# 1AC

### 1AC---Supply Chain

#### Advantage 1 is the Supply Chain:

#### 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

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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.

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

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

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

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

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

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

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

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

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

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

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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.

#### 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**.

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

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

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

### 1AC---Ports

#### Advantage 2 is Ports:

#### 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 global conflict

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.

#### 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.

### 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.

### 1AC---Inherency

#### 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.

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

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

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

#### Current enforcement thumps

Lawler & Carlson 22, \*Partner, White Collar Defense & Investigations at Blank Rome \*\* Partner, Maritime at Blank Rome (\*William E. Lawler III \*\* Kierstan L. Carlson, 1-26-2022, "Planes, Trains and Ships: Criminal Antitrust Enforcement Speeding Up for Transportation Sector," MarineLink, https://www.marinelink.com/news/planes-trains-ships-criminal-antitrust-493745)

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

#### Biden’s XO---increased enforcement’s key

Seward & Kissil 21, LLP (Seward and Kissel LLP, 9-8-2021, "Shipping Companies Beware: Antitrust Challenges Ahead as DOJ Focuses On Industry," Seward & Kissel LLP, https://www.sewkis.com/publications/shipping-companies-beware-antitrust-challenges-ahead-as-doj-focuses-on-industry/)

In response to U.S. President Joseph Biden’s July 9, 2021 Executive Order to enhance competition and antitrust enforcement, the U.S. Federal Maritime Commission (“FMC”) entered into a Memorandum of Understanding (“MOU”) with the Antitrust Division of the U.S. Department of Justice (“DOJ”) to facilitate criminal investigations of violations of U.S. laws. Given that shipping companies and their employees may be separately charged by DOJ regardless of their physical location and face draconian penalties upon conviction, it is incumbent for all shipping companies – foreign and domestic – to monitor these recent developments and take steps to minimize the likelihood of harmful consequences, including by establishing or enhancing existing compliance programs.

Overview of the MOU

On July 12, 2021, the FMC and DOJ signed its first interagency MOU to foster cooperation in the enforcement of antitrust and other laws related to the maritime industry. Key provisions of the MOU provide that the agencies will: i) share information and materials relevant to the competitive conditions in the U.S.-international ocean liner shipping industry, including terminal services provided to ocean liners, and ii) confer, at least annually, to discuss and review enforcement and regulatory matters. Unlike the FMC, DOJ has the authority to bring criminal charges against alleged offenders of antitrust laws. In the past, DOJ has made its presence known by issuing statements regarding certain alliance agreements (vessel-sharing agreements); this MOU raises the stakes as it suggests more intense scrutiny by DOJ.

FMC Activity, Audit Program and Recent Litigation

On July 19, 2021, within days of the Executive Order and the signing of the MOU, the FMC also disclosed the Vessel-Operating Common Carrier Audit Program to review carrier compliance with FMC’s detention and demurrage rule. As part of this new audit program, the FMC will audit the top nine carriers by market share ― i.e., Maersk, MSC, CMA CGM, COSCO Group, Hapag-Lloyd, ONE, Evergreen, HMM and Yang Ming. Initially, the FMC will request information from the carriers to create a database of quarterly reports on detention and demurrage practices, and will follow with individual carrier interviews. The audit may also focus on other aspects of these companies’ practices and operations, such as billing, appeals procedures, penalties assessed by the lines, and any other restrictive practices. Significantly, the FMC has already been auditing carriers to address issues concerning intermodal congestion related to COVID-19 and to identify operational solutions to cargo delivery system challenges. The FMC is apparently poised to investigate eight carriers ― CMA CGM, Hapag-Lloyd, HMM, Matson, MSC, OOCL, SM Line and Zim ― that were identified as having implemented congestion-related surcharges. In August, the FMC requested information about these surcharges from these carriers. The FMC’s inquiry may focus on whether surcharges were implemented following proper notice, if their purpose was clearly defined, and whether there were clear events or conditions that triggered or terminated the surcharges. The FMC suggested enforcement action may occur if tariffs are improperly established. Shipping customers are also imploring the FMC to investigate shipping practices. On July 28, 2021, MCS Industries, a Pennsylvania-based home furnishings manufacturer, filed an administrative proceeding against COSCO and MSC, alleging that the carriers had violated provisions of the Shipping Act and refused to honor their service contracts, calling for the FMC to conduct an investigation of these companies’ shipping practices. COSCO and MSC have denied the allegations and noted, among other things, that MCS’s complaint should be heard in the fora specified in its respective service contracts with the carriers. An administrative law judge was appointed to hear the matter, the outcome of which should be closely watched by industry participants.

DOJ Antitrust Landscape

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.

#### OSRA 21 (Ocean Shipping Reform Act of 2021) doesn’t end anti-competitive behavior yet is massive in expanding the scope of regulation

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

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

#### 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---Supply Chain

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

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

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

### 2AC---AT: High Food Prices

#### High prices drive inflationary pressures, not material wealth — it causes nutritional deficiencies

Weber 15 — Regine Weber (Center for Development Research (ZEF), University of Bonn), 2015, “Welfare Impacts of Rising Food Prices: Evidence from India,” *International Conference of Agricultural Economists*, https://ageconsearch.umn.edu/bitstream/211901/2/Weber-Welfare%20Impacts%20of%20Rising%20Food%20Prices-673.pdf

5. Conclusion

In this paper we explore how inflationary food prices impact India’s consumer welfare and poverty ratios. We account for changes in consumption patterns, i.e. substitution effects among food items, by including own and cross price elasticities obtained through the estimation of a demand system, i.e. QUAIDS. The estimation of QUAIDS and the respective results for income, compensated own and cross price elasticities show that high value food commodities, for instance milk, other livestock products and fruits, are the most sensitive to an own price change, as well as to a change in income. In times of increasing food prices, consumers substitute high value food items for cheaper alternatives. Consequently, households consume a less diversified diet in times of high food prices, focusing their diet on cheaper staple commodities. High value agricultural goods play an important role in a diversified and nutritionally balanced diet, since they are rich in proteins and vitamins. India’s food inflation, which has been led by high value agricultural commodities, therefore threatens to exacerbate the nutritional status of the Indian consumer. India’s TPDS, as well as the newly introduced NFSA are based on cereals and the access to food, rather than nutrition security. Particularly poor households substitute expensive food items by cheaper alternatives and hence switch to a cereals lead diet. This causes nutritional deficiencies and should be addressed by the already implemented food distribution scheme. The scope of food security programs needs to be extended to nutrition security. The results of our welfare analysis suggest that rural households suffer a larger welfare loss than urban households. The simulation of a 10 per cent food price increase indicates that rural households lose 5 to 6 per cent of their monthly income, while urban households lose 3 to 4 per cent. The impact analysis of a food price increase on India’s poverty ratio shows that additional 4.69 per cent of households in rural areas and 2.19 per cent of households in urban areas are driven into poverty. This scenario, which is based on India’s real food price inflation, represents a large throwback in India’s fight against poverty and hunger. As upper bound scenario, we show that a 20 per cent food price increase would further cause additional 9.32 per cent of rural and 4.52 per cent of urban households to fall below the poverty line. We conclude that India’s current food inflation has a strong negative impact on India’s poverty ratio.

## ADV---Ports

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

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

## ADV---Inherency

### 2AC---Thumpers---Shipping

## AT: CP---Private Enforcement

### 2AC---CP---Permutations

### 2AC---Deficit---Exemption

### 2AC---Theory---Textual + Functional

### 2AC---Deficit---Private Litigation

#### 1---International, private enforcement is key to deter cartels.

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>)

To effectively deter cartels, the total expected penalty must at least equal the supra-competitive profits from participating in the cartel.57 Because an international cartel enjoys supra-competitive profits from its sales in other countries, "[tihe relevant expected penalty depends on the sum of the expected penalties in each nation., 58 According to the OECD, sanctions against cartels "are, on the whole, still inadequate" 59 in most countries. Therefore, cartels will raise their prices in the United States even though doing so increases the likelihood of the cartel's detection due to the United States's more rigorous antitrust regime. The international cartel will still harm American consumers because it can offset its expected American losses with its supra-competitive profits from countries where it has little fear of penalty. As a result, "the deterrent required to prevent a global cartel from including the United States is generally larger than the deterrent required to prevent a purely domestic cartel from forming." 60

#### 2---Private enforcement is overwhelmingly superior to public enforcement.

Harrington 15, \*Joshua Harrington, Patrick T. Harker Professor, Department of Business Economics & Public Policy, at The Wharton School, University of Pennsylvania; (January 2015, “The Comity-Deterrence Tradeoff and the FTAIA: Motorola Mobility Revisited”, <https://joeharrington5201922.github.io/pdf/cpi15.pdf>)

IV. THE POTENTIAL HARM CREATED BY THE SEVENTH CIRCUIT’S DECISION

Public and private antitrust enforcement can shut down existing cartels and deter future cartels from forming by influencing both the likelihood that a cartel is discovered and convicted and the extent of penalties brought to bear on convicted cartels. The higher is that likelihood, the more likely is the spigot of harm to be shut off. The higher is that likelihood and the more severe are the penalties, the more likely that firms will be deterred from ever turning the spigot on. If we take private damages out of the equation, how much is the disabling and deterring of cartels impacted?

In addressing that question, let us first consider the scenario in which, if there is a cartel, the government were to prosecute it. Presuming that they obtain a conviction, the cartel will be shut down and thus serve the objective of disabling cartels. However, the lack of private suits weakens the objective of deterring cartels as penalties are limited to jail time and government fines and lack potentially sizable private damages. It is well-recognized that current penalties— even with private damages—are very likely to be insufficient to deter. As this point is well-argued in a recent Amicus Curiae Brief16 and the point is not new, I will not dwell on it. Suffice it to say that the Court’s decision to prohibit companies like Motorola to sue will undoubtedly reduce the penalties levied on cartels and, because the full array of penalties are currently inadequate to deter many cartels, will contribute to antitrust enforcement further falling short of what is require to achieve the goal of deterrence.

The preceding analysis was predicated on the critical assumption that the government prosecutes the cartel, but this may not occur for two reasons. First, the government may be unaware of the cartel’s existence. Lacking the right to bring a private case, cartels are less likely to be discovered because those harmed have weaker incentives to monitor for collusion. Nevertheless, they still do have some incentive to monitor and report a suspected cartel to the government in order to disrupt the harm that is being inflicted upon them. It is then unclear whether the loss of antitrust standing will substantively weaken the incentive to monitor to the point that it warrants interfering with comity.

Of greater relevance is the second reason for the lack of public enforcement, which is that the government suspects unlawful collusion but chooses not to litigate. The Antitrust Division of the U.S. Department of Justice (“DOJ”) has limited resources, which means all possible cases cannot be pursued. Furthermore, the presence of a resource constraint impacts the type of cases that are pursued. These days, the DOJ’s caseload is heavily oriented to cases involving the leniency program but not all forms of collusion lend themselves to a firm receiving amnesty. A member of a hard-core cartel engaged in a per se offense can expect to receive leniency if it is the first to come forward but there are many cases of collusion that do not involve behavior that is per se unlawful. Given the lower threshold for a conviction in a civil case, private litigation has been, and will continue to be, essential in prosecuting these less flagrant, but no less harmful, forms of collusion.

While it is difficult to document case selection by the DOJ, there is certainly evidence consistent with it being a substantive factor. In noting that the DOJ obtained convictions in 92 percent of 699 cases filed over 1992 to 2008, Professors Robert Lande and Joshua Davis comment:17

The DOJ appears much more willing to tolerate a false negative (a failure to prosecute a violation of the antitrust laws) than a false positive (litigating a case when in fact there was no violation). In other words, it appears the DOJ chooses not to pursue litigation in many meritorious cases, perhaps at least in part because it lacks the necessary resources. This may well create a need for private litigation as a complement to government enforcement of the antitrust laws.

#### 3---The threat of private litigation deters conduct significantly better than criminal enforcement.

Lande 17, \*Robert H. Lande is the Secretary of the American Antitrust Institute’s Board of Directors. He was the AAI’s first Senior Fellow and a co-founding Director of the AAI and has served the AAI on a full-time basis during three different periods. He is the Venable Professor of Law at the University of Baltimore; \*Joshua P. Davis is Professor of Law and Director of the Center for Law and Ethics at the University of San Francisco; (January 1st, 2017, “Restoring the Legitimacy of Private Antitrust Enforcement”, <https://scholarworks.law.ubalt.edu/cgi/viewcontent.cgi?article=2017&amp;context=all_fac>)

C. Private Cases Help Deter Anticompetitive Behavior

Private enforcement also deters anticompetitive behavior. There is, moreover, evidence that these deterrence effects are likely to be significant.

Another recent AAI study highlights the deterrence benefits of private enforcement by comparing the likely deterrent effects of private enforcement of the U. S. antitrust laws to the deterrence effects of the most esteemed antitrust program in the world, criminal anti-cartel enforcement by the Antitrust Division of the U.S. Department of Justice.21 The surprising results are that private enforcement probably deters more anticompetitive behavior.

The study does this by noting that from 1990 through 2011, the total of DOJ corporate antitrust fines, individual fines, and restitution payments totaled $8.18 billion. Disvaluing a year of prison at $6 million and a year of house arrest at $3 million adds another $3.588 billion in total deterrence from the DOJ’s anti-cartel cases. This totals approximately $11.7 billion. This is an extremely impressive figure, and these sanctions surely have deterred a significant amount of anticompetitive behavior. Nevertheless, this total is significantly less than the more than $33 billion resulting from just sixty analyzed private cases that occurred during the same period. Moreover, the analysis of 60 private cases ignored the costs to defendants of providing products, discounts, or coupons as part of settlements, paying their own attorney’s fees and costs, and suffering a disruption of their business practices. Indeed, given the disparity between the likely deterrent effects of private and DOJ criminal enforcement, even a significantly more conservative approach would yield the same ultimate conclusion.22 The study’s conclusions that the amounts of payouts in private cases are actually staggeringly high-so high that they deter anticompetitive conduct more effectively than the criminal fines and prison sentences resulting from Department of Justice cases-is thus the opposite of the consensus within the antitrust community.

#### 4---Public enforcement alone fails.

Lande 17, \*Robert H. Lande is the Secretary of the American Antitrust Institute’s Board of Directors. He was the AAI’s first Senior Fellow and a co-founding Director of the AAI and has served the AAI on a full-time basis during three different periods. He is the Venable Professor of Law at the University of Baltimore; \*Joshua P. Davis is Professor of Law and Director of the Center for Law and Ethics at the University of San Francisco; (January 1st, 2017, “Restoring the Legitimacy of Private Antitrust Enforcement”, <https://scholarworks.law.ubalt.edu/cgi/viewcontent.cgi?article=2017&amp;context=all_fac>)

As has been observed, “government cannot be expected to do all or even most of the necessary enforcement” for numerous reasons – in addition to budgetary constraints – including “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.”7

#### 5---Private antitrust enforcement is key to detect anticompetitive conduct.

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>)

II. BACKGROUND

A core aspect of America's antitrust regime is its encouragement of private litigation as an enforcement device. Private litigation is thought to be particularly effective against cartels, as the consumers in a cartel market may often be among the first entities to detect the cartel's damaging collusive behavior, and awarding damages-particularly a multiple of the cartel's profits-may make the illegal conduct cost-prohibitive. Thus, private litigation is viewed as an important mechanism for achieving one of the fundamental goals of the antitrust acts: the maximum deterrence of cartels.26

Initially, the application of America's antitrust regime was contained within its borders. But as commerce became increasingly international after World War II, U.S. courts applied the antitrust laws extraterritorially. America's extraterritorial application of its antitrust laws created tension with its trading partners, who disagreed with the American approach of relying on private litigation and treble damages as an enforcement device. They viewed the extraterritorial application of U.S. law as an anticompetitive maneuver aimed at furthering U.S. trade objectives. In the late 1970s and early 1980s, many of these countries passed legislation to frustrate the extraterritorial application of America's antitrust laws. The U.S. Congress responded by passing the FTAIA. This law barred foreigners from using America's laws against American companies when American consumers were not harmed. The Empagran decision-and the governments' amici briefs-must be understood within this context of antitrust policy as trade policy.

A. The Sherman and Clayton Acts

The Sherman and Clayton Acts are the statutory foundation for private antitrust litigation in the United States. The Sherman Antitrust Act outlaws "[e]very contract, combination . . . or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations., 27 Violations are felonies, with corporations and individuals facing civil and criminal penalties, including imprisonment.29

To expand the enforcement of the antitrust laws and to facilitate the compensation of the victims of antitrust harms, Congress adopted the Clayton Act. Section 4 of the Clayton Act creates a private cause of action for individuals and companies harmed by antitrust violations, 30 and section 12 grants jurisdiction over these lawsuits to any district in which the defendant does business.3' Plaintiffs in such lawsuits act as "private attorneys general, 32 who help alert authorities to violations of the antitrust laws while also punishing those violations. The Clayton Act allows private litigants to sue for treble damages. Treble damages enhance deterrence in two ways-they encourage private suits, which raise the probability the cartel will be detected,33 and they increase the penalty imposed on defendants found guilty of violating the acts.34 The Clayton Act has succeeded in encouraging such suits. 35

B. Cartels-An Introduction

Cartels are "unambiguously bad' 36 and "the most egregious violations of competition law."3 7 The collusion they engage in the "supreme evil of antitrust. ' '3s A cartel is a group of firms in an industry that should be competitors but have instead agreed to coordinate their activities so that they can raise prices and earn profits above competitive market levels. Cartels utilize a number of mechanisms to coordinate their activities, including horizontal price fixing,39 bid rigging, territorial division,40 non-territorial customer division, and market-share agreements. In addition to harming the consumers of their products by charging supra-competitive prices, cartels also reduce economic efficiency by causing consumers to purchase less of a product than they otherwise would buy and by reducing the competitive pressures that member firms face to control costs and to innovate.41

A cartel must overcome four challenges to operate successfully. First, the cartel's members must reach agreement to restrict the supply of a product and increase its price. A cartel restricts supply so that the loss from the lower quantity of sales is more than offset by the increase in the price of each remaining sale. The optimal cartel quantity and price is that of a monopoly producer, but cartels rarely achieve that optimal level because cheating by members and market entry by new producers increases market supply. Thus, a second challenge for a cartel is to ensure that its members follow the agreed course of action. Each cartel member has an incentive-to sell more than the agreed quantity of the product-at the cartel price or one slightly below it-to gain even more profit.42 Because cheating threatens the cartel's viability, cartels must monitor their members and punish cheating.4 3 But monitoring is difficult because of the third challenge inherent to cartels: their illegal actions force them to operate in secrecy to avoid detection.44 Yet even if, while operating in secret, cartels are able to monitor and punish cheaters, they still must prevent entry by other firms into the market. Entrants will be enticed by the opportunity to earn profits due to the extra-competitive cartel prices, and their entry will drive down the cartel's profits. To maintain its hold on the market, the cartel must prevent new entry, again without making the cartel visible. The complexity of addressing these four challenges leads many economists to conclude that cartels are "inherently unstable."43

Certain market characteristics are conducive to collusive activity. Cartels often operate in concentrated markets with few firms, permitting easier coordination and more reliable confidentiality.46 Markets with high initial investment costs are also conducive to cartel activity. These costs deter other firms from quickly entering the market to take advantage of the cartel's artificially high prices.47 Products that are homogenous and fungible also facilitate cartel activity. a Such products are usually uniformly priced, making it easier for cartels to monitor member prices. Finally, market structures, such as public disclosure laws regarding prices and quantities, can help cartels monitor their members' activities.

Market characteristics alone cannot sustain a cartel; cartel members must adopt a variety of practices to avoid detection and to enforce compliance. Cartels avoid detection by holding secret meetings, using code names, and creating legitimate-appearing trade associations to share information.49 Generally, cartel members meet periodically to review public and private sales and price figures from prior periods. They also force members who exceed their quotas to compensate the other members.50 Thus, cartels overcome their inherent instability by successfully providing supra-competitive profits to their members while maintaining the secrecy of their collusion and punishing any deviations. Indeed, based on the fact that twenty-four of the forty international cartels prosecuted in the 1990s had operated for at least four years, one study concluded, "market forces alone may be unable to quickly undermine attempts to fix prices, rig bids, allocate quotas, and market shares; perhaps implying a potential role for national anti-cartel enforcement." 51

### 2AC---AT: NB

## AT: CP---Section 5

### 2AC---CP---Permutations

### 2AC---Deficit---FMC

#### 2---Expertise (Federal Maritime Commission)

Khouri 19 Chair of the Federal Maritime Commission. (Michael, April 4, 2019, Testimony Before BEFORE THE UNITED STATES SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION SUBCOMMITTEE ON SECURITY, <https://www.commerce.senate.gov/services/files/F6DD1ADF-0A95-4E4F-9EC6-BF62AF1D2E66>)

The Federal Maritime Commission As a first matter, allow me a moment to introduce the FMC and its role, which is best summarized by our prime meridian: ensuring competition and integrity for America’s ocean supply chain. The FMC is an independent agency with specialized experience in the international ocean transportation industry. We administer a focused antitrust regulatory regime tailored to the particular factors affecting the ocean liner trade. The Shipping Act of 1984 contains several major sections that are comparable to the antitrust statutes administered by the Department of Justice and the Federal Trade Commission. Since passage of the original Shipping Act in 1916, Congress has recognized that the international ocean liner industry requires special legislative and regulatory oversight. This is due to the substantial amount of our Nation’s international exports and imports being delivered via ocean liner carriage, the resulting critical role the industry plays in our international commerce, and the many competing, and potentially conflicting, maritime regulatory regimes and interests of our international trading partners. Based on economic and non-economic conditions affecting the international ocean liner trade, Congress determined in 1916 to allow certain types of ocean carrier collaboration that would not normally be permitted under other antitrust statutes, in order to ensure that certain U.S. national objectives would be met. This included the availability of ocean transportation and stability of the shipping infrastructure upon which our international commerce depends. The antitrust laws, including the Shipping Act of 1984, are designed to protect competition, not individual competitors. Collaborative joint venture agreements among competitor ocean carriers, as long as they are not found to be materially anticompetitive, are recognized as beneficial, finding efficiencies, and reducing costs that ultimately benefit U.S. exporters and saves the U.S. consumer money. Congress entrusted competition oversight and antitrust enforcement for this industry to a specialized agency with particular expertise in this legal area, close familiarity with the commercial and operational issues involved in the ocean liner industry, and sensitivity to the interests of U.S. stakeholders and our many international trading partners. The FMC reviews and monitors international ocean liner carrier joint collaborations and agreements under the Shipping Act to ensure that procompetitive efficiencies and cost savings are obtained for the benefit of U.S. consumers, and that anticompetitive effects are prevented or properly mitigated. Our Annual Report was submitted on April 1, 2019 and provides a comprehensive summary of the Commission’s activities and industry developments in Fiscal Year 2018. Our Fiscal Year FY 2020 Budget Justification was submitted on March 18, 2019 and provides detailed support for our budget request. I will address matters of interest to the Committee, discuss what we foresee as potential developments and trends in the coming year, review our significant activities of the past year, and recap our budget request for FY 2020.

### 2AC---UQ---Protectionism

#### Free trade is structurally doomed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## AT: CP---Regulations

### 2AC---CP---Permutations

#### 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---Theory---Conditionality

### 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---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

## AT: DA---Exemption

### 2AC---AT: Link

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

#### Corporate dynamism is low because of supply chains

FT 21, Financial Times editorial board. (Editorial Board, 10-31-2021, “Supply chain disruptions are now holding back the recovery,” Financial Times, https://www.ft.com/content/84c2555b-68f0-4654-bb73-d1b995d45bc2)

Disruptions to supply chains have been visible for a while in higher prices. Now they have firmly made their presence felt in both corporate earnings and growth data. US and eurozone figures at the end of last week demonstrated that bottlenecks are holding back production at factories — and slowing the pace of the recovery. That has had a knock-on effect on industrial giants such as Germany’s Volkswagen and California’s Apple. Both told investors that a global shortage of semiconductors had held back sales, leading them to miss out on around €500m and $6bn of profit respectively. For decades the goal of economic management, primarily delegated to central bankers, has been to keep the total amount of spending — or aggregate demand — growing in tandem with the capacity of the economy to provide the goods and services that consumers want, labelled aggregate supply. Keeping the two in balance is meant to preserve economic stability and stop price growth from accelerating, or decelerating, out of hand. The pandemic jolted both at the same time, reorientating consumer spending from services to goods that could still be enjoyed at home; closed gyms meant a scramble for exercise equipment, for example. Today’s bottlenecks are a demonstration that demand has recovered much more quickly than supply. That reflects, in part, the success of stimulus programmes, and the uneven fight against coronavirus. While mass vaccination efforts in Europe and the US have allowed for something approaching normal life to resume, in many developing Asian countries that produce the goods western consumers want, outbreaks have shut factories. Ultimately, this presents a challenge about which central bankers can do little. Inflation has risen and they have a legal duty to keep it under control. Consequently, many are beginning to scale back stimulus: on Friday the Australian central bank opted to cease defending its yield target for sovereign bonds, allowing the benchmark interest rate to start drifting upwards. It joins a club of major economies including New Zealand and Norway that have already started to tighten monetary policy. Investors expect the Federal Reserve and the European Central Bank to follow suit soon. While bringing demand down to match supply can keep price pressures in check, it is a much less satisfying solution — leading to lower growth and employment — than expanding supply. There are, however, no easy levers that policymakers can pull. While easy money and government spending can boost total demand, supply only grows slowly and governments have limited ability to influence it. Business investment is the one part of economic demand, at least in the US, that is still lagging. That is a shame. Capital spending is the best way to keep supply growing and prevent bottlenecks from recurring or shortages from becoming permanent. Easy monetary policy, however, appears to have done more to boost asset prices than investment in industrial equipment or commercial buildings. That could be down to the uncertain path of the recovery. Many businesses, just like central bankers, may be waiting to see whether the shortages are transitory or more permanent. Pulling the trigger on investment now could lead to excess capacity if they ease. Similarly if central banks tighten too quickly and demand is choked off, investment might be wasted. Generous tax relief for capital spending, along the lines of Britain’s “super deduction”, should be considered more widely. The best way to avoid bottlenecks is to get a wider bottle.

### 2AC---I/L

#### Supply chain disruptions are key

Fontdegloria 21, (Xavier, 10-12-2021, “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.

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

#### Shipping alliances control the economy

Khafagy 22, is an award-winning New York City–based journalist. He has contributed to such publications as The New Republic, Vice, The Appeal, The Guardian, Curbed, Bloomberg, and In These Times. (Amir, 2-2-2022, “The Hidden Costs of Containerization,” The American Prospect, https://prospect.org/economy/hidden-costs-of-containerization/)

Prior to the 1980s, the Shipping Act of 1916 regulated the relatively modest ocean carrier industry like a public utility. Prices were transparent and there were no exclusive agreements for volume shippers; anyone wanting to ship cargo could access the same rates. The United States Shipping Board, later the Federal Maritime Commission (FMC), regulated prices and practices, and subsidies assisted domestic shipbuilding. The act enabled smaller companies to enter ocean shipping with stable prices to weather downturns. But the Shipping Act of 1984, and later the Ocean Shipping Reform Act of 1998, took down this architecture. It allowed shipping companies to consolidate, and eliminated price transparency, facilitating secret deals with importers and exporters. The FMC was defanged as a regulator. Almost immediately, containerization took off. The number of goods carried by containers skyrocketed from 102 million metric tons in 1980 to about 1.83 billion metric tons as of 2017. Ocean carriers quickly fell into three “alliances”: 2M, Ocean Alliance, and “THE Alliance.” These alliances carry about 80 percent of seaborne cargo, up from 40 percent in 1998, giving customers few options. Container ships also dramatically increased in size. Today, the average ship is capable of carrying over 20,000 containers at any given time. Many ships are absurdly gargantuan, with some as long as the length of the Empire State Building. Between 1980 and 2020, the deadweight tonnage of container ships has grown from about 11 million metric tons to around 275 million metric tons. Infrastructure had to be altered to accommodate the increasingly large vessels. Between 2013 and 2019, the Port Authority of New York and New Jersey spent $1.7 billion to raise the 90-year-old Bayonne Bridge—which connects the New York City borough of Staten Island to New Jersey—clearance approximately 64 feet, from 151 to 215 feet, in an effort to accommodate larger ships. Several ports simply cannot handle mega-ships, narrowing the locations where they can be off-loaded. The mega-ships reduced the per capita cost of shipping goods, which importers and exporters loved. But there were ulterior motives. No upstart carrier could possibly compete with the alliances; they couldn’t afford the massive startup costs to build or lease their own mega-ship. And ports that sunk money into accommodating the bigger ships were unlikely to alienate those mega-shippers through fees or other disfavored practices. The big bad ocean carriers had the rest of the supply chain over a barrel.

## AT: DA---Chilling Effect

### 2AC---UQ---Chilling Effect

#### 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: Link---Chilling Effect

#### 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

#### 2---Sector-specific antitrust has no effect on other parts of the economy

Dr. Paul Krugman 1-18, Distinguished Professor in the Graduate Center Economics Ph.D. Program and Distinguished Scholar at the Luxembourg Income Study Center at the City University of New York, Professor Emeritus at the Princeton School of Public and International Affairs, Sole Recipient of the Nobel Memorial Prize in Economic Sciences for Work on International Trade Theory, PhD from MIT, “Why Are Progressives Hating on Antitrust?”, The New York Times, 1/18/2022, https://www.nytimes.com/2022/01/18/opinion/biden-inflation-monopoly-antitrust.html

One thing the Biden administration has been doing, however, is trying to toughen up antitrust policy, arguing that highly concentrated ownership in many industries — largely a result of decades of lax regulation — is helping keep prices high and possibly contributing to recent inflation.

I’d describe this initiative as controversial, except that there’s hardly any controversy, at least in the media: Biden’s linkage of monopoly power to inflation is facing vehement, almost hysterical, criticism from all sides, including many progressive commentators. And I find that vehemence puzzling; I think it says more about the commentators than it does about the administration.

Let’s stipulate that monopolies aren’t the reason inflation shot up in 2021 — because there was already plenty of monopoly power in America back in 2020. True, profit margins, as measured by the share of profits in gross domestic product, have increased quite a lot recently:

Most of that rise, however, probably reflects big returns to companies, like shippers, that happen to own crucial assets at a time of supply-chain bottlenecks. It’s possible, as Senator Elizabeth Warren has suggested, that some companies are using general inflation as an excuse to jack up prices, abusing their monopoly power in ways that might have provoked a backlash in normal times; that’s certainly not a crazy argument, and making it doesn’t make Warren the second coming of Hugo Chavez. Still, such behavior can’t explain more than a small fraction of current inflation.

But as far as I can see, the Biden administration and its allies aren’t claiming otherwise. They’re simply emphasizing monopoly power because it’s one thing they might be able to do something about.

And where is the policy harm? On one side, toughening up antitrust enforcement in sectors like meatpacking is something the U.S. government should be doing in any case. On the other side, there’s no hint that the administration’s antimonopoly rhetoric will lead to irresponsible policies elsewhere.

As I said, all indications are that Biden and company will leave the Fed alone as it raises interest rates in an effort to cool demand. And I haven’t seen any important Democratic figure, inside or outside the administration, calling for Nixon-style price controls. The most interventionist policy that seems remotely possible would be something like John F. Kennedy’s jawboning of the steel industry after an obviously coordinated jump in steel prices — and it’s hard to imagine Biden sounding nearly as hard-line and critical of big business as Kennedy did in that speech, as you can see in the video below.

So why the barrage of criticism, not just from the right — which was to be expected — but from the center and even the center-left?

I don’t really know the answer, but I have a few suspicions.

Part of the problem, I think, is an obsession with intellectual purity. Some policy wonks outside the administration apparently expect the policy wonks inside the administration — many of them friends and former colleagues — to keep sounding exactly the way they did when they weren’t political appointees. But look, that’s not the way the world works. Political appointees are supposed to serve the politicians who appointed them. Dishonesty or gross misrepresentation of reality isn’t OK, but emphasizing the good things one’s employers are trying to do is OK — and part of the job.

Beyond that, it sure looks as if many people who consider themselves progressive are made deeply uncomfortable by anything that sounds populist — even when a bit of populist outrage is entirely justified by the facts. Imagine the reaction if Biden gave a speech sounding anything like Kennedy on the steel companies (again, video below). How many Democratic-leaning economists would have fainting spells?

So here’s my suggestion: Give Biden and his people a break on their antitrust crusade. It won’t do any harm. It won’t get in the way of the big stuff, which is mostly outside Biden’s control in any case. At worst, administration officials will be using inflation as an excuse to do things they should be doing in any case. And they might even have a marginal impact on inflation itself.

### 2AC---Thumper---Chilling Effect

#### If one policy can rewrite the outcome of all potential mergers, the following should thump:

#### 1---Biden just rewrote merger guidelines.

Reuters 1/18/22, (January 18th, 2022, “U.S. antitrust enforcers plan to toughen merger guidelines”, https://www.reuters.com/world/us/us-antitrust-enforcers-plan-toughen-merger-guidelines-2022-01-18/)

WASHINGTON, Jan 18 (Reuters) - U.S. antitrust enforcers announced plans on Tuesday to rewrite merger guidelines in order to better fight illegal deals.

The U.S. Justice Department and Federal Trade Commission issued a joint statement saying U.S. industries had become increasingly concentrated and a surge in merger filings in 2020 and 2021 signaled the situation will worsen.

In the statement FTC Chair Lina Khan cited a need to prevent price rises and prevent companies from pushing wages down. She said the agencies were soliciting public opinion on how best to address this.

Jonathan Kanter, head of the Justice Department's Antitrust Division, said the government wanted to "think carefully about how to ensure our merger enforcement tools are fit for purpose in the modern economy."

The FTC and Justice Department had said in July, when the Biden administration issued a competition executive order, that they would soon launch a review of merger guidelines to determine if they were overly permissive.

Previous guidelines spelled out analytical techniques and evidence to be relied upon to determine if a merger is legal under antitrust law.

Sarah Miller, founder of the American Economic Liberties Project, called the plan to rejig the guidelines a victory.

"The agencies' commitment to issuing new guidelines based on market realities, including in digital and labor markets, should be applauded by anyone concerned about the power of Big Tech or the plight of working families," she said.

#### 2---facebook lawsuit and Congress.

Kang 1/11/22, \*Cecilia Kang covers technology and regulation and joined The Times in 2015. She is the co-author, along with Sheera Frenkel of The Times, of “An Ugly Truth: Inside Facebook's Battle for Domination.”; (January 11th, 2022, “A Facebook antitrust suit can move forward, a judge says, in a win for the F.T.C.”, https://www.nytimes.com/2022/01/11/technology/facebook-antitrust-ftc.html)

A federal judge on Tuesday allowed the Federal Trade Commission’s antitrust lawsuit against [Facebook](https://www.nytimes.com/2021/10/04/technology/facebook-ftc-antitrust-suit.html) to move forward, rejecting Facebook’s request to dismiss the case and handing the agency a major victory in its quest to curtail the power of the biggest tech companies.

The judge, James Boasberg of the U.S. District Court of the District of Columbia, [said last year](https://www.nytimes.com/2021/06/28/technology/facebook-ftc-lawsuit.html) that the F.T.C. had not provided sufficient evidence that the company, which has since renamed itself Meta, had a monopoly in social media and abused that power by harming competition. The agency refiled the case in August, and on Tuesday Judge Boasberg said that it had provided adequate support.

But he also included some caveats. Judge Boasberg said the agency could proceed with its claims that the company abused its monopoly power through acquisitions, which the agency has described as a “buy-or-bury” strategy. He dismissed, however, the agency’s charge that Facebook violated antitrust laws by cutting off third parties from its platform.

The facts provided by the agency, he said, “are far more robust and detailed than before, particularly in regard to the contours of defendant’s alleged monopoly.”

The judge’s decision is a major step forward for regulators battling the powerful armies of lobbyists and litigators employed to protect the empires built by tech giants like Amazon, Apple, Facebook and Google. Their combined market value has surpassed $7 trillion.

Government officials argue that this concentration of power hurts rivals and can harm consumers. In rare bipartisan agreement, Democrats and Republicans have rallied around antitrust action. This week, the Senate announced that it would begin to vote on new antitrust laws aimed at the tech sector.

#### Thumper threshold is low---even showing up to the fight causes their impact.

Sorkin et al. 21, \*Andrew Ross Sorkin is a columnist and the founder and editor-at-large of DealBook; \*Jason Karaian is the editor of DealBook, based in London; \*Sarah Kessler is a senior staff editor for DealBook and the author of “Gigged,” a book about workers in the gig economy; \*Stephen Gandel is a news editor for DealBook. He was previously a senior reporter for CBS News, and a columnist at Bloomberg; \*Michael de la Merced joined The Times as a reporter in 2006, covering Wall Street and finance; \*Lauren Hirsch joined the New York Times from CNBC in 2020, covering business, policy and mergers and acquisitions; \*Ephrat Livni reports from Washington on the intersection of business and policy for DealBook; (July 27th, 2021, “Biden’s Antitrust Team Talks Its Way to a Win”, https://www.nytimes.com/2021/07/27/business/dealbook/aon-deals-antitrust.html)

Tough talk on antitrust

In the Biden administration’s first major antitrust action, the government scored a victory simply by showing a willingness to fight. Aon called off its proposed $30 billion takeover of the rival insurer Willis Towers Watson yesterday, citing delays stemming from a lawsuit brought just over a month ago by the Justice Department to block the deal, which was first announced in March last year.

“This is a victory for competition and for American businesses,” Attorney General Merrick Garland said in a statement after the deal was scrapped. The [government argued](https://www.justice.gov/opa/press-release/file/1404951/download) that merging two of the three biggest insurance brokers would “likely lead to higher prices and less innovation.” The companies countered that the government didn’t understand their businesses.

“We reached an impasse,” Greg Case, Aon’s C.E.O., said in a statement. Aon had angled for a summer trial while the Justice Department suggested winter next year. The judge set a November date, but warned of delays; Aon decided that instead of digging in, it would pay a $1 billion termination fee to Willis and move on.

Tough talk can make big deals less appealing, former antitrust officials told DealBook. “The risk and time delays of a merger challenge often cause the parties to abandon a deal,” said Doug Melamed, a Stanford law professor and former acting chief of the Justice Department’s antitrust division. President Biden’s pledge to rein in corporate power with [more aggressive antitrust enforcement efforts](https://www.nytimes.com/2021/07/09/business/biden-big-business-executive-order.html), backed by a [team of Big Tech critics](https://www.nytimes.com/2021/07/21/business/dealbook/kanter-justice-antitrust.html), is limited by existing laws. Aon’s move highlights how trustbusters can have their way by other means.

And even if the government doesn’t win every case it brings, the signals it sends about scrutinizing mergers more closely [have been received by deal makers](https://www.bloomberg.com/news/articles/2021-07-26/deal-boom-under-threat-in-washington-after-aon-willis-deal-dies?srnd=deals), who are otherwise having a very busy year. (One of the [busiest on record](https://www.reuters.com/business/media-telecom/global-markets-ma-2021-06-04/), in fact.)

## AT: K---Capitalism

### 2AC---Framework

### 2AC---Permutations

### 2AC---AT: No Link

### 2AC---AT: Alternative

### 2AC---AT: Sustainability [Short]

#### Innovation dematerializes growth---capitalism is sustainable

McAfee 19, \*Andrew Paul McAfee, a principal research scientist at MIT, is cofounder and codirector of the MIT Initiative on the Digital Economy at the MIT Sloan School of Management; (2019, “More from Less: The Surprising Story of How We Learned to Prosper Using Fewer Resources and What Happens Next”, https://b-ok.cc/book/5327561/8acdbe)

There is no shortage of examples of dematerialization. I chose the ones in this chapter because they illustrate a set of fundamental principles at the intersection of business, economics, innovation, and our impact on our planet. They are: We do want more all the time, but not more resources. Alfred Marshall was right, but William Jevons was wrong. Our wants and desires keep growing, evidently without end, and therefore so do our economies. But our use of the earth’s resources does not. We do want more beverage options, but we don’t want to keep using more aluminum in drink cans. We want to communicate and compute and listen to music, but we don’t want an arsenal of gadgets; we’re happy with a single smartphone. As our population increases, we want more food, but we don’t have any desire to consume more fertilizer or use more land for crops. Jevons was correct at the time he wrote that total British demand for coal was increasing even though steam engines were becoming much more efficient. He was right, in other words, that the price elasticity of demand for coal-supplied power was greater than one in the 1860s. But he was wrong to conclude that this would be permanent. Elasticities of demand can change over time for several reasons, the most fundamental of which is technological change. Coal provides a clear example of this. When fracking made natural gas much cheaper, total demand for coal in the United States went down even though its price decreased. With the help of innovation and new technologies, economic growth in America and other rich countries—growth in all of the wants and needs that we spend money on—has become decoupled from resource consumption. This is a recent development and a profound one. Materials cost money that companies locked in competition would rather not spend. The root of Jevons’s mistake is simple and boring: resources cost money. He realized this, of course. What he didn’t sufficiently realize was how strong the incentive is for a company in a contested market to reduce its spending on resources (or anything else) and so eke out a bit more profit. After all, a penny saved is a penny earned. Monopolists can just pass costs on to their customers, but companies with a lot of competitors can’t. So American farmers who battle with each other (and increasingly with tough rivals in other countries) are eager to cut their spending on land, water, and fertilizer. Beer and soda companies want to minimize their aluminum purchases. Producers of magnets and high-tech gear run away from REE as soon as prices start to spike. In the United States, the 1980 Staggers Act removed government subsidies for freight-hauling railroads, forcing them into competition and cost cutting and making them all the more eager to not have expensive railcars sit idle. Again and again, we see that competition spurs dematerialization. There are multiple paths to dematerialization. As profit-hungry companies seek to use fewer resources, they can go down four main paths. First, they can simply find ways to use less of a given material. This is what happened as beverage companies and the companies that supply them with cans teamed up to use less aluminum. It’s also the story with American farmers, who keep getting bigger harvests while using less land, water, and fertilizer. Magnet makers found ways to use fewer rare earth metals when it looked as if China might cut off their supply. Second, it often becomes possible to substitute one resource for another. Total US coal consumption started to decrease after 2007 because fracking made natural gas more attractive to electricity generators. If nuclear power becomes more popular in the United States (a topic we’ll take up in chapter 15), we could use both less coal and less gas and generate our electricity from a small amount of material indeed. A kilogram of uranium-235 fuel contains approximately 2–3 million times as much energy as the same mass of coal or oil. According to one estimate, the total amount of energy that humans consume each year could be supplied by just seven thousand tons of uranium fuel. Third, companies can use fewer molecules overall by making better use of the materials they already own. Improving CNW’s railcar utilization from 5 percent to 10 percent would mean that the company could cut its stock of these thirty-ton behemoths in half. Companies that own expensive physical assets tend to be fanatics about getting as much use as possible out of them, for clear and compelling financial reasons. For example, the world’s commercial airlines have improved their load factors—essentially the percentage of seats occupied on flights—from 56 percent in 1971 to more than 81 percent in 2018. Finally, some materials get replaced by nothing at all. When a telephone, camcorder, and tape recorder are separate devices, three total microphones are needed. When they all collapse into a smartphone, only one microphone is necessary. That smartphone also uses no audiotapes, videotapes, compact discs, or camera film. The iPhone and its descendants are among the world champions of dematerialization. They use vastly less metal, plastic, glass, and silicon than did the devices they have replaced and don’t need media such as paper, discs, tape, or film. If we use more renewable energy, we’ll be replacing coal, gas, oil, and uranium with photons from the sun (solar power) and the movement of air (wind power) and water (hydroelectric power) on the earth. All three of these types of power are also among dematerialization’s champions, since they use up essentially no resources once they’re up and running. I call these four paths to dematerialization slim, swap, optimize, and evaporate. They’re not mutually exclusive. Companies can and do pursue all four at the same time, and all four are going on all the time in ways both obvious and subtle. Innovation is hard to foresee. Neither the fracking revolution nor the world-changing impact of the iPhone’s introduction were well understood in advance. Both continued to be underestimated even after they occurred. The iPhone was introduced in June of 2007, with no shortage of fanfare from Apple and Steve Jobs. Yet several months later the cover of Forbes was still asking if anyone could catch Nokia. Innovation is not steady and predictable like the orbit of the Moon or the accumulation of interest on a certificate of deposit. It’s instead inherently jumpy, uneven, and random. It’s also combinatorial, as Erik Brynjolfsson and I discussed in our book The Second Machine Age. Most new technologies and other innovations, we argued, are combinations or recombinations of preexisting elements. The iPhone was “just” a cellular telephone plus a bunch of sensors plus a touch screen plus an operating system and population of programs, or apps. All these elements had been around for a while before 2007. It took the vision of Steve Jobs to see what they could become when combined. Fracking was the combination of multiple abilities: to “see” where hydrocarbons were to be found in rock formations deep underground; to pump down pressurized liquid to fracture the rock; to pump up the oil and gas once they were released by the fracturing; and so on. Again, none of these was new. Their effective combination was what changed the world’s energy situation. Erik and I described the set of innovations and technologies available at any time as building blocks that ingenious people could combine and recombine into useful new configurations. These new configurations then serve as more blocks that later innovators can use. Combinatorial innovation is exciting because it’s unpredictable. It’s not easy to foresee when or where powerful new combinations are going to appear, or who’s going to come up with them. But as the number of both building blocks and innovators increases, we should have confidence that more breakthroughs such as fracking and smartphones are ahead. Innovation is highly decentralized and largely uncoordinated, occurring as the result of interactions among complex and interlocking social, technological, and economic systems. So it’s going to keep surprising us. As the Second Machine Age progresses, dematerialization accelerates. Erik and I coined the phrase Second Machine Age to draw a contrast with the Industrial Era, which as we’ve seen transformed the planet by allowing us to overcome the limitations of muscle power. Our current time of great progress with all things related to computing is allowing us to overcome the limitations of our mental power and is transformative in a different way: it’s allowing us to reverse the Industrial Era’s bad habit of taking more and more from the earth every year.

### 2AC---Cap Good---Liberalism

#### Free markets cement world peace, but transition causes war

Mousseau 19, Professor in the School of Politics, Security, and International Affairs at the University of Central Florida. (Michael, “The End of War,” International Security 44:1, 2019, https://sciences.ucf.edu/politics/wp-content/uploads/sites/29/2019/07/IS\_End-of-War.pdf)

Is war becoming obsolete? There is wide agreement among scholars that war has been in sharp decline since the defeat of the Axis powers in 1945, even as there is little agreement as to its cause.1 Realists reject the idea that this trend will continue, citing states’ concerns with the “security dilemma”: that is, in anarchy states must assume that any state that can attack will; therefore, power equals threat, and changes in relative power result in conflict and war.2 Discussing the rise of China, Graham Allison calls this condition “Thucydides’s Trap,” a reference to the ancient Greek’s claim that Sparta’s fear of Athens’ growing power led to the Peloponnesian War.3 This article argues that there is no Thucydides Trap in international politics. Rather, the world is moving rapidly toward permanent peace, possibly in our lifetime. Drawing on economic norms theory,4 I show that what sometimes appears to be a Thucydides Trap may instead be a function of factors strictly internal to states and that these factors vary among them. In brief, leaders of states with advanced market-oriented economies have foremost interests in the principle of self-determination for all states, large and small, as the foundation for a robust global marketplace. War among these states, even making preparations for war, is not possible, because they are in a natural alliance to preserve and protect the global order. In contrast, leaders of states with weak internal markets have little interest in the global marketplace; they pursue wealth not through commerce, but through wars of expansion and demands for tribute. For these states, power equals threat, and therefore they tend to balance against the power of all states. Fearing stronger states, however, minor powers with weak internal markets tend to constrain their expansionist inclinations and, for security reasons, bandwagon with the relatively benign market-oriented powers. I argue that this liberal global hierarchy is unwittingly but systematically buttressing states’ embrace of market norms and values that, if left uninterrupted, is likely to culminate in permanent world peace, perhaps even something close to harmony. My argument challenges the realist assertion that great powers are engaged in a timeless competition over global leadership, because hegemony cannot exist among great powers with weak markets; these inherently expansionist states live in constant fear and therefore normally balance against the strongest state and its allies.5 Hegemony can exist only among market-oriented powers, because only they care about global order. Yet, there can be no competition for leadership among market powers, because they always agree with the goal of their strongest member (currently the United States) to preserve and protect the global order based on the principle of selfdetermination. If another commercial power, such as a rising China, were to overtake the United States, the world would take little notice,

because the new leading power would largely agree with the global rules promoted and enforced by its predecessor. Vladimir Putin’s Russia, on the other hand, seeks to create chaos around the world. Most other powers, having market-oriented economies, continue to abide by the hegemony of the United States despite its relative economic decline since the end of World War II.6 To support my theory that domestic factors determine states’ alignment decisions, I analyze the voting preferences of members of the United Nations General Assembly from 1946 to 2010. I ªnd that states with weak internal markets tend to disagree with the foreign policy preferences of the largest market power (i.e., the United States), but more so if they are major powers or have stronger rather than weaker military and economic capabilities. The power of states with robust internal markets, in contrast, appears to have no effect on their foreign policy preferences, as market-oriented states align with the market leader regardless of their power status or capabilities. I corroborate that this pattern may be a consequence of states’ interest in the global market order by ªnding that states with higher levels of exports per capita are more likely than other states to have preferences aligned with those of the United States; those with lower levels of exports are more likely to have interests that do not align with the United States, but again more so if they are stronger rather than weaker. Liberal scholars of international politics have long offered explanations for why the incidence of war may decline, generally beginning with the assumption that although the security dilemma exists, it can be overcome with the help of factors external to states.7 Neoliberal institutionalists treat states as like units and international organization as an external condition.8 Trade interdependence is dyadic and thus an external condition.9 Democracy is an internal factor, but theories of democratic peace have an external dimension: peace is the result of the expectations of states’ behavior informed by the images that leaders create of each other’s regime types.10 In contrast, I show that the security dilemma may not exist at all and how peace can emerge in anarchy with states pursuing their interests determined entirely by internal factors.11

# 1AR

## Econ

### 1AR---!---Economy

### 1AR---!---Taiwan

### 1AR---!---Food Shortage

## CP---Regulations

#### 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

#### Consolidation is the root cause of supply chain issues

Moss 21, is President of the American Antitrust Institute in January 2015. An economist, Dr. Moss has developed and expanded AAI’s advocacy channels and strategies, and strengthened communications with enforcers, Congress, other advocacy groups, and the media. Her work spans both antitrust and regulation, with industry expertise in digital technology, electricity, petroleum, food and agriculture, airlines, telecommunications, and healthcare. Before joining AAI in 2001, Dr. Moss was at the Federal Energy Regulatory Commission, where she coordinated the agency’s competition analysis for electricity mergers. (Diana, 11-30-2021, “Moss Tells Washington Post That Root of Supply Chain Disruptions is Consolidation and Concentration,” American Antitrust Institute, https://www.antitrustinstitute.org/moss-attributes-supply-chain-issues-to-consolidation-across-multiple-industries/)

In a Washington Post article on November 29, 2021 “FTC demands information from top companies, such as Amazon and Walmart, in sweeping supply chain probe,” AAI President Diana Moss explains that the root of supply chain disruptions is consolidation and concentration. From the article: The White House and some independent analysts have blamed a lack of competition throughout the supply chain for many of the current problems, which are fueling inflation and depressing the president’s public approval ratings. Biden this summer issued an executive order calling for regulators to crack down on consolidation in the ocean shipping and freight rail industries as part of a broader competition initiative. “We’ve had an incredible amount of consolidation in the supply chain. … That’s why it’s been unable to withstand the kind of shock we’ve seen with the pandemic,” said Diana Moss, president of the American Antitrust Institute. “We are now learning the hard way what 40 years of unbridled consolidation and lax merger enforcement mean.”

#### Goes both ways AND links to net benefit

2NC Posner 10 – Judge in the U.S. Court of Appeals for the Seventh Circuit, Senior Lecturer at the University of Chicago Law School

Richard A. Posner, “Regulation (Agencies) versus Litigation (Courts): An Analytical Framework,” Regulation vs. Litigation: Perspectives from Economics and Law, National Bureau of Economic Research, Inc., 2010, https://ideas.repec.org/h/nbr/nberch/11956.html

Ex ante: cons. Ex ante regulation narrows the information base because when it takes the form of rules, it buys precision at the cost of excluding case- specifi c information that the promulgators of the regulation either did not anticipate or excluded in order to keep the regulation simple (i.e., to keep it a rule). Standards (such as negligence) versus rules (such as a numerical speed limit) allow much more information to be considered in particular cases. In doing so, however, standards not only reduce predictability; they also, as noted before, veer into ex post regulation, because vague standards beget disputes that require litigation over alleged violations to resolve. In addition, ex ante regulation, like preventive care in medicine, can burden much harmless activity, such as safe driving in excess of the speed limit. (Compare screening the entire population for medical conditions that afflict only a few people.) This is related to the fact that rules exclude relevant circumstances for the sake of clarity. When ex ante regulation takes the form of licensure rather than merely prohibition—compare a requirement of a building permit to a speed limit— costs of compliance may soar, along with an increased risk of bribery if the permit is highly valuable.

## AT: DA---Mergers

### 1AR---L---Siloed

### 1AR---Thumper---Shipping

#### Thumper threshold is low---even showing up to the fight causes their impact.

Sorkin et al. 21, \*Andrew Ross Sorkin is a columnist and the founder and editor-at-large of DealBook; \*Jason Karaian is the editor of DealBook, based in London; \*Sarah Kessler is a senior staff editor for DealBook and the author of “Gigged,” a book about workers in the gig economy; \*Stephen Gandel is a news editor for DealBook. He was previously a senior reporter for CBS News, and a columnist at Bloomberg; \*Michael de la Merced joined The Times as a reporter in 2006, covering Wall Street and finance; \*Lauren Hirsch joined the New York Times from CNBC in 2020, covering business, policy and mergers and acquisitions; \*Ephrat Livni reports from Washington on the intersection of business and policy for DealBook; (July 27th, 2021, “Biden’s Antitrust Team Talks Its Way to a Win”, https://www.nytimes.com/2021/07/27/business/dealbook/aon-deals-antitrust.html)

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And even if the government doesn’t win every case it brings, the signals it sends about scrutinizing mergers more closely [have been received by deal makers](https://www.bloomberg.com/news/articles/2021-07-26/deal-boom-under-threat-in-washington-after-aon-willis-deal-dies?srnd=deals), who are otherwise having a very busy year. (One of the [busiest on record](https://www.reuters.com/business/media-telecom/global-markets-ma-2021-06-04/), in fact.)

### 1AR---Thumper---Shipping Compliance

#### New compliance teams have been created to hold shippers accountable

Schuler 7-20, is editor of gCaptain.com. (Mike, 7-20-2021, “U.S. Regulator Steps Up Scrutiny of Ocean Carriers’ Detention and Demurrage Practices,” gCaptain, https://gcaptain.com/u-s-regulator-steps-up-ocean-carrier-scrutiny-related-to-detention-and-demurrage/)

The U.S. Federal Maritime Commission is stepping up its scrutiny of ocean carriers by establishing a new audit program and dedicated team to assess carrier compliance with the agency’s rule on detention and demurrage. The “Vessel-Operating Common Carrier Audit Program” was officially established Monday at the direction of FMC Chairman Daniel B. Maffei. It will launch immediately. The audit program will analyze the top nine carriers by market share for compliance with the Commission rule interpreting 46 USC 41102(c) relating to detention and demurrage practices in the United States. The FMC said of the nine largest carriers (Maersk, MSC, CMA CGM, COSCO, Hapag-Lloyd, ONE, Evergreen, HMM and Yang Ming) will be audited irrespective of whether a formal or informal complaint has been filed. The FMC said it will work with companies to address their application of the rule and clarify any questions or ambiguities. Information supplied by carriers may also be used to establish industry best practices. Other areas of the audit process may include practices of companies related to billing, appeals procedures, penalties assessed by the lines, and any other restrictive practices. The audit comes just weeks after President Biden issued an executive order directing over a dozen federal agencies to take action to promote competition in the American economy and urge a crack down on anti-competitive practices. One of the initiatives in the order directs the FMC to take steps to protect American exporters from high costs imposed by ocean carriers and crack down on “unjust and unreasonable fees,” including detention and demurrage charges that have soared during the pandemic. Detention and demurrage charges are widely used in container shipping and are often unclear or ambiguous to shippers who pay them. The charges cover the use of shipping containers beyond a free time period and are applied to encourage timely pickup and return of cargo and equipment. D&D charges have gained a lot of attention at the FMC during the pandemic as imports have soared, disrupting cargo flows and creating equipment imbalances. In announcing the Executive Order, White House Press Secretary Jen Psaki noted that just three foreign-owned shipping alliances now control more than 80 percent of the market, contributing to a spike in shipping costs and fees during the pandemic and leaving exporters at mercy of large foreign companies. “The Federal Maritime Commission is committed to making certain the law is followed and that shippers do not suffer from unfair disadvantages,” said said Chairman Maffei. “The work of the audit team will enable the Commission to monitor trends in demurrage and detention practices and revenue, as well as to establish ongoing dialog between staff and carriers on challenges facing the supply chain. Of course, if the audit team uncovers prohibited activities, the Commission will take appropriate action. Furthermore, the information gathered by the audit process might lead to changes in FMC regulations and industry guidance if warranted.” Last week, the FMC and Department of Justice’s Antitrust Division signed an agreement to increase cooperation and communication in oversight and enforcement responsibilities of the ocean liner shipping industry. The agreement, a first between the FMC and DOJ, establishes a framework for the two agencies to continue regular discussions and review law enforcement and regulatory matters affecting competition in the shipping industry. The Audit Program announced today will begin with an information request establishing a database of quarterly reports allowing the FMC to assess how detention and demurrage is administered. Responses will be followed by individual interviews with the carriers. Lucille Marvin, the Commission’s Managing Director, will lead both the audit program and the audit team, which will initially be comprised of existing Commission employees.

### 2AC---Thumper---Shipping

#### Crackdown is happening and is expected---DOJ

Leonard 7-9, is a reporter at Supply Chain Dive. (Matt, 7-9-2021, “Biden takes aim at consolidation in ocean, rail with new executive order on increasing competition,” Supply Chain Drive, https://www.supplychaindive.com/news/biden-executive-order-ocean-rail-consolidation/603078/)

UPDATE: July 13, 2021: The FMC and DOJ Antitrust Division signed a Memorandum of Understanding Monday as the two agencies begin to work more closely on oversight and enforcement in the ocean freight market, according to an announcement from the FMC. "This memorandum between the Commission and the Department of Justice supplements and strengthens the FMC’s ability to detect, address, and pursue violations of the law or anticompetitive behavior by those we regulate," FMC Chairman Daniel B. Maffei said in a Monday statement. President Joe Biden will sign an executive order Friday that takes aim at corporate consolidation with the goal of increasing competition among businesses, according to a release from the White House. The wide-ranging order includes 72 initiatives and enlists more than a dozen agencies to fulfill its goals. It specifically calls on the Surface Transportation Board and Federal Maritime Commission to use their regulatory power to encourage changes within the heavily consolidated carrier market. When it comes to rail, the executive order points out railroads tend to own their tracks and prioritize their own freight. The order calls on the STB to require track owners to provide rights of way to passenger trains and strengthen requirements for fair treatment of freight companies. Separately, it orders the FMC to ensure that U.S. exporters aren't being charged "exorbitant" fees by carriers. Press Secretary Jen Psaki said Thursday it would have the FMC work alongside the Justice Department "to crack down on unjust and unreasonable fees" and anticompetitive behavior by carriers. The effort by the Biden administration to tamp down on the power of heavily consolidated transportation industries comes at a time when the international supply chain has been heavily strained by increased demand and myriad disruptions. In talking about the order, Psaki said that carriers have often used the power of their consolidation to force higher prices on shippers. "On domestic freight railroad, the executive order urges the Surface Transportation Board to ... allow shippers to more easily challenge inflated rates when there is no competition between routes," Psaki said. The order specifically calls out the practice of detention and demurrage. These fees charged by ocean carriers have levied controversy for years, leading to the FMC releasing guidance for the industry last year. But the supply chain has become increasingly congested over the last 16 months, leading to increased dwell time in ports, which exacerbates the issue of detention and demurrage fees for shippers, experts have said. And while increased dwell time means that the fees are becoming more common, a recent report from Container xChange found they're also getting more expensive. The FMC is already investigating reports that carriers aren't following the guidance issued last year. "In recent months, we have increased our scrutiny of the ocean carrier alliances to identify evidence of anticompetitive behavior regarding rates and capacity, and we will continue to do so as the COVID-19 and import surge crisis continues. We welcome the assistance and cooperation from other agencies, including the Department of Justice," FMC Chairman Daniel B. Maffei said in an emailed statement Friday. On detention and demurrage, Maffei said, "it remains a top priority of the agency to identify and take action against those who flout the Commission’s recent interpretive rule on reasonable regulations and practices." Gerald A. Morrissey, a partner at Holland & Knight, said the order likely won't provide any new powers to the FMC or STB, but have the agencies work with the regulatory frameworks they already operate under. Morrissey pointed out that the agencies are given their powers by Congress. He noted that the order outlines support for the STB and FMC "to do all that they can." "And I would expect that that means, you know, all that they can under existing authority," Morrissey said. Psaki pointed out that the ocean shipping industry has become increasingly consolidated within three major alliances. While not named in the order the alliances are 2M, THE Alliance, and Ocean Alliance. And none of the carriers that operate in them are U.S. companies. But Morrissey said the U.S. government is still able to regulate their business under the Shipping Act. This act requires carriers to act with reasonable practices and prevented them from boycotting, he said. "​So there are a number of protections," he said. "It does apply to them, despite that they may be located or headquartered in other countries." One aspect of the trade that the U.S. can't regulate is rates. The government once had this power, but deregulation of the industry changed that, Mo1Arrissey said.

### 2AC---Antitrust Thumper---Generic

#### Antitrust fervor is at an all-time high---thumps.

Zanfagna 9/7/21, \* [Gary Zanfagna](https://www.paulhastings.com/professionals/garyzanfagna) is an antitrust and competition partner at Paul Hastings LLP; (September 7th, 2021, “Antitrust isn't headed to an inflection point; it's already there”, https://thehill.com/opinion/judiciary/571087-antitrust-isnt-headed-to-an-inflection-point-its-already-there)

The truth is most companies have not had to think too much about antitrust regulations. The basic rules are pretty well known. But that is potentially changing quickly as antitrust concerns focus on not only high-tech companies, but businesses across the economy, from startups to global conglomerates. It means antitrust is at an important inflection point. Changes are occurring at multiple levels---from [rule reform](https://www.klobuchar.senate.gov/public/_cache/files/e/1/e171ac94-edaf-42bc-95ba-85c985a89200/375AF2AEA4F2AF97FB96DBC6A2A839F9.sil21191.pdf) to [new applications](https://www.hawley.senate.gov/senator-hawley-introduces-trust-busting-twenty-first-century-act-plan-bust-anti-competitive-big) of existing rules to [increased enforcement](https://www.klobuchar.senate.gov/public/index.cfm/news-releases?ID=A4EF296B-9072-4244-90AF-54FE43BB0876). Some of these changes are a reflection of the economic upheaval ushered in by the digital economy, which has prompted businesses and governments to look to antitrust rules to solve their problems. Witness [President Biden](https://thehill.com/people/joe-biden)’s [July 9 executive order](https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/) whose 72 provisions include requests ranging from asking the FCC to reinstate net neutrality rules to directing the FDA to issue rules to allow more competition in the hearing aid market. It’s a reflection of a general zeitgeist whose goal is to slow the onslaught of consolidation in technology across industries, from news media to healthcare to agriculture. And it’s gathering momentum as new rules are being proposed from both sides of the aisle. Many look to the 449-page [“Investigation of Competition in Digital Markets”](https://www.nytimes.com/interactive/2020/10/06/technology/house-antitrust-report-big-tech.html?action=click&module=RelatedLinks&pgtype=Article) report from the judiciary committee on antitrust as the opening salvo. The report took aim at Amazon, Apple, Facebook, and Google, outlining how those once scrappy startups now leverage their market position in ways not seen since “the era of oil barons and railroad tycoons.” The judiciary report’s conclusion: prevent big tech from acquiring smaller tech with tougher policing---and reform antitrust laws. Both Democrats and Republicans have since voiced their support for such ideas. Aimed at the seemingly intractable challenges of the digital era, Sen. [Amy Klobuchar](https://thehill.com/people/amy-klobuchar)’s (D-Minn.) “[Antitrust Law Enforcement Reform Act”](https://www.congress.gov/bill/117th-congress/senate-bill/225/text) would create barriers to prevent consolidation across industries, not just in tech, but in any business that might be connected to “dominant digital platforms.” The legislation would have a prescriptive force, creating a presumption against certain mergers, whether they be in biotech or burgers. Meanwhile, on the Republican side, Sen. [Josh Hawley](https://thehill.com/people/joshua-josh-hawley) (R-Mo.) has rolled out a bill that looks even more severe, blocking some mergers and acquisitions outright. The [“Trust-Busting for the Twenty-First Century Act”](https://www.hawley.senate.gov/senator-hawley-introduces-trust-busting-twenty-first-century-act-plan-bust-anti-competitive-big) would ban any acquisitions by companies with a market cap of more than $100 billion. The act would also make it easier for the FTC to classify a company’s behavior as anti-competitive, and then extract penalties (including profits) based on that behavior. And it’s not just the Federal government. Several states have proposed their own legislation to prevent and punish what they see as anti-competitive behavior. Arizona narrowly passed initial legislation that would prevent app store operators, specifically Apple and Google, from forcing developers to use their payment systems. Meanwhile in New York State, the [Twenty-First Century Anti-Trust Act (S933)](https://www.nysenate.gov/legislation/bills/2019/s8700/amendment/a) includes a first-of-its-kind state merger notification of any deal in which the buyer would end up with more than $8 million in assets of the target. It would also create an “abuse of dominance” offense and give the N.Y. attorney general rulemaking authority---whether or not the company was based in New York. These proposals have a long way to go before becoming law, but they demonstrate potentially significant antitrust adjustments coming. Expanding antitrust view The ripple effects will be profound, affecting transportation, communications, banking and healthcare companies. Incumbents looking to diversify their business are vulnerable, as are startups looking for profitable partners. Unhappy competitors who feel stymied may look to antitrust rules for remediation. And private equity moves to consolidate fledgling, fragmented industries will face tougher questions about overlap and industry concentration. So, we are going to see antitrust being used in industries and in ways that haven’t been considered in many years, with views about market concentration expanding to encompass what used to be considered diverse or vertical markets. In fact, both Sen. Klobuchar’s and Sen. Hawley’s proposals specifically target consolidation across industries. Sen. Hawley’s $100 billion ban explicitly targets vertical acquisitions. It would certainly prevent deals like Facebook’s acquisition of WhatsApp or Google’s purchase of Fitbit.

### 2AC---Antitrust Thumper---Apple

#### Apple case thumps---it’s politicized, and has ripple effects across antitrust.

Albertgotti 9/10/21, \*[Reed Albergotti](https://www.washingtonpost.com/people/reed-albergotti/), Washington Post; (September 10th, 2021, “Judge’s ruling may take a bite out of Apple’s App Store, but falls short of calling the iPhone maker a monopolist”, https://www.washingtonpost.com/technology/2021/09/10/apple-epic-decision-judge-market-monopoly/)

A federal judge fundamentally altered Apple’s App Store business model on Friday in a landmark ruling that accused the iPhone maker of illegal anticompetitive behavior and is likely to have ripple effects across the U.S. antitrust landscape. In a decision on an antitrust lawsuit brought by Fortnite maker Epic Games, U.S. District Judge Yvonne Gonzalez Rogers ruled that Apple must allow app developers to “steer” customers to alternatives to the tech giant’s payment processing service, which collects a 30 percent fee on most digital transactions. That was previously not allowed by the company, and marks a major victory for developers which have long complained of the tight grip the tech giant holds over its App Store on the roughly one billion iPhones currently in use. [The blockbuster trial between Apple and the maker of ‘Fortnite’ goes out with a ‘hot tub’ session](https://www.washingtonpost.com/technology/2021/05/24/apple-epic-trial-hot-tubbing/?itid=lk_interstitial_manual_5) Gonzalez Rogers also found that Apple was in violation of California state competition laws because of the way it forces developers into using Apple’s payment processing service without allowing them to tell customers there are alternatives, which are often cheaper. She stopped short of ruling in favor of Epic‘s claims that Apple is a monopolist, although she left the door open by suggesting more evidence could have changed her decision. “The court does not find that it is impossible; only that Epic Games failed in its burden to demonstrate Apple is an illegal monopolist,” she wrote. Epic spokeswoman Elka Looks said the company plans to appeal the ruling. Tim Sweeney, chief executive of Epic, said in a tweet that, “Today’s ruling isn’t a win for developers or for consumers.” Apple did not respond to requests for comment. The ruling, one of the first major legal actions taken against a tech giant in a new era of antitrust scrutiny, is sure to echo loudly both in Washington, where a legislative effort to rein in the power of Big Tech is underway, and in the courts, which are facing the biggest test of existing antitrust laws in decades. Tech giants have come under the microscope in recent years as it became clear that current antitrust law does not effectively address their power, and regulators and lawmakers have been pushing to change that.

### 2AC---Antitrust Thumper---Biden

#### Biden executive order outweighs.

Posner 21, professor at the University of Chicago Law School (Eric, 7-21-2021, "The Antitrust War’s Opening Salvo", Project Syndicate, <https://www.project-syndicate.org/commentary/biden-antitrust-executive-order-what-it-does-by-eric-posner-2021-07>)

CHICAGO – US President Joe Biden’s new executive order on “Promoting Competition in the American Economy” is more significant for what it says than for what it does. In fact, the order doesn’t actually order anything. Rather, it “encourages” federal agencies with authority over market competition to use their existing legal powers to do something about the growing problem of monopoly and cartelization in the United States. In some cases, the relevant agencies are asked merely to “consider” ramping up enforcement; in others, they are directed to issue regulations, but the content of those regulations remains largely up to them. Nonetheless, it would be a mistake to dismiss the order’s tentative language as mere rhetoric. Antitrust is the main body of law governing market competition in the US, and it has been the object of sustained attack by business interests and conservative intellectuals for more than 50 years. Biden is the first president since Harry Truman to take a strong public [anti-monopoly stand](https://www.project-syndicate.org/commentary/new-brandeisians-antitrust-for-big-tech-by-eric-posner-2021-06), and he has backed it up by [appointing](https://www.politico.com/news/2021/07/20/biden-picks-doj-antitrust-chief-500310) ardent anti-monopoly advocates to his government. The executive order is ambitious in its scope and style. In strongly worded passages, it accuses businesses of monopolistic and unfair practices in major industries, including technology, agriculture, health care, and telecommunications. It laments the decline of government antitrust enforcement, and identifies numerous harms that have resulted – including economic stagnation and rising inequality. The order also establishes a new bureaucratic organization in the White House to lead the anti-monopoly effort. Demanding a “whole-of-government” approach, it calls on the vast resources of numerous agencies, and not just the two that traditionally oversee antitrust (the Department of Justice and the Federal Trade Commission).

### 1AR---I/L---Mergers

#### Mergers cause price-gouging and diminish efficiency.

Pierce 16, \*Bruce A. Blonigen is the Philip H. Knight Professor of Social Science and Associate Dean for the Social Sciences at the University of Oregon. \*Justin R. Pierce is an economist at the Federal Reserve Board of Governors; (November 15th, 2016, “Mergers May Be Profitable, but Are They Good for the Economy?”, https://hbr.org/2016/11/mergers-may-be-profitable-but-are-they-good-for-the-economy)

The last couple of years have seen [record levels](http://www.wsj.com/articles/merger-deals-set-monthly-record-even-as-election-looms-1477614934) of merger and acquisition (M&A) activity but also [increasing concern](https://www.whitehouse.gov/sites/default/files/page/files/20160414_cea_competition_issue_brief.pdf) about industry concentration and its negative effects. And while much has been written to speculate about whether mergers improve or harm economic welfare, there is little empirical evidence supporting either side of the argument. In recent research, we provide new evidence that while mergers may raise profits, many fail to deliver efficiency gains that could increase overall prosperity.

Firms engage in mergers because they see a profitable opportunity. If profits rise due to lower costs — through higher productivity or economies of scale, for example — the result can be lower prices for consumers and improved overall economic welfare. However, if increased profitability comes from greater concentration of market power within a firm and if firms use that power to mark up prices, then the net effect on welfare can be negative.

While these concepts are relatively intuitive, measuring what occurs after mergers take place presents obstacles that have limited systematic study of their effects on efficiency and market power.

In a recent [working paper](https://ideas.repec.org/p/fip/fedgfe/2016-82.html), we directly confront these challenges and provide new evidence for the effects of mergers on efficiency and market power across a relatively broad set of industries in the economy. Our study looks at all U.S. manufacturing plants from 1997 through 2007, an important and diverse sector of the U.S. economy where we can get detailed data on plant operations and that is responsible for about a quarter of all U.S. M&A deals. We are able to overcome the difficulty of disentangling efficiency effects from market power effects by using new empirical techniques that help our statistical analysis more closely approximate an experiment.

On average, we find that mergers do not have a discernible effect on productivity and efficiency. Specifically, we do not find evidence for plant-level productivity changes, nor do we find evidence for the consolidation of administrative activities that is often cited as a way in which mergers yield lower costs through economies of scale. We also don’t find evidence that merged firms are more likely to close down less-efficient plants. By contrast, we find substantial average increases in the amount that firms mark up prices over cost following a merger, ranging from 15% to over 50%, depending on the control group we use.

While we are limited in the degree to which we can examine differences across the sample, due to the confidential nature of our data, we are able to examine differences in merger effects between horizontal mergers (involving firms in the same industry) and other types. Theory suggests that the market power effects of mergers are likely to be largest for horizontal mergers. Consistent with this, we find that increases in price markups are higher in horizontal mergers. By contrast, when we look at nonhorizontal mergers, we find little evidence of price markups and even find some positive effects on plant-level productivity.

As always, further study is needed. But our research raises doubts about the ability of mergers to drive productivity, particularly when two firms in the same industry merge. In such cases, companies may well profit, but not necessarily in ways that improve the economy overall.

#### And, a vast majority fail.

Lande 20, \*Robert H. Lande is Venable Professor of Law, University of Baltimore School of Law; Sandeep Vaheesan is Legal Director at the Open Markets Institute; (2020, “Preventing the Curse of Bigness Through Conglomerate Merger Legislation”, <https://scholarworks.law.ubalt.edu/cgi/viewcontent.cgi?article=2104&context=all_fac>)

B. Shareholders of the Resulting Firm Often Suffer Significant Losses

A final basis for rejecting any general claims that mergers are generally desirable is that many empirical examinations of the results for shareholders show that on average the buyer and its investors suffer losses, not gains. In 1992, a major study, covering more than thirty years of mergers among publicly traded companies, reported that the surviving firm on average lost about ten percent of its value over a period of five years.150 Another group of researchers reported that the acquired businesses tended to suffer reduced profitability and loss of market position.151 In 2012 alone, publicly held companies wrote off $51 billion dollars because of bad mergers.152

Other research is consistent with these findings. A comparison of successful buyers to the losing bidder in a corporate buyout found that the buyers had worse results over time than the unsuccessful bidders.153 In 2010 McKinsey reported: “Anyone who has researched merger success rates knows that roughly 70% of mergers fail.”154 An article in the Harvard Business Review observed that “study after study puts the failure rate of mergers and acquisitions somewhere between 70% and 90%.”155 The basic point being that buyers have a tendency to overpay and not to realize the gains that they claimed to expect. Even the co-author of a leading article claiming acquisitions resulted in significant premiums for the buyer subsequently recanted and conceded that there were “significant negative returns . . . following a merger.”156

Thus, measured by stock market results most large mergers are not in fact very helpful to the development of economic efficiency, innovation, or other consequences that are desirable from the perspective of the public interest. It follows that stronger anti-merger legislation does not create a significant risk of substantial loss of desirable economic outcomes.

Mergers’ “disappointing results are . . . consistent with the repeated observation that many motivations for merger are largely disconnected from achieving economic efficiency despite what the promoters may assert in securities filings and press briefings.”157 A “publicly held corporation faces very substantial agency problems.”158

The shareholders are largely powerless when ownership is widely dispersed. The board of directors, the agent of the shareholders, is usually under the control of management, which in turn can shape both buying and selling decisions to serve its strategic interests. Moreover, third parties, takeover funds, legal and financial advisers, can and do reap benefits from promoting such transactions even when the result for the enterprise is negative. Hence, many major mergers arise from motivations unrelated to increased efficiency.159

For all these reasons the purchase and sale of large corporations does not consistently advance desirable economic results. These results should encourage Congress to seriously consider new anti-merger legislation.

### 1AR---AT: Tech Leadership

#### Economic strength controls tech leadership

Magnus 21, is an associate at the China Centre at Oxford University, a research associate at the School of Oriental and African Studies, and former chief economist of UBS. (George, 3-3-2021, “Economics, National Security, and the Competition With China,” War on the Rocks, https://warontherocks.com/2021/03/economics-national-security-and-the-competition-with-china/)

Bookended by the global financial crisis and the COVID-19 pandemic over the last 13 years, the world has been presented with a third existential shock that is the defining drama of these early decades of the 21st century: a more truculent and assertive China. Once viewed by liberal-leaning democracies simply as a formidable consumer and feisty competitor, China has also grown and changed over the last decade to become an economic and national security adversary with which the United States has locked horns in ideological and strategic competition. Economic and financial rivalry between Beijing and Washington is now commonplace in industry, investment, information systems, and innovation, all the more so in the wake of vulnerabilities, including high levels of economic interdependence, exposed by the pandemic. These have raised anxiety about what needs to be done to strengthen America’s economic system and national security. Yet, China worries about these things too, and for good reason. Its economic outlook and prospects are not only very different from the past in this new environment, but also much more nuanced than the formal narrative suggests. Indeed, the China drama includes a major paradox. The authoritarian and rigid nature of its governance system---with no rivals to President Xi Jinping or succession plan---is simultaneously the biggest threat to the global order and China’s biggest fault line. The United States needs to be aware of and responsive to both, as President Joe Biden---like his predecessor Donald Trump---places geopolitical competition with China at the forefront of U.S. foreign policy. Two Sides of the Same Coin In a bipartisan manner, the United States has now embraced the interrelationship between economics and national security in its bilateral relationship with China. The Biden administration, for instance, has continued Trump-era rules that target Chinese technology firms deemed a threat to U.S. supply chain security. While Washington’s national security establishment may have opposed Trump on many policies, it would find few detractors to the administration’s 2017 National Security Strategy, especially the chapter titled “Pillar II: Promote American Prosperity,” which was subtitled “Economic security is national security.” In War on the Rocks, Eric Sayers has recently reviewed the strategic competition between the United States and China, while James Mulvenon has considered it more specifically through the lens of technological nationalism. As 2021 matures, the Biden administration will likely focus on a domestic policy agenda, spanning the economy and infrastructure, key industrial sectors, technology and innovation, education, and military preparedness. In its foreign agenda, as already promised, attention will be given to strengthening alliances, especially in Asia. China will also be paying attention to its own security agendas. At the National People’s Congress beginning March 5, it will unveil details of the new 14th Five Year Plan (2021 to 2025), which, for the first time, will have a stand-alone section on national security. Communist Party leaders revealed late last year that the plan would span not just military but also economic, financial, and technological security. Under Xi, though, China’s concept of national security could not be more different from that of the United States and other liberal-leaning democracies. National security is indistinguishable from the security of the Chinese Communist Party’s control and rule, and in turn, from the security of Xi. All other forms of security, which include food, jobs, technology and self-reliance, the domestic economy, social stability, and the environment, are important in their own right but are also integral to the bigger political objective. Outside of these areas, territorial integrity---covering Hong Kong, Tibet, Xinjiang, and the “renegade province” of Taiwan, is a core Communist Party interest---while Xi has stated more broadly that: We must concentrate our efforts on bettering our own affairs, continually broadening our comprehensive national power, improving the lives of our people, building a socialism that is superior to capitalism, and laying the foundation for a future where we will win the initiative and have the dominant position. Fusion of Economics and National Security Globalization, high levels of economic and supply chain interdependence, and China’s economic growth have ensured that economics and national security are and will remain inextricably linked. Contemporary power relations are far more complex than we remember during the Cold War, even if the economic complexity was not as apparent at the time. China’s relative economic size and significance far exceed the Soviet Union, which was at most about a quarter the size of the United States. According to the International Monetary Fund’s calculations, China’s gross domestic product (GDP) is already about $4 trillion larger than that of the United States in so-called purchasing power parity terms, which is a way of measuring economic welfare to take account of lower prices and sometimes undervalued exchange rates in emerging nations. Yet, this measure is of little or no relevance for the economic significance of countries in the global system or for geopolitics. No one has an account or transacts in purchasing power parity. In market terms, which is the better comparison, China’s GDP is about two-thirds that of the United States, and some economists expect it will overtake the United States by the end of this decade, though whether this amounts to more than bragging rights, if and when it happens, is a good question. Nevertheless, China’s economic heft is unquestionably the platform on which its global ambition is based. China is the only emerging country to have materially lifted its share of world output, from about 3.5 percent in 2000 to almost 18 percent by 2020 (or by a factor of 12 in U.S. dollar terms to about $14.8 trillion). Rising GDP levels mean that current military spending at just under 2 percent of GDP---and research and development spending by the government and corporations at a little over that level---deliver a lot more quantity over time, even if the effectiveness of that spending can be judged only in the context of the quality of the spending as well as the amount. For now, though, China’s growing economic weight in the world economy is what has propelled economic issues to the heart of geopolitics. The American thinker Edward Luttwak once alluded to America’s trade disputes with Europe and Japan in the 1970s as the “logic of conflict in the grammar of commerce,” and Sino-Western trade and commercial relations have underscored this with some serious feistiness and frisson. Better balanced bilateral trade may have been the Trump administration’s original flawed goal back in 2017. As I explained in my book Red Flags: Why Xi’s China Is in Jeopardy, the objective was faulty because it is not possible to manage bilateral trade balances effectively, and overall trade balances are determined by savings and investment, not by tariffs. But today’s grammar of commerce is overly expansive, and embraces everything from export controls and close scrutiny over foreign direct investment, to entity lists of companies forbidden to sell or trade certain products. Moreover, disputes over industrial policies and corporate governance, different standards and protocols for advanced technologies and communications systems, internet access, data gathering, and cyber security are all up for grabs in the current Sino-American economic competition. The U.S. government, for example, has used its own more than 300-strong entity list to restrict or ban the sale of certain types of semiconductors without a license, especially where there are links to the People’s Liberation Army or to the repression in Xinjiang. China’s biggest and most advanced semiconductor manufacturer Semiconductor Manufacturing International Corporation, the drone maker DJI, and dozens of other Chinese firms and universities are affected, including construction firms militarizing disputed islands in the South China Sea. Moreover, it was recently reported that China was considering export controls on rare earth metals, of which it controls 80 percent of the world’s supply. Officials were examining if and how restrictions might affect the U.S. defense industry, especially the manufacture and maintenance of F-35 fighter jets and other sophisticated weaponry and their intricate electrical power systems and magnets. Lockheed Martin (maker of the F-35), Boeing, and Raytheon have all previously been in the crosshairs of China’s Foreign Ministry for selling arms to Taiwan. There is cause for some concern that the imposition of export controls on rare earth materials would deprive buyers of important resources, but such concern is measured. China may account for the bulk of rare earth metals output, but it has only 37 percent of global reserves. The United States has its own deposits, as do Canada, India, South Africa, Japan, and Brazil. But many nations prefer to buy cheaper in China, in effect outsourcing the environmental costs of processing them. China banned rare earth exports to Japan in 2010 because of a row over disputed islands, but Tokyo was quickly able to reestablish a new supply chain, neutralizing the ban. Finance and National Security The U.S. dollar financial system is a big deal in geopolitics. Indeed, financial power and political power are as intertwined and significant for the United States as they were for imperial Britain and Spain and Renaissance Italy. There are both costs and benefits for the United States in having the world’s principal reserve currency, but it certainly allows Washington to run external deficits without fuss, and use leverage and sanctions in international financial transactions. The Austrian-born U.S. economist Joseph Schumpeter once wrote, “the monetary system of a people reflects all that the people wants, does, endures, is and … exercises a significant influence upon its economic activity and its destiny in general.” Seen this way, the monetary system itself is existential, and one can see why China sees it this way too, because a yuan-based system would bring status and influence. Just over a decade ago, the financial crisis that lay waste to Wall Street and the Western economic model proved to be the catalyst to persuade Beijing that the U.S. dollar’s era of dominance was over. China has no choice but to use U.S. dollars for the bulk of its trade and investment transactions, but it doesn’t like to be subject to an effectively U.S.-controlled monetary system. Its rhetoric is therefore to move away from a U.S. dollar-centric system while being unable to do much about it. The People’s Bank of China, under the direction of the State Council, and Chinese and international banks embarked on a significant campaign to internationalize the renminbi, literally “the people’s money,” or more colloquially the “redback.” It was a feisty call, and one that has neither aged well nor had much substance. Even though Beijing is opening the door selectively to American financial services companies to gain access to U.S. dollars and American know-how, financial decoupling is occurring in several ways, as the integration of American and Chinese capital markets is coming under scrutiny. Financial sanctions have been implemented against Chinese officials and firms, federal pension funds have been banned from investing in Chinese stocks, Trump signed an executive order banning U.S. investments in 31 Chinese firms tied to the People’s Liberation Army, and over 200 Chinese firms listed on U.S. exchanges have been given limited time to finally comply with U.S. accounting standards or be delisted. Washington has set up a bureaucratic infrastructure to oversee the economic decoupling with Beijing. The Commerce Department’s Bureau of Industry and Security, which oversees technology and export controls, is a key player. The Treasury’s Office of Foreign Assets Control administers sanctions, including on individuals and entities in Xinjiang and Hong Kong. The longer established interagency Committee on Foreign Investment in the United States polices foreign direct investment. Now, under the Foreign Investment Risk Review Modernization Act, it has a wider brief to review a variety of deals, especially involving high technology. Finally, the Justice Department’s National Security Division authorizes criminal prosecutions in the event of theft of trade secrets and intellectual property. The Chinese government still holds at least $1 trillion of U.S. financial assets, and almost certainly more that is not recorded officially and held in offshore financial centers. Thankfully, this is a weapon it would be foolish to use. Wholesale liquidation of its U.S. assets would trigger staggering losses that would hit China directly and antagonize Washington. While it is sometimes argued that China holds leverage over the United States by virtue of its ownership of U.S. securities, the reality is that China is condemned to increase its Treasury securities holdings for as long as it runs balance of payments surpluses, and there is no indication these will not persist. Beijing cannot seriously internationalize the renminbi or aspire to global reserve currency status because it doesn’t permit the only two mechanisms that can bring this about: running balance of payments deficits, or allowing open and free outward capital movements. Further, China is also part of a Belgium-based financial entity called the Society for Worldwide Interbank Financial Telecommunication in which 11,000 financial firms in over 200 countries receive payment to settle about $5 trillion of transactions each day. Three-quarters of payments are settled equally in U.S. dollars and euros, while the renminbi accounts for around 1.5 to 2 percent. The United States has the power to exclude participants from this system simply by refusing access to dollar clearing in U.S. banks. China is trying to develop its own version of this exchange, but to little noticeable effect. It also expects progress in developing a digital currency to possibly elbow the U.S. dollar aside but this is unlikely too, as reserve currencies rely not so much on technology but openness, convertibility, transparency, sophisticated markets, the rule of law, and trusted regulation. The U.S. dollar-based global financial system will continue to prevail for the foreseeable future.

#### Case outweighs---arms racing impact is too vague

Elsa Kania 18, Adjunct Fellow with the technology and national security program at CNAS, 4/19/18, “The Pursuit of AI Is More Than an Arms Race,” https://www.defenseone.com/ideas/2018/04/pursuit-ai-more-arms-race/147579/

However, the concept of an “arms race” is too simplistic a way to think of the coming AI revolution. To confront its challenges wisely requires reframing the current debates.

First and foremost, AI is not a weapon, nor is “artificial intelligence” a single technology but rather a catch-all concept alluding to a range of techniques with varied applications in enabling new capabilities. Just in the near term, the utility of AI in defense may include the introduction of machine learning to cyber security and operations, new techniques for cognitive electronic warfare, and the application of computer vision to analyze video and imagery (as in Project Maven), as well as enhanced logistics, predictive maintenance, and more.

Despite the active research and development underway, these technologies remain nascent

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and brittle enough that “fully autonomous” weapons (or even cars) are hardly imminent. Moreover, militaries – even those that care less about laws and ethics – may be unwilling to relinquish human control due to the risks.