# 1AC

## 1AC---Export Cartels

### 1AC---Trade ADV

#### Advantage 1---Trade

#### Antitrust rules are rapidly proliferating globally, but are overlapping and disjointed---the lack of international harmonization increases their cost and complexity AND creates an opening for politicized use of rules as a mechanism to unfairly promote domestic industrial policy under the guise of competition

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I. Global developments suggest increased need for legal certainty in rulemaking and enforcement

Companies today operate in an increasingly globalised world, interconnected via digital platforms and ecosystems. The technological revolution is accelerating at an ever-increasing speed. It promises to fundamentally alter both the competitive landscape and the tools by which competition is regulated. Against this backdrop, the world is facing substantial environmental challenges with mounting pressure on businesses to change the way they operate, including an increasing need for firms to collaborate to achieve social goals and increased efficiency that no one firm could achieve independently.

While some progress has been made towards a unified view of competition law, companies are also facing rising geopolitical tensions that have led to protectionist measures and the pursuit of industrial policy objectives under the guise of competition law enforcement. Concepts including national security, full employment, and ‘fair’ or ‘level’ pricing frequently introduce domestic protection concerns into traditional economic tests. With the proliferation of competition regimes, now well over 100, the potential for regulatory drag on the global markets increases exponentially. Having spent the last two decades as competition counsel, I can say with certainty that the complexity of the legal landscape and uncertainty and unpredictability as to compliance with competition law regulations have increased dramatically in recent years both at a global and EU level. Companies are struggling to achieve legal competition law compliance despite consistent efforts including scaling up their compliance departments.

As our markets continue to evolve in the face of technology and sustainability and other social goals, it is now more important than ever for the European Commission (‘the Commission’) to ensure legal certainty, both in rulemaking and in enforcement. The costs associated with uncertainty should not be underestimated, particularly as the Commission considers new enforcement tools designed to address competition structures and practices that may fall outside of traditional economic analyses. Not only is transparency and predictability vital for the proper functioning of the European Economic Area, but it would also send a much-needed signal to the rest of the world. Conversely, if, in any new enforcement system transparency and predictability do not prevail, the Commission’s efforts would likely serve to indirectly legitimise non-transparent and unpredictable protectionis[m]t in other countries, not founded on the rule of law and due process.

Even if one of the key roles of the Commission is to enforce competition law, it is important to keep in mind that competition policy and enforcement are tools of economic policy. Implemented well, competition policy can stimulate economic growth and competitiveness but, if not, it can be a significant regulatory brake on investment, economic development, and sustainability advances.

II.Why should we worry about uncertainty costs?

When considering the potential costs of new regulation, decision-makers often emphasise the legal spend, i.e., the cost of in-house lawyers, external advisers, document preservation systems, etc. But what is often overlooked is the far more expensive costs related to uncertainty in the process of risk-weighting potential investments. A simple example:

Company A seeks to enter into a transaction with Company B to achieve carbon output reduction. Company A’s executive management team, in conjunction with financial advisors, calculates a value for the transaction, which is typically a range of acceptable prices to achieve the desired goal. Company A’s CEO then engages her legal department to assess the potential for regulatory risk flowing from the venture. Given the potential for fines, divestitures, restrictions, or outright prohibitions on the project from a myriad of governmental authorities, the application of competition regulation has the potential to result in billions of dollars in business losses. On receiving legal advice on the probability of such losses, Company A’s CEO applies risk weighting to the value of the transaction, adjusting the value downward to account for the regulatory risk.

In some ways, legal ‘weight’ on a transaction, collaboration, or other business initiative is (socially and economically) desirable—if for example, a company employee proposed to engage in a price-fixing cartel, the legal department’s assessment of extreme risk serves a valuable societal goal. But in far too many cases, it is the mere lack of transparency and certainty in global competition regimes that lead to a determinative ‘risk weighting’ outcome in a deal. Competition counsel must conservatively advise of the uncertainty surrounding deal execution, and responsible CEOs must protect shareholders against business losses flowing frompossible regulatory intervention including the reputational risk following compliance breaches. As in our example, regulatory uncertainty alone may prevent a pro-competitive, socially desirable transaction that has been devalued by the risk of regulatory intervention.

When designing business practices, engaging in collaboration with other companies, and in considering merger activities, legal certainty, transparency, and predictability routinely drive willingness to invest.

III. Legal uncertainty has increased significantly in recent years

The trend that we see is that the complexity of the legal landscape and uncertainty as to compliance with and enforcement of antitrust regulations have increased dramatically in recent years, both globally and in the EU. There are several reasons for this development.

Firstly, more and more jurisdictions have competition laws in place and an increasing number of countries are actively enforcing their rules. For global companies that can mean familiarisation with up to 100 different competition law regulations. This is not particular to competition law, but it highlights the need for clear and transparent rules as well as predictability.

Secondly, the substantive competition rules are becoming increasingly unclear due to the application of domestic protection concerns, non-economic factors, and novel competition theories, such as proposed new competition enforcement tool (‘New Competition Tool’) currently under review in Europe1. The conduct at issue in these kinds of cases is rarely ‘black or white’ or may simply be a consequence of the (changing) market dynamics (also where changes are unrelated to the conduct of the company) and will typically pursue legitimate purposes, making it extremely difficult for companies to draw the boundaries needed to avoid government intervention.

Thirdly, companies increasingly operate in a vast number of countries, and their business practices may implicate several jurisdiction’s rules at the same time. Companies are often faced with substantially different rules despite apparently similar concepts. Also, we see new confidence by emerging countries to apply the common antitrust concepts according to their own interpretation and possibly to serve their own political ends. Lack of international convergence on substantive rules including sector-specific regulations thus in practice differs immensely across jurisdictions despite ICN and OECD efforts to harmonise rules.

#### Specifically---export cartels are legalized protectionism designed to bypass WTO subsidy controls---that creates increasing disputes that put trade on the brink, especially after Trump and Brexit

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Section 1: Introduction

Today, there is a growing fear of rising protectionism, from the United States (US) under the Trump administration’s imposition of tariffs and a trade war with China, to the United Kingdom’s Brexit, to the less known trade-restricting measures adopted by other countries all over the world.1

The neoclassical economic model suggests the desirability of free trade over protectionism because free trade lowers prices, allows a flow of goods with little restrictions and improves the quality of products, resulting in overall welfare gain.2 On the other hand, protectionism results in welfare losses, increased prices and a decline in innovation, thus harming consumers and economic efficiency.3

The natural inclination of states to engage in protectionism is as old as time and, until today, has never been diminished.4 The General Agreement on Trade & Tariff (GATT),5 superseded by World Trade Organisation (WTO) since 1995, rendered the classical forms of protectionism such as tariffs obsolete. However, it did not defeat protectionism; instead, protectionism has evolved through its protean capacity to adapt into new and often undetectable forms,6 now labelled as ‘murky’ protectionism.7

Competition law enforcement is suspected as one of the forms of this murky protectionism. There are two ways (among others) considered in this article in which States can utilise competition law to impair free trade and restrict access of foreign firms to domestic market. First is the exemption under national competition law such as export cartel exemptions; second is the strategic application of domestic competition law, e.g. alleged discriminatory and selective enforcement of merger regulation.8

It appears that States use their competition law as invincible trade barriers to further their protectionist bids such as national security and environmental protection.9 In recent years, States have been accused of using their competition law to pursue protectionism. For instance, the US has criticised the EU’s merger regulation as protecting competitors and not competition, particularly in the technology industry in mergers involving non-EU firms – even when those same acquisitions are approved by other competition authorities. A good example is the Commission’s 2001 decision to block the $42 billion acquisition of Honeywell by General Electric.10 Similarly, the US is being encouraged to change their stance on leniency towards export cartels due to its beggar-thy-neighbour effect.11 Investigating the controversy around the use of competition law for protectionist ends is particularly relevant today to protect and uphold free trade and liberalisation. There is a gap between competition and trade policies which national competition law fails to address and the WTO rules fail to regulate. Merger regulation and export cartel exemptions appear to be used as tools for protectionist ends to exploit the gap. This article, therefore, examines whether States use their competition law to pursue protectionist policy in the EU and the US. In this context, the article specifically focuses on analysing how merger regulation and treatment of export cartel further protectionism.12

In terms of method and approach, the article uses the international political economy (IPE) perspective underpinned by (legal/political) realism and interdisciplinary, theoretical-analytical perspectives within the framework of international competition law. It employs (comparative) qualitative empirical evidence from the EU and US for comparative analysis. The international political economic perspective is used to analyse how the presence of political elements and influences on decision-making reflect the enforcing jurisdiction’s national environment, culture, priorities and goals by presenting an opportunity for the use of competition law for protectionist bids. Meanwhile, the interdisciplinary and theoretical-analytical perspective is used to employ literature in the legal, economics, international relations and international politics areas.13 This is empirically analysed within the framework of (international) competition law. The (comparative) qualitative empirical evidence is employed by gathering relevant material from the European Union and the United States of America for an in-depth analysis.

The article adopts legal/political realism theory in the analysis section to demonstrate that the regulation of competition law by regulators/competition authorities in the EU (mainly, the EU Commission)14 and in the USA (the US Department of Justice and the Federal Trade Commission)15 is highly influenced by the public policy of the nation. In simple parlance, legal realism is a theory that all law derives from prevailing social interests and public policy. According to legal realist theory, judges consider not only abstract rules, but also social interest and public policy, when deciding a case.16 Legal realism is a diverse school of thought and any attempt to homogenise it will distort more than simplify,17 since its influence goes beyond being a mere theory of adjudication.18 Judges more often than not promote social ends; just as Cardozo admitted, a judge may be tempted to substitute their view for that of the community.19 From this perspective, the legal realist is attached to social reform and they want law to serve as an instrument for social action. To achieve this, realist thought, policy objectives and interrelationship between legal rules had to become more intimate.20

Political realism is a theory that attempts to explain, model, and prescribe political relations. It proposes that power is (or ought to be) the primary end of political action, whether in the domestic realm or international arena. In the domestic realm, the theory contends that politicians do, or should, strive to maximise their power, whilst in the international arena, nation States are the primary agents that maximise, or ought to maximise, their power. In the context of nation States, the proposition is that a nation can only advance its interests against the interests of other nations; this implies that the international environment is inherently unstable.21 Realism emphasizes power and the national interest and directs more attention to political security than to economic issues.22 Realism is equated to, if not related to, mercantilism, also known as protectionism.23 To obtain political security, realists enrich their power and wealth at the expense of their neighbouring States, often through an increase in exports and decrease in imports.24 IPE is concerned with the interaction of economics and politics in the international sphere.25 Politics is represented by the State as a sovereign political unit and economics is represented by the market as a system of production and consumption at a price determined by supply and demand.26

Based on the political and economic dimensions involved in the interplay of competition law and trade policy, particularly protectionism, it is the position of this article that realist theory, along with an IPE perspective, is relevant in understanding why nation States use competition law as a protectionist bid in their trade policy.

The article is structured into five broad sections; this section, Section 1 is the general introduction and set out the method, including the theoretical approach used in the article. Section 2 provides a brief conceptual understanding of the relevant concepts in the article which have divergent conceptual interpretations within academic literature. Section 3 discusses the relationship between competition law and other issues areas such as trade policy, protectionism and others. Section 4 analyses competition law and protectionism in the two case studies, EU and US, by using specific competition law instruments: (i) merger regulation and (ii) treatment of export cartels to investigate and analyse how they are used for protectionism, including a brief comparative analysis. Finally, Section 5 summarises and concludes the article.

Section 2: A Conceptual understanding of relevant concepts

Looking at academic literature, scholars have provided divergent conceptual views or interpretations of relevant competition law concepts that appear in the article.

(i) Competition

Competition, in its broad economic sense, is the process whereby firms struggle to win against each other. Competition law, also known as antitrust in the United States, refers to the legal rules and standards which aim to protect the process of competition by dealing with market imperfections and restoring desirable competitive conditions in the market.27 Competition policy, on the other hand, is broader than competition law and covers the full range of government measures that could promote competitive market structures and behaviour, including trade liberalisation measures.28 Views on the necessity of the enactment of competition law to implement competition policy remain divided.29 The neo-classical economics case for competition argues competition provides various benefits such as lower prices, efficiency, and innovation.30 There is no consensus on the goals of competition law. Some scholars suggest that competition law is akin to a sponge or that it is a fluid concept influenced by varying objectives, policies, culture; hence, the goals vary based on each enacting jurisdiction.31 On the other hand, one of the prominent scholars of the Chicago school of competition analysis suggests that the ultimate goal of competition law is economic efficiency, which is equated to consumer welfare maximisation.32 Nonetheless, the most commonly declared goal of competition law is to protect and encourage competition to achieve the optimal resource allocation and maximise consumer welfare.33

As a result of these diverging goals and enforcement policies of competition law, several scholars proposed for the internalisation, or at least harmonisation, of competition law.34 Some scholars such as Fox and Manne and Weinberger, recognising the restrictive effect on trade by anticompetitive practices, called for the alignment of competition law within the WTO Framework. However, this failed to materialise as a result of the diverging views of the member States.35

(ii) Merger

Under a business or firm perspective, mergers36 are motivated by efficiency goals as explained by efficiency theory, strategy to increase market power as explained by market power hypothesis, or simply the managers’ greed or overconfidence as explained by the hubris hypothesis.37 Efficiency theory suggests that firms will merge if there is a potential to generate sufficient realisable synergies beneficial to all the merging parties.38 Synergies comprise of collusive, operational and financial synergy.39 Operational synergies are manifested in resulting economies of scale and economies of scope as they mainly relate to production and/or administrative efficiencies; financial synergy refers to cost savings, and collusive synergy refers to expansion of market power as supported by the market power hypothesis.40 Alternatively, hubris hypothesis argues that decisions to merge are the result of managements’ overestimation of the resulting benefits to the business due to the managers’ overconfidence in decision-making.41 Nonetheless, each merger transaction is unique; hence, there is no single theory that encapsulates the motivations for pursuing these transactions.42

Under the legal perspective, however, a merger simply refers to a combination of two or more corporations into a single entity, regardless of business reason or mode of acquisition.43 For competition authorities, mergers pose a concern because of the merging firms’ potential to accumulate or expand market power, which can distort competition through monopoly or abuse of dominance.44

However, empirical analyses negate the protectionism hypothesis, at least with the perspective of the EU competition law. Initial studies found a positive correlation between the likelihood of opposition to mergers involving foreigners and the foreseen negative impact of the merger on domestic competitors.45 Yet, after the 2004 reforms introduced EU merger regulation, a re-examination of the protectionist hypothesis showed a shift in the protectionist tendencies of the enforcement authority.46 Recent research affirmed the results of this re-examination and found that the EU Commission committed no discrimination in its enforcement of merger regulation, whether in frequency or intensity, in mergers involving foreign firms.47 These empirical analyses, at least in the EU context, show that competition authorities did not use their merger control power to intervene on mergers involving non-EU or US acquirers. Nevertheless, they fail to conclusively prove that protectionism with merger regulation does not exist. Conversely, qualitative analyses examining merger decisions and the text of the merger regulations claim that merger regulation is used, or at least could potentially be used, for protectionist purposes such as promotion of national champions.48

(iii) Export cartels

A cartel is an association of rivals agreeing to fix prices above the competitive level, limit output below the competitive level or allocate markets between or amongst themselves in order to maximise their profits.49 Cartels, generally, have been labelled as the ‘supreme evil of antitrust’50 and the ‘primary evil of global trade’.51 On the other hand, export cartels are cartels that only operate in foreign markets and do not directly affect the markets in the jurisdiction where the cartel members are located.52 While there is a consensus among the world’s competition authorities to prohibit hard-core cartels,53 there is lack of clarity and transparency surrounding the treatment of export cartels. It is argued that export cartels receive considerable political support,54 not only because of its benefits to the exporting country, but also because it is argued that export cartels are not necessarily pure evil like hard-core cartels.55 Export cartels may have the same goals as hard-core cartels – to fix prices or allocate markets – but they may also have strictly efficiency-enhancing goals such as sharing marketing and transportation costs.56

According to economic theory, export cartels raise domestic producer welfare without diminishing domestic consumer welfare.57 Additional export revenues and increases in national welfare incentivises exporting States to tolerate, if not promote, export cartels.58 Furthermore, since the adverse effects of export cartels are externalised or felt exclusively by importing States, exporting States possessing the territorial jurisdiction over the cartel have very little interest in disciplining the conduct.59 On the other hand, importing States which have the motivation to prevent the conduct due to its anticompetitive effect and corresponding reduction in their consumer welfare do not have the territorial jurisdiction and must rather apply their competition laws extra-territorially to sanction the cartel.60 However, since exporting States are not motivated to sanction the cartel, or even induced to promote or tolerate the cartel because of its positive domestic effect, they may block any extraterritorial enforcement by the importing States through exemptions or non-cooperation.61 This conflicting interest presents a competition law enforcement dilemma on export cartels.

Fox similarly observed the insufficiency of national competition enforcement to regulate export cartels because it lacks legitimacy or capacity to reach competitive restraints on foreign soil; nonetheless, it mainly affects the domestic home market.62 Export cartels are often not covered by national competition laws when they do not affect the domestic market, neither directly or indirectly. Scholars argue that export cartels, to the extent that they are tolerated – if not encouraged – by the exporting States, are an effort of exporting States to boost domestic welfare at the expense of global welfare. More specifically, it is at the cost of the consumers’ welfare in the target market – a clear manifestation of a beggar-thy-neighbour conduct.63 On the contrary, there is a belief that the scarcity of empirical data on export cartels handicaps the attempts to analyse the issue on export cartels.64 The lack of data creates difficulties to determine the gravity of the anticompetitive harm that export cartels create; thus, the very assumptions on which the theory of the nexus of export cartel and anticompetitive conduct rely may be misguided.65

(iv) Trade policies

Like competition law, trade policy also contains both political and economic dimensions. It refers to the system of incentives put in place by a State with regard to production and consumption, including importation, exportation and trade of goods and services as aligned with the imposing state’s growth and development objectives.66 Trade policy involves various actions and tools such as the imposition of tariffs, quotas or restrictions, granting of subsidies to domestic industries and other measures often classified into two broad types: tariffs and non-tariff measures.67

The tariff is the classic instrument of trade policy.68 Tariffs are imposed to generate revenue but also, more importantly, to protect the domestic industry of the imposing country.69 However, with increasing trade liberalisation, most states covertly seek to protect domestic sectors through other instruments of trade policy such as non-tariff measures.70 Non-tariff measures include quotas, licences, technical barriers to trade, sanitary and phytosanitary measures, export restrictions, custom surcharges, financial measures and anti-dumping measures.71 Whilst non-tariff measures may intrinsically be protectionist, they seem useful in addressing failures in the market such as externalities and the asymmetry of information between producers and consumers.72

Trade policy is historically determined on the basis of the macro and micro view.73 The micro view provides that the State adopts its trade policy in accordance with the preferences of its industrial constituents.74 Hence, under the micro view, trade policy refers to the ‘aggregate outcome of industry battles over protection.’75 The macro view, on the other hand, suggests that the trade policy of the State cannot simply be traced back to the preferences of its industrial constituents.76 Under the macro view, the trade policy of the State reflects the collective interest of the State and the State acts as an independent agent furthering the national State objectives. Trade policy in all countries consists of varying dimensions or levels. For example, the EU trade policy, in addition to its ‘unilateral’ liberalization, i.e. voluntarily providing preferential market access or zero tariffs for specific types of countries, also adopts bilateral, plurilateral and multilateral agreements as well as commercial instruments such as anti-dumping laws and other safeguards.77 The objectives pursued at each level of trade policy constantly changes.78 Different States negotiate in order to determine their international trade policies.79 Hence, bilateral, plurilateral or multilateral trade agreements are born, usually involving preferential tariff rates, agreements on investments, technology-sharing or single market objectives.80 In the context of protectionism, the ability of States to resolve trade disputes amongst themselves significantly influences protectionist positions.81 However, it is argued that protectionist trade policy is more than just a means of adjudicating trade disputes; rather, protectionism is pursued by certain States in order to further their national economic and political policies.82

Part II

Protectionism

Protectionism is a kind of trade policy aimed at impeding foreign trade access to the domestic market and preserving, if not improving, the position of domestic producers in contrast to foreign producers.83 With the decline of classic protectionism, i.e. the imposition of tariffs and other visible barriers to trade, comes the rise of ‘murky’ protectionism, also known as new protectionism, which is characterised by seemingly innocuous and subtle measures designed to distort free trade without constituting as violations of the WTO rules or trade agreements.84 More aptly, murky protectionism has been defined as ‘abuses of legitimate discretion which are used to discriminate against foreign goods, companies, workers and investors’.85 Examples of murky protectionism are the imposition of regulatory and licensing requirements, tightening of product standards, limitation of ports of entry, introduction of bailout packages and initiation of disguised ‘green’ protectionism.86

Academic literature provides conflicting arguments regarding protectionism. Economic theory under the classic utility model establishes that any benefit that may result from protectionism is outweighed by its costs in terms of losses to consumer welfare and decline of economic growth.87 Another argument against protectionism is the moral argument which provides that protectionism is akin to stealing, i.e. producers and rent-seeking individuals induce the government to pursue their interests and benefit at the expense of consumers, in effect taking away what is due.88 On the other hand, the most notable arguments in favour of protectionism are national defence, infant industry and strategic trade theory.89

The national defence argument authorises the protection of industries with a vital role in national security such as weapon manufacturing to ensure the States’ readiness in times of war or adversity.90 It is suggested that agricultural protectionism is subsumed under the national defence argument because food security and food availability are part of the States’ legitimate national interests.91 It has been noted that the EU’s agricultural protectionism resulted in growth of production, achievement of self-sufficiency in food security and stability in the common market for agricultural products.92

The infant industry argument provides that a State, in order to grow, must first strengthen its newly established industries which do not enjoy the cost and production efficiencies yet compared to its competitors; this is at least until it establishes its comparative advantage and the playing field has been levelled.93 Proponents for the protection of the infant industry assert that protection must only be temporary and the benefits provided by the protected industry must exceed the costs of protection, also known as the Mill-Bastable Test.94

The strategic trade theory, introduced by James Brander and Barbara Spencer, has also been used to support protectionism.95 According to the strategic trade theory, firms are inclined to take ‘strategic’ moves exhibiting aggressive behaviour; the State’s support of such national firms will further give more credence to such behaviour, in effect deterring potential rivals such as foreign firms.96 Hence, strategic trade theory suggests the States can raise their national income at the expense of other States by supporting or promoting national firms in international competition.97

Section 3: The relationship between competition law and other issue areas

(i) Competition and Trade Policies

Competition and trade policies are both national policies used as tools for economic development, albeit with different objectives, principles, and scope. No consensus on the overall relationship between the two has yet been reached. It is suggested that the two policies could be mutually reinforcing, complementary, contradictory, or substitutes depending on how they are applied.98 Based on their basic objectives, efficiency and consumer welfare, competition and trade policies are perceived as mutually reinforcing.99 On the other hand, by dealing with private, anticompetitive conduct to ensure effective market access, competition policy is viewed as complementary with trade policy which is concerned with the removal of governmental actions. This facilitates the anti-competitive behaviour by private entities. Restrictive trade measures limit competition by curtailing the entry of foreign suppliers in the market as well as aiding anti-competitive practices by domestic firms; meanwhile, exclusions and exemptions from competition law, as well as lack of enforcement thereof, negatively impact trade.100

A contradictory relationship between competition and trade policy is also suggested as a result of their divergent aims and effects. Competition policy is concerned with consumer welfare, while trade policy is focused on the welfare of producers and is more easily influenced by special interest groups.101 Trade policy also has objectives which conflict with competition policy aims such as raising revenue, promoting self-sufficiency and supporting exports.102 Finally, competition policy and trade policy are also viewed as substitutes in some respects. For instance, the WTO found that competition law provisions relating to price discrimination serve as a substitute for anti-dumping measures in some circumstances.103

The impact of anti-competitive business practices on international trade is the most important concern in trade policy.104 Experts105 recognise that anti-competitive practices of firms, in addition to trade barriers, hamper international trade. Hence, the necessity to integrate or at least align competition and trade policies has been formally recognised as early as the proposal for the establishment of the International Trade Organisation (Havana Charter). The Havana Charter contained provisions which encourage member States to prohibit business practices that affect international trade which restrain competition, limit access to markets, or foster monopolistic control whenever such practices are harmful to trade.106 Nonetheless, the Havana Charter was not ratified and was instead succeeded by the GATT of 1947, which salvaged some of the provisions from the Havana Charter. Thus, the negotiating parties that created the GATT of 1947 had shown a public awareness that arrangements designed to foster trade could be undermined when commercial enterprises engaged in cartels or other restrictive business practices, and these negotiating parties had proposed treaty provisions to ensure that competition policy would reinforce government measures for international trade.107 Subsequently, the World Trade Organisation was established in 1995 to succeed the GATT of 1947. Efforts to include competition policy within the trade policy framework in the WTO have proved particularly challenging due to lack of agreement among member States on competition policy.108 Support for international discipline regarding competition law was originally stimulated by US perceptions that international cartels and the absence or lack of enforcement of national competition law obstructed the ability of US firms to contest markets.109 The US supported the inclusion of a chapter dealing with restrictive business practices, reflecting its views against German cartels and Japanese zaibatsu who are the main opposition to including competition law in the WTO.110 In recent times, the EU has been in the lead, arguing that all WTO members must adopt and enforce competition laws. Developing countries have not been at the center of the debate on trade and competition in the WTO.111 However, competition policy has an important role in developing countries, both in promoting a competitive environment and in building and sustaining public support for a pro-competitive policy stance. However, the issue is that many do not have competition laws; those that do often have limited implementation ability.112 The bottom line of the debate is that any agreement on international competition policy that goes beyond general procedural cooperation and introduction of transparency mechanisms likely must be plurilateral, at least initially.

The lack of consensus on the nexus of competition and trade policy creates a gap which is exploited in order to pursue various motives such as promoting industrial policy, protectionism or nationalism.

(ii) Competition law and protectionism

In the United States, some scholars claim that antitrust law is rooted in protectionist institutions.113 Evidence reveals that the political impetus for antitrust law originated from lobbying farmers of several agricultural states;114 however, the majority views of scholars differs on this.115 Inefficient businesses misused antitrust laws by suing their efficient competitors for lower prices, increase in output and product or process innovation116 Today, the use of antitrust law for protectionism is no longer limited to the protection of an industry from another within the domestic sphere; it extends to the international level and transcends international trade. Similarly, in the European Union, remnants of industrial policy abound in the EC competition law.117 The European Commission has been attacked on the ground of ‘disguised protectionism’, protecting EU-based competitors and furthering the single market objective rather than seeking to uphold competition in strict terms.118 This is clearly demonstrated in the proposed Siemens-Alstom merger. In prohibiting the proposed consolidation of Siemens and Alstom, the European Commission unleashed a turmoil of political discontent; arguably, this is more the manifestation of longstanding frustration with certain underlying asymmetries within merger regulation which impede the ascendancy of the European industry on the world stage than an issue with the Commission’s decision itself.119

Competition law, as a political creation, is inherently susceptible to ‘instrumentalisation’ for protectionist ends. Competition law is at risk of being misused to advance industrial policies, political agendas and protectionist policies in the guise of competition enforcement, thus bypassing the scrutiny of international trade agreements.120 The existing legislative framework of competition law enhances this risk, as it provides for greater discretion in decision making and political involvement in the enforcement of competition law.121 While open-ended discretionary standards are laudable because economic analysis cannot be put into rigid standards as each competition case is unique, it also creates opportunities for abuse. Discretion may be abused to allow regulators to pursue their own private interests, shirk unpleasant duties, augment their regulatory authority in hopes of increasing monopoly rents which they can trade to interest groups in return for personal benefits, and act in other ways that are contrary to the public good.122 In the context of merger law, for instance, discretion may incentivise regulators to pursue protectionism – in particular, new protectionism. Trade agreements and institutions such as the WTO have made traditional protectionism through open trade discrimination challenging. Yet, the underlying political dynamic driving protectionism has not gone away. Hence, while jurisdictions do not forbid certain mergers, they can still discriminate against them. For instance, regulators can require more onerous ‘fixes’ for mergers that threaten local producers such as requiring the merging parties to divest assets in a way that benefits the domestic competitor.123

Indeed, the argument that competition law may be a tool to pursue a protectionist end is commonly premised upon the possibility that competition law – especially through selective, discriminatory enforcement – might actually be abused as a trade barrier.124 National protectionism is often demanded by certain industries or interest groups.125 However, a competition regime that favours domestic firms such as local producers hurt not only the producers and consumers of other countries, but also the domestic consumers.

(iii) Merger regulation and protectionism

One area of competition law that has always been suspected as an instrument of protectionism is merger regulation; the failed merger of Siemens-Alstom is a good case in point. Merger regulation is one of the pillars of competition policy aimed at preserving market competition in the event of business combinations and takeovers.126 However, preservation of competition is not the only rationale for the enforcement of merger regulations; national security, businesses perceived to be of national strategic importance, technological capabilities, jobs and export also influence merger control enforcement.127 Thus, the protectionism hypothesis posits that merger regulation is used as a tool to protect domestic firms from competition.128 In addition to protection of domestic firms, which is often associated with the infant industry argument, States are also suspected of using merger regulations to promote its national champions on the premise of strategic trade theory. In the context of merger control, the notion of a national champion generally means that the government encourages or does not prevent a merger between two domestic firms to create a more powerful entity, or it opposes the acquisition of one of the domestic firms by a foreign company.129

A study has found that, while merger regulation has deterred anticompetitive mergers, it has also protected rival producers from increased competition due to efficient mergers.130 In the context of EU merger policy, an empirical analysis to prove the protectionist hypothesis concluded a direct correlation between the likelihood of opposition to the merger by the competition authority when the bidder is a foreign national and the expected adverse effect of the reviewed merger on domestic competitors.131 After reforms on the EU Merger Regulation were introduced in 2004, the hypothesis was re-examined and change in protectionist tendencies were discovered.132 The result was more consistent with a recent empirical study that showed the Commission has not intervened more frequently or extensively in transactions involving a non-EU- or US-based firm’s acquisition of a European target.133 Nonetheless, there has been no conclusive findings on the absence of protectionism. At most, empirical analyses have shifted the burden of proof to those advancing the view.

Despite these empirical results disproving the use of merger regulation for protectionist purposes, persistent allegations abound. The political model of antitrust established that merger decisions are influenced by political contributions of lobby groups representing special interests, political pressures and social welfare considerations.134 For instance, Bu argues that the decision of Chinese competition authority to block the merger between Coca Cola and Huiyuan illustrates the influence of non-competition considerations such as protectionism on merger regulation enforcement.135 The lack of sufficient analysis as well as broad conclusions reached on the decision left no other conclusion but that China was trying to protect its home-grown, local company from potential brand dilution once absorbed by Coca Cola.136 Another example is the opposition of the US to the potential merger between Broadcom, a Singapore-based company, and Qualcomm, an American telecommunication chip manufacturer, on the grounds of national security.137 In the EU, its opposition to the Boeing/McDonnell Douglas merger was suspected to arise from protectionist sentiment because of the merger’s adverse impact on the rival EU firm Airbus.138

(iv) Export cartels exemption and protectionism

Export cartel exemptions are instruments of competition policy for trade policy ends.139 By tolerating, if not supporting, anticompetitive conduct just because it does not affect the domestic market, exporting states in effect assist or condone the harm caused to the importing states.140 Hence, export cartel exemptions are perceived as tools for protectionism in this context of the beggar-thy-neighbour approach.

In the context of trade policy, export cartel exemptions produce the same economic effect as export subsidies or aids.141 While both harm competition at the expense of foreign markets and foreign competitors, only export subsidies are regulated under the WTO rules.142 However, State-run export cartel are challengeable under WTO rules with different outcomes depending on the State.143 Hence, the difficulty in prosecuting export cartels that have anti-competitive effects is considered a trade dilemma. In Argentina, based on Measures Affecting the Export of Bovine Hides and the Import of Finished Leather,144 the WTO Panel noted that the WTO rules do not obligate its members ‘to assume a full “due diligence” burden to investigate and prevent cartels from functioning as private export restrictions’.145

The United States, through the Webb-Pomerene Act of 1918,146 explicitly exempted export cartels and export association from the Sherman Act147 and from Section 7 of the Clayton Act,148 which has been reinforced by the Export Trading Company Act of 1982149 and the Foreign Trade Antitrust Improvements Act150 which regulated export cartels by granting them certificates. The EU, on the other hand, while it does not explicitly exempt export cartels, Articles 101 and 102 of the TFEU151 provide for the limited application of the EU competition law to conduct that produces anticompetitive effects (objective or subjective) within the internal market and to the trade between Member States. Hence, the EU competition law implicitly allows export cartels if they do not influence the EU internal market.

#### The perception of protectionism-by-antitrust sends shockwaves that end the last semblance of global trade---subtle vehicles like competition law are a unique threat because open protectionism is controlled by international agreements

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INTRODUCTION

Trump. Le Pen. Brexit. Protectionist rhetoric has consumed the international political stage. Western countries and their leaders were once the drivers of economic globalization, relying on free-market speeches and the prospect of removing trade barriers to appeal to their constituents. 1They pointed fingers at other countries engaging in or encouraging protectionist behavior and challenged them in the court of public opinion and elsewhere to stop their antics. The "our country first, world trade after" mentality was widely politicized and vilified. Now, it seems that Western national leaders are championing the very protectionism that they once criticized. 2

Although a system of truly free world trade has never been perfected, past world leaders have eliminated most of the protectionist trade mechanisms that once ran rampant in the international economy. They did so by implementing multilateral and bilateral trade agreements. These webs of agreements have bolstered decades of support for free trade, or at least some version of it. By and large, tariff policies and other forms of protectionism were either eliminated or dramatically reduced. [\*118] Now, as we have seen in the media, when a government imposes a tariff, it becomes a rather extreme political statement which sends a shockwave of significant global consequences.

Protectionism did not end when the age of overbearing tariff policies did, despite then-leaders' best efforts to vilify it. Rather, the end of the tariff era forced nations to achieve protectionist goals through more subtle trade vehicles, like antitrust law. 3So, the recent resurgence of protectionist rhetoric should mean that these subtle trade vehicles, including antitrust law, will be relied on more heavily. It is a fear of many that antitrust law may become overused and inequitably applied to achieve and combat protectionist aims.

Notwithstanding the recent uptick in tariff threats, it is unlikely that all Western leaders will revamp or terminate the trade agreements set forth by their predecessors and bring back the kinds of tariff policies that once existed in their place. Although in the United States ("U.S."), President Trump recently imposed tariffs on steel imports, it appears that his intent is to limit this behavior to a specific industry rather than institute a widespread policy favoring the use of tariffs generally. 4To remedy bad behavior in a specialized set of industries is not to instigate a global paradigm shift. This purpose is underscored by his use of the national security exemption, which is largely interpreted as being used for individual situations rather than general policy schemes. 5 Many still hope that his course of action will be retracted and is merely a strong negotiation tactic. However, there is no doubt that Trump is far more comfortable than past leaders with subverting the status quo on trade relations.

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

Given the anticipated continuation of cooperative trade agreements and the proliferation of protectionist rhetoric as the new norm of public opinion, leaders will be forced to rely on existing avenues to meet protectionist aims. Again, we find ourselves relying squarely on antitrust law, the more subtle and widely accepted mechanism of restricting trade, to address perceived inequities. In the words of the World Trade Organization ("WTO"), "once formal trade barriers come down, other issues become more important." 7 Among the important issues lies antitrust law. Antitrust and competition laws can form a subtle trade barrier resulting in the imposition of tariff-like measures.

Antitrust law can be enforced to reach protectionist aims and to combat them. It is a tool that allows nations to achieve individual protectionist aims without undermining the future of trade between countries and the cooperative framework underpinning the relatively delicate global free trade enjoyed today. However, the perception of enforcement of antitrust laws as an abusive and solely protectionist mechanism may cause the death of even the smallest semblance of international free trade that remains in the international marketplace today.

#### The result will be full-on trade wars

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Yet, even so, it would be unreasonable for every minor violation of a local ordinance overseas to give rise to an unfair competition action in America. Committing to such collateral enforcement of foreign law in such an unqualified manner would be problematic on several levels. Doing so would open the floodgates to transnational claims, clogging the dockets of U.S. courts and agencies. 142It could encourage harassment of foreign competitors, burdening them with the costs and distractions of defending unfair competition claims lodged in a distant U.S. court. And it could also encourage litigation tourism, inviting foreign plaintiffs to forum shop. Finally, use of unfair competition law could be abused for protectionist purposes. Such perceived unilateral aggression could trigger retaliation that risks sparking a larger trade war.

#### Trade wars cause shooting wars that trigger World War III and collapse containment of environmental, disease, and tech threats that cause extinction

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Four structural forces will shape the future of International Relations: globalization (but without liberal rules, institutions, and leadership)1; multipolarity (the end of American hegemony and wider distribution of power among states and non-states2); the strengthening of distinctive, national and subnational identities, as persistent cultural differences are accentuated by the disruptive effects of Western style globalization (what Samuel Huntington called the “non-westernization of IR”3); and secular economic stagnation, a product of longer term global decline in birth rates combined with aging populations.4 These structural forces do not determine everything. Environmental events, global health challenges, internal political developments, policy mistakes, technology breakthroughs or failures, will intersect with structure to define our future. But these four structural forces will impact the way states behave, in the capacity of great powers to manage their differences, and to act collectively to settle, rather than exploit, the inevitable shocks of the next decade.

Some of these structural forces could be managed to promote prosperity and avoid war. Multipolarity (inherently more prone to conflict than other configurations of power, given coordination problems)5 plus globalization can work in a world of prosperity, convergent values, and effective conflict management. The Congress of Vienna system achieved relative peace in Europe over a hundred-year period through informal cooperation among multiple states sharing a fear of populist revolution. It ended decisively in 1914. Contemporary neoliberal institutionalists, such as John Ikenberry, accept multipolarity as our likely future, but are confident that globalization with liberal characteristics can be sustained without American hegemony, arguing that liberal values and practices have been fully accepted by states, global institutions, and private actors as imperative for growth and political legitimacy.6 Divergent values plus multipolarity can work, though at significantly lower levels of economic growth-in an autarchic world of isolated units, a world envisioned by the advocates of decoupling, including the current American president. 7 Divergent values plus globalization can be managed by hegemonic power, exemplified by the decade of the 1990s, when the Washington Consensus, imposed by American leverage exerted through the IMF and other U.S. dominated institutions, overrode national differences, but with real costs to those states undergoing “structural adjustment programs,”8 and ultimately at the cost of global growth, as states—especially in Asia—increased their savings to self insure against future financial crises.9

But all four forces operating simultaneously will produce a future of increasing internal polarization and cross border conflict, diminished economic growth and poverty alleviation, weakened global institutions and norms of behavior, and reduced collective capacity to confront emerging challenges of global warming, accelerating technology change, nuclear weapons innovation and proliferation. As in any effective scenario, this future is clearly visible to any keen observer. We have only to abolish wishful thinking and believe our own eyes.10

Secular Stagnation

This unbrave new world has been emerging for some time, as US power has declined relative to other states, especially China, global liberalism has failed to deliver on its promises, and totalitarian capitalism has proven effective in leveraging globalization for economic growth and political legitimacy while exploiting technology and the state’s coercive powers to maintain internal political control. But this new era was jumpstarted by the world financial crisis of 2007, which revealed the bankruptcy of unregulated market capitalism, weakened faith in US leadership, exacerbated economic deprivation and inequality around the world, ignited growing populism, and undermined international liberal institutions. The skewed distribution of wealth experienced in most developed countries, politically tolerated in periods of growth, became intolerable as growth rates declined. A combination of aging populations, accelerating technology, and global populism/nationalism promises to make this growth decline very difficult to reverse. What Larry Summers and other international political economists have come to call “secular stagnation” increases the likelihood that illiberal globalization, multipolarity, and rising nationalism will define our future. Summers11 has argued that the world is entering a long period of diminishing economic growth. He suggests that secular stagnation “may be the defining macroeconomic challenge of our times.” Julius Probst, in his recent assessment of Summers’ ideas, explains:

…rich countries are ageing as birth rates decline and people live longer. This has pushed down real interest rates because investors think these trends will mean they will make lower returns from investing in future, making them more willing to accept a lower return on government debt as a result.

Other factors that make investors similarly pessimistic include rising global inequality and the slowdown in productivity growth…

This decline in real interest rates matters because economists believe that to overcome an economic downturn, a central bank must drive down the real interest rate to a certain level to encourage more spending and investment… Because real interest rates are so low, Summers and his supporters believe that the rate required to reach full employment is so far into negative territory that it is effectively impossible.

…in the long run, more immigration might be a vital part of curing secular stagnation. Summers also heavily prescribes increased government spending, arguing that it might actually be more prudent than cutting back – especially if the money is spent on infrastructure, education and research and development.

Of course, governments in Europe and the US are instead trying to shut their doors to migrants. And austerity policies have taken their toll on infrastructure and public research. This looks set to ensure that the next recession will be particularly nasty when it comes… Unless governments change course radically, we could be in for a sobering period ahead.12

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.

### 1AC---Harmonization ADV

#### Advantage 2---Harmonization

#### The plan multilateralizes antitrust---formalizing law under international frameworks for contingent cooperation creates an opt-in system of explicit reciprocity that creates agreement AND spills over to deep economic integration

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B. Between Contracts and Networks: Frameworks

Another dichotomy that dominates the integration of competition policy pertains to the forms of internationalization, which in the competition policy space have generally been dominated by contract-style treaties on the one hand and by open networks on the other.166 Between these two models lies what seems to be an under-utilized alternative, which I call a “framework for contingent cooperation.”

[FOOTNOTE] 166 This binary view dominates the literature. See, e.g., Edward M. Graham, “Internationalizing” Competition Policy: An Assessment of the Two Main Alternatives, 48 Antitrust Bull. 947, 949 (2003) (“[M]echanisms [for antitrust internationalization] range from bilateral treaties creating arrangements for cooperation between or among national competition law enforcement agencies to informal working arrangements among agencies.”); Eleanor M. Fox, International Antitrust and the Doha Dome, 43 Va. J. Int’l L. 911, 912 (2003) (contrasting “horizontalism” with “globalism”); Anu Piilola, Assessing Theories of Global Governance: A Case Study of International Antitrust Regulation, 39 Stan. J. Int'l L. 207, 247 (2003) (“Rather than drafting overarching multilateral agreements on antitrust laws, cooperation efforts in the immediate future are more likely to succeed in managing existing diversity and promoting voluntary convergence based on approximation of domestically applied standards. Networks of antitrust authorities are well-suited to facilitate this process of cooperation and voluntary convergence.”). [END FOOTNOTE]

A “framework” in the sense that I am using that term is a facilitative arrangement that does not constitute a treaty under international law,167 and which does not carry the charge of international legal obligation, but which involves an exchange of specific and reciprocally contingent commitments by participant jurisdictions to engage in mutually beneficial conduct. Specifically, each party states that it will extend certain benefits to each other party so long as each other does likewise; the parties may also create supplementary mechanisms to monitor and/or adjudicate compliance with these commitments.168

A framework of this kind is not a treaty: it is what Kal Raustiala calls a “pledge,”169 and what Charles Lipson calls an “informal” agreement,170 involving no legal obligation, and it involves no commitment of the parties’ reputation for law-abiding behavior.171 On the other hand, it differs from an open, information-sharing network because it precisely specifies behavioral commitments, and because each of the parties shares an understanding that concrete consequences will promptly follow—exclusion from the benefits provided by others—if its behavior materially deviates from the terms of the commitment.172 A framework is therefore essentially a specific declaration of intention to engage in conduct that benefits others, contingent upon parallel behavior by other participating states, without obligatory status under international law.

This is, in some sense, the direct opposite of the approach typically taken in competition policy chapters in trade agreements. The provisions of competition policy chapters partake of the substance of treaty law, but are generally framed in broad terms rather than specifics, and generally do not reflect a shared understanding that specific consequences will attend breach. By contrast, frameworks do not bind in international law, are framed in specific terms than aspirational generalities, and reflect an understanding that the benefits of cooperation will be withdrawn in the event of violation.

Contingent cooperation thus depends for its effectiveness primarily upon three important dynamics. The first and most important of these is the rationality of strategic cooperation. A familiar mainstream view holds that to a significant extent states behave in international society in ways that rationally serve their interests.173 And when cooperation over a series of interactions is overall in the interests of each member of a group, but when each member faces a rational incentive to defect from the terms of cooperation in individual cases, familiar economic theory teaches that a strategic cooperative equilibrium can be maintained among the parties.174 In contingent cooperation, each party understands that if it defects materially from the terms of the framework, the other participants will withdraw the excludable benefits of cooperation, and this provides the incentive to comply.175

Contingent cooperation can be made more stable by the introduction of certain structures designed to monitor compliance (just as with a cartel among private companies).176 This might among other things involve the creation of a central “facilitator” that is responsible, in a general sense, for obtaining, collecting, and processing information necessary to sustain a cooperative equilibrium.177 Depending on the purpose and scope of the cooperation project, this could include (for example): reviewing the text of laws, regulations, and policy documents for consistency with the terms of the framework; conducting peer-review-style evaluations and certifications; hosting voluntary dispute resolution processes, including mediation and/or arbitration, to determine whether and when the framework has been violated; or even receiving and handling complaints of violations ombudsman-fashion (i.e., receiving the complaint, giving the subject of the complaint an opportunity to respond, and publishing findings and conclusions). A central facilitator could also go beyond a policing function and offer a common forum for certain forms of cooperation and information sharing. The nature of such broader functions, and the extent to which they would be useful or desirable, would depend on the nature and purpose of the cooperation.

The second dynamic that powers contingent cooperation is the normative appeal of the project itself. The point here is not unlike what Gráinne de Búrca calls “mission legitimacy”: the normative force of the underlying purpose of a cooperative project, and specifically the power of that normativity to secure the acceptance and cooperation of those who participate.178 Parties joining projects of contingent cooperation can be expected to be in some sense self-selecting: they join such endeavors because, in part, they are genuinely committed to promoting and achieving the ends that the project represents, and they embrace the project of cooperation as worthwhile.179 It may sound a little naïve to suggest that a project of cooperation may be more likely to “stick” if it has some normative appeal to the participating polities, but legal scholarship has long recognized that states do what they undertake to do more often than strictly rational analysis would predict.180 And I think the proposition that genuine commitment to a goal can contribute to compliance is in truth somewhat less naïve than the converse idea that compliance is just as likely without it.

The third source of a framework’s effectiveness is to be found in the acculturative and socializing effects of interaction in an environment in which values and practices are shared and reinforced as normative, and in which attention is paid to the existence and nature of violations. There is a rich and complex literature on the ways in which states, state actors, and the individuals within them may be “socialized” or “acculturated” by repeated engagement with others through common institutions and shared environments of normativity, eventually contributing to the emergence of obligations with genuine normative force.181 Jutta Brunnée and Stephen Toope have pointed out ways in which the force of legal obligation itself arises from shared communities of practice grounded in social reality and shared understandings, not formal commitments.182 As they put it, “[s]tability may be aided by explicit articulation of a norm in a text, but it is ultimately dependent upon [an] underlying shared understanding and a continuous practice of legality.”183

Participation in an endeavor of contingent cooperation may help to engender the development of such understandings and practices, and these may contribute to the effectiveness of the framework. In the longer term, this may even result in the creation of a legal instrument. But this progression is not necessary for acculturation to exert a reinforcing effect: for, as Anu Bradford accurately notes, there is no reason to think that “the pathway from nonbinding to binding rules” is an inevitable or even a natural one.184

The distinctive value of a framework is that it provides a low-cost way for jurisdictions to explore and participate in possible arrangements of mutual benefit that depend upon shared concrete understandings regarding future behavior, but without bearing the burden of an obligation under international law, without running the reputational risk of having to break a treaty, and without facing the domestic hurdles (or political scrutiny) that a treaty would necessitate.185 Use of such a framework may help to reduce the concerns grounded in political morality that might otherwise attend inter-jurisdictional action in sensitive areas:186 to use a term I have coined elsewhere, as contingent practices from which states could withdraw at any time, frameworks would benefit from considerable resources of “exit legitimacy.”187

Frameworks are not suited to every application. They seem particularly apt for types of international cooperation that generate excludable benefits for other participants and can be reasonably well monitored: in the sphere of competition policy, for example, this would include commitments to provide nondiscriminatory access to procurement markets as well as many forms of antitrust cooperation (including cooperation with one another’s investigations, coordination of enforcement activity, the operation of joint filing systems for merger review and cartel leniency programs, and so on). Certain guarantees of nondiscriminatory treatment by SOEs could also be extended on a selective basis. On the other hand, contingent cooperation is much less suitable for projects that require strong and highly credible guarantees of commitment from the participants (in which case a traditional treaty-contract would seem more appropriate188) or groups of parties still lacking the prerequisite agreement on the terms and ambit of desirable cooperation. Nor is it suitable in the absence of sufficient confidence in the ability or incentive of other parties to deliver on their commitments: in these cases, open dialogue and information exchange through a network would seem preferable. Nor, obviously, is it a good fit for projects in which the benefits of cooperation are non-excludable.189 To pick an obvious example, contingent cooperation would not recommend itself as a natural choice for an international project to introduce SOE discipline: the benefits are non-excludable (there is no obvious way to withdraw them selectively in the event of defection) and compliance is very difficult to monitor, so the use of a framework is unlikely to make much of a contribution.190

#### Starting by prohibiting cartels generates experience and feedback loops that spill over to broader harmonization

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a. *Criteria for goals*

The most obvious criteria for goals is that they must be sufficiently attractive to induce and maintain commitment from all necessary participants in the process. As we have seen, however, there is a broad range of goals in existing systems, which means that the goals of the project will have to be relatively general and flexible, becoming more specifically defined through experience along the pathway. A project which assumes that a single conception of competition law favored by one or two participants at a particular point in time will be accepted and implemented by all participants is unlikely to attract widespread commitment. Goals must also be ‘graspable’ or ‘interpretable.’ The language must identify the range of possible interpretations. If it does not, it cannot represent a common goal, and it cannot maintain support. In negotiating international agreements, it is common for parties intentionally to choose language that is too vague to guide actual decision making. That may be appropriate for other types of agreement, but it would be inconsistent with the long-term orientation of a commitment strategy.

The project’s goals must also be ‘shared’ or ‘shareable’. Where goals are shared, each participant has an interest in the effective pursuit of the goals by other participants. For example, the goal of increasing consumer welfare (as understood in neoclassical economics) is shareable, because any increase in consumer welfare on a global market benefits consumers across the market, regardless of state boundaries. In contrast, the goal of protecting a set of producers in one country would presumably not be shareable, as it relates only to those specific producers and those who benefit from their success.¹²

Finally, the agreed goals will have to be perceived as ‘fair’ by all types of participants. Goals that are likely to give significant advantages and gains to some participants (such as highly-industrialized countries) and to cause net harm to others (eg developing countries) cannot attract widespread support. At a minimum, therefore, fairness is likely to require that all participants have a reasonable prospect of benefit. Given the non-linear nature of economic development, however, it cannot require that all benefit equally.

b. Goal structure

Goals will have to be related to each other in ways that guide the development of national systems. As an example of such a structure, we use three goals which, if applied together, might form the basis of a global competition law strategy. Th ere may be others, but my purpose here is merely to illustrate how such a goal structure might look.

The basic concept is that participants would eventually all have approximately the same goals for competition law, at least insofar as it is applied to global markets. In order to achieve that result, national competition law goals would be expected to fi t within a range of goals that narrows over time. Given that national goals often vary considerably, this process will take time and affect some countries more than others. The basic goals would be set out at the time of agreement, but the pathway concept would allow variation over time on the basis of input from the participants.

The most basic goal of all competition laws is to deter anti-competitive conduct. Definitions of ‘anticompetitive’ vary, however, and the concept is notoriously difficult to operationalize in legal decision making. By itself, therefore, this goal is too broad. A second goal could give further guidance—protecting the process of competition from private restraints. The idea is contained in some form in all competition law systems, and thus it provides another shared basis for a pathway strategy. Although there can be uncertainty about the edges of the concept, it makes clear that the competitive process itself is the focus of the project, thus further limiting the set of acceptable national goals. Th e goal of providing durable benefits to consumers could further limit the acceptable range of goals. Again, virtually all competition law systems seek to protect the consumer, so it can also provide a basis for commitment. Together, a package of goals such as this might provide a viable basic goal framework.

c. Potential problem areas

The history of competition law development points to three potential problem areas in developing an acceptable goal structure. One is whether non-economic goals should be part of such a project. Competition laws have often pursued political and social goals in addition to their economic goals. In post-war Europe and in Japan, for example, competition law was often explicitly or implicitly intended to support democratic development. Experience with competition law has, however, revealed the difficulties of using competition law for non-economic goals, and the general trend has been to eliminate them. Given that a multinational project for competition law creates obligations for not one state, but many, such goals are likely to be incompatible with its objectives.

A second potentially difficult issue involves the goal of consumer welfare (in the sense of neoclassical economics). US officials and scholars (as well as many European competition officials) now generally assume that consumer welfare should provide the only goal of competition law, but many outside the US do not accept this view. Given that US support is likely to be necessary for the success of any global competition law project, this creates a potentially serious basis for conflict. Th ere may, however, be ways to minimize this conflict. For example, the consumer welfare standard is based on the application of price theory to a unified market. It does not take into account the existence of political borders. Th is at least calls into question whether it can be effective as the sole goal in a competition law strategy in which national boundaries play a central role. Moreover, the consumer welfare standard is most effectively used for short-run analysis, but a pathway project depends on maintaining political commitment over time. Those who favor consumer welfare as the sole goal of competition law may, therefore, be willing to broaden their range of acceptable goals, at least over the near term, in order to obtain the benefits of the project.

Another potential obstacle involves the goal of economic development. As we have seen, many countries have used competition law as a tool for development. Moreover, developing countries have often argued that economic development should be a goal of competition law, because economic development can be expected to create additional competitors as well as broader markets and thus enhance competition in the long run.¹³ Many kinds of policies may, however, be seen as supporting economic development, and thus identifying it as a goal for a pathway project gives little guidance. In addition, such a goal could easily be used to justify policies that are inconsistent with competition goals. In a pathway strategy, however, there may be no need for developing countries to insist on development as a goal, because the strategy provides flexibility in the timing of obligations and allows obligations regarding norms to be phased in over time. It is thus itself development-oriented. Most, perhaps all, of the arguments supporting development as a goal can be satisfied through the long-term orientation of the pathway concept.

In a pathway context, goals must guide the construction of the process and provide incentives to support it. Accordingly, in formulating goals that can perform this function effectively, the objective should be to articulate a set of goals that is specific enough to achieve commitment from states that prefer a narrow conception of goals, but broad enough to attract commitment from those who have a broader vision of goals. Each will have to accommodate the other. This can be justified if it supports a process that gives both groups most of what they want or is at least superior to its alternatives.

4. Commitment in norm-setting

Th e pathway concept requires that participants eventually restrict the norms that they apply to global markets. Th is narrowing of acceptable norms would have to be phased in over time, depending on factors in a country’s economy and political system as well as on the capacity and experience of its institutions. Some norms may be required early in the process, whereas others may be phased in as the project’s benefits are demonstrated and working relationships are created.

a. Potential obstacles

Two issues are likely to be prominent in reaching agreement on substantive norms. One is the role of economics. Recall that economics plays two basic roles in competition law: one is to interpret data, the other is to provide norms or standards of conduct. Our concern here is with its normative role. In the US, that role is central. There are few ‘rules’ that are based solely on the characteristics of the conduct itself. Legal decisions usually focus on economic analysis of the actual or probable effects of the conduct under the circumstances of a specific case. Economics here plays a normative role. It determines the lawfulness of the conduct. As we have seen, the European Commission has recently moved toward this view, at least in most areas of competition law.

Th is normative role for economics is, however, rare in other competition law systems. It creates a degree of legal uncertainty that few countries have accepted. In these systems, conduct is typically deemed unlawful where the conduct itself has specified characteristics or relatively specific effects, without requiring full analysis of its economic consequences in each specific case. A full effects-based economic analysis is expensive, and many countries do not have the resources to perform such an analysis. In the near term, therefore, it probably cannot be required as part of a global competition law strategy.

Divergence in views about the role of economics is thus likely to present challenges for any global competition law agreement, but one value of a pathway strategy is that it may be able to develop uses of economics that can bridge the gap. For example, officials and experts from participating countries could together develop common scenarios in which anti-competitive effects can be presumed or excluded.¹⁴ National competition officials and courts would be free to apply their laws according to their own procedures, but the scenarios would serve as guidelines for their decisions. Moreover, the group may eventually even include an obligation that national decision makers give reasons for reaching conclusions that are inconsistent with these scenarios. This may be a way of reducing concerns in the US and Europe about inadequate economic analysis and also meeting the demands of other systems for greater legal security.

The issue of whether norms should apply equally to all participants may also be an obstacle to agreement. It has created significant difficulties in previous discussions of global competition law, and it continues to be a major part of discussions in the area. Developing countries often argue that for historical and other reasons fi rms located in their countries have had limited opportunity to grow and to become competitive on global markets. As a result, if they are subjected to competition from larger foreign fi rms, they will have little chance of success, and global markets will forever be dominated by firms from a few countries. Th is, they claim, justifies what is often called ‘special and differential treatment’ for them. Other states have generally been unwilling to accept such treatment in the context of competition law.¹⁵

This issue is likely to be critical to competition law development, but the pathway concept may be uniquely positioned to accommodate it, because that strategy allows norms to be phased in over time, depending on factors such as the economic conditions in the participant state. A developing country’s obligations could thus automatically be tailored to its level of economic development, and differential treatment would gradually be eliminated over time.

b. Specific types of norms—cartels

A brief review of the main categories of norms illustrates some of these issues. The treatment of cartels could serve as a starting point and foundation for a pathway strategy. There is widespread agreement that cartels are generally harmful, and most, if not all, competition laws either prohibit them or contain norms intended to deter them. The economic harms from cartels are usually obvious, and even relatively low-cost deployment of economic analysis can identify them. This means that there may be little difficulty in requiring competition law systems to prohibit cartels. This would allow states to develop experience with the project and to develop trust, knowledge pathways, and feedback loops—all of which can provide momentum for further commitment. Above all, enforcement in the area can be expected to generate benefits that would further support the project.

#### Normative convergence through antitrust harmonization prevents extinction from resource depletion, human rights abuse, and war

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A. The international political environment

At the root of international political theory is the fundamental maxim that relations between sovereign nations in the absence of mitigating factors is characterized by intense competition, mutual distrust, the inability to make credible commitments, and war.20

[FOOTNOTE] 20 Political scientists characterize the international system as “anarchic.” In the absence of world government (or other mitigating force), competition between states is largely unregulated by external laws or enforcement. The world is characterized by mistrust, the inability to contract, and the ultimate reliance on a state’s own devices. See THOMAS HOBBES, LEVIATHAN 80 (Edwin Curley ed., 1994) (in the state of nature “the condition of man . . . is a condition of war of everyone against everyone”). In fuller terms:

There is no authoritative allocator of resources: we cannot talk about a ‘world society’ making decisions about economic outcomes. No consistent and enforceable set of comprehensive rules exists. If actors are to improve their welfare through coordinating their policies, they must do so through bargaining rather than by invoking central direction. In world politics, uncertainty is rife, making agreements is difficult, and no secure barriers prevent military and security questions from impinging on economic affairs.

ROBERT O. KEOHANE, AFTER HEGEMONY: COOPERATION AND DISCORD IN THE WORLD POLITICAL ECONOMY 18 (1984). Efficiency-enhancing gains from trade are difficult to appropriate because trade itself (and any other form of exchange or agreement between nations) is characterized by the absence of credible commitments to future behavior. And underlying the problem is the ever-present threat of the use of force. See, e.g., Kenneth N. Waltz, Anarchic Orders and Balances of Power, in NEOREALISM AND ITS CRITICS 98, 98 (Robert O. Keohane ed. 1986) (“The state among states . . . conducts its affairs in the brooding shadow of violence . . . . Among states, the state of nature is a state of war.”). Although this dire characterization of the international environment is, of course, a stylized approximation of the real world—there are always overlying constraints on sovereign behavior in the form of norms, reputational effects, and customary international law, HEDLEY BULL, THE ANARCHICAL SOCIETY: A STUDY OF ORDER IN WORLD POLITICS (1977)—it is a useful and widely accepted heuristic for crafting a theory of international politics. [END FOOTNOTE]

As one commentator notes, “Nations dwell in perpetual anarchy, for no central authority imposes limits on the pursuit of sovereign interests.”21 And states are “unitary actors who, at a minimum, seek their own preservation and, at a maximum, drive for universal domination.”22 As a result, states operating on the international stage are unable to judge the sincerity of each others’ stated intentions when those intentions are contrary to this manifest interest. Because of self-help rules, states are forced in the main to assess their own security environment by assessing the capabilities of competitors, downplaying their motives. Given that the nature of the competition can implicate the fundamental survival of one (or more) of the actors, actions taken by one state to improve its own security must necessarily decrease the security of its competitor; in the absence of mitigation, security is a zero-sum game.23 In a world where cooperation is exceedingly difficult (because there is no authority to enforce agreements, nor any basis for assessing the reliability of another state’s commitments), international relations are characterized by a continuous race to the bottom, a mindless arms race rather than the opportunity to realize gains from cooperation.

It is obvious that not all relations between states are characterized by the security dilemma, however. Canada, for example, shares an unprotected border with the most powerful nation in the world without degenerating into a destructive and costly arms race. By some mechanism, then, Canada must be able reliably to judge U.S. intentions, even absent the apparent ability by the United States credibly to bind itself to a nonaggressive policy toward Canada. The key to mitigating the pressures of the security dilemma is the ability to distinguish a state with aggressive and expansionist tendencies from a benign one.24 States can be distinguished by their fundamental type. They can be classified as “revisionist,” that is, they seek to subvert the dominant order, or they can be classified as “status quo,” that is, they seek to support it.25 But, as noted, a state’s ability to judge another’s intentions (as opposed simply to counting its armaments) is extremely tenuous and comes at great cost. In fact, political science offers few well-understood mechanisms for judging a state’s propensity for aggression.

At the same time, hegemonic states have an abiding interest in spreading and maintaining their dominant worldview.26 Not only is it imperative that dominant states receive credible signals about other states’ intentions, but it is also important that dominant states attempt to inculcate their norms within other states that, over time, might mount credible challenges to the dominant states’ security.27 The spread of hegemony through internalization of norms occurs for three reasons. First, states with similar institutions and sympathetic domestic norms are simply better and more reliable trading partners, and it is in the hegemon’s economic interest to instill its norms.28 Second, states with defensive military postures and that adhere to the status quo present significantly less security risk to dominant states.29 And finally, the hegemon has a normative interest in the spread of its culture, its worldview, and its norms.30 This conception of the playing field upon which states interact leads to the conclusion that, entirely apart from the immediate and substantial economic benefits to a state from well-ordered interactions with other states, hegemonic states also have a national security and a normative interest in the information to be gleaned from the fact that these interactions are, in fact, well ordered.

In the absence of centralized enforcement, privately held and nonverifiable information as to a state’s fundamental type is the critical problem in assessing motives.31

[FOOTNOTE] 31 See KEOHANE, supra note 20, at 31 (“Order in world politics is typically created by a single dominant power [or hegemon].”). States are consequently classified as one of two types, “revisionist” or “status quo,” based on their acceptance and adherence to the political norms, institutions, and rules created by the hegemon. Status quo states are those that try to improve their condition from within the framework of the accepted world order. Revisionist states, by contrast, seek to gain position both by working outside that order and by working to subvert the hegemonic order itself. For instance, the existing world order is generally accepted to be that created by the United States after World War II. It comprises a liberal international economic order, the use of multilateral institutions (such as the United Nations and the WTO), negotiation for dispute resolution rather than the threat of violence, and the promotion of liberal democratic moral norms. See, e.g., Schweller, supra note 24, at 85; HANS J. MORGENTHAU, POLITICS AMONG NATIONS: THE STRUGGLE FOR POWER AND PEACE 32 (1948). Trade disputes between status quo states (like tariff disputes between the United States and Europe) are resolved through peaceful negotiation rather than the threat of war. Although status quo states do not entirely eschew the use of violence, they typically seek international authorization and legitimization before employing military force, as in the multilateral operations in Iraq, Kosovo, and Afghanistan. Revisionist states, on the other hand, such as North Korea, Iran, and China, will more readily use military force as a bargaining tool and are more reluctant fully to participate in transparent military, economic, and political negotiations. [END FOOTNOTE]

States wishing to escape the pressures of the security dilemma and engage in cooperative behavior need a means of conveying their preferences to others in a credible manner. There are, in general, two means by which such information can be transmitted: states can either bind themselves in such a way that they are unable to deviate from a stated behavior (known as “hands tying” in Schelling),32 or they can signal their intention to engage in a specified course of action by incurring costs sufficiently large that they discourage the misrepresentation of preference.33

International institutions can play a crucial role in facilitating the transmission of this information.34 In particular, international agreements over the terms of trade, even without binding supranational enforcement authority, provide a means for states to bind themselves to a desirable course of behavior in the short run and, more importantly, to signal their acquiescence to the ruling world order in the long run. Because compliance with treaty obligations often requires signatories to alter their domestic laws to reflect the terms of the treaty, the costs of compliance can be substantial. In the short run, to the extent that states enforce their domestic laws they can bind themselves to a certain course of behavior. In the long run, a state’s willingness to incur the substantial costs of changing its laws, both the transaction costs inherent in changing domestic laws and the even more substantial costs in domestic political capital, signals a willingness to engage other states on the terms set by the reigning international power. Moreover, there may be unintended effects, as changes in domestic laws result in a new set of domestic incentives to which actors respond, and new windows of opportunity may open up through which policy entrepreneurs can push for the internalization of new norms.35 Competition laws in particular are susceptible to this mode of analysis.

Most nations have adopted competition laws as a way to actualize (as well as to symbolize) a degree of commitment to the competitive process and to the prevention of abusive business practices . . . . The introduction of competition laws and policies has also gone hand in hand with economic deregulation, regulatory reform, and the end of command and control economies.36

The surest way to remove the threat of war, increase wealth, conserve resources, and protect human rights is through fundamental agreement between all states (or at least effective agreement between verifiably status quo states) under a normative umbrella that promotes all of those values. This normative convergence can be effected through the stepwise internalization of the sorts of economic and democratic values inherent in international economic liberalization, perhaps most notably through the adoption of principled international antitrust standards.37

#### Resource depletion causes extinction

Dr. Timothy Gorringe 20, Professor in the Department of Religion and Theology at the University of Exeter, “Confession and Hope: Ekklesia’s Task in the Global Emergency”, Religions, Volume 11, Number 2, https://www.mdpi.com/2077-1444/11/2/97/htm

1. The Four Horsemen

Doubtless every generation has its own version of the four horsemen of Revelation 6, and they have been grim enough over the centuries, but never as genuinely apocalyptic, in the popular sense, as today. Today’s four horsemen—overpopulation, resource depletion, loss of biodiversity and climate change—could each separately mean civilisational collapse and put together they could mean the end of human life on earth.1

The first issue is population, which has more than doubled since 1961 to getting on for 8 billion. The UN predicts it will plateau at 11 billion at the end of the century but this cannot be guaranteed. The assumption is that women’s education, and the availability of contraception, will stabilize numbers but, as Stephen Emmot points out, both of these have been available in Niger for years, and the average birth rate is still seven children per woman. In China and Hungary larger families are officially promoted. If the current rate of global reproduction continues, there will not be eleven billion, but twenty eight billion human beings by the end of the century (Emmott 2013). While one sixth of the present world population still live in absolute poverty it remains the case that, as the Baltimore economist Herman Daly has been arguing for half a century, huge numbers mean huge impacts. Emmott argues that the pressures this size of population will generate can only end in complete collapse, in which the earth will become uninhabitable.

Population impacts are intensified by the dominant economic model, neo-liberalism, which looks for more and more growth, ignoring the warnings of the ‘Limits to Growth’ report of fifty years ago. The mission of the World Bank is to put an end to poverty, which is admirable, but the subtext is that the whole world should live like the United States—which would require five planets, and indeed more if absolute numbers keep growing. One of the results of this version of ‘economy’ (actually, an anti-economy as Wendell Berry in particular has argued) is a soaring gap between rich and poor all over the world. Today inequality is driven not primarily by inherited wealth but by salary differentials.2 Some CEOs earn more than a thousand times what their lowest paid employees earn. The French economist Thomas Piketty suggests that if it got to a stage where the top decile appropriated 90% of each year’s output, revolution would likely occur unless some peculiarly effective repressive apparatus exists to keep it from happening.3 Even in terms of the system as it is, an inegalitarian spiral cannot continue indefinitely: Ultimately there will be no place to invest the savings, and the global return on capital will fall, until an equilibrium distribution emerges.4

The second of our four horsemen is resource depletion, which includes uranium, copper, phosphorus, rare earths which are vital for renewable energy, top soil, but above all water. Sixty per cent of fresh water is found in just nine countries.5 It is estimated that within twenty years almost half the world’s population will experience water scarcity. Global consumption of water is doubling every twenty years, more than twice the rate of human population growth. Agriculture accounts for sixty five per cent (one ton of wheat requires one thousand tons of water), domestic use ten percent, and industry accounts for the rest. Even now ‘the water table in major grain producing areas in China is falling at the rate of five feet per year. Of China’s 617 cities 300 already face water shortages. 80% of their rivers no longer support fish life.’ (Kunstler 2006).

Some analysts have been predicting peak oil for many years and if this were really the case it would have huge implications for farming and therefore for the capacity to feed seven or eleven billion. However, as Emmott notes, new reserves of oil and gas are constantly being found, and shale oil and gas is coming on stream. The problem, as he puts it, is not that there are not enough fossil fuels, but, to the contrary, that we will seek to use every last drop.6

#### Human rights failure causes nuclear war

Gregory Treverton 17, Chair of the National Intelligence Council, Office of the Director of National Intelligence, National Intelligence Council Unclassified Strategic Assessment Of Global Trends, Authored by ODNI Personnel Including the Chairman of the NIC, “The Near Future: Tensions Are Rising”, 2017, <https://www.dni.gov/index.php/global-trends/near-future>

These global trends, challenging governance and changing the nature of power, will drive major consequences over the next five years. They will raise tensions across all regions and types of governments, both within and between countries. These near-term conditions will contribute to the expanding threat from terrorism and leave the future of international order in the balance.

Within countries, tensions are rising because citizens are raising basic questions about what they can expect from their governments in a constantly changing world. Publics are pushing governments to provide peace and prosperity more broadly and reliably at home when what happens abroad is increasingly shaping those conditions.

In turn, these dynamics are increasing tensions between countries—heightening the risk of interstate conflict during the next five years. A hobbled Europe, uncertainty about America’s role in the world, and weakened norms for conflict-prevention and human rights create openings for China and Russia. The combination will also embolden regional and nonstate aggressors—breathing new life into regional rivalries, such as between Riyadh and Tehran, Islamabad and New Delhi, and on the Korean Peninsula. Governance shortfalls also will drive threat perceptions and insecurity in countries such as Pakistan and North Korea.

* Economic interdependence among major powers remains a check on aggressive behavior but might be insufficient in itself to prevent a future conflict. Major and middle powers alike will search for ways to reduce the types of interdependence that leaves them vulnerable to economic coercion and financial sanctions, potentially providing them more freedom of action to aggressively pursue their interests.

Meanwhile, the threat from terrorism is likely to expand as the ability of states, groups, and individuals to impose harm diversifies. The net effect of rising tensions within and between countries—and the growing threat from terrorism—will be greater global disorder and considerable questions about the rules, institutions, and distribution of power in the international system.

Europe. Europe’s sharpening tensions and doubts about its future cohesion stem from institutions mismatched to its economic and security challenges. EU institutions set monetary policy for Eurozone states, but state capitals retain fiscal and security responsibilities—leaving poorer members saddled with debt and diminished growth prospects and each state determining its own approach to security. Public frustration with immigration, slow growth, and unemployment will fuel nativism and a preference for national solutions to continental problems.

* Outlook: Europe is likely to face additional shocks—banks remain unevenly capitalized and regulated, migration within and into Europe will continue, and Brexit will encourage regional and separatist movements in other European countries. Europe’s aging population will undermine economic output, shift consumption toward services—like health care—and away from goods and investment. A shortage of younger workers will reduce tax revenues, fueling debates over immigration to bolster the workforce. The EU’s future will hinge on its ability to reform its institutions, create jobs and growth, restore trust in elites, and address public concerns that immigration will radically alter national cultures.

United States. The next five years will test US resilience. As in Europe, tough economic times have brought out societal and class divisions. Stagnant wages and rising income inequality are fueling doubts about global economic integration and the “American Dream” of upward mobility. The share of American men age 25- 54 not seeking work is at the highest level since the Great Depression. Median incomes rose by 5 percent in 2015, however, and there are signs of renewal in some communities where real estate is affordable, returns on foreign and domestic investment are high, leveraging of immigrant talent is the norm, and expectations of federal assistance are low, according to contemporary observers.

* Outlook: Despite signs of economic improvement, challenges will be significant, with public trust in leaders and institutions sagging, politics highly polarized, and government revenue constrained by modest growth and rising entitlement outlays. Moreover, advances in robotics and artificial intelligence are likely to further disrupt labor markets. Meanwhile, uncertainty is high around the world regarding Washington’s global leadership role. The United States has rebounded from troubled times before, however, such as when the period of angst in the 1970s was followed by a stronger economic recovery and global role in the world. Innovation at the state and local level, flexible financial markets, tolerance for risk-taking, and a demographic profile more balanced than most large countries offer upside potential. Finally, America is distinct because it was founded on an inclusive ideal—the pursuit of life, liberty, and happiness for all, however imperfectly realized—rather than a race or ethnicity. This legacy remains a critical advantage for managing divisions.

Central and South America. Although state weakness and drug trafficking have and will continue to beset Central America, South America has been more stable than most regions of the world and has had many democratic advances—including recovery from populist waves from the right and the left. However, government efforts to provide greater economic and social stability are running up against budget and debt constraints. Weakened international demand for commodities has slowed growth. The expectations associated with new entrants to the middle class will strain public coffers, fuel political discontent, and possibly jeopardize the region’s significant progress against poverty and inequality Activist civil society organizations are likely to fuel social tensions by increasing awareness of elite corruption, inadequate infrastructure, and mismanagement. Some incumbents facing possible rejection by their publics are seeking to protect their power, which could lead to a period of intense political competition and democratic backsliding in some countries. Violence is particularly rampant in northern Central America, as gangs and organized criminal groups have undermined basic governance by regimes that lack capacity to provide many basic public goods and services.

* Outlook: Central and South America are likely to see more frequent changes in governments that are mismanaging the economy and beleaguered by widespread corruption. Leftist administrations already have lost power in places like Argentina, Guatemala, and Peru and are on the defensive in Venezuela, although new leaders will not have much time to show they can improve conditions. The success or failure of Mexico’s high-profile reforms might affect the willingness of other countries in the region to take similar political risks. The OECD accession process may be an opportunity—and incentive— for some countries to improve economic policies in a region with fairly balanced age demographics, significant energy resources, and well-established economic links to Asia, Europe, and the United States.

An Inward West? Among the industrial democracies of North America, Europe, Japan, South Korea, and Australia, leaders will search for ways to restore a sense of middle class wellbeing while some attempt to temper populist and nativist impulses. The result could be a more inwardly focused West than we have experienced in decades, which will seek to avoid costly foreign adventures while experimenting with domestic schemes to address fiscal limits, demographic problems, and wealth concentrations. This inward view will be far more pronounced in the European Union, which is absorbed by questions of EU governance and domestic challenges, than elsewhere.

* The European Union’s internal divisions, demographic woes, and moribund economic performance threaten its own status as a global player. For the coming five years at least, the need to restructure European relations in light of the UK’s decision to leave the EU will undermine the region’s international clout and could weaken transatlantic cooperation, while anti-immigration sentiments among the region’s populations will undermine domestic political support for Europe’s political leaders.
* Questions about the United States’ role in the world center on what the country can afford and what its public will support in backing allies, managing conflict, and overcoming its own divisions. Foreign publics and governments will be watching Washington for signs of compromise and cooperation, focusing especially on global trade, tax reform, workforce preparedness for advanced technologies, race relations, and its openness to experimentation at the state and local levels. Lack of domestic progress would signal a shift toward retrenchment, a weaker middle class, and potentially further global drift into disorder and regional spheres of influence. Yet, America’s capital, both human and security, is immense. Much of the world’s best talent seeks to live and work in the United States, and domestic and global hope for a competent and constructive foreign policy remain high.

China. China faces a daunting test—with its political stability in the balance. After three decades of historic economic growth and social change, Beijing, amid slower growth and the aftereffects of a debt binge, is transitioning from an investment-driven, export-based economy to one fueled by domestic consumption. Satisfying the demands of its new middle classes for clean air, affordable houses, improved services, and continued opportunities will be essential for the government to maintain legitimacy and political order. President Xi’s consolidation of power could threaten an established system of stable succession, while Chinese nationalism—a force Beijing occasionally encourages for support when facing foreign friction—may prove hard to control.

* Outlook: Beijing probably has ample resources to prop up growth while efforts to spur private consumption take hold. Nonetheless, the more it “doubles down” on state owned enterprises (SOEs) in the economy, the more it will be at greater risk of financial shocks that cast doubt on its ability to manage the economy. Automation and competition from lowcost producers elsewhere in Asia and even Africa will put pressure on wages for unskilled workers. The country’s rapidly shrinking working-age population will act as a strong headwind to growth.

Russia. Russia’s aspires to restore its great power status through nationalism, military modernization, nuclear saber rattling, and foreign engagements abroad. Yet, at home, it faces increasing constraints as its stagnant economy heads into a third consecutive year of recession. Moscow prizes stability and order, offering Russians security at the expense of personal freedoms and pluralism. Moscow’s ability to retain a role on the global stage—even through disruption—has also become a source of regime power and popularity at home. Russian nationalism features strongly in this story, with A Chinese man rides a bike among luxurious cars. China’s dramatic economic growth has highlighted greater gaps between rich and poor.

President Putin praising Russian culture as the last bulwark of conservative Christian values against the decadence of Europe and the tide of multiculturalism. Putin is personally popular, but approval ratings of 35 percent for the ruling party reflect public impatience with deteriorating quality of life conditions and abuse of power.

* Outlook: If the Kremlin’s tactics falter, Russia will become vulnerable to domestic instability driven by dissatisfied elites— even as a decline in status suggests more aggressive international action. Russia’s demographic picture has improved somewhat since the 1990s but remains bleak. Life expectancy among males is the lowest of the industrial world, and its population will continue to decline. The longer Moscow delays diversifying its economy, the more the government will stoke nationalism and sacrifice personal freedoms and pluralism to maintain control.

An Increasingly Assertive China and Russia. Beijing and Moscow will seek to lock in temporary competitive advantages and to right what they charge are historical wrongs before economic and demographic headwinds further slow their material progress and the West regains its footing. Both China and Russia maintain worldviews in which they are rightfully dominant in their regions and able to shape regional politics and economics to suit their security and material interests. Both have moved aggressively in recent years to exert greater influence in their regions, to contest the US geopolitically, and to force Washington to accept exclusionary regional spheres of influence—a situation that the United States has historically opposed. For example, China views the continuing presence of the US Navy in the Western Pacific, the centrality of US alliances in the region, and US protection of Taiwan as outdated and representative of the continuation of China’s “100 years of humiliation.”

* Recent Sino-Russian cooperation has been tactical, however, and is likely to return to competition if Beijing jeopardizes Russian interests in Central Asia and as Beijing enjoys more options for cheap energy supply beyond Russia. Moreover, it is not clear whether there is a mutually acceptable border between what China and Russia consider their natural spheres of influence. Meanwhile, India’s growing economic power and profile in the region will further complicate these calculations, as New Delhi navigates relations with Beijing, Moscow, and Washington to protect its own expanding interests. A Chinese development firm—with links to the Chinese Government and People’s Liberation Army— today announced that it recently purchased the uninhabited Cobia Island from the Government of Fiji for $850 million. Western security analysts assess that China plans to use the island to build a permanent military base in the South Pacific, 3,150 miles southwest of Hawaii.

Russian assertiveness will harden anti-Russian views in the Baltics and other parts of Europe, escalating the risk of conflict. Russia will seek, and sometimes feign, international cooperation, while openly challenging norms and rules it perceives as counter to its interests and providing support for leaders of fellow “managed democracies” that encourage resistance to American policies and preferences. Moscow has little stake in the rules of the global economy and can be counted on to take actions that weaken US and European institutional advantages. Moscow will test NATO and European resolve, seeking to undermine Western credibility; it will try to exploit splits between Europe’s north and south and east and west, and to drive a wedge between the United States and the EU.

* Similarly, Moscow will become more active in the Middle East and those parts of the world in which it believes it can check US influence. Finally, Russia will remain committed to nuclear weapons as a deterrent and as a counter to stronger conventional military forces, as well as its ticket to superpower status. Russian military doctrine purportedly includes the limited use of nuclear weapons in a situation where Russia’s vital interests are at stake to “deescalate” a conflict by demonstrating that continued conventional conflict risks escalating the crisis to a large scale nuclear exchange.

In Northeast Asia, growing tensions around the Korean Peninsula are likely, with the possibility of serious confrontation in the coming years. Kim Jong Un is consolidating his grip on power through a combination of patronage and terror and is doubling down on his nuclear and missile programs, developing long-range missiles that may soon threaten the continental United States. Beijing, Seoul, Tokyo, and Washington have a common incentive to manage security risks in Northeast Asia, but a history of warfare and occupation along with current mutual distrust makes cooperation difficult. Continued North Korean provocations, including additional nuclear and missile tests, might worsen stability in the region and prompt neighboring countries to take actions, sometimes unilaterally, to protect their security interests.

Competing Views on Instability

China and Russia portray global disorder as resulting from a Western plot to push what they see as self-serving American concepts and values of freedom to every corner of the planet. Western governments see instability as an underlying condition worsened by the end of the Cold War and incomplete political and economic development. Concerns over weak and fragile states rose more than a generation ago because of beliefs about the externalities they produce— whether disease, refugees, or terrorists in some instances. The growing interconnectedness of the planet, however, makes isolation from the global periphery an illusion, and the rise of human rights norms makes state violence against a governed population an unacceptable option.

#### Global antitrust harmonization prevents waves of reactionary populism

Aurelien Portuese 21, Director of Antitrust and Innovation Policy at the Information Technology and Innovation Foundation, Doctor in Law from the University of Paris II, Graduated from the London School of Economics, Sciences Po Paris, and from the University of Hamburg, “FTC Should Have Global Antitrust Regulatory Aspirations”, Law360 Expert Analysis, 3/19/2021, Lexis

Competition has changed, the world powers have changed too. Resorting to bilateral cooperation and praising mere soft law instruments are insufficient to cope up with the breadth of the current challenges inherent to international competition.

How can the FTC better ensure that EU competition rules are compatible with U.S. antitrust laws, especially with respect to digital companies? How can America better ensure that state-owned enterprises in China compete fairly with U.S. companies on the merits, instead of benefiting from lavish subsidies and domestic planning?

And how can regulators ensure that international mergers approved in some jurisdictions do not get rejected in others, thereby creating hopelessly tangled business situations and considerable legal uncertainty?

The FTC report, unfortunately, fails to address these pressing issues. Indeed, summing up the tone of the discussions that predated the report's publication, the internationally recognized antitrust expert Tad Lipsky of George Mason University is reported to have said that "the world is not yet ready and possibly will never be ready for a binding global approach to competition law convergence."[4]

On the contrary, what the world needs now is multilateral agreements and rules that are legally binding. Otherwise, unfair global competition will exacerbate waves of tension and anger, which will further fuel populist movements across the globe.[5]

#### Nuclear war

Karl von der Heyden 17, Co-Chairman of the American Academy in Berlin, was awarded the Duke University Medal for Distinguished Meritorious Service, recipient of The International Center in New York's Award of Excellence, M.B.A. from the Wharton School of the University of Pennsylvania, “I Survived World War II. Nationalism Is a Path to War”, https://time.com/4815170/wwii-nationalism-donald-trump-america-first/

This collective tendency to forget is not a new phenomenon. After the horrors of the Napoleonic Wars, Europe was given a new order of nation states under the Treaty of Vienna, signed in 1815. The new order lasted relatively well, surviving the revolutions of 1848 and the subsequent Crimean and Franco-Prussian wars. By the time World War I began in 1914, institutional and personal memories of the post-Napoleonic order had been weakened or forgotten.

Similarly, seventy years after World War II, millions of people in the U.S. and Europe have forgotten the lessons learned from that war and from the peace that followed. Nascent nationalist and popular movements converged in Britain to produce a vote to leave the [European Union](https://time.com/4696437/european-union-future-maastricht/). Similar coalitions heavily influence the American political scene today, as they do in Poland, Hungary and even the Netherlands. White House communications that appear to realign foreign policy put in place over the last half-century are beginning to concern America’s allies.

I understand why the “[America First](https://time.com/4569845/donald-trump-america-first/)” movement propagated by Donald Trump sounds patriotic to many voters, as do other movements that favor isolationism. It is natural to blame others for our failure to adjust to new technologies, to immigration and to competition from countries whose growth rates are higher than our own. But the truth is that the “America First” movement runs the risk that it could trigger a global decline in productivity. Free trade has benefitted the U.S, Europe and much of the rest of the world. Many new businesses, particularly in information technology, can now start with a global footprint on Day One instead of being confined to a local market. NATO has preserved the freedom of the Western World from Communism. It has recently become more relevant again in view of the Russia’s efforts to disrupt it.

Perhaps most worrisome is the apparent cooling of relations between European NATO allies and the United States, which has compelled German Chancellor [Angela Merkel](https://time.com/4797241/angela-merkel-us-german-tensions-g7-summit/) to say, “The times when we could fully rely on others are to some extent over… We Europeans must really take our fate into our own hands.”

Problems arise when we start classifying our own and other countries as “winners” or “losers.” Free trade, immigration and the treatment of refugees will never be perfect — far from it. But the alternatives of walling off people, as well as trade, are worse. Appealing to ultra-nationalist and xenophobic feelings is playing with fire. With easy access to weapons of mass destruction, the danger is greater than ever.

Growing up in Germany, I saw the dangers of fascism and nationalism. I saw leaders who only made matters worse by appealing to the majority of voters who feared minorities and foreigners.

Anyone who appreciates history would know better than to make even casual references to the possibility of [nuclear war](http://www.cnn.com/2017/04/18/politics/kfile-trump-north-korea-nuclear-war/index.html).

#### Augmenting the capacity for antitrust in emerging economies is critical to global development

Dr. Armando E. Rodriguez 16, Associate Professor at the College of Business at the University of New Haven, PhD in Economics from the University of Texas, BS in Chemical Engineering from the University of Texas-Austin, and Ashok Menon, Principal Associate at Nathan Associates, M.A., International Trade, The Middlebury Institute of International Studies at Monterey, B.A. in Communications and Law from the University of California at San Diego, “Success and Limits of Competition Law and Policy in Developing Countries: The Causes of Competition Agency Ineffectiveness in Developing Countries”, Law & Contemporary Problems, 79 Law & Contemp. Prob. 37, Lexis

Examining the administrative and operational difficulties as well as the successes and failures of developing country competition law enforcement activities can help policymakers address the numerous difficulties accompanying the implementation of competition policies. 1 As Umut Aydin and Tim Buthe explain in the introductory article of this symposium, there are a variety of criteria that should be taken into account when assessing performance, and those criteria vary across countries depending on the overall goals of the agencies themselves. 2 Nonetheless, it is a task that is evidently necessary given the variation in performance across the world's competition policy enforcement agencies, as the statistical appendix to this article demonstrates. To this end, this symposium has brought together an impressive array of interdisciplinary experts, practitioners, and scholars - all charged with critically appraising the successes and shortcomings of competition policy programs worldwide. By assembling both the "lessons learned" as well as derivative recommendations or remedies that address shortcomings, it is expected that policymakers and practitioners can [\*38] develop and deploy improved competition policy mechanisms to assist in the broader objective of enhancing developing nations' economic growth.

This institutional engineering task is a challenging undertaking. The competition law enforcement apparatus can be exceedingly well-positioned to curtail the abuses of naked horizontal cartels. And at that simple task agencies do a decent job, despite being bedeviled by procedural difficulties and methodological limitations. 3 But they don't succeed often because the naked, horizontal cartels at which they aim rarely exist.

This point hinges on recognizing a distinction between private, "naked," cartels and cartels that succeed by their proximity to and close historical association with the state - publicly sanctioned cartels, for lack of a better term. In this view, the latter - the tacitly or explicitly state-sanctioned cartels - are the norm in developing economies. The presence of these cartels, their interlinkages with the state, and the strength of the association are a product of a nation's development. These state-sponsored cartels, also recognizable as combines, groups, or associations, are market participants that emerged historically to reduce transactions costs in response to artifacts and problems of development. 4 By contrast, naked private cartels emerge infrequently, unlikely to exist in pure form because they are unsustainable. 5

[\*39] Competition policy's remit is broad. It reaches beyond challenging narrow horizontal collaborations among competitors. It brings to bear the full array of antitrust proscriptions against a wide range of business practices ranging from vertical practices, abuse of dominant positions, commonplace horizontal practices, to full-fledged merger reviews.

As a practical and operational matter, the metrics and procedures on which antitrust enforcement relies are inherently imperfect and may expose it to two kinds of decisionmaking errors. First, there is the possibility of prosecuting a pro-competitive or competitively innocuous market practice. Or, second, it can overlook a patently anti-competitive one. Conventional antirust doctrine holds that there is little chance of error in prosecuting a naked cartel because naked cartels convey few pro-competitive benefits. 6 On the other hand, as the agency seeks to target violations other than horizontal cartels, the possibility of unintentionally damaging pro-competitive behavior increases, and, as a result, the associated likelihood of error increases as well.

Thus, the core enforcement tool of the agency's tool kit, its most-effective, unambiguous and well-understood competition policy principle - the prohibition of per-se anti-competitive horizontal agreements orchestrated by private cartels - is a finely honed weapon aimed at an either scarce or inconsequential problem in most developing economies. In pursuing more ambiguous business practices, false-positives are inevitable because distinguishing pro-competitive conduct from unambiguously harmful conduct is an inherently difficult task. 7

This article advances the following proposition: the level of antitrust enforcement activity in developing economies should be markedly lower than its level in developed ones. The reasoning turns on the following claims: particular [\*40] conditions of developing economies make the likelihood of antitrust enforcement error greater; and collaboration among firms is an endogenous, pervasive, necessary and often pro-competitive practice that emerged in response to the historical presence of high transaction costs endemic to developing areas. The scant presence of private cartels relative to all commercial entities suggests a low prevalence or base-rate. A failure to account for the presence of a low base rate event enhances the likelihood of error in forensic outcomes, specifically, a greater realization of false positives. 8 Sensitivity to the high cost associated with possible prosecutorial overreach suggests that competition policy, in its operation, should tread lightly and operate under a presumption of error.

In this narrative, trade associations, family-owned, or ethnic, industrial, and corporate groups, or any other variant of "self-regulating" entities found in developing economies are an organizational alternative to reduced, inadequate, or limited administrative guidance by the state. They exist due to limited access to capital and managerial talent, as well as political and socio-economic transaction costs unlikely to be significant in successful market economies. 9 These entities help coordinate decisions and efforts among association members. They therefore reduce transaction costs and create value for their members and others.

The presence of these interest groups conveys both benefits and costs to the economy and its development. As a result, the targeting of seemingly (and possibly) anti-competitive business practices without a recognition of the countervailing pro-competitive benefits results in enforcement errors that are much more damaging than the enforcement errors in developed economies. In sum, the prospective social costs of enforcement actions appear substantially greater than the benefits. This would suggest a more muted role for competition policy as a development instrument, to the extent that the error-cost tradeoff should inform the emphasis or aggressiveness of antitrust enforcement.

This hypothesis is illustrated and examined in the article. Part II describes and explains the source of the uncertainty that begets antitrust enforcement errors in developing economies. Part III describes the relevance and comparatively greater influence of business groups, industry, and regional associations, among others, which constitute private social networks that convey pro-competitive benefits. Part IV provides an accounting of the particularities of developing economies, and specifically the characteristics that handicap competition policy [\*41] practice in its orthodox deployment. Part V explains the impact of enforcement actions on the relative costs of colluding privately versus seeking state-sanctioned protections. Part VI offers some concluding comments.

A few caveats are necessary; as is a careful delineation of the scope of the commentary. This article does not seek to add to the copious scholarship on informal norms, private enforcement mechanisms, or private orderings - terms often used interchangeably. The article provides an overview of the extent to which the pro-competitive benefits of the social capital present among members of close-knit groups should be accounted for in the administration of the competition laws in developing economies. And last, although it draws from the work of commentators who question antitrust enforcement's general effectiveness, this article's analysis of antitrust policy is focused exclusively on its incantation in developing economies. 10

It follows, as a matter of policy, that antitrust in developing economies - if it's to be had at all - should be relegated to its core function: the curtailment of horizontal price-fixing. 11 The current observed ineffectiveness of competition policy enforcement in developing countries rests to a great extent on the massive enforcement agenda with which the enforcement agencies are saddled, the multiple and often contradictory policy goals, and the unattainable expectations heaped on competition policy. Competition policy agencies in developing countries should, at least in the short-term, focus on horizontal practices; all other [\*42] activities can be too costly, expensive, and counterproductive for competition agencies in developing countries to implement effectively.

II The Source Of Errors

The difficulties involved in proving the illegal nature of cartels and other anti-competitive agreements among firms are well known. Antitrust authorities can only prosecute the makers of collusive agreements if there is hard evidence of violations of the proscribed conduct. 12 This high threshold makes collusion very difficult to combat. But proceeding with less than conclusive evidence may ultimately lead to mistakenly taking action against practices that only seem anti-competitive but in reality are not collusive.

Investigating and prosecuting is costly. But investigations and false prosecutions also create unintentional social costs by "chilling competitive behavior," and instill reluctance to take risks and innovate practices for fear of running afoul of the competition agency. 13 Such litigation risk, or simply the fear of attracting unwanted regulatory attention, could even dissuade firms from deploying practices that might be only remotely similar to the scrutinized practice for fear of it being confounded. In fact, as a result of the potentially significant unfavorable impact on net welfare, several scholars have noted that it might be optimal for society to tolerate some degree of seemingly anti-competitive behavior among firms or - equivalently - that enforcement err on the side of caution and restraint. 14

#### Extinction

Thomas Kean 18, Co-Chairs the Bipartisan Policy Center’s Task Force on Terrorism and Ideology, M.A. from Columbia University Teachers College, BA from Princeton University, et al., “Fragile States Fail Their Citizens and Threaten Global Security”, United States Institute for Peace Blog, 9/5/2018, https://www.usip.org/blog/2018/09/fragile-states-fail-their-citizens-and-threaten-global-security

Fragile States Fail Their Citizens and Threaten Global Security

Each fragile state is fragile in its own way, but they all face significant governance and economic challenges. In fragile states, governments lack legitimacy in the eyes of citizens, and institutions struggle or fail to provide basic public goods—security, justice, and rudimentary services—and to manage political conflicts peacefully.

Citizens have few if any means of redress. As a result, the risk of instability and conflict is heightened. Throughout the Middle East, the Horn of Africa, and the Sahel, fragility is further exacerbated by growing youth populations. In the Arab World, about 60 percent of the population is below the age of 30, and youth unemployment, at just under 30 percent, is more than twice the global average.

In some states, governments lack the capacity to meet their citizens' needs. In many others, fragility is perpetuated by undemocratic and, often, predatory governance. In such countries, ruling elites exploit the state and enrich themselves rather than serve the citizens. They are willing to hold on to power by any means necessary: buying support through patronage, violently repressing opponents, and neglecting the rest. The resulting deep sense of political exclusion among citizens is aggravated by insecurity and shortages of economic opportunity. Repeated shocks—including the global financial downturn, the Arab Spring, and recurring cycles of crippling droughts—have roiled the Middle East, the Horn of Africa, and the Sahel in the last decade. Few states have weathered these shocks well because the conditions of fragility impede effective responses.

Almost every country in these regions falls outside the "stable" range of the Fund for Peace's Fragile States Index, occupying a spot somewhere between a "warning" and an "alert" level of state fragility. Other assessments of state fragility, such as the Organisation for Economic Co-operation and Development's States of Fragility report, reach similar conclusions.

And fragility in all three regions has deepened over the past decade. Since 2006, 30 countries across these regions have become more fragile, while only 19 have seen their fragility reduced. And the extent of these increases in fragility, on average, was greater than the decreases. Today, both the scale and the complexity of fragility are unprecedented.

Amid this ferment, extremists have launched their most daring onslaughts and made their greatest gains. Fragile states are no longer mere safe havens but instead are the battlefields on which violent extremists hope to secure their political and ideological objectives.

#### A tailored opt-in framework for export cartels secures global agreement

Dr. Marek Martyniszyn 12, Senior Lecturer in Law at Queen’s University Belfast, PhD from University College Dublin, LLM (with Specializations in EU Economic and World Trade Law) from the Saarland University’s European Institute, MA Degree from the Warsaw School of Economics and Postgraduate Certificate in Higher Education Teaching (PGCHET) from Queen's University Belfast, “Export Cartels: Is it Legal to Target Your Neighbour?”, Journal of International Economic Law, March 2012

In recent years competition laws were introduced in many jurisdictions and considerable effort was invested by the international community in competition advocacy and voluntary cooperation between competition authorities (best exemplified by the creation of the International Competition Network which now has more than 100 members), leading to more dialogue and understanding in this area of law. This led, for example, to international consensus on international private hard core cartels (but not export cartels) as harmful and actual cooperation in their pursuit across jurisdictions. Taking this into consideration, the time is perhaps ripe to come back to the discussion on export cartels and to revisit narrow-focused proposals in this regard which could be introduced within the WTO framework. The one suggested by Sweeney seems particularly appealing: an agreement taking into account in antitrust investigations not only domestic, but also foreign harm caused by such cartels; reinforced by a positive comity (a commitment to investigate a particular case at the request of a foreign jurisdiction). 233 Such a regime could be adopted as a plurilateral agreement, preferably on the side and not within a major negotiation round, open to all interested jurisdictions and subject to the WTO dispute settlement mechanism. Taking into consideration that China, as the discussed cases present, is caught between a rock of antidumping and a hard place of antitrust actions, it may be interested in such a solution. The US, on the other hand, facing now Chinese export cartels with considerable state involvement may find it worthwhile to sit down and negotiate as well so as to avoid similar but greater problems in the future. The European Union, which already within the framework of the WTO Woking Group took the view that the issue of export cartels should be addressed, would surely join the talks. While developing countries were quite sceptical about competition issues on the trade agenda, the Indian experience with the US soda ash export cartel, discussed above, shows that they may now find it in their best interests to work towards an international solution to export cartels, especially if approached outside the major round of trade negotiations. 234 In fact if the tipping point has not been reached yet, the recent developments allow hoping that it is not too far away and more thought should be now invested into consideration of possible scenarios addressing export cartels, both private and public, reflecting the current challenges.235

#### Reciprocal prohibitions on export cartels are feasible and easily administered

Dr. Brendan Sweeney 11, PhD in Economics from Monash University, Deputy Head of the Department of Business Law and Taxation at Monash University, “Export Cartels” in The Internationalisation of Competition Rules: The Approach of European States, ISBN 9780415685443, Routledge, 7/29/2011, p. 397-398

3. Agreement in which exporting state considers foreign harm

A more realistic arrangement is one in which the exporting state, when determining the legality of an export cartel, agrees to take into account the consumer effects suffered in the importing state. Necessarily this will require states to agree to an export cartel rule based on anti-competitive effects. 100

Proceedings in the export state could be initiated by a request from the importing state. Given that the exporting state has incentives to tolerate export cartels, the exporting state should be required to respond to another state′s request by investigating the matter and issuing a written determination. The exporting state should also provide to aggrieved importers non-discriminatory access to their local competition law and policy processes (both administrative and judicial), to provide adequate procedural rules (for example, discovery rules), and to ensure adequate transparency. 101 A private right of action would be a desirable addition to this type of positive comity agreement. 102 Hoekman and Mavroidis have even suggested that a WTO special prosecutor might be given authority (and the resources) to bring an action on behalf of the least developed states. 103

The attractions of this solution are threefold. First, there is no need to apply law extraterritorially. Secondly, it is in the interest of the importing state to provide the necessary evidence of anti-competitive effects. Thus, the problems of evidence-gathering are likely to be minimized. Thirdly, although the exporting state will have to consider foreign effects, this is less disruptive than other alternatives, for example, handing primary authority to an international institution.

### 1AC---OAS ADV

#### Advantage 3---OAS

#### The credibility of the Organization of American States, or OAS, is on the brink due to lack of regional cohesion---this crushes its institutional effectiveness

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The lack of regional institutional cohesion has also hobbled Latin America’s ability to establish a lasting democratic order. Rather than devoting resources to strengthening existing institutions such as the OAS, leaders throughout the Americas have cooked up an alphabet soup of regional organizations. This proliferation of organizations has served to divide rather than unite the hemisphere. The 2010 Community of Latin American and Caribbean States excluded Canada and the United States, and the 2004 Bolivarian Alliance for the Peoples of Our America originally had only two member states: Cuba and Venezuela, which then proceeded to hand select other like-minded members. The 2008 Union of South American Nations fell apart when many countries defected from it to found the Forum for the Progress and Development of South America, this time without Venezuela’s participation. As the international relations scholar Christopher Sabatini has shown, this overabundance of regional organizations has encouraged national sovereignty at the expense of the collective values articulated in the charter. It has also impaired the ability of genuinely important regional institutions, such as the OAS, to lead with authority and credibility—and to respond effectively when democracy is most at risk.

#### Harmonizing export cartel law strengthens economic integration throughout the OAS

Frederic Desmarais 9, LLB from McGill University, B.Sc. in International Studies from the University of Montreal, “Export Cartels in the Americas and the OAS: Is the Harmonization of National Competition Laws the Solution?”, Manitoba Law Journal, 33 Man. L.J. 41, Lexis

C. The Advantages of the Harmonization Process

In its report of 1974, the CERBP of the OECD concluded that a notification procedure is desirable. 230 It recommended its member states to consider incorporating such a procedure in their national competition laws by stating that:

A notification procedure should cover details about membership, fields of action, the type of restriction involved, and the basic facts of the business done or planned. Obligatory notification of export cartels would enable the national authorities to obtain a much more clearer picture of the advantages and disadvantages of export cartels in their countries, and eventually, modify their legislation accordingly. [Emphasis added.] 231

In so doing, the CERBP shed light on the primary advantage of an explicit exemption system with a notification requirement: the ability to gather information regarding the activities of export cartels to assess the pros and cons of such associations. As a result, the IAJC should adhere to the conclusion of the CERBP.

The second advantage of this harmonization process is that it will facilitate the prosecution of anticompetitive export cartels instituted by developing American countries. As illustrated by section 2(C), developing countries are often powerless to prosecute export cartels adversely affecting their national market because they lack extra-territorial enforcement capacity, technical expertise, and access to evidence in other countries that typically don't have exemption systems with notification requirements. Some bilateral agreements provide for facilitation of [\*84] extra-territorial prosecutions but only between major American countries. 232 An informal harmonization process geared towards the explicit exemption system that comes with a notification requirement remedies, or at least diminishes, these enforcement and evidence problems.

As a final point, this harmonization process could lead to a fostering of an inter-American awareness of competition law and economic integration issues. The Canadian Department of Foreign Affairs and International Trade concluded that discussions concerning export cartels could serve to:

[D]raw isolationist elements in the U.S. Department of Justice into a process of rethinking the role of competition policy harmonization and cooperation in an integrating continental market [...].

[B]uild an understanding as to how competition policy could contribute towards deepening NAFTA and indeed multilateral market integration. [Emphasis added.] 233

Regardless, the World Bank and the OECD foresee positive developments from such action: "In any case, increased cooperation between competition authorities and pressures to harmonize competition policy worldwide are likely to result in the elimination of export cartel exemptions or at least make them impractical." 234

VII. CONCLUSION

Export cartels rest on a retrograde conception of the international system. The rationale of national enrichment to the detriment of other countries appears, from a solely national perspective, to make sense. However, the thorough analysis of the [\*85] various effects of export cartels in part II illustrates that they may be at best a zero-sum game. They not only distort international trade, but they may generate adverse and anticompetitive effects on domestic markets and on developing countries, which are the majority in the American hemisphere. Their anticompetitive effects may nullify their "potential benefits" which are, as evidenced by the United States experience, empirically unpersuasive for justifying their perpetuation. As Eleanor Fox argues: "It is in everyone's interest to be free of export cartels in an integrated world". [Emphasis added.] 235

The study conducted by the IAJC concerning cartels in the Americas takes its origins from GA's Resolution 1772 which underscored the importance of legal issues in economic integration and requested the IAJC to circumscribe its activities in that matter to competition law and protectionism in the American hemisphere. 236 Although the rapporteurs Rodas and Fried did not explicitly recommend a harmonization process in their final report, they did not disregard this alternative which is in accordance with section 99 of the OAS Charter. In the document entitled Competition and Cartels in the Americas: Suggested Conclusions to Document CJI/doc.118/03, 237 the rapporteurs pointed out, as their second conclusion that American states are politically willing to incorporate competition law and cartels issues in an international convention, namely the FTAA, which they actually did in its three drafts. But the FTAA is currently an ineffectual organization and, even in the long-term; one can doubt that American states will advance further in this integration process.

Furthermore, the United States, as evidenced by its position within the WTO framework, acts as the standard bearer of export cartel exemptions. Thus the best alternative to achieve international regulation of export cartels is establishing of an informal harmonization based on the explicit exemption system with notification, since this mechanism currently functions in American law. This would only require redirecting the political willingness of OAS member states that was underscored by the rapporteurs towards an informal harmonization process. This process has three advantages. First, it would allow access to information on the activities of export cartels so that states could assess the pros and the cons of their eventual perpetuation or ban. Second, it would facilitate legal proceedings by developing countries against harmful export cartels, thereby complying with one request of the IAJC formulated in its resolution Cartels in the Scope of the Competition Law in the Americas urging member states:

[\*86] [T]o pay special attention to the challenges faced by smaller, and less developed, member states, so that they can develop the capacity required to maintain effective administration, application, and international cooperation in this area. [Emphasis added.] 238

Third, it could foster an inter-American awareness on competition law and economic integration issues.

The United States Supreme Court reminds us that: "[T]he antitrust laws [...] were enacted for the protection of competition, not competitors". [Emphasis added.] 239 This statement is undeniably accepted among the majority of the countries of the world. For instance, the OECD recognizes that all its member states consider that this statement is accurate. 240 Export cartel exemptions are problematic precisely because they were not enacted for the protection of competition itself, but rather for the protection of competitors whose foreign activities might even generate anticompetitive effects on domestic markets. Uniformity is not an absolute good in legal matters, but in the case of export trade law it is fundamental to the welfare of consumers around the globe.

#### They’re on the brink of integration---export cartels are key

Frederic Desmarais 9, LLB from McGill University, B.Sc. in International Studies from the University of Montreal, “Export Cartels in the Americas and the OAS: Is the Harmonization of National Competition Laws the Solution?”, Manitoba Law Journal, 33 Man. L.J. 41, Lexis

Competition law has become a topic that cannot be ignored in the activities of the major international organizations of the world. Currently, there is a favourable trend towards competition policy on the international scene, as evidenced, inter alia, by the Recommendation of the Council Concerning Action against Hard Core Cartels 1 [\*42] of the Organization of Economic Co-operation and Development (OECD), by the creation of the International Competition Network, 2 and by the Working Group on the Interaction between Trade and Competition Policy within the context of the World Trade Organization (WTO). 3 The Organization of American States (OAS) has followed this trend, and accordingly, its General Assembly (GA) has requested that the Inter-American Juridical Committee (IAJC) study competition law issues in the Americas. 4 In 2003, the IAJC published its final report entitled Competition and Cartels in the Americas. 5

The literature on hard core cartels is copious. The OECD defines a hard core cartel as "an anticompetitive agreement, anticompetitive concerted practice, or anticompetitive arrangement by competitors to fix prices, make rigged bids (collusive tenders), establish output restrictions or quotas, or share or divide markets by allocating customers, suppliers, territories, or lines of commerce". 6 This literature nonetheless neglects one type of cartel, which not only rests on a retrograde conception of the international system, but also which generates various anticompetitive effects: export cartels. Export cartels are associations of firms, operating in the same country, that cooperate with one another in various ways, such as fixing common prices in order to export their goods and/or services to the international market. The primary objective of this paper is to provide a comprehensive analysis of export cartels within the OAS framework, and to offer a solution to address their adverse effects on developing countries, which make up the majority of the states in the American hemisphere.

#### Extinction

Lawrence J. Gumbiner 14, Deputy U.S. Permanent Representative to the Organization of American States, World Affairs Council of Charlotte, North Carolina, HumanRights.org, “The OAS and the Inter-American System”, 4/4/2014, http://www.humanrights.gov/2014/04/04/the-oas-and-the-inter-american-system/

Introduction I want to extend my appreciation to the WAC for this invitation and the opportunity to share with you the United States’ foreign policy commitment to multilateral diplomacy through the Organization of American States and the inter-American system. In his address to an OAS General Assembly last June in Guatemala, Secretary of State John Kerry underscored that: “Across the Americas, the OAS enjoys a unique status as the region’s most inclusive, most respected regional organization…[I]t reflects the hard work of all of us trying to forge norms and create institutions that safeguard our shared commitment to our citizens of democracy and human dignity.” Multilateral diplomacy is an essential, indeed a vital, element of U.S. policy in the Western Hemisphere. Over recent decades, the Western Hemisphere has undergone profound and positive changes. People throughout the region have made enormous sacrifices to defeat dictators and strengthen their democracies, and generating increasing prosperity. We must now consolidate these gains in the face of very serious challenges. And the challenges we face emanate from poverty, from social exclusion, from struggles to provide security for average citizens and from the inability, in some societies, of democratic institutions to deliver the goods and services that people need. One fundamental debate in our hemisphere today is over how to develop truly democratic political systems. Winning elections alone is not sufficient. Elected leaders must govern justly and democratically, and respect for rule of law and democratic institutions must be instilled, to maintain legitimacy. Why the region matters But before I describe in more detail the importance of the OAS and our diplomacy in the Americas, I want to emphasize with you why, despite the cacophony of significant news from the rest of the world – from Russia to the Middle East to Asia – we should keep a keen focus on our interests in this hemisphere. With a GDP of $3.6 trillion, the Latin American and the Caribbean economy is over three times larger than that of India or Russia, and nearly as large as China or Japan. North America represented over 29% of our world trade in 2013, with Canada our top global trade partner and Mexico our third-largest partner. When it comes to energy, we are understandably very concerned about developments in the Middle East. But more than one-half of U.S. oil imports originate in this hemisphere, and this region will account for approximately 2/3 of global growth in petroleum production in the future. Venezuela has the second largest and Canada the third largest proven oil reserves. We often talk about water becoming the most valuable commodity of the future, with wars being fought and political stability threatened over its availability. With this in mind, you should know that more than 45% of the world’s fresh water is in the Americas, including five of the top eight source countries in the world — Brazil, Canada, Colombia, USA, and Peru. This hemisphere is also home to six of the top ten most bio diverse countries in the world, with all of the economic and environmental considerations that this richness entails. So when we talk about critical issues that impact the United States and where our key economic, political and security interests are at play on a daily basis — we need to start here in our own hemisphere. Why the OAS matters Which brings me back to the OAS: Why is it so important? Because it is the anchor of our engagement in the Americas. Through some of the most tumultuous periods of our region’s history, the OAS has been a voice for democracy and human rights. The OAS has been critical to peaceful development and the growth of democracy for over 100 years — it is the embodiment of the Inter-American system. The precursor of the OAS was the Pan American Union, created in 1910 as an early vision of hemispheric integration and mutual cooperation. In 1948, the OAS Charter was adopted at the Ninth Inter-American Conference in Bogota. That same year marked the adoption of the American Declaration of the Rights and Duties of Man, the first international human rights instrument, and a model for the U.N. Declaration of Human Rights. The Inter-American Commission on Human Rights was created by the OAS in 1959, the first of its kind, and also a model for the UN Human Rights Commission. As the hemisphere’s premier political multilateral institution, the OAS is the forum for the 34 democratically elected governments of the region to engage in dialogue, diplomacy, and conflict resolution. And it is for that reason that the United States is actively working to reform and strengthen the OAS and build a stronger, more vibrant, more effective institution — both financially and politically — to address 21st Century challenges affecting the region. To do that, we need to focus on its four pillars: democracy, human rights, integral development and hemispheric security. With this in mind, let me review with you the OAS progress on these pillars. Democracy On democracy, the United States is committed to working through the OAS to foster democratic governance and protect fundamental rights and liberties enshrined in the Inter-American Democratic Charter. Today, this Democratic Charter is at the core of a principled multilateralism in the Americas. With its adoption in September 2001, no OAS member state can be a disinterested spectator to what occurs in our hemisphere. The Charter, reflects a significant hemispheric commitment to the collective defense of regional democracy; a shared desire to lock in the democratic gains of recent decades and prevent a return to autocratic rule. Acting under the Inter-American Democratic Charter, and in the spirit of the Charter, the OAS has helped member states where democratic practices or institutions have been challenged. Of particular note was the OAS’ important role in Haiti, where it worked on voter registration and distribution of over 3.4 million ID cards that was essential for that country to make the transition to a functioning democracy and the elections in 2006. The OAS plays a critical role in Colombia through its mission for demobilization of illegal armed groups. In the event of a peace agreement with the guerrilla organization FARC, the OAS will be ready if requested to perform a similar function. Following the 2009 coup in Honduras, the OAS stepped in to help restore democracy. And in Venezuela, the OAS has remain engaged over the years in an effort to support and preserve democratic institutions in that country. As you are aware, a strong and vibrant debate is presently occurring at the OAS on how to deal with Venezuela’s current crisis after more than a month of protests. Fulfilling the promise of the Democratic Charter to proactively address threats to democracy is not an easy task among 34 sovereign states in a consensus-based organization. It is one of the key challenges facing the OAS as it adapts to hemispheric developments in the 21st century. Election Observation Missions (EOMS) Democracy starts with clean elections, and election observation is a key element in OAS efforts to strengthen democracy in the hemisphere. This year, the OAS has fielded or will be fielding high quality election observer missions — or EOMs — in El Salvador, Costa Rica, Colombia, Panama and Bolivia. We also expect they will assist with elections in Haiti and Antigua and Barbuda when elections there are called. The OAS enjoys a longstanding reputation for impartiality and technical competence on elections, respected worldwide for stringent standards in accordance with the United Nations supported “Principles for International Election Observation”. But what is particularly critical today is the recognition that a free and fair election is more than just counting up the ballots; indeed, the biggest threats to democratic elections in the Americas no longer come from elections that are “stolen” at the ballot box. The integrity of voter information, the politicization of electoral authorities, a weakened media, civil society and inadequate separation of powers ― are all factors that contribute to the integrity of elections. To that end, the OAS has developed groundbreaking new methodologies on such issues as campaign finance, media and gender. It is also working on election integrity and security, and sub-represented groups. The organization has created the first ever electoral quality management standard for electoral processes, officially endorsed by the International Organization for Standardization. These new approaches reflect a progressive vision of what electoral observation and analysis should be today. It is for that reason that despite much polarization in the region, the OAS stamp of approval on elections still represents the gold standard and is sought after by almost all electoral authorities in the hemisphere. Human Rights Furthering democracy through human rights is one of the institution’s most significant contributions. The Inter-American Human Rights System (IAHRS) ― the “crown jewel” of the inter-American System ― is comprised of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. The United States is proud to be the largest financial supporter of the Commission, which is located in Washington. It is comprised of seven Commissioners, and eight thematic rapporteurships, including an independent Special Rapporteur on Freedom of Expression. The Commission played an historically significant role in helping to combat the dictatorships of the 1980s ― particularly in the Southern Cone and Central America ― and bring about the growth of democracy that the region enjoys today. The Commission provides a critical forum for citizens — whether acting through NGOs or on their own — to seek redress of alleged human rights abuses. One of its most important functions is to produce country reports — well documented assessments of human rights conditions and issues in countries throughout the region, with a focus on the most egregious examples of human rights abuses. While the United States is not a party to the American Convention on Human Rights ― we signed it in 1977 but have not ratified it ― and is thus not subject to the jurisdiction of the Costa-Rica based Court, we are nevertheless a strong supporter of the court’s important regional role in protecting human rights. The future of the IAHRS is one of the most politically charged debates at the OAS today. For several years the System ― particularly the Commission and its Special Rapporteur on Freedom of Expression ― have come under sharp criticism from countries, led by Ecuador, who chafe under the scrutiny that the Commission provides. They are seeking dramatic changes, including a reduction in funding and moving of the HQ out of Washington. The United States has been and will remain a firm supporter of this important institution, and we will continue our financial assistance as well as political backing to assure that this remains the backbone of human rights advocacy in the hemisphere. Integral Development Integral development has been a core pillar for the OAS since the days of the Alliance for Progress, and is a critical function for many of the smaller states in our hemisphere. It is particularly relevant for Caribbean islands who rely on the organization for many projects and activities that are not available through the UN or multilateral development banks. One of the most significant functions the OAS provides is the forum to convene ministers from throughout the hemisphere. These ministers would not meet under any other umbrella. The OAS sponsors ministerial meetings on labor, education, environment, science, culture, tourism, and social development. The U.S. is a prime supporter of the development agenda in the OAS. Last night, in conjunction with the Department of Commerce and City of Charlotte we welcomed the America’s Competitive Exchange, with some 40 entrepreneurs and government officials from throughout the hemisphere. This hands-on connection between innovators and entrepreneurs from the U.S. and the rest of the hemisphere was an example of how the OAS can build positive, practical relationships to promote integral development. Some of our other initiatives include Small Business Development Centers for the Caribbean, a grants program to promote sustainable cities and communities, and the Energy & Climate Partnership of the Americas, a program launched by President Obama at the Summit of the Americas in 2009. Hemispheric Security Hemispheric security is our final core function at the OAS. Even before the OAS was formally constituted ― mutual security was a driver of hemispheric cooperation, and the basis of the 1947 Rio Treaty on mutual defense. Today, security threats have evolved from the risk of foreign invasion to the question of citizen security – which polls show is the number one concern of citizens in our hemisphere – and one where the OAS and Inter-American System play a fundamental role. We face these threats in our hemisphere today by cooperating on anti-terrorism, counter-narcotics, anti-corruption and the fight against transnational organized crime. And we continue to promote military cooperation and civil/military education through the Inter-American Defense Board and its College. Even where some of our political relations are strained, we find that we can work effectively on many fronts with public security forces where we have common interests in providing basic protection for our citizenry. The Western Hemisphere responded to the events of 9/11 with greater resolve than any other area in the world, largely working through the OAS. Less than a year after the 9/11 attacks, the OAS adopted the Inter-American Convention Against Terrorism. As a result the OAS has become a leader in the region in the new realm of cyber-security and terrorist cyber attacks on government networks and critical infrastructure. One area where the OAS has proved most effective is in de-mining. Over the past two decades we have pored tremendous efforts into humanitarian demining, mine education, and victims’ assistance. With U.S. financial support, OAS efforts significantly contributed to the severe reduction on elimination of mines in Central America, in Peru, Ecuador and Colombia. Summits of the Americas Closely tied to the OAS is the pinnacle of U.S. multilateral engagement in the region, The Summit of the Americas ― the only hemispheric event that brings together all democratically elected Heads of State and Government in the Western Hemisphere. Since its inception in 1994 under President Clinton, six summits and two special summits have taken place from Buenos Aires to Quebec. The outcomes are too numerous to list in total here, but they have been substantial. In addition to the Energy & Climate Partnership I referred to earlier, the Obama Administration has launched through the Summit process “Connecting the Americas 2022” to facilitate universal access to electricity and cleaner, more reliable power for citizens across the region, and “100,000 Strong in the Americas”, a program to promote increased international student exchanges between the United States and Latin America and the Caribbean. The last Summit in Cartagena Colombia in 2012 featured the first “CEO Summit of the Americas”, a high-level dialogue among the region’s business and government leaders focused on pragmatic partnerships between governments and the private sector to boost economic growth. We expect that tradition to continue at the next summit, to be held in Panama in 2015. An important issue going forward is how to more closely link the Summits with the OAS. Presently, the OAS hosts the secretariat of the Summit of the Americas, and serves as a clearinghouse for the implementation of Summit objectives. Part of our discussions with the U.S. Congress on OAS reform is how to create more direct linkages between these institutions. The Challenges Ahead Over the last decades, the hemisphere and the OAS have made enormous progress, but we now face new challenges on the political, economic and security fronts that must be addressed with leadership in bilateral as well as multilateral fora. Let me briefly touch on our overall policy in the hemisphere. Our approach at the OAS represents the multilateral apporach to the policy. The themes are similar. We continue to fervently support democracy, but based on good governance and respect for diversity of opinions that underpins democratic values. Several countries in the region see threats to democratic governance and freedom of expression. We are particularly concerned by the deteriorating situation in Venezuela, where the United States has called on the Venezuelan government to respect the human rights and the rule of law and begin a peaceful dialogue that alleviates the current tension. We have made that case and will continue to do so forcefully in the OAS. Economic engagement lies at the center of our strategy. Our current efforts are focused on concluding the Trans-Pacific Partnership that include several Asian countries, our NAFTA partners plus Chile and Peru. We have a sustained economic policy dialogue with Brazil and are strengthening our ties with Pacific Alliance members Mexico, Chile, Colombia and Peru. Prosperity cannot exist without security. That is why we continue to invest in security cooperation with Mexico, Central America, the Caribbean, and Colombia. And lastly, a more vigorous energy diplomacy is a core priority. The evolving world energy map has created huge openings for greater cooperation on energy matters in the Western Hemisphere, including collaboration to promote energy security with responsible environmental stewardship. The OAS provides significant value-added on all of these themes and plays an important catalytic role in advancing our shared hemispheric agenda. But the organization must be nimble to adjust to changing circumstances, one that reflects the realities of the Americas in the 21st Century. For that reason, we are working on a reform agenda at this venerable institution. We are building a better, more modern OAS, not only based on up to date management practices, but one that focusses on the key challenges of our time.

#### Linking the U.S. and OAE economically is key to Caribbean development

Lawrence J. Gumbiner 14, Deputy U.S. Permanent Representative to the Organization of American States, World Affairs Council of Charlotte, North Carolina, HumanRights.org, 4/4/2014, “The OAS and the Inter-American System”, http://www.humanrights.gov/2014/04/04/the-oas-and-the-inter-american-system/

Integral Development Integral development has been a core pillar for the OAS since the days of the Alliance for Progress, and is a critical function for many of the smaller states in our hemisphere. It is particularly relevant for Caribbean islands who rely on the organization for many projects and activities that are not available through the UN or multilateral development banks. One of the most significant functions the OAS provides is the forum to convene ministers from throughout the hemisphere. These ministers would not meet under any other umbrella. The OAS sponsors ministerial meetings on labor, education, environment, science, culture, tourism, and social development. The U.S. is a prime supporter of the development agenda in the OAS. Last night, in conjunction with the Department of Commerce and City of Charlotte we welcomed the America’s Competitive Exchange, with some 40 entrepreneurs and government officials from throughout the hemisphere. This hands-on connection between innovators and entrepreneurs from the U.S. and the rest of the hemisphere was an example of how the OAS can build positive, practical relationships to promote integral development. Some of our other initiatives include Small Business Development Centers for the Caribbean, a grants program to promote sustainable cities and communities, and the Energy & Climate Partnership of the Americas, a program launched by President Obama at the Summit of the Americas in 2009

#### Adversaries will now exploit gaps to generate instability.

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In a great power competition, most of the United States’ policy attention has focused on East Asia and Eastern Europe. However, the incoming Biden administration should remember George Orwell’s refrain: “To see what is in front of one’s nose needs a constant struggle.” In front of the nose of U.S. leaders is an overlooked fact: a secure, peaceful, and prosperous Western Hemisphere has allowed the U.S. to confidently pursue its national interests abroad. It is imperative for the next administration to factor Latin America more greatly into U.S. strategy.

China, Russia, and Iran are making various advances in front of Washington’s nose. China is growing its investments in the region as an extension of its Belt and Road Initiative. Russia is cementing its ties with anti-U.S. states such as Nicaragua and Venezuela. Iran and its proxy Hezbollah have harnessed illicit networks in the region to finance their operations in the Middle East. For a region so geographically distant from these countries, each competitor has invested significant resources to create conditions that could challenge U.S. interests and hemispheric security. The U.S. will need to compete with these opponents in this arena now if it wishes to maintain its position as the economic, diplomatic, and security partner of choice into the future. An active defense of the U.S. position would also be a broader defense of the shared values, interests, and prosperity that have united the Western Hemisphere.

Attacking Adversarial Asymmetry

Russia, China, and Iran do not have to project extensive military power in the region to compete with Washington. They can challenge it through asymmetric, non-military means to put cumulative pressure on the U.S. and its friends during crises in other theaters. China has constructed a military-administered space facility in Argentina of unknown purposes, is competing to develop the region’s telecommunications architecture, and is operating ports on both sides of the Panama Canal, a strategic waterway for the global economy and the movement of U.S. military forces. Russia continues to provide critical military support to the Maduro regime in Venezuela and has trained more than half of the region’s security services in counterterrorism and counter-narcotics operations. It has also established RT en Español as one of its major information dissemination networks in the region. Iranian-backed Hezbollah has expanded from the Tri-Border Area of Argentina, Paraguay and Brazil to Venezuela, where it is able to launder its money for global operations.

While many of these challenges are primarily economic and political, the strategic implications and the potential for them to grow into something more is significant. In a potential crisis elsewhere, each of these powers can use these different assets to collect intelligence, influence decision-making, and monitor and interdict forces. Sustained refugee outflows in Venezuela could destabilize the Hemisphere. More serious is the possibility that a regime like Maduro’s receives Iranian missiles or more substantial Russian or Chinese military support, creating an A2/AD zone in the southern Caribbean. Economic pressure and news outlets spreading misinformation could undermine coalition-building. Ships may not be able to transit key waterways or resupply from ports. The fusion of these economic, diplomatic, informational, and criminal instruments of statecraft with select military tools presents a hybrid challenge to U.S. and partner interests. One concrete example is China’s role as a leading trade partner and investor in the region, using its economic relationships to uphold anti-U.S. governments and influence local decision-making on behalf of Beijing’s interests. China has aggressively leveraged its economic influence to deprive Taiwan of its remaining diplomatic partners, with nine of the island’s fifteen remaining diplomatic allies located in the Americas. If Beijing seeks to further weaken Taiwan, it can escalate its pressure campaign in this hemisphere and whittle down this list even further in combination with other forms of military and political pressure in the Taiwan Strait. It’s a reminder that what happens in the Western Hemisphere can also profoundly affect developments elsewhere in the world.

#### That undermines global hotspot management.

Lt. Col. Tim Gorrell 05, MA, Strategic Studies, US Army War College, "Cuba: The Next Unanticipated Anticipated Strategic Crisis?" U.S. Army War College, 03/18/2005, pg. 8-13.

The time has come to look realistically at the Cuban issue. Castro will rule until he dies. The only issue is what happens then? The U.S. can little afford to be distracted by a failed state 90 miles off its coast. The administration, given the present state of world affairs, does not have the luxury or the resources to pursue the traditional American model of crisis management. The President and other government and military leaders have warned that the GWOT will be long and protracted. These warnings were sounded when the administration did not anticipate operations in Iraq consuming so many military, diplomatic and economic resources. There is justifiable concern that Africa and the Caucasus region are potential hot spots for terrorist activity, so these areas should be secure. North Korea will continue to be an unpredictable crisis in waiting. We also cannot ignore China. What if China resorts to aggression to resolve the Taiwan situation? Will the U.S. go to war over Taiwan? Additionally, Iran could conceivably be the next target for U.S. pre-emptive action. These are known and potential situations that could easily require all or many of the elements of national power to resolve. In view of such global issues, can the U.S. afford to sustain the status quo and simply let the Cuban situation play out? The U.S. is at a crossroads: should the policies of the past 40 years remain in effect with vigor? Or should the U.S. pursue a new approach to Cuba in an effort to facilitate a manageable transition to post-Castro Cuba?

ANALYSIS OF POLICY ALTERNATIVES

The U.S. can pursue three policy alternatives in dealing with Cuba:

SUSTAIN THE CURRENT POLICY AND FULLY ENFORCE THE ECONOMIC EMBARGO

The crux of the argument for this policy is that sanctions and other restrictions will exert tremendous pressure on the Castro regime, in hope that the regime will fall prior to Castro’s death. There is little indication that this policy will succeed. The U.S. is virtually the only country pursuing a policy to isolate Cuba. In the 1990s Castro was able to develop new trade and markets. While Cuba is not a prosperous country, it has nonetheless managed to endure. The loss of Soviet subsidies, which amounted to 25% of Cuba’s national income, and the loss of the Eastern European bloc as trading partners, which amounted to 75% of Cuba’s import/export trade, left Castro with no alternative but to implement economic changes both internally and externally. 30 These initiatives have stimulated steady, but modest, economic growth.

Today in Cuba, 160,000 people (or 4% of the workforce) are self-employed.31 These entrepreneurial endeavors include small restaurants, taxi drivers, repairmen, and other service industries. If the present course of sanctions continues, the gains of these small reforms will be suppressed leading to significant deprivation for the people involved. Also, Cuba trades with over 100 countries worldwide, so while trade with the U.S. would certainly improve Cuba’s economic well-being, it is debatable whether the lack of U.S. trade is bringing the regime to its knees. The point is that sanctions are not hurting Castro, but are hurting the Cuban population. Restricting trade and travel hurts the small businesses, the tourist industry and others whose livelihood depends on a service economy. It also degrades the quality of life of those Cubans whose financial support comes from family members in the U.S.

Strategists who subscribe to current policy argue that these limitations/hardships will eventually promote an uprising among the populace to overthrow Castro. There is no substantial evidence that this will occur and much that argues against it. While Castro will not live forever, he has outlasted over 45 years of such U.S. policy. He is 78 years old and his father lived to be 80 under significantly less desirable conditions.32 If the present policy course is to wait Castro out this could potentially take another 5-10 years. The wait equates to 5-10 years of despair for the Cuban people, further decay of the country’s infrastructure and more dire conditions that would make democratic reform all the more difficult and costly when Castro actually expires.

Pursuing the present steady state policy will further alienate the Cuban people at home and abroad. The U.S. often has a myopic vision in regard to other cultures. In the case of Cuba, by focusing only on Castro and ignoring the Cuban peoples’ culture and traditions, U.S. policy makers are blinded and have failed to see a future Cuba.

RETAIN SANCTIONS AGAINST CUBA, BUT ENFORCE THEM IN VARYING DEGREES DEPENDING ON THE POLITICAL CLIMATE AND THE CUBAN REGIME’S CONDUCT IN REGARD TO AMERICAN INTERESTS

Throughout the past 15 years, the U.S. has experimented with a variable enforcement option. During the Clinton administration, restrictions were occasionally eased. For example, in March 1998, President Clinton announced: 1) the resumption of licensing for direct humanitarian charter flights to Cuba; 2) the resumption of cash remittances up to $300 per quarter for the support of close relatives in Cuba; 3) the development of licensing procedures to streamline and expedite licenses for the commercial sale of medicines and medical supplies and equipment; and 4) a decision to work on a bipartisan basis with Congress on the transfer of food to the Cuban people.33 In January 1999, President Clinton ordered additional measures to assist the Cuban people, which included further easement of cash remittances, expansion of direct passenger charter flights to Cuba, reestablishment of direct mail service, authorization for the commercial sale of food to independent entities in Cuba, and an expansion of people-to-people exchanges (i.e. scientist, students, athletes, etc.)34 This policy ended when the new administration failed to see any reciprocal progress from Castro.

Fragmenting the policy process may do more harm than good. It does too little too late and causes hard feelings among Cubans and American businesses. The carrot-stick diplomatic approach will not make Castro yield. Such policy breeds inconsistency as it can vary from administration to administration, as it has between the Clinton and Bush administrations. The rules constantly change and thus have a ripple effect on American businesses and the quality of life of Americans, Cuban-Americans and native Cubans.

Cuban trade has already declined to a trickle since the Bush administration sought to further squeeze the Castro government. Prior to the Bush administration’s trade crack down, 2004 was emerging as a record year for U.S. imports to Cuba. By the end of December 2004 U.S. suppliers and shippers were projected to have earned some $450 million, a 20% increase over 2003 sales.35 Imposing restrictions, as the Bush administration did in June 2004, perplexed American businesses with unpredicted problems. These businesses make adjustments, as do Cuban- American citizens, then must abruptly alter their business strategies because of a Congressional vote or an Executive order. This political tug-of-war does not move the U.S. any closer to realizing its security objectives.

On the Cuban American front there is eroding support for this U.S. policy position. In the 2000 presidential election, President Bush won 81% of south Florida’s Cuban-American vote. A recent poll by the William C. Veleasquez Institute-Mirram Global indicates that his support today has fallen to 66%.36 This decline signals a negative response to policy that limits travel, restricts the amount of goods people can bring to their relatives, and places limitations on sending money to family in Cuba. Cuban-Americans believe that this only hurts their poor relatives in Cuba. According to Jose Basulto, head of Brothers to the Rescue, and Ramon Raul Sanchez, head of the anti-Castro Democracy Movement, the U.S. government is using the Cuban people to harass Castro.37 Applying policy in a give-and-take manner, accomplishes little to facilitate the fall of Castro. The Cuban people enjoy brief periods of limited benefits, only to have these benefits withdrawn should the President or members of Congress wish to take another jab at Castro. American civilian businesses are also negatively affected.

LIFT ALL SANCTIONS AND PURSUE NORMAL DIPLOMATIC RELATIONS WITH CUBA

Normalcy is the only policy that the U.S. has not attempted. The present policy misses the security implications, alienates allies and others worldwide, harms U.S. businesses, and is losing support domestically. First, the U.S. must reassess the threat posed by Cuba. There is, in fact, virtually no security threat. Further, policies that were applicable in the past, when there was a threat, should not be applied to the current environment. The U.S. Cuban policy is perplexing because it appears to conflict with the ends, ways and means that the National Security Strategy is applied in other regions of the world. The U.S. has normalized relations with Vietnam and Libya and has certainly opted for an open dialogue with Communist China. Likewise, there is abundant evidence that a new policy toward Cuba could very well achieve the ends that 43 years of embargo have failed to accomplish.

Secondly, Cuba currently trades and has diplomatic ties with much of the world. The goal of U.S. sanctions is to isolate the Cuban regime; however, they have only slowed, not deterred economic growth. On 4 November 2003 the United Nations voted, for the 12th straight year, 173 to 3 (with 4 abstentions) against the four-decade U.S. embargo against Cuba.38 Voting with the U.S. were Israel and the Marshall Islands. The U.S.’ staunchest allies, the 15 members of the European Union, along with Japan, Australia and New Zealand, all object to the “extra-territorial” effect of U.S. legislation that they feel violates their sovereignty. 39 There are two schools of thought regarding trade and democracy. The first is that economic growth will promote democracy. The other questions this notion and argues that democracy must come first. 40 There is strong opinion, however, that in Cuba’s case economic engagement will bring about the desired results. Certainly many Cuban-Americans and perhaps some others in the world would not agree with this course of action. However, there is evidence that a significant number of people both within the U.S. and abroad favor a policy change. In 1992 a pastoral letter from Cuba’s Bishops stated that the US embargo “directly affects the people who suffer the consequences in hunger and illness. If what is intended by this approach is to destabilize the government by using hunger and want to pressure civic society to revolt, then the strategy is also cruel.“41

The third consideration is U.S. business. Under the current rules, U.S. businesses are permitted to sell agricultural produce to Cuba.42 Today 27 firms from 12 U.S. states are doing business with Cuba, making Cuba 22nd among U.S. agricultural markets.43 These business activities are greatly influenced by Cuban-Americans and members of Congress. The economic power of the U.S. can be our most powerful weapon. The possibilities of economic engagement offer a myriad of branches and sequels that could promote a rapport between the American people and the Cubans. The aggressive pursuit of these endeavors would go far in ensuring an orderly transition to a post-Castro Cuba. It is an erroneous assumption to believe that Castro’s demise will miraculously trigger reform and all the problems of the last 40 years will vanish. A visionary policy, albeit constrained within the parameters of the Castro regime, will go far in setting agreeable social-economic conditions in Cuba both now and in the future.

Finally, public opinion in the U.S. favors a new policy direction. A 1997 Miami Herald poll found that a majority of Cubans under the age of 45 supported “establishing a national dialogue with Cuba,” whereas for the most part their elders opposed such dialogue.44 Former President Jimmy Carter, writing in the Washington Post after his May 2002 visit to Cuba, reported that he found an unexpected degree of economic freedom. Carter went on to say that if Americans could have maximum contact with Cuban, then Cubans would clearly see the advantages of a truly democratic society and thus be encouraged to bring about orderly changes in their society. 45 Castro himself appears willing to consider greater reform. In 1998 he permitted Pope John Paul II to visit Cuba; Cubans are permitted to own property; he has opened trade; and in 2002 he broadcast former President Jimmy Carter’s address at the University of Havana.46 Additionally, he indicated that the Cuban government would return any of the Guantanamo detainees in the unlikely event that they would escape.47

CONCLUSION AND RECOMMENDATION

U.S. policy makers need to confront the real Cuba of today in order to build a “free” Cuba of tomorrow that is capable of taking its place in the world community as a responsible, democratic nation. Given the history of the past 100 years, and particularly our Castro centric policy, the U.S. needs to make a bold change toward Cuba. The U.S. has pursued a hard-line approach toward the Castro regime for over 40 years. While this policy was easily justified during the Cold War era and, to a certain degree, during the 1990s, it fails to address the present U.S. national security concerns. The globalization trends of the 21st century are irreversible, Fidel Castro is in the twilight of his life, and a new generation of Cuban-Americans is supportive of new strategies that will ease the transition to a post-Castro Cuba while buttressing economic and social opportunities in the near term. Furthermore, there is a new dimension that U.S. policy strategists must take into account in deciding the course of U.S.- Cuba relations – the GWOT. World-wide asymmetrical threats to U.S. interests, coupled with the Iraqi occupation and the potential for any one of the present hot spots (i.e. Iran, North Korea, Taiwan, etc.) to ignite, should prompt strategic leaders to work harder to mitigate a potential Caribbean crises. The prudent action would then be to develop strategies that can defuse or neutralize these situations before they require the U.S. to divert resources from protecting its interests in the GWOT.

#### Iran, Israel, Turkey, South Asia, and Korea are all triggers---each causes World War III

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World War 3 concerns have spiked in the wake of devastating news from Afghanistan. In a matter of days, Taliban fighters have taken control of Afghanistan - over the weekend storming the capital. Hundreds of thousands of Afghans are now in hiding or attempting to flee to other countries in a bid to find safety from this group. Given the tense relations between countries around the world, Express.co.uk has compiled a guide for the flashpoints where World War 3 is most likely to erupt in 2021.

US-Iran

The UN's nuclear watchdog has said Iran continues to produce uranium metal.

In a report issued by the International Atomic Energy Agency in Vienna to UN member states, Director General Rafael Mariano Grossi said that his inspectors had confirmed on Saturday that Iran had now produced 200 grams of uranium metal enriched up to 20 percent.

Mr Grossi previously said 3.6 grams of uranium metal had been produced at Iran's Isfahan plant.

The worsening relations between the US and Iran is thought likely to have serious economic, political and security ramifications for the USA and its allies.

If the two nations were to engage in military conflict, Iran could opt to block the Strait of Hormuz, through which 30 percent of the world's oil travels.

This would result in global oil prices rising and could risk the USA's relationship with its allies.

Any outbreak of war between the USA and Iran could also see an escalation of tensions in other countries including Syria and Yemen or a rise in Iranian missile strikes targeting US troops in the Middle East.

Iran-Israel

Tensions between Iran and Israel have been frustrated for a while with low-intensity warfare raging across the Middle East as a result.

The former nation supports anti-Israel groups in Gaza, Syria and Lebanon in particular, while Israel often strikes at Iranian forces across the region.

Overall, Israel has endeavoured to create an anti-Iran coalition at a diplomatic level, while Iran has invested in cultivating ties with militias and non-state actors.

While it may be difficult to claim these nations will launch into a wider war if Iran is determined to restart its nuclear program, Israel may choose to engage in wider strikes hitting the Iranian homeland directly.

This type of assault could have wider implications as it could prove to be a threat to global oil supplies which would inevitably cause more nations to intercede.

The two nations have been embroiled in a bitter exchange in recent months, particularly recently after the Islamic Republic was implicated in the drone strike on an oil tanker, owned by Israeli billionaire Eyal Ofer, off the coast of Oman.

Two crew members, a Briton and a Romanian, recently died in the attack.

Israel's Defense Minister Benny Gantz warned of an armed response and the Israeli Prime Minister indicated his country must "act alone" against Tehran.

US-Turkey

Tensions between the US and Turkey has heightened in recent years, initially as a result of the US providing authorisation to Turkey to clear the Syrian border of US-supported Kurds.

However, immediately afterwards, the US threatened Ankara with sanctions, causing tensions to rise.

Additionally, Turkish President Recep Tayyip Erdogan suggested he has aspirations for Turkey which could involve nuclear weapons.

As a result, the state of the US-Turkey relationship has worsened, causing fear about the subsequent impact on the NATO alliance.

President Erdogan is known for being passionate about his plan which could force Washington and Ankara to the very edge and have a result on Russia who is a neighbouring nation.

Turkish forces launched airstrikes and a ground offensive against PKK fighters in northern Iraq earlier this year.

In June, Turkish Foreign Minister Mevlut Cavusoglu said the Makhmour refugee camp in northern Iraq must be cleared of people he called Kurdish militants.

He said Turkey will clear the militants alone if the Iraqi Government does not and Turkish airstrikes killed three people at the camp.

Kashmir

In the past 10 years, the relationship between India and Pakistan has worsened, bringing the countries to the brink of war.

Since the partition of British India in 1947 and the subsequent creation of India and Pakistan, the two countries have been involved in a number of wars, conflicts and military stand-offs interspersed with periods of harmony and peace.

In 2019, Prime Minister Narendra Modi attempted to reduce the autonomy of Kashmir and to change citizenship policies within the rest of India.

These steps have caused some unrest within India and highlighted the long-standing tensions between Delhi and Islamabad.

Further domestic disturbances in India and Pakistan could lead to World War 3.

While this is unlikely, it could lead to terrorist attacks internationally or in Kashmir.

Prime Minister Modi might then feel forced to bring on a more serious conflict and given China’s vicinity, and the growing relationship between Delhi and Washington could lead to more disastrous international implications.

Indian and Pakistani intelligence officials held secret talks in Dubai in January in an effort to deescalate tensions over the Kashmir region, sources claim.

The United Arab of Emirates is also reportedly helping to mediate.

Hundreds of people in Birmingham marched across the region over the Kashmiri independence pelea.

Demonstrators walked calling on India to work in accord with the United Nations over the issue and end human rights violations, demand the return of civil liberties and release political prisoners.

Afghanistan

The nation of Afghanistan is in a state of crisis after Taliban fighters stormed the capital over the weekend.

Kabul was the last major city in the country to fall, there were scenes of panic across the region.

The airport was closed earlier for soldiers to try and clear the runways - US military planes are now landing, including one carrying US marines.

US President Joe Biden has defended his decision to pull out of Afghanistan, admitting events developed quicker than he thought.

He blamed Afghan leaders for the collapse.

Many Afghans left behind have spoken to the terror on the ground, with witnesses reporting occasional gunfire.

At least five people were reportedly killed at the airport on Monday as thousands tried to flee.

President Ashraf Ghani fled Afghanistan yesterday as Taliban leaders broadcast a victory message from the presidential palace in Kabul.

A UN document has warned the Taliban has now stepped up its search for people who worked for Nato or the previous Afghan Government.

Door-to-door searches are reportedly being undertaken in a bid to find targets and threaten their family members.

The hardline Islamist group has tried to reassure Afghans since seizing power in a lightning offensive, promising there would be "no revenge".

But these recent actions indicate the Taliban's tactics have not changed since it was in power during the 1990s.

US troops have now withdrawn from Afghanistan and the Taliban has called the nation a "free and sovereign" state, describing the departure of US troops as "historic".

US-North Korea

Fundamental tensions at the heart of the US-North Korea relationship could result in combative action.

North Korea accused US leader Joe Biden of pursuing a hostile policy against it and warned a response could leave the USA in a "very grave situation".

The North Korean foreign ministry said diplomacy was a “spurious signboard” for the US to “cover up its hostile acts,” according to state media agency KCNA.

These incendiary comments were made after President Joe Biden delivered a policy speech to Congress earlier this month during which he discussed nuclear programs in North Korea and Iran saying they posed threats which must be addressed through "diplomacy and stern deterrence".

This was just one of the explosive comments directed at the US.

Pyongyang also blasted Washington for criticizing its human rights record and Seoul for failing to stop anti–North Korea leaflets from being sent across the border.

Speaking on the topic of North Korea, first-term US leader Mr Biden said he is seeking middle ground between former president Donald Trump's emphasis on personal diplomacy and former president Barack Obama's approach of conditioning engagement on North Korean concessions.

As North Korea is a nuclear power with its own complex relationship with China, it is a critical nation for US national security concerns.

The nations undertake many weapons and missile tests, small-scale military and cyber attacks with each posing a significant risk for potential escalation.

#### OAS cred’s key to Latin American stability

Lawrence J. Gumbiner 14, Deputy U.S. Permanent Representative to the Organization of American States, World Affairs Council of Charlotte, North Carolina, HumanRights.org, “The OAS and the Inter-American System”, 4/4/2014, <http://www.humanrights.gov/2014/04/04/the-oas-and-the-inter-american-system/>

Democracy On democracy, the United States is committed to working through the OAS to foster democratic governance and protect fundamental rights and liberties enshrined in the Inter-American Democratic Charter. Today, this Democratic Charter is at the core of a principled multilateralism in the Americas. With its adoption in September 2001, no OAS member state can be a disinterested spectator to what occurs in our hemisphere. The Charter, reflects a significant hemispheric commitment to the collective defense of regional democracy; a shared desire to lock in the democratic gains of recent decades and prevent a return to autocratic rule. Acting under the Inter-American Democratic Charter, and in the spirit of the Charter, the OAS has helped member states where democratic practices or institutions have been challenged. Of particular note was the OAS’ important role in Haiti, where it worked on voter registration and distribution of over 3.4 million ID cards that was essential for that country to make the transition to a functioning democracy and the elections in 2006. The OAS plays a critical role in Colombia through its mission for demobilization of illegal armed groups. In the event of a peace agreement with the guerrilla organization FARC, the OAS will be ready if requested to perform a similar function. Following the 2009 coup in Honduras, the OAS stepped in to help restore democracy. And in Venezuela, the OAS has remain engaged over the years in an effort to support and preserve democratic institutions in that country. As you are aware, a strong and vibrant debate is presently occurring at the OAS on how to deal with Venezuela’s current crisis after more than a month of protests. Fulfilling the promise of the Democratic Charter to proactively address threats to democracy is not an easy task among 34 sovereign states in a consensus-based organization. It is one of the key challenges facing the OAS as it adapts to hemispheric developments in the 21st century. Election Observation Missions (EOMS) Democracy starts with clean elections, and election observation is a key element in OAS efforts to strengthen democracy in the hemisphere. This year, the OAS has fielded or will be fielding high quality election observer missions — or EOMs — in El Salvador, Costa Rica, Colombia, Panama and Bolivia. We also expect they will assist with elections in Haiti and Antigua and Barbuda when elections there are called. The OAS enjoys a longstanding reputation for impartiality and technical competence on elections, respected worldwide for stringent standards in accordance with the United Nations supported “Principles for International Election Observation”. But what is particularly critical today is the recognition that a free and fair election is more than just counting up the ballots; indeed, the biggest threats to democratic elections in the Americas no longer come from elections that are “stolen” at the ballot box. The integrity of voter information, the politicization of electoral authorities, a weakened media, civil society and inadequate separation of powers ― are all factors that contribute to the integrity of elections. To that end, the OAS has developed groundbreaking new methodologies on such issues as campaign finance, media and gender. It is also working on election integrity and security, and sub-represented groups. The organization has created the first ever electoral quality management standard for electoral processes, officially endorsed by the International Organization for Standardization. These new approaches reflect a progressive vision of what electoral observation and analysis should be today. It is for that reason that despite much polarization in the region, the OAS stamp of approval on elections still represents the gold standard and is sought after by almost all electoral authorities in the hemisphere. Human Rights Furthering democracy through human rights is one of the institution’s most significant contributions. The Inter-American Human Rights System (IAHRS) ― the “crown jewel” of the inter-American System ― is comprised of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. The United States is proud to be the largest financial supporter of the Commission, which is located in Washington. It is comprised of seven Commissioners, and eight thematic rapporteurships, including an independent Special Rapporteur on Freedom of Expression. The Commission played an historically significant role in helping to combat the dictatorships of the 1980s ― particularly in the Southern Cone and Central America ― and bring about the growth of democracy that the region enjoys today. The Commission provides a critical forum for citizens — whether acting through NGOs or on their own — to seek redress of alleged human rights abuses. One of its most important functions is to produce country reports — well documented assessments of human rights conditions and issues in countries throughout the region, with a focus on the most egregious examples of human rights abuses. While the United States is not a party to the American Convention on Human Rights ― we signed it in 1977 but have not ratified it ― and is thus not subject to the jurisdiction of the Costa-Rica based Court, we are nevertheless a strong supporter of the court’s important regional role in protecting human rights. The future of the IAHRS is one of the most politically charged debates at the OAS today. For several years the System ― particularly the Commission and its Special Rapporteur on Freedom of Expression ― have come under sharp criticism from countries, led by Ecuador, who chafe under the scrutiny that the Commission provides. They are seeking dramatic changes, including a reduction in funding and moving of the HQ out of Washington. The United States has been and will remain a firm supporter of this important institution, and we will continue our financial assistance as well as political backing to assure that this remains the backbone of human rights advocacy in the hemisphere.

#### Draws in great powers---goes nuclear

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As the previous chapter demonstrates, for the past two hundred years the principal cause of concern for U.S. defense policymakers and planners thinking about Latin America has been the prospect that great powers outside the Western Hemisphere could exploit the military weakness and internal security challenges of the states within it to threaten U.S. security. While there is reason for optimism about the future of Latin America,58 there is also cause for concern. The region faces enduring obstacles to economic59 and political development60 as well as signi􀂿cant internal security challenges. As General John Kelly, the commander of U.S. Southern Command (SOUTHCOM)61 noted in his March 2013 posture statement before Congress, Latin America: 􀀾I􀁀s a region of enormous promise and exciting opportunities, but it is also one of persistent challenges and complex threats. It is a region of relative peace, low likelihood of interstate con􀃀icts, and overall economic growth, yet is also home to corrosive criminal violence, permissive environments for illicit activities, and episodic political and social protests.62 The instability and non-traditional security challenges that General Kelly cites provide potential opportunities for the United States’ major rivals to (borrowing a term from Monroe’s declaration) “interpose” themselves into the region and, by so doing, threaten regional stability and U.S. security. Two discernible trends suggest that current and prospective Eurasian rivals could seek to exploit regional conditions and dynamics in ways that could impose immense costs on the United States and divert its attention from more distant theaters overseas. The first trend is a return to a heightened level of competition among the “great powers” following two decades of U.S. dominance. The second trend concerns the growing cost of projecting power by traditional military means due to the proliferation of “anti-access/area-denial” (A2/AD) capabilities in general, and precision-guided munitions (PGMs) in particular. These trends suggest that, despite a possible decline in relative U.S. power, external forces will continue to 􀂿nd it beyond their means to threaten the hemisphere through traditional forms of power projection. Far more likely is a return of a competition similar to that which the United States engaged in with the Soviet Union during the Cold War. During that period both powers sought to avoid direct con􀃀ict with the other, given the risks of escalation to nuclear con􀃀ict. Instead each focused primarily on gaining an advantage over the other through the employment of client states and non-state groups as proxies. Proxies were employed for reasons other than avoiding a direct clash, such as gaining positional advantage (e.g., enabling the sponsor to establish bases in its country, as the Soviets did in Cuba). Proxies were also employed as a means of diverting a rival’s attention from what was considered the key region of the competition and to impose disproportionate costs on a rival (e.g., Moscow’s support of 􀀱orth Vietnam as a means of drawing o􀌆 U.S. resources from Europe). This chapter outlines trends in the Western Hemisphere security environment that outside powers may seek to exploit to advance their objectives in ways that threaten regional stability and U.S. security. This is followed by a discussion of how these external powers might proceed to do so. Seeds of Instability Crime, Illicit Networks, and Under-Governed Areas Latin America has a long history of banditry, smuggling, and organized crime. As in the case of Pancho Villa and the 1916-1917 Punitive Expedition, these activities have occasionally risen to a level at which they in􀃀uence U.S. national security calculations. Rarely, however, have these activities been as pervasive and destabilizing as they are today. Although a wide variety of illicit activity occurs in Latin America, criminal organizations conducting drug tra􀌇cking are the dominant forces in the Latin American underworld today, accounting for roughly 􀀇􀀗0 billion per year63 of an estimated 􀀇100 billion in annual illicit trade.6􀀗 Since the Colombian cartels were dismantled in the 1990s, this lucrative trade has been dominated by powerful Mexican cartels whose operations extend across the length and breadth of Mexico, as well as up the supply chain into the cocaine-producing regions of the Andean Ridge and through their wholesale and retail drug distribution networks across the United States.65 The cartels, along with countless smaller criminal organizations, comprise what the head of SOUTHCOM has described as, 􀀾a􀁀n interconnected system of arteries that traverse the entire Western Hemisphere, stretching across the Atlantic and Paci􀂿c, through the Caribbean, and up and down 􀀱orth, South, and Central America . . . 􀀾a􀁀 vast system of illicit pathways 􀀾that is used􀁀 to move tons of drugs, thousands of people, and countless weapons into and out of the United States, Europe, and Africa with an e􀌇ciency, payload, and gross pro􀂿t any global transportation company would envy.66 That being said, the drug tra􀌇cking underworld is by no means a monolithic entity or cooperative alliance. Rather, it is a fractious and brutally competitive business in which rival entities are constantly and literally 􀂿ghting to maximize their share of the drug trade and for control of the critical transshipment points, or plazas, through which it 􀃀ows. To attack their competitor’s operations and protect their own operations from rivals and the Mexican government’s crackdown that began in 2006, the cartels have built up larger, better armed, and more ruthless forces of hired gunmen known as sicarios. Using the billions of dollars generated by their illicit activities, they have acquired weapons and equipment formerly reserved for state armies or state-sponsored insurgent groups, including body armor, assault ri􀃀es, machine guns, grenades, landmines, anti-tank rockets, mortars, car bombs, armored vehicles, helicopters, transport planes, and—perhaps most remarkably—long-range submersibles.67 The cartels’ pro􀂿ts have also enabled them to hire former police and military personnel, including members of several countries’ elite special operations units68 and, in several cases, active and former members of the U.S. military.69 These personnel bring with them—and can provide to the cartels—a level of training and tactical pro􀂿ciency that can be equal or superior to those of the government forces they face. As a result of this pro􀂿ciency and the military-grade weapons possessed by the cartels, more than 2,500 Mexican police o􀌇cers and 200 military personnel were killed in confrontations with organized crime forces between 2008 and 2012 along with tens of thousands of civilians.70 In the poorer states of Central America, state security forces operate at an even greater disadvantage.71 While their paramilitary forces enable the cartels to dominate entire cities and large remote areas through force and intimidation, they are not the only tool available. The cartels also leverage their immense wealth to buy the silence or support of police and government o􀌇cials who are often presented with a choice between plata o plomo—“silver or lead.” According to the head of the Mexican Federal Police, around 2010 the cartels were spending an estimated 􀀇100 million each month on bribes to police.72 By buying o􀌆 o􀌇cials—and torturing or killing those who cannot be corrupted—the cartels have greatly undermined the e􀌆ectiveness of national government forces in general and local police in particular. This, in turn, has undermined the con􀂿dence of the population in their government’s willingness and ability to protect them. Through these means and methods the cartels have gained a substantial degree of de facto control over many urban and rural areas across Mexico, including major cities and large swathes of territory along the U.S.-Mexico border. In many of these crime-ridden areas the loss of con􀂿dence in the government and police has prompted the formation of vigilante militias, presenting an additional challenge to government control.73 Meanwhile, in the “northern triangle” of Central America (the area comprising Guatemala, Honduras, and El Salvador through which the cartels transship almost all cocaine bound for Mexico and the United States) the situation is even more dire. Approximately 90 percent of crimes in this area go unpunished, while in Guatemala roughly half the country’s territory is e􀌆ectively under drug tra􀌇ckers’ control.7􀀗 Further south, similar pockets of lawlessness exist in coca-growing areas in Colombia, Venezuela, Ecuador, Peru, and Bolivia. In Colombia and along its borders with Venezuela, Ecuador, and Peru, much of the coca-growing territory remains under the control of the Revolutionary Armed Forces of Colombia, or FARC. A guerrilla organization founded in the 1960s as a Marxist-Leninist revolutionary movement dedicated to the overthrow of the Colombian government, the FARC embraced coca growing in the 1990s as a means of funding its operations and has subsequently evolved into a hybrid mix of left-wing insurgent group and pro􀂿t-driven cartel.76 This hybrid nature has facilitated cooperation between the FARC and ideological sympathizers like the Bolivarian Alliance, Hezbollah, Al Qaeda in the Islamic Maghreb, and other extremist groups77 as well as with purely criminal organizations like the Mexican cartels. Although the FARC has been greatly weakened over the past decade and no longer poses the existential threat to the Colombian government that it once did, it remains 􀂿rmly in control of large tracts of coca-producing jungle, mostly straddling the borders between Colombia and FARC supporters Venezuela and Ecuador. In summary, organized crime elements have exploited under-governed areas to establish zones under their de facto control. In so doing they pose a signi􀂿cant and growing threat to regional security in general and U.S. interests in particular. As SOUTHCOM commander General Kelly recently observed: 􀀾T􀁀he proximity of the U.S. homeland to criminally governed spaces is a vulnerability with direct implications for U.S. national security. I am also troubled by the signi􀂿cant criminal capabilities that are available 􀀾within them􀁀 to anyone—for a price. Transnational criminal organizations have access to key facilitators who specialize in document forgery, trade-based money laundering, weapons procurement, and human smuggling, including the smuggling of special interest aliens. This criminal expertise and the ability to move people, products, and funds are skills that can be exploited by a variety of malign actors, including terrorists.78 Hezbollah and the Bolivarian Alliance Hezbollah in Latin America 􀀱on-state entities recognized by the U.S. as terrorist organizations also operate in the region, most notably Lebanon-based Hezbollah, an Iranian client group. Hezbollah maintains an active presence in the tri-border area (TBA) of South America— the nexus of Argentina, Brazil, and Paraguay—stretching back to the 1980s. The TBA has traditionally been under-governed and is known by some as “the United 􀀱ations of crime.”79 Eight syndicate groups facilitate this activity in South America’s so-called “Southern Cone,” overseeing legitimate businesses along with a wide range of illegal activities to include money laundering, drug and arms traf- 􀂿cking, identity theft and false identi􀂿cation documents, counterfeiting currency and intellectual property, and smuggling. 􀀱ot surprisingly they are linked to organized crime and to non-state insurgent and terrorist groups, such as the FARC.80 Estimates are that over 􀀇12 billion in illicit transactions are conducted per year, a sum exceeding Paraguay’s entire GDP by a substantial amount.81 Hezbollah achieved notoriety in the region in 1992 when it bombed the Israeli embassy in Argentina. This was followed with the bombing of the AMIA Jewish community center in Buenos Aires two years later. Like many other terrorist organizations, as Hezbollah expanded it established relationships with drug cartels82 that it supports in a variety of ways. For example, the cartels have enlisted Hezbollah, known for its tunnel construction along the Israeli border, for help in improving their tunnels along the U.S.-Mexican border. In 2008, Hezbollah helped broker a deal in which one of Mexico’s major drug cartels, Sinaloa, sent members to Iran for weapons and explosives training via Venezuela using Venezuelan travel documents. 83 As the locus of the drug trade and other illegal cartel activities moved north into Central America and Mexico, Hezbollah has sought to move with it with mixed success. In October 2011, Hezbollah was linked to the e􀌆orts of an Iranian-American to conspire with Iranian agents to assassinate the Saudi ambassador to the United States. The plot involved members of the Los Zetas Mexican drug cartel.8􀀗 The would-be assassin, Mansour Arbabsiar, had established contact with his cousin, a Quds Force85 handler, Gen. Gholam Shakuri. The plot is believed by some to be part of a wider campaign by the Quds Force and Hezbollah to embark on a campaign of violence extending beyond the Middle East to other Western targets, including those in the United States.86 In early September 2012, Mexican authorities arrested three men suspected of operating a Hezbollah cell in the Yucatan area and Central America, including a dual U.S.-Lebanese citizen linked to a U.S.-based Hezbollah money laundering operation. 87A few months later, in December 2012, Wassim el Abd Fadel, a suspected Hezbollah member with Paraguayan citizenship, was arrested in Paraguay. Fadel was charged with human and drug tra􀌇cking and money laundering. Fadel reportedly deposited the proceeds of his criminal activities—ranging from 􀀇50-200,000 per transaction—into Turkish and Syrian bank accounts linked to Hezbollah. In summary, Hezbollah has become a 􀂿xture in Central and Latin America, expanding both its activities and in􀃀uence over time. It has developed links with the increasingly powerful organized crime groups in the region, particularly the narco cartels, along with radical insurgent groups such as the FARC and states like Venezuela who are hostile to the United States and its regional partners. Hezbollah’s principal objectives appear to be undermining U.S. in􀃀uence in the region, imposing costs on the United States, and generating revenue to sustain its operations in Latin America and elsewhere in the world. These objectives are shared by Iran, Hezbollah’s main state sponsor. The Bolivarian Alliance As noted above, geographic, economic, and cultural factors have traditionally helped to prevent the emergence in Latin America of any real military rival to the United States. Although there are no traditional military threats in the region, there are indigenous states whose actions, policies, and rhetoric challenge regional stability and U.S. security. Over the past decade, several states have come together to form the Bolivarian Alliance of the Americas (ALBA), an organization of left-leaning Latin American regimes whose overarching purpose is to promote radical populism and socialism, foster regional integration, and reduce what they perceive as Washington’s “imperialist” influence in the region.89 Since its founding by Hugo Chavez of Venezuela and Fidel Castro of Cuba in December 200􀀗, the Bolivarian Alliance has expanded to include Antigua and Barbuda, Bolivia, Dominica, Ecuador, 􀀱icaragua, and Saint Vincent and the Grenadines. Although the members of the Bolivarian Alliance are militarily weak and pose almost no traditional military threat to the United States or its allies in the region,90 they challenge American interests in the region in other ways. First, they espouse an anti-American narrative that finds substantial support in the region and consistently oppose U.S. efforts to foster cooperation and regional economic integration.91 Second, in their efforts to undermine the government of Colombia, which they consider to be a U.S. puppet, ALBA states provide support and sanctuaries within their borders to coca growers, drug traffickers, other criminal organizations, and the FARC.92 Links to Hezbollah have also been detected.93 Perhaps of greatest concern, they have aligned themselves closely with Iran, inviting it and Syria to participate as “observer states” in the alliance. Other worrisome ALBA activities involve lifting visa requirements for Iranian citizens and hosting large numbers of Iranian diplomats and commercial exchange members that some observers believe to be Iranian intelligence and paramilitary Quds Force operatives.9􀀗 By hosting and cooperating with both foreign agents and violent non-state actors, the ALBA states have come to function as critical nodes in a network of groups hostile to the United States. A Coming Era of Proxy Wars in the Western Hemisphere? History shows that Washington has often emphasized an indirect approach to meeting challenges to its security in Latin America. Yet the United States has not shied away from more direct, traditional uses of force when interests and circumstances dictated, as demonstrated over the past half century by U.S. invasions of the Dominican Republic (1965), Grenada (1983), and Panama (1989) and the occupation of Haiti (199􀀗).Yet several trends seem likely to raise the cost of such operations, perhaps to prohibitive levels. Foremost among these trends is the diffusion of precision-guided weaponry to state and non-state entities. 92 The Second Lebanon War as “Precursor” War A precursor of this trend can be seen in the Second Lebanon War between Israel and Hezbollah.95 During the con􀃀ict, which lasted less than 􀂿ve weeks, irregular Hezbollah forces held their own against the highly regarded Israeli Defense Force (IDF), demonstrating what is now possible for non-state entities to accomplish given the proliferation of militarily-relevant advanced technologies. Hezbollah’s militia engaged IDF armor columns with salvos of advanced, man-portable, antitank guided missiles and other e􀌆ective anti-armor weapons (e.g. rocket-propelled grenades (RPGs) with anti-armor warheads) in great numbers. When the IDF employed its ground forces in southern Lebanon, its armored forces su􀌆ered severe losses; out of the four hundred tanks involved in the 􀂿ghting in southern Lebanon, forty-eight were hit and forty damaged.96 Hezbollah’s defensive line was also well equipped with latest-generation thermal and low-/ no-light enhanced illumination imaging systems, while frontline units were connected to each other and higher command elements via a proprietary, 􀂿ber-optic based communications network, making collection of communications tra􀌇c by Israeli intelligence extremely di􀌇cult. Perhaps most important, Hezbollah possessed thousands of short- and medium- range rockets, often skillfully hidden below ground or in bunkers that made detection from overhead surveillance platforms nearly impossible. During the brief con􀃀ict Hezbollah’s forces 􀂿red some four thousand unguided rockets of various types that hit Israel. Hezbollah’s rocket inventory enabled its forces to attack targets throughout the northern half of Israel. Over nine hundred rockets hit near or on buildings, civilian infrastructure, and industrial plants. Some two thousand homes were destroyed, and over 􀂿fty Israelis died with several thousand more injured. The casualties would undoubtedly been greater if between 100,000 and 250,000 Israeli civilians had not 􀃀ed their homes. Haifa, Israel’s major seaport had to be shut down, as did its oil re􀂿nery.97 Hezbollah also employed several unmanned aerial vehicles for surveillance of Israel, as well as C-802 anti-ship cruise missiles used to attack and damage an Israeli corvette. 98 The G-RAMM Battlefield The brief war between Israel and Hezbollah suggests that future irregular forces may be well-equipped with enhanced communications, extended-range surveillance capabilities, and precision-guided rockets, artillery, mortars and missiles (G-RAMM) 99 able to hit targets with high accuracy at ranges measured from the tens of kilometers perhaps up to a hundred kilometers or more. In projecting power against enemies equipped in this manner and employing these kinds of tactics U.S. forces—as well as other conventional forces— will find themselves operating in a far more lethal battlefield than those in either of the Gulf wars or in stability operations in Afghanistan and Iraq. Moreover, currently constituted conventional forces typically depend on large fixed infrastructure (e.g., military bases, logistics depots, ports, airfields, railheads, bridges) to deploy themselves and sustain combat operations. These transportation and support hubs also serve as the nodes through which internal commerce and foreign trade moves within a country. This key, fixed infrastructure will almost certainly prove far more difficult to defend against irregular forces armed with G-RAMM weaponry. Indeed, had Hezbollah’s “RAMM” inventory had only a small fraction of G-RAMM munitions, say 10-20 percent, it would have been able to in􀃀ict far greater damage than it did historically to Israeli population centers, key government facilities, military installations, and essential commercial assets such as ports, air􀂿elds, and industrial complexes. An irregular enemy force armed with G-RAMM capabilities in substantial numbers could seriously threaten Latin American governments as well as any U.S. (or external great power) forces and support elements attempting a traditional intervention operation. Implications for the U.S. and Other Major Powers The preceding narrative suggests that the combat potential of irregular forces is likely to increase dramatically in the coming years. As this occurs, the cost of operating conventional forces—especially ground forces—and defending key military support infrastructure is likely to rise substantially. Given these considerations the United States and other major powers external to the Western Hemisphere will have strong incentives to avoid the use of conventional forms of military power, particularly large ground forces, in favor of employing irregular proxy forces to advance their interests. Moreover, the high cost and questionable bene􀂿t of the campaigns in Afghanistan and Iraq are likely to create strong domestic opposition in the United States to such operations for some time to come. This must be added to the United States’ greatly diminished 􀂿scal standing that has led to large cuts in planned investments in defense. These factors suggest that Washington will be much less likely to engage in direct military action in Latin America in the coming years than historically has been the case. At the same time, rivals of the United States like China and Russia may be incentivized by these trends, as well as the United States’ overwhelming military dominance in the Western Hemisphere, to avoid the direct use of force to expand their in􀃀uence in Latin America. Instead, like some of the Bolivarian Alliance members, they appear likely to follow the path taken by the Soviet Union during the Cold War and Iran today: supporting non-state proxies to impose disproportionate costs on the United States and to distract Washington’s resources and attention from other parts of the world. This is not to say that Beijing, Moscow, and Tehran would eschew future opportunities to establish bases in Latin America. As in the past, such bases can support efforts to accomplish several important objectives. They can, for example, further insulate a Latin American regime from the threat of direct U.S. military intervention, since Washington would have to account for the possibility that the conflict would lead to a direct confrontation with a more capable and potentially nuclear-armed power .100 Bases in the hemisphere can also enable external powers to conduct military assistance activities, such as training, more easily. Electronic surveillance of the United States and Latin American states could be accomplished more cheaply and e􀌆ectively from forward positions. Finally, certain kinds of military capabilities, such as long-range ballistic missiles and attack submarines, could be pro􀂿tably stationed in Latin America by powers external to that region, particularly if they intended to create the option of initiating con􀃀ict at some future date. These reasons, among others, have made preventing an extra-hemispheric power from establishing bases in Latin America an enduring U.S. priority. Players in a Latin American Great Game Given current trends, several powers external to the region may, either now or over the coming decade, have both the motive and the means to employ both state and non-state proxies in Latin American to achieve their interests. Principal among them is Iran, which is already engaged in supporting proxies against the United States and its partners in the Middle East and has long been developing proxies in Latin America. Additionally, there are reasons to think that China and Russia may be interested in cultivating and supporting Latin American proxies as well.

#### Other major powers will say ‘yes’

Michael Ristaniemi 20, PhD Candidate in Commercial Law at the University of Turku, Vice President for Sustainability at the Metsä Group, Participant in the Visiting Scholar Programme at the University of California, Berkeley, “International Antitrust: Toward Upgrading Coordination and Enforcement”, Doctoral Dissertation, October 2020, https://core.ac.uk/download/pdf/347180879.pdf

Despite the above, the major powers do have an interest in cooperating internationally in competition issues. The EU and the US appear to desire further convergence of practices and substantive thinking. Officially, China does not appear to have a strong stance on convergence, but recent practice shows that it too has engaged in an increasing amount of dialogue on competition matters. Indeed, there is an increasing amount of cooperation in relation to investigating international cartels, referring to cartels that operate in several nations concurrently and which seek to cartelize them.208

Further, the competition authorities of major powers have an incentive to ensure that merger control procedures affecting mergers benefiting their respective regions are as internationally streamlined and coordinated as possible given the number of multinationals that originate from each of their respective territories. Nonetheless, there are a few hurdles for streamlining international merger control. First is the dichotomous leadership of the US and the EU systems, with no single leading standard to become the global standard. Second, there are clear differences in nations’ scope of merger review that may arise from partially differing sets of goals should they attempt to address public interest or other non-competition related concerns concurrently with competition concerns.209 In any case, the aggregate cost of a fragmented system of international merger control is arguably higher than it would need to be. Improved, more structured coordination could help, as discussed further in Chapters 5 and 6 below.

#### Status-seeking drives agreement AND overwhelms economic costs

Geoffrey A. Manne 13, Lecturer in Law at Lewis & Clark Law School, Executive Director of the International Center for Law & Economics, JD from the University of Chicago Law School, Former Olin Fellow at the University of Virginia School of Law, and Dr. Seth Weinberger, PhD and MA in Political Science from Duke University, MA in National Security Studies from Georgetown University, AB from the University of Chicago, Associate Professor in the Department of Politics and Government at the University of Puget Sound, “International Signals: The Political Dimension of International Competition Law”, The Antitrust Bulletin, Volume 57, Number 3, Last Revised 7/18/2013, p. 490-492

The United States has an interest in obtaining credible long-term commitments from other states—particularly developing states—to the dominant norms of global economic and political liberalization preferred by the United States. To the extent that adherence to the tenets of economic liberalization preferred by the United States is costly, adherence to those standards conveys a measure of long-term commitment. Similarly, to the extent that states can be made to adapt their domestic infrastructure and institutions to conform with the United States’ preferred institutions of economic liberalization (an undoubtedly costly proposition8), the United States can credibly hope to initiate a process of internalization, whereby the adaptations made create a “lock-in” effect which helps to further the processes of market liberalization and democratization that the United States believes are essential for the maintenance of its preferred international order.9 In short, the more difficult and costly it is for a state to adhere to an international agreement, the more its continued, costly adherence signals the state’s long-term commitment to the underlying tenets with which the agreement is imbued.

Moreover and not least, the process of harmonization through successive, bilateral (or narrow, regional) agreements, particularly in the economic sphere, permits the measured, evolutionary adoption of international standards. The crass realpolitik of multilateral international institutions, even though imbued with desirable normative constraints, suggests that the product of their deliberations will be less economic than political. Many have suggested, however, that regulatory competition in an arena like antitrust (where laws are invariably applied extraterritorially and where states have no ability to lure incorporations with attractive antitrust laws) makes an evolutionary, competitive approach infeasible.10

The recognition of political costs, however, and a consideration of the broader political environment in which international economic laws are negotiated, suggest that an evolutionary, competitive approach is in fact possible. As described in more detail below,11 nations compete for favorable trade and other status. To the extent that their position in the normative order is affected favorably by incurring the costs of compliance with the dominant economic norms as embodied in particular agreements (because of the internalization effect), some measure of competition is possible. By this we mean that, rather than a race for the top (or bottom) engendered by the competition for incorporation fees, for example, states will compete in a race for political status. Because political status is conferred by entering into agreements with dominant economic powers, developing countries (and other states that have not yet solidified their political or economic positions) will enter into agreements without direct transfer payments in order to receive the benefits of credibility, normative change, and international acceptance. The net effect should be the effective export of consistent American (or, more recently, European) antitrust policy. Notably, because harmonization can be achieved over time, through limited agreements, the substance of the dominant international law can also be honed over time as experience proves it necessary.12

#### Even if some hold-out, the framework is flexible enough to create coalitions of the willing that expand later

Dr. Daniel Francis 21, Climenko Fellow and Lecturer on Law at Harvard Law School, Doctorate of Laws Degree from the NYU School of Law, Master of Laws Degree from Harvard University, JD from Trinity College at Cambridge University, Former Deputy Director of the Federal Trade Commission, “Choices and Consequences: Internationalizing Competition Policy after TPP”, in Megaregulation Contested: The Global Economic Order After TPP, Ed. Kingsbury, Revised 8/26/2021, p. 52-53

Conclusion

I have argued that strong, universalistic prescriptions regarding the internationalization of competition policy are unlikely to be very convincing or very interesting. Polities and societies have sharply differing accounts of what “free” and “fair” competition might mean, and when and how the state should shape it, interfere with it, or exclude it altogether. Liberalization and competition offer tremendous benefits to jurisdictions that embrace them; but no jurisdiction does so entirely, and each polity must find its own optimal balance between competition and the values that—so to speak—compete with it. This makes international action a very complex affair in which internationalization is likely to happen slowly when it happens at all. Sometimes it will be simply unavailable: “state preferences may be configured in such a way as to make cooperation unprofitable for all, in which case it will not occur, no matter what international mechanisms are in place.”204

As “[d]isagreement on matters of principle is . . . not the exception but the rule in politics,”205 I have suggested that there is considerable value in the provision of a wide range of tools and forms to facilitate international action. The bigger and more diverse the toolkit, the greater the likelihood of finding a solution that will serve the turn. To that end, I have emphasized the value of three forms of flexibility in this area: regionalism as a complement to bilateralism and multilateralism; frameworks as a complement to treaties and networks; and a willingness to explore cooperation on competition policy both alongside and separately from the liberalization of trade.

All the hard questions remain. But, as policymakers and scholars survey the wreckage of megaregionalism, I think there are plenty of reasons for optimism. I have emphasized that when grand megaregional bargains wrought in binding international law fail, other paths may remain open. Other combinations, other configurations, can offer the prospect of “progress”—in the right sense—to coalitions of the willing. At the time of writing, there is some evidence that many of the TPP’s parties continue to see value in deep cooperation in matters of trade and competition policy, even without the participation of the United States.206 With some creativity and imagination, and in partnership with like-minded jurisdictions, there is every reason to expect that they will achieve it.

### 1AC---Plan

#### Plan

#### The United States federal government should prohibit anticompetitive private cartel practices not authorized by an internationally-agreed framework of cooperation regarding competition law.

### 1AC---IF TIME

#### Back to OAS.

#### Instability draws in Russia

R. Evan Ellis 15, Research Professor of Latin American Studies at the Strategic Studies Institute, U.S. Army War College, 6/17/2015, “The New Russian Engagement With Latin America: Strategic Position, Commerce, and Dreams of the Past”, Strategic Studies Institute, http://www.strategicstudiesinstitute.army.mil/pubs/display.cfm?pubID=1275

Beyond such impacts on coalition formation, Russian engagement with the region on the United States also adversely impacts pro-U.S. states such as Colombia, Chile, and even Honduras, which arguably perceive themselves as increasingly surrounded by proRussian states, and threatened by Russia’s activities in the region. In the case of Colombia, Russia’s close political, military, and economic relations with the three ALBA states that surround it (Venezuela, Ecuador, and Cuba), and perceived historic Russian ties to groups that fight against the Colombia government internally, such as the FARC and the ELN, increase the Colombian government’s sense of encirclement by hostile forces, and its interest in informal security guarantees from its traditional ally, the United States. For some in Honduras, the prospect of renewed Russian engagement with neighboring El Salvador, in combination with the strong Russian position in Nicaragua and Cuba, raises similar fears of “encirclement.”

With respect to the ALBA states, the economic viability of regimes such as the Bolivarian government of Venezuela arguably is enabled more by loans and support from the PRC than from Russia. Nonetheless, Russian activities reinforces, and sometimes compliments, the impacts of Chinese engagement in select sectors such as petroleum, arms, and construction, and provides political support for the anti-Western projects of these countries in a way that the PRC, to date, has been reluctant to do. As suggested earlier, Russian arms and investment thus make these regimes somewhat more viable, and potentially more dangerous to their neighbors.

In turn, the viability of these regimes, and their willingness to host Russian military and irregular activities, creates an opportunity for Russia to operate in the region in a manner that threatens the United States in the hemisphere when it wishes to do so. During a conflict involving Russia in another theater, for example, such allies present Russia with options to act in Latin America and the Caribbean so as to force the United States to divert attention and resources away from its activities in other parts of the globe. Examples of such possible actions include basing or resupplying nuclear-capable military assets in countries in close proximity to the United States, such as Venezuela, Cuba, Nicaragua, and Ecuador. Other possibilities include supporting military action against a U.S. ally, such as a Venezuelan occupation of historically contested Colombian territory on its border, or a Nicaraguan incursion against Costa Rica.

#### Extinction

Dr. Anthony Barrett 13, PhD in Engineering and Public Policy from Carnegie Mellon, Director of Research at the Global Catastrophic Risk Institute (GCRI), Fellow at the RAND Stanton Nuclear Security Fellows Program, and Seth Baum, PhD in Geography from Pennsylvania State University, Executive Director at the GCRI, Research Scientist at the Blue Marble Space Institute of Science, and Kelly Hostetler, Research Assistant @ the GCRI, “Analyzing and Reducing the Risks of Inadvertent Nuclear War Between the United States and Russia,” Science and Global Security 21(2): 106-133, online [language modified]

War involving significant fractions of the U.S. and Russian nuclear arsenals, which are by far the largest of any nations, could have globally catastrophic effects such as severely reducing food production for years, 1,2,3,4,5,6 potentially leading to collapse of modern civilization worldwide and even the extinction of humanity. 7,8,9,10 Nuclear war between the US and Russia could occur by various routes, including accidental or unauthorized launch; deliberate first attack by one nation; and inadvertent attack. In an accidental or unauthorized launch or detonation, system safeguards or procedures to maintain control over nuclear weapons fail in such a way that a nuclear weapon or missile launches or explodes without direction from leaders. In a deliberate first attack, the attacking nation decides to attack based on accurate information about the state of affairs. In an inadvertent attack, the attacking nation mistakenly concludes that it is under attack and launches nuclear weapons in what it believes is a counterattack. 11,12 (Brink~~man~~ship strategies incorporate elements of all of the above, in that they involve deliberate manipulation of the risk of otherwise unauthorized or inadvertent attack as part of coercive threats that “leave something to chance,” i.e., “taking steps that raise the risk that the crisis will go out of control and end in a general nuclear exchange.” 13,14 ) Over the years, nuclear strategy was aimed primarily at minimizing risks of intentional attack through development of deterrence capabilities, though numerous measures were also taken to reduce probabilities of accidents, unauthorized attack, and inadvertent war. 15,16,17 For purposes of deterrence, both U.S. and Soviet/Russian forces have maintained significant capabilities to have some forces survive a first attack by the other side and to launch a subsequent counter-attack. However, concerns about the extreme disruptions that a first attack would cause in the other side’s forces and command-and-control capabilities led to both sides’development of capabilities to detect a first attack and launch a counter-attack before suffering damage from the first attack. 18,19,20 Many people believe that with the end of the Cold War and with improved relations between the United States and Russia, the risk of East-West nuclear war was significantly reduced. 21,22 However, it has also been argued that inadvertent nuclear war between the United States and Russia has continued to present a substantial risk. 23,24,25,26,27,28,29,30,31,32,33 While the United States and Russia are not actively threatening each other with war, they have remained ready to launch nuclear missiles in response to indications of attack. 34,35,36,37,38 False indicators of nuclear attack could be caused in several ways. First, a wide range of events have already been mistakenly interpreted as indicators of attack, including weather phenomena, a faulty computer chip, wild animal activity, and control-room training tapes loaded at the wrong time. 39 Second, terrorist groups or other actors might cause attacks on either the United States or Russia that resemble some kind of nuclear attack by the other nation by actions such as exploding a stolen or improvised nuclear bomb, 40,41,42 especially if such an event occurs during a crisis between the United States and Russia. 43 A variety of nuclear terrorism scenarios are possible. 44 Al Qaeda has sought to obtain or construct nuclear weapons and to use them against the United States. 45,46,47 Other methods could involve attempts to circumvent nuclear weapon launch control safeguards or exploit holes in their security. 48,49 It has long been argued that the probability of inadvertent nuclear war is significantly higher during U.S.-Russian crisis conditions, 50,51,52,53 with the Cuban Missile Crisis being a prime historical example of such a crisis. 54,55,56,57,58 It is possible that U.S.-Russian relations will significantly deteriorate in the future, increasing nuclear tensions. 59 There are a variety of ways for a third party to raise tensions between the United States and Russia, making one or both nations more likely to misinterpret events as attacks. 60,61,62,63

#### ‘Antitrust now’ wrecks their DAs:

#### ‘Dark pattern’ enforcement increased yesterday

Kristin L. Bryan 10-29, Senior Associate at Squire Patton Boggs (US) LLP, “Breaking: FTC Announces It Will Ramp up Enforcement Against “Dark Patterns” Directed at Consumers”, National Law Review, 10/29/2021, https://www.natlawreview.com/article/breaking-ftc-announces-it-will-ramp-enforcement-against-dark-patterns-directed

This month, CPW’s Kyle Fath, Kristin Bryan, Christina Lamoureux & Elizabeth Helpling explained how data privacy and cybersecurity were Federal Trade Commission (“FTC”) priorities. As they wrote, there were “three key areas of interest to consumer privacy that are now in the FTC’s spotlight, as well as their relation to state privacy legislation and their anticipated impact to civil litigation.” One area of interest they identified was deceptive and manipulative conduct on the Internet (including so-called “dark patterns”). Today, the FTC announced that it was going to ramp up enforcement against illegal dark patterns that trick consumers into subscriptions. Read on to learn more and what it means going forward.

First, some background. The term “dark patterns” collectively applies manipulative techniques that can impair consumer autonomy and create traps for online shoppers (for instance, think of multi-click unsubscription options). As CPW previously explained, “[e]arlier this year, the FTC hosted a workshop called “Bringing Dark Patterns to Light,” and sought comments from experts and the public to evaluate how dark patterns impact customers.” The genesis for this workshop was the FTC’s concern with harms caused by dark patterns, and how dark patterns may take advantage of certain groups of vulnerable consumers.

Notably, the FTC is not alone in its attention to this issue as California’s Attorney General previously announced regulations that banned dark patterns and required disclosure to consumers of the right to opt-out of the sale of personal information collected through online cookies. Dark patterns has also been targeted in civil litigation. This year, the weight-loss app Noom faced a class action alleging deceptive acts through Noom’s cancellation policy, automatic renewal schemes, and marketing to consumers.

Building off these prior developments, today, the FTC announced a new enforcement policy statement “warning companies against deploying illegal dark patterns that trick or trap consumers into subscription services.” As the FTC cautioned, “[t]he agency is ramping up its enforcement in response to a rising number of complaints about the financial harms caused by deceptive sign up tactics, including unauthorized charges or ongoing billing that is impossible cancel.”

As summarized in the FTC’s press release announcing this development, businesses going forward must follow three key requirements in this area or run the risk of an enforcement action (including potential civil penalties):

(1) Disclose clearly and conspicuously all material terms of the product or service: This includes disclosing how much a product and/or service costs, “deadlines by which the consumer must act to stop further charges, the amount and frequency of such charges, how to cancel, and information about the product or service itself that is needed to stop consumers from being deceived about the characteristics of the product or service.”

(2) Obtain the consumer’s express informed consent before charging them for a product or services: This means “obtaining the consumer’s acceptance of the negative option feature separately from other portions of the entire transaction, not including information that interferes with, detracts from, contradicts, or otherwise undermines the consumer’s ability to provide their express informed consent.”

(3) Provide easy and simple cancellation to the consumer: Marketers are also to “provide cancellation mechanisms that are at least as easy to use as the method the consumer used to buy the product or service in the first place.”

This development is likely one of only many anticipated to be rolled out in light of the FTC’s continued focus on data privacy and cybersecurity.

#### Safeguards rule thumps AND more’s coming

Lindsey O’Donnell-Welch 10-28, Executive Editor at Decipher, “FTC Beefs Up Security Mandates for Financial Sector”, Decipher, 10/28/2021, https://duo.com/decipher/ftc-beefs-up-security-requirements-for-financial-sector

The Federal Trade Commission (FTC) has announced sweeping updates to a set of existing requirements, called the Safeguards Rule, which aim to ensure that financial institutions secure consumer data.

The Safeguards Rule, established 19 years ago, mandates that financial institutions develop information security programs to better protect the collection, storage and transmission of sensitive data - including customers' bank account and social security information. Under the FTC’s modifications, announced on Wednesday, the criteria for these programs is fleshed out in more detail, and the rule now extends to non-banking financial institutions, such as mortgage brokers. An FTC spokesperson said that these changes are part of the FTC’s periodic review of its rules, in order to ensure they “keep up to date with technological and other changes in the marketplace.”

“Financial institutions and other entities that collect sensitive consumer data have a responsibility to protect it,” said Samuel Levine, director of the FTC’s Bureau of Consumer Protection, in a statement. “The updates adopted by the Commission to the Safeguards Rule detail common-sense steps that these institutions must implement to protect consumer data from cyberattacks and other threats.”

As part of the recent changes, the FTC has detailed how financial institutions can develop and implement the required information security programs, by pointing to the specific criteria that needs to be in place. As part of this criteria, for instance, organizations need to make sure they limit who can access consumer data and utilize encryption to secure the data. Another change will hold financial institutions more accountable in securing consumer data, with the FTC now requiring each organization to designate a “qualified” individual to oversee the program and give periodic reports on the program to a board of directors. Financial companies are now also required to explain their information-sharing practices - including the technical and physical safeguards used to collect, store and distribute data.

In another significant change, the Safeguards Rule will be extended to include non-banking financial institutions that are “engaged in activities that the Federal Reserve Board determines to be incidental to financial activities.” These institutions, such as mortgage brokers, motor vehicle dealers and payday lenders, are now required to create their own security programs under the new rule. At the same time, FTC has also exempted financial institutions that collect less customer data - specifically those that collect data from less than 5,000 consumers - from certain requirements, such as written risk assessments, incident response plans or the annual reporting to a board of directors.

"Financial services organizations hold valuable, monetizeable data for millions of consumers."

The FTC voted 3-2 to adopt the Safeguards Rule updates, with some commissioners expressing concerns about a lack of data demonstrating that the changes would actually translate into better protections for consumer data.

“The new prescriptive requirements could weaken data security by diverting finite resources towards a check-the-box compliance exercise and away from risk management tailored to address the unique security needs of individual financial institutions,” according to a joint statement by commissioners Noah Joshua Phillips and Christine Wilson, who opposed the updates.

Moving forward, the FTC is looking for further comments on making additional changes to the rule that would require financial institutions to report certain data breaches, and other security incidents, to the commission.

#### Prior approval rules cracked down this week

Brent Kendall 10-29, “New Policy Gives FTC Greater Control Over How Companies Do M&A”, Wall Street Journal, 10/29/2021, https://www.wsj.com/articles/new-policy-gives-ftc-greater-control-over-how-companies-do-m-a-11635499802

The Federal Trade Commission, led by new Democratic Chairwoman Lina Khan, has adopted a series of policy changes aimed at cracking down on corporate mergers, sparking deep partisan disagreement at the agency.

The latest initiative came this week when Democrats who control the five-member FTC announced a policy that would give the commission veto power over a company’s future transactions once it attempts an allegedly anticompetitive merger or acquisition.

The new prior-approval policy will be incorporated into legal settlements in which merging companies make concessions to resolve FTC concerns that their tie-up would be anticompetitive. The commission in those agreements plans to prohibit companies from making future acquisitions in the same market—and possibly other markets—without its say-so. The FTC might also seek prior-approval rights when companies drop a proposed merger after an antitrust investigation, or if the FTC wins a merger challenge in court.

Holly Vedova, tapped by Ms. Khan to lead the FTC’s bureau of competition, said in a statement the new policy restores a practice the FTC followed until the mid-1990s and “forces acquisitive firms to think twice before going on a buying binge because the FTC can simply say no.”

The policy adds a layer of enforcement beyond standard U.S. antitrust rules, which say companies doing sizable mergers must submit them for government review and can close their transaction after a waiting period, unless the FTC or Justice Department files a lawsuit and convinces a court to block the deal. The department hasn’t adopted a policy similar to the FTC’s new measure, raising questions about diverging approaches.

#### It's huge AND changes the law

Cadwalader 10-29 – Cadwalader, Wickersham & Taft LLP, “FTC Restores Prior Approval Policy For Merger Restrictions”, Mondaq, 10/29/2021, https://www.mondaq.com/unitedstates/financial-services/1125944/ftc-restores-prior-approval-policy-for-merger-restrictions

The FTC restored its past practice of requiring merging parties to obtain prior approval from the FTC "before closing any future transaction affecting each relevant market for which a violation was alleged" (emphasis in original).

In the Prior Approval Policy Statement, the FTC stated that it will include prior approval provisions in merger divestiture orders for a minimum of 10 years for each market in which alleged harm occurred. Further, in a case in which the parties abandon the transaction during litigation, the FTC stated that it will determine whether to pursue a prior approval order based on the following, non-exhaustive, list of factors:

* whether the transaction is "substantially similar" to a prior challenged transaction;
* the level of market concentration;
* the extent to which the transaction further concentrates the market;
* whether one of the parties has pre-merger market power and the second party is a "nascent or fringe competitor";
* the history of acquisitiveness of each party in the relevant market; and
* whether the transaction will enable anticompetitive market dynamics.

In addition, the FTC stated that all divestiture buyers must agree to prior approval for a minimum of 10 years for any future sale of relevant assets.

Commentary

The FTC has taken another large step in its unilateral efforts to increase the cost and burden of mergers. At least for now, the DOJ has not followed suit. The new "prior approval" requirement for future acquisitions stands the Hart-Scott-Rodino Act on its head because the policy shifts the burden of merger approval onto the merging parties instead of the government. Moreover, the policy will hit especially hard at private equity firms that plan for disposal of acquired assets within a few years' time because the new policy also disfavors divestiture buyers who dispose of acquired stock or assets in less than 10 years.

# 2AC

## Trade ADV

## Harmonization ADV

## OAS ADV

## OFF

### T Per Se---2AC

#### ‘Prohibition’ is injunction. That can happen after review.

Sarah E. Light 19, Assistant Professor of Legal Studies and Business Ethics at the The Wharton School at the University of Pennsylvania, “The Law of the Corporation as Environmental Law”, Stanford Law Review, 71 Stan. L. Rev. 137, Lexis

Section 1 of the Sherman Act prohibits "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce." 159 There are certain kinds of actions that are per se illegal under the antitrust laws, rendering antitrust law an absolute bar. 160 Such actions include price fixing, horizontal boycotts, and output limitations. 161 Courts apply the per se rule when firms aim to "disadvantage competitors by "either directly denying or persuading or coercing suppliers or customers to deny relationships the competitors need in the competitive struggle.'" 162 In the per se unreasonableness context, the plaintiff need not show anticompetitive effect, as harm to competition is presumed. 163

Before the enactment of the Clean Air Act, the federal government invoked antitrust law to end a collusive agreement among major automakers and their industry association to keep pollution control technology from reaching the California market. By 1952, authorities addressing air pollution in Los Angeles County had accepted scientific findings that motor vehicle emissions were the major source of the smog that blanketed the Los Angeles basin. 164 Local officials began to reach out to the major automobile [\*173] manufacturers about research on emissions-control technology. 165 In 1953, the Automobile Manufacturers' Association (AMA), an industry trade group, began a campaign to study the issue and committed to funding research. 166 In 1955, several automobile manufacturers, including the four major manufacturers - General Motors, Ford, Chrysler, and American Motors - entered into a formal cross-licensing agreement to share technological information and data on the development of emission-control technology, 167 an action that later became the subject of antitrust litigation. 168 They announced their decision publicly, garnering some praise for addressing the smog problem. 169

In 1960, California passed the California Motor Vehicle Pollution Control Act. 170 The Act mandated that manufacturers of new cars install emissions-control devices; however, the mandate was only triggered once such devices had been certified by the newly created Motor Vehicle Pollution Control Board. 171 By 1964, the Board had certified four emissions-control devices as meeting the state's standards, triggering the mandate under the Act. 172 Independent firms, rather than the major automakers, had developed these devices. 173 Shortly after the state certified these devices, the major automakers announced that they, too, had developed their own emissions-control technology, 174 arguably so that they would not be required to license technology from other firms. This sequence of events led some officials in California to conclude that the major automakers had conspired to delay making their own technologies publicly available. 175 After Los Angeles County officials asked the U.S. Attorney General to investigate possible collusion, a grand jury was convened. 176

Although the Department of Justice did not file criminal charges, in January 1969 it filed a civil antitrust suit against the AMA and the four major [\*174] automakers, alleging that the defendants had conspired among themselves and with smaller motor vehicle manufacturers "to eliminate competition in the research, development, manufacture and installation of motor vehicle air pollution control equipment, and in the purchase from others of patents and patent rights, covering such equipment," in violation of section 1 of the Sherman Act. 177 In response to the complaint, the defendants argued that their cooperation had actually accelerated the development of emissions-control devices and noted that collaboration was required to ensure that all manufacturers would be able to comply with the increasingly stringent standards. 178 After the lawsuit was filed, a partner in the law firm representing the AMA penned an article 179 explaining that individual consumers had been "unwilling to spend the additional small amount" necessary to purchase vehicles equipped with emissions-reducing devices. 180 Thus:

So far as the installation of devices was concerned, therefore, the manufacturers had a substantial and legitimate interest in cooperating. No company wanted to incur a cost disadvantage, either in terms of an increase in sales price or an adverse effect on vehicle driveability, without some assurance that all manufacturers were incurring similar disadvantages in the marketplace. 181

Arguably, this was as much a problem of the interaction between corporate law and antitrust law in competitive markets as it was one of antitrust law alone. If firms had a broader mandate beyond profit maximization, including to contribute to the public interest, perhaps they would have been more willing to incur a short-term cost disadvantage, even in a competitive market, rather than enter into an agreement to limit competition.

The parties resolved the suit by entering into a consent decree, which required the defendants not to conspire to delay the development of emissions-control devices and to make available without royalties both patent licenses and data on the emissions-control devices they had developed. 182 However, the decree did not require the defendants to admit liability or pay monetary penalties or damages for environmental harm; nor did it require the [\*175] retrofitting of vehicles. 183 Despite the lack of damages or penalties, in this case antitrust law served as a mandate to promote environmental goals, preventing collusion in the market when firms feared that developing an environmental product would put them at a competitive disadvantage.

A second, more recent example of antitrust law serving as an environmental mandate comes from the European Union, not the United States, but the example offers a similar lesson about the potential confluence, rather than conflict, between antitrust principles and environmental goals. In 2011, the European Commission fined two consumer products firms, Unilever and Procter & Gamble, more than 300 million euros combined for entering into an agreement to maintain prices for laundry detergent while the firms switched to selling a more concentrated, environmentally preferable formulation. 184 The firms switched to the more environmentally friendly formulation as a result of their participation in a voluntary industry initiative called the "Code of Good Environmental Practice for Household Laundry Detergents," 185 a classic example of private environmental governance. The voluntary initiative included reducing the amount of detergent needed for each load of laundry, as well as overall product weight and packaging. 186 The industry initiative appropriately did not include any commitments regarding price fixing. 187

However, the firms privately "agreed to keep the price unchanged" when the "products were "compacted'" in a way that might appear to a consumer that he would be able to wash fewer loads of laundry than the compacted product was capable of cleaning. 188 In addition, they engaged in other forms of price collusion, including "restricting their promotional activity" and "deciding not to pass the benefit of cost savings (reduced raw materials, packaging and transport costs) on to consumers." 189 The firms further agreed on direct price [\*176] increases and "exchanged sensitive information on prices and trading conditions, thereby facilitating the various forms of price collusion." 190

In this case, just as in the case of the automakers, antitrust law enforcement served as an environmentally positive mandate. Relying on antitrust law, the European Commission fined these firms for seeking to avoid passing cost savings from an environmentally beneficial product onto consumers. The motivations of the consumer products firms mirrored those of the automakers: In both cases, the firms feared that being the first to market an environmentally preferable product would reduce profits or create a competitive disadvantage vis-a-vis other firms in the marketplace. This example likewise suggests the importance of viewing antitrust law in connection with other fields, such as corporate law. Firms driven by a profit motive experience that motive in the context of a competitive environment. 191

B. Prohibitions and Disincentives: The Antitrust Per Se Rule and the Rule of Reason

While antitrust law can serve as an environmental mandate by prohibiting collusive behavior that keeps environmentally preferable goods from the market, there is also conflict between antitrust law's goals of promoting competition and environmental law's goals of promoting [\*177] conservation. 192 Because antitrust law's per se rule and rule of reason operate on a somewhat fluid continuum, 193 this Subpart discusses the two doctrines together. The per se rule operates as a prohibition, whereas the rule of reason operates as both a prohibition and a disincentive.

As noted above, antitrust law generally prohibits certain types of market activity - price fixing, horizontal boycotts, and output limitations - as illegal per se, and harm to competition is presumed. 194 For example, if an industry association declines to award a seal of approval necessary for a product's sale without any good faith attempt to test the product's performance, but rather simply because that product is manufactured by a competitor, such an action would be illegal per se. 195 Under this Article's framework, a per se violation is thus a prohibition.

The more fact-intensive inquiry under the rule of reason tests "whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition." 196 While this extremely broad statement might suggest that any fact is relevant to the inquiry, the salient facts under the rule of reason are "those that tend to establish whether a restraint increases or decreases output, or decreases or increases prices." 197 If an anticompetitive effect is found, then the action is illegal and the rule of reason operates, like the per se rule, as a prohibition. 198 The rule of reason can also operate as a disincentive, even if no [\*178] court finds an anticompetitive effect, as uncertainty and litigation risk may discourage firms from undertaking legally permissible, environmentally positive industry collaborations. 199

#### ‘Practices’ can be singular

Justice Clinton 82, Supreme Court of Nebraska, Justice. Opinion in MID-SOUTH, ETC. v. Platte Valley Livestock, 315 NW 2d 229 - Neb: Supreme Court 1982

Most words, including the word "practice," encompass more than one meaning, and the particular meaning intended must be determined from the context in which it is employed. Only two of the multiple meanings of the word practice, as found in the dictionary, can possibly apply in the context of the statute. In Webster's Third New International Dictionary, Unabridged (1968), one meaning is "to make use of: use, employ." Another meaning is "to do something habitually," or "repeated or customary action." 233\*233 The words of the statute, "and every unjust, unreasonable, or discriminatory regulation or practice is prohibited and declared to be unlawful," § 208(a), do not suggest that the word practice includes only that which is done habitually or repetitively by the particular stockyard or marketing agency. (Emphasis supplied.) Rather, as we will later attempt to demonstrate from an analysis of the cases upon which the parties rely, repetition may be important only in determining whether a particular act is an unjust or unreasonable practice included within the evils which the act was intended to cure.

#### Coherence---it’s impossible to apply to ‘anticompetitive’ conduct

Donald L. Beschle 87, Associate Professor of Law at The John Marshall School of Law, B.A. from Fordham University, J.D. from the New York University School of Law, LL.M. from Temple University School of Law, “"What, Never? Well, Hardly Ever": Strict Antitrust Scrutiny as an Alternative to Per Se Antitrust Illegality”, Hastings Law Journal, March 1987, 38 Hastings L.J. 471, Lexis

This Article argues that the defenders of per se analysis have assigned themselves an impossible task. Arguing that types of activity can [\*476] be identified as invariably anticompetitive is futile; counterexamples can almost always be put forward. Consequently, defenders of per se categorization are reduced to one of two unattractive alternatives. First, they can concede that per se categories may in some instances prohibit procompetitive activity, but argue that the overall benefits of per se categorization justify the result. Such an argument is unsatisfying because it explicitly sacrifices particular blameless defendants in order to search for an increase in general welfare. Second, per se defenders can narrow their categories to eliminate procompetitive counterexamples. This strategy, however, threatens to destroy those categories entirely. And if most of the once-condemned activity is returned to the realm of the rule of reason, the insight that certain types of behavior are particularly dangerous is lost.

### T Increase---2AC

#### ‘Prohibit’ means to create a standard that forbids incompatible conduct

John G. Koeltl 7, United States District Judge on the Southern District of New York, “United States Baseball v. City of New York”, United States District Court for the Southern District of New York, 509 F. Supp. 2d 285, 297, 2007 U.S. Dist. LEXIS 63234, 8/27/2007, Lexis

The City responds that its home rule and police powers are broader pursuant to Article IX, Section 2(c) of the New York State Constitution, New York Home Rule Law § 10(1)(a)(12), and New York General City Law § 20(13) than the plaintiffs suggest. These provisions give the City the power to enact laws for the "safety, health, well-being, and welfare" of its residents. The City asserts [\*\*29] that the Bat Ordinance does not constitute a "prohibition" because it does not condemn all use of non-wood bats. It bars their use in competitive high school baseball games, but not for example in high school practices, junior high school games, "pick up" games, or youth league games that are not school-sponsored. Moreover, the City persuasively argues that the suggested distinction between "prohibitions" and other "regulations" is artificial and untenable, because all regulations prohibit some conduct that is incompatible with the regulatory standards and all "prohibitions" leave some conduct untouched. For example, a New York court upheld as a valid exercise of the police power a New York City law banning the possession in a public place of a knife with a blade of at least four inches in length in People v. Ortiz, 125 Misc. 2d 318, 479 N.Y.S.2d 613, 620 (Crim. Ct. 1984). The plaintiffs suggest the law at issue in Ortiz was a not a "prohibition," but it appears to be at least as complete a prohibition as the Bat Ordinance, which prohibits only certain uses of bats with certain defined characteristics.

#### ‘Increases’ are by expanding the scope. That defines the medium of action.

Merriam-Webster’s 21 Online Dictionary, ‘by’, https://www.merriam-webster.com/dictionary/by

: through or through the medium (see MEDIUM entry 1 sense 2) of : VIA

enter by the door

#### ‘Scope’ is authority, not actions

Kenneth H. Kato 99, Judge on the Washington Appeals Court, Division Three, JD and BA from the University of Washington, “Spokane v. Civil Serv. Comm'n”, Court of Appeals of Washington, Division Three, Panel Four, 98 Wn. App. 574, 576, 989 P.2d 1245, 1246, 1999 Wash. App. LEXIS 2158, 12/21/1999, Lexis

For purposes of RCW 41.56.100, which provides that a public employer is not required to collectively bargain with its employees when the subject matter involved has been "delegated to any civil service commission or personnel board similar in scope, structure and authority" to the state personnel board, "scope" refers to the body's jurisdiction or authority to take various actions.

#### ‘Increase’ is a result that can occur through a process

Merriam-Webster’s 19 Online Dictionary, ‘increase’, https://www.merriam-webster.com/dictionary/increase

increased; increasing

Definition of increase (Entry 1 of 2)

intransitive verb

1 : to become progressively greater (as in size, amount, number, or intensity)

2 : to multiply by the production of young

### Transparency CP---2AC

#### Giving jurisdiction to importing states fails

Brendan Sweeney 7, Department of Business Law & Taxation, Monash University, Journal of International Economic Law, J Int Economic Law (2007) 10 (1), 3/1/2007, Lexis

2. Agreement to give jurisdiction to the importing state

The most appropriate judge of the anti-competitive nature of an export cartel is in fact the importing state. Although the importing state is likely to ignore the producer benefits experienced in the exporting state in its calculation, the substantive outcome (other things being equal) is more likely to be in accord with general competition principles than regulation by the exporting state.

However, there are three major objections to this suggestion. First, many developing states do not have the enforcement infrastructure or resources needed to determine cases of collusion occurring outside the jurisdiction. Even if the problems of accessing foreign-based evidence could be solved, many developing states just do not have the skills to pursue complicated competition cases.

Secondly, the importing state may not be able to enforce its remedies. This is likely to be the case where, as often occurs in developing states, the exporters have no assets within the jurisdiction of the importing state. This is a problem because developing states are likely to be a major source of complaints.

Thirdly, to hand jurisdiction to the importing state would involve a considerable sovereignty sacrifice because the exporting state would be relinquishing control over activities occurring within its borders probably involving its citizens. 98 There is no indication that states are prepared to make this kind of sacrifice. In fact, the history of competition law extraterritoriality suggests that states do not lightly surrender jurisdiction to another state. 99 Consequently, an agreement to shift jurisdiction to the importing state should only be adopted if there is no less intrusive alternative.

### Mergers CP---2AC

#### Negotiations on other issues deadlock

Dr. Marek Martyniszyn 21, Senior Lecturer in Law at Queen’s University Belfast, PhD from University College Dublin, LLM (with Specializations in EU Economic and World Trade Law) from the Saarland University’s European Institute, MA Degree from the Warsaw School of Economics and Postgraduate Certificate in Higher Education Teaching (PGCHET) from Queen's University Belfast, “Competitive Harm Crossing Borders: Regulatory Gaps And A Way Forward”, Journal of Competition Law & Economics, Volume 17, Issue 3, September 2021, https://academic.oup.com/jcle/article/17/3/686/6095856

IV. PART IV: NARROWING THE GAPS

A realignment of the current system of enforcement relating to transnational anticompetitive conduct could help address its weaknesses. These proposals explicitly focus on international hardcore cartels, which constitute the most flagrant example of anticompetitive conduct. They do not extend to other areas of competition law, in which significant differences among jurisdictions persist (and, in effect, a broad consensus is missing as to what conduct should be prohibited). Most of the recommendations can be implemented without significant inherent costs and require no international negotiations. Hence, they can be of relevance to competition systems which particularly suffer from resource constraints.57 While not eliminating the existing enforcement gaps, such realignments should significantly narrow them for the ultimate benefit of consumers.

#### Failure to cover export cartels guts the CP’s credibility and causes rebound protectionism

Dr. Marek Martyniszyn 21, Senior Lecturer in Law at Queen’s University Belfast, PhD from University College Dublin, LLM (with Specializations in EU Economic and World Trade Law) from the Saarland University’s European Institute, MA Degree from the Warsaw School of Economics and Postgraduate Certificate in Higher Education Teaching (PGCHET) from Queen's University Belfast, “Competitive Harm Crossing Borders: Regulatory Gaps And A Way Forward”, Journal of Competition Law & Economics, Volume 17, Issue 3, September 2021, https://academic.oup.com/jcle/article/17/3/686/6095856

Anticompetitive conduct harming the domestic market is prohibited in virtually all states that introduced competition legislation. That is the raison d’être of such legislation. Conduct harming only foreign markets (causing outbound competitive harm) is virtually never proscribed. Arrangements causing competitive harm abroad are legal under most domestic competition laws. For example, in the United States the 1982 Foreign Trade Antitrust Improvement Act ‘cut back the reach of the Sherman Act [the key U.S. competition law statute] … principally to protect U.S. sellers from challenges … for their activity abroad.’15 Export cartels, for example, are permitted in virtually all jurisdictions.16 Hosting states— which are best positioned (in terms of the relative ease of enforcement) to deal with such anticompetitive conduct—wash their hands of it. Essentially, states care about national, not global, welfare.

In the long-term this is problematic. If conduct that causes harm abroad is not illegal, law enables businesspersons involved in transnational commerce to develop skills and mindsets that may be later used to cause competitive harm on the domestic market, which—in turn—will be costly and difficult to uncover and remedy. From a normative perspective, it sends contradictory signals to the public, undermining the credibility of the law, especially in those jurisdictions that envisage the severe sanction of imprisonment for some violations of competition law, such as cartel conduct or bid rigging (rigging public tenders). At a minimum, a policy of ‘you’ll go to jail if you do it here, but we do not mind if you do it elsewhere’ is unlikely to reinforce a belief in the serious nature of any such violations.

Moreover, there is now an international consensus as to the harmful nature of hardcore cartels, which entail horizontal agreements between competitors aiming, in particular, to fix prices, submit rigged bids, set output quotas, and share or divide markets. This consensus was solidified internationally by means of a soft law instrument. As early as 1998 the Council of the Organisation for Cooperation and Economic Development (OECD) adopted a recommendation that called for an effective prohibition of such arrangements.17 This prohibition was echoed and built upon in various broader fora since then.18 The widespread recognition of the harmful nature of hardcore cartels is in stark contrast to the acceptance of and indifference towards such conduct causing outbound competitive harm.

#### Export cartels are a critical vector for the development of emergent antitrust enforcers---direct reciprocity with the U.S. is key

Pierre M. Horna 20, Legal Affairs Officer, Competition and Consumer Policies Branch, Division on International Trade, UNCTAD Secretariat, and Leni Papa, Consultant, Competition Law and Policy, to the Philippine Competition Commission, “Export Cartels in Times of Populist Protectionism: Challenges and Options for Young and Small Competition Agencies” in Research Handbook on Methods and Models of Competition Law, Ed. Healy, Jacobs, and Smith, p. 499-501

B Cooperation, the Lack of Incentives and Willingness to Investigate Export Cartels

The solution related to the extraterritoriality of competition laws is only available to jurisdictions with robust and mature competition regimes or considerable economic and political leverage, such as the EU or the US. The discussion becomes contentious when developing countries have to deal with export cartels originating from developed nations.73 This was seen in the American Soda Ash cases in India74 and South Africa, where completely different outcomes were reached by the local jurisdictions attempting to apply the extraterritorially principle.75

As explained above, export cartels in this discussion are pure export cartels wherein export producers within one specific jurisdiction collude to target a precise foreign market. In this type of cartel, the exporting country is the birthplace of the collusion and will most likely be the location of the evidence against the cartel. The competition authority in the targeted jurisdiction therefore needs information on the location of the evidence. It would also benefit from knowing if the competition authority in the originating jurisdiction is willing to cooperate and provide further information.

As export cartels are often exempted from the application of competition laws in their own jurisdiction due to the lack of effect there, as well as industrial policy considerations,76 the competition authority in the originating jurisdiction often has no incentive to provide evidence to prosecute and punish export cartels in the targeted jurisdiction.

The issue is compounded if the targeted jurisdiction has a young or small competition agency. Access to evidence about the alleged export cartel is more difficult for young and small competition agencies compared to mature competition agencies. For young competition agencies, access to the most basic information held by the other agency at the pre-investigatory phase would require the support of that other competition agency and, without compelling arguments to convince their peers, it is unlikely that this will happen. Also, a young competition agency in the originating jurisdiction will not have an incentive to share information about export cartels unless the targeted jurisdiction has leverage against the originating jurisdiction. For instance, in the vitamin C export cartel, the competition authority in the targeted jurisdiction, the US, began its pre-investigation phase without the prior support of the Chinese competition authorities. Perhaps due to the pressure exerted by the US, Chinese authorities later sent an amicus curiae to the US courts to plead on behalf of the export cartel, arguing that the cartel was formed under Chinese law.77

Another issue relevant to cartel offences is the lack of compulsory agreements to gather information on behalf of other competition authorities. This is despite the existence of the Hague Convention on Taking Evidence Abroad in Civil or Commercial Matters (Hague Evidence Convention).78 The Hague Evidence Convention failed to result in compulsory agreements to gather information on behalf of a requesting competition authority for the reasons set out below:

(1) *The mandatory or non-mandatory character of the Convention*: When the Hague Convention was being negotiated, it was unclear if it was mandatory or not. No provision in the Convention expressly addressed this issue. However, the founders of the Convention, particularly those states that were common law jurisdictions,79 were of the belief that the Convention was not mandatory. This issue was settled in Aérospatiale, where the US Supreme Court held that the Hague Convention does not have a mandatory character.80 While comity considerations and common sense would suggest that the Convention should be used, in private antitrust actions in the US, unfortunately, ‘courts favour the use of domestic discovery rules rather than the Convention’.81

(2) *The failure to define ‘civil and commercial matters’ in the Convention*: The legal definition and scope of the term ‘civil and commercial matters’ has also caused problems in the implementation of the Hague Convention. While common law jurisdictions are of the view that the Convention covers all proceedings except those that are criminal in nature, civil law jurisdictions claim that the Convention cannot apply to tax and administrative matters.82 As a result, mature competition authorities such as the US and the EU have never relied on the Hague Convention when enforcing their laws. The limited use of the Hague Convention in countries where cartel laws are criminalized has made it ‘inadequate for international assistance in the field of antitrust enforcement’.83

(3) *The lack of familiarity among legal practitioners and courts*: Probably for the two reasons above, few US legal practitioners and courts know about the Convention. Those who are unfamiliar with it feel that it is not an effective tool for obtaining foreign-based evidence.84 Despite this, in the EU, efforts to promote private enforcement have led to the ‘rediscovery’ of the Convention, which could ultimately mean a great contribution to transnational competition law litigation, unless the trend of criminalization of competition rules undermines the usefulness of the Convention.85

The issues arising in relation to export cartels are directly related to how political and economic considerations are negotiated in the relations between mature or large and young or small competition authorities. For example, if a young but large competition authority, such as Brazil or India, wishes to investigate export cartels affecting its markets, the willingness of exporting jurisdictions to cooperate would likely depend on how much pressure it is able to place on the relevant competition authority. Based on reciprocity and beyond established legal boundaries, there is a possible solution to dealing with export cartels. Even though reciprocity goes beyond the scope of this chapter, one could say that in this particular area, reciprocity, which is crucial in an international public law context, can be the basis for mutually acceptable solutions for both jurisdictions involved in an export cartel. Thus, current solutions in relation to export cartels are relatively effective because of practices that, on many occasions, will go well beyond the political willingness of the competition authority and rather to diplomats at the ministry of foreign affairs or trade (anti-dumping) authorities.

### AT: Governance NB

#### The plan opens foreign markets for U.S. firms---that’s key to growth

Michael Ristaniemi 18, PhD Candidate in Commercial Law at the University of Turku, Vice President for Sustainability at the Metsä Group, Participant in the Visiting Scholar Programme at the University of California, Berkeley, “Convergence, Divergence or Disturbance – How Major Economic Powers Approach International Antitrust”, Concurrences, Number 3, September 2018

1. Goals

7. Nations have an inherent interest in the health of their respective economies. While varying political systems may affect the ways in which this interest manifests itself, it is arguable that the underlying premise remains. A nation caring about its economy can be divided into caring about the health of domestic supply and demand as well as the competitiveness of domestic firms in foreign markets, both of which intersect with competition law and the underling policy considerations. The desire for exporting nations to facilitate competitiveness of firms originating from their respective territories helps set a common baseline to build an international framework upon.

8. Out of the three major powers, the US is the most explicit about its aim in securing the position of US corporations in foreign markets. The DOJ has recently stated that its guiding principle in international antitrust has been and will continue to be “the promotion of sound economic theories and evidence-based enforcement that protects consumer welfare, based on a fundamental dedication to procedural fairness and a firm commitment to non-discriminatory treatment.”11 This summarizes several relevant substantive elements.

9. First, emphasizing protecting consumer welfare, fairness, non-discrimination as well as enforcement supported by substantive evidence all attempt to reduce the likelihood of foreign nations promoting their “national champions” or otherwise discriminating against American companies, whether due to industrial policy or for other protectionist purposes. Second, promoting economic theories consistent with what is expected to lead to consumer welfare gains goes one step further—it is likely to suggest that a nation’s competition legislation and its enforcement ideology should be driven by what economics would recommend for having efficient markets. In the latter case, particularly, it is important to keep in mind that no universal definition of the purposes of competition law exists and, thus, said aim to promote the aforementioned elements is quite utilitarian, aiding US companies’ access to foreign markets.

10. Equitable and non-discriminatory treatment, on par with how domestic companies are treated by foreign regimes, has been a key way for how competition policy is used to remove obstacles from the way of US business interests.12 There are signals that this topic remains a key focus area for US authorities: in July 2017, the heads of judiciary of both US House of Representatives and Senate sent a joint letter to the Department of Justice (DOJ) and the Federal Trade Commission (FTC) urging them to include higher-standard competition chapters in future trade agreements in order to help improve transparency and mitigate protectionism of foreign antitrust enforcers.13

### FTC Tradeoff DA---2AC

#### The plan’s through the IAD---that’s separate from all other FTC activity

Dina Kallay 14, Director, Intellectual Property and Competition, at Ericsson, Former Counsel for Intellectual Proper ty & International Antitrust at the FTC Office of International Affairs, and Marc Winerman, Former FTC Staffer, Leading Authority on FTC History, The FTC International Program at 100, 29 Antitrust ABA 39, Fall 2014, 42, Lexis

International Antitrust and Consumer Protection Work in the 1980s and 1990s

In the 1980s and 1990s a number of relevant trends emerged. First, markets became more and more global, a trend expedited with the 1994 successful conclusion of the World Trade Organization's Uruguay Negotiation Round, to which 123 jurisdictions were signatories with additional ones added later. The FTC's 1995 Annual Report reflects this trend in noting "dynamic changes in the economy such as . . . the internationalization of many markets." 59 Second, with the fall of the former Soviet Union in 1989, a growing number of jurisdictions around the world began to adopt antitrust enforcement regimes as they transformed their market model from a planned one to a market-based model. More antitrust regimes meant a greater need for case and policy coordination with non-U.S. counterparts to ensure consistent outcomes, and prevent conflicting results of actions by agencies in different countries. 60 Further, the birth of many new antitrust agencies, especially in economies that lacked a competition culture, also meant these agencies were in need of training in order to successfully develop and implement a sound anti-trust enforcement regime.

The resulting needs did not go unanswered. In 1982, an International Antitrust Program was established as a separate division within the FTC's Bureau of Competition, known as the International Antitrust Division. The program included investigation and prosecution of antitrust violations that had international features, as well as international liaison activities with foreign antitrust officials. 61 It was not until 1985 when the work of this division was first acknowledged in the Commission's Annual Report, which reported its staff as having worked that year on 25 investigations that involved international aspects and having been "active in a variety of intervention matters and international liaison activities involving transnational competition and antitrust law enforcement issues impacting upon the domestic economy." 62

#### Cartel enforcement generates revenue---that’s funneled back to the FTC

Dr. Marek Martyniszyn 21, Senior Lecturer in Law at Queen’s University Belfast, PhD from University College Dublin, LLM (with Specializations in EU Economic and World Trade Law) from the Saarland University’s European Institute, MA Degree from the Warsaw School of Economics and Postgraduate Certificate in Higher Education Teaching (PGCHET) from Queen's University Belfast, “Competitive Harm Crossing Borders: Regulatory Gaps And A Way Forward”, Journal of Competition Law & Economics, Volume 17, Issue 3, September 2021, https://academic.oup.com/jcle/article/17/3/686/6095856

Furthermore, international cartelists should face more severe sanctions for their violations. Despite the increasing interest in criminalization and individual liability more broadly, the most common sanctions for cartel conduct are corporate fines. The prevalent fining methodology is to impose fines that are benchmarked to the relevant in-country turnover of the culprits.71 Given the nature of the present regulatory regime, this practice is friendly to cartelists. Assuming, for the sake of argument, that corporate fines and fine-setting methodology are both sufficient and just, an international cartel would face appropriate sanctions only if it were to be held responsible in each and every affected jurisdiction. That is virtually impossible. Moreover, the common practice is to introduce maximum limits on fines. Quite often fines cannot exceed either a specific monetary amount, provided for in the relevant domestic rules, or a fixed percentage of the violator’s last year-relevant in-forum turnover, typically ten per cent.72 There is no theory or empirical evidence supporting such thresholds. Even if there were, in practice such thresholds are never met. The imposed fines are set at astonishingly low levels compared to illegal profits, even within the sanctioning jurisdictions.73 Given the practical impossibility of effective enforcement in every harmed state, those jurisdictions which have the capacity to bring transnational cases should increase the severity of their sanctions to increase deterrence. They should do so by, at least, both increasing permissible fine limits and by utilizing the full available spectrum of punitive measures. In this context, the transnational nature of a violation, leading to a transfer of wealth abroad, should be taken into account.

From the deterrence perspective it would be advisable to relate fines to overall, not just in-forum turnover. This would undoubtedly lead to the defendants’ bar raising the double jeopardy argument, conflating the question of which harm is being addressed and which legal interest is being protected with the issue of appropriate sanctions. In the current regulatory framework, each jurisdiction addresses the harm caused on its own market. Therefore, double jeopardy is not and would not become an issue. To avoid this misleading double jeopardy argument, it may be worth considering replacing turnover as a sanctioning benchmark with the overall value of the violator’s assets. In general, the type and severity of sanctions is a sovereign matter. For example, the US provides for imprisonment of up to ten years for individuals involved in a cartel,74 although in many other countries around the world such conduct is not subject to any criminal sanctions, or even to any individual sanctions. Since this is a sovereign choice and there are no binding universal norms to the contrary, it cannot be contested. That said, there is no reason why agencies and courts should not continue with the good practice, which has already emerged, of taking into account sanctions already imposed by other jurisdictions. This practice should continue as a matter of comity, especially in cases involving non-financial sanctions.

Moreover, fines levied on foreign violators could be left, at least partially, in domestic competition agencies’ budgets to facilitate future enforcement and advocacy activities. Sceptics may argue that this would skew the incentives, making the agencies more likely to bring such cases. That is, in fact, the very objective of this proposal. As explained above transnational cases are generally more complicated, presenting higher risks for enforcers. The system should reflect that and incentivize the taking of such risks. More fundamentally, given that transnational violations tend to cause greater harm and lead to outflow of wealth, they warrant agencies’ enhanced attention.

#### Other entities fill-in

Alison Jones 20, Professor at King’s College London, & William E. Kovacic, Global Competition Professor of Law and Policy, The George Washington University Law School, “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy,” The Antitrust Bulletin, Volume 65, Number 2, SAGE Publications Inc, 06/01/2020, pp. 227–255

C. Improving Capability: Agency Cooperation and Project Selection

The U.S. antitrust system is famous for its decentralization of the power to prosecute, giving many entities – public agencies (at both the federal and state levels), consumers, and businesses – competence to enforce the federal antitrust laws. The federal enforcement regime also coexists with state antitrust laws and with sectoral regulation, at the national and state levels, that include competition policy mandates.

The extraordinary decentralization and multiplicity of enforcement mechanisms supply valuable possibilities for experimentation and provide safeguards in case any single enforcement agent is ~~disabled~~ [hamstringed](e.g., due to capture, resource austerity, or corruption).75 Among public agencies, there is also the possibility that federal and state government institutions, while preserving the benefits of experimentation and redundancy, could improve performance through cooperation that allows them to perform tasks collectively that each could accomplish with great difficulty, or not at all, if they act in isolation. In the discussion below, we suggest approaches that preserve the multiplicity of actors in the existing U.S. regime but also promise to improve the performance of the entire system through better inter-agency cooperation – to integrate operations more fully “by contract” rather than a formal consolidation of functions in a smaller number of institutions.

### AT: COVID Impact

#### Trade solves recovery.

Dr. Abdulwahab Al-Sadoun 20, PhD in Industrial Chemistry from King’s College, University of London, Secretary General of the Gulf Petrochemicals and Chemicals Association, “Why Trade Protectionism Could Stifle our Fight Against Coronavirus”, LinkedIn, 6/7/2020, https://www.linkedin.com/pulse/why-trade-protectionism-could-stifle-our-fight-abdulwahab-al-sadoun

Why open trade matters

The coronavirus crisis has demonstrated like no other the need for cross-border cooperation, resource sharing and harmonization of regulations to help countries unite their efforts against the virus. Due to the coronavirus pandemic demand for essential hygiene products and medical equipment has spiked up globally, and well-functioning value chains can help to quickly ramp up production, while mitigating price increases. On the other hand, a lack of international cooperation and imposition of tariffs and other trade barriers risk impeding the urgently required supply of vital goods in parts of the globe.

For example, without the necessary consumables such as face masks, gowns and gloves produced in middle-income countries, major developed economies will struggle to prevent infections, especially among medical staff. On the other hand, a lack of more complex equipment like lifesaving ventilators made primarily by high-income exporters will put more lives at risk in developing economies. The same principle applies to the chemicals manufactured by producers in the GCC and used as intermediary raw materials to produce medical and hygiene equipment that are absolutely crucial to fighting the COVID-19 pandemic.

Market cooperation will be essential

No one ever wins from closed market policies. On the contrary, protectionism always impoverishes a nation, with consumers often paying the highest price. Trade barriers raise prices, reduce market competitiveness, which increases productivity, and leaves a country more dependent on vulnerable and inefficient industries. Instead governments should focus on building bridges and improving their knowhow through knowledge sharing and leveraging inter-firm relations which in turn can help speed up responsiveness to the crisis.

Furthermore, working towards a coordinated action and improving supply chain efficiencies can help contain the disease and build resilience against future crises. The need of the hour now is to keep global supply chains working at maximum capacity and allow the free flow of goods to countries that need them the most. Facilitating trade logistics and fast-tracking customs clearance of not only final products but also vital intermediates will also be important. In the face of this deadly pandemic, the world must come together and work effectively towards the same goal – defeat the virus and save lives.

### Infrastructure DA---2AC

#### It passes inevitably.

Mychael Schnell 10/31, Breaking News reporter at The Hill, B.A. in Journalism from George Washington University, “Officials, lawmakers express optimism that infrastructure, spending vote is near,” The Hill, 10/31/21, https://thehill.com/homenews/sunday-talk-shows/579305-officials-lawmakers-express-optimism-that-infrastructure-spending

House Democrats are eyeing Tuesday as the day to pass a bill on the framework and a bipartisan infrastructure measure. House Democratic leaders told committees they had to finish any changes to the spending bill by Sunday and that the House Rules committee could meet as soon as Monday to consider the pared-down $1.7 trillion package.

Sanders, the chair of the Senate Budget Committee, told host Dana Bash on CNN’s “State of the Union” that he and other Democrats are working this weekend to “strengthen” the social spending package and add provisions that will help lower the cost of prescription drugs, after such initiatives were left out of the White House’s framework last week due to internal disagreements between moderates and progressives.

He said the goal of adding a prescription drug pricing plan to the bill is “not easy stuff,” but emphasized the importance of lowering costs.

Other Democrats reportedly agree. According to reporting from Politico, a group of Congressional Democrats and White House officials met this weekend to draft a prescription drug proposal to be added to the reconciliation package

Top Biden administration officials spent Sunday touting progress and expressing optimism despite the ongoing negotiations.

Transportation Secretary Pete Buttigieg told host George Stephanopoulos on ABC’s “This Week” that negotiators are “the closest we have ever been” to passing the infrastructure bill and reconciliation package.

He said the administration is “very optimistic” that the pieces of legislation will have the votes to pass this week, contending that Biden released the framework last week “because he believes that it will pass the House and the Senate and can get to his desk.”

President Biden made one more pitch to Democratic lawmakers for the spending package on Thursday after releasing the draft proposal with hopes of solidifying a deal before boarding Air Force One and jetting off to Europe to attend the G20 summit and the COP26. That goal, however, was blocked by progressives when they refused again to commit to an agreement before fully reviewing the legislative text of the bill.

Energy Secretary Jennifer Granholm on Sunday characterized the last minute trip to Capitol Hill as a win, pointing to progressives’ verbal support for the framework.

“What happened is that the progressives came out unanimously supporting what was in the framework… they had to look at the language, which was released on Friday. And now he can say-- he can go to COP, to Glasgow, and say that he has 100% unanimity in the Democrat Caucus and House. And that is really bringing people together over this agenda,” Granholm told host Chuck Todd on NBC’s “Meet the Press.”

#### Biden has no PC

Adam Creighton 10/29, Washington Correspondent for The Australian, award-winning journalist with a special interest in tax and financial policy, B.S. in Economics from the University of New South Wales, M.A. in Economics from Oxford University, “Joe Biden’s stocks grow weaker as errors build,” The Australian, 10/29/21, https://www.theaustralian.com.au/world/joe-bidens-stocks-grow-weaker-as-errors-build/news-story/770507d77e5918541ebc5e2ab0c71af0

Little is going right for the Democrats in the US. President Joe Biden flew out of Washington on Thursday night for Italy and then Glasgow in the weakest political position of his presidency.

Biden’s rapidly diminishing political capital at home augurs badly for any new global agreement on climate change.

His personal approval rating has been falling, accelerating since the controversial withdrawal from Afghanistan in August, to the lowest point of any president at this stage except Donald Trump.

Economic growth has collapsed in the third quarter to 2 per cent, inflation remains stuck above 5 per cent, and the President’s reform agenda has stalled.

Almost 20 months on from the start of the pandemic the labour force remains three million smaller than it was in February last year.

Illegal arrivals at the southern border with Mexico have exploded. A Republican could even win a close-run governor election in ­Virginia next week, which a few weeks ago looked to be a shoo-in for the Democratic incumbents.

Far-left Democrats refused to support the President’s slimmed-down “infrastructure” compromise on Thursday (Friday AEDT), furious the originally massive ­social spending had shrunk from a mooted $US3.5 trillion, as promised earlier this year, to less than $US1.9 trillion to appease moderate Democrats worried about how the plans might play in the suburbs.

In other words, the President landed in Rome early on Friday for his first in-person G20 meeting without any of the legislative ­machinery he needs to make his April promise to slash US carbon emission by 50 per cent by 2030 credible.

Biden’s lacklustre first year is the product of forced and unforced errors. Inflation was always going to tick up as the economy snapped back, whoever was in office. The job market was bound to recover slowly.

But setting reform ambitions so high when the Democrats won only a tiny legislative mandate last November – barely a handful of seats in House of Representatives and none in the Senate – was bound to end in humiliation.

Biden’s proposed reforms to ­social security match Lyndon Johnson’s Great Society reforms of the late 1960s in social impact, without any of the political mandate. Similarly, the White House unexpectedly mandated that every employee in businesses with more than 100 staff – more than 100 million workers – needed to be vaccinated against Covid-19, guaranteeing to fuel angry protests, and clog US courts for years.

#### The plan isn’t Congress AND they won’t care

David A. Simon 14, Special Counsel to the General Counsel, Office of General Counsel, U.S. Department of Defense, J.D. at Harvard Law School, M.Phil. at Oxford University, Trinity College, B.A. at University of Minnesota, “Ending Perpetual War? Constitutional War Termination Powers and the Conflict Against Al Qaeda”, Pepperdine Law Review, 41 Pepp. L. Rev. 685, Lexis

Presidents, however, have used sole executive agreements to conclude international agreements unilaterally since the early days of the American republic. 9 In the absence of a clear constitutional provision for declaring [\*690] peace, the wars waged by the founding generation against States were all ended by peace treaties 10 (since peace treaties were the customary method of ending interstate war for much of the first part of U.S. history). 11 Before World War II, congressional approval of formal peace treaties was the standard practice for major wars. 12 Since 1945, however, as the United States has engaged in more frequent military operations of limited duration and amounting to hostilities below the threshold of war, presidents have ended wars unilaterally--often without any formal legal termination agreement. 13 At the same time, and particularly in the last few decades, it is commonplace for the executive branch to conclude international agreements without congressional approval. 14 From 1980 to 2000, for example, presidents unilaterally entered into more than 500 security-related agreements--including numerous status of forces agreements with foreign countries. 15 There is, thus, a strong trend of post-World War II congressional acquiescence in the face of unilateral presidential action to conclude international agreements--including as part of efforts to terminate wars. 16 Such historical pattern of congressional acquiescence and executive action supports the contention that the President's authority to terminate wars unilaterally through executive agreements and presidential proclamations has increased in the period since World War II. 17

#### Antitrust harmonization is popular

Michael Ristaniemi 20, PhD Candidate in Commercial Law at the University of Turku, Vice President for Sustainability at the Metsä Group, Participant in the Visiting Scholar Programme at the University of California, Berkeley, “International Antitrust: Toward Upgrading Coordination and Enforcement”, Doctoral Dissertation, October 2020, https://core.ac.uk/download/pdf/347180879.pdf

Despite the above, the major powers do have an interest in cooperating internationally in competition issues. The EU and the US appear to desire further convergence of practices and substantive thinking. Officially, China does not appear to have a strong stance on convergence, but recent practice shows that it too has engaged in an increasing amount of dialogue on competition matters. Indeed, there is an increasing amount of cooperation in relation to investigating international cartels, referring to cartels that operate in several nations concurrently and which seek to cartelize them.208

Further, the competition authorities of major powers have an incentive to ensure that merger control procedures affecting mergers benefiting their respective regions are as internationally streamlined and coordinated as possible given the number of multinationals that originate from each of their respective territories. Nonetheless, there are a few hurdles for streamlining international merger control. First is the dichotomous leadership of the US and the EU systems, with no single leading standard to become the global standard. Second, there are clear differences in nations’ scope of merger review that may arise from partially differing sets of goals should they attempt to address public interest or other non-competition related concerns concurrently with competition concerns.209 In any case, the aggregate cost of a fragmented system of international merger control is arguably higher than it would need to be. Improved, more structured coordination could help, as discussed further in Chapters 5 and 6 below.

### AT: Grid Impact

#### No blackouts

Selena Larson 18, Cyber Threat Intelligence Analyst at Dragos, Inc., “Threats to Electric Grid are Real; Widespread Blackouts are Not”, 8/6/2018, https://dragos.com/blog/industry-news/threats-to-electric-grid-are-real-widespread-blackouts-are-not/

The US electric grid is not about to go down. Though it’s understandable if someone believed that. Over the last few weeks, numerous media reports suggest state-backed hackers have infiltrated the US electric grid and are capable of manipulating the flow of electricity on a grand scale and cause chaos. Threats against industrial sectors including electric utilities, oil and gas, and manufacturing are growing, and it’s reasonable for people to be concerned. But to say hackers have invaded the US electric grid and are prepared to cause blackouts is false. The initial reporting stemmed from a public Department of Homeland Security (DHS) presentation in July on Russian hacking activity targeting US electric utilities. This presentation contained previously-reported information on a group known as Dragonfly by Symantec and which Dragos associates to activity labeled DYMALLOY and ALLANITE. These groups focus on information gathering from industrial control system (ICS) networks and have not demonstrated disruptive or damaging capabilities. While some news reports cite 2015 and 2016 blackouts in Ukraine as evidence of hackers’ disruptive capabilities, DYMALLOY nor ALLANITE were involved in those incidents and it is inaccurate to suggest the DHS’s public presentation and those destructive behaviors are linked. Adversaries have not placed “cyber implants” into the electric grid to cause blackouts; but they are infiltrating business networks – and in some cases, ICS networks – in an effort to steal information and intelligence to potentially gain access to operational systems. Overall, the activity is concerning and represents the prerequisites towards a potential future disruptive event – but evidence to date does not support the claim that such an attack is imminent. The US electric grid is resilient and segmented, and although it makes an interesting plot to an action movie, one or two strains of malware targeting operational networks would not cause widespread blackouts. A destructive incident at one site would require highly-tailored tools and operations and would not effectively scale. Essentially, localized impacts are possible, and asset owners and operators should work to defend their networks from intrusions such as those described by DHS. But scaling up from isolated events to widespread impacts is highly unlikely.

# 1AR---Octas---Harvard

## Mergers CP

### Foreign Markets Turn---1AR

#### The plan creates info-sharing that roots out diffuse international collusion---that has distorting effects BUT is opaque

David J. Gerber 12, Distinguished Professor of Law at Chicago-Kent College of Law, B.A. from Trinity College, M.A. from Yale University, and J.D. from the University of Chicago, Awarded the Degree of Honorary Doctor of Laws by the University of Zurich, Former Visiting Professor at the Law Schools of the University of Pennsylvania, Northwestern University, and Washington University, Global Competition: Law, Markets, and Globalization, p. 295-298

A. The Potential Value of Multilateral Agreement

What value can multilateral agreement provide? We will soon look at the forms and dimensions of agreement and at ways of maximizing its value, but we begin by examining the potential benefits of agreement itself. Much of the opposition to proposals to develop a multinational competition regime seems to flow from a narrow set of assumptions about the obligations that such a regime would entail, and thus we need to assess the general strategy before identifying particular forms that it might take.

A key feature of agreement is that it relates parties. A government’s participation in an agreement carries a message to other states or institutions that they are related to each other by obligations. This relationship opens channels for communication that might not otherwise exist, for example by providing or enhancing opportunities for particular kinds of meetings, exchanges of personnel and so on. More importantly, it gives structure to communication that it cannot otherwise have, relating it to obligations and giving it meaning through its relationship to those obligations. Competition officials can, of course, meet to discuss professional issues without such obligations, but the obligations give each a specific interest in what the other is saying and doing that would not otherwise exist.

Agreement also legitimizes the use of normative language—‘should’ issues.

It provides a normative reference point for conduct and communication. This makes new questions both acceptable and appropriate—such as, for example, ‘Has each met its obligations?’ and ‘Should the obligations be changed?’ Th is also opens channels for discussion of how participants can most effectively meet their respective obligations. Without such a relationship, state A’s recommendations to state B may have little claim to attention within state B. In the context of agreement, however, incentives to respond to recommendations or at least to consider them carefully necessarily increase. Decisions of individual participants become intertwined by virtue of their mutual obligations.

The relationship also creates shared interests. At a minimum, it gives each participant an interest in what the obligations mean, ie how they are interpreted. In addition, it creates shared interests in the fulfillment, monitoring and assessment of the obligations. Where a state perceives its interests to be shared with others, it has greater incentives to communicate with them, to clarify the meaning attached to the obligations, and to focus on their potential value and consequences. In some situations there may also be incentives to conceal such factors, but for our purposes the main point is that agreement can create such interests.

Not only can agreement create shared interests, but it can also reveal them.

For example, perceiving the potential harms and benefits of competition is neither easy nor automatic, but a dialogue about competition law experiences that is focused and shaped by shared obligations can lead officials to recognize its potential value for them. The consequences of conduct in an increasingly complex world are often globe-spanning, but they are often difficult to detect. A globally dominant firm may, for example, impose the same anti-competitive conditions on distributors in several African countries, but officials in one country may not be aware that the practice is taking place in other countries or that the pattern of conduct has consequences throughout the region. Where officials exchange information in the context of shared obligations they may more readily recognize these effects and be in a position to combat the conduct. Such obligations give each country an incentive to provide information to the other participants and to identify its relationship to their shared interests.

## Transparency CP

### Solvency---Trade

#### The U.S. is entrenched.

Frederic Desmarais 9, LLB from McGill University, B.Sc. in International Studies from the University of Montreal, “Export Cartels in the Americas and the OAS: Is the Harmonization of National Competition Laws the Solution?”, Manitoba Law Journal, 33 Man. L.J. 41, Lexis

The literature acknowledges that there is no willingness to ban export cartels among the major economies of the world, including the United States. 210 In fact, the United States: "has been one of the leading defenders of export cartel [\*78] exemptions." 211 For instance, within the WTO framework, the United States took the following position:

Continuing, with regard to the call for prohibition of so-called "export cartels", he noted [representative of the United States] that these arrangements typically were conceived as mechanisms for domestic entities that lacked the resources to engage in effective export activity acting individually. As such, they often had pro-competitive effects in that they added another player to the relevant markets and might bring innovation or lower prices. Moreover, they were not secret and therefore did not bear the hallmarks of what was traditionally considered to be a hardcore cartel. Hence, blanket condemnation or per se treatment of such arrangements was inappropriate. If the effects of this kind of cartels were anticompetitive, there was no impediment today to any jurisdiction affected enforcing their competition law to prosecute their anticompetitive effects. 212

#### They receive considerable support.

Dr. Brian Ikejiaku 21, Senior Lecturer in Law at Coventry University, PhD from the Research Institute of Law, Politics, & Justice (RILPJ) at Keele University, and Cornelia Dayao, LL.M in International Business Law, “Competition Law as an Instrument of Protectionist Policy: Comparative Analysis of the EU and the US”, Utrecht Journal of International and European Law, Volume 36, Issue 1, http://doi.org/10.5334/ujiel.513

(iii) Export cartels

A cartel is an association of rivals agreeing to fix prices above the competitive level, limit output below the competitive level or allocate markets between or amongst themselves in order to maximise their profits.49 Cartels, generally, have been labelled as the ‘supreme evil of antitrust’50 and the ‘primary evil of global trade’.51 On the other hand, export cartels are cartels that only operate in foreign markets and do not directly affect the markets in the jurisdiction where the cartel members are located.52 While there is a consensus among the world’s competition authorities to prohibit hard-core cartels,53 there is lack of clarity and transparency surrounding the treatment of export cartels. It is argued that export cartels receive considerable political support,54 not only because of its benefits to the exporting country, but also because it is argued that export cartels are not necessarily pure evil like hard-core cartels.55 Export cartels may have the same goals as hard-core cartels – to fix prices or allocate markets – but they may also have strictly efficiency-enhancing goals such as sharing marketing and transportation costs.56

According to economic theory, export cartels raise domestic producer welfare without diminishing domestic consumer welfare.57 Additional export revenues and increases in national welfare incentivises exporting States to tolerate, if not promote, export cartels.58 Furthermore, since the adverse effects of export cartels are externalised or felt exclusively by importing States, exporting States possessing the territorial jurisdiction over the cartel have very little interest in disciplining the conduct.59 On the other hand, importing States which have the motivation to prevent the conduct due to its anticompetitive effect and corresponding reduction in their consumer welfare do not have the territorial jurisdiction and must rather apply their competition laws extra-territorially to sanction the cartel.60 However, since exporting States are not motivated to sanction the cartel, or even induced to promote or tolerate the cartel because of its positive domestic effect, they may block any extraterritorial enforcement by the importing States through exemptions or non-cooperation.61 This conflicting interest presents a competition law enforcement dilemma on export cartels.

#### It’d appear to give in to Europe---that’s a deal breaker

Anu Bradford 7, LL.M. from the University of Helsinki, S.J.D. from Harvard Law School, Henry L. Moses Professor of Law and International Organization at Columbia Law School, Former Professor at the University of Chicago Law School, “International Antitrust Negotiations and the False Hope of the WTO”, Harvard International Law Journal, 48 Harv. Int'l L.J. 383, Summer 2007, Lexis

The most powerful explanation for the United States's hesitation (and the EU's converse enthusiasm) to international antitrust rules, however, appears to be the prospect that any international antitrust agreement negotiated today would be likely to resemble the EU-model of antitrust regulation (yielding the United States the payoff [pi][us] - d[us]). Both the United States and the EU have been actively exporting their antitrust regimes to developing countries and transition economies in an attempt to expand their respective "spheres of influence." 106 While several countries have adopted U.S.-style antitrust laws, the EU seems to be winning the race for the supremacy of antitrust laws. 107 Thus, an international antitrust agreement would be likely to shift several states away from the "U.S. model" and toward the "EU model," compromising U.S. influence in an important area of economic policy. For the same reason, it is not surprising that the EU is willing to seize the opportunity to "lock in" its preferred regulatory approach worldwide.

### Solvency---Harmonization

#### U.S. leadership forges global agreement

David J. Gerber 12, Distinguished Professor of Law at Chicago-Kent College of Law, B.A. from Trinity College, M.A. from Yale University, and J.D. from the University of Chicago, Awarded the Degree of Honorary Doctor of Laws by the University of Zurich, Former Visiting Professor at the Law Schools of the University of Pennsylvania, Northwestern University, and Washington University, Global Competition: Law, Markets, and Globalization, p. viii

A second puzzle involves the role of the US in global competition law development. US antitrust law has long been at the center of the competition law world. It represents extensive experience and a remarkable reservoir of thought and learning. It is often proposed as a model for other countries to follow, and many assume that it should be the basis for thinking about competition law on the global level or that US power and influence will necessarily lead to this result. Yet US antitrust experience is unique. It has developed under legal and economic circumstances that rarely have much in common with those faced by others, either individually or in international contexts. Th is raises questions about the role it should play in the global context. The support of the US and the US antitrust community is indispensable for any global competition law project, but it is far from clear how this power and influence should be used. I have wrestled with this issue for decades, and I am convinced that the power of the US and the learning and expertise found within the US antitrust community can be employed in ways that support development of an effective and cooperation-based global competition law regime. I am also painfully conscious of the obstacles in the path of this kind of cooperative evolution.

## FTC DA

### Trade-Off---IAD Silo---1AR

#### International activities are siloed from all other FTC action

Alyson M. Cox 20, JD Candidate at Notre Dame Law School, Bachelor of Science in Biological Sciences, University of Notre Dame, “From Humphrey's Executorto Seila Law: Ending Dual Federal Antitrust Authority”, Notre Dame Law Review, 96 Notre Dame L. Rev. 395, 402, November 2020, Lexis

There are multiple bureaus and offices within the FTC, including the Bureau of Competition, the Bureau of Consumer Protection, the Bureau of Economics, the Office of International Affairs, and the Office of Administrative Law Judges. 49 Administrative Law Judges (ALJs) preside over administrative factfinding proceedings and issue initial decisions, 50and they too have removal protections. ALJs can only be removed "for good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing before the Board." 51

#### There’s no cross-over

Spencer Weber Waller 5, Professor of Law and Director of the Institute for Consumer Antitrust Studies at the Loyola University Chicago School of Law, “In Search of Economic Justice: Considering Competition and Consumer Protection Law”, Loyola University Chicago Law Journal, 36 Loy. U. Chi. L.J. 631, Winter 2005, Lexis

Despite this more comprehensive mission, the FTC is organized in a way that tends to emphasize the separation of these fields, rather than the common elements of the agency's mission. The FTC has a Bureau of Competition and a separate Bureau of Consumer Protection, with a Bureau of Economics to support the work of both endeavors. The Bureau of Competition ("BC") primarily engages in the investigation and enforcement of mergers and complex civil antitrust cases with a recent emphasis on intellectual property and health care issues. The Bureau of Consumer Protection ("BCP") primarily investigates and challenges outright fraudulent conduct. 9 The FTC website details recent BCP activity involving Internet sales, telemarketing, false health and fitness claims, identity theft and similar issues. 10 These are all very different issues from the day-to-day focus of the competition staff. This basic split is further mirrored in the Bureau of Economics ("BE"), where the staff tends to specialize in either competition or consumer protection. Any crossover of staff and cooperation occurs primarily in competition advocacy before legislatures or regulatory agencies, and not in case selection and investigation.

#### The plan’s the IAD

Randolph W. Tritell 15, J.D. from the University of Pennsylvania Law School, B.A. from Stony Brook University, “Meeting the Challenges of the Evolving International Antitrust Landscape”, George Mason Law Review, 22 Geo. Mason L. Rev. 1269, Lexis

I would like to share with you some of the Federal Trade Commission's ("FTC") main international antitrust activities and some of the challenges that we face in our work. Let's begin with a brief look back. When I returned to the FTC in 1998, the rapid increase in competition laws and agencies that accompanied transitions to market economies that began following the collapse of the Soviet Union was in full swing. The FTC was already beginning to adapt to the challenges of globalization of antitrust. Having begun with a single lawyer in the General Counsel's office, the international antitrust program was established as a division in the Bureau of Competition to investigate and litigate these new-fangled cases with an international party or evidence of some other international dimension. As the number of those cases grew, the investigation and litigation functions were returned to the Bureau of Competition Divisions that handled the relevant subject matter. The International Antitrust Division remained responsible for providing support on international issues and, with the Antitrust Division of the Department of Justice ("DOJ"), handling relationships with foreign agencies and the increasing policy work spawned by the growth of the field. 1

#### Budgets only trade-off within bureaus

US Code 21 – “Text Of The Labor, Health And Human Services, Education, Agriculture, Rural Development, Energy And Water Development, Financial Services And General Government, Interior, Environment, Military Construction, Veterans Affairs, Transportation, And Housing And Urban Development Appropriations Act, 2022”, Rules Committee Print 117-12, https://docs.house.gov/billsthisweek/20210726/BILLS-117-RCP117-12.xml

Sec. 101. Appropriations made in this title shall be available for expenditure or transfer (within each bureau or office), with the approval of the Secretary of the Interior, for the emergency reconstruction, replacement, or repair of aircraft, buildings, utilities, or other facilities or equipment damaged or destroyed by fire, flood, storm, or other unavoidable causes: Provided, That no funds shall be made available under this authority until funds specifically made available to the Department of the Interior for emergencies shall have been exhausted: Provided further, That all funds used pursuant to this section must be replenished by a supplemental appropriation, which must be requested as promptly as possible.

#### They each have their own internal budgets

William E. Kovacic 16\* and David A. Hyman\*\*, Global Competition Professor of Law and Policy, George Washington University Law School and Non-Executive Director, United Kingdom Competition and Markets Authority, and \*\* H. Ross and Helen Workman Chair in Law and Professor of Medicine, University of Illinois, “Consume or Invest: What Do/Should Agency Leaders Maximize?”, Washington Law Review, 91 Wash. L. Rev. 295, March 2016, Lexis

The first investment domain is hiring personnel. The agency must find, hire, and retain skilled professionals and other personnel. And, once the personnel are hired, they must be organized into teams. For example, the FTC has separate Bureaus for Competition, Consumer Protection, and Economics. The Bureau of Competition and the Bureau of Consumer Protection are staffed by lawyers; the Bureau of Economics is staffed by economists. 12 As we have noted elsewhere, "the [\*300] government is already thickly planted with bureaus, agencies, and inter-agency working groups, departments and commissions" - and each has its own internal organization designed to effectuate the statutory mission. 13

#### Budgets are allocated to each bureau and then spent

Matthew Barish 18, Associate Editor, Cardozo Arts & Ent. L.J. Vol. 36, Benjamin N. Cardozo School of Law (2018); J.D. Candidate, 2018, Benjamin N. Cardozo School of Law; B.S., Business Management and Finance, Brooklyn College, “Reaching for the Stars: A Proposal to the FTC to Help Deter Astroturfing and Fake Reviews”, Cardozo Arts & Entertainment Law Journal, 36 Cardozo Arts & Ent LJ 827, Lexis

First, it has been proposed that the FTC needs to increase its enforcement against companies that engage in deceptive commerce practices. 204 The FTC is arguably the largest consumer protection organization in the United States, yet only brings a handful of unfair and deceptive acts claims in the context of fake online reviews each year. 205 In order to increase and effectuate the number of enforcement actions the agency brings each year, the FTC needs to respond to and investigate more complaints. This requires a proportional increase in funding and staffing of the FTC and the allocation of those funds and resources to the specific bureaus within the Commission that are responsible for regulating deceptive or unfair business practices, conducted on the Internet. According to the FTC's 2017 Congressional Budget Justification (the "2017 CBJ"), 206 the Commission requested a program level of $ 342,000,000 and 1,211 full-time equivalent (FTE) positions. 207 But this is merely a $ 35,100,000 budget increase from the prior year - one that includes only a small addition of 20 new FTE [\*856] positions. 208 This budget increase is meager for an agency that is responsible for protecting consumers and promoting competition within the entire United States landscape, and more specifically, a landscape that continues to increase its use of e-commerce. 209

#### Budgets are separate AND don’t spill over

Bob Ulin 12, Reporter for the Federal Times, “Tight Budgets Could Bring Era Of Interagency Cooperation”, Federal Times, 6-17, http://www.federaltimes.com/article/20120617/ADOP06/306170004/Tight-budgets-could-bring-era-interagency-cooperation

The word “interagency” is an elusive concept of voluntary associations of federal departments and agencies, each having its own procedures, jargon and rules. Each federal department has its own leader, budget, mission, career progression and congressional oversight committee. As such, there is little incentive to cooperate. While one might think that temporary service outside of one’s own agency would be seen as broadening, that is rarely the case because there is no incentive for it.