# 2AC

## ADV---Economy

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

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

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

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

## ADV---Ports

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

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

## ADV---Inherency

### 2AC---AT: Enforcement Fails

#### EU and China want the plan

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."

### 2AC---Thumper

## AT: T---Private Sector

### 2AC---AT: Private Sector

#### Counter-interpretation---the private sector includes an industry.

The Law Dictionary N.D., (The Law Dictionary: Featuring Black's Law Dictionary Free Online Legal Dictionary 2nd Ed. “Private Sector” , <https://thelawdictionary.org/private-sector/> , date accessed 9/11/21)

What is PRIVATE SECTOR? An industry that is composed of private companies. The corporate sector and the personal sector are encompassed in the private sector and they are responsible for the allocation of the majority of resources within the economy.

#### The private sector includes subsets---refers to many different actors.

Waler and Hofstetter 16 (Katharina Walker is Advisor for vocational skills development and Helvetas’ youth focal person. Sonja Hofstetter joined Swisscontact in Cambodia in July 2016. She is the Quality Assurance Manager and Deputy Team Leader of the Skills Development Programme. “ Study on Agricultural Technical and Vocational Education and Training (ATVET) in Developing Countries” Federal Department of Foreign Affairs FDFA, Swiss Agency for Development and Cooperation SDC, Global Programme Food Security, 25.1.2016, <https://www.shareweb.ch/site/Agriculture-and-Food-Security/focusareas/Documents/ras_capex_ATVET_Study_2016.pdf> , date accessed 7/19/21)

In many developing countries, the private sector1 [[BEGIN FOOTNOTE 1]] 1 The private sector is not perceived as a homogenous mass even though the terminology might suggest this to be the case. In this study, the term “private sector” is used to circumscribe the various actors such as small and medium sized companies, large companies, sectorial associations, business associations, chambers of commerce, etc.[[END FOOTNOTE 1]] faces challenges in finding adequately skilled employees. This also holds true for sectors linked to agriculture, e.g. processing, distribution, marketing, etc. The development of ATVET from a purely productivity-oriented approach to provide broader and more specialised skills sets along agricultural value chains is likely to raise the interest of private sector actors. This incentive can result in a stronger and more sustainable financial and conceptual engagement of employers in ATVET.

#### ‘By’ only requires anticompetitive practices resulting from private sector action.

Michigan Court of Appeals 10 (SAWYER, J. Opinion in DEQ. v. Worth Twp., 808 N.W.2d 260, 289 Mich. App. 414 (Ct. App. 2010). Google scholar caselaw. Date accessed 7/23/21).

Second, we look to the meaning of the phrase "by the municipality." This phrase is key because it answers plaintiffs' contention that MCL 324.3109(2) imposes responsibility for a discharge on a municipality without regard to the source of the discharge. That is, plaintiffs argue that any discharge of raw sewage within a municipality constitutes prima facie evidence of a violation by the municipality even if the municipality is not the source of the discharge. We disagree. The word "by" has many meanings. For its meaning as a nonlegal term, we look to a layman's dictionary rather than a legal one. Horace v. City of Pontiac, 456 Mich. 744, 756, 575 N.W.2d 762 (1998). We find these definitions from the Random House Webster's College Dictionary (1997) to be particularly helpful: "10. through the agency of" and "12. as a result or on the basis of[.]" Thus, MCL 324.3109(2) imposes responsibility on the municipality not when the violation merely occurs within the boundaries 264\*264 of the municipality, but when the violation occurs "through the agency of" the municipality or "as a result" of the municipality, that is to say, when it is the actions of the municipality that lead to the discharge.

## AT: CP---States

### 2AC---Permutations

### 2AC---L---NB

### 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).

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

#### States get squashed by foreign laws

Dodge 19, is a leading expert on international law, international transactions, and international dispute resolution, currently a member of the State Department’s Advisory Committee on International Law and an Adviser to the American Law Institute’s Restatement (Third) of the Conflict of Laws, J.D. at Yale. (William, 2020, “Presumptions Against Extraterritoriality in State Law,” University of California Davis Law Review, https://lawreview.law.ucdavis.edu/issues/53/3/53-3\_Dodge.pdf)

I. THE FEDERAL PRESUMPTION AGAINST EXTRATERRITORIALITY For the past three decades, the federal presumption against extraterritoriality has been the principal tool that the U.S. Supreme Court has used to determine the geographic scope of federal statutes.18 The current version of the federal presumption is significantly more flexible than at least some versions that the Supreme Court used in the past.19 Courts may also rely on other principles of interpretation in determining the geographic scope of federal statutes, including a principle of reasonableness in interpretation, deference to administrative agencies, and the Charming Betsy canon of avoiding violations of international law.20 At the outer margins, the Due Process Clause of the Fifth Amendment may also constrain the extraterritorial application of federal statutes.21 But in contrast to state law, there are no conflict-of-laws rules at the federal level that give priority to foreign law in cases of conflicting regulation.22 A. An Overview of the Federal Presumption In 1909, the U.S. Supreme Court noted that “the general and almost universal rule is that the character of an act as lawful or unlawful must be determined wholly by the law of the country where the act is done.”23 Consistent with this general rule, the Court articulated a presumption that “in case of doubt,” a federal statute should be construed “as intended to be confined in its operation and effect to the territorial limits over which the lawmaker has general and legitimate power.”24 The Supreme Court applied this presumption inconsistently between 1909 and 1949 and then abandoned it for four decades.25 In 1991, however, the Supreme Court resurrected a strong version of the federal presumption against extraterritoriality in EEOC v. Arabian American Oil Co. (Aramco),26 suggesting that the presumption should be applied as a clear statement rule and (like the traditional presumption) should turn on the location of the regulated conduct.27

## AT: CP---WTO

### 2AC---Permutations

### 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

#### WTO dispute resolution takes years

Triggs and Bartels 22, Francesca is a Trainee Solicitor at Freshfields Bruckhaus Deringer, Lorand is counsel at Freshfields Bruckhaus Deringer. (Francesca and Lorand, 01-17-2022, “The Australia-China trade dispute: what happened, and what’s next?” Freshfields Bruckhaus Deringer, <https://riskandcompliance.freshfields.com/post/102hgbx/the-australia-china-trade-dispute-what-happened-and-whats-next>)

Bringing the dispute before the WTO – not a quick fix WTO panels were established in May and October 2021 to adjudicate on the barley and wine disputes respectively. Reports are usually issued around 18 months later; any fault identified will then have to be corrected within a ‘reasonable period of time’ (usually at least 15 months), meaning a couple of years could go by while tariffs continue to bite. It’s worth noting that the parties would still have the option to settle at this point. Although the initial consultations prior to the WTO panels being established were not successful (they rarely are), diplomatic settlement has in some cases been ultimately more efficient in resolving the dispute than proceeding with WTO legal action. If settlement is not reached, and in the unlikely scenario that the panel report is not complied with, the party affected by the contested trade measures can ask the Dispute Settlement Body (DSB), which administers the WTO dispute settlement system, for permission to implement temporary retaliatory measures (within limits), which would usually take the form of blocks on imports. It’s likely, however, that either Australia or China would comply. In particular, China has continued to indicate that it is keen to establish a reputation as a law-abiding member of the WTO, and furthermore in September formally submitted an application to join the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) – a matter on which Australia as a party benefits from a veto.

#### WTO settlement is expensive and long-term

Schneider-Petsinger 20, is Senior Research Fellow, US and the Americas Programme; Project Director, Global Trade Policy Forum. (Marianne, 09-11-2020, “Reforming the World Trade Organization,” Chatham House, https://www.chathamhouse.org/2020/09/reforming-world-trade-organization/04-dispute-settlement-crisis)

04 Dispute settlement in crisis Ending the appointments impasse that has disabled the WTO Appellate Body will require addressing legitimate US concerns. However, a permanent solution also depends on revitalizing the WTO’s rule-making function. One of the key functions of the WTO is to help members resolve trade disputes. The current crisis at the WTO Appellate Body has highlighted this role. The highest tribunal of world trade is a standing body of seven individuals that hears appeals regarding reports issued by panels in disputes between WTO members. Each Appellate Body member serves a four-year term and may be reappointed for another four-year term. Because the Trump administration since the summer of 2017 has blocked the (re)appointment of several Appellate Body members, gradually reducing the number of serving appointees, the Appellate Body on 11 December 2019 lost its quorum of three members required to hear new appeals.29 This in effect has brought the Appellate Body’s work to a standstill. It is of some irony that the US – once the strongest advocate for the creation of the Appellate Body – has now caused its (at least temporary) demise. It should be noted that paralysis of the WTO Appellate Body alone does not mean the end of the WTO or the rules-based international trading system. The panel stage of WTO dispute settlement continues to function. Even though the Appellate Body is non-operational, a party to a WTO dispute can still appeal to it against the report of a panel – however, new appeals are not heard and are thus left in limbo. The situation has potentially severe implications for rules-based dispute settlement. Instead of waiting endlessly, parties that win a case at the panel stage will likely take matters into their own hands and retaliate unilaterally. This could lead to increased protectionism, and a return to arrangements in which power dynamics between parties play a larger role than the rules as the basis for trade relations. A further irony in the current situation is that the US is the most active user of the WTO’s dispute settlement system. Between 1995 and 2019, the US was a complainant in 124 out of the total of 593 WTO disputes.30 The EU was not far behind, initiating 104 cases. The US and the EU also had the highest number of WTO disputes filed against them between 1995 and 2019 – with the US being a respondent in 155 cases and the EU in 86.31 Both the US and the EU have targeted each other significantly (see Figures 1 and 2). Figure 1. WTO disputes involving the US as respondent and complainant (number of cases), 1995–2019 Even though President Trump has repeatedly claimed that the US loses most of its cases at the WTO, the picture is more complex. Perhaps the current administration is focused on the defensive cases, where the US has ‘lost’ approximately 86 per cent of disputes (i.e. meaning that at least one violation was found).32 But looking at the other side of the coin, in approximately 91 per cent of cases which the US has brought offensively, it has ‘won’ at least one of the claims in each case.33 Figure 2. WTO disputes involving the EU as respondent and complainant (number of cases), 1995–2019 This pattern of a strong record as a complainant and a weak record as a respondent holds for other WTO members as well. In part, it can be explained by the fact that bringing a case to the WTO is costly and time-consuming, so members do so only if they believe they have a legitimate claim. It is also noteworthy that not all the disputes initiated reach the panel stage, with consultation among WTO members often sufficient to settle the matter without requiring a ruling.34 For those cases in which a WTO panel made a ruling in the original proceedings, about two-thirds have been appealed.35 Thus, expectations at the time of the WTO’s creation that appeals would be rare have turned out to be inaccurate. If one assumes that the US is not systematically treated unfairly in WTO dispute settlements, why then have the cases led to so much strife in the US compared to the reaction that cases receive in other frequent users of the dispute settlement system – such as the EU? A first notable difference arises when comparing the number of cases in which the US and the EU are complainants with the number of those in which they are respondents. As shown in Figures 1 and 2, the US has had more cases brought against it than it has brought, whereas the EU has been a complainant more often than a respondent. A second factor is the nature of the cases. About two-thirds of the disputes against the US involve trade remedies (i.e. 110 cases have involved safeguard, anti-dumping and/or countervailing measures).36 For the EU, fewer than half of the cases brought against it have involved trade remedies. As discussed below, trade remedy cases are key to the US’s concerns regarding the Appellate Body.

### 2AC---Non-Compliance

#### WTO will rule against countries, but states won’t view their rules as binding

Tesik 21, senior associate in the international trade practice of Wiley Rein, LLP. He holds a J.D. from American University Washington College of Law in Washington, DC, and an LLM in Chinese law from Peking University in Beijing (Adam, “Is the WTO the Worst of Both Worlds for U.S.-China Tech Competition?,” Lawfare Blog, <https://www.lawfareblog.com/wto-worst-both-worlds-us-china-tech-competition>)

Legal outcomes, however, are not always consistent with common sense. The United States, the European Union and Japan, for example, have taken the position that the Appellate Body’s definition of “public bodies,” a legal element in a subsidies claim, is too narrow to discipline the actions of quasi-state entities like guidance funds. They argue that new definitions are needed. In the WTO’s consensus-based system, however, it could be impossible to convince countries like China to agree to new rules that explicitly target their own development strategies. Even if the United States were to prevail in a subsidies case, compliance would be challenging. China has long questioned the legitimacy of the rules-based order that the WTO once exemplified. The opening exchange between U.S. and Chinese officials during their recent meeting in Anchorage suggests that China may be unwilling to accept any efforts by the Biden administration to revive the “rules-based order” in managing U.S.-China tensions. When even like-minded allies seem incapable of resolving sensitive disputes through the WTO, pessimism regarding the institution’s ability to play economic peacemaker between the United States and China seems justified.

## AT: DA---Floodgates

### 2AC---AT: UQ

#### Courts are clogged now.

Land et al. 21, \*Greg Land covers topics including verdicts and settlements and insurance-related litigation for the Daily Report in Atlanta; \*Amanda Bronstad is the ALM staff reporter covering class actions and mass torts nationwide. She writes the email dispatch Law.com Class Actions: Critical Mass; (July 30th, 2021, “Can We Talk? Eyeing COVID-Clogged Dockets, Judges Push Civil Cases to Settle”, https://www.law.com/2021/07/30/can-we-talk-eyeing-covid-clogged-dockets-judges-push-civil-cases-to-settle/?slreturn=20211014154916)

As judges around the country gingerly reopen their courtrooms and invite lawyers, litigants and jurors back for business—sometimes as usual, but often still far from the normal routines of years past—they’re being confronted by an array of pitfalls, real and potential. Will a surge of COVID-19 cases among the unvaccinated and forceful advance of the delta variant force renewed shutdowns? Will jurors and staffers be willing to risk a return? Are mask mandates and vaccine passports in the offing? But one very real dilemma is already on their minds: Backlogs of criminal, civil and domestic cases that have piled up, exacerbating already crowded dockets where litigants and lawyers jostle to get motions filed, rulings issued and, toughest of all, cases tried. Richard Clifton, a senior judge on the U.S. Court of Appeals for the Ninth Circuit, who serves as president of the Federal Judges Association, said that court backlogs are a big topic for judges, although not all are as impacted as others. “At least one judge in a very busy district didn’t think the backlog had turned out as high as it turned out to be,” he said. “Other judges have commented, unspecifically, they’re just piling up.” He said the most frequent comment is that the civil calendar “is just sitting there” because judges are spending all their time dealing with criminal caseloads. He hasn’t heard about judges suggesting settlement as an option to those with civil cases but, he said, “I would be shocked if it weren’t happening.” “The reality is that most cases get settled, we all know that—it’s not a good or a bad thing, it’s just a fact,” he said. And, while judges don’t actively get involved in settlements, their goal is to resolve cases. “And if it’s realistic to say to parties, ‘look, you won’t get a trial date anytime soon,’ I’m sure that’s something judges are saying to parties in those cases.” That’s exactly what happened to Ryan Baker, of [Waymaker](https://www.waymakerlaw.com/) in Los Angeles. “It absolutely is the case that, especially in the federal courts, civil trials are at the end of the line,” he said. Baker represents the defendant in a trademark case filed in 2017. “I know there’s been a lot of debate among the judges on how to handle this situation,” he said. “There are very different views, as there are with any group of people, on what is appropriate and what measures need to be taken.” In Baker’s case, U.S. District Judge Cormac Carney of the Central District of California minced no words in telling the parties in April that he could not guarantee a trial date in 2021, or even the first half of 2022. “The court strongly believes that this case should settle,” he wrote in a minute order. “To hold a trial in this civil case would mean asking citizens to report for jury duty or to testify as witnesses when many of them have been out of work for months and fear they will not be able to pay their rent, mortgage, or other bills, or put food on the table for their families. “And it would also ask the court to find time in its congested calendar for such an endeavor after more than a year of closure due to the coronavirus,” Carney wrote. Baker said the case went through two mediations and three court-ordered settlement conferences before settling July 23. “And these conferences, the last couple have been ordered because the court is concerned that this case is not going to be set for trial, not this year, not even next year, because of the backlog of criminal matters that will necessarily precede all the civil trials,” he said. California’s Central District, which includes Los Angeles, has six judicial vacancies. But Baker said a lot depends on how much is at stake in the case and the specific judge’s calendar. He has another case in the district in which Judge Consuelo Marshall has set a trial date for February 2022. But there has been a strong push for settlement. “The backlog factor weighs heavily in favor of courts really advocating for private resolution because the reality is litigants are having to bear the cost of extended and protracted litigation,” Baker said. In a 2015 patent infringement lawsuit in the Southern District of New York, Judge Gregory Woods canceled a Nov. 29 trial, citing a criminal trial now scheduled for that date. After his June 15 order, U.S. Magistrate Judge Sarah Netburn asked the parties for settlement dates. Another judge in New Mexico cited the court’s backlog as a reason to grant final approval of a nearly $4.2 million settlement involving a class of truck drivers seeking unpaid overtime wages. Settling the 2019 class action would avoid “significant delay,” U.S. Magistrate Judge Gregory Fouratt said in an April 9 order. “The court further observes that litigation of this case would have moved exceptionally slowly in the current pandemic environment in which jury trials are logistically difficult and almost entirely devoted for the next 12-18 months to resolving an unprecedented backlog in criminal cases,” he wrote.

### 2AC---AT: Link

#### Many cases are extraterritorial those have a different process

Schmidt 6, \*Jonathan T. Schmidt. Antitrust lawyer. Master’s in Public Affairs from the Princeton School of Public and International Affairs. JD from Yale Law School. Former Fulbright Fellow in Peru, where he studied micro-enterprise lending; (2006, “Keeping U.S. Courts Open to Foreign Antitrust Plaintiffs: A Hybrid Approach to the Effective Deterrence of International Cartels.” <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1266&context=yjil>)

Yet even if amnesty programs were properly designed and harmonized to account for international cartels, exercising U.S. jurisdiction over Empagran-type claims could still reduce the deterrence of international cartels. Jurisdiction over such claims could undermine the effective antitrust policies of other countries and unnecessarily burden U.S. courts with litigation. At the same time, closing U.S. courts to all Empagran-type cases will almost certainly reduce deterrence. Many nations-particularly developing nations, but also some developed nations--do not effectively enforce their antitrust laws against international cartels, 211 or they provide protection to domestic export cartels. 2 12 Thus the United States requires a remedy that distinguishes between those situations in which litigation is more appropriately brought in another jurisdiction and those situations where no other jurisdiction will provide the plaintiffs with the possibility of adequate relief.

Fashioning such a remedy implicates two other foreign policy interests of the United States. First, America has an interest in seeing that its antitrust laws are applied consistently and predictably in order to reduce the uncertainty regarding the cost of trading in U.S. commerce. Potential defendants-whether domestic or foreign multinational corporations-cannot predict their potential liability.2 13 Uncertainty also encourages foreign plaintiffs to try to bring lawsuits in the U.S. courts instead of other venues because a successful suit in U.S. court can bring much greater damage awards.21 4 Second, the United States has an interest in not becoming the world's antitrust court. Antitrust cases are large and require a significant amount of court resources. The United States has an interest in seeing that other countries take on the burden of antitrust enforcement, particularly if those countries do so in a manner that is harmonious with America's antitrust policies.

### 2AC---AT: Internal Link

#### No turns case:

#### Differentiated case management.

Fentress 16, \*Keith Fentress is the founder and president of Fentress Incorporated. He has an extensive history of consulting to real property organizations; (October 13th, 2016, “Caseload Management Can Lead to Better Courtroom Utilization”, https://blog.fentress.com/blog/better-courtroom-utilization)

A sustained increase in court caseload often means that [more judges](https://blog.fentress.com/blog/share-courtrooms/) are needed to hear the cases, which results in a need for more courtrooms. For courts that are already fully-staffed, the only solution is an expansion to the current building or a brand new courthouse – options that don’t relieve the short-term space need and that are often difficult or impossible in jurisdictions with tight budgets.

Instead of tolerating a burdensome caseload and overloading judges and staff, many courts find ways to increase their operational efficiencies. One of these strategies is the use of differentiated case management, which can be a very effective tool to increase courtroom utilization.

What is DCM?

If you are a judge or a clerk of court, you probably know all about differentiated case management. But for many architects and other facility professionals, it is quite likely an unfamiliar term. Differentiated case management – DCM – is a technique that courts use to create an efficient, tight-fitting assignment of cases for judges based on the specific characteristics of each case, much like putting a jigsaw puzzle together. By balancing complex cases that involve more time and resources with simpler cases that require less time and resources, a court manager can better utilize his or her judges and courtrooms.

Working with DCM

When I was a graduate student, I worked in the case assignment section of the county court clerk’s office. The court actively used a DCM program, which improved operational efficiencies throughout the courthouse and positively impacted the courtroom space requirements. A balanced caseload meant an optimal level of courtroom utilization; all of the courtrooms were being utilized as fully and as often as possible and fewer were sitting empty while upcoming dockets piled up.

Here’s how it worked. When a case was filed, the initiating party completed a form that described the case in terms of time needed to complete each stage of the case (such as the time required for the discovery phase). Depending on the complexity of the case, the court clerk’s office assigned it to one of four tracks, from the least to most complex. A less complex case that required only minimal discovery was assigned to the expedited track. Cases in this track had limited pretrial deadlines and trials were set within 90 days of filing. By contrast, the most complex cases were assigned to an extended track, where the trial date was set at over a year away. There were also two other intermediate tracks between the expedited and extended tracks, with varying trial date schedules.

Positive Results

In my job, I witnessed firsthand the efficiencies gained through the court’s use of DCM. The less complex cases were disposed of faster on the expedited track, with many resolved prior to the trial, some dismissed entirely, and others settled through mediation. Resolving these cases quickly was beneficial to everyone involved – the litigants received quick dispositions and the judges who had fewer cases going to trial were able to reserve their time for the cases that most needed their attention. In addition, the clerk’s office had less paperwork and fewer documents to process.

The use of DCM was beneficial for everyone, but the benefits didn’t stop there. The program also improved the court’s image among the public and the legal community. The litigants involved in less complex cases no longer had to wait years to have their cases resolved, while on the criminal side, DCM often reduced the amount of time a defendant spent in pretrial detention because simpler cases were heard and resolved more quickly.

### 2AC---AT: !

## AT: DA---Chilling

### 2AC---AT: Link

#### No Link:

#### 1---Antitrust is siloed with checks on cross-industry enforcement

Dr. William Rogerson 20, Charles E. and Emma H. Morrison Professor of Economics at Northwestern University, Ph.D. in Social Sciences from the California Institute of Technology, and Dr. Howard Shelanski, Ph.D. in Economics from University of California, Berkeley, Professor of Law at Georgetown University and Partner at Davis Polk & Wardwell LLP, JD from the UC Berkeley School of Law, BA from Haverford College, Former Clerk for Judge Stephen F. Williams of the U.S. Court of Appeals for the D.C. Circuit and Justice Antonin Scalia of the United States Supreme Court, Former Administrator of the White House Office of Information and Regulatory Affairs and Director of the Bureau of Economics at the Federal Trade Commission, Former Chief Economist of the Federal Communications Commission and Senior Economist for the President’s Council of Economic Advisers at the White House, “Antitrust Enforcement, Regulation, and Digital Platforms”, University of Pennsylvania Law Review, 168 U. Pa. L. Rev. 1911, June 2020, Lexis

A. Case-by-Case, Fact-Specific Approach

Complexity of underlying issues aside, adjudication is well suited to settings in which applicability of the law is contingent on case-specific facts. With the exception of the limited conduct that the antitrust laws prohibit per se, courts review most business activities through a rule of reason, under which some conduct that is illegal in one set of circumstances is allowable in another. 21The inquiry into liability goes beyond whether particular conduct in fact occurred (which is the extent of the inquiry into conduct that is illegal per se) and extends into a balancing of the conduct's likely effects on competition. 22The more that liability is contingent on such case-specific facts, the more difficult it is to determine liability in advance of the conduct's having taken place. Adjudication typically occurs when conduct either is imminent or has already occurred, at which point the relevant facts as to the effects of the conduct are, in principle, more readily measured. 23 Such "ex post" mechanisms of enforcement can reduce the risk of over-enforcement when compared to alternative approaches, like some forms of regulation, that spell out more comprehensively in advance what conduct is illegal. 24Reducing false positives, however, may or may not be a virtue--that calculation depends on the extent to which particular adjudicative institutions and processes under-enforce by allowing harmful conduct or transactions to slip through the liability screen.

B. Slow, Usually Predictable Doctrinal Development

A second attribute of the American adjudicatory process for antitrust is stability. While antitrust doctrine has occasionally swerved abruptly over the past century, the common-law process through which antitrust law has developed usually provides clear notice that a change is coming. As a recent example, the Supreme Court's shift in Leegin Creative Leather Products, Inc. v. PSKS. Inc. 25from per se liability to a rule of reason for resale price maintenance likely caught few observers by surprise. 26

### 2AC---Thumper

#### Massive antitrust AND uncertainty are inevitable BUT won’t stop mergers

Lina Saigol 1-19, Head of Corporate News, EMEA, Dow Jones Media Group, BA from McGill University, “Mergers Are Booming. U.S. Regulators Are Gearing Up to Crack Down on Them.”, Barron’s, 1/19/2022, https://www.barrons.com/articles/mergers-booming-us-regulators-crackdown-51642534456?tesla=y

Aggressive antitrust enforcement is back.

That is the stark message that President Joe Biden has sent the business community, and regulators have already kicked into action, threatening to rein in a record-setting merger boom.

Those charged with delivering Biden’s message are two Big Tech critics: Lina Khan, chair of the Federal Trade Commission, and Jonathan Kanter, head of the Justice Department’s antitrust division. On Tuesday, they outlined a plan to revise how the agencies will review mergers. They want public comment on how to update federal guidelines “to better detect and prevent illegal, anticompetitive deals,” they said in a statement.

“Our country depends on competition to drive progress, innovation, and prosperity,” Kanter said. “We need to understand why so many industries have too few competitors, and to think carefully about how to ensure our merger enforcement tools are fit for purpose in the modern economy.”

Earlier on Tuesday, Microsoft (ticker: MSFT) said it would acquire gaming company Activision Blizzard (ATVI) in an all-cash transaction valued at nearly $70 billion. The acquisition needs regulatory and shareholder approval. Wedbush analyst Dan Ives wrote that there may be regulatory hurdles because of the acquisition’s size. But he expects the deal to close because Microsoft isn’t under the same scrutiny as some of its tech rivals.

Earlier this month, a federal judge ruled the FTC can move forward with its revised antitrust lawsuit against Meta Platform ‘s (FB) Facebook that alleges the social media platform is unlawfully suppressing competition.

Many bankers and lawyers say they aren’t too worried, contending that tighter enforcement might slow the mergers and acquisitions market rather than derail it.

That is due in part because the FTC is constrained by limited manpower and budget. Also, regulators don’t have authority on their own to block a merger—federal judges can issue orders blocking it.

“Of course there has been an increased level of scrutiny and managements and boards have raised the bar on what they will consider, but we will continue to see large deals with compelling strategic imperative,” Bruce Evans, global co-head of M&A at Deutsche Bank , told Barron’s.

In December, the FTC sued to block computer-chip powerhouse Nvidia (ticker: NVDA) from spending $40 billion for British technology provider Arm, saying the blockbuster deal would unfairly stifle competition.

Just weeks earlier, the Justice Department sued to halt a proposed $2.2 billion tie-up between publishers Penguin Random House and Simon & Schuster, which would create a mega-publisher in the books market. The agency argues that consolidation would hurt authors and readers.

The lawsuits come after Biden signed a sweeping executive order in July aimed at curbing the power of big business by cracking down on anticompetitive practices in sectors ranging from agriculture to pharmaceuticals to labor.

Consolidation in industries over the past several decades has denied Americans the benefits of an open economy and widened racial, income, and wealth inequality, the executive order stated. The administration sees less corporate competition as one of the causes of inflation. “Higher prices and lower wages caused by lack of competition are now estimated to cost the median American household $5,000 a year,” according to the order.

Rising equity markets and widespread stimulus measures helped spur companies worldwide to clinch more than 62,000 deals worth $5.8 trillion last year, up 64% from the previous year, according to data provider Refinitiv.

Big pharmaceutical companies could be one of the biggest sectors at risk of regulatory scrutiny. The FTC put the industry on alert in July when it said it would review more deals amid skyrocketing drug prices and ongoing concerns about anticompetitive conduct.

The industry still has record levels of cash to spend and needs to merge to innovate. By the end of this year, 18 large-cap U.S. and European biopharmas will have more than $500 billion in cash on hand, according to estimates by SVB Leerink analyst Geoffrey Porges.

Deal makers will be closely watching Pfizer ‘s (PFE) $6.7 billion takeover of Arena Pharmaceuticals , announced in December, which could become a test case for the FTC’s view of pharma M&A.

Citi analyst Andrew Baum said the deal was “highly attractive” for Pfizer, but the key issue would be whether the “newly muscular” FTC would fight it and allow it to proceed given the significant overlap between important drugs. The two companies might need to sell parts of the business to push the deal through.

Some companies are calling off their planned mergers as soon as they receive feedback. In December, outdoor sporting goods retailer Sportsman’s Warehouse Holdings (SPWH) and Great Outdoors Group, owner of the Bass Pro Shops chain, canned their deal in the belief that it wouldn’t be approved, according to a regulatory filing.

Months earlier, insurance brokers Aon (AON) and Willis Towers Watson (WTW) pulled their merger after the DOJ sued to stop the $30 billion tie-up. The brokers said regulators’ objections created “unacceptable delay and uncertainty.”

“While inevitably some parties may not be willing to accept increased risk and opt not to pursue a transaction, the vast majority of transactions will move forward and all but a select few will ultimately close,” Frank Aquila, global head of M&A at international law firm Sullivan & Cromwell said.

Others are fighting back. Penguin Random House and Simon & Schuster last month filed a joint response opposing the DOJ’s suit, arguing that the lawsuit “is wrong on the facts, the law, and public policy.”

The U.S. Chamber of Commerce has also sharpened its attack on the FTC, accusing the regulator of “waging a war” against American businesses, failing to strictly follow rules and caving to political interference.

“The FTC is going rogue and engaging in regulatory overreach that is accelerating uncertainty and threatening our fragile economic recovery,” the chamber said.

### 2AC---AT: UQ

#### Litigation wave high now

Radford 1-18-2022 (Kent, “Antitrust in the Biden administration: 3 key steps to take to prep for the rise in investigations,” *ABA Journal*, <https://www.abajournal.com/columns/article/antitrust-in-the-biden-administration-three-key-steps-to-take-to-prep-for-the-rise-in-investigations>)

From technology behemoths buying up dynamic startups to market-leading utility companies joining forces, there is a clear trend of market consolidation in the U.S. In the quest to curb the monopolization of industries, President Joe Biden signed an executive order in July promoting competition in the economy—which signals an upcoming increase in antitrust investigations for the legal industry.

The executive order lays out 72 initiatives to tackle the most pertinent issues, with a “whole-of-government” antitrust policy committing the federal government to aggressive enforcement of the antitrust laws. This includes a call for the leading antitrust agencies, the U.S. Department of Justice and the Federal Trade Commission, “to enforce the antitrust laws vigorously” and importantly, recognize that the “law allows them to challenge prior bad mergers that past administrations did not previously challenge.”

In particular, the executive order directs these organizations to focus their enforcement efforts on particular industries: labor, agriculture, health care and technology (although these are far from the only industries under fire). And with the news that the DOJ is suing to stop the American Airlines/JetBlue alliance, followed by 32 state attorney generals urging the DOJ to take further action, it looks like the litigation wave is already starting.

## AT: DA---Politics

### 2AC---AT: UQ

#### BBB is dead---the Manchin well is poisoned

Weissmanm 1-13-2022 (Jordan, “My Incredibly Dumb but Potentially Effective Plan to Save Joe Biden’s Agenda (or at Least Some of It),” Slate, https://slate.com/news-and-politics/2022/01/there-still-might-be-one-way-to-save-joe-bidens-agenda-or-at-least-some-of-it.html)

So, I have an idea to resurrect the Build Back Better Act, Joe Biden’s social spending and climate bill that, as of now, appears to be dead in the water. On the policy merits, it is objectively dumb—just completely pointless and maybe even self-defeating. But as a political compromise that might entice a certain senator from West Virginia, I think it’s just ridiculous enough to work.

It is time, perhaps, to transform BBB into a deficit reduction bill, by making sure it raises significantly more new revenue than it spends.

I’m cringing just typing those words. (Sincerely.) During the 2020 Democratic primary, I wrote at length about how the worst-case scenario in a Joe Biden presidency was that he might rediscover his old deficit hawkishness and make a premature turn toward fiscal austerity. But please consider the circumstances Democrats now find themselves in: Negotiations over BBB crashed to a halt in December, when Joe Manchin shocked his party by announcing that he was a hard no on the legislation during a Fox News interview. It was later reported that the senator had made a private, $1.8 trillion counteroffer to the administration, including hundreds of billions in spending for climate, but became enraged when the White House released a press release blaming him for the bill’s delay, despite his asking them not to.

A thin-skinned overreaction? Perhaps. But the prospects for a bill only appear to have dimmed since that pre-holiday blowup. On Saturday, the Washington Post reported that Manchin’s $1.8 trillion offer appeared to be off the table. “Privately, he has also made clear that he is not interested in approving legislation resembling Biden’s Build Back Better package and that Democrats should fundamentally rethink their approach,” the paper reported. “Senior Democrats say they do not believe Manchin would support his offer even if the White House tried adopting it in full—at least not at the moment—following the fallout in mid-December.”

### 2AC---PC Low

#### Political capital low now

Baker 1-17-2022 (Gerard, “Biden Goes for Broke. He’s Broke. Now What?,” Wall Street Journal, <https://www.wsj.com/articles/biden-goes-for-broke-filibuster-kyrsten-sinema-joe-manchin-stacey-abrams-bbb-voting-rights-bills-11642432437>)

lèse-majesté = the insulting of a ruler

‘Just colossally disrespectful” was how someone described as a “longtime Biden advisor” characterized for a Daily Beast reporter the behavior of Sen. Kyrsten Sinema last week. The Arizona Democrat had told the Senate she wouldn’t support a proposal to suspend the filibuster, thereby dealing the long-expected fatal blow to President Biden’s legislative ambitions.

The adviser was presumably articulating a widespread frustration in the president’s ranks after Ms. Sinema declined even to hear any more pleas from Mr. Biden before jilting him. But think about that outburst for a moment and consider what it says about the standing and authority of the 46th president as we mark the end of his first year in office.

Has there ever been a figure a year into his term reduced to such impotence that his aides are impelled to whine to friendly media about the “disrespect” shown him by a first-term senator? Can you imagine Lyndon Johnson’s acolytes doing that for him? Ronald Reagan’s ?

But such lèse-majesté is routine now in Democratic ranks. In the past month the president has been spurned by Ms. Sinema, rebuffed by Sen. Joe Manchin, and, perhaps most humiliating, snubbed by Stacey Abrams, whose principal political achievement is to have come in second in the 2018 election for Georgia governor. Ms. Abrams decided she had a “scheduling” conflict when the president was in her patch last week.

As we survey the flattened landscape of Mr. Biden’s ambitions at the one-year mark, it’s for all of us, not just frazzled White House staff to ask: What now?

The answer is obvious: He should do what he should have done a year ago. A little wisdom, some prudence and a grasp of elementary congressional arithmetic might have guided him to make genuine progress for an exhausted and fractured nation. Instead of trying to build ever more improbable progressive utopias in the clouds on the vaporous platform of a 50-50 Senate, he could have started—and could even now—start doing some of the things the American people would actually like to see him do. He could take boring, practical measures to address real challenges—getting us past the pandemic, cooling inflation, addressing crime in the cities and the crisis at the border—not the imaginary ones that fester in the revolutionary’s mind.

But it’s going to be much harder now. A year ago he had the political capital of a newly elected president with an approval rating that approached 60%. Having largely squandered that capital, what does he do to persuade vulnerable politicians in his own party—let alone anyone else—that they should support the goals of a president with 40% approval?

### 2AC---AT: Link

### 2AC---L---Turn

#### 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 21 (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---Plan is a win for Biden---restores PC

Overly 21, 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.

### 2AC---AT: Impact

# 1AR

## AT: CP---States

### 1AT---Pre-emption

#### States are preempted

Pound 16, J.D. candidate 2017, Tulane University Law School (James, 2016, Uncharted Waters: In re Vehicle Carrier Services Antitrust Litigation and the Sinking of State Antitrust Actions, 40 Tul. Mar. L. J. 545, Lexis/Nexis)

In the noted case, the United States District Court for the District of New Jersey held that the Shipping Act of 1984 barred the antitrust claims brought under the Clayton Act and preempted state-law antitrust claims [\*550] under the doctrine of conflict preemption. 35 First, addressing the claims under the Clayton Act, the court held that a plain reading of the Shipping Act clearly indicates that the collusive capacity restrictions alleged against the defendants are within the purview of the Shipping Act and, hence, must be filed with the FMC. 36 Next, the court found that unfiled capacity restriction agreements were prohibited by the plain language of the Shipping Act. Therefore, the court held that under § 40307(d) of the Shipping Act, these "prohibited acts" are exempt from Clayton Act claims. 37 Second, the court expressly held - as a matter of first impression - that state antitrust claims are preempted by the Shipping Act because state antitrust laws conflict with Congress's stated intent of "minimizing government intervention and regulatory costs" in its passage of the Act.

## AT: DA---BBB

### 1AR---AT: UQ

#### 2022 will be gridlocked

Roberts 12-30-2021 (William, “Biden will struggle to steer US agenda in 2022: Analysts,” *Al Jazeera*, <https://www.aljazeera.com/news/2021/12/30/biden-will-struggle-to-steer-us-agenda-in-2022-analysis>)

Today, Biden’s approval ratings are low and his signature policy proposals bogged down, as Republicans appear set to retake control of Congress. “Under the circumstances, Biden’s done phenomenally well, getting what he did get done,” James Thurber, a professor of government at American University in Washington, DC, who is writing a book on Biden’s first year in office, told Al Jazeera. Democrats in Congress pushed through a $1.9 trillion COVID-19 relief and economic stimulus package in March. Bipartisan majorities in the House and Senate passed a $1.2 trillion infrastructure plan in November and a $777bn defence budget in December. But Biden’s flagship welfare and climate legislation – the $1.75 trillion, 10-year “Build Back Better” plan – has been blocked by Democratic in-fighting and Republican opposition. The Omicron variant of COVID-19 has caused a surge in infections and prices for food and fuel have been rising. “People will still be disappointed and he will have a rough time in 2022 because it’s an election year,” Thurber said. “It will be an ugly year of confrontation, partisanship and gridlock.”

#### Insert Manchin says no

1NR Zeballos-Roig 1—26 [Blue]—(staff writer). Joseph Zeballos-Roig & Ayelet Sheffey. January 26, 2022. “Joe Manchin says 'there's a lot of areas in climate' spending that he can strike a deal on as Democrats begin revisiting the stalled Build Back Better spending bill”. Business Insider. <https://www.businessinsider.com/joe-manchin-climate-spending-deal-build-back-better-biden-2022-1>.

Investments in the climate might be the easiest thing Sen. Joe Manchin and his Democratic colleagues can agree on when it comes to President Joe Biden's stalled $2 trillion social and climate spending legislation.

In an interview with Newsy, the conservative West Virginia Democrat reiterated his belief that a deal could be struck on the climate and clean energy provisions of Biden's Build Back Better plan.

"In climate, I think there's a lot of areas in climate that we agree," he said. "The only thing I've ever said: You cannot eliminate your way to a cleaner environment."

He added that he wanted to "innovate" with new spending on technology.

It comes as Biden and Democrats refocus on salvaging parts of the bill that could get Manchin's support. Without his vote, Senate Democrats can't approve the plan over fierce GOP opposition. The president has suggested pieces of the plan would move in "chunks."

A substantial sum in the package is devoted to a set of tax credits to ease the transition away from fossil fuels towards cleaner energy sources like wind and solar.

Biden has said he believes that portion of the package could form the basis of a slimmer bill. "I think it's clear that we would be able to get support for the $500 billion plus for energy and the environment," he said last week.

The West Virginia senator dashed Democrats' hopes to pass President Joe Biden's sweeping climate and social spending bill before the end of 2021, citing concerns with inflation and certain provisions within the bill, like the expanded monthly child tax credit. But as negotiations are restarting early this year, Manchin signaled he's on board with a major Democratic priority: combating the climate crisis.

#### All other ev is from optimists in the house and don’t cite Manchin or Sinema

### NU---GOP Required

#### GOP required, zero chance

Davenport 1-20-2022, NYT analyst, with Lisa Friedman (Coral, “‘Build Back Better’ Hit a Wall, but Climate Action Could Move Forward,” New York Times, <https://www.nytimes.com/2022/01/20/climate/build-back-better-climate-change.html>)

Even though Democrats control the White House and Congress, the party is stymied in the Senate by procedural rules, unified Republican opposition and the fact that the chamber is split 50-50 with Democrats and their two independent allies able to prevail only because of the tiebreaking authority of Vice President Kamala Harris. If Democrats were to try to bring a climate bill to the Senate floor for a vote, they would need to be joined by at least 10 Republicans to clear a 60-vote threshold to push past a Republican filibuster.

### NU---AT Ev Old

#### Passage will be harder in the new year and courts block meaningful action

Friedman 1-5-2022 (Lisa, “Why the Coming Months Will Be Critical for Biden’s Climate Plan,” New York Times, https://www.nytimes.com/2022/01/05/climate/biden-climate-nyt-newsletter.html)

President Biden couldn’t persuade Congress to pass major climate legislation in 2021, and it looks like his plans to slash America’s planet-warming pollution could face an even harder path this year. That’s because the Build Back Better Act, the president’s top legislative priority, faces an uncertain future in Congress. Experts say the $555 billion in clean energy tax incentives the bill currently includes will be necessary to meet Biden’s target of cutting greenhouse gas emissions this decade by at least 50 percent from 2005 levels. Democrats have vowed to push forward with the climate package. But midterm elections loom, making negotiations a challenge. If Republicans, who are unanimously opposed to the package, win a majority in one or both houses of Congress in November, prospects for passing big climate legislation will all but vanish. The Supreme Court this year also could move to restrict the government’s authority to cut emissions from power plants, potentially wiping out a powerful regulatory tool.

### 1AR---PC Low

#### PC low

AFP 12-20-2021 (“Political paralysis, Covid surge: problems pile up for Biden,” <https://www.france24.com/en/live-news/20211220-political-paralysis-covid-surge-problems-pile-up-for-biden>)

A defiant rejection of his massive social spending bill by a single US senator -- a fellow Democrat -- and a surge in Covid cases are imperiling Joe Biden less than a year into his presidency. Returning to the White House from a weekend at his family home in Delaware, the 79-year-old president, wearing a black face mask, headed straight from his helicopter to the Oval Office without a word or a glance at a scrum of waiting reporters. West Virginia Senator Joe Manchin dealt a potentially fatal blow this weekend to Biden's $1.75 trillion "Build Back Better" plan designed to equip the United States to face 21st Century challenges such as climate change and Chinese competition. The president has not publicly responded to Manchin's body blow, confining himself to a single tweet. "Right now, there's a kid out there whose family can't afford her insulin because it costs $1,000 per month," Biden tweeted on Monday. "The Build Back Better Act would cap their monthly insulin costs at $35. I'm committed as ever to getting it done for them." Democratic Senate Majority Leader Chuck Schumer sought to rally his demoralized troops, pledging to bring the bill -- the centerpiece of Biden's domestic agenda -- to the Senate floor. "We are going to vote on a revised version of the House-passed Build Back Better Act -- and we will keep voting on it until we get something done," Schumer said. How they could do so without the crucial vote of the senator from West Virginia in an evenly divided Senate is not clear. Manchin announced on Sunday on Fox News, former Republican president Donald Trump's favored TV network, that he was a "no" on the bill that proposes sweeping reforms to health care, immigration, climate and education. Republican senators who backed the president's infrastructure bill have also made it clear that they will not support Build Back Better, which they claim would push the United States down a path to "socialism." White House Press Secretary Jen Psaki issued a blistering statement blasting Manchin's "breach of his commitments to the president" and the "sudden and inexplicable reversal in his position." With his popularity ratings already mired in the low 40s, Biden's political capital is at a low ebb less than a year ahead of mid-term elections that could well see Democrats lose control of both chambers of Congress.

#### Biden can’t turn it around

Collinson 12-30-2021 (Stephen, “A pandemic-scarred year ends in darkness -- but with hope on the horizon,” KAKE 10, <https://www.kake.com/story/45561008/a-pandemic-scarred-year-ends-in-darkness-but-with-hope-on-the-horizon>)

There's no healing America's tortured politics

Biden's own political problems deepened the longer the year went on, with the pandemic exacerbating his struggle to make the best of slim Democratic congressional majorities. He's not alone. The once-in-a-century challenges of a pandemic have left many world and local leaders — at least those in democracies — diminished. The sheer volume of unpopular, impossible decisions they must make is remarkable and fast erodes political capital they had hoped to spend on other things. But Biden has also had his own missteps -- like a partial declaration of victory over the virus on July Fourth, even at a moment when it was clear that the Delta variant that would cause a summer wave was lurking in the US. After promising for months to overhaul US testing capabilities, he now admits his administration was slow to crank up the production of rapid antigen tests ahead of the arrival of a far more infectious variant than previous viral strains. Yet Biden has also been hampered by a relentless effort by Republicans to weaponize the pandemic for political gain. Ex-President Donald Trump may have belatedly decided to speak up for vaccines developed on his watch, but a relentless propaganda blitz by conservative media and right-wing populist politicians has contributed to low take-up levels and many deaths.

#### Death of BBB depleted PC

Stanage 12-17-2021 (Niall, “The Memo: Failure on big bill would spark cascade of trouble for Biden,” The Hill, <https://thehill.com/homenews/administration/586238-the-memo-failure-on-big-bill-would-spark-cascade-of-trouble-for-biden>)

President Biden’s push to pass his big social spending bill has stalled for now — and the loss of momentum threatens to spark a cascade of difficulties for the White House. Many Democrats, especially on the left, are furious with Sen. Joe Manchin (D-W.Va.), the most prominent holdout against a deal on the legislation. But others in the party say Manchin has been largely consistent in his positions and that the White House has been guilty of wishful thinking regarding its ability to sway him. While Democrats fret, Republicans are gleeful. Sen. Lindsey Graham (R-S.C.) told Sean Hannity of Fox News Channel on Wednesday that he thinks Biden’s plan, known as Build Back Better, is “dead forever.” If the plan runs aground, the failure will seriously deplete the president’s political capital, deliver a blow to his image as the consummate dealmaker and deprive Democrats of a major selling point in the midterm elections.

### AT Climate

#### Manchin would only support a meaningless climate effort

Steinbauer 1-20-2022, ontributing writer covering national environmental policy. He was an editorial fellow at Sierr (James, “It’s Do or Die Time for Build Back Better,” Sierra Club, <https://www.sierraclub.org/sierra/it-s-do-or-die-time-for-build-back-better>)

At the same time, Manchin’s support of the climate provisions in the Build Back Better Act is largely because he has already knocked the teeth out of them. In October, he said he would not vote for Democrats’ flagship climate policy, a program that would have required power companies to rapidly replace fossil fuels with renewables such as solar and wind or pay a penalty. What’s left is more than $500 billion for a suite of clean energy tax credits, making buildings more energy-efficient, and restoring forests and farmland so that they sequester carbon. “He took his pound of flesh,” said Melinda Pierce, the legislative director of the Sierra Club. “Do I expect him to nibble around the edges more, and will those bites hurt? Yes. But the climate piece has largely come to a conclusion.”

#### Courts block

Friedman 1-5-2022 (Lisa, “Why the Coming Months Will Be Critical for Biden’s Climate Plan,” New York Times, https://www.nytimes.com/2022/01/05/climate/biden-climate-nyt-newsletter.html)

President Biden couldn’t persuade Congress to pass major climate legislation in 2021, and it looks like his plans to slash America’s planet-warming pollution could face an even harder path this year. That’s because the Build Back Better Act, the president’s top legislative priority, faces an uncertain future in Congress. Experts say the $555 billion in clean energy tax incentives the bill currently includes will be necessary to meet Biden’s target of cutting greenhouse gas emissions this decade by at least 50 percent from 2005 levels. Democrats have vowed to push forward with the climate package. But midterm elections loom, making negotiations a challenge. If Republicans, who are unanimously opposed to the package, win a majority in one or both houses of Congress in November, prospects for passing big climate legislation will all but vanish. The Supreme Court this year also could move to restrict the government’s authority to cut emissions from power plants, potentially wiping out a powerful regulatory tool.

#### A broken-up BBB doesn’t solve climate change

Joselow 1-18-2022 (Maxine, “Climate advocates argue against breaking up BBB, call it a 'mistake' for Democrats and the planet,” *Washington Post*, <https://www.washingtonpost.com/politics/2022/01/18/climate-advocates-argue-against-breaking-up-bbb-call-it-mistake-democrats-planet/>)

Swing-district Democrats want to break up BBB, prompting concern among some climate advocates

House Democrats facing tough reelection fights are urging party leaders to break up President Biden's sprawling Build Back Better bill into a series of narrow measures and pass them individually, The Washington Post's Marianna Sotomayor reported yesterday. These swing-district members have argued to House leaders in recent days that holding votes on politically popular provisions in the bill, such as curbing prescription drug costs and extending the child tax credit, would help Democrats survive a potential Republican wave in the midterm elections. But the potential strategy has prompted concern from some Democrats and climate advocates, who say the party should keep fighting for the entire roughly $2 trillion package, including its $555 billion in climate spending, rather than splintering the bill simply because of the looming midterms. “Everything in Build Back Better should be done. Frankly, I'm an advocate for the original $3.5 trillion Build Back Better, which, by the way, is spending $350 billion a year. I mean, heck, that's half of what we spend every year subsidizing the fossil fuel industry,” Rep. Sean Casten (D-Ill.), who will face off in a primary against Rep. Marie Newman (D-Ill.) following congressional redistricting, said in a phone interview with The Climate 202 yesterday evening. “We're sitting here right now having a conversation about inside-the-Beltway politics while the world is on fire,” Casten added. “Shame on us. Forget about voters in the midterms — who gives a crap? How do we look our kids in the eye?” Advertisement Faiz Shakir, an adviser to Sen. Bernie Sanders (I-Vt.) who managed the senator’s 2020 presidential campaign, said he thinks breaking up BBB would be a “mistake” both for Democrats politically and for the planet. “If you've moved in a direction of cutting this up where you left climate out, you have failed by definition,” Shakir said in a phone interview yesterday. “You've just failed because climate is an urgent threat to our well-being and our children, and we have this great opportunity in front of us to do something about it.”