# 1AC

### 1AC---Economy

#### Advantage 1 is the Economy:

#### Shipping alliances are exempt from antitrust

Georgieva 20, J.D. candidate 2020, Tulane University Law School. (Ralitsa, 2020, Cracking Down Antitrust Prohibitions: Conferences, Mergers and Acquisitions, and Alliances in the Shipping Industry, 44 Tul. Mar. L. J. 291, Lexis Nexis)

The viable distinction between M&As and alliances is that alliances are often cooperative agreements and their terms are negotiated between the members of the alliance. M&A deals, on the other hand, "tend to be more competitive in nature with market-based prices and associated with more risks." 194 However, M&As could create an excessive concentration of market power. M&As are subject to antitrust regulation under section 7 of the Clayton Act; 195 "the Shipping Act does not provide the [FMC] with authority to review and approve mergers." 196Through M&A activity, a company eliminates a competitive rival and increases market concentration, which is "a potential concern for future anticompetitive market behavior." 197 In contrast, when companies join forces through an alliance, there are just as many sellers of vessel space as there were before, and rate competition continues among the alliance's members. 198Consequently, there is no increase in market concentration, and alliances are not subject to antitrust regulation under section 7 of the Clayton Act. 199 The FMC has the sole authority to oversee agreements among and between ocean common carriers and among and between maritime terminal operators for their compliance with the Shipping Act - general antitrust laws such as the Sherman Act and the Clayton Act are [\*317] inapplicable to those agreements. 200 This antitrust loophole makes alliances a valuable option that is provided for the companies under the Shipping Act. 201 A question arises of whether forming alliances could harm competition. Alliances could raise antitrust law concerns in what has become a concentrated market. In 1998, the top four carriers had a market share of less than 20%. This share increased to almost 60% in 2018. 202The market share of the biggest carrier, Maersk, was 19% in 2018, which is a larger market share than any global liner alliance ever had before 2012. 203These numbers point to a "market situation that could be considered an oligopoly and moderately concentrated." 204 The three major alliances "together represent around 95% of the market share, with limited activity from independent carriers, in particular on the Asia-Europe trade lines." 205Arguably, alliances could represent barriers for independent carriers to enter the market and could function as vehicles for collusion, "as they provide carriers with in-depth insights on the cost structures of their competitors." 206Therefore, container lines that are not members of alliances may find it more difficult to compete in the shipping market. Consequently, they will be either forced to join an alliance in order to survive or leave the market. 207Some commentators argued that smaller container lines could continue to operate in niche markets. 208However, evidence suggests that smaller container lines are already losing ground to mega alliances. 209

#### The exemption artificially inflates shipping rates

Maiorano 21, Senior Competition Expert at OECD, Competition Division. (Frederica, 6-7-2021, “Directorate for Financial and Enterprise Affairs Competition Committee Working Party No. 2 on Competition and Regulation Competition Enforcement and Regulatory Alternatives – Note by the United States,” OECD, https://bit.ly/3mkAzKO)

Ocean shipping 12. The Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 exempts certain agreements among ocean common carriers (i.e., those operating vessels and providing service to the public between the United States and a foreign country) from the antitrust laws and subjects them to oversight by the Federal Maritime Commission (FMC), an independent regulatory agency. The Act expressly confers an exemption from the antitrust laws for agreements on shipping rates, pooling arrangements, and shipping route allocations, so long as those agreements are first submitted to and reviewed by the FMC. This is the oldest surviving U.S. statutory antitrust exemption, having been originally adopted in 1916. The exemption covers not only agreements that have gone into effect under the Act, but also activities undertaken “with a reasonable basis to conclude” that they were pursuant to an agreement that has gone into effect. The antitrust exemption also covers intermodal through rates incorporating rail, truck, and ocean legs of particular cargo movements. 13. A carrier agreement does not require FMC “approval,” but is subject to several specific statutory conditions and goes into effect—and thereby becomes immunized from the antitrust laws—45 days after it is accepted for filing or submission of any additional information requested by the FMC. Once an agreement has been filed, the only way it can be challenged as anticompetitive is if the FMC successfully seeks to have a court enjoin the agreement on grounds that it is “likely, by a reduction in competition, to produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost.”8 14. Conduct that does not satisfy the statutory requirements for the antitrust exemption remains subject to the antitrust laws. For example, immunity does not extend to mergers and acquisitions involving ocean carriers. The DOJ has also successfully prosecuted pricefixing cases involving international trade lanes. A recent example involved a world-wide conspiracy involving price fixing, bid rigging, and market allocation in international ocean shipping services for roll-on, roll-off cargo to and from the United States and elsewhere. Roll-on, roll-off cargo is non-containerized cargo that can be both rolled onto and off of an ocean-going vessel; examples include new and used cars and trucks and construction and agricultural equipment. In 2015 and 2016, four companies (Wallenius Wilhelmsen Logistics AS, Kawasaki Kisen Kaisha Ltd., Nippon Yusen Kabushiki Kaisha, and Compañia Sud Americana de Vapores S.A.) pled guilty and were sentenced to pay total fines of $234.9 million, and four corporate executives pled guilty and were sentenced to an average of over 16 months in jail.9 15. The DOJ has long advocated that the general antitrust exemption granted by the Shipping Act is no longer justified and should be eliminated.10 In addition, the American Bar Association Antitrust Law Section’s monograph on Federal Statutory Antitrust Exemptions11 describes why the arguments traditionally asserted to justify the exemption (i.e., ruinous competition due to overcapacity) are dubious. The ABA Antitrust Law Section concludes that the conferences “typically result in inefficiently high rates” and have at least “some ability to inflate price.”12

#### 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.

#### 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

#### Ports are vital to the domestic stability, failure will wipe out 60 percent of the economy

---Lack of port infrastructure

---Cargo volume

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>)

It is long past time for Congress to update the Shipping Act to give the FMC the power it needs to bring lawsuits to block foreign carriers from colluding to set unfair prices and service terms. At the same time, lawmakers also must allow U.S. port service providers to demonstrate in court how these anticompetitive practices by the foreign cartels are harming their businesses and workers. Currently, their interests are barred from being considered in antitrust actions against foreign ocean carriers. Absent reform of this outdated regulatory environment, ports will be unable to make critical infrastructure upgrades that will allow the U.S. maritime industry to continue serving as vital economic engine for the country. Ports currently support 23 million jobs and generate more than $320 billion in tax revenue each year. And if current growth projections hold, they will become even more indispensable. By 2030, America’s trade volume is expected to quadruple, including tremendous growth in the amount of freight bound for export. Within 20 years, 60 percent of the U.S. economy is expected to depend upon port-related activity. But America’s maritime industry will not be able to continue to attract private investors and lenders to build infrastructure to meet this future economic demand unless Congress takes action now to end price-fixing and other anticompetitive practices by foreign ocean carriers that stifle industry profits, put jobs at risk and stifle private investment in much-needed port infrastructure upgrades. In particular, carriers immunized from antitrust regulation are also ordering enormous, new 22,000-container ships that will require new cranes and shore facilities, but they will not provide long-term volume guarantees necessary for ports to finance these capital improvements through regular commercial markets. Aside from this obvious legislative restoration of reasonable balance to enable private industry to meet demands, the two equally unacceptable outcomes are to do without the infrastructure and pay the economic penalty when bottlenecks occur, or look to taxpayer-funded solutions. Many lawmakers in Congress have talked about the need for modernizing regulations that constrain U.S. economic and job growth. They now have the perfect opportunity to reform U.S. maritime laws so they protect America’s shipping industry and port workers instead of lining the wallets of foreign competitors. And these reforms must begin with giving the FMC and the American maritime industry the power to take legal action to block unfair, anticompetitive actions by foreign cartels.

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

Cullinane 21, is a professor at the Department of Business Administration at the University of Gothenburg, Hercules Haralambides is a professor at the Department of Maritime Economics at Erasmus University. (Kevin, 7-26-2021, “Global trends in maritime and port economics: the COVID-19 pandemic and beyond,” Nature Public Health Emergency Collection, https://bit.ly/3mlxb2z)

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

#### 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.

#### Goes nuclear---unravels interdependence, hastens multipolarity, and invigorates nationalism.

Oppenheimer 21, MA, Clinical Professor and leads the IR Futures concentration @ the Center for Global Affairs, School of Professional Studies, New York University. (Michael F., “The Turbulent Future of International Relations”, *The Future of Global Affairs: Managing Discontinuity, Disruption and Destruction*, pg. 28-42, Palgrave Macmillan)

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

Posen 21, is the president of the Peterson Institute for International Economics, PhD at Harvard University. (Adam, February 2021, “Rebuilding the Global Economy,” Peterson Institute for International Economics, https://bit.ly/3jLZZ2n)

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.

#### 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.

#### Taiwan goes nuclear

Talmadge 18, Associate Professor of Security Studies at the Edmund A. Walsh School of Foreign Service at Georgetown University. (Caitlin, 10/15/18, "Beijing’s Nuclear Option: Why a U.S.-Chinese War Could Spiral Out of Control", *Foreign Affairs*, https://www.foreignaffairs.com/articles/china/2018-10-15/beijings-nuclear-option)

As China’s power has grown in recent years, so, too, has the risk of war with the United States. Under President Xi Jinping, China has increased its political and economic pressure on Taiwan and built military installations on coral reefs in the South China Sea, fueling Washington’s fears that Chinese expansionism will threaten U.S. allies and influence in the region. U.S. destroyers have transited the Taiwan Strait, to loud protests from Beijing. American policymakers have wondered aloud whether they should send an aircraft carrier through the strait as well. Chinese fighter jets have intercepted U.S. aircraft in the skies above the South China Sea. Meanwhile, U.S. President Donald Trump has brought long-simmering economic disputes to a rolling boil. A war between the two countries remains unlikely, but the prospect of a military confrontation—resulting, for example, from a Chinese campaign against Taiwan—no longer seems as implausible as it once did. And the odds of such a confrontation going nuclear are higher than most policymakers and analysts think. Members of China’s strategic com­munity tend to dismiss such concerns. Likewise, U.S. studies of a potential war with China often exclude nuclear weapons from the analysis entirely, treating them as basically irrelevant to the course of a conflict. Asked about the issue in 2015, Dennis Blair, the former commander of U.S. forces in the Indo-Pacific, estimated the likelihood of a U.S.-Chinese nuclear crisis as “somewhere between nil and zero.” This assurance is misguided. If deployed against China, the Pentagon’s preferred style of conventional warfare would be a potential recipe for nuclear escalation. Since the end of the Cold War, the United States’ signature approach to war has been simple: punch deep into enemy territory in order to rapidly knock out the opponent’s key military assets at minimal cost. But the Pentagon developed this formula in wars against Afghanistan, Iraq, Libya, and Serbia, none of which was a nuclear power. China, by contrast, not only has nuclear weapons; it has also intermingled them with its conventional military forces, making it difficult to attack one without attacking the other. This means that a major U.S. military campaign targeting China’s conventional forces would likely also threaten its nuclear arsenal. Faced with such a threat, Chinese leaders could decide to use their nuclear weapons while they were still able to.As U.S. and Chinese leaders navigate a relationship fraught with mutual suspicion, they must come to grips with the fact that a conventional war could skid into a nuclear confrontation. Although this risk is not high in absolute terms, its consequences for the region and the world would be devastating. As long as the United States and China continue to pursue their current grand strategies, the risk is likely to endure. This means that leaders on both sides should dispense with the illusion that they can easily fight a limited war. They should focus instead on managing or resolving the political, economic, and military tensions that might lead to a conflict in the first place. A NEW KIND OF THREAT There are some reasons for optimism. For one, China has long stood out for its nonaggressive nuclear doctrine. After its first nuclear test, in 1964, China largely avoided the Cold War arms race, building a much smaller and simpler nuclear arsenal than its resources would have allowed. Chinese leaders have consistently characterized nuclear weapons as useful only for deterring nuclear aggression and coercion. Historically, this narrow purpose required only a handful of nuclear weapons that could ensure Chinese retaliation in the event of an attack. To this day, China maintains a “no first use” pledge, promising that it will never be the first to use nuclear weapons. The prospect of a nuclear conflict can also seem like a relic of the Cold War. Back then, the United States and its allies lived in fear of a Warsaw Pact offensive rapidly overrunning Europe. NATO stood ready to use nuclear weapons first to stalemate such an attack. Both Washington and Moscow also consistently worried that their nuclear forces could be taken out in a bolt-from-the-blue nuclear strike by the other side. This mutual fear increased the risk that one superpower might rush to launch in the erroneous belief that it was already under attack. Initially, the danger of unauthorized strikes also loomed large. In the 1950s, lax safety procedures for U.S. nuclear weapons stationed on NATO soil, as well as minimal civilian oversight of U.S. military commanders, raised a serious risk that nuclear escalation could have occurred without explicit orders from the U.S. president. The good news is that these Cold War worries have little bearing on U.S.-Chinese relations today. Neither country could rapidly overrun the other’s territory in a conventional war. Neither seems worried about a nuclear bolt from the blue. And civilian political control of nuclear weapons is relatively strong in both countries. What remains, in theory, is the comforting logic of mutual deterrence: in a war between two nuclear powers, neither side will launch a nuclear strike for fear that its enemy will respond in kind. The bad news is that one other trigger remains: a conventional war that threatens China’s nuclear arsenal. Conventional forces can threaten nuclear forces in ways that generate pressures to escalate—especially when ever more capable U.S. conventional forces face adversaries with relatively small and fragile nuclear arsenals, such as China. If U.S. operations endangered or damaged China’s nuclear forces, Chinese leaders might come to think that Washington had aims beyond winning the conventional war—that it might be seeking to ~~disable~~ or destroy China’s nuclear arsenal outright, perhaps as a prelude to regime change. In the fog of war, Beijing might reluctantly conclude that limited nuclear escalation—an initial strike small enough that it could avoid full-scale U.S. retaliation—was a viable option to defend itself. STRAIT SHOOTERS The most worrisome flash point for a U.S.-Chinese war is Taiwan. Beijing’s long-term objective of reunifying the island with mainland China is clearly in conflict with Washington’s longstanding desire to maintain the status quo in the strait. It is not difficult to imagine how this might lead to war. For example, China could decide that the political or military window for regaining control over the island was closing and launch an attack, using air and naval forces to blockade Taiwanese harbors or bombard the island. Although U.S. law does not require Washington to intervene in such a scenario, the Taiwan Relations Act states that the United States will “consider any effort to determine the future of Taiwan by other than peaceful means, including by boycotts or embargoes, a threat to the peace and security of the Western Pacific area and of grave concern to the United States.” Were Washington to intervene on Taipei’s behalf, the world’s sole superpower and its rising competitor would find themselves in the first great-power war of the twenty-first century. In the course of such a war, U.S. conventional military operations would likely threaten, ~~disable~~, or outright eliminate some Chinese nuclear capabilities—whether doing so was Washington’s stated objective or not. In fact, if the United States engaged in the style of warfare it has practiced over the last 30 years, this outcome would be all but guaranteed. Consider submarine warfare. China could use its conventionally armed attack submarines to blockade Taiwanese harbors or bomb the island, or to attack U.S. and allied forces in the region. If that happened, the U.S. Navy would almost certainly undertake an antisubmarine campaign, which would likely threaten China’s “boomers,” the four nuclear-armed ballistic missile submarines that form its naval nuclear deterrent. China’s conventionally armed and nuclear-armed submarines share the same shore-based communications system; a U.S. attack on these transmitters would thus not only disrupt the activities of China’s attack submarine force but also cut off its boomers from contact with Beijing, leaving Chinese leaders unsure of the fate of their naval nuclear force. In addition, nuclear ballistic missile submarines depend on attack submarines for protection, just as lumbering bomber aircraft rely on nimble fighter jets. If the United States started sinking Chinese attack submarines, it would be sinking the very force that protects China’s ballistic missile submarines, leaving the latter dramatically more vulnerable. Even more dangerous, U.S. forces hunting Chinese attack submarines could inadvertently sink a Chinese boomer instead. After all, at least some Chinese attack submarines might be escorting ballistic missile submarines, especially in wartime, when China might flush its boomers from their ports and try to send them within range of the continental United States. Since correctly identifying targets remains one of the trickiest challenges of undersea warfare, a U.S. submarine crew might come within shooting range of a Chinese submarine without being sure of its type, especially in a crowded, noisy environment like the Taiwan Strait. Platitudes about caution are easy in peacetime. In wartime, when Chinese attack submarines might already have launched deadly strikes, the U.S. crew might decide to shoot first and ask questions later. Adding to China’s sense of vulnerability, the small size of its nuclear-armed submarine force means that just two such incidents would eliminate half of its sea-based deterrent. Meanwhile, any Chinese boomers that escaped this fate would likely be cut off from communication with onshore commanders, left without an escort force, and unable to return to destroyed ports. If that happened, China would essentially have no naval nuclear deterrent. The situation is similar onshore, where any U.S. military campaign would have to contend with China’s growing land-based conventional ballistic missile force. Much of this force is within range of Taiwan, ready to launch ballistic missiles against the island or at any allies coming to its aid. Once again, U.S. victory would hinge on the ability to degrade this conventional ballistic missile force. And once again, it would be virtually impossible to do so while leaving China’s nuclear ballistic missile force unscathed. Chinese conventional and nuclear ballistic missiles are often attached to the same base headquarters, meaning that they likely share transportation and supply networks, patrol routes, and other supporting infrastructure. It is also possible that they share some command-and-control networks, or that the United States would be unable to distinguish between the conventional and nuclear networks even if they were physically separate. To add to the challenge, some of China’s ballistic missiles can carry either a conventional or a nuclear warhead, and the two versions are virtually indistinguishable to U.S. aerial surveillance. In a war, targeting the conventional variants would likely mean destroying some nuclear ones in the process. Furthermore, sending manned aircraft to attack Chinese missile launch sites and bases would require at least partial control of the airspace over China, which in turn would require weakening Chinese air defenses. But degrading China’s coastal air defense network in order to fight a conventional war would also leave much of its nuclear force without protection. Once China was under attack, its leaders might come to fear that even intercontinental ballistic missiles located deep in the country’s interior were vulnerable. For years, observers have pointed to the U.S. military’s failed attempts to locate and destroy Iraqi Scud missiles during the 1990–91 Gulf War as evidence that mobile missiles are virtually impervious to attack. Therefore, the thinking goes, China could retain a nuclear deterrent no matter what harm U.S. forces inflicted on its coastal areas. Yet recent research suggests otherwise. Chinese intercontinental ballistic missiles are larger and less mobile than the Iraqi Scuds were, and they are harder to move without detection. The United States is also likely to have been tracking them much more closely in peacetime. As a result, China is unlikely to view a failed Scud hunt in Iraq nearly 30 years ago as reassurance that its residual nuclear force is safe today, especially during an ongoing, high-intensity conventional war. China’s vehement criticism of a U.S. regional missile defense system designed to guard against a potential North Korean attack already reflects these latent fears. Beijing’s worry is that this system could help Washington block the handful of missiles China might launch in the aftermath of a U.S. attack on its arsenal. That sort of campaign might seem much more plausible in Beijing’s eyes if a conventional war had already begun to seriously undermine other parts of China’s nuclear deterrent. It does not help that China’s real-time awareness of the state of its forces would probably be limited, since blinding the adversary is a standard part of the U.S. military playbook. Put simply, the favored U.S. strategy to ensure a conventional victory would likely endanger much of China’s nuclear arsenal in the process, at sea and on land. Whether the United States actually intended to target all of China’s nuclear weapons would be incidental. All that would matter is that Chinese leaders would consider them threatened. LESSONS FROM THE PAST At that point, the question becomes, How will China react? Will it practice restraint and uphold the “no first use” pledge once its nuclear forces appear to be under attack? Or will it use those weapons while it still can, gambling that limited escalation will either halt the U.S. campaign or intimidate Washington into backing down? Chinese writings and statements remain deliberately ambiguous on this point. It is unclear which exact set of capabilities China considers part of its core nuclear deterrent and which it considers less crucial. For example, if China already recognizes that its sea-based nuclear deterrent is relatively small and weak, then losing some of its ballistic missile submarines in a war might not prompt any radical discontinuity in its calculus. The danger lies in wartime developments that could shift China’s assumptions about U.S. intentions. If Beijing interprets the erosion of its sea- and land-based nuclear forces as a deliberate effort to destroy its nuclear deterrent, or perhaps even as a prelude to a nuclear attack, it might see limited nuclear escalation as a way to force an end to the conflict. For example, China could use nuclear weapons to instantaneously destroy the U.S. air bases that posed the biggest threat to its arsenal. It could also launch a nuclear strike with no direct military purpose—on an unpopulated area or at sea—as a way to signal that the United States had crossed a redline.

#### Coordinated “container management” 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**.

### 1AC---Ports

#### Advantage 2 is Ports:

#### Shipping Alliances undermine all efforts to reduce container ship pollution

Alger et al 21, global environmental politics scholar at the University of British Columbia. (Justin, with Jane Lister a Senior Research Fellow and Associate Director of the Centre for Transportation Studies at the Sauder School of Business, University of British Columbia, and Peter Dauvergne is Professor of International Relations at the University of British Columbia, Feb 18, 2021, Corporate Governance and the Environmental Politics of Shipping, https://brill.com/view/journals/gg/27/1/article-p144\_7.xml?language=en

. Of course, the problem is that any gains in efficiency are more than offset by the industry’s rapid growth. As projected, shipping emissions roughly doubled from 1970 to 2018.15 The IMO also projects that shipping carbon emissions will rise between 50 and 250 percent by 2050 under a business-as-usual scenario.16 Fuel efficiency matters for minimizing the environmental impact of shipping, but any gains risk being overshadowed by rising aggregate emissions. There is a similar challenge with emissions reduction efforts in ports. Despite regulatory efforts in many cities to reduce air pollution from ports, the IMO projects that port emissions are still likely to quadruple by 2050.17 The 100 most polluted ports alone affect approximately 230 million people.18 Building larger, more fuel-efficient ships is not enough to address these threats to the environment and human health. Focusing strictly on carbon emissions also risks neglecting the myriad of other environmental impacts of the shipping industry. As ships burn the lowest-grade heavy fuel oil (bunker fuel), the emissions include not just carbon but also sulfur dioxide, hydrocarbons, and various forms of nitrogen oxide, all of which have substantial environmental and human health effects. Low-grade marine fuel contains, for example, 3,500 times more sulfur than road diesel.19 According to one study, 30 percent of atmospheric sulfur aerosol around major shipping routes is directly attributable to shipping, contributing to the occurrence of acid rain and more intense storms.20 Other threats include oil spills, invasive species, disposal of hazardous material, and noise, among others. These environmental threats from global shipping have all grown since the 1970s despite progress in reducing emission rates. These trends point to a global shipping industry that looks much different today than it did in the 1970s. Transnational regulation and governance are an increasingly pervasive feature of both world affairs and scholarly analysis. An analysis of global shipping in the twenty-first century needs to account for the growing influence of corporations in global governance. Corporations, in many ways, now exert greater influence than states over global issues of stability, equity, and efficiency. This is especially true within the shipping industry. 3 The Roots of Industry Authority The shipping industry is the oldest transnational business and the transmission belt of the global economy. Historically, shipping and geopolitical power have gone hand in hand. In the past, it has been in the interest of states to limit regulations on the high seas to facilitate open competition and economies of scale in trade. The prevailing norm for high seas governance has been freedom of the seas—a norm that shipping companies have worked to reinforce in their efforts to avoid state regulation and consolidate their position. The industry’s privileged position in the global economy has made it especially effective in influencing its own governance. The freedom of the seas norm is central to why the shipping industry continues to be so difficult for states to regulate.21 This difficulty is partly the result of state design. Historically, states have advocated for minimal regulations at sea in pursuit of their strategic and economic interests. The legal justification for freedom of the seas dates back to 1609, when Dutch jurist Hugo Grotius made the case that shipping routes and ocean resources were inexhaustible resources and therefore should be available to all states equally—an important geostrategic priority for the then Dutch Republic.22 Grotius naturally could not predict the scale of extractive activity centuries later, but his legal basis for freedom of access to shipping routes largely endures today. The norm featured prominently throughout the ten-year negotiations for the UN Convention on the Law of the Sea (UNCLOS) adopted in 1982. As the world’s preeminent maritime powers throughout the nineteenth and twentieth centuries, the United Kingdom and United States viewed freedom of the seas as essential to the health of their economies. They used their collective power to enshrine it in international law. The evolution of the shipping regime since—around issues such as jurisdictional rights, damage control, and technical barriers—similarly reflects the prerogative of states to ensure free movement of ships and commerce. The historical state-based governance of shipping has, in short, worked toward enhancing industry autonomy in the name of geopolitics and commerce. States actively promoting industry autonomy gave major industry players a lot of leeway over how to organize, through their own banks and insurance companies, and most notably through loosely regulated industry “conferences” (essentially cartels).23 These conferences coordinated on maintaining control over certain shipping routes, often deliberately deploying ships on the same schedules as non-members to push them out of the market.24 Pushing smaller competitors out of the market allowed these conferences to fix prices at a higher rate, among other predatory business practices. The conference system would not endure, however. The emergence of containerization in the latter half of the twentieth century reduced shipping costs, making the market more competitive for smaller companies.25 New antitrust laws targeting conferences in Europe and the United States at the beginning of the twenty-first century followed, further undermining their viability. These regulations were intended to break up what was increasingly an unfair, oligopolistic market, but they had the unanticipated effect of providing the impetus for the further centralization of authority in the industry. This centralization of power has taken two forms: an increase in mergers and acquisitions, and the formation of shipping alliances. The high fixed-variable cost ratio of the shipping industry makes consolidation an imperative for major shipping countries.26 With the benefits of coordinating routes and prices through conferences increasingly restricted by governments, major industry players have resorted to strategic mergers and acquisitions to achieve greater economies of scale. Figure 2 depicts the sharp rise in these mergers and acquisitions in the 1990s that has continued steadily since. Some of these mergers reflect a dramatic shift in industry composition. For example, the merger of COSCO and China Shipping in 2016—China’s two largest state-owned shipping conglomerates—made COSCO Shipping the world’s fourth-largest shipping company at the time (it has since risen to third). Strategic alliances also emerged to replace conferences, and these now dominate the shipping landscape. The market share of the major alliances leaped from 30 percent in 2011 to 80 percent in 2018, depicted in Figure 3. Just three alliances—Ocean Alliance, The Alliance, and 2M Alliance—now account for 80 percent of global capacity. Formed in 2017 following a reshuffling, these three alliances allow major carriers to coordinate to enhance their global service coverage and optimize operational costs by sharing resources. The major distinction between these alliances and the conferences of old is that alliance partners do not share commercial information, including pricing. But in practice, these alliances allow a select few large shipping companies to dominate the industry even further. Minimal government antitrust efforts and lingering liner shipping block exemptions from competition policy have enabled the ongoing formation of an oligopoly in global shipping—driven by the advent of megaships and by the steady increase in industry consolidation through mergers, acquisitions, and alliances that began in the 1990s.27 The industry has, in short, been highly effective in avoiding regulation or in finding creative ways to limit its efficacy. There is perhaps no clearer instance of this than the “flags of convenience” model, by which ships can choose which country’s flag to fly. This model allows ships to fly the flag of a country of its choice, including those with minimal safety and environmental regulatory requirements. Countries that ignore IMO resolutions have an outsized ability to undermine new standards. Rather than adhering to new rules—environmental or otherwise—ships often can simply switch flags and ignore them altogether. This system has endured because it benefits all parties: flag states get more traffic, non-flag states get cheaper shipping costs, and shipping companies get increased profits.28 One possible solution is for governments to adopt an exclusion model that prohibits port access to ships that fly flags of convenience.29 But progress has been slow. In 2017, the five largest shipping fleets by flag of registration were Panama, Liberia, the Marshall Islands, Hong Kong, and Singapore.30 This model continues to allow ships to pick and choose which country’s regulations to adhere to, vastly undermining the ability of the IMO and national governments to set standards.31 The freedom of the seas norm that states have long sought to reinforce has had perverse effects on global shipping governance. Mergers and acquisitions, conferences, alliances, and flags of convenience all contribute to an industry structure that has systematically reinforced the power of major corporations. For their part, states have struggled to identify the right balance between the geopolitical and commercial importance of freedom of the seas and the need to regulate the industry (environmental or otherwise). Even when states do introduce new rules, they tend to have unintended consequences. Antitrust efforts helped break up shipping conferences, but led to today’s structure of powerful alliances. From price fixing to alliances to regulatory evasion, major corporations have significantly enhanced their market dominance and, by extension, their political power over global shipping—an outcome with perhaps unexpected consequences for the environmental governance of the industry. 4 Environmental Governance of Global Shipping The consolidation of the industry since the 1970s and the freedom of the seas approach to shipping governance have allowed major companies to exert substantial influence over their environmental governance. Consolidation can benefit states looking to better regulate industry by, most notably, making it easier to design and target regulations in an industry with fewer larger firms. But consolidation also means a few firms have substantial market power that they can leverage to shape the content of state regulation, or oppose it outright. The industry has used that leverage in tangible ways to shape the environmental governance of shipping. Historically, that influence has translated into efforts to avoid environmental regulation. The shipping industry was one of only two industries exempted from emissions cuts in the 2015 Paris Agreement on climate change—a trend that continues its similar exemption from the 1997 Kyoto Protocol. Shipping is responsible for approximately 3 percent of global carbon emissions, which would put it in the top ten global emitters if considered a country, so its exemption is a major blow to the climate regime. Environmentalists lamented the shipping exception, decrying the “corporate capture” of the IMO and UN by shipping and air transport lobbyists. But the global shipping industry has been nigh untouchable for states looking to curb the sector’s climate change impact. This untouchable status is partly by design. In addition to an embedded freedom of the seas norm, the industry further benefits from the norm of liberal environmentalism, which emerged out of the negotiations and compromises leading up to the 1992 UN Conference on Environment and Development (UNCED), often referred to as the Rio Earth Summit.32 In Rio, states confirmed the need to better protect the global environment, but with the major caveat that efforts should not interfere with economic growth and development. Ever since, this compromise has defined the state-led governance of environmental issues from climate change to deforestation to biodiversity loss. The maritime industry agreed to support the Rio agenda only as long as it could set its own regulatory agenda.33 As the transmission belt of the global economy, it was simply too essential to all countries to risk disruption. Exemptions in Paris and Kyoto, and the so-called corporate capture of the IMO, therefore merely reflect the application of this norm to global shipping and its centrality in the global economy. That is not to say that state-led governance of shipping has not been strong and successful at times. For example, states took action on oil spills by imposing stricter spill prevention standards on the industry. Oil spills can seriously damage corporate reputation, much more so than diffuse, long-term environmental impacts such as emissions. They have a lasting, visible impact, and generate public outcry. The industry has therefore been responsive to tougher IMO resolutions and technical guidelines for oil spill prevention.34 Despite the cost of implementing stricter safety standards in ship design, the industry sees the value in ceding authority on certain issues to external organizations such as the IMO. Adhering to best practices, as defined by outside governance bodies, has led to a sharp reduction in spills since the 1970s, as depicted in Figure 4. But it also provides the industry with a scapegoat in the event of a spill. Rather than a focus on internal malpractice, many oil spills become a lightning rod for reviewing the international standards set by the IMO. Oil spills can be reduced in number and their impact mitigated, but they are an inevitability of ship bunkering (refueling) and oil transport. By ceding authority on oil spills, the industry has effectively deflected the burden of responsibility to governments and international bodies on a high-profile, potentially market-damaging issue. Similarly, in 2008 the IMO adopted a sulfur cap of 0.5 percent of fuel composition to come into effect on 1 January 2020—a sizable decrease from the previous 3.5 percent limit. This regulation applies to all new and existing ships, generally requiring that ships substitute cleaner, more expensive fuel, but also requiring retrofitting of tanks and engines in many older ships. Individual flag states are still responsible for sanctions in the event of noncompliance, but the IMO has adopted a particularly aggressive stance on sulfur emissions, raising its profile as an environmental priority and effectively ratcheting up pressure on industry. Given the pressure, major industry players are expected to comply, with a projected cost for the container shipping industry of between $ 5 billion and $ 30 billion, depending on market rates for fuel.35 Regulations such as those for oil spills and the sulfur cap demonstrate that state-led governance of shipping can be effective with industry buy-in, often gained through political pressure. States can and have put limitations on certain activities with real consequences for the industry. But new safety designs, ship retrofitting, and cleaner fuels are costly. Given the potential cost of new regulations, major shipping companies have not sat idly by, instead taking the initiative to better shape the environmental governance of their industry through self-regulation. 5 Environmental Self-Governance Following the lead of their big brand customers like Coca-Cola, IKEA, Walmart, and countless others, the major shipping companies are seeking to control their regulatory fate through self-governance and CSR initiatives. By voluntarily committing to sustainability, these companies can simultaneously reduce the impetus for government-led regulation, while setting the terms of debate for future regulation.36 When companies environmentally self-regulate, even with unambitious goals, they tend to dissuade voters, activists, and government officials alike from supporting more robust regulations.37 They also create benchmarks for the rest of the industry to follow and they influence the agenda for state-led governance. In doing so, the companies enhance their autonomy from government-imposed regulation, allowing them to shape the future of the industry and protect their profitability. Put simply, through CSR major shipping companies gain political authority to decide which environmental issues to address, and how to address them in a way that will not have an oversized effect on their bottom line. The cost of these self-imposed initiatives is a price well worth paying to avoid the potential losses associated with a rigorous state-led regulatory regime. One such example was the approach that the International Chamber of Shipping (ICS) took to IMO-imposed greenhouse gas emissions reductions. Just as the IMO was advancing with a 2017–2023 road map for reducing greenhouse gases, the ICS submitted an alternative proposal to the IMO that voluntarily permitted the organization to impose reductions beginning in 2023. The ICS proposal did not specify any reduction targets. The IMO accepted the industry proposal, feeling that industry buy-in was important for compliance. But the cost of this buy-in was high. The proposal marginalized and delayed action, with the IMO ultimately setting an intensity target for 2030 while pushing back the absolute emission reduction target to 2050—letting industry off the hook in the short term. The ICS effectively co-opted the IMO reductions targets. Their watered-down proposal was representative of many CSR initiatives—weak, voluntary industry commitments that fail to adequately address the environmental problem in question.38 In this case and others, the industry used its bargaining power to supplant a more ambitious, IMO-driven plan. To the IMO—an organization that struggles with compliance—having industry on board was more important than rigorous emissions targets. In this instance, small and large firms unified through the ICS to undermine the IMO plan but, increasingly, just a few firms are able to go it alone to similar result. More recently, major industry players are moving toward greater environmental self-governance, as exemplified by green ship certification schemes. Spearheaded by industry leaders, these voluntary CSR programs, such as RightShip, Clean Cargo, Green Award, Green Ship of the Future, Environmental Ship Index, and the Clean Shipping Index, establish benchmark criteria to assess vessels on their environmental performance. They mainly measure carbon emissions and fuel efficiency. Ships that pass the mark receive a positive ranking and green seal of approval that qualifies the vessel for market incentives such as reduced port fees and better slot allocation at port. These ratings also bestow a market advantage to companies with certified vessels by allowing them to appeal to cargo customers seeking more environmentally responsible transport. More importantly, the voluntary standards are providing the industry with the opportunity to shape environmental rules. Container shipping companies representing approximately 85 percent of the world’s ocean container shipping volume, for example, participate in the Clean Cargo Program, which includes a business Climate Call to Action agenda. 6 Environmental Self-Governance at Maersk Beyond industry-led certification, there are a select few companies that are proactively pushing for better environmental regulation, most notably Maersk (or what is more formally known as A.P. Møller—Mærsk A/S). Maersk’s sustainability initiatives and its advocacy for better environmental performance by the industry have earned it a positive reputation, even among industry critics. InfluenceMap’s report on corporate capture of the IMO, for example, specifically lauds Maersk for its transparency and progressive voice in an otherwise scathing report.39 As Maersk CEO Søren Skou puts it, “Companies can no longer stay on the sidelines when it comes to global issues.”40 Maersk has been proactive on environmental governance, and its efforts are transforming not only the company but the industry itself. Other companies and associations concentrated in Northern European countries are already starting to follow suit and support environmental action such as through the Trident Alliance lobby for strong sulfur fuel regulation and enforcement. Beyond gaining political influence, there is a powerful business case for Maersk’s support for stronger environmental governance. The business value, we argue, goes beyond the standard CSR “eco-business” from enhancing environmental efficiencies, reducing waste, and gaining more control of supply chains.41 Given the nature of the global shipping industry, higher environmental standards are giving Maersk a significant competitive advantage. New environmental regulations tend to raise the costs of shipping in an industry with already low profit margins, especially for smaller carriers that cannot take advantage of economies of scale. Companies such as Maersk that benefit from the cost savings of megaships and alliances are much better positioned to absorb these kinds of financial shocks than smaller companies. Maersk wields substantial power as the market leader in an increasingly centralized industry, allowing it to pressure governments and ports to make new environmental standards compulsory and ensure “level-playing-field” enforcement to guard their competitive margins. The inevitable outcome of rising operating costs is further industry consolidation through mergers and acquisitions, smaller companies put out of business, and rising barriers to entry for aspiring companies. By escalating environmental requirements and, therefore, risks and costs on its competitors, Maersk solidifies its industry dominance. Maersk’s position on sulfur emission limits in the Port of Hong Kong exemplifies how a powerful company exerts its influence to push for stronger environmental regulations to give it a competitive advantage. In 2012, the Port of Hong Kong cut port fees in half for ships that used fuel with no more than 0.5 percent sulfur content. Maersk, along with seventeen other companies, took advantage of the program. But in 2013 Maersk threatened to switch back to cheaper, dirtier fuel if the port did not make the cleaner fuel mandatory for all. Maersk claimed the cleaner fuel cost an additional $ 2 million per year, only 40 percent of which was made up by cost savings from reduced port fees. This increased cost, Maersk argued, put it at a competitive disadvantage relative to its major competitors in East Asia.42 Maersk, however, was already using low-sulfur content fuel on its ships in part because it needed to abide by European standards. Its threat to switch to dirtier fuel was therefore somewhat hollow, as was its calculation of the additional cost to Maersk. Maersk’s incentive was certainly to level the playing field and it did so by pushing the Port of Hong Kong to adopt the same standards Maersk was already using internally. Bowing to Maersk, its largest customer, the Port of Hong Kong made the reduced-sulfur content fuel mandatory on all ships in 2015. Maersk is used here as an illustrative example, but Nordic shipping companies in particular are increasingly employing tactics similar to Maersk’s pressuring of the Port of Hong Kong. While the majority of shipping companies, often represented by the International Chamber of Shipping, remain silent on environmental issues, some of the largest shipping companies have been anything but. There are two key reasons why some of the major players like Maersk are becoming more environmentally conscious.43 The first is that they are more inclined to long-term planning. They see competitive advantage in being ahead of the curve on environmental performance, allowing them to attract environmentally conscious customers. As IKEA, Nike, Walmart, and others commit to sustainable supply chains, their public image increasingly depends on reducing the environmental cost of shipping. The CEO s of companies like Amazon, Cargill, and Walmart consistently rank in the top 100—and frequently the top 20—in lists of the most influential people in global shipping. Transnational retailers are increasingly looking to shipping emissions as one way of reducing their environmental footprints and enhancing their sustainability credentials. Large shipping companies are therefore using their strong market positions to capitalize on this growing demand for green shipping. Maersk, for example, has established “carbon pacts” with its major suppliers, notably Tetra Pak, BMW, and AkzoNobel, to meet the growing demand for greener ocean transport. Such pacts are also, however, a highly strategic means to lock customers into a long-term business relationship. The second reason is that companies such as Maersk tend to be more technologically advanced than their competition. The better environmental performance of these companies is due in large part to this technological prowess. This prowess not only includes their ability to design and build more fuel-efficient megaships, but also to conduct industry-leading research and development into the low- or zero-emissions vessels of the future. Many of these vessels will use cleaner fuels such as liquefied natural gas (LNG) and hydrogen, while others use advanced battery, fuel cell, wind, and solar technology. Whereas most shipping companies focus on operational measures such as improved maintenance and slow steaming for better fuel efficiency to address sustainability, the major industry sustainability leaders are pursuing fundamentally new ship designs. Being ahead of the curve with these advancements gives the big players an incentive to push for stricter environmental standards. Any new environmental regulations would have a greater impact on competitors lagging behind on these technologies. While the main target of these tactics may be major competitors (i.e., large Chinese shipping companies), the increased costs to smaller shipping companies are, at best, collateral damage. At worst, they represent systematic efforts by the world’s largest shipping companies to force their smaller competitors out of the market. The efforts of Maersk to use sustainability to enhance its market position is increasingly common in environmental governance. Corporations regularly look to co-opt environmental governance to set the terms for it.44 But as Strange noted in 1976, global shipping is unique in its geopolitical and commercial importance in the international system. The industry’s Paris exemption, as noted above, is perhaps the clearest indication of its exceptional status. The source of Maersk’s power is not just market dominance, but specifically market dominance in an industry that is essential to the majority of global commerce. The ongoing trend toward greater industry consolidation, particularly over the past decade, has only heightened the influence of major players. Put simply, major players such as Maersk are leveraging the industry’s status as well as their market dominance to dictate the direction and scope of environmental governance, significantly enhancing their competitiveness along the way. 7 Conclusion: The Path to Sustainability? The elephant in the room is whether, on balance, industry-driven governance is an effective mechanism for improving the overall environmental performance of the container shipping industry. It certainly is leading to short-term incremental improvements, but the answer is murkier with respect to strategic long-run advances. The progressive stance of companies such as Maersk on reducing greenhouse gas emissions is an important normative shift within the industry. It is certainly desirable that some of the largest companies in the world’s oldest transnational industry are acknowledging their environmental impacts. Such efforts are certainly better than avoidance and obfuscation, as has been common in the past. In addition, many of the technological advances in shipping are helping to decrease environmental consequences. The shipping industry is not going anywhere, so these advances are necessary if it is to become more sustainable. Yet we need to keep in mind that corporate self-governance of environmental matters is further consolidating power and authority within the shipping industry. Concentration is happening on two fronts. First, industry self-governance is co-opting governance from state-led processes. Industry increasingly decides which problems to address and how to address them. These decisions tend to lead to marginal, incremental steps that benefit business by minimizing any impact on profitability. Fuel efficiency gains, for example, do not compensate for rapid growth in global shipping. On aggregate, the environmental impact of the industry is rising despite better efficiency. As noted, international shipping currently accounts for 3 percent of global greenhouse gas emissions. One European Union study predicts that this percentage will rise to 17 percent by 2050, if left unregulated.45 Private governance alone is not enough to reduce this impact meaningfully. The problem is compounded because shipping is a derived demand industry, so its impact also depends on unregulated global consumption levels and supply chains.46 The current industry-led approach nonetheless risks being a linear solution to an exponential problem. Second, major industry players in container shipping are using environmental regulation as a tool to enhance their market dominance, leading to even greater consolidation of the industry. It is not necessarily problematic for industry leaders like Maersk to raise the bar of environmental performance and force laggards to follow suit. But as noted above, this could be problematic for global shipping because smaller companies cannot keep up in an already centralized industry with low profit margins, aggravating already existing inequities common across the international political economy. Sustainability has become, in part, a competitive tool for some corporate players to make the industry even less democratic. It can raise costs that are more easily absorbed by large companies, put a premium on economies of scale, and increase barriers to entry: all further enhancing the power and authority of major companies to dictate governance. Industry sustainability initiatives are, unexpectedly, hastening global shipping’s march toward becoming a global oligopoly, if it is not already there. We could arguably consider this trade-off between consolidation and a commitment to environmental self-governance a good thing for the industry’s performance. If it meant sustainability in global shipping, then perhaps the case could be made that a less democratic industry is an acceptable cost. The prevailing question is whether a few large container shipping companies, increasingly self-regulating, will be willing to make greater sacrifices for sustainability to prevent the bleaker projections of the industry’s environmental impact from becoming reality.

#### Ports are hotspots for future climate investment

UNEP 21, United Nations Environmental Programme (August 5, 2021, 5 EXAMPLES OF BEST PRACTICE TO SUSTAINABLY FINANCE THE PORT SECTOR, <https://www.unepfi.org/news/themes/ecosystems/5-examples-of-best-practice-to-sustainably-finance-the-port-sector/>

The blue (ocean) economy offers many opportunities for private finance to lend and invest in a sustainable and nature-positive way. Here we look at some of the leading examples of best practice in social and environmental sustainability across the port sector which banks, insurers and investors can seek out. Ports are gateways for development, global trade and maritime innovation, and being located at sea level, they are on the front lines of climate change. Ports are also clusters of companies and hubs of economic activity. With strong scale and scope advantages they are ideal hubs for sustainable maritime innovation and have become a key part of development strategies employed by many nations (Rodrigue and Notteboom 2020). To further encourage the sustainable development of the sector, we have listed 5 examples of innovative best practice in ports that you might not know about. Check out Turning the Tide, UNEP FI’s detailed guidance on financing for the sustainable blue economy for more examples and how they may be material to your institution. The guide also includes an overview of activities to challenge or to avoid financing altogether, based on their sustainability credentials and overall risk. The recommendation may be to challenge certain activities, even where best practice is present in other areas. 1. Green transport Ports are the gateways between land and sea, and can offer opportunities for linking the blue economy with the green economy. Seek out ports or companies that provide green port-hinterland connections that are less reliant on additional travel or offer alternatives like rail terminal development. 2. Green technology Ports can be a hub for sustainable innovation and a centre for spinning off new business opportunities. Seek out ports that have skills and systems available to support green port technologies, for example in funding green technology development, as in the case of the Maritime and Port Authority of Singapore’s Maritime Decarbonisation Centre. Another green port initiative in Singapore is led by ship management company Eastern Pacific Shipping (EPS) and entrepreneur network Techstars. The duo announced a joint-venture project to launch a global start-up accelerator, the “EPS MaritimeTech Accelerator Powered by Techstars”. Digital technology is transforming the maritime space, making it possible to advance and monitor sustainability goals in everything from port operations to fuel efficiency and sustainable fishing. A shortlist of start-up companies was chosen for an intensive three-month programme of research and development, mentorship, and collaboration. The companies then pitched their business to an audience of venture capitalists, corporate innovation leaders and industry experts (Port Technology 2019). “The maritime world has traditionally lagged behind other sectors when it comes to embracing and leveraging the power of digital solutions and new technology,” says Dhritiman Hui, the new managing director of the mentorship-driven Techstars accelerator program. “Now, the confluence of new regulation, an influx of tech-savvy entrepreneurs interested in the space, and large, deep-pocketed VC funds, intrigued by the size and the possibilities of the maritime sector, are threatening to shift that paradigm.” 3. Spatial management Ports are heavily trafficked areas with vessels arriving and departing throughout the day. This can cause impacts on wildlife and habitats. Seek out ports with policies and practices in place that protect vulnerable species and habitats and adapt to known animal aggregation migration routes – for example along the California coast annual incentives are offered for vessels to reduce speed in and around ports to avoid fatal collisions with whales and reduce noise pollution. 4. Supply chains How ports are powered and supplied carries significant environmental impacts, and when done sustainably can set an example for their hinterlands and associated ecosystem of businesses. Focusing on renewable energy, utilising waste heat, carbon capture and storage as well as improving energy efficiency are all steps that can be taken, as demonstrated by the Port of Rotterdam. Seek out ports or associated companies using green supply chains for renewable energy, waste management, and sustainable sourcing. 5. Emissions incentives Ports can incentivise their visiting ships to move towards best practice on e.g. carbon emissions, for example by offering incentives for good emission ratings through discounted port fees as done by a number of ports worldwide through the Environmental Ship Index. Seek out ports that offer lower fees or other incentives to attract ships with good emissions ratings.

#### Container ships are unregulated detriments to the environment

Hureau 21, research and writer at Grover, M.A. in sustainable development at Uppsala University. (Alexandre, 2-8-2021, “Big cargo ships, big pollution,” Medium, https://medium.com/age-of-awareness/big-cargo-ships-big-pollution-834a525d7b7f)

Have you ever asked yourself how things get to where you are? Bananas from Ecuador? No problem. A computer from China? It’s waiting for you. Clothes from Bangladesh? Of course. Sure, there’s a lot of buzz going around about Amazon’s supply chain, but that’s usually the end of the journey for a given product. Before it gets to the merchant or the warehouse that will dispatch it to you, it has to be grown or manufactured. And, since many products originate from abroad, it has to be shipped. Often overlooked, the shipping industry serves as the bloodstream of our modern, globalized world. It also represents 10% of all global transport GHG emissions, a number which could rise by up to 250% by 2050. In addition, a single cargo ship may cause the same health issues as 50 million cars due to the use of low-quality bunker fuel. This is in addition to other issues such as the movement of species through the ballast water (pumped to keep the ships more stable), and the occasional oil spill or loss of cargo. Despite this, the industry has managed to continue operating with very little oversight, having been left out of international treaties such as the Paris Agreement. To this day, even though the public and governments are starting to demand change, there is very little public information about what the world’s largest shipping companies are up to when it comes to the environment. The shipping industry is in need of reform and innovation, and this change needs to happen now. Cargo ships are big It’s hard to imagine how large cargo ships are because most of us don’t hang around cargo ports on a regular basis. Common factors that dictate the maximum size of a ship include Suezmax and New Panamax. These are essentially standards dictating the maximum size a ship can have and still cross the Suez Canal and the Panama Canal. The former has a limit of 400 meters long, while the latter stops at 366 meters. Unsurprisingly, many ships aim for these upper limits, allowing them to transport vast amounts of cargo while reducing transit time as much as possible. Of course, these extremely large ships need extremely large engines to power them, and as the size of freighters continues to expand, so does the size of their powertrain. It’s not uncommon to find engines that stand multiple stories tall and can deliver over 100,000 horsepower. As you might expect, the fuel consumption that goes along with it is equally impressive. A somewhat efficient engine may consume as much as 1,660 gallons (7,547 litres) of bunker fuel per hour. Now imagine the cumulative impact of these ships going around the world. Emissions are also big The thing is, bunker fuel is nothing like the oil you use in your car. Most commonly, it is diesel of such low quality that it is almost a waste when looking at oil refining. Of course, along with making it extremely cheap to run, it also makes it extremely polluting. While the global warming impact is certainly high, the other pollutants emitted by cargo ships are also very alarming. A study estimated that global maritime shipping was responsible for up to 250,000 deaths annually due to air pollution, and up to 6.4 million childhood asthma cases. While there are restrictions when close to shore, these ships spend most of their time in international water, where there is little supervision and the level of enforcement is low. In fact, penalties for non-compliance with environmental rules have been a large point of debate in the creation of international agreements. The maritime industry is slow to adopt new environmental standards on its own, and as all is tradition in international affairs, governments have a hard time coming to an enforceable agreement. There are other environmental impacts Of course, air pollution is but one negative environmental impact that maritime shipping has. It would take a very long time to cover them all, but these include the aforementioned movement of species through water ballasts and the spills that periodically occur. Ships the size of those found in the maritime shipping industry often carry large amounts of water as ballast which they collect near the coast of one country and dump near another. In turn, they carry animals and plants from one place to the next, potentially introducing invasive species. A convention was adopted in 2004 to try and deal with this problem, but many countries still haven’t signed on, including large actors such as the United States. Fun fact, the International Maritime Organization apparently doesn’t have a page for the convention either. Spills and cargo losses need no introduction. Every few years, a large oil spill makes the news, but only if it’s large enough. Meanwhile, some beaches have become famous for the peculiar things that wash up on them because of cargo that was lost at sea. Cool tech and innovation Thankfully, the world is not completely asleep when it comes to the future of the maritime industry, and there is a constant flux of innovation that has been happening over the past few years. Though whether or not some of these reach a large enough scale to make an impact will likely depend on the price of oil and pressure from investors and governments. Some of these innovations involve going back to previous technologies. Cargill, for instance, wants to add large sails to its cargo ships in a bid to reduce their emissions by up to 30%. There is also at least one company that aims to use modern technologies to make highly efficient cargo ships powered by sails, though at a much smaller scale than used in the current industry. There is also a lot of research happening to find alternative energy sources. Ranging from biofuels to synthetically produced fuels powered by renewable energy, there are many options out there. The problem remains that these will only truly be adopted if they have an economic benefit for the shipping companies, or if they are incentivized or forced to innovate. Most of the things in your life have been shipped by cargo---from the food you eat, to the clothes you wear. Even if a product is manufactured locally, the odds are that parts and materials were shipped. Our globalized world trives on this interconnectedness, and, for better or worse, the maritime industry will keep getting bigger to meet the growing demand. The pressure is mounting for change to happen, but it’s still too slow. We need people to start demanding stricter environmental regulation, governments to get on board existing regulations while pushing for new ones, and companies to step up and bring innovation to a sector that is so desperately in need of it.

#### Warming causes extinction

Kareiva 18, Ph.D. in ecology and applied mathematics from Cornell University, director of the Institute of the Environment and Sustainability at UCLA, Pritzker Distinguished Professor in Environment & Sustainability at UCLA, et al. (Peter, “Existential risk due to ecosystem collapse: Nature strikes back,” *Futures*, 102)

In summary, six of the nine proposed planetary boundaries (phosphorous, nitrogen, biodiversity, land use, atmospheric aerosol loading, and chemical pollution) are unlikely to be associated with existential risks. They all correspond to a degraded environment, but in our assessment do not represent existential risks. However, the three remaining boundaries (climate change, global freshwater cycle, and ocean acidification) do pose existential risks. This is because of intrinsic positive feedback loops, substantial lag times between system change and experiencing the consequences of that change, and the fact these different boundaries interact with one another in ways that yield surprises. In addition, climate, freshwater, and ocean acidification are all directly connected to the provision of food and water, and shortages of food and water can create conflict and social unrest. Climate change has a long history of disrupting civilizations and sometimes precipitating the collapse of cultures or mass emigrations (McMichael, 2017). For example, the 12th century drought in the North American Southwest is held responsible for the collapse of the Anasazi pueblo culture. More recently, the infamous potato famine of 1846–1849 and the large migration of Irish to the U.S. can be traced to a combination of factors, one of which was climate. Specifically, 1846 was an unusually warm and moist year in Ireland, providing the climatic conditions favorable to the fungus that caused the potato blight. As is so often the case, poor government had a role as well—as the British government forbade the import of grains from outside Britain (imports that could have helped to redress the ravaged potato yields). Climate change intersects with freshwater resources because it is expected to exacerbate drought and water scarcity, as well as flooding. Climate change can even impair water quality because it is associated with heavy rains that overwhelm sewage treatment facilities, or because it results in higher concentrations of pollutants in groundwater as a result of enhanced evaporation and reduced groundwater recharge. Ample clean water is not a luxury—it is essential for human survival. Consequently, cities, regions and nations that lack clean freshwater are vulnerable to social disruption and disease. Finally, ocean acidification is linked to climate change because it is driven by CO2 emissions just as global warming is. With close to 20% of the world’s protein coming from oceans (FAO, 2016), the potential for severe impacts due to acidification is obvious. Less obvious, but perhaps more insidious, is the interaction between climate change and the loss of oyster and coral reefs due to acidification. Acidification is known to interfere with oyster reef building and coral reefs. Climate change also increases storm frequency and severity. Coral reefs and oyster reefs provide protection from storm surge because they reduce wave energy (Spalding et al., 2014). If these reefs are lost due to acidification at the same time as storms become more severe and sea level rises, coastal communities will be exposed to unprecedented storm surge—and may be ravaged by recurrent storms. A key feature of the risk associated with climate change is that mean annual temperature and mean annual rainfall are not the variables of interest. Rather it is extreme episodic events that place nations and entire regions of the world at risk. These extreme events are by definition “rare” (once every hundred years), and changes in their likelihood are challenging to detect because of their rarity, but are exactly the manifestations of climate change that we must get better at anticipating (Diffenbaugh et al., 2017). Society will have a hard time responding to shorter intervals between rare extreme events because in the lifespan of an individual human, a person might experience as few as two or three extreme events. How likely is it that you would notice a change in the interval between events that are separated by decades, especially given that the interval is not regular but varies stochastically? A concrete example of this dilemma can be found in the past and expected future changes in storm-related flooding of New York City. The highly disruptive flooding of New York City associated with Hurricane Sandy represented a flood height that occurred once every 500 years in the 18th century, and that occurs now once every 25 years, but is expected to occur once every 5 years by 2050 (Garner et al., 2017). This change in frequency of extreme floods has profound implications for the measures New York City should take to protect its infrastructure and its population, yet because of the stochastic nature of such events, this shift in flood frequency is an elevated risk that will go unnoticed by most people. 4. The combination of positive feedback loops and societal inertia is fertile ground for global environmental catastrophes Humans are remarkably ingenious, and have adapted to crises throughout their history. Our doom has been repeatedly predicted, only to be averted by innovation (Ridley, 2011). However, the many stories of human ingenuity successfully addressing existential risks such as global famine or extreme air pollution represent environmental challenges that are largely linear, have immediate consequences, and operate without positive feedbacks. For example, the fact that food is in short supply does not increase the rate at which humans consume food—thereby increasing the shortage. Similarly, massive air pollution episodes such as the London fog of 1952 that killed 12,000 people did not make future air pollution events more likely. In fact it was just the opposite—the London fog sent such a clear message that Britain quickly enacted pollution control measures (Stradling, 2016). Food shortages, air pollution, water pollution, etc. send immediate signals to society of harm, which then trigger a negative feedback of society seeking to reduce the harm. In contrast, today’s great environmental crisis of climate change may cause some harm but there are generally long time delays between rising CO2 concentrations and damage to humans. The consequence of these delays are an absence of urgency; thus although 70% of Americans believe global warming is happening, only 40% think it will harm them (http://climatecommunication.yale.edu/visualizations-data/ycom-us-2016/). Secondly, unlike past environmental challenges, the Earth’s climate system is rife with positive feedback loops. In particular, as CO2 increases and the climate warms, that very warming can cause more CO2 release which further increases global warming, and then more CO2, and so on. Table 2 summarizes the best documented positive feedback loops for the Earth’s climate system. These feedbacks can be neatly categorized into carbon cycle, biogeochemical, biogeophysical, cloud, ice-albedo, and water vapor feedbacks. As important as it is to understand these feedbacks individually, it is even more essential to study the interactive nature of these feedbacks. Modeling studies show that when interactions among feedback loops are included, uncertainty increases dramatically and there is a heightened potential for perturbations to be magnified (e.g., Cox, Betts, Jones, Spall, & Totterdell, 2000; Hajima, Tachiiri, Ito, & Kawamiya, 2014; Knutti & Rugenstein, 2015; Rosenfeld, Sherwood, Wood, & Donner, 2014). This produces a wide range of future scenarios. Positive feedbacks in the carbon cycle involves the enhancement of future carbon contributions to the atmosphere due to some initial increase in atmospheric CO2. This happens because as CO2 accumulates, it reduces the efficiency in which oceans and terrestrial ecosystems sequester carbon, which in return feeds back to exacerbate climate change (Friedlingstein et al., 2001). Warming can also increase the rate at which organic matter decays and carbon is released into the atmosphere, thereby causing more warming (Melillo et al., 2017). Increases in food shortages and lack of water is also of major concern when biogeophysical feedback mechanisms perpetuate drought conditions. The underlying mechanism here is that losses in vegetation increases the surface albedo, which suppresses rainfall, and thus enhances future vegetation loss and more suppression of rainfall—thereby initiating or prolonging a drought (Chamey, Stone, & Quirk, 1975). To top it off, overgrazing depletes the soil, leading to augmented vegetation loss (Anderies, Janssen, & Walker, 2002). Climate change often also increases the risk of forest fires, as a result of higher temperatures and persistent drought conditions. The expectation is that forest fires will become more frequent and severe with climate warming and drought (Scholze, Knorr, Arnell, & Prentice, 2006), a trend for which we have already seen evidence (Allen et al., 2010). Tragically, the increased severity and risk of Southern California wildfires recently predicted by climate scientists (Jin et al., 2015), was realized in December 2017, with the largest fire in the history of California (the “Thomas fire” that burned 282,000 acres, https://www.vox.com/2017/12/27/16822180/thomas-fire-california-largest-wildfire). This catastrophic fire embodies the sorts of positive feedbacks and interacting factors that could catch humanity off-guard and produce a true apocalyptic event. Record-breaking rains produced an extraordinary flush of new vegetation, that then dried out as record heat waves and dry conditions took hold, coupled with stronger than normal winds, and ignition. Of course the record-fire released CO2 into the atmosphere, thereby contributing to future warming. Out of all types of feedbacks, water vapor and the ice-albedo feedbacks are the most clearly understood mechanisms. Losses in reflective snow and ice cover drive up surface temperatures, leading to even more melting of snow and ice cover—this is known as the ice-albedo feedback (Curry, Schramm, & Ebert, 1995). As snow and ice continue to melt at a more rapid pace, millions of people may be displaced by flooding risks as a consequence of sea level rise near coastal communities (Biermann & Boas, 2010; Myers, 2002; Nicholls et al., 2011). The water vapor feedback operates when warmer atmospheric conditions strengthen the saturation vapor pressure, which creates a warming effect given water vapor’s strong greenhouse gas properties (Manabe & Wetherald, 1967). Global warming tends to increase cloud formation because warmer temperatures lead to more evaporation of water into the atmosphere, and warmer temperature also allows the atmosphere to hold more water. The key question is whether this increase in clouds associated with global warming will result in a positive feedback loop (more warming) or a negative feedback loop (less warming). For decades, scientists have sought to answer this question and understand the net role clouds play in future climate projections (Schneider et al., 2017). Clouds are complex because they both have a cooling (reflecting incoming solar radiation) and warming (absorbing incoming solar radiation) effect (Lashof, DeAngelo, Saleska, & Harte, 1997). The type of cloud, altitude, and optical properties combine to determine how these countervailing effects balance out. Although still under debate, it appears that in most circumstances the cloud feedback is likely positive (Boucher et al., 2013). For example, models and observations show that increasing greenhouse gas concentrations reduces the low-level cloud fraction in the Northeast Pacific at decadal time scales. This then has a positive feedback effect and enhances climate warming since less solar radiation is reflected by the atmosphere (Clement, Burgman, & Norris, 2009). The key lesson from the long list of potentially positive feedbacks and their interactions is that runaway climate change, and runaway perturbations have to be taken as a serious possibility. Table 2 is just a snapshot of the type of feedbacks that have been identified (see Supplementary material for a more thorough explanation of positive feedback loops). However, this list is not exhaustive and the possibility of undiscovered positive feedbacks portends even greater existential risks. The many environmental crises humankind has previously averted (famine, ozone depletion, London fog, water pollution, etc.) were averted because of political will based on solid scientific understanding. We cannot count on complete scientific understanding when it comes to positive feedback loops and climate change.

#### Alliances manipulate and destroy ports

Merk et al 18, Associate Professor at the Urban School of the Institute for Political Science (Sciences Po) in Paris and leader of port and shipping work at the International Transport Forum (ITF) of the Organisation for Economic Co-operation and Development (OECD). (Olaf, with Lucie Kirstein and Filip Salamitov, 2018, The Impact of Alliances in Container Shipping, <https://www.itf-oecd.org/sites/default/files/docs/impact-alliances-container-shipping.pdf>.)

Whereas alliances might create value for some carriers, Chapter 2 illustrated that they likely destroy value for ports, terminals and port services, by undermining their return on investment. This is public investment for most port authorities, and private investment for terminal operators and port service providers, such as towage companies. Most ports depend on one or two alliances and the risk of losing the alliance calls provides these with huge leverage over ports to reduce rates and invest in additional infrastructure. Within ports, alliances have frequently resulted in simultaneous over-utilisation and under-utilisation of terminals, related to a “winner takes all” dynamic related to the dominance of the three global alliances. Rationalisation of alliance networks has reduced the number of direct port connections. Alliances and consolidation of the industry have contributed to the disappearance of smaller container ports, various independent terminal operators and drive consolidation in the towage sector.

#### Strong ports promote naval readiness

EPA 21, Environmental Protection Agency (Ports Primer: 2.1 The Role of Ports, <https://www.epa.gov/community-port-collaboration/ports-primer-21-role-ports>)

In addition to serving as economic drivers and transportation hubs, ports play an important role in national defense. Fifteen of our commercial seaports have been named Strategic Seaports by the U.S. Department of Defense (DOD) (see the map at right). These ports can help to support military deployments because of their large staging areas, connections to rail infrastructure and ability to load non-containerized cargo. Ports can also use these capabilities to support emergency relief activities, such as from the Federal Emergency Management Agency, for natural disasters. The DOD is particularly reliant on Strategic Seaports during military surge operations. For example, during Operation Iraqi Freedom, the DOD used these ports to load combat vehicles and aircraft. These operations require Strategic Seaports to have adequate rail infrastructure, significant staging areas for military cargo and workers skilled in handling non-containerized military equipment. As our commercial seaports continue to experience increasing levels of commercial containerized shipping, port staging areas and rail capacity to support military operations may be strained.

#### Readiness prevents war

Cropsey and McGrath 18 is Director of the Center for American Seapower at the Hudson Institute, is former Deputy Director of the Center for American Seapower at the Hudson Institute and naval officer former assistant to the Secretary of Defense and naval officer. (Seth and Bryan, January 2018, “Maritime Strategy in a New Era of Great Power Competition,” , Hudson Institute, <https://s3.amazonaws.com/media.hudson.org/files/publications/HudsonMaritimeStrategy.pdf>]

Introduction As a maritime nation, naval power is the U.S.’s most useful means of responding to distant crises, preventing them from harming our security or that of our allies and partners, and keeping geographically remote threats from metastasizing into conflicts that could approach our borders. A maritime defense demands a maritime strategy. As national resources are increasingly strained the need exists for a strategy that makes deliberate choices to connect ends (security) with means (money and the fleet it builds). This paper examines the need for a maritime strategy, discusses options, and offers recommendations for policy makers. After several decades of unchallenged world leadership, the United States once again faces great power competition, this time featuring two other world powers. China and Russia increasingly bristle under the constraints of the post-World War II systems of global trade, finance, and governance largely created by the United States and its allies, systems that the United States has protected and sustained to the economic and security benefit of its citizens and the citizens of other nations. Both China and Russia are demonstrably improving the quality of their armed forces while simultaneously acting aggressively toward neighboring countries, some of which are US treaty allies. Additionally, both nations are turning their attention to naval operations far from their own coasts, operations designed to advance national interests that are often in tension with those of the United States.1 For the past several decades, US national security strategy has not had to contend with great powers. Instead, it has concerned itself primarily with building alliances designed to manage regional security more efficiently by proxy, while devoting increasingly more resources to homeland defense and intelligence aimed at stemming acts of terror by Islamic radical organizations and their followers. To the extent that the US position of leadership in the world was not threatened, this strategy was reasonable, if imperfectly pursued. Such a strategy will no longer suffice in a world of great power competition, especially one in which powers of considerable—but unequal—strength are opposed. Unbalanced multi-polarity is an especially unstable condition, and the United States is not effectively postured to manage that instability. Henry Kissinger divides the concept of world order into two parts: a normative system that defines acceptable action, and a ‘balance of power’ arrangement that punishes the breach of such conventions2. As the underlying balance of forces shifts, states with different ideas of international order gain the power to reshape the system. Thucydides’ ancient insight holds true – the rise in power of one actor threatens all others. Where such threat exists and if the balance of power between states or coalitions approaches equilibrium, a “Cold War” between competing ideological camps occurs.

### 1AC---Plan

#### Plan: The United States federal government should substantially increase prohibitions on private sector anticompetitive business practices by removing the Shipping Act antitrust exemption.

#### The plan allows FMC (Federal Maritime Commission) enforcement and litigation against alliances

NITL 21, National Industrial Transportation League, a trade association whose mission is to advance the views of shippers on industrial freight transportation issues and advance their professional development (May 19, 2021, NITL Urges Congress to Adopt Shipping Act Reforms in Response to Unprecedented Disruption to the Ocean Shipping Network, https://www.nitl.org/wp-content/uploads/2020/03/NITL-release-Shipping-Act-Revisions-May-19-2021-final.pdf)

The National Industrial Transportation League (NITL), the nation’s oldest trade association representing industrial freight transportation shippers, is calling on Congress to modernize the Shipping Act of 1984 after months of congestion at U.S. seaports and unprecedented disruption to the ocean shipping network. The ongoing ocean shipping turmoil has wreaked havoc on US exporters and importers, costing them billions in higher shipping costs, demurrage and detention charges, and lost business, with still no clear end in sight. The inability of US companies to timely access marine containers and chassis and secure sufficient vessel bookings to meet their business requirements has upended the ocean cargo shipping and delivery network. These unprecedented challenges have exposed gaps in the law governing ocean carrier services that warrant immediate action. A proposal drafted by NITL recommends modifications to address these challenges. The proposal is designed to provide remedies for importers and exporters who are experiencing unprecedented shipping costs, are unable to obtain adequate ocean transportation service to meet their cargo delivery needs and are concerned about unfair business practices. The NITL proposal provides four main recommendations to modify The Shipping Act, including: • Establishing rules prohibiting common carriers and marine terminal operators from adopting and applying unjust and unreasonable demurrage and detention rules and practices by codifying the industry guidance issued by the Federal Maritime Commission in the Spring of 2020, and shifting the burden of proof for complaints onto the service providers to show that their practices are reasonable and comply with the rules. • Clarifying the obligations of common carriers with respect to equipment and vessel space allocations and contract performance by requiring them to adhere to minimum service standards that meet the public interest. Ocean carriers would also be required to develop contingency service plans during periods of port congestion to mitigate supply chain disruptions. • Modifying the prohibited acts to address unfair business practices related to the instrumentalities required to perform the transportation services, including access to, allocation of, and interchange of equipment, and any unreasonable allocations of vessel space by ocean common carriers considering foreseeable import and export demand. Expanding the FMC’s authority to act upon complaints filed against anticompetitive agreements between ocean carriers that operate with antitrust immunity, such as alliances, and allowing third-party intervenors to participate in court proceedings initiated by the FMC against such agreements. “While ocean transportation costs are rising to unprecedented levels, we have seen a substantial deterioration in service by the ocean carriers. The lack of timely access to marine equipment and vessel sailings has caused adverse ripple effects throughout US companies’ supply chains leading to material shortages, empty store shelves, and business interruption,” said NITL Director and Ocean Committee Chair Lori Fellmer. “NITL believes that the inability of exporters and importers to effectively address these challenges commercially means the time has come to update the Shipping Act to reflect current day circumstances. “The NITL proposal addresses many of the problems faced by the shipping community and seeks to address gaps in the current law. While the League strongly commends the regulatory efforts in recent years initiated by the FMC, we believe the agency and shipping industry would benefit greatly from these proposed reforms that are targeted to address present day challenges,” said Fellmer. The League was instrumental in the efforts leading up to the 1998 amendments to the Shipping Act and looks forward to working with the Congress, the FMC, and all industry stakeholders to address the critical challenges faced by importers and exporters and others by updating this important federal law.

#### Federal Maritime Commission (FMC) decisions aren’t currently under antitrust

Young-Bascom 11, is a Professor of Law at the University of Wisconsin. (George, 2011, “Replacing Antitrust Exemptions for Transportation Industries: The Potential for a “Robust Business Review Clearance,” Oregon Law Review, Vol. 89 1059-1106, https://www.antitrustinstitute.org/wp-content/uploads/2018/08/Carstensen.pdf)

4. Some Tentative Conclusions

The great bulk of agreements and combinations that benefit from antitrust immunity have no absolute need for such an entitlement. Despite the concerns about the specifics of a few ventures, a majority of the joint venture agreements seem to present little risk of any antitrust liability. The relatively few standard-setting agreements are somewhat more problematic because they reflect a collective agreement among competitors that restricts the ways they compete. Because these agreements are subject to agency review and approval, the agreements could easily be transformed into formal agency orders based on an administrative proceeding in which all interested parties could participate as the STB has suggested. Thus, even if such agreements were characterized as unlawful under antitrust law, they can easily be converted into a formal regulatory requirement. With few exceptions, the current body of exempted agreements is not consistent with a clear cartel motivation. Two more troubling observations point toward the need for reform. First, especially in ocean shipping, some explicit cartel agreements remain. There seems, however, to be little justification for such agreements. Indeed, as the STB has stated in connection with the trucking agreements, such agreements are now contrary to declared public policy. Second, the present systems for land and air transportation immunities fail to provide a sufficiently rigorous check on the potentially adverse competitive effects that can and do flow from unnecessarily restrictive or unduly inclusive ventures. Worse, the FMC lacks any authority even to review the merits of submitted agreements that result in immunity. Overall, then, the present system has a strong tendency to undermine competition. The results are diminished efficiency and a loss of dynamic innovation. Moreover, given the changes in the underlying market contexts that result from both technological and legal changes, there is no continuing policy reason for the current system of an agency’s unilateral grant of immunity. This is not to argue that the agencies serve no function. First, the agencies provide a forum for establishing rules and regulations to govern aspects of these markets that are beyond the capacity of antitrust law and courts’ enforcing that law. Second, the agencies establish important reporting requirements to obtain information necessary in evaluating the services being offered by transportation providers. Third, the agencies provide continuing oversight, monitoring, and investigative capacity beyond the authorization or institutional capacity of the DOJ. Thus, the question is not whether the agencies should be removed from the process but whether agency approval alone should warrant immunity from antitrust law.

#### Private litigation and class action is necessary to deter international alliances

Lande 16, Professor of Law at the University of Baltimore School of Law, Director of the American Antitrust Institute. {Robert; Spring 2016; Antitrust, “Class Warfare: Why Antitrust Class Actions Are Essential for Compensation and Deterrence,” <https://scholarworks.law.ubalt.edu/cgi/viewcontent.cgi?article=2019&context=all_fac>)

OUR RECENT EMPIRICAL STUDIES demonstrate five reasons why antitrust class action cases are essential: (1) class actions are virtually the only way for most victims of antitrust violations to receive compensation; (2) most successful class actions involve collusion that was anticompetitive; (3) class victims’ compensation has been modest, generally less than their damages; (4) class actions deter significant amounts of collusion and other anticompetitive behavior; and (5) anticompetitive collusion is underdeterred, a problem that would be exacerbated without class actions. Recent court decisions undermine class action cases, thus preventing much effective and important antitrust enforcement.1 Class Actions Are Virtually the Only Way for Most Victims of Federal Antitrust Violations to Receive Compensation The antitrust statutes provide that violations result in automatic treble damages for the victims.2 The legislative history 3 and case law indicate that compensation of victims is a goal, perhaps the dominant goal, of antitrust law’s damages remedy.4 Class actions play an essential role in ensuring that the treble damages remedy serves its intended function of “protecting consumers from overcharges resulting from price fixing.”5 As the Supreme Court noted, “[C]lass actions . . . may enhance the efficacy of private [antitrust] actions by permitting citizens to combine their limited resources to achieve a more powerful litigation posture.”6 Accordingly, “courts have repeatedly found antitrust claims to be particularly well suited for class actions . . . .”7 Without class actions, cartels and other antitrust violators that inflict widespread economic harm would have little to fear from the treble damages remedy. This is because, as a practical matter, class action cases are virtually the only way for most victims of anticompetitive behavior to receive compensation.8 A 2013 study that Professor Joshua Davis and I conducted documents the benefits of private enforcement by analyzing 60 of the largest recent successful private U.S. antitrust cases (defined as suits resolved since 1990 that recovered at least $50 million in cash for the victims9 ). These actions returned a total of $33.8–$35.8 billion in cash to victims of anticompetitive behavior.10 These figures do not include products, discounts, coupons, or the value of injunctive relief or precedent—only cash.11 Consequently, these totals significantly understate the actual benefits of this litigation to the victims involved. And, of course, this study covered only 60 suits (albeit 60 of the largest private recoveries) out of the many hundreds of private cases filed in the United States during this period. Of these 60 large private cases, 49 were class action suits.12 These cases recovered a total of $19.4–$21.0 billion—the majority of the amount analyzed in our study.13 Since these were among the largest private actions ever filed, specific conclusions based upon these results may not generalize perfectly to all class action cases. They do suggest, however, that without class action cases, effective and significant victim compensation would be reduced dramatically. Most Successful Class Actions Involve Collusion that Was Anticompetitive Almost every private antitrust case that results in a remedy does so through a settlement,14 so the underlying merits of the plaintiffs’ claims usually have not been definitively assessed by a court or jury. Critics sometimes use this fact to support assertions that class actions usually are meritless, that plaintiffs often receive huge sums from cases not involving anticompetitive conduct, and that private antitrust actions often amount to legalized blackmail or extortion.15 Antitrust class actions arise in widely varied market and factual settings, and views about the merits of specific cases and the litigation risks involved vary as well. This makes it extremely difficult to draw objective conclusions about the merits of settlements. Nevertheless, there are good reasons to believe that the vast majority of class action cases in the Davis/Lande study involved legitimate claims. Forty-one of the 49 class actions involved allegations of collusion,16 and the same conduct supporting the settlements gave rise to criminal penalties in 20 cases; to civil relief by the FTC or DOJ in 8 cases; to civil relief by a state or other governmental unit in 9 cases; to a trial that the defendants lost and that was not overturned on appeal in 7 cases; to a class being certified in 22 cases; and to plaintiffs surviving or prevailing at summary judgment in 12 cases.17 Overall, 44 of the 49 class action suits (90 percent) exhibited at least one of these forms of legal validation as to their merits. (The 5 actions that did not have at least one of these indicia settled too early for a substantive evaluation of their merits).18 These results are broadly consistent with a finding that Professor John Connor derived from an analysis of 130 private recoveries worldwide in international cartel cases for which he could obtain the necessary data.19 He found that of the 50 largest worldwide settlements, measured by their monetary recoveries in constant dollars, 49 had been filed against international cartels.20 Of these, 51 percent were follow-ups to successful DOJ prosecutions, and another 8 percent were filed after fines by the EC or other non-U.S. antitrust authorities.21 Using a different data set, Connor and I found that 36 of 71 (also 51 percent) successful U.S. class action recoveries followed successful DOJ criminal cases.22 This data does not prove that these or any other specific class action cases involved anticompetitive conduct. But critics who assert that most antitrust class actions are little more than legalized blackmail rely only on anecdotes, hypotheticals, and opinions (often of defendants in the cases), without support from studies, and with no reliable empirical evidence that the actions lack merit or that settlement amounts are excessive compared to the anticompetitive harm.23 To be fair, one should compare the above indicia of validity to the absence of any systematic evidence underpinning the critics’ charges. Critics also sometimes assert that remedies typically secured in class action settlements are at best dubious and often are completely worthless, consisting of useless coupons, meaningless discounts, and obsolete products. They argue with regard to cash payments (without providing even a single anecdote) that “issuing [class members] a check is often so expensive that administrative costs swallow the entire recovery.”24 According to many critics the only ones to benefit from private enforcement are the attorneys involved.25 The critics who make these charges, however, never offer evidence beyond opinions, hypotheticals, and occasional anecdotes. Indeed, for the 49 antitrust class action cases that Davis and I studied, the data show that, overall, only a total of approximately 20 percent of the recoveries went for attorney fees (14.3 percent) or claims administration expenses (4.1 percent).26 The rest was returned to the victims. This result is consistent with older estimates of legal fees in antitrust class action cases in the 6.5 to 21 percent range.27 Critics also sometimes examine what happened in other areas of law and assert that these outcomes occur in contemporary antitrust class action suits as well. But they never offer systematic evidence from antitrust cases to support their opinions.28 Interestingly, only one of the lawsuits in the Davis/Lande study involved a coupon remedy—the Auction Houses cases. However, those coupons were fully redeemable for cash if they were not used for five years.29 The actions Davis and I studied were among the largest antitrust class actions ever brought and therefore might not be representative of class action cases in general. Abuses surely occur from time to time in class action cases, as they do almost everywhere in the legal system. But a majority of the critics’ most egregious examples are from other areas of law or are quite old.30 No one has ever presented reliable evidence showing that such examples occur frequently or are typical of contemporary antitrust class action cases.31 Class Victims’ Compensation Has Been Modest, Generally Less than Their Damages Even though the $19.4–$21.0 billion that Davis and I showed had been returned to victims in 49 class action cases is a significant figure when viewed in absolute terms, it probably was not nearly enough to fully compensate all of the victims involved. To ascertain “Recovery Ratios” (the percentage of the illegal overcharges that was obtained in the form of monetary payments to victims in private actions), Professor Connor and I assembled a sample consisting of every completed private case against cartels discovered from 1990 to mid-2014 for which we could find the necessary information. For each of these 71 cases we assembled neutral scholarly estimates of affected commerce and overcharges and compared these estimates to the damages secured in the private actions filed against these cartels.32 The victims of only 14 of the 71 cartels (20 percent) recovered their damages (or more) in settlement. Only seven (10 percent) received more than double damages. The rest— the victims in 57 cases—received less than their damages. In four cases, the victims received less than 1 percent of damages, and in 12 cases they received less than 10 percent of damages. Overall, the median average settlement was 37 percent of single damages. The unweighted mean settlement (a figure that gives equal weights to the cartels that operated in large and small markets) was 66 percent. The mean and median average Recovery Ratios are higher (81 percent and 52 percent, respectively), for the 36 cases that were follow-ups to DOJ prosecutions that imposed criminal sanctions.33 Because these Recovery Ratios do not include any valuations of products, discounts, coupons, or the value of injunctive relief or precedent, the actual worth of these remedies to the victims is greater than the figures reported above. Nevertheless, it fairly can be concluded that antitrust class action cases often return important recoveries to victims that are significant in absolute terms, but usually are modest when measured against the sizes of the overcharges involved. Class Actions Deter Significant Amounts of Collusion and Other Anticompetitive Behavior Private class action cases serve to deter a substantial amount of anticompetitive activity, perhaps even more than the highly acclaimed anti-cartel program of the U.S. Department of Justice, which often results in prison sentences for cartel participants.34 Virtually every contemporary analysis of antitrust enforcement assumes that deterrence is an important purpose of the private treble damages remedy provision.35 The Supreme Court has underscored this point. For example, in Reiter v. Sonotone Corp., the Court explained: Congress created the treble-damages remedy of § 4 precisely for the purpose of encouraging private challenges to antitrust violations. These private suits provide a significant supplement to the limited resources available to the Department of Justice for enforcing the antitrust laws and deterring violations.36 The government, however, cannot be expected to do all of the necessary enforcement for a number of reasons, including budgetary constraints, “undue fear of losing cases; lack of awareness of industry conditions; overly suspicious views about complaints by ‘losers’ that they were in fact victims of anticompetitive behavior; higher turnover among government attorneys; and the unfortunate, but undeniable, reality that government enforcement (or non-enforcement) decisions are, at times, politically motivated.”37 A recent study highlights the deterrence benefits of private enforcement by comparing the likely deterrent effects of private antitrust enforcement to that of criminal anti-cartel enforcement by the Antitrust Division.38The surprising result is that private enforcement—and even just antitrust class action cases considered separately—probably deters more anticompetitive behavior. From 1990 through 2011 the total of DOJ corporate antitrust fines, individual fines, and restitution payments totaled $8.2 billion. (Dis)valuing a year of prison or house arrest at $6 million39 adds another $3.6 billion in total deterrence from the DOJ’s anti-cartel cases, yielding a total of approximately $11.8 billion. This is a substantial figure, and the possibility of incurring such sanctions surely has deterred a significant number of would-be antitrust violators.40 Nevertheless, these penalties amount to approximately 50 percent of the $19.4–$21.0 billion in cash alone (not including products, etc.) secured by just the 49 studied class cases that were completed during the same period.41 These private cases were only a portion of the hundreds of successful class action cases completed during this period (albeit they were many of the largest).42 The total amount of payouts in class action cases is so high that it probably deters more anticompetitive conduct than even the DOJ’s anti-cartel enforcement efforts.

# 2AC

## ADV---Economy

### 2AC---AT: Inherency

#### Yes inherent, need a compliance program. Insert, but it thumps every DA!

Seward & Kissel 21 [Seward and Kissel LLP. "Shipping Companies Beware: Antitrust Challenges Ahead as DOJ Focuses On Industry." https://www.sewkis.com/publications/shipping-companies-beware-antitrust-challenges-ahead-as-doj-focuses-on-industry/ ]

DOJ’s coordinated efforts with the FMC have implications for the shipping industry as DOJ antitrust prosecutions have been both expansive and punitive. DOJ’s jurisdiction includes foreign business activities that have a “substantial and intended effect in the U.S.” That broad reach has impacted numerous companies throughout the world in various industries ranging from auto parts to air cargo. Companies in such industries have paid millions of dollars in penalties and many of their employees have been imprisoned.

The shipping industry has not been spared. In a long-running investigation, a Norwegian shipping company and its executives were indicted for their participation in an antitrust conspiracy focused on the allocation of customers and routes, rigging bids, and fixing prices for the sale of international ocean shipments of roll-on, roll-off cargo to and from the United States. The company pled guilty and was sentenced to pay a $21 million fine; four individuals have already been sentenced to serve prison terms. Four other companies also pled guilty for their roles in the conspiracy, leading to the assessment of more than $255 million in criminal fines.

Importance of Compliance Programs

Given these developments, it is important for all shipping companies to establish effective compliance programs. Since 2019, DOJ has resolved certain criminal investigations without charges where DOJ concluded that the companies under investigation have implemented adequate and effective compliance programs. This leniency policy was implemented to incentivize companies to prioritize antitrust compliance and to be proactive in detecting and reporting anticompetitive behavior.

Under this policy, DOJ will not automatically grant leniency to companies that merely maintain a compliance program. Rather, DOJ will determine whether the compliance plan is adequate. If deemed adequate, even where unlawful conduct has occurred, more lenient treatment is potentially available. In determining the adequacy of compliance plans, DOJ’s Guidance on Corporate Compliance Programs is instructive. That Guidance details the components of an effective compliance program, including whether the company at issue has devoted sufficient antitrust compliance resources, conducted training, created effective reporting systems, and tailored the compliance program to the company’s business and industry.

Conclusion

For those companies operating under DOJ jurisdiction, the existence of an effective compliance program minimizes the likelihood of an investigation and decreases the resulting penalties where violations occur. With the FMC and DOJ now committing to collaborating in investigating the shipping industry, it is crucial to follow developments arising from this collaboration and to implement a substantial compliance program to curtail the occurrence of improper conduct and to minimize penalties should misconduct occur.

### 2AC---AT: Turn

#### Growth Low.

#### 1---Delta and tight labor market.

La Monica 10-7-2021, digital correspondent. (Paul R., “America's CEOs are losing confidence in the economy,” CNN Business, <https://www.cnn.com/2021/10/07/investing/ceo-confidence-economy/index.html>)

New York (CNN Business)US business leaders are still upbeat about the economic recovery. But they're not as confident as they were just a few months ago, and they blame the Delta variant and a super tight labor market for the drop in sentiment. The Conference Board, a leading business research think tank, reported Thursday a steep slide in its CEO confidence index for the third quarter. After hitting an all-time high of 82 in the second quarter on hopes that the United States had turned the corner on the pandemic, the index slid to 67 — a nearly 20% dip — in the third quarter. The good news is that a reading above 50 remains a sign of overall optimism. But the downward trend bears watching, especially since US consumer confidence also slumped earlier this summer. Covid-19 worries remain top of mind for America's titans of industry. "CEO confidence is down from the all-time peak reached in Q2, when Covid-19 appeared on the verge of defeat," Dana Peterson, chief economist at the Conference Board, said in a news release. "A summer surge of the highly infectious Delta variant — coupled with slumping vaccination rates — has brought pandemic uncertainty back to the fore." That has tainted the outlook for CEOs. CEOs less upbeat about economy and worried about finding talent The Conference Board, which produced the survey in conjunction with the Business Council, reported that 88% of CEOs surveyed in the second quarter had said they expected overall economic conditions to improve over the next six months. But just 60% of respondents felt that way in the third quarter. What's more, in the third-quarter survey, just 65% of top executives said they anticipated short-term prospects for their own industry would improve. That's down from 81% in the second-quarter results. Job market conditions are another major challenge: 60% of CEOs said they expect to expand headcount, up from 54% in Q2. But open job positions are increasingly difficult to fill. Nearly three-quarters of the CEOs surveyed said in the third quarter that they're having trouble finding quality workers, up from 57% in the previous report.

#### 2---Supply chain disruptions.

Fontdegloria 10-12-2021, (Xavier, “U.S. Small-Business Confidence Slipped in September Amid Severe Supply and Labor Shortages,” *MarketWatch,* https://www.marketwatch.com/story/u-s-small-business-confidence-slipped-in-september-amid-severe-supply-and-labor-shortages-271634033208)

Confidence among small-business owners in the U.S. declined slightly in September as both labor shortages and supply-chain disruptions had a significant impact on the business, according to a survey compiled by the National Federation of Independent Business released Tuesday. The NFIB Small Business Optimism Index fell to 99.1 in September from 100.1 in August, missing the 100.5 reading expected by economists polled by The Wall Street Journal. "Small business owners are doing their best to meet the needs of customers, but are unable to hire workers or receive the needed supplies and inventories," NFIB chief economist Bill Dunkelberg said. The NFIB survey is a monthly snapshot of small businesses in the U.S., which account for nearly half of private sector jobs. Economists look to the report for a read on domestic demand and to extrapolate hiring and wage trends in the broader economy. Three of the 10 components that form the index increased in September, five decreased and two were unchanged. The measure gauging small-business owners' plans to create new jobs in the next three months fell six points, although it remained at historically high levels. Around 51% of the firms surveyed reported job openings they couldn't fill, a record-high reading for the third consecutive month. "Many people are still reluctant to take a job due to Covid-19 risks, especially those more public facing jobs such as restaurants," Mr. Dunkelberg said. Expectations for better business conditions over the next six months continued to deteriorate, falling by five points. "Owners have grown pessimistic about future economic conditions as this indicator has declined 21 points over the past three months to its lowest reading since December 2012," the report said. Plans to make capital outlays and to increase inventories also fell slightly, the data showed. MarketWatch and Barron’s journalists will convene top experts in crypto and other financial pros to identify the opportunities and risks that lie ahead for investors. On the positive side, the percentage of owners expecting higher sales volumes improved by four points, a reversal from the past two months. Respondents have reported inventory shortages for most of the current year, the report said. In September, more than 35% of small-business owners said supply-chain disruptions have had a significant impact on their business, and just 10% reported no impact from the current supply strains. "Supply chains are still in disarray, with ships and containers piling up on the coasts but only slowly being unloaded and distributed to businesses as truck drivers are in short supply," Mr. Dunkelberg said. These shortages are contributing to increases in average selling prices. Almost half of the respondents, or 46%, reported raising selling prices, with wholesale, manufacturing and retail being the sectors where more firms reported higher prices, the report said.

#### Business confidence is a meaningless indicator. Structural factors are key to predicting the economic trajectory.

Bagrie 18, Managing Director of Bagrie Economics. (August 9, 2018, Cameron, “Business confidence is a hopeless indicator. But that doesn’t mean the economy isn’t in trouble,” *The Spinoff,* https://thespinoff.co.nz/business/09-08-2018/business-confidence-is-bullshit-but-that-doesnt-mean-the-economy-isnt-in-trouble)

The economy is headed for recession if you believe the readings from business confidence. Thankfully we can largely ignore business confidence readings. We can’t ignore other survey measures though that are saying growth has slowed and the official statistics are showing the same. The last three quarterly GDP prints have been 0.6, 0.6 and 0.5% and we only have data up to March 2018. That’s annualised growth in the low 2’s and a dip below 2% now looks likely. We have the potential for a growth pothole. That is becoming a concern as the wheels of the economy need to be turning and tax revenue coming in the door for social agenda demands to be met. A whopping net 45% of firms are pessimistic about the general economy according to the ANZ Business Outlook survey. That’s a level last seen around the global financial crisis. Of course, no one really believes things are that bad. We can’t blame the global scene as other countries would be seeing massive falls in confidence too if that was a key factor. Other countries are not. The New Zealand Institute of Economic Research (NZIER) is showing weak readings for business confidence within their Quarterly Survey of Business Opinion (QSBO) too. The good news is that business confidence is hopeless as an economic indicator. The correlation with economic growth is poor and I largely ignore business confidence readings. Changes in direction can provide some insightful information – whether things are picking up or slowing down, but not the levels. Businesses tend to be more upbeat regarding general confidence about the economy under a blue flag as opposed to a red one. Business confidence averaged minus 18 between 2000 and 2007. The economy (measured by real gross domestic product) grew on average by more than 3.5% per year. Yep, confidence was negative, but growth was positive. So, we ignore business confidence as an economic indicator. This is nothing new. It’s surprising headline business confidence figures receive so much attention. Commentators make the constant mistake of saying the ANZ survey is a business confidence survey. The same applies to the NZIER’s QSBO. They are surveys of business views across an array of key indicators including prospects for growth, hiring, whether firms are planning to invest and experiences with inflation / costs. These indicators matter. Business confidence is one question. The so-called “soft” or “perception” indicators are the hard data of tomorrow. They are estimates and view based but you can’t ignore them. They are well correlated with growth.

### 2AC---!---Terrorism

### 2AC---!---Economy

### 2AC---!---Taiwan

### 2AC---!---Food Shortage

## ADV---Ports

### 2AC---!---Warming

### 2AC---!---Readiness

## AT: T---Per Se

### 2AC---AT: Per Se

#### We meet---the plan increases prohibitions on alliance price fixing which is a per se violation.

Mohr et al 94, Assistant Professor of Marketing in the College of Business at the University of Colorado-Boulder. (Jakki, with Gregory T. Gundlach is an Associate Professor of Marketing in the College of Business Administration at the University of Notre Dame and Robert E. Spekman is Professor of Business Administration at the University of Virginia, Legal Ramifications of Strategic Alliances; Legal ambiguity muddies the waters for collaborative ventures. SECTION: RELATIONSHIP MARKETING; Vol. 3, No. 2; Pg. 38, https://www.unf.edu/~ggundlac/pdfs/pub\_42.pdf)

Many cooperative ventures between competing firms give way to greater competition, even though the absolute number of competing firms might be reduced. A collaborative effort would be labeled as a cartel if horizontal competitors collaborated with respect to price or some other market policy that had a direct and substantial effect on price. Collaboration for such purposes has in the past been declared per se illegal, without elaborate inquiry as to the precise harm caused, or the business' reasons for collaborating.

#### Prohibit can mean ‘severely hinder’---doesn’t necessitate a ban.

Washington Court of Appeals 19 (KORSMO-judge. Opinion in State v. Kimball, No. 35441-5-III (Wash. Ct. App. Apr. 2, 2019). Google scholar caselaw. Date accessed 7/13/21).

His argument runs counter to the meaning of the word "prohibit." It means "1. To forbid by law. 2. To prevent, preclude, or severely hinder." BLACK'S LAW DICTIONARY 1405 (10th ed. 2014). As "severely hinder" suggests, a "prohibition" need not be an all or nothing proposition.

## AT: CP---Uniqueness

### 2AC---Permutation

## AT: CP---Con Con

### 2AC---AT: Con-Con CP---TL

**Doesn’t solve---courts have the say on the counterplan’s enforcement.**

**Segal and Spaeth 02** (Jeffrey A. – Professor of Political Science at SUNY Stony Brook, Harold J. – Professor Emeritus of Political Science at Michigan State University, “The Supreme Court and the Attitudinal Model Revisited,” p. 5-6)

If action by Congress to undo the Court's interpretation of one of its laws does not subvert judicial authority, a fortiori neither does the passage of a constitutional amendment, for example, the Twenty-Sixth Amendment reducing the voting age to eighteen and thereby undoing the decision in Oregon v. Mitchell,' which held that Congress could not constitutionally lower the voting age in state elections. Furthermore, not only does a constitutional amendment not subvert judicial authority, courts themselves – ultimately, the Supreme Court – have the last word when determining the sanctioning amendment's meaning. Thus, the Court is free to construe any amendment – whether or not it overturns one of its decisions – as it sees fit, even though its construction deviates appreciably from the language or purpose of the amendment.

## AT: CP---Multilat

### 2AC---Permutations

#### 2---do the cp

OECD 17. OECD Directorate For Financial And Enterprise Affairs Competition Committee. “Roundtable on the Extraterritorial Reach of Competition Remedies - Note by the United States”. FTC. 4-5 December 2017. https://www.ftc.gov/system/files/attachments/us-submissions-oecd-2010-present-other-international-competition-fora/et\_remedies\_united\_states.pdf

12. The Department’s Merger Remedies Guide (“DOJ Merger Remedies Guide”) addresses merger remedies that may reach assets or conduct outside the United States. Similar to Section 5.1.5 of the International Guidelines, the DOJ Merger Remedies Guide also explains that the Department strives, “to the extent possible,” to ensure that its “remedies do not conflict unnecessarily with the remedies of other jurisdictions.”19 The Guide states, “In many cases, the [Department] may be able to work collaboratively with other antitrust agencies to craft remedies that are effective across jurisdictions.”20

### 2AC---Deficits

#### 1---Say no lobbying and disagreement

Stephan 5, Professor and Hunton & Williams Research Professor, University of Virginia School of Law. (Paul, “Global Governance, Antitrust, and the Limits of International Cooperation,” <https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1635&context=cilj>)

The broad definition of competition policy not only makes sense logically, but underscores the difficulties of achieving an international consensus about its content. Even if states could agree that efficiency optimization of the sum of consumer and producer welfare-is the only legitimate objective of competition policy, agreement as to whether a particular regime advances or detracts from efficiency would remain elusive. Specifying the optimal mix of competition and cooperation in a particular economic sector is inevitably controversial. 23 Technological innovation and other kinds of change, as well as shifting consumer preferences, limit the lessons one can learn from a sector's history. Once legitimate differences over the optimal level of competition arise, it becomes difficult, if not impossible, to determine whether a regulator is pursuing efficiency-driven competition policy. The proliferation of alternative objectives for competition policy multiplies the difficulty of finding common ground. Given the difficulty of fixing optimal levels of competition, we should expect much competition law to take the form of elastic standards rather than of precise and constraining rules. With increased discretion comes inconsistency. For example, one cannot insist on maximizing consumer welfare and still promote national champions or protect inefficient small producers. In turn, tolerance of inconsistency opens the door to discrimination. Regulatory choices driven by animus towards foreign producers can be reconciled with other, permissible rationales. The more open-ended and multi-factored the policy and the greater the discretion of regulators to decide where and how to apply competition policy, the easier it becomes to disguise trade protection as competition policy. 24 Strategic deployment of competition law would be most feasible where governments have exclusive enforcement authority. 25

#### 2---Clarity

Merk 18, leads the work on ports and shipping at the International Transport Forum (ITF) of the Organisation for Economic Co-operation and Development (OECD), Director of Maritime Transport and Ports Sector. Other contributors from the International Transport Forum. (Olaf, 2018, “The Impact of Alliances in Container Shipping,” International Transport Forum, https://www.itf-oecd.org/sites/default/files/docs/impact-alliances-container-shipping.pdf)

Co-existence of different regulatory regimes As noted above, there is a wide range of regulatory regimes for competition in international shipping. These approaches range from no shipping-specific exemptions on one end of the scale to specific exemptions for shipping conferences at the other. Despite this divergence in approaches, it is clear that repeal of the EU consortia block exemption would be in line with a growing trend in countries to limit special treatment of shipping. There is a risk that the current regulatory heterogeneity will leave the door open to collusion. Braakman (2017) has suggested that there might be “hub-and-spoke cartels” in the container shipping industry, defined as the exchange of strategically sensitive information between competitors through a third party that facilitates the cartelistic behaviour of the competitors involved. An example of such a hub could be Singapore, where carriers are allowed to cooperate on prices. The idea is that exchange of strategically sensitive information on the intra-Asia leg of a voyage could aim to align the market conduct of lines with regards to the contingents of cargo that remain on board and are destined for ports in Europe. Such a hub-and-spoke-cartel might be facilitated by the Shanghai Shipping Exchange that on a weekly basis publishes the freight rates and surcharges in which the rates and surcharges for the intra-Asia trade are incorporated and that could have the effect of policing the agreed rates and surcharges. Competition law in various countries has extra-territorial application, but one could wonder if this currently is enforced. Extra-territorial application means that anti-competitive conduct directed at foreign markets – e.g. markets outside the EU - may come within the jurisdiction of the European Commission, even when the conduct would be permitted under the foreign jurisdictions. What is relevant is the effect of that conduct on other undertakings inside the EU; not the location of that conduct (Braakman, 2014). The EU leaves it to firms to conduct a self-assessment of the extraterritorial application of its competition laws, but has not formulated specific guidelines for this self-assessment. Considering the global nature of the liner shipping sector and the heterogeneity of competition regimes for shipping, one wonders how shipping companies could carry out such a selfassessment. The sector would be provided with more legal certainty if such specific guidance were provided. The main relevant competition authorities have initiated coordination of their activities that might help to address these issues. Regulators from the EU, United States and China have met several times since 2013, spurred by their divergent approaches to the proposed P3 alliance, to discuss market developments and competition law. Such coordination has become increasingly important with consolidation and market concentration, and might benefit from the participation of regulators from other major maritime countries such as Singapore

## AT: CP States

### 2AC---Permutations

### 2AC---Deficit---Preemption

#### State efforts are preempted

Longstreth and Bachman 15, Longsreth is a partner focusing on antitrust in transportation at K&L Gates, J.D. at Harvard Law School. Bachman is a partner focusing on competition law at K&L Gates. (John & Allen, 9-10-2015, “Shipping Act Antitrust Exemption Held for the First Time to Preempt State Antitrust Laws,” K&L Gates, https://files.klgates.com/files/105702\_antitrust\_alert\_09102015.pdf)

For the first time, a federal court has held that the Shipping Act of 1984, 46 U.S.C. §§ 40101–41309 (Shipping Act), preempts state-law antitrust claims. The federal district court in New Jersey applied conflict preemption principles to hold that a challenge to a price fixing and capacity reduction agreement among international shipping companies was within the exclusive jurisdiction of the Federal Maritime Commission (FMC), and that the Shipping Act preempts state law antitrust claims that would apply to such conduct. In re Vehicle Carrier Services Antitrust Litigation, No. 13-3306 (ES)(MDL No. 2471) (D.N.J. Aug. 28, 2015). The decision is important not only as the first case to address this issue under the Shipping Act, but also as a confirmation that federal preemption remains a viable defense to state-law antitrust claims, notwithstanding the Supreme Court’s recent decision in Oneok, Inc. v. Learjet, Inc., 135 S. Ct. 1591 (2015) declining to find state antitrust claims preempted by the Natural Gas Act. The scope of the Shipping Act’s antitrust exemption Agreements that are filed with the FMC and become effective under the Shipping Act, or that are exempt from filing under the Act, are expressly exempted from federal antitrust laws. 46 U.S.C. §§ 40307(a)(1), (2). Conduct may also fall outside of the specific authority granted in an effective agreement but still be immune if there is a reasonable basis to believe it was authorized, and if the conduct falls within the scope of the Act. 46 U.S.C. § 40307(a)(3). “[A]ll activity permitted or prohibited by the Act enjoys immunity from antitrust coverage if undertaken with a reasonable belief that it was being done under an effective agreement filed with the FMC.” A&E Pac. Constr. Co. v. Saipan Stevedore Co., 888 F.2d 68, 72 n.6 (9th Cir. 1989)(emphasis added). The Shipping Act and its antitrust exemption apply to agreements among vessel-operating common carriers in the U.S.-foreign trades, or with or among one or more marine terminal operators serving such carriers. See 46 U.S.C. § 40102(6), (14), § 40301(a), (b). The Shipping Act and its exemption do not apply to the U.S. domestic or offshore trades, sometimes known as the “coastwise” or “Jones Act” trades. Nor do they apply to noncommon carriers, such as many bulk or tanker operators, or to agreements between carriers and entities that are not marine terminal operators, such as shippers or non-vessel-operating carriers. Id. See generally ABA Transportation Antitrust Handbook, at 270–73 (2014). At issue in Vehicle Carrier Services were alleged price fixing and capacity reduction agreements between carriers that had not been filed with the FMC. Because this activity was not undertaken pursuant to an effective agreement, or with reason to believe it was under an effective agreement, it was not immune from criminal enforcement by the Justice Department or civil penalties imposed by the FMC. Both agencies, in fact, took enforcement September 10, 2015 Practice Groups: Antitrust, Competition & Trade Regulation Maritime Shipping Act Antiturst Exemption Held for the First Time to Preempt State Antitrust Laws 2 actions against the cartel. See, e.g, United States v. Compania Sud Americana de Vapores S.A., No. 1:14-cr-100 (D. Md.) However, conduct that is prohibited by the Shipping Act cannot be the subject of a private civil antitrust suit under any circumstances. 46 U.S.C. § 40307(d)

## AT: CP---Regulation

### 2AC---Permutations

#### Permutations:

#### 1---do both---requires rates to be lowered.

#### 2---do the cp---regulations expands the scope of core antitrust laws by increasing prohibitions.

Bradford and Chilton 18 (Anu Bradford, Henry L. Moses Professor of Law and International Organization, Columbia Law School. Adam S. Chilton, Assistant Professor of Law and Walter Mander Research Scholar @ the University of Chicago. “Competition Law Around the World from 1889 to 2010: The Competition Law Index” , Columbia Law School Scholarship Archive Faculty Scholarship, <https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=3519&context=faculty_scholarship> , 2018, date accessed 9/5/21)

The Scope Index is the closest to the CLI in that it also measures the law in the books, treating prohibitions as elements that increase the scope (or stringency) of the law and defenses as elements that reduce the scope (or stringency) of the law. Basic categories in the Scope Index and our CLI are also the same, even if somewhat differently labeled. For example, we refer to “anticompetitive agreements” where the Scope Index refers to “restrictive trade practices.”

### 2AC---Deficit---Extraterritoriality

#### Regulation is strictly domestic, antitrust isn’t.

Hovenkamp 03, Ben V. & Dorothy Willie Professor of Law and History, University of Iowa. (Herbert, Fall 2003, “Antitrust as Extraterritorial Regulatory Policy”, 48 Antitrust BULL. 629, pg. 632-633, https://heinonline.org/HOL/P?h=hein.journals/antibull48&i=637)

This change from government agency control to antitrust control is beginning to have one consequence that was not foreseen. While regulatory regimes in the United States could be state, federal, or local, they were for the most part quite strictly territorial. For example, residents of Minneapolis might have their retail electricity regulated intraterritorially by the federal government, the State of Minnesota, or perhaps even the city. But it is unlikely that retail electricity in Minneapolis would be regulated by the State of Illinois or the government of Canada. The antitrust laws do not exercise the same territorial circumspection. Under traditional ideas about regulatory control it would be almost unthinkable that the United States would attempt to apply its law to a Mexican telephone company's rate structure or customer selection policies; under modern conceptions of antitrust law it is not. The global reach of antitrust extends very far. Actions that occur abroad can be condemned under the Sherman Act if they have an intended, substantial and foreseeable effect on United States commerce. 5 Appellate courts have even approved criminal indictments under United States antitrust law for activity that took place entirely abroad.6

#### Shipping is a global industry, antitrust is essential for coordination with foreign markets

Merk 18, leads the work on ports and shipping at the International Transport Forum (ITF) of the Organisation for Economic Co-operation and Development (OECD), Director of Maritime Transport and Ports Sector. Other contributors from the International Transport Forum. (Olaf, 2018, “The Impact of Alliances in Container Shipping,” International Transport Forum, https://www.itf-oecd.org/sites/default/files/docs/impact-alliances-container-shipping.pdf)

Co-existence of different regulatory regimes As noted above, there is a wide range of regulatory regimes for competition in international shipping. These approaches range from no shipping-specific exemptions on one end of the scale to specific exemptions for shipping conferences at the other. Despite this divergence in approaches, it is clear that repeal of the EU consortia block exemption would be in line with a growing trend in countries to limit special treatment of shipping. There is a risk that the current regulatory heterogeneity will leave the door open to collusion. Braakman (2017) has suggested that there might be “hub-and-spoke cartels” in the container shipping industry, defined as the exchange of strategically sensitive information between competitors through a third party that facilitates the cartelistic behaviour of the competitors involved. An example of such a hub could be Singapore, where carriers are allowed to cooperate on prices. The idea is that exchange of strategically sensitive information on the intra-Asia leg of a voyage could aim to align the market conduct of lines with regards to the contingents of cargo that remain on board and are destined for ports in Europe. Such a hub-and-spoke-cartel might be facilitated by the Shanghai Shipping Exchange that on a weekly basis publishes the freight rates and surcharges in which the rates and surcharges for the intra-Asia trade are incorporated and that could have the effect of policing the agreed rates and surcharges. Competition law in various countries has extra-territorial application, but one could wonder if this currently is enforced. Extra-territorial application means that anti-competitive conduct directed at foreign markets – e.g. markets outside the EU - may come within the jurisdiction of the European Commission, even when the conduct would be permitted under the foreign jurisdictions. What is relevant is the effect of that conduct on other undertakings inside the EU; not the location of that conduct (Braakman, 2014). The EU leaves it to firms to conduct a self-assessment of the extraterritorial application of its competition laws, but has not formulated specific guidelines for this self-assessment. Considering the global nature of the liner shipping sector and the heterogeneity of competition regimes for shipping, one wonders how shipping companies could carry out such a selfassessment. The sector would be provided with more legal certainty if such specific guidance were provided. The main relevant competition authorities have initiated coordination of their activities that might help to address these issues. Regulators from the EU, United States and China have met several times since 2013, spurred by their divergent approaches to the proposed P3 alliance, to discuss market developments and competition law. Such coordination has become increasingly important with consolidation and market concentration, and might benefit from the participation of regulators from other major maritime countries such as Singapore

### 2AC---Deficit---Deterrence

#### Deterrence deficit---regulations can’t deter anticompetitive conduct.

Dogan 08, \*Stacey L. Dogan, Professor of Law, Northeastern University; \*Mark Lemley, William H. Neukom Professor, Stanford Law School; of counsel, Keker & Van Nest LLP; (October 2008, “Antitrust Law and Regulatory Gaming”, https://scholarship.law.bu.edu/cgi/viewcontent.cgi?article=1873&context=faculty\_scholarship)

Our goal in this paper is not to persuade the reader that these particular examples of regulatory gaming violate the antitrust laws (though we think they do) or that other examples, such as regulatory price squeezes, do not violate the antitrust laws. Rather, our point is that whether or not particular acts of regulatory gaming harm competition is and should be an antitrust question, not merely one that involves interpreting statutes or agency regulations. Regulatory agencies and even Congress cannot prevent gaming ex ante. Experience with the pharmaceutical industry suggests that if Congress acts to squelch one form of gaming, companies will find other ways to game the system. And even if Congress or the regulating body can surgically fix a particular type of exclusionary behavior, such an ex post response (unlike the threat of antitrust treble damages) does nothing to compensate for past harm or to deter future gaming behavior. Some level of antitrust enforcement – with appropriate deference to firm decisions about product design and affirmative regulatory decisions that affect market conditions – provides a necessary check on behavior, such as product hopping, that has no purpose but to exclude competition.

### 2AC---Conditionality---Long

## AT: DA---Trade

### 2AC---UQ

### 2AC---Thumper

#### Extraterritorial enforcement now.

Michael Murray 10/22, antitrust partner in the Paul Hastings Washington, D.C., office, recently served as the Principal Deputy Assistant Attorney General of the Justice Department’s Antitrust Division, the second-in-command official of the Division, 10/22/2021, “U.S. Antitrust Efforts Pose Risk for Asian Companies,” https://news.bloomberglaw.com/antitrust/u-s-antitrust-efforts-pose-risk-for-asian-companies

The U.S. government’s antitrust enforcement efforts pose increased risks to Asian companies, Paul Hastings partners Michael Murray and Shaun Wu explain. It is crucial that companies design compliance systems to appropriately calibrate these risks and that the new antitrust landscape is fully considered when developing growth strategies, they say.

The U.S. government’s strong resolve to enforce its antitrust laws with vigor and ingenuity creates significant and particularized risks for Asian companies.

Although these U.S. government efforts are often viewed as aimed at U.S.-headquartered technology companies, they in fact pose specific and increased risks to Asian companies as well because of the industries the U.S. government is targeting, the relationships between many Asian and U.S. companies, and the history of U.S. government enforcement actions against Asian companies.

Recent events, including President Biden’s July 9 [executive order on competition](https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/), the Federal Trade Commission’s new policies on vertical mergers and multilateral cooperation, and the nomination of key personnel, provide the key to understanding and mitigating these risks.

The New Antitrust Landscape

The previous administration initiated antitrustinvestigations against major American technology companies. Biden has continued and expanded those efforts. Most prominently, hisexecutive order institutes a whole-of-government approach to increase enforcement.

Biden also specifically criticized particular industries, such as “a small number of dominant Internet platforms” that “extract monopoly profits,” telecommunications companies that make consumers “pay too much” for internet services, and “consolidated” shipping and agricultural industries, and called for a recalibrated approach to intellectual property and standard-setting.

More recently, Biden selected aggressive antitrust enforcers for posts at the FTC and the Department of Justice’s Antitrust Division.

FTC Chair Lina M. Khan already has eased the threshold for opening investigations and even has engaged international regulators as force multipliers, creating a multilateral pharmaceutical merger task force and coordinating with the EU on merger enforcement.

Jonathan Kanter, the nominee to head the Antitrust Division, received a hearing Oct. 6 before the Senate Judiciary Committee, but the Antitrust Division already has challenged multiple mergers before his arrival.

Khan and Kanter also have the opportunity to enforce new antitrust laws that would make it easier to challenge mergers and anticompetitive conduct.

The Implications for Asian Companies

This antitrust environment has four implications for Asian companies.

First, Asian companies should expect increased criminal cartel enforcement, especially against individual executives, accompanied by a decreased crediting of strong compliance systems. The previous administration instituted an important change when it decided to credit companies for strong compliance systems. The current administration is likely to de-emphasize or even reverse that policy, while emphasizing the leniency program that provides amnesty to the first company to detect and self-report cartel violations.

The Biden administration also is likely to focus its efforts on prosecuting individual executives, and not just companies, in accordance with a renewed emphasis on “individual accountability.” This focus on individual executives is especially significant for Asian technology conglomerates because of the pivotal role the founder or members of the founding family typically play in the decision-making process for expansions and acquisitions.

Second, new antitrust enforcers are likely to focus increasingly on the size of companies and on business relationships that may not previously have attracted scrutiny. For example, the FTC recently rejected the 2020 vertical merger guidelines that provided businesses with some certainty regarding potential acquisitions within their own industry.

Similarly, antitrust regulators have indicated that they will pay particular attention when large companies in an industry seek to purchase smaller, nascent competitors that may be positioned to disrupt an industry. The agencies also have signaled that they intend to police large companies for “self-preferencing” a subsidiary’s product over that of a competitor or for performing intermediary functions. Indeed, many Asian conglomerates have had their subsidiaries perform complementary functions in their own supply chains for self-sufficiency and compatibility.

Third, the agencies have committed to increased numbers of investigations. The FTC has made it easier for agency staff to open investigations and approved novel investigative theories that focus on whether a company’s conduct harms other businesses, regardless of whether it harms consumers.

Finally, the agencies will have a laser focus on labor enforcement issues. The end of the last administration brought the first-ever indictment for wage-fixing and the first-ever indictment for an agreement not to poach employees. The Biden administration is likely to continue these efforts and expand them to other restrictions on employee mobility, such as noncompete agreements.

Steps for Asian Companies to Take to Mitigate Risk

Asian companies should take three steps to mitigate the risk of these new U.S. enforcement trends.

#### No link---Antitrust laws rarely apply extraterritorially AND when they do its cooperative!

OECD 17. OECD Directorate For Financial And Enterprise Affairs Competition Committee. “Roundtable on the Extraterritorial Reach of Competition Remedies - Note by the United States”. FTC. 4-5 December 2017. https://www.ftc.gov/system/files/attachments/us-submissions-oecd-2010-present-other-international-competition-fora/et\_remedies\_united\_states.pdf

4. The U.S. Agencies require relief sufficient to eliminate identified anticompetitive harm that has the requisite connection to U.S. commerce and consumers, even if this means reaching assets or conduct in a foreign jurisdiction.7 For example, in the merger context, a company may be required to divest a manufacturing plant outside of the U.S. in order to help preserve competition in the U.S. At the same time, Section 5.1.5 of the International Guidelines sets out a balanced standard for the Agencies’ reliance on extraterritorial remedies that “limits overly broad extraterritorial reach, while recognizing and allowing for effective enforcement.” 8 To this end, the International Guidelines provide that: The Agencies seek remedies that effectively address harm or threatened harm to U.S. commerce and consumers, while attempting to avoid conflicts with remedies contemplated by their foreign counterparts. An Agency will seek a remedy that includes conduct or assets outside the United States only to the extent that including them is needed to effectively redress harm or threatened harm to U.S. commerce and consumers and is consistent with the Agency’s international comity analysis.9 5. This statement sets out a number of important guiding principles. First, the Agencies always look first to resolve anticompetitive concerns through domestic remedies. 6. Second, the Agencies will seek an extraterritorial remedy only when: (1) the extraterritorial remedy is needed to address harm or threatened harm to U.S. commerce and consumers, and (2) such a remedy is consistent with the Agency’s comity analysis. Thus, the Agencies’ general practice is to seek an effective remedy that is restricted to the United States, which the Agencies believe is the best approach. Only when a domestic remedy cannot effectively redress the harm or threatened harm to U.S. commerce or consumers will the Agencies consider broader remedies that have extraterritorial effect. 7. The International Guidelines explain that comity can be a consideration in the Agencies’ remedy determinations. Comity “reflects the broad concept of respect among co-equal sovereign nations and plays a role in determining ‘the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation.’”10 The U.S. Supreme Court has held that no conflict exists for purposes of international comity analysis if a person subject to regulation by two nations can comply with the laws of both.11 In addition, even where there is no direct conflict, “the Agencies will assess the articulated interests and policies of a foreign sovereign beyond whether there is a conflict with foreign law.” 12 Comity has not been a significant factor in the Agencies’ remedy determinations involving more than one sovereign because of the high degree of international convergence in competition law and policy. Convergence has reduced the number of direct conflicts, including on remedies. 8. Third, the Agencies seek to avoid conflicts with remedies contemplated by their foreign counterparts, notably through cooperation. The International Guidelines specifically provide that the Agencies “may cooperate with other authorities, to the extent permitted under U.S. law, to facilitate obtaining effective and non-conflicting remedies.”13 Cooperation “can improve substantive analyses and ensure that investigations and remedies are as consistent and predictable as possible, which improves outcomes, and reduces uncertainty and expense to firms doing business across borders.”14 Divergent remedies have the potential to impair firms’ abilities to compete globally and can undermine competition enforcement efforts. In many cases, particularly those involving extraterritorial remedies, cooperation and coordination are important to an effective outcome and improve understanding of each of the cooperating authorities’ needs and proposed decisions. 15 Information exchange among enforcers investigating the same conduct enables the Agencies to understand each other’s decisions in a case and any impact on U.S. commerce. 16 Cooperation has also facilitated informal and practical approaches to limiting duplication, including by one authority’s closing of its investigation without remedies after taking another authority’s remedy into account. 17 9. Consequently, if an extraterritorial remedy is contemplated in a particular case, these principles, as provided in the International Guidelines, allow the Agencies to ensure that the remedy is appropriately tailored to address the identified competitive harm to U.S. commerce and consumers without unnecessarily conflicting with the laws, policies, or remedies of foreign jurisdictions. 10. Specific examples of Agency cooperation on remedies are discussed at Part VI.

#### Decades of unilateral application thump.

Virginia del Aguila 05. “Establishing Global Competition Standards: Achievable Mission or Utopia?” Centro de Estudios Economicos de Regulacion. Universidad Argentina de la Empresa. Working Paper N 20. April 2005. <https://www.uade.edu.ar/DocsDownload/Publicaciones/4_228_1634_WPS020_2005.pdf>

The competition authorities in the US have had **little compunction** about enforcing their antitrust laws against overseas companies. In this sense, they have in some occasions demanded that commercial documents located abroad should be handed over, and the **Courts have even issued final orders** requiring that foreign companies should **change their commercial practices or restructure their industry**41. Nonetheless, it should be noted that the 1994 International Antitrust Enforcement Assistance Act (IAEAA)42 is intended to improve the ability of the US enforcement agencies to obtain evidence located abroad by providing for reciprocal agreements to be entered between the US and other countries to facilitate the exchange of information, including confidential information. Notwithstanding, due to the fact that certain antitrust offences are criminal under US law and, thus, it is possible for individuals to be sentenced to terms of imprisonment, for the moment only an agreement between the US and Australia was concluded under the IAEAA.

#### Dialogue solves concerns.

OECD 17. OECD Directorate For Financial And Enterprise Affairs Competition Committee. “Roundtable on the Extraterritorial Reach of Competition Remedies - Note by the United States”. FTC. 4-5 December 2017. https://www.ftc.gov/system/files/attachments/us-submissions-oecd-2010-present-other-international-competition-fora/et\_remedies\_united\_states.pdf

4. Process and Transparency in Remedy Determinations 15. In addition to policy transparency, the Agencies recognize the importance of transparency, procedural fairness, and non-discrimination with regard to individual remedy determinations, particularly those implicating extraterritoriality. In situations in which an Agency deems an extraterritorial remedy necessary, transparency and procedural fairness ensure that the parties understand the Agency’s rationale for and have the opportunity to provide input into the decision.30 Among other benefits, actively engaging with parties helps the Agencies to craft appropriate resolutions that address the specific competitive harm in the jurisdiction, including by better understanding the scope of a remedy that may be under consideration in another jurisdiction. 31 Such engagement allows for more efficient remedies and improves the potential for cooperation and coordination of remedies, when appropriate. 16. An explanation of why a particular remedy is needed is also helpful if the remedy will apply outside the jurisdiction. Such an explanation enables foreign parties and sister agencies to understand the rationale for the application of the extraterritorial remedy and to appreciate that it is applied in a non-discriminatory manner.32

#### They’ll work cooperatively.

Patricia A Brink and Ruediger Schuett 18. Brink is the director of civil enforcement for the Antitrust Division of the US Department of Justice. Schuett is international counsel in the Antitrust Division’s International Section. “United States: Department of Justice, Antitrust Division”. Global Competition Review. 9-19-18. https://globalcompetitionreview.com/review/the-antitrust-review-of-the-americas/the-antitrust-review-of-the-americas-2019/article/united-states-department-of-justice-antitrust-division

Over the past year, the Antitrust Division of the US Department of Justice has maintained its long-standing commitment to international cooperation, both in its investigations as well as through multilateral organisations and initiatives. As the antitrust enforcement community is confronting an increasing number of cross-border transactions, shared policy challenges and the globalisation of cartel investigations, the Antitrust Division's relationships with foreign antitrust agencies continue to grow stronger. Indeed, the division views close cooperation with its counterparts north and south of the borders, as well as with antitrust agencies worldwide, as an important tool to further enhance the effectiveness and efficiency of its enforcement programme. The number of investigations involving coordination with foreign agencies clearly demonstrates the division's commitment to international cooperation. In 2017 and 2018 alone, the Antitrust Division has cooperated with 19 different antitrust agencies from 17 countries worldwide – including six countries in the Americas – on 26 different civil investigations. The Antitrust Division also actively supports and promotes the invaluable work of international organisations such as the International Competition Network (ICN) and the Organisation for Economic Co-operation and Development (OECD) in the antitrust enforcement arena, and it has recently launched a new initiative to promote and strengthen procedural fairness in antitrust investigations globally.

## AT: DA---Politics

### 2AC---AT: UQ

#### Won’t pass---progressives, cuts, and senate

Wilkie 10-28, is a writer for CNBC. (Christina, 10-28-2021, “Biden’s social spending framework gets a chilly reception from holdouts in Congress,” CNBC, https://www.cnbc.com/2021/10/28/biden-framework-for-build-back-better-social-climate-bill.html)

WASHINGTON – President Joe Biden announced Thursday that he had reached a deal with Senate Democratic holdouts on the outlines of a $1.75 trillion social spending and climate bill. The product of months of tense negotiations between moderate and progressive lawmakers in his party, the new framework contains more details than anything else the White House has released thus far. But it still may not be enough to win over key congressional holdouts. “I know we have an historic economic framework,” Biden said in remarks at the White House. But he added, “I’ll have more to say after I return from the critical meetings in Europe this week.” Senior administration officials said early Thursday morning that Biden was “confident this framework will win the vote of every Democratic senator.” But that confidence was shaken when none of the three senators in whose hands the fate of the plan lies -- progressive standard bearer Bernie Sanders of Vermont and centrists Joe Manchin, W.Va. and Kyrsten Sinema, Ariz. -- publicly committed to voting for the current framework. On the contrary, they all appeared to view the framework as an evolving proposal, not a final, ironclad deal. The current framework is far smaller than Biden’s original $3.5 trillion proposal. The House Rules Committee released a draft of the reconciliation text Thursday afternoon. Still, the package contains a wide-ranging set of programs that, if enacted, will profoundly impact the lives of families with children, low-income Americans and the renewable energy economy. They include: Universal preschool for all 3- and 4-year olds, which is funded for at least 6 years. Subsidized child care that caps what parents pay at 7% of their income, which is funded for 6 years. A one-year extension of the current expanded Child Tax Credit, which impacts approximately 35 million households nationwide. Expanded tax credits for 10 years for utility and residential clean energy, including electric vehicles. Extend the current, pandemic-related Affordable Care Act subsidies for 4 years. Allow Medicare to cover the cost of hearing. The White House says the total cost of the programs will come to $1.75 trillion. There is also an additional $100 billion earmarked to reduce immigration backlogs and speed up asylum processing. But that money would require approval by the Senate’s nonpartisan rule maker, known as the Senate Parliamentarian, who has twice rejected attempts by Democrats to include immigration language in what is technically a budget bill. Also notable is what the framework does not contain. A longstanding proposal to create a federal paid family and medical leave system was dropped from the bill on Wednesday afternoon after Manchin, a key Democratic swing vote, said he did not believe the program belonged in the bill. Cuts like these infuriated House and Senate progressives, and Sanders told reporters Thursday “it needs to be improved.” “What we have to do now is, first of all, make sure that before the [infrastructure bill] vote takes place in the House, to make sure that there is a very explicit legislative language” on the social spending plan, he said. Manchin would not explicitly support the framework, either. “It’s hands of the House,” he told reporters outside his Capitol Hill office. “I’ve been dealing in good faith. I will continue to deal in good faith.” In a statement, Sinema said the months of negotiations had resulted in “significant progress” on the budget bill. “I look forward to getting this done,” she added. Biden traveled to Capitol Hill on Thursday morning to attend a meeting of the House Democratic caucus. There, he explained what was in the social and climate framework and he appealed to House progressives to vote for the framework’s companion bill, a stalled $1 trillion infrastructure bill that has already passed the Senate. It was unclear Thursday whether progressives would agree to rally behind the infrastructure bill, which does not contain many of their top priorities. House Speaker Nancy Pelosi, D-Calif., suggested Thursday morning that a vote on the infrastructure package was likely. Later, during an afternoon press conference, she dodged a direct question on whether she was still planning to convene the chamber to vote on the bipartisan plan. Progressives so far have refused to back the bill, which funds highways, bridges, utilities and ports. They have demanded that Democratic leaders first release firm legislative language for the companion social spending bill.

### 2AC---No PC---General

#### No PC and no agenda.

Chang 10-29 (Samantha, Contributor, “Biden Holds Basement Meeting Begging Dems for Help, But Lawmakers Walk Out Baffled,” 10-29-2021, <https://www.westernjournal.com/biden-holds-basement-meeting-begging-dems-help-lawmakers-walk-baffled/>, DOA: 10-29-2021) //Snowball

Progressive Rep. Ruben Gallego of Arizona slammed centrist senators Joe Manchin of West Virginia and Kyrsten Sinema of Arizona for obstructing the Democrats’ far-left agenda.

“I think everyone is very clear that the biggest problem we have here is Manchin and Sinema,” Gallego said, according to Politico. “They don’t trust them. We need to hear from them that they’re actually in agreement with the president’s framework.”

This is the second time in two months that the House infrastructure vote was pushed back amid intraparty rifts.

It’s a humiliating blow to Biden that underscores that he lacks the political capital to push his agenda through despite Democrats controlling the White House and the House of Representatives.

### 2AC---AT: Link

#### No link & link turn:

#### 1--- Link’s empirically denied

Tirschwell 21, vice president within the Maritime & Trade division of IHS Markit, publisher of The Journal of Commerce. (Peter, July 18, 21, Draft of bill reveals scope of US shipping act overhaul effort <https://www.joc.com/maritime-news/container-lines/shipping-act-draft-bill-promises-regulatory-overhaul_20210718.html?page=1>)

Others will point out the bill’s implicit prioritizing of exports over imports. Ocean carriers’ refusal to carry certain export cargoes over the past year can be seen both as an effort to free up capacity for import cargoes moving at several times the freight rate of export cargos, helping carriers **achieve** record profits, but also an effort to ensure capacity for consumer products, including many necessarily consumer staples, that dominate import volumes. But none of that is slowing down the momentum for legislation on Capitol Hill, which was hardly hurt by the Biden administration including shipping in its July 9 executive order on competition, pointing out ocean carrier consolidation and their foreign ownership and urging the FMC to enforce existing prohibitions of unjust and unreasonable practices in detention and demurrage. Nor does the reform effort face the gauntlet of powerful US-flag carriers that earlier shipping act revisions had to accommodate, leading to consensus on issues like confidential contracting; today’s container shipping industry is dominated by carriers based in Europe and Asia, including China, who in the current environment find themselves with few allies in Washington. If the reform movement results in legislation being passed and signed that will happen despite the adamant opposition of the carriers.

#### 2---Biden disapproval is sky-high and collapses PC—fixing the supply chain solves

Lambert 10/26 (Lance Lambert, Fortune, 10/26/2021, Joe Biden has a disapproval problem," https://fortune.com/2021/10/26/biden-disapproval-rating-clinton-bush-trump/"Joe Biden has a disapproval problem," https://fortune.com/2021/10/26/biden-disapproval-rating-clinton-bush-trump/, "Joe Biden has a disapproval problem," https://fortune.com/2021/10/26/biden-disapproval-rating-clinton-bush-trump/

When it comes to presidential politics, no metric is more closely watched than the sitting president’s approval rating. The more Americans who back the president, the more political capital that the commander-in-chief wields. But once it drops off, it rarely bounces all the way back. That’s why so many Democratic officials are fretting about the recent drop in President Joe Biden’s approval rating. As of Tuesday, just 43.5% of the nation supports the job he’s doing—down from 53% on his first day in office, according to FiveThirtyEight. But there’s arguably a metric that is just as important: a president’s disapproval rating. That represents the share of voters who disapprove of how the president is doing. For Biden, the metric is flashing red. Last week, that disapproval rating for Biden rose above the all-important 50% threshold for the first time. As of Tuesday, it sits at an all-time high of 50.9%. That’s a historically high disapproval rating for a president who is not even at the one-year mark. At the same point in their first term, Presidents Jimmy Carter (30.1%), Ronald Reagan (35.3%), George H.W. Bush (22.9%), Bill Clinton (44.2%), George W. Bush (9.1%), and Barack Obama (41.7%) all had much lower disapproval ratings. The only recent president with a higher disapproval rating at this point in his tenure was the man Biden beat in November: Donald Trump, at 56.7%. During his first few months in office, Biden maintained a fairly solid level of popularity. That period was when he issued executive orders to help ramp up COVID-19 vaccinations and signed into law the politically popular $1.9 trillion stimulus package in March. But that popularity quickly faded this summer. In August, the Biden administration received public backlash after its military withdrawal from Afghanistan failed to go as planned. At the same time, the Delta variant caused COVID-19 cases and deaths to soar in some states. Not to mention, supply chain troubles worsened, causing even more price hikes for household goods.

#### 3---Not controversial

Tirschwell 21, is vice president within the Maritime & Trade division of IHS Markit, publisher of The Journal of Commerce. (Peter, July 18, 21, Draft of bill reveals scope of US shipping act overhaul effort <https://www.joc.com/maritime-news/container-lines/shipping-act-draft-bill-promises-regulatory-overhaul_20210718.html?page=1>)

Others will point out the bill’s implicit prioritizing of exports over imports. Ocean carriers’ refusal to carry certain export cargoes over the past year can be seen both as an effort to free up capacity for import cargoes moving at several times the freight rate of export cargos, helping carriers **achieve** record profits, but also an effort to ensure capacity for consumer products, including many necessarily consumer staples, that dominate import volumes. But none of that is slowing down the momentum for legislation on Capitol Hill, which was hardly hurt by the Biden administration including shipping in its July 9 executive order on competition, pointing out ocean carrier consolidation and their foreign ownership and urging the FMC to enforce existing prohibitions of unjust and unreasonable practices in detention and demurrage. Nor does the reform effort face the gauntlet of powerful US-flag carriers that earlier shipping act revisions had to accommodate, leading to consensus on issues like confidential contracting; today’s container shipping industry is dominated by carriers based in Europe and Asia, including China, who in the current environment find themselves with few allies in Washington. If the reform movement results in legislation being passed and signed that will happen despite the adamant opposition of the carriers.

#### 4---The plan changes the conversation by pivoting to domestic issues---that builds PC lost on Afghanistan

Gift 9-7-2021, Associate Professor of Political Science at UCL, where he is director of the Centre on US Politics (CUSP). (Thomas, “Biden’s mishandled Afghanistan withdrawal is unlikely to have a large effect on the 2022 midterms,” <https://blogs.lse.ac.uk/usappblog/2021/09/07/bidens-mishandled-afghanistan-withdrawal-is-unlikely-to-have-a-large-effect-on-the-2022-midterms/>)

The last few weeks have been an undeniable jolt to the White House. Biden’s approval ratings have dipped into negative territory. Republicans are using the devastating images out of Kabul to paint a portrait of an unreliable commander-in-chief. Even Democratic allies have questioned how Biden’s recent moves square with a leader who promised to be a steady hand and to restore American trust abroad. Afghanistan was Biden’s first true foreign policy test, and his execution failed. Politically, however, whether this proves to be a temporary blip for Biden—or the start of a protracted loss of political capital—will depend on how effectively the administration can change the conversation. The White House communications office is clearly trying to pivot back to domestic issues. But even here, there’s no safe harbor given continued depressing news on COVID-19, worse-than-expected August job numbers, mounting concerns about inflation, and so on. To the extent that presidents are granted even a modicum of a honeymoon period anymore, we’re well past that with Biden.

#### 5---That’s collapsing PC

Creighton 10-29-21

(Adam, https://www.theaustralian.com.au/world/joe-bidens-stocks-grow-weaker-as-errors-build/news-story/770507d77e5918541ebc5e2ab0c71af0)

Little is going right for the Democrats in the US. President Joe Biden flew out of Washington on Thursday night for Italy and then Glasgow in the weakest political position of his presidency. Biden’s rapidly diminishing political capital at home augurs badly for any new global agreement on climate change. His personal approval rating has been falling, accelerating since the controversial withdrawal from Afghanistan in August, to the lowest point of any president at this stage except Donald Trump. Economic growth has collapsed in the third quarter to 2 per cent, inflation remains stuck above 5 per cent, and the President’s reform agenda has stalled. Almost 20 months on from the start of the pandemic the labour force remains three million smaller than it was in February last year. Illegal arrivals at the southern border with Mexico have exploded. A Republican could even win a close-run governor election in ­Virginia next week, which a few weeks ago looked to be a shoo-in for the Democratic incumbents.

#### 6---Plan is a win for Biden---restores PC

Overly 10-25, is a writer for Politico. (Steven, 10-25-2021, “Frustration builds over stalled China competition bill,” Politico, https://www.politico.com/newsletters/weekly-trade/2021/10/25/frustration-builds-over-stalled-china-competition-bill-798425)

CHINA COMPETITION BILL STALLED IN CONGRESS: There’s no shortage of legislation struggling to eke its way through a narrowly divided Congress at the moment. But there’s growing frustration that Congress has yet to approve a bipartisan package that aims to make the U.S. economy more competitive against China and address crippling supply chain challenges, POLITICO’s Andrew Desiderio and Gavin Bade report. The U.S. Innovation and Competition Act (S. 1260 (117)) got the green light from the Senate back in June, but its companion legislation has been sitting idle in the House. It’s a sweeping measure that lawmakers contend will bolster domestic investment in manufacturing and technology, including the production of hard-to-obtain semiconductors. All about chips: The legislation contains $52 billion to fund the CHIPS for America Act, which would provide incentives to companies that make high-end microchips in the U.S. The global semiconductor shortage has snarled a wide range of industries, from automobiles to electronics, and exposed U.S. dependence on foreign producers in Taiwan and South Korea. Some lawmakers have suggested that the semiconductor funding could be cleaved off and passed as part of the National Defense Authorization Act. But doing so would be risky: As one of the broader package’s bipartisan provisions, it serves as a carrot to move the full bill along. “There’s some urgency to that part,” Sen. Chris Van Hollen (D-Md.) said of the semiconductor funding. “I don’t object to [CHIPS] moving on a faster track, so long as it doesn’t jeopardize the chances of the overall package.” Bridging the bills: House trade policy leaders are still hopeful they can pass their legislation before the end of the year. But they have yet to decide how to deal with a host of broadly supported Senate provisions that aren’t yet in their version of the bill. Those include the reauthorization of three expired tariff exemption programs put in the Senate bill to prevent a GOP filibuster, as well as corporate-friendly changes to how Customs and Border Protection enforces trade blockades. Domestic politics: Democrats say the legislation would attract bipartisan support and give the party a much-needed political win, especially as consumers grow increasingly concerned about rising prices and supply chain challenges.

#### 7---Winner’s win---spending PC rebuilds it [their ev is premised on outdated political theory]

Kane 7-24-2021, The Washington Post's senior congressional correspondent and columnist (Paul, “Day-to-day, Biden’s agenda looks rocky. But congressional Democrats say things are far rosier if you take the long view.,” *Washington Post*, https://www.washingtonpost.com/powerpost/biden-agenda-democrats-congress/2021/07/24/83b776be-ebc0-11eb-ba5d-55d3b5ffcaf1\_story.html)

There is, so far at least, little fear that Democrats are spreading themselves too thin by eschewing the traditional practice of focusing on a handful of domestic policy issues in the first two years of an administration. “Political momentum and political capital is like a muscle. The more you exercise it, the more of it you have. It is not like a finite resource that you can run out of if you spend too much of it. What happens is that if we do a lot of positive things, then we’ve got more political clout to do even more positive things,” Sen. Brian Schatz (D-Hawaii) said. But there is an undercurrent of fear that Democrats lost focus on battling the pandemic and that those gains might be forgotten if current trend lines prompt new shutdowns. “We’ve done a good job over the last several months. But we’re going to have to continue to do it with aggressiveness and precision because the other side has no interest in governing and is going to spend all their time trying to mischaracterize public policy wins,” Rep. Hakeem Jeffries (D-N.Y.), who is in charge of messaging in Pelosi’s leadership team, said. Some worry that the Biden administration needs to stay focused on promoting the $1.9 trillion American Rescue Plan, fearful of mistakes similar to 12 years ago, when the Obama administration neglected to promote its roughly $800 billion economic recovery bill after it passed a month into office. “I don’t think they’ve gotten enough credit for the extraordinary logistical and managerial effort to manage the rollout of the vaccine. That was a big task. And I think it was managed effectively. And I think that’s maybe the most important thing and the least discussed,” Sen. Angus King (I-Maine) said. In late 2010, while he was still a college professor, King wrote an essay, “The Democrats Beat Themselves,” citing how poorly the Obama administration sold the economic recovery. “Basically, the President was subjected to a two-year, nonstop ‘Swift Boating’ and never really fought back,” King wrote after the 2010 political bloodbath for Democrats. So, yes, on Tuesday, federal health officials reported more than 62,000 new cases of the deadly virus as 314 Americans died of the virus. A day earlier, the stock market tumbled more than 700 points amid fears of the health crisis causing another economic shock. But exactly six months earlier---Jan. 20, the day Biden was sworn in under strict social distancing and masking guidelines outside the Capitol---there were more than 185,000 new virus cases and a rolling weekly average of almost 200,000, with 4,440 deaths caused by covid-19 that day. On Jan. 20, the Dow Jones industrial average stood at 31,188, far below the closing of 34,512 six months later. Labor Department reports this month showed strong wage growth amid steady job growth that suggests sometime next year, the economy will recover all the lost jobs from the pandemic. In June and most of July, Biden tried to move past the pandemic and focused his attention on the bipartisan infrastructure plan and the proposed $3.5 trillion budget plan that is favored by liberals. Those two packages are filled with campaign pledges to remake government support for the middle class, the most ambitious budgets since the Great Society proposals of the 1960s. Democrats will need to make Congress spend a lot more time in Washington if they want to get Biden’s agenda passed Democrats defend these proposals as worthy of the big moment the nation faces. “We are confronting a multitude of crises, including a once-in-a-century covid-19 pandemic, a democracy crisis, a racial justice crisis and a climate crisis all at the same time,” Jeffries said. Schatz views the old presidential model of focusing on a couple big things as outdated. “The model from the ’80s was if you do too many things, people are going to get freaked out. And I think the danger here is not doing enough rather than doing too much,” he said.

#### 8---Republicans could horsetrade the plan

Pickman 21 (Ben Pickman-writer for Sports Illustrated. “Sen. Mike Lee, Rep. Jeff Duncan Introduce Legislation to End MLB's Antitrust Exemption” , <https://www.si.com/mlb/2021/04/14/mlb-antitrust-exemption-legislation-introduced-congress> , April 14, 2021, date accessed 10/31/21)

Representative Jeff Duncan (R., S.C.) and Senator Mike Lee (R., Utah) filed legislation on Wednesday seeking to end MLB's antitrust exemption.

The legislation is cosponsored by Republican senators Ted Cruz, Josh Hawley, Marco Rubio and Marsha Blackburn. There are 29 original cosponsors in the House of Representatives, all of whom are Republicans. If passed, the legislation would eliminate the antitrust status afforded to Major League Baseball since 1922.

### 2AC---AT: Link

#### No link:

#### 1---Antitrust laws are applied cooperatively!

OECD 17. OECD Directorate For Financial And Enterprise Affairs Competition Committee. “Roundtable on the Extraterritorial Reach of Competition Remedies - Note by the United States”. FTC. 4-5 December 2017. https://www.ftc.gov/system/files/attachments/us-submissions-oecd-2010-present-other-international-competition-fora/et\_remedies\_united\_states.pdf

4. The U.S. Agencies require relief sufficient to eliminate identified anticompetitive harm that has the requisite connection to U.S. commerce and consumers, even if this means reaching assets or conduct in a foreign jurisdiction.7 For example, in the merger context, a company may be required to divest a manufacturing plant outside of the U.S. in order to help preserve competition in the U.S. At the same time, Section 5.1.5 of the International Guidelines sets out a balanced standard for the Agencies’ reliance on extraterritorial remedies that “limits overly broad extraterritorial reach, while recognizing and allowing for effective enforcement.” 8 To this end, the International Guidelines provide that: The Agencies seek remedies that effectively address harm or threatened harm to U.S. commerce and consumers, while attempting to avoid conflicts with remedies contemplated by their foreign counterparts. An Agency will seek a remedy that includes conduct or assets outside the United States only to the extent that including them is needed to effectively redress harm or threatened harm to U.S. commerce and consumers and is consistent with the Agency’s international comity analysis.9 5. This statement sets out a number of important guiding principles. First, the Agencies always look first to resolve anticompetitive concerns through domestic remedies. 6. Second, the Agencies will seek an extraterritorial remedy only when: (1) the extraterritorial remedy is needed to address harm or threatened harm to U.S. commerce and consumers, and (2) such a remedy is consistent with the Agency’s comity analysis. Thus, the Agencies’ general practice is to seek an effective remedy that is restricted to the United States, which the Agencies believe is the best approach. Only when a domestic remedy cannot effectively redress the harm or threatened harm to U.S. commerce or consumers will the Agencies consider broader remedies that have extraterritorial effect. 7. The International Guidelines explain that comity can be a consideration in the Agencies’ remedy determinations. Comity “reflects the broad concept of respect among co-equal sovereign nations and plays a role in determining ‘the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation.’”10 The U.S. Supreme Court has held that no conflict exists for purposes of international comity analysis if a person subject to regulation by two nations can comply with the laws of both.11 In addition, even where there is no direct conflict, “the Agencies will assess the articulated interests and policies of a foreign sovereign beyond whether there is a conflict with foreign law.” 12 Comity has not been a significant factor in the Agencies’ remedy determinations involving more than one sovereign because of the high degree of international convergence in competition law and policy. Convergence has reduced the number of direct conflicts, including on remedies. 8. Third, the Agencies seek to avoid conflicts with remedies contemplated by their foreign counterparts, notably through cooperation. The International Guidelines specifically provide that the Agencies “may cooperate with other authorities, to the extent permitted under U.S. law, to facilitate obtaining effective and non-conflicting remedies.”13 Cooperation “can improve substantive analyses and ensure that investigations and remedies are as consistent and predictable as possible, which improves outcomes, and reduces uncertainty and expense to firms doing business across borders.”14 Divergent remedies have the potential to impair firms’ abilities to compete globally and can undermine competition enforcement efforts. In many cases, particularly those involving extraterritorial remedies, cooperation and coordination are important to an effective outcome and improve understanding of each of the cooperating authorities’ needs and proposed decisions. 15 Information exchange among enforcers investigating the same conduct enables the Agencies to understand each other’s decisions in a case and any impact on U.S. commerce. 16 Cooperation has also facilitated informal and practical approaches to limiting duplication, including by one authority’s closing of its investigation without remedies after taking another authority’s remedy into account. 17 9. Consequently, if an extraterritorial remedy is contemplated in a particular case, these principles, as provided in the International Guidelines, allow the Agencies to ensure that the remedy is appropriately tailored to address the identified competitive harm to U.S. commerce and consumers without unnecessarily conflicting with the laws, policies, or remedies of foreign jurisdictions. 10. Specific examples of Agency cooperation on remedies are discussed at Part VI.

#### 2---Decades of unilateral application thump.

Virginia del Aguila 05. “Establishing Global Competition Standards: Achievable Mission or Utopia?” Centro de Estudios Economicos de Regulacion. Universidad Argentina de la Empresa. Working Paper N 20. April 2005. <https://www.uade.edu.ar/DocsDownload/Publicaciones/4_228_1634_WPS020_2005.pdf>

The competition authorities in the US have had **little compunction** about enforcing their antitrust laws against overseas companies. In this sense, they have in some occasions demanded that commercial documents located abroad should be handed over, and the **Courts have even issued final orders** requiring that foreign companies should **change their commercial practices or restructure their industry**41. Nonetheless, it should be noted that the 1994 International Antitrust Enforcement Assistance Act (IAEAA)42 is intended to improve the ability of the US enforcement agencies to obtain evidence located abroad by providing for reciprocal agreements to be entered between the US and other countries to facilitate the exchange of information, including confidential information. Notwithstanding, due to the fact that certain antitrust offences are criminal under US law and, thus, it is possible for individuals to be sentenced to terms of imprisonment, for the moment only an agreement between the US and Australia was concluded under the IAEAA.

#### 3---Dialogue solves concerns.

OECD 17. OECD Directorate For Financial And Enterprise Affairs Competition Committee. “Roundtable on the Extraterritorial Reach of Competition Remedies - Note by the United States”. FTC. 4-5 December 2017. https://www.ftc.gov/system/files/attachments/us-submissions-oecd-2010-present-other-international-competition-fora/et\_remedies\_united\_states.pdf

4. Process and Transparency in Remedy Determinations 15. In addition to policy transparency, the Agencies recognize the importance of transparency, procedural fairness, and non-discrimination with regard to individual remedy determinations, particularly those implicating extraterritoriality. In situations in which an Agency deems an extraterritorial remedy necessary, transparency and procedural fairness ensure that the parties understand the Agency’s rationale for and have the opportunity to provide input into the decision.30 Among other benefits, actively engaging with parties helps the Agencies to craft appropriate resolutions that address the specific competitive harm in the jurisdiction, including by better understanding the scope of a remedy that may be under consideration in another jurisdiction. 31 Such engagement allows for more efficient remedies and improves the potential for cooperation and coordination of remedies, when appropriate. 16. An explanation of why a particular remedy is needed is also helpful if the remedy will apply outside the jurisdiction. Such an explanation enables foreign parties and sister agencies to understand the rationale for the application of the extraterritorial remedy and to appreciate that it is applied in a non-discriminatory manner.32

#### 4---Extraterritoriality results in global market stability

Leonardo 16, is J.D. candidate at Depaul University College of Law. (Lizl, 2016, ““A Proposal to the Seventh and Ninth Circuit Split: Expand the Reach of the U.S. Antitrust Laws to Extraterritorial Conduct that Impacts U.S. Commerce,” Depaul Law Review, vol. 66, https://via.library.depaul.edu/cgi/viewcontent.cgi?article=4008&context=law-review)

C. The Ninth Circuit Must Prevail: Apply the Broad Rule International supply chains have benefits in today’s modern world. Raw materials, parts, and labor costs are generally cheaper in Asia.291 Companies have more flexibility to look for other companies to transact with, given the advancement in technology and the volatility of the marketplace.292 Efficiency and effectiveness increase over time as these companies collaborate and integrate their efforts to achieve optimal returns.293 Customers, generally, want cheap but quality-made products.294 When companies meet these demands, customers are more likely to buy the products, and as a result, other companies enter the market with the intention of delivering the same goods at a lower price.295 Companies, then, both cooperate and compete against each other, finding ways to come up with final products that are more efficient, eventually leading to market growth.296 However, despite these described benefits, price-fixing cartels still find a way to impose higher costs of products to consumers.297 A price-fixing cartel considers the product flow among regions in order to establish the price it will charge for a particular product.298 The conspiracy, generally, will not work if the price of the product is only increased in one region because market forces will essentially reallocate the sales to other regions that sell the product at lower prices.299 For example, if the LCD conspirators focused their price increase on regions outside of the United States, U.S. companies would have a strong inclination towards limiting their purchases to LCD panels sold in the United States at lower prices and then exporting these panels to foreign subsidiaries themselves, thus effectively avoiding the cartel’s products.300 However, conspirators are savvy enough to avoid being cut out of certain markets, particularly as the United States is one of the largest consumer markets in the world.301 To avoid this problem, the LCD conspirators (or any international cartel) have an incentive to raise the prices of the products in all regions that have multinational operations, including the United States.302 This action will disrupt the efficient and organized processes that help lower production costs, primarily because the United States has higher than usual labor costs compared to other countries.303 With insufficient rules curtailing price-fixing cartels, U.S. companies could limit the use of international supply chains.304 Moreover, they will be discouraged from conducting business or moving some businesses offshore where it will be more beneficial.305 As a result, the total price of U.S. consumer goods will be higher than it would have been had they been created in countries that have lower production and labor costs.306 This kind of uncertainty makes it difficult for both producers and consumers to manage the volatility of the market. In light of the increasing demand for international business transactions, it is more important than ever that U.S. consumers are continuously protected from companies’ wrongful conduct, whether or not these companies engage in these transactions while outside of the United States’ jurisdiction.307 The Seventh Circuit’s ruling undermines this protection. It focused its analysis on technicalities of the statute, and it placed more weight on international comity concerns than on the protection of U.S. consumers, whom the legislators intended to protect when it enacted the statute.308 On the contrary, the Ninth Circuit’s interpretation of the FTAIA is aligned more closely with the canons of statutory interpretation. The Seventh Circuit’s holding that “it was Motorola, rather than the defendants, that imported these panels into the United States”309 is inconsistent with the legislative intent of the FTAIA.310 Congress plainly intended to read the import-commerce exclusion broadly when it enacted the FTAIA.311 In Hartford Fire, the U.S. Supreme Court recognized that the “FTAIA was intended to exempt from the Sherman Act [1] export transactions that [2] did not injure the United States economy.”312 The court reiterated this in Empagran when it held that the “FTAIA seeks to make clear to American exporters . . . that the Sherman Act does not prevent them from entering into business arrangements . . . , however anticompetitive, as long as those arrangements adversely affect only foreign markets.”313 The language of the Sherman Act neither implies nor explicitly states that it should only be applied when commercial transactions occurred in the United States, and not abroad.314 This is a strained interpretation of the Act given that Congress could have explicitly stated such a rule.315 The Ninth Circuit, therefore, correctly dismissed the defendants’ suggestion that because they were not the importers, they should not be held liable.316 Other Federal Circuit Courts of Appeal have held in accordance with the Ninth Circuit, suggesting that some federal courts are in agreement with this reading of the FTAIA’s legislative intent. In Animal Science, the Third Circuit held that in order to find liability, the anticompetitive behavior of the defendant must have been “directed at an import market.”317 Thus, in holding this, the defendants needed only to “function as the physical importers of goods.”318 This meant that there was not a “necessary prerequisite” that the defendants are the importers per se before antitrust laws could apply;319 “[f]unctioning as a physical importer” will be sufficient.320 Here, even though the defendants did not import the LCD panels into the United States per se, the panels’ incorporation into the electronics that were subsequently imported into the United States was sufficient to pass the test.321 The defendants knew that these panels could not stand alone, but rather must be combined with other parts to manufacture a final product.322 That knowledge, the foreseeability of the effect to the United States, and the intentional inflation of the price to an artificially high level meant that the defendants “functioned as a physical importer,” falling squarely under the Sherman Act.323 With regard to the first requirement of the FTAIA, Judge Posner for the Seventh Circuit, wrote that the domestic effect was too “remote” to satisfy the “direct effects” test because the conduct occurred abroad and then passed through a multi-step process before causing “a few ripples in the United States.”324 However, this reasoning assumes the presence of a complicated process to import the LCDs when, in fact, there was none.325 The LCDs were purchased at a high price, incorporated into electronics, and almost instantly shipped to the United States.326 The process was limited to purchasing, manufacturing, and distribution,327 and the LCD panels have no utility without being incorporated in various consumer products, such as mobile phones.328 The artificially high price of the panels was the exclusive factor that adversely impacted U.S. commerce.329 Assuming relatively flat labor costs, the price of the final product would not have increased had it not been for the defendants’ anticompetitive conspiracy to increase the panels’ price. The Ninth Circuit’s interpretation of “direct effects” is therefore proper. The United States market was directly impacted as a result of the “immediate consequence” of the defendants’ price-fixing conspiracy.330 With regard to the “gives rise to” requirement of the FTAIA, the Seventh Circuit’s opinion was sparse, despite consensus among the other circuits.331 The Seventh Circuit relied on the argument that Motorola could not recover because the injury “occurred entirely in foreign commerce.”332 By concluding that the defendants’ conduct did not give rise to Motorola’s claim, the court misread the holding in Empagran, 333 in which the U.S. Supreme Court highlighted the importance of our nation’s “ability . . . to regulate its own commercial affairs.”334 However, it also held that antitrust laws may be applied to foreign anticompetitive conduct so long as it is “reasonable” and it reflects “legislative effort to redress domestic antitrust injury that foreign anticompetitive conduct has caused.”335 That is exactly the issue in Motorola. The Seventh Circuit held that Motorola’s overcharge claims as a result of defendants’ inflated price did not give rise to those claims.336 It reasoned that the harm happened abroad when Motorola purchased the price-fixed panels, independent of the increased cell phone prices.337 But as stated above, the artificially high price of the LCD panels was the reason Motorola was seeking a remedy.338 Had the defendants not conspired to fix the price of these components, the final product price of the mobile phones would not have increased; Motorola would not have been forced to pass on the artificial price increase to U.S. consumers.339 Instead of focusing on the linguistics the U.S. Supreme Court employed in Empagran, the Seventh Circuit should have applied a “more natural” reading by focusing on the basic purpose of the FTAIA and the Sherman Act— protection of U.S. consumers.340 After all, it has been widely recognized that, in a global economy, anticompetitive conduct can negatively impact domestic markets by inflating prices paid by U.S. commerce.341 This is an outcome that U.S. antitrust laws were created to combat.342

### 2AC---AT: Impact

# 1AR

## ECON

### 1AR---AT: Circumvention

#### The prospect of antitrust intervention deters violations---that’s Melamed and Shapiro---no enforcement necessary.

Cheng 13, \*Thomas Cheng, B.A. (Yale), J.D. (Harvard), B.C.L. (Oxon); Attorney & Counsellor, New York State; Associate Professor, Faculty of Law, The University of Hong Kong; (2013, “Putting Innovation Incentives Back in the Patent-Antitrust Interface”, <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1195&context=njtip>), ability edited

Imposing a duty to license on opportunistic patentees may solve this problem. If these patentees know that the courts may step in and mandate licensing at a reasonable royalty rate,214 they will be induced to enter into negotiations with follow-on innovators in good faith.215 The threat of compulsory licensing may become a default background legal rule against which negotiations between initial and follow-on innovators take place. The instances in which the courts need to intervene could be few.

## CP---Regulation

### 1AR---Perm

### 1AR---Deficit---Extraterritoriality

#### Courts presume domestic law is not extraterritorial to avoid conflicts with foreign law

SSCE N.D., Society of Corporate Compliance and Ethics (SCCE)® is a member-based association with 6,000+ compliance and ethics members worldwide. (SCCE, No Date, “United States Jurisdiction Abroad,” SCCE, https://assets.corporatecompliance.org/Portals/1/691\_0\_us\_jurisdictionabroad.pdf)

The United States applies their jurisdiction abroad under several instances. This is something very important for U.S. based corporations with global operations to understand, since they might be in a situation where U.S. jurisdiction applies as a result of actions taken by one of their subsidiaries in a foreign jurisdiction. The issue presented in this paper is when the U.S. can exercise jurisdiction abroad, so we will discuss the protective principle and universality of the five bases of jurisdiction as described below: Five Bases of Jurisdiction ¾ Territoriality ¾ Nationality ¾ Passive Personality ¾ Protective Principle ¾ Universality Presumption - U.S. Law Does Not Apply Abroad In general, absent a clear indication of intent for a statute to apply abroad, there is a presumption that U.S. laws do not apply abroad. ¾ In general, there is a presumption that U.S. laws do not apply outside of the United States; thus, absent a clear intent for a U.S. statute to be applied abroad, U.S. courts will ordinarily interpret U.S. statutes to apply domestically, and not abroad. F. Hoffmann-La Roche Ltd. V. Empagran S.A., 542 U.S. 155, 164 (2004). The purpose is to avoid unintended conflict with laws of foreign nations. E.E.O.C. v. Arabian American Oil Co., 499 U.S. 244, 248. However, it is important to note that there are certain circumstances in which the United States may apply domestic law abroad: For example, the United States may give extraterritorial effect to U.S. laws in cases involving: 1. U.S. citizens abroad. 2. Foreign citizens employed by U.S. companies abroad. 3. Violation of certain laws, such as: ¾ Foreign Corrupt Practices Act (Dealing with bribery) ¾ Export Administration Act of 1979 (Dealing with boycotts) ¾ Iranian Assets Control Regulations (Dealing with the response to the hostage crisis) ¾ Civil Rights Act, the National environmental Policy Act, and drug enforcement laws.i

#### Extraterritoriality results is key to global market stability

Leonardo 16, is J.D. candidate at Depaul University College of Law. (Lizl, 2016, ““A Proposal to the Seventh and Ninth Circuit Split: Expand the Reach of the U.S. Antitrust Laws to Extraterritorial Conduct that Impacts U.S. Commerce,” Depaul Law Review, vol. 66, https://via.library.depaul.edu/cgi/viewcontent.cgi?article=4008&context=law-review)

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## CP---Politics

### Straight-Turn

### 1AR ⁠— Condo

#### Condo’s a voter for fairness and education:

#### 1 ⁠— skew ⁠— answers their defense, outweighs because the 2AC’s key to aff offense, and the block

Merrell & Graham 16, \*Henry A. Kessinger Postdoctoral Fellow at Yale University, Herb York Dissertation Fellow, Ph.D. in Political Science from UC San Diego, B.A. in Political Science and Economics from Southern Illinois University, research has appeared in World Development and Cornell University Press, has publications related to argumentation theory and debate pedagogy \*\*Director of the Saluki Debate Team at Southern Illinois University Carbondale, B.A. from Missouri Southern State College in Communication, M.A. from Kansas State in Communication, Ph.D. from Arizona State University in Communication, expertise in competitive debate, political debates, persuasion, interpersonal communication, public speaker, argumentation (Brandon Merrell, Todd Graham, 2016, “Contrasting Structures, Conditional Strategies: Designing Format-Specific Theories for Competitive Debate,” Parliamentary Debate, Vol. 13, Issue 1 (Spring 2016), pp. 6-7)

How does conditionality differ from kicking other arguments?

Whereas the negative can unilaterally remove a conditional advocacy from the debate round, they cannot do the same for non-advocacies. When negative debaters “kick” out of most arguments, they are required the explain why those positions no longer have any meaningful impact or importance in the round and why the judge need not consider them when making a decision. The most common way for negatives to accomplish this requirement is to strategically concede arguments that are made by their opponents.

For example, when kicking topicality the negative team typically begins by extending the affirmative “we meet” and conceding that the affirmative plan is topical. By doing so, the negative has explained that the position should no longer influence the judge’s decision because the affirmative burden of topicality has been satisfied. Similarly, when kicking out of a disadvantage the negative team will often extend “no-link” or “no-impact” arguments made by their opponents, thereby demonstrating to the judge that the position is no longer relevant in the context of the round because it either does not interact with the plan or does not result in an impact. In each case, the negative must be careful: although they have sought to explain why the issue is unimportant, the affirmative is free to revisit the position and to explain why it remains relevant. This is particularly true if the negative mishandled or inadequately addressed an affirmative response. For example, if the negative dropped a series of affirmative turns on the disadvantage, a critique of topicality, or reverse voting issues on topicality, the affirmative can revisit each of the positions and explain why those arguments still merit consideration from the judge.9 As such, the affirmative can influence the negative’s behavior by making a large number of offensive arguments against a position while declining to make defensive claims. In this case, the negative must address the affirmative side’s offensive arguments and cannot quickly extend affirmative defense in order to “kick out” of the issue. Thus, the affirmative can act strategically to prevent the negative from quickly collapsing in the block.

The same strategic tool is not available against conditional advocacies. When the negative kicks a conditional advocacy, they unilaterally declare that the position has been removed from the round along with all associated arguments. Furthermore, they claim that the position cannot be evaluated or revisited by their opponents. The negative need not explain their rationale for kicking the advocacy, nor are they required to respond to their opponents’ answers against the position before removing it from the round. As a result, the affirmative lacks the capability to influence the negative’s strategy by issuing purely offensive answers. Conditionality therefore allows the negative a unique method of collapsing quickly to specific arguments in the block and of gaining an unimpeachable time-tradeoff relative to the affirmative. Additional ways in which conditionality provides a relative strategic advantage to the negative are addressed in the following sections.

#### They said: arg construction ⁠— that’s wrong

Merrell & Graham 16, \*Henry A. Kessinger Postdoctoral Yellow at Yale University, Herb York Dissertation Fellow, Ph.D. in Political Science from UC San Diego, B.A. in Political Science and Economics from Southern Illinois University, research has appeared in World Development and Cornell University Press, has publications related to argumentation theory and debate pedagogy \*\*Director of the Saluki Debate Team at Southern Illinois University Carbondale, B.A. from Missouri Southern State College in Communication, M.A. from Kansas State in Communication, Ph.D. from Arizona State University in Communication, expertise in competitive debate, political debates, persuasion, interpersonal communication, public speaker, argumentation (Brandon Merrell, Todd Graham, 2016, “Contrasting Structures, Conditional Strategies: Designing Format-Specific Theories for Competitive Debate,” Parliamentary Debate, Vol. 13, Issue 1 (Spring 2016), pp. 11-12)

Finally, conditionality is said to increase argumentative creativity and to prevent negative teams from relying on generic advocacies. This analysis is functionally backward: in any give round, the strategic teams should present whichever arguments they believe are most likely result in a winning ballot. At present, generic counterplans and kritiks are useful in parliamentary debate because affirmative teams continue to answer them poorly. As such, very little penalty is attached to generic negative strategies that are read unconditionally. However, as affirmatives become more adept at answering generic counterplans and kritiks, teams will be less apt to read such arguments unconditionally for fear that their opponents respond successfully. Conditionality, on the other hand, encourages the continued use of stale, generic arguments because there is no penalty attached to trying and kicking a generic counterplan that the affirmative saddles with offense. Even in his assessment of conditionality in policy debate, Aaron Hardy (2010) argued that giving the negative “carte blanche to introduce as many [advocacies] as time permits in each debate creates a number of drawbacks. It fosters a debate curriculum which discourages on-point research in favor of generically applicable argumentation... It also discourages the development of in-round strategic thinking skills which require seeing interactions and synthesis between multiple different positions.” We agree with Hardy that, on balance, conditionality results in a trend in favor of generic argumentation and impedes the development of strategic skills, thereby reducing the value of debate as an educational tool.

#### Real world ⁠AND skews/contradictions turn it

Merrell & Graham 16, \*Henry A. Kessinger Postdoctoral Yellow at Yale University, Herb York Dissertation Fellow, Ph.D. in Political Science from UC San Diego, B.A. in Political Science and Economics from Southern Illinois University, research has appeared in World Development and Cornell University Press, has publications related to argumentation theory and debate pedagogy \*\*Director of the Saluki Debate Team at Southern Illinois University Carbondale, B.A. from Missouri Southern State College in Communication, M.A. from Kansas State in Communication, Ph.D. from Arizona State University in Communication, expertise in competitive debate, political debates, persuasion, interpersonal communication, public speaker, argumentation (Brandon Merrell, Todd Graham, 2016, “Contrasting Structures, Conditional Strategies: Designing Format-Specific Theories for Competitive Debate,” Parliamentary Debate, Vol. 13, Issue 1 (Spring 2016), pp. 11)

\*raison d’être: the most important reason or purpose for someone or something’s existence

Second, proponents of conditionality claim that it is the most realistic approach to policymaking and that it facilitates a search for the best policy option. These claims, however, draw an inappropriate analogy. Realistic policymaking is a skill to be admired, but it should not be emulated at all costs. Various rules directly inhibit competitive debaters from searching for the best policy option when doing so would jeopardize overall fairness in the round. For example, allowing the affirmative team to shift its plan midway through the debate would allow the affirmative to identify a more desirable policy option, but this process is not allowed because it would be highly abusive to the negative side. Indeed, even the resolution itself impedes the affirmative’s search for the “best policy” by limiting the range of available plans to a narrow set of topical proposals. Rules and norms that limit a search for the best policy are particularly widespread in parliamentary debate. One need only look to factors such as limited pre-round prep time, lack of printed materials in-round, changing topics, and even an early belief in the importance of value and metaphor debates as evidence that a search for optimal policy is not the activity’s raison d’être.16

#### We solve neg thinking

Merrell & Graham 16, \*Henry A. Kessinger Postdoctoral Yellow at Yale University, Herb York Dissertation Fellow, Ph.D. in Political Science from UC San Diego, B.A. in Political Science and Economics from Southern Illinois University, research has appeared in World Development and Cornell University Press, has publications related to argumentation theory and debate pedagogy \*\*Director of the Saluki Debate Team at Southern Illinois University Carbondale, B.A. from Missouri Southern State College in Communication, M.A. from Kansas State in Communication, Ph.D. from Arizona State University in Communication, expertise in competitive debate, political debates, persuasion, interpersonal communication, public speaker, argumentation (Brandon Merrell, Todd Graham, 2016, “Contrasting Structures, Conditional Strategies: Designing Format-Specific Theories for Competitive Debate,” Parliamentary Debate, Vol. 13, Issue 1 (Spring 2016), pp. 10-11)

Those who support conditionality also allege that the technique promotes strategic thinking for the negative side. However, conditionality actually reduces strategic thinking for the negative because teams are no longer required to answer arguments that they are losing. In a world without conditionality, negative teams must select their opening strategy carefully, by weighing the likelihood that opponents will successfully respond to each position that is introduced. They must also choose carefully when selecting which positions to pursue in the block and estimating how long it will take to answer affirmative arguments and kick out of each unwanted position. Conditionality reduces the strategic calculus by allowing negatives to collapse directly to whichever argument or position that the affirmative team mishandled. The requirement to exhibit foresight and carefully consider the utility of arguments before presenting them in the round is substantially reduced in a world of conditional advocacies. Only when debaters are held accountable for their arguments during debate rounds do they begin to understand the strengths and weaknesses inherent to their own positions and learn to defend their claims against opposing viewpoints.15

#### On the aff too!

Merrell & Graham 16, \*Henry A. Kessinger Postdoctoral Yellow at Yale University, Herb York Dissertation Fellow, Ph.D. in Political Science from UC San Diego, B.A. in Political Science and Economics from Southern Illinois University, research has appeared in World Development and Cornell University Press, has publications related to argumentation theory and debate pedagogy \*\*Director of the Saluki Debate Team at Southern Illinois University Carbondale, B.A. from Missouri Southern State College in Communication, M.A. from Kansas State in Communication, Ph.D. from Arizona State University in Communication, expertise in competitive debate, political debates, persuasion, interpersonal communication, public speaker, argumentation (Brandon Merrell, Todd Graham, 2016, “Contrasting Structures, Conditional Strategies: Designing Format-Specific Theories for Competitive Debate,” Parliamentary Debate, Vol. 13, Issue 1 (Spring 2016), pp. 10)

Potential responses regarding education and debate quality

Supporters of conditionality seek to justify it on a variety of grounds. First, they claim that conditionality facilitates strategic thinking by both teams. Second, they claim that conditionality is the most real world approach to policymaking. Finally, conditionality is said to prevent negative teams from reading generic arguments by allowing them the flexibility to kick undesirable advocacies. We examine each of these arguments in turn.

First, advocates of conditionality argue that the strategy encourages ‘strategic thinking’ by both sides in the debate. In particular, negative teams often argue that by making the debate more difficult for the affirmative, conditionality helps their opponents develop better strategic skills.14 However, this justification overlooks the obvious—in a competitive environment teams already have ample incentives to behave strategically. The argument that conditionality forces the affirmative to wield better strategies would only hold water if affirmative debaters currently enjoyed so large a competitive advantage relative to the negative that they were able to behave carelessly. As we explain below, this does not appear to be the case. In fact, counter to its supporters’ justifications, conditionality actually decreases the strategic tools at the affirmative’s disposal by preventing teams from using straight-turns to compensate for negative time-tradeoffs or to protect against the strategic collapse in the block. Rather than a variety of options, MGs who hope to strategically optimize have little choice but to resort to conditionality-bad theory as a guaranteed outlet for offense.

#### Good debaters won’t get stuck with bad positions

Merrell & Graham 16, \*Henry A. Kessinger Postdoctoral Yellow at Yale University, Herb York Dissertation Fellow, Ph.D. in Political Science from UC San Diego, B.A. in Political Science and Economics from Southern Illinois University, research has appeared in World Development and Cornell University Press, has publications related to argumentation theory and debate pedagogy \*\*Director of the Saluki Debate Team at Southern Illinois University Carbondale, B.A. from Missouri Southern State College in Communication, M.A. from Kansas State in Communication, Ph.D. from Arizona State University in Communication, expertise in competitive debate, political debates, persuasion, interpersonal communication, public speaker, argumentation (Brandon Merrell, Todd Graham, 2016, “Contrasting Structures, Conditional Strategies: Designing Format-Specific Theories for Competitive Debate,” Parliamentary Debate, Vol. 13, Issue 1 (Spring 2016), pp. 22)

Second, negative teams often lament that conditionality forces them to defend an advocacy for the entire round, even after it has been proven undesirable. However, we argue that strategically presenting and then defending arguments is central to debate. The complaint offered here would be nonsensical in all other debate contexts. If the negative read a disadvantage or impact scenario that ultimately proved useful to their opponents, the negative could not ask the judge to disregard the argument merely because it was no longer beneficial to their side. Rather, debaters should take care when they select arguments prior to the LOC and should consider in advance how the debate round may play out. Teams can avoid being tied to “undesirable” advocacies by selecting their strategy more carefully during prep time. Debaters who regularly find themselves “trapped” defending counterplans or kritiks that the affirmative has proven undesirable are often teams that exercise minimal discretion when selecting which advocacies to read. Strategic debaters will eschew positions that are unlikely to be decided in their favor. As such, they need not rely on conditionality to protect themselves.

## DA---Trade

### 1NR---AT: Impact

#### No internal link.

Allison Murray 19, JD from the Loyola Law School, Los Angeles Law School, BS in Business Administration from the University of Redlands, Judicial Law Clerk at the U.S. Bankruptcy Courts, Former Corporate Paralegal at Boeing, Degree in Economics and Management from the University of Oxford, “Given Today's New Wave of Protectionism, Is Antitrust Law the Last Hope for Preserving a Free Global Economy or Another Nail in Free Trade's Coffin?”, Loyola of Los Angeles International and Comparative Law Review, Volume 42, Number 1, 42 Loy. L.A. Int'l & Comp. L. Rev. 117, Winter 2019, p. 117-119

Trump is not the only high-profile leader flirting with staunch protectionism. Western leaders in the E.U. appear to be growing more comfortable than their predecessors with considering similar policies. However, Western lawmakers themselves do not seem as persuaded by the statements of their leadership. The general sentiment among international policymakers is that there has been too much political wherewithal spent on loosening international trade barriers to take actions [\*119] that could counteract that progress. 6Presidential actions taken because of dissatisfaction with current global trade relations aside, a complete overhaul of trade agreements may be too daunting and difficult a task, especially absent ample political support in legislative bodies.

#### China and EU want the U.S. to remove shipping exemptions

Anderson 15, Reporter for Shipping Watch. (Ole June 19, 2015, Agreement to intensify global control of container shipowners, <https://shippingwatch.com/secure/carriers/Container/article7807963.ece>)

The competition authorities in the EU, the US and China agreed at a meeting this Thursday in Brussels to work together more closely in terms of control of the world's 20 largest container carriers which are currently organized in four alliances. Together, the four alliances control over 90% of the trades between the Far East and North Europe and between Asia and the US. The EU Commission has internationally and historically been critical towards the container carriers many years of exemptions from the ordinary competition regulations. The Commission highlighted in a statement after the meeting in Brussels that the continued growth in the scale of cooperation in the industry makes it necessary to insure a tighter control of the ship owners. I'll control that would include closer and more frequent contact and exchange of information between the three main competition authorities. The largest container Alliance out of the four, Maersk line and msc's so-called 2m Alliance, initiated its cooperation this January while the rest have either strengthen their former cooperations or entered into new constellations. The chairman of the US Federal Maritime commission, Mario Cordero, told shipping watch previously this week that one of the topics that will be discussed at the meeting concerns congestion in the ports. The issue has become prominent in several cases in which increasingly large ships call in the ports of the alliance's are trying to concentrate their Freight and fewer but bigger vessels. The carrier's customers, which are organized in different shipper organizations, have also reacted to the carrier's enforced cooperation. For instance, the European shippers Council has laid down for main demands for monitoring shipowners, while the shippers in Singapore have expressed concern over the increasing influence that the four major container alliances have in the market. "Today, all major carriers in the East-West trades are in one of four alliances, a development unprecedented in the liner shipping industry," said the chairman of the Singapore National shippers Council, Jean-Luc. "This is cause for concern for shippers as the liner industry is possibly the only industry which enjoys immunity from prosecution under antitrust laws for Collective agreements."

# 2AR

## Conditionality

### 2AR---Condo

#### It applies to policy debate more

Merrell & Graham 15, \*Henry A. Kessinger Postdoctoral Yellow at Yale University, Herb York Dissertation Fellow, Ph.D. in Political Science from UC San Diego, B.A. in Political Science and Economics from Southern Illinois University, research has appeared in World Development and Cornell University Press, has publications related to argumentation theory and debate pedagogy \*\*Director of the Saluki Debate Team at Southern Illinois University Carbondale, B.A. from Missouri Southern State College in Communication, M.A. from Kansas State in Communication, Ph.D. from Arizona State University in Communication, expertise in competitive debate, political debates, persuasion, interpersonal communication, public speaker, argumentation (Brandon Merrell, Todd Graham, 2015, “Conditionality and Advocacy Status,” pp. 9)

Conclusion

Structural distinctions between parliamentary and policy exacerbate the harms of conditionality in the latter event, both in terms of the strategic imbalance that the strategy creates and its potential to erode the overall quality of debate. Given these concerns, judges should consider setting aside prevailing attitudes against intervention and should instead stipulate that they will not tolerate conditional arguments in much the same way that they reject harassment. Similarly, coaches and teams should forgo their pursuit of competitive advantages by confining themselves and their teams to unconditional advocacies in the interests of the activity as a whole. At the very least, all teams should recognize the importance of teaching teams to competently argue that conditionality is bad.