# NEG vs Gonzaga MM- Kentucky Rd 2

## 1NC Off

### CP – Section 5

#### The FTC should issue enforcement guidance that the presently-existent phrase “unfair methods of competition in or affecting commerce” in Section 5 of the FTCA includes refusal to license climate mitigation and adaption technology. The FTC should release a clear statement and data sets that reflects this and enforce accordingly.

**The cplan solves. It also competes – the FTC interprets current authority, instead of creating new prohibitions.**

**Kahn ‘21**

et al; This is a recent joint statement released by the five Federal Trade Commissioners. The Chair of the Federal Trade Commission is Lina Khan - an Associate Professor of Law at Columbia Law School. Also on the Commission is Rohit Chopra – who was previously The Assistant Director of the Consumer Financial Protection Bureau, as well as Rebecca Slaughter - an American attorney who was previously the acting chair of the Federal Trade Commission. Two others also sit on the Commission. “STATEMENT OF THE COMMISSION On the Withdrawal of the Statement of Enforcement Principles Regarding “Unfair Methods of Competition” Under Section 5 of the FTC Act” - July 9, 2021 - #E&F – modified for language that may offend - https://www.ftc.gov/system/files/documents/public\_statements/1591706/p210100commnstmtwithdrawalsec5enforcement.pdf

**Section 5** of the **F**ederal **T**rade **C**ommission **A**ct **prohibits** “unfair methods of competition in or affecting commerce.”1 In 2015, the Federal Trade Commission under Chairwoman Edith Ramirez published the Statement of Enforcement Principles Regarding “Unfair Methods of Competition” Under Section 5 of the FTC Act (hereinafter “2015 Statement”), which established principles to guide the agency’s exercise of its “standalone” Section 5 authority.2 Although presented as a way to reaffirm the Commission’s preexisting approach to Section 5 and preserve doctrinal flexibility,3 the 2015 Statement contravenes the text, structure, and history of Section 5 and largely writes the FTC’s standalone authority out of existence. In our ~~view~~ (perspective), the 2015 Statement abrogates the Commission’s **congressionally mandated duty** to use its expertise to identify and combat unfair methods of competition even if they do not violate a separate antitrust statute. Accordingly, because the Commission intends to restore the agency to this critical mission, the agency withdraws the 2015 Statement.

I. Background

On August 13, 2015, the Federal Trade Commission issued the 2015 Statement, which announced that the Commission would apply Section 5 using “a framework similar to the rule of reason,” by only challenging actions that “cause, or [are] likely to cause, harm to competition or the competitive process, taking into account any associated cognizable efficiencies and business justifications[.]”4 The 2015 Statement advised that the Commission is “less likely” to raise a standalone Section 5 claim “if enforcement of the Sherman or Clayton Act is sufficient to address the competitive harm.”5

In a statement accompanying the issuance of these principles, the Commission explained that its enforcement of Section 5 would be “aligned with” the Sherman and Clayton Acts and thus subject to “the ‘rule of reason’ framework developed under the antitrust laws[.]”6 In a speech announcing the statement, Chairwoman Ramirez noted that she favored a “common-law approach” to Section 5 rather than “a prescriptive codification of precisely what conduct is prohibited.”7 She also acknowledged that the Commission’s policy statement was codifying an interpretation of Section 5 that is more restrictive than the Commission’s historic approach and more constraining than the prevailing case law.8 She added, “[W]e now exercise our standalone Section 5 authority in a far narrower class of cases than we did throughout most of the twentieth century.”9

With the exception of certain administrative complaints involving invitations to collude, the agency has pled a standalone Section 5 violation just once in the more than five years since it published the statement. 10

II. The Text, Structure, and History of Section 5 Reflect a Clear Legislative Mandate Broader than the Sherman and Clayton Acts

By tethering Section 5 to the Sherman and Clayton Acts, the 2015 Statement negates the Commission’s core legislative mandate, as reflected in the statutory text, the structure of the law, and the legislative history, and undermines the Commission’s institutional strengths.

In 1914, Congress enacted the **F**ederal **T**rade **C**ommission **A**ct to reach beyond the Sherman Act and to provide an alternative institutional framework for **enforcing** the **antitrust** laws. 11 After the Supreme Court announced in Standard Oil that it would subject restraints of trade to an open-ended “standard of reason” under the Sherman Act, lawmakers were concerned that this approach to antitrust delayed resolution of cases, delivered inconsistent and unpredictable results, and yielded outsized and unchecked interpretive authority to the courts.12 For instance, Senator Newlands complained that Standard Oil left antitrust regulation “to the varying judgments of different courts upon the facts and the law”; he thus sought to create an “administrative tribunal … with powers of recommendation, with powers of condemnation, [and] with powers of correction.”13 Likewise, a 1913 Senate committee report lamented that the rule of reason had made it “impossible to predict” whether courts would condemn many “practices that seriously interfere with competition, and are plainly opposed to the public welfare,” and thus called for legislation “establishing a commission for the better administration of the law and to aid in its enforcement.”14 **These concerns spurred the passage of the FTC A**ct, which created an administrative body that could police unlawful business practices with **greater expertise** and **democratic accountability** than courts provided.15

**At the heart of the statute was Section 5,** which declares “unfair methods of competition” **unlawful**.16 By proscribing conduct using this new term, rather than codifying either the text or judicial interpretations of the Sherman Act, the plain language of the statute makes clear that Congress intended for Section 5 to reach beyond existing antitrust law. The structure of Section 5 also supports a reading that is not limited to an extension of the Sherman Act. Notably, the FTC Act’s remedial scheme differs significantly from the remedial structure of the other antitrust statutes. The Commission cannot pursue criminal penalties for violations of “unfair methods of competition,” and Section 5 provides **no private right of action**, shielding violators from **private lawsuits** and treble damages. In this way, the institutional design laid out in the FTC Act reflects a basic tradeoff: Section 5 grants the Commission extensive authority to shape doctrine and reach conduct not otherwise prohibited by the Sherman Act, but provides a more limited set of remedies.17

The legislative debate around the FTC Act makes clear that the text and structure of the statute were intentional. Lawmakers chose to **leave it to the Commission** to determine which practices fell into the category of “unfair methods of competition” rather than attempt to define through statute the **various unlawful practices**, given that “there were too many unfair practices to define, and after writing 20 of them into the law it would be quite possible to invent others.”18 Lawmakers were clear that Section 5 was designed to extend beyond the reach of the antitrust laws. 19 For example, Senator Cummins, one of the main sponsors of the FTC Act, stated that the purpose of Section 5 was “to make some things punishable, to prevent some things, that cannot be punished or prevented under the antitrust law.”20

The Supreme Court has repeatedly affirmed this view of the **agency’s Section 5 authority**, holding that **the statute**, **by its plain text**, does not limit unfair methods of competition to practices that violate other antitrust laws. 21 The Court, recognizing the Commission’s expertise in competition matters, has given “deference”22 and “great weight”23 to the Commission’s determination that a practice is unfair and should be condemned.

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### CP – Fast Track / Climate

**The United States federal government should establish and fund a National Climate Bank and require at least 60 percent be invested in communities with the greatest need and re-enact and make permanent the Green Technology Pilot Program**

**National Climate Bank solves climate and growth – public financing stimulates private investment**

**Kathleen 20** [Expertise: International climate policy, climate preparedness, climate justice, Arctic policy. Cathleen Kelly is a senior fellow for Energy and Environment at the Center for American Progress. She specializes in international and U.S. climate mitigation, preparedness, resilience, and sustainable development policy. Kelly served in the Obama administration at the White House Council on Environmental Quality, where she led a 20-plus-agency task force to develop a national climate resilience strategy., 1/30/2020, “3 Bold Actions Congress Should Take to Equitably Address Weather and Climate Disasters”, <https://www.americanprogress.org/issues/green/news/2020/01/30/479843/3-bold-actions-congress-take-equitably-address-weather-climate-disasters/>]RG

Congress should also create a **National Climate Bank** to drive public and private investment into renewable energy, clean transportation, and community resilience projects, particularly in front-line communities such as economically disadvantaged communities, tribal communities, and communities of color. In July 2019, Sens. Edward Markey (D-MA) and Chris Van Hollen (D-MD) introduced the National Climate Bank Act to expand investments in clean energy, transportation, and infrastructure to reduce carbon and other pollution and improve the health and well-being of communities. Rep. Debbie Dingell (D-MI) introduced similar legislation in the House in December 2019. Her legislation proposes that the National Climate Bank be capitalized with $35 billion over six years to leverage up to $1 trillion in private investment. According to Rep. Dingell, "Establishing a National Climate Bank will serve as an important implementation tool to achieve this goal by publicly financing and stimulating private investments" in **renewable energy** and "clean transportation," as well as provide **support** to **communities** that bear the brunt of climate change. Meanwhile, if the CLEAN Future Act is enacted, it would create a "first-of-its-kind National Climate Bank … to provide financing for low- and zero-emissions energy technologies, **climate resiliency**, building efficiency and electrification, industrial decarbonization, grid modernization, agriculture projects, and clean transportation." Like the House and Senate National Climate Bank bills, the CLEAN Future Act would require the bank to prioritize investments in "frontline, rural, low-income and environmental justice communities." Similar to the State Future Funds that CAP proposed in 2015, the **National Climate Bank** is a forward-thinking approach to supporting future-ready infrastructure and access to clean, affordable energy and transportation options to improve community health and safety. Congress can begin to **tackle past inequities** and unfair infrastructure practices by requiring that at least 60 percent of proposed National Climate Bank capital be invested in communities with the greatest need.

#### Green pilot solves patents and provides uniqueness for our link turns

Hurtado 21 --- Melissa Hurtado, JD student, Northwestern, “Journal of Technology and Intellectual Property”, JTIP Blog, March 27, 2021, https://jtip.law.northwestern.edu/2021/03/27/green\_tech\_patent\_boom\_or\_bust/

In order for the U.S. to reverse the trend away from needed and important patent applications for climate change mitigation technology, the U.S. should begin by restarting the Green Technology Pilot Program that it once championed to fast-track these technologies. Before the program ended on March 30, 2012, the USPTO accorded special status to 3,500 applications related to environmental quality, energy conservation, renewable energy development, and greenhouse gas emission reductions. These accelerated examination programs allowed patentees to receive a final disposition within about 12 months. Despite the seemingly premature ending, there remain significant and promising technological inventions that have yet to be widely patented or enabled, including patents in relation to grids, batteries, and carbon capture technology. Because patents are an essential tool to combat climate change, the USPTO and the federal government should actively consider expanding and improving the fast-track process.

### DA – FTC Independence

***Next off is FTC independence:***

**FTC independence in the US key to *global norms* that support agency independence. Vital for *free trade* and *GLO*.**

* United States’ FTC practices are modeled *by several nations* – including South Korea – and *will continue to be modeled* by nations that are still amid transitions towards industrialization;
* Global attentiveness to the United States’ FTC practices *remains ongoing* and - “*to this day*” - are a *central obstacle* to aspired free trade norms;
* The root of the loss of the global public’s confidence in free trade stems from the success of zero-sum strategies. *The root of that* is an interpretation of the FTCA that permits politicized intervention;
* Ambiguity in the United States’ FTCA permit the Act to be exercised *EITHER with a great deal of agency discretion* – *OR* alternatively, *with the perceived influence of external political branches*;
* Current US FTC practices lean away agency independence – and that’s *a central obstacle* to international agencies countering the growth of protectionist mercantilist norms
* More broadly, this hampers *general support for internationalism/GLO*

**Nam ‘18**

Steven S. Nam - Distinguished Practitioner, Center for East Asian Studies, Stanford University. Steven is also a Commission member of the Model International Mobility Treaty Commission under Columbia University's Global Policy Initiative. He is a member of the Antitrust Section of the American Bar Association and earned his B.A. at Yale and his J.D. and M.A. degrees at Columbia – “OUR COUNTRY, RIGHT OR WRONG: THE FTC ACT’S INFLUENCE ON NATIONAL SILOS IN ANTITRUST ENFORCEMENT” – University of Pennsylvania Journal of Business Law, Vol. 20, No. 1, 2018 - #E&F – No text omitted – but the Table of Contents – which comes after the Abstract - was not included – modified for language that may offend - https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1555&context=jbl

ABSTRACT:

The Federal Trade Commission Act of 1914 (“**FTC A**ct”), **a model** for **many other countries** that set up their **own** competition agencies, combines the **control** afforded by presidential appointment and removal powers over FTC commissioners with an **exceedingly discretionary** mandate. This Article contends that the FTC Act’s outmoded openness to **strong presidential direction**, **where adapted abroad**, has helped detract from **antitrust regulator independence.** Even advanced players in the liberal international economic order **such as South Korea** have made use of the United States’ original blueprint for unitary **executive-stamped** **antitrust** enforcement without sharing a long historical evolution of counterbalancing regulatory norms, e.g. the judicial check that was Humphrey’s Executor v. United States, 295 U.S. 602 (1935).

Strong executive direction **in antitrust enforcement** is particularly suited to capitalist economies helmed by administrations with mercantilist policies, **given their belief that the state and big business must coop**erate in the face of zero-sum international competition. South Korean President Lee MyungBak’s term (2008-2013) serves as an apt recent case study, featuring dirigiste calibration of antitrust enforcement against a backdrop of global recession. This Article examines the parallels between the FTC Act and the South Korean Monopoly Regulation and Fair Trade Act (“MRFTA”) before scrutinizing the enabled silo-like enforcement patterns of the Korean Fair Trade Commission under the Lee administration. Increasingly widespread erosion of public confidence in free and competitive trade demands a better understanding of the forces **preventing global convergence** in antitrust enforcement, and of their **roots.**

We have created, in the Federal Trade Commission, a means of inquiry and of accommodation in the field of commerce which ought both to coordinate the enterprises of our traders and manufacturers and to remove the barriers of misunderstanding and of a too technical interpretation of the law. —President Woodrow Wilson, September 1916

[Our companies] are fighting with unfavorable conditions amid competition in the global economy. To do so, they must be allowed to escape various regulations. Let’s take just a half step forward to move beyond the pace of change in the global economy. —South Korean President Lee Myung-bak, March 2008

It is clear that, at the beginning of the 21st century, we cannot afford to operate, to enforce our competition laws, in national or regional silos. We must not remain isolated from what happens in other jurisdictions. Even if markets often remain regional or national in terms of competitive assessment, fostering global convergence in our legal and economic analysis is essential to ensuring effectiveness of our enforcement and creating a level playing field for businesses across our jurisdictions. —Joaquín Almunia, Vice-President of the European Commission for Competition Policy, April 2010

The [U.S.] Agencies do not discriminate in the enforcement of the antitrust laws on the basis of the nationality of the parties. Nor do the Agencies employ their statutory authority to further nonantitrust goals. —The U.S. Department of Justice and the Federal Trade Commission, April 1995

INTRODUCTION

The International Competition Network’s founding in October 2001, with the aim of “formulat[ing] proposals for procedural and substantive convergence” among its stated goals,5 sought to usher in a future with more cosmopolitan and coherent global antitrust enforcement. Although U.S. regulatory leadership maintained that “consistently sound antitrust enforcement policy cannot be defined and decreed for others by the U.S., the EU, or anyone else,” many countries (turned) ~~looked~~ to the U.S. **as a role model** while developing their **competition** regimes.6 It is ironic, **then,** that **to this day** a **central obstacle** to the aspired international “culture of competition” **can be found in none other than the influence of the U.S.’s own FTC A**ct.7

American **antitrust** priorities around the time of the legislation’s passage oscillated between tempering trusts and shepherding business to further national economic strength, all towards the domestic interest. They shaped a regulatory environment that **would reemerge abroad** in **many** later-developing countries.

The deepening global retreat from **internationalism** ***and*** free market principles in the present day, with the specter of **trade wars looming**, is exacerbated by nationalist competition regimes that **are derivative of a U.S. model** predating the modern world economy. Domestic critics of open markets often overlook the U.S.’s own past vis-à-vis protectionist governments today. Illiberal or nominally liberal, they walk the kind of dirigiste path once treaded by the American School through the early twentieth century.8

**Globally, independence of antitrust agencies will prove key – checks spiraling economic nationalisms that’ll crush liberal peace.**

**Nam ‘18**

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National antitrust silos are not a novel phenomenon. Former European Commissioner for Competition Joaquín Almunia warned of them years ago,152 and scholarship touching upon the furtherance of nationalist goals by various antitrust agencies dates back decades.153 However, a **creeping** loss of public confidence in open markets—**coupled with** the obstacles to coherent global antitrust enforcement that bear the FTC Act’s influence, **as illustrated in this Article**—risks amplifying the problem. As anti-free trade agendas continue to garner more mainstream popularity for formerly counter-establishment parties, a proliferation of **protectionist** silos could tempt even governments that, for the most part, had moved past them. Why, American officials may ask, should the U.S. continue championing the liberal international economic order when an illiberal China or an ostensibly liberal South Korea bends regulatory rules to disadvantage American companies, workers, and consumers? Skepticism towards a liberal democratic “end of history”154 in general, and failures of economic liberalism in particular, are threatening to motivate political circles accordingly. Even **perennial norms** and conventions of **the U.S. competition regime** which evolved to safeguard regulator independence at home are no longer above disruption; the ambiguous statutory articulations that **carried over abroad** to empower strong executives are likewise playing a paper tiger role domestically of late.155

Protectionist policies designed to compromise market competition—for all its documented excesses and inadequacies—would sap its creative vitality and the concurrent **liberal peace**156 **often taken for granted**. Economic liberalism ails not so much from the intrinsic failings of core tenets, but from their more egregious nation-state and corporate violators. Proposals for greater accountability and harmonization have ranged from presumption of an underlying coordination scheme in antitrust investigations of a culpable country’s companies,157 to an international competition regime binding on member states in at least some areas of antitrust.158 Each has associated costs, but their very debate harnesses polycentric dialogue lacking in nationalist regulatory agendas and calls for “our country, right or wrong” protectionist silos. It should be emphasized to policymakers and politicians collectively that lasting convergence in antitrust enforcement is unachievable without global coherence in regulator autonomy, and the FTC Act’s **formative influence** is not above scrutiny or reproach. **Still-elusive** realization of the liberal economic international order’s intended form will **require** an expanded constellation of **independent competition regulators** empowered to enforce antitrust laws consistently.

**Global free trade reversals will cause *multiple existential impacts*.**

* Arctic conflict
* Space conflict;
* Global nuclear prolif;
* Structural wars;
* Climate;
* Geo-engineering;

**Langan-Riekhof ‘21**

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With the trade **and financial** connections that defined the prior era of globalization disrupted, economic and security blocs formed around the United States, China, the EU, Russia, and India. Smaller powers and other states joined these blocs for protection, to pool resources, and to maintain at least some economic efficiencies. Advances in AI, energy technologies, and additive manufacturing helped some states adapt and make the blocs economically viable, but prices for consumer goods rose dramatically. States unable to join a bloc were left behind and cut off.

Security links did not disappear completely. States threatened by powerful neighbors sought out security links with other powers for their own protection or accelerated their own programs to **develop nuclear weapons**, as the ultimate guarantor of their security. Small conflicts occurred at the edges of these new blocs, particularly over scarce resources or emerging opportunities, like **the Arctic** and **space**. Poorer countries became increasingly unstable, and with no interest by major powers or the United Nations in intervening to help restore order, **conflicts became endemic**, exacerbating other problems. Lacking coordinated, multilateral efforts to mitigate emissions and address **climate changes**, little was done to slow greenhouse gas emissions, and some states experimented with **geoengineering with disastrous consequences**.

*Note to students*: this ev appears to advance a cemented future – but it is an ebook report by the National Intelligence Council outlining possible futures \*if\* certain premises were to take place. Perhaps this is best explained by an except from the opening of this report: “Welcome to the 7th edition of the National Intelligence Council’s Global Trends report. Published every four years since 1997, Global Trends assesses the key trends and uncertainties that will shape the strategic environment for the United States during the next two decades. Global Trends is designed to provide an analytic framework for policymakers early in each administration as they craft national security strategy and navigate an uncertain future. The goal is not to offer a specific prediction of the world in 2040; instead, our intent is to help policymakers and citizens see (aware of) what may lie beyond the horizon and prepare for an array of possible futures”.

### DA - Politics

**Biden’s PC is key to pass debt ceiling through reconciliation**

**Hartmann 9-30**-21 (Thom Hartmann, writing fellow with the Independent Media Institute, #1 progressive talk-show host, carried on SiriusXM, Pacifica, radio stations nationwide, Free Speech TV, author of "The Hidden History of Monopolies: How Big Business Destroyed the American Dream," and more than 25 other books in print, “GOP Suicide Bombers Threaten Debt-Ceiling Sabotage of US Economy,” City Watch, 9-30-2021, https://www.citywatchla.com/index.php/375-voices/22694-gop-suicide-bombers-threaten-debt-ceiling-sabotage-of-us-economy)

There's plenty of coverage about how worried Treasury Secretary Janet Yellen is about how severe the impact an American default—or **even a pause in issuing Treasuries**, which are **essential to the smooth functioning of the international monetary system**—would be.

"I think there **would be a financial crisis**, and a calamity," Yellen told reporters yesterday.

But left unsaid was why Republicans would want such a "crisis" and "calamity." What's possibly in it for them?

After all, raising the debt ceiling has, on its face, nothing to do with Democrats' plans to spend $3.5 trillion or so on infrastructure over the next decade; that would be dealt with in future debt ceilings.

Why would the **Rep**ublicans **filibuster the debt ceiling**, **forcing** the Democrats to burn through their one-**reconciliation**-bill-a-year?

Perhaps that question answers itself, although it is possible under Senate filibuster rules to have a separate reconciliation bill just to raise the debt ceiling; the problem is that doing so makes the entire reconciliation process for other things even more complicated.

So what do they want? Why the suicide vests?

When McConnell last tried this, then against President Obama eight years ago, the GOP had a list of demands that Must Be Met to stop them from blowing up the country along with themselves: cut taxes on the morbidly rich, turn Medicare into a welfare program, and make it easier for big refineries and coal mines to pollute our air and rivers.

**This time** it appears their goal is to stop President Biden's Build Back Better legislation, also known as the $3.5 trillion reconciliation bill, a failure which will damage the Democrats politically both with their base and with independent voters for 2022 and 2024.

In other words, it's **all about splitting the Dem**ocratic **base** against itself while **making** President **Biden look impotent** so Republicans can regain control of the House and Senate and set up Donald Trump (or equivalent) to run for president in three years.

**Reconciliation** is a complex and **time-consuming** process, and if McConnell's threat works and Democrats have to come up with an entirely new **reconciliation** bill to raise the **debt ceiling** it'll **burn through** precious **time** and **political capital** needed to pass Biden's signature legislation.

Even if they roll the debt ceiling and funding the government into that larger bill, it'll take a **startling amount** of **Senate floor time** that gives giant special interests more time to carpet bomb TV and other media with propaganda opposing the $3.5 trillion Build Back Better legislation while they dangle ever more money and future income opportunities in front of wavering Democrats.

And, as a bonus, the American media will fail to blame this on the GOP: they'll go along with McConnell's line that it's all the Democrats fault, even though it was the Republicans who invoked the filibuster that forces reconciliation.

Just that sentence is complex enough that our media will default to a "Democrats Fail Again" headline instead of "Republican Suicide Bombers Threaten America with Such Damage That Democrats Kill Their Own Legislation To Save the Country."

**Plan drains PC, provokes a time-consuming partisan battle**

**Carstensen ‘21**

Peter C. Carstensen - Fred W. & Vi Miller Chair in Law Emeritus, University of Wisconsin Law School, M.A., Yale University; LL.B., Yale Law School; former attorney at the Antitrust Division of the United States Department of Justice, where one of his primary areas of work was on questions of relating competition policy and law to regulated industries. He is a Senior Fellow of the American Antitrust Institute – “THE “OUGHT” AND “IS LIKELY” OF BIDEN ANTITRUST” – Concurrences – #1 - Feb 15, 2021 - #E&F - https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en#carstensen

14. Similarly, despite bipartisan murmurs about competitive issues, the potential in a closely divided Congress that any major initiatives will survive is limited **at best.** In part the challenge here is how the Biden administration will rank its commitments. If it were to make reform of competition law a major and primary commitment, it would **have to** **trade off other goals**, which might include health care reform or increases in the minimum wage. It is likely in this circumstance the new administration, like the Obama administration’s abandonment of the pro-competitive rules proposed under the PSA, would elect **to give up stricter competition rules** in order to achieve **other legislative priorities.**

15. Another key to a robust commitment to workable competition is the choice of cabinet and other key administrative positions. Here as well, the early signs are not entirely encouraging. In selecting Tom Vilsack to return as secretary of agriculture, the president has embraced a friend of the large corporate interests dominating agriculture who has spent the last four years in a highly lucrative position advancing their interests. Given the desperate need for pro-competitive rules to implement the PSA and control exploitation of dairy farmers through milk-market orders, the return of Vilsack is not good news. Who will head the FTC and who will be the attorney general and assistant attorney general for antitrust is still unknown, but if those picks are also centrists with strong links to corporate America the hope for robust enforcement of competition law will further attenuate!

16. In sum, this is a pessimistic prognostication for the likely Biden antitrust enforcement agenda. There is much that ought to be done. But this **requires** a willingness to take major enforcement risks, **to invest significant political capital** in the legislative process, and to select leaders who are committed to advancing the public interest in fair, efficient and dynamically competitive markets. The early signs are that the new administration will be no more committed to robust competition policy than the Obama administration. Events may force a more vigorous policy—I will cling to that hope as the Biden administration takes shape.

**Collapses global finance**

**Hanlon 9-13**-21 (Seth Hanlon, senior fellow for Economic Policy at the Center for American Progress, former special assistant to the president for economic policy at the White House National Economic Council, where he coordinated the Obama administration’s tax policy, JD Yale Law School, BA Harvard University, “Congressional Republicans Must Not Play Political Games With the Debt Limit,” Center for American Progress, 9-13-2021, https://www.americanprogress.org/issues/economy/news/2021/09/13/503720/congressional-republicans-must-not-play-political-games-debt-limit/)

**Ten years ago**, the Republican leaders of the U.S. House of Representatives **risked** an **unthinkable economic catastrophe** in a reckless attempt to gain leverage in budget negotiations. They threatened to block an increase in the U.S. debt limit—a routine and necessary step that enables the government to make ongoing payments required by law without defaulting. The **crisis was averted**, **but** the episode **caused significant harm** to the economy.

The debt limit needs to be raised again this fall, most likely in October. But in recent weeks, 106 Republican House members and 46 Republican senators, including Senate Minority Leader Mitch McConnell (R-KY), have said they will not vote for a debt limit increase. They claim that President Joe Biden and the congressional majority bear sole responsibility for taking the necessary action to avoid default. These members of Congress’ position is deeply hypocritical: As this column explains and Figure 1 helps illustrate, many of their own actions and policies have made the debt limit increase necessary. Their position is also terribly irresponsible because failing to raise the debt limit would cause catastrophic harm to the entire country.

Figure 1

[FIGURE 1 OMITTED]

Raising the debt limit is needed to preserve the full faith and credit of the United States

One of the **bedrocks** of the **U.S. and world economy** is the full faith and **credit of the U**nited **S**tates**:** the **secure expectation** that the U.S. government **will pay** its obligations **in full** and **on time**. The United States’ **rock-solid credit allows financial markets to function** and the country to pay low interest, or even negative real interest, to bondholders based on the certainty that they will be paid interest and principal on time. It also gives Americans, such as Social Security beneficiaries, veterans, military and federal civilian employees, beneficiaries of federal programs, and countless others, the security of knowing that they will receive the payments they rely on and are entitled to.

The United States has never defaulted on its obligations. The closest thing was a minor technical snafu in 1979 that was quickly fixed.

From time to time, Congress must raise the debt limit to prevent the country from defaulting. The debt limit is a 104-year-old provision that places a dollar cap on the total amount of outstanding debt that the Treasury Department can have to finance the government’s ongoing legal obligations. The debt limit is an unnecessary historical relic; almost no other comparable countries have one. The actual public debt is determined not by the debt limit but by the substantive spending and revenue laws that Congress passes.

In practice, the debt limit serves little function other than to potentially enable factions in Congress to force the United States to default on obligations it has already incurred—if they are reckless enough to do so.

The debt limit debacle of **2011 must not be repeated**

Before 2011, parties in Congress never seriously threatened to force the United States into default to extract concessions. But then, the House Republicans’ reckless gambit brought the country to the brink of disaster. Even though the United States narrowly avoided default, the episode raised costs of borrowing for the government, private businesses, and homebuyers, and it slowed the already struggling economic recovery by undermining consumer and business confidence.

No good came out of the 2011 crisis. The resulting agreement produced an ill-conceived budget “sequester” that further slowed the economic recovery and resulted in chronic underfunding of key priorities.

Since 2011, every time the debt limit has needed to be raised, Congress has raised or suspended it without incident and on a bipartisan basis. Congress did so on a bipartisan basis seven times since that year: in 2013 (twice), 2014, 2015, 2017, 2018, and 2019.\* Then-President Barack Obama took the position after 2011 that he would never again negotiate over the debt limit. Similarly, the Trump administration repeatedly urged Congress to pass “clean” debt limit increases—that is, debt limit increases without conditions.

A majority of Senate Republicans, including then-Majority Leader McConnell, supported suspending the debt limit all three times it was needed under Trump.\* The most recent time, in 2019, McConnell explained:

[The debt limit suspension] ensures our federal government will not approach any kind of short-term debt crisis in the coming weeks or months. It secures our nation’s full-faith and credit and ensures that Congress will not throw this kind of unnecessary wrench into the gears of our job growth and thriving economy.

Raising the debt limit is just as imperative now as it was in 2019. The only difference in 2021 is that a Democrat sits in the White House.

A U.S. default would be catastrophic

When the United States reaches the debt limit, the Treasury Department cannot issue additional debt and therefore risks running out of cash. With the debt at the limit, the Treasury is now buying time through previously used accounting moves known as “**extraordinary measures**.” Unfortunately, those measures will probably **only last into October**, according to Treasury Secretary Janet Yellen. At that point, the government will not be able to meet its ongoing legal obligations. It would default. And while no one knows precisely what that could mean, the consequences could entail:

* Social Security checks stopping, putting the livelihoods of millions at risk
* The military and federal workers not receiving their paychecks
* Providers such as hospitals and doctors not being paid for services provided under Medicare and Medicaid
* People filing taxes on extension this fall not getting the refunds they are owed, and monthly child tax credit payments ceasing
* Countless families and businesses being thrown into turmoil as they are stiffed on many other kinds of payments
* Critical government services shutting down

In addition, a U.S. **default would cause chaos in global financial markets**. Treasury bonds set the benchmark for the risk-free interest rate—and if the government suddenly defaults on the payments on those bonds, the financial system would be fundamentally uprooted. The **financial system** could **melt down even worse than** it did in **2008**, **drying up credit** and **grinding commerce to a halt**.

As Treasury Secretary Yellen told Congress in June:

Failing to increase the debt limit would have **absolutely catastrophic economic consequences**. It would be utterly unprecedented in American history for the United States government to default on its legal obligations. I believe it would precipitate a financial crisis. It would threaten the jobs and savings of Americans, and at a time when we are still recovering from the **COVID pandemic**.

Mark Zandi, chief economist at Moody’s Analytics, said: “It would be **financial Armageddon**. It’s complete craziness to even contemplate the idea of not paying our debt on time.” And JPMorgan Chase CEO Jamie Dimon said that a U.S. default “could cause an **immediate, literally cascading catastrophe of unbelievable proportions** and damage America for 100 years.” The American Enterprise Institute’s Michael Strain emphasized, “**Even edging close** to defaulting is **dangerous**,” and with **as much as a temporary default**, the “unthinkable might happen.”

**Cascades to multiple intersecting existential risks** – including nuclear wars, environmental destruction, and critical infrastructure – **AND turns case** – including implementation and enforcement capacity, alliances and authoritarianism

--VUCA = volatility, uncertainty, complexity, and ambiguity

--JIT = just in time

**Maavak 21** (Mathew Maavak, consultant at Risk Foresight, specializing in Strategic Foresight, Contingency Planning, Perception/Crisis Management, Energy and Resource Geopolitics, Defense and Security Analysis, PhD policy studies, Universiti Teknologi Malaysia, MA International Communication, University of Leeds, “Horizon 2030: Will Emerging Risks Unravel Our Global Systems?” Salus Journal, 9(1), 2021, https://salusjournal.com/wp-content/uploads/2021/04/Maavak\_Salus\_Journal\_Volume\_9\_Number\_1\_2021\_pp\_2\_17.pdf)

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

[FIGURE 1 OMITTED]

Figure 1: Systemic Emergence of Global Risks

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 **U**nited **S**tates 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 Calabria-based ‘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 s**entiments. 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 **S**outh **C**hina **S**ea; **No**rth **Ko**rean **prolif**eration of **nuclear** and **missile tech**nologies; 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.

Geopolitics will still be dictated by major powers. However, how will the vast majority of nations fare during this VUCA decade? Many “emerging nations” have produced neither the intelligentsia nor industries required to be future-resilient. Raw materials and cheap labour cannot sustain anaemic societies in a volatile world. Advances in material sciences and robotic automation as well as technological “ephemeralization” (Fuller, 1938; Heylighen, 2002) may shift manufacturing back to the Developed World.

In an attempt to mask the looming redundancy of these nations, untold billions have been wasted on vanity studies, conferences and technological initiatives drawn up by an army of neoliberal experts and native proxies. Risks were rarely part of the planning calculus. National and regional blueprints ranging from Malaysia’s Vision 2020, Saudi Vision 2030, ASEAN 2025 to Africa 2030, amongst others, will fail just as their innumerable precursors did.

The author defines a redundant nation as one which persistently lacks a comprehensive brain bank and an adaptive governance structure in order to be future-resilient. Redundant nations are preludes to failed states. They will lack native ideations and coherent policies that are critically needed in a VUCA decade. While policies intended to “promote growth in developing countries” had traditionally acted “as agents for conflict prevention” (Humphreys, 2003), the trade-off was often bureaucratic overgrowth, corruption, ethnoreligious discrimination and resource wastages.

Attempts to re-use these nations as geopolitical proxies a la the Cold War may prove too costly for potential sponsors. The Fat Leonard scandal (Whitlock, 2016) in Southeast Asia – which entrapped senior US naval officers in a web of sleaze – may be a harbinger of similar breaches on friendly territory, particularly as China’s Belt and Road Initiative (BRI) challenges US geopolitical hegemony worldwide. The BRI however snakes through many potentially redundant nations and may expose China to a “death by a thousand cuts” via geo-economic extortion. Beijing’s recent attempts to portray itself as a humanitarian superpower has somewhat backfired after numerous defects were discovered in its “medical aid” exports (Kern, 2020).

Ultimately, one should not underestimate the possibility, however remote, of national boundaries being redrawn before the Great Reset period is over. The global map was different only 100 years back. The once-mighty Soviet Union no longer exists while its former nemesis, the United States, faces social clefts of ominous proportions. Alarming parallels are now being drawn between the inauguration of President Abraham Lincoln on March 4, 1861 – which led to the US civil war – and the swearing in of Joe Biden as 46th President of United States on Jan 20 2021 (Waxman, 2021). How will a **weakened U**nited **S**tates affect **NATO** and the **larger** **Western-led** **global alliance**?

SOCIETAL

The WEF (2017) had pencilled “global social instability” as the biggest threat facing our collective future. A similar outcome was gamed out in a 2007 study by the Development, Concepts and Doctrine Centre at the United Kingdom Ministry of Defence (DCDC, 2007).

According to Peter Turchin (2016), a professor of Evolutionary Biology at the University of Connecticut, the **U**nited **S**tates may experience “a period of **heightened** social and political instability during the 2020s” – marked by **governmental dysfunction**, societal **gridlock** and **rampant political polarization**. To blame this phenomenon on the presidency of Donald J. Trump is to wilfully ignore the gradual build-up of various fissiparous forces over decades.

The social media plays a force multiplier role here. While risks metastasize at the bedrock levels of society, policymakers are constantly distracted from the task of governance by a daily barrage of recriminations, fake news and social media agitprops. As a result, longterm policy imperatives are routinely sacrificed for immediate political gains. The importunate presidential impeachment sagas and electoral fraud accusations in the United States are reflective of wider social fissures, state fragilities and policy paralyses worldwide.

There is nothing new in this panem et circenses (bread and circuses) phenomenon. Juvenal had noted a similar trend during Rome’s imperial decline circa 100 A.D. Recently, despite clear signals that the world was facing an economic catastrophe, the United Nations seemed more focused on the discovery of gender bias in virtual assistant software like Siri and Alexa (UNESCO, 2019). How will this revelation benefit the bottom 99% of humanity in dire economic conditions; one where the victims will be preponderantly women and children?

Just like in Imperial Rome, bread and circuses are symptomatic of an economic system that relentlessly benefits the elite. The mountain is ignored and the molehill is prioritized through controlled public narratives. The issue of “stolen childhoods”, for example, is now couched in terms of climate change rather than on sexual exploitation. Few take note that nearly “100,000 children – girls and boys – are bought and sold for sex in the U.S. every year, with as many as 300,000 children in danger of being trafficked each year.” Child rape, as John Whitehead (2020) further notes, has become “Big Business in America.” Not surprisingly, human trafficking has emerged as a $150 billion global industry (Niethammer, 2020).

Such shocking human rights failures do not figure prominently in the calculus of various “social justice” movements. The Top 1% needs their “useful idiots” – a phrase misattributed to Lenin – to generate a constant supply of distractions. Activist-billionaire George Soros, for example, is pumping $1 billion into a global university network to “fight climate change” and “dictators” which curiously include elected leaders such as former US President Donald J. Trump and India’s Prime Minister Narendra Modi. These “academically excellent but politically endangered scholars” (Open Society, 2020), as Soros calls them, may turn out to be the very disruptors who will “undermine scientific progress” in the West – just as Turchin (2016) predicted in his seminal study. Soros’ pledge was coincidentally made when COVID19 began to decimate the global economy and healthcare systems. Elite philanthropy is now an avenue for global subversion. An assortment of scholars, government officials and NGOs are already channelling the agendas of their well-pocketed patrons, backed by Big Tech’s control of the mainstream and social media (Maavak, 2020c). Their narratives are reminiscent of giddy sophistries which fuelled a variety of communist and anarchist movements during the build-up to WWII.

Under these circumstances, some nations may eventually seal their borders and initiate **authoritarian measures** in order to **maintain internal stability**. This is no longer an unthinkable proposition as dissatisfaction with democracy has peaked worldwide (Foa et al, 2020). Measures **perfected by COVID-19 lockdowns** may have inadvertently served as a test run in this regard.

## 1NC On

### 1NC TRIPs

#### Compulsory licensing under TRIPs crushes innovation

Brand 21 --- Melissa Brand is Assistant General Counsel and Director of Intellectual Property at the Biotechnology Innovation Organization (BIO), a major trade association with over 1,000 members in the biotechnology industry, “TRIPS IP Waiver Could Establish Dangerous Precedent for Climate Change and Other Biotech Sectors”, May 26th 2021, https://www.ipwatchdog.com/2021/05/26/trips-ip-waiver-establish-dangerous-precedent-climate-change-biotech-sectors/id=133964/

In other words, Ambassador Tai acknowledged that the scope of the current TRIPS IP waiver discussions includes the concept of forced tech transfer. In the context of climate change, the idea would be that companies who develop successful methods for producing new seed technologies and sustainable biomass, reducing greenhouse gases in manufacturing and transportation, capturing and sequestering carbon in soil and products, and more, would be required to turn over their proprietary know-how to global competitors.

While it is unclear how this concept would work in practice and under the constitutions of certain countries, the suggestion alone could be devastating to voluntary international collaborations. Even if one could assume that the United States could not implement forced tech transfer on its own soil, what about the governments of our international development partners? It is not hard to understand that a U.S.-based company developing climate change technologies would be unenthusiastic about partnering with a company abroad knowing that the foreign country’s government is on track – with the assent of the U.S. government – to change its laws and seize proprietary materials and know-how that had been voluntarily transferred to the local company.

Necessary Investment Could Diminish

Developing climate change solutions is not an easy endeavor and bad policy positions threaten the likelihood that they will materialize. These products have long lead times from research and development to market introduction, owing not only to a high rate of failure but also rigorous regulatory oversight. Significant investment is required to sustain and drive these challenging and long-enduring endeavors. For example, synthetic biology companies critical to this area of innovation raised over $1 billion in investment in the second quarter of 2019 alone. If investors cannot be confident that IP will be in place to protect important climate change technologies after their long road from bench to market, it is unlikely they will continue to invest at the current and required levels.

#### Can’t solve TRIPs even under compulsory licensing --- the prices will be too high

Wang 19 --- Ya-Lan Wang, Masters Student, MIPLC, “Patent Protection for Green Technologies – Is Compulsory Licensing the Way of Promoting Technology Transfer?”, Munich Intellectual Property Law Center (MIPLC) Master Thesis (2018/19), https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3684342

c) Economic Capabilities of Least-Developed Countries Might be An Issue

As the TRIPS has made it specific in its Article 31(h), “the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorisation.”370 However, considering some of the “least-developed countries may find it difficult to pay the rights holder adequate remuneration,”371 it might not be possible for those countries to obtain such technologies, even with the fact that granting compulsory licenses is allowed, they simply cannot afford it. It is, promising in theory to apply TRIPS to allow technology transfer of green technology through granting compulsory licensing, however, it might be practically impossible in reality depending on the economic capabilities of the country in need of such technology.

#### Refusing to license doesn’t violate TRIPs --- your author

Zhou 19 ~Chen, Assist Prof in the Law School of Xiamen Univ, "Can intellectual property rights within climate technology transfer work for the UNFCCC and the Paris Agreement?" International Environmental Agreements: Politics, Law and Economics 19.1, p.108-10, JCR~

By defning the scope of patents and exceptions to be granted, TRIPS imposes mandatory obligations on the standardized IPR protection for its Members. Patent protection broadly applies to all inventions, both products and processes. Article 27 lists a number of exceptions to this broad patentability, including “human, animal or plant life or health or to avoid serious prejudice to the environment”.36 With these words, technology transfer for environmental purposes attains a sort of special treatment. However, whether these exceptions beneft technology transfer or not depend on how the terms are interpreted in a concrete case. In addition, Article 30 allows for two more exceptions for the unauthorized use of patents: legitimate interests of third parties and security.37 In the case of climate technology, however, it is only if the interests of the third parties in mitigating and adapting to climate change are given enormous weight that the third-party exception can be made (Littleton 2008: 10). Likewise, it is unlikely that patenting climate technologies would constitute a material threat to maintaining international security and peace.38 Moreover, the public health exception introduced by Article 31 leaves the door open for a possible climate technology transfer exception.39 Members of the TRIPS are allowed to determine the specifc terms of the public health exception clause such as “emergency”, “non-commercial use” and “domestic market requirement”.40 This could, for instance, defne extreme weather events as an “emergency” requiring compulsory licensing. Nevertheless, due to the uncertainties in national law systems and the limited role of international law, exercising compulsory licensing in the international transfer of climate technologies is realistically difficult (Harper 1997: 385–388). An important reality in the national law system is that governments cannot intervene with private technology producers unless they have adequate legal grounds, which is where the UNFCCC might (and should) play its critical role. Article 31 had initially been designed to permit compulsory licensing in public pharmaceuticals to address national emergencies. Despite their similarities with public pharmaceuticals, whether climate mitigation and adaptation technologies can invoke compulsory licensing or not remains unclear (Kogan 2010).41 There are profound divergences on this issue between developing and developed country Parties.42

#### ~~No evidence that it restores WTO credibility --- your Okonjo-Iweala evidence is about vaccines --- that happened~~

#### ~~Your Hufbauer trade war card is about diverging policies --- like cap and trade, carbon tax, etc --- plan doesn’t solve~~

#### ~~Trade war doesn’t escalate~~

~~Hong 17 – Brendon, reporter, “What Happens When Trump’s Tirade War With China Becomes a Trade War?”, The Daily Beast, 1-16-17, https://www.thedailybeast.com/what-happens-when-trumps-tirade-war-with-china-becomes-a-trade-war?ref=scroll~~

~~The big risk—that a trade war would lead to a shooting war—probably is overrated. But that’s because China has so many economic weapons at its disposal.~~

~~HONG KONG—No matter how some pundits frame current U.S.-China relations, Beijing wants no part in armed conflict with America. Open war—whether framed as escalation of tensions across the Taiwan Strait, in the South China Sea, or due to geopolitical head-butting—is not a feasible option for either side. The globe’s two largest economies not only share intimate economic ties; their fates are intertwined. But the occasional bloody nose is unavoidable. The battlefield where China and America trade blows may well be trade.~~

### ~~1NC A2: Climate~~

#### ~~Patents plummeting --- no room for innovation / US energy policy / US-China trade war~~

~~Hurtado 21 --- Melissa Hurtado, JD student, Northwestern, “Journal of Technology and Intellectual Property”, JTIP Blog, March 27, 2021, https://jtip.law.northwestern.edu/2021/03/27/green\_tech\_patent\_boom\_or\_bust/~~

~~Underlying the U.S. and global patent systems is the belief that granting a limited monopoly will incentivize innovation. Although climate change comes to mind as a particularly controversial topic, according to PEW Research, six in ten Americans and majorities in other surveyed countries see climate change as a major threat. Patent filings seemed to reflect that concern as climate change mitigation technology patents more than doubled between 2005 and 2012. However, beginning in 2012, patent filings for climate change mitigation technologies plummeted— down 44% for carbon capture and storage and 29% for clean energy patents. Why, in a world of increased awareness and acceptance of climate change, did the U.S. and global patent systems fail to deliver on the promise that patents were enough to incentivize innovation?~~

~~There are several potential explanations for the green tech patent drop-off. From a technological perspective, there is some evidence that green tech matured quickly and capped, leaving room only for improvement patents. From a policy perspective, many have argued that continued fossil fuel and carbon subsidies, along with the lack of a carbon pricing system, have disincentivized green energy and made it more difficult to compete. From a global market perspective, did the U.S. and China trade war for independence and dominance over the $300B semiconductor market detract from China, which was the largest patentor of green tech, filing patents in the biotech, chemical, and green tech sectors? What is the solution to reversing the green tech patent drop off? From a legal and patent perspective, I argue that the U.S. and global patent systems need to provide fast-tracking for green tech patent applications and reduced standards.~~

#### ~~Compulsory licensing sends a chilling effect in innovation~~

**~~Delrahim 17~~** ~~--- Makan Delrahim, Assistant Attorney General, Remarks at the USC Gould School of Law's Center for Transnational Law and Business Conference, Friday, November 10, 2017, https://weblaw.usc.edu/resources/downloads/faculty/centers/ctlb/reforming-patent-form-conference.pdf?121120153141~~

~~Against this backdrop, I respectfully submit that enforcers and courts should be mindful of the~~ **~~proper application~~** ~~of antitrust law to standard setting. There is a growing trend supporting what I would view as a misuse of antitrust or competition law, purportedly motivated by the fear of socalled patent hold-up, to police private commitments that IP holders make in order to be considered for inclusion in a standard. This trend~~ **~~is troublesome~~**~~. If a patent holder violates its commitments to an SSO,~~ **~~the first and best line of defense~~**~~, I submit,~~ **~~is the SSO~~** ~~itself and its participants.~~

~~These commitments are typically~~ **~~contractual~~** ~~in nature. More specifically, SSOs often impose obligations on IP holders seeking to have their technology evaluated and, if selected, incorporated into a standard to engage in fair, reasonable, and nondiscriminatory licensing of their technology— what we call “FRAND” or “RAND” commitments. Disputes inevitably arise regarding what licensing fees or practices are “reasonable,” and “nondiscriminatory,” as you would expect with free-market negotiations. We should be most concerned, however, when this dispute involves concerted action, on either side—the implementers or the innovators.~~

~~If a patent holder is alleged to have violated a commitment to a standard setting organization, that action may have some impact on competition. But, I respectfully submit, that does not mean the heavy hand of antitrust necessarily is the appropriate remedy for the would-be licensee—or the enforcement agency.~~ **~~There are perfectly adequate~~** ~~and~~ **~~more appropriate~~** ~~common law and statutory remedies available to the SSO or its members.~~

~~Patent rights are conferred by statute and guaranteed by the U.S. Constitution. The enforcement of valid patent rights should not be a violation of antitrust law. A patent holder cannot violate the antitrust laws by properly exercising the rights patents confer, such as seeking an injunction or refusing to license such a patent. Set aside whether taking~~ **~~these actions might violate the common law~~**~~. Under the antitrust laws, I humbly submit that a unilateral refusal to license a valid patent~~ **~~should be per se legal~~**~~. Indeed, just this Monday, Chief Judge Diane Wood, a former Deputy Assistant Attorney General at the Antitrust Division, stated that “[e]ven monopolists are almost never required to assist their competitors.”~~

~~Under the existing statutory scheme, it is not the duty or the proper role of antitrust law to referee what unilateral behavior is reasonable for patent holders in this context. Patent holders make decisions every day about how to exploit their property rights, knowing that the consequence of those actions may be to subject themselves to contractual or other common law liability. The blunt application of antitrust law to such unilateral conduct~~ **~~throws those decisions into disarray~~** ~~threatening to punish IP holders with~~ **~~onerous penalties~~** ~~that can~~ **~~deter other innovators~~** ~~from taking the necessary R&D investment risk to develop the next great technological leap forward.~~

#### ~~Warming is slow and adaptable --- no feedbacks~~

**~~Jayaraj 21~~** ~~--- Vijay Jayaraj, M.Sc., Environmental Science, University of East Anglia, England, Research Contributor for the Cornwall Alliance for the Stewardship of Creation., “Why I Am a Climate Realist”, Cornwall Alliance, March 11~~~~th~~ ~~2021, https://cornwallalliance.org/2021/03/why-i-am-a-climate-realist/~~

~~The answer to my question trickled in slowly over a number of years. Evidence began to emerge that scientists acknowledged a large gap between the actual observed real-world temperature datasets (from satellites) and those temperature predictions from computer climate models.~~

~~While these differences may not prove the allegations against the Climategate scientists, they do confirm one thing: the computer climate models exaggerate the future warming rate due to their high sensitivity to carbon dioxide emissions. As a result, the models continue to show an excessive and unreal warming rate for future decades.~~

~~Despite plenty of evidence, the IPCC continues to use these~~ **~~faulty~~** ~~model predictions to inform the public and policymakers about future changes in temperature.~~

**~~A steady stream of scientific studies~~** ~~has documented the evidence for~~ **~~lack of dangerous warming~~**~~—IPCC’s level of warming based on fifth- and sixth-generation (CMIP5 and CMIP6) models and the apparent absence of climate-induced ecological collapse.~~

~~In 2020 alone,~~ **~~over 400 peer-reviewed scientific papers took up a skeptical position on climate alarmism~~**~~. These papers—and hundreds from previous years—address various issues related to climate change, including problems with climate change observation, climate reconstructions, lack of anthropogenic/CO2 signal in sea-level rise, natural mechanisms that drive climate change (solar influence on climate, ocean circulations, cloud climate influence, ice sheet melting in high geothermal heat flux areas), hydrological trends that do not follow modeled expectations, the fact that corals thrive in warm, high-CO2 environments, elevated CO2 and higher crop yields, no increasing trends in intense hurricanes and drought frequency, the myth of mass extinctions due to global cooling, etc.~~

~~Academia is~~ **~~filled~~** ~~with scientific literature that contradicts the position of those who believe climate change is unprecedented.~~

~~Also, during the course of the last decade, it became apparent that most of Al Gore’s claims in his 2006 documentary were false. Contrary to his claims, polar bear populations remained steady, the Arctic did not become ice free during the summer of 2014, and storms did not get stronger due to global warming.~~

~~In simple words, Gore misled the world and promoted falsehood as science, and he continues to do so while profiting from a renewable industry that is sold as the cure for global warming. Yet, he himself generates carbon dioxide emissions many times higher than an average family’s.~~

~~So, not only are the predictions of models wrong, but also the interpretations of climate data and the propaganda of a climate doomsday were also wrong.~~

~~Today, we know the modern warming rate is~~ **~~not unprecedented~~**~~. Warming of such magnitude has happened twice within the past 2000 years. Further, ice at both poles is at~~ **~~historic highs~~**~~, even compared with the Little Ice Age of the 17th century.~~

~~Besides, there has been no increase in extreme weather events due to climate change and the loss of lives due to environmental disasters has drastically reduced during the last 100 years.~~

~~So, I am a climate realist. I acknowledge that there has been a gradual increase in global average temperature since the end of the Little Ice Age in the 17th century. I acknowledge that climate change can happen in both ways—warming and cooling. I do understand that anthropogenic CO2 emissions and other greenhouse gases could have positively contributed to the warming from mid-20th century onwards.~~

~~I also acknowledge that warming and the increased atmospheric carbon dioxide that has contributed to it have actually helped society. The current atmospheric carbon dioxide concentration, nearly 50 percent higher than in the 17th century, and the warming—which has occurred chiefly in winter, in higher latitudes and altitudes, and at night, thus raising cold temperatures but with little effect on hot temperatures—have actually resulted in optimal conditions for global plant growth, thus aiding in the flourishing of the agricultural sector.~~

~~The Bengal tiger populations have bounced back, and polar bear populations are steady, thanks to conservation efforts. Forest area in Europe is increasing every year, and countries are planting tree saplings at a record rate. Life expectancy has reached all-time highs in many countries, and more people are constantly pulled out of extreme poverty every year (although business lockdowns to fight COVID-19 threaten to reverse that trend). Access to freshwater has improved and human productivity has increased drastically.~~

~~So,~~ **~~there is no actual climate emergency.~~** ~~Instead, what we have are celebrities, activists, un-elected political bodies like the UN, and even some climate scientists religiously promoting a popular doomsday belief.~~

**~~The models do not know the future~~**~~, and neither do the Climategate scientists. But an exaggerated view of future warming provides the ideal background for anti-carbon-based fuels policies that will undermine the economic well-being of every society in the world. We must not allow that.~~

~~Be a climate realist.~~

**~~No risk of aff offense --- patent hold up is a false theory~~**

**~~Osenga 18~~** ~~--- Kristen Osenga, Professor, teaches at the University of Richmond School of Law and writes in the areas of intellectual property, patent law, law and language, and legislation and regulation,, “Ignorance Over Innovation: Why Misunderstanding Standard Setting Organizations Will Hinder Technological Progress”, 2018, https://scholarship.richmond.edu/law-faculty-publications/1502/~~

~~The concern behind patent hold-up in the technology standards space is that patent owners could force firms wishing to implement a standard an excessively high royalty rate to use the patented technology by relying on the fear of injunctive relief if the implementer fails to pay the royalty.77 But patent hold-up is just as theoretically~~ **~~possible in the absence of standardization~~**~~. Any time a property owner has a good that others want for which there is no perfect substitute, the owner could seek excessively high rates.' 8 There are numerous markets that exhibit this characteristic, and yet market forces ensure that those seeking the good are able to fairly negotiate for access. The fact that market forces have successfully prevented hold-up in other circumstances helps underscore why the issue is~~ **~~simply theoretical~~** ~~in the case of standard-essential patents (SEPs).~~

~~Although critics make it seem as though patent hold-up is a regularly occurring phenomenon,~~ **~~it is by no means a~~** ~~natural by-~~**~~product of standardization~~**~~. Rather, actual holdup requires both~~ **~~opportunity and action~~** ~~by the patent holder.79 With respect to opportunity, simply owning an SEP does not automatically create a situation where a patent holder can seek and obtain excessive royalties. Additionally, not all patents are created equal.so The value of the technology covered by the patent is what actually drives the royalty rates, not a patent's designation as an SEP."' Ultimately, seeking excessively high licensing rates poses~~ **~~many risks to patent owners~~** ~~that often overshadow the opportunity to do so. For instance, standardization is often a repeat-player game; if a patent holder acts in an unfair manner, it is unlikely that other firms will be willing to urge adoption of that patent holder's technology in future standard setting proceedings.82 Additionally, there are risks for the patent holder in engaging in unfair negotiations with implementers. These implementers may also hold SEPs that the patent holder may need to cross-license or may be important firms for commercializing the patent holder's technology." For these reasons and others, the supposed leverage of the patent holder to act unfairly is~~ **~~outweighed~~** ~~by ma~~**~~ny factors~~** ~~that~~ **~~decrease the likelihood of patent hold-up~~**~~.~~

# 2NC

## Section 5 CP

#### At the top -

#### The CPlan *boosts it* because the FTC’s the lone actor. Plan and perm *don’t solve* - they involve *non-FTC actors*.

#### Our Nam cards are shockingly strong. The global community models FTC independence levels. External actors might be good or bad domestically, but – overseas - they greenlight involvement of political appointees. That boosts mercantilist postures and crushes global free trade.

#### Free trade turns case – it checks ongoing global wars which structurally complicate the Aff advantages AND detract resources for Aff enforcement.

#### Our ev lists six extinction warrants – we’ll deepen the terminals:

#### ( ) geoengineering overcompensates – fails and causes extinction.

#### Baum ‘13

Et al; Dr. Seth Baum is an American researcher involved in the field of risk research. He is the executive director of the Global Catastrophic Risk Institute (GCRI), a think tank focused on existential risk. He is also affiliated with the Blue Marble Space Institute of Science and the Columbia University Center for Research on Environmental Decisions. He holds a PhD in Geography and authored his dissertation on climate change policy: “Double catastrophe: intermittent stratospheric geoengineering induced by societal collapse” - Source: Environment Systems & Decisions - vol.33, no.1 pp. 168-180 - #E&F – available via: https://pubag.nal.usda.gov/catalog/122717

Perceived failure to reduce greenhouse gas emissions has prompted interest in avoiding the harms of climate change via geoengineering, that is, the intentional manipulation of Earth system processes. Perhaps the most promising geoengineering technique is stratospheric aerosol injection (SAI), which reflects incoming solar radiation, thereby lowering surface temperatures. This paper analyzes a scenario in which SAI brings great harm on its own. The scenario is based on the issue of SAI intermittency, in which aerosol injection is halted, sending temperatures rapidly back toward where they would have been without SAI. The rapid temperature increase could be quite damaging, which in turn creates a strong incentive to avoid intermittency. In the scenario, a catastrophic societal collapse eliminates society’s ability to continue SAI, despite the incentive. The collapse could be caused by a pandemic, nuclear war, or other global catastrophe. The ensuing intermittency hits a population that is already vulnerable from the initial collapse, making for a double catastrophe. While the outcomes of the double catastrophe are difficult to predict, plausible worst-case scenarios include human extinction. The decision to implement SAI is found to depend on whether global catastrophe is more likely from double catastrophe or from climate change alone. The SAI double catastrophe scenario also strengthens arguments for greenhouse gas emissions reductions and against SAI, as well as for building communities that could be self-sufficient during global catastrophes. Finally, the paper demonstrates the value of integrative, systems-based global catastrophic risk analysis.

#### ( ) *Prolif* Prolif = probable scenario for extinction bc of *miscalc*, *user error*, or *unauthorized use*.

Thakur ‘15

Ramesh Thakur, Director of the Centre for Nuclear Non-Proliferation and Disarmament in the Crawford School of Public Policy, The Australian National University. 2015. “Nuclear Weapons and International Security.” Routledge

The world faces two existential threats: climate change and nuclear Armageddon. Those who reject the first are derided as denialists; those dismissive of the second are praised as realists. Nuclear weapons may or may not have kept the peace among various groups of rival states; they could be catastrophic for the world if ever used by both sides in a war between nuclear-armed rivals; and the prospects for their use have grown since the end of the Cold War. Even a limited regional nuclear war in which India and Pakistan used 50 Hiroshima-size (15kt) bombs each could lead to a famine that kills up to a billion people. 1 Having learnt to live with nuclear weapons for 70 years (1945–2015), we have become desensitized to the gravity and immediacy of the threat. The tyranny of complacency could yet exact a fearful price with nuclear Armageddon. The nuclear peace has held so far owing as much to good luck as sound stewardship. Deterrence stability depends on rational decision-makers being always in office on all sides: a dubious and not very. reassuring precondition It depends equally critically on there being no rogue launch, human error or system malfunction: an impossibly high bar. For nuclear peace to hold, deterrence and fail-safe mechanisms must work every single time. For nuclear Armageddon, deterrence or fail-safe mechanisms need to break down only once. This is not a comforting equation. It also explains why, unlike most situations where risk can be mitigated after disaster strikes, with nuclear weapons all risks must be mitigated before any disaster. 2 As more states acquire nuclear weapons, the risks multiply exponentially with the requirements for rationality in all decision-makers; robust command-and-control systems in all states; 100 percent reliable fail-safe mechanisms and procedures against accidental and unauthorized launch of nuclear weapons; and totally unbreachable security measures against terrorists acquiring nuclear weapons by being able to penetrate one or more of the growing nuclear facilities or access some of the wider spread of nuclear material and technology.

#### ( ) Arctic war means extinction

#### outweighs on probability and magnitude – war exits the region, goes nuclear, and can be instigated by miscalc.

Chrisinger ‘20

Internally quoting Niklas Granholm – who is Deputy Director of Studies at FOI, the Swedish Defence Research Agency, Division for Defence Analysis. Mr Granholm currently heads a study project on behalf of the Swedish Foreign Ministry studying the strategic developments in the Arctic. He was seconded to the Swedish Ministry of Defence in 2007 and during 2006 was a Visiting Fellow to RUSI. He has been an Associate Fellow of the Institute since 2007. Between 1999-2006, he headed the project for international peace support and crisis management operations on behalf of the Swedish Ministry of Defence. From 1997-99 he was seconded to the Swedish Ministry for Foreign Affairs, Division for European Security Policy. David Chrisinger is a Logan Nonfiction Fellow and a contributing writer to The New York Times Magazine and The War Horse, an award-winning nonprofit newsroom educating the public on military service, war, and its impact. Prior to this, David worked at the U.S. Government Accountability Office as a Strategic Planning and Foresight Analyst. For nearly nine years, he taught public policy writing, consulted with researchers on the design and execution of governmental audits and evaluations, facilitated message development exercises, and wrote and edited reports and testimonies for the U.S. Congress. For six years, he also taught public policy writing at Johns Hopkins University. “It Would Be a Mistake to Underestimate Russia”: The New Cold War That’s Emerging in the Arctic” – The War Horse – Nov 19th - #E&F - https://thewarhorse.org/military-arctic-new-cold-war-with-russia-and-climate-change/

One of the greatest risks, according to Niklas Granholm, is that the Arctic region will undergo a “Balkanization” like what occurred in Eastern Europe after the fall of the Soviet Union. Granholm is the deputy director of studies at the Swedish Defence Research Agency, and he points to the Faroe Islands calling for self-rule from Denmark, Scotland clamoring for independence from the United Kingdom after Brexit, and the resurgence of troubles in Northern Ireland as indicators that more fragmentation and political division in the Arctic could lead to less cooperation or even hostility. Paired with the great-power competition among the United States, Russia, and China, any Balkanization of the region would, in Granholm’s words, be a “double whammy” and could make the Arctic much more combustible.

“Whatever happens in the Arctic won’t stay there,” he said. “It will escalate.”

Is this the beginning of a new Cold War?

The new Norwegian radar system undermines Russia’s ability to launch a retaliatory nuclear strike from its submarine fleet in the Arctic, New York Times reported, and that bothers Russia, according to Lt. Col. Tormod Heier, a faculty adviser at the Norwegian Defense University College. Because it upsets the strategic nuclear balance between the United States and Russia, the new radar system establishes a blow to Russia’s last indisputable claim to great-power status.

“There is a new Cold War,” Heier told the Times, adding that the risk of nuclear war was much higher now than in the old Cold War “because Russia is so much weaker, and because of that much more dangerous and unpredictable.”

In recognition of the threats posed by a new Cold War, the Pentagon released an updated National Defense Strategy in January 2018. While the document makes no specific mention of the Arctic, it recognizes the threats posed by great-power competition (especially as it relates to America’s eroding competitive edge) and clarifies that potential conflict with Russia and China had supplanted terrorism as the biggest threat to American national security.

To achieve this end state, the United States must confront three risks that, if they materialized, would stand in the way. First, bad actors could use the Arctic as a staging ground for an attack on the U.S. homeland. Second, states like Russia and China could challenge the rules-based international order in the Arctic in ways that could lead to conflict. Third, but not least, tensions, competition, and conflict in other parts of the world could spill over into the Arctic.

Three months later, the U.S. Coast Guard released its own strategy for the Arctic, which called for funding to upgrade ships, aircraft, and unmanned systems operating in the region. Admiral Karl Schultz, the Coast Guard’s commandant, told the Washington Post that the goal should be to return the Arctic to a “peaceful place where we work to cross international lines here with partner nations that share interests in a transparent fashion.” Projecting sovereignty, he continued, will help expedite that return.

But all these plans have failed to persuade decision makers to establish new organizational structures designed to address changes in the Arctic wrought by climate change and the rush to exploit the region’s natural resources. The plans do not include any substantive plans to guide the construction of infrastructure needed in the region, nor do they detail how resources will need to be reallocated to mitigate risks and help the United States reach its desired end state. They provide a vision for the future, but they do not provide a road map on how to get there.

Russia won’t back down

In late August 2019, a Russian submarine emerged from the icy waters near the North Pole and fired a Sineva-type intercontinental ballistic missile capable of carrying a nuclear warhead. That same day, another Russian submarine in the Arctic Circle launched a Bulava-type intercontinental ballistic missile from beneath the surface of the Barents Sea. One missile hit a remote corner of Russia’s Pacific coast, and the other landed on the Kanin Peninsula. Twelve years after Russia planted its flag on the seabed below the North Pole, this demonstration of its military capabilities in the Arctic can be seen as its latest attempt to assert its sovereignty in the region. Against a broader backdrop of distrust and diminished communication across the U.S.-Russia divide, there exists a risk that relatively minor miscalculations or misinterpretations could escalate into broader conflict.

#### ( ) Space conflict causes extinction

* creates “use it or lose it” pressures bc an attack on a satellite creates communication and (subsequently) warfighting vulnerabilities;
* outweighs on probability

Marshall ‘21

Timothy John Marshall is a British journalist, author and broadcaster, specialising in foreign affairs and international diplomacy. He is a guest commentator on world events for the BBC. Marshall's blog, 'Foreign Matters', was short-listed for the Orwell Prize 2010.[8] In 2004 he was a finalist in the Royal Television Society's News Event category for his Iraq War coverage. He won finalist certificates in 2007, for a report on the Mujahideen, and in 2004 for his documentary 'The Desert Kingdom' which featured exclusive access to Crown Prince Abdullah and his palaces. “War in space is a growing threat – with hypersonic missiles and lasers to shoot down satellites” - This is an edited excerpt from the book: The Power of Geography: Ten Maps That Reveal the Future of Our World by Tim Marshall - April 20, 2021 - #E&F – modified for language that may offend - https://inews.co.uk/news/long-reads/space-war-lasers-missiles-satellites-conflict-tim-marshall-963439

Without binding treaties, low Earth orbit is a probable battlefield for military weapons aimed firstly at rivals within the belt, and then below it.

Russia and China have made organisational changes in their military, as have the Americans with the formation of the US Space Force in 2019. There are concerns that this activity violates the Outer Space Treaty, but it only states that weapons of mass destruction such as nuclear missiles should not be placed “in orbit or on celestial bodies or [stationed] in outer space in any other manner”. There’s nothing in international law to prevent the stationing of laser-armed satellites. And every page of history suggests that if one country does it, so will another, and then another. This is why the US Department of Defence has a mantra: “Space is a war-fighting domain.”

Britain’s space force

The UK Space Command was officially formed on 1 April, staffed from the Royal Navy (RN), British Army and Royal Air Force (RAF), the Civil Service and key members of the commercial sector. Its commander is a former Harrier jump jet pilot, Air Vice-Marshal Paul Godfrey.

The defence think-tank Rusi said after the British announcement that “questions remain as to what a space command means in practice, particularly for a medium-sized space power with few sovereign assets”. It added that “major decisions shaping the future of the UK’s military space capabilities and activities are likely to be taken this year”.

The head of the RAF, Air Chief Marshal Sir Mike Wigston, warned in November that Russia and China were developing anti-satellite weaponry and that the UK must be prepared.

“A future conflict may not start in space, but I am in no doubt it will transition very quickly to space, and it may even be won or lost in space, so we have to be ready and, if necessary, defend our critical national interests.”

In the previous century the possibility of nuclear war threatened to destroy our way of life; now the weaponisation of space ~~looks~~ (seems) as if it will pose a similar danger.

At the inauguration of Space Force, the then US President Donald Trump said: “American superiority in space is absolutely vital… The Space Force will help us deter aggression and control the ultimate high ground.”

The Chinese and Russians view space in the same way. We saw an early attempt to gain this advantage with the American Strategic Defence Initiative in the 80s, trying to develop a missile-defence system that could protect the US from nuclear attack. One of the options it investigated was space-based weaponry, earning it the name “Star Wars”.

Now the development of hypersonic missiles, which can fly at more than 20 times the speed of sound, is also focusing attention on this area. Unlike conventional intercontinental ballistic missiles, hypersonic missiles do not fly in an arc and can change direction and altitude. Therefore, at launch the potentially targeted country cannot work out where they are heading and co-ordinate their defences. Hitting a missile with a missile is hard enough; hypersonic missiles make it much more difficult.

Governments are examining the possibility of positioning anti-hypersonic laser systems in space to fire downwards. But machines capable of firing on the laser systems would then be developed, and then defensive systems for them – a space arms race.

The situation will only become more complicated as we continue to turn science fiction into reality. An example of that came in July 2020. Russia’s Kosmos 2542 military satellite had been “stalking” an American satellite, USA 245, at times coming within 150km of it, a distance regarded as close. It then released a mini satellite from within it – Kosmos 2543. The US military calls these “Russian dolls”. This “baby” Kosmos also shadowed the American spacecraft before manoeuvring towards a third Russian satellite. It then appeared to fire a projectile travelling at more than 400mph.

The Kremlin says it was simply inspecting the condition of its satellites, but the British and Americans both believe it was a weapons test. The US also shadows foreign satellites and is researching its own space weapons, but it was furious about what it believes was a breach of conventional behaviour. Such protocols and understandings are not codified in ratified law. But the threat to satellites is one that all countries must take seriously.

Dangers in orbit

Satellites are vital for modern warfare. All advanced countries rely on satellites for intelligence and surveillance. If a series of military satellites were hit, the high command would immediately worry that this was a precursor to being attacked on the ground. Early-warning systems of a nuclear launch might go down, triggering a decision on whether to launch first. Even if a conflict remained non-nuclear, the other side would have the advantage of precision-targeting its enemy and moving its own forces without being “seen”, while its opponent’s ability to send encrypted communications would also be limited.

This is all a very real threat. Already Russia, China, the US, India and Israel have developed “satellite-killer” systems. Techniques are being invented to shoot down satellites with lasers, to “dazzle” them so they cannot communicate, to spray them with chemicals, and even to ram them. And with no laws about who can be where, how close they can be and what activity is allowed, there is the growing danger of an exercise, or even faulty navigating, being mistaken for an impending attack.

### Yes, reversible – 2NC/1NR

#### Yes, US modeling’s reversible on this issue:

#### ( ) Nations DID model, but that emulation’s STILL OCCURING and attentive to US posture.

Nam ‘18

Steven S. Nam - Distinguished Practitioner, Center for East Asian Studies, Stanford University. Steven is also a Commission member of the Model International Mobility Treaty Commission under Columbia University's Global Policy Initiative. He is a member of the Antitrust Section of the American Bar Association and earned his B.A. at Yale and his J.D. and M.A. degrees at Columbia – “OUR COUNTRY, RIGHT OR WRONG: THE FTC ACT’S INFLUENCE ON NATIONAL SILOS IN ANTITRUST ENFORCEMENT” – University of Pennsylvania Journal of Business Law, Vol. 20, No. 1, 2018 - #E&F – This is footnote #26 of the article – and it includes an excerpt from William J. Kolasky, former Deputy Assistant AG. of the Dept’ of Justice - https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1555&context=jbl

26. Many of the *emergent* antitrust laws worldwide in recent decades have been modeled after their predecessors in the U.S. and the EU. See, e.g., Kolasky:

Let me turn finally to the new International Competition Network (or ICN). The last decade has seen market principles, deregulation and respect for competitive forces broadly embraced around the world. Over 90 countries—accounting for nearly 80 percent of world production (19)—have enacted antitrust laws, and at least 60 have antitrust merger notification regimes. Many of these laws are modeled after the U.S. or EU antitrust laws. Now the real work begins. Having convinced much of the world to structure their national economies around competition and free markets, we must ensure that antitrust works effectively and efficiently to deliver what it promises.

#### ( ) Pre-empt – the un-underlined parts say “US or EU” – but there’s no flaws with the EU model AND the 1NC Nam ev is too strong on US key.

#### ( ) Plus, 1NC Nam is strong on this – here are lines:

* Says*“to this day”*a central obstacle is the FTC model;
* The author uses the *present tense* when saying “global retreat from internationalism… in the present day … is exacerbated by nationalist competition regimes”

#### Doesn’t matter if there’s some lock-in – Nam proves that presently-developing economies are looking at the FTC model – meaning the process is ongoing,

## Against their Congress arg

#### CPlan doesn’t hurt SOP – note that quotes in this card are FROM CONGRESS when THE CREATED THE FTC’S INTERPRETIVE ROLE.

Khan ‘20

et al; At the time of this writing, Lina Khan was an Academic Fellow, Columbia Law School; Counsel, Subcommittee on Antitrust, Commercial, and Administrative Law, US House Committee on the Judiciary; and former Legal Fellow, Federal Trade Commission. Now, Lina Khan serves as the head of the FTC. The co-author for this piece is Rohit Chopra, who was previously The Assistant Director of the Consumer Financial Protection Bureau and currently sits on the FTC. “The Case for “Unfair Methods of Competition” Rulemaking”, 87 U. CHI. L. REV. 357, 359-63 - #E&F – 2020 - https://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/ChopraKhan\_Rulemaking\_87UCLR357.pdf

By designing the Commission this way, Congress sought to create a regime where the law developed not just through the judiciary but also through an expert agency. Congress envisioned that the Commission’s data collection from market participants would ensure that the agency stayed abreast of evolving business practices and market trends, and that it would use this expertise to establish market-wide standards clarifying what practices constituted an “unfair method of competition,” even as the market evolved. This unique role would complement adjudication pursued by the Attorney General, state attorneys general, and private parties.30 Indeed, Congress expected that federal judges and other policymakers would defer to the Commission on competition matters because it would “serve as an indispensable instrument of information and publicity, as a clearinghouse for the facts by which both the public mind and the managers of great business undertakings should be guided.”31 It would, in other words, be “unusually expert.”3

## vs. Perm do both

### A-Level

#### Plan and perm include *non-FTC actors*.

#### Involvement of external actors *that are political appointees* creates *perceptions* of external influence. That erodes the signal of FTC independence.

* The article outlines a difference between political appointees subject to *at-will* removal by POTUS (serve at the pleasure of the President – i.e. Solicitor General, AG, DOJ, etc) **VIS-A-VIS** *for-cause* agency Committee members. FTC Commissioners – an example in the article - operate on 7 year terms, spanning Administrations, and can solely be removed for-cause.

Kovacic ‘15

et al; William E. Kovacic - Global Competition Professor of Law and Policy, George Washington University Law School; Non-Executive Director, United Kingdom Competition and Markets Authority. From January 2006 to October 2011, he was a member of the Federal Trade Commission and chaired the agency from March 2008 to March 2009. - “The Federal Trade Commission as an Independent Agency: Autonomy, Legitimacy, and Effectiveness” - 100 Iowa L. Rev. 2085 (2015) - #E&F - https://ilr.law.uiowa.edu/print/volume-100-issue-5/the-federal-trade-commission-as-an-independent-agency-autonomy-legitimacy-and-effectiveness/

On March 16, 1915, the Federal Trade Commission (“FTC”) opened for business and began what has proven to be a uniquely compelling experiment in economic regulation. The FTC was the first law enforcement agency to be designed “from the keel up” as a competition agency. One vital consideration in forming the new institution was to define its relationship to the political process. Among other features in the original FTC Act, Congress provided that the agency’s commissioners would have fixed, seven-year terms and that a commissioner could be removed during his or her term only for cause.

Through these and other design choices, Congress created what would come to be known as the world’s first “independent” competition agency. The FTC’s degree of insulation from direct political control supplied an influential model of institutional design and contributed to the acceptance of a norm, evident in modern commentary about competition law, that public enforcement agencies should be politically independent. This Essay examines the relationship of competition agencies to the political process. We use the experience of the FTC to address three major issues. First, what does it mean to say that a competition agency is “independent”? Second, how much insulation from political control can a competition agency achieve in practice? Third, how is the pursuit of political independence properly reconciled with demands that a competition agency be accountable for its decisions—an important determinant of legitimacy—and with the need to engage with elected officials to be effective in performing functions such as advocacy?

In addressing these questions, we seek to develop themes we have addressed in earlier work involving the establishment and operations of the FTC. We approach the topic in the spirit of Professor Herbert Hovenkamp, whose work shows how historical research can improve our understanding of a competition system. Professor Hovenkamp’s scholarship has deeply influenced our approach to this field, and we are honored to participate in a symposium that celebrates his extraordinary contributions to competition law and policy.

II. The Relationship of the Competition Agency to the Political Process: Design Tradeoffs

The suggestion that competition agencies be independent reflects a desire to enable enforcement officials to make decisions without destructive intervention by elected officials or by political appointees who head other government departments. One method of providing the desired independence from these forms of interference is for the law to state that competition agency leaders can be removed by elected officials only for good cause. Political intervention undermines sound policy making when it causes the agency to bend the application of competition law to serve special interests at the expense of the larger society’s well being. As discussed below, because antitrust-relevant behavior (e.g., a merger) can involve large commercial stakes and affect the economic fortunes of individual firms and communities, the decisions of a competition agency can attract close scrutiny by heads of state, legislators, and cabinet officials.

The need for independence arguably varies according to the function that the competition agency is performing. In carrying out some functions, particularly certain law enforcement functions, the agency requires greater insulation from political pressure. For other functions, broader involvement by elected officials in setting the agency’s agenda and determining its choice of projects may be appropriate.

The utmost degree of independence is warranted when a competition agency functions as an adjudicative decisionmaker. Congress gave the FTC authority to use administrative adjudication to develop norms of business conduct. After the agency initiates a formal prosecution and functions as a trade court, the legitimacy of its decisions requires the highest degree of assurance that sound technical analysis, not political intervention, determined the outcome.

### \*\*Appearance link to perm

#### Our appearance link to the perm.

#### The perm need not fiat FTC coordination with outside agencies. Involvement of outside parties diminishes *the perception* of FTC legitimacy.

Kovacic ‘15

et al; William E. Kovacic - Global Competition Professor of Law and Policy, George Washington University Law School; Non-Executive Director, United Kingdom Competition and Markets Authority. From January 2006 to October 2011, he was a member of the Federal Trade Commission and chaired the agency from March 2008 to March 2009. - “The Federal Trade Commission as an Independent Agency: Autonomy, Legitimacy, and Effectiveness” - 100 Iowa L. Rev. 2085 (2015) - #E&F - https://ilr.law.uiowa.edu/print/volume-100-issue-5/the-federal-trade-commission-as-an-independent-agency-autonomy-legitimacy-and-effectiveness/

These considerations require a more cautious answer to the question of how much independence is appropriate. Implicit or explicit in many discussions of independence are conditions that we believe represent a sensible core domain of decisions that are shielded from political interference. The most important of these is the exercise of law enforcement authority, which can lead to the imposition of significant sanctions upon juridical persons and natural persons. The political branches of government ought not to be able to (a) determine whether the agency will prosecute particular parties; or (b) influence how specific disputes will be resolved, including the choice of punishments for alleged wrongdoers. It can also be problematic if government officials outside the agency seek to micromanage pre-complaint investigations and, to a lesser extent, there are potential risks when such outside officials can demand that the agency open pre-complaint investigations. These conditions assume greater importance as the severity of the agency’s power to punish increases. As noted earlier, by this approach we would not preclude guidance by legislators about which sectors or types of commercial phenomena deserve the agency’s attention.

We have focused on law enforcement because the power to gather information, to prosecute cases, and to impose sanctions often is perceived to be the most formidable of the agency’s policymaking tools. The same observations would apply, however, to other exercises of the agency’s authority, such as the issuance of rules that implement statutory commands and the preparation of reports. A basic test is whether the form of attempted intervention from external bodies diminishes, in fact or in appearance, the capacity of the agency to exercise independent professional judgment in the administration of its responsibilities.

#### That erodes norms favoring agency independence. Creates the appearance of influence from external political actors.

Kovacic ‘15

et al; William E. Kovacic - Global Competition Professor of Law and Policy, George Washington University Law School; Non-Executive Director, United Kingdom Competition and Markets Authority. From January 2006 to October 2011, he was a member of the Federal Trade Commission and chaired the agency from March 2008 to March 2009. - “The Federal Trade Commission as an Independent Agency: Autonomy, Legitimacy, and Effectiveness” - 100 Iowa L. Rev. 2085 (2015) - #E&F - https://ilr.law.uiowa.edu/print/volume-100-issue-5/the-federal-trade-commission-as-an-independent-agency-autonomy-legitimacy-and-effectiveness/

The earlier decision to initiate an administrative litigation or a similar decision to initiate a court proceeding—either of which requires the FTC to make a “reason to believe” determination—similarly requires a high degree of independence. A system of competition law quickly loses its legitimacy when, for example, an elected official can force the agency to file cases to harass political adversaries, to fulfill campaign promises to contributors (even worse, to make good on bribes), or to shield incumbent economic interests from challenge by new firms or business models which, if allowed to grow, will improve economic performance. Stepping further back in the process, there is substantial reason to minimize political oversight of ongoing investigations, which can potentially border on, or at least create the appearance of bordering on, micromanagement and congressional intervention in, for example, an investigation into a pending merger.

### vs. “Perm Do both” - Turf war disad

#### Turf war disad.

#### Aff solvency is a net benefit – CP alone has *better solvency* than the perm.

Hittinger ‘19

et al; Carl W. Hittinger is a senior partner and serves as BakerHostetler’s Antitrust and Competition Practice National Team Leader and the litigation group coordinator for the firm’s Philadelphia office. He concentrates his practice on complex commercial and civil rights trial and appellate litigation, with a particular emphasis on antitrust and unfair competition matters, including class actions. “Antitrust Agency Turf War Over Big Tech Investigations” – The Temple 10-Q - This article is reprinted with permission from the Oct. 4, 2019, edition of The Legal Intelligencer. #E&F - https://www2.law.temple.edu/10q/antitrust-agency-turf-war-over-big-tech-investigations/

As we discussed in June 2018, because the FTC and DOJ have concurrent civil antitrust jurisdiction, they rely on a clearance agreement to coordinate their authority. The current agreement’s Appendix A seeks to prevent disputes by assigning particular industries to each agency. The quasi-independent, consumer-protection-focused FTC generally monitors industries that, as Simons recently put it, “most directly affect consumers and their wallets.” By contrast, the DOJ, an executive branch law enforcement agency, generally oversees less consumer-facing industries and sectors impacting national defense. Because Appendix A is perfunctory, however, disputes frequently arise when a company targeted for investigation falls between Appendix A’s cracks or, more commonly, straddles more than one industry. The clearance agreement lists criteria for resolving these disputes. Emphasizing specialization and conservation of resources, it grants priority to the agency “with expertise in the product or similar products … gained through a substantial antitrust investigation … within the last seven years.” The agreement also enumerates a list of tie-breaking factors; for example, an agency gets more “expertise” credit if a case was litigated to verdict than if it was filed and later settled. While the vast majority of disputes are settled with Appendix A and the tie-breaking criteria, disagreements may also be settled through a neutral evaluator and, ultimately, upon elevation to direct discussion by the FTC chairperson and the assistant attorney general for the Antitrust Division of the DOJ.

Conflicts Over Investigations Into Big Tech:

The agencies’ turf war over Big Tech suggests they may be struggling to apply the aging clearance agreement to companies and business models that were somewhat embryonic when it was drafted in 2002. For example, social media is not explicitly addressed in the agreement, and there appears to be no obvious analogue to it in Appendix A. Although there are reports that the FTC and DOJ struck a new clearance deal concerning Big Tech, there are bound to be hiccups. U.S. Sen. Mike Lee, chairman of the Senate Subcommittee on Antitrust, Competition Policy, and Consumer Rights, said last month: “What’s evident from this latest institutional tug of war is that the Antitrust Division of the DOJ and the FTC are now actively battling each other to take the lead in pursuing Big Tech.”

However, the emergence of Big Tech does not fully explain the discord. This summer, the DOJ and FTC publicly clashed in the FTC’s monopolization case against cellular chipmaker Qualcomm—a quarter-century-old enterprise whose product seems to fit neatly within Appendix A’s framework. The case was filed by a divided FTC commission in the waning days of the Obama administration, alleging the company licensed standard essential patents in an anticompetitive fashion. The district court ruled in the FTC’s favor, but, on Qualcomm’s appeal, the DOJ filed an amicus brief siding with Qualcomm’s request for a stay of the lower court’s ruling. It argued: “Immediate implementation of the remedy could put our nation’s security at risk, which is vital to military readiness and other critical national interests.”

More importantly, because the standard for a stay requires a peek at the merits of Qualcomm’s appeal, the DOJ found itself in the unusual position of undermining the FTC’s case: “Qualcomm is likely to succeed on the merits because the district court’s decision ignores established antitrust principles and imposes an overly broad remedy.” The FTC responded in its opposition brief that the DOJ “mischaracterized” the district court’s analysis, that it offered “unsubstantiated concerns” about R&D, and that it essentially asserted that Qualcomm should be immune from antitrust scrutiny.

Given the current political emphasis on a variety of real or perceived controversial competition issues, it is no wonder the FTC and DOJ have prioritized investigatory action over fidelity to the clearance process. As Sen. Amy Klobuchar, ranking member of the Senate Subcommittee on Antitrust, Competition Policy, and Consumer Rights, said in a September hearing, “I’d rather have a split investigation between the DOJ and FTC than no investigation.” The clearance agreement itself says: “Each agency nevertheless retains full responsibility and authority for the discharge of its statutory duties.”

September’s Senate Antitrust Oversight Hearing:

As has been widely reported, Big Tech clearance disputes played a role in a Sept. 17 Senate oversight hearing held by the Senate Subcommittee on Antitrust, Competition Policy, and Consumer Rights, which was attended by Simons and Delrahim. In opening remarks, Sen. Mike Lee chastised the agencies: “In the past, the agencies have avoided too much mischief because they’ve generally played well together. Recently, this appears quite regrettably to have changed. From what I can tell, clearance disputes have become more frequent, more pronounced, and more prolonged.”

Lee asked Delrahim and Simons whether the FTC and DOJ were still operating under the “clearance system to avoid duplicative efforts or have things broken down on this front?” Simons responded, “for the vast majority of matters, we continue to operate under the existing clearance agreement,” but, upon further questioning, agreed with Lee that “things have broken down at least in part.” Delrahim added: “I cannot deny that there are instances where Chairman Simons’ and my time is wasted on those types of squabbles.”

Lee also quizzed the agency heads whether, hypothetically, if they were asked to provide “advice on setting up an antitrust regime in another country … that didn’t already have one, would you under any circumstances recommend that they follow the U.S. model and that they have two separate agencies responsible for civil antitrust enforcement?” Simons responded flatly: “No, I wouldn’t.” Delrahim remarked, “it would be hard to imagine a system being designed at the first instance like we have today.” He conceded: “It’s not the best model of efficiency.”

The Hazards of Clearance Disputes:

Disputes over clearance can have tangible adverse effects on enforcement. First, some have commented that delays caused by clearance disputes can narrow the efficacy of remedial options, particularly with mergers. As Sen. Richard Blumenthal has commented, “The Big Tech companies are not waiting for the agencies to finish their cases. They are structuring their companies so that you can’t unscramble the egg.” Structural remedies are favored by Delrahim, who has commented that alternative, behavioral remedies should be used sparingly: “The division has a strong preference for structural remedies over behavioral ones. … The Antitrust Division is a law enforcer and, even where regulation is appropriate, it is not equipped to be the ongoing regulator.”

Second, disputes over clearance and, more so, duplicative investigations waste agency resources, threaten to blunt their effectiveness, and can lead to inconsistent and confusing governmental positions. In the Sept. 17 oversight hearing, Simons and Delrahim were both criticized for requesting an increase in funding: “As you both acknowledged, both of you could use, and desperately need, more resources. That being the case, it makes no sense to me that we should have duplication of effort, when that has a tendency inevitably to undermine the effectiveness of what you’re doing.” Duplicative investigations dilute the specialization that is a principal goal of the agencies’ clearance agreement and raise the risk that one agency will take legal positions that undercut the other. No doubt the DOJ’s amicus brief in the Qualcomm case influenced the U.S. Court of Appeals for the Ninth Circuit’s decision to issue a stay pending appeal.

#### Turf wars also cause imposed re-structuring - crushing FTC independence.

Birnbaum ‘19

Internally quoting William E. Kovacic - Global Competition Professor of Law and Policy, George Washington University Law School; Non-Executive Director, United Kingdom Competition and Markets Authority. From January 2006 to October 2011, he was a member of the Federal Trade Commission and chaired the agency from March 2008 to March 2009. Emily Birnbaum is a Tech lobbying Reporter at Politico - “Antitrust enforcers in turf war over Big Tech” - The Hill - 09/17/19 - #E&F - https://thehill.com/policy/technology/461829-antitrust-enforcers-in-turf-war-over-big-tech

Typically during investigations, the FTC and DOJ will check in with each other and share resources to ensure there is no duplication. But experts are warning their disagreements could make the process more difficult.

Kovacic cautioned that both agencies had an interest in resolving those tensions.

“These kinds of tensions ... create an environment in which public officials begin to consider a basic restructuring of the U.S. system,” Kovacic said.

He said in that case, “Neither agency can be assured that it would be the survivor.”

## Politics

### O/V

Credibility being called into question does not mean that his agenda will be run in a different way

They have no evidence stating that Biden’s political capital is shot meaning that the neg has met their burden of explaining that Biden’s PC is not shot and their evidence helps to prove that by not specifically saying that his PC is shot, and they should have to meet the burden of having evidence to back their analytics

#### Disad outweighs and turns case:

#### First, timeframe – is just a week and a half before perceptual harm triggers irreversible impact cascades – whether by accidental default or market overreaction

#### Second – scope – financial crisis encompasses all of their internal links and impacts, but on an economy-wide scale – AND externally triggers nuclear conflicts in every hotspot, environmental disasters both bigger and faster than warming, AND accelerates warming – causes cascading critical infrastructure failures – collapses global and regional alliances – and spurs democratic backsliding and global authoritarian crackdowns – all existential

#### Link alone turns case – guts fiscal capacity AND gridlocks political and law enforcement institutions, making plan’s implementation and enforcement impossible – despite durable fiat

#### Our arg was never that the debt ceiling would never get raised – only that delay getting it through reconciliation risks miscalc and accidental default AND market overreactions to brinksmanship

Strain 9-10-21 (Michael R. Strain, director of economic policy studies and Arthur F. Burns Scholar in Political Economy at the American Enterprise Institute, Bloomberg Opinion columnist, “Raise the Debt Ceiling, Republicans. You’ll Be Glad You Did.” The Washington Post, 9-10-2021, https://www.washingtonpost.com/business/raise-the-debt-ceiling-republicans-youll-be-glad-you-did/2021/09/10/046e31de-123c-11ec-baca-86b144fc8a2d\_story.html)

It’s unfortunate but true: Influential Republican politicians are playing another round of political chicken that could easily lead to a damaging brush with default on the national debt. There are better ways for them to rein in excessive Democratic spending plans that don’t endanger financial markets, taxpayers and their own political self-interest.

The U.S. is flirting with default this fall, as it did twice before in the past decade. For the government to pay its bills, Congress needs to increase the nation’s debt limit, an increasingly problematic legal requirement imposed a century ago. Unfortunately, it’s looking like this routine function of government will descend into a partisan fight. While there’s little doubt that the limit will eventually be raised, even merely pushing up against it would be damaging.

It’s hard to say precisely when the government will run out of money because the Treasury Department’s cash receipts fluctuate, particularly during the pandemic. Treasury estimates that it will run out of funds sometime in October.

Senate Republicans have made clear that they want no part in increasing the borrowing limit to raise the necessary cash. On Aug. 10, 46 of the chamber’s 50 Republicans released a letter informing Senate Democrats that they won’t vote to increase the debt ceiling.

Republican frustration is understandable. Since January, Democrats have been threatening to use a procedure known as “reconciliation” to pass a $3.5 trillion spending bill with a simple majority, rather than the 60-vote supermajority typically required in the Senate. GOP senators are asking: If reconciliation is available to pass, say, paid family leave and universal pre-kindergarten programs, why not force Democrats to use it to lift the government’s borrowing limit without Republican assent?

This question has answers. First, it’s unclear whether the reconciliation rules would allow a debt-ceiling increase to be passed as a stand-alone bill. The Senate doesn’t have a lot of experience using this procedure, and my conversations with top aides on Capitol Hill indicate a lot of confusion on this point.

Another suggestion is that Democrats include the debt-ceiling increase in their $3.5 trillion reconciliation bill, which would create and expand major climate and social programs and lacks any Republican support. But there’s no guarantee that the spending bill will be able to get the unanimous Democratic support needed to pass it by a simple majority, or that it would pass before the government would need to increase the borrowing limit to avoid default. House Speaker Nancy Pelosi closed the door on this option on Wednesday. In addition, it’s an odd strategy to push for including a must-pass provision in a bill that you don’t want to pass.

Republicans want to preserve the filibuster, the 60-vote threshold required for most legislation. Without it, Democrats could run the table, passing their agenda with a simple majority in the Senate. Refusing to raise the debt ceiling and forcing Democrats to find a way to increase it with a 51-vote majority will substantially weaken the GOP’s claim that the Senate can carry out basic functions of responsible governance with the chamber’s supermajority requirement in place. By refusing to help lift the debt ceiling, the GOP would be putting the legislative filibuster at risk.

There’s no chance that the debt ceiling won’t eventually be raised. The only question is how much damage is incurred along the way.

Even edging close to defaulting is dangerous, as recent experience shows. According to the Government Accountability Office, debt-ceiling brinkmanship pushed up interest rates in 2011, leaving taxpayers on the hook for an extra $1.3 billion in government borrowing costs in that year alone. The Bipartisan Policy Center estimated that the 10-year cost was roughly $19 billion.

Financial market volatility and measures of economic policy uncertainty spiked, and consumer confidence plummeted. Republicans — whose cultural agenda has strong appeal among higher-income, college-educated voters — should note that stock prices also fell, reducing the value of retirement and college-savings plans.

An even bigger threat than a close call would be temporarily defaulting. This scenario is made more likely because of multiple sources of intersecting uncertainty: precisely when the government will run out of cash, reconciliation rules, the fate of the $3.5 trillion spending bill, and whether Congress can pass a measure this month to prevent a government shutdown. It’s unclear how an effort to raise the debt limit might be intertwined with any of these. In all this activity and confusion, the unthinkable might happen.

Republicans should anticipate that if they push too hard, the stock market is likely to drop by thousands of points per day and they would take most of the blame. After one or two days, Congress would surely pass a debt-limit increase with overwhelming bipartisan support. In this scenario, what has the GOP accomplished?

Instead of refusing to lift the debt ceiling, Republicans should find something to trade with the Democrats. Disaster-relief funds. A larger defense budget. Or something. Find 10 Republican senators to join forces with 50 Democrats to meet the Senate’s supermajority requirement. Let the rest of the GOP — especially those who have to run for re-election in 2022 — off the hook.

This would be responsible governance, ensuring that the U.S. honors its financial obligations. It would constitute a strong argument for retaining the legislative filibuster. If done quickly, it would avoid the economic and political damage from brinkmanship. If done with a bill to keep the government funded, it would refocus public attention on the Democrats’ floundering efforts to pass President Joe Biden’s legislative agenda.

Quickly and quietly taking care of this is in the party’s — and the country’s — best interest.

#### It’s NOT certain – there’s only barely enough time before markets freak out in anticipation and our impact’s triggered – ANY disruption to the timeline is fatal

Myers et al 10-1-21 (Charles Myers, Chairman of Signum Global Advisors, over 20 years of US political and electoral experience advising candidates in Presidential, Senate, House of Representatives, Gubernatorial and Mayoral races, including Hillary Clinton and President Joe Biden, 25 years of experience in global financial markets, former Global Head of Equities and Board Member at Fox-Pitt, Kelton, M. Phil Cambridge University, BA Amherst College; interviewed by Matt Peterson, ideas editor for Barron's Group, has covered the economy, politics, and global affairs for more than 15 years, formerly worked for The Atlantic, Eurasia Group, and Yale University; “‘Go for Growth at Any Cost’: What’s Driving Democratic Strategy into the Midterms,” Barron’s, 10-1-2021, https://www.barrons.com/articles/whats-driving-democratic-strategy-into-the-midterms-biden-debt-ceiling-51633119902)

Barron’s: Let’s level-set. How dysfunctional is the policy process right now on a scale of one to 10? One is, say, we’re going to breach the debt ceiling, and 10 is things are working well.

Charles Myers: It varies by issue. On BIF [the bipartisan infrastructure framework] and on reconciliation, I would say the dysfunction is far less than it appears from the outside, meaning internally within the Democratic Party. We could even have a vote on BIF tonight. It may slip until tomorrow. They’re very close. On that issue, I would give it an eight, despite the noise.

On the debt ceiling, I would give it a two because the Democratic leadership is insisting that Republicans vote with them to lift or suspend the ceiling. That’s just not going to happen. Their procedural alternative to raise the ceiling is to pass a new budget resolution, just the Democrats, and then hold a standalone vote on the debt ceiling and lift it to a new number. From everything we’ve seen, that process could take seven to 10 days. If they really accelerated, there’s a possibility they could do it in three to four days, but that’s assuming everything works perfectly. Nothing in Washington ever works perfectly.

The risk on the debt ceiling is that we get much closer to the edge than is comfortable for the markets. If there’s no clarity on resolution of the debt ceiling, I would argue, before the 8th, 9th, 10th of October, the markets will start to really sell off. Then the risk of missteps and actually breaching the ceiling is quite high.

On that issue at the level of dysfunction is quite high because of the politics involved and how angry the Democrats are that they did vote in a bipartisan way three times under President Trump to raise or suspend the ceiling.

Barron’s: What would tip the Democrats over into starting the reconciliation process to raise the debt ceiling? Because as you said, right now, they’re angry that Republicans don’t want to help.

Charles Myers: It’s going to be a function of two things. One, if BIF actually passes in the House, it gets that done and is a big win for Biden and for the Democrats. The second thing is the calendar, meaning reality. As we head into the next four to five days, the leadership is really bumping up against a calendar deadline, that in fact could — and they’re very much aware of this — put them in very dangerous waters.

Barron’s: It sounds like even in the best-case scenario, we’re looking at much of October being filled with alarming headlines from Washington.

Charles Myers: On the debt ceiling, yes. For the market, it’s the single biggest issue right now in the very short term. Our base case is the Democrats will raise it just in time, but we’re going to get a little closer to the edge than is comfortable for the market.

#### Every day of delay matters

Levitz 9-30-21 (Eric Levitz, Associate Editor of Daily Intelligencer and Senior Writer at New York Magazine, MA Fiction Writing, Johns Hopkins University, “How Biden Could End the Debt-Ceiling Crisis by ‘Minting the Coin’,” Intelligencer, New York Magazine, 9-30-2021, https://nymag.com/intelligencer/2021/09/debt-ceiling-mint-the-coin-explained.html)

How congressional Democrats could raise the debt ceiling on their own

Democrats can’t pass an ordinary bill raising the debt ceiling without either (1) Senate Republicans’ cooperation or (2) abolishing the legislative filibuster. The GOP refuses to provide the former, and Joe Manchin loves the latter more than life.

But that still leaves Democrats with one viable option. A special type of legislation known as a “budget reconciliation bill” cannot be filibustered in the Senate. And budget reconciliation can be invoked to raise the debt limit once every fiscal year. Democrats could therefore use that process to pass a debt-ceiling hike on their own. This is, in fact, what McConnell has told the party to do.

The downside of this option is that budget reconciliation is an elaborate process chock-full of so many arbitrary rules that it would take weeks just to pass a clean debt-ceiling-hike bill through a reconciliation bill. Doing so would also likely require Senate Democrats to cancel their October recess. On Wednesday, the Senate’s second-highest-ranking Democrat, Dick Durbin, told Politico, “Using reconciliation is a nonstarter. We have gone through it twice, I’ve listened, and it takes him about 15 minutes for Chuck Schumer to explain how that works, what it involves. Three or four weeks of activity in the House and Senate.”

This isn’t a great excuse for not raising the debt limit through reconciliation. Yes, the process is arduous. But it would allow Democrats to effectively abolish the debt ceiling, once and for all, by raising the debt limit to ​​ “googolplex dollars,” or else simply decreeing that from this point forward, the debt ceiling will be set at a level equivalent to the total debt that the U.S. government holds.

This said, because reconciliation is arduous, it becomes a less viable option with each passing day. With congressional Democrats still dragging their feet, it’s possible that the fate of the U.S. economy rests on Joe Biden’s willingness to “mint the coin.”

#### Avoiding delay’s key

Weisman 10-1-21 (Jonathan Weisman, congressional correspondent at the New York Times, 30 year career in journalism; “Four Jagged Puzzle Pieces and a Few Weeks for Democrats to Assemble Them,” New York Times, 9-28-2021, updated 10-1-2021, https://www.nytimes.com/2021/09/28/us/politics/biden-agenda-debt-limit-infrastructure.html)

In a pivotal week, in a make-or-break stretch for President Biden’s domestic agenda, congressional Democrats are trying to assemble a puzzle of four jagged pieces that may or may not fit together.

Making them work as a whole is critical for the party’s agenda and political prospects, and how quickly they can assemble the puzzle will determine whether the government suffers another costly and embarrassing shutdown — or, worse yet, a first-ever default on its debt that could precipitate a global economic crisis.

Here are all the moving parts.

Piece 1: Government funding.

At a second past midnight on Friday morning, the parts of the government that operate under the discretion of Congress’s annual spending process will run out of money if a stopgap spending bill does not pass. Oct. 1 is the beginning of the fiscal year, and with larger issues dominating their attention, the Democratic House and Senate have not completed any of the annual appropriations bills to fund the Departments of Defense, Transportation, Health and Human Services, State and Homeland Security, to name a few.

This is not unusual. More often than not, the individual funding bills do not pass until winter. In the interim, Congress passes “continuing resolutions” to keep departments open at current spending levels, with perhaps a few tweaks for urgent priorities and emergencies like hurricane response and, this year, Afghan refugee resettlement.

By Thursday, Congress could easily pass such a resolution to avoid a lapse in funding that could furlough federal workers and force “essential” employees, like those at the Transportation Security Administration, to work for no money. But on Monday, such a stopgap measure was blocked by Republicans in the Senate because it was attached to …

Piece 2: The debt limit.

The federal government has for decades operated under a statutory ceiling on the amount it can borrow — in common parlance, the debt limit. The $28 trillion federal debt climbs inexorably, not only because the government spends so much more than it recoups in taxes, but also because parts of the government owe money to other parts, mainly most of the government owing money from Social Security after decades of borrowing.

In essence, raising the debt limit is akin to paying off your credit card bill at the end of the month, because a higher borrowing ceiling allows the Treasury to pay creditors, contractors and agencies money that was already extracted from them in Treasury bonds and notes or contracts. It is not for future obligations.

The last time the issue surfaced, in August 2019, Congress and President Donald J. Trump suspended the debt limit through July 31 of this year. On Aug. 2, the Treasury reset the debt limit to $28.4 trillion, and the government crashed through it days later. Ever since, the department has been shuffling money from account to account to make sure its bills are paid, but sometime in mid- to late October, such “extraordinary measures” will be exhausted, and the bills will go unpaid. This would be a shock to the international economy, since U.S. government debt is a global safe harbor for all kinds of cash and investments.

During Mr. Trump’s presidency, Republicans and Democrats did not fight over debt limit increases, in part because large spending increases for the coronavirus pandemic and other priorities were bipartisan — although the large tax cut of 2017 was not.

This year, Republican leaders have declared that because Democrats control the House, the Senate and the White House, they and they alone must raise the debt ceiling.

Republicans have made it clear that they intend to filibuster an ordinary bill to raise the debt ceiling, as they did on Monday. For Democrats to do so unilaterally, they would most likely have to use a budget process called reconciliation that shields fiscal measures from a filibuster.

Doing so is a complex and time-consuming affair. It all has to be done in the next two to three weeks, to beat the still unknown but rapidly approaching “X date” when the government defaults. Janet Yellen, the Treasury secretary, told Congress on Tuesday that the deadline is Oct. 18.

#### Risk’s increasing by the day

Torgerson et al 9-9-21 (Thomas R. Torgerson, Managing Director, Co-Head of Sovereign Ratings, DBRS Morningstar; and Nichola James, Managing Director, Co-Head of Sovereign Ratings, DBRS Morningstar; “U.S. Debt Ceiling: Playing a Dangerous Game (Again),” DBRS Morningstar, 9-9-2021, https://www.dbrsmorningstar.com/research/384244/us-debt-ceiling-playing-a-dangerous-game-again)

Difficult political negotiations often come down to the wire in the United States and have always in the past resulted in a compromise before running into any constraints on meeting debt obligations. Neither party wants to deal with the repercussions of missed payments on debt or any other federal government obligation. Furthermore, at this juncture, Democrats have narrow control over the House and Senate and have the ability to pass a debt ceiling increase in spite of Republican opposition, under reconciliation rules. This distinguishes the current situation from prior episodes in 2011 and 2013.

However, current plans are to keep the debt ceiling increase separate from the budget legislation. This strategy would require Republican support, which at present appears unlikely to be forthcoming. Absent a shift in strategy from at least one of the two parties, the risk of miscalculation grows with every passing day, and may ultimately result in the U.S. rating being placed under review, similar to our actions taken in 2013.

“The U.S. retains some exceptional credit strengths, and its ratings are underpinned by its high degree of economic, institutional and financial resilience,” notes Thomas R. Torgerson, Co-Head of Sovereign Ratings at DBRS Morningstar. “However, DBRS Morningstar considers brinksmanship with the debt ceiling to be a dangerous game - atypical of a 'AAA' rated sovereign.”

## Case

1st advantage

#### Aff evidence doesn’t say failure to license creates political tension --- but rather compulsory licensing would be HIGHLY controversial and would result in companies PULLING OUT of the international trading regimes

Sarnoff & Chon 18 ~Joshua, Prof of Law at Depaul College of Law, served as a Distinguished Scholar at the US Patent and Trademark Office, Margaret, Prof for the Pursuit of Justice at the Seattle Univ School of Law, "Innovation Law and Policy Choices for Climate Change-Related Public-Private Partnerships," The Cambridge Handbook of Public-Private Partnerships, Intellectual Property Governance, and Sustainable Development, eds Margaret Chon et al, p.265-7, JCR~

As stated earlier, many people and institutions have recognized the unequal technology transfer framework for climate change and energy innovation. To address these concerns, numerous changes, some highly controversial, have been proposed to the global patent regime.Footnote130 These include: broad, categorical exclusions of environmentally sound or climate friendly technologies from the patent system; and regulation of licensing and market behaviors, including compulsory licensing, antitrust scrutiny, and price controls.Footnote131 These direct means of regulating prices and competition will remain legally available to governments that hope to induce – but may be forced to compel – more favorable licensing and pricing practices than would voluntarily occur.Footnote132

Although further amendment of the WTO Agreement on Trade Related Aspects of Intellectual Property (TRIPS Agreement) – as has been discussed by the United Nations SecretariatFootnote133 – is a theoretical possibility, consensus for adopting amendments in the short term is highly unlikely. Without such treaty amendments, countries (particularly those in the developing South) may seek to make greater use of existing TRIPS Agreement flexibilities to tailor their patent doctrines to assure access and to lower costs. They may adopt exclusions from patent eligibility, exceptions to patent rights, and alternatives to private licensing (such as a global technology pool). They also may expand access to publicly funded technologies to better promote technology development, transfer, and use.Footnote134 These options may provide greater ex ante predictability “in accessing technologies and [may] further enable much-needed research and development for local adaptation and dissemination, which would further reduce the cost of the technologies.”Footnote135

Governments addressing private refusals to license patented technologies or high prices for access to those technologies may regulate such conduct directly, by adopting compulsory licenses or by imposing price control regulations.Footnote136 Alternatively, they may regulate such conduct indirectly, by treating restrictive or costly licensing as a competition violation (for example, as an abuse of dominant position) or by treating the patents themselves as essential facilities (that is, as products or services that are considered competitive necessities and for which access also can be required by compulsory licenses).Footnote137 Such direct or indirect regulation, moreover, may be largely ineffective in regard to assuring transfers of tacit knowledge.Footnote138

Both direct and indirect approaches to regulating access and prices will be highly controversial, and may threaten substantial trade retaliation or may prompt withholding by businesses of technology and foreign investment. Compulsory licensing, price regulation, and antitrust treatment have been repeatedly resisted by the United States and (somewhat less so) by other developed countries, particularly in foreign markets where the countries do not bear the costs but reap the benefits of technology exports.Footnote139 The developing South may be unwilling to resist such trade pressures, even if the threats and trade sanctions would be found illegal under WTO rules.Footnote140 These legal and political constraints bring us to proposals discussed in the next Part of this chapter, which emphasize private sector, voluntary initiatives to increase access and technology transfer, within a context of public sector laws and policies that promote innovation and access.

Second advantage

#### WTO resilient

Bown 18 – Chad P., Reginald Jones Senior Fellow at the Peterson Institute for International Economics, former lead economist at the World Bank and tenured professor at Brandeis, “Is the Global Trade System Broken?” Opening Remarks, 5-7, https://piie.com/commentary/op-eds/global-trade-system-broken

The WTO has not failed. No one has requested its judges rule on whether these latest Chinese policies are breaking the system. On the dozens of earlier occasions when asked to intervene over different policies, the WTO has largely ruled against China. And China has complied. When deployed properly, the WTO dispute-settlement system has succeeded.

President Trump could bring to Geneva a new set of sweeping legal challenges. His Section 301 investigation into China's allegedly unfair trade practices could result in unprecedented transparency, putting Chinese policies under the spotlight for the world to judge.

Even other WTO members' response to Mr. Trump's questionable trade actions—his steel and aluminium tariffs in particular—leaves room for optimism. The European Union established an early template, announcing plans to respond to Mr. Trump's unconventional behavior within the WTO's framework. China followed the European Union's example, making a similar WTO argument that served to constrain its own retaliation. And other countries have not given up on the WTO dispute settlement—some have even announced their intentions to formally challenge Mr. Trump's tariffs.

The WTO has proven resilient before. Despite the synchronised global downturn of 2008–09—which also includsed a trade collapse and the Great Recession—the system held strong, with no return to the trade policy of the 1930s.

While the WTO is not broken, the debate over a "broken" trading system could be referring to one that is "in despair." To that line of argumentation, I am much more sympathetic.

#### No evidence that it restores WTO credibility --- your Okonjo-Iweala evidence is about vaccines --- that happened

#### Your Hufbauer trade war card is about diverging policies --- like cap and trade, carbon tax, etc --- plan doesn’t solve

#### Trade war doesn’t escalate

Hong 17 – Brendon, reporter, “What Happens When Trump’s Tirade War With China Becomes a Trade War?”, The Daily Beast, 1-16-17, https://www.thedailybeast.com/what-happens-when-trumps-tirade-war-with-china-becomes-a-trade-war?ref=scroll

The big risk—that a trade war would lead to a shooting war—probably is overrated. But that’s because China has so many economic weapons at its disposal.

HONG KONG—No matter how some pundits frame current U.S.-China relations, Beijing wants no part in armed conflict with America. Open war—whether framed as escalation of tensions across the Taiwan Strait, in the South China Sea, or due to geopolitical head-butting—is not a feasible option for either side. The globe’s two largest economies not only share intimate economic ties; their fates are intertwined. But the occasional bloody nose is unavoidable. The battlefield where China and America trade blows may well be trade.

### 1NC A2: Climate

#### Patents plummeting --- no room for innovation / US energy policy / US-China trade war

Hurtado 21 --- Melissa Hurtado, JD student, Northwestern, “Journal of Technology and Intellectual Property”, JTIP Blog, March 27, 2021, https://jtip.law.northwestern.edu/2021/03/27/green\_tech\_patent\_boom\_or\_bust/

Underlying the U.S. and global patent systems is the belief that granting a limited monopoly will incentivize innovation. Although climate change comes to mind as a particularly controversial topic, according to PEW Research, six in ten Americans and majorities in other surveyed countries see climate change as a major threat. Patent filings seemed to reflect that concern as climate change mitigation technology patents more than doubled between 2005 and 2012. However, beginning in 2012, patent filings for climate change mitigation technologies plummeted— down 44% for carbon capture and storage and 29% for clean energy patents. Why, in a world of increased awareness and acceptance of climate change, did the U.S. and global patent systems fail to deliver on the promise that patents were enough to incentivize innovation?

There are several potential explanations for the green tech patent drop-off. From a technological perspective, there is some evidence that green tech matured quickly and capped, leaving room only for improvement patents. From a policy perspective, many have argued that continued fossil fuel and carbon subsidies, along with the lack of a carbon pricing system, have disincentivized green energy and made it more difficult to compete. From a global market perspective, did the U.S. and China trade war for independence and dominance over the $300B semiconductor market detract from China, which was the largest patentor of green tech, filing patents in the biotech, chemical, and green tech sectors? What is the solution to reversing the green tech patent drop off? From a legal and patent perspective, I argue that the U.S. and global patent systems need to provide fast-tracking for green tech patent applications and reduced standards.

#### Compulsory licensing sends a chilling effect in innovation

**Delrahim 17** --- Makan Delrahim, Assistant Attorney General, Remarks at the USC Gould School of Law's Center for Transnational Law and Business Conference, Friday, November 10, 2017, https://weblaw.usc.edu/resources/downloads/faculty/centers/ctlb/reforming-patent-form-conference.pdf?121120153141

Against this backdrop, I respectfully submit that enforcers and courts should be mindful of the **proper application** of antitrust law to standard setting. There is a growing trend supporting what I would view as a misuse of antitrust or competition law, purportedly motivated by the fear of socalled patent hold-up, to police private commitments that IP holders make in order to be considered for inclusion in a standard. This trend **is troublesome**. If a patent holder violates its commitments to an SSO, **the first and best line of defense**, I submit, **is the SSO** itself and its participants.

These commitments are typically **contractual** in nature. More specifically, SSOs often impose obligations on IP holders seeking to have their technology evaluated and, if selected, incorporated into a standard to engage in fair, reasonable, and nondiscriminatory licensing of their technology— what we call “FRAND” or “RAND” commitments. Disputes inevitably arise regarding what licensing fees or practices are “reasonable,” and “nondiscriminatory,” as you would expect with free-market negotiations. We should be most concerned, however, when this dispute involves concerted action, on either side—the implementers or the innovators.

If a patent holder is alleged to have violated a commitment to a standard setting organization, that action may have some impact on competition. But, I respectfully submit, that does not mean the heavy hand of antitrust necessarily is the appropriate remedy for the would-be licensee—or the enforcement agency. **There are perfectly adequate** and **more appropriate** common law and statutory remedies available to the SSO or its members.

Patent rights are conferred by statute and guaranteed by the U.S. Constitution. The enforcement of valid patent rights should not be a violation of antitrust law. A patent holder cannot violate the antitrust laws by properly exercising the rights patents confer, such as seeking an injunction or refusing to license such a patent. Set aside whether taking **these actions might violate the common law**. Under the antitrust laws, I humbly submit that a unilateral refusal to license a valid patent **should be per se legal**. Indeed, just this Monday, Chief Judge Diane Wood, a former Deputy Assistant Attorney General at the Antitrust Division, stated that “[e]ven monopolists are almost never required to assist their competitors.”

Under the existing statutory scheme, it is not the duty or the proper role of antitrust law to referee what unilateral behavior is reasonable for patent holders in this context. Patent holders make decisions every day about how to exploit their property rights, knowing that the consequence of those actions may be to subject themselves to contractual or other common law liability. The blunt application of antitrust law to such unilateral conduct **throws those decisions into disarray** threatening to punish IP holders with **onerous penalties** that can **deter other innovators** from taking the necessary R&D investment risk to develop the next great technological leap forward.

#### Warming is slow and adaptable --- no feedbacks

**Jayaraj 21** --- Vijay Jayaraj, M.Sc., Environmental Science, University of East Anglia, England, Research Contributor for the Cornwall Alliance for the Stewardship of Creation., “Why I Am a Climate Realist”, Cornwall Alliance, March 11th 2021, https://cornwallalliance.org/2021/03/why-i-am-a-climate-realist/

The answer to my question trickled in slowly over a number of years. Evidence began to emerge that scientists acknowledged a large gap between the actual observed real-world temperature datasets (from satellites) and those temperature predictions from computer climate models.

While these differences may not prove the allegations against the Climategate scientists, they do confirm one thing: the computer climate models exaggerate the future warming rate due to their high sensitivity to carbon dioxide emissions. As a result, the models continue to show an excessive and unreal warming rate for future decades.

Despite plenty of evidence, the IPCC continues to use these **faulty** model predictions to inform the public and policymakers about future changes in temperature.

**A steady stream of scientific studies** has documented the evidence for **lack of dangerous warming**—IPCC’s level of warming based on fifth- and sixth-generation (CMIP5 and CMIP6) models and the apparent absence of climate-induced ecological collapse.

In 2020 alone, **over 400 peer-reviewed scientific papers took up a skeptical position on climate alarmism**. These papers—and hundreds from previous years—address various issues related to climate change, including problems with climate change observation, climate reconstructions, lack of anthropogenic/CO2 signal in sea-level rise, natural mechanisms that drive climate change (solar influence on climate, ocean circulations, cloud climate influence, ice sheet melting in high geothermal heat flux areas), hydrological trends that do not follow modeled expectations, the fact that corals thrive in warm, high-CO2 environments, elevated CO2 and higher crop yields, no increasing trends in intense hurricanes and drought frequency, the myth of mass extinctions due to global cooling, etc.

Academia is **filled** with scientific literature that contradicts the position of those who believe climate change is unprecedented.

Also, during the course of the last decade, it became apparent that most of Al Gore’s claims in his 2006 documentary were false. Contrary to his claims, polar bear populations remained steady, the Arctic did not become ice free during the summer of 2014, and storms did not get stronger due to global warming.

In simple words, Gore misled the world and promoted falsehood as science, and he continues to do so while profiting from a renewable industry that is sold as the cure for global warming. Yet, he himself generates carbon dioxide emissions many times higher than an average family’s.

So, not only are the predictions of models wrong, but also the interpretations of climate data and the propaganda of a climate doomsday were also wrong.

Today, we know the modern warming rate is **not unprecedented**. Warming of such magnitude has happened twice within the past 2000 years. Further, ice at both poles is at **historic highs**, even compared with the Little Ice Age of the 17th century.

Besides, there has been no increase in extreme weather events due to climate change and the loss of lives due to environmental disasters has drastically reduced during the last 100 years.

So, I am a climate realist. I acknowledge that there has been a gradual increase in global average temperature since the end of the Little Ice Age in the 17th century. I acknowledge that climate change can happen in both ways—warming and cooling. I do understand that anthropogenic CO2 emissions and other greenhouse gases could have positively contributed to the warming from mid-20th century onwards.

I also acknowledge that warming and the increased atmospheric carbon dioxide that has contributed to it have actually helped society. The current atmospheric carbon dioxide concentration, nearly 50 percent higher than in the 17th century, and the warming—which has occurred chiefly in winter, in higher latitudes and altitudes, and at night, thus raising cold temperatures but with little effect on hot temperatures—have actually resulted in optimal conditions for global plant growth, thus aiding in the flourishing of the agricultural sector.

The Bengal tiger populations have bounced back, and polar bear populations are steady, thanks to conservation efforts. Forest area in Europe is increasing every year, and countries are planting tree saplings at a record rate. Life expectancy has reached all-time highs in many countries, and more people are constantly pulled out of extreme poverty every year (although business lockdowns to fight COVID-19 threaten to reverse that trend). Access to freshwater has improved and human productivity has increased drastically.

So, **there is no actual climate emergency.** Instead, what we have are celebrities, activists, un-elected political bodies like the UN, and even some climate scientists religiously promoting a popular doomsday belief.

**The models do not know the future**, and neither do the Climategate scientists. But an exaggerated view of future warming provides the ideal background for anti-carbon-based fuels policies that will undermine the economic well-being of every society in the world. We must not allow that.

Be a climate realist.

**No risk of aff offense --- patent hold up is a false theory**

**Osenga 18** --- Kristen Osenga, Professor, teaches at the University of Richmond School of Law and writes in the areas of intellectual property, patent law, law and language, and legislation and regulation,, “Ignorance Over Innovation: Why Misunderstanding Standard Setting Organizations Will Hinder Technological Progress”, 2018, https://scholarship.richmond.edu/law-faculty-publications/1502/

The concern behind patent hold-up in the technology standards space is that patent owners could force firms wishing to implement a standard an excessively high royalty rate to use the patented technology by relying on the fear of injunctive relief if the implementer fails to pay the royalty.77 But patent hold-up is just as theoretically **possible in the absence of standardization**. Any time a property owner has a good that others want for which there is no perfect substitute, the owner could seek excessively high rates.' 8 There are numerous markets that exhibit this characteristic, and yet market forces ensure that those seeking the good are able to fairly negotiate for access. The fact that market forces have successfully prevented hold-up in other circumstances helps underscore why the issue is **simply theoretical** in the case of standard-essential patents (SEPs).

Although critics make it seem as though patent hold-up is a regularly occurring phenomenon, **it is by no means a** natural by-**product of standardization**. Rather, actual holdup requires both **opportunity and action** by the patent holder.79 With respect to opportunity, simply owning an SEP does not automatically create a situation where a patent holder can seek and obtain excessive royalties. Additionally, not all patents are created equal.so The value of the technology covered by the patent is what actually drives the royalty rates, not a patent's designation as an SEP."' Ultimately, seeking excessively high licensing rates poses **many risks to patent owners** that often overshadow the opportunity to do so. For instance, standardization is often a repeat-player game; if a patent holder acts in an unfair manner, it is unlikely that other firms will be willing to urge adoption of that patent holder's technology in future standard setting proceedings.82 Additionally, there are risks for the patent holder in engaging in unfair negotiations with implementers. These implementers may also hold SEPs that the patent holder may need to cross-license or may be important firms for commercializing the patent holder's technology." For these reasons and others, the supposed leverage of the patent holder to act unfairly is **outweighed** by ma**ny factors** that **decrease the likelihood of patent hold-up**.

### 1AR

Fast Track CP

We are kicking out saying that he aff solves the issue faster than the CP can- Politics is not a net benefit to this CP testing aff competition, not a voting issue

FTC Independence

We are going to kick this DA, aff solves the link, testing aff competition, not a voting issue

### Neg Block --- TRIPs

#### Compulsory licensing would not cause tech use globally

Wang 19 --- Ya-Lan Wang, Masters Student, MIPLC, “Patent Protection for Green Technologies – Is Compulsory Licensing the Way of Promoting Technology Transfer?”, Munich Intellectual Property Law Center (MIPLC) Master Thesis (2018/19), https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3684342

d) Lack of Technological Ability to Make Use Is Still A Problem

“The problem with the compulsory licence as a tool to gain access to environmental technology is the fact that access to patents is only a part of the process of product development.”372 Given that the existing compulsory licensing schemes may provide enough grounds for States to get access to green technologies through technology transfer, a great amount of States that are in need of such technologies are in fact developing or undeveloped countries with very limited or even no manufacturing capabilities to make use of such technologies. As “poor developing countries may not have the technological ability to make use of patented technologies,”373 it’s in fact doubtful that how much can developing or undeveloped countries can actually benefit from this technology transfer brought by the compulsory licensing schemes.

#### Turn --- International compulsory licensing of green tech crushes innovation and stymies local development

Wang 19 --- Ya-Lan Wang, Masters Student, MIPLC, “Patent Protection for Green Technologies – Is Compulsory Licensing the Way of Promoting Technology Transfer?”, Munich Intellectual Property Law Center (MIPLC) Master Thesis (2018/19), https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3684342

The Use of Compulsory Licensing Reduces the Incentives for Innovations

Developing new technologies, especially cutting-edge technologies like green technologies, could be extremely costly. “To offset these significant costs, most innovative firms and individuals seek to protect their inventions with patents” 360 or other stronger measures. Inventors are expecting to have stronger intellectual property rights. “Strong intellectual property rights (IPR) are important for creating the economic incentives necessary for technology firms to devote time and money to developing innovative technology.”361

As “green technology has become big business,” 362 “the corporations and inventors who create these innovations use the global IPR system to profit (sometimes greatly) from them for the entire length of the statutory monopoly granted by patents.”363 The protection of patent “gives those innovators a chance to recoup that investment before copycat versions flood the market.”364 Their profits are generated from the “significant gaps between marginal cost and retail price, generating many billions of dollars in profits called ‘patent rents’ for companies.” 365 Companies who own the patents “argues that these patent rents are what propel innovation.” 366 If the compulsory licenses are easily often granted, they lose their chance to profit and therefore will have less or no incentives to invest in technological innovations.

b) The Use of Compulsory Licensing Might Hinder the Long-Term Proliferation and Development of Domestic IP

As the spokesperson of Merck & Co said in responding to the Brazilian Government’s decision on granting compulsory license to its patented medication, the impacts it might have on to the companies who own patents is that

“this expropriation of intellectual property sends a chilling signal to research-based companies about the attractiveness of undertaking risky research on diseases that affect the developing world, potentially harming patients who may require new and innovative life-saving therapies.”367

Since the companies are expecting to profit from their new inventions through the monopoly created by the patent systems, if compulsory licenses are often easily granted, companies, especially researched based companies, will no longer be willing to invest in developing cutting-edge technologies. This for the long run will hampered the R&D power and technology development of companies in domestic markets.

International technology transfers, for the same reasons, potentially jeopardize the developments of domestic technology developments and growth, as scholar Monte has pointed out, for a very simple reason: “if one can simply appropriate the invention there will be no ‘sweat of the brow’ learning taking place,”368 and, “therefore, no endogenous development, as it is not required.”369 If throughout compulsory licensing, countries can easily acquire the technologies they need from other countries, considering the price paid getting technologies through compulsory licensing is considerably cheaper than develop those technologies themselves, they may not be willing to invest in such costly, time consuming processes of R&Ds.

For the long-term considerations, it may not be all good using compulsory licensing scheme in order to achieve technology transfer.

#### Trade doesn’t solve war

Miller 14 – Charles Miller, 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.

### Ext

**Adaption Solves**

**Cass 18** (Oren Cass is a senior fellow at the Manhattan institute, “Doomsday Climate Scenarios Are a Joke” <https://www.wsj.com/articles/doomsday-climate-scenarios-are-a-joke-1520800377?shareToken=st435339ed5eb547259eb78cdbf9fbec0f&reflink=article_email_share>) DAH

Debates over climate change are filled with dire estimates of its cost. This many trillions of dollars of damage, that large a share of gross domestic product destroyed, so-and-so many lives lost, etc. Where do such figures come from? Mostly **from laughably bad economics.** This has nothing to do with the soundness of climate science. The games begin when economists get their hands on scientific projections and try to translate temperatures into human impacts. They conduct statistical analyses of the effects that small year-to-year temperature variations have on things like mortality and economic growth, and try to extrapolate to the effect of very large, slow shifts in underlying climate. **This creates absurd estimates that ignore human society’s capacity for adaptation**. This is the latest iteration of the same mistake environmental catastrophists seem insistent on making in every generation. The best illustration lies deep in a 2015 paper published in Nature by professors from Stanford and the University of California, Berkeley. They found that warm countries tended to experience lower economic growth in abnormally warm years, while cold countries experienced higher growth in such years. Applying that relationship to a much warmer world of the future, they concluded that unmitigated climate change would likely reduce global GDP by more than 20% from what it otherwise would reach by century’s end. That is roughly an order of magnitude higher than prior estimates, and it has received widespread media attention. **But it is as preposterous as it is stunning.** While the world economy stagnates, the model projects, cold countries will achieve almost unimaginable wealth. Iceland supposedly will achieve annual per capita income of $1.5 million by 2100, more than double that of any other country except Finland ($860,000). Mongolia, which currently ranks 118th in per capita income, is supposed to rise to seventh, at which point the average Mongolian will earn four times as much as the average American. Canada’s economy becomes seven times as large as China’s. **The technical term to describe this analysis is “silly.”** Obviously, the relationship posited between temperature and growth has little to do with reality. Sadly, this paper represents the norm. Last fall the U.S. Government Accountability Office released a summary of existing research on future climate costs for the United States. As I show in a new report published by the Manhattan Institute, a small set of studies dominate this research. **They reach their imposing dollar figures by refusing**, like the Nature study, **to consider how society will evolve and adapt.** One Environmental Protection Agency study estimates the potential increase in extreme-temperature deaths by looking at city-specific effects. It assumes that a day counting as unusually hot for some city in 2000 will cause a similar mortality increase in that city in 2100, even if climate change makes it no longer unusual. The result is a projection that a hot day will kill massive numbers in Northern cities by 2100—though such temperatures are already routine at lower latitudes with no such ill effects. Pittsburgh’s extreme-temperature mortality rate is supposed to be 75 times as high in 2100 as that of Phoenix in 2000, though Pittsburgh will not be as hot then as Phoenix was a century earlier. But if Pittsburgh’s climate steadily warms over the coming century, it will not react to a 100-degree day in 2100 the same way it did in 2000. Even if it didn’t warm, **we should assume that economic and technological advancement will make the city and its residents more resilient to heat than they are today.** Another analysis relied on by GAO, taking its own approach to extreme-temperature deaths, inadvertently makes this point—**then proceeds to ignore** it. The “American Climate Prospectus” attempts to combine two different studies that consider whether very hot days—during which the average temperature is above 90 degrees—have higher mortality than days with moderate temperatures. The first of these studies used data from 1968–2002 and **found that the answer was yes. But a second study**, published later by some of the same authors, **looked at how this relationship had changed over time**. Here **they found that the mortality rate on hot days had declined precipitously. The adoption of air-conditioning**, they concluded, **“has positioned the United States to be well adapted to the high-temperature-related mortality impacts of climate change.”** Incredibly, even though overlapping authors had contributed to both of these studies, and one of them was also a reviewer of the “Prospectus” analysis, the “Prospectus” ignored the declining-mortality trend and claimed climate change would kill tens of thousands annually. This question of adaptation, and how to account for a future different from the present, is not an esoteric detail for science and economics. It is fundamental to understanding the challenge posed by climate change. **If you imagine society is static and incapable of innovation, the prospect of climate change must be terrifying**—all of humanity paralyzed like Michelle Pfeiffer in “What Lies Beneath,” watching the bathtub fill slowly with water. But horror movies are not reality. The 1960s overpopulation scare made sense, assuming that society would not find more productive ways to farm. The 1970s fear of impending limits to growth made sense, assuming that society could not expand a finite supply of resources. **Those doomsday predictions failed because the underlying assumption was mistaken. Society is constantly adapting to all sorts of changes. If a projection of climate-change cost ignores adaptation, we can safely ignore it.**

#### No climate patents

Coren 19 --- Michael J. Coren Climate reporter, Quartz, Aug 27th 2019, https://qz.com/1695757/patents-to-fight-climate-change-are-declining/

But one key trend has reversed: The number of patents filed for climate change mitigation technologies more than doubled between 2005 and 2012, according to a recent analysis by researchers at the International Energy Agency (IEA) and the Organisation for Economic Co-operation and Development (OECD). But since then, new patent filings for power, transport, buildings, manufacturing, and carbon capture and storage have plunged, bucking the general trend for global patents. New filings for carbon capture and storage and clean energy patents are down 44% and 29%, respectively, from their peaks, for example.