# 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---AT: Trump

#### 2018 regulations were modest changes---that only affected tug boat operators

Longstreth & Scanlon 18, Partner and Practice Area Leader for Law Firm K&L Gates. (John & Michael, Dec 20, 2018, U.S. Maritime and Public Policy and Law Alert, <https://www.klgates.com/Recent-Amendments-to-the-Shipping-Act-A-Course-Correction-Not-a-Sea-Change-12-20-2018>)

Earlier this month, legislation amending certain Shipping Act prohibitions on anticompetitive conduct was enacted as part of the Coast Guard Authorization Act of 2018.[1] The legislation expands the enforcement powers of the Federal Maritime Commission (FMC), which administers the Act, and its authority to permit certain agreements only if they are consistent with the antitrust laws and the purposes of the Act. However, the Act is not intended to alter the current division of responsibility between the Department of Justice and the FMC for competition enforcement, and it thus maintains the FMC’s exclusive authorities under the Shipping Act and the limitation of the Justice Department’s authority to matters outside the FMC’s exclusive jurisdiction. The Act represents a modest course correction, rather than a sea change, in the current regulatory regime. THE NEW STATUTORY PROVISIONS The legislation adds two restrictions on negotiations or agreements by alliances and other joint carrier groups: a complete prohibition as to tug providers and a requirement that joint carrier negotiations and agreements with marine terminal operators (MTOs) for the purchase of certain port services comply with the antitrust laws and the purposes of the Shipping Act. The new legislation also augments the FMC’s regulatory powers to address agreements that lessen competition for covered MTO services, and it adds certain related reporting requirements. The legislation expressly provides that nothing in the Shipping Act’s prohibitions on concerted action, as amended, “shall be construed to limit the authority of the Department of Justice regarding antitrust matters.”[2] Increased Protections for Tug Operators and Providers of Certain Marine Terminal Operator Services The legislation expands the current provision of the Shipping Act prohibiting joint negotiations with non-ocean carriers unless they comply with the antitrust laws and the purposes of the Shipping Act,[3] by adding a new paragraph that applies the same prohibition and exception to joint negotiations and agreements for the purchase of certain marine terminal operator services.[4] The covered MTO services are defined to include vessel berthing or bunkering, loading or unloading cargo to or from a vessel to or from a point on a wharf or terminal, and positioning, removal, or replacement of buoys related to the movement of the vessel.[5] A new paragraph prohibits, without exception, any joint negotiations for towing or tug services.[6] These new provisions are intended to address a problem perceived by some tug operators and marine terminal operators, that increasingly large carrier alliances might exercise undue market power in negotiating agreements with them. Ironically, many tug operators themselves have monopolies in their service areas. The flat prohibition on negotiations with tug operators mirrors the flat prohibition on joint negotiations with non-ocean carriers in the Shipping Act before the 1998 Ocean Shipping Reform Act (OSRA) amendments. That prohibition was loosened in 1998 to allow joint carrier negotiations and agreements with non-ocean carriers if consistent with the antitrust laws and the purposes of the Shipping Act. That looser restriction was the model for the new provision on negotiations for covered MTO services, and only tug providers are now protected by a flat prohibition on joint carrier negotiations. Increased FMC Enforcement Authority Some corresponding changes in the FMC’s enforcement powers have been added as well. The Commission is expressly given the power to reject an agreement “likely to substantially lessen competition in the purchasing of certain covered [MTO] services,” and to consider any relevant competition factors in making that determination, including “the competitive effect of agreements other than the agreement under review.[7] The Commission must also include in its annual report an analysis of any impacts on competition for the purchase of covered MTO services by carrier alliances, and a summary of any corrective actions taken.[8] Miscellaneous Provisions The Commission is given the express authority to require reports and records from MTOs and their officers and agents.[9] The Commission is also directed, when publishing notice of any agreement filed with it for review, to ask that interested persons submit information and documents.[10] Various transparency provisions are added for Commission meetings.[11] Ocean transportation intermediaries must be licensed to advertise and hold out to provide services, as well as to actually provide them, but need not be licensed and bonded to act as the disclosed agent of another intermediary.[12] Finally, the Commission is authorized to preclude a carrier from participating simultaneously in a rate discussion agreement and an agreement to share vessels in the same trade if that is likely by a reduction in competition to unreasonably reduce transportation service or increase transportation cost.[13] PRESERVATION OF THE RESPECTIVE ROLES OF THE FMC AND THE JUSTICE DEPARTMENT IN COMPETITION ENFORCEMENT The new legislation makes only modest changes to the Shipping Act’s regulation of competition, and it does not affect the general proposition that conduct is within the FMC’s exclusive jurisdiction if it is under a filed and effective Shipping Act agreement, or if there is a reasonable basis to conclude it is under such an agreement or is exempt from filing.[14] The legislation does, however, confirm the FMC’s authority to assess whether joint carrier negotiations for covered MTO services are consistent with the antitrust laws. As noted previously, a similar provision has been in place for non-ocean carriers since 1998, although it does not appear to have been construed, and no issue about the FMC construing the antitrust laws appears to have been raised when this provision was enacted.

### 2AC---AT: Biden

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

#### LIO is stable and won’t collapse now

Hirsh 19, Senior correspondent and deputy news editor at Foreign Policy. (Michael, 12-27-2019, “Why the Liberal International Order Will Endure Into the Next Decade,” Foreign Policy, https://foreignpolicy.com/2019/12/27/why-liberal-international-order-will-endure-next-decade-2020-democracy/)

It’s become fashionable to wonder whether the liberal international order can survive the malign forces that have been lining up against it during the 2010s—what the Wall Street Journal called the “Decade of Disruption.” But based on recent trends, it’s a fair bet that democracy, globalism, and open trade will endure handily into the third decade of the 21st century.

Start with the state of democracy. Nothing has been more alarming to internationalists than the one-two punch of U.S. President Donald Trump and British Prime Minister Boris Johnson, who have taken power in two of the world’s oldest and most important democracies by awakening the old demons of nationalism. With Trump focusing his ire on NATO and the World Trade Organization, and Johnson stalking out of the European Union, the two leaders have transformed the once-hallowed “special relationship” from a bulwark of global stability (sullied though it was by the Iraq War) into what looks more like a wrecking ball. Elsewhere, illiberalism has overtaken young democracies, such as Hungary and Poland, and even threatened mature ones with the rapid rise of nationalist parties such as the Alternative for Germany and Norbert Hofer’s anti-immigrant Freedom Party of Austria. In the world’s largest democracy, India, Prime Minister Narendra Modi and his Hindu nationalist Bharatiya Janata Party appear to be sending the same message. And there are considerable doubts about whether the democratic body politic possesses an immune system strong enough to fight off a plague of cyber-generated misinformation and disinformation, and systemic hacking by such autocrats as Russian President Vladimir Putin.

But democracy just won’t give up, and in 2019—which could justly be called the year of global protest—it kept reinventing itself at the grassroots. This has been happening in the most unlikely of places around the globe, in countries such as Iran, Lebanon, Iraq, Chile, and above all in Hong Kong, where thousands of determined protesters have braved bullets and tear gas, embarrassing Chinese President Xi Jinping even as he brutally consolidates his autocratic rule on the mainland. Perhaps the U.S. and British democracies are becoming decadent—and 2020 will tell us a lot about that question come November—but the idea of democracy remains a powerful, ever-replenishing urge that, as sociologists and political scientists have long told us, only gets stronger the more that income and educational levels increase around the world.

The international economy is also undergoing some severe stress tests—and surviving remarkably intact. The year 2019 began with deep-seated fears that Trump’s trade wars would help trigger a global recession—and among the most concerned was Federal Reserve Chairman Jerome Powell, who midway through the year suggested he and other central bank chiefs simply didn’t know how bad things could get. “The thing is,” Powell said, “there isn’t a lot of experience in responding to global trade tensions.” Growth and investment are still slowing due in large part to the uncertainty Trump has created, but fears of a recession have receded. It turns out the U.S. president cannot single-handedly return the United States to the days of Smoot-Hawley—even his fellow neonationalist Boris Johnson believes in free trade—and the domino effect of retaliatory tariffs that followed in the 1930s, setting the stage for world war. (In June 1930, under the Smoot-Hawley Act, the United States raised tariffs to an average of 59 percent on more than 25,000 imports; just about every other nation reacted in tit-for-tat protectionist fashion, severely depressing the global economy.)

Today, the complexities of a deeply integrated global economy and its supply chains may prove too much to undo—even for the most powerful person on the planet.

And what of the institutions of the international system? The United States has always had an uneasy relationship with its post-World War II progeny, principally the United Nations, the WTO, and NATO—despite helping create them—and Trump only gave expression to an American id that was long seething under the surface. True, Trump is demeaning these institutions to an unprecedented degree and demanding far more of them. But he’s only saying more stridently what was said by, say, President Barack Obama, who also criticized the NATO allies for being free-riders, and former President George W. Bush, whose administration privately mocked the alliance and sneered at the U.N. (Another little-remembered precursor to Trump was President Bill Clinton’s feisty first-term trade representative, Mickey Kantor, who once said he wasn’t interested in free-trade “theology” and preferred that Americans behave like mercantilists.)

Trump is making a serious run at denuding the WTO by taking down its appellate court, but even that institution is likely to outlast a 73-year-old president who, at most, has only four more years in office to wreak havoc on the global system. This is especially likely because he is now mostly alone in his anti-globalist passion with the departure of his deeply ideological national security advisor, the militant John Bolton.

Let’s not forget either that the advent of Trump and Johnson represents a legitimate backlash to major policy errors made by the elites who have dominated the international system. George W. Bush led the Republican Party badly astray with his strategically disastrous Iraq War and fecklessness over the deregulation of Wall Street, which set the stage for the biggest financial crash since 1929 and the Great Recession. That turned voters off to traditional Republican thinking and opened the door to Trump’s unlikely takeover of the party. Something similar happened in Britain, when Bush’s partner in these neoliberal economic delusions and his ally in an unnecessary war, the once-popular Labour leader Tony Blair, set the stage for Labour’s eventual handoff to the socialist Jeremy Corbyn. (A shift that was, in turn, analogous to the ascent of Sen. Bernie Sanders, Sen. Elizabeth Warren, and the left inside the U.S. Democratic Party in response to the rise of Trump’s 2016 presidential rival Hillary Clinton, who was seen as pro-war and too friendly to Wall Street.)

But the larger point is that Trump and Johnson are only the latest stresses to a system that, since the end of the Cold War, has suffered some pretty major ones and yet endured. In the quarter-century since then, financial markets collapsed several times, and the global economy has remained intact. Islamist terrorists have struck at major capitals around the world, and a clash of civilizations hasn’t ensued. The world’s two largest economies, the United States and China, incessantly bicker, but they’re still doing business. Ivory tower realists continue to be dead wrong in their predictions that the international system will fall back into anarchy, even when politicians like Trump are doing their best to make that happen. On the realist view, the so-called West and its institutions should have disintegrated after the Cold War with the disappearance of the Soviet Union; as Owen Harries wrote in Foreign Affairs in 1993, “The political ‘West’ is not a natural construct but a highly artificial one. It took the presence of a life-threatening, overtly hostile ‘East’ to bring it into existence and to maintain its unity. It is extremely doubtful whether it can now survive the disappearance of that enemy.”

Instead, these international constructs only expanded—so rapidly and intensively that they generated a backlash. And that expansion is plainly still outpacing the efforts to block or destroy it, especially as we see other nations forging free trade deals behind Trump’s back. Above all, while plainly America’s stature as stabilizer of the international system has been seriously set back—first by Bush, most recently by Trump—there is some positive news even in the impeachment drama now underway. Although Trump is all but certain to be acquitted in the Senate, the impeachment vote in the House, following weeks of testimony by career U.S. diplomats, was a dramatic reaffirmation of traditional American values for fair dealing not just with Ukraine, but with all nations.

### 2AC---AT: Covid Defense

### 2AC---AT: Squo Solves

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

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

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

## ADV---Ports

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

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

## AT: T---Expand Scope

### 2AC---AT: Expand Scope

#### Counter Interpretation---prohibitions expand the scope

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.”

#### **Anticompetitive practices are strategies that have anticompetitive effects.**

Wells 16, Executive Notes Editor, Washington University Global Studies Law Review, J.D., Washington University in St. Louis. (Todd Wells, “Exploring the Space for Antitrust Law in the Race for Space Exploration,” Washington University Global Studies Law Review, Vol. 15, 2016, LexisNexis)

Antitrust law attempts to fight anti-competitive actions. "Anticompetitive practices refer to a wide range of business practices in which a firm or group of firms may engage in order to restrict inter-firm competition to maintain or increase their relative market position and profits without necessarily providing goods and services at a lower cost or of higher quality." The Organization for Economic Cooperation and Development, Glossary of Statistical Terms, Anticompetitive Practices http://stats.oecd.org.proxy.library.georgetown.edu/glossary/detail.asp?ID=3145. Obviously, with such a broad definition of anticompetitive practices, many types of actions can fall under the regulation of anticompetitive law. This can cover forms of collusion, price fixing, bid rigging, bid suppression, complementary bidding, bid rotation, subcontracting, and market divisions. Price Fixing, Bid Rigging, and Market Allocation Schemes: What They Are and What to Look For, U.S. Dep't of Justice, http://www.justice.gov/atr/ public/guidelines/211578.htm. An even broader approach would put patents under antitrust law. "All of these developments, in Congress and the Courts, are in the spirit of harmonizing patent and antitrust law, generally in the direction of subsuming patent law under antitrust law. From the perspective of providing clarity and certainty for those who are the targets of patent and antitrust suits, harmonization has much appeal." Robin Feldman, Patent and Antitrust: Differing Shades of Meaning,13 Va. J.L. & Tech. 1, 7 (2008).

## AT: CP---Notice & Comment

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

#### 3---Certainty perm: Do the CP and do the plan regardless.

Hickman 16, \*Kristin E., Harlan Albert Rogers Professor of Law, University of Minnesota Law School. \*\*Mark Thomson, Law clerk to the Honorable Ed Carnes, United States Court of Appeals for the Eleventh Circuit. (“Open Minds and Harmless Errors: Judicial Review of Postpromulgation Notice and Comment”, 101 Cornell L. Rev. 261, pg. 313-314, Available at: <https://scholarship.law.cornell.edu/clr/vol101/iss2/1>)

Second, as a matter of policy, placing the burden of proof on the challenging party risks undermining the APA’s procedural requirements for rulemakings. An agency is never required to adopt a particular version of a rule or act on particular comments.258 Indeed, no matter how much evidence a party marshals in support of a given rule, the agency is free to adopt the opposite rule, so long as it articulates some rational basis for doing so.259 Thus, except in the most unusual of cases—for example, if an agency were to concede expressly that it would have adopted a different rule had a party’s comments been before it—a claimant will never be able to carry the burden of proving that an agency’s failure to comply with § 553 affected the result of a rulemaking. Faced with such a claim, an agency wishing to establish harmlessness need only reply that it would have adopted the same rule irrespective of the procedures followed.260 Giving agencies such an easy “out” from prepromulgation notice and comment would dramatically reduce any incentive for agencies to comply with § 553, and the requirements in that section would become afterthoughts.261 To avoid that result—which is plainly contrary to Congress’s statutorily expressed preference for prepromulgation notice and comment—the agency, rather than the party challenging the rule, must be required to demonstrate the harmlessness of its failure to comply with § 553.

### 2AC---Deficit---Capture

#### Notice-and-comment leads to capture and strike down

Bagley 19, Professor of Law, University of Michigan (Nicholas, December 2019, "The Procedure Fetish," *Michigan Law Review* 118, no. 3, pg. 364-365)

More prosaically, the outsize participation of industry groups in notice and comment means that agencies will have a wealth of information at their disposal about the costs of agency rules and why, given certain facts about the industry, they won't accomplish very much. As Tom McGarity and Ruth Ruttenberg have shown, "industry cost estimates have usually been high, sometimes by orders of magnitude, when compared to actual costs incurred." 119 In contrast, regulatory beneficiaries often lack the resources, the technical know-how, and the industry-specific knowledge to contradict those estimates, leaving agencies to do the best they can with the information they have.120 An agency that lowballs cost estimates or is too bullish about a rule's benefits will face the ire of industry, which will (with some reason) argue in court that the agency has downplayed their concerns without adequate justification. In contrast, an agency that wishes to kill a rule or justify its refusal to move forward can cherry-pick from the data submitted by industry, all with little to fear from courts that are reluctant to second-guess agencies on technical matters.

### 2AC---!---AT: NB

### 2AC---Theory---Conditionality

## AT: CP---Regulation

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

#### Permutations:

#### 1---do both---the plan isn’t the DOJ or FTC so there is no net benefit

Varney et al. 20, \*Christine A Varney, Julie A North and Margaret Segall D’Amico are partners, and Molly M Jamison is an associate, at Cravath, Swaine & Moore LLP; (October 22nd, 2020, “Antitrust Remedies in Highly Regulated Industries”, https://globalcompetitionreview.com/guide/the-guide-merger-remedies/third-edition/article/antitrust-remedies-in-highly-regulated-industries#footnote-059)

Balancing remedies with regulation As discussed above, there is a wide range of approaches for merger review between antitrust authorities and specialised regulatory agencies. Given the range of different approaches, it is difficult to make generalisations across either agencies or industries. What is clear is that there are certain strengths and weaknesses to a dual merger review and remedy approach. On the one hand, the dual review system has been criticised for its purported inefficiency and added costs of concurrent reviews by two agencies.[[84]](https://globalcompetitionreview.com/guide/the-guide-merger-remedies/third-edition/article/antitrust-remedies-in-highly-regulated-industries#footnote-007) On the other hand, others have touted the importance of consistent antitrust review[[85]](https://globalcompetitionreview.com/guide/the-guide-merger-remedies/third-edition/article/antitrust-remedies-in-highly-regulated-industries#footnote-006) and the avoidance of agency capture that a dual review system can accomplish. So how should antitrust authorities approach mergers in highly regulated industries? Should Congress do away with dual review and grant exclusive merger review jurisdiction to the DOJ or FTC? Or should the regulatory agencies be responsible for merger review and remedies in their areas of expertise? A review of past practices suggests that there is not a single right answer to these questions. However, in the current landscape there are considerations that could mediate some concerns about inefficiency and cost. First, coordination between the relevant antitrust authority and regulatory agency can facilitate consistent outcomes and ensure that the appropriate remedies are ordered. The most common critique of having both antitrust and regulatory review of mergers is inefficiency. Having two federal agencies both expend time and resources reviewing mergers and imposing remedies is expensive for both taxpayers and the merging entities, and extends the time required to review transactions. Conflicting decisions – where one agency may approve a transaction while the other challenges it – also add to the risk of inefficiency. Better coordination and cooperation can mediate these concerns to an extent.[[86]](https://globalcompetitionreview.com/guide/the-guide-merger-remedies/third-edition/article/antitrust-remedies-in-highly-regulated-industries#footnote-005) As the American Antitrust Institute identified, increased cooperation should be a ‘high priority’, particularly in industries transitioning from regulated to a more competitive free market.[[87]](https://globalcompetitionreview.com/guide/the-guide-merger-remedies/third-edition/article/antitrust-remedies-in-highly-regulated-industries#footnote-004) Second, antitrust authorities should continue to use regulatory agencies’ strengths to the fullest extent possible to construct appropriate remedies. Regulatory agencies have expert knowledge of the industry and often have access to far more information on the market than the DOJ or FTC would be able to gather on their own. The DOJ and FTC have to rely on receiving information from parties, competitors and customers in the market. Such information is often limited in scope and time period. By contrast, regulatory agencies, such as the FCC and Federal Reserve, have access to information on the market spanning decades and are better able to access necessary information that can save antitrust authorities time and cost. Moreover, regulatory agencies already have the ability to monitor and oversee industry actors. Reliance on the regulatory agencies’ ability to monitor could resolve the frequent concerns about imposing conduct remedies and the use of long-term consent decrees.[[88]](https://globalcompetitionreview.com/guide/the-guide-merger-remedies/third-edition/article/antitrust-remedies-in-highly-regulated-industries#footnote-003) The ability to impose effective conduct remedies may reduce the DOJ and FTC’s reliance on the one-time fix of a structural remedy and open the possibility of more tailored remedies.[[89]](https://globalcompetitionreview.com/guide/the-guide-merger-remedies/third-edition/article/antitrust-remedies-in-highly-regulated-industries#footnote-002)

### 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

### 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---Expertise

## AT: CP---States

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

### 2AC---CP---Theory

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

#### State efforts are preempted

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

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

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

## AT: DA---Japan

### 2AC---UQ---Resilience

#### Alliance is resilient

Green 20, the senior vice president for Asia and Japan chair at the Center for Strategic and International Studies, and director of Asian Studies at the Edmund A. Walsh School of Foreign Service at Georgetown University. Jeffrey W. Hornung is a political scientist at the nonprofit, nonpartisan RAND Corporation. (Michael, “Are U.S.-Japan Relations on the Rocks?,” RAND, <https://www.rand.org/blog/2020/07/are-us-japan-relations-on-the-rocks.html>)

There is not cause for concern about Japan abandoning the alliance with the United States. Abe came back to power promising (PDF) a stronger U.S.-Japan alliance and has given no indication that he is abandoning that promise. Nor are any of the major political figures trying to replace him challenging the alliance relationship. Moreover, the growing threat from China means that Washington and Tokyo need each other more than ever. But the growing points of friction and uncertainty in the relationship carry negative consequences, particularly given that even though polls show that the Japanese public supports the alliance, they also reveal that trust in the United States and President Trump has dropped precipitously. And it sends the wrong message to Tokyo that the next U.S. envoy is cooling his heels waiting for confirmation.

### 2AC---AT: Link---Japan

#### No Link:

#### 1---Antitrust is already applied extraterritorially and Japan is onboard to reel in the shipping industry.

#### 2---Japan’s Fair Trade Commission agrees shipping should not be exempt from antitrust statues

JFTC 16, Japan Fair Trade Commission is the competition regulator in Japan. (February 2016, “Review of the System for Exemption from the Antimonopoly Act for International Ocean Shipping,” JFTC, https://www.jftc.go.jp/en/pressreleases/yearly-2016/February/160204\_files/160331.pdf)

Conclusion Firstly, as of this time, the existence and scope of the exemption from the antitrust laws in the US and the EU competition law in the EU are different for liners, and, unlike Japan, agreements on trampers are not regarded as the exemption from both the antitrust laws in the US and the EU competition law in the EU. Therefore, it is not necessary to make these agreements exempt from the AMA on the grounds of the international consistency of the exemption system. Secondly, at present, few shippers consider conferences and discussion agreements to be necessary and shippers place greater emphasis on the level of freight rates than on their stability. Shippers who wish for stable freight rates address this issue by making a fixed-term contract. It is difficult to claim that conferences and discussion agreements work well to stabilize freight rates. Therefore, it is not necessary to make conferences and discussion agreements exempt from the AMA on the grounds of the shippers’ interests. Thirdly, as of this time, while many shippers consider consortia and car carrier agreements to be necessary, the cooperation or coordination on transportation space is basically considered to pose little problem under the AMA if it is conducted within the rationally necessary scope for increasing the convenience of shippers unless it restricts quantities of services provided by shipping companies. The issue of whether adjusting shipping service schedules, the number of shipping services, and maritime routes comes into question under the AMA is considered to depend on the specific conducts performed and the competition situation in the market. However, it is essentially unlikely that the conduct of adjustment will come into question in principle under the AMA unless it restricts means of competition as a whole and unfairly impairs interests of shippers, while it is possible to cope with the issue of securing legal certainty through the formulation of guidelines, etc. by the JFTC. Thus, it is not necessary to make consortia and car carrier agreements exempt from the AMA. At present, it is not necessary to make conferences, discussion agreements, consortia and car carrier agreements which are mainly exempted by notification to the Minister of the MLIT exempt from the AMA. Therefore, it is considered to be no reason for maintaining the system of exemption from the AMA for international ocean shipping.

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

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

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

### 2AC---Thumper---Bases

#### Alt-cause---US-driven Omicron spread.

Gale 1-6-2022 (Alastair, “Japan Criticizes U.S. Response After Omicron Spreads Near American Bases,” *Wall Street Journal*, <https://www.wsj.com/articles/japan-criticizes-u-s-response-after-omicron-spreads-near-american-bases-11641466830>)

A surge in Covid-19 infections around U.S. military bases in Japan is generating tension between Tokyo and Washington after a loophole in entry rules for American soldiers accelerated the spread of the Omicron variant. Foreign Minister Yoshimasa Hayashi on Thursday in Japan asked Secretary of State Antony Blinken for U.S. service members to be restricted to their bases, and regions around bases called for emergency steps to prevent the spread of Covid-19. Prime Minister Fumio Kishida also expressed dissatisfaction with the U.S. response and said he ordered his foreign minister to demand tougher steps at a U.S.-Japan meeting scheduled for Friday. Japan had hoped to keep Omicron at bay with a near-total ban on foreigners entering the country. But the highly infectious variant managed to hitch a ride anyway, including via U.S. troops, who are allowed under a security treaty to travel directly into and out of U.S. bases in Japan on military aircraft. These troops don’t undergo the immigration checks foreigners usually receive on arrival. The troops then interacted with Japanese locals, including workers on the bases. On Thursday, the southern prefecture of Okinawa, where most of the U.S. military in Japan is based, reported 981 cases, the largest caseload in the country. U.S. Forces Japan made masks mandatory for all personnel in public areas on and off base and reported a total of 1,784 current infections among people in military facilities. Around 50,000 U.S. service members are based in Japan, the largest permanent overseas U.S. military deployment. Japan had only a few hundred Covid-19 infection cases each day nationwide from October through late last year, but the total is now climbing rapidly. “A major cause of the spread of the Omicron variant is infections coming from U.S. military bases,” Okinawa Gov. Denny Tamaki said this week. Mr. Tamaki called Thursday for emergency restrictions on businesses such as bars and restaurants, including those around bases, to prevent the spread of the virus. “We may need to take even stronger measures,” he said. Although the U.S. and Japanese militaries work closely together and have stepped up cooperation in the face of a threat from China, tensions involving crime, noise and other base-related issues have long bedeviled the relationship, particularly in Okinawa. Mr. Tamaki has called for a reduction in the U.S. presence and opposes a plan to replace a Marine air station in an urban part of Okinawa with a new base in a more rural part of the island.

### 2AC---!---AT: Cyber

#### No cyber impact

Lewis, 18 — James Andrew Lewis; senior vice president at the Center for Strategic and International Studies, Ph.D. from the University of Chicago. (January 2018, “Rethinking Cybersecurity: Strategy, Mass Effect, and States,” <https://espas.secure.europarl.europa.eu/orbis/sites/default/files/generated/document/en/180108_Lewis_ReconsideringCybersecurity_Web.pdf>, p. 7-11)

The most dangerous and damaging attacks required resources and engineering knowledge that are beyond the capabilities of nonstate actors, and those who possess such capabilities consider their use in the context of some larger strategy to achieve national goals. Precision and predictability—always desirable in offensive operations in order to provide assured effect and economy of force—suggest that the risk of collateral damage is smaller than we assume, and with this, so is the risk of indiscriminate or mass effect. State Use of Cyber Attack Is Consistent with Larger Strategic Aims Based on a review of state actions to date, cyber operations give countries a new way to implement existing policies rather than leading them to adopt new policy or strategies. State opponents use cyber techniques in ways consistent with their national strategies and objectives. But for now, cyber may be best explained as an addition to the existing portfolio of tools available to nations. Cyber operations are ideal for achieving the strategic effect our opponents seek in this new environment. How nations use cyber techniques will be determined by their larger needs and interests, by their strategies, experience, and institutions, and by their tolerance for risk. Cyber operations provide unparalleled access to targets, and the only constraint on attackers is the risk of retaliation—a risk they manage by avoiding actions that would provoke a damaging response. This is done by staying below an implicit threshold on what can be considered the use of force in cyberspace. The reality of cyber attack differs greatly from our fears. Analysts place a range of hypothetical threats, often accompanied by extreme consequences, before the public without considering the probability of occurrence or the likelihood that opponents will choose a course of action that does not advance their strategic aims and creates grave risk of damaging escalation. Our opponents’ goals are not to carry out a cyber 9/11. While there have been many opponent probes of critical infrastructure facilities in numerous countries, the number of malicious cyber actions that caused physical damage can be counted on one hand. While opponents have probed critical infrastructure networks, there is no indication that they are for the purposes of the kind of crippling strategic attacks against critical infrastructure that dominated planning in the Second World War or the Cold War. Similarly, the popular idea that opponents use cyber techniques to inflict cumulative economic harm is not supported by evidence. Economic warfare has always been part of conflict, but there are no examples of a country seeking to imperceptibly harm the economy of an opponent. The United States engaged in economic warfare during the Cold War, and still uses sanctions as a tool of foreign power, but few if any other nations do the same. The intent of cyber espionage is to gain market or technological advantage. Coercive actions against government agencies or companies are intended to intimidate. Terrorists do not seek to inflict economic damage. The difficulty of wreaking real harm on large, interconnected economies is usually ignored. Economic warfare in cyberspace is ascribed to China, but China’s cyber doctrine has three elements: control of cyberspace to preserve party rule and political stability, espionage (both commercial and military), and preparation for disruptive acts to damage an opponent’s weapons, military information systems, and command and control. “Strategic” uses, such as striking civilian infrastructure in the opponent’s homeland, appear to be a lower priority and are an adjunct to nuclear strikes as part of China’s strategic deterrence. Chinese officials seem more concerned about accelerating China’s growth rather than some long-term effort to undermine the American economy.6 The 2015 agreement with the United States served Chinese interests by centralizing tasking authority in Beijing and ending People’s Liberation Army (PLA) “freelancing” against commercial targets. The Russians specialize in coercion, financial crime, and creating harmful cognitive effect—the ability to manipulate emotions and decisionmaking. Under their 2010 military doctrine on disruptive information operations (part of what they call “New Generation Warfare”). Russians want confusion, not physical damage. Iran and North Korea use cyber actions against American banks or entertainment companies like Sony or the Sands Casino, but their goal is political coercion, not destruction. None of these countries talk about death by 1000 cuts or attacking critical infrastructure to produce a cyber Pearl Harbor or any of the other scenarios that dominate the media. The few disruptive attacks on critical infrastructure have focused almost exclusively on the energy sector. Major financial institutions face a high degree of risk but in most cases, the attackers’ intent is to extract money. There have been cases of service disruption and data erasure, but these have been limited in scope. Denial-of-service attacks against banks impede services and may be costly to the targeted bank, but do not have a major effect on the national economy. In all of these actions, there is a line that countries have been unwilling to cross. When our opponents decided to challenge American “hegemony,” they developed strategies to circumvent the risks of retaliation or escalation by ensuring that their actions stayed below the use-of-force threshold—an imprecise threshold, roughly defined by international law, but usually considered to involve actions that produce destruction or casualties. Almost all cyber attacks fall below this threshold, including, crime, espionage, and politically coercive acts. This explains why the decades-long quest to rebuild Cold War deterrence in cyberspace has been fruitless. It also explains why we have not seen the dreaded cyber Pearl Harbor or other predicted catastrophes. Opponents are keenly aware that launching catastrophe brings with it immense risk of receiving catastrophe in return. States are the only actors who can carry out catastrophic cyber attacks and they are very unlikely to do so in a strategic environment that seeks to gain advantage without engaging in armed conflict. Decisions on targets and attack make sense only when embedded in their larger strategic calculations regarding how best to fight with the United States. There have been thousands of incidents of cybercrime and cyber espionage, but only a handful of true attacks, where the intent was not to extract information or money, but to disrupt and, in a few cases, destroy. From these incidents, we can extract a more accurate picture of risk. The salient incidents are the cyber operations against Iran’s nuclear weapons facility (Stuxnet), Iran’s actions against Aramco and leading American banks, North Korean interference with Sony and with South Korean banks and television stations, and Russian actions against Estonia, Ukrainian power facilities, Canal 5 (television network in France), and the 2016 U S. presidential elections. Cyber attacks are not random. All of these incidents have been part of larger geopolitical conflicts involving Iran, Korea, and the Ukraine, or Russia’s contest with the United States and NATO. There are commonalities in each attack. All were undertaken by state actors or proxy forces to achieve the attacking state’s policy objectives. Only two caused tangible damage; the rest created coercive effect, intended to create confusion and psychological pressure through fear, uncertainty, and embarrassment. In no instance were there deaths or casualties. In two decades of cyber attacks, there has never been a single casualty. This alone should give pause to the doomsayers. Nor has there been widespread collateral damage.

## AT: DA---FTC

### 2AC---UQ---FTC

#### FTC overwhelmed now.

PYMNTS 21, (7-28-2021, “FTC Sees Most Merger Filings In 2 Decades, Chair Says,” PYMNTS.com <https://www.pymnts.com/antitrust/2021/ftc-sees-most-merger-filings-2-decades>)

The Federal Trade Commission (FTC) is dealing with a rise in mergers that has amounted to the highest number of filings in 20 years, Bloomberg reported. “Although the FTC is working to review many of these deals, the sheer volume of transactions is significantly straining commission resources,” FTC Chair Lina Khan said, per Bloomberg. “I am deeply concerned that the current merger boom will further exacerbate deep asymmetries of power across our economy, further enabling abuses.” Companies have thus far announced $2.8 trillion in deals in the first seven months of this year, Bloomberg reported, which amounts to 2021 likely being the most active ever. The reason for the influx is the high level of corporate confidence and the free spending of private equity firms, which has been happening over several industries, including technology, media, healthcare, transportation and others, according to Bloomberg. Over the first three quarters of the current fiscal year, antitrust agencies have processed more than 2,400 merger filings Khan said, per Bloomberg. But she said the wave of mergers hasn’t been the only issue. There are two other big problems facing the FTC, including a recent Supreme Court decision making it harder to recover money for victims of scams or deceptive practices, and the general boost in fraud during the pandemic, which has been made even worse by digital platforms, Bloomberg reported.

### 2AC---AT: Link---FTC

#### No link:

#### 1---Plan is not the FTC, Watkins and Young say there is fine line in jurisdiction that places anticompetitive shipping practices under the FMC

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)

Exemptions to antitrust laws have prevailed in the liner-shipping sector for many years. 26 In 1916, Congress enacted the Shipping Act to regulate the liner conferences, "which were perceived as international cartels in the shipping industry." 27 The 1916 Act demonstrated Congress's intention to treat the shipping industry "differently from other businesses and trades subject to the antitrust laws of the United States." 28 The Act created an independent agency, the U.S. Shipping Board (later known as the Federal Maritime Board and ultimately becoming the FMC), which had the authority to regulate private vessels and oversee compliances with antitrust laws. 29The 1916 Act is an example of Congress's decision to regulate the liner conferences within the market rather than to abolish them. 30Thus, the Shipping Act of 1916 accepted the conferences as a necessary evil in the international shipping market place but implemented numerous restrictions in an attempt to limit their potential for abuse of market power. 31Under the 1916 Act, shipping companies need to file their inter-carrier agreements with the Shipping Board for approval before they become effective; "the approval confers antitrust immunity on the filed inter-carrier agreement." 32In order to obtain approval, section 15 of the 1916 Act required the agreement to be subjected to an inquiry as to whether the agreement was "unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors." 33Next, section 15 asks whether the agreement "operates to the detriment of the commerce of the [United States]" and whether "the operation of the agreement ... violates the relevant chapter under the 1916 Act."

#### 2---No card that cuts would be from [ insert ]

### 2AC---AT: Algorithmic Bias

#### AI bias inevitable

Hao 19 This is how AI bias really happens—and why it’s so hard to fix -- by Karen Hao February 4, 2019 https://www.technologyreview.com/2019/02/04/137602/this-is-how-ai-bias-really-happensand-why-its-so-hard-to-fix/

Unknown unknowns. The introduction of bias isn’t always obvious during a model’s construction because you may not realize the downstream impacts of your data and choices until much later. Once you do, it’s hard to retroactively identify where that bias came from and then figure out how to get rid of it. In Amazon’s case, when the engineers initially discovered that its tool was penalizing female candidates, they reprogrammed it to ignore explicitly gendered words like “women’s.” They soon discovered that the revised system was still picking up on implicitly gendered words—verbs that were highly correlated with men over women, such as “executed” and “captured”—and using that to make its decisions. Imperfect processes. First, many of the standard practices in deep learning are not designed with bias detection in mind. Deep-learning models are tested for performance before they are deployed, creating what would seem to be a perfect opportunity for catching bias. But in practice, testing usually looks like this: computer scientists randomly split their data before training into one group that’s actually used for training and another that’s reserved for validation once training is done. That means the data you use to test the performance of your model has the same biases as the data you used to train it. Thus, it will fail to flag skewed or prejudiced results. Lack of social context. Similarly, the way in which computer scientists are taught to frame problems often isn’t compatible with the best way to think about social problems. For example, in a new paper, Andrew Selbst, a postdoc at the Data & Society Research Institute, identifies what he calls the “portability trap.” Within computer science, it is considered good practice to design a system that can be used for different tasks in different contexts. “But what that does is ignore a lot of social context,” says Selbst. “You can’t have a system designed in Utah and then applied in Kentucky directly because different communities have different versions of fairness. Or you can’t have a system that you apply for ‘fair’ criminal justice results then applied to employment. How we think about fairness in those contexts is just totally different.” The definitions of fairness. It’s also not clear what the absence of bias should look like. This isn’t true just in computer science—this question has a long history of debate in philosophy, social science, and law. What’s different about computer science is that the concept of fairness has to be defined in mathematical terms, like balancing the false positive and false negative rates of a prediction system. But as researchers have discovered, there are many different mathematical definitions of fairness that are also mutually exclusive. Does fairness mean, for example, that the same proportion of black and white individuals should get high risk assessment scores? Or that the same level of risk should result in the same score regardless of race? It’s impossible to fulfill both definitions at the same time (here’s a more in-depth look at why), so at some point you have to pick one. But whereas in other fields this decision is understood to be something that can change over time, the computer science field has a notion that it should be fixed. “By fixing the answer, you’re solving a problem that looks very different than how society tends to think about these issues,” says Selbst.

## AT: K---Cosmo

### 2AC---K---Framework

### 2AC---K---Permutations

#### Extraterritoriality challenges the Westphalian world order which is based on a model of exclusive jurisdiction—

Kayaoglu 7, professor of international relations in the Politics, (Turan, Philosophy and Economics Program at the Interdisciplinary Arts and Sciences Department of the University of Washington, The Extension of Westphalian Sovereignty: State Building and the Abolition of Extraterritoriality, International Studies Quarterly, Volume 51, Issue 3, September 2007, Pages 649–675)

The abolition of extraterritoriality marked the extension of the Westphalian order—states’ mutual exclusion from each others’ domestic authority structures—into non-Western countries. That exclusion denoted Western states’ recognition of non-Western countries’ claims of Westphalian sovereignty. As a Western legal institution in non-Western states, extraterritoriality demonstrates that the state's absolute territorial jurisdiction is a unique feature of the modern international system. Various IR scholars have suggested territorial jurisdiction is constructed through the interactions of various state, nonstate, and international actors.2 Non-Western rulers’ authority claims waxed and waned before those rulers achieved territorial jurisdiction and external recognition of their claims to absolute territorial jurisdiction. The variation in the timing of the abolition of extraterritoriality shows that the diffusion of territorial sovereignty into non-Western countries occurred over time at irregular intervals from the end of the nineteenth century to the middle of the twentieth century (Table 1).

### 2AC---K---AT: Link

### 2AC---K---AT: Cosmopolitanism

#### Cosmo is a disaster.

Colatrella, 20—associate adjunct professor of government and sociology at the University of Maryland University College (Steven, “Solidarity or Human Rights? National Sovereignty and Citizenship in the Twenty-First Century,” *Bringing the Nation Back In: Cosmopolitanism, Nationalism, and the Struggle to Define a New Politics*, Chapter 2, pg 34-38, dml)

When one is seen by others to be only a human being, without any of the social, political or cultural characteristics that make one fully human, the result may be compassion and charity but it may also be just as likely be seen as an invitation to further abuse. “Bare life,” as Arendt and Agamben term it, cannot be the basis for human dignity.

For human rights still require states to enforce them, just not the same state that is repressing or violating them. But the enforcement of rights by external states or by “the international community” means war. Immanuel Kant warned that peace could not come from forcing a single state that refused to accept even a positive value or policy of the world community to get in line, since that is not peace but war (Kant). Machiavelli warned that republics need a plurality of republics, able to criticize each other, encourage each other to best practices, engage in competition. When all republics fall under a single central power—even a collective one—we find an empire, not a republic. A condition in which the world community was unanimous and forced a recalcitrant state into accepting policies it and its citizens had not approved would be analogous to empire, to that world polity that Arendt likewise warned would not result in a stronger enforcement of rights, but in the greatest threat to them, and one without external recourse for redress (Arendt 298).

Nor are these abstract problems. Mark Mazower has painstakingly shown that the entire conception of international law has always been based on the “standard of civilization” in which certain states were within such a standard, and so legitimized to enforce their conception of international law, while other peoples and states and communities were outside of it, and so vulnerable to having the will of others imposed upon them (Mazower 70). In short, colonialism, neocolonialism, and the current regime of human rights are closely linked, and it is no accident that the countries that find themselves targets of humanitarian interventions under the “responsibility to protect” are ones that are not within the current updated version of the standard of civilization—that is to say, not allies of the United States and often opposed to neoliberalism. Thus, even in shifting from the older national government’s responsibility to its own citizens to a conception that the international community has a responsibility to protect human rights, we find that we have merely changed which fox is guarding the chickens.

Human Rights and Global Citizenship

As a legalistic concept, human rights require a political authority to define what they are legally. One of the most widely cited works on human rights, Jack Donnelly’s Universal Human Rights in Theory and Practice fails from the start on this point with its key analogy: human rights, like property rights, are a preexisting condition. This notion has already been dismantled by Arendt as shown above. By contrast, international relations theorists recognize that human rights must be granted and recognized by global institutions, but the lack of a central international authority makes this very difficult. The realist school of international relations (Morgenthau; Waltz) sees anarchy reigning in a state of nature in world politics, making the protection of human rights well nigh impossible. The so-called English School of International Relations sees an international society as precarious, in which norms, though real, are enforced by national states that see adherence to such norms as advantageous for maintaining the international society and in the interest of the individual states in question (Bull). These theories are united in that they see international organizations as instruments for carrying out what has already been agreed to by national states. Neither position posits a global polity as existing, and many theorists in each camp would see such a polity as undesirable.

Others are less pessimistic. Constructivists view human rights as a discourse that has achieved a certain degree of autonomy from institutional settings, though the geopolitical limits on the discourse remain (Risse; Ropp and Sikkinke 16). Some political theorists seek to found human rights solely on the narrow basis of historical liberal theory, with all the baggage that this involves—from class privilege and economic doctrine to the policies of existing international organizations such as the IMF and WTO, and with the historical affiliation with Anglo-American hegemonies intact (Charvet and Nay). Samuel Moyn’s demonstration of the Christian roots of human rights merely shifts the instrument of human rights formation from political constitutionalism to Christian ethos. In both cases, however, the Western origin of the rights concept belies its alleged universality. Donnelly’s influential work engages in intellectual gymnastics to find a plausible basis for universal human rights. But even this work admits that despite all, people must live in determined polities or they would find themselves in a Hobbesian state of nature, and that in the end states have human rights responsibilities only to their own citizens and territorial residents (Donnelly 30–32).

Clearly, only global citizenship could address all of these difficulties, and there has been considerable work done on developing that idea. Robert Paehlke seeks the basis for global citizenship in the movements to limit corporate depravity and U.S. militarism worldwide, hoping ironically that the opposition to the current global governance regime will provide that same regime with a stronger basis for legitimacy (Paehlk 15, 200–02). Andrew Moravcsik instead argues that democratic republican governments have often accepted the limitations on sovereignty imposed by international human rights regimes when the gains in reducing domestic political uncertainty—the risk of having a domestic opposition reverse preferred policies—outweigh that compromise (Moravcsik 217–52). Efforts at conceptualizing a “global democracy” are perpetually challenged by the lack of any global, or even international, or even European demos or people (Held 220). Aristotle’s criteria continue to matter in the twenty-first century. It seems difficult to avoid the conclusion that even under the most global of human rights regimes, rights remain inextricably tied to domestic politics and national governments. If there is a role for civil society and popular social movements, their impact must be primarily at the national level, and be differentiated in that impact in different countries and political communities. To be effective beyond national boundaries, they must act in concrete ways in solidarity with brother and sister movements and struggles or with efforts to bring about analogous gains to those already won or being fought for in each other’s national political communities. This means that the struggles, acts of solidarity, and discourses of movements from the pre-globalization era, especially from the immediately preceding era of anti-colonial and analogous movements, are surprisingly relevant to addressing our problems today.

### 2AC---K---AT: Nationalism

#### Nationalism is redeemable and good.

Forlenza, 20—fellow at the Remarque Institute, New York University and at Potsdam University’s Center for Citizenship, Social Pluralism, and Religious Diversity (Rosario, “Nation as Home: Anthropological Foundations and Human Needs,” *Bringing the Nation Back In: Cosmopolitanism, Nationalism, and the Struggle to Define a New Politics*, Chapter 9, pg 176-177, dml)

This paper has argued that dominant political theory and social science analysis of nations and nationalism are blind to the crucial question of background experiences, or the latent and hidden experiential and anthropological practices that take for granted the reference point of human life, the experience of home. To have a home or share an experience of home is the solid and basic necessary basis for human life (for any human life) to have a meaning.

Nations and nationalism must be understood as the translation of the need to have a home—or to share the experience of home—into a larger political entity, a participation in a broader cosmic entity, and the creation of political allegiance under conditions of existential uncertainty. Intellectuals and observers do not usually understand that nationalism has been such a powerful phenomenon precisely because it is based on the endless revaluation and symbolization of the nation-state as home, which cannot be simply overcome with the cosmopolitan paradigm of taking the world as home.

Historical experiences show that the anthropological need to share a home can crystallize in political revolution and war and become the master narrative of nationalism that blossoms into a fully developed, violent, and exclusionary doctrine. However, this process of abstraction is by no means unidirectional, and highly elaborated nationalism can open to a healthier sense of the nation as home. After all, although nationalism has not often proved to be great at creating multiethnic coalitions, specific egalitarian redistributive politics have historically been correlated with national projects. In short, the nation can be based on recognition and familiarity—an important term for all its banality. The nation in this sense can exclude abstraction, alienation, and violence aggressively pitched against the other/ the enemies. Boundaries and borders between “homes” can re-unify common things between individuals and communities. Or, to put differently, there are not common things to share without boundaries and borders.

Membership in a cosmopolitan world produces a weak form of identity and an ideological-legalistic construct, which cannot serve as the basis of commonalities, shared identities, and meaningful political communities—all of which are necessary to address the tearing of the world. A meaningful, stable political allegiance must engage peoples’ energies and values by drawing forth the existential dimension of human beings and their experience of home as expressed in cultural and anthropological practices rooted in localizing processes.

### 2AC---K---Turn

#### If they do scale-up, allows unregulated corporatism

Cheah 6, Associate Professor of Rhetoric at the University of California at Berkeley (Pheng Cheah, 2006, “Cosmopolitanism,” Theory, Culture & Society 23(2–3)

The feasibility of institutionalizing a mass-based cosmopolitan political consciousness therefore very much remains an open question today. It is not enough to fold the pluralistic ethos of older cosmopolitanisms into the institutionalized tolerance of diversity in multicultural societies. This kind of cosmopolitanism is only efficacious within the necessarily limited frame of the (now multiculturalized) democratic state in the North Atlantic that is sustained by global exploitation of the South. This type of limited cosmopolitanism has a more insidious counterpart in the state-sponsored cosmopolitanism of developed countries in Asia. Here, cosmopolitanism degenerates into a set of strategies for the biopolitical improvement of human capital. It becomes an ideology used by a state to attract high-end expatriate workers in the high-tech, finance, and other high-end service sectors as well as to justify its exploitation of its own citizens and the lower-end migrant workers who bear the burden of the country’s successful adaptation to flexible accumulation. Cosmopolitanism is here merely a symbolic marker of a country’s success at climbing the competitive hierarchy of the international division of labor and maintaining its position there. The inscription of new cosmopolitanisms (and theories about them) within the force field of uneven globalization must be broached at every turn.

#### Cosmopolitanism is ethnic cleansing that appeals to a homogenous elite while papering over distinct ethnicities and silencing identity politics.

Calhoun 8, University Professor of Social Sciences at Arizona State University, Former Director of the London School of Economics and Political Science, Former President of the Social Science Research Council, Ph.D. in Sociology from Oxford University, MA in Anthropology and Sociology (Craig Calhoun, 2008, “Cosmopolitanism and Nationalism,” Nations and Nationalism, Volume 14, Issue 3, July, <https://is.muni.cz/el/1423/podzim2012/SAN237/um/Calhoun_cosmopolitan-and-nationalism.pdf>)

Imagining a world without nations, a world in which ethnicity is simply a consumer taste, a world in which each individual simply and directly inhabits the whole, is like imagining the melting pot in which all ethnicities vanish into the formation of a new kind of individual. In each case this produces an ideology especially attractive to some it neglects reasons why many reproduce ethnic or national distinctions. And perhaps most importantly it obscures the issues of inequality that make ethnically unmarked national identities accessible mainly to elites, and make an easy sense of being a citizen of the world contingent on having the right passports, credit cards and cultural credentials. American debates over immigration and assimilation predate independence, often as debates about the peopling of specific colonies, and shape both images of America and practical policies through the history of the United States. The dominant American ideology - common among scholars as well as the broader population - suggested that the first new nation' was precisely not an ethnic nation. Tom Paine famously held that Europe, not England is the parent country of America- though one might suggest that 'European' is itself an ethnic category of sorts, at least by comparison to, say, Asian or Latin American. In any event, British - and indeed, specifically English history loomed large in US school curricula. But both 'consensus historians (e.g. Higham, 1955) and later social scientists (e.g. Greenfield, 1992, Lipset, 1996) have commonly seen nativist movements as aberrations recurrently overcome, and the main pattern idealized that transcends ethnicity. This view perhaps grasps an element of truth in its contrasts to Europe, but it has been very uncritically held. From the beginning it failed to confront both the fundamental challenge of racial domination and the continuing hegemony of an elite constituted in part through ethnicity. Long described as WASP, this has broadened but not entirely disappeared, and continues to be reproduced in com mon experiences of education, religion and culture as well as networks of social relations.5 Recurrently, the notion of the ideal post-ethnic nation has also confronted waves of less elite nativist sentiment political agitation. And finally, the assertion of ethnic identities and the positive valuing of difference also have a long tradition, and one that has long made uncomfortable those who would see the struggle as only between assimilationists or cosmopolitans and nativists or racists. W.E.B. DuBois wrote famously of the double-consciousness of those for whom an ascriptive racial identity must always compete with an inclusive national identity. Yet, in The Souls of Black Folk he advocated no simple choice. 'One ever feels his two-ness,- an American, a Negro; two souls, two thoughts, two unreconciled strivinigs: two warring ideals in one dark body, whose dogged strength alone keeps it from being torn asunder (DuBois, 1994:2). The American Negro may long 'to merge his double-self into a better and truer self. But in this merging he wishes neither of the older selves to be lost. He would not Africanize America, for America has too much to teach the world and Africa. He would not bleach his Negro soul in a flood of white Americanism, for he knows that Negro blood has a message for the world. He simply wishes to make it possible for a man to be both a Negro and an American ...(DuBois, 1994: 3) Various sorts of "both/and identities are pervasive in the modern world. They are brought to the fore by international migration, by European integration, and by the claims of multiple states on common cultural traditions and identities, like China and Taiwan and for that matter Singapore. Islam and Christianity are each religions that produce common identities crossing national divisions. Gender, race and even engagement in social movements can produce 'both/and' identities (see Anzaldúa, 1987; Collins, 1990). Neither universalism nor essentialist nativism or nationalism deals well with these multiplicities and overlaps, and indeed it is common for universalists to imagine all claims to group solidarity on the model of nativist closure- and for nativists and nationalists to imagine all suggestions that multiple identities matter as rootless cosmopolitan' challenges to the integral whole. Celebration of multiple identities has recently come into vogue for example as multiculturalism- and has produced both universalist and particularist responses. I" Salman Rushdie says he writes love songs 'to our mongrel selves'; he refuses to be simply Indian, lives in England, and travels enough to show those who would stop him in the name of religious purity that they have failed (Rushdie, 2000: 394). Indeed, one might think it is hard for anyone to be simply Indian', so deeply plural and cross-cutting are the identities of the subcontinent. Yet there are other Indians living in England whose very sense of being is bound up with being Indian. And as Tariq Modood notes, many immigrants from India in the era of partition became Pakistanis without ever living in that country, and then in the dominant British politics of identity became Asian' and then more commonly Muslim (Modood et al., 2004). Indian' now distinguishes mainly Hindu Britons (ironically echoing the assertions of religious purity of some Hindu fundamentalists back on the subcontinent). There are also angry Englishmen determined to make sure that neither Indians nor Muslims ever feel they belong unequivocally to England's green and pleasant land. Of course there are also Indians in India for whom England is only ancient history and India itself somewhat abstract but for whom village or caste are central loca- tions. There are at least as many for whom a militantly Hindu account of being Indian is fundamentally compelling. And there are still other Indians for whom the Communist Party (or rather, one of them) is still vital and transcends ethnicity and nationality and others who love mathematics partly because it seems a universal language as well as a good source of that other universal, money. In England, when asked their national identity, those of Indian descent face the same puzzle as others: is the right answer English, British or just possibly European?" This sort of field of multiple and heterogeneously structured identities has become increasingly common in the contemporary world but it should not be thought that identities were ever quite so clear or singular in the past as ideology sometimes suggested. Colonialism produced plenty of examples and independence did not neatly straighten them out. Think of Léopold Senghor, first President of Senegal but before that a member of the French National Assembly and all the while a pan- Africanist, one of the founders of the idea and movement of negritude. Earlier empires produced their own such complexities, but even villages were not quite the homogenous communities of myth and nostalgia. From the 1960s to the 1990s multiculturalism was in vogue. The wave seems since to have crested. By 2007 a New York Times art critic could draw a contrast between Manhattan's somewhat more central art world and its Brooklyn cousin by saying Multiculturalist terms like identity hybridity and diversity may sound like words from a dead language in Chelsea, but they are the lingua franca of the Brooklyn show (Carter 2007), It's not only in the Chelsea galleries that 'identity' sounds passé it seems so 1990s to a range of social theoretical hipsters. They want to give identity and especially identity politics a rest and be cosmopolitan. But cosmopolitanism is claimed by multiculturalists as well as those who think multiculturalism has got out of hand and needs to be tamed by emphasis on universal humanity (and those who think multiculturalism is simply no longer trendy). Indeed the very idea of multiculturalism was also something of a theoretical muddle. On the one hand it suggested the essential malleability of identity and on the other the essential priority of identity (though both sides tended to condemn essentialism). The same went for the 'politics of identity. This meant most coherently that identity was always subject to politics - to struggles within groups over what they stood for, to struggles between those with different agendas over which identity would be primary. But to many it also meant sim- ply that different groups struggled politically to get due recognition for their identities or over issues in which the stakes were defined by group identity (see Calhoun, 1994). Cosmopolitanism is most often invoked by those who see identity politics as a sort of mistake - like lingering ethnonationalism, rather than citizenship of the world. But the issues have not gone away. European politics is rife with struggles over whether national identities or the common claim of 'European' should be primary. There are few African countries where claims for religious, or ethnic, or regional or 'tribal' identities are not sometimes as powerful as projects of national integration. Latin American countries find themselves common identity in the struggle against US domination, but internally are split by movements deriving significant force from indigenous resentment against elites defined in part by European ancestry (as well as cosmopolitan property). The economic rise of China both masks identity struggles within the People's Republic and intensifies others around Asia. And from the Middle East through South and South East Asia (and indeed in Europe, Africa and the US) Islamic renewal generates both struggles over identity and struggles defined by religious identities that modernization theorists had pronounced permanently fading.

#### Hold a high threshold for solvency ⁠— it must specify how the world ought to function, otherwise it’s a bunk project

Tatum 18 , Assistant professor in the Department of Political Science and Geography at Francis Marion University (Dillon Tatum, 11-28-2018, “Toward a Radical IR,” Duck of Minerva, <http://duckofminerva.com/2018/11/toward-a-radical-ir.html>)

David Brook’s latest column in the New York Times, banging on the same themes about “the kids are just not right,” raises some questions about what it means to engage in radical politics in the Trump era. Brooks compares the younger generation’s belief “that the system itself is rotten and needs to be torn down” to accomodationist and gradualisms. He continues on to speculate about how these new attitudes might affect older, more “pragmatic,” liberals who desire to work within the system. Brooks, as usual, uses a conservative argument to position himself in the “middle.” I have been thinking a lot about this issue of “radicalism” contra arguments about working within systems that are unjust in thinking about liberal world order and its futures. It has led me to a question I am currently exploring in a work-in-progress about what the possibilities are of radicalism as a way of approaching international politics. Against arguments like Brooks’, and even more sophisticated arguments about agonistic democracy developed by thinkers like Chantal Mouffe, I think there is a place in IR for radical conceptions of transformation, order, and politics. What is radicalism? Brooks never fully fleshes out this concept. Philosophy and political theory have engaged with the issue of radicalism as a concept, though the results are often divergent. To quote Agnes Heller, in her treatise on radical philosophy, it “can give the world a norm, and it can will people to want to give a world to the norm.” Radicalism as an idea, and as a form of critique, mobilizes many different modes of thinking about the social and the political. The most comprehensive definition of radicalism is that provided by Paul McLaughlin, who defines radicalism “in terms of (i) a fundamental orientation (toward fundamental objects) (ii) in the political domain (iii) of an argumentative nature.” More than that, though, we can add that radicalism intervenes in the political domain with the goal of fundamental transformation. Additionally, though radicalism indeed proceeds in an argumentative nature, this methodology for argument is one that is aimed at critiquing, and seeking the destruction/replacement of existing institutions. A revised working definition of radicalism, therefore, is: a way of thinking about politics that focuses on totalities, praxis and political action, and the deployment of historicist methods with an eye toward “getting to the root of things.” Thus, radicalism is both a broad range of critical thought and practice, but also is specific in the realms of focus, action, and method. If Brooks is right that there is a major clash between a radical younger generation and a more pragmatic and moderate older generation in American politics, these differences are not well expressed in contemporary thinking about IR. Some of the biggest divisions are between what Robert Cox called “problem-solving theories” and theories that critique such approaches, but provide little argumentation aimed at tearing structures of injustice down altogether. In short: IR, even at its critical ends, is not radical (for an excellent exception see here and here). Why is this important? This morning, I taught a seminar on the question “Is Liberal World Order Finished?” I asked my students to think about what makes a liberal order “liberal,” and then asked: “Can we fix the liberal world order, or can we imagine a world without it?—and what would that look like?” The students were quick to point out the violences, inequities, and problems inherent in a liberal world order, but it took a good bit of pushing and prodding to get them to articulate whether/how we should/could take this order apart and rethink it. This was not just a difficult task for the students—it is something IR has not spent enough time meditating on. There is a lot to be critical of these days. And, I disagree with Brooks’s pessimism about a younger radical generation. Politics is deeply intertwined with engagements with radicalism. What I think is missing when we consider global politics, though, is that many of our pressing questions about institutions, order, and state action proceed from the same sort of moderation, accomodationism, or—at the most—an immanently critical vein. If we want to intellectually and politically approach issues like: What do we make of the future(s) of liberal world order? IR needs to engage with radicalism.

### 2AC---K---AT: Alternative

#### The alt fails and re-inscribes power hierarchies

Dhawan 13, junior professor of political science for gender/postcolonial studies at Goethe University (Nikita Dhawan, Fall/Winter 2013, “Coercive Cosmopolitanism and Impossible Solidarities,” Qui Parle: Critical Humanities and Social Sciences Volume 22, Number 1)

Although Nussbaum and Beck enthusiastically endorse cosmopolitanism as a “solution” for past injustices and a “promise” of better times to come, I want to emphasize the complicities between liberal cosmopolitan articulations of solidarity and the global structures of domination they claim to resist. Pheng Cheah argues that such a critique of cosmopolitanism’s elitist detachment is motivated by a vision of cosmopolitanism as an “intellectual ethos” espoused by a “select clerisy” lacking feasible political structures for the universal institutionalization of its ideals.10 But I object to the project of cosmopolitanism, because it fails to seriously address the historical processes through which certain individuals are placed in a situation from which they can aspire to global solidarity and universal benevolence—in other words, it lacks a concept of cosmopolitanism as the self-indulgence of the altruistic and the magnanimous. Nussbaum, to her credit, is trying to explore ways of improving people’s lives. But that itself is the problem. Her attempt to act in the interests of distant others, to look beyond her position and make everyone have as good a life as “ours,” disregards the connection between the well-off “here” and the impoverished “elsewhere.” As Spivak has argued, Nussbaum’s cosmopolitanism appears profoundly provincial, in its too-hasty assumption, as “given,” that a “first-world” metropolitan academic and a “third-world” sexed subaltern subject would share fundamental aims and interests.11 Nussbaum firmly believes in a critical Socratic pedagogy12 that would circumvent Eurocentrism through cultivating sensitivity [End Page 144] to other cultures and perspectives, even as she asserts that she “would rather risk charges of imperialism than refuse to take a moral stand on urgent issues facing women” (wcd, 2). In contrast to Nussbaum’s faith in cosmopolitanism’s self-correctional reflexivity, Spivak diagnoses in the cosmopolitan call to align ourselves with our fellow citizens a shift from “the white man’s burden” to the “the burden of the fittest.”13 This revision of social Darwinism defines the “unfit” as unable either to help or to govern themselves. The distance between those who “dispense” justice, aid, rights, and solidarity and those who are simply coded as “victims of wrongs” and thus as “receivers” remains a signature of historical violence (oa, 266n14). When progressive activists and intellectuals intervene “benevolently” in the struggles of subaltern groups for greater recognition and rights, they reinforce the very power relations that they seek to demolish. Conversely, Beck proposes that our common vulnerability in the face of risk brings us together. But as we all know, though we might be facing the same storm, we are not all in the same boat, and that makes all the difference. For Beck, the tsunamis resulted in the “globalization of compassion”; but, as an instructive contrast, I would like to consider a moment in Spivak’s narrative of a major cyclone in Bangladesh in 1991 and the subsequent intervention by Médecins sans frontières. The msf workers, none of whom spoke the local language, were obliged to work through interpreters. When Spivak later arrived at one of the villages where she had worked actively in the past, some of the villagers ran up to her, saying, “We don’t want to be saved, we want to die, they are treating us like animals.”14 In a situation like this, and without any common language, can we even think of solidarity? For these reasons, the Sri Lankan feminist Malathi De Alwis15 has asked if we are truly capable of empathizing with the pain of others, and even if we should be allowed to witness their pain if this witnessing only serves to affirm our humanity and our capacity to care. Correspondingly, of course, we need to find “authentic victims” who truly deserve our benevolence. What do we do with our “will to empower” the “disenfranchised and the vulnerable,” and how do we deal with those who refuse to be interpellated as appropriate objects of our solidarity? Inderpal Grewal proposes that contemporary cosmopolitanism is an outcome of two fundamental and inextricable concepts, namely, the liberal subject as a possessor of rights and as the subject of international trade.16 The former emerges from the Kantian notion of “the world citizen” as a subject of rights on a transnational scale, itself deeply linked to the subject of global economic exchange and trade. Grewal points out that, even as these two cannot exist without each other, the link between the two is conveniently obliterated in celebratory discourses about cosmopolitanism. Along similar lines, Cheah asks whether the international division of labor is the unacknowledged but necessary condition of new cosmopolitanisms (“c,” 495). This erasure is crucial to the production of cosmopolitan subjects in late capitalism. Historically, the cosmopolite, one who rises above narrow group loyalty to altruistically embrace the larger world, was marked as European, bourgeois, elite, and male. Discourses of new cosmopolitanism seek to rewrite this script by articulating the cosmopolitan within localized settings, creating rooted, vernacular, and lived cosmopolitanisms, arguing that contemporary transnationalism furnishes the material conditions for such new radical cosmopolitanisms that can regulate the excesses of capitalist globalization from below. The question remains whether these vernacular cosmopolitanisms genuinely enable those who were previously exiled from the public sphere tobe heard. New cosmopolitanisms are caught between a politics that advocates the virtues of postcolonial, cosmopolitan democracy and a kind of managerial internationalism and global moral entrepreneurship wherein those who claim to have listened to and heard the subaltern speak do not even share a common language with her.

#### Rupturing IR fails---demanding change without explaining concrete IR fixes reifies

Hom 18, PhD Professor of IR at Edinburg (Andrew R. Hom, 2018, “Silent Order: the Temporal Turn in Critical International Relations,” Millennium: Journal of International Studies, 46.3)

The Rapture of Rupture Uninhabitable, defined by its other, conflating novel with better, and unavoidably positional – in spite of these tensions rupture enjoys a prominent place in the critical discourse of time. How, then, does it actually work in that discourse? What explains its theoretical punch? I think the answer is a deeply embedded liberal-idealism. To be clear, this is not the neoliberalism of late modernity or the Kantian triad of democracy, interdependence, and multilateralism.182 Rather, rupture recalls the classic liberal commitment to the value and rights of the individual and the consequent responsibilities of sovereign states.183 Nor is it idealist in an ideational or strictly philosophical sense. Rather, I refer to a tendency to abstract ethical aspirations into theoretical assumptions while ignoring the concrete realities of political power, indeterminacy, and unintended consequences.184 Without substantive content, these notions appear relevant to most situations but offer little practical traction because all the heavy lifting is done by assumptions, abstractions, or productive silences. In the case of critical IR, we might think of this liberal-idealism as the rapture of rupture. First, the liberalism embedded in rupture. Critical scholars declare a commitment only to the ‘politics … [of] an active process of drawing and experimenting with lines, without having any preestablished lines – of history, society, and the world – to fall back on’.185 This springs from their fear of ‘reinforcing practices of security and violent forms of response’.186 But why should we eschew security practices and violence – two august aspects of politics – unless we build on some preestablished lines authorising the importance of human individuals and viewing the state as a threat rather than a security provider and/or realisation of collective will? Other critical scholars draw these lines from the ‘politically affirmative and progressive nature of deconstructive thought, as revealed through its onto-political character’,187 which acknowledges a commitment to choosing a which among many possible whats. This sort of progressivism wordlessly underwrites claims that in ruptures wake, ‘the only guiding principle is that of multiplicity itself’, which prioritises ‘difference’ and ‘singularity’ but presumably not different violence or singular evil.188 Moreover, it gives proposals to experiment with ‘more productive and creative’ approaches the gloss of self-sufficiency by orienting us toward welcome possibilities rather than novel forms of depredation. In these ways, times of rupture depend on classically liberal sensibilities, where the intrinsic value of human individuals makes it important to speak for the powerless, the marginalised, the non-elite and the ‘professionals of nothing’.189 This is entirely consistent with the earlier point that every temporality reflects particular purposes and works according to specific standards of reference. Critical scholars acknowledge this partway, noting that experimentation ‘can be said to express a particular ethics of the event, an ethics of trying to encounter the ambiguities and uncertainties of the pure event in a more productive and creative way’.190 Yet as an ethics, this involves some aspect of reconstruction, just as any critique implies or begs a substantive vision of an alternate future.191 However, such liberal and ethical impulses create tensions in times of rupture. As one liberal theorist notes, liberalism makes little sense ‘as an arena for the unfettered expression of “difference”’; its distinctiveness ‘lies not in the absence but, rather, in the content of its public purposes’ and how they privilege individuals and diversity.192 This is not multiplicity and possibility as such but rather from ‘a view of the human good that favours certain ways of life and tilts against others’.193 Without that ‘tilt’, experimenting with times of rupture becomes ‘a circular exercise, repeated for itself but with no effect, no life force, and no bite beyond the choir to whom it preaches’.194 Or worse, it opens room for novel forms of harm. This is where idealism becomes crucial to ruptured times. As various champions insist, rupture concerns only an engagement with possibility, thinking about what another politics might require to open up genuine alternatives. Even though other political agents are busy ‘recompos[ing] and reassert[ing]’ interpretive frameworks in rupture’s wake,195 critical advocates are unwilling to ‘subordinate the mysteries of time to specific notions of historical change’.196 Like other engagements with, say, protest cultures, there is a palpable ‘optimism for change’ here; one ‘rooted squarely in [the] refusal to describe what form a newly imagined politics might take’ and thus ‘defined only by its unconventionality’. 197 Novelty and possibility as such only resonate as preferable if we assume they encourage spontaneous improvement by virtue of their ‘extra-discursive’ or ‘natural state, a kind of protean fecundity that exists in idealised form in isolation from politics as it is usually lived’.198 Moreover, this frames violence and subordination as intrinsically old and positive pluralism as resolutely new. Ironically, then, given critical scholars’ resistance to imagined ‘temporal borders’ and avowed interest in ‘a radical critique of the contingent “ground(ing)”’ of modernity,199 the value of rupture depends upon a thoroughly modern form of temporal delineation. These silent assumptions and hidden logics help ‘characterize’ and thus ‘control’ times of rupture,200 transforming it from a description of traumatic and unlivable conditions to the foundation of a novel ethics that insists we ‘remain with uncertainty’ and ‘hope that something different’ will emerge.201 They are what take us from difference itself to a future ‘deemed worthy of being aspired towards’.202 They thus obscure the need to make alternatives tangible, which is vital for critique’s sake and for the everyday politics of individuals who do not enjoy the privilege of remaining in sheer contingency and indeterminacy.203 And they inhibit any evaluation of ruptured time as a ‘practical question’ of what it actually ‘does’, its ‘effects’, and how it works.204 To drive this point home, recall an earlier vision of novelty and difference tinged by tragedy. Hannah Arendt embraced ‘natality’ as moments of pure possibility but insisted these be tempered by a political sensitivity to potentially catastrophic unintended consequences. Each birth, in her formulation, is ‘uniquely new’ but includes no guarantees – ‘authentic’ novelty might be ‘all-destructive’.205 Ignoring these implications depoliticises and gentrifies novelty and leaves us poorly prepared to resist depredation when it (re-) emerges.206 Only by ignoring or sublimating the heavy lifting can critical scholars pass over a ‘rainbow bridge’ 207 of sorts that turns the start of the political problem – radical change – into the self-sufficient conclusion of ‘another politics’, which occludes the need to reduce contingency while avoiding catastrophe. So while deeply suspicious of promises to ‘take us from here to there’ or move us from past through present toward a better future,208 the critical discourse of rupture works – like the rapture itself – on the assumption ‘of being carried onward or swept along’ by ‘forces of movement’ that emerge independent of conscious effort.209 The rapture of rupture thus marks a missed opportunity, beginning with a legitimately ‘different perspective on time and politics’210 but producing a concept with ‘little relevance to life’211 because it demurs at precisely the point when it becomes necessary to lean on the scales, to encourage this time (or these times) instead of that and thereby privilege some purposes and politics over others. Ruptures are golden opportunities to develop another, better or less awful politics – as such they require more than hope, nebulous experimentation,212 or the refusal to say any more than ‘what I think it does for me’.213 Unless we think novel harms impossible and better outcomes naturally assured, ruptures mark a moment when it is vital to wilfully construct or at least reflexively delimit political time anew.214(324-8)

# 1AR

## T

### 1AR---W/M

#### That meets their interp---insert

ESE No Date. Erasmus School of Economics (as per their website, “The Erasmus Center for Economic and Financial Governance is an international multidisciplinary network of leading researchers and societal stakeholders initiated by researchers from Erasmus School of Economics and Erasmus School of Law. ECEFG conducts interdisciplinary research (law, economics and political science) and contributes to current debates in public and in academia on issues relating to European and global economic and financial governance.”). "Competition Policy". <https://www.eur.nl/en/ese/affiliated/ecefg/research/competition-policy>

Competition Policy

Research in this field consists of two broad areas. The first area – Theory and Implementation of Competition Law and Policy – refers to fundamental and applied research into topics that are traditionally seen as the core of competition policy. The second area – Scope of Competition Law and Policy – refers to all research on the effect and desirability of including new considerations in competition law and policy in order to address the challenges of our time, such as the increasing power of big tech firms, or global warming.

Theory and Implementation of Competition Policy

This covers for instance collusion, abuse of dominance, mergers, market regulation and state aid. Some examples of research topics are:

* the practices firms can use to engage in collusion and its welfare consequences;
* the practices firms can use to abuse a dominant position and its welfare consequences;
* which practices can be considered proof of such activities;
* how to regulate access to a market;
* how to properly assess the effects of a particular practice or merger;
* the practices, by which the state and public authorities distort competition such as subisidies and tax measures
* the interpretation and application of EU and national competition law by Competition Authorities and Courts and the extent to which they achieve the goals of competition policy

Scope of Competition Policy

The effectiveness of European competition law and policy in combination with rapid technological changes have raised questions about its proper scope. Which policy objectives can and should be pursued by means of competition law and policy, and which should be delegated to other legal fields and policies? Some examples of specific research questions include:

* Can and should competition law be used to protect the privacy of consumers on the internet?
* Information gathered by firms can be used to increase their own profits. How does this affect consumers, and what does this depend on? Can and should competition law deal with market power derived from information gathering? For instance, should the big five tech giants be forced to divest activities?
* Should competition policy also include considerations of economic inequality or environmental effects?
* Can competition law remain effective if it is used for more than safeguarding fair competition?

### 1AR---Arbitrary

#### “Scope” requires removing exemptions---it’s a ‘we meet’ AND counter-interp

ABA 15, American Bar Association, Handbook on the Scope of Antitrust Law, ABA Section of Antitrust Law, Chicago: ABA Publishing, 2015, pp. 9-12, ISBN: 978-1-63425-054-2)

Next, the language of the federal antitrust laws imposes several scope limits. Each of the major antitrust statutes applies only to "trade or commerce,"39 and that phrase has been held to exclude gratuitous or charitable conduct and other conduct not involving the exchange of goods or services for consideration.40 The Sherman Act likewise applies only to "persons," and while that term is construed broadly under the Sherman Act, it has some exceptions, notably for the federal government and its instrumentalities.41 Stricter limits appear in the Clayton, Robinson-Patman, and Federal Trade Commission Acts (FTC Act), and these limits are quite complex. The Robinson-Patman Act and two of the Clayton Act's substantive provisions, the limit on tying and exclusive dealing arrangements in section 3 and the limit on interlockin§ directorates in section 8, apply only to persons "engaged in comrnerce.',4 The Federal Trade Commission Act is subject to a few special peculiar Scope limits of its own Finally, in several distinct ways the language of other federal statutes can limit the scope of the federal antitrust laws. First, approximately three dozen statutes explicitly limit antitrust as it would otherwise apply in particular contexts. Statutory exemptions tend to concern either ( 1) industries that are already regulated by some agency, like insurers excepted by the McCarran-Ferguson Act, by virtue of their being regulated by state insurance commissioners,44 or ocean shipping firms regulated by the Federal Maritime Com.mission,45 or (2) specific kinds of conduct that Congress has chosen from time to time to favor with special freedom to collaborate, like technological research and development, 46 the graduate medical resident program,47 or production joint ventures among competing newspapers.48

#### Solves limits---only 6 affs

Carstensen 11, Professor of Law, University of Wisconsin. (Peter, 2011,Replacing Antitrust Exemptions for Transportation Industries: The Potential for a "Robust Business Review Clearance", 89 Or. L. Rev. 1059 , Lexis/Nexis)

There are six identifiable exemptions from antitrust law for various aspects of the transportation industries. The exemptions include The Shipping Act, railroad exemptions, collective agreements among motor carriers, intercity bus mergers and acquisitions, international air carrier agreement exemptions, and airport congestion.

#### AND ground

McGinnis 14 (Anne, “Ridding the Law of Outdated Statutory Exemptions to Antitrust Law: A Proposal for Reform,” University of Michigan Journal of Law Reform, 47.2)

Most of the statutory exemptions enacted over the last one hundred years are still in place today, despite widespread changes in economic theory, market structures, and antitrust law in general. When initially enacted, many statutory exemptions were seen as special-interest legislation harmful to competition, competitors, and society. While others were beneficial when first put into law, even many of those have grown irrelevant over time. Some have even become as harmful as those enacted with the intent of benefitting special interests.

### 1AR---Overlimiting

### 1AR ⁠— Reasonability

### AT: Arbitrary

## K---Cosmopolitanism

### 1AR ⁠— Theory

### 1AR ⁠— Framework

#### The plan outweighs epistemology ⁠— knowledge is contextual and fractured; focusing debate on assumptions is intellectual hubris and fails to address global problems

Lake 14, Jerri-Ann and Gary E. Jacobs Professor of Social Sciences and Distinguished Professor of Political Science at the University of California, San Diego (David A. Lake, 2014, “Theory is dead, long live theory: The end of the Great Debates and the rise of eclecticism in International Relations,” European Journal of International Relations, 19(3), pages 580-581, https://quote.ucsd.edu/lake/files/2014/02/Lake-EJIR.pdf)

In the end, I prefer progress within paradigms rather than war between paradigms, especially as the latter would be inconclusive. The human condition is precarious. This is still the age of thermonuclear weapons. Globalization continues to disrupt lives as countries realign their economies on the basis of comparative advantage, production chains are disaggregated and wrapped around the globe, and financial crises in one country reverberate around the planet in minutes. Transnational terrorism threatens to turn otherwise local disputes into global conflicts, and leave everyone everywhere feeling unsafe. And all the while, anthropomorphic change transforms the global climate with potentially catastrophic consequences. Under these circumstances, we as a society need all the help we can get. There is no monopoly on knowledge. And there is no guarantee that any one kind of knowledge generated and understood within any one epistemology or ontology is always and everywhere more useful than another. To assert otherwise is an act of supreme intellectual hubris. This is not a plea to let a hundred, a thousand, or ten thousand intellectual flowers bloom. Scholars working in cloistered isolation are not likely to produce great insights, especially when the social problems besetting us today are of such magnitude. All knowledge must be disciplined. That is, knowledge must be shared by and with others if it is to count as knowledge. Positivists and post-positivists are each working hard to improve and clarify the standards of knowledge within their respective paradigms. This is an important turn for both, as it will facilitate progress within each even as it raises barriers to exchange across approaches. So, if not a thousand flowers, it is perhaps better for teams of scholars to tend a small number of separate gardens, grow what they can best, and share when possible with the others and, especially, the broader societies of which they are part.

Conclusion

Do not mourn the end of theory, if by theory we mean the Great Debates in International Relations. Too often, the Great Debates and especially the paradigm wars became contests over the truth status of assumptions. Declarations that ‘I am a realist’ or Lake 581 pronouncements that ‘As a liberal, I predict …’ were statements of a near quasi-religious faith, not conclusions that followed from a falsifiable theory with stronger empirical support. Likewise, assertions that positivism or post-positivism is a better approach to understanding world politics are similarly ~~blinding~~ [wrong]. The Great Debates were too often academic in the worst sense of that term. Mid-level theory flourished in the interstices of these debates for decades and now, with the waning of the paradigm wars, is coming into its own within the field. I regard this as an entirely positive development. We may be witnessing the demise of a particular kind of grand theory, but theory — in the plural — lives. Long may they reign.

### 1AR ⁠— AT: Link

### 1AR ⁠— Alternative

#### The aff can’t get rid of nationalism or the state

Stephen M. Walt 19, Robert and Renée Belfer professor of international relations at Harvard University, 6/4/19, “You Can’t Defeat Nationalism, So Stop Trying”, https://foreignpolicy.com/2019/06/04/you-cant-defeat-nationalism-so-stop-trying/

Nothing has happened since then to alter my views; if anything, the importance of understanding the power of nationalism is even greater today. It was nationalism—specifically, a desire to regain lost national autonomy—that drove the British decision to leave the European Union, even though the movement’s leaders (and I use that term advisedly) cannot figure out how to do it and departure is likely to make most Britons poorer and could lead to the eventual dissolution of the entire United Kingdom. U.S. President Donald Trump rode nationalist nostalgia for an imagined past (“Make America Great Again”) to the White House in 2016, and it forms the basis for the protectionist and anti-immigrant policies that keep his political base loyal now. Nationalism is central to Chinese President Xi Jinping’s ambitious efforts to make China a world leader, and it is the common thread uniting right-wing European politicians in France, Austria, Italy, Hungary, and Poland. Everywhere one looks, in fact, one sees nationalism at work in today’s world.

Why is nationalism so powerful, and why is its impact so important?

For starters, humans are social beings. From the moment we are born, we belong to some sort of community—a family, a tribe, a village, a province, and, today, a country. Because we depend on those around us from the very beginning, humans have evolved to be highly sensitive to in-group/out-group distinctions. Being able to identify friends and foes quickly was once critical for survival, and it is cognitively easier to rely on simple indicators (“she speaks my language”; “he looks different than my group”) than conducting an in-depth assessment of someone else’s character or propensities. Given these evolutionary imperatives, it is hardly surprising that humans are probably more sensitive to such distinctions than we ought to be. This is not to say we cannot see beyond our own tribes and forge powerful attachments to others, or that we cannot redefine who is “in” or “out” over time; it is merely to say that we have a strong propensity to identify more strongly with those we regard as being “like us.”

Thus far, the “nation” has been the largest cultural group with this sort of enduring attraction for its members. The defining traits that make up a nation can vary, but they usually include a common language, shared culture, a territorial origin, and a shared narrative about the collective past. Most importantly, a nation is a group of people that conceives of itself as constituting a unique community with a particular identity. In Benedict Anderson’s famous phrase, nations are “imagined communities” where total strangers nonetheless recognize and acknowledge each other as belonging to the same group.

Moreover, as John Mearsheimer points out in his recent book The Great Delusion, the power of nationalism rests in part on its symbiotic relationship with the state.

Given the competitive pressures inherent in a world with no central authority, states have powerful incentives to encourage national unity within their borders, so that citizens are loyal and more willing to sacrifice for the state when necessary. Promoting nationalism—and especially a common language—also helped create more unified national economies and more productive populations, thereby enhancing the state’s overall capacity.

Similarly, because national groups that lack their own state are more vulnerable to conquest, absorption, persecution, or assimilation, many nations decided that having a state of their own was the best way to ensure their survival as an independent cultural group. The unfortunate histories of the Kurds, Palestinians, Tamils, and many others shows what can happen when a national group’s aspirations to statehood are repeatedly thwarted.In the modern world, in short, nations want their own states to ensure their survival and autonomy, while states promote nationalism to strengthen themselves and preserve their independence. Nationalist movements hope to add themselves to the ranks of U.N. members, while states do what they can to suppress independence movements within their borders and to create a homogeneous body of loyal citizens. In extreme cases, minorities are expelled, slaughtered, or “re-educated” (as China is now trying to do to the Uighur population in Xinjiang) in an effort to create a more unified (and presumably loyal) population.Taken together, these twin imperatives help explain why nationalism remains such a powerful and persistent force. And make no mistake: Its impact is profound. Even overly educated and generally skeptical individuals (e.g., me) are hardly immune to its effects. Why do I bemoan the absence of American men among the ranks of the world’s top tennis players? Why do I root for the American team at the men’s and women’s World Cup? Not because I know any of these athletes personally and happen to like them or admire their individual virtues; for all I know, they might be undeserving jerks. No, I’m rooting for them solely because they’re American. Although I think of myself as fairly cosmopolitan in outlook and wise to the seductive appeal of national pride, I can’t escape it entirely.Why should we care about this powerful and enduring phenomenon? First, because national sentiment is easily exploited by political leaders, including most of the demagogues whose activities are currently roiling politics around the world. By wrapping themselves in the mantle of patriotism, and constantly warning about the foreigners that are supposedly threatening our way of life, would-be authoritarians such as Hungarian Prime Minister Viktor Orban or cynical opportunists such as Boris Johnson can convince supporters that they are the only defense against national decline or even extinction.Second, nationalist narratives encourage double standards: They rationalize whatever one’s own side does while depicting similar behavior by others in the worst possible light. Americans condemn President Vladimir Putin’s Russia for its actions in Ukraine (and they are certainly worthy of condemnation), but we forget that we’ve done plenty of similar things in the past. It is more than a little ironic, for example, when the same people who loudly demanded that the United States invade Iraq in 2003 (on the basis of dubious arguments and manufactured “evidence”) were quick to attack Russia for its interference in Ukraine. Can you spell “hypocrisy”? Similarly, U.S. officials like Secretary of State Mike Pompeo routinely portray Iran as a relentless aggressor, blithely ignoring all the moments when the United States has used its vastly greater military powers to interfere in states that had done nothing to attack us. Mind you, I’m not defending Russian or Iranian conduct; I’m just showing how nationalist blinders make it harder to see what is really going on.Third, nationalism can get in the way of potential political compromises, especially when supposedly sacred national territory is involved. There was no rational reason for Serbia to try to retain Kosovo back in 1999 (the local population was overwhelmingly made up of hostile Kosovars and the region itself was of no great strategic or economic value), but Belgrade could not let it go because it was the cradle of Serbian national identity. Similarly, the inability of contemporary states to solve lingering territorial disputes (whether in Kashmir, the East China Sea, the Sakhalin Islands, or wherever) owes much to the power of national feeling. Not so very long ago, states ceded or sold territory when it made strategic or financial sense for them to do so, and they usually did it without much controversy. (The United States got the Louisiana Purchase from France and Alaska from Russia in just this way, for example). Today, such actions are almost unheard-of, because nationalized populations resist giving up anything that is seen as part of the country’s sacred territory.Relatedly, nationalism makes cross-border empathy and understanding more elusive. Because all nations sanitize their own history, downplaying or denying their past transgressions and portraying their own actions as consistently noble and benevolent, they frequently won’t remember harms they have done to others. If they do remember it, it will be in a sugar-coated and self-serving form. As a result, subsequent generations won’t understand why others might have a very different view of the past, and thus a different view of the first state’s motivations and character. In some cases, of course, this phenomenon may be present in both countries and make the level of mutual misunderstanding even greater. The result: Each side won’t fully grasp why the other has good reason to be wary or suspicious, and each will be prone to interpret prudent defensive behavior as evidence of irrevocably malign intent. One need only consider the stubbornly toxic relationship between the United States and Iran to see how powerful and enduring such dynamics can be.Fourth, nationalism has long been a potential source of overconfidence, because most (all?) national myths include subtle or not-so-subtle claims to superiority. Not only is our nation different from all others, we are taught, it is also better. Nationalism is hard to separate from national pride, and pride makes it harder to believe that outsiders could ever beat us in a fair fight. This tendency doesn’t mean that every tiny David thinks he can beat mighty Goliath (i.e., even proud nations sometimes recognize when the balance of power is stacked against them), but can still lead to arrogance and wishful thinking. It is no accident, I suspect, that die-hard Brexiteers believe leaving the EU will both restore British autonomy (yes) and usher in a new era of British prosperity and greatness (no). Brexit proponents may have known such claims were dubious and used them for for purely cynical reasons, but the blatant appeal to national pride made audiences more likely to accept them.Nationalism is not without its virtues, of course. Convincing individuals to make sacrifices for the common good is not a bad thing, and a healthy degree of political unity and pride in a country’s genuine accomplishments is surely preferable to the rancorous, open-ended struggles that divide many democracies today. Binational or multinational states without a tradition of assimilation do not have an inviting history, and efforts to grant autonomy to every self-identifying nation inside a country would probably lead to ruinous levels of dysfunction and eventual dissolution.

In any case, nationalism ain’t going away. The challenge, therefore, is to acknowledge its value and limit its vices. That is, of course, easier said than done. At the very least, its power and persistence needs to be recognized and respected. Among other things, a healthy respect for nationalism’s power would discourage powerful states from thinking they can remake the world according to their own particular designs, and help us avoid the hubristic fantasies that have caused so much harm in recent years. We live in a world of bristling nationalisms, that’s not going to change anytime soon, and acknowledging that is a good basis on which to construct a more realistic foreign policy.

### 1AR ⁠— Perm

### 1NR---Case---Cosmopolitanism

### 1NR---Case---Lake

### 1NR---Case---Cap Turn

### 1NR---Case---Method

### 1NR---Case---Realism