# 1AC

### 1AC---Supply Chain

#### Advantage 1 is the Supply Chain:

#### Anticompetitive shipping alliances have the international economy in a stranglehold

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One tiny federal agency with 116 full-time employees and a $28.9 million dollar budget is in charge of regulating the global marine economy, which contributes $397 billion to the US GDP annually and accounts for 80 percent of goods shipped worldwide. That’s not just an apples and oranges discrepancy—that’s like an apple versus Apple. The budget for the military’s marching bands is fifteen times greater than the Federal Maritime Commission’s budget; the Marines alone have five times more musicians than the Commission has staff. Meanwhile, for months now, aerial views of America’s biggest ports have shown dozens of massive container ships backed up for miles, blotting the ocean as far as the eye can see. Billions of dollars of imported goods sit idly on the water for weeks, depreciating in value, while trucks face over 24-hour waits outside of port gates. The logjam is terrible for people’s health, too—the California Air Resource Board estimates that the sitting ships’ increased pollution is equivalent to adding an obscene 5.8 million cars and 100,000 big rig trucks to the area. The complex and interconnected web of the global supply chain is in a crisis that defies simple solutions. But addressing that crisis is made more difficult by decades-old deregulation of the ocean shipping industry, and the fact that a few powerful global entities are making billions of dollars from its continued dysfunction. Three alliances of the nine biggest shipping container lines control 83 percent of the global shipping market and 95 percent of critical East-West trade lanes. They are on track to make an eye-watering $150 billion dollars in 2021—more than 25 times their 2019 profit. Terminal operators are also turning a profit, as most terminals are operated by U.S. subsidiaries of those same foreign container lines. It’s worth noting that the top 25 container lines are all foreign companies; the US’s largest container line, Matson, holds only a 0.3 percent share of the market. These three carrier-operator alliances are effectively holding the global supply chain hostage in order to milk as much money as they can from heightened demand and stifled supply. These alliances have no economic incentive to increase supply. Their incentive is to continue to reap windfall profits. Yet significant investment in supply is precisely what the public complaining about inflation and shortages requires, and what the industry’s regulator ought to be demanding on behalf of the people. And who is that regulator? The pea-sized Federal Maritime Commission, squashed under the industry’s gigantic mattress. The Federal Maritime Commission is like David up against the shipping line Goliaths, if David voluntarily put down his slingshot and tied his hands behind his back. For being the only federal agency in charge of regulating a behemoth industry, the Commission is markedly anti-regulation. “I have never seen a regulation I liked,” said Commissioner Rebecca Dye, now in her nineteenth year at the agency. The Commission voluntarily embraced Trump’s 2017 “eliminate two existing regulations for every new regulation” Executive Order, and reviewed its own regulations for potential repeals. The Commission’s deregulatory spirit dates back more than two decades, to the passage of two laws: the Shipping Act of 1984, and the Ocean Shipping Reform Act of 1998. Both of these laws substantially lessened the Commission’s authority. The Federal Maritime Commission’s regulatory authority stems from the handful of maritime laws that it enforces. (These include the Shipping Act of 1984 and the Ocean Shipping Reform Act of 1998, as well as Section 19 of the 1920 Merchant Marine Act, the Foreign Shipping Practices Act of 1988, and sections 2 and 3 of Public Law 89-777.) At the time of its founding in 1961, the Commission’s responsibilities were outlined by the Shipping Act of 1916, which granted the agency a lot of authority. Under the 1916 Act, it was mandatory for carriers to file all tariffs (official rates) and agreements with the Commission. The Commission would review and approve all agreements before they came into effect. Approved agreements were exempt from U.S. antitrust laws. To streamline what had become a time-consuming approval process, the Shipping Act of 1984 changed this procedure so that once agreements are filed with the Commission, they are automatically approved after 45 days unless the Commission moves to block them. Tariffs were also no longer required to be filed with the Commission, just published publicly. Then, the Ocean Shipping Reform Act of 1998 took industry autonomy several steps further. The 1998 Act allowed carriers and shippers to negotiate confidential contracts for the first time. These agreements are still filed with the Commission, but their terms are otherwise secret. The importance of publicly reported tariffs rapidly diminished, now that prices can be negotiated and set in private. And through all this, carriers retained their antitrust immunity. This deregulatory push was in the name of “competition” and the “marketplace,” but its effect was to crush smaller competitors and encourage monopolistic alliances, while preventing public scrutiny and most antitrust intervention in the industry. Over the past two decades, every sector of the ocean shipping industry has consolidated. Not only do three alliances of nine carriers now control 83 percent of container ship capacity, but three Chinese manufacturers produce 83 percent of all new containers, and five companies control 82 percent of container leasing. Smaller ports have suffered as the big carriers buy bigger ships; a capital-intensive strategy for cutting costs that excludes smaller carriers, and forces costly adaptations upon ports. Larger ships initially provided greater efficiency and cost-savings for carriers, but now, with many mega-ships larger than the Empire State Building, their increasing diseconomies of scale read as a monopolistic tool to force the industry to operate on their terms. This is why we see megaships stuck for days at port; they’re not profitable to sail unless they’re entirely full, and it takes a long time to load and empty them. Meanwhile, ocean carriers and marine terminal operators can charge demurrage and detention fees to the shippers, intermediaries and truckers when things get behind schedule. Where the Commission Comes In All of that explains why importers, exporters, intermediaries, and truckers have repeatedly asked the Commission to become more involved, while carriers and terminal operators have argued that the Commission lacks authority to do so. Such a dispute broke out over the Commission’s 2020 interpretive rule clarifying what constitutes reasonable demurrage and detention fees. The Commission’s commentary on this rule and the controversy it generated illuminates how the Commission perceives its own role and authority. While the Commission acknowledged that “one purpose of the Shipping Act is to minimize government intervention,” it countered that that “does not mean that the Commission may abandon its duty to prevent unreasonable practices.” So while the laws the Commission is in charge of administering expressly put limits on its power, the Commission still has regulatory responsibilities it must fulfill. While the Commission claims that it “prefers commercial solutions to demurrage and detention problems,” the Commission’s investigation found that “commercial solutions are only adequate from the perspective of ocean carriers and marine terminal operators.” In other words, when left to their own “free market” devices, carriers and operators bulldozed the other industry parties, forcing a reluctant Commission to intervene. By the 2010s, the ocean supply chain’s vulnerability and inefficiencies were already visible. The Commission’s response, spearheaded by Commissioner Rebecca Dye, was to bring together various industry stakeholders in conversation. The 2017 Report of this “Supply Chain Innovation Teams initiative” offers further insight into the Commission’s view of its responsibilities and, perhaps, capacity. Dye reports that industry participants “indicated that they had little appetite for governmental prescriptions or requirements,” and adds that “from the outset, the Commission recognized that additional government regulations were not the answer.” It is alarming to see a regulatory agency renege its chief function. The Commission decided to serve instead as “a catalyst for stakeholder-identified commercial solutions” (emphasis in original). Is this decision evidence of corporate capture, or the result of an agency whose resources are dwarfed by its mandate, still striving to make an impact? Whatever the cause of the Commission’s reluctance to advance regulation, it appears that both the White House and a bipartisan coalition of lawmakers see regulation as the best path out of our current quagmire. While the Commission’s response to the supply chain crisis continues to emphasize “commercial solutions,” and includes the creation of a new National Shipper Advisory Committee, convening major shippers like Walmart, Tyson Foods, Amazon and DuPont to advise the Commission on ocean shipping policy, Congress is looking to the proposed Ocean Shipping Reform Act of 2021 for answers. The House of Representatives agreed to suspend the usual rules (which they do for noncontroversial bills) and passed the Ocean Shipping Reform Act of 2021 in a bipartisan 364-60 vote on December 8. The bill has already been sent to the Senate, read twice, and referred to committee. The 2021 Act would give the Federal Maritime Commission more authority to crack down on bad practices by carriers and terminal operators, including discriminating and retailiating against shippers, making false certifications, and imposing unreasonable demurrage and detention fees. It would leave to the Commission’s discretion whether and when it is reasonable for carriers to refuse US agricultural exports when it is more profitable to send empty containers back to China. The White House, meanwhile, has directed the Federal Maritime Commission to “​​use all of the tools at its disposal to ensure free and fair competition.” This includes the Commission’s unique ability to intervene on antitrust issues: “while the alliances between the carriers receive statutory immunity from antitrust laws, the FMC can challenge those agreements if they ‘produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost or … substantially lessen competition.’” In reality, though the Commission has labored to avoid stepping on industry toes, it has substantial authority to enforce antitrust laws when shipping agreements—the confidential agreements that only the Commission gets to read—reduce competition and damage supply chain resilience. An encouraging sign that the Commission recognizes its antitrust capacity comes in the form of a Memorandum of Understanding with the Department of Justice’s Antitrust Division this summer, committing the two agencies to cooperate on “the enforcement of antitrust and other laws related to the Industry.” While the Federal Maritime Commission’s singular discretion when it comes to challenging shipping agreements for antitrust violations may be its sharpest tool, it has a broad mandate to monitor all parties in the US-international ocean shipping industry to ensure “just and reasonable practices.” It is also the Commission’s job to facilitate “alternative dispute resolution” when problems crop up between parties, and to seek remedies when necessary. The Commission has the authority to conduct investigations and hold legal proceedings overseen by the Commission’s Administrative Law Judges, and prosecuted by its Bureau of Enforcement. Yet despite audible discontent within the industry, the Commission has found that “few private parties have filed complaints seeking reparations,” in part because shippers and truckers fear retaliation. While the Commission is taking steps to minimize barriers to private party complaints, the prohibitive cost of retaliation is indicative of the container lines’ tight grip on the industry. Fully tapping into these powers, old and new, to take a more leading role in resolving the international supply chain crisis, will almost certainly require that the Commission receive a bigger budget and more staff. Like many federal agencies, the number of Commission employees has been waning when it should be waxing. In 1998, the Federal Maritime Commission had 139 full-time employees. By 2006, the Commission had 121 full-time employees, and by 2020, only 111. Likewise, accounting for inflation, its budget has essentially remained flat over the past decade, rising nominally from $24 million in 2012 to $27.4 million in 2020. In contrast, the transport volume of ocean trade has steadily increased over the past thirty years, from 4 billion tons annually in 1990 to over 10 billion tons in 2020. Likewise, the world’s fleet of merchant ships has doubled in size since 1990, even while the US share of the global fleet has shrunk from 16.9 percent in 1960 to 2.7 percent in 1990 to only 0.4 percent in 2019. As it is both the Federal Maritime Commission’s responsibility to support the development of a US liner fleet, and to combat unfair practices by foreign carriers, the Commission’s responsibility for regulating a growing industry has increased even as its capacity has shrunk. The Commission monitors an ever-growing number of rates, agreements, alliances and disputes in the international shipping industry. Per its annual report, in 2020 the Commission was continuously monitoring over 300 cooperative agreements, and received 45,164 new service contracts and 779,884 contract amendments. The Commission accepted 375 new and 273 amended ocean transportation intermediary (OTI) applications, and 285 OTI licenses were revoked or surrendered. Through the Commission’s informal conflict resolution program, it resolved 241 ombud matters, and responded to 1,730 queries from the public (a 52 percent increase from 2019). If the Commission is to take on additional enforcement responsibilities, it should bring on more staff to avoid information overload. While the Commission’s leaders do not set their own budget, they can help to influence funding levels by highlighting these gaps. In recent years, however, their requests have been seemingly inadequate to fill them. In its 2022 budget request, the Commission set a goal of 128 employees, only a modest increase over current staffing levels. Commission leadership can also work directly with the Office of Personnel Management (OPM) to streamline its hiring processes to ensure its budget, at whatever level, is put to efficient use onboarding new staff. A majority of the Commission’s positions fall under the General Schedule, meaning that hiring for them involves a number of procedures that can slow the process. The Commission should consider requesting hiring flexibilities from OPM to expedite this process, in addition to exploring ways to improve recruitment. If the Commission’s current leadership proves unwilling to rise to the challenge, Biden has the opportunity to fill two of five Commissioner seats. His challenge will be to find a labor-minded Republican (as the agency requires partisan balance) to enact the bold regulatory agenda that the moment demands. Elsewhere in the agency, the bright side of hiring amidst the supply chain crisis would be that new Commission employees may be less invested in preserving the status quo. The proposed Ocean Shipping Act of 2021 would provide the Federal Maritime Commission with a moderate increase in funding, from $29.6 million in 2021 to $32.6 million in 2022 and $35.8 million in 2023. But overall, the 2021 Act bestows more new requirements upon the Commission than new powers. Increasing an already skeptical agency’s obligations without substantially increasing their resources is an effort destined to fall short. Many snarls in the supply chain web remain outside of the Commission’s purview and go unaddressed by the bill, from the chassis shortage to the comparatively limited operating hours of American ports, leaving its impact unknown. Still, the Act has potential to curtail the carrier cartels’ stranglehold on the industry, if the Commission rises to the enforcement challenge. Among other things, the Act would require the Commission to report annually to Congress on anticompetitive, nonreciprocal, or otherwise concerning trade practices by carriers. The Commission would also be required to publish records online of carriers and terminal operators who have made false certifications, and what penalties the Commission imposed on them. Carriers and operators would now have to certify any demurrage and detention fees they charge shippers with the Commission beforehand, to ensure that they’re legally compliant. One of the most significant powers the proposed legislation would provide emerges from a requirement that the Federal Maritime Commission seek public comment on whether the supply chain crisis is bad enough to necessitate a temporary Emergency Order. If the Commissioners unanimously approve an Emergency Order, the Commission will be authorized to require any carrier or terminal operator to share any and all relevant information on cargo “throughput and availability” with relevant shippers and rail and motor carriers. Considering, as the White House put it, that current laws “do not require even basic transparency in this sector,” an Emergency Order of this kind could promote a radical shift in information-sharing practices in an otherwise opaque industry. It’s not a short-term fix in and of itself, but an important long-term investment. If the government could make economically significant data visible, and incentivize the creation of a standard information system with common language for industry parties to communicate with each other, that would go a long way towards mitigating future versions of this crisis. Industry stakeholders have previously expressed the desire for “greater visibility of critical information” across the transportation system to the Federal Maritime Commission, but whether the gun-shy Commission would vote in support of an Emergency Order and take the lead in enforcing the exchange of information is unclear. Looking Forward The Federal Maritime Commission’s stated mission is to “ensure a competitive and reliable international ocean transportation supply system.” At the moment, it is hard to think of two less accurate adjectives for the current system than “competitive” and “reliable.” Yet this crisis could be seized by the Commission as an opportunity to secure the staffing and budget it needs to employ its full range of tools. The Commission could further expand its muscle through collaboration with other government agencies, including the DOJ Antitrust Division and the FTC and DOC as they begin to address supply chain issues in the retail and manufacturing industries. A reinvigorated Federal Maritime Commission would be better equipped to tackle problems beyond the immediate supply chain crisis as well. Commissioner Dye has spoken approvingly of how “most innovation in supply chain management is not revolutionary but rather incremental.” Indeed, one should tinker with vast and complex systems like the international ocean shipping system with caution, given the supply chain’s evident vulnerability to cascading effects. Yet we are in a historic moment in which incremental innovation is simply insufficient to prevent global climate catastrophe, in no small part due to the industrial developments—including international ocean trade—of the past 150 years. If the shipping industry were a country, it would be the sixth largest polluter in the world, emitting more greenhouse gases annually than Germany and Canada. Not only does the supply chain need an intervention to ensure that parties can’t profit from its dysfunction, but the industry as a whole needs to grapple with its outsized carbon footprint. These interconnected issues require a regulatory agency committed to acting at full capacity, and to multisolving. With the passage of the $1 trillion infrastructure bill this November comes unprecedented money for transportation innovation, including $17 billion earmarked for American ports. That money is an opportunity for revolutionary, not incremental change, as every transportation sector reckons with the moral and financial imperative of decarbonization. At the same time, the UN is poised to proceed with a $5 billion decarbonization fund for ocean shipping, paid for entirely by the industry with the industry’s approval, to get large numbers of zero-carbon ships on the water by 2030. The Federal Maritime Commission should actively support these and further developments, as its mission to foster supply chain integrity and protect the public from unfair practices can only be fulfilled long-term through definitive action to mitigate climate change. The future viability of international ocean trade and the planet and public’s health hangs in the balance.

#### Special treatment shields foreign shipping alliances and harms domestic ports

---Department of Justice and private parties are barred from litigating maritime alliances

---Alliances divert cargo from United States ports because of unilateral unjust contract terms

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.

#### Price gouging affects the entire economy and locks in slow growth---pandemic is priced in

Savvides 21, Reporter for The Loadstar. (Nick, March 18, 2021, More complaints against 'profiteering' carriers expected as shippers' costs soar, <https://theloadstar.com/more-complaints-against-profiteering-carriers-expected-as-shippers-costs-soar/>)

Following its formal complaint to the Federal Maritime Commission (FMC) last week, Pennsylvania home décor firm MCS Industries CEO Richard Master (above) has told The Loadstar why the company felt it had no choice, but to speak out. Mr Master said he had been in contact with a number of larger and smaller shippers and there was concern for their businesses as well as anger at the failure of shipping lines to meet their contractual obligations. “Some lines are more co-operative than others, but none has supplied us like we supply our customers,” claimed Mr Master. “When we make a deal we stick to it.” According to MCS, the difficulties caused by poor service levels and high rates will “reverberate throughout the US economy”, and inevitably have very serious economic consequences. Mr Master said with more than 11m containers handled in US supply chains annually and the costs of imported boxes increasing from around $2,700/40ft from Asia to the west coast to $15,000-$20,000/40ft, it has left some companies with little choice but to complain. MCS transports around 3,500 containers a year from suppliers in Asia, the contents on average valued at $20,000-$30,000, so current rates are “like a dagger to the heart” of small and medium-sized shippers, explained Mr Master. It is not that the shippers do not understand that the pandemic has caused disruption, however. And Mr Master pointed out that contract negotiations took place earlier this year, normally in the first quarter, up to a year after the pandemic started, so the lines knew that the issues and disruption it caused had been “in play for some time”. “When we started negotiating the contracts, we accepted that prices would be 70-80% higher than last year, but we thought that was appropriate, it was excessive but it reflected the disruption and market conditions,” he conceded. But, he said, once the contracts were signed, “we didn’t get the containers [agreed to] and the prices spiralled up over a period”. He claimed this wasn’t just price increases due to the pandemic, “they were baked into the negotiations,” he said, which was “price gouging”. And that is what prompted the complaint to the FMC. He continued to allege that the lines were, in effect, profiteering, and asked: “With rates at such inflated levels what is the motivation for the lines to return to normal levels of operation?” MCS’s business from Asia is worth $120m, but the cost of transport increased by $30-40m overnight, which will be passed on to the consumer and will lead to inflation of 20%-40% in the sector MCS operates – inflation is created artificially by the shipping lines, Mr Master said. In a letter to chairman of the FMC Daniel Maffei, Mr Master said he believed it was clear that government and the FMC were aware of the critical nature of the issue “and the havoc that it is wreaking on American businesses and consumers”. He added: “Federal shipping and antitrust laws appear to provide federal regulators with the tools needed to investigate this outrageous conduct by ocean carriers.” He said rapid action was needed to mitigate the worst effects being felt “right now, on a daily basis, by American businesses and consumers”. In effect, Mr Master accuses the carriers of operating a cartel, allowing them to manipulate the market illegally. “The formation of these cartels has allowed foreign shipping interests to co-ordinate pricing and business practices, and take advantage of economic conditions to charge extortionate prices to US customers,” he alleged. Mr Master would like to see reparations to shippers for their losses, and the lines forced to meet their contractual obligations. Furthermore, MCS would like the FMC to ensure that the lines address container shortages and the “dislocation” of containers, with not enough empties in Asia and too many in congested US ports. Finally, the MCS CEO pointed to the “serious co-ordination issues in the operation of the US ports”. He said: “Truckers performing drayage services, delivering full containers to shippers and receivers, must be able to schedule normal appointments to avoid current untenable delays. Steamship lines currently levy penalties on the US shippers for delays which are beyond their control.” Moreover, truckers have been unable to secure appointments to return the empty boxes, which has resulted in more financial penalties. “These penalties, which are ultimately borne by American consumers in the form of consumer price inflation, must stop,” demanded Mr Master.

#### 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.

#### Pursuit of growth is inevitable, and economic collapse causes extinction---trade, disease, technology, climate change, oppression, and disinformation

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The world economy is experiencing a corrosion of globalization. The web of economic and commercial ties across the world is fraying, with more frequent and larger gaps in it—even as trade in goods, services, and technology shifts locations and in some places grows. For globalization is multidimensional, encompassing much more than international trade, though panic about trade gets most of the political and press attention. What matters for human welfare is the quality, not the quantity, of globalization. As global economic integration deteriorates, its benefits for everyone are eroding. Worldwide, people want to be left in peace, make a decent living, educate their children, look after their families, and, if possible, save for the future. For decades that simple but profound state of economic safety and freedom became ever more widely attained, largely hand-in-hand with increased international openness. But we have been going mostly in the wrong direction on both counts since at least 2008, well before COVID-19. The economic and social impact of the pandemic has not just accelerated the corrosion of commerce and relationships across borders but also made undeniable the extreme vulnerability of the world’s population to disease, economic insecurity, and exclusion. As a result, the risks of the most genuinely existential threats—climate change, technological slowdown, racial and gender-based oppression, digital disinformation and removal of privacy, aging populations, and the likely recurrence of epidemics—have risen. All of these threats are global, in that they are common to all humanity, and can be lastingly reduced only by global cooperative action. All of these threats are economic, in that beyond their direct human toll, their causes and lasting impact are meaningfully changed by our economic activities and policies. Both markets and international institutions have failed to deliver economic safety in the absence of global engagement by governments. Successful economic cooperation needs specific constructive policies with tangible deliverable results. That is why we at the Peterson Institute for International Economics (PIIE) have provided work plans for Rebuilding the Global Economy. At the start of a new US presidential term, we are telling policymakers what needs to be repaired by defining critical and practical priorities and solutions. Our series, featuring memoranda to policymakers and virtual events with experts, were published on a rolling basis in November and December 2020, accompanied by online public meetings. This PIIE Briefing republishes their papers to guide policymakers in 2021. Rebuilding is a very deliberate and, we believe, apt verb for the task at hand. The global economy continues to exist, and it is necessary for the future well-being of all people, whether or not governments decide to withdraw from it. People and nations need a safe structure in which to conduct their economic lives, to join communities, and to be left in privacy. The building, however, has been allowed to sink into disrepair and, in some ways, has ceased to be fit for purpose. The architecture of the 1940s, updated on the fly in the early 1970s and again after 1989, does not meet today’s standards of inclusion and accessibility, does not have room enough for many growing (and some already grown) economies, and is inadequate shelter against the environmental threats we now face. But the global economy is repairable. What is needed now are actionable plans setting out clear priorities for economic policymakers. These plans must reject the status quo and must be objective and specific in their assessment of what can be salvaged and repaired as opposed to what should be torn down and replaced. These plans must not, however, be grandiose architectural fantasies—we all have to continue living and working in the global economy even while substantial renovation is underway, and there are limits to how far people want to be disrupted. This is where the Peterson Institute can make a meaningful contribution. The starting point for our Rebuilding the Global Economy program is a set of 39 memos targeted at specific senior policymakers in the US government, the European Union, and international organizations. In these memos we have specified what the policymaker and their agency or department should prioritize to rebuild the global economy in their remit, what critical things they should stop doing or reverse immediately, and what institutional relationship they need to change or repair.

#### 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.

#### Economic leadership prevents war with China---geopolitical tensions, interdependence, and decline

Nye 21, is a professor of political science at Harvard University and former dean of the Kennedy School of Government, recently ranked as the most influential scholar on American Foreign Policy among international relations scholars. (Joseph, 3-3-2021, “The factors that could lead to war between the US and China,” Australian Strategic Policy Institute, https://www.aspistrategist.org.au/the-factors-that-could-lead-to-war-between-the-us-and-china/)

When China’s foreign minister, Wang Yi, recently called for a reset of bilateral relations with the United States, a White House spokesperson replied that the US saw the relationship as one of strong competition that required a position of strength. It’s clear that President Joe Biden’s administration is not simply reversing Donald Trump’s policies. Some analysts, citing Thucydides’ attribution of the Peloponnesian War to Sparta’s fear of a rising Athens, believe the US–China relationship is entering a period of conflict pitting an established hegemon against an increasingly powerful challenger. I am not that pessimistic. In my view, economic and ecological interdependence reduces the probability of a real cold war, much less a hot one, because both countries have an incentive to cooperate in a number of areas. At the same time, miscalculation is always possible and some see the danger of ‘sleepwalking’ into catastrophe, as happened with World War I. History is replete with cases of misperception about changing power balances. For example, when US President Richard Nixon visited China in 1972, he wanted to balance what he saw as a growing Soviet threat to a declining America. But what Nixon interpreted as decline was really the return to normal of America’s artificially high share of global output after World War II. Nixon proclaimed multipolarity, but what followed was the end of the Soviet Union and America’s unipolar moment two decades later. Today, some Chinese analysts underestimate America’s resilience and predict Chinese dominance but this, too, could turn out to be a dangerous miscalculation. It is equally dangerous for Americans to over- or underestimate Chinese power, and the US contains groups with economic and political incentives to do both. Measured in dollars, China’s economy is about two-thirds the size of that of the US, but many economists expect China to surpass the US sometime in the 2030s, depending on what one assumes about Chinese and American growth rates. Will American leaders acknowledge this change in a way that permits a constructive relationship, or will they succumb to fear? Will Chinese leaders take more risks, or will Chinese and Americans learn to cooperate in producing global public goods under a changing distribution of power? Recall that Thucydides attributed the war that ripped apart the ancient Greek world to two causes: the rise of a new power and the fear that this created in the established power. The second cause is as important as the first. The US and China must avoid exaggerated fears that could create a new cold or hot war. Even if China surpasses the US to become the world’s largest economy, national income is not the only measure of geopolitical power. China ranks well behind the US in soft power and US military expenditure is nearly four times that of China. While Chinese military capabilities have been increasing in recent years, analysts who look carefully at the military balance conclude that China will not, say, be able to exclude the US from the Western Pacific. On the other hand, the US was once the world’s largest trading economy and its largest bilateral lender. Today, nearly 100 countries count China as their largest trading partner, compared to 57 for the US. China plans to lend more than US$1 trillion for infrastructure projects with its Belt and Road Initiative over the next decade, while the US has cut back aid. China will gain economic power from the sheer size of its market as well as its overseas investments and development assistance. China’s overall power relative to the US is likely to increase. Nonetheless, balances of power are hard to judge. The US will retain some long-term power advantages that contrast with areas of Chinese vulnerability. One is geography. The US is surrounded by oceans and neighbours that are likely to remain friendly. China has borders with 14 countries, and territorial disputes with India, Japan and Vietnam set limits on its hard and soft power. Energy is another area where America has an advantage. A decade ago, the US was dependent on imported energy, but the shale revolution transformed North America from energy importer to exporter. At the same time, China became more dependent on energy imports from the Middle East, which it must transport along sea routes that highlight its problematic relations with India and other countries. The US also has demographic advantages. It is the only major developed country that is projected to hold its global ranking (third) in terms of population. While the rate of US population growth has slowed in recent years, it will not turn negative, as in Russia, Europe, and Japan. China, meanwhile, rightly fears ‘growing old before it grows rich.’ China’s labour force peaked in 2015 and India will soon overtake it as the world’s most populous country. America also remains at the forefront in key technologies (bio, nano and information) that are central to 21st-century economic growth. China is investing heavily in research and development, and competes well in some fields. But 15 of the world’s top 20 research universities are in the US; none is in China. Those who proclaim Pax Sinica and American decline fail to take account of the full range of power resources. American hubris is always a danger but so is exaggerated fear, which can lead to overreaction. Equally dangerous is rising Chinese nationalism, which, combined with a belief in American decline, leads China to take greater risks. Both sides must beware of miscalculation. After all, more often than not, the greatest risk we face is our own capacity for error.

#### Coordination is causing global food shortages

Murray et al 21, reporters for Bloomberg. (Brendon, with Isis Almeida, Ann Koh and Michael Hirtzer, Feb 3, 2021, Container crunch upends global food trade while ships queue at U.S. ports, https://www.japantimes.co.jp/news/2021/02/03/world/food-shipping-global-economy-covid-19-u-s-china/)

Food is piling up in all the wrong places, thanks to carriers hauling empty shipping containers. Global competition for the ribbed steel containers means that Thailand can’t ship its rice, Canada is stuck with peas and India can’t offload its mountain of sugar. Shipping empty boxes back to China has become so profitable that even some American soybean shippers are having to fight for containers to supply hungry Asian buyers. Strikes in Argentina have also boosted Asian demand for U.S. agriculture products, adding to competition for boxes. “People aren’t getting their goods where they need them,” said Steve Kranig, director of logistics at IM-EX Global Inc., a freight forwarder that handles cargoes including rice, bananas and dumplings from Asia to the U.S. “One of my customers ships 8 to 10 containers of rice every week from Thailand to Los Angeles. But he can only ship 2 to 3 containers a week right now.” China has recovered faster from COVID-19, so has revved up its export economy and is paying huge premiums for containers---making it far more profitable to send them back empty than to refill them. There are also signs the soaring freight rates are boosting the cost of some foods. White sugar prices surged to a three-year high last month, and delays in food-grade soybean shipments from the U.S. could mean higher tofu and soy milk costs for consumers in Asia, said Eric Wenberg, executive director of the Specialty Soya and Grains Alliance. While it’s not entirely uncommon for containers to transit back empty after a voyage, carriers usually try to backfill them to profit from shipping rates in both directions. But the cost of carrying goods from China to the U.S. is almost 10 times higher than the opposite journey, prompting liners to favor empty boxes instead of loading them, Freightos data showed. ‘Shortage of everything’ At the port of Los Angeles, the U.S.’s biggest for container cargo, three in every four boxes going back to Asia are traveling empty compared with the normal 50% rate, said Executive Director Gene Seroka. In Vancouver, terminals have shortened the time to transport the stuffed boxes onto ships from three days to as little as seven hours, said Jordan Atkins, vice president of WTC Group. “It’s not possible to get the amount of volume we have here in Vancouver to return containers in those tight windows,” said Atkins. “Pulses in general are struggling getting on the ships,” he said, referring to crops like peas and lentils. Canada is the world’s second-largest producer of pulses. India, the world’s second-largest sugar producer, exported only 70,000 metric tons in January, less than a fifth of the volume shipped a year earlier, said Ravi Gupta, president of Shree Renuka Sugars Ltd., the nation’s top refiner. Vietnam, the largest producer of the robusta coffee beans used to make instant drinks and espresso, is also struggling to export. Shipments dropped more than 20% in November and December, said Le Tien Hung, chairman of Simexco Dak Lak, Vietnam’s No. 2 exporter. Around the world, some foodstuff buyers are waiting while others have halted purchases altogether, traders say. “It’s been like that since December,” said Kranig of IM-EX Global. “You’re going to get not only a shortage of food but a shortage of everything. I would not be surprised to hear some beneficial cargo owners’ freight rates for 2021-2022 shipping season double from previous years.” If that prediction bears out, once the bulk of North Americans and Europeans are vaccinated, some of those high freight rates could be passed on to them as they return to cafes, restaurants and office towers. The container crunch comes just as American shippers are trying to boost exports of everything from soybeans to grain meals to Asia. China is scooping up American crops to feed a hog herd that’s recovering from a deadly pig disease faster than most expected. The situation is so dire that some buyers are canceling contracts, opting for bulk shipping methods, the most common for feed products, or delaying purchases to avoid high freight costs.

#### Food shortages cause extinction

FDI 12, is a Research institute providing strategic analysis of Australia’s global interests, citing Lindsay Falvery, PhD in Agricultural Science and former Professor at the University of Melbourne’s Institute of Land and Environment (Future Directions International, “Food and Water Insecurity: International Conflict Triggers & Potential Conflict Points,” <http://www.futuredirections.org.au/workshop-papers/537-international-conflict-triggers-and-potential-conflict-points-resulting-from-food-and-water-insecurity.html>)

There is a **growing appreciation** that the conflicts in the next century will **most likely** be fought over a lack of resources. Yet, in a sense, this is not new. Researchers point to the French and Russian revolutions as conflicts induced by a lack of food. More recently, **Germany’s World War Two** efforts are said to have been inspired, at least in part, by its perceived need to gain access to more food. Yet the general sense among those that attended FDI’s recent workshops, was that the scale of the problem in the future could be **significantly greater** as a result of population pressures, changing weather, urbanisation, migration, loss of arable land and other farm inputs, and increased affluence in the developing world. In his book, Small Farmers Secure Food, Lindsay Falvey, a participant in FDI’s March 2012 workshop on the issue of food and conflict, clearly expresses the problem and why countries across the globe are starting to take note. . He writes (p.36), “…if people are hungry, especially in cities, **the state is not stable** – riots, violence, breakdown of law and order and migration result.” “Hunger feeds anarchy.” This view is also shared by Julian Cribb, who in his book, The Coming Famine, writes that if “large regions of the world run short of food, land or water in the decades that lie ahead, then **wholesale, bloody wars are liable to follow**.” He continues: “An increasingly credible scenario for **World War 3** is not so much a confrontation of super powers and their allies, as a **festering, self-perpetuating chain of resource conflicts**.” He also says: “The wars of the 21st Century are less likely to be global conflicts with sharply defined sides and huge armies, than a scrappy mass of failed states, rebellions, civil strife, insurgencies, terrorism and genocides, sparked by bloody competition over dwindling resources.” As another workshop participant put it, people do not go to war to kill; they go to war over resources, either to protect or to gain the resources for themselves. Another observed that hunger results in passivity not conflict. Conflict is over resources, not because people are going hungry. A **study** by **the I**nternational **P**eace **R**esearch **I**nstitute indicates that where food security is an issue, it is more likely to result in some form of conflict. **Darfur, Rwanda, Eritrea and the Balkans** experienced such wars. Governments, especially in developed countries, are increasingly aware of this phenomenon. The UK Ministry of Defence, the CIA, the US **C**enter for **S**trategic and **I**nternational **S**tudies and the Oslo Peace Research Institute, **all identify** famine as a potential trigger for conflicts and possibly even **nuclear war**.

#### Lack of port revenue opens vulnerabilities to terrorism---extinction

Haveman and Schatz 6, Haveman is a research fellow and director of the Economy Program at the Public Policy Institute of California. Shatz is a research fellow at the Public Policy Institute of California, where he focuses on California’s interactions with the global economy. (Jon & Howard, 2006, “Protecting the Nation’s Seaports: Balancing Security and Cost,” Public Policy Institute of California, <https://www.ppic.org/wp-content/uploads/content/pubs/report/R_606JHR.pdf>)

The Issue of Port Security The term “port security” serves as shorthand for the broad effort to secure the entire maritime supply chain, from the factory gate in a foreign country to the final destination of the product in the United States. The need to secure ports and the supply chain feeding goods into the ports stems from two concerns. The first is that transporting something from one place to another—the very activity that the ports facilitate—is an important activity for terrorists. Terrorists could use a port as a conduit through which to build an arsenal within the nation’s borders. The second concern is that ports themselves present attractive targets for terrorists. Ports are a significant potential choke point for an enormous amount of economic activity. The 361 U.S. seaports make an immense contribution to U.S. trade and the U.S. economy. They move about 80 percent of all U.S. international trade by weight, and about 95 percent of all U.S. overseas trade, excluding trade with Mexico and Canada. By value, $807 billion worth of goods flowed through the seaports in 2003, about 41 percent of all U.S. international goods trade. This value is higher than the value of trade moved by all modes in any single leading industrial country except Germany. Temporarily shutting down a major U.S. port could impose significant economic costs throughout not only the United States but also the world. Al-Qaeda leader Osama bin Laden has labeled the destruction of the U.S. economy as one of his goals: “If their economy is finished, they will become too busy to enslave oppressed people. It is very important to concentrate on hitting the U.S. economy with every available means.”1 The potential for a port closure to disrupt economic activity has been made clear several times in recent years. In 2002, the closure of all West Coast ports was clearly responsible for some element of economic disruption, with estimates of lost activity ranging from the hundreds of millions of dollars per day to several billion. In September 2005, Hurricane Katrina further served to reinforce the fact that ports are an integral feature of our goods distribution system. The closure of the Port of New Orleans and many smaller ports along the Gulf Coast is likely to have adversely affected U.S. grain exports, although at the time of this writing, cost estimates were not available. Hurricane Katrina further illustrated the effects of disruptions to the flow of oil, gasoline, and natural gas to the nation’s economy. That a natural disaster can produce such a result implies that an attack on oil terminals at U.S. ports could be both desirable and effective for terrorists. Beyond their economic role, the largest seaports are also near major population centers, so the use of a weapon of mass destruction at a port could injure or kill thousands of people. In addition, a weapon such as a nuclear device could cause vast environmental and social disruption and destroy important non-port infrastructure in these urban areas such as airports and highway networks. How much risk is there for either of these concerns? U.S. law enforcement, academic, and business analysts believe that although the likelihood of an ocean container being used in a terrorist attack is low, the vulnerability of the maritime transportation system is extremely high, and the consequence of a security breach, such as the smuggling of a weapon of mass destruction into the country, would be disastrous.2 Others take issue with the notion that the likelihood of a container attack is low, believing that an increase in global maritime terrorism in 2004 and the reputed appointment late that year of a maritime specialist as head of al-Qaeda in Saudi Arabia portended a significant maritime attack.3

### 1AC---Alliances

#### Advantage 2 is Megaships:

#### 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 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---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.”