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#### The plan spills over, decimating business confidence and overall economic recovery

Trace Mitchell 21, Policy Counsel at NetChoice, JD from the George Mason University, Antonin Scalia Law School, Former Research Associate at the Mercatus Center at George Mason University, BA in Political Science and Government from Florida Gulf Coast University, “Weaponizing Antitrust to Attack Big Tech Is a Bad Idea”, Morning Consult, 3/3/2021, https://morningconsult.com/opinions/weaponizing-antitrust-to-attack-big-tech-is-a-bad-idea/

From the House Judiciary report calling for dramatic antitrust reform to federal antitrust regulators and state attorneys general initiating lawsuits against Facebook and Google, government officials are once again calling for more aggressive antitrust enforcement to go after America’s tech businesses.

And while critics from all sides are reaching for any and all tools to go after “Big Tech,” weaponizing antitrust will only end up harming American consumers and the American economy at a time when we’re still trying to keep our heads above water.

Using antitrust to go after American tech won’t stop at Silicon Valley. Every sector of our economy will be at risk of politically motivated antitrust enforcement. And that won’t just hurt consumers searching for information on Google or shopping for products on Amazon — America’s economy could lose its global competitiveness amid a global pandemic.

In fact, the recent cases against Google from the Department of Justice and state attorneys general are a great example of just how this misuse of antitrust could harm Americans across the country and halt innovation in its tracks.

These suits conveniently forget how consumers benefit from Google’s suite of products in attempts to claim that Google unfairly monopolized the search and search advertising markets. Even worse, by claiming consumer harm, the government fails to truly grasp what consumers actually want.

You see, under the consumer welfare standard, antitrust enforcement is built to focus on what consumers want and whether consumers benefit. When the government argues Google is harming Americans because its products are preinstalled and even the default search engine on Apple, the government forgets that American consumers don’t think this is a problem.

The vast majority of search users prefer Google to its competitors. And through preinstallation, we get free-to-use products, quick searches and near-limitless information in an integrated system with the click of a mouse. It isn’t a problem; it’s a time saver. Further, because Google can reinvest in developing more user-friendly tech in a preinstalled ecosystem, we get interoperable apps that make our experience that much more convenient and intuitive. And even if consumers do want a different app, they can fix this problem with no heavy leg work or travel — just the swipe of a finger.

But if the government gets its way, the message could be disastrous for innovation: Even if your business benefits Americans and improves the user experience, the government can still put a target on your back. Not to mention, the government would be more likely to put a target on your back if you’re large and politically disfavored. Consumers across the internet and the American economy would be hurt and left without more accessible and more affordable technology as options.

We should be working to reward, not punish, innovation. Otherwise, the next Google may just decide it isn’t worth the time and effort.

Similarly, the Federal Trade Commission’s recent case against Facebook also puts the wants of policymakers above the actual interests of consumers.

Here, the government claims that Facebook harms consumers by acquiring and then integrating services like Instagram and WhatsApp. So harmful, the Federal Trade Commission says, that Facebook must divest from these services, even if that would harm American consumers, innovation and entrepreneurship for decades to come.

But this is not a case of consumer harm or bad behavior — Facebook’s acquisition of Instagram and WhatsApp helped ensure that consumers’ desires were prioritized. Through millions of investment dollars into research and development, Facebook turned good services into great services that consumers actively keep coming back to.

Through relentless product improvement, WhatsApp became a free-to-use platform and Instagram became one of the most successful photo-sharing social media apps in the world. In both cases, consumers benefited from convenient and state-of-the-art advancements. No longer do we have to pay to use messaging or search through multiple results to shop our influencer feed.

As it stands, the Federal Trade Commission case could splinter one successful tech company into multiple, less efficient organizations, setting a precedent that could affect every American industry. Consumers would not only lose Facebook’s free-to-use services but also potentially the next big clothing brand or the next hit microbrewed beer.

By impeding mergers, the sheer fear of potential antitrust enforcement would shutter the doors on small businesses from all sectors of the economy. So much investment in innovation is built on the possibility of being acquired by a larger player. Entrepreneurs and innovators from manufacturing, automotive and tech alike would be left with an unfortunate takeaway — succeed and benefit consumers, but not too much.

And with an economy still struggling to recover, the absolute last thing we need is to leave consumers without innovative and affordable choices, small businesses without key investment opportunities and our economy without a competitive edge globally.

But by weaponizing antitrust, we’ll get neither thoughtful intervention nor consumer benefits. Instead, the United States will lose ground to foreign competitors and American consumers will ultimately pay the price.

#### Decline cascades---nuclear war

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Various scholars and institutions regard global social instability as the greatest threat facing this decade. The catalyst has been postulated to be a Second Great Depression which, in turn, will have profound implications for global security and national integrity. This paper, written from a broad systems perspective, illustrates how emerging risks are getting more complex and intertwined; blurring boundaries between the economic, environmental, geopolitical, societal and technological taxonomy used by the World Economic Forum for its annual global risk forecasts. Tight couplings in our global systems have also enabled risks accrued in one area to snowball into a full-blown crisis elsewhere. The COVID-19 pandemic and its socioeconomic fallouts exemplify this systemic chain-reaction. Onceinexorable forces of globalization are rupturing as the current global system can no longer be sustained due to poor governance and runaway wealth fractionation. The coronavirus pandemic is also enabling Big Tech to expropriate the levers of governments and mass communications worldwide. This paper concludes by highlighting how this development poses a dilemma for security professionals.

Key Words: Global Systems, Emergence, VUCA, COVID-9, Social Instability, Big Tech, Great Reset

INTRODUCTION

The new decade is witnessing rising volatility across global systems. Pick any random “system” today and chart out its trajectory: Are our education systems becoming more robust and affordable? What about food security? Are our healthcare systems improving? Are our pension systems sound? Wherever one looks, there are dark clouds gathering on a global horizon marked by volatility, uncertainty, complexity and ambiguity (VUCA).

But what exactly is a global system? Our planet itself is an autonomous and selfsustaining mega-system, marked by periodic cycles and elemental vagaries. Human activities within however are not system isolates as our banking, utility, farming, healthcare and retail sectors etc. are increasingly entwined. Risks accrued in one system may cascade into an unforeseen crisis within and/or without (Choo, Smith & McCusker, 2007). Scholars call this phenomenon “emergence”; one where the behaviour of intersecting systems is determined by complex and largely invisible interactions at the substratum (Goldstein, 1999; Holland, 1998).

The ongoing COVID-19 pandemic is a case in point. While experts remain divided over the source and morphology of the virus, the contagion has ramified into a global health crisis and supply chain nightmare. It is also tilting the geopolitical balance. China is the largest exporter of intermediate products, and had generated nearly 20% of global imports in 2015 alone (Cousin, 2020). The pharmaceutical sector is particularly vulnerable. Nearly “85% of medicines in the U.S. strategic national stockpile” sources components from China (Owens, 2020).

An initial run on respiratory masks has now been eclipsed by rowdy queues at supermarkets and the bankruptcy of small businesses. The entire global population – save for major pockets such as Sweden, Belarus, Taiwan and Japan – have been subjected to cyclical lockdowns and quarantines. Never before in history have humans faced such a systemic, borderless calamity.

COVID-19 represents a classic emergent crisis that necessitates real-time response and adaptivity in a real-time world, particularly since the global Just-in-Time (JIT) production and delivery system serves as both an enabler and vector for transboundary risks. From a systems thinking perspective, emerging risk management should therefore address a whole spectrum of activity across the economic, environmental, geopolitical, societal and technological (EEGST) taxonomy. Every emerging threat can be slotted into this taxonomy – a reason why it is used by the World Economic Forum (WEF) for its annual global risk exercises (Maavak, 2019a). As traditional forces of globalization unravel, security professionals should take cognizance of emerging threats through a systems thinking approach.

METHODOLOGY

An EEGST sectional breakdown was adopted to illustrate a sampling of extreme risks facing the world for the 2020-2030 decade. The transcendental quality of emerging risks, as outlined on Figure 1, below, was primarily informed by the following pillars of systems thinking (Rickards, 2020):

• Diminishing diversity (or increasing homogeneity) of actors in the global system (Boli & Thomas, 1997; Meyer, 2000; Young et al, 2006);

• Interconnections in the global system (Homer-Dixon et al, 2015; Lee & Preston, 2012);

• Interactions of actors, events and components in the global system (Buldyrev et al, 2010; Bashan et al, 2013; Homer-Dixon et al, 2015); and

• Adaptive qualities in particular systems (Bodin & Norberg, 2005; Scheffer et al, 2012) Since scholastic material on this topic remains somewhat inchoate, this paper buttresses many of its contentions through secondary (i.e. news/institutional) sources.

ECONOMY

According to Professor Stanislaw Drozdz (2018) of the Polish Academy of Sciences, “a global financial crash of a previously unprecedented scale is highly probable” by the mid- 2020s. This will lead to a trickle-down meltdown, impacting all areas of human activity.

The economist John Mauldin (2018) similarly warns that the “2020s might be the worst decade in US history” and may lead to a Second Great Depression. Other forecasts are equally alarming. According to the International Institute of Finance, global debt may have surpassed $255 trillion by 2020 (IIF, 2019). Yet another study revealed that global debts and liabilities amounted to a staggering $2.5 quadrillion (Ausman, 2018). The reader should note that these figures were tabulated before the COVID-19 outbreak.

The IMF singles out widening income inequality as the trigger for the next Great Depression (Georgieva, 2020). The wealthiest 1% now own more than twice as much wealth as 6.9 billion people (Coffey et al, 2020) and this chasm is widening with each passing month. COVID-19 had, in fact, boosted global billionaire wealth to an unprecedented $10.2 trillion by July 2020 (UBS-PWC, 2020). Global GDP, worth $88 trillion in 2019, may have contracted by 5.2% in 2020 (World Bank, 2020).

As the Greek historian Plutarch warned in the 1st century AD: “An imbalance between rich and poor is the oldest and most fatal ailment of all republics” (Mauldin, 2014). The stability of a society, as Aristotle argued even earlier, depends on a robust middle element or middle class. At the rate the global middle class is facing catastrophic debt and unemployment levels, widespread social disaffection may morph into outright anarchy (Maavak, 2012; DCDC, 2007).

Economic stressors, in transcendent VUCA fashion, may also induce radical geopolitical realignments. Bullions now carry more weight than NATO’s security guarantees in Eastern Europe. After Poland repatriated 100 tons of gold from the Bank of England in 2019, Slovakia, Serbia and Hungary quickly followed suit.

According to former Slovak Premier Robert Fico, this erosion in regional trust was based on historical precedents – in particular the 1938 Munich Agreement which ceded Czechoslovakia’s Sudetenland to Nazi Germany. As Fico reiterated (Dudik & Tomek, 2019):

“You can hardly trust even the closest allies after the Munich Agreement… I guarantee that if something happens, we won’t see a single gram of this (offshore-held) gold. Let’s do it (repatriation) as quickly as possible.” (Parenthesis added by author).

President Aleksandar Vucic of Serbia (a non-NATO nation) justified his central bank’s gold-repatriation program by hinting at economic headwinds ahead: “We see in which direction the crisis in the world is moving” (Dudik & Tomek, 2019). Indeed, with two global Titanics – the United States and China – set on a collision course with a quadrillions-denominated iceberg in the middle, and a viral outbreak on its tip, the seismic ripples will be felt far, wide and for a considerable period.

A reality check is nonetheless needed here: Can additional bullions realistically circumvallate the economies of 80 million plus peoples in these Eastern European nations, worth a collective $1.8 trillion by purchasing power parity? Gold however is a potent psychological symbol as it represents national sovereignty and economic reassurance in a potentially hyperinflationary world. The portents are clear: The current global economic system will be weakened by rising nationalism and autarkic demands. Much uncertainty remains ahead. Mauldin (2018) proposes the introduction of Old Testament-style debt jubilees to facilitate gradual national recoveries. The World Economic Forum, on the other hand, has long proposed a “Great Reset” by 2030; a socialist utopia where “you’ll own nothing and you’ll be happy” (WEF, 2016).

In the final analysis, COVID-19 is not the root cause of the current global economic turmoil; it is merely an accelerant to a burning house of cards that was left smouldering since the 2008 Great Recession (Maavak, 2020a). We also see how the four main pillars of systems thinking (diversity, interconnectivity, interactivity and “adaptivity”) form the mise en scene in a VUCA decade.

ENVIRONMENTAL

What happens to the environment when our economies implode? Think of a debt-laden workforce at sensitive nuclear and chemical plants, along with a concomitant surge in industrial accidents? Economic stressors, workforce demoralization and rampant profiteering – rather than manmade climate change – arguably pose the biggest threats to the environment. In a WEF report, Buehler et al (2017) made the following pre-COVID-19 observation:

The ILO estimates that the annual cost to the global economy from accidents and work-related diseases alone is a staggering $3 trillion. Moreover, a recent report suggests the world’s 3.2 billion workers are increasingly unwell, with the vast majority facing significant economic insecurity: 77% work in part-time, temporary, “vulnerable” or unpaid jobs.

Shouldn’t this phenomenon be better categorized as a societal or economic risk rather than an environmental one? In line with the systems thinking approach, however, global risks can no longer be boxed into a taxonomical silo. Frazzled workforces may precipitate another Bhopal (1984), Chernobyl (1986), Deepwater Horizon (2010) or Flint water crisis (2014). These disasters were notably not the result of manmade climate change. Neither was the Fukushima nuclear disaster (2011) nor the Indian Ocean tsunami (2004). Indeed, the combustion of a long-overlooked cargo of 2,750 tonnes of ammonium nitrate had nearly levelled the city of Beirut, Lebanon, on Aug 4 2020. The explosion left 204 dead; 7,500 injured; US$15 billion in property damages; and an estimated 300,000 people homeless (Urbina, 2020). The environmental costs have yet to be adequately tabulated.

Environmental disasters are more attributable to Black Swan events, systems breakdowns and corporate greed rather than to mundane human activity.

Our JIT world aggravates the cascading potential of risks (Korowicz, 2012). Production and delivery delays, caused by the COVID-19 outbreak, will eventually require industrial overcompensation. This will further stress senior executives, workers, machines and a variety of computerized systems. The trickle-down effects will likely include substandard products, contaminated food and a general lowering in health and safety standards (Maavak, 2019a). Unpaid or demoralized sanitation workers may also resort to indiscriminate waste dumping. Many cities across the United States (and elsewhere in the world) are no longer recycling wastes due to prohibitive costs in the global corona-economy (Liacko, 2021).

Even in good times, strict protocols on waste disposals were routinely ignored. While Sweden championed the global climate change narrative, its clothing flagship H&M was busy covering up toxic effluences disgorged by vendors along the Citarum River in Java, Indonesia. As a result, countless children among 14 million Indonesians straddling the “world’s most polluted river” began to suffer from dermatitis, intestinal problems, developmental disorders, renal failure, chronic bronchitis and cancer (DW, 2020). It is also in cauldrons like the Citarum River where pathogens may mutate with emergent ramifications.

On an equally alarming note, depressed economic conditions have traditionally provided a waste disposal boon for organized crime elements. Throughout 1980s, the Calabriabased ‘Ndrangheta mafia – in collusion with governments in Europe and North America – began to dump radioactive wastes along the coast of Somalia. Reeling from pollution and revenue loss, Somali fisherman eventually resorted to mass piracy (Knaup, 2008).

The coast of Somalia is now a maritime hotspot, and exemplifies an entwined form of economic-environmental-geopolitical-societal emergence. In a VUCA world, indiscriminate waste dumping can unexpectedly morph into a Black Hawk Down incident. The laws of unintended consequences are governed by actors, interconnections, interactions and adaptations in a system under study – as outlined in the methodology section.

Environmentally-devastating industrial sabotages – whether by disgruntled workers, industrial competitors, ideological maniacs or terrorist groups – cannot be discounted in a VUCA world. Immiserated societies, in stark defiance of climate change diktats, may resort to dirty coal plants and wood stoves for survival. Interlinked ecosystems, particularly water resources, may be hijacked by nationalist sentiments. The environmental fallouts of critical infrastructure (CI) breakdowns loom like a Sword of Damocles over this decade.

GEOPOLITICAL

The primary catalyst behind WWII was the Great Depression. Since history often repeats itself, expect familiar bogeymen to reappear in societies roiling with impoverishment and ideological clefts. Anti-Semitism – a societal risk on its own – may reach alarming proportions in the West (Reuters, 2019), possibly forcing Israel to undertake reprisal operations inside allied nations. If that happens, how will affected nations react? Will security resources be reallocated to protect certain minorities (or the Top 1%) while larger segments of society are exposed to restive forces? Balloon effects like these present a classic VUCA problematic.

Contemporary geopolitical risks include a possible Iran-Israel war; US-China military confrontation over Taiwan or the South China Sea; North Korean proliferation of nuclear and missile technologies; an India-Pakistan nuclear war; an Iranian closure of the Straits of Hormuz; fundamentalist-driven implosion in the Islamic world; or a nuclear confrontation between NATO and Russia. Fears that the Jan 3 2020 assassination of Iranian Maj. Gen. Qasem Soleimani might lead to WWIII were grossly overblown. From a systems perspective, the killing of Soleimani did not fundamentally change the actor-interconnection-interaction adaptivity equation in the Middle East. Soleimani was simply a cog who got replaced.

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#### ‘Prohibiting’ a practice requires per se illegality.

Lee Mendelsohn 6, Director at Edward Nathan, “KIPA Conduct Amounts to Price Fixing”, Business Day (South Africa), 6/12/2006, Lexis

The first step in any competition law analysis is to define the relevant market. There are two components to an analysis of the relevant market, namely the relevant product market and the geographic market.

The relevant product market consists of those products and services that operate as a competitive constraint on the behaviour of the suppliers of those products and/or services.

The relevant product market is determined by ascertaining whether a small but significant non-transient increase in pricing of the product in question would cause buyers to substitute the product with another product or would cause suppliers of other products to begin producing the product in question.

The relevant geographic market is determined by ascertaining whether a small but significant non-transient increase in pricing of the product in question would cause buyers to purchase the product from other geographic areas, alternatively suppliers of the product in other geographic areas to supply those products into the area in question.

For the purposes of this case study, we are instructed to accept that each medical speciality constitutes a relevant product market and that the relevant geographic market for each of them is Kleindorpie.

The Competition Act provides that "an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if … it involves … directly or indirectly fixing a purchase or selling price or any other trading condition".

An "agreement" is defined as including a contract, arrangement or understanding, whether or not legally enforceable. The term agreement is very widely defined. A "horizontal relationship" is defined as a "relationship between competitors".

The prohibition on the fixing of a purchase or selling price or any other trading condition is one of the so-called "per se" prohibitions which are included in our Competition Act. The prohibition is automatic and absolute and the fixing of prices or other trading condition cannot be justified on the basis of any technological, efficiency or other procompetitive gains that could outweigh the potential anticompetitive effect of the fixing of the price or trading condition. If the capitation plan of KIPA falls within the restrictive horizontal practice prohibiting price fixing and the fixing of other trading conditions, such practice will be a contravention of the act.

#### Limits---many standards, requiring distinct answers, make the topic unmanageable.

#### Ground---fringe standards dodge links and allow bidirectional permissiveness.

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#### The plan triggers a shift to ET application of antitrust law.

Austen L. Parrish 9, Vice-Dean for Academic Affairs and Professor of Law at the Southwestern Law School, J.D. from Columbia University School of Law, B.A. from the University of Washington, “Reclaiming International Law from Extraterritoriality”, Minnesota Law Review, Volume 93, 93 Minn. L. Rev. 815, February 2009, p. 852-870

2. Developing Global Extraterritoriality

The new era of extraterritorial litigation is not limited, however, to American lawsuits. Transnational litigation, although predominantly occurring in the United States, 191 is spreading worldwide. 192 While the United States remains the most active promulgator of extraterritorial measures in the competition/antitrust law field, other states and regional organizations such as the European Union, 193 France, 194 Germany, 195 [\*853] the Republic of Korea, 196 and most common law countries 197 have adopted laws of extraterritorial application. 198 As Gary Born describes it, "a number of European states have begun to apply selected national regulatory statutes extraterritorially, with rigor approaching that of the United States, arousing complaints from both the United States and international businesses." 199 International and cross-border regulatory cases are now routinely heard in domestic courts throughout the world. 200 In the mid-1990s, one study concluded that "more [\*854] than 100,000 (and possibly even 200,000) international disputes enter[] the civil courts of first instance in Europe every year." 201

Nor is the growth limited to private law or regulatory matters. Transnational public law litigation (mostly dealing with human rights and criminal law) is on the rise in other countries. 202 Some human rights advocates have declared a new era of civil international human rights litigation. 203 A number of [\*855] high-profile cases have been brought against foreign officials under universal jurisdiction. 204 And the trend is not likely to change. Commentators argue that the number of transnational cases litigated outside the United States have, or should, increase. 205 The expectation is also that with increased extraterritorial application of domestic laws, "clashes" between inconsistent rulings in different countries will become commonplace. 206

That other countries have followed the American extraterritorial example is hardly surprising. Over time, the United States' broad application of its own law extraterritorially has created a precedent (if not a sense of righteousness) in other countries, "who would apply their laws and their versions of international law to Americans whose actions they do not like." 207 Indeed, the use of extraterritorial laws by other countries has led to some highly publicized cases. From Internet 208 and cyber- [\*856] cases, 209 to criminal prosecutions, 210 to prominent human rights cases, 211 other countries have started to use their laws as a way to advance their own foreign policies and to respond to the perceived U.S. aspiration of special legal status. As the United States has stepped up its claims to extraterritorial jurisdiction, other countries claim "me too." In many ways then, the use of domestic laws to address transnational challenges is itself becoming an international norm.

III. THE EXTRATERRITORIALITY THREAT

The increasing propensity of states to apply domestic laws extraterritorially should trouble international law scholars (whether Sovereigntist or Internationalist in orientation) more than it has. When taking the aims and concerns of the Sovereigntists and the modern Internationalists seriously, both groups would be better off if they encouraged curtailing the use of extraterritorial laws, while reinvigorating traditional international lawmaking. The threat of extraterritoriality is a foe to both groups, and containing it by reclaiming international law is a common objective that could bridge the theoretical divide between them.

A. Taking Sovereigntist Concerns Seriously

Sovereigntists should find extraterritorial domestic regulation more disconcerting than classic international lawmaking through multilateral treaties. Global extraterritoriality calls into question the Sovereigntist assumption that the United States, by virtue of sheer power alone, is able to shape the world order and protect American interests. As an initial matter, retaliation is likely in the extraterritoriality context; as Richard Falk warned over forty years ago, the use of domestic law in transnational litigation invites retaliation. 212 To the extent that the United States is seen as aggressively using domestic law to assert its hegemony globally, we can expect that others will do so too. 213 The impact is real: retaliation interferes with U.S. regulatory objectives, and also "destroys a spirit of cooperation and common purpose in solving international economic problems." 214 U.S. foreign relations are similarly burdened. 215 Extraterritoriality also potentially allows law to be used for purely sensational rather than legal ends; in the world of extraterritorial application of domestic law, states might manipulate domestic suits for their own political agendas. 216 In contrast, [\*858] retaliation does not occur with multilateral treaties because treaties are a product of negotiation and consent. 217

Retaliation also has the potential to impact American interests to a much greater extent now than it has previously. Traditionally, American companies or individuals could safely ignore foreign legal actions (i.e., default) and then litigate any attempt to enforce the foreign judgment in the United States. In cases where the foreign court's exercise of jurisdiction was viewed as exorbitant, the defendant would be largely judgment-proof. 218 Yet that strategy is no longer practical. In the wake of globalization, many American corporate defendants have significant assets throughout the world (e.g., in the EU and China), and corporations increasingly need to avail themselves of business opportunities worldwide to remain competitive in a global market. 219 More significantly, as U.S. law has recognized broader legitimate exercises of jurisdiction (such as under the effects and universality principles), so too can others nations' courts broadly exercise extraterritorial jurisdiction without it being found offensive. Of course, all this may be beside the point. Even if a judgment is ultimately unenforceable, the costs of litigation and the potential for enforcement (as slim as it may be) 220 force companies and individuals to account for foreign regulations and laws. 221 The potential impact is even [\*859] greater in the public law context. The way the United States has waged its war on terror - viewed almost universally as extralegal 222 - means that American officials are more than ever susceptible to foreign actions. 223

The possibility of retaliation, however, is not the only problem. Extraterritorial application of domestic law threatens democratic sovereignty 224 in a more profound way than international treaties and their institutions. 225 Under traditional notions of democracy, government rests upon the consent of the governed. 226 But extraterritorial laws force foreigners to bear [\*860] the costs of domestic regulation, even though foreigners (i.e., those beyond the state's territorial borders) are nearly powerless to change those regulations. 227 Foreigners are the true outsiders to the political process with no vote, and presumably little formal ability to influence domestic political processes. 228 The decision makers - the domestic courts - are politically unaccountable to the foreign defendants and apply laws to which the foreigners have not consented. 229 The threat to democratic sovereignty may be particularly felt when the countries in which laws are applied extraterritorially are themselves not liberal democracies. For these reasons, scholars have described the extraterritorial application of law as the greatest affront to democratic sovereignty. 230

Admittedly, the democratic legitimacy problem has historically been less of a concern for Americans. When only U.S. law is applied extraterritorially, only foreigners suffer the affront. But as described above, no longer is extraterritoriality a uniquely U.S. phenomenon - other nations increasingly apply their law extraterritorially as well. 231 A comparison drives the point home. The practice of U.S. courts citing and using foreign law has led to fierce and virulent responses over concerns that the use of foreign law leads to undemocratic results. 232 Sovereigntists [\*861] have written literally dozens of articles condemning the practice, 233 and the political uproar has been shrill. 234 But that affront to democratic sovereignty is minimal compared to the problems that extraterritorial laws pose - where foreign law is being directly applied to U.S. citizens and residents. That scholars have failed to condemn the practice is thus remarkable.

For Sovereigntists, a more important point remains. Given the threat of extraterritoriality, strengthening international law and institutions now may be the best means to maintain sovereignty and American hegemony and power in the long term. 235 Unlike domestic extraterritorial actions and other ad hoc relations, multilateral treaty regimes "are less vulnerable [\*862] to later shifts in power" and are "relatively stable even if the hegemon declines." 236 International treaty law thus shapes the behavior of states. 237 And not being part of a treaty regime undermines a nation's ability to influence the development of the law. 238 If the insight from realists and modern rationalist scholars is that international law is all about power, then the United States would be wise to use that power to influence international law while it still can. 239 With indications that China and the EU may begin to challenge U.S. hegemony, embracing international law now - while the United States is still in a position to shape norms - may be strategically wise. 240 That is, "for those interested in promoting democratic sovereignty, it is a far, far better thing for the United States to be the chief progenitor of international law than, say, the People's Republic of China." 241

In contrast, American influence over the world is much more circumscribed when domestic law replaces international law. Conducting foreign policy through courts is difficult - this [\*863] would be true even if extraterritorial lawsuits were limited to U.S. courts. In the United States, exploitative litigation can be filed "because of weak constraints on the kinds of suits that get filed and the potential for perverse incentives to litigants." 242 But these concerns are magnified when dealing with foreign legal systems. Is the U.S. government to keep track of all lawsuits filed abroad that can potentially affect American interests? Even then, national governments have less opportunity and ability to interact and directly influence other countries' courts. And to the extent that influence exists, national governments find it much easier to deal with foreign affairs issues at government-to-government levels. At minimum, Sovereigntists should be concerned with domestic courts wielding greater influence in developing international law. Whether private litigation - even in a U.S. court - is the best way to resolve complicated transboundary issues is far from clear. 243 At the very least, foreign courts will be open to the accusation of parochial biases - with the appearance, if not the reality, that those courts favor foreign over U.S. interests. 244

[\*864] A natural response exists to all this. Some international law skeptics presumably would prefer a world where domestic extraterritorial laws are curtailed, and international law is also rejected. In such a world, states would rely solely on politics and power to extend influence. Yet such an approach would be near impossible to implement. In a globalized, modern, interdependent world, "it is impossible to conceive of a return to nature, to a pre-regulatory planet in which each state is free to act as it wishes, unfettered by international obligations." 245 Even if the forces of globalization were not an issue, NGOs, activist groups, and other states would not sit by idly. A remedy must exist somewhere for international harms. And if an entity has engaged in a blatant violation of an international norm, why should the entity not be held accountable? The question then is not whether law will address international challenges, but rather whether it will be international or extraterritorial in nature.

B. Taking Modern Internationalist Concerns Seriously

The modern Internationalists should also be wary of courts extraterritorially applying domestic laws as a way to address international challenges. As a means of promoting human and environmental rights, the extraterritorial application of domestic law is likely to be successful, if at all, only in the short term. From a Sovereigntist perspective, one of the threats of non-U.S. transnational litigation is the inability of the U.S. federal government to easily respond. From a modern Internationalist perspective, the problem is that foreign governments may be all too good at responding. Indeed, foreign states have long resisted U.S. civil litigation as a way of projecting American policy. 246 From diplomatic protests 247 to nonrecognition of judgments, 248 to enactment of blocking 249 or clawback statutes, 250 [\*865] countries have a wide range of options to prevent the effective extraterritorial application of U.S. laws. And, even worse, some commentators believe the effect could spur a backlash and goad foreign governments away from those values we hold most important. 251

Yet ineffectiveness of enforcement is not the only problem that should concern modern Internationalists. Extraterritorial laws undermine international law in a more fundamental way. Persistent resort to domestic courts, rather than developing multilateral treaty regimes, creates a self-perpetuating cycle [\*866] that ultimately undermines progressive development of international treaty law and international institutions. 252 A singular focus on developing and enforcing norms in domestic courts detracts from attention and efforts to develop international laws and shared norms. 253 At least comprehensive solutions are nearly impossible through domestic litigation. Extraterritoriality inevitably leads to a patchwork of inconsistent adjudications as different courts from different countries approach international issues using different laws and procedures. 254 In comparison, international tribunals enjoy procedural and other advantages that make them more suited to resolving international claims. 255

Modern Internationalists should also be wary (or perhaps embarrassed) of the apparent imperialism of using U.S. laws to serve global goals. Scholars have already challenged substantive human rights law as imposing Western values on other cultures. 256 The extraterritorial application of American law [\*867] certainly has the appearance of a unilateral instrument of American hegemony. 257 Other countries often view American court decisions as suspect. 258 This is particularly true when the United States applies a double standard - permitting foreigners to be sued in U.S. courts, but not permitting human rights lawsuits to be filed against American actors. 259 Accordingly, vigorous enforcement of human rights through international instruments and institutions often has a greater claim to legitimacy than domestic enforcement.

That other nations increasingly enforce their domestic law extraterritorially to extend their own international influence is problematic in another way. Little reason exists to believe that foreign laws necessarily will be consistent with Western concepts of justice. As Alfred Rubin argued almost twenty years ago, when transnational human rights litigation was in its nascent stages, "placing ourselves in the position of world policeman [\*868] for our version of international law creates a defensive reaction in even our allies … . It creates a precedent and sense of righteousness in others who would apply their laws and their versions of international law to Americans whose actions they do not like." 260 In recent years, even "U.S. courts have tended to adopt very narrow interpretations of rights protected under international human rights and humanitarian law treaties." 261 Internationalists rightly fear how U.S. courts will construe environmental rights. 262 This fear should be much greater with foreign courts that are less likely to share U.S. visions of liberal, democratic values. 263 At the very least, lawsuits may be filed by opportunistic litigants. 264 Or litigants may begin to forum shop to preemptively prevent suits seeking to impose liability. 265 [\*869] Internationalists might then do well to oppose in principle all kinds of transnational extraterritorial litigation on the grounds that domestic courts may set dangerous precedents weakening international legal protection.

This concern can be viewed from a slightly different perspective. In the international sphere, the United States was successful in imposing its perspective on international law after the Second World War, and the result has been the rise of human rights regimes. But if law migration really can occur, 266 would the modern Internationalists be comfortable if the international norms being created are not only non-American, but un-American, illiberal, and perhaps counter to traditional concepts of individual rights? 267 There's little reason to believe that other states (those unfriendly to human and environmental rights) will not equally be able to influence and effect change in international law. 268 Said differently, the disaggregation of the nation-state may lead to a pluralism that we are uncomfortable with.

C. What Is To Be Done?

So how should Sovereigntists and modern Internationalists respond to the threat of extraterritoriality? A complete description of how to reclaim international law is beyond the scope of this article. But some modest observations are appropriate.

Good reasons exist to embrace traditional international law. State-centered international law, tempered by strong human rights enforcement, is designed to prevent jealousies between states and excessive nationalism. Indeed, the widely held view of international law, until recently, was one of a system that would "triumph over narrow nationalism and, in so doing, … promote the peaceful settlement of disputes and a [\*870] common, cooperative approach to the resolution of global issues." 269 And it has worked reasonably well. Under classic international law doctrine, respect for territorial integrity through nonintervention in other states' domestic affairs promoted peace and stability. 270 This is the core of the concept of sovereign equality and the ban on nonintervention. 271 But extraterritorial application of law threatens to compromise that very principle, 272 and with it the stability the world has seen over the past fifty years.

The United States should encourage the development of international norms and procedures, because by doing so it protects its position in the world, and it avoids the difficulties with extraterritoriality. States enter into multilateral agreements specifically to obtain political, military, and economic security. Once created, multilateral laws and their institutions are less vulnerable to later shifts in power - thus protecting the interests of hegemons, like the United States, and projecting their influence even after hegemony has ended. 273 Nico Krisch has described it well, explaining how international law can lead to stability and the embedding of the values of dominant states:

International law is also extremely useful as an instrument of stabilization: it allows dominant states to project their visions of world order into the future, since once they are transformed into law, the backward-looking character of international law makes them reference points for future policies. And oftentimes, concepts strongly rooted in international legal norms create a new normality: over time, they modify the conceptions of legitimacy of international society, which makes later changes all the more difficult. 274

#### Backlash against extraterritoriality causes de-dollarization

Dr. Cynthia Roberts 20, Professor of Political Science at Hunter College, City University of New York and Research Scholar at the Saltzman Institute of War and Peace Studies at Columbia University, PhD, MPhil, and MA from Columbia University, “Chinese Strategic Intentions: A Deep Dive into China's Worldwide Activities A Strategic Multilayer Assessment (SMA) White Paper”, April 2020, https://tinyurl.com/3hj4cfua

This paper identifies two concerns regarding the extension of great power competition to America’s currently unrivalled dominance in financial power. First, aggressive overuse of financial instruments as extra-territorial instruments of coercion and punishment is incentivizing opponents, and even US allies, to find workarounds and defenses to limit their vulnerabilities and increase their autonomy for independent foreign policy. Although these initiatives still fall short as a genuine alternative to the US dollar, let alone the seed of structural power, the United States should not be complacent or assume that inertia and incumbency will keep the dollar as king forever. A second concern is that the weaponization of finance creates not only negative blowback effects that may impose greater future costs on senders (Drezner, 2015) but also the risk of a security dilemma spiral and inadvertent escalation.

Increases in US Coercive Financial Leverage Incentivize Other Powers to Find Escapes and Alternative Institutions

Aggressive overuse of financial instruments as extra-territorial instruments of coercion and punishment is incentivizing China, Russia, and even US allies to find workarounds and defenses to limit their vulnerability to American coercion. The financial domain is becoming contested as potential alternatives to the US dollar and financial system start to proliferate. These include expanding the international roles of the Chinese currency; constructing alternatives to existing international payments systems and the main global financial messaging system, the Society for Worldwide Interbank Financial Telecommunication (SWIFT); and the development of next generation digital currencies and payments systems that potentially could operate beyond the reach of the US government. Former Treasury Secretary Jacob Lew warned that “the plumbing is being built and tested to work around the United States. Over time as those tools are perfected, if the United States stays on a path where it is seen as going alone… there will increasingly be alternatives that will chip away at the centrality of the United States” (Lew, 2019).

#### Extinction

Joshua Zoffer 20, Investor at Cove Hill Partners, Fellow at New America, JD Candidate at Yale University Law School, AB from Harvard University, “To End Forever War, Keep the Dollar Globally Dominant”, The New Republic, 2/3/2020, https://newrepublic.com/article/156417/end-forever-war-keep-dollar-globally-dominant

In early 2016, Obama Treasury Secretary Jack Lew cautioned that the dollar’s dominance as a global currency rested, in part, on the U.S. government’s reluctance to fully weaponize it. If foreign markets and governments “feel that we will deploy sanctions without sufficient justification or for inappropriate reasons,” he warned, “we should not be surprised if they look for ways to avoid doing business in the United States or in U.S. dollars.” Lew’s case stemmed from the more fundamental view that the dollar’s international role is “a source of tremendous strength for our economy, a benefit for U.S. companies and a driver of U.S. global leadership”—in other words, a role worth keeping. This view is emblematic of American financial governance since the Second World War. U.S. economic analysts, especially at the Treasury, have jealously guarded the dollar’s role and the many benefits it offers: the ability to run large deficits at low cost and disproportionate influence over the structure of the global economy, among others.

Yet in their recent article in The New Republic, David Adler and Daniel Bessner argue the U.S. should abandon these advantages. In their view, the dollar’s role has encouraged American militarism and should be relinquished to curb such behavior. Dollar hegemony is not without cost, but to renounce it would be a profound mistake. Adler and Bessner’s view neglects the sizable economic benefits the dollar’s role confers on the U.S., as well as its possible use as an antidote to military adventurism. It ignores the enormous good that can be done with deficit spending, much of which has gone to the American military but could instead fund progressive programs. And it elides the inability of the U.S. and its global trading partners to shift away from dollar dominance without creating worldwide financial distress. Adler and Bessner are right that the U.S. has misused its privilege, but Washington should not abandon it; rather, American leaders should seek to transform it.

Generations of American policymakers have been right to protect the dollar’s key currency role for economic reasons. Most notably, dollar hegemony affords the U.S. the ability to run large and prolonged budget and balance-of-payments deficits. The dollar represents 62 percent of allocated foreign exchange reserves, is used to invoice and settle roughly half of world trade, and accounts for 42 percent of global payments. Because governments, banks, and businesses worldwide need lots of dollars, the world market always stands ready to absorb new U.S.-dollar-denominated debt without charging higher interest rates.

Adler and Bessner correctly point out that the rest of the world considers the dollar’s role as the world’s reserve currency to be an “exorbitant privilege,” a term coined in the 1960s by then French Finance Minister Valéry Giscard D’Estaing. The ability to spend beyond its means has enabled the U.S. to fund its impressive military might, whether one views that power as the fountainhead of Pax Americana or the source of illegitimate military adventurism.

But these economic benefits go beyond just deficits. The demand for dollars also pushes up the dollar’s value against other currencies, enhancing American purchasing power and offering consumers access to imports on the cheap. The dollar’s role also means American firms rarely need to do business in foreign currencies, reducing transaction costs and exchange-rate risks.

More broadly, America’s central economic role gives it outsize influence at crucial moments. At the height of the financial crisis that began in 2008, the Federal Reserve was able to inject vital liquidity into the global financial system by selectively offering dollar swap lines to trusted foreign central banks. Dollar hegemony enabled the U.S. to act swiftly, effectively, and on its own terms.

In addition, the dollar’s role offers a potent alternative to kinetic military action as a means of pursuing foreign policy objectives. The dollar’s broad use means access to dollar liquidity—which in turn requires access to the U.S. financial system—is essential for foreign governments and businesses. For foreign banks, especially, being cut off from dollar access is essentially a death sentence. That makes sanctions that do so a powerful tool in the international arena.

In 2005, for example, the U.S. used the dollar to strike a devastating blow against North Korea without firing a single shot or even formally enacting sanctions. Using authority provided by Section 311 of the Patriot Act, the Department of the Treasury crippled Banco Delta Asia, a bank accused of facilitating illegal activity by the North Korean government, by merely threatening to cut off its access to the American financial system. Deposit outflows began within days; within weeks the bank was placed under government administration to avoid a full collapse. Pyongyang was hit hard, as other banks ceased their business with it to avoid meeting the same fate.

Similarly, though the Trump administration has worked hard to undo it, the Joint Comprehensive Plan of Action with Iran to limit the development of nuclear weapons was made possible, in part, by painful dollar sanctions that brought Iran to the table. Far from being a proximate cause of military conflict, the dollar’s central global role has often been used to contain adversaries without military intervention.

Still, skeptics are right to point out that the dollar’s role has indirectly funded American interventionism and that dollar sanctions have been overused, provoking the ire of American allies. But these facts suggest we should use our dollar power to forge a more progressive U.S. order, not abandon the advantage altogether. America’s exorbitant privilege need not fund warships and missiles: The same low-interest borrowing could be used to fund a new universal health care system, expand access to higher education, or pursue any number of large-scale social policy objectives, including financing global public goods that no other country or consortium of countries is prepared to fund, such as climate change mitigation.

### 1NC

Multilat CP

#### The United States federal government should establish and advocate a framework for contingent international cooperation on expanding antitrust enforcement resources against export cartels, substantially increase prohibitions on domestic export cartels that operate in foreign nations without protections for export cartels upon mutual agreement.

#### The CP’s framework multilateralizes antitrust---explicit reciprocity bypasses generic barriers AND spills over to deep economic integration

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. 40-48

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

### 1NC

FTC Politics DA

#### The FTC is on track for unprecedented budget expansion to combat privacy abuses, but PC is key.

Mary Ashley Salvino 11-1, Privacy Attorney and Senior Legal Specialist at Bloomberg Law, J.D. from the City University of New York School of Law at Queens College, “How Will the FTC Get Its Privacy Mojo Back in 2022?”, Bloomberg Law, 11-01-2021, <https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-how-will-the-ftc-get-its-privacy-mojo-back-in-2022>

The odds are likely that the FTC will seek to optimize and strengthen its authority via its new left-leaning leadership. Lawyers should keep an eye on how the FTC leverages and aligns political capital in a way that maximizes innovation and cooperation with Democrats in Congress. Be ready for a robust rulemaking effort by the FTC, accompanied by a strong push for uniform privacy legislation.

The confirmation of Alvaro Bedoya as an FTC commissioner will likely give the FTC new leadership and momentum to focus on alternative rulemaking in consumer privacy protection. Additionally, Lina Khan, the new FTC chairwoman, has expressed interest in forging new antitrust rules, which could extend to creating additional privacy rulemaking.

In terms of political calculus, a strengthened regulator faces the same bipartisan gridlock characterized by a divided Congress. Yet legal practitioners should be aware of a growing momentum on both sides of the aisle, seeking more stringent regulations on unbridled Big Tech firms, as well as emerging nonpartisan sentiments toward seeking protection for children online.

Exploring Unprecedented Funding Initiatives

On Sept. 14, the House Committee on Energy and Commerce voted to appropriate an unprecedented $1 billion over 10 years to the FTC to establish and operate a new privacy bureau. Such an infusion, if passed by Congress, would instantly transform the FTC’s ability to effectively regulate unfair or deceptive acts or practices relating to privacy, data security, and data abuses. To put this infusion into perspective, it is critical to compare to FTC’s privacy budget for 2021 ($13 million) to its overall budget of $351 million.

Looking forward to 2022, it is likely that continued political alignment will be necessary to reinforce (and perhaps even expand) the FTC’s data privacy enforcement power. However, proponents of the FTC funding boost will need to reckon with rigorous bipartisan scrutiny in the Senate, as well as fierce opposition skepticism by Republicans and centrist Democrats alike. At the very least, proposals will face serious funding trimming, and even full-throated opposition, by legislators concerned about agency overreach.

#### The plan incites opposition, destroying other priorities.

William E. Kovacic 20, Professor at the George Mason University School of Law, JD from Columbia University, BA from Princeton University, “Keeping Score: Improving the Positive Foundations for Antitrust Policy”, University of Pennsylvania Journal of Business Law, Volume 23, Issue 1, 23 U. Pa. J. Bus. L. 49, Lexis

THE POLITICAL ASSAULT ON THE FTC

From the late 1960s through the 1970s, the FTC pursued an extraordinarily ambitious agenda of competition and consumer protection matters. Significant antitrust litigation included challenges to dominant firm misconduct and collective dominance, distribution practices, horizontal restraints, and facilitating practices. Many matters involved powerful economic interests, and in a number of cases the Commission sought structural relief in the form of divestitures or the compulsory licensing of [\*75] intellectual property. In 1974, the agency also initiated a program that required certain large firms to provide "line-of-business" data concerning a range of performance indicators.

In the same period, the Commission used a mix of litigation and rulemaking to transform its consumer protection agenda. Through policy guidance and litigation, the agency introduced its advertising substantiation program that required firms to have support for factual claims made in their advertisements. The Commission initiated over twenty-five rulemaking proceedings and promulgated final rules involving a broad collection of product and service sectors.

As a group, the FTC's competition and consumer protection initiatives aroused fierce opposition from the affected firms and industries, which contested the agency's actions in court and before Congress. The complaints of industry resonated with a large, powerful bipartisan coalition of legislators who criticized the Commission's activism, proposed various measures to curb the agency's authority, and ultimately adopted a number of restrictions in The Federal Trade Commission Improvements Act of 1980 [\*76] (FTC Improvements Act). In 1980, bitter opposition to elements of the FTC's competition and consumer protection programs led Congress to allow the FTC's funding to lapse, forcing the agency to temporarily cease operations. Perhaps emboldened by the weak political support the Commission enjoyed before 1981, when the Democrats controlled the White House and both chambers of Congress, the Reagan administration briefly resumed the assault on the agency's funding. In January 1981, David Stockman, Ronald Reagan's first Director of the Office of Management and Budget (OMB), launched a short-lived effort to eliminate funding for the FTC's competition policy program.

The congressional and executive branch officials who criticized the FTC in this period advanced two positive claims to justify recommendations for withdrawing authority or funding for the Commission. One claim was that the agency's choice of competition and consumer protection programs had contradicted congressional guidance about how the FTC should use its authority and resources. Many legislators complained that the agency had disregarded the legislature's preferences and used its powers in ways that Congress never contemplated to fall within the FTC's remit. As Congress considered bills in 1979 to limit the Commission's powers, Congressman [\*77] William Frenzel captured the prevailing legislative mood:

It is bad enough to be counterproductive and therefore highly inflationary, but the FTC compounds its sins by generally ignoring the intent of our laws, and writing its own laws whenever the whimsey strikes it . . .

Ignoring Congress can be a virtue, but the FTC's excessive nose-thumbing at the legislative branch has become legend. In short, the FTC has made itself into virulent political and economic pestilence, insulated from the people and their representatives, and accountable to no influence except its own caprice.

The Commission, Frenzel concluded, was "a rogue agency gone insane."

The accusation of Commission disobedience figured prominently in Senate deliberations on the 1980 FTC Improvements Act. In less flamboyant but still pointed terms, the chief Senate sponsors of the FTC Improvements Act said restrictions were necessary to curb the agency's unauthorized adventurism. Senator Howard Cannon explained: "The real reason that we have proposed this legislation for the FTC is because the Commission appeared to be fully prepared to push its statutory authority to the very brink and beyond. Good judgment and wisdom had been replaced with an arrogance that seemed unparalleled among independent regulatory agencies."

The accusation of disregard for congressional will soon echoed in statements by high level officials in the newly arrived Reagan administration. OMB Director Stockman recited a variant of this theme in an appearance before a House of Representatives Committee early in 1981 to address his proposal to eliminate funding for the agency's competition mission. Stockman said, " . . . in recent years the FTC has served the public interest very poorly, in major part because it has sought to expand its power and influence beyond that envisioned by Congress."

Beyond generalized claims of institutional disobedience, the accusation of disregard for congressional will was invoked to justify proposals to impose restrictions on specific FTC initiatives. For example, in the fall of [\*78] 1979, the Senate Commerce Committee held hearings on a proposal by Senator Howell Heflin to eliminate the FTC's power to order divestiture or other forms of structural relief in non-merger cases. This was a shot across the bow of the FTC's pending "shared monopoly" cases involving the breakfast cereal and petroleum refining sectors, where the FTC had requested structural relief (divestitures and, in the cereal case, compulsory trademark licensing) to restore competition. Congress did not adopt the Helfin proposal, but the idea of eliminating or restricting the FTC's power to seek divestiture remained a serious threat to the agency. Roughly a year after the Commerce Committee hearings on the Heflin amendment, on the day before the balloting in the 1980 presidential elections, Vice-President Walter Mondale appeared at a campaign rally in Battle Creek, Michigan (the headquarters of the Kellogg Company). The Vice-President assured his audience that, if he and President Jimmy Carter were reelected, the Carter administration would seek legislation to ban the FTC from obtaining divestiture in the breakfast cereal shared monopolization case.

A second, related claim was that the FTC had abandoned any adherence to sound administrative practice and descended into utterly irrational decision making. The agency was not merely disobedient ("rogue") but [\*79] crazy ("insane"), as well. Here, again, Congressman Frenzel pungently made the point. The FTC, Frenzel said, "is a king-sized cancer on our economy. It has undoubtedly added more unnecessary costs on American consumers who it is charged with protecting, than any other half dozen agencies combined." David Stockman's initial broadside against the Commission in February 1981 echoed this sentiment. In a newspaper interview, Stockman said the FTC "is a passel of ideologues who are hostile to the business system, to the free enterprise system, and who sit down there and invent theories that justify more meddling and interference in the economy."

The accusation of disobedience and the diagnosis of insanity fit poorly, or at least awkwardly, with the positive record of the FTC's activities in the 1970s. As discussed immediately below, the rogue agency story clashes with the many instances, especially between 1969 and 1976, in which congressional committees and key legislators directed the agency to carry out an aggressive, innovative enforcement program against major commercial interests. In 1969, numerous legislators endorsed the view of two external studies that the FTC had used its authority timidly and ineffectively. Leading members of Congress demanded that the agency [\*80] transform its competition and consumer programs or face extinction. Congress described the content of the desired transformation in several ways. At a high level, oversight committees and individual legislators called for a dramatic boost in the agency's appetite to undertake ambitious, risky projects--to replace a cautious, risk-avoiding decision calculus with a bold philosophy that erred in favor of intervention and used the agency's elastic powers innovatively. Congress's admonition to be aggressive and use power expansively emerged again and again in confirmation proceedings and routine oversight hearings. During hearings in 1970 to confirm Caspar Weinberger to be the Commission's new chair, Senator Warren Magnuson, Chairman of the Senate Commerce Committee, told the nominee to "maintain the right kind of morale by recruiting strongly and expanding . . . Trade Commission programs in order to perform the job well." In setting out this charge, Magnuson seemed to recognize that the FTC would have to be steadfast in resisting backlash--including from Congress--that would emerge as the FTC went about "expanding" its programs. The Commerce Committee Chairman said Congress was calling on the FTC to perform "tasks that require a great deal of attention and a great deal of fortitude not to respond to any pressures that come from any place."

Weinberger's successor, Miles W. Kirkpatrick, received similar, and even more explicit congressional guidance, to apply the Commission's powers broadly and aggressively. In 1969, Kirkpatrick had chaired a blueribbon American Bar Association panel whose report recommended the FTC implement an ambitious antitrust agenda that involved significant doctrinal, operational, and political risks. In his appearances as FTC chair before [\*81] congressional committees, Kirkpatrick often heard legislators applaud the risk-preferring approach of the ABA study. In Kirkpatrick's first appearance before the Commission's Senate Appropriations subcommittee in 1971, the Subcommittee Chairman, Senator Gale McGee, provided the following guidance:

I think this is one of the Federal commissions that has a much larger responsibility and capability than sometimes it has been willing to live up to for reasons of congressional sniping at it in some respects or pressures put on it through the industry and the like.

Too often it has been either shy or bashful. . . . That is why we were having a rather closer look at your requests just in the hopes of encouraging you, if anything, to make mistakes, but I think the mistakes you are to make ought to be mistakes in doing and trying rather than playing safe in not doing.

I believe that is the most serious mistake of all . . . you are not faulted for making mistakes. You may be for making it twice in a row, for not learning properly but, we would rather you make a mistake innovating, trying something new, rather than playing so cautiously that you never make a mistake. . . .

In his appearance before the same subcommittee a year later, Senator McGee observed with approval that Kirkpatrick had "responded to the criticism . . . by both Mr. [Ralph] Nader and the American Bar Association by moving aggressively against some of the major industries in the United States." Recognizing that the approach he described could elicit opposition from affected business interests, McGee promised that he and his colleagues would exercise best efforts to watch the agency's back: "[I]f you step on toes you are going to catch flak for it, but I hope we will be able to push this even more aggressively by backing you more completely with the kind of help that I think you require." McGee closed the proceedings with [\*82] militant instructions:

"Stay with it and flex your muscles, clinch your fists, sharpen your claws, and go to it. We think this is desperately important in the interest of the Congress, whose creature you are, and the consumer whose faith and substantive capabilities in surviving hang very heavily upon what you succeed in doing."

Kirkpatrick served as the FTC's chair for just over twenty-nine months. The Commission's new chair, Lewis Engman, received the same policy guidance that Congress had provided Weinberger and Kirkpatrick. At Engman's confirmation hearing before the Senate Commerce Committee early in 1973, Senator Frank Moss observed:

Under . . . Weinberger and Kirkpatrick, the Commission has taken on new life beginning with the search for strong and imaginative, rigorous developers and enforcers of the law and reaching out with innovative programs to restore competition and to make consumer sovereignty more than chamber of commerce rhetoric.

With evident approval, Moss recounted how the FTC had "stretched its powers to provide a credible countervailing public force to the enormous economic and political power of huge corporate conglomerates which today dominate American enterprise." The members of the Senate Commerce Committee, Moss concluded, "consider it one of our solemn duties to protect the Commission from economic and political forces which would deflect it from its regulatory zeal." Member after member of the Commerce Committee echoed Moss's message to Engman. Senator Ted Stevens, an Alaska Republican, told the nominee, "I am really hopeful that . . . you will become a real zealot in terms of consumer affairs and some of these big business people will complain to us that you are going too far. That would be the day, as far as I am concerned."

The FTC got the message. The words and actions of Weinberger, Kirkpatrick, Engman, and other FTC leaders in this period reflected a preference for boldness, aggressiveness, innovation, and zeal. In a letter to Senator Edward Kennedy in July 1970, Weinberger reported that the FTC was trying "to make the most of that other resource given to us by Congress [\*83] -- our statutory powers." Weinberger said the Commission had "encouraged the staff to make recommendations to us which will probe the frontiers of our statutes," had made progress in "[p]robling the outer limits" and "exploring the frontiers" of the agency's authority, and had shown it "is receptive to novel and imaginative provisions in orders seeking to remedy unlawful practices." In a speech to a professional association in 1971, Kirkpatrick reported that the Commission was "moving into 'high gear' in the task of preserving and promoting competition in the American economy." He said he and his fellow board members "fully intend to be in the vanguard of exploration of the new frontiers of antitrust law."

By mid-1974, the FTC had launched several significant cases involving monopolization and collective dominance, including pathbreaking shared monopolization cases against the breakfast cereal and petroleum refining industries. With these matters underway, Engman in 1974 appeared at a congressional hearing of the Joint Economic Committee and received criticism that the FTC had been insufficiently active in challenging monopolies. The Joint Committee's chairman, Senator William Proxmire, told Engman "the FTC, like a number of other regulatory agencies seems to concern itself with minor infractions of the law, and to spend much of its time on cases of small consequence." Perhaps astonished to hear that cases to break up the nation's leading breakfast cereal manufacturers and petroleum refiners involved minor infractions or matters of small consequence, Engman replied, "The Federal Trade Commission today is very aggressive. . . . We have seen a total turnaround in terms of the types of matters which are being addressed by the Bureau of Competition."

[\*84] Beyond general policy exhortations to exercise power boldly and to err on the side of intervention, of doing too much rather than too little, Congress in the early to mid-1970s instructed the Commission to focus attention on specific commercial sectors and competitive problems within them. In the face of severe fuel shortages and price spikes for petroleum products in the early 1970s, numerous legislators demanded that the FTC conduct investigations and challenge the conduct of large, integrated petroleum companies. Many insisted that the FTC use its competition mandate to force integrated refiners to deal on equitable terms with independent refiners and distributors. The Commission's decision to file the Exxon shared monopoly case, which sought extensive horizontal and vertical divestiture remedies, can be explained as a response to these demands. In the same period, Congress applied strong pressure upon the FTC to examine and correct what it believed to be serious structural obstacles to effective competition in the food manufacturing industry. Here, also, the agency's decision to prosecute the shared monopolization case against the country's leading producers of ready-to-eat breakfast cereals can be seen as a response to this concern and faithful to the congressional prescription that the FTC use novel, innovative approaches to cure competitive problems. In these and other matters, the Commission explored the frontiers of its powers in the development of new cases.

When one aligns the guidance of Congress in the early to mid-1970s about the appropriate content of FTC policy making with the FTC's activity in the decade, it is apparent that the critique of the agency as disobedient to legislative will is a fiction, or at least badly misleading. A more accurate positive depiction of events in the 1970s is that the Commission faithfully followed legislative instructions given from 1970 up through the mid-1970s about the appropriate philosophy and means of enforcement, and that, as the decade came to a close, Congress changed its mind about what the FTC [\*85] should do and how it should do it. As described below in Section IV.D., that change in legislative temperament and the response by Congress to industry backlash against the FTC's program have important implications for how the FTC plans programs and selects projects in the future. Accurate positive analysis reveals that the agency was not disobedient to Congress but was inattentive to the operation of a political feedback loop that exposes Congress to industry pressure once the FTC implements programs that involve significant economic stakes and endanger powerful commercial interests.

Nor does a careful study of the positive record of the 1970s show that the FTC policy making was "insane." Measured by its contributions to institution-building, the Commission did many things that epitomize good public administration. It carried out important organizational and personnel reforms that upgraded its operations and personnel. As explained more fully below, the agency also improved its mechanisms for setting priorities and selecting projects to achieve them and strengthened investments in policy research and development (including a program to evaluate the effects of completed cases). The FTC successfully carried out new regulatory duties entrusted by Congress in the 1970s; most notable was the implementation of the premerger notification mechanism that Congress created in the Hart-Scott-Rodino Antitrust Improvements Act of 1976. In all of these areas, the Commission of the 1970s made enduring enhancements to the institution and set important foundations for successful programs that followed in the next forty years. An insane agency could not have done so.

[\*86] Another focal point for attention in assessing the FTC's performance in the 1970s was the quality of its substantive agenda. Was the FTC's substantive program in the 1970s "insane"? Many Commission competition and consumer protection initiatives in the 1970s encountered grave problems. FTC efforts to execute the bold, innovative, risk-preferring program that Congress had called for earlier in the decade generated a number of serious project failures. Insanity, on the part of individual leaders or the institution as a whole, does not explain the failures. These outcomes have more prosaic causes whose understanding is important to the future formulation of competition policy. Chief among the FTC's flaws were a lack of historical awareness about the political hazards associated with undertaking an agenda of bold, innovative cases against powerful commercial interests; inadequate appreciation for the demands of bringing large numbers of difficult cases and promulgating ambitious trade regulation rules would impose on the agency's improving but uneven human capital; and underestimation of the change in the center of gravity of economic learning that supports the operation of the U.S. antitrust system. As described below, many of these failings are rooted in weaknesses in the FTC's knowledge in the 1970s of the positive record of its past enforcement experience.

B. The Inadequate and Misdirected Enforcement Activity Narrative

Like the hyperactivity narrative described above, the inadequate activity narrative relies heavily on enforcement data to support the view that the federal antitrust agencies have brought too few cases overall and, when filing cases, have focused resources on the wrong types of matters.

Implicit or explicit assumptions about the level of enforcement activity have provided a central foundation in the modern era for broad normative claims of poor system performance. One collection of inadequacy critiques attacks federal enforcement program of the Reagan administration -- a period characterized by what one journalist described as an "almost total abandonment of antitrust policy." In 1987, in discussing Reagan-era [\*87] federal antitrust enforcement, Professor Robert Pitofsky said the DOJ and the FTC had produced "the most lenient antitrust enforcement program in fifty years." Professor Milton Handler remarked that in the Reagan era "a policy of nonenforcement has set in, much to the distress of those who believe that without antitrust the free market cannot remain free." Professors Lawrence Sullivan and Wolfgang Fikentscher observed, in addressing the treatment of civil nonmerger matters, "enforcement ceased."

A second body of commentary assails the work of the federal agencies in the George W. Bush administration. For example, in 2008, during his campaign to gain the Democratic Party's nomination for the presidency, Barack Obama said the George W. Bush administration "has what may be the weakest record of antitrust enforcement of any administration in the last half-century." The Obama statement did not compare activity levels across all administrations over the 50-year-long comparison period, but the statement suggested that the general claim was based on variations in activity over time.

A third version of the inadequacy narrative marks the beginning of the decline of effective enforcement at the outset of the George W. Bush administration and extending through the present.

A fourth variant writes off the entire period from roughly 1980 onward as an antitrust catastrophe. After noting that for most of the 20th century "antitrust enforcement waxed or waned depending on the administration in office," Professor Robert Reich recently wrote that "after 1980 it all but [\*88] disappeared." He added that Presidents Bill Clinton and Barack Obama "allowed antitrust enforcement to ossify, enabling large corporations to grow far larger and major industries to become more concentrated."

Presented below are categories of arguments that rely upon specific assertions about the positive record of modern antitrust enforcement. These arguments make positive claims regarding either the amount of activity, the reasons for observed behavior, or both.

GENERAL CRITICISMS OF ANTITRUST ENFORCEMENT: BORK, REAGAN, AND THE DESTRUCTION OF U.S. COMPETITION POLICY

Many commentators have offered explanations for why federal antitrust enforcement became inadequate after the late 1970s. One major positive explanation is that the modern Chicago School of antitrust analysis, grounded largely in the writings of Robert Bork, inspired a severe retrenchment of enforcement at the DOJ and the FTC and led the federal courts to narrow antitrust doctrine since the late 1970s. A major focus of this discussion of the causes for changes in enforcement involves rules governing the treatment of dominant firms.

A second cause offered to explain a redirection of enforcement is the ascent to the presidency of Ronald Reagan and his appointment of permissive leadership to the DOJ and the FTC. The Reagan administration [\*89] is said to have inherited a generally well-functioning antitrust enforcement system and run it into the ground.

The Chicago School, Bork-centric, and Reagan-centric explanations for policy change can be misleading due to mischaracterizations of what took place and their tendency to omit other forces that had helped narrow the scope of antitrust enforcement. Bork and the Chicago School unmistakably have exerted a significant impact upon modern antitrust policy, but the retrenchment of antitrust enforcement in some areas cannot accurately be attributed to them entirely or, for a number of important developments, even principally. Many proponents of the inadequacy narrative make little or no mention of the role of modern Harvard School scholars, such as Philip Areeda and Donald Turner, in leading courts and enforcement agencies to move the antitrust system toward a less interventionist stance.

Areeda and Turner encouraged courts to forego reliance on noneconomic goals in deciding antitrust cases. The two Harvard scholars also advocated the adoption of stricter procedural and doctrinal screens to counteract what they perceived to be flaws in the U.S. system of private rights of action. The inadequacy narrative often overlooks the influence of the modern Harvard School and thus misses how much the permissiveness of modern antitrust policy reflects the Harvard School's concern that private rights of action over-deter legitimate business conduct by dominant firms. [\*90] This yields a faulty positive diagnosis of the forces that have reduced the reach of the U.S. antitrust regime. As noted below, understanding how the institution-grounded limitations proposed by the modern Harvard School have imposed greater demands on plaintiffs has important implications for government plaintiffs seeking to devise a strategy to reclaim doctrinal ground lost since the 1970s.

Similar imprecision and omission characterize the portrayal of the Reagan administration as the force that swung antitrust policy away from a sensible interventionist equilibrium and gave it a durably noninterventionist orientation. Some elements of the Reagan-centric narrative turn events 180 degrees around from their positive roots. More significant, the narrative does not address how badly the Congress and the White House had damaged the FTC's stature and operations before Ronald Reagan took office in late January 1981. By the end of 1980, the Commission had been shoved into the equivalent of political bankruptcy by a Congress and a White House under the control of the Democratic Party.

By treating the 1980 presidential election as the cause of an abrupt change in federal antitrust enforcement policy, the Reagan-centric inadequacy narrative fails to grasp the significance of the political assault, led by Democrats, against the FTC in the late 1970s. Recognition of how the FTC's relationship with Congress changed over the course of the 1970s forces one to confront the question of why an agency that enjoyed powerful congressional support through much of the decade came to grief so quickly. The episode has a sobering cautionary lesson for contemporary policy making: it demonstrates how quickly congressional attitudes can change once powerful business interests affected by FTC actions bring their [\*91] resources to bear upon Congress, and how turnover in the legislature can erode vital political support. An accurate positive account of the 1970s suggests that an agency should strive to complete its cases and rulemaking initiatives as expeditiously as possible, lest long lags between the start and conclusion of matters expose the agency to debilitating political backlash. This policy making prescription becomes apparent only by forming an accurate picture of what happened to the FTC in the 1970s.

CHICAGO-SCHOOL INSPIRED FOCUS ON PRICE EFFECTS

Critics of modern FTC and DOJ law enforcement often state that the federal agencies focus entirely on price and output effects in selecting and prosecuting cases. This tunnel-visioned approach is said to ignore important considerations involving the harmful effects of business behavior on quality and innovation.

In 2019, in a newspaper op-ed, Rana Fordoohar, a journalist who covers the tech sector, stated: "But monopoly policy in America is currently driven by "Chicago School" thinking, which espouses the idea that as long as consumers aren't paying too much for a good or service, all is well." In August 2020, Joshua Brustein, a business journalist, said: "For decades, antitrust enforcers have centered on the consumer welfare standard, which defined price increases as the only valid focus of antitrust action."

Like the portrayal of activity levels, these positive descriptions of the policy concerns that have guided FTC and DOJ law enforcement are faulty. The claim that the federal antitrust agencies since the late 1970s have focused solely upon price and output effects overlooks the many important instances in which innovation and other quality-related effects were paramount in FTC and DOJ decisions to challenge mergers and bring nonmerger cases. Among other areas from the 1980s to the present, the DOJ and the FTC have emphasized innovation effects in analyzing competitive effects in deals involving defense contractors and transactions [\*92] in the health care sector.

[FOOTNOTE] See, e.g., Joint Statement of the Department of Justice and the Federal Trade Commission on Preserving Competition in the Defense Industry (Apr. 12, 2016) ("In the defense industry, the Agencies are especially focused on ensuring that defense mergers will not adversely affect short- and long-term innovation crucial to our national security. . . ."); Daniel L. Rubinfeld & John Haven, Innovation and Antitrust Enforcement, in DYNAMIC COMPETITION AND PUBLIC POLICY 65 (Jerry Ellig ed., 2001) (discussing DOJ emphasis on innovation-related effects in antitrust enforcement, including the Department's challenge to Lockheed Martin's effort to purchase Northrop Grumman in the late 1990s); William E. Kovacic, Competition Policy Retrospective: The Formation of the United Launch Alliance and the Ascent of SpaceX, 27 GEO. MASON L. REV. 863, 867-68, 899-900 (2020) [hereinafter Competition Policy Retrospective] (discussing centrality of innovation issues in modern antitrust analysis of aerospace and defense mergers). [END FOOTNOTE]

INADEQUATE ENFORCEMENT AGAINST DOMINANT FIRM MISCONDUCT

A recurring critique of modern U.S. federal enforcement is the failure of the DOJ and the FTC to police dominant firm misconduct. In 2002, Professor Robert Pitofsky wrote that "during the Reagan years, there was no enforcement whatsoever" against attempts to monopolize and monopolization. At a conference in 2009, Professor Harvey Goldschmid observed that during the George W. Bush presidency "there has been no enforcement" of Section 2 of the Sherman Act.

In a wide-ranging attack upon federal antitrust enforcement since the 1970s, Jonathan Tepper and Denise Hearn concluded:

The evidence confirms the death of antitrust. When surveying merger challenges, [Professor Gustavo] Grullon found that enforcement of Section 2 of the Sherman Act fell from an average of 15.7 cases per year from 1970-1999 to less than 3 over the period 2000-2014. . . . The recent failure to enforce antitrust is horrifying, considering how industries have become more concentrated every year.

In May 2018, Senator Richard Blumenthal and Professor Tim Wu [\*93] authored an op-ed piece that recited similar statistics: "Enforcement of the antimonopoly laws has fallen: Between 1970 and 1999, the United States brought about 15 monopoly cases each year; between 2000 and 2014, that number went down to just three."

Each of these statements about the amount of federal enforcement activity is incorrect. The Reagan antitrust agencies did not bring many cases involving attempted monopolization or monopolization, but the number exceeded what Professor Pitofsky called "no enforcement whatsoever". The number of FTC attempted monopolization and monopolization cases initiated from 2001 through 2008 exceeded what Professor Goldschmid called "no enforcement." From 1970 through 1999, federal enforcement of Section 2 of the Sherman Act and the enforcement of Section 5 of the FTC Act to challenge collective dominance or single-firm exclusionary conduct did not exceed four cases per year - a notably lower rate of activity than the number of cases per year reported by Senator Blumenthal and Professor Wu ("about 15 cases each year") and the number for the same period reported by Jonathan Tepper and Denise Hearn (15.7 cases per year).

[\*94] INADEQUATE MERGER ENFORCEMENT

Inadequacy narratives frequently use categorical statements about activity levels to demonstrate weaknesses in federal merger enforcement. In a discussion of Reagan administration antitrust policy, Professor Eleanor Fox observed that "U.S. federal merger enforcement ground to a halt." In the 2010 edition of their antitrust casebook, Professor Robert Pitofsky, Professor Harvey Goldschmid, and Judge Diane Wood observed that there was "no enforcement at all against vertical or conglomerate mergers during the Bush Administration." In a recent book discussing U.S. antitrust policy, Professor Tim Wu observed that the DOJ in the George W. Bush administration "did not block any major mergers."

The factual claims contained in these assessments are incorrect. Federal merger enforcement during the Reagan administration did not grind to a halt. The George W. Bush Administration did not challenge large numbers of vertical mergers, but the number was greater than the "no enforcement at all" amount claimed by Professor Pitofsky, Professor [\*95] Goldschmid, and Judge Wood. During the Bush administration, the DOJ sued and blocked mergers involving General Dynamics/Newport News Shipbuilding (nuclear submarine design and production) and United Airlines/US Airways (airline transportation services). Given the significance of the merging parties and the importance of the economic sectors at issue, competition law experts, in responding to Professor Wu, likely would score these proposed transactions as "major" mergers.

C. How Narratives Predicated Upon Mistaken Positive Assumptions Distort Understanding About the Functioning of the U.S. Antitrust Regime

Should the competition policy community of academics, advocacy groups, government officials, and practitioners care about these and other inaccurate depictions of federal enforcement activity? Indeed, they should. There is a danger that the fractured positive accounts of past activity will be taken as true and inform the debate about the future of competition policy. There is a fast-expanding literature that contends, as Professor Daniel Crane puts it, that "antitrust enforcement has drifted toward near-oblivion, with potentially dire consequences for our economy, and society more generally." The portrayal of inert federal agencies as abandoning a sensible earlier custom of robust enforcement is a particularly important pillar of modern calls for sweeping reform.

Failure to Learn from Earlier Enforcement Activities. A major hazard of the inadequacy narratives and their dismal depiction of modern antitrust policy is that they impede the learning by which an antitrust agency improves over time. If it is assumed as a fact that the federal antitrust enforcement [\*96] policy was devoid of useful activity for the past forty years or longer, then there is no point in looking for positive accomplishments. A listener who accepts as true the claim that nothing happened, or that what happened was the work of an insane agency, reasonably might conclude that there is nothing worth emulating from the earlier period.

There is a serious cost to embracing the excessive activity narrative or the inadequate activity narrative as resting on sound positive foundations. By writing off the relevant eras as a wasteland, one ignores noteworthy policy developments that modern analysts can use to guide policy going forward. Merger enforcement provides an example. If federal merger enforcement actually ground to a halt between 1981 and 1988, there would be no merger challenges to study. Yet the federal enforcers blocked a number of deals in this period and, in some instances, the government gained favorable judicial decisions that provide clues about how to formulate successful challenges in the future.

Perhaps the most notable of the government's merger litigation victories in the 1980s was the FTC's successful challenge to Hospital Corp.'s effort to acquire Hospital Affiliates International, Inc. and Health Care Corp. The Commission argued that the acquisitions would reduce competition by enabling the surviving firms to coordinate behavior more effectively with regard to pricing and other terms of service. The 117-page opinion for the Commission by Commissioner Terry Calvani is a textbook model of superb opinion-writing, what the Seventh Circuit called a "model of lucidity." Commissioner Calvani carefully set out the arguments of complaint counsel and the defendants, reviewed the precedent and literature regarding the coordinated effects theory of harm, and displayed [\*97] the type of erudition and expertise that is offered as a justification for entrusting antitrust adjudication to an expert administrative body.

Every commissioner who is assigned to write an opinion for the FTC should feel an obligation to read the Calvani Hospital Corp. decision to see the quality of analysis and style of presentation that can impress a court of appeals favorably. Rather than dismiss the period since 1980 as a barren era in federal enforcement, the advocates for a major expansion of intervention should assemble an accurate positive record of every decision and every initiative that can help them achieve their ends.

In the face of a demanding judiciary, the FTC will need every advantage it can obtain, including footholds provided by enforcement measures undertaken from the early 1980s forward. If proponents of fundamental change treat the past forty years as an empty space in antitrust policy, they will walk past precedents and practices that would advance their cause. If one assumes that timidity bordering on cowardice gripped the federal agencies after 1999, there is likewise no point in considering how the FTC in the 2010s achieved considerable success in three consecutive trips to the Supreme Court in antitrust cases - the first time the Commission had won three straight cases before the high court since the 1960s - or bothering to understand what mix of strategy and advocacy (and, perhaps, luck) made it possible.

The analysis of innovation issues provides another example of how an accurate grasp of the positive record can help build a new program. Consider the claim, noted above, that the federal agencies brought no vertical merger cases between 2001 and 2008. An observer who embraced this view is likely to overlook the FTC's decision to block the proposed merger of Cytyc and Digene. The Commission's analysis of this transaction teaches a lot about how to analyze innovation markets that reach back to the earliest stages of an R&D pipeline.

Adherence to the view that modern antitrust policy has ignored [\*98] innovation effects in merger analysis and in nonmerger cases likewise will miss important sources of insight. The experience of the two federal agencies since the early 1980s in reviewing aerospace and defense industry mergers illuminates how to analyze innovation issues and formulate successful merger challenges in dynamic, high technology sectors. The federal government's analysis of these transactions has been representative of a larger awareness that innovation concerns should be decisive, or at least equal in importance to price effects, in a significant number of merger reviews and nonmerger matters.

Diagnosing the Obstacles to Litigation Success and Overcoming Them. A second and closely related reason to resist faulty positive accounts of past experience is that they obscure the path to possible litigation success in single-firm monopolization cases. In the FTC's unsuccessful Rambus case, the U.S. Court of Appeals for the District of Columbia relied heavily on a Supreme Court decision ( NYNEX Corp. v. Discon, Inc. ) that was premised in part on concerns about overdeterrence that might arise from private treble-damage law suits. The FTC might have argued to the D.C. Circuit that the Commission, as a federal government agency, was a responsible steward of the public trust and need not be bound by doctrines designed to confine private litigants. Future attempts to use litigation to condemn dominant firm conduct, and extend the reach of antitrust oversight, might emphasize the distinctive role of public enforcement and, perhaps, resort more extensively to the FTC's administrative adjudication process.

In other words, seeing more clearly the foundations of defendant-friendly doctrine indicates what litigation strategy (i.e., premised on the distinctive role of the public prosecutor and the special capacity of the FTC's administrative process) promises the greatest prospects for success in what is today a daunting judicial environment. To use litigation to expand the zone of potential intervention, the Commission will need to study and build [\*99] upon litigation successes such as McWane, Inc. v. FTC, where the Commission prevailed on a monopolization theory of liability before a court of appeals that has not always been a favorable forum for the review of Commission antitrust cases. If one assumes, as some commentators suggest, that the federal agencies brought no monopolization cases in the past twenty years, then one is unlikely to look for or study McWane - to recognize the doctrinal footholds it provides for future cases, to analyze how the agency assembled a convincing factual record, and, more generally, to see how the agency can replicate the success in the future.

Setting a Common Foundation for Debate About Future Antitrust Enforcement. A third reason to remedy the uncertain grasp of the past is its importance to the modern debates about the proper direction for the U.S. antitrust system. Without a common understanding of what actually happened in the past, how can policy makers and commentators make sound normative judgments about what the U.S. enforcement agencies should do in the future? Professor Douglas Melamed recently has posited that the contestants in the modern debate about antitrust policy often talk past each other and do not engage on questions crucial to deciding whether and how much to modify current antitrust policy, or to create new competition policy instruments and institutions. It is doubtful that what Professor Melamed calls two largely disconnected "conversations" can be joined up without a better common understanding of what actually has taken place. In so many ways, accurate comprehension of what happened is the essential foundation for the processes of interpretation (What explains the behavior in question? What is its significance?), evaluation (Was the behavior good or bad?), and refinement (What should we do next time?).

Think of it in terms of teaching a class. Suppose the bases for the grade in the course are (a) regular attendance in class, (b) contributions to class discussion, and (c) performance on an end-of-term examination. Before we determine the quality of the student's work and assign a grade, we need first to agree about whether the student showed up for class, spoke in class, and turned in an exam. Modern discourse about U.S. competition law indicates a lack of agreement on equivalents of these basic predicates for a normative assessment of the performance of the antitrust enforcement system.

Appreciating How Institutional Arrangements Shape Substantive [\*100] Outcomes. Both of the inadequacy narratives described above lapse into describing the U.S. antitrust system as regularly succumbing to irrational (or, as Representative Frenzel put it, insane) swings in behavior, from wild overreaching in the 1970s and in earlier periods of antitrust history to excessive restraint from the late 1970s to the present. In their positive description of why events transpired as they did, the inadequacy narratives focus heavily on the role of agency leadership and personality. For example, the excessive enforcement narrative portrays federal enforcement officials in the 1960s as possessed by a deranged opposition to mergers and depicts Michael Pertschuk, the FTC's chairman from 1977-1981, as a singularly malevolent force who drove the agency off the rails. The inadequate enforcement narrative damns William Baxter, who chaired the DOJ Antitrust Division from 1981 through 1983, and James C. Miller III, who chaired the FTC from 1981 to 1984, as irrational extremists with no fidelity to norms that promote sound policy making.

The abilities and instincts of individual leaders are undoubtedly important to the success of a competition authority. Yet the personality-driven explanation for agency behavior overlooks the role that institutional arrangements have played in shaping outcomes - for example, by moderating policy impulses of some leaders and creating structures and mechanisms (such as a program of ex post evaluation of agency decisions) that improve policy making regardless of who is in charge. The single-minded focus on personalities also obscures the extent to which various institutional arrangements played central roles in the agency's achievement of successful policy outcomes. In short, one loses the ability to develop a [\*101] better sense of what accounts for policy successes and failures. Replacing a supposed pariah with a presumed miracle worker may not improve the status quo by much if deep-seated institutional weaknesses are major sources of observed policy failures.

#### Absent effective regulation, privacy violations destroy democracy.

Carissa Véliz 21, Associate Professor of Philosophy and Tutorial Fellow in Hertford College at the University of Oxford, Ph.D. in Philosophy from the University of Oxford, “Privacy and digital ethics after the pandemic,” Nature Electronics, Vol. 4, 2021, <https://www.nature.com/articles/s41928-020-00536-y>

The increasingly prominent — and inescapable — role of digital technologies during the coronavirus pandemic has been accompanied by concerning trends in privacy and digital ethics. But more robust protection of our rights in the digital realm is possible in the future.

The coronavirus pandemic has permanently changed our relationship with technology, accelerating the drive towards digitization. While this change has brought advantages, such as increased opportunities to work from home and innovations in e-commerce, it has also been accompanied with steep drawbacks, which include an increase in inequality and undesirable power dynamics.

Power asymmetries in the digital age have been a worry since big tech became big. Technophiles have often argued that if users are unhappy about online services, they can always opt-out. But opting-out has not felt like a meaningful alternative for years for at least two reasons.

First, the cost of not using certain services can amount to a competitive disadvantage — from not seeing a job advert to not having access to useful tools being used by colleagues. When a platform becomes too dominant, asking people not to use it is like asking them to refrain from being full participants in society. Second, platforms such as Facebook and Google are unavoidable — no one who has an online life can realistically steer clear of them. Google ads and their trackers creep throughout much of the Internet1, and Facebook has shadow profiles on netizens even when they have never had an account on the platform2.

Citizens have responded to the countless data abuses in the past few years with what has been described as a ‘techlash’3. Tech companies whose business model is based on surveillance ceased to be perceived as good guys in hoodies who offered services to make our lives better. They were instead data predators jeopardizing, not only users’ privacy and security, but also democracy itself. During lockdown, communication apps became necessary for any and all social interaction beyond our homes. People have had to use online tools to work, get an education, receive medical attention, and enjoy much-needed entertainment. Gratefulness for having technology that allows us to stay in contact during such circumstances has thus watered down the general techlash. Big tech’s stocks have been consistently on the rise during the pandemic, in line with its accumulating power.

As a result of the pandemic, however, any lingering illusion of voluntariness in the use of technology has disappeared. It is not only citizens who rely on big tech to perform their jobs: businesses, universities, health services, and governments need the platforms to carry out their everyday functions. All over the world, governmental and diplomatic meetings are being carried out on platforms such as Zoom and Teams. Since governments do not have full control over the platforms they use, confidentiality is uncertain.

Enhanced power asymmetries have also worsened the vulnerability of ordinary citizens in areas that range from the interaction with government to ordering food online, and almost everything in between. The pandemic has, for example, led to an increase in the surveillance of employees as they work from home4. Students are likewise being subjected to more scrutiny: by their schools and teachers, and above all, by the companies on which they depend5. Surveillance for public health purposes has likewise increased. Privacy losses disempower citizens and often lead to further abuses of power. In the UK, for example, companies collecting data for pubs and restaurants for contact-tracing purposes have sold on that information6.

Such abuses are not isolated events. For the past two decades, we have allowed an unethical business model that depends on the systematic violation of the right to privacy to run amok. As long as we treat personal data as a commodity, there will be a high risk of it being misused — by being stolen in a hack or by being sold to the highest bidder (which often includes nefarious agents).

In addition to favouring digital technologies, power shifts resulting from the pandemic have also promoted authoritarian tendencies. Democracy is in retreat. According to Freedom House, a think-tank in Washington DC, democracy and respect for human rights have deteriorated in 80 countries since the outbreak of the coronavirus7. The pandemic has, in particular, greatly benefitted China and its approach to technology. By managing the pandemic much more successfully than Western countries, China has advanced years in its race against Western hegemony.

The task ahead

As the pandemic abates, the challenge will be to maintain the positive aspects that can come from an increase in digitalization, while minimizing the risks and harms, and attempting to recover any ground lost. This path is replete with possible pitfalls.

One concern is the increasing closeness between technology companies and governments. Tech billionaire and former Google CEO Eric Schmidt has, for instance, called for “unprecedented partnerships between government and industry”8. Palantir, the controversial Central Intelligence Agency (CIA)-backed company, is now collaborating with both the UK’s National Health Service (NHS) and the US Department of Health and Human Services9. The NHS, in particular, gave Palantir all kinds of data about patients, employees and members of the public — from contact information to details of gender, race, work, physical and mental health conditions, political and religious affiliation, and past criminal offences10.

Prominent among the many privacy challenges citizens face in the wake of the pandemic are data deals that might consolidate widespread surveillance as a requirement to access primary services and opportunities. Given big tech’s track record in violating people’s privacy, its recent interest in expanding into the health sector is particularly alarming. Amazon’s new Pharmacy promises 80% discounts, for example, which suggests that sensitive data may be of more interest to the retailer than immediate profits11.

A related concern is that, in their effort to defeat China in the race towards the development of increasingly sophisticated artificial intelligence (AI), Western countries might continue to allow the trade in personal data, and may even be enticed to further liberalize personal data for the purposes of financial gain or competitive advantage12. Such an approach would be a mistake. True progress is not achieved by forsaking human rights. Beating China in a race to the moral bottom would not be a victory for the West. Instead, countries need to close ranks in defence of human rights. Diplomacy will be crucial in the coming years to meet the biggest challenges beyond the coronavirus pandemic, which include climate change and the regulation of digital technologies. Countries must try to come together and reach agreements on minimum standards and rules regarding cybersecurity, privacy and the governance of AI. If enough countries unite, they can make it attractive for China to cooperate.

Items on the agenda

Privacy needs to be a key item at the diplomatic negotiating table. Even the most capitalist societies do not allow certain kinds of trade that erode rights or valued ways of life. Personal data should not be something to be bought and sold. Duties of care should be attached to the collection and management of personal data. By collecting more personal data than we need, and by trading it for profit, we are creating our own risk as a society. Data misuse leads to inequality, mistrust, national security risks, and even to the erosion of democracy, as illustrated by the Cambridge Analytica scandal13. Trades in personal data should be banned, and fiduciary duties should be imposed on anyone who collects, manages or stores personal data14.

Cybersecurity standards and rules are a second crucial item to reach agreements on. We need to build safer products. For that, we need to come up with international minimal standards and certifications, as well as pacts to ensure a relatively peaceful cyberspace that can be used safely by netizens and companies. Perhaps the most difficult and important challenge on the agenda will be to agree on AI ethical standards. Rules are needed to ensure accountability, fairness, safety, and the enhancement of individual autonomy.

Up until now, companies and governments have been using the general population as guinea pigs in their attempts to develop AI. Citizens are routinely subjected to algorithms that have not undergone a robust process of randomized controlled trials. On occasion, algorithms have never been used outside the lab, and we discover their faults once they have harmed someone. We do not allow that to happen with pharmaceutical drugs, and neither should we allow it to happen with algorithms that are involved in decisions that have a significant impact on people’s lives.

Reasons for optimism

Despite the concerning trends regarding privacy and digital ethics during the pandemic, there are reasons to be cautiously optimistic about the future. First, citizens around the world are increasingly suspicious of tech companies, and are gradually demanding more from them. Second, there is a growing awareness that the lack of privacy ingrained in current apps entails a national security risk, which can motivate governments into action. Third, US President Joe Biden seems eager to collaborate with the international community, in contrast to his predecessor. Fourth, regulators in the US are seriously investigating how to curtail tech’s power, as evidenced by the Department of Justice’s antitrust lawsuit against Google and the Federal Trade Commission’s (FTC) antitrust lawsuit against Facebook15. Amazon and YouTube have also been targeted by the FTC for a privacy investigation16. With discussions of a federal privacy law becoming more common in the US, it would not be surprising to see such a development in the next few years. Tech regulation in the US could have significant ripple effects elsewhere.

Societies have managed to regulate every significant industry that has ever existed — from railways, cars, and aviation to utilities, pharmaceuticals, and food. The task of our generation is to make sure that whatever rights we are owed offline are also respected online. Digital technologies can only constitute progress if they serve the well-being of citizens and the flourishing of democracy.

#### Extinction

Jessica T. Mathews 21, Distinguished Fellow & former President, Carnegie Endowment for International Peace, "Present at the Re-creation?" Foreign Affairs, March/April 2021, <https://www.foreignaffairs.com/articles/united-states/2021-02-16/present-re-creation>.

In short, what Biden regularly calls “the power of our example” is nothing like what it used to be. When it comes to the pillars of a law-abiding democracy, the United States is now more an example of what to avoid than of what to embrace. The country retains military primacy and the economic heft to impose sanctions, but the former has limited utility, and the latter are seldom effective when wielded unilaterally. To achieve its ends, Washington will have to heal at home—a long, slow process—while it rebuilds its power to persuade. As secretary of state, Antony Blinken will likely lead an important effort to rebuild morale and effectiveness within the country’s diplomatic corps, luring back talented professionals who fled Trump’s chaos, broadening recruitment, pursuing reforms to make the department’s work more efficient and creative, and appointing diplomatic veterans to key posts at home and abroad. But such steps will take a long time to make a difference. Meanwhile, Biden’s team may be seriously overestimating the leverage that the United States retains for initiatives that depend on its example, such as the global summits the president wants to convene on climate change and renewing democracy.

Facing a globalized world in which power is dispersed and the United States’ reputation is diminished, Biden will confront cautious, even skeptical foreign partners—a challenge to which American leaders are unaccustomed. Much of his agenda will have to be carried out through executive orders, which, the world knows, can be just as quickly undone by the next president. Foreign governments understand that last year’s presidential election was not a repudiation of Trumpism. Even close allies have therefore been forced into a dangerous game of American roulette, dealing with a United States that can flip unpredictably from one foreign policy posture to its opposite. The logical response for them is to hedge: avoiding major commitments and keeping their options open, even when it comes to U.S. policies that would otherwise be welcome. In such an environment, everything that Washington hopes to achieve will be more difficult.

PICKING UP THE PIECES

Unless there is a current crisis, foreign policy generally plays a negligible role in U.S. elections. That was never more true than in the 2020 Democratic primary campaign, in which every contender named repairing democracy at home as the most important “foreign policy” priority. Biden was an extreme example. The fact sheet that accompanied his first major foreign policy address, delivered in October 2019, listed “remake our education system” as the first bullet point and “reform our criminal justice system” as the second.

Nor was foreign policy a significant topic in the general election campaign, even though the past half century has shown that what occurs overseas is more than likely to determine a president’s legacy. Disastrous wars or foreign imbroglios severely damaged the administrations of five of Trump’s nine most immediate predecessors: Lyndon Johnson (the Vietnam War), Richard Nixon (Vietnam, again), Jimmy Carter (the Iran hostage crisis), Ronald Reagan (the Iran-contra affair), and George W. Bush (the Iraq war). Foreign policy is also the source of sudden surprises that call for leaders with experience in rapid, high-stakes decision-making and a knowledge of recent history. Nonetheless, voters don’t seem to care much—and thus neither do most candidates.

Still, Biden’s intentions can be inferred from his record in government, from what he has said and written in the past few years, and, particularly, from his early high-level appointments. Although together those things shed a good deal of light on what he will try to do, it is too early to know what a U.S. Senate that features the thinnest possible Democratic majority will allow him to accomplish or how doubting foreign governments will respond. Unknowable, too, are the effects of dangers now building offstage, the kinds of systemic shocks that have become almost a norm of the last several decades. Finally, there are practical issues of sequencing that get lost in campaign rhetoric. For instance, it is one thing to say, as Biden has, that new trade agreements will have to wait until after the federal government has made major investments in infrastructure and research and development; it is quite another thing to do that in practice. The world won’t take a time-out while the United States makes badly needed repairs at home.

It is certain that Biden will make two overarching changes to the foreign policy of Trump and his secretary of state, Mike Pompeo. Biden understands the strength inherent in Washington’s network of allies and friends and will do all he can to rebuild close relationships with them, especially in Europe. He will also reverse the Trump administration’s dismissive attitude toward multilateral problem solving and the international institutions that make it possible. Washington will now show up at even the most boring meetings, represented by officials who know something about what is being discussed and who support, rather than oppose, the mission of the international organizations that convene them. These will be sweeping changes, welcomed around the world.

Among specific priorities, climate change is clearly at the top of Biden’s mind. The president has assembled a team whose strength signals the weight he attaches to this issue: a former secretary of state (John Kerry) as a special envoy on climate, an experienced former head of the Environmental Protection Agency (Gina McCarthy) in a newly created senior environmental post in the White House, a highly regarded state official (Michael Regan) to lead the EPA, and a former Michigan governor (Jennifer Granholm) known for her expertise in alternative energy sources, especially electric vehicles, as head of the Department of Energy.

Conversely, Granholm’s nomination to lead the department (75 percent of whose budget goes to nuclear weapons and infrastructure) and the choice of the retired general Lloyd Austin to head the Department of Defense suggest that nuclear issues will not be a priority, as neither of them, nor Biden’s national security adviser, Jake Sullivan, is a widely recognized expert in this area. Biden will act immediately to extend the New START agreement with Russia, the last remaining major nuclear arms control treaty. And he will be prepared to spend a great deal of political capital to rejoin and rescue the Iran nuclear deal. But there are many other consequential items in the nuclear portfolio. As vice president, Biden took a strong stance in favor of reducing the role of nuclear weapons in U.S. defense strategy, limiting their use to deterrence rather than war fighting. The Trump administration took the opposite position, and Biden will need to try to wrench policy back toward his preferred course. Meanwhile, the country is in the early stages of a second nuclear arms race, this time with both China and Russia. A bloated, $2 trillion nuclear modernization program is underway that urgently requires reexamination. Also, new technologies are being developed that will raise the likelihood of an unintended nuclear war and erase the once sharp barrier between conventional and nuclear conflicts. Addressing any of this successfully will require leadership from someone of real stature in the field.

A FOREIGN POLICY FOR THE MIDDLE CLASS?

Throughout the campaign, Biden spoke of his intention to craft “a foreign policy for the middle class.” No other theme was as prominent. In practice, however, his administration will have to face the question of whether such a thing actually exists. Changing the rules of international trade is a small part of the answer, but technological change has played a far larger role than trade in the loss of high-paying U.S. manufacturing jobs. That may be why, when discussing how his foreign policy will help Americans, Biden tends to veer quickly from trade to other issues: a higher minimum wage, better education, more affordable health care. All of those are important, but none is the province of foreign policy. Biden’s “Build Back Better” economic plan promises enormous federal investments in infrastructure—roads, railways, the electric grid, and broadband Internet—and in research and development in certain sectors. This is old-fashioned industrial policy. Whether it is good economic policy and where the money will come from are debatable issues; whether they are the stuff of foreign policy is not. The more closely one examines the specifics, the more the concept of a foreign policy for the middle class slips away.

First among the true foreign policy challenges is the need for a balanced, nonideological approach to China. Beijing’s military buildup, its provocative maneuvers in the South China Sea, its increasingly repressive policies (including egregious human rights abuses against Uighurs in Xinjiang and a crackdown on pro-democracy activists in Hong Kong), and its withholding of critically important information on the emergence of the novel coronavirus that led to the COVID-19 pandemic all form a threatening backdrop. The United States has no choice, however, but to develop a strategy for successful coexistence with this fast-rising economic and military power. Trump’s approach swung from fawning praise of Chinese President Xi Jinping to unrelieved enmity and pointless name-calling. The administration’s single achievement on China was a ballyhooed trade deal that pushed the most important structural issues to a second round of negotiations—which never took place. Beijing pledged to buy an additional $200 billion worth of U.S. goods and services but has not come close to actually doing so. Meanwhile, the percentage of Americans with an unfavorable view of China has increased from 47 percent at the beginning of Trump’s presidency to 73 percent last fall, according to the Pew Research Center. Even in the business and financial sectors, which still hope to profit from access to the huge Chinese market, views on China have turned decidedly negative.

To reverse the downward spiral in relations, Washington needs to abandon the lazy habit of demonizing China and drop the pretense that the contest with Beijing is an ideological struggle akin to the Cold War. Instead, the United States needs to identify China’s legitimate interests in Asia and around the world and determine what Washington should accept, where it should try to outcompete China, and what it must confront. It should base its posture on its relations with allies and potential partners across the region, recognizing how conditions have changed since the global financial crisis and avoiding an approach that would force Asian governments to choose between the two superpowers. Washington should get back into multilateral trade and economic agreements in Asia and join forces with European countries in its approach to Beijing, rather than allowing Europe to become a battleground in the U.S.-Chinese rivalry. Most urgently, Beijing, Taipei, and Washington (including some heedless members of the U.S. Congress) must recognize that the “one China” policy is in imminent danger of unraveling after having kept the peace in an interrupted civil war for four decades. Instead of maintaining the policy’s delicate balance of ambiguities, Trump and Pompeo played a game of chicken, thus inviting massive and utterly unnecessary risks. If the agreement falls apart, the possibility of war between China and the United States will be high, since for the United States to back away from a fight would mean abandoning its commitment to a democratic ally at tremendous reputational cost. A U.S.-Chinese war would be unlikely to stay nonnuclear.

### 1NC

Anticompetitive PIC

#### The United States federal government should substantially increase antitrust prohibitions on anticompetitive domestic export cartels that operate in foreign nations without protections for export cartels.

#### Export cartels do not inherently limit competition---only the CP limits anticompetitive export cartels---the plan bans them outright.

Peerapat Chokesuwattanaskul 17, Ph.D. candidate at the University of Cambridge, MPhil in Economics from the University of Cambridge, “Export cartels and economic development,” University of Cambridge Centre of Development Studies, 09-06-2017, https://doi.org/10.17863/CAM.20940

The first type defines a cartel by its anti-competition purpose. The definitions proposed by the likes of Liefmann (1932), Stocking and Watkins (1948), and Belleflamme and Peitz (2010) in Table 2.3 serve as good examples. Liefmann (1932) stated several times that a monopolistic purpose is a necessary condition for a cartel. Otherwise, an agreement is just a concern (a merger of firms which remain legitimately independent of one another in a single unit for the purposes of production techniques, administration, trading, or finance) or similar forms of associations. However, the anti-competition definition of a cartel is not relevant in this study for two main reasons.

The first reason is that a cartel does not necessarily have a purpose to limit or eliminate competition. It is true that, once firms agree to regulate their interaction in a certain activity, a degree of competition in that activity might be decreased as an immediate consequence. However, it does not imply that the degree of competition in the longer term or in other activities will be lower as well15. For example, a cartel may be formed to preserve long-term competition by allowing the highest-cost (often, the smallest or newly-founded) ones to still be profitable in the short term. Moreover, a cartel may actually relocate competition in one activity (e.g., price) to another (e.g., non-price), the concept of relocation of competition which will be discussed further in the subsequent chapters.

The second reason is that the elimination of competition itself is not necessarily detrimental to improvements in social welfare, especially in terms of economic development. Cut-throat or ruinous competition is the term which describes a situation in which excessive competition hinders the firm’s productivity growth. It was a fundamental reason behind German and Japanese legalisation of cartels in the twentieth century (Haucap et al., 2010).

#### Developing economy growth high.

WorldBank 10/5/21 (10/5/21 Strong Rebound in 2021 Boosts Economies in Emerging Europe and Central Asia, https://www.worldbank.org/en/news/press-release/2021/10/05/strong-rebound-in-2021-boosts-economies-in-emerging-europe-and-central-asia-slowdown-ahead-in-2022)

WASHINGTON, October 5, 2021 – A surprisingly strong rebound in the first half of this year boosted economic activity in emerging and developing countries in the Europe and Central Asia region, with the regional economy now projected to expand by a better-than-expected 5.5 percent in 2021, says the latest edition of the World Bank’s Economic Update for the region, released today.

The rebound was largely driven by a strong recovery in exports during the first half of this year, as activity in the Euro area bounced back and commodity prices rose sharply, as well as strengthening domestic demand due to vaccinations and support packages. The boost to exports, however, may be fading due to the ongoing global and regional spread of more contagious COVID-19 variants, which has also dampened the recovery in regional domestic demand.

#### Plan destroys economic development.

Peerapat Chokesuwattanaskul 17, Ph.D. candidate at the University of Cambridge, MPhil in Economics from the University of Cambridge, “Export cartels and economic development,” University of Cambridge Centre of Development Studies, 09-06-2017, https://doi.org/10.17863/CAM.20940

Export cartels have been accused of raising the price level and hence depleting welfare ceteris paribus in the recent literature. However, there are two reasons why a reduction in welfare by export cartels may not occur.

Firstly, export cartels may promote global competition by introducing additional players into the market which reduces the overall price level or provides more variety of products for consumers (Evenett et al., 2001; Immenga, 1995). By definition, export cartels are single-country oriented and formed exclusively for exporting activities20 (Sweeney, 2007; Waller, 1992). As a consequence, export cartels from developing countries are partial cartels from the global perspective (i.e., not formed by all firms in the global market) and have no market power (Dick, 1992; Jensen-Eriksen, 2013). Some export cartels were even formed to reduce prices in order to be competitive and be able to penetrate the global market (Sweeney, 2007). The empirical evidence in different countries such as Germany and Japan also shows that export cartel formation was related to price reduction (Audretsch, 1989; Dick, 1992; Levenstein and Suslow, 2006). Therefore, the argument that consumer surplus will be depleted by the existence of export cartels is rather vague when it comes to export cartels from developing countries.

Export cartels from developing countries in the global market could be seen as an analogy of cartels formed by SMEs in the domestic market, which is generally acceptable due to their potential to preserve the long-term competition21 (Bhattacharjea, 2004; Bridgman et al., 2015). Therefore, domestic cartels were often allowed to be formed among SMEs in some countries such as Germany in the mid-twentieth century (Khun, 1997a). The same analogy can be made in terms of firms from developing countries surviving the competitive force against the larger firms from developed countries or the multinational enterprises in the global market. Therefore, the inefficiency might not even be created under the dynamic setting. SMEs in Germany were particularly allowed or even encouraged to form cartels in the mid-20th century to buffer against overwhelming competition from both domestic and foreign firms. For example, in 1904, two smaller German banks, the Dresdner Bank and the Schaaffhausen Bankverein, agree to form, under our definition, a territory and profit-sharing cartel (Liefmann (1932) considered it as the interest-group which is a type of concern). The purpose of the cartel was "to strengthen the capital power and influence of each of the banks by means of common action in big business deals" and, more importantly, to help stimulate their "competitive power against their two big rivals the Deutsche Bank and the Diskontogesellschaft."

#### Extinction

Brown et al 20. Frances Z. Brown is a senior fellow and co-director of Carnegie’s Democracy, Conflict, and Governance Program, who previously worked at the White House, USAID, and in nongovernmental organizations, Saskia Brechenmacher is a PhD candidate at the University of Cambridge and a fellow in Carnegie’s Democracy, Conflict, and Governance Program, Thomas Carothers is interim president of the Carnegie Endowment for International Peace. "How Will the Coronavirus Reshape Democracy and Governance Globally?" <https://carnegieendowment.org/2020/04/06/how-will-coronavirus-reshape-democracy-and-governance-globally-pub-81470>

BROADER GOVERNANCE IMPLICATIONS Beyond the pandemic’s effects on democracy, a range of governance ramifications may emerge in the months ahead. BASIC GOVERNANCE VIABILITY AND REGIME STABILITY The pandemic will exert enormous pressures on governance institutions in heavily affected countries—especially on health systems, but also on many other essential government functions, from education and food supply chains to law enforcement and border control. Even in comparatively wealthy states, like Italy, Spain, and the United States, health systems in the worst-affected areas have already cracked under the weight of the pandemic. **Crisis responses will inevitably require triage** well beyond the health sector, **diverting** **government** attention and **resources from other vital functions and challenges**. This problem will be exacerbated as more and more politicians, government leaders, and civil servants test positive for the virus, rendering governments less able to operate just when they need to be working overtime. The specter of the pandemic has also forced legislatures and government agencies to curtail operations or work remotely, resulting in inevitable losses of efficiency. As the virus spreads more widely in weak states, these governance challenges will be even more pronounced. **The acute public health emergency** **will be on a collision course with an abject lack** **of government capacity,** frail institutions, limited government reach, and low citizen trust in leaders (and corresponding reluctance to heed public health directives). Social distancing will be difficult to observe in crowded settlements, especially if residents are reliant on informal work to survive. At the same time, **governments in many developing countries will struggle to mobilize adequate resources to ease** the effects of an **economic recession.** Robust international assistance efforts will be essential, but insufficient implementation capacity may hinder their effectiveness. In countries already suffering from protracted conflict or instability, the pressures of the pandemic and **resultant cascade of governance failures could lead to at least partial state collapse.** PRESSURE ON SOCIOPOLITICAL COHESION The pandemic will strain basic sociopolitical cohesion in many states. The differential effects of the health crisis along key axes—rich vs. poor, urban vs. rural, region vs. region, and citizen vs. migrant—may sharpen existing sociopolitical divides. The pandemic may compound those strains by exacerbating political polarization where it already exists. From India and Bolivia to Poland and the United States, many democracies are already suffering from rising animosity and tensions between contending political camps. As the crisis worsens, opposing sides may disagree about the gravity of the pandemic or about appropriate government responses—a dynamic that could be intensified by people’s greater reliance on online communication while they remain mostly isolated in their homes, and by governments using the crisis to advance partisan agendas. In the United States, for example, partisanship has heavily shaped perceptions of the severity of the crisis and individuals’ trust in the government’s response. In Brazil, President Jair Bolsonaro’s dismissal of the seriousness of the crisis has inflamed an already fierce political divide. At the same time, the “wartime” imperative to combat the pandemic could invoke feelings of shared sacrifice and collective mission that heal rather than aggravate societal and political divisions. But such a rallying effect likely requires political leaders to rise to the challenge and take a unifying approach, which goes against the populist playbook in use in many countries. Tracking leadership styles and messages will be key to understanding the longer-term effects of the pandemic on sociopolitical cohesion. HEIGHTENED CORRUPTION Government responses to the pandemic are likely to exacerbate graft and corruption in many countries. Crises involving urgent medical needs and scarce supplies inevitably present opportunities for smuggling, graft, price-gouging, and fraud. Corruption undermines the effectiveness of public health responses, particularly if valuable resources are diverted from high-need areas or citizens are denied treatment if they refuse to pay bribes. Both domestic actors and international partners assisting with public health responses should anticipate these risks and avoid the tendency to adopt an “anything goes in an emergency” attitude. In the medium term, the perception and reality of heightened corruption may increase popular discontent with governments. However, the crisis could also end up spurring new anticorruption measures. If corruption spikes rapidly when governments implement crisis measures, widespread public outrage may catalyze reforms that improve health governance and public accountability. More immediately, the prospect of high-stakes corruption may also mobilize civil society, governments, and international actors to take preventive steps, especially in places that are still less affected by the pandemic. In the United States, for example, legislators heeded calls for increased oversight in the new economic stimulus package. Civil society groups in Nigeria are urging government authorities to institute corruption safeguards as the country braces for the coronavirus. Possible additional measures may include concerted diplomatic pressure for greater oversight over aid flows or increased adoption of recommendations already developed by advocacy groups. LOCAL-NATIONAL DISCONNECT The virus may reshape dynamics between national and regional or local government actors. Local officials are on the front lines of the crisis response, sometimes reinforcing and sometimes competing with messages from national leaders. In Afghanistan, where the central government’s presence in the periphery is limited, some provincial governors have been shoring up its policies and bolstering its response efforts. The governor of Nangarhar Province quickly set up an emergency aid fund and publicly dispelled myths about curing the virus, while other governors have supplied basic food packages to encourage infected men to stay home from work. Elsewhere, the virus response has exacerbated friction between local and national officials. In Hungary, where the opposition party controls several major cities, the central government unveiled a measure that would dilute mayors’ decisionmaking authority during an emergency. Local leaders quickly attacked the plan as one that would undermine the coronavirus response, and the government eventually walked it back. In Turkey, the pandemic has renewed long-standing tensions between President Recep Tayyip Erdoğan and the opposition-party mayor of Istanbul. Contrary to Erdoğan’s directives, the mayor has advocated a lockdown of Istanbul and launched his own fundraising campaign to galvanize the response, prompting national leaders to block the effort. In the United States, the pandemic response has intensified frictions between Trump and several Democratic state governors critical of his administration’s response. These trends could change internal power relations in various places, whether by enhancing local-level leaders’ legitimacy at the expense of national officials or worsening governance fragmentation. Where friction between national governments and opposition-party local leadership tracks ideological, regional, and rural-urban lines, it may exacerbate preexisting political polarization. ENHANCED ROLES OF NONSTATE ACTORS The virus may also reshape relationships between nonstate actors and governments, with important implications for government legitimacy and claims to sovereignty. Where governments enjoy low levels of citizen trust, cooperating with nonstate systems of governance may be essential to ensuring an effective crisis response. In Sierra Leone, for example, local chiefs were highly influential in containing the spread of Ebola. The Taliban in Afghanistan are already committing themselves to cooperating with health officials from international organizations like the World Health Organization that typically collaborate with sovereign governments. Arab governments are mobilizing official Islamic institutions and authorities to help them manage the crisis, which may help them compensate for low levels of public trust in official communications and directives—while potentially also reinforcing government control over the religious domain. However, nonstate actors’ enhanced role in implementing crisis responses may also strengthen their legitimacy and authority in the eyes of local communities, thereby entrenching their political influence. In Rio de Janeiro, for example, drug trafficking gangs have imposed a coronavirus curfew in the city’s favelas and handed out soap to local residents, while condemning the Brazilian government’s lack of action. In Lebanon, the paramilitary organization Hezbollah has reportedly mobilized a remarkable 25,000 people, including medics, to combat the virus, in addition to organizing new testing centers and ambulances and repurposing an entire hospital for the crisis. Although the group insists that its efforts are meant to “complement the government apparatus”—Hezbollah is part of the government coalition—the response stands in notable contrast to the struggles of the official Lebanese administration. In Afghanistan, the Taliban have launched a coronavirus awareness campaign in areas of the country under their sway; whereas the Kurdish-led region of northeast Syria, which maintains autonomy from the regime of President Bashar al-Assad, has initiated curfews, coordinated aid delivery, and stood up isolation wards to combat the virus. As in many situations of acute crisis, rapid and effective efforts by nonstate actors to enforce order or deliver services can foster or reinforce alternative systems of governance, particularly if the government is seen as absent, ineffective, or divisive. On the other hand, different regimes may try to use the crisis to shore up their control over nonstate entities. It will be important to monitor these: in fragile or low-income states, nonstate actors’ heightened roles in crisis response—or, alternatively, their efforts to impede effective responses—will likely reshape citizens’ perceptions of state legitimacy and their expectations of the state. TIME TO PREPARE Looking ahead, all domestic and transnational actors concerned with democracy’s future must closely monitor the wide-ranging, fast-moving political effects of the pandemic, rapidly devise responses to lessen potential harm, and seize any positive opportunities the crisis may present. **Coming soon is a second**, **perhaps even bigger wave of political disruption that will be caused by the unfolding global economic crisis**. Potentially devastating increases in economic inequality, unemployment, debt, and poverty, as well as pressures on the stability of financial institutions, will put enormous strains on governance systems of all types. After the global financial crisis that erupted in 2008, few foresaw the very long tail of negative political consequences. Yet that crisis ultimately ushered in the rise and spread of illiberal populism, fragmentation of party systems, and consolidation of several authoritarian regimes—long after economic recovery was under way. **Amid a new crisis even more daunting in scale,** there is a natural tendency for governments and individuals alike to be consumed by the urgency of near-term domestic fallout from the pandemic. But just as the virus’s contagion respects no borders, its political effects will inevitably sweep across boundaries and continue to echo long after the health emergency has eased. Now is the time to get ready.

## Exceptionalism ADV

### Exceptionalism---1NC

#### Advantage makes no sense---if our cartels were destroying economies, they’d get kicked out through extraterritorial antitrust.

#### Stopping cartels doesn’t solve---economic incentives for trade barriers still exist.

#### They have not read an internal link to trade wars---protectionism is distinct, and no evidence says the US will retaliate.

#### US cartels don’t exist---only aff evidence is about cartels from other countries which thump.

#### Trade is tubed

Walter Russell Mead 11-29, James Clarke Chace Professor of Foreign Affairs and Humanities at Bard College, Columnist for The Wall Street Journal, Scholar at the Hudson Institute, and Book Reviewer for Foreign Affairs, “Global Free Trade Is in Crisis”, The Wall Street Journal, 11/29/2021, https://www.wsj.com/articles/the-world-free-trade-system-is-in-crisis-organization-meeting-omicron-tariffs-sanctions-11638220676

As diplomats prepare for December’s 110-government virtual Summit for Democracy, there is much hand-wringing over democracy’s global retreat. That democratic recession is real, but another fundamental element of the liberal world order is in even more trouble.

Free trade is as critical as democracy to the health of world order, but suspicion of free trade is an attitude that unites Biden Democrats and Trump populists. In its latest Trumpian trade move, last week the Biden administration doubled tariffs on Canadian lumber.

Meanwhile, Omicron-related Covid fears led the World Trade Organization to cancel its ministerial meeting in Geneva. With the WTO losing both efficacy and legitimacy, trade liberalization, next to American military power the single most important force binding the nations of the world into a liberal order, is facing its most significant challenge since the Great Depression.

Free trade matters. It has done vastly more than all the world’s foreign-aid bureaucrats to raise living standards and increase opportunities for people in emerging economies. And that is not all. By giving both rich and poor nations a common interest in the peace and stability of the global system, free trade does more than NGOs and activists to promote peace. Billions of people around the world have seen dramatic increases in their living standards thanks to America’s trade leadership. That prosperity is what makes so many people in so many places willing to accept a world system that gives America a privileged and unique role.

Like the crisis of democracy, the crisis of free trade is partly due to the failures of its friends and partly to the hostility of its enemies. Both the free-trade and democracy agendas that emerged in the heady years following the collapse of the Soviet Union were simplistically conceived and often poorly carried out. The WTO was useless in the face of systemic rule breaking and bending by China, which was admitted to the group in 2001. American policy makers did not think enough about the domestic consequences of the dislocations associated with burgeoning global trade, allowing antitrade politicians to make inroads in both parties. And an unwieldy 164-country negotiating process keeps the WTO moving slowly even as the need for international cooperation on trade grows.

Today the defenders of free trade face even more problems. The importance of maintaining or developing secure supply chains for goods critical to military or other sensitive systems has combined with rising political tensions with China. That has initiated a process of decoupling that over time will inevitably politicize trade. China has doubled down on efforts to develop its own information-technology industry for both national-security and economic reasons.

The global climate-change movement sees “green tariffs” as a tool to impose environmentalists’ policies on India, China and other countries. By limiting market access to goods produced by carbon-intensive methods, rich countries could force poor ones to adopt First World environmental regulations. That is a weapon many green activists are eager to wield, and uniting greens with traditional protectionist constituencies like labor unions would undercut support for free trade in the U.S. and beyond.

Meanwhile, many European Union officials see access to the bloc’s enormous internal market as its strongest asset in international relations. Whether by supporting green tariffs on agricultural products from the Amazon or by controlling the behavior of tech giants by threatening their access to Europe’s market, EU bureaucrats see trade restrictions as their one real tool to make Europe’s voice count in the world. Brexit removed one of the staunchest EU champions of free trade from the bloc; support for free trade in Brussels seems likely to diminish over time.

Although free trade has been a pillar of the American-led world order since the 1940s, the retreat from trade has gained ground across the American political spectrum. The Trump administration’s unfortunate decision, backed by many Democrats, to abandon the Trans-Pacific Partnership—a trade pact specifically designed to limit Chinese economic influence in Asia and to push China toward more honest and open trade policies—has been politically and economically costly for the U.S.

#### COVID thumped trade BUT it’s resilient

Dammu Ravi 21, Foreign Service Officer for the Government of India, Currently Working in the Ministry of External Affairs, “Unpacking the Resiliency of Global Trade, Yet Again”, The Hindu, 8/11/2021, https://www.thehindu.com/opinion/op-ed/unpacking-the-resiliency-of-global-trade-yet-again/article35845220.ece

Going by past experiences and historic ruptures, there is hope for global trade recovery in the post-COVID-19 world

In the last year, the devastating impact of COVID-19 pandemic has shrunk the world economy by 4.4% and global trade by 5.3%; job losses have been estimated to be to the tune of 75 million. Around the world, countries have responded to pandemic-induced shortages with protectionist reactions and nationalist aspirations with the potential to disrupting complex cross-border supply chains. The blame game on trade openness and trade agreements for widening trade deficits, income inequalities and growing unemployment are all but natural domestic reactions. These trends make projections for the post-COVID-19 world even more dismal and depressing.

Past trends

Going by past experiences, historic ruptures often generate and accelerate new global links that lay foundations for institutional changes, seeking enduring cooperation among nations. The Second World War created sustaining multilateral institutions; besides the United Nations, the Bretton Woods Institutions such as World Bank and International Monetary Fund (IMF) and International Trade Organisation (ITO) were created to help rebuild the shattered post-war economy. The General Agreement on Tariffs and Trade (GATT) was negotiated in 1947 as a means to reducing barriers to international trade. The oil shocks of the 1970s led to the establishment of the International Energy Agency (IEA) in 1974 to manage oil supply disruptions and went on to create awareness on the need for global energy security. The financial crisis of 2008 led to the G20 Leaders Summit, an elevation from the G20 Finance Ministers forum in 1999, in a bid to take cooperation beyond the G7 in a global quest to control inflation due to fiscal expansion. These developments had a consequential impact on global trade, with dramatic surges in volumes; from a mere $60.80 billion in 1950 to $2,049 billion in 1980; $6,452 billion in 2000; $19,014 billion in 2019 (Source: wto.org).

Future prospects

The patterns above leave much hope for optimism for global trade in the post-COVID-19 crisis in the collective belief that international trade is vital for development and prosperity, while competition is central to generating competence. Stimulus packages and forced savings in several countries in the last year have created financial buffers. Global supply chains that have remained dormant for long are expected to be resilient to help revive manufacturing with lower production costs, induce investments and promote technology transfers.

#### Antitrust protectionism now AND inevitable

Anu Bradford 12, Henry L. Moses Distinguished Professor of Law and International Organization at the Columbia Law School, 2012, “Antitrust Law in Global Markets,” Research Handbook on the Economics of Antitrust Law, Ed. By Einer Elhauge, Edward Elgar Publishing, https://scholarship.law.columbia.edu/faculty\_scholarship/1976

B Emergence of Antitrust Protectionism

Some commentators believe that states employ antitrust laws to further protectionist goals.122 As traditional trade barriers have fallen following multiple rounds of trade negotiations, states are expected to look for alternative ways to protect their domestic markets.123 Domestic firms seeking protection may increasingly turn to antitrust authorities, urging them to block the entry of foreign rivals on antitrust grounds, or to tolerate domestic firms’ monopolistic practices in an effort to bolster their international competitiveness.124 If successful, these protectionist pressures can convert antitrust laws into instruments of industrial policy, severely undermining the gains of trade liberalization.

Antitrust protectionism can take several forms: states may engage in systematic under- or overenforcement of antitrust laws depending on their terms of trade (‘tradefl ow bias’). States may also exempt domestic firms from antitrust scrutiny altogether (‘statutory bias’). Similarly, antitrust agencies may engage in selective enforcement practices, disproportionately targeting foreign fi rms at the expense of domestic fi rms in their investigations (‘enforcement bias’). Yet the key assumption behind all forms of alleged antitrust protectionism is the same: each antitrust jurisdiction internalizes the costs and the benefits incurred by its domestic producers and consumers, while externalizing the costs and the benefits sustained by producers and consumers in another jurisdiction.

#### Trade doesn’t prevent war

Dr. Omar M. G. Keshk 13, Senior Lecturer in the Political Science Department at, and PhD in Political Science from, Ohio State University, Rafael Reuveny, Professor of International Political Economy and Ecological Economics at Indiana University, and Brian M. Pollins, Emeritus Associate Professor of Political Science at Ohio State, “Trade and Conflict: Proximity, Country Size, and Measures,” Conflict Management and Peace Science, 2010 27:3, SAGE Journals

In all, any signal that “trade brings peace” remains weak and inconsistent, regardless of the way proximity is modeled in the conflict equation. The signal that conflict reduces trade, in contrast, is strong and consistent. Thus, international politics are clearly affecting dyadic trade, while it is far less obvious whether trade systematically affects dyadic politics, and if it does, whether that effect is conflict dampening or conflict amplifying. This is what we have termed in KPR (2004) “The Primacy of Politics.”

7. Conclusion

This study revisited the simultaneous equations model we presented in KPR (2004) and subjected it to four important challenges. Two of these challenges concerned The specification of the conflict equation in our model regarding the role of inter- capital distance and the sizes of both sides in a dyad; one questioned the bilateral trade data assumptions used in the treatment of zero and missing values, and one challenge suggested a focus on fatal MIDs as an alternative indicator to the widely used all-MID measure

The theoretical and empirical analyses used to explore proposed alternatives to our original work were instructive and the empirical results were informative, but there are certainly other legitimate issues that the trade and conflict research community may continue to ponder. For example, researchers may continue to work on questions of missing bilateral trade data, attempt to move beyond the near- exclusive use of the MIDs data as we contemplate the meaning of “military conflict,” and use, and extend the scope of, the Harvey Starr GIS-based border data as one way to treat contiguity with more sophistication than the typical binary variable.

The single greatest lesson of this study is that future work studying the effect of international trade on international military conflict needs to employ a simultaneous specification of the relationship between the two forces. The results we obtained under all the 36 SEM alternatives we estimated yielded an important, measurable effect of conflict on trade. Henceforth, we would say with high confidence that any study of the effect of trade on conflict that ignores this reverse fact is practically guaranteed to produce estimates that contain simultaneity bias. Such studies will claim that “trade brings peace,” when we now know that in a much broader range of circumstances, it is “peace that brings trade.”

Our message to those who would use conflict as one factor in a single-equation model of trade is only slightly less cautionary. They too face dangers in ignoring the other side of the coin. In one half of the 36 permutations we explored, the likelihood of dyadic military conflict was influenced by trade flows. In most tests where this effect surfaced, it was positive, that is, trade made conflict more likely. But the direction of this effect is of no consequence for the larger lesson: trade modelers ignore the simultaneity between international commerce and political enmity at their peril. They too run no small risk of finding themselves deceived by simultaneity bias.

Our empirical findings show clearly that international politics pushes commerce in a much broader range of circumstances than the reverse. In fact, we could find no combination of model choices, indicators, or data assumptions that failed to yield the result that dyadic conflict reduces dyadic trade. Liberal claims regarding the effect of dyadic trade on dyadic conflict simply were not robust in our findings. They survived in only 8 of the 36 tests we ran, and failed to hold up when certain data assumptions were altered, and were seriously vulnerable to indicator choices regarding inter-capital distance, conflict, and national size.

#### Plan is weaponized as protectionist

Dr. Simon J. Everett 2k, PhD in Economics from Yale University, Professor of International Trade and Economic Development, University of St. Gallen, Head of the Global Trade Alert Research Group of the Centre of Economic Policy Research, Alexander Lehman, and Dr. Benn Steil, DPhil in Economics from the University of Oxford, Fellow and Director of International Economics and Official Historian in Residence at the Council on Foreign Relations, “Antitrust Policy in an Evolving Global Marketplace”, in Antitrust Goes Global: What Future for Transatlantic Cooperation?, p. 14

Growing International Trade and Antitrust Intervention

To the extent that antitrust is supposed to promote competition, antitrust enforcement and trade liberalization can logically be seen as substitutes. On this view the 1890 Sherman Antitrust Act represents the political price American big business had to pay in return for protective tariffs.25 If competition were to be restricted, government intervention would need to increase to offset the loss of market discipline.

If this logic is compelling, the converse should also hold. As import penetration increases, all else being equal, one would expect less need for antitrust activism on the part of a nation’s competition authorities. Increased foreign competition can substitute for domestic legal proceedings as a means of keeping prices close to marginal costs. Increased transatlantic trade liberalization should, by such thinking, serve to reduce the scope for antitrust intervention and hence transatlantic antitrust conflict. In fact, the U.S. Justice Department’s merger guidelines do require consideration of actual and potential entry by foreign producers in determining the definition of antitrust markets.

Will further trade liberalization therefore mitigate the need for cross-border antitrust cooperation? The answer is almost certainly no, for two reasons. First, as noted, trade liberalization has reduced but not eliminated domestic market power. Second, an alternative logic, backed too by empirical evidence, suggests that cross-border antitrust conflict is actually more likely as trade increases.

Antitrust is a political phenomenon and is therefore subject to all the normal interest group pressures that affect policy across the spectrum. As import penetration tends to have a disproportionate negative effect on the profits and market share of smaller domestic enterprises,26 trade liberalization is likely to be accompanied by increased small-firm lobbying for domestic antitrust intervention. Prima facie supporting evidence would be the resulting rise in domestic market concentration ratios and declining prices, the latter of which may trigger specific charges of predatory pricing. Domestic mergers, motivated by productive efficiency concerns brought on by foreign competition, are also more likely to be challenged by smaller and less viable enterprises. To the extent that trade protectionism is hindered by treaty obligations, antitrust may therefore be used to offset the adverse distributional effects of imports. By this logic, trade stimulates antitrust activity. The latter is a by-product of mercantilism.

## Resources ADV

### Resources---1NC

#### Potash cartels are over.

Rob Wile 13, Energy and Economics Reporter at Business Insider, “A Russian Megafirm Just Blew Up The Potash Market — Which Could Be Great For Anyone Who Buys Food,” Business Insider, 08-04-2013, https://www.businessinsider.com/cartel-ends-grip-of-potash-market-2013-8

Potash is the key ingredient in fertilizer. It would very difficult to grow food without it.

Like oil, there is a finite supply of potash, which contains potassium.

And like oil, the a major portion of the potash market has been controlled by a cartel of Russian, Eastern European and Canadian firms.

Until this week.

Uralkali, the world's biggest potash supplier, announced it was leaving Belarus Potash Co, the European side of the potash cartel.

The move sent shares in potash suppliers tumbling.

The Toronto Globe and Mail's Michael Babad says there's an outside chance Urakali is bluffing to force fellow cartel member Belaruskali to get in line.

But if it proves to be true, the price of potash is going to collapse — which would be brutal for the industry, but great for consumers.

Babad quotes Joel Jackson of BMO Nesbitt Burns' price estimate:

Our analysis is preliminary, but our initial bear case is that global price estimates could fall by $100/tonne (down closer to marginal European costs), which will impact all producers, though companies such as [Potash Corp. and Uralkali] have the most spare capacity to partially offset lower prices and might relatively fare the least worse.

Besides shareholders of potash firms, the other big loser would be the province of Saskatchewan, where Potash comprises 18% of all exports, Babad says.

#### Aff does not solve---it applies domestically---Potash cartels are Russian and Canadian, and mining cartels are Indonesian!

#### Cartels are down.

Alain Verbeke & Caroline Buts 21, – Professor of International Business and Strategy, McCaig Chair in Management, University of Calgary; Professor at the department of applied economics of the Vrije Universiteit Brussel, “The Not So Brilliant Future of International Cartels,” Management and Organization Review, Cambridge University Press, 8/17/2021, https://www.cambridge.org/core/journals/management-and-organization-review/article/not-so-brilliant-future-of-international-cartels/363CC718A5FD54F8BB390B9AB22150B7

A NOT SO BRILLIANT FUTURE OF INTERNATIONAL CARTELS?

As explained in the previous section, we do not dispute the possibility that international cartels could become more important in the future under carefully defined conditions. We are doubtful, however, even when accepting B&C’s broad definition of this governance mode, that international cartels will gain ground more generally, vis-à-vis other forms of governance in international business, when multinational enterprises face increased political risk.

A key element, and perhaps a surprising one, explaining our doubt about the bright future of cartels is four clear trends in cartel regulation that are now creating significant political risk for international cartel members (admittedly not covering B&C’s benevolent cartels). First, competition policy is now a priority for policy makers around the world, as reflected in the progress made in detecting, investigating, and prosecuting cartels (OECD, 2020; OECD, 2021b). Recently published data indicate that 68% of global cartels (with members from at least two different continents) have been prosecuted by multiple jurisdictions, with average cartel fines being very high at €19.3 million (OECD, 2020).

Second, the consequences of being caught as a cartel member have gradually become more severe and far-reaching, both for the orchestrating and the participating companies, and for the employees involved (Ordóñez-De-Hano, Borrell, & Jiménez, 2018). Depending on the jurisdiction, a wide array of sanctions is now being deployed, including personal fines, trade prohibitions, and prison sentences (these have increased sevenfold over a recent five-year period, OECD, 2020). After a finding of cartel-behavior from the competition authority, the legal battle usually continues in the form of lawsuits for damages whereby victims file claims and may also coordinate their actions, e.g., to recover cartel overcharges (Burke, 2019).

Third, cartel investigations have also become more sophisticated. Leniency policies – providing immunity from fines for the first player who admits to the existence of a cartel and discloses information on its functioning – are on the rise. This powerful tool serves both detection and deterrence purposes in the realm of anticompetitive behavior (Margrethe & Halvorsen, 2020; Marvão & Spagnolo, 2018; Miller, 2009). It incentivizes cartel members to become whistle blowers. Companies will be less likely to join a cartel if they know that its members may be enticed to disclose cartel operations, (Brenner, 2009; Vanhaverbeke & Buts, 2020).

A larger number of agencies than before now also have the mandate to conduct ‘dawn raids’, in order to collect evidence of cartel behavior and they can even enter private premises of employees during their search for incriminating material. In addition, sophisticated econometric analyses have become standard practice to provide evidence of coordinated conduct in industry and to calculate cartel overcharges (Parcu, Monti, & Botta, 2021).

Fourth, competition authorities have invested more in outreach, communicating competition rules through dedicated events, online campaigns, and competition networks. Compliance programs have also been on the rise with an increasing number of mainly large companies investing in compliance training to abide by competition rules (De Stefano, 2018).

The increased efforts to fight anticompetitive agreements in industry are now deterring and destabilizing cartels. Following a substantial increase in the number of cartels that have been ‘caught’, the average life span of these cartels is now going down rapidly (OECD, 2020). The fight against illegal, anticompetitive behavior will intensify further in the near future, rather than governments shifting their focus to contemplate potential benefits. At the same time, the beneficial effects have been widely acknowledged of international collaboration forms that are legally allowed by various competition policy regimes (and are therefore not considered cartels), see for instance Martínez-Noya and Narula (2018) on international R&D cooperation.

#### No impact to export cartels.

D. Daniel Sokol 8, Assistant Professor at the University of Florida Levin College of Law, J.D. from the University of Chicago Law School, “What Do We Really Know About Export Cartels and What is the Appropriate Solution?”, Journal of Competition Law & Economics, Vol. 4, No. 4, 2008, http://doi.org/10.1093/joclec/nhm037

An alternative explanation as to the impact of export cartels is that export cartels are not a serious antitrust problem. That is, export cartels may not fall within the realm of hard-core cartels. Becker dismisses this claim.23 Export cartels may have efficiency justifications in which the coordinated conduct is merely ancillary conduct to attain the aims of a coordinated venture. A joint venture among exports may allow for economies of scale for small and medium-sized exporters and may reduce the costs of doing business internationally.2 5 This may include administrative costs, advertising, and foreign sales agencies.26 Another effect to export cartels is that. membership in such cartels may reduce the risk that any one company undertakes in its foreign venture. Whether or not such claims are true is unclear. At least in the United States, in the current antitrust environment, any joint exporting arrangement would require the same level of antitrust counseling to get a formal exemption under the Export Trading Company Act as it would to understand the jurisdictional limits of the Federal Trade Antitrust Improvements Act. In neither case could they reduce whatever uncertainty results from the competition laws of the country or region where they export. In other countries it is unclear whether the argument may be valid, particularly in countries with implicit exemptions.

#### They lack empirical data.

D. Daniel Sokol 8, Assistant Professor at the University of Florida Levin College of Law, J.D. from the University of Chicago Law School, “What Do We Really Know About Export Cartels and What is the Appropriate Solution?”, Journal of Competition Law & Economics, Vol. 4, No. 4, 2008, http://doi.org/10.1093/joclec/nhm037

Much remains unknown as to the extent of the export cartel problem in many countries-is there a problem, and if so, how large is the problem and is the problem in decline? Becker does not address these questions. Indeed, Becker notes that "the empirical situation is quite complex" but does not let the lack of data prevent him from advocating a theoretical position in favor of increased cooperation as the best solution to combat export cartels." Yet these questions of the nature and scope of export cartels are the critical questions for any such analysis of export cartels. Becker goes so far as to argue that the problem of export cartels "does not allow for second best solutions."12 This reasoning is problematic. First, because of political economy considerations, we live in a world of second best solutions and it is naive to think that policy allows for first best solutions.' 3 Second, even in a world of second best solutions, Becker's solution has problems that are more severe than other alternative solutions.

Without an understanding of the problem of export cartels and its scope, any serious discussion of export cartels may be a solution in search of a problem. Countries with explicit export cartel immunities other than the United States lack transparency and available data to detail the nature of the export cartel immunity.14 Indeed, even the empirical work on U.S. export cartels reveals limited data to understand export cartels fully.' 5 This creates difficulties in determining how much anticompetitive harm an export cartel may create. Even worse, in countries with implicit exemptions the collection of data and transparency is next to impossible. Where there is no notification because the export cartel immunity is implicit, it is difficult to determine even the existence of the cartel let alone the scope of the export cartel and whether it has hard-core cartel attributes. Given the data collection problems in jurisdictions that have explicit immunities, understanding the extent of the spillover effects of export cartels across jurisdictions is even more difficult to determine. The lack of empirical data suggests that global solutions on export cartels may be based more on theory than empirical evidence and therefore not well suited for situations in which the very assumptions behind such theories may be misguided.

#### Indian nukes are transparent and safe.

Rajiv Nayan 16, Senior Research Associate at the Institute for Defence Studies and Analyses, New Delhi, 1-4-2016, "Nuclear India through a Western Eye," No Publication, http://www.idsa.in/idsacomments/nuclear-india-through-a-western-eye\_rnayan\_040115

Further, the ‘investigative report’ on the Jaduguda mining complex propagates horror stories. And it spreads unscientific tales amounting to encouragement of superstition, which is antithetical to democracy that the Center for Public Integrity is supposed to promote. Further, a number of old reports cited in this article lack sound methodology and scientific basis. For instance, the methodology used by Dr. Ghose (cited in the article on the Jaduguda complex) to calculate gross alpha activity in water has not been endorsed by any of the international accredited agencies. This article on uranium mining also refers to the ‘country’s secret nuclear mining and fuel fabrication programme’. It is not clear what the author means by ‘secret’ and how it is linked to health and the environment, which appear to be the twin concerns of the article. At the least, the Jaduguda complex is not secret. All the mines and milling stations are listed on the Uranium Corporation of India Limited (UCIL) website. Similarly, India does not hide the sites of its nuclear fuel fabrication. In Indian Parliament, questions relating to fuel fabrication installations are answered and discussions have been taking place. It is true that India does not make its uranium ore production public. However, the Indian government reveals the production of fuel assemblies in the Nuclear Fuel Complex. For example, the government has stated that in the financial year 2014-2015, the Hyderabad-based Nuclear Fuel Complex produced 1252 Metric Tonnes of fuel assemblies. Similarly, the article on the Kudankulam reactor titled “India’s Nuclear Solution to Global Warming is Generating Huge Domestic Protests” maintains that the reactor is vulnerable to a tsunami and lists other safety problems. The Department of Atomic Energy (DAE), the Nuclear Power Corporation of India Limited and the Atomic Energy Regulatory Board (AERB) have stated that the design features of the reactor and the emergency preparedness in the facility have taken all the existing dangers into account. However, activists like Levy are not willing to accept any technical or policy explanation. Another article, “India’s nuclear explosive materials are vulnerable to theft, US officials and experts say”, maintains, mostly on the basis of anonymous statements made by some Indian and American officials, that India’s nuclear security faces the problem of training and equipment. The article quotes one retired Indian police official asking for more manpower and weapons. If any security organisation were to be asked whether it wants an increase in its manpower and armoury, the answer will always be yes. Sometimes, the agency may really require extra manpower and weapons, but at other additionalities may be required for creating a sound reserve force. Be that as it may, the security agencies manning key nuclear installations state that they are quite capable of managing the current level of physical security challenges. Of course, training or awareness of emerging threats, review of new technological developments, and manpower for protection of fast increasing nuclear reactors are necessary. This futuristic projection should not mean that current nuclear installations are insecure. Has the series of articles served democracy? It does not seem so. It appears as if, after writing several revealing reports and a book on Pakistan’s nuclear programme, Adrian Levy was under some pressure to perform a balancing act by tarnishing the Indian nuclear programme. One of the four articles is on the thermonuclear device, which democratic India developed to strengthen its nuclear deterrence vis-à-vis an overtly authoritarian China and a farcically democratic Pakistan. Like a section of the US non-proliferation community that relishes supporting and sympathising with China and Pakistan, Levy and the Center for Public Integrity have followed the same approach. That India relies on the thermonuclear device for its security is declared policy. India had exercised restraint till 1998, and went nuclear only after it had witnessed no nuclear disarmament, continued accumulation of nuclear weapons by the countries recognised under the Nuclear Non-Proliferation Treaty (NPT) and worse, a NPT member country like China acting as the kingpin of nuclear proliferation that had benefited Pakistan. It is conventional wisdom that democratic India did not clandestinely acquire nuclear weapons and continues to feel compelled to develop its arsenal even if slowly or of a smaller size. The article on the thermonuclear device also mentions several uncertain facts such as the new site for uranium enrichment or hydrogen bomb making and the real success or failure of the thermonuclear device, which have been sufficiently discussed before. Alarmingly titled “India is Building a Top Secret Nuclear City to Produce Thermonuclear Weapons, Experts Say”, this article argues that ‘an extra stockpile of enriched uranium fuel’ used in Indian hydrogen bombs may be considered a ‘provocation’ by China and Pakistan. Only a novice would believe that China or Pakistan will review their nuclear strategies, on the basis of these already known, but unsubstantiated, facts appearing in the media. Further, the authors of these articles would have done great service by exposing ‘abuses of power, corruption and betrayal of public trust by powerful public and private institutions, using the tools of ‘investigative journalism’—the mandate of the Center of Public Integrity. But other than casually mentioning a couple of unsubstantiated corruption cases, the articles have not really pushed the Center’s mandate. In one of the articles on the protest against the Kudankulam reactor, Adrian Levy criticises the Atomic Energy Regulatory Board (AERB), the Indian regulatory body, by relying on what one former chairman has stated. In the process, he ignores or ridicules other versions. Further, he has not objectively examined the shocking misuse of funds by NGOs engaged in the protests. On the contrary, he is critical of the government for cracking down on dubious NGOs. In fact, he should have recommended that the Indian government make public its report on these NGOs. That would have alerted the Indian people and all the funders. Is it ethical to obtain funds for one purpose and use it for something different? Similarly, an investigative journalist should have more thoroughly examined the role of the church in fanning the movement. Further, there is also the need to explain the sudden prosperity of environmental activists in India. Good scholars or journalists need to provide an objective perspective. Pamphleteering has a very limited role. The last of the four articles, on India’s nuclear security, too, looks like an extension of old rumours/reports. It either lacks facts or exaggerates some stray incidents. This raises the puzzling question about the objective behind bringing out these misnamed ‘investigative’, and in actual fact extremely negative, stories on Indian nuclear policy and installations. A couple of articles clearly indicate that a section of Western nuclear community wants more information on India’s nuclear science programme, and especially its nuclear weapons programme. For this purpose, it has been using not just government delegations but also NGOs. The media now seems to have become a new partner in this endeavour.

#### No minerals impact

--not that rare we’d adapt

--tons of reserves in US, brazil, Canada, Australia, US

--impact is CCP propaganda

--nobody is worried

--did it in 2010 no impact

--smugglers export

--industry shift to use less

--reserves mean military is fine

James Vincent 19, Reporter, AI and Robotics at the Verge. "Rare Earth Elements Aren’t The Secret Weapon China Thinks They Are”, The Verge, 5/23/2019, https://www.theverge.com/2019/5/23/18637071/rare-earth-china-production-america-demand-trade-war-tariffs

One particularly chaotic option would be a ban on the export of rare earths — raw materials that are crucial for electronics. These elements are produced mostly in China, and used in the US for everything from electric cars to wind turbines, smartphones to missiles.

Chinese state media have backed the idea, calling America’s dependence on Chinese rare earths “an ace in Beijing’s hand.” President Xi Jinping hinted at that possibility when he visited a rare earth facility at the beginning of this week. (As a ministry spokesperson commented with what seemed like a nod and a wink: “It is normal that the top leader investigates relevant industrial policies. I hope everyone can interpret it correctly.”)

Rare earth elements are sometimes described as the “vitamins of chemistry,” as small doses produce powerful salutary effects. A sprinkle of cerium here and a pinch of neodymium there makes TV screens brighter, batteries last longer, and magnets stronger. If China suddenly shut off access to these materials, it would be like rewinding the tech industry back a few decades. And no one wants to ditch their iPhone and go back to a BlackBerry.

Experts in the field, though, are much less concerned about such a chilling scenario. They say that while a restriction on rare earth exports would have some immediate adverse effects, the US and the rest of the world would adapt in the long run. “If China really cuts off supply entirely then there are short term problems,” Tim Worstall, a former rare earth trader and commodities blogger tells The Verge. “But they’re solvable.”

Far from being an ace in the hole, it turns out rare earths are more of a busted flush.

The reasons for this are numerous, and span geography, chemistry, and history. But the most important factor is also the simplest to explain: rare earths just aren’t that rare.

A group of 17 elements, rare earths are what the USGS (United States Geological Survey) describe as “moderately abundant.” That means they’re not as common as oxygen, silicon, and iron, which make up the vast majority of the Earth’s crust, but some are on a par with elements like copper and lead, which we don’t consider exotic or scarce. Significant deposits exist in China, but also Brazil, Canada, Australia, India, and the United States.

[Marked]

The challenge with producing rare earths (and the reason they were given their name) is that they’re rarely found in concentrated lumps. These are chemically sociable elements, happy to bond with other compounds and minerals and tumble about in the dirt. This makes extracting rare earths from common earth like convincing a drunk friend to leave a raucous party: a lengthy and harrowing procedure. As Eugene Gholz, a rare earth expert and associate professor of political science at the University of Notre Dame puts it: “Once you take it out of the ground, the big challenge is chemistry not mining; converting the rare earths from rock to separated elements.” Unlike convincing that drunk friend, though, this process involves a series of acid baths and unhealthy doses of radiation. This is one of the reasons that countries like the US have been more or less happy to cede production of rare earths to China. It’s a messy, dangerous business, so why not let someone else do it? Other factors also helped, including lower labor costs and the existence of Chinese mines that produce rare earths as a byproduct. China’s sway in the rare earths market is a fairly recent state of affairs. Between the 1960s and the 1980s, the majority of the world’s supply was actually produced in America, from the Mountain Pass mine in California. The mine’s processing plant was shut down in 1998 after problems disposing of toxic waste water, and the whole site was mothballed in 2002. It’s only from the 1990s onward that China has shouldered the bulk of production, along with the associated environmental costs. (In 2010, the Chinese government estimated that the industry was producing 22.05 million tons of toxic waste each year.) An oft-referenced figure is that China now produces some 95 percent of the world’s rare earths, but Gholz says this statistic is “wildly out of date.” The USGS pegs China’s part as closer to 80 percent.

That’s still a substantial chunk of the world’s supply, though, and with no doubt that these are important commodities, the question is: what happens if China does cut off the US?

Luckily, we have a very good idea of what would happen next because it’s already happened before. Back in 2010, China stopped exports of rare earths to Japan following a diplomatic incident involving a fishing trawler and the disputed Senkaku Islands. Gholz wrote a report of the fallout from this incident in 2014, and found that despite China’s intentions, its ban actually had little effect.

Chinese smugglers continued to export rare earths off the books; manufacturers in Japan found ways to use less of the materials; and production in other parts of the world ramped up to compensate. “The world is flexible,” says Gholz. “When you try to restrict supplies to politically influence another country, people don’t give up, they adapt.”

He says that although his report examined the rare earth industry as it was in 2010, the “conclusions are pretty much the same” in 2019.

If China did turn off the rare earth tap, there would be enough private and public stockpiles to supply essential sectors like the military in the short term. And while an embargo could lead to price rises for high-tech goods and dependent materials like oil (rare earths are essential in many refining processes), Gholz says it’s highly unlikely that you would be unable to buy your next smartphone because of a few missing micrograms of yttrium. “I don’t think that’s ever going to happen. It just doesn’t seem plausible,” he says.

Even though a ban on rare earth exports is just speculation at this point, companies have begun to preempt any new Chinese restrictions. American chemical firm Blue Line Corp and Australian rare earth miner Lynas have already proposed new production facilities in the US, and rare earth stocks around the world have surged in response to the threat.

In the event of a ban, one of the most important backstops would be America’s Mountain Pass mine. Although the mine was closed after Chinese rare earths drove down prices, the facility is intact and resumed production last January. Recent estimates suggest it’s already supplying one-tenth of the world’s rare earth ores (though not their processing), and in the event of an embargo, it would be possible to bring Mountain Pass back up to speed.

## Outreach ADV

### Outreach---1NC

#### US says no---we have no reason to internationally cooperate since we don’t see other countries’ cartels as harmful, and we think we can apply our laws extraterritorially anyway.

#### No modeling---other countries see US antitrust as irrational, even if we get things right.

William E. Kovacic 15, Professor of Law and Policy at George Washington University, former General Counsel for the Federal Trade Commission, J.D. from Columbia University, “The United States and Its Future Influence on Global Competition Policy,” George Mason Law Review, Vol. 22, 2015, accessed via Lexis

One force that reduces the perceived legitimacy of the U.S. system is a widely accepted narrative, reflected in popular discourse and scholarly commentary, which portrays federal enforcement as irrational and unstable. 65 [\*1172] In this interpretation of modern U.S. enforcement history, antitrust policy undergoes recurring erratic shifts, with a small number of lucid intervals. For the most part, the irrationality narrative suggests that U.S. antitrust policy embraced unsupportable extremes of over-enforcement in the 1960s and 1970s, under-enforcement from 1981 to 1988 and 2001 to 2008, and achieved a sensible, balanced equilibrium only from 1993 to 2000 and 2009 to the present. 66 This accounting of antitrust history raises a troublesome question: why should any jurisdiction outside the U.S. respect a system that has lost its mind in roughly 41 of the past 55 years?

Policy-making in the irrationality narrative is sharply discontinuous, and the enforcement institutions have little evident capacity for self-assessment or correction over time. 67 Individual leaders count for everything, and institutional arrangements fail to discipline policy-making; 68 appoint a wise official and you get good results, but pick a zealot and the agency swerves toward frantic hyperactivity or utter indolence. The irrationality narrative is the public policy equivalent of an interpretation of Formula One racing that attributes the outcome in races entirely to the driver and treats the quality of the car and supporting team as largely irrelevant.

The irrationality account of U.S. enforcement history derives power from the stature of the narrators. Despite its unreliable reading of U.S. experience, the narrative's academic pedigree is daunting. Some of the greatest scholars in U.S. competition law have contributed to the story. If nonentities constructed the narrative, foreign observers would dismiss it out of hand. Instead, the narrative of irrationality and instability, often presented with the metaphor of a wildly swinging pendulum, originated and developed in the work of some of the field's most influential commentators. On many occasions outside the U.S., I have heard enforcement officials, practitioners, and scholars speak of the irrationality narrative as though it were an established truth. To these observers, the stature of the scholars who popularized the irrationality narrative invariably lends verisimilitude to the story.

As described below, the irrationality narrative of the U.S. system serves the aims of the right and the left in the debate about federal enforcement policy. For those who favor more intervention or less intervention, alike, the image of a system dangerously out of control serves to frame their own "sensible" policy proposals. By this technique, the narrator emerges as the voice of wisdom in a crazed policy environment.

[\*1173] The architecture of the modern irrationality narrative took shape in 1978 when Professor Robert Bork published the first edition of his transformative treatise, The Antitrust Paradox. 69 Professor Bork's central thesis was that "modern antitrust has so decayed that the policy is no longer intellectually respectable." 70 Each institution with a role in the implementation of the antitrust laws--the courts, the Congress, and the federal enforcement agencies--caused the decay. On antitrust matters, the Congress displayed the mentality of "the sheriff of a frontier town" who "did not sift evidence, distinguish between suspects, and solve crimes, but merely walked the main street and every so often pistol-whipped a few people." 71 With few exceptions, the courts embraced a view of antitrust law that "teaches the necessity for government intervention when no such necessity exists, and even when intervention is positively harmful." 72 Without regard to adverse economic effects, the DOJ and the FTC "must continually press on to fresh territory, seeking theories that broaden the application of the law and make violations easier to establish." 73

In Professor Bork's telling, the implementing institutions were capricious, reckless, or bent upon self-aggrandizement. 74 As a group, the institutions have gone mad, for they have no tendency or, perhaps, any capacity to reflect on their experience, identify error, and make corrections. 75 Instead, the U.S. antitrust system had "an inbuilt thrust toward greater severity or further extension." 76 Nothing, Professor Bork warned, seemed able to contain the destructive march of intervention: "This process has no obvious stopping point." 77

The image of a system out of control served Professor Bork's rhetorical aims; it showed the urgency for reform by presenting a system in shambles. The image also distorted (more mildly, misread) current trends substantially. When The Antitrust Paradox appeared in January 1978, each institution Professor Bork rebuked--the Congress, the courts, and the federal enforcement agencies--had taken steps to rebalance the antitrust system. 78 The adjustments came slowly, but they were coming, nonetheless. If Professor Bork had acknowledged that the seemingly out-of-control institutions [\*1174] were making important adjustments, his book would have lost some (maybe much) of its force.

A second decisive contribution to the irrationality narrative came in the late 1980s and early 1990s from one of Professor Bork's harshest critics, Professor Robert Pitofsky. Though Professor Pitofsky scorned Professor Bork's calls for a vast retrenchment of antitrust enforcement, he used his own version of the irrationality narrative while setting out a more interventionist agenda. 79 Describing federal merger enforcement from the early 1960s through the early 1990s, Professor Pitofsky wrote:

American antitrust policy has tried to balance possible threats to competition against merger benefits, but remarkably, has careened from one extreme to another in this balancing process. For example, the United States had by far the most stringent antimerger policy in the world in the 1960s, striking down mergers among small firms in unconcentrated markets. By the 1980s, the United States maintained an extremely lenient merger policy, regularly allowing billion dollar mergers to go through without government challenge, even when they involved direct competitors. 80

Like Professor Bork in The Antitrust Paradox, Professor Pitofsky presented a system run amok. Federal policy "careen[s] from one extreme to another," like an automobile with an impaired driver swerving across the centerline. 81 No institutional feature in the U.S. system provided needed balance. 82

In Professor Pitofsky's version of the narrative, the solution to the aberrant enforcement behavior came by way of appointments--including his own--to the federal agencies. 83 In 2002, after chairing the FTC from 1995 to 2001, Professor Pitofsky said federal merger control by the late 1990s "stopped careening from aggressive enforcement based in some part on a populist ideology to minimalist enforcement based on hostility to the core assumptions of antitrust . . . ." 84 Under the Clinton Administration's appointees, federal policy stopped "careening," avoiding the extremes of an overheated, populist-inspired activism of the 1960s and the "minimalist" program of the Reagan presidency with its "hostility to the core assumptions of antitrust." 85

For Professor Pitofsky, like Professor Bork, the narrative of a system gripped by irrational, erratic variations in behavior served an important instrumental purpose. The portrayal of a regime swinging wildly between extremes allowed Professor Pitofsky to claim the role--as suggested in the [\*1175] title of his 2002 article, Antitrust at the Turn of the Twenty-First Century: A View from the Middle--of the wise centrist. 86 Professor Pitofsky underscored the rationality of his own program by juxtaposing it against the irrationality of his predecessors. 87 Clinton Administration antitrust officials strove to claim the mantle of wise centrism. 88 As the following passage from an essay in The Economist in 2000 shows, they framed their program as a sensible middle way between the irrational interventionism of the 1960s and 1970s and the inactivity of the 1980s:

It helps that [DOJ Assistant Attorney General Joel] Klein and his counterpart at the FTC, Robert Pitofsky, have been deliberately low-key in talking about their activities, claiming that they are modest and in the legal mainstream of legal thought and economics. They concede that they have been more interventionist than the laissez-faire ideologues of the Reagan years, but they say they are nothing like the trust-busting zealots of the 1960s who saw evil in every big company or merger. 89

In reporting on the Clinton administration strategy, The Economist presents the federal enforcement policy just as the DOJ and FTC leadership wished: a "modest" and "mainstream" program standing between two eras of irrationality; one guided by "trust-busting zealots" and the other led by "laissez-faire ideologues." 90

Taken on its own terms, the irrationality interpretation of U.S. antitrust history provides a grim picture of the American system. One should be wary of a system that intermittently has lucid policymaking intervals, but its normal state is irrationality. If everything depends on the appointment of wise centrists to head the agencies, nothing good can happen when the [\*1176] choice of DOJ or FTC leadership is not so inspired. Because personalities are decisive, when the wise centrists depart, nothing in the institutions themselves can prevent the system from returning quickly to bad old habits.

As the quotation presented above illustrates, the wise centrism story acquires force if periods of thoughtless extremism bracket the sensible policy era. As developed by Professor Pitofsky and other antitrust scholars, the irrationality narrative derives its power from the system's tendency to embrace extremes. 91 Dramatic variations in performance demonstrate the absence of thoughtful policy-making. The narrator seems sane by comparison if all others appear to be deranged. Professor Pitofsky's article in 2002 about the future of antitrust policy used this framing technique. 92 He wrote that "during the Reagan years, there was no enforcement whatsoever against non-horizontal mergers and joint ventures, boycotts, minimum resale price maintenance, exclusive dealing contracts, tie-in sales, attempts to monopolize, and monopolization." 93

The passage quoted above highlights two recurring features of the irrationality narrative. First, Professor Pitofsky's statement uses sweeping, categorical language ("no enforcement whatsoever") to describe the period of extreme inactivity. 94 In the 2002 article and in other papers, Professor Pitofsky made strong claims of inactivity to portray the Reagan Administration antitrust program as a gross departure from good practice. 95 Second, the portrayal of events, though written with the utmost self-assurance, often cannot withstand fact-checking and is verifiably incorrect. 96

[\*1177] Professor Pitofsky has plenty of esteemed company in telling the U.S. irrationality story by making bold claims belied by actual enforcement experience. As noted above, Professor Bork's denunciation of antitrust policy circa 1978 ignored important doctrinal and policy developments that fit poorly with a system out of control. 97 The story of horrible decay is less compelling if the asserted flaws are not so horrible. Other accounts of U.S. enforcement experience by the field's leading commentators include claims that during the Reagan Administration "merger enforcement ground to a halt," 98 that antitrust "[e]nforcement ceased," 99 and that the DOJ and the FTC "did not file a single vertical case." 100 Why did the U.S. system lose its mind? The answer, say two of America's best scholars, is that "extremists" took control of the enforcement agencies. 101 Experts in the U.S. might excuse these descriptions of federal enforcement as careless hyperbole. In my experience, foreign observers are more likely to take them at face value.

The story of U.S. antitrust policy in the 1980s is considerably more complex. Crucial factual tenets of the irrationality narrative are unsupportable. Merger enforcement never halted, 102 enforcement never ceased, 103 and vertical restraints cases (at least a few) still appeared. 104 To look beyond the categorical statements of inactivity and recount enforcement developments [\*1178] accurately would reveal a more thoughtful enforcement program at work. There is a major difference, for example, between saying a merger enforcement program has disappeared, and saying that boundaries have been reset, but policed actively.

Would a fuller, more accurate account of federal enforcement trends over time reveal intense debate about the proper direction of policy? Of course. Has policy shifted across administrations, especially after a regime change? No doubt. Yet, liberated from the irrationality narrative's determination to accentuate the magnitude of changes and cast decision-makers as senseless extremists, a more faithful account of U.S. federal enforcement history would portray adjustments as more gradual and nuanced, in most cases, than the irrationality narrative suggests. The discipline imposed by institutional arrangements, not simply patterns in leadership appointments (whether irrational officials or prudent centrists), would account for refinements over time.

#### ASEAN crisis management is inevitable.

Huong Le Thu 20, senior analyst at the Australian Strategic Policy Institute, “Vietnam shows ASEAN valuable new form of leadership,” Nikkei Asia, 06-25-2020, https://asia.nikkei.com/Opinion/Vietnam-shows-ASEAN-valuable-new-form-of-leadership

The virtual summit of the Association of Southeast Asian Nations taking place this Friday presents a challenge -- not only for the 10-nation bloc but also for Vietnam, the group's 2020 chair.

Without the backroom chats for all-important consensus building -- ASEAN's key measure of success -- the summit, delayed for nearly two months by the COVID-19 pandemic, demands a new style of diplomacy from Vietnamese Prime Minister Nguyen Xuan Phuc. He will have to negotiate online instead of in person in the port city of Da Nang, the original venue.

The format might not matter if ASEAN had developed a tradition of strong leadership, perhaps from its largest or best-run member countries. This model was shunned by the bloc's founders to promote equality among the group's diverse membership, but in recent years it has developed into a serious institutional weakness. Now it must deal with this problem.

Indonesia has at times been seen as a de facto leader because of its size. However, Jakarta has shied away from exercising its inherent authority since the election of President Joko Widodo, whose focus on domestic policy has left a regional leadership vacuum.

There are few other national candidates for Southeast Asian leadership. The Philippines under President Rodrigo Duterte has abandoned any attempt to challenge Chinese territorial assertiveness, choosing instead to cozy up to the regime of President Xi Jinping. Malaysia and Brunei, whose territorial claims also conflict with those of Beijing, have become reticent in the face of Chinese aggression, while Thailand and Singapore have sought largely to avoid jeopardizing bilateral ties with China.

As a latecomer to ASEAN, having joined in 1995 -- nearly three decades after the organization was founded -- Vietnam has been disinclined to take up a leadership position, despite rapid economic progress and encouragement from some other member states.

At the outset of its membership the country's economy lagged behind the six existing ASEAN members, and it was grouped with other latecomers in a second tier known as CLMV -- Cambodia, Laos, Myanmar, Vietnam. But the subsequent quarter century has seen impressive growth, with Hanoi thriving despite the recent impact on the region of the U.S.-China trade war.

Vietnam is seen to have performed strongly in the fight against COVID-19, earning respect for its impressive suppression of the disease from wealthier and more developed member states such as Singapore, Thailand and Malaysia.

The country remains economically less developed than many other ASEAN member states, but is poised to minimize the economic hit from COVID-19, recovering faster from the post-pandemic global recession and adapting to new opportunities better than most of its neighbors.

It has proved a capable host in previous stints in the ASEAN chairmanship, which rotates annually, but has not tried to lead ASEAN in every respect, rather picking security and diplomacy. It has no desire to replace Indonesia as the organization's de facto leader, and will not do so.

As a prime target of Chinese expansionism Hanoi has taken up a pivotal role in conflict management in the South China Sea, emerging as the region's front-line defender of the territorial status quo and demonstrating its interest in investing more diplomatic capital in the regional body. Importantly, Hanoi has shown strong support for ASEAN's institutional relevance in the region, unlike some bigger and better resourced neighbors with longer tenure in the organization.

For all these reasons, Vietnam's fellow ASEAN members appear confident of Hanoi's diplomatic capability, even in the trying circumstances of an online and relatively underprepared summit.

Hanoi's example points to a way out of the leadership conundrum for ASEAN -- if the organization is to prosper and develop it needs other member states to take active leadership roles in specific sectors of ASEAN activity.

ASEAN has transformed Southeast Asia since its foundation in 1967. But external conditions are changing again as the acrimonious trade and security relationship between Washington and Beijing sours the regional diplomatic environment.

Against this background Nguyen will do well to hold the ASEAN line on the South China Sea on Friday, and even better to maintain the organization's facade of consensus in the face of widely diverging views on the region's future.

Whatever the outcome of the virtual summit, however, the group needs to come to terms with the fact that no single member can restore its diplomatic centrality. That requires a collective effort of the willing and the committed.

#### Banning all cartels fails.

D. Daniel Sokol 8, Assistant Professor at the University of Florida Levin College of Law, J.D. from the University of Chicago Law School, “What Do We Really Know About Export Cartels and What is the Appropriate Solution?”, Journal of Competition Law & Economics, Vol. 4, No. 4, 2008, http://doi.org/10.1093/joclec/nhm037

A categorical ban on export cartel immunities could be imposed. A more gradualist approach offered by Scherer would be to allow each country an export cartel exemption in up to three industries." A full or partial ban is a difficult proposition to undertake. Because export cartels are case-specific and some export cartels may have ancillary justifications for their conduct, a general ban on immunities may not optimize global welfare. As with many per se rules, a per se ban on export cartel immunities provides a shorthand for how to address categorical conduct. However, per se rules may prohibit behavior that is pro-competitive. This is why, in the modem era, antitrust is wary of per se prohibitions generally. From the lack of empirical evidence based on data limitations, one cannot make a categorical assertion that export cartels are anticompetitive.4 s

#### Other countries say no.

D. Daniel Sokol 8, Assistant Professor at the University of Florida Levin College of Law, J.D. from the University of Chicago Law School, “What Do We Really Know About Export Cartels and What is the Appropriate Solution?”, Journal of Competition Law & Economics, Vol. 4, No. 4, 2008, http://doi.org/10.1093/joclec/nhm037

Because of public choice concerns, agencies may be reluctant to assist foreign antitrust agencies in information gathering of export cartels. Agencies that do offer assistance face potential political backlash regarding funding and other scrutiny by legislators and other parts of the executive branch (such as trade ministries) that support the special interests behind export cartels. This assumes that antitrust agencies are even permitted by law to assist sister agencies on export cartel investigations. There is a potential for cooperation on export cartel matters between competition officials in different countries who share a common vision and must fight against the trade or commerce officials within their own governments who promote these things. However, attacking entrenched vested interests is a risky strategy for antitrust agencies, as are other areas in which government limits competition (for example, agricultural subsidies) when other enforcement priorities such as hard-core cartels and ex ante competition advocacy come at a much lower cost and with a higher potential for success with less political backlash.

Bhattacharjea illustrates through a comparative case study of the soda ash export cartel the potential deleterious effect of export cartels on developing world countries. His work demonstrates how developing world competition agencies may be under-equipped to address export cartel anticompetitive behavior.3 9 A separate article describes how foreign export cartels have created anticompetitive effects within Mexico. In the Mexican case, the CFC's ability to act against foreign export cartels has been limited because the CFC was not empowered to investigate or impose remedies on foreign-based firms. 40 However, what is unclear is whether these case studies are representative or suffer from selection bias. Though there was some discussion of export cartels initially in the WTO Working Group on Trade and Competition, countries dropped the issue of export cartels from the agenda early on in favor of topics in which an agreement could be reached.

#### No ASEAN harmonization.

Cenuk Sayekti 20, Senior Lecturer in Law at Universitas Lancang Kuning, Ph.D. in Competition Law from Macquarie University, “Competition Law Harmonization: What ASEAN Can Learn from Others?”, Jurnal Ilmu Hukum, Vol. 4, No. 2, April 2020, https://doi.org/10.24246/jrh.2020.v4.i2.p195-216

Demands for a more comprehensive harmonization of competition law in ASEAN member states assume that legal diversity has caused transaction costs and lowers economic trade and welfare by creating legal uncertainty. The implementation of Technical Barriers to Trade (TBT) could be an example. 11 Legal harmonization is best suited to the peculiarities of the region and to ASEAN itself rather than legal transplantation of legal unification. 12

Some studies acknowledged that competition law as the fundamental principle of regional economic integration and harmonization could bring many benefits to the countries which are involved.13 The latest research findings such as Luu,14 Thanadsillapakul,15 and Malinauskaite,16 confirmed that competition law harmonization is essential for the existence of an economic community. 17 Regional competition law may reduce some significant obstacles to competition law enforcement in developing jurisdictions.18 In a common market, competition law has the potential to further the goal of the integrated market.19 Integrating competition policy is valuable as a regional agreement has a wider opportunity to assist the regions in achieving deeper economic integration than the international system could achieve.

A significant benefit offered by regional competition policy is that it eliminates barriers to trade and it makes sure the member countries to enforce their domestic competition laws to ensure the access of firms.20 To put it in other words, common standardized rules of competition policy reduce entry barriers to the economic community.

ASEAN adopted the EU style harmonization and the positive expectations have been raised.21 EU has succeeded in achieving harmonization of competition law through the supranational authority.22 Meanwhile, ASEAN members are still struggling with their efforts to stabilize their new-born competition laws. Some gaps exist among the member states in their levels of enforcement. Diversity in the national levels of enforcement may not only harm the national market but it also may impede the free flow of trade across the ASEAN. Therefore, competition law authorities must establish the proper role of competition policy.

# 2NC

## Anticompetitive PIC

### Do the CP---2NC

#### ‘Prohibition’ must ban all instances of behavior

James Lane Buckley 91, Judge on the United States Court of Appeals for the District of Columbia Court, BA and JD from Yale University, Former Undersecretary for Security Assistance at the State Department, Former United States Senator from New York, “Hazardous Waste Treatment Council v. Reilly”, United States Court of Appeals for the District of Columbia Circuit, 938 F.2d 1390, 1395-1396, 1991 U.S. App. LEXIS 16095, 7/26/1991, Lexis

Petitioners claim that the EPA considers a state law to "act as a prohibition" under the regulation only when it bans all treatment, storage, and disposal within a State, and they point to the ALJ's statement, based on his reading of the preamble to the regulations, 45 Fed. Reg. at 33,395, that the EPA "appears to have construed the phrase 'act as a prohibition' in [paragraph (b)] as equivalent to an outright ban or refusal to accept hazardous waste for treatment, storage, or disposal." ALJ Decision at 112. Petitioners contend that the regulation must embrace any law that would even indirectly, as in the instant case, prohibit any treatment facility; otherwise, a State could accomplish a total ban one facility at a time. Senate Bill 114, they charge, epitomizes the "NIMBY" syndrome: In response to the needs of the nation for treatment of hazardous waste, North Carolina has simply said, "Not in my backyard." By refusing to respond, petitioners urge, the EPA ignores its duty to monitor state programs.

Although, at oral argument, government counsel [\*\*13] attempted to defend the "ban on all treatment" position that petitioners ascribe to the EPA, that is not the basis on which the agency concluded that Senate Bill 114 did not act as a prohibition within the meaning of section 271.4(b). In explaining why the second condition of paragraph (b) had not been met, the Regional Administrator emphasized that of the 485 riparian miles available in North Carolina for a facility of the kind proposed by GSX, 333 remained available under the Act, and noted that a smaller plant could be built at the Laurinburg site. Final Decision at 2. We therefore construe the EPA's decision to mean that a state law "acts as a prohibition" on the treatment of hazardous wastes when it effects a total ban on a particular waste treatment technology within a State, and nothing more.

[\*1396] Such a construction is reasonable and merits deference. The language of paragraph (b), which uses the word "prohibit[]" rather than "impede[]" or "restrict[]" as in the case of paragraph (a), suggests that the former allows States greater latitude in regulating particular treatment facilities before a prohibition is found to exist. This is consistent with the preamble's expression of [\*\*14] a desire to encourage the development of state programs by avoiding the establishment of "very tight standards." See 45 Fed. Reg. at 33,385. Second, defining prohibition in terms of the ban of a particular technology falls well within the language of paragraph (b). Finally, we see nothing inconsistent between this construction and the language of the underlying statute, 42 U.S.C. § 6926(b), which merely asserts that a state program may not be authorized if "such program is not consistent with the Federal and State programs applicable in other States." This language allows the agency enormous latitude in structuring its own implementing regulations and in interpreting them.

#### ‘Substantial’ means totality of circumstances

US First Circuit Court of Appeals ’98

In Re Richard Lamanna, Debtor.first Usa, et al., Appellees, v. Richard Lamanna, AppellantUnited States Court of Appeals, First Circuit. - 153 F.3d 1Heard July 27, 1998.Decided Aug. 25, 1998 <http://www.swlearning.com/blaw/cases/court_uses.html>

Decision Affirmed. The court joins other circuits in adopting the "totality of the circumstances" test as the measure of substantial abuse under the Bankruptcy Code. This is a flexible standard adopted by Congress to allow bankruptcy courts to consider the factors involved in each case and to prevent abuse of Chapter 7 filings. When there is evidence that the consumer can pay their debts, there is likely to be found substantial abuse.

### Cartels Good---2NC

#### There are scenarios where export cartels are not anticompetitive---the plan bans those.

Peerapat Chokesuwattanaskul 17, Ph.D. candidate at the University of Cambridge, MPhil in Economics from the University of Cambridge, “Export cartels and economic development,” University of Cambridge Centre of Development Studies, 09-06-2017, https://doi.org/10.17863/CAM.20940

Theoretically, there are conditions under which an increase in producer surplus is likely to exceed the sum of the loss in consumer surplus and deadweight loss, and, hence become welfare-improving. These conditions are determined by the degree of heterogeneity of firms and the demand elasticity. The former influences the level of producer surplus and deadweight loss and the latter determines the level of consumer surplus.

According to Bos and Pot (2012), there are three main conditions under which cartels may improve total welfare. If one supposes that firms have different unit costs, where the price is lower than the unit costs of at least one firm, a welfare-improving cartel agreement could be made by setting the price to be as high as the unit costs of all firms. The other two conditions depend on whether cartels have a side-payments structure, under which the one who violates the quota has to pay compensation (side-payment) to the others. If the side-payments structure is installed and unit costs are different across firms, cartels with side payments allow production to be shifted towards more efficient firms and hence welfare improvement. If the side-payments structure is absent and if the market demand is sufficiently inelastic19, the profit margin on all sales must be positive and the difference in unit costs across firms is sufficiently large in order to make a cartel agreement welfare-improving. These conditions are generally satisfied in the situation under which the inferior firms gain a substantial improvement in terms of producer surplus while consumers are less sensitive towards changes in prices. This situation resembles small and medium firms from developing countries successfully exporting into more developed markets in which consumers have a substantial purchasing power.

#### Small companies AND countries

Niklas Jensen-Eriksen 2013. Casimir Ehrnrooth Professor of Business History, and a member of the multidisciplinary Helsinki Institute of Sustainability Science (HELSUS) at the University of Helsinki. "A Potentially Crucial Advantage" https://www.cairn.info/revue-economique-2013-6-page-1085.htm

Although export cartels can be useful tools for small or undeveloped countries, it would not be in general interest to categorically exempt cartels from these countries from strict competition laws, and ban those that originate from in - dustrialized countries. This division would not tell us anything about the role of these cartels in the markets, because companies from small or undeveloped countries can set up alliances that have a monopoly position and therefore have traditional negative effects on customers and on economic development. nei - ther should we stop small companies from large industrialized countries from setting up efficiency-enhancing institutions, if they continue to face strong competition from non-members. These institutions should be banned if they achieve a dominant position in the markets. it might, however, be difficult for individual governments to find out whether nominally independent foreign suppliers have formed export cartels that have such a strong position. Requiring the registration of export cartels in all coun - tries, combined with the sharing of information among governments, could help competition authorities better understand the state of competition in individual markets.91

#### Promotes econ and tech development

Niklas Jensen-Eriksen 2013. Casimir Ehrnrooth Professor of Business History, and a member of the multidisciplinary Helsinki Institute of Sustainability Science (HELSUS) at the University of Helsinki. "A Potentially Crucial Advantage" https://www.cairn.info/revue-economique-2013-6-page-1085.htm

This article argues that cartels can in certain circumstances be a source of power for the small and weak nations, and that this aspect has often been overlooked in current public discussions about cartels, which tend to emphasize their negative effects. In particular, we will look at export cartels, which, in most countries, are exempted from the scope of tough competition laws, but which have since the end of the 1980s received an increasing amount of criticism. Yet, as several writers have noted, the available empirical evidence on the actual effects and activities of export cartels is very limited. This article expands our knowledge by analyzing one country, Finland, where these institutions played an exceptionally important role. The Finnish export associations helped the country’s small and insignificant producers become significant players in world markets, and promoted economic and technical development in their home country. Yet, the Finnish cartels also promoted the cartelization of international trade.

#### Link framer – everyone agrees the empirical evidence for export cartels is limited, so you should be incredibly hesitant to vote aff because uniqueness is on track

Niklas Jensen-Eriksen 2010. Casimir Ehrnrooth Professor of Business History, and a member of the multidisciplinary Helsinki Institute of Sustainability Science (HELSUS) at the University of Helsinki. "Predators or Patriots? Export cartels as a source of power for the weak" <https://ebha.org/ebha2010/code/media_168473_en.pdf>

However, countries are not involved only in export but also in import trade, and hence many of them have been willing to consider a general international ban. Furthermore, as governments have became increasingly willing to attack anticompetitive practices and to remove various trade barriers, export cartels have began to appear as strange anomalies. It is therefore not surprising that since the end of the 1980s, policymakers and scholars have considered whether export cartels should be treated in same way as other cartels. No consensus has emerged.7 This does not reflect only the fact that they are perceived to offer benefits for exporting countries**. As several scholars have noted, the available empirical evidence on the actual effects and activities of export cartels is very limited**,8 **and it is therefore difficult to offer firm conclusions on what impact they have on economic development and world trade.**

#### Lit review

Peerapat **Chokesuwattanasku** **2018**. University of Cambridge, DPhil Dissertation. "Export cartels and economic development" <https://www.repository.cam.ac.uk/bitstream/handle/1810/273865/Chokesuwattanaskul-2018-PhD.pdf?sequence=1&isAllowed=y>

The assessment of the academic understanding is far from being clear-cut either. The conventional view on export cartels promotes a strict prohibition of export cartels, believing that export cartels are purely beggar-thy-neighbour and detrimental for the exporting firms themselves. However, some scholars have recently proposed that export cartels are more likely to be beneficial when they originate in developing countries than those from developed countries (Bhattacharjea, 2004; Dick, 1990; Jensen-Eriksen, 2013). It seems that the effects of export cartels on economic development are not as detrimental as claimed by scholars and policymakers (Buccirossi and Spagnolo, 2006; Kühn, 2001; Schultz, 2002; Victor, 1991).

#### Case studies prove

Niklas Jensen-Eriksen 2010. Casimir Ehrnrooth Professor of Business History, and a member of the multidisciplinary Helsinki Institute of Sustainability Science (HELSUS) at the University of Helsinki. "Predators or Patriots? Export cartels as a source of power for the weak" <https://ebha.org/ebha2010/code/media_168473_en.pdf>

Yet, we cannot rely only on US data, if we want to come to some general conclusions about the significance of export cartels or on whether they should be treated in a similar way as other cartels. Nor is it likely that any particular simple data set can offer sufficient information on the impact of export cartels. They, like any other long-lasting economic institutions, can have varied effects on societies. Detailed case studies on various countries could help us to build a more coherent picture of the activities of these associations and their impact on international trade and economic development of countries. In this paper, we will look at one country, Finland, where export cartels played a crucial part in the economy. The famous US export cartels covered only a small part of their country’s export trade. At the early 1930s, they did handle approximately 19 per cent of the country’s exports, but by 1981 this share had declined to two per cent.15 The Finnish foreign trade, in contrast, was dominated by the export cartels for most of the 20th century. But what impact did this have on the competitive position of the Finnish producers or on the economy of the country? Did they have negative political or economic repercussions for Finland or on the international trade? Did they promote the cartelization of world paper trade? It is argued that the co-operative strategy was highly successful: the small agricultural peripheral country gradually became one of the leading producers of pulp and paper in the world, and a developed industrial nation. The associations could also be used as defensive barriers, for example, against attempts by Hitler’s Germany to expand its economic influence in Northern Europe during the Second World War. In short, is argued that cartels can be a source of power for the weak nations, and that this aspect has often been overlooked in current public discussions about cartels, which tend to emphasise their negative effects. This paper is based on published works and on government and business documents.

#### Development

Niklas Jensen-Eriksen 2010. Casimir Ehrnrooth Professor of Business History, and a member of the multidisciplinary Helsinki Institute of Sustainability Science (HELSUS) at the University of Helsinki. "Predators or Patriots? Export cartels as a source of power for the weak" <https://ebha.org/ebha2010/code/media_168473_en.pdf>

Yet, other scholars and countries have been less keen to ban export cartels altogether. Brendan Sweeney had pointed out that export cartels can enhance consumer and aggregate welfare in right circumstances. “Where the cartel is comprised of small to medium-sized businesses and its aim is to increase the value of exports by reducing costs, sharing risks and improving products, the cartel is likely to be welfare-enhancing.” These kinds of associations can stimulate competition in markets, and thus benefit foreign customers as well as cartel members.28 According to Andrew Dick, export cartels can be either efficiency-enhancing or monopoly-promoting, but he also pointed out that these goals are not necessarily mutually exclusive. He studied the impact of US export cartels on a sample of 16 commodities, and found five efficiency-enhancing cartels, three monopoly cartels, one with mixed effects and seven which turned out to be relatively useless.29 It has also been argued that tough domestic or multilateral competition policies would take away some of those policy instruments than can be used to support their development,30 and that that export cartels “level the playing field” for small companies who would find it difficult to enter foreign markets or compete with large corporations.31

#### Allows helpful consolidation

Niklas Jensen-Eriksen 2010. Casimir Ehrnrooth Professor of Business History, and a member of the multidisciplinary Helsinki Institute of Sustainability Science (HELSUS) at the University of Helsinki. "Predators or Patriots? Export cartels as a source of power for the weak" <https://ebha.org/ebha2010/code/media_168473_en.pdf>

Co-operation had helped the survival of uncompetitive and small producers, which could not have defended their market shares in open, unrestricted competition. The competition legislation was a factor, although not the only one, behind the consolidation process that swept through the European pulp and paper industry during the 1980s and 1990s. However, the cause-effect process was in fact a two-way street. Consolidation also promoted decartelisation. For example, when the size of the Finnish companies grew, they felt that they no longer needed to be members of national export associations like Finnpap and Finncell. The large Finnish companies resigned one by one and during the 1990s these associations, whom even the Finnish authorities had by now started to harass, were disbanded.

## Trade ADV

### Say No---2NC

#### EU backlash kills

Sokol 9 (D. Daniel Sokol, Assistant Professor, University of Florida Levin College of Law, Limiting Anticompetitive Government Interventions That Benefit Special Interests, 17 GEO. Mason L. REV. 119 (2009), <https://scholarship.law.ufl.edu/cgi/viewcontent.cgi?article=1121&context=facultypub>, y2k)

The weakness of the ICN specific to addressing antitrust public restraints is that it may not have United States and EU support. There has been no discussion at the ICN of immunities (such as export cartels), international trade/market access issues, or antidumping. No ICN work discusses how to overcome immunities directly. Moreover, most public restraints come about as a result of legislative failure. Agencies may not be so effective as to be able to police against existing public restraints, though they may be able to better affect the imposition of new public restraints. Thus, recommended practices can only go so far when it is not a market malfunction or a problem of coordination that causes the problem of public restraints. Rather, it seems to be the ability of governments to limit legislation that is both existing and proposed. Agencies can make progress in this area. However, this progress may be slow.

#### China prevents harmonization even in the opt-in system

Kendall 19 (Brent Kendall is a legal affairs reporter in the Washington bureau of The Wall Street Journal, where he covers the Justice Department, the Federal Trade Commission and the federal courts, including the Supreme Court, Global Antitrust Agencies Issue New Rules on Enforcement, 4-5, <https://www.wsj.com/articles/global-antitrust-agencies-issue-new-rules-on-enforcement-11554496427>, y2k)

The International Competition Network’s new protocols, announced Friday, are aimed at streamlining the enforcement process while also preventing countries from using local antitrust laws to favor domestic companies over competitors from other jurisdictions.

Individual nations will have to opt in to be bound by the framework, and its effectiveness could be limited by how Chinese authorities respond, analysts said.

“It basically means you can’t reverse-engineer an outcome to favor privileged competitors,” said University of Florida antitrust-law professor Daniel Sokol. “This could put pressure on a number of countries.”

Much of the private sector’s call for greater clarity and stronger protections has come amid the rise of antitrust enforcement as a hot topic in the U.S. and abroad, with public frustration mounting over increased corporate concentration and the size and reach tech behemoths, among other companies.

The U.S. Justice Department had been pushing for the rules to be adopted. The number of countries seeking to exercise antitrust authority has grown substantially in recent years; as a result, multinational mergers need the approval not only of the U.S. and European Union but of a range of smaller countries as well.

“The proliferation of competition authorities around the world underscores the importance of agreeing on a core set of procedural norms,” the Justice Department’s antitrust chief, Makan Delrahim, said last year in an address to the Council on Foreign Relations. But the new protocols don’t attempt to reconcile the range of laws used to address mergers and anticompetitive conduct, which vary greatly by country.

The ICN protocol was approved by agencies from a core group of countries, including the U.S., Brazil, France, Japan, Mexico and South Korea.

China isn’t a member of the ICN, though it would still have the option to agree to the rules if other countries could persuade it to do so. U.S. officials have discussed the issue with their Chinese counterparts, according to a person familiar with those talks.

George Paul, an antitrust lawyer at White & Case LLP, said it would take time to determine whether the new rules would lead to meaningful improvements in emerging jurisdictions.

“My sense is that China will do what it wants—whether it joins or not,” Mr. Paul said. “Ultimately, the ability to get harmonization is limited because the Chinese economy and legal system operates very differently than our capitalism-based economy and legal system does.”

#### Harmonization would be super gradual---allows a host of anticompetitive conducts to go unpunished in the interim which triggers the aff

Sokol 9 (D. Daniel Sokol, Assistant Professor, University of Florida Levin College of Law, Limiting Anticompetitive Government Interventions That Benefit Special Interests, 17 GEO. Mason L. REV. 119 (2009), <https://scholarship.law.ufl.edu/cgi/viewcontent.cgi?article=1121&context=facultypub>, y2k)

The proposed WTO solution is not an exclusive solution. In conjunction with soft law institutions, it should build domestic capacity to limit or remove public restraints. Hard law solutions are infrequent whereas soft law fosters day-to-day interaction between agencies. Thus, soft law institutions play a critical role in shaping antitrust norms. They can help to identify public restraints, develop better practices to reduce them, and serve to educate regulators and the public at large as to the anticompetitive aspects of public restraints. A soft law solution on its own would be very gradual, and in the near-to-medium term allow a significant amount of anticompetitive conduct to go unchallenged, because of the reluctance to take on significant public restraints due to public choice concerns. The increased use of the WTO would help solve what soft law harmonization and domestic approaches cannot do as effectively in the near-to-medium term--overcome the domestic political process. It is the domestic political process which has created antitrust immunities and anticompetitive public restraints. Thus, revitalizing antitrust regulation and taking action against such restraints may require an international solution.

### Thumpers---2NC

#### Tons of thumpers to protectionism

Noah Fry 12-4, PhD Candidate in Political Science at McMaster University, “Fighting U.S. Protectionism Requires Inward Focus”, Winnipeg Free Press, 12/4/2021, https://www.winnipegfreepress.com/opinion/analysis/fighting-us-protectionism-requires-inward-focus-575861322.html

U.S. President Joe Biden’s Build Back Better Act shows that American protectionism existed before and continues past the Donald Trump administration. Canada must finally learn from this hallmark of American politics and calibrate its trade policy to have a stronger industrial focus.

Under the proposed bill, consumers of electric vehicles can receive US$12,500 in tax credits. But to receive the full rebate, the vehicle must be produced by American manufacturers.

The act, not yet approved by the Senate, serves as a response to both economic and environmental crises. It aims to restore the American auto industry while addressing climate change.

Canada’s international trade minister, Mary Ng, says in a letter to congressional leaders that the bill is discriminatory and will cause “irreparable harm” to both Canadian and American auto sectors. Prime Minister Justin Trudeau said he also expressed concern about the rebates and their impact on continental trade in his recent Oval Office meeting with Biden.

U.S. protectionism is nothing new

Despite their frustration, Canadian policy-makers shouldn’t be surprised. The proposed legislation is among a string of protectionist measures pushed by several administrations.

The Barack Obama administration supported Buy American provisions in the wake of the 2008 economic recession. Canadian policy-makers complained at the time that the provisions were discriminatory, and they were ultimately watered down.

The Trump administration was especially protectionist. It applied tariffs broadly, including on Canadian steel and aluminium twice. By 2019, the United States was leading the world with more sanctions than at any other period in its history.

Biden signalled his support for America-first provisions during his presidential campaign. The Democratic platform included references to restoring auto-sector jobs and increasing electric-vehicle sales.

Last April, the Biden administration opened a Made in America Office and directed agencies to increase the amount of American content in their purchases.

More broadly, Americans have long offered significant subsidies to its agricultural sector. The trend line in American trade policy is clear: protectionism is back on table, in significant ways.

### Protectionism Inevitable---2NC

#### Export cartels are not key.

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

It is suggested that concerns regarding the link between competition policy and trade policy have been around since the pre-GATT period. There have also been attempts to integrate the competition policy with the WTO framework. Nonetheless, studies linking competition law and protectionism remained scant. While the protectionist tendencies of EU merger regulation enforcement have been explored empirically, little or nothing has been found in the US context. Furthermore, studies that relate export cartels to protectionism are mainly based on theoretical assumptions given the lack of empirical data to establish the economic effects of export cartels.

### Trade D---2NC

#### Trade doesn’t solve war

Charles Miller 14, Lecturer at the Strategic and Defence Studies Centre at the Australian National University, “Globalisation and War”, April, <http://www.aspistrategist.org.au/globalisation-and-war/>

John O’Neal and Bruce Russett’s work is perhaps the best known in this regard—and Steven Pinker cites them approvingly in his book The Better Angels of Our Nature. Analysing trade and conflict data from the nineteenth to the twenty-first centuries, they found that trade flows do have a significant impact in reducing the chances of conflict, even when taking a variety of other factors into account. But their conclusions have in turn been questioned by other scholars. For one thing, their model failed to take three things into account. First, it’s quite possible that peace causes trade rather than the other way around—no company wants to start an export business to another country if it anticipates that business linkages will be cut off by war further down the line. Second, conflict behaviour exhibits what’s called ‘network effects’— if France and Germany are at peace, chances are Belgium and Germany will be too. And third, both the likelihood of conflict and the level of trade are influenced by the number of years a pair of countries has already been at peace—because prolonged periods of peace increase mutual trust. Take any of these factors into account, and studies have shown (here and here) that the apparent relationship between trade flows and peace disappears. Perhaps, though, conceiving of globalisation solely in terms of trade flows is mistaken. Alternative indicators of globalisation include foreign direct investment, financial openness and the levels of government intervention in economic relations with the rest of the world. Data on those variables is less extensive than on trade flows, usually dating back only to the post World War II period. But some analysts, such as Patrick McDonald and Erik Gartzke, have argued that a significant correlation can be found between them and a reduction in the probability of conflict. Those findings, newer than O’Neal and Russett’s, haven’t yet been subjected to the same intense scrutiny, so may in turn be qualified by future research. What does all that mean for the policy-maker? The statistical evidence certainly doesn’t tell us that globalisation has made war in East Asia impossible. ‘Cromwell’s law’ counsels us that a logically conceivable event should never be assigned a probability of zero. The most we could conclude is that globalisation has made such an occurrence much less likely. There’s some hopeful numerical evidence that globalisation does indeed have that effect, but the evidence isn’t so compelling that we can substitute an economic engagement policy for a security policy. By all means, let’s continue to promote trade in the Asia-Pacific. But we should also continue to be prepared for scenarios which are unlikely but would be hugely damaging if they were to occur.

#### Trade is irrelevant for war

Katherine Barbieri 13, Associate Professor of Political Science at the University of South Carolina, Ph.D. in Political Science from Binghamton University, “Economic Interdependence: A Path to Peace or Source of Interstate Conflict?” Chapter 10 in Conflict, War, and Peace: An Introduction to Scientific Research, Google Books

How does interdependence affect war, the most intense form of conflict? Table 2 gives the empirical results. The rarity of wars makes any analysis of their causes quite difficult, for variations in interdependence will seldom result in the occurrence of war. As in the case of MIDs, the log-likelihood ratio tests for each model suggest that the inclusion of the various measures of interdependence and the control variables improves our understanding of the factors affecting the occurrence of war over that obtained from the null model. However, the individual interdependence variables, alone, are not statistically significant. This is not the case with contiguity and relative capabilities, which are both statistically significant. Again, we see that contiguous dyads are more conflict-prone and that dyads composed of states with unequal power are more pacific than those with highly equal power. Surprisingly, no evidence is provided to support the commonly held proposition that democratic states are less likely to engage in wars with other democratic states.

The evidence from the pre-WWII period provides support for those arguing that economic factors have little, if any, influence on affecting leaders’ decisions to engage in war, but many of the control variables are also statistically insignificant. These results should be interpreted with caution, since the sample does not contain a sufficient number wars to allow us to capture great variations across different types of relationships. Many observations of war are excluded from the sample by virtue of not having the corresponding explanatory measures. A variable would have to have an extremely strong influence on conflict—as does contiguity—to find significant results.

7. Conclusions This study provides little empirical support for the liberal proposition that trade provides a path to interstate peace. Even after controlling for the influence of contiguity, joint democracy, alliance ties, and relative capabilities, the evidence suggests that in most instances trade fails to deter conflict. Instead, extensive economic interdependence increases the likelihood that dyads engage in militarized dispute; however, it appears to have little influence on the incidence of war. The greatest hope for peace appears to arise from symmetrical trading relationships. However, the dampening effect of symmetry is offset by the expansion of interstate linkages. That is, extensive economic linkages, be they symmetrical or asymmetrical, appear to pose the greatest hindrance to peace through trade.

## Resources ADV

### Cartel Ended---2NC

#### Every cartel lost.

Tim Treadgold 15, Contributor at Forbes, “Wave Goodbye To Another Commodity Cartel As Potash Goes The Way Of Oil,” Forbes, 03-10-2015, https://www.forbes.com/sites/timtreadgold/2015/03/10/wave-goodbye-to-another-commodity-cartel-as-potash-goes-the-way-of-oil/?sh=a7125e420ab8

The commodity cartels keep cracking. Six months after the break-down of OPEC's control of the oil market there are signs that the price of an important agricultural product, potash, is also poised to take a fresh step down.

In the same way the Organization of Petroleum Exporting Countries once dictated production rates and prices for oil, control of the market for potash, a rich source of potassium which boosts crop yields, is fracturing.

Once a business tightly-controlled by an East European and North American cartel the first cracks appeared 21-months ago when a Russian company, Uralkali, quit the Belarussian Potash Company in which it was a co-owner with a Belarussian company, Belaruskali.

Lost Pricing Power

That left Canpotex, the North American marketing venture controlled by Potash Corp of Saskatchewan, Mosaic Company and Agrium, as the dominant cartel in the potash business, but without the power to keep prices up.

Since Uralkali pulled out of Belarussian Potash the price of standard potash has dropped from around $400 a ton to $300/t.

The next leg down could come if potash producers and customers fail to re-sign the long-term contracts which have been the backbone of the potash business for decades.

In past years the annual, contracts mainly with customers in China and India, have been signed in January or February with the Chinese contract treated as the global price benchmark.

High Prices Damaged Demand

While producers have enjoyed the comfort of a fixed price for their potash it has not often been in favor of consumers, with most believing that the cartels raised the price too far in 2012, damaging demand from farmers.

Manipulation of the potash market has been a feature of the industry for decades with a low point being a Canadian Government ban on a 2010 bid by the mining giant, BHP Billiton, to acquire Potash Corp.

That rejection saw BHP Billiton push ahead with development of its own potash mine called Jansen in Saskatchewan though recent activity at the project has slowed in line with the over-supplied potash market and weak prices.

A further slowdown at Jansen is possible if the long-term contract system between potash producers and customers has broken down.

Chinese Buyers Hold The Whip Hand

The Australian investment bank, Macquarie Wealth Management, noted in a potash industry research paper circulated yesterday that the producers are seeking a price increase to around $335/t whereas Chinese customers want to roll over contracts at $305/t, or to achieve a further price cut.

The bank's research paper was headed: 'The beginning of the end for the potash contract system' with the cover illustration being an Arctic ice flow split by a wide gash in the ice.

Our view is for the balance of power to be skewed further towards the Chinese buyers for every day of delay, as the position of global potash producers weakens," Macquarie said.

"In fact, we believe there is an increasing chance that the contract system itself may not survive 2015."

The System Is Falling Apart

"We think the benchmark contract system in China will fall apart sooner or later anyway.

"We see no upside for potash prices over the next four years, given the premium paid above the cost curve, with key producer currencies falling we feel pricing may soon move toward $250/t on a spot basis to see any meaningful, sustained, supply reaction."

#### They collapsed!

Alistair MacDonald 15, Reporter at The Wall Street Journal, “How a Potash Cartel Collapsed,” Wall Street Journal, 12-14-2015, https://www.wsj.com/articles/how-the-belarusian-potash-company-re-gained-its-footing-1450098821

In July 2013, Elena Kudryavets stepped off a plane in São Paulo and was called by a colleague with news: their Russian trading associates had just ended a partnership that controlled over a third of the global market potash—a key fertilizer.

The decision by Russian miner Uralkali URKA -0.02% JSC to exit its partnership with Ms. Kudryavets’ Belarusian Potash Company ended a cartel system that had, along with a North American trading group, effectively controlled prices in the $20 billion plus market. Uralkali’s departure prompted potash prices to fall by some 25% and left Ms. Kudryavets running a company at which many of the senior executives, and expertise, had just left for Russia.

The end of the partnership, then also called the Belarusian Potash Co., left both sides nursing a grievance that makes it less likely that the pair will reunite.

“My first thought was disbelief,” said Ms. Kudryavets, who is director general of BPC, the sales and marketing arm of giant potash miner JSC Belaruskali.

Belorussian executives say that Uralkali backed out when Minsk sought more say in a relationship that had been dominated by the Russians. A spokeswoman for Uralkali said that the Belarussians sold potash outside of the relationship.

“Belaruskali always wanted better deals, better markets, better logistics, better financials, than Uralkali,” she said in an email.

The departure left BPC scrambling for staff. The top positions in the Minsk-based partnership had been held by Uralkali employees, including the heads of sales, marketing and finance. The sales team also came from Uralkali.

The BPC team had been so gutted by the loss of the Uralkali partnership that “we’d turn up at conferences and not know anyone,” said Aleksandr Polyakov, who was hired to run sales and marketing after the breakup.

In 2014, China’s state buyers didn’t even invite BCP to pitch for their yearly contract, long seen as the benchmark that helps set prices across the industry. Belaruskali executives moved quickly to rebuild, hiring staff and re-establishing relationships. This spring, Belaruskali won the Chinese contract, in a sign of how the company has re-established itself.

Managers also fought to dispel an outside perception of the mine, and the country, as a Soviet relic dependent on Russia. In May, a delegation of potash buyers visiting Minsk from Myanmar told Mr. Polyakov that they were afraid to get off the plane.

“They thought it was going to be like North Korea,” he said.

Executives at Belaruskali and BPC see little reason to resurrect the partnership. Analysts believe, though, that this decision would likely be made by Alexander Lukashenko, Belarusia’s authoritarian President, and Russian President Vladimir Putin. Most analysts say that the relationship isn’t close and potash is one way for Mr. Lukashenko to demonstrate his autonomy from Moscow.

“The message from Belarus is a return to the cartel is not going to happen,” said Balázs Jarábik, a visiting scholar at the Carnegie Endowment, who focuses on Eastern Europe.

At both companies, executives show continued bitterness over the end of their partnership. Both say they operate fine alone.

#### Their card does not say cartels are back. It says the industry is strong, and pricing is “cartel-like,” but then agrees that the actual cartel ended in 2013.

Dizard 21 - (John Dizard, columnist @ Financial Times; 4-30-2021, Financial Times, "Fertiliser industry emerges from nine-year funk," doa: 6-21-2021) url: https://www.ft.com/content/105965d2-3f12-4ffb-9d8a-f54f92450eff

The fertiliser industry has seen an astonishing turnround in its fortunes over the past year. The beginning of the Covid-19 crisis last year marked the bottom of what had been a nine-year funk in prices and profits.

But then something happened, or, rather, a combination of favourable trends. Perpetually credit-hungry farmers got expansive monetary policy, governments hastened to ensure food supplies would be secured, and consumers jammed their home shelves.

With farmers’ incomes rising in most of the world, they had the cash to spend on more fertiliser applications, sometimes on more marginal land. And there was a return of La Niña, a Pacific weather phenomenon. This leads to more rainfall in some areas and less in others but overall seems to boost fertiliser demand and prices.

Mosaic, the largest US-headquartered fertiliser company by market capitalisation, had been struggling with plant closures, leverage and the costs of digesting a Brazilian acquisition. Its shares were down to $9.59 in March last year. Now they are more than $36. More conservative competitors, such as Yara International of Norway, or Nutrien, from Saskatchewan, Canada, have seen share prices rise by about a third.

The producers’ profit increases have been accelerating since the beginning of this year. The boomlet is even benefiting the industry’s independent analysts. Consulting firms are bidding for the available talent. Even better, as one says: “People would kind of laugh when I said I was a fertiliser analyst. Now we’re getting all sorts of calls, particularly since the beginning of the year. Investors are really interested.”

As always with commodities producers, the question is how long the good times last, and who will survive and take share throughout the coming cycle.

The generic term “fertiliser industry” actually refers to three different crop-yield-enriching elements: nitrogen, phosphorus and potassium, or “NPK”. Nitrogen compounds, mostly urea, have the largest volume and are the most frequently applied, followed by phosphorus in the form of phosphates, and potassium in the form of potash.

Nitrogen compounds are the most widely produced and have the most competitive pricing. Potash market analysts describe the fertiliser’s pricing pattern as being “cartel like”. And, indeed, Canadian exports are handled by the Canpotex monopoly, which sells the Saskatchewan potash output of Nutrien and Mosaic. Up until 2013, Canpotex appeared to co-ordinate price-setting with Russian and Belarusian producers. Potash profit margins are generally higher than those of other fertilisers.

Fertiliser companies usually start out with an endowment of a low-cost form of one of these elements, and use the profits from their original advantage to build access to the other two minerals and international markets. For example, Yara started by using cheap Norwegian hydro power to make nitrogen fertiliser; one of Nutrien’s predecessor companies began with a large, low-cost potash deposit in Saskatchewan; and Mosaic’s predecessor company had access to a Florida phosphate deposit and the American market.

Other entrants have followed this path. EuroChem and Phosagro acquired Russian phosphate and potash in post-Soviet times, along with access to cheap nitrogen from Russian gas. OCP in Morocco has huge phosphate deposits, and has diversified upstream and across Africa and Brazil. Saudi Arabia has used its local phosphate deposits and cheap gas to create Ma’aden, which in turn partnered with Mosaic and Yara.

Of course the companies seek to use political power to advantage. Last year, for example, Mosaic successfully pushed for tariffs on Phosagro and OCP.

#### No such thing as a mineral cartel unless you’re talking about potash.

---[UK in blue]

Preston 14 - (\*Jaakko Kooroshy \*\*Felix Preston and \*\*\*Siân Bradley \*Head of Data & Methodologies & Sustainable Investing @ FTSE Russell, Research Fellow @ Chatham House, Executive Director @ Goldman Sachs \*\*senior research fellow and deputy research director in the Energy, Environment and Resources Department @ Chatham House \*\*\*Senior Research Fellow in the Energy, Environment and Resources Department @ Chatham House; December 2014, Chatham House, The Royal Institute for International Affairs, " Cartels and Competition in Minerals Markets: Challenges for Global Governance," doa: 6-9-2021) url: https://www.chathamhouse.org/sites/default/files/field/field\_document/20141219CartelsCompetitionMineralsMarketsKooroshyPrestonBradleyFinal.pdf

Maintaining open, orderly and well-functioning global metals and minerals markets remains a major challenge for global resource governance. Despite the demise of formal collusive arrangements, the threat of attempts by producer governments and companies to increase prices, restrict supplies or carve up markets remains real. State-backed private cartels that restrict supplies in potash markets, the questionable warehousing practices on the LME that affect the price of aluminium, and the 2014 price spike in nickel caused by contentious Indonesian export restrictions are three recent examples.

With complex global supply chains and blurred boundaries between physical and financial markets, the threat has shifted from producer-country cartels to much more subtle, yet potentially equally damaging practices. Opaque pricing mechanisms and weakly governed market platforms are vulnerable to manipulation by powerful market participants, including trading houses, major producers and financial institutions. The ongoing debates and litigation around the manipulation of pricing mechanisms for precious metals demonstrate this point.

Combating such practices is an urgent task for policy-makers, not only to avert the substantial adverse economic impacts of these distortions, but also to prevent the international tensions to which they can give rise. The effects of market distortions and disruptions for metals and minerals are publicly much less visible than those for other key resources such as fossil fuels or agricultural products. But the limited evidence that is available points to billions of dollars in damages to consuming industries, which eventually are passed down supply chains. In many cases market distortions can also contribute to bilateral tensions or trigger acrimonious trade disputes.

While the different types of anti-competitive practices have similar impacts – higher prices for consumers, supply constraints or market inefficiencies – successful policy responses require a case-bycase approach that takes key actors and specific political economy dynamics into account. The options for responding to export restrictions imposed by sovereign states, for example, look very different from those designed to improve regulation of transnational trading platforms.

In all cases, however, interconnected markets mean that collaboration across borders is key to improve regulation and address distortions. At present mineral markets receive limited attention from many governments, and where governments engage they are often pursuing a narrow national agenda. For example, anti-trust enforcement in metals markets remains piecemeal, and anti-competitive market structures are often only assessed when regulators are required to approve major mergers or acquisitions.

Working together, there are significant opportunities for large consuming countries to exert joint leverage in global markets and international institutions to catalyse reform in key areas. Costs and inefficiencies resulting from anti-competitive practices ultimately affect companies and consumers in all countries, but it is the major mineral importers, such as the EU and China, which are worst affected. Enhanced cooperation among these actors would, however, require looking beyond existing raw materials-related trade tensions, particularly around steel and speciality metals such as rare earths.

## Modelling ADV

### No Modelling---2NC

#### Hyperpartisanship exacerbates that perception internationally.

William E. Kovacic 15, Professor of Law and Policy at George Washington University, former General Counsel for the Federal Trade Commission, J.D. from Columbia University, “The United States and Its Future Influence on Global Competition Policy,” George Mason Law Review, Vol. 22, 2015, accessed via Lexis

Since the early 1980s, the irrationality narrative has acquired an increasingly partisan dimension. 105 Partisan narrators denigrate the contributions of political opponents and exaggerate the accomplishments of their own party. 106 Partisan narratives distort antitrust experience and claim credit for achievements that required contributions across several presidential administrations, including eras in which a regime change took place. 107 The partisan voice attributes severe variations in activity to appointees chosen by one's political opponents: choose my team, and the system performs sensibly, but elect my opponents, and federal enforcement leaves the rails.

To foreign observers, the partisan explanation for enforcement variations suggests that U.S. enforcement policy is driven chiefly by politics. By this view, the system lacks a widely accepted, stable core and swings dramatically depending on election results. Through publications and speeches, the competition policy community outside the U.S. hears respected American scholars suggest that the party of the president determines whether antitrust enforcement thrives or withers. 108 In this narrative, institutional arrangements [\*1179] and a norm of professionalism play weak, secondary roles in constraining political appointees.

One sign of partisanship in the irrationality narrative is the emphatic statement of fact that the speaker knows, or should know, is incorrect. As noted above, the portrayal of irrationality relies heavily on the depiction of extreme behavior. 109 A partisan commentator strives to portray the political opponent as given to extreme policies, and this extremism is contrasted with the narrator's own sensible policy preferences. To admit that an opponent sometimes, or even often, behaves responsibly robs the narrative of its power.

Professor Pitofsky's account of Reagan Administration enforcement policy involving dominant firm behavior illustrates the phenomenon. In an article published in 1987, Professor Pitofsky said "although section 2 of the Sherman Act still outlaws monopolization, the [Reagan] Administration has brought not a single case in seven years." 110 In the first seven years of the Reagan Administration, the FTC brought two monopolization cases, including a widely publicized matter involving abuse of government processes as an exclusionary device. 111 A review of the FTC cases from 1981 through 1987 would have revealed that the FTC's prosecution of monopolization violations exceeded more than "not a single case." 112

Several years later, Professor Pitofsky again scolded the Reagan antitrust agencies for their inattention to dominant firm misconduct. As noted above, Professor Pitofsky several times accused Reagan antitrust officials of abandoning the field in the early 2000s. 113 In one article, Professor Pitofsky said that during the Reagan era "there was no enforcement whatsoever" against attempts to monopolize or monopolization. 114 In a second article, he said that during the Reagan Administration, "there was an absence of enforcement against . . . monopolization and attempts to monopolize . . . ." 115

[\*1180] The DOJ and the FTC brought a total of four matters focused on attempted monopolization or monopolization during the Reagan presidency. 116 By some historical measures, four dominant firm misconduct cases is a relatively small number. 117 It is nevertheless unmistakably more than "an absence" or "no enforcement whatsoever." 118 One of the four Reagan-era cases--the prosecution of American Airlines for attempting to monopolize passenger service in and out of Dallas-Fort Worth 119--was especially noteworthy and provided a crucial legal foundation for the DOJ's prosecution of Microsoft in the late 1990s for illegal monopolization. 120 Given its colorful circumstances and doctrinal importance, no prominent antitrust scholar could have missed it, and there is good reason to think Professor Pitofsky was aware of the case. 121 For the sake of a clean narrative that discredits political adversaries, the American Airlines 122 case had to disappear. Partisanship provides the motivation to say there was "no enforcement whatsoever" instead of acknowledging that there were a few dominant-firm-conduct cases, including at least one with arguably substantial significance. 123

The partisan ingredient of the irrationality narrative surfaced powerfully in the run-up to the 2008 presidential election and in the years following President Barack Obama's inauguration in January 2009. 124 Leading U.S. antitrust scholars argued that the wise antitrust centrism of the Clinton Administration had given way, during the George W. Bush presidency, to the inactivity doldrums seen earlier in the Reagan era. 125 Professor Pitofsky observed in 2008 that the pursuit of "a middle ground between overenforcement [\*1181] of the 1960s and underenforcement of the 1980s . . . came to an end with appointments during President Bush's second term of some agency enforcement officials, lower court judges and, most important, the confirmation of two conservative justices to the Supreme Court . . . ." 126 Through these individuals, "extreme interpretations and misinterpretations of conservative economic theory (and constant disregard of the facts) have come to dominate antitrust . . . ." 127

I am not a disinterested bystander in these events. By the time Professor Pitofsky made the comments quoted above, President Bush had appointed a total three persons to the federal antitrust agencies: Thomas Barnett was appointed to the DOJ, while Thomas Rosch and I were appointed to the FTC. 128 During a visit to Europe in 2008 as Chair of the FTC, I met a foreign enforcement official who, after reading Professor Pitofsky's statement, had identified the three individuals appointed by President Bush in his second term to the federal antitrust agencies. Noting that the Pitofsky remark ("appointments . . . of some agency enforcement officials" 129) seemed to apply to two of the three, he asked, "Are you the one who constantly disregards the facts, or is it only Barnett and Rosch?" I can attest to the difficulty of defending the legitimacy of the U.S. antitrust system as a government official at international events after a revered U.S. scholar suggests that DOJ and FTC leadership is extremist and intellectually dishonest.

[Marked]

The depiction of extremism, a certifying trait of the irrationality narrative, anchored the critique of the Bush program. 130 The sweeping categorical characterizations common in discussions of the Reagan antitrust program now were cast at the Bush presidency. 131 At a conference in 2009, Professor Harvey Goldschmid said "there has been no enforcement" of Sherman Act § 2 during the George W. Bush Administration. 132 In a similar vein, in the 2010 edition of their antitrust casebook, Professor Pitofsky, Professor Goldschmid, and Judge Diane Wood wrote that there was "no enforcement at all against vertical or conglomerate mergers during the Bush Administration." 133

[\*1182] Professor Goldschmid's "no enforcement" comment ignored the FTC's prosecution during the George W. Bush administration of monopolization cases that yielded substantial, measurable economic benefits for consumers in the pharmaceutical and petroleum sectors. 134 The FTC's unsuccessful challenge to alleged monopolization by Rambus 135 is reported as a principal case in the 2010 edition of the Pitofsky, Goldschmid, and Wood casebook. 136 The efforts that casebook authors usually make to follow federal merger enforcement developments likewise would preclude a claim that there was "no enforcement at all" against vertical mergers in this period. 137

The volume of vertical merger cases from 2001 to 2008 was not high, but enforcement did take place. 138 Why would renowned students of the U.S. antitrust system insist so strongly ("no enforcement at all" 139) that nothing happened? This is the power of irrationality narrative and partisanship at work. The narrators distorted experience to create artificially sharp contrasts, disparage opponents, and showcase the wisdom of their own preferences.

As the discussion here suggests, I contest the factual assumptions that underpin the irrationality interpretation of modern U.S. federal enforcement experience. The fondness for stark polarities (my team is enlightened, your team is demented; my team did everything, your team did nothing) is destructive. It prevents the attainment of a fuller understanding of how U.S. antitrust policy has changed over time. It also obscures the complex mix of forces--individual leadership, institutional arrangements, and the larger [\*1183] economic context--that accounts for policy adjustments. The irrationality narrative is a dreadfully crude diagnostic device in an era where much better analytical tools are available.

But let's assume that the factual predicates of the irrationality narrative are exactly right. Let's say that the story accurately documents the U.S. system's tendency to swing dramatically to extremes, with only occasional periods of lucidity. This is a most discouraging portrait of American antitrust policy and not a recommendation for emulation abroad. In this regime, politics and personalities count for everything, and institutions have no capacity to discipline decision-making or foster useful policy refinements. It is easy to see how foreign observers who read such commentary would hesitate to respect or emulate an antitrust regime with a reputation so volatile and unprincipled. It is not reassuring to say that the system functions properly only if election results bounce the right way.

### No ASEAN Harmonization---2NC

#### ASEAN members think export cartels help their economies.

Cenuk Sayekti 20, Senior Lecturer in Law at Universitas Lancang Kuning, Ph.D. in Competition Law from Macquarie University, “Competition Law Harmonization: What ASEAN Can Learn from Others?”, Jurnal Ilmu Hukum, Vol. 4, No. 2, April 2020, https://doi.org/10.24246/jrh.2020.v4.i2.p195-216

A potential barrier that ASEAN needs to consider is the differences in the treatment of market behavior. Such a barrier appears in several anticompetitive conduct provisions such as export cartels, vertical restraint, and merger policy. The different treatments of anti-competitive conduct may affect trade relations between countries. Export cartels are deemed as forms of anti-competitive conduct since those arrangements create monopolies in the relevant market.24

Those forms of conduct are commonly regarded as acceptable and permitted, while the domestic cartels are forbidden. It is understood that domestic arrangements may harm local consumers, while export cartels can be beneficial.25 The commonly given justification is that export cartels will help firms to cope with international trade barriers, reduce the extra costs of exports, and refuse the power of international buying cartels.26

Some countries exempt export cartels from their national competition policies as these practices encourage the exercise of market power by their domestic exporting firms,27 and they viewed export cartels as an instrument of strategic trade policy. Furthermore, a national government exempting export cartels from the policy in its territory aims to gain supra-normal profits in international markets.28

A rationale for export cartels to be exempted from domestic competition law is because it may facilitate cooperative penetration of foreign markets. This will transfer welfare from foreign consumers to domestic firms and result in a balance of trade. Scherer highlights a range of possible cartel situations.29 Domestic producers may collaborate with foreign producers in international cartels. Sometimes, these cartels are engaged in market sharing, in which the cartels affect international trade relations as well as facilitating monopoly pricing by engaging in output restrictions30

Virtually, the majority of countries exempt export cartels from their competition policy because export cartels contribute to the national economy positively, as they extract surplus from foreign consumers and transfer it into the profits of homebased companies. 31 For instance, Taiwan and Japan allow import cartels although the enforcement is restricted. Both countries, as well as South Korea, exempted cartels from their laws.

The Australian Competition and Consumer Commission (ACCC) can authorize an exemption if it is found that there is a potential benefit that outweighs the potential harm. The annual authorizations for export cartels have declined from a peak of 69 in 1975 to just 4 in 2002. As of 1997, the ACCC reported that it had received 400 export agreement notifications.32

The competition policy arrangement between Japan and the US faced difficulty when the two countries had different views on export cartels.33 The law in Japan authorized legal officers to enforce cartel agreements, while cartel agreements were legalized under the WebbPomrene Export Trade Act of 1918 in the US. However, the US courts did not enforce these agreements, resulting in the cartels were obliged to provide the enforcement mechanism themselves.34

In other cases, countries engaged in economic integration or cooperation may exclude export cartels from their competition law. In 2004, a study by Levenstein and Suslow surveyed 56 countries, of which 17 offered exporters an exemption from national competition laws;35 the rest provided no exemption from regulation for export cartels, but rather exempted them implicitly. Levenstein and Suslow argued that countries with an implicit exemption of export cartels stated that heir national laws were silent on restrictive activities that affect foreign markets.36 Further, Levenstein and Suslow argued that the structure of national competition laws only restricts activity that harms domestic competition. It leaves a vacuum in which export cartels can operate without any obvious institution to restrict their anti-competitive activities. To avoid this, it is necessary to have international cooperation on export cartel agreements.37

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## FTC DA

### AT: Biden XO

#### The XO is empty talk that’s years from being implemented

Jeff Jaeckel 21, Co-Chair Global Antitrust Law Practice Group at Morrison & Foerster, Alexander Paul Okuliar, Co-Chair Global Antitrust Law Practice Group at Morrison & Foerster, and Lisa M. Phelan Co-Chair Global Antitrust Law Practice Group at Morrison & Foerster, and Megan E. Gerking Partner at Morrison & Foerster, “Charting a New Course for Antitrust: President Biden’s Executive Order Promoting Competition in the American Economy”, Client Alert, 7/14/2021, https://www.mofo.com/resources/insights/210714-president-biden-executive-order-antitrust.html

Despite its breadth, the immediate effect of the EO on law or regulation is less clear. The EO itself does not enact any new law or regulation. Rather, the EO often uses vague language in instructing or guiding the actions of agencies. This is likely purposeful in many instances, including when the EO refers to independent agencies, like the FTC, Federal Communications Commission, Maritime Commission, Consumer Financial Protection Bureau, and the Surface Transportation Board. Nonetheless, for almost every initiative, there is likely to be a significant gap between the action directed or encouraged by the EO and the time it will take for the relevant agency to investigate, evaluate, and potentially implement a new rule or policy. Even where the direction to an agency is explicit, issuing a new rule or regulation takes time. An agency must first draft a rule, allow for a notice-and-comment period, make any necessary revisions, and then issue and start to enforce a final rule. And this does not account for likely legal challenges. In some instances, the EO directs the agencies to submit a report on the issue first rather than make any immediate changes, pushing any resulting regulatory activity out at least until the period following completion of the report.

#### It's non-binding AND will be blocked by the court and Congress

Lewis Brisbois 21, Lewis Brisbois Bisgaard & Smith LLP, “President Biden Signs Executive Order on Promoting Competition in the American Economy”, 7/12/2021, https://lewisbrisbois.com/newsroom/legal-alerts/president-biden-signs-executive-order-on-promoting-competition-in-the-american-economy

On July 9, 2021, President Biden signed an “Executive Order on Promoting Competition in the American Economy.” According to a Fact Sheet released in advance of the signing, the Executive Order takes “decisive action to reduce the trend of corporate consolidation, increase competition, and deliver concrete benefits to America’s consumers, workers, farmers, and small businesses.”

Among other things, the Executive Order encourages the Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice (DOJ) to focus enforcement efforts on problems in key markets and coordinate other federal agencies’ responses to corporate consolidation. Further, the Executive Order calls on the FTC and DOJ to “enforce the antitrust laws vigorously.” The Executive Order would also make it easier for high tech workers to change jobs by banning or limiting non-compete agreements, lower prescription drug prices by supporting programs to import cheaper prescription drugs from Canada, make it less expensive to repair products by limiting manufacturers from barring self-repairs or third-party repairs of their products, and increase opportunities for small businesses by directing all federal agencies to promote greater competition through procurement and spending decisions. In all, the Executive Order outlines 72 initiatives that attempt to rein in corporate powerhouses that control markets.

In the Fact Sheet, the Biden Administration compared its Executive Order to the responses of previous Administrations to “growing corporate power,” expressly citing the trust-busting efforts of the Theodore Roosevelt and FDR Administrations’ “supercharged antitrust enforcement” agendas.

Although Democratic lawmakers and union leaders have cheered the Executive Order, some business advocacy groups have reportedly warned that such measures as those in the Executive Order could slow the economy.

Executive Orders are expressions of policy intent that have no actual binding legal force. Their ability to change the law lies in follow-up implementation by federal agencies that act to implement presidential initiatives. Those changes are limited by the extent of underlying statutory authority, and the courts in recent years have appeared reluctant to expand the scope of what is considered anticompetitive activity under the antitrust laws. Business interests should keep a close eye on the regulatory proposals that result from this Executive Order and consider engaging on those that affect their business operations.

## Biz Con DA

### Impact---2NC

#### It causes terrorism, civil wars, and diversion that go global---nothing checks

Dr. Qian Liu 18, PhD in Economics from Uppsala University, Former Visiting Researcher at the University of California, Berkeley, Managing Director for Greater China at The Economist Group, Guest Lecturer at New York University, Tsinghua University, the Chinese Academy of Social Sciences and Fudan University, “The Next Economic Crisis Could Cause A Global Conflict. Here's Why”, World Economic Forum, 11/13/2018, https://www.weforum.org/agenda/2018/11/the-next-economic-crisis-could-cause-a-global-conflict-heres-why

The next economic crisis is closer than you think. But what you should really worry about is what comes after: in the current social, political, and technological landscape, a prolonged economic crisis, combined with rising income inequality, could well escalate into a major global military conflict.

The 2008-09 global financial crisis almost bankrupted governments and caused systemic collapse. Policymakers managed to pull the global economy back from the brink, using massive monetary stimulus, including quantitative easing and near-zero (or even negative) interest rates.

But monetary stimulus is like an adrenaline shot to jump-start an arrested heart; it can revive the patient, but it does nothing to cure the disease. Treating a sick economy requires structural reforms, which can cover everything from financial and labor markets to tax systems, fertility patterns, and education policies.

Policymakers have utterly failed to pursue such reforms, despite promising to do so. Instead, they have remained preoccupied with politics. From Italy to Germany, forming and sustaining governments now seems to take more time than actual governing. And Greece, for example, has relied on money from international creditors to keep its head (barely) above water, rather than genuinely reforming its pension system or improving its business environment.

The lack of structural reform has meant that the unprecedented excess liquidity that central banks injected into their economies was not allocated to its most efficient uses. Instead, it raised global asset prices to levels even higher than those prevailing before 2008.

In the United States, housing prices are now 8% higher than they were at the peak of the property bubble in 2006, according to the property website Zillow. The price-to-earnings (CAPE) ratio, which measures whether stock-market prices are within a reasonable range, is now higher than it was both in 2008 and at the start of the Great Depression in 1929.

As monetary tightening reveals the vulnerabilities in the real economy, the collapse of asset-price bubbles will trigger another economic crisis – one that could be even more severe than the last, because we have built up a tolerance to our strongest macroeconomic medications. A decade of regular adrenaline shots, in the form of ultra-low interest rates and unconventional monetary policies, has severely depleted their power to stabilize and stimulate the economy.

If history is any guide, the consequences of this mistake could extend far beyond the economy. According to Harvard’s Benjamin Friedman, prolonged periods of economic distress have been characterized also by public antipathy toward minority groups or foreign countries – attitudes that can help to fuel unrest, terrorism, or even war.

For example, during the Great Depression, US President Herbert Hoover signed the 1930 Smoot-Hawley Tariff Act, intended to protect American workers and farmers from foreign competition. In the subsequent five years, global trade shrank by two-thirds. Within a decade, World War II had begun.

To be sure, WWII, like World War I, was caused by a multitude of factors; there is no standard path to war. But there is reason to believe that high levels of inequality can play a significant role in stoking conflict.

According to research by the economist Thomas Piketty, a spike in income inequality is often followed by a great crisis. Income inequality then declines for a while, before rising again, until a new peak – and a new disaster. Though causality has yet to be proven, given the limited number of data points, this correlation should not be taken lightly, especially with wealth and income inequality at historically high levels.

This is all the more worrying in view of the numerous other factors stoking social unrest and diplomatic tension, including technological disruption, a record-breaking migration crisis, anxiety over globalization, political polarization, and rising nationalism. All are symptoms of failed policies that could turn out to be trigger points for a future crisis.

Voters have good reason to be frustrated, but the emotionally appealing populists to whom they are increasingly giving their support are offering ill-advised solutions that will only make matters worse. For example, despite the world’s unprecedented interconnectedness, multilateralism is increasingly being eschewed, as countries – most notably, Donald Trump’s US – pursue unilateral, isolationist policies. Meanwhile, proxy wars are raging in Syria and Yemen.

Against this background, we must take seriously the possibility that the next economic crisis could lead to a large-scale military confrontation. By the logic of the political scientist Samuel Huntington , considering such a scenario could help us avoid it, because it would force us to take action. In this case, the key will be for policymakers to pursue the structural reforms that they have long promised, while replacing finger-pointing and antagonism with a sensible and respectful global dialogue. The alternative may well be global conflagration.

#### Turns every impact

Geoffrey Kemp 10, Director of Regional Strategic Programs at The Nixon Center, Served in the White House Under Ronald Reagan, Special Assistant to the President for National Security Affairs and Senior Director for Near East and South Asian Affairs on the National Security Council Staff, Former Director, Middle East Arms Control Project at the Carnegie Endowment for International Peace, 2010, The East Moves West: India, China, and Asia’s Growing Presence in the Middle East, p. 233-234

The second scenario, called Mayhem and Chaos, is the opposite of the first scenario; everything that can go wrong does go wrong. The world economic situation weakens rather than strengthens, and India, China, and Japan suffer a major reduction in their growth rates, further weakening the global economy. As a result, energy demand falls and the price of fossil fuels plummets, leading to a financial crisis for the energy-producing states, which are forced to cut back dramatically on expansion programs and social welfare. That in turn leads to political unrest: and nurtures different radical groups, including, but not limited to, Islamic extremists. The internal stability of some countries is challenged, and there are more “failed states.” Most serious is the collapse of the democratic government in Pakistan and its takeover by Muslim extremists, who then take possession of a large number of nuclear weapons. The danger of war between India and Pakistan increases significantly. Iran, always worried about an extremist Pakistan, expands and weaponizes its nuclear program. That further enhances nuclear proliferation in the Middle East, with Saudi Arabia, Turkey, and Egypt joining Israel and Iran as nuclear states. Under these circumstances, the potential for nuclear terrorism increases, and the possibility of a nuclear terrorist attack in either the Western world or in the oil-producing states may lead to a further devastating collapse of the world economic market, with a tsunami-like impact on stability. In this scenario, major disruptions can be expected, with dire consequences for two-thirds of the planet’s population.

### AT: Antitrust Now---2AC 1

#### Antitrust will stall in the courts---only the plan’s success signals a sea change in the law.

Tara L. Reinhart 10-6, Partner for Antitrust/Competition at Skadden, Arps, Slate, Meagher & Flom LLP, J.D. from the Catholic University of America Columbus School of Law, B.A. from the University of North Carolina, et al., “FTC Chair Khan Highlights Key Policy Priorities Going Forward, but Aggressive Agenda Faces Uphill Climb”, JD Supra – Newstex Blogs, 10/6/2021, Lexis

Practical Limitations on Implementation of Chair Khan's Policy Priorities

Chair Khan describes the antitrust agenda outlined in her memorandum as 'robust,' and the memo communicates her intention to attempt to reshape antitrust policy and enforcement. However, a revolutionary shift in antitrust enforcement by the FTC will face substantial practical challenges.

Most significantly, the path to reshaping antitrust enforcement will be constrained by the substantial body of existing antitrust law and the need to convince a federal judge that the conduct in question is unlawful. Chair Khan's memo generally advocates for a new, more expansive and holistic approach to identifying antitrust harms beyond the traditional focus on consumer welfare and price effects. However, courts have — and will likely continue to — rely on existing standards developed in the case law over many decades. Those standards focus on consumer welfare and predominantly price effects. Absent legislative change, then, a practical gap will persist between Chair Khan's vision of refocused and more assertive antitrust enforcement, on the one hand, and the law that would apply to any FTC enforcement action, on the other.2[2]

Moreover, Chair Khan's plan to revise the merger guidelines and her desire to target 'facially illegal deals' will also face constraints based on current law. First, the antitrust guidelines typically incorporate existing legal standards, making radical change difficult to achieve. The 1982 Guidelines, which impactfully affected merger enforcement with the implementation of the hypothetical monopolist test, provide the last dramatic revision. Whether courts will accept major revisions at this stage will be an open question. Second, agency merger review is shaped by the existing review process enacted by the Hart-Scott-Rodino Act, regardless of whether the FTC believes a deal is facially illegal. Unlike regulators in other jurisdictions, the FTC must file a lawsuit and prevail in court if the agency wants to block a pending transaction.

Relatedly, Ms. Khan's ability to implement her ambitious agenda will be subject to the fact that changing these legal frameworks will depend on either Congressional action, which is far from certain, or litigation victories, which require the commitment of significant resources at a time when the FTC claims to already be stretching its capacity. Despite her recognition of the demands already imposed on FTC staff and plan for 'intentional' resource allocation, Chair Khan envisions the FTC undertaking increased vigilance and a more assertive agenda. If the existing resource constraints grow in response to Chair Khan's enhanced enforcement ambitions, the FTC could face difficulty balancing its investigatory agenda with the ability to litigate those cases, particularly considering the complex nature of antitrust matters, which often take years to resolve and require millions of dollars for experts and other related costs as well as a large team of attorneys and staff to manage. In addition, though Chair Khan referenced her hope for increased cross-bureau coordination in cases, it is unclear that such coordination would be efficient or create the capacity needed to fulfill the new agenda, especially when attorneys from other government divisions have already been recruited to help reduce burdens on matters of antitrust enforcement.

Finally, Chair Khan's desire to expand the agency's regional footprint and supplement the staff with various nonlawyer roles may further strain the budgetary resources needed to keep pace with the new agenda and present their own management challenges. Whether funding from Congress is imminent, whether it would be used to onboard lawyers or the other potential staff Ms. Khan desires, and how quickly hiring could reach the scale necessary to support the FTC's newly announced enforcement priorities are not yet clear.

Conclusion

Given the challenges to implementing the generalized policy goals set by Chair Khan, we do not expect an immediate fundamental sea change in antitrust enforcement. The practical obstacles described above mean that Chair Khan's FTC will be unable to contest every instance of what the agency might perceive to be unlawful conduct or unfair competition. We expect that the FTC will need to continue to be selective in the cases that it brings, which may mean that in the near-term, it will focus available resources on sectors of the economy perceived as involving 'the most significant actors,' such as large technology firms that Chair Khan has frequently referenced, particularly to the extent they engage in transactions that implicate the novel considerations under the proposed 'holistic' approach to identifying antitrust harms.3[3] We still expect to see some matters receive extensive investigations and proceed to litigation, and the outcomes of these matters will likely partially signal the success of the new agenda.

#### That generates uniqueness---court losses increase biz con and make the FTC look weak.

David McLaughlin 21, Economics and Antitrust Reporter for Bloomberg, “Antitrust Crusader Lina Khan Faces a Big Obstacle: The Courts”, Bloomberg News, 6/23/2021, https://www.bloomberg.com/news/articles/2021-06-23/tech-antitrust-lina-khan-faces-courts-as-challenge-to-ftc-s-progressive-agenda?sref=iKB6XOvf

Instead, hours after the Senate confirmed her, Biden put the 32-year-old Khan—one of the most prominent antagonists of big business—in charge of the agency, where she’ll be responsible for challenging mergers and taking on companies when they use their market muscle to snuff out competition.

Now comes the hard part: putting her agenda into action. The biggest hurdle, say antitrust experts, is a judiciary that has made it very difficult for competition watchdogs to win ambitious cases. And to make any change of consequence, whether breaking up a monopoly or stopping a takeover, enforcers must prevail in court.

“None of that is easy, and it’s particularly not easy when courts are very conservative, as they are today,” says Stephen Calkins, a law professor at Wayne State University and a former general counsel at the FTC. “She’s certainly talked about breaking up companies but, my golly, that’s incredibly hard to do.”

Khan made her mark in 2017, with a law review article she wrote while still a student at Yale Law School. Titled “Amazon’s Antitrust Paradox,” it traced how the online retailer came to control key infrastructure of the digital economy and how traditional antitrust analysis fails to consider the danger to competition the company poses. The paper was widely talked about in antitrust circles and was read by senior enforcement officials.

U.S. tech titans are at the center of the antitrust debate in Washington. They are ever more powerful, with Apple Inc., Amazon.com Inc., Alphabet Inc., and Facebook Inc. among the top 10 largest companies in the world, by market value. A House of Representatives investigation last year accused the companies of abusing their dominance to thwart competition, and lawmakers are considering a raft of bills to impose new rules on how the companies operate. Federal antitrust enforcers and state attorneys general have sued Google and Facebook for what authorities say are monopoly abuses.

Khan, who was counsel to the House antitrust committee during its probe, was one of the main authors of the House report. It recommended a series of reforms to antitrust laws that she and anti-monopoly activists have long championed, like restricting which markets the companies can operate in and requiring them to treat other businesses on their platforms fairly and without favoritism.

Khan’s work helped revolutionize competition-policy debates and shift support for a more forceful approach that abandoned the playbook inspired decades ago by Robert Bork, the conservative legal scholar and judge. That framework came to be known as the consumer welfare standard and relies on price effects as the measure of competitive harm. Khan argued in her paper for a new approach, focused on the competitive process and the structure of markets, that she said would more fully capture harms that the consumer welfare standard misses.

Once considered on the fringes of antitrust thinking, Khan and her acolytes—often dubbed the New Brandeis School, after Supreme Court Justice Louis Brandeis—are now firmly mainstream with Khan’s appointment as FTC chairwoman.

The FTC has suffered some stinging defeats recently. Last year, the agency lost a major monopoly case filed against chipmaker Qualcomm. In April, a unanimous Supreme Court eliminated a tool used by the FTC to recover money for defrauded consumers. Later this month, a federal judge in Washington is expected to rule on whether the agency’s monopoly lawsuit against Facebook can proceed.

Still, there’s widespread agreement that the status quo is no longer tenable. Over the last two decades, concentration has risen in industries across the economy. Some economists say dominant companies can use their market power to suppress wages, for example, exacerbating inequality. The worries are bipartisan. Republicans and Democrats alike are pushing for antitrust reforms to rein in the biggest tech platforms, and Khan was confirmed by the Senate with significant Republican support.

Big losses in the courts would eventually hurt Khan’s authority and demoralize her staff, says William Kovacic, a former FTC chairman who now teaches at George Washington University Law School. “You become like a sports team that is known to its opponents as unable to win,” he says. But defeats also could provide the foundation for the kind of sweeping antitrust legislation that Khan and her supporters want.

“If you want to change the world, at some point it goes to the courts or it goes to the legislature,” Kovacic says. “But you can’t do it by yourself.”

#### It's not law---changes to statute won’t happen.

Chris Matthews 12-27, Stocks Reporter at MarketWatch, “Look for Washington Regulators — Not Congress — To Try to Block More Mergers in 2022, Analysts Say”, MarketWatch, 12/27/2021, https://www.marketwatch.com/story/look-for-washington-regulators-not-congress-to-try-to-block-more-mergers-in-2022-analysts-say-11640110564

Antitrust reform was supposed to be one of the best chances for bipartisan compromise during the current Congress. But critics of monopoly power will likely have to rely on independent agencies for any federal government action against Big Tech next year, experts tell MarketWatch.

“There is still pervasive angst toward Big Tech, but we are no closer to a coordinated bipartisan response,” even after a year of hearings and scandals that has created the perception of a united political front against powerful tech platforms, Robert Kaminski, policy analyst at Capital Alpha Partners, said in an interview.

The chances for a bipartisan push to strengthen antitrust enforcement was likely highest in June, when Democratic Rep. David Cicilline of Rhode Island and Republican Rep. Ken Buck of Colorado led the passage of seven new antitrust bills through the House Judiciary Committee.

If the bills were to become law, they would make it more difficult for large tech platforms to acquire smaller companies, ban large tech firms from using their platforms to promote their own products at the expense of rivals, and force social media companies to make it easier for users to switch to a rival service.

The most sweeping bill of the six is the Ending Platform Monopolies Act, which would end “the ability for dominant platforms to leverage their control over multiple business lines to self-preference and disadvantage competitors,” and could potentially deal a serious blow to the business models of companies like Amazon.com Inc. AMZN, -1.14% and Google parent Alphabet GOOG, -0.91%.

That these were able to pass the House Judiciary Committee in a bipartisan fashion was seen at the time as evidence of broad support for these strict measures, but the unique composition of the panel means that those results cannot be extrapolated to Congress at large, according to a recent analysis of antitrust dynamics published by Beacon Policy Advisors.

“While this package of bills was voted out of committee in a relatively contentious markup, they have completely stalled on the House floor,” Beacon analysts wrote. “This is not too surprising given the resistance that they face from much of the House Republican caucus and lack of unified Democratic support.”

Sen. Amy Klobuchar, a Minnesota Democrat, has taken up the cause of these bills, putting forth bipartisan legislation in the Senate that scales back the Cicilline-Buck legislation in an effort to get broader support. While she has gotten support from high-profile Republicans like Sen. Chuck Grassley of Iowa, the lack of public support for these measures from Republican Sen. Mike Lee of Utah illustrates the difficulty any tough antitrust legislation will have getting 60 votes in the Senate and a majority in the House.

Lee, as the ranking Republican on the Senate antitrust subcommittee, is “one of the more influential members of the Republican caucus on antitrust policy,” the Beacon analysts argue, and GOP senators, most of whom are skeptical of government oversight of the private sector, will take his lead on the issue.

The Beacon analysis also points to the importance of the 42 Democrats representing California in the House after the state’s moderates — including Reps. Zoe Lofgren, Lou Correa, Ted Lieu and Eric Swalwell — voted against the measures in the judiciary committee, arguing that they went too far. “It should also be said that without the support from House Speaker Nancy Pelosi [also a California Democrat], these bills would be effectively dead on arrival,” they wrote.

### AT: Confidence Low---2AC 2

#### Confidence is strong, powering a wave of mergers and innovation

Anirban Sen 12-20, and Pamela Barbaglia, Kane Wu, Economic Reporters at Reuters, “Global M&A Activity Smashes All-Time Records to Top $5 Trillion in 2021”, Reuters, 12/20/2021, https://www.reuters.com/markets/europe/global-ma-activity-smashes-all-time-records-top-5-trillion-2021-2021-12-20/

Global merger and acquisition (M&A) activity shattered all-time records in 2021, comfortably erasing the high-water mark that was set nearly 15 years ago, as an abundance of capital and sky-high valuations fuelled frenetic levels of dealmaking.

The value of M&A globally topped $5 trillion for the first time ever, with volumes rising 63% to $5.63 trillion by Dec. 16, according to Dealogic data, easily surpassing the pre-financial-crisis record of $4.42 trillion in 2007.

"Corporate balance sheets are incredibly healthy, sitting on $2 trillion of cash in the U.S. alone -- and access to capital remains widely-available at historically low costs," said Chris Roop who co-heads North America M&A at JPMorgan (JPM.N).

Technology and healthcare, which typically account for the biggest share of the M&A market, led the way again in 2021, driven partly by pent-up demand from last year when the pace of M&A activity fell to a three-year-low due to the global financial fallout from the COVID-19 pandemic.

Companies rushed to raise funds from stock or bond offerings, large corporates took advantage of booming equity markets to use their own stock as acquisition currency, while financial sponsors swooped on publicly listed companies.

Moreover, robust corporate earnings and an overall bright economic outlook gave chief executives the confidence to pursue large, transformative deals, despite potential headwinds such as inflationary pressures.

Report ad

"Strong equity markets are a key driver of M&A. When stock prices are high, that usually corresponds with a positive economic outlook and high CEO confidence," said Tom Miles, co-head of Americas M&A at Morgan Stanley (MS.N).

Overall deal volumes in the United States nearly doubled to $2.61 trillion in 2021, according to Dealogic. Dealmaking in Europe jumped 47% to $1.26 trillion, while Asia Pacific rose 37% to $1.27 trillion.

"While China cross-border activity has been modest, corporates from other Asian countries have stepped up to buy global assets. We expect to see this trend continue, especially for deals in Europe and the United States," said Raghav Maliah, Goldman Sachs' (GS.N) global vice chairman of investment banking.

#### Top-line GDP growth will be 4%, underpinned by positive expectations about the future environment

Tim Smart 12-23, Contributing Editor for News at U.S. News & World Report, Responsible for All News Editorial Content, Including Best Countries, Best States and Healthiest Communities, “Will 2022 Be Naughty or Nice for the Economy…Or Both?”, U.S. News & World Report, 12/23/2021, https://www.usnews.com/news/the-report/articles/2021-12-23/will-2022-be-naughty-or-nice-for-the-economy-or-both

First, the good news:

* The labor market continues to improve, with the unemployment rate down to 4.2% from 14.8% in the earliest days of the pandemic in April of 2020.
* Consumer demand remains strong, with wallets and bank accounts flush with pandemic payouts, rising wages and a year of record housing prices and strong stock market performance.
* Industrial production increased 0.5% in November after a 1.7% gain in October, while motor vehicle assemblies rose to a 9.35 million annual rate, the highest since May and possibly a sign that supply chain issues are abating. Meanwhile, a recent survey of corporate financial officers by Deloitte found 97% expect their spending on labor to increase in 2022, with the CFOs also raising their planned capital spending, hiring and compensation higher than in the previous quarter.

The recently released Wilmington Trust’s 2022 Business Owners Success Survey found “business owner optimism and confidence in the U.S. economy and their own businesses are almost back to pre-pandemic levels with 77% saying they are very optimistic about their business prospects – approaching the 81% who answered the same just before the pandemic.”

“We are optimistic about the economy,” says Luke Tilley, chief economist at Wilmington Trust. “We are optimistic about demand.”

After slowing markedly in the third quarter, amid the surge of cases from the delta variant of the coronavirus, growth picked up in October and November and estimates are that fourth-quarter growth could be the strongest since the early 1980s.

“Supported by the expectation of continued healthy financial market conditions, increased production to restock lean inventories, further gains in the consumption of services as consumer and business travel picks up, and a resilient housing market, continued above-trend growth is likely in 2022,” Kevin Kliesen, a business economist and research officer at the Federal Reserve Bank of St. Louis, wrote on Monday. “At this point, the most probable outcome is 3% to 4% real GDP growth.”

### AT: Cartels Bad Turn---2AC 3

#### a) Benefits of antitrust require perfect application that’s impossible in practice---costly false positives are inevitable

Thomas A. Lambert 11, Wall Chair in Corporate Law and Governance and Professor of Law at the University of Missouri Law School, JD from the University of Chicago Law School, BA from Wheaton College, “The Roberts Court and The Limits of Antitrust”, Boston College Law Review, 52 B.C. L. Rev. 871, May 2011, Lexis

The enforcement provisions of the antitrust laws ensure that courts are routinely called upon to make these sorts of judgments in lawsuits by private plaintiffs. The Clayton Act provides that "any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws" may bring a lawsuit in federal court. 25 To account for the fact that many antitrust violations occur in secret and thus escape condemnation, the statute seeks to optimize the deterrent effect of private enforcement by permitting each successful plaintiff to "recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee." 26 What we end up with, then, is a body of law that is ultimately aimed at maximizing competition (understood in terms of market output), is quite general in its literal proscriptions, becomes "fleshed out" by generalist courts adjudicating private disputes, and is highly attractive to private plaintiffs seeking super-compensatory recoveries.

Taken together, these aspects of American antitrust law--all of which predate the Roberts Court by decades--render antitrust adjudication an inherently limited enterprise. In most challenges to novel business practices (and the prospect of treble damages guarantees that there will be many such challenges), whether liability is appropriate will be difficult to determine. Challenges to concerted conduct are frequently perplexing because a great many, perhaps most, output-enhancing business innovations involve cooperation among independent economic [\*877] actors, frequently competitors. 27 Challenges to unilateral conduct that may enhance market power are often hard to resolve because all actions that help a seller win business from its rivals--even pro-consumer actions like most price cuts--technically "exclude" those rivals. 28 Distinguishing output-reducing collusion from output-enhancing coordination (in section 1 cases) and unreasonable from reasonable exclusionary acts (in section 2 cases) can be exceedingly difficult. 29 To draw the necessary distinctions, judges and juries usually must weigh conflicting testimony from economic experts and reach conclusions on a number of complex subsidiary issues, such as the contours of the relevant market, the existence and magnitude of entry barriers, and the elasticity of demand and/or supply for the product at issue.

Antitrust adjudication is thus exceedingly, and inevitably, costly. 30 Most obviously, there are significant costs involved in simply reaching a decision. The parties themselves, with the aid of lawyers and, in most cases, economic experts, must gather, process, and present a large amount of complex data. 31 The fact finder must then deliberate over the information presented and reach conclusions on both subsidiary issues (e.g., the contours of the relevant market) and the outcome-determinative question (e.g., whether the challenged trade restraint is "unreasonable" because it reduces overall market output). 32 Taken together, these costs constitute the decision costs of an antitrust adjudication.

But those are not the only relevant costs. Given the complexity of the issues presented in antitrust cases, mistakes are inevitable, and those mistakes will themselves impose costs. On the one hand, when a fact finder wrongly acquits an anticompetitive practice, market power is created or enhanced, causing loss in the form of allocative inefficiency; [\*878] consumers are injured because output is lower and prices higher than they otherwise would be. 33 On the other hand, when a fact finder wrongly convicts a practice that is, in fact, output-enhancing, the market is denied the greater output (and lower prices) that practice would have produced, and a productive inefficiency results. Again, consumers are injured by reduced output, less product variety and innovation, and higher prices. Taken together, the productive inefficiencies spawned by false positives (hereinafter "Type I errors") and the allocative inefficiencies resulting from false negatives (hereinafter "Type II errors") constitute the error costs of antitrust adjudication. As explained below, there are good reasons to believe that the costs of false positives will exceed those of false negatives. 34 But, for present purposes, the important point to see is that antitrust adjudication will inevitably involve some mistakes, and those mistakes--be they false acquittals or false convictions--will impose social costs. 35

#### b) Follow-on---the plan creates the fear of future unrelated AND politicized amendments

Gregory E. Neppl 19, Partner at Foley and Lardner LLP, JD from Duke University School of Law, BA from Duke University, “Antitrust Enforcement “Reform” as a Political Issue: The Good, the Bad, and the Ugly”, 11/7/2019, https://www.foley.com/en/insights/publications/2019/11/antitrust-enforcement-reform-political-issue

New Merger Guidelines

New merger guidelines that reflect non-competition considerations (such as job security) would modify the consumer welfare standard discussed above and, in the absence of new statutory authority, likely contravene Section 7 of the Clayton Act as currently drafted. One problem with such “new guidelines” – unhinged from “competition” or “competitive effects” – is that successive administrations might amend (or reinterpret) such guidelines in response to whatever political issue du jour allowed that administration to win political power. While antitrust enforcement is not free of politics currently (i.e., the President does nominate the Assistant Attorney General (Antitrust Division), appoint the FTC Chairperson, and nominate FTC commissioners when openings arise, and the House and Senate subcommittees with antitrust enforcement oversight regularly hold hearings on high-profile mergers), both DOJ and FTC have a respectable history of pursuing enforcement efforts generally free from partisan politics. The issuance of new merger guidelines that reflect non-competition considerations may open the door to regular amendments to the guidelines and increase the likelihood that partisan politics could replace factual and economic analysis in merger evaluations. Such an outcome would not promote business confidence. Moreover, “bright-line” merger guidelines – setting caps for vertical mergers, horizontal mergers, and total market share – would ignore the fact that vertical foreclosure risks and “market power” are in practice not so easily quantifiable. The agencies already employ market share screens (such as HHI) to identify those mergers more likely to require close scrutiny. Bright-line caps, however, would necessarily threaten certain mergers that are competitively neutral, or even pro-competitive, through resulting efficiencies and synergies.

### AT: No Link---2AC 4

#### Even targeted antitrust sends a broad signal of aggressive overregulation

Raymond J. Keating 21, Chief Economist for the Small Business & Entrepreneurship Council and Adjunct Professor in the MBA Program at the Townsend School of Business at Dowling College, “Antitrust Fictions (and Actions) Will Have Real, Negative Economic Consequences”, SBE Council, 6/18/2021, https://sbecouncil.org/2021/06/18/antitrust-fictions-and-actions-will-have-real-negative-economic-consequences/

It needs to be understood that while supposedly targeting so-called “Big Tech,” these intrusive regulations and substantial costs would fall on competitors as well, thereby actually discouraging competition in technology markets. For good measure, moving ahead with his kind of hyper-antitrust regulation of tech firms lays the groundwork for doing so in other industries, such as in retail, energy, health and medical sectors, and so on. This is what Senate anti-trust crusaders hope to accomplish.

The message is clear: Beware entrepreneurs, businesses and investors if you become too successful or if you cross certain political constituencies. The government stands ready to punish you via intrusive and costly regulation.

#### Legally, antitrust is economy-wide, so there’s no way to limit the plan’s scope AND risk-averse firms and lawyers think it’ll be applied, chilling investment

Thomas Nachbar 19, Professor of Law at the University of Virginia School of Law, JD from the University of Chicago Law School, AB in History and Economics from the University of Illinois, “Book Review: Heroes and Villains of Antitrust”, The Antitrust Source, 18-6 Antitrust Src. 1, June 2019, Lexis

That regulatory skepticism had a particular salience for antitrust law, which itself is designed to maintain a particular balance between private and government action in markets. n53 Since Adam Smith, the argument of so-called free-market intellectuals has not been that markets are perfect but rather that they are comparatively better at solving problems than governments. Part of the argument is that, in most cases, market forces will drive a firm that has adopted an inefficient practice to shift to a more efficient one, lest it lose more business than it gains from the practice. But if antitrust law outlawed a practice, there is no potential for the market to correct--the practice once outlawed would remain outlawed. n54 And because antitrust law applies to all industries, a practice outlawed for one firm or industry would be outlawed for all firms in all industries, or be interpreted as such by risk-averse firms and their risk-averse lawyers--not to mention the treble damages that the liable antitrust defendant would have to pay.

[FOOTNOTE] n55 See Credit Suisse Sec. (USA) LLC v. Billing, 551 U.S. 264, 284 (2007) ("In sum, an antitrust action in this context is accompanied by a substantial risk of injury to the securities markets and by a diminished need for antitrust enforcement to address anticompetitive conduct."); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 546 (2007) ("It is one thing to be cautious before dismissing an antitrust complaint in advance of discovery, but quite another to forget that proceeding to antitrust discovery can be expensive.") Verizon Commc'ns, Inc. v. Law Offices of Curtis V. Trinko, LLP, 540 U.S. 398, 414 (2004) ("Mistaken inferences and the resulting false condemnations 'are especially costly, because they chill the very conduct the antitrust laws are designed to protect.'") (quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 594 (1986)). [END FOOTNOTE]

#### The plan’s abrupt expansion creates major uncertainty that disrupts business planning

Alden F. Abbott 21, Senior Research Fellow at the Mercatus Center of George Mason University, J.D. from Harvard Law School and M.A. in Economics from Georgetown University, “Competition Policy Challenges for a New U.S. Administration: Is The Past Prologue?”, Concurrences: Antitrust Publications & Events, February 2021, https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en

12. But recent suggestions put forth in an October 2020 House Judiciary Subcommittee on Antitrust majority report (HJSMR) [12] and in a November 2020 report by the Washington Center for Equitable Growth (WCEGR) [13] (coauthored by various prominent critics of Trump administration antitrust enforcement who served in the Obama administration) would go far beyond application of existing antitrust law to big digital platforms. In particular, the HJSMR proposes taking a highly regulatory approach to digital platforms, including imposing “[s]tructural separations and prohibitions of certain dominant platforms from operating in adjacent lines of business.” [14] The WCEGR also endorses the use of rulemaking (and, in particular, FTC rulemaking) to tackle significant problems of competition. [15] Rushing into rulemakings on platforms (especially without a clear showing of market failure) poses major risks, however, including, in particular, the creation of disincentives to invest in platform-specific innovation; and the interference with potential efficiency-seeking transactions by platform operators and suppliers of complements (in light of inevitable government second-guessing of platform-related business decision-making). The JBA antitrust team may wish to keep such potential costs in mind in setting competition policy vis-à-vis digital platforms.

13. To address the perceived growth and abuse of market power that are said to afflict the American economy, the HJSMR and WCEGR have also proposed to amend and thereby “toughen” the core antitrust statutes, to alter burdens of proof in litigation, and to bestow a substantial increase in resources on federal antitrust enforcers. [16] The problem of scarce agency resources has long been highlighted by enforcement agency leadership, and certainly merits attention. The call for dramatic systemic change in antitrust enforcement norms, however, should be approached cautiously, with a jaundiced eye. In our common-law-based antitrust system, a major disruption to long-familiar statutory schemes would generate major uncertainty regarding antitrust enforcement principles and substantially disrupt business planning for an indeterminate amount of time. Many welfare-enhancing transactions could be sacrificed. The harm to consumer and producer welfare due to lost socially beneficial business initiatives would be hard (if not impossible) to measure, but nonetheless real. It is certainly possible that such losses would outweigh (perhaps substantially) whatever welfare gains might flow from statutory enforcement “reform.” In other words, it should not casually be assumed that “more and different” antitrust would be an unalloyed benefit. As in all other areas of law enforcement, likely costs as well as purported benefits should be central to the antitrust public policy calculus. (Costs would include, of course, the likelihood and magnitude of “false positives” under the new enforcement regime, not just the reduction in socially beneficial transactions.)

### AT: Resilient---2AC 6

#### Growth is fragile AND economic spending cuts social services, sparking instability

Tyler Beckelman 21, Director of International Partnerships at the U.S. Institute of Peace, Master’s Degree in Conflict Resolution from Georgetown University, BA in Political Science, International Studies, and Economics from Macalester College, and Amanda Long, Senior International Partnerships Assistant at the U.S. Institute of Peace, BA in International Relations and Global Studies from the University of Texas at Austin, “A New U.S. Approach to Help Fragile States Amid COVID-Driven Economic Crisis”, United States Institute of Peace, 3/5/2021, https://www.usip.org/publications/2021/03/new-us-approach-help-fragile-states-amid-covid-driven-economic-crisis

Without a financial lifeboat, a prolonged economic and fiscal crisis will make fragile states even more fragile.

The ability of governments to spend their way to recovery is considerably strained; highly indebted regimes must confront the difficult choice of servicing debt payments or scaling up spending on social services like health care, infrastructure, and education, with most nations forced to reduce investments in services just as they’re needed most. Diminished spending on services results in widening inequality, declining trust in government, and further erosion of the social contract. With more than three-quarters of the population classified as “extremely poor” in fragile states, the potential for new waves of civil resistance, insecurity—and repression—is considerable.

#### Monetary buffers are exhausted

Irina Fan 20, Master Degree in Quantitative Analysis for Business from the City University of Hong Kong, Head of Insurance Market Analysis at the Swiss Re Institute, Jerome Jean Haegeli, Group Chief Economist at the Swiss Re Institute, and Patrick Saner, Head Macro Strategy at the Swiss Re Institute, “Global Resilience Has Taken A Hit – These Countries Will Bear The Brunt”, 8/26/2020, https://www.swissre.com/risk-knowledge/building-societal-resilience/global-resilience-taken-a-hit.html

The global economy has suffered its biggest shock since the Second World War. When coronavirus hit, we battened down the hatches and it’s driven us into deep recession.

As countries begin to emerge, they face a different landscape. Massive stimulus packages rolled out by hard-hit economies have created a seismic shift. They may have softened the impact, but they have left us more exposed to future economic shocks than before.

According to initial figures from the Swiss Re Institute's Resilience Index 2020, we estimate global resilience has dropped by a fifth in 2020 compared to 2019 levels.

This is a comparable fall to that seen during the 2008 Global Financial Crisis. But this time, the impacts have been far more rapid: during the GFC, the same scale of decline took three years to materialise. In addition, we went into this recession less resilient than in 2007 ahead of the GFC. And despite major bailouts and fiscal stimuli, lockdowns continue to hamper economic activity.

In an uncertain global economy, resilience is key to building economic stability. Identifying weak spots at a macro and micro level will put us in a stronger position to manage risk. Alongside their resilience status prior to the pandemic, fiscal policies are likely to be key in shaping the economic resilience of each country post-pandemic.

But, even for some at the top half of the resilience index, monetary policy buffers are all but exhausted. Many levers have already been pulled. This reduced space to manoeuvre means our preliminary 2020 rankings have seen some major shifts from 2019.

### AT: Biz Con Bad---2AC 7

#### AND it’s about New Zealand!

2AC Bagrie 18 - (Cameron Bagrie, Managing Director of Bagrie Economics, Guest Analyst @ Spinoff; 8-9-2018, Spinoff, "Business confidence is a hopeless indicator. But that doesn't mean the economy isn't in trouble," 9-14-2021) url: https://thespinoff.co.nz/business/09-08-2018/business-confidence-is-bullshit-but-that-doesnt-mean-the-economy-isnt-in-trouble/

The economy is headed for recession if you believe the readings from business confidence. Thankfully we can largely ignore business confidence readings.

We can’t ignore other survey measures though that are saying growth has slowed and the official statistics are showing the same. The last three quarterly GDP prints have been 0.6, 0.6 and 0.5% and we only have data up to March 2018. That’s annualised growth in the low 2’s and a dip below 2% now looks likely. We have the potential for a growth pothole. That is becoming a concern as the wheels of the economy need to be turning and tax revenue coming in the door for social agenda demands to be met.

A whopping net 45% of firms are pessimistic about the general economy according to the ANZ Business Outlook survey. That’s a level last seen around the global financial crisis. Of course, no one really believes things are that bad. We can’t blame the global scene as other countries would be seeing massive falls in confidence too if that was a key factor. Other countries are not. The New Zealand Institute of Economic Research (NZIER) is showing weak readings for business confidence within their Quarterly Survey of Business Opinion (QSBO) too.

The good news is that business confidence is hopeless as an economic indicator. The correlation with economic growth is poor and I largely ignore business confidence readings. Changes in direction can provide some insightful information – whether things are picking up or slowing down, but not the levels.

#### Studies prove biz con’s key AND depends on perceptions of political stability

Gabriel Caldas Montes 21, PhD Candidate in the Department of Economics at Fluminense Federal University and Fabiana da Silva Dr. Leite Nogueira, PhD in Economics from Universidade Federal Fluminense, Professor of Economics at the Universidade de Vassouras, “Effects of Economic Policy Uncertainty and Political Uncertainty on Business Confidence and Investment”, Journal of Economic Studies, April 2021, Emerald Insights

1. Introduction

The literature on business confidence is vast. If on the one hand some studies indicate that business confidence acts as a leading indicator of macroeconomic activity and influences the economic environment, on the other hand, some studies investigate the determinants of business confidence (Khan and Upadhayaya, 2020).

Although many advances have been made, the literature on the determinants of business confidence continues to evolve. Some studies analyze not only the effects of macroeconomic variables, but also the effects of other variables able to create (or reduce) uncertainties, such as corruption (Montes and Almeida, 2017) and monetary policy credibility (Montes, 2013; de Mendonça and Almeida, 2019). These studies reveal that low credibility and high levels of corruption reduce confidence due to the uncertainties that emerge.

Uncertain economic scenarios created by economic policy uncertainty undermine confidence, and affect the decision making of entrepreneurs, who, for example, postpone investment and employment decisions in order to gain more information (Bloom et al., 2018). Regarding the definition of economic policy uncertainty, Al-Thaqeb and Algharabali (2019) points out that “*Policy uncertainty is the economic risk associated with undefined future government policies and regulatory frameworks*” (Al-Thaqeb and Algharabali, 2019, p. 2). Baker et al. (2016) and Al-Thaqeb and Algharabali (2019) suggest that economic policy uncertainty delay economic recoveries during periods of recession as businesses and households postpone their decisions about investment and consumption expenditures due to market uncertainty. Nevertheless, regarding the effects of economic policy uncertainty on research and development (R&D) expenditures and innovation outputs, Tajaddini and Gholipour (2020) find positive relationships for a set of 19 developed and developing countries, thus, contradicting those that claim a negative association between economic policy uncertainty and R&D expenditure.

Since the work of Bloom (2009), and due to existing controversies in the literature, studies investigate the effects of uncertainty shocks on different economic variables (e.g., Baker et al., 2016; Bachmann et al., 2013; Colombo, 2013; Nodari, 2014; Donadelli, 2015; Gulen and Ion, 2015; Moore, 2017; Istiak and Serletis, 2018; Bahmani-Oskooee and Nayeri, 2018; Bahmani- Oskooee et al., 2018; Mumtaz and Surico, 2018; Gholipour, 2019; Greenland et al., 2019; Istiak and Alam, 2019, 2020; Tajaddini and Gholipour, 2020). In general, the findings suggest that macroeconomic variables such as GDP, investment and employment are adversely affected by increased economic policy uncertainty.

The political environment is also a source of uncertainty that affects the economy. Studies provide evidence that the instability of the political environment has negative effects on the economic environment (e.g., Barro, 1991; Alesina and Perotti, 1996; Svensson, 1998; Carmignani, 2003; Aisen and Veiga, 2006, 2013; Durnev, 2010; Zouhaier and Kefi, 2012; Julio and Yook, 2012; Uddin et al., 2017; Azzimonti, 2018; Jens, 2017). These studies show that political instability has negative effects on inflation, GDP and unemployment.

Political uncertainty reflects instabilities on the political scene (i.e., involving politicians). The instabilities arising from the political scenario are associated to uncertainties regarding possible changes in the “rules of the game” and in the functioning of institutions. Hence, the uncertainty related to the political system is a key feature affecting the business environment, which entrepreneurs must consider when deciding, for instance, to start or expand their businesses. The effects of political uncertainty are stronger when firms and politicians have close connections and political favors might be at play.

One can suggest economic policy uncertainty reduces entrepreneurs’ optimism about the future of the economy and their business. Similarly, an uncertain political environment can deteriorate business confidence, producing negative effects on the economic environment. Hence, some important questions arise. Does political uncertainty affect business confidence? Is business confidence affected by economic policy uncertainty? Are political uncertainty and economic policy uncertainty transmitted to investment decisions through business confidence? These questions are particularly important for developing countries since these countries often present higher levels of political uncertainty and economic policy uncertainty.

#### Failure causes bankruptcies and unemployment---it’s unique: confidence is slowly recovering with stable support

Dr. Laurence Boone 20, PhD in Economics from London Business School, OECD Chief Economist, Master Degree in Econometrics from the University of Reading, MAS in Modelization and Quantitative Analysis from Paris X-Nanterre University, “Building Confidence Crucial Amid An Uncertain Economic Recovery”, OECD Interim Economic Report, 9/16/2020, https://www.oecd.org/newsroom/building-confidence-crucial-amid-an-uncertain-economic-recovery.htm

With the COVID-19 pandemic continuing to threaten jobs, businesses and the health and well-being of millions amid exceptional uncertainty, building confidence will be crucial to ensure that economies recover and adapt, says the OECD’s Interim Economic Outlook.

After an unprecedented collapse in the first half of the year, economic output recovered swiftly following the easing of containment measures and the initial re-opening of businesses, but the pace of recovery has lost some momentum more recently. New restrictions being imposed in some countries to tackle the resurgence of the virus are likely to have slowed growth, the report says.

Uncertainty remains high and the strength of the recovery varies markedly between countries and between business sectors. Prospects for an inclusive, resilient and sustainable economic growth will depend on a range of factors including the likelihood of new outbreaks of the virus, how well individuals observe health measures and restrictions, consumer and business confidence, and the extent to which government support to maintain jobs and help businesses succeeds in boosting demand.

The Interim Economic Outlook projects global GDP to fall by 4½ per cent this year, before growing by 5% in 2021. The forecasts are less negative than those in OECD’s June Economic Outlook, due primarily to better than expected outcomes for China and the United States in the first half of this year and a response by governments on a massive scale. However, output in many countries at the end of 2021 will still be below the levels at the end of 2019, and well below what was projected prior to the pandemic.

If the threat from COVID-19 fades more quickly than expected, improved business and consumer confidence could boost global activity sharply in 2021. But a stronger resurgence of the virus, or more stringent lockdowns could cut 2-3 percentage points from global growth in 2021, with even higher unemployment and a prolonged period of weak investment.

Presenting the Interim Economic Outlook, covering G20 economies, OECD Chief Economist Laurence Boone said: “The world is facing an acute health crisis and the most dramatic economic slowdown since the Second World War. The end is not yet in sight but there is still much policymakers can do to help build confidence.”

She added: “It is important that governments avoid the mistake of tightening fiscal policy too quickly, as happened after the last financial crisis. Without continued government support, bankruptcies and unemployment could rise faster than warranted and take a toll on people’s livelihoods for years to come. Policymakers have the opportunity of a lifetime to implement truly sustainable recovery plans that reboot the economy and generate investment in the digital upgrades much needed by small and medium-sized companies, as well as in green infrastructure, transport and housing to build back a better and greener economy.”

### AT: Antitrust Now---Oil and Gas

#### ‘Gas’ investigations are just PR and involve no actual resources

Thomas Mulloy 21, Senior Editor at CStore Decisions Magazine, BA from Bowling Green University, “FTC Chair Pledges Greater Scrutiny on Retail Fuel Prices, Mergers”, CStore Decisions, 8/31/2021, https://cstoredecisions.com/2021/08/31/ftc-chair-pledges-greater-scrutiny-on-retail-fuel-prices-mergers/

Federal Trade Commission Chair Lina Khan this week said she is directing staff to examine retail fuel station deals as well as investigate possible collusion by national convenience store chains to push up prices.

According to the U.S. Department of Labor, overall energy prices are up 24% in the past year while pump prices have climbed 42%. Gas prices began the year at $2.24 per gallon and are now averaging $3.15.

That jump also may be due to increased demand in an economy rebounding from the pandemic. Other reasons behind increased fuel pump prices could be refinery closures, higher labor costs and shortages of drivers.

Khan made her comments in a letter to the White House, also citing what she called the FTC’s lax approach to fuel station mergers in recent years that resulted in heavy consolidation, resulting in “conditions ripe for price coordination and other collusive practices.”

Khan said that the FTC will determine whether there exists a power imbalance that favors large national chains, allowing them to force franchisees to raise their fuel prices – “benefitting the chain at the expense of the franchisee’s convenience store operations.”

In June, the FTC approved the sale of Marathon Petroleum Corp.’s Speedway c-store chain to 7-Eleven. But the companies closed the deal before it received the FTC’s blessing. Approval only came after both companies agreed to sell hundreds of locations deemed in competition with each other.

The new scrutiny could affect HollyFrontier Corp.’s agreement announced this week to buy Sinclair Oil Corp., a deal which includes refineries, a renewable diesel facility, a 300-distributor network and 1,500 convenience store locations.

Khan’s comments came shortly after Hurricane Ida made landfall in Louisiana after moving through the Gulf of Mexico, home to 48% of U.S. refining capacity and 16% of crude oil production. Ida disrupted about 12% of the nation’s total daily refining capacity.

Some industry analysts are skeptical of the FTC’s and Khan’s motivations, believing the crackdown is as much about politics as anything else, as the price hikes have come since the beginning of the Biden administration in January.

“I wouldn’t want to say this was about PR, but I don’t think the investigations are going to reveal much,” Tom Kloza, head of energy analysis at the Oil Price Information Service, told Washington-based The Hill, which covers Congress and politics.

### AT: Antitrust Now---Health

#### Health enforcement is limited

Gaby Galvin 21, Health Reporter at Morning Consult, BA in Journalism from the University of Maryland, College Park, “Hospitals, Other Health Care Players Are Seeing ‘the Bar of Scrutiny’ Raised by Biden Regulators”, Morning Consult, 9/10/2021, https://morningconsult.com/2021/09/10/health-care-antitrust-biden-administration/

Some analysts are skeptical of the Biden administration’s ability to meaningfully rein in such deals.

“The idea that now Biden is going to direct the FTC to pay closer attention to health care mergers is a lot like closing the barn door after the horses have run out,” said Michael Abrams, co-founder and managing partner at health care consultancy Numerof & Associates. But “when you combine the payer and the provider, it’s the consumer who, more than ever, needs protection.”

Regulators picking their battles

Going forward, Gilman said he expects agencies to “be less likely to either clear or settle vertical merger transactions” right away, which “could have some chilling effect.” But regulators will also have to “triage” top priority cases, given the FTC said it is being hit with a “tidal wave” of merger filings.

In late July, for example, the FTC dropped a complaint against AbbVie Inc. accusing the drugmaker of blocking generic competition for its testosterone drug AndroGel, but said it still believes AbbVie engaged in illegal, anti-competitive behavior to earn its “ill-gotten gains.”

The clearest early signal of how aggressively the Biden administration will push health care competition may come not from merger reviews, but from its efforts on price transparency. HHS has proposed increasing fines for hospitals that don’t comply with a rule requiring them to publicly post their prices, from up to $109,500 annually to more than $2 million. Research indicates most hospitals are ignoring the rule, which went into effect this year.

Mitchell said price transparency is the “low-hanging fruit” to promote competition in health care, and that similar rules should apply to health insurers. Abrams, meanwhile, warned that transparency measures could still be watered down in the federal government’s rule-making and enforcement processes.

### Turns Case

#### Decline turns the case---agencies will cease enforcement during the downturn

Anika Dandekar 21, Political Science at University of California, San Diego, “Politics of Antitrust Enforcement: The Influence of Ideology and Party Control on Regulatory Behavior”, Senior Thesis, 3/29/2021, https://polisci.ucsd.edu/undergrad/departmental-honors-and-pi-sigma-alpha/A.Dandekar\_Senior-Honors-Thesis.pdf

1.3.3 Bureaucratic Approach

Some scholars have tried to explain varying antitrust by changing makeup or preferences of regulatory agencies themselves.

Some suggest that the agencies respond to external factors. Amacher et al. (1985) examined FTC enforcement of the Robinson- Patman Act and found that it was influenced by economic conditions, decreasing during business contractions and increasing during periods of expansion. They suggested that this means "the FTC moves to cushion producer losses" during hard economic times, but transfers "wealth to consumers" during economic upswings. Lewis-Beck (1979) found that while small increases in the division's budget did not reduce anticompetitive behavior, a major increase in the division's budget might significantly stem merger activity because of a "threshold effect”.

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### U---AT: Legislation---2NR

#### There’s no chance of legislative antitrust

Joseph Charles Folio 21 III, Lawyer at Morrison Forrester, and Lisa M. Phelan Co-chair Global Antitrust Law Practice Group at Morrison Forrester, Jeff Jaeckel, Co-chair Global Antitrust Law Practice Group at Morrison Forrester, and Alexander Paul Okuliar, Co-chair Global Antitrust Law Practice Group at Morrison Forrester, “Antitrust Update: Up and Down the Avenue”, 3/22/2021, https://www.mofo.com/resources/insights/210322-atr-update.html

Are the stars aligning for antitrust reform? President Biden is filling key positions in the White House (Timothy Wu, National Economic Council) and at the FTC (Lina Khan, nominee for commissioner) with lawyers who have advocated for increased antitrust enforcement, especially against “big tech.” In Congress, the House antitrust subcommittee concluded a year-long investigation in October 2020 and found bipartisan agreement on discrete areas for reform. With Democrats now in control of both houses of Congress, antitrust legislation seems close. But not so fast.

The House and Senate antitrust subcommittees have held four hearings since February 25, 2021, but it is crucial to view these recent developments in their proper context. Even when politicians and enforcers appear to agree on a goal, it can still be a long and winding road to actual policy reform.

Two to go

Although antitrust reform advocates cheered President Biden’s initial appointments, two of the most consequential antitrust positions—the assistant attorney general (AAG) for antitrust and the FTC chair—remain open. Both the AAG and FTC chair wield tremendous authority; they approve cases, guide investigations, and will decide how to proceed with ongoing litigation. It is unlikely that the Biden administration will make any significant decisions, or support any particular legislation, before its key personnel are firmly in place. And that can take time. Former AAG Makan Delrahim was nominated in March 2017 but not confirmed until September 2017.

Interestingly, the pressure to nominate like-minded antitrust reformers for these two positions is coming from multiple angles. One public interest group recently sent a letter to White House chief of staff Ron Klain and, after “highly commend[ing]” the nomination of Ms. Khan to be an FTC commissioner, warned against the influence of certain White House and DOJ officials over the AAG and FTC chair nominations because of their links to “big tech” companies.[1] Additionally, many in the press have been critical of the level of tech enforcement activity during the Obama administration and want to avoid a replay of those years.[2]