captured by Tim Boyle, CEO of Columbia Sportswear, whose supply chain runs through China, reacting to yet another ratcheting up of US tariffs on Chinese imports, most recently on consumer goods: We move stuff around to take advantage of inexpensive labor. That’s why we’re in Bangladesh. That’s why we’re looking at Africa. We’re putting investment capital to work, to get a return for our shareholders. So, when we make a wager on investment, this is not Vegas. We have to have a reasonable expectation we can get a return. That’s predicated on the rule of law: where can we expect the laws to be enforced, and for the foreseeable future, the rules will be in place? That’s what America used to be.20 The international political effects will be equally damaging. The four structural forces act on each other to produce the more dangerous, less prosperous world projected here. Illiberal globalization represents geopolitical conflict by (at first) physically non-kinetic means. It arises from intensifying competition among powerful states with divergent interests and identities, but in its effects drives down growth and fuels increased nationalism/populism, which further contributes to conflict. Twenty-first-century protectionism represents bottom-up forces arising from economic disruption. But it is also a top-down phenomenon, representing a strategic effort by political leadership to reduce the constraints of interdependence on freedom of geopolitical action, in effect a precursor and enabler of war. This is the disturbing hypothesis of Daniel Drezner, argued in an important May 2019 piece in Reason, titled “Will Today’s Global Trade Wars Lead to World War Three,”21 which examines the pre-World War I period of heightened trade conflict, its contribution to the disaster that followed, and its parallels to the present: Before the First World War started, powers great and small took a variety of steps to thwart the globalization of the 19th century. Each of these steps made it easier for the key combatants to conceive of a general war. We are beginning to see a similar approach to the globalization of the 21st century. One by one, the economic constraints on military aggression are eroding. And too many have forgotten—or never knew—how this played out a century ago. …In many ways, 19th century globalization was a victim of its own success. Reduced tariffs and transport costs flooded Europe with inexpensive grains from Russia and the United States. The incomes of landowners in these countries suffered a serious hit, and the Long Depression that ran from 1873 until 1896 generated pressure on European governments to protect against cheap imports. …The primary lesson to draw from the years before 1914 is not that economic interdependence was a weak constraint on military conflict. It is that, even in a globalized economy, governments can take protectionist actions to reduce their interdependence in anticipation of future wars. In retrospect, the 30 years of tariff hikes, trade wars, and currency conflicts that preceded 1914 were harbingers of the devastation to come. European governments did not necessarily want to ignite a war among the great powers. By reducing their interdependence, however, they made that option conceivable. …the backlash to globalization that preceded the Great War seems to be reprised in the current moment. Indeed, there are ways in which the current moment is scarier than the pre-1914 era. Back then, the world’s hegemon, the United Kingdom, acted as a brake on economic closure. In 2019, the United States is the protectionist with its foot on the accelerator. The constraints of Sino-American interdependence—what economist Larry Summers once called “the financial balance of terror”—no longer look so binding. And there are far too many hot spots—the Korean peninsula, the South China Sea, Taiwan—where the kindling seems awfully dry. Multipolarity We can define multipolarity as a wide distribution of power among multiple independent states. Exact equivalence of material power is not implied. What is required is the possession by several states of the capacity to coerce others to act in ways they would otherwise not, through kinetic or other means (economic sanctions, political manipulation, denial of access to essential resources, etc.). Such a distribution of power presents inherently graver challenges to peace and stability than do unipolar or bipolar power configurations,22 though of course none are safe or permanent. In brief, the greater the number of consequential actors, the greater the challenge of coordinating actions to avoid, manage, or de-escalate conflicts. Multipolarity also entails a greater potential for sudden changes in the balance of power, as one state may defect to another coalition or opt out, and as a result, the greater the degree of uncertainty experienced by all states, and the greater the plausibility of downside assumptions about the intentions and capabilities of one’s adversaries. This psychology, always present in international politics but particularly powerful in multipolarity, heightens the potential for escalation of minor conflicts, and of states launching preventive or preemptive wars. In multipolarity, states are always on edge, entertaining worst-case scenarios about actual and potential enemies, and acting on these fears—expanding their armies, introducing new weapon systems, altering doctrine to relax constraints on the use of force—in ways that reinforce the worst fears of others. The risks inherent in multipolarity are heightened by the attendant weakening of global institutions. Even in a state-centric system, such institutions can facilitate communication and transparency, helping states to manage conflicts by reducing the potential for misperception and escalation toward war. But, as Waheguru Pal Singh Sidhu argues in his chapter on the United Nations, the influence of multilateral institutions as agent and actor is clearly in decline, a result of bottom-up populist/nationalist pressures experienced in many countries, as well as the coordination problems that increase in a system of multiple great powers. As conflict resolution institutions atrophy, great powers will find themselves in “security dilemmas”23 in which verification of a rival’s intentions is unavailable, and worst-case assumptions fill the gap created by uncertainty. And the supply of conflicts will expand as a result of growing nationalism and populism, which are premised on hostility, paranoia, and isolation, with governments seeking political legitimacy through external conflict, producing a siege mentality that deliberately cuts off communication with other states. Finally, the transition from unipolarity (roughly 1989–2007) to multipolarity is unregulated and hazardous, as the existing superpower fears and resists challenges to its primacy from a rising power or powers, while the rising power entertains new ambitions as entitlements now within its reach. Such a “power transition” and its dangers were identified by Thucydides in explaining the Peloponnesian Wars,24 by Organski (the “rear-end collision”)25 during the Cold War, and recently repopularized and brought up to date by Graham Allison in predicting conflict between the US and China.26 A useful, and consequential illustration of the inherent challenge of conflict management during a power transition toward multipolarity, is the weakening of the arms control regime negotiated by the US and the Soviet Union during the Cold War. Despite the existential, global conflict between two nuclear armed superpowers embracing diametrically opposed world views and operating in economic isolation from each other, the two managed to avoid worst-case outcomes. They accomplished this in part by institutionalizing verifiable limits on testing and deployment of both strategic and intermediate-range nuclear missiles. Yet as diplomatically and technically challenging as these achievements were, the introduction of a third great power, China, into this two-country calculus has proven to be a deal breaker. Unconstrained by these bilateral agreements, China has been free to build up its capability, and has taken full advantage in ramping up production and deployment of intermediate-range ground-launched cruise missiles, thus challenging the US ability to credibly guarantee the security of its allies in Asia, and greatly increasing the costs of maintaining its Asian regional hegemony. As a result, the Intermediate Nuclear Force treaty is effectively dead, and the New Start Treaty, covering strategic missiles, is due to expire next year, with no indication of any US–Russian consensus to extend it. The US has with logic indicated its interest in making these agreements trilateral; but China, with its growing power and ambition, has also logically rejected these overtures. Thus, all three great powers are entering a period of nuclear weapons competition unconstrained by the major Cold War arms control regimes. In a period of rapid advances in technology and worsening great power relations, the nuclear competition will be a defining characteristic of the next decade and beyond. This dynamic will also complicate nuclear nonproliferation efforts, as both the demand for nuclear weapons (a consequence of rising regional and global insecurity), and supply of nuclear materials and technology (a result of the weakening of the nonproliferation regime and deteriorating great power relations) will increase. Will deterrence prevent war in a world of several nuclear weapons states, (the current nuclear powers plus South Korea, Iran, Saudi Arabia, Japan, Turkey), as it helped to do during the bipolar Cold War? Some neorealist observers view nuclear weapons proliferation as stabilizing, extending the balance of terror, and the imperative of restraint, to new nuclear weapons states with much to fight over (Saudi Arabia and Iran, for example).27 Others,28 examining issues of command and control of nuclear weapons deployment and use by newly acquiring states, asymmetries in doctrines, force structures, and capabilities between rivals, the perils of variable rates in transition to weapons deployment, problems of communication between states with deep mutual grievances, the heightened risk of transfer of such weapons to non-state actors, have grave doubts about the safety of a multipolar, nuclear-armed world.29 We can at least conclude that prudence dictates heightened efforts to slow the pace of proliferation, while realism requires that we face a proliferated future with eyes wide open. The current distribution of power is not perfectly multipolar. The US still commands the world’s largest economy, and its military power is unrivaled by any state or combination of states. Its population is still growing, despite a recent decline in birth rates. It enjoys extraordinary geographic advantages over its rivals, who are distant and live in far worse neighborhoods. Its economy is less dependent on foreign markets or resources. Its political system has proven—up to now—to be resilient and adaptable. Its global alliance system greatly extends its capacity to defend itself and shape the world to its liking and is still intact, despite growing doubts about America’s reliability as a security guarantor. Based on these mostly material and historical criteria, continued American primacy would seem to be a good bet, if it chooses to use its power in this way.30 So why multipolarity? The clearest and most frequently cited evidence for a widening distribution of global power away from American unipolarity is the narrowing gap in GDP between the US and China. The IMF’s World Economic Outlook forecasts a $0.9 trillion increase in US GDP for 2019–2020, and a $1.3 trillion increase for China in the same period.31 Many who support the American primacy case argue that GDP is an imperfect measure of power, that Chinese GDP data is inflated, that its growth rates are in decline while Chinese debt is rapidly increasing, and that China does poorly on other factors that contribute to power—its low per capita GDP, its political succession challenges, its environmental crisis, its absence of any external alliance system. Yet GDP is a good place to start, as the single most useful measure and long-term predictor of power. It is from the overall economy that states extract and apply material power to leverage desired behavior from other states. It is true that robust future Chinese growth is not guaranteed, nor is its capacity to convert its wealth to power, which is a function of how well its political system works over time. But this is equally the case for the US, and considering recent political developments is not a given for either country. As an alternative to measuring inputs—economic size, political legitimacy, technological innovation, population growth—in assessing relative power and the nature of global power distribution, we should consider outputs: what are states doing with their power? The input measures are useful, possibly predictive, but are usually deployed in the course of making a foreign policy argument, sometimes on behalf of a reassertion of American primacy, sometimes on behalf of retrenchment. As such, their objectivity (despite their generous deployment of “data”) is open to question. What is undeniable, to any clear-eyed observer, is a real decline in American influence in the world, and a rise in the influence of other powers, which predates the Trump administration but has accelerated into America’s free fall over the last four years. This has produced a de facto multipolarity, whether explainable in the various measures of power—actual and latent—or not. This decline results in part from policy mistakes: a reckless squandering of material power and legitimacy in Iraq, an overabundance of caution in Syria, and now pure impulsivity. But more fundamentally, it is a product of relative decline in American capacity—political and economic—to which American leadership is adjusting haphazardly, but in the direction of retrenchment/restraint. It is highly revealing that the last two American presidents, polar opposites in intellect, temperament and values, agreed on one fundamental point: the US is overextended, and needs to retrench. The fact that neither Obama nor Trump (up to this point in his presidency) believed they had the power at their disposal to do anything else, tells us far more about the future of American power and policy—and about the emerging shape of international relations—than the power measures and comparisons made by foreign policy advocates. Observation of recent trends in US versus Russian relative influence prompts another question: do we understand the emerging characteristics of power? Rigorously measuring and comparing the wrong parameters will get us nowhere at best and mislead us into misguided policies at worst. How often have we heard, with puzzlement, that Putin punches far above his weight? Could it be that we misunderstand what constitutes “weight” in the contemporary and emerging world? Putin may be on a high wire, and bound to come crashing down; but the fact is that Russian influence, leveraging sophisticated communications/social media/influence operations, a strong military, an agile (Putin-dominated) decision process, and taking advantage of the egregious mistakes by the West, has been advancing for over a decade, shows no sign of slowing down, and has created additional opportunities for itself in the Middle East, Europe, Asia, Latin America, the Arctic. It has done this with an economy roughly the size of Italy’s. There are few signs of a domestic political challenge to Putin. His external opponents are in disarray, and Russia’s main adversary is politically disabled from confronting the problem. He has established Russia as the Middle East power broker. He has reached into the internal politics of his Western adversaries and influenced their leadership choices. He has invaded and absorbed the territory of neighboring states. His actions have produced deep divisions within NATO. Again, simple observation suggests multipolarity in fact, and a full explanation for this power shift awaiting future historians able to look with more objectivity at twenty-first-century elements of power. When that history is written, surely it will emphasize the extraordinary polarization in American politics. Was multipolarity a case of others finding leverage in new sources of power, or the US underutilizing its own? The material measures suggest sufficient capacity for sustained American primacy, but with this latent capacity unavailable (as perceived, I believe correctly, by political leadership) by virtue of weakening institutions: two major parties in separate universes; a winner-take-all political mentality; deep polarization between the parties’ popular bases of support; divided government, with the Presidency and the Congress often in separate and antagonistic hands; diminishing trust in the permanent government, and in the knowledge it brings to important decisions, and deepening distrust between the intelligence community and policymakers; and, in Trump’s case, a chaotic policy process that lacks any strategic reference points, mis-communicates the Administration’s intentions, and has proven incapable of sustained, coherent diplomacy on behalf of any explicit and consistent set of policy goals. Rising Nationalism/Populism/Authoritarianism The evidence for these trends is clear. Freedom House, the go-to authority on the state of global democracy, just published its annual assessment for 2020, and recorded the fourteenth consecutive year of global democratic decline and advancing authoritarianism. This dramatic deterioration includes both a weakening in democratic practice within states still deemed on balance democratic, and a shift from weak democracies to authoritarianism in others. Commitment to democratic norms and practices—freedom of speech and of the press, independent judiciaries, protection of minority rights—is in decline. The decline is evident across the global system and encompasses all major powers, from India and China, to Europe, to the US. Right-wing populist parties have assumed power, or constitute a politically significant minority, in a lengthening list of democratic states, including both new (Hungary, Poland) and established (India, the US, the UK) democracies. Nationalism, frequently dismissed by liberal globalization advocates as a weak force when confronted by market democracies’ presumed inherent superiority, has experienced a resurgence in Russia, China, the Middle East, and at home. Given the breadth and depth of right-wing populism, the raw power that promotes it—mainly Russian and American—and the disarray of its liberal opponents, this factor will weigh heavily on the future. The major factors contributing to right-wing populism and its global spread is the subject of much discussion.32 The most straightforward explanation is rising inequality and diminished intergenerational mobility, particularly in developed countries whose labor-intensive manufacturing has been hit hardest by the globalization of capital combined with the immobility of labor. Jobs, wages, economic security, a reasonable hope that one’s offspring has a shot at a better life than one’s own, the erosion of social capital within economically marginalized communities, government failure to provide a decent safety net and job retraining for those battered by globalization: all have contributed to a sense of desperation and raw anger in the hollowed-out communities of formerly prosperous industrial areas. The declining life expectancy numbers33 tell a story of immiseration: drug addition, suicide, poor health care, and gun violence. The political expression of such conditions of life should not be surprising. Simple, extremist “solutions” become irresistible. Sectarian, racial, regional divides are strengthened, and exclusive identities are sharpened. Political entrepreneurs offering to blow up the system blamed for such conditions become credible. Those who are perceived as having benefited from the corrupt system—long-standing institutions of government, foreign countries and populations, immigrants, minorities getting a “free ride,” elites—become targets of recrimination and violence. The simple solutions of course, don’t work, deepening the underlying crisis, but in the process politics is poisoned. If this sounds like the US, it should, but it also describes major European countries (the UK, France, Italy, Germany, Poland, Hungary, the Czech Republic), and could be an indication of things to come for non-Western democracies like India. We have emphasized throughout this chapter the interaction of four structural forces in shaping the future, and this interaction is evident here as well. Is it merely coincidence that the period of democratic decline documented by Freedom House, coincides precisely with the global financial and economic crisis? Lower growth, increasing joblessness, wage stagnation, superimposed on longer-term widening of inequality and declining mobility, constitute a forbidding stress test for democratic systems, and many continue to fail. And if we are correct about secular stagnation, the stress will continue, and authoritarianism’s fourteen-year run will not be over for some time. The antidemocratic trend will gain additional impetus from the illiberal direction of globalization, with its growth suppressing protectionism, weaponization of global economic exchange, and weakening global economic institutions. Multipolarity also contributes, in several ways. The former hegemon and author of globalization’s liberal structure has lost its appetite, and arguably its capacity, for leadership, and indeed has become part of the problem, succumbing to and promoting the global right-wing populist surge. It is suffering an unprecedented decline in life expectancy, and recently a decline in the birth rate, signaling a degree of rot commonly associated with a collapsing Soviet Union. While American politics may once again cohere around its liberal values and interests, the time when American leadership had the self-confidence to shape the global system in its liberal image is gone. It may build coalitions of the like-minded to launch liberal projects, but there will be too much power outside these coalitions to permit liberal globalization of the sort imagined at the end of the Cold War. In multipolarity, the values around which global politics revolve will reflect the diversity of major powers, their interests, and the norms they embrace. Convergence of norms, practices, policies is out of the question. Global collective action, even in the face of global crises, will be a long shot. To expect anything else is fantasy. Unbrave New World and Future Challenges At the outset of this chapter we described these structural forces as interacting to produce more conflict and diminished prosperity. We also predicted a world with shrinking collective capacity to address new challenges as they arise. What specifically will such a world look like? We address below three principal challenges to global problem solving over the next decade. Interstate Conflict In the world experienced by most readers of this volume, conflict is observed within weak states, sometimes promoted by regional competitors, by terrorist groups, or by great powers, acting through surrogates or by indirect means. Sometimes, as in Syria, this conflict spills over to contiguous states and contributes to regional instability, and challenges other regions to respond effectively, a challenge that Europe has not met. Much of this will continue, but the global significance of such local conflicts will be greatly magnified by increasing great power conflict, which will feed—rather than manage or resolve—local instabilities and will in turn be exacerbated by them. Great powers will jockey for advantage, support their local partners, escalate preemptively. Conflicts initially confined to failing states or unstable regions will be redefined by great powers as global in scope and significance. This tendency of states to view local conflicts in the context of a zero-sum, global struggle for power is familiar to students of the Cold War, but now with the additional challenges to collective action, expanded uncertainty and worst-case thinking associated with the power transition to multipolarity. We can easily observe increased conflict in US-China relations, as we will in US-Russia relations as future US administrations try to make up for ground lost during the Trump presidency, especially in the Middle East. We can observe it among powerful states with mutual historical grievances, now with a weakening presence of the hegemonic security guarantor and having to consider the renationalization of their defense: Japan-South Korea, Germany-France. We can observe it among historical rivals operating in rapidly changing security landscapes: India-China. We can observe it within the Middle East, as internal rivalries are appropriated by regional powers in a contest for regional dominance. We can observe it clearly in Syria, where the regime’s violent suppression of Arab Spring resistance led to all-out civil war, attracted outside support to proxy forces by aspiring regional hegemons Saudi Arabia and Iran, enabled the rise of ISIS, and eventually to great power intervention, principally by Russia. In a world of effective great power collaboration or American primacy, the Syrian civil war might have been settled through power sharing or partition, or if not, contained within Syria. The collapse of Yugoslavia, occurring during a period of US “unipolarity” and managed effectively, demonstrates the possibilities. Instead, with the US retrenching, Middle East rivals unconstrained by great powers, and great power competition rising, the Syria civil war was fed by outside powers, then metastasized into the region, and—in the form of refugee flows—into Europe, fundamentally altering European politics. Libya may be at the early stages of this scenario. This is not the end of the Syria story. Russia has established itself as a major player in Syria and the Middle East’s power broker, the indispensable country with leverage throughout the region. China is poised to reap the financial and power benefits of Syrian reconstruction. The US has just demonstrated, in its act of war against the Iranian regime, its willingness, without consultation, to put its allies’ security in further jeopardy, accentuating the risks of security ties with Washington and generating added opportunities for Russia and China. The purpose here is not to critique US policy, but to point out the dramatically shifting power balance in a critical region, toward multipolarity. The dangers of such a shift will become apparent as some future US president attempts to reassert US influence in the region and finds a crowded playing field. Can a multipolar distribution of power among several states whose interests, values, and political practices are divergent, all experiencing bottom-up nationalist pressures, all seeking advantages in the oversupply of regional instability, be made to work? I think not. Will this more dangerous world descend into direct military confrontation between great powers, and could such confrontation lead to use of nuclear weapons? Here the question becomes, what will this more dangerous world actually look like; what instruments of coercion will be available to states as technology change accelerates; how will states employ these instruments; how will deterrence work (if at all) among several states with large but unequal levels of destructive capacity, weak command, and control, disparate— or opaque—strategies and simmering rivalries; can conflict management work in a world of weak institutions? The collapse of the Cold War era nuclear arms control regime, the threat to the Non-Proliferation Treaty represented by the demise of the JCPOA, and multiple indications of an accelerating nuclear arms race among the three principle powers, augurs badly. Given the structural forces at play, and without predicting the worst, we are indeed entering perilous times. Global Poverty and Inequality Despite the challenges of volatility and disruptive change inherent in globalization, the world under American liberal leadership has managed a dramatic reduction of extreme poverty. According to World Bank estimates, in 2015, 10 percent of the world’s population lived on less than $1.90 a day, down from nearly 36 percent in 1990.34 In fact, as of September 2018, half the world is now middle class or wealthier.35 The uneven success of the UN Millennium Development Goals (MDGs) exemplifies this achievement, and demonstrates what is possible when open markets are managed through strong global institutions, effective leadership and interstate collaboration. What this liberal hegemonic system did not achieve, however, was a fair distribution of the gains from globalization within states, and among those states that for various reasons were not full participants in this system. This record of partial achievement leaves us with a full agenda for the next fifteen years, but without the hegemonic leadership, strong institutions, ascendant liberalism or robust global growth that enabled previous gains. There are powerful reasons to question the sustainability of these poverty reduction gains, leading to doubts about the realization of the Sustainable Development Goals, which have replaced the MDGs as global development targets.36 (See Jens Rudbeck’s chapter and Sidhu’s UN chapter for SDGs). Skeptics have pointed to slowing global growth, specifically in China, whose demand for imported commodities was a major factor in developing country growth and job creation; growing protectionism in developed country markets, fueled by bottom-up forces of nationalism, and from top-down by a weakened global trading regime and increased geopolitical rivalry; the effects of accelerating climate change on agriculture, migration and communal conflict in poor countries; and the growth burst among poor countries from the rapid transition to more efficient use of resources, a transition that is now slowing down.37 Perhaps the greatest concern in this scenario is a general deterioration in the developing country foreign investment climate. Foreign direct investment (FDI) has been a major contributor to growth, job creation, and poverty alleviation among poor countries. It has incentivized growth=friendly policies, reduced corruption, introduced technology and effective management practices, and linked poor countries to foreign markets through global supply chains.38 It has stimulated growth of indigenous manufacturing and service companies to supply new foreign investments. It has been the major cause of economic convergence between rich and poor countries. From 2000 to 2009, developing economies’ growth rates were more than four percentage points higher than those of rich countries, pushing their share of global output from just over a third to nearly half.39 However, FDI flows into poor countries are imperiled by the structural forces discussed here. Political instability arising from slower growth and environmental stress will increase investors’ perception of higher risk, reinforcing their developed country bias. Protectionism among developed countries will threaten the global market access upon which manufacturing investment in developing countries is premised, causing firms to pare back their global supply chains. As companies retrench from direct investment in poor countries, the appeal to those countries of Chinese debt financed infrastructure projects, under the Belt-Road Initiative with little or no conditionality, but at the risk of “debt traps,” will increase. Global Warming The question posed at the beginning of this section is whether the international system, evolving toward multipolarity and rising nationalism, will find the collective political capital to confront challenges as they arise. Global warming is the mother of all challenges, and the weakness in the system’s capacity to respond is clear. With the two major political/economic powers and greenhouse gas emitters locked in deepening geopolitical conflict (and with one of them locked in climate change denial, possibly through 2024), the chances of significantly slowing global warming or even ameliorating its effects are very slim. We are reduced to the default option, nation-specific adaptation to climate change, which will impose rising human, political and economic costs on all, and will widen the gap between rich countries with adaptive capacity (of varying degrees), and the poor, who will suffer deteriorating economic, political, and social conditions. (For a contrary, optimistic view see Michael Shank’s chapter, which credits new actors—like cities—as playing a more constructive role in climate mitigation.) This would bring to a close liberal globalization’s greatest achievement; the raising of 1.1 billion people out of extreme poverty since 1990,40 with all its associated gains in quality of life (in the WHO Africa region, for example, life expectancy rose by 10.3 years between 2000 and 2016, driven mainly by improvements in child survival and expanded access to antiretrovirals for treatment of HIV).41 Several forces are at work here. The problem itself is graver—in magnitude and in rate of worsening—than predicted by climate scientists. The UN Intergovernmental Panel on Climate Change (IPCC), the major source of information on global warming, has consistently underpredicted the rate of climate deterioration. This holds true even for its “worst-case scenarios,” meaning that what was meant as a wake-up call has in fact reinforced complacency.42 (see Michael Shank’s chapter for further discussion of climate change). The IPCC, in its 2019 report, has tried to undo the damage by emphasizing the acceleration in the rate of warming and its effects, the only partially understood dynamic of climate change, and—given wide uncertainty—the possibility of unpleasant surprises yet to come. This strengthens the scientific case for urgency—to both severely limit greenhouse gas emissions, and to increase investment in ameliorating the effects. Unfortunately, the crisis comes at a moment when the climate for collective action is ice cold. Geopolitical competition incentivizes states to out produce each other, regardless of the environmental effects. Multipolarity complicates collective action. Economic stagnation mandates job creation, making regulation politically toxic. Bottom-up nationalism/populism causes states to pursue “relative gains,” meaning that if the nation is seen as gaining in a no-holds-barred economic competition with others, the negative environmental effects can be tolerated. A post-Trump presidency would help, with the US rejoining the Paris Agreement, and lending its weight to tighter regulation, increased R and D, and stronger economic incentives to reduce carbon emissions. Keep in mind, however, that President Obama was fully behind such efforts, but in a deeply polarized America was unable to implement measures needed to fulfill the Paris obligations through legislation, and his executive orders to do this were swiftly overturned by Trump.

#### Trade-peace theory is true. Neither COVID nor Ukraine thump.

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The war in Ukraine has led some pundits to declare the end of globalization. We heard that after 9/11, after the Great Recession, after the US/China trade war, and again after Covid, and none of those predictions have panned out. Ukraine will likely be no different, as the threat of war actually makes the argument for globalization stronger. There are two valid arguments for [sanctions](https://www.econlib.org/library/Enc/Sanctions.html). First, denying money and material to an enemy nation can reduce their ability to wage war. Second, the threat of sanctions makes countries less likely to “go rogue”. In general, I am rather skeptical of the efficacy of sanctions. I believe they are used far too often. And yet even I would not have favored allowing US firms to sell steel and oil to Germany and Japan during WWII. I don’t have strong views on what sanctions are appropriate for Russia today, except that the case for sanctions against Russia is stronger than for almost any other situation since WWII. But sanctions only work when there is globalization. If a country is an autarky, i.e., relying solely on domestic production, then sanctions are ineffective. People say, “Obviously globalization doesn’t work, as we still have bad things happen in the world.” Yes, the advantages of globalization have been oversold. (Recall the McDonald’s test.) But what is the counterfactual? Suppose we end globalization and each country becomes as autarkic as North Korea. Does that make the world more peaceful or more violent? Our best hope for world peace is to enmesh every country so deeply in a web of interdependence with its neighbors that even our ~~dimwitted~~ leaders will be able to see the negative sum nature of war. Globalization may not prevent war, but it makes war less likely at the margin. And if war does break out, economic interdependence gives us a weapon to use in place of violence. Globalization also makes the world a richer place. Economic development doesn’t guarantee peace, but greater wealth does make countries more peaceful, on average. They have more to lose from war.

#### 3---Megaships isolate India from global trade

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According to the ITF, direct port calls by ships are considered important because they reduce risks, feeder vessel costs, and turnaround time in comparison to the option of trans-shipment feedering[2] via other ports.[23] Ports are considered competitive when they are chosen more regularly for direct calls than other ports.[24] Maritime landside infrastructure limitations dictate direct call options. A terminal’s integration with the wider set of requirements in the supply chain decides the choice of routes.[25] Even if a terminal is large enough to handle the berthing of a mega-ship, it needs several large cranes, better yard management capability, increased automation, larger storage facilities, more inland connectivity, and enhanced labour productivity. Mega vessels seek speedy unloading of the large volumes they carry.[26] Most countries in the Indian Ocean have to deal with reduced direct port calls due to their inability to serve mega-ship port calls.[27] With the size of ships predicted to grow beyond 21,000 TEU after 2020, more countries could be increasingly cut off from direct calls unless they undertake extensive modernisation. India’s largest port, the Adani CMA Mundra Terminal Private Limited on its west coast, can currently accommodate ships only up to 18,000 TEU. The majority of India’s container traffic is therefore shipped through ports outside the country, mainly from Colombo and Singapore. India is developing six deep-water sea mega-ports for receiving mega-ships under its ambitious Sagarmala Project, though the project is still in its nascent stages.[28] Unless India invests in maritime infrastructure, it will be unable to attract direct port calls to its shores, and will be vulnerable to geopolitical risks emerging from the Chinese investments in Colombo’s Hambantota mega-port and Pakistan’s Gwadar mega-port.[29] Cities unable to manage land acquisition for mega-port complexes are in danger of becoming completely cut out of direct calls. Long-term market projections suggest that by mid-century, international trade could require container ships of up to 50,000 TEU capacity which are likely to sail exclusively between trans-shipment terminals and mega-port complexes.[30] Mega-ship port calls could therefore mark the beginning of the end for the link between cities and ports.[31]

#### Fear of isolation causes lash out

Mukherjee 20, Researcher on Asian Security with the Stimson Center. (Tuneer, Sino-Indian Maritime Competition: Shadow Fighting In The Indian Ocean, https://www.stimson.org/2020/sino-indian-maritime-competition-shadow-fighting-in-the-indian-ocean/)

Sino-Indian conflict has historically been restricted to the land domain. However, as both Beijing and New Delhi have opened their economies to global commerce, their dependency on sea-borne trade has exponentially increased. Both have come to realize the importance of naval power in enabling them to secure their sea lines of communication (SLOC), their primary concern being undisrupted energy access from the Middle East. To this end, both nations have outlined ambitious force modernization plans to develop a “blue-water navy” that can operate at longer distances from their homeland for sustained periods of time. As Beijing’s maritime security interests intersect with India’s, there has been a linear escalation in the interactions between the two naval forces, leading to benign competition between them in the Indian Ocean Region (IOR). The Malaccan Dilemma As early as 1985, Chinese naval planners began deploying squadrons for routine port calls in the Indian Ocean. 1 Over the years, this has evolved into Chinese naval taskforces engaged in security missions. In fact, in September 2019, India’s naval chief Admiral Karambir Singh asserted that at any given time on an average, about seven to eight Chinese ships operated in the area. This escalation of Chinese naval presence has been gradual and can be linked to China’s security dilemma over its access to SLOCs west of the Strait of Malacca. The “Malaccan Dilemma,” first touted by Chinese President Hu Jintao in 2003, was predicated around a crisis scenario in which China would be denied access to its trade and energy routes in the IOR. Since then, Beijing has stepped up its diplomatic, trade, and naval efforts to secure a foothold in the Indian Ocean. According to some estimates, around 40 percent of Chinese trade passes through the choke point every year. China’s Indian Ocean Outreach To address the “Malaccan Dilemma,” President Hu Jintao in 2004 initiated the policy of “new historic missions,” which entailed Chinese naval forces being deployed in the far seas for military operations other than war. The deployment of Chinese naval forces to the Gulf of Aden in 2008 for anti-piracy operations marked an inflection point in Sino-Indian maritime dynamics. It signaled Beijing’s intention of building a robust presence in the IOR to safeguard its interests. Since then, China has increased its footprint in the IOR by weaving together a patronage network in the Indian Ocean littoral countries. China has undertaken massive port development projects in countries such as Sri Lanka, Pakistan, and Bangladesh, under its 21st Century Maritime Silk Road initiative, accompanied by bountiful transfers of naval equipment and technology. All this has affected India’s strategic calculus, triggering fears of encirclement in what it considers its backyard. Shifting the Status Quo Notably, these Chinese endeavors resulted in three significant developments that have challenged the status quo in the Indian Ocean maritime theater. The first was the frequent deployment of Chinese submarines for “anti-piracy operations” in the region. This highly unusual move made Indian strategists wary of Beijing’s bona fide intentions in the IOR. The second was the inauguration of China’s first overseas naval base in Djibouti in 2017, which made concrete the prospect of a Chinese logistical support network in the region. The third is that, since 2015, Chinese research vessels have routinely plied the area collecting data and improving China’s knowledge of the hydrography, topography, and bathymetry of the waters. Such civilian missions help improve China’s operational knowledge of the IOR, while making it increasingly difficult for Indian forces to monitor Chinese activities in the region. India naval strategists fear these missions are aimed at augmenting Chinese subsurface maneuvers to counter India’s theatrical superiority. India’s Naval PostureIn the backdrop of their strategic competition and both countries’ efforts to arm themselves with the latest technology, Sino-Indian maritime rivalry raises concerns about an impending altercation between them in the high seas of the Indian Ocean.[…] In a likely scenario of a maritime confrontation between them in the region, their naval power will be well-matched. India’s biggest strategic advantage lies in its central position in the Indian Ocean, and its familiarity with the operating environment of the IOR. The Indian Navy has always maintained that its primary focus of operations is providing security for the Indian Ocean – protecting the homeland against external actors and maintaining sea control over the various SLOCs and chokepoints of the IOR. Thus, considering China’s increased presence, India has recalibrated its bearings and sought to improve its maritime domain awareness (MDA) in the IOR. It has adopted a more vigilant constabulary role using anti-submarine warfare equipment. Beginning in 2017, India initiated a new pattern of mission-based deployments in various areas of the IOR, conducting patrols around key SLOCs all year round. Taken together, these moves have amplified the Indian Navy’s operational awareness of the region. India has also initiated closer maritime cooperation with nations that are likewise cautious of China’s naval expansion. On the sidelines of the 2017 East Asia Summit in Manila, India, Japan, Australia, and the United States, took part in consultative discussions, reinvigorating the once abandoned Quadrilateral Security Dialogue. What came out of that summit and subsequent discussions, which have since been elevated to the ministerial level, was a loose framework for how to manage issues pertaining to the maritime commons and the concept of a free and open Indo-Pacific. The brainchild of Japanese Prime Minister Shinzo Abe, the Indo-Pacific essentially represents a realignment of the strategic backdrop against which the maritime security dynamics of Asia are set, reimagining the Indian and the Pacific Ocean as a unitary maritime theater. The United States has also supported this alignment by means of strategic and diplomatic outreach in the region via the Free and Open Indo-Pacific strategy. Washington and New Delhi have correspondingly cultivated a closer maritime security relationship, cementing strategic cooperation via a logistics exchange agreement in 2016 and an information sharing agreement in 2018. Comparing China and India’s Naval Capabilities In the backdrop of their strategic competition and both countries’ efforts to arm themselves with the latest technology, Sino-Indian maritime rivalry raises concerns about an impending altercation between them in the high seas of the Indian Ocean. China and India have progressively strengthened their naval capabilities over the years, investing in high value platforms such as nuclear-powered submarines, aircraft carriers, and autonomous unmanned vessels. Beijing and New Delhi have also made sustainable efforts to develop their C4ISR (Command, Control, Communications, Computers, Intelligence, Surveillance and Reconnaissance) capabilities by launching their own navigation satellites. However, as Figure 1 & 2 below indicate, there is a growing gap between the blue-water naval capabilities of the two nations, with China clearly ahead. Yet, it is also important to note that China’s primary focus of naval strength has been in its near seas surrounding the first island chain. The Indian Ocean, while important, is a secondary focus for Beijing. Comparatively, India has not engaged China with a counter-theater presence in the Western Pacific and has focused its efforts instead on amplifying its naval defense of the IOR. The tri-services base at the Andaman & Nicobar Islands serves as an important component of this effort. In a likely scenario of a maritime confrontation between them in the region, their naval power will be well-matched. Anticipating Future Conflict In September 2019, a Chinese research vessel was forced to retreat by Indian forces for operating inside the exclusive economic zone of the Andaman & Nicobar Islands without prior permission. The incident reminded both sides of the delicate intricacies surrounding maritime engagement in the open seas. Specific confidence-building mechanisms and crisis management protocols are nearly non-existent between the two navies. Save for statutory procedures guiding interactions on the high seas, Sino-Indian maritime interactions remain unregulated. As both countries’ naval forces come in contact more frequently, tensions loom on the horizon. China and India have been engaged in a competitive embrace with one another for a while now. Both sides realize the importance of a cooperative bilateral relationship but are unwilling to cede any strategic ground. In the likelihood of a situation where Beijing gains an upper hand in the continental realm, strategists in New Delhi might be tempted to implement access-denial measures against Chinese naval assets in the region, to tilt the strategic balance back in India’s favor. While a confrontation along their international border could be isolated, a similar scenario in the maritime domain is likely to have multifaceted implications far beyond New Delhi and Beijing.

#### That goes nuclear

De Silva 21, Department of Strategic Studies, General Sir Johnkotelawala Defence University, Disarmament, Indian Ocean and Strategic Externalities: The Case of Sri Lanka, Journal for Peace and Nuclear Disarmament Volume 4, 2021 - Issue 2)

Frank Hoffmann’s “Pink Flamingo” concept is pertinently applicable to the South Asian region (Barner and Bensahel 2015) since it highlights a disaster that a state or an entity would have noticed emerging but ignored and that could cause catastrophic devastation. Hoffman is of the view that Pink Flamingo situations are patently evident but deliberately disregarded by policymakers for diverse reasons. South Asia is prone to dangerous nuclear trends and they are often ignored by the policymakers of non-nuclear states. This situation is worsened due to the tendency of avoiding adherence to the international disarmament mechanisms by the emerging nuclear powers in the region. Neither India nor Pakistan is a party to the Nuclear Non-Proliferation Treaty (NPT). It is understood that if an accident flares up in any of these states it could escalate into a worse pitch due to the public panic. In such an atmosphere nobody can guarantee that South Asia is suitably prepared to handle the transnational after effects of a nuclear catastrophe. Even though the threat is imminent, none of the non-nuclear states in South Asia has paid adequate attention to mitigate it. Apart from the direct danger of an accident or nuclear confrontation, the neighboring states of nuclear powers also face the threat of strategic manipulation of their assets by nuclear states. The worrisome factor is a blissful underestimation by non-nuclear states about the gravity of the emerging and persistent problem. The lack of awareness on how to face such situations could result in an abrupt collapse of the security well-being of non-nuclear states due to factors that operate beyond their control. This paper attempts to reveal the dangers of the existing “pink flamingo” situation in South Asia through the lens of a non-nuclear state.

### 1AC---Protectionism

#### Advantage 2 is Protectionism:

#### The plan is key to trade resilience, the alternative is global protectionism

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I. RESILIENCE OF COMPETITION LAW SYSTEMS Crisis is inevitable. Crises will occur more or less frequently in different areas and markets. The frequency, severity, and breadth are what distinguish a crisis from an emergency. While there seems no bright line to distinguish the two, the establishment of emergencies typically involves some form of declaration. For example, the COVID-19’s situation might be considered a global crisis yet in some countries the effects were so severe that the governments declared an emergency. Competition law and policy have interacted with different crises throughout time. Yet, the interaction between competition law and emergencies happens less frequently. And emergencies are often said to require extraordinary responses. Discussions have been enduring about how law in general should deal with emergencies and whether emergencies require a different set of legal norms. Two fundamentally different approaches can be identified. On the one hand, those which assume that the existing norms are flexible enough to deal not only with a crisis but also with an emergency. This group is concerned about the impact that emergency laws and powers have on the functioning of society and individual freedoms. On the other hand, there are those which argue for a different set of legal rules for emergencies (often referred to as emergency laws and rules). On this side of the debate, the concern is that the powers that exist under the traditional system are not enough to effectively deal with the emergency situation. Moreover, the (extreme) stretching of the existing legal frameworks will create lasting damage that will affect the operation of the system substantially even once the emergency is over. As a research agenda for competition lawyers, this would mean examining in detail the pros and cons of such arguments in our area of law. It might even be desirable to work on designing a template and system that can be enacted and used once an emergency has been identified and declared. II. PROTECTIONISM VERSUS RESILIENCE The second research agenda is more closely related to the concept of resilience as such. As also witnessed in the contributions to this special JAE section on COVID-19 and competition law, there are a number of authors and institutions that expect a fall-out from this situation, in particular, with regard to global supply chains, industrial policy, and globalization and specialization as such. Such fears are certainly not unfounded. For example, the French President called for making France ‘fully and completely self-sufficient’ focusing on certain products and materials that have ‘strategic importance’.2 Beyond this focus on self-sufficiency, there are legitimate concerns regarding resilience. How resilient are the markets and the global supply chains in situations like the one created by COVID-19? In this regard, a closer engagement with the concept of resilience as studied in social and environmental sciences can be insightful. The theoretical frameworks used in the study of social–ecological systems explore a system’s resilience in three different dimensions.3 First, resilience stricto sensu (as mentioned above) is the capacity to deal with disturbances and the system’s ability to reorganize during change without losing its inherent identity, structure, function, and feedback loops. Secondly, adaptability defined as the capacity of actors active in a system to influence resilience stricto sensu. Thirdly, transformability comes into play when the system does not manage to stay within a critical threshold. It refers to the capacity to achieve a new stability as an entirely different system. An in-depth engagement with the concept of resilience allows to better distinguish measures genuinely aimed at improving resilience from those industrial policy agendas that are purely protectionist. III. CONCLUSION Resilience promises to be an important concept for competition law and policy in the years to come. The question of resilience relates to the capability of the competition law and policy system to maintain and adjust its current equilibrium state. But similarly, resilience as an objective might be prioritized by governments. A deeper engagement with the theory and literature on resilience by competition law and policy experts might help in distinguishing blunt industrial policy and protectionism from genuine efforts that improve resilience. For example, where state measures support national champions, but these measures provide little to no increase in resilience as compared to other policy options (eg stockpiling of goods). The interaction between these two different resilience-related research agendas seems also useful. For example, the distinction between purely protectionist measures and resilience-improving measures helps with maintaining the resilience of the current competition law and policy system.

#### Europe models the plan

Palma et al 21, is a US Legal and Enforcement Correspondent for Financial Times. Other authors: Kiran Stacy, Aime Williams, James Fontanella-Khan, and Javier Espinoza. (Stefania, 12-21-2021, “New US-EU co-operation on competition policy raises boardroom alarms,” Financial Times, https://www.ft.com/content/03a2df73-da6a-4bc5-b242-dd3ea71bcd6a)

Lina Khan’s selection as head of the US Federal Trade Commission has ushered in a new era of co-operation between regulators on both sides of the Atlantic, according to Margrethe Vestager, the EU’s competition chief. Vestager told the Financial Times she saw “a lot of alignment” with her American colleagues on policymaking and legal enforcement, as European regulators welcome a new age of trustbusting under US President Joe Biden. Her comments reflect a new closeness between competition regulators in the US, EU and UK as they pursue parallel cases into proposed deals by Facebook, Nvidia and Illumina. Officials in the Biden administration say such collaboration will be essential as they look to toughen America’s approach to competition law, especially in the technology sector. The transatlantic co-operation has raised alarms in US boardrooms, however, where executives have already been highly critical of Khan, who has been credited with overhauling the Democratic party’s comparatively hands-off approach to competition policy. By convincing EU authorities to take up the Biden administration’s priorities, critics argue, she has extended the power of an agency that has occasionally found itself constrained by US court rulings, most recently bringing a sweeping FTC case against Facebook. “We find it inspiring when we see the Facebook case that the FTC filed, and we follow their investigations,” Vestager told the FT about the commission’s case against the social media company. “I think it was really interesting that both Jonathan Kanter [the newly appointed chief of the US Department of Justice’s antitrust division], Lina Khan and I, we are different generations,” said Vestager, 53. “We have different years of experience . . . we have different educational backgrounds, but there’s a lot of alignment in the way that we think”. Despite Vestager’s warm words, some in corporate America argue that regulators are colluding to block transactions they do not like, even if they do not fall strictly under their jurisdictions. Sean Heather, senior vice-president of international regulatory affairs and antitrust at the US Chamber of Commerce, said: “International commitments direct antitrust regulators to keep their hands off deals that have zero legitimate local nexus to their jurisdiction.” He added: “‘Divide and conquer’ strategies among antitrust agencies to block mergers in order to evade a jurisdiction based review on the merits would be itself cartel behaviour.” Last week, Illumina took aim at the European Commission over its investigation into the biotech company’s $8bn takeover of Grail, even though Grail has no activities in Europe. Daniel Beard, the company’s lawyer, told a hearing at the European General Court: “If the commission is going to radically change policy, then businesses should know. Think about business certainty.” Illumina’s case is just one of three under scrutiny from regulators in the US and Europe, as the watchdogs across the Atlantic become increasingly aligned. US regulators earlier this month sued to block Nvidia’s acquisition of UK chip design company Arm from SoftBank, a deal valued at $82bn, following similar probes launched by the EU and UK. And last month, the UK’s Competition and Markets Authority ordered Facebook’s parent company Meta to unwind its $315m acquisition of Giphy. Meta complained about the judgment, not least because it said Giphy had no concrete plans to enter the UK market. People with knowledge of the probes into Nvidia and Illumina told the FT regulators in the US and Europe are in regular contact and have been sharing information about their cases. Earlier this month, Khan, Kanter and Vestager met in Washington, where they launched the EU-US Joint Technology Competition Policy Dialogue. As part of that, the two sides said their aim was “co-ordinating as much as possible on policy and enforcement”, especially in the technology sector. Kanter told the FT his unit “prioritises building international relationships” that help enforce antitrust laws. “Promoting economic liberty and competitive markets is a shared goal of many international competition enforcers,” he added. “I think that 10 years ago there might have been a couple of calls during [a] case,” said an official at the DoJ. During significant cases today, “there might be a weekly call . . .[or] more than once a week”. “The collaboration is quite strong right now,” the official added. “This is a pretty exciting time.” William Kovacic, a former Republican chair of the FTC and now a non-executive director of the UK CMA, said: “Efforts have intensified recently for a number of reasons. Not least, when dealing with markets as new and as complex as Big Tech, it is good to be able to pool resources and share information.” In recent years, European and American regulators have been united by the shared challenge of curbing the corporate power of the big technology groups, many of which have opaque revenue streams and business models. Vestager said: “This alignment of codes when it comes to digital — it’s really important that we can get together and discuss how our real life practice can set that into motion if we have cases.” Bill Baer, visiting fellow at the Brookings Institution and former head of the DoJ’s antitrust division, said: “It’s not so much a new approach as it is a recognition that these challenges are global and getting to good outcomes requires unusually close collaboration.” Early signs of such co-operation started under the Trump administration, when the UK’s CMA blocked the proposed $360m merger between the two US-based airline software companies Sabre and Farelogix, after the DoJ had lost its own case in court. But this joint approach was patchy, and subject to the whims of the former president, who disliked many large technology companies but often bridled at the idea of European regulators taking action against them. Biden, however, has prompted a much more fundamental rethink of US competition policy by appointing three progressives to the leading antitrust roles in his administration: Khan at the FTC, Kanter at the DoJ and Tim Wu as a White House adviser. All three have argued for tougher competition enforcement, especially in the technology sector. Khan made her name as an academic by calling for Amazon to be broken up. “For years US regulators viewed their European counterparts as anti-American socialists,” said one Washington-based lobbyist. “Now arguably the Americans are to the left of the Europeans.”

#### Europe is debating a balance of protectionism and competition law---wrong choice cause EU fracturing

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While U.S. President Joe Biden this week launched himself into the race to bolster American industry, ideologically divided Europeans are struggling to even get to the start line in their attempt to strengthen EU corporate power. The gulf between the American and EU approaches was laid bare on Wednesday, when Biden rolled out an executive order to review supply chains in vital goods ranging from medical kit to microchips, all with an eye to making America less vulnerable. On the same day, a disunited Europe had to delay for more than a month the launch of its own long-awaited industrial strategy to boost EU industry. That plan is now due on April 27. Three EU officials and diplomats said the delay was unavoidable because European countries and the European Commission in Brussels are still riven by fundamental ideological divisions over how aggressive or protectionist the bloc should be in asserting its industrial prowess. The debate hinges on core economic issues like whether the EU should reshore key sectors or make more use of state subsidies. The more assertive camp is led by France, Germany and EU Internal Market Commissioner Thierry Breton. But they are meeting fierce resistance from more liberal advocates of open economies in countries such as Sweden and the Netherlands, as well as in the powerful trade and competition departments of the European Commission. “The question at stake is whether Europe will go for the Trumpian doctrine of made-in-Europe and protectionism, or choose to strengthen the European tradition of openness,” said an EU diplomat from the more liberal camp. Biden has also raised concern in Europe with his "Buy American" push. When asked about the reason for the delay, a Commission spokesperson stressed the need for a unified "ambitious response" among all of the executive's departments. “This exercise requires that all Commission services provide a collective response commensurate with the scale and impact of the crisis,” the spokesperson said. The debate takes place against the backdrop of heightened tension with not only Washington, but particularly China, and raises existential questions on whether Europe sees itself as more of a stickler for rules-based free-trade orthodoxy or more of a competitor playing to win, à la Beijing. The coronavirus crisis also highlighted how Europe’s reliance on a handful or even a single country of origin for vital products and components, like active ingredients for medicines and microchips used by the car industry, can wreak havoc in its supply chains. This in turn spurred EU leaders last fall to ask the Commission to identify “strategic dependencies,” where Europe is over-reliant on certain supply chains, and to propose measures to address them. That's due to happen within the revamped industrial strategy. Sovereignty advocates Internal Market Commissioner Breton, a veteran French businessman who heads EU industry policy, is the most vocal proponent of a way more interventionist approach. Most controversially to the eurocrats in Brussels, he is willing to explore changing the hallowed rulebook on competition, particularly to invest public money in anything that's considered strategic to the EU's future economic success. “We are very attached to compliance with these rules. But it is also true that ... there is a game ongoing between the U.S. and China, which will obviously continue to harden, and we in Europe intend to play our part completely in this new strategic game,” he said at a press conference earlier this month, while adding that Europe "needs an industrial policy worthy of this name." Over in the Council, France and Germany lead the charge and this month called for wide-ranging measures in a joint paper. The ideas included: Tweaked merger rules to allow the formations of champions; looser subsidy rules to cover businesses’ running costs as well as companies’ investments in innovative technologies; and the launching of a number of cross-border ventures in a range of sectors from health to low-carbon industry, supported by EU and national funds. “Now is the moment to switch all industrial policy buttons to ‘power on’,” said German Economy Minister Peter Altmaier at the launch of the paper. France is also keen to bring back parts of its production in Europe or its neighborhood, a practice known as reshoring or near-shoring. "Either we want to be industrially independent or we don't," said Economy Minister Bruno Le Maire earlier this month, adding this would include investing massively in new technologies and protecting European businesses in sectors considered strategic from foreign takeover bids. The extent to which the Commission will heed their calls in its industrial policy paper is the subject of internal divisions. “It’s just a fact that we need to consider to what extent trade measures and competition rules have a role to play,” said an EU official with knowledge of the discussion, adding there are “forces of conservatism” within the Commission that oppose this. Free trade defenders EU Trade Commissioner Valdis Dombrovskis is at the vanguard of those who are clearly skeptical about the way that France and Germany want to push the agenda. He has broad support from countries like the Nordics, the Netherlands, Spain and several central European countries that fear that the industrial vision is mainly in the interests of Franco-German giants. “Even if the current crisis feeds the temptation to look inward, this is not the answer,” Dombrovskis said last Thursday, when he presented the Commission’s new trade strategy. Dombrovskis emphasized that the trade strategy’s key tenets are “open, sustainable, assertive." The notions of openness and "green trade" are omnipresent in the document, while tackling strategic dependencies remains in the background. The EU's smaller, trade-oriented countries are worried that the EU’s new but ambiguous mantra of “open strategic autonomy” is throwing the baby — the EU’s commitment to free and open trade — out with the bathwater. “You have to make sure Europe is not dependent on one country but that's a question of diversification, not autonomy,” said the EU diplomat from this camp. In a position paper dated January 25 and obtained by POLITICO, 12 EU countries noted that “the identification of critical areas must be based on a thorough assessment” including “security implications” and “wider economic effects,” and that any support measures should be carefully evaluated. “Not every sector and technology can or should be regarded as critical. For example, being important for future European competitiveness is and should not be sufficient to qualify for such targeted measures,” wrote the Czech Republic, Denmark, Estonia, Finland, Ireland, Latvia, Lithuania, Malta, the Netherlands, Slovakia, Spain and Sweden. The fear is that, with the U.K. gone, the bloc's missing an advocate of free and open trade, and that larger countries feel freer to featherbed their key industries. "Who's going to be the voice of open, seamless trade?" asked an EU industry representative who wished to remain anonymous. "In the 'open strategic autonomy,' who's going to stand for the 'open'?" Giorgio Leali and Sarah Anne Aarup contributed reporting.

#### 1---Protectionist spread collapses any European agenda

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Europe’s populists seem set to pull off a major win in the European parliamentary elections this week. But populism’s real challenge to European democracy goes far deeper than its ability to force ideas long regarded as extremist or unsavory into the political agenda. Populist parties, even when not in the majority, are splintering the political party system, making governing more difficult. If support for populism and anti-establishment parties continues to grow, European democracies will remain on a trajectory toward an era of [inaction] paralysis, unable to deliver results to an increasingly frustrated public. Europeans, like many Americans, have grown disenchanted with politics as usual. In Europe, the financial crisis of 2008 and especially the refugee crisis of 2015 dealt a major blow to centrist parties that advocated for open markets and open borders. Greeks resented the economic austerity measures imposed on them by the European Union. Germans never got to vote on Chancellor Angela Merkel’s decision to allow more than 1 million refugees into their country. As a result, a growing swath of Europeans no longer view mainstream political parties as representing their interests. Far-right populist parties have been the biggest beneficiaries of this growing resentment. Today far-right parties have a presence in 23 out of 28 European parliaments. As these parties gain a foothold in national parliaments, coalition-building — the bedrock of effective governance in parliamentary systems — is becoming increasingly difficult. More and more European citizens find themselves ruled by “weak coalition” governments, the results of political parties scrambling to form legislative majorities to keep the populists out. Such coalitions typically take months of horse-trading to form. In Sweden, the surge in support for the far-right Sweden Democrats in last fall’s elections meant that the center-left and center-right parties fell short of a majority. It took the government 130 days to form a minority government to shut the far right out. After Germany’s 2017 federal elections, there was an unusually prolonged period of nail-biting negotiations until the Christian Democrats (CDU) and the Social Democrats (SPD) formed a grand coalition that excluded the far-right Alternative for Germany (AfD). Regardless of the strategy pursued by centrists, the outcome is the same: a government that is too weak and mired in disagreements to deliver results. But the problem is much bigger than the immediate spike in support for the far right. The rise of new parties across the political spectrum is splintering party systems throughout Europe. In Spain, for example, the creation of new parties on the far right (Vox) and far left (Podemos) in 2014 transformed the country’s political system from a two-party system to one with five. Similarly, in Germany, the emergence of the far-right AfD in 2013 and the far-left Die Linke in 2007 contributed to the diffusion of power across seven national parties in the Bundestag. The Netherlands now has 13 parties in its parliament. Because politics at the European level reflect national-level politics, populist-fueled fragmentation is coming to the European parliament as well. The center-right (EPP) and the center-left (S&D) parliamentary groups are likely to lose their narrow combined majority. In Italy, Matteo Salvini’s party, the League, received only 6 percent in the previous elections five years ago, but will probably sweep to first place this year to lead the far-right opposition together with France’s Marine Le Pen. While Le Pen’s rebranded National Rally party is running neck and neck with President Emmanuel Macron’s En Marche, she and Salvini have announced a plan to join forces in a Europe of Nations and Freedom (ENF) group. With En Marche expected to forgo joining the centrist bloc in favor of the liberal coalition (ALDE), the center-left faction will split. And as Britain brings an anti-European Union Brexit party to the parliament, one thing is certain: This European parliament will be the most divided in the union’s history. The populist-fueled fracturing of politics is bad news for democracy. Not only does such fragmentation make it difficult to form a government, but it also impedes the ability to unite around a common vision or reach consensus. Recent elections suggest that Europe is just at the beginning of a growing trend toward fragmentation. As the number of conflicting interests grows, it will become more difficult for European governments to effectively address complex challenges such as sluggish economic growth, immigration and ineffective armies. In other words, populist-fueled fragmentation will produce political stasis that will make it difficult for democracy to deliver.

#### European fracturing and rearm cause World War III

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Even that path will bring its dangers, because in many respects Europe after the European Union will be a more dangerous place than it was during the Cold War. Then, the continent was divided and had far more nuclear weapons on its territory than it does today, including many on a high state of alert. The situation was fraught and few would wish to go back to it. But a military balance of sorts was preserved, underpinned not only by nuclear deterrence but eventually by arms control agreements too. Spheres of influence existed and for the most part both sides recognized them and acted accordingly. Over time, and especially after the close encounter with Armageddon represented by the Cuban Missile Crisis in 1962, crisis prevention and crisis management procedures were put in place to limit the risks. Intense espionage, hot conflict by proxy in other parts of the world, and a variety of sub-military forms of competition continued, but the Cold War stayed cold. By its end, its protagonists had managed to transition it from unmanaged competition to managed stand-off.1" In Europe after the EU the challenge will have to be faced all over again. Even without a fundamental confrontation of political ideas between the major powers it will be hard to avoid conflict. The challenge will not be to manage a status quo in the context of recognized spheres of influence and an agreed set of rules, but to manage an unfolding process of historical change on a continent whose rules have just imploded, where no recognized spheres of influence exist, and in a landscape littered with potential points of great-power friction. There is no reason to suppose that the political class and leadership elite that had failed to keep the EU together in the first place can find the wisdom and statecraft to rise to that challenge. And there is no reason either to suppose, where that elite has been replaced by one more nationalist in tone and policy content, that the outcome will be any better. If anything, it will be worse. History seems to teach us that the successful management of a balance of power can be achieved for a time but not indefinitely.145 It is a feat sometimes achieved by earlier generations of Europeans and on occasion, even for a prolonged period, but it is also one that in the end, and quite spectacularly, they were unable to sustain. A post-EU Europe will be inherently unstable. We may see wars in eastern Europe that trigger refugee flows to the west on a similar scale to those recently experienced from the south. We may see smaller wars into which larger European powers are pulled or miscalculations of interest that trigger conflict between them. And we may once again see a Europe where smaller states have their interests totally disregarded by those with greater clout. What we are unlikely to see, for a very long time at least, is a Europe of cooperative institutions and behaviours underpinned by common values and some shared rules of the road. We would not necessarily experience the new Dark Age that Winston Churchill warned of in 1940, but if the EU collapses we will be much nearer to it than to the sunlit uplands for which he and so many other Europeans fought.146

#### 2---Reducing trade tensions is key to check Chinese tech norms.

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

#### Chinese tech norms cause extinction.

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The system must also be adapted to deal with new issues that were not envisioned when the existing order was designed. Foremost among these issues is emerging and disruptive technology, including AI, additive manufacturing (or 3D printing), quantum computing, genetic engineering, robotics, directed energy, the Internet of things (IOT), 5G, space, cyber, and many others. Like other disruptive technologies before them, these innovations promise great benefits, but also carry serious downside risks. For example, AI is already resulting in massive efficiencies and cost savings in the private sector. Routine tasks and other more complicated jobs, such as radiology, are already being automated. In the future, autonomous weapons systems may go to war against each other as human soldiers remain out of harm’s way. Yet, AI is also transforming economies and societies, and generating new security challenges. Automation will lead to widespread unemployment. The final realization of driverless cars, for example, will put out of work millions of taxi, Uber, and long-haul truck drivers. Populist movements in the West have been driven by those disaffected by globalization and technology, and mass unemployment caused by automation will further grow those ranks and provide new fuel to grievance politics. Moreover, some fear that autonomous weapons systems will become “killer robots” that select and engage targets without human input, and could eventually turn on their creators, resulting in human extinction. The other technologies on this lisgt similarly balance great potential upside with great downside risk. 3D printing, for example, can be used to “make anything anywhere,” reducing costs for a wide range of manufactured goods and encouraging a return of local manufacturing industries.61 At the same time, advanced 3D printers can also be used by revisionist and rogue states to print component parts for advanced weapons systems or even WMD programs, spurring arms races and weapons proliferation.62 Genetic engineering can wipe out entire classes of disease through improved medicine, or wipe out entire classes of people through genetically engineered superbugs. Directed-energy missile defenses may defend against incoming missile attacks, while also undermining global strategic stability. Perhaps the greatest risk to global strategic stability from new technology, however, comes from the risk that revisionist autocracies may win the new tech arms race. Throughout history, states that have dominated the commanding heights of technological progress have also dominated international relations. The United States has been the world’s innovation leader from Edison’s light bulb to nuclear weapons and the Internet. Accordingly, stability has been maintained in Europe and Asia for decades because the United States and its democratic allies possessed a favorable economic and military balance of power in those key regions. Many believe, however, that China may now have the lead in the new technologies of the twenty-first century, including AI, quantum, 5G, hypersonic missiles, and others. If China succeeds in mastering the technologies of the future before the democratic core, then this could lead to a drastic and rapid shift in the balance of power, upsetting global strategic stability, and the call for a democratic- led, rules-based system outlined in these pages.63

### 1AC---Plan

#### Plan: The United States federal government should substantially increase prohibitions on private sector anticompetitive business practices by the private sector by the shipping industry.

### 1AC---Solvency

#### FMC (Federal Maritime Commission) enforcement deters alliances

O’Shea 17, an attorney who works on transportation and infrastructure issues, (Sean, 10-3-2017, Congress Must Stop Foreign Ocean Carriers From Harming U.S. Economy, Morning Consult, <https://bit.ly/3BxRtu9>)

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

#### The status quo thumps DAs BUT doesn’t solve case:

#### Crackdown is expected, but current legislation doesn’t address antitrust exemptions

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One of the oldest antitrust exemptions may yet fall victim to the pandemic as the global supply chain crisis causes federal policymakers to reevaluate the statutory immunity currently enjoyed by ocean carriers. Despite a year of turmoil in the ocean carriage supply chain, American consumers appear to have weathered the holiday shopping season with most of their gift giving intact. Many consumers did their part by shopping early. But government also played a significant role. President Biden issued an Executive Order promoting competition and took other actions designed to remedy price gouging and backlogs. Last month the House of Representatives passed by a 364-60 bipartisan vote the Ocean Shipping Reform Act, which would grant the Federal Maritime Commission additional remedial authority, including a mandate to adopt rules prohibiting the imposition of unjust and unreasonable fees by ocean carriers and terminal operators. The bill now goes to the Senate for consideration. Curiously, none of these efforts has addressed a more fundamental competition issue — the immunity granted under the Shipping Act for agreements among ocean carriers. For example, ocean carriers can reach agreements with competitors concerning price and capacity that otherwise could be per se unlawful under Sherman Act section 1. With shippers facing unprecedented price increases for container carriage—as much as a tenfold increase in the price to ship containers—is it time to revisit the statutory antitrust exemption under the Shipping Act ? The History of the Shipping Act Antitrust Exemption The Shipping Act of 1916 includes the oldest surviving statutory immunity from the antitrust laws. See ABA Section of Antitrust Law, Federal Statutory Exemptions from Antitrust Law (2007), at 36. A 1914 report to Congress found rampant collusion in the shipping industry, inter alia, as to price and route allocation. Congress sought to remedy these abuses in the 1916 Act by adopting one of the report’s alternative recommendations—the creation of a federal board (now known as the Federal Maritime Commission) to regulate, rather than to prohibit, these collusive agreements. Over time, Congress watered down even this limited oversight through deregulation. Under revisions to the Shipping Act in 1984 and 1998, if an ​inter-firm agreement filed with the Federal Maritime Commission meets procedural requirements, the Commission must let it take effect—subject to the right of the Commission (and only the Commission) to seek to enjoin it in court as anticompetitive by proving that it is “likely, by a reduction in competition, to produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost.” Further, ocean carriers may “adopt ‘voluntary’ guidelines regarding individual service contracts, which members to an agreement can use to signal expected behavior.”[1] Past Efforts to Eliminate the Shipping Act Antitrust Exemption In successive sessions in 1999 and 2001, then House Judiciary Committee chairs Henry Hyde and James Sensenbrenner introduced the “Free Market Antitrust Immunity Reform (“FAIR”) Act to eliminate the antitrust immunity for ocean carriers, while retaining the exemption for certain agreements among marine terminal operators. Each of these bills received strong support from the U.S. Department of Justice: “We do not believe that the ocean shipping industry has extraordinary characteristics that warrant departure from normal competition policy. … In the current era of expanding globalization of trade, in which we are ever more dependent upon an efficient transportation system, it is all the more important that our public policy promote full and open competition.”[2] Modern ocean carriage of freight containers continues to present multiple opportunities for supracompetitive price agreements among ocean carriers, marine terminal operators, and others in the shipping supply chain. Given the focus of President Biden’s Executive Order on reducing unfair overcharges in the ocean shipping industry, one may rightly presume that the Department of Justice’s antipathy toward the Shipping Act antitrust exemption remains unchanged, or is perhaps more urgent. What Revisiting the Shipping Act Antitrust Immunity Could Look Like The House-passed Ocean Shipping Reform Act would eliminate certain types of overcharges known as “detention” and demurrage” that have increased shipping costs, particularly during the pandemic. But the bill does not address the more basic concerns created by an antitrust exemption that permits cartel participants to set prices. After all, even a “reasonable” price set by a cartel can exceed prices that would be offered in a competitive market. With the House bill moving to the Senate, Congress again has the opportunity to revisit whether the Shipping Act exemption makes sense in the current environment, or at all. At least one trade association, the Consumer Technology Association (“CTA”), thinks it’s time to revisit and eliminate this exemption.[3] Even while praising House passage of a bill designed to eliminate shipping overcharges (known as “detention” and “demurrage”), CTA urged Congress “to remove the outdated and unjustifiable antitrust exemption, which gives foreign shippers a free pass to collude and raise prices to the detriment of U.S. consumers.”[4] The FAIR Act of 1999-2001 proposed an all-in approach that eliminated the antitrust exemption for ocean carriers in toto. More granular approaches could be adopted as well. For example, if Congress wishes to target a solution during the pandemic, it could eliminate the exemption for as long as Covid-19 disrupts container transportation, rather than adopt a permanent repeal. Or Congress could focus on more pernicious types of agreements such as price-fixing agreements, while permitting ocean carriers to continue entering into vessel-sharing agreements that at least in theory promote efficiency by combining containers from multiple carriers onto a single ship—similar to airline codesharing arrangements. As Senator Amy Klobuchar wrote in her recent book, “even a cursory review of the legislative and judicial history of America’s antitrust exemptions—one peppered with backroom deals in the halls of Congress—demonstrates that this area of the law is, at best, incoherent and confusing, and, at its worst, corrupt and unfair.”[5] With the House bill moving to the Senate, Congress has the opportunity to revisit whether the Shipping Act exemption makes sense in the current environment, or at all.

#### Current enforcement thumps

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The Biden administration recently issued a sweeping Executive Order [1] aimed at protecting and enhancing competition, and the transportation sector—including air, ocean, and rail—is among the industries specifically identified and likely to see heightened antitrust scrutiny under the new directives. This executive action was soon followed by the long-awaited announcement of Biden’s pick to lead the U.S. Department of Justice’s Antitrust Division (Division), Jonathan Kanter, who, assuming he is confirmed, is widely anticipated to oversee an era of vigorous antitrust enforcement under a Democratic administration and Congress. That goal was clear in recent remarks by current Acting Assistant Attorney General Richard Powers. In discussing the Division’s criminal enforcement trends, Powers noted that last fiscal year saw the most corporate fines and penalties of the past five years and the most open grand jury investigations in the last decade, and that the Division’s current number of indicted cases (17) across 14 different investigations is the most in modern history, and reaffirmed the Division’s ongoing objective to hold individual executives accountable for antitrust crimes.[2] Now more than ever, companies must be vigilant in ensuring compliance with competition laws. While the new executive order focuses on industry consolidation amongst the largest carriers and alliances that may hinder competition and increase prices, historically, the Division has repeatedly pursued conduct cases against firms suspected of cartel activity such as price fixing, market allocation, and bid rigging conspiracies, and clients should expect that enforcement focus to continue. The Division has an array of tools at its disposal for uncovering anticompetitive conduct. It relies heavily on its leniency program to encourage self-reporting of antitrust violations by providing strong incentives to cooperators,[3] but also employs traditional investigative resources such as the grand jury, search warrants and subpoenas, consensual monitoring such as audio or video tape recordings, wiretaps, and the like. The Division also coordinates with other federal agencies and its international counterparts in monitoring, investigating, and prosecuting cartel activity. Cooperation with international antitrust enforcers—most of which have leniency programs of their own—includes tactics such as coordinated searches or dawn raids, information and evidence sharing, and extradition agreements, as well as broader coordination of international enforcement strategy through organizations like the International Competition Network. As such, firms with global operations must ensure compliance with the antitrust regimes of multiple jurisdictions. In the United States, antitrust violations carry the threat of substantial corporate criminal fines—sometimes running into the hundreds of millions of dollars—as well as prison sentences for individual executives and employees, and this extends to foreign corporations and foreign nationals.[4] Firms also can face enormous private civil class action litigation exposure, as such cases typically follow announcement of criminal antitrust investigations within days, even without guilty pleas or convictions. Mere allegations of a possible antitrust violation can be enough to spur costly litigation. Thus, implementation of a robust, effective corporate antitrust compliance program is critical to educate employees and avoid problems before they arise.[5] This article provides a brief overview of recent criminal antitrust enforcement in the transportation sector, focusing on international air and ocean shipping, to exemplify likely areas of scrutiny and potential consequences of misconduct. Air transportation President Biden’s recent executive order directs the Department of Justice (DOJ) and the Department of Transportation to coordinate on competition issues in air transportation, with particular attention to anticompetitive practices impacting passenger travel, but also more broadly to ensure improved competition with respect to market entry and improved service and capacity. Historically, the industry has been monitored closely by global antitrust enforcers and has been the subject of numerous investigations, and that level of attention is expected to continue. In 2006, the Division commenced an international investigation of the air carrier industry in coordination with European authorities.[6] Leniency was granted to Lufthansa and Virgin Atlantic in exchange for their cooperation, revealing far-reaching conspiracies to fix fuel surcharges for cargo shipments and for passenger tickets.[7] The conspiracy was carried out through meetings and other communications in which the participants discussed and agreed to fix certain rates and surcharges, as well as to monitor and enforce them after implementation. British Airways and Korean Air Lines soon pleaded guilty to price fixing of the surcharges on both cargo and passenger flights, each paying $300 million in criminal fines, and also agreed to cooperate in the investigation. In all, 22 airlines and 21 executives have been charged in the DOJ investigation, more than $1.8 billion in criminal fines have been imposed, and eight executives have been sentenced to prison. Just last year, the DOJ obtained extradition of an air cargo executive, a Dutch national, who had been apprehended in Italy after nearly 10 years as a fugitive. She pleaded guilty and was sentenced to 14 months in prison (with credit for time held by the Italian government pending extradition) and ordered to pay a $20,000 criminal fine. Antitrust authorities’ attention to the air transport industry extends beyond large carriers alone. The market for air freight forwarding services also has been the subject of international enforcement activity. Between 2010 and 2013, the Division charged 16 freight forwarders with multiple conspiracies to fix and to impose on shippers certain freight forwarding service fees, including fuel surcharges and various security fees, for services provided in connection with international air freight forwarding during 2002–2007. The companies either pleaded or agreed to plead guilty and paid criminal fines totaling more than $120 million.[8] Ocean shipping With respect to the market for maritime transport, the Division shares enforcement duties with the Federal Maritime Commission (FMC). The FMC monitors the effects of ocean carrier alliances on competition and can bring civil actions in court to enjoin agreements if they are likely, by a reduction in competition, to result in unreasonable price increases or service reductions, or to substantially lessen competition in purchasing covered services.[9] The FMC Bureau of Enforcement investigates potential violations and can negotiate settlements and informal compromises of civil penalties, or may engage in formal FMC proceedings. The Biden Executive Order encourages the FMC to cooperate with DOJ on enforcement efforts—focusing on the significant fees imposed on U.S. exporters by increasingly consolidated foreign shipping conglomerates—pursuant to which the agencies signed a Memorandum of Understanding in July 2021 to enable regular collaboration and review of shipping industry competition issues. It thus seems likely that market participants can expect increased attention to the pricing practices of alliances of large ocean carriers. Most recently, ocean carriers engaged in transportation of “roll-on/roll-off”[10] cargo to and from the U.S. and elsewhere have been the target of a major international criminal investigation into a worldwide conspiracy from as early as 2006 through 2012, affecting hundreds of millions of dollars in commerce. Beginning in 2014, DOJ has brought charges in Maryland federal court—the most recent filed in 2018—against five carriers based in Japan, Norway, and Chile, plus 13 individual employees, for price fixing, bid rigging, and allocation of customers and routes. The court has ordered the carriers to pay a total of more than $255 million in criminal fines. To date, four individuals of those charged have pleaded guilty and been sentenced to prison terms ranging from 14 to 18 months plus a $20,000 fine. Others remain fugitives.[11] The deep-sea container shipping industry has been the subject of investigation as well. As a recent example, the Division raided the biannual “Box Club” meeting in 2017, serving subpoenas on CEOs of the major lines concerning potential price fixing. According to several carriers, the investigation concluded in 2019 without any charges or fines. This followed an earlier investigation by the European Commission’s Directorate-General for Competition (DG Comp), which opened formal proceedings in 2013 against several container shipping companies, concerned that their practice of publicly announcing intended price increases allowed them to exchange information on future pricing intentions. In 2016 the Commission accepted, and made legally binding, commitments by the companies to alter their pricing announcements to ensure transparency to customers and avoid competition concerns. As was the case in the air cargo industry, freight forwarding services for ocean shipping have been the subject of investigation as well. The Division recently investigated and charged a nationwide conspiracy to fix prices for international ocean freight forwarding services during 2010–2015, resulting in guilty pleas in 2018 and 2019. The Division also pursued a domestic shipping conspiracy to allocate customers, rig bids, and fix rates and surcharges levied on purchasers of coastal water transportation of freight (e.g., heavy equipment, perishable food items, medicine, and consumer goods) between the continental United States and Puerto Rico during the period 2002–2008, leading to charges against three companies and seven individuals. Between 2008 and 2013, the companies received fines ranging from $14–17 million each, and executives received prison sentences ranging from 7–60 months plus fines of $20,000 each. Importantly, on top of the criminal fines and prison sentences, each of the antitrust investigations in the air and ocean transportation markets that resulted in criminal penalties quickly spawned private plaintiff class action lawsuits seeking treble damages, costing the companies involved millions of dollars in defense and settlement costs. The best defense, as noted above, is for companies to educate their executives and employees about common antitrust traps and competitor interactions to avoid through implementation of a well-crafted, comprehensive, and effective antitrust compliance program. In the current antitrust enforcement climate, transportation industry clients can expect increased scrutiny of shipping rates, fees, and surcharges, as well as any action or conduct that may result in reduced competition among carriers. Companies are strongly encouraged to consult with experienced antitrust counsel before pursuing any strategy or course of action that could raise a red flag.

#### OSRA is being debated now (Ocean Shipping Reform Act of 2021) doesn’t end anti-competitive behavior yet is massive in expanding the scope of regulation

Dayen 21, executive editor of The American Prospect, author of Monopolized: Life in the Age of Corporate Power (2020) and Chain of Title: How Three Ordinary Americans Uncovered Wall Street’s Great Foreclosure Fraud (2016), which earned the Studs and Ida Terkel Prize, winner of the 2021 Hillman Prize for excellence in magazine journalism (David Dayen, 12-13-2021, “The Inflation-Fighting Bill You Don’t Know About,” The American Prospect, https://prospect.org/economy/inflation-fighting-bill-you-dont-know-about/)

Inflation is peaking at 6.8 percent. Real wages are falling, particularly among the middle class. Republicans smell blood, hoping to make rising prices the centerpiece of their midterm strategy. Democrats have pointed their own fingers, accusing the opposition of rooting against the economy for political gain rather than helping to fix the problems. Given all this, you could have easily overlooked that the most focused legislation to alleviate a key driver of inflation passed the House last Wednesday with 364 votes. The Ocean Shipping Reform Act of 2021 (OSRA 2021), the first update to ocean shipping rules in nearly 25 years, begins to reverse a punishing 1990s-era deregulation in the maritime portion of the supply chain. It’s unique in several ways: an anti-monopoly initiative from a federal government that has at best tolerated and at worst actively promoted monopolies for decades, a sharply bipartisan effort in a polarized and toxic Congress, and an expansion of regulatory power to structure markets that breaks with a federal bias toward self-regulation and laissez-faire posturing. And “it all began in an almond orchard and a rice field,” its co-author told me. Rep. John Garamendi (D-CA), who represents vast agricultural areas in Northern California, explained that exporters approached him earlier in the year with a problem. “They said, ‘We cannot get a container, and if we get one, we can’t afford it,’” Garamendi told me in an interview. In parallel, Rep. Dusty Johnson (R-SD) was hearing the exact same thing from exporters in his home state. Valley Queen Cheese, a local supplier, has over two million pounds of lactose sold to interests in New Zealand that have been waiting for an empty container for six weeks. According to Johnson’s office, shipping times dock-to-dock have increased from 50–60 days to 120 days. And prices to secure a spot on a ship have increased as much as tenfold. “We learned quickly that this was a market that is simply broken down,” Rep. John Garamendi said. Importers were having similar problems. Garamendi told me about a company in his district that sells plastic Christmas decorations; their imported goods are stacked at the bottom of seven other containers at a port. The company is being charged millions of dollars in “demurrage and detention” fees, designed to clear goods from port terminals and get containers back to ships, even though that company has no way of getting its goods off the dock. “We learned quickly that this was a market that is simply broken down,” Garamendi said. He teamed with Johnson to fix it, introducing OSRA 2021 in August. Within three months, it overwhelmingly passed the House. Sens. Amy Klobuchar (D-MN) and John Thune (R-SD) have indicated they would introduce a Senate companion, and a Senate hearing last week showed bipartisan interest in the issue. The White House has endorsed the bill. To find the root causes, you have to go back to how ocean carriers have used their concentrated power to exploit anyone who wants to send cargo anywhere. As Matt Stoller laid out last month, for most of the 20th century the shipping industry was regulated as a public utility, which of course it is, as getting goods to markets swiftly benefits us all. Under the old rules, ocean carriers could legally form alliances to set prices and manage routes, but all prices and fees had to be transparent; service had to be offered on equal terms with no individual rebates or volume discounts or geographic discrimination; and no exclusionary conduct, like promising slots to certain cargo, was permitted. Subsidies for the domestic shipbuilding industry ensured that U.S. carriers would play a vital role. The goal was to expand commerce by allowing trade to flow reasonably, with affordable access for cargo shippers and a stable business for ocean carriers. That all was brought to an end with the passage of the Ocean Shipping Reform Act of 1998. Shipping contracts became proprietary and secret deals permitted, while the antitrust exemption for carrier alliances remained in place. Meanwhile, domestic shipbuilding subsidies vanished. As a result, the top ten ocean carriers today control twice as much of the market, more than 80 percent, as they did in 1998. They are divvied up into three dominant carrier alliances, giving exporters even fewer choices. None of the major carriers are U.S.-based. As carriers consolidated, they built bigger ships, which couldn’t be docked at smaller ports, concentrating traffic at the larger ones (this is why the Ports of Los Angeles and Long Beach see 40 percent of all import traffic in the U.S.). They made volume discount deals with large retailers that guaranteed supply to them over smaller competitors. With the Ocean Shipping Reform Act of 1998, shipping contracts became proprietary and secret deals permitted, while the antitrust exemption remained in place. Moreover, as Garamendi pointed out, China entered the WTO 20 years ago this past week, rapidly becoming a dominant country for goods manufacturing. This extraordinary shift of production increased the global reliance on this narrow band of ocean carriers. “They’re able to collude, and plenty of them do,” Garamendi said. The exploitation expanded during COVID, with profit taking precedence over access or fairness. Garamendi heard from constituents that containers with Chinese imports were brought to the U.S., unloaded, and then immediately sent back to Asia, bypassing ports where exports could be sent off. Though this seems like a lost opportunity, “we discovered that the ocean shippers could make far more money turning that container around than waiting for agricultural exporters to load it and return it to the ship,” Garamendi said. These circumstances have been wildly lucrative for ocean carriers, while debilitating for exporters and consumers. Maersk, the world’s largest carrier, enjoyed its largest profits in 117 years last quarter. The record profits call into question whether the shipping industry is interested in solving the supply chain crisis, rather than profiting from it. That’s where the updated Ocean Shipping Reform Act comes in. The bill is at once modest and pretty radical in scope. In 1998, the Federal Maritime Commission (FMC) was stripped of most of its ability to investigate and impose regulations on ocean carrier contracts. Under the new legislation, the FMC can initiate investigations of practices in the shipping industry, and set enforcement measures. It can also apply minimum service standards to shipping contracts, and third parties could challenge contractual agreements if they find them to be anti-competitive. The bill also changes the FMC’s mission to one of reciprocal trade, and requires ocean carriers to accept cargo if it can be loaded into their containers, rather than just sailing off with empties. While the FMC is currently investigating demurrage and detention fees, under OSRA 2021, these fees would be subject to regulation and would have to be reasonable, ending the practice of charging companies for failing to get cargo that they cannot access off the docks (a pervasive problem that predates the pandemic, as this 2018 FMC fact-finding demonstrates). Records of these fees would have to be kept as well, and a new process for challenging the fees would be established, with the FMC playing an active role. “This supply chain crunch has laid bare many inefficiencies in the market today, and we have a chance to address those inefficiencies,” Johnson said in a floor speech last Wednesday. Other legislators from both parties heard about the same problem from their constituents, which created the push for reform. Over 360 state and local groups endorsed OSRA 2021. It also helped, as it often does in Washington, that large special interests joined in the complaint, counterbalancing the large ocean carriers. “Just in the last week I got a call from Walmart,” Garamendi told me. “A few hours later it was Amazon.” This coalition was able to ward off the World Shipping Council’s opposition. Overall, OSRA 2021 attempts, in a minor way, to shift the balance of power away from the ocean carrier cartel and back into the hands of democratically inclined interests, which have a role to play in structuring fair rules. The bill counts on the FMC being adequately aggressive and adequately funded; Garamendi said he would be watching next year’s budget closely to see if the agency has the resources necessary to do the job. Moreover, the infrastructure legislation passed earlier this year provides funding to improve ports and the networks that carry goods off them. More broadly, competition policy to address such imbalances of power has to be on the government’s menu, too. “The market system cannot operate with a cartel or collusion,” Garamendi said. “We have had more than 30 years of neglect. Nobody has a right to the American market, but everyone ought to have a fair opportunity in the market.” Anti-monopolists have been heartened by this legislation, because it actually intervenes in the public interest into markets that have obviously failed. Quietly, Congress is rediscovering its powers to actually operate in this fashion.

#### It's progressing through the senate

German 3-28, is Ag New Director. (Brian, 3-28-2022, “Ocean Shipping Reform Act Advances to Full Senate,” AgNet West, https://agnetwest.com/ocean-shipping-reform-act-advances-to-full-senate/)

Last week the Ocean Shipping Reform Act was approved by a voice vote in the U.S. Senate Commerce Committee. The bill is now headed to the full Senate for consideration. A version of the legislation has already passed through the U.S. House of Representatives as part of the Creating Opportunities for Manufacturing, Pre-Eminence in Technology, and Economic Strength (COMPETES) Act. The legislation would essentially empower the Federal Maritime Commission with more authority to regulate ocean carrier practices.

#### Maersk was subpoenaed by the DOJ

Dixon 3-17, is a general assignment reporter at Law360. (Gracie, 3-17-2022, “DOJ Subpoenas Shipping Giant Maersk Amid Antitrust Focus,” Law360, https://www.law360.com/articles/1474850/doj-subpoenas-shipping-giant-maersk-amid-antitrust-focus)

The U.S. Department of Justice has subpoenaed Maersk, the Danish shipping giant confirmed Friday, a move in line with President Joe Biden's State of the Union promise to "crack down" on rising ocean freight shipping costs following the industry's rapid consolidation. The subpoena for A.P. Moller Maersk comes less than a month after the White House announced a concerted effort by the DOJ and the Federal Maritime Commission to ensure that three global alliances that have come to dominate ocean carrier freight shipping in the past decade are complying with competition laws. According to a Maersk spokesperson, the subpoena is part of the DOJ's ongoing investigation into supply chain disruption. "We have not seen evidence of any actual or alleged wrongdoing on the part of Maersk and will continue to cooperate with the U.S. Department of Justice as they continue their investigation," the spokesperson added. The White House had outlined concerns that spot rates for freight shipping between the U.S. and Asia have jumped 1000% since January 2020, while the container shipping industry pulled in $190 billion in profits last year, a seven-fold increase from 2020, in a fact sheet issued ahead of the State of the Union address. "Right now, three global alliances, made up entirely of foreign companies, control almost all of ocean freight shipping, giving them power to raise prices for American businesses and consumers, while threatening our national security and economic competitiveness," the White House said in the Feb. 28 statement. Ocean freight carriers enjoy a degree of protection from antitrust measures under The Shipping Act of 1984 and The Ocean Shipping Reform Act of 1988. The statutes give antitrust cover to ocean carriers' agreements on shipping rates, pooling arrangements and allotted routes if approved by the FMC, which regulates carriers. But the White House shared concerns that as the three alliances' control of the global container ship capacity ratcheted up from 30% to 80% since 2011, these protections have enabled the dramatic price hikes. The White House added that ocean carriers are now able to cancel or change bookings and impose additional fees without notice, often effectively refusing to take American exports altogether. Under the cross-agency initiative, the DOJ will provide attorney and economists' support for enforcement of Shipping Act violations, and the FMC will provide the Antitrust Division with maritime industry expertise for enforcement efforts as well. The rapid consolidation and rising prices have also garnered Congressional attention. The Subcommittee on the Coronavirus Crisis and the Subcommittee on Economic and Consumer Policy jointly requested information from ocean freight carriers Maersk, CMA CGM Group and Hapag-Lloyd AG regarding dramatic price increases and reports of exorbitant fees and surcharges in early March. "We are deeply concerned that [Maersk, CMA CGM, and Hapag-Lloyd] may have engaged in predatory business practices during the pandemic, making scores of essential goods needlessly expensive for consumers and small businesses," Chairmen Rep. James E. Clyburn, D-S.C., and Rep. Raja Krishnamoorthi, D-Ill., said in a statement at the time. The Ocean Shipping Antitrust Enforcement Act, a bipartisan bill introduced by Rep. Jim Costa, D-Calif., on Feb. 28 would walk back several antitrust exemptions currently in place for ocean freight carriers. And members of the Senate Commerce, Science and Transportation Committee held a hearing March 3 to consider the Ocean Shipping Reform Act, a separate bipartisan bill that would strengthen the FMC's oversight authority and ability to hear complaints against carriers.

#### Repealing the exemption is key

Evers-Hillstrom 2-2, is a staff writer for The Hill. (Karl, 02-02-2022, “Shipping giants under fire for record profits, fees as pandemic continues,” The Hill, https://thehill.com/business-a-lobbying/592397-shipping-giants-under-fire-for-record-profits-fees-as-pandemic-continues)

Shipping giants have come under fire from U.S. business groups and watchdogs for raking in record-breaking profits on the backs of skyrocketing prices driven by unprecedented port congestion. Each of the largest ocean carriers saw their profits more than triple over the last year, according to research from liberal watchdog group Accountable.US, which noted that all of the firms upped their prices substantially amid surging demand. The industry, which is dominated by a handful of large freight companies, is currently lobbying senators to reject a bipartisan House-passed bill that aims to crack down on anticompetitive shipping practices, which carriers argue would only worsen supply chain issues. “Many highly-profitable industries are using the pandemic as an excuse to gouge consumers or tack on sky-high fees, and the shipping industry is no exception,” Accountable.US President Kyle Herrig said in a statement. “Despite shattering previous profit records last year, big shippers are trying to convince Congress that their abusively high fees are essential even as they fan the flames of inflation.” New contracts with carriers to transport goods are roughly twice as expensive as they were in 2020, when the pandemic momentarily caused demand to drop off. With the U.S. now importing roughly three times as many goods as it sends out, and with clogged ports forcing ships to wait weeks to unload their shipments, there’s never been so much demand for ocean carriers. Such circumstances have led to record profits. Denmark-based carrier Maersk expects to report $24 billion in 2021 earnings before taxes and depreciation, triple its 2020 haul. Shanghai-based Cosco Shipping reported $14 billion in annual profits, nine times its 2020 earnings. Germany’s Hapag-Lloyd AG said Tuesday that its pre-tax income more than quadrupled to $12.8 billion last year. Experts say that rising transportation costs contribute to soaring U.S. inflation because they get passed down to customers. Consumer prices climbed 7 percent in 2021, the largest increase in roughly four decades, according to Labor Department data. The White House has bemoaned that the shipping industry is heavily concentrated and expressed concern that carriers could use their market power to charge higher prices. Today, just nine carriers control 80 percent of the global shipping market. U.S. exporters, already angered by soaring prices, say that carriers are hitting them with unfair fees for failing to return cargo containers that they cannot deliver to ships due to intense congestion at ports. Exporters also claim that carriers are increasingly leaving U.S. ports without taking their goods back with them. “In many cases, shippers are being charged through no fault of their own,” said Brian Whitlock, a logistics expert at consulting firm Gartner. “They can’t physically return the containers back to the ports.” In response, agricultural and business interests are pushing lawmakers to prioritize the Ocean Shipping Reform Act, a bill that would empower the Federal Maritime Commission (FMC) to develop new rules to require carriers to take U.S. exports and prevent carriers from slapping exporters with unfair fees for failing to return containers. The bill, sponsored by Reps. Dusty Johnson (R-S.D.) and John Garamendi (D-Calif.), sailed through the House with the support of more than 360 lawmakers in December. The Senate is expected to unveil its own bill within the next two weeks. Carriers are lobbying lawmakers to oppose the bill, arguing that it won’t do anything to remedy supply chain issues that are driving up prices. Port congestion is caused by a shortage of truck drivers and truck chassis, along with scarce warehouse space, among other issues. “The problems that are causing the congestion are on the land side, not the ocean side, so the bill by its very structure isn’t capable of fixing the operational problems we’re facing,” said John Butler, president and CEO of the World Shipping Council, which represents large carriers. “The sooner we return to more normal cargo flow and resolve those inland congestion issues, the sooner we’ll get that fluidity back, and that’s what is going to drive prices down,” he added. The World Shipping Council spent nearly $222,000 on federal lobbying in 2021, up 150 percent from the previous year, according to OpenSecrets. The group paid Crossroads Strategies $50,000 in the fourth quarter to dispatch 13 lobbyists on the issue, including former Sen. John Breaux (D-La.). Still, the council is competing with dozens of influential and better-funded lobbying groups that back the bill, including the National Retail Federation, American Farm Bureau Federation and Consumer Brands Association. Some business and farming groups say the legislation doesn’t go far enough, arguing that lawmakers need to strip shipping giants of an antitrust exemption enacted by Congress more than a century ago that allows carriers to share vessels to deliver products to ports they might otherwise avoid on their own. Gary Shapiro, president and CEO of the Consumer Technology Association, which represents tech and electronics firms such as Amazon and Samsung, said in a December statement that the exemption “gives foreign shippers a free pass to collude and raise prices to the detriment of U.S. consumers.” The Justice Department has previously urged lawmakers to remove the exemption, arguing that the industry doesn’t need it to function properly, a request that Congress has largely ignored until recently. Sen. Amy Klobuchar (D-Minn.), a member of the Senate Judiciary Committee who is pushing several anti-monopoly bills, is working on antitrust legislation related to the shipping industry, according to her office. The Biden administration, meanwhile, has emboldened the FMC to go after anticompetitive shipping practices through executive action. The White House in November said that the agency can challenge antitrust agreements if they “produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost or ... substantially lessen competition.”