## 1

### T – per se

#### Business practices are ongoing conduct defined by the behaviors of many market participants

Kerry Lynn Macintosh 97, Associate Professor of Law, Santa Clara University School of Law. B.A. 1978, Pomona College; J.D. 1982, Stanford University, “Liberty, Trade, and the Uniform Commercial Code: When Should Default Rules Be Based On Business Practices?,” 38 Wm. & Mary L. Rev. 1465, Lexis

These new and revised articles reflect a strong trend toward choosing default rules 4 that codify existing business practices. 5 [FOOTNOTE 5 BEGINS] In this Article, the term "business practices" is used to refer to practices that emerge over time as countless market participants exercise their freedom to engage in profitable transactions. For an account of the evolution of business practices, see infra Part II. As used here, "business practices" is broader and less technical than "trade usage," which the Code narrowly defines as "any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question." U.C.C. 1-205(2). [FOOTNOTE 5 ENDS] This is particularly true of the recent revisions to Articles 3 (Negotiable Instruments), 4 (Bank Deposits and Collections) and 5 (Letters of Credit).

#### Prohibit means forbid by authority

Merriam-Webster No Date <https://www.merriam-webster.com/dictionary/prohibition> and <https://www.merriam-webster.com/dictionary/prohibiting>

Definition of prohibition 1: the act of prohibiting by authority

Definition of prohibit transitive verb 1: to forbid by authority : ENJOIN

#### Only per se illegality prohibits a practice---rules of reason prohibit anticompetitive effects for individual acts, or instances of ‘practice.’

John Paul Stevens 90, Justice, Supreme Court of the United States, “FTC v. Superior Court Trial Lawyers Ass'n,” 493 U.S. 411, Lexis

LEdHN[3C] [3C]LEdHN[14] [14]Equally important is the second error implicit in respondents' claim to immunity from the per se rules. In its opinion, the Court of Appeals assumed that the antitrust laws permit, but do not require, the condemnation of price fixing and boycotts without proof of market power. 15 The opinion further assumed that the per se rule prohibiting such activity "is only a rule of 'administrative convenience and efficiency,' not a statutory command." 272 U.S. App. D. C., at 295, 856 F. 2d, at 249.This statement contains two errors. HN10 [\*\*\*\*42] The per se [\*433] rules are, of course, the product of judicial interpretations of the Sherman Act, but the rules nevertheless have the same force and effect as any other statutory commands. Moreover, while the per se rule against price fixing and boycotts is indeed justified in part by "administrative convenience," the Court of Appeals erred in describing the prohibition as justified only by such concerns. The per se rules also reflect a long-standing judgment that the prohibited practices by their nature have "a substantial potential for impact on competition." Jefferson Parish Hospital District No. 2 v. Hyde, 466 U.S. 2, 16 (1984).

[\*\*\*\*43] LEdHN[15] [15]As we explained in Professional Engineers, HN11 the rule of reason in antitrust law generates

"two complementary categories of antitrust analysis. In the first category are agreements whose nature and necessary effect are so plainly anticompetitive that no elaborate study of the industry is needed to establish their illegality -- they are 'illegal per se.' In the second category are agreements whose competitive effect can only be evaluated by analyzing the facts peculiar to the business, the history of the restraint, and the reasons why it was imposed." 435 U.S., at 692.

[\*\*\*873] "Once experience with a particular kind of restraint enables the Court to predict with confidence that the rule of reason will condemn it, it has applied a conclusive presumption that the restraint is unreasonable." Arizona v. Maricopa County Medical Society, 457 U.S. 332, 344 (1982).

[\*\*781] LEdHN[16] [16] [\*\*\*\*44] The per se rules in antitrust law serve purposes analogous to per se restrictions upon, for example, stunt flying in congested areas or speeding. Laws prohibiting stunt flying or setting speed limits are justified by the State's interest in protecting human life and property. Perhaps most violations of such rules actually cause no harm. No doubt many experienced drivers and pilots can operate much more safely, even at prohibited speeds, than the average citizen.

[\*434] If the especially skilled drivers and pilots were to paint messages on their cars, or attach streamers to their planes, their conduct would have an expressive component. High speeds and unusual maneuvers would help to draw attention to their messages. Yet the laws may nonetheless be enforced against these skilled persons without proof that their conduct was actually harmful or dangerous.

In part, the justification for these per se rules is rooted in administrative convenience. They are also supported, however, by the observation that every speeder and every stunt pilot poses some threat to the community. An unpredictable event may overwhelm the skills of the best driver or pilot, even if the [\*\*\*\*45] proposed course of action was entirely prudent when initiated. A bad driver going slowly may be more dangerous that a good driver going quickly, but a good driver who obeys the law is safer still.

#### Prefer it:

#### 1) GROUND---key to link uniqueness and a unidirectional topic. Fringe standards dodge topic links, AND they can pick a broader but more permissive standard, making the topic bidirectional.

#### 2) LIMITS---too many possible standards, each requiring distinct answers, makes the topic unmanagbly large.

## 2

### Outreach PIC

#### The United States federal government should require bilateral trade agreements to include a prohibition of export cartels.

#### Multilateral cooperation isn’t a precursor to stopping export controls – the CP solves and avoids our outreach bad turns

Crane ’09 [Daniel; 2009; Visiting Professor, University of Chicago Law School; Professor of Law, Benjamin N. Cardozo School of Law, Yeshiva University; Chicago Journal of International Law; “Substance, Procedure, and Institutions in the International Harmonization of Competition Policy,” vol. 10]

Some justifications advanced for multilateral antitrust harmonization that are not particularly compelling include eliminating discrimination against outsider firms, improving the average quality of antitrust norms, and eliminating export cartels. Of these, discrimination against foreign firms' access to domestic markets has received a good bit of attention. This is a real concern with many egregious illustrations, but it is not primarily an antitrust concern. Antitrust law tends to be concerned with the acquisition and exercise of market power, and trade barriers do not necessarily have anything to do with the acquisition of market power. For example, agricultural trade barriers often take place against a backdrop of intensely competitive local markets. Further, there are existing mechanisms under the General Agreement on Tariffs and Trade and the World Trade Organization ("WTO") to deal with trade barriers that do not rely on antitrust principles.

The problem of trade barriers does not end with tariffs; there are other ways to discriminate against foreign firms. A more subtle version of parochial discrimination occurs when a jurisdiction allows anticompetitive activity in a way that blocks foreign competitors from accessing the domestic market. A case in point is the Kodak-Fuji dispute over the distribution of consumer photographic film and paper distribution in Japan.3 Japan effectively tolerated (and, indeed, encouraged) vertical exclusive dealing arrangements between manufacturers, wholesalers, and retailers that made it difficult for US firms like Kodak to access the Japanese market.

But, again, harmonization of international antitrust enforcement would not necessarily address this set of problems. Tolerance of anticompetitive agreements in cases like the Kodak photographic film and paper matter exacts a toll on domestic consumers and potential domestic entrants to the market as well. The burden on foreign firms is incidental to the fact that the domestic regime may have adopted a poor antitrust policy that also threatens its own producers and consumers. This is perhaps an example of "bad" antitrust law, but as noted in the introduction and again below, the arguable dearth of antitrust law in some jurisdictions is not a sufficient reason to agitate for harmonization.

A more serious international problem is beggar-thy-neighbor exaction of monopoly rents through the allowance of export cartels. The problem is familiar from US federalism cases, where the Supreme Court has allowed states to mandate cartel behavior by their domestic producers who were primarily exporting out of state. 4 From the short-run perspective of domestic political regimes, this is a perfectly rational strategy to increase the well-being of local producers without internalizing the costs of monopoly pricing. Though it is equally true that the world economy would gain if export cartels were prohibited, individual jurisdictions are not likely to follow this long-run strategy. Unlike in the previous Kodak example, the costs of the anticompetitive restraint are almost entirely exported from the enacting jurisdiction, which means that there is virtually no domestic political constraint against the adoption and perpetuation of the restraint.

What is not at all clear is that international harmonization of antitrust laws-or, at least, harmonization on a multilateral scale-is necessary to curb the harms of export cartels. Under the dominant "effects test" for antitrust jurisdiction, domestic authorities are competent to prosecute importers that have agreed to fix prices in the domestic market, even though the agreement was transacted in a foreign jurisdiction.' Further, since trading partners often carry a roughly equal balance of trade, there is no reason why bilateral trade agreements cannot prohibit export cartels between the signatories.6 Curbing export cartels may seem like a good idea, but the current level of pressure for economic efficiency does not translate into a strong imperative for multilateral antitrust harmonization.

## 3

### Notification cp

The United States federal government should

* maintain the antitrust export cartel exemption;
* establish a framework for international cooperation around export cartel notification.

#### Multilateral notification regime solves better.

Rodas ‘2 [Dr. João Grandino; 2002; professor and former director of the Law School of the University of São Paulo; Organization of American States, “Cartels in the Sphere of Competition Law in the Americas,” no. 106; KP]

Following recommendations suggested by Simon J. Evenett, Margaret C. Levenstein, and Valerie Y. Suslow4, any proposed reform to international cartel enforcement should be assessed, in large part, on the deterrent it provides to firms to cartelise markets in the first place. That deterrent’s strength depends on the firms’ perceptions of the probability of getting punished and the size of any expected penalty. Although the pecuniary gains from cartelisation may result from raising prices across the globe, recent enforcement experience suggests that much of the evidence and many of the people responsible for international cartelisation are to be found in the nations where the headquarters of globally-oriented firms are located. This suggests that although calculations of the pecuniary harm should in principle shift from the national to the global, at present reforms to the “investigative technology” probably need only focus on cooperation between the industrial nations. As a first response, it is tempting to advocate creating a global enforcement authority with powers to collect evidence, conduct interviews, and then compute the global gains from cartelisation and levy the appropriate fines. In principle, such a proposal could overcome the deficiencies of the current system of national enforcement and bilateral cooperation. However, at this juncture no nation appears ready to pool sovereignty in such an aggressive manner, or to allow its citizens and firms to be punished by such a body. The EU’s relatively weak enforcement powers against price-fixing and the like are a testament to the reluctance of EU members, who have been pooling sovereignty in other areas for decades, to cede powers in cartel cases—even though the distortions to the free flow of goods and services across European borders that cartels can engender are widely acknowledged. So, we should turn our attention to more modest and perhaps more likely reform options. One option would be to address the deficiencies of the current system of national corporate-leniency programs. First, a provision should be introduced so that firms can simultaneously apply for leniency in multiple jurisdictions and have those applications evaluated on the totality of the evidence of cartelisation presented. Second, to reduce the uncertainty faced by the “first” firm to come forward with evidence about a currently uninvestigated international cartel, corporate-leniency programs should state the minimum (non-zero) degree of relief from penalties. Such a reform would further increase the incentive of any cartel member to “defect,” making cartelisation harder to sustain. Another option takes initial steps to remedying this deficiency. Once the investigation turns to the matter of calculating pecuniary gain, this inevitably controversial step could be turned over to a pre-selected panel of qualified and independent experts, who would reside in the signatories to a plurilateral agreement. This panel would present estimates (with associated estimated standard deviations) of the cartel’s gains across all the affected nations that are parties to this agreement. The panel would break down its estimate of the total gains to the cartel from each nation’s markets, which enforcement authorities would take into account when penalizing cartel members or when making their case to a court to penalize cartel members. The obvious disadvantage of this latter reform option is that gains from cartelising nonsignatories’ markets are not taken into account. Given the non-trivial amounts of information required to come up with a sensible estimate of cartel’s pecuniary gains, it is naïve to blithely insist that any supra-national panel estimate the global consequences of a cartel. Instead, a plurilateral agreement should have open accession clauses to enable non- members that have developed both national enforcement capabilities and which have attained a pre-specified degree of international anti-cartel cooperation to join. Furthermore, thought could be given to informing non-signatories that their interests are affected by a cartel in return for a commitment to treat leniently any firm that has volunteered information during the investigative stages. Taking these proposals together, a reform process could unfold over time in which industrial countries move from their current arrangements to the first through third options. Strengthening national anti-cartel laws and commitments to enforcement are a necessary prerequisite. The enhanced cooperation will foster trust between antitrust agencies, which is essential if agencies are to have any faith in the intent and capacity of others to use the ample discretion built into most anti-cartel laws to successfully conduct international cartel investigations. Admittedly such a process would not immediately lead to the creation of a supra-national anti-cartel agency.

An alternative to these reform options that has been proposed is a plurilateral or multilateral agreement at the World Trade Organization (WTO). Such an agreement could involve commitments to enact and enforce an anti-cartel law, and to cooperate with investigations launched abroad. As there is less than ten years of experience with international anti-cartel investigations, it is doubtful that best practices in enforcement have evolved to such a stage that they could be codified in an agreement. This implies that any such multilateral agreement would probably have to be based on minimum substantive standards and implementation procedures. Investigative and prosecutorial discretion are likely to remain and it is not obvious how a WTO dispute panel might assess whether a government used that discretion in a manner entirely consistent with the agreement. The likely outcome is that only those antitrust authorities that have not followed certain minimal procedural steps would be found in violation, an outcome that is unlikely to result in significant increases in the probability that cartel members will be punished. Finally, such a WTO agreement is unlikely to ensure that the penalties for cartelisation are based on the worldwide pecuniary gains. For all of these reasons a WTO agreement is, at present, unlikely to remedy the deficiencies of national anti- cartel enforcement. However, the international agreements described earlier could provide the basis for strengthening anti-cartel enforcement in countries that currently are not willing or able to adopt and enforce stronger anti-cartel laws. A WTO agreement could be crafted to explicitly address two forms of privately-orchestrated and trade- related cartels. First, laws which permit recession cartels, where firms under considerable competitive pressure — potentially from imports — to engage in market division, could be banned on the grounds that the WTO already has well-established safeguard mechanisms. Second, disciplines could be placed on legally sanctioned export cartels. There appears to be a justification for letting small firms share the considerable fixed costs of marketing and exporting; the objective should be to prevent such arrangements from resulting in consumer welfare losses. Two disciplines could be imposed on laws granting exemptions for export cartels: notification and unimpeded entry. Notification would involve the publication of the names of the members of such cartels, which will facilitate monitoring by antitrust officials in the importing country. A requirement that entry to such arrangements be unimpeded would help both reduce any market power that is enjoyed by existing members, and make coordinating any restrictive business practices more difficult.

## 4

### Development da

#### Exporting western anti-trust devastates developing economies

Martin ’21 [Thomas Martin; 2019; LLB, Queens University Belfast; Dissertation for Master of Laws at the University of British Columbia; "Is global convergence of competition law the answer? How East Asian challenges demonstrate the limitations of the convergence strategy," https://open.library.ubc.ca/soa/cIRcle/collections/ubctheses/24/items/1.0396863]

Against this backdrop, scepticism has grown towards competition laws adopted under the influences of external pressure, such as Japan and South Korea, and new competition laws such as in China. John Haley has even gone as far as to suggest that the adoption of competition law in some jurisdictions could be seen as wasted effort. Haley articulates this view by stating: “The problem … is misplaced reliance on inappropriate models. Simply stated, the legislative paradigms used for national competition legislation throughout the region do not adequately address the basic underpinnings of monopoly power and barriers to free and competitive markets in East Asia or in most other developing states. Nor, some might add, can these models be reasonably transplanted into legal systems that lack the institutional and cultural infrastructures necessary for their effective implementation.”310 This thesis argues that, after analysis of the East Asian region, it is clear that competition law, as a legal transplant, must be moulded to the specific economic, political and cultural needs of its receiving country. This idea has certainly been gaining some momentum in competition law literature in recent years and proponents have often used Godek’s comment to support this view: “Exporting antitrust… is like giving a silk tie to a starving man. It is superfluous; a starving man has much more immediate needs. And if the tie is knotted too tightly, he won’t be able to eat what little there is available to him.”311 From the recent literature on competition law in developing countries, and from the analysis in this paper, a clear message emerges for jurisdictions adopting competition law. Do not blindly follow the ideas of the well-resourced enforcement agencies or international organisations and especially avoid adopting a cut and paste model.312 According to Heba Shaheim, emerging competition jurisdictions should be sceptical of advice that recommends “wholesale copying or partial importation from establish competition rules.”313

#### Regulatory convergence undermines sustainable development – devastates poverty and sustainable growth

Cheng ’12 [Thomas; 1/1/12; Assistant professor at the Faculty of Law of the University of Hong Kong; Chicago Journal of International Law; "Convergence and Its Discontents: A Reconsideration of the Merits of Convergence of Global Competition Law," vol. 12, https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1362&context=cjil]

Serious poverty and income inequality are prevalent in many developing economies. These phenomena present two main challenges to developing countries as far as competition law enforcement is concerned. One is the need to encourage entrepreneurship to promote inclusive growth; the other is the need to protect impoverished consumers from exploitative practices. A number of commentators, including Fox, have argued that developing countries must pursue inclusive growth that will alleviate poverty and reduce income inequality.162 Inclusive growth requires opportunities for upward economic mobility, an important avenue for which is entrepreneurship.'63 For those who are at the bottom of the economic ladder in a developing country, often the only way to break out of poverty is to start their own businesses, which are going to be, at least initially, SMEs. Therefore, encouragement of entrepreneurship and assistance to SMEs must be a central pillar in every inclusive growth strategy. If competition law is to complement an inclusive growth strategy, it must afford SMEs stronger protection than is customary in established jurisdictions and be particularly vigilant against abuse of dominance. This is especially so because dominant firms in developing countries are often former state monopolies that still benefit from official patronage or informal connections to the state. Their privileged positions make it even harder for new private firm rivals to compete with them.

The poorest in many developing countries live below the poverty line and often scrape by with no more than a dollar or two a day.'64 They are often malnourished, sick, and illiterate, which severely curtails their productivity and ability to improve their economic well-being. Therefore, an inclusive growth strategy must include policies to combat malnourishment, poor health, and illiteracy. While the bulk of the responsibility will fall on government programs that directly confront these problems, competition law has a role to play. Competition law enforcement may focus on goods that have the most direct impact on the nutritional, health, and educational needs of the poorest in developing countries. Anticompetitive conduct in these sectors should be dealt with harshly.

Beyond that, developing country competition authorities may consider taking a tougher stance on exploitative practices by dominant firms. This is despite the fact that most established jurisdictions, especially the US, have largely left exploitative practices out of the purview of competition law."' The usual justification for this stance is two-fold. First, there is a serious implementation problem of distinguishing between very high prices and excessive prices.'6 6 Such distinctions are notoriously difficult to draw. The inability to do so undermines effective enforcement and legal certainty for firms seeking to comply with the law. Second, there is the theoretical objection that the opportunity to reap temporary monopoly profit spurs firms to compete and innovate.'6 1 In the industrialized nations, the general view is that consumers are able to bear momentary high prices, which will be eroded once a new competitor enters the market. Short-run monopolistic prices are the price that consumers pay for the benefit of keener long-run competition and innovation. While consumers in developed nations may be in a position to withstand such high prices, the poorest consumers in developing countries are not. Any extra cost for a basic necessity will have a direct and severe impact on their overall standard of living. For example, 10 percent more spent on foodstuffs may require consumers to remove their children from school."' The plight of these consumers therefore may justify a more assertive stance on exploitative practices in markets for basic necessities.

#### SDGs are leverage points that solve extinction BUT failure causes cascading risks that cumulatively outweigh any single risk, causing extinction

Fenner and Cernev 20, [Richard Fenner (BSc (Hons) PhD CEng MICE FCIWEM) is Director of the MPhil in Engineering for Sustainable Development at Cambridge, Cernev – Australian National University, Canberra, Australia, The importance of achieving foundational Sustainable Development Goals in reducing global risk, Volume 115, January 2020, https://www.sciencedirect.com/science/article/pii/S0016328719303544]

Fig. 3 demonstrates that cascade failures can be transmitted through the complex inter-relationships that link the Sustainable Development Goals. Randers, Rockstrom, Stoknes, Goluke, Collste, Cornell, Donges et al. (2018) have suggested that where meeting some SDGs impact negatively on others, this may lead to “crisis and conflict accelerators” and “threat multipliers” resulting in conflicts, instability and migrations. Ecosystem stresses are likely to disproportionately affect the security and social cohesion of fragile and poor communities, amplifying latent tensions which lead to political instabilities that spread far beyond their regions. The resulting “bad fate of the poor will end up affecting the whole global system"(Mastrojeni, 2018). Such possibilities are likely to go beyond incremental damage and lead to runaway collapse.

The World Economic Forums’ Global Risks Report for 2018 shows the top five global risks in terms of likelihood and impact have changed from being economic and social in 2008 to environmental and technological in 2018, and are closely aligned with many SDGs (World Economic Forum, 2018). The report notes “that we are much less competent when it comes to dealing with complex risks in systems characterised by feedback loops, tipping points and opaque cause-and-effect relationships that can make intervention problematic”. The most likely risks expected to have the greatest impact currently include extreme weather events natural disasters, cyber attacks, data fraud or theft, failure of climate change mitigation and water crises.

These are represented in Fig. 3 by the following exogenous variables. “Climate change” drives the need for Climate Action (SDG 13), “Cyber threat” may adversely impact technology implementation and advancement which will disrupt Sustainable Cities and Communities (SDG 11); Decent Work and Economic Growth (SDG 8) and the rate of introduction of Affordable and Clean Energy (SDG 7), with reductions in these goals having direct consequences in also reducing progress in the other goals which they are closely linked to. “Data Fraud or Threat” has the capacity to inhibit innovation and Industrial Performance (SDG 9), reducing competitiveness (and having the potential to erode societal confidence in governance processes). “Water Crises” (linked with climate change) have a direct impact on Human Health and Well Being (SDG 3) as well as reducing access to Clean Water and Sanitation (SDG 6) and reducing agricultural production which increases Hunger (SDG 2). The causal loop diagram also highlights “Conflict” as a variable (driven by multiple environmental-socio-economic factors) which together with regions most impacted by climate degradation will lead to an increase in migrant refugees enhancing the spread of disease and global pandemic risk, thus impacting directly on Human Health and Well Being (SDG 3)

4.2. Existential and catastrophic risk

The level and consequences of these risks may be severe. Existential Risks (ER) have a wide scope, with extreme danger, and are “a risk that threatens the premature extinction of humanity or the permanent and drastic destruction of its potential for desirable future development” (Farquhar et al., 2017,) essentially being an event or scenario that is “transgenerational in scope and terminal in intensity” (Baum & Handoh, 2014). With a smaller scope, and lower level of severity, global catastrophic risk is defined as a scenario or event that results in at least 10 million fatalities, or $10 trillion in damages (Bostrom & Ćirković, 2008). Global Catastrophic Risk (GCR) events are those which are global, but they are durable in that humanity is able to recover from them (Bostrom & Ćirković, 2008; Cotton-Barratt, Farquhar, Halstead, Schubert, & Snyder-Beattie, 2016) but which still have a long-term impact (Turchin & Denkenberger, 2018b).

Achieving the Sustainable Development Goals can be considered to be a means of reducing the long-term global catastrophic and existential risks for humanity. Conversely if the targets represented across the SDGs remain unachieved there is the potential for these forms of risk to develop. This association combined with the likely emergence of new challenges over the next decades (Cook, Inayatullah, Burgman, Sutherland, & Wintle, 2014) means that it is of great value to identify points within the systems representations of the Sustainable Development Goals that could both lead to global catastrophic risk and existential risk, and conversely that could act as prevention, or leverage points in order to avoid such outcomes. This identification in turn enables sensible policy responses to be constructed (Sutherland & Woodroof, 2009).

Whilst existential threats are unlikely, there is extensive peril in global catastrophic risks. Despite being lesser in severity than existential risks, they increase the likelihood of human extinction (Turchin & Denkenberger, 2018a) through chain reactions (Turchin & Denkenberger, 2018a), and inhibiting humanity’s response to other risks (Farquhar et al., 2017). It is necessary to consider risks that may seem small, as when acting together, they can have extensive consequences (Tonn, 2009). Furthermore, the high adaptability potential of humans, and society, means that for humanity to become extinct, it is most likely that there would be a series of events that culminate in extinction as opposed to one large scale event (Tonn & MacGregor, 2009; Tonn, 2009).

Whilst the prospect of existential risk, or global catastrophic risk can seem distant, the Stern Review on the Economics of Climate Change estimated the risk of extinction for humanity as 0.1 % annually, which accumulates to provide the risk of extinction over the next century as 9.5 % (Cotton-Barratt et al., 2016). With respect to identifying these risks, it is known that in particular, “positive feedback loops… represent the gravest existential risks” (Kareiva & Carranza, 2018), with pollution also having the potential to pose an existential risk.

## 5

### Ftc da

#### The FTC will enforce ‘right to repair’ now---it spurs growth and innovation, particularly in agriculture.

Minter ’21 [Adam; July 11; Columnist and author; Bloomberg, “Americans Must Reclaim Their Right to Repair,” <https://www.bloomberg.com/opinion/articles/2021-07-11/americans-must-reclaim-their-right-to-repair>]

When the Apple II personal computer was shipped in 1977, it came with a [detailed manual](https://archive.org/details/Apple_II_Mini_Manual/page/n49/mode/2up) for upgrading and repairing the device. Parts were readily available from Apple Inc. (and, later, other manufacturers), and if Apple owners didn’t want to fix or upgrade at home, they could find plenty of small, competitive repair businesses to do the work for them.

That was then. These days, Apple’s products arrive sealed shut, often with [proprietary screws](https://www.ifixit.com/News/9905/bit-history-the-pentalobe). Service manuals, circuit-board schematics and repair parts are [reserved](https://www.ifixit.com/News/43179/apple-endangers-our-business-model-gets-a-repairability-point-for-it) for Apple’s technicians, shops and a handful of “authorized” partners. With no access to parts, manuals or indie repair shops, consumers pay much more to keep their devices running.

President Joe Biden’s new executive order to promote competition encourages the Federal Trade Commission to end such anti-competitive repair monopolies. It’s a contentious move. Apple and the makers of other technological products from farm tractors to [35mm cameras](https://www.ifixit.com/News/1349/how-nikon-is-killing-camera-repair) argue that their repair monopolies are good for consumers. But as these monopolies have grown, their toll on consumers, the environment and American productivity and innovation has risen. Biden’s recognition of a “right to repair” can help lower these costs and, at the same time, spur new kinds of growth across the economy.

Repair has always been a part of American life. The first prairie farmers had no option but to repair their own carts and plows. When mechanization came along, farmers became expert technicians — so skilled that companies often consulted them on tractor designs. During the past 15 years, as computers have been integrated into expensive farm equipment, that relationship has broken down. The handful of remaining implement manufacturers make sure that only dealerships, with specialized software tools, can diagnose problems. Those same tools are often also needed to install parts and authorize repairs.

The costs to farmers can be significant. Paying a Deere & Co dealership to plug in a computer to clear an error code on a tractor or combine can cost [hundreds of dollars](https://www.vice.com/en/article/xykkkd/why-american-farmers-are-hacking-their-tractors-with-ukrainian-firmware) — not including transporting the tractor to the dealership. Worse, by limiting access to crucial diagnostic and repair tools, manufacturers cause significant delays during harvest, planting and other busy periods. At certain times, a piece of equipment immobilized for even a few hours can cost a farmer thousands of dollars.

As farmers lose money, farm manufacturers with parts and service businesses [profit handsomely](https://uspirg.org/feature/usp/deere-headlights). From 2013 to 2019, Deere & Co annual sales of new equipment declined 19%, to $23.7 billion, while sales of parts increased 22%, to $6.7 billion. Harvester manufacturers aren’t the only ones who’ve spotted a growth market in restricting access to repair. In 2019, Apple’s Tim Cook [conceded](https://www.apple.com/newsroom/2019/01/letter-from-tim-cook-to-apple-investors/) that lower-cost iPhone battery replacements had negatively impacted new iPhone sales. More expensive repairs, on the other hand, lead customers to think they may as well buy a new phone.

That’s bad for the buyers of Apple’s expensive new phones and even worse for lower-income consumers who rely on secondhand devices. Lack of competition in repair markets raises the cost of owning older devices, and ultimately accelerates their untimely, wasteful disposal.

The first calls to roll back manufacturer restrictions on repair, in the early 2010s, were focused on cars. But the problem now encompasses everything from phones to farm equipment. Since 2014, [32 states](https://www.repair.org/legislation) have considered so-called Fair Repair bills. Earlier this year, the New York legislature became the [first](https://states.repair.org/states/newyork/) to pass one.

But manufacturers have pushed hard to defeat such legislation. In 2017, Apple warned Nebraska lawmakers that Fair Repair “would make it very easy for hackers to relocate to Nebraska.” [TechNet](http://technet.org/), a trade group that represents Apple, Amazon Inc. and Google, has [warned](https://www.bloomberg.com/news/articles/2021-05-20/microsoft-and-apple-wage-war-on-gadget-right-to-repair-laws) several states that Fair Repair legislation would somehow jeopardize the safety of devices. (TechNet did not respond to requests for examples of such consumer safety threats.)

The federal government has not bought these arguments. In May, the Federal Trade Commission [reported](https://www.ftc.gov/news-events/blogs/business-blog/2021/05/nixing-fix-report-explores-consumer-repair-issues) that “many of the explanations manufacturers gave for repair restrictions aren’t well-founded.” Biden’s executive order now encourages the FTC to “limit powerful equipment manufacturers from restricting people’s ability to use independent repair shops or do DIY repairs.”

#### The plan trades off.

Nylen ’20 [Leah; December 10; Antitrust journalist; Politico, “FTC suffering a cash crunch as it prepares to battle Facebook,” <https://www.politico.com/news/2020/12/10/ftc-cash-facebook-lawsuit-444468>]

The agency that just launched a landmark antitrust suit to break up Facebook is so strapped for cash that its leaders have discussed shrinking their staff and warned against taking on more cases.

In a series of emails to all Federal Trade Commission staff, obtained by POLITICO, Executive Director David Robbins said the agency would face a period of “belt tightening” to cut costs — and that filing fewer cases and trimming litigation expenses must be on the table.

“[W]e will either need to bring fewer expert intensive cases or significantly decrease our litigation costs (e.g. experts, transcripts, litigation support contractors, etc.),” Robbins said in an Oct. 29 email.

The emails offer an increasingly dire portrait of the money woes facing the FTC, which has launched a record amount of litigation in the past year even as the pandemic has caused a sharp reduction in the corporate merger filing fees that normally supply about half its budget. The crunch also raises the possibility that the FTC may not have the cash it needs to win its case against Facebook, which is gearing up for an expensive fight, or to take on additional companies like Amazon.

#### Extinction.

Castellaw ’18 [John; March 14; Lieutenant General in the United States Marine Corps, member of the Center for Climate and Security’s Advisory Board, teaching fellow in the College of Business and Global Affairs at the University of Tennessee; Senate Committee on Foreign Relations, “Why Food Security Matters,” <https://www.foreign.senate.gov/imo/media/doc/031418_Castellaw_Testimony.pdf>]

Food Security Is Critical to Our National Security

The United States faces many threats to our National Security. These threats include continuing wars with extremist elements such as ISIS and potential wars with rogue state North Korea or regional nuclear power Iran. The heated economic and diplomatic competition with Russia and a surging China could spiral out of control. Concurrently, we face threats to our future security posed by growing civil strife, famine, and refugee and migration challenges which create incubators for extremist and anti-American government factions. Our response cannot be one dimensional but instead must be nuanced and comprehensive, employing “hard” as well as “soft” power in a National Security Strategy combining all elements of National Power, including a Food Security Strategy.

An American Food Security Strategy is an imperative factor in reducing the multiple threats impacting our National wellbeing. Recent history has shown that reliable food supplies and stable prices produce more stable and secure countries. Conversely, food insecurity, particularly in poorer countries, can lead to instability, unrest, and violence. Food insecurity drives mass migration around the world from the Middle East, to Africa, to Southeast Asia, destabilizing neighboring populations, generating conflicts, and threatening our own security by disrupting our economic, military, and diplomatic relationships. Food system shocks from extreme food-price volatility can be correlated with protests and riots. Food price related protests toppled governments in Haiti and Madagascar in 2007 and 2008. In 2010 and in 2011, food prices and grievances related to food policy were one of the major drivers of the Arab Spring uprisings.

These conclusions are based on my decades of experience while serving as a Marine around the world and from a lifetime as a steward of the soil on my family farm in Tennessee. I see food security strategy in military terms as either being “defensive” or “offensive”. “Defensive” includes those actions we take to protect our agricultural infrastructure including crops, livestock and the food chain here in the United States. Conversely, the “Offensive” side of food security takes the initiative to deal with food security issues overseas and this is where I will spend most of my time today.

There is a good reason for our success on the “defensive” here at home in ensuring our own food security. As my good friend and former Tennessee Deputy Agriculture Commissioner Louis Buck points out to me, American agriculture has always been about public/private enterprise. The Morrill Act of 1862 – showing our Country’s foresight and confidence in the future even in the dark days of our Civil War – created our Land Grant University model of teaching, research and extension. And equally importantly, we have a private sector that values individual initiative, unleashing an unparalleled vitality. With that vitality driving innovation, our farmers and ranchers leverage the expertise and information from the public sector to manage risks and seek profits from deployed capital. But above all, American farmers and ranchers are our “citizen soldiers” on the front lines here at home fighting to guarantee our food security.

America is also blessed with fertile soil, water availability, moderate climate, and the advanced technology to successfully utilize our abundance. Whether I walk the corn fields of Indiana or the cotton fields of Tennessee, I see agricultural technology in use that is amazing. Soon after I retired from the Marines and came home to the family farm, I climbed into the cab of a self-propelled sprayer. Settling into the seat was like strapping into the cockpit of one of the aircraft I flew, except the sprayer had more computing power and better data links. All these factors, public and private, natural and manmade, hard work and innovation, combine to provide the American people with the widest choices in the world of wholesome foods to eat and clothes to wear.

## Trade Adv

### 1NC – Alt Causes

#### Anti-dumping is increasing and legal

Murray ’19 [Allison Murray; 05/2019; Loyola Law School, Los Angeles, Juris Doctor; "Given Today’s New Wave of Protectionism, is Antitrust Law the Last Hope for Preserving a Free Global Economy or Another Nail in Free Trade’s Coffin?" https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=1785&context=ilr]

Critiques aside, the benefit of anti-dumping policies is that they can be effective even without a supranational system of power. Much like a country’s standard trade tariff systems, the duties are imposed by that country without requiring any coordination or cooperation from other countries.88 However, unlike standard trade tariff systems, anti-dumping measures are still an acceptable application of a country’s power because they are not precluded by trade agreements.89 In light of the recent economic struggles of the Western world and resulting protectionist views, there seems to be no incentive for countries to subvert the trend toward increased anti-dumping enforcement.

Extraterritorial antitrust thumps – allows unlimited American prosecution of foreign companies.

#### Protectionist merger policy is an alt cause to antitrust

Ikejiaku ’21 [Brian; 2021; Senior Lecturer in Law at Coventry University, PhD from the Research Institute of Law, Politics, & Justice (RILPJ) at Keele University; Utrecht Journal of International and European Law, “Competition Law as an Instrument of Protectionist Policy: Comparative Analysis of the EU and the US,” vol. 36; KP]

(iii) Merger regulation and protectionism

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

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

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

#### Growing FDI protectionism also thumps.

Davis ’21 [Naomi; February 2; FDI consultant at Investment Monitor, with expertise in location benchmarking and cross-border investment; Investment Monitor, “The rise of protectionist FDI regulations,” <https://www.investmentmonitor.ai/insights/the-rise-of-protectionist-fdi-regulations>; KP]

A country establishing foreign investment laws to protect its national security is nothing new. However, in line with the global rise of foreign direct investment (FDI) protectionism, an ever-growing number of countries are reconsidering what constitutes a threat to their national security or public interest. As a result, an increasing number of governments are establishing FDI screening mechanisms, expanding the range of sectors subject to them, and lowering the thresholds for investments that require prior approval. Investment Monitor’s FDI regulations database offers a general overview of these protectionist policies from country to country as well as the restrictions that have been implemented in relation to Covid-19.

The US’s anti-China policies

The US is one of the leading proponents of protectionist FDI regulations. The Foreign Investment Risk Review Modernization Act (FIRRMA) was signed into law by then-president Donald Trump in August 2018 and became fully effective in February 2020. The act strengthened and modernised the Committee on Foreign Investment in the United States (CFIUS) to handle national security concerns more effectively. Although no explicit reference about China is made in FIRRMA’s provisions, the primary objective of the act is to give the CFIUS greater visibility into Chinese investment in the US.

The EU’s protectionist path

Similarly, the EU had already been outlining protectionist measures pre-pandemic. Regulation (EU) 2019/452, the first set of EU-level rules aimed explicitly at FDI, was first adopted in March 2019, and became fully operational in October 2020. The regulation created a cooperation mechanism for member states and the European Commission to exchange information and, if necessary, raise concerns related to specific investments. While the regulation does not replace FDI screening measures within the member states, it aims to encourage cooperation, information sharing and transparency regarding FDI control. Several EU countries, among them Germany, Austria and France, have already toughened their investment regimes following the adoption of the regulation, while others including the Czech Republic, Denmark and Ireland are preparing draft bills that will soon be enacted into law.

New era for Chinese FDI regulations

China’s Foreign Investment Law (FIL) came into force on 1 January 2020, ushering in a new era for its foreign investment regime. The FIL expanded the scope of China’s national security review to include transactions between two foreign entities if there is a Chinese company or Chinese interests involved. As per rules published in December 2020, a body for security reviews will also be established and headed by the National Development and Reform Commission and the Ministry of Commerce. In addition, in December 2020, the Market Access Negative List was released, which outlines the industries that are either restricted or prohibited from both foreign and domestic investment. While the 2020 list features eight fewer restricted sectors than in 2019 (123 down from 131 in the previous edition), investors in industries such as agriculture, mining and financial services will still face restrictive measures.

The impact of Covid-19

This protectionist trend has been exacerbated following the Covid-19 outbreak, with a raft of temporary amendments introduced by countries worldwide to protect vulnerable companies from opportunistic foreign takeovers. Numerous countries, including the UK and Japan, implemented measures to protect domestic life sciences companies while Australia made all foreign takeover proposals, regardless of sector or monetary value, subject to up to six months’ scrutiny. As the pandemic rages on in many parts of the world and economic recession looms, it remains to be seen which countries will loosen, extend or make permanent these changes.

### 1NC – Say No

#### Entrenched political interests ensure other countries won’t follow through with export cartel investigations even if they agree

Sokol ’09 [D. Daniel Sokol; 2009; 1 Assistant Professor, University of Florida Fredric G. Levin College of Law; University of Florida Legal Studies Research Paper, “What Do We Really Know About Export Cartels and What is the Appropriate Solution?” No. 2009-05]

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

### 1NC – No Competition Protectionism

#### Zero empirical basis for protectionism – only our study is complete

Bradford et al ’17 [Anu H. Bradford; Robert J. Jackson Jr.; Jonathon Zytnick; 7/23/17; Henry L. Moses Distinguished Professor of Law and International Organization at the Columbia Law School; Professor of Law and Director, Program on Corporate Law & Policy at Columbia Law School; Ph D Candidate in Economics at Columbia University; "Is EU Merger Control Used for Protectionism? An Empirical Analysis." https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=3094&context=faculty\_scholarship]

Previous work on the determinants of Commission antitrust enforcement has produced decidedly mixed results. Bergman et al. (2005), relying on a sample of 96 mergers notified to the Commission between 1990 and 2002, find that political variables—such as the nationality of the merging firms—have no significant effect on the probability of an adverse ruling. Similarly, Lindsay et al. (2003), examining 245 Commission merger decisions between 2000 and 2002, do not find the nationality of the bidder to be a statistically meaningful predictor of Commission action.

By contrast, Aktas et al. (2004, 2007, 2012) have published a series of papers seeking to establish whether Commission merger review reflects a pro-EU bias. In their initial 2004 study, the authors found that investors anticipate higher costs to merging parties when the Commission intervenes in a case involving a non-EU bidder. In a 2007 follow-up piece, the authors examined a sample of 290 Commission merger decisions between 1990 and 2000, finding that the Commission is more likely to oppose a merger when the bidder is a foreign national and when the merger adversely affects European competitors.11 But in 2012, Aktas et al reevaluated that finding, concluding on the basis of an updated sample that the bidder’s status as a foreign national is not a meaningful predictor of outcomes in the Commission merger-review process.

By contrast, Ozden (2005) studies the 209 largest mergers between 1995 and 1999 involving at least one US firm. That study finds that more extensive merger review is more likely if, among other things, the target is European or all U.S. firms in the industry have high market share. Ozden concludes that the higher likelihood of merger review in cases involving a European target reveals a political and economic tendency to protect European firms. 12

None of this prior work, however, made use of a comprehensive sample of all mergers reported to the Commission since the inception of the merger-review process in 1990. Nor, for the reasons described below, did those studies feature covariates addressing significant variation over time, among industries, and among nations. In this Article, we introduce a novel dataset that offers the most comprehensive view of the Commission’s antitrust decisions to date. We describe that dataset in detail in the next section.

### 1NC – Export Cartels Not Key

#### Export cartels are not key and don’t create protectionism

Bradford ’12 [Anu H. Bradford; 2012; Henry L. Moses Distinguished Professor of Law and International Organization at the Columbia Law School; Research handbook on the economics of antitrust law; "Antitrust Law in Global Markets," https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=2977&context=faculty\_scholarship]

Antitrust protectionism can also manifest itself in the types of exemptions given to domestic companies. For example, scholars have frequently cited exemptions for export cartels in domestic antitrust laws as an example of biased antitrust enforcement that favors domestic fi rms.144 An export cartel refers to an agreement between two or more fi rms to charge a specifi ed export price or to divide export markets among them.145 The difference between an export cartel and a normal cartel is that an export cartel restricts its collusive behavior to goods or services that are exported to foreign markets. Export cartels enhance the welfare of domestic firms, which can extract supracompetitive profits at the expense of foreign consumers. The export cartel’s home state does not have the incentive to pursue the cartel’s anticompetitive activity given that the entire anticompetitive harm falls outside of its jurisdiction.146

To illustrate how export cartels can serve states’ protectionist interests, assume that state A is the exporting jurisdiction, and state B is the importing jurisdiction. Critics of export cartel exemptions fear that state A exempts export cartels because it fails to consider the cartels’ anticompetitive eff ects on state B’s consumers. Knowing this, state B likewise chooses to exempt export cartels from its antitrust laws, given that the anticompetitive harm falls on state A’s consumers. As a result, both state A and state B fail to pursue export cartels, causing harm to both state A and state B consumers. This yields a suboptimal payoff for both states.

It is, however, unclear that the above description of the strategic situation is accurate. One may argue that export cartel exemptions do not pose a serious international enforcement problem. Even when state A exempts the export cartel from its antitrust laws, state B can pursue the export cartel under its domestic antitrust laws as long as the cartel adversely aff ects competition in state B’s domestic market.147 One can even argue that the decision by state A not to prosecute the cartel represents optimal allocation of jurisdiction: state B is in a better position to evaluate the effects of the cartel on its own market. Of course, this argument assumes that state B has the resources to impose eff ective remedies on the cartel. Eff ective prosecution by state B may therefore require assistance from state A, in particular if the evidence is located in the jurisdiction of the latter.148

### 1NC – AT: Populism Impact

#### Populism is no threat

**Akkerman 17** Tjitske Akkerman, Political Science Professor at the University of Amsterdam, the Netherlands. [Populism is overrated – if there is a threat to democracy, it’s from authoritarian nationalism, July 31st, https://blogs.lse.ac.uk/europpblog/2017/07/31/populism-is-overrated-if-there-is-a-threat-to-democracy-its-from-authoritarian-nationalism/]//BPS

Populism is perhaps the most overrated concept today. The presumption that populism is threatening to destabilise democratic regimes in Europe abound in the media as well as in academia. Populism is, as Cas Mudde has argued, not anti-democratic but against liberal democracy. It endorses the ideal of a majoritarian or popular democracy, based on the general will of the people. Yet, this potential threat to liberal democracies is merely hypothetical. There is a current wave of populism in Europe and there is pressure on liberal freedoms in many European countries, but is populism a significant cause of the current pressures on liberal democracies? To identify threats (or correctives if you like) to liberal democracies it is important to assess the impact of populism instead of assuming it. Research indicates that populist parties have had little impact on democratic institutional reform in Western Europe so far. With predominantly proportional electoral systems and coalition governments in which populist parties are most often still junior partners, significant opposition of courts, parliaments and civil societies, liberal democracies in Western Europe overall provide resilient contexts. However, this still leaves open the possibility that populism has been a major force behind the establishment of illiberal regimes in Hungary, Poland or Latin America, and that it may still grow into such a force in Western Europe. My arguments to question the potential impact of populism on liberal democracies are more general. First, populism is not a core ideology of political parties or movements in Europe. Neither populist parties nor their voters tend to give much weight to issues of democratic reform. Dissatisfaction with politics is a marginal reason for voters in Western Europe to vote for radical right-wing parties, and dissatisfaction does not play a role at all as a motivation to electorally support left-wing populist parties. Like their voters, populist parties do not give much salience to issues of democratic reform. For radical right-wing populist parties, for instance, proposals to introduce direct forms of democracy or to reform the judiciary tend to be instrumental to anti-immigration policies and security issues. Nationalism and authoritarianism are much more important ideological sources for these parties than populism. For left-wing populist parties, it is still to be seen whether they aim to reform liberal democracies into popular democracies. Second, not all populist parties are against liberal democracy. Some parties are merely rhetorically populist. The Dutch Socialist Party (SP), for instance, is widely regarded as a populist party. Surely, the party often contrasts the good people to corrupt elites like bankers, but the SP is also committed to a liberal democracy. This is in contrast to Geert Wilders’ radical right-wing Party for Freedom (PVV) that is not only rhetorically populist, but also shows little commitment to liberal democracy. Third, the pressure on liberal democracies is not restricted to populist parties. Policy proposals and legislative initiatives that are in tension with or defy fundamental freedoms are also coming from mainstream parties. Systematic comparative research is still lacking, but a case study of the Netherlands makes clear that policies that are in conflict with the rule of law are not restricted to populist parties.

## Resources adv

### 1NC – No Potash Cartel

#### The potash cartel is broken

Treadgold ’15 [Tim; 5/10/15; Commodities reporter and geologist; Forbes; “Wave Goodbye To Another Commodity Cartel As Potash Goes The Way Of Oil,” https://www.forbes.com/sites/timtreadgold/2015/03/10/wave-goodbye-to-another-commodity-cartel-as-potash-goes-the-way-of-oil/?sh=309e5e0020ab]

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

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

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

Lost Pricing Power

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

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

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

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

High Prices Damaged Demand

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

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

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

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

Chinese Buyers Hold The Whip Hand

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

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

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

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

The System Is Falling Apart

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

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

### 1NC – Uniqueness

#### Chinese food security is high.

Deng et al. ’21 [Longyun et al.; August 28; School of Geography and Environment, Shandong Normal University; Environmental Science and Pollution Research, “Multiscale analysis of factors affecting food security in China,” <https://link.springer.com/article/10.1007/s11356-021-16125-1#Sec20>; KP]

Food security in China and its influencing factors are characterized by spatial heterogeneity and differences in scale, and smaller scale showed greater heterogeneity than the larger scale; therefore, multiscale research can provide more scientific suggestions for improving food security at various scales. At the prefectural level, food security had obvious spatial heterogeneity, and more than 90% of cities showed an upward trend in food security, with the most marked improvements occurring in North and Northeast China. Added value of tertiary, which can provide food purchasing power (domestic or international trade) and ensure local food security, was the main factor affecting food security. Moreover, for 89% of cities, the agricultural factors of arable land area, grain-sown area, and the social factor of urbanization exerted positive effects on food security and had negative effects for 11% of cities. At the provincial level, food security in all provinces was on the rise during the research period. Hotspots were concentrated in Northeast China while cold spots were concentrated in southern provinces. The gross agricultural output value was the main determinant of food security. At the national scale, food security showed a significant upward trend, and added value of primary was the main influencing factor. The agricultural (fertilizer application amount, effective irrigation area, total power of agricultural machinery) and economic (added value of primary, secondary, and tertiary industry) factors had positive effects on the level of food security at the three scales.

### 1NC – AT: Resources Impact

#### Resources are abundant – access to them is increasingly economically feasible

Teixeira 17 – PhD in Sociology at the University of Wisconsin-Madison (Ruy, “The Optimistic Leftist: Why the 21st Century Will Be Better Than You Think”, 3-7 Kindle Reader)

Another important reason why the left will be forced to embark on a different, growth-oriented economic path is the necessity of transitioning to a green economy. The left embraces this goal for the very good reason that the future of the planet may depend on it. But the intimate connection of this goal to strong economic growth is frequently missed. For one thing, the amount of infrastructure and scientific investment that will be necessary to facilitate this transition is immense, exactly the sort of investment that can help combat secular stagnation and promote full employment.35 Clean energy investments are particularly effective at creating jobs—and relatively good ones.36 And of course such a program is completely incompatible with austerity economics. So an effective approach to the clean energy transition both needs and should facilitate strong growth. It is odd that the left does not stress this connection more than it does. This may have something to do with prevalence of anti-growth sentiments in some of the greener parts of the left. These sentiments could not be more misguided. The basis for these views has been well summarized31 by technologist Ramez Naam, author of the recent book The Infinite Resource: The Power of Ideas on a Finite Planet. The world is facing incredibly serious natural resource and environmental challenges: Climate change, fresh water depletion, ocean over- fishing, deforestation, air and water pollution, the struggle to feed a planet of billions. All of these challenges are exacerbated by ever rising demand—over the next 40 years estimates are that demand for fresh water will rise 50%, demand for food will rise 70%, and demand for energy will nearly double—all in the same period that we need to tackle climate change, depletion of rivers and aquifers, and deforestation. 3 All of these problems are tied in one way or another to economic growth. So, logically, if we want to stop the problems shouldn't we just stop or even reverse economic growth? Naam rejects this logic despite fully embracing the scale of the problems we face. His first reason is that stopping growth would not work morally or practically. It would not work morally, Naam argues, because most of future growth will benefit people whose living standards are far below those in the developed world. To tell these people to forego the benefits of economic growth, when those in the developed world have already received those benefits, is grossly unfair. As Naam points out: Roughly one billion people alive today on the planet have access to automobiles, air conditioners, and central heat. The other six billion do not. Two billion lack access to a toilet. One billion lack access to electricity. The bulk of the growth to come over the next few decades— in global GDP, in energy consumption, in C02 emissions, in food consumption, in water use— will all come from the developing world. That growth isn't trivial. It isn't about building McMansions or driving SUVs. It is, by and large, growth that reflects the aspirations of billions of people around the world to rise to a level of comfort that nearly everyone in the rich world— even those we consider poor—enjoy. A path forward that doesn't allow room for billions to rise out of poverty and to at least this modicum of comfort is not a very appealing one. 3 And stopping growth would definitely not work practically. Even if we could stop growth in the developed world, how are we to stop those in the developing world who want to consume more from doing so? Short of enforcing austerity in the developing world, we can't do that. Naam's second reason is that stopping growth is not necessary. The resources—water, food, energy, etc.—available to humanity greatly outstrip the potential needs of our population, not only today but in the future. The problem lies in accessing those resources in an economically feasible and environmentally sustainable way. That in turn depends on innovation, both technological and economic. Take energy and, by extension, climate change. The price of solar energy is coming down fast; a watt of solar power today costs only 5 percent of what it cost in 1980. But it's still too expensive to out-compete fossil fuels, even setting aside, for the moment, the storage problem. The solution: massive investment in clean energy R&D (the United States currently invests only $5 billion a year in this, actually less than it invested in the 1980s) and a carbon tax to encourage clean energy use and accelerate innovation. As Naam puts it: The fundamental driver here is economics. Consumers, businesses, and industry want energy. They need energy. That's true everywhere in the world. And they will buy whatever sort of energy is cheapest. Indeed, if a new source of energy is sufficiently cheaper than the old, consumers will switch their energy consumption from the old to the new. If we want to win the race against climate change, one thing matters more than all others: make renewable energy (including storage) cheap. Dirt cheap. And do it fast. Naam makes similar arguments about challenges in the areas of water and food: the solution is not to stop growth but to innovate and to do it fast. In this, he joins such "green growth" advocates as Ralf Fücks, president of the Heinrich Böll Foundation and a leading member of the German Green Party, whose new book Green Growth, Smart Growth lays out a number of ideas similar to Naam's.41 This is indicative of a new attitude toward economic growth among much of the green left in advanced countries.

## Outreach Adv

### 1NC – Say No

#### No alignment – states won’t agree even if both want a deal and it’s unenforceable – US and EU, developing countries

Bradford ’12 [Anu H. Bradford; 2012; Henry L. Moses Distinguished Professor of Law and International Organization at the Columbia Law School; Research handbook on the economics of antitrust law; "Antitrust Law in Global Markets," https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=2977&context=faculty\_scholarship]

Section IIB explored the possibility that the risk of defection inherent in the prisoner’s dilemma would impede states from pursuing international antitrust cooperation. However, some scholars have questioned this premise. They argue that the greatest impediment for international cooperation does not stem from the possibility of defection but from the diffi culty of reaching the right set of rules in the first place. States prefer convergence to nonconvergence; they just cannot agree on optimal rules to converge on. Bradford, for instance, has argued against the widespread existence of PD- incentives,193 asserting instead that the collective action problem underlying international antitrust cooperation resembles a ‘coordination game’ where the distributional consequences of various forms of coordination impede states’ ability to settle on any given set of international rules.194 This theory assumes that different antitrust rules are optimal for different states. The costs and the benefi ts of a harmonized antitrust regime would therefore be unevenly distributed among states, creating a distributional conflict. This distributional conflict impedes states’ ability to agree on the focal point of coordination.195

The most prominent distributional conflict exists between the United States and the EU. Despite the increasing alignment of the US and EU antitrust laws over the last decade, some key differences persist, as discussed above in section IC.196 These enduring differences explain why the United States and the EU have competed against each other to direct international convergence towards their respective antitrust laws.197 Even if both entities recognize that increased international coordination would lead to greater effi ciency, each would prefer to internationalize their respective domestic antitrust regimes.198

This type of strategic situation is known as a coordination game with distributional consequences (CGDC) or a ‘battle of the sexes’.199 In a CGDC, both states prefer a coordinated outcome to a noncoordinated outcome, even though both also favor coordinating at their respective preferred equilibrium. For instance, the United States and the EU might both prefer coordination to noncoordination given that their antitrust laws today are increasingly similar; neither the United States nor the EU would incur signifi cant adjustment costs if they were to coordinate to each other’s preferred equilibrium. Still, it is reasonable to assume that, given the choice, both players would favor their own respective regimes as the focal point of convergence. The challenge is to choose between the focal point the United States prefers (US antitrust law) and the focal point the EU prefers (EU antitrust law).

Similar distributional conflict exists between developed countries and developing countries.200 Developed countries want any international antitrust regime to reduce multinational corporations’ (MNCs’) transaction costs of operating on global markets. They also seek to ‘level the playing fi eld’ by enhancing MNCs’ access to the developingcountry markets.201 In contrast, developing countries resist the idea of a level playing field, asserting that their small domestic corporations require protection to be able to compete against MNCs.202 Developing countries struggling with capacity constraints also fear that an international antitrust agreement would impose unduly burdensome obligations on them. Both developed countries and developing countries would benefi t from coordination, but they disagree on whether to coordinate around the focal point preferred by the former or the latter.

Even the proponents of an international antitrust agreement concede that the unequal distributional consequences of any international agreement would present a challenge for cooperation.203 This has led them to propose ways to overcome the distributional confl ict. Eleanor Fox, for instance, invokes the spirit of cosmopolitanism as a solution to the existing disagreements among antitrust jurisdictions on optimal law and policy.204 Fox calls on countries to bar government actions ‘where the harm [the action] causes to world welfare perceptibly outweighs the benefi t to the nation’s citizens’.205 However, critics have pointed out that this approach raises practical and moral concerns. On the practical level, data measuring ‘world’ and ‘domestic’ welfare would be hard to obtain and, once obtained, would remain controversial; it would also be difficult for countries in the WTO to agree when ‘perceptible’ net losses to world welfare have occurred. On an even more fundamental level, Fox’s approach raises concern on whether ‘world welfare’ is the appropriate standard to use in the fi rst place. As Marsden argues, the national government’s obligations should lie with its national constituency.206

### 1NC – Harmonization Fails

#### Harmonizing antitrust law is impossible.

Kretzmer ’19 [Tevia; June 25; Master of Laws at the University of Chicago Kent, Attorney at Lanham-Love; Social Science Research Network, “To What Extent, If at All, Is It Desirable or Realistic to Aim for a Global Agreement on Competition Policy?” https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3404131]

The prospects of successfully harmonising a cohesive competition policy does not appear possible in the current global competition policy climate. A lack of organisation, direction and leadership among the supposed main role players in international competition law has led to an environment whereby each country adheres to its own set of competition laws or policies, and an extraterritorial application of same upon foreign companies or governments where they are deemed to be noncompliant with the home country’s competition laws. This conduct between countries can cause major conflict with regard to sovereign interests.50 The difficulty in formulating a global consensus on competition policy is by no means an enviable task, with such difficulty well demonstrated in how states endured nearly a century of negotiations in order to reach an agreement on how to control the spread of disease,51 a seemingly necessary agreement one might think. This inflexibility can be transferred to a key question in the field of competition law which is well postulated by Dabbah who questions how much certain countries would forgo national interests and priorities in favour of a global agreement based on common rules and shared objectives.52 As far back as 1997, attitudes towards the efficacy of creating a global competition policy had been questioned. Joel Klein, head of the antitrust division in the US Department of Justice in the late 1990s, set out his thoughts on whether the WTO would succeed in establishing a harmonised regime by stating:

this working group can play an important educational role in demonstrating the important contributions of antitrust to efficient national…we are less persuaded that the time is ripe for the negotiation of global antitrust rules.53

A delusionary perception of the current competition law system is that the current laws are suitable for all relevant parties to some extent. Interestingly however, it has been pointed out that in the majority of cases, the respective competition laws of developing countries has been ‘modelled on the basis of the competition laws found in the developed world.’54 The competition laws that have been created by developed states are arguably not suited to the starkly different needs of their developing counterparts. This is well supported by the fact that many developing countries’ competition laws and policies can be traced to the significant amount of preferential trade agreements that were signed between developed and developing countries in the 1990s.55 This situation, whereby developing states have essentially employed competition policies that are naturally suited to developed countries and their specific interests seems farcical. As has been noted, due to the fact that competition policy is always evolving, specifying overarching and binding rules on every country may be misguided.56

### 1NC – Autonomy Turn

#### No convergence – states can’t agree and specificity means they harm growth

Martin ’21 [Thomas Martin; 2019; LLB, Queens University Belfast; Dissertation for Master of Laws at the University of British Columbia; "Is global convergence of competition law the answer? How East Asian challenges demonstrate the limitations of the convergence strategy," https://open.library.ubc.ca/soa/cIRcle/collections/ubctheses/24/items/1.0396863]

Over a period of fifty years, the landscape of advice for jurisdictions seeking to adopt competition law has drastically changed.343 Early adopters of competition law only had one model upon which to base their new legislations: the competition laws of the United States. However, as has been demonstrated through analysis of both Japan and South Korea, it quickly became clear to the early adopters that this initial model was not fully suitable for their jurisdiction. 344 As such, changes to the original US model were being made and new competition models were created. Hence, by the time competition law began proliferating across the globe, countries seeking to adopt competition law were confronted with a myriad of models that could potentially have contradictory claims.345 In an effort to respond to the rapid proliferation of competition law and to overcome the contradictory claims, scholarship developed to promote the idea of global competition convergence. Convergence was presented as the best, perhaps only, available strategy for “reducing the conflict, costs, and uncertainties that the transnational competition law regime imposes on global economic activity.”346 The efforts to harmonize competition law have been led by established jurisdictions, such as, the United States and the European Union, and through organisations like the Organisation for Economic Cooperation and Development (OECD) and the International Competition Network (ICN), a concerted attempt has been made to establish a consensus on different aspects of competition law. As such, deviations from this converged global approach have been considered to be inappropriate applications of competition law.347

This research adds to the existing literature on competition law convergence by questioning the facile assumption that the convergence strategy should be followed across the globe. Through examination of the competition law in Japan, South Korea, and China, this thesis has illustrated the inherent flaws in the assumption that there is a universally applicable set of competition law principles. Firstly, the convergence strategy relies on there being a universal consensus on the objectives of competition law and, as demonstrated through the analysis of the East Asian region, such a consensus is lacking. As argued by Oliver Budzinski, “there neither is, nor can ever be, an ultimately ‘right’ competition theory.”348 In Japan, for example, their differing views on importance of competition law, coupled with their own policy goals for economic development, led to a long period of inconsistent enforcement under their Western model of competition law. Considering the myriad of diverging views on the objectives of competition law, this thesis would argue that any deep convergence encompassing all aspects of competition law is not attainable. Furthermore, this thesis contends that competition law principles and doctrines must be fashioned and applied with an acute awareness of the local economic, political, and socio-cultural characteristics

of the adopting jurisdiction.349 The lack of experience and expertise in many emerging jurisdictions places a responsibility on the established enforcement agencies and international organisations to make recommendations that will be applicable to the particular economic needs of the adopting country.350 Under the current convergence strategy, ‘best practices’ are created which do not incorporate the specific economic, political and socio-cultural contexts of the adopting country. Therefore, this thesis argues that some level of regulatory diversity must be maintained in competition law. Each country should adopt a competition law that has been adequately adjusted to its needs and capabilities.

### 1NC – No Harmonization Spillover

#### No one wants to harmonize other regulatory areas of law

Martin ’21 [Thomas Martin; 2019; LLB, Queens University Belfast; Dissertation for Master of Laws at the University of British Columbia; "Is global convergence of competition law the answer? How East Asian challenges demonstrate the limitations of the convergence strategy," https://open.library.ubc.ca/soa/cIRcle/collections/ubctheses/24/items/1.0396863]

Before this thesis further develops the case for maintaining regulatory divergence in competition law, it is important to recognise some of the main points in favour of developing a global approach to competition enforcement. The adoption of competition law by large swathes of jurisdictions has given rise to challenges for global corporations. Damien Geradin notes that the decentralised globalisation of antitrust has had three major implications for global corporations.326 First, it has increased the cost of doing business and the complexity of large-scale competition investigations, which now have a multi-jurisdictional component.327 Second, it has increased the risk of contradictory decisions where a firm’s behaviour is reviewed by different antitrust authorities under different sets of rules.328 And thirdly, it has increased the likelihood that some decisions will be guided by protectionist motives.329 However, competition law is far from the only area of business regulation that faces the problem of cross-jurisdictional regulatory inconsistencies. In fact, these inconsistencies are a fact of life for multinational corporations and are present in most areas of law, including corporation law, tax law, labour law, products liability law, securities regulation, and environmental law.330 Yet, as noted by Braithwaite and Drahos, there has been much less clamour for harmonization in these other areas of law, with corporation law, for example, relatively free from efforts at harmonization.331 Furthermore, this thesis would argue that for international convergence of competition law to be totally feasible and beneficial, there would have to be an international consensus on the objectives of competition law. As this research has demonstrated from the analysis of Japan, South Korea, and China, such a consensus is lacking. Indeed, Oliver Budzinski has argued that “there neither is, nor can ever be, an ultimately ‘right’ competition theory.”332

### 1NC – Squo Solves

#### Existing agreements and coop solve

Bradford ’12 [Anu H. Bradford; 2012; Henry L. Moses Distinguished Professor of Law and International Organization at the Columbia Law School; Research handbook on the economics of antitrust law; "Antitrust Law in Global Markets," https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=2977&context=faculty\_scholarship]

Also the opportunity costs of forgoing global antitrust rules are relatively low.223 Most states – the strong antitrust jurisdictions in particular – can apply their domestic antitrust laws extra- territorially as long as their respective domestic markets are affected by the alleged anticompetitive conduct. Extra- territorial enforcement by the importing jurisdiction limits externalities stemming from any underenforcement of antitrust laws by the exporting jurisdiction.224 Further, the existing bilateral agreements and voluntary multilateral cooperation within the OECD and the ICN have enhanced convergence and reduced the frictions arising from decentralized enforcement. While voluntary guidelines and case- by- case cooperation may have their limits, they may lower the opportunity cost enough to make the expected benefi ts of a global antitrust regime no longer worthwhile.225 Paul Stephan also argues that international rules are unnecessary because there are sufficient market incentives for states to refrain from over- and underenforcement of their antitrust rules. For instance, a state that chooses to protect domestic producers against welfare- enhancing competition does so at the expense of future investment and innovation, the welfare of its consumers, and the competitiveness of its industries. 226

## 2NC

## Trade

### 2NC – Alt Causes – General

#### Slew of other policies murder free trade.

Alden ’21 [Edward; July 21; Ross distinguished visiting professor at Western Washington University, a senior fellow at the Council on Foreign Relations; Foreign Policy, “Free Trade Is Dead. Risky ‘Managed Trade’ Is Here,” <https://foreignpolicy.com/2021/07/20/free-trade-dead-managed-carbon-border-tax-climate-tariffs-trade-war-protectionism-esg-biden-trump-eu-china/>; KP]

For three quarters of a century, the growth of world trade—which has spread prosperity to much of the planet, including hundreds of millions of people in the developing world—has been underpinned by a simple commandment: Thou shalt not discriminate. In the years after World War II, most nations agreed, for the first time in history, they would treat foreign-made goods the same from almost every country. The United States would, for example, charge the same tariff on a sweater imported from Italy as on one imported from Bangladesh and impose no additional discriminatory regulations. First, this powerful principle allowed many poor countries, such as Bangladesh, to grow by exporting goods. Later, when advances in communications and logistics pushed globalization forward, it allowed companies to spread production around the globe, confident they could make goods in almost any country and export them to any other under identical rules.

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

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

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

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

Recently, these exceptions have mushroomed. Former U.S. President Donald Trump cited national security—a narrow but permitted GATT exception—to raise taxes on imports of steel and aluminum from some countries. U.S. President Joe Biden is making similar arguments when he insists goods like semiconductors, advanced electric batteries, pharmaceuticals, and critical minerals be produced primarily in the United States. Washington has threatened to block goods deemed environmentally damaging and is currently pursuing a case against Vietnam over its exports of furniture and other wood products made from timber alleged to have been illegally harvested. The European Union, the United States, Britain, and Canada recently imposed trade sanctions targeted at imports from China’s Xinjiang region to protest Beijing’s treatment of the region’s Uyghur Muslims.

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

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

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

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

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

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

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

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

#### American free trade is in the grave.

Campanella ’20 [Edoardo; November 5; a Future World fellow at IE University’s Center for the Governance of Change in Madrid; Foreign Policy, “Free Trade Is Over,” <https://foreignpolicy.com/2020/11/05/protectionism-trump-biden-buy-american-tariffs/>; KP]

The United States is emerging from this presidential election as divided as ever: geographically, ideologically, and economically. Democratic nominee Joe Biden, who for now seems to have the edge to secure the White House, would have needed a solid congressional majority to implement the ambitious fiscal and environmental agenda to rebuild America that he ran on.

Controlling the House of Representatives will not be enough. Thus curbed in his ability to pursue his broader agenda, Biden will likely at least try to shield the American middle class from global economic turbulence through trade policy. In short, whether Biden or President Donald Trump eventually triumphs, protectionism is here to stay.

Four years in power have allowed Trump to engineer the most abrupt shift in U.S. trade policy since World War II, marking its departure from the rules-based trading system that Washington had established over the previous seven decades. A Biden presidency would lead to a partial normalization in trade relations, marking a return to a more multilateral and less transactional approach. But even before messy electoral outcomes became likely, it was foolish to expect him to repudiate Trump’s protectionist legacy.

From the very beginning, Biden made clear that “economic security is national security.” In that framework, domestic issues, primarily the regeneration of the American middle class and small businesses, would always top his agenda, especially amid the ongoing COVID-19 pandemic. It makes sense then that protectionism has crept into his platform. The candidate’s “Made in America” agenda hides veiled forms of protectionism aimed at promoting goods and services that are produced domestically. Under the “Buy American” slogan, for example, he envisages $400 billion in government procurement investment that would target goods and services provided exclusively by U.S. businesses. And consider his proposed carbon adjustment fee against countries that fail to meet their climate and environmental obligations. That is nothing more than a tariff.

Even beyond efforts like these, which would actually reinforce protectionism, there is the simple political fact that, on entering the White House, Biden would have a hard time unrolling Trump’s protectionist measures or launching new free trade agreements.

Although Biden blamed Trump’s tariffs for hurting the U.S. economy, he would have to perform a complicated balancing act to lift them. This is especially true when it comes to China because he is backed by labor unions, which want jobs protected from Chinese competition, but also by farmers, who want to regain access to the lucrative Chinese market. In an attempt to build a common front against China, Biden might lift tariffs on aluminum and steel produced by European companies. That might look like a win for free trade, but such a concession would likely be made conditional on NATO spending commitments, a shared reform of the World Trade Organization, and reassurances concerning 5G deals with Beijing.

Finally, even if the political will were there to forge new trade agreements, it would take years to do so through the normal processes—even though Trump has had a habit of just declaring them. According to the Peterson Institute for International Economics, it takes on average one and a half years to negotiate a free trade agreement with the United States and then more than three and a half years to reach the implementation stage. More complex, multiparty agreements like the Trans-Pacific Partnership (from which Trump withdrew) can take almost a decade.

In short, if Biden wins, Trump’s confrontational protectionism may give way to a more selective form—focused on specific issues like the environment, aimed at the protection of U.S. manufacturing, and targeted at real geopolitical rivals. But the days of free trade are over.

#### Anti-dumping laws cause trade wars and protectionism – outweighs antitrust.

Murray ’19 [Allison; 2019; Loyola Law School, Los Angeles, Juris Doctor; Loyola of Los Angeles International and Comparative Law Review, “Given Today's New Wave of Protectionism, is Antitrust Law the Last Hope for Preserving a Free Global Economy or Another Nail in Free Trade's Coffin?” vol. 42; KP]

Anti-dumping policies are the antitrust topic that receives the most frequent and stark criticism. Anti-dumping policies allow governments to "impose duties [(e.g., fines on a company)] whenever goods are sold in export markets at less than their fair [(e.g., market)] value."" The policies are intended to "prevent firms from price discriminating between markets," especially national ones.54 Similar to the above protectionist arguments about antitrust laws on the whole, critics often argue that antidumping laws "induce more distortions in the market than they resolve.""

What sets antidumping apart from the rest of antitrust policy? Why is antidumping a riper target for criticism? Although all competition laws address market distortions, anti-dumping is the only measure among them that does not merely act to eliminate anti-competitive behavior of a firm; rather, anti-dumping is punitive in nature.56 A successful antidumping claim results in relief that is more severe than a mere injunction or making the injured party whole." Anti-dumping cases result in the imposition of fines and high tariffs on the anticompetitive party, even to the extent that the fines or tariffs dramatically affect the party's ability to continue its current and future business dealings.5 For this reason, certain countries, like Japan, share the view that anti-dumping measures are the most easily abused antitrust tool and a great threat to the preservation of free market competition."

Anti-dumping legislation gained popularity after the Second World War, perhaps unsurprisingly coinciding with the declining popularity and use of tariffs.60 Today, over ninety countries have adopted anti-dumping laws; nearly every country that has antitrust laws has anti-dumping laws as well." Some experts argue that trade liberalization and anti-dumping laws have spurred the rise of anti-dumping measures. These experts point to agreements that have eliminated trade tariffs as the cause of these adoptive anti-dumping measures.62 See Figure 1 below.

Even against the "we want free trade" public backdrop of the 1980s and 1990s, countries attempted to protect themselves from overt anti- competitive behavior, like price dumping.' Any alternative risked losing public support for trade liberalization at the first sign of abuse in the market." One can imagine the public outcry that would ensue if a country was unable to respond to anticompetitive behavior. Even the U.S., which had traditionally been a staunch advocate for free trade, "imposed more than 600 antidumping measures and nearly 300 anti-subsidy duties since 1980," each of which were "aimed at correcting what the U.S. government deemed to be unfair trade."'

A key criticism of anti-dumping policy is that it is used inconsistently to serve special political interests.6 7 In the U.S., steel is an "emblem of [the] country's descent from greatness."68 American steelmakers have lobbied for decades to preserve and protect the domestic industry.69 Today, the U.S. makes "half as much as 50 years ago and employs just a third of the workers."" Past U.S. Presidents made it part of their political platforms to initiate trade policies that would limit the importation of competing steel products, especially from Europe and Japan." The Trump Administration appears to be no exception. Although Trump recently resorted to imposing tariffs, he first used anti-dumping measures to protect the American steel industry.72

The first trade case brought by the U.S. government during the Trump Administration was an anti-dumping case alleging that producers from other countries (Brazil, Norway, and Australia) deliberately sold silicon metal (a raw material required to produce steel) "at artificially low prices in the U.S."73 The alleged dumping margins were 134.9%, 45.7%, and 52.8% respectively. 4 After an affirmative ruling in favor of the U.S. in October of 2017, the U.S. Department of Commerce ("DOC") made final affirmative determinations in February of 2018.71

Additionally, on November 28, 2017, the DOC self-initiated an anti- dumping case against China alleging that China exported common alloy aluminum sheets at a low price in order to materially injure the domestic industry for that product in the U.S."6 This self-initiation is highly unusual and has not been done in more than twenty-five years.77 In its initial evaluation, the U.S. estimated that the illegal prices being set were between 48 to 100 percent less than the fair market value.78

These are only a few examples of antidumping cases that have affected the darlings of American industry. According to the DOC, "enforcement of U.S. trade law is a prime focus of the Trump administration. From January 20, 2017, through February 26, 2018, the Department of Commerce initiated 102 antidumping and countervailing duty investigations-a 96% increase from 52 in the previous period. The Commerce Department currently maintains 424 antidumping and countervailing duty orders which provide relief to American companies and industries impacted by unfair trade." 79

Of course, the hope remains that the U.S. process continues to be impartial and unmoved by political interests. Fairness is an integral part of our justice system and serves as the cornerstone justification for the imposition of otherwise unacceptable tariffs on foreign parties. However, such need for impartiality (in perception or otherwise) has not dissuaded special interest groups and political figures from publicly lobbying the U.S. Government to make certain rulings. As to the self-initiated case against China referenced above, Congressmen, CEOs, labor union leaders, and other politically powerful individuals created a spectacle of their public lobbying efforts, citing the importance of "protecting" the U.S. constituents from "trade practices .. . threatening U.S. jobs.""

The perception that the law is susceptible to manipulation based on special political interests is partly what made Boeing's 2017 filings against Bombardier for anti-dumping violations, and the preliminary findings of the U.S. International Trade Commission ("ITC") in favor of Boeing, so controversial.' Essentially, Boeing brought an action against Bombardier, a smaller competitor, alleging that Bombardier had been offering passenger jet products at well below its own costs.82 Boeing, a U.S. company, was ridiculed in the press and accused of filing the suit merely to obliterate a smaller foreign competitor's growing foothold in a product market where Boeing already had strong market power." Boeing was perceived as a bully and a whiner, while Bombardier, the party alleged to have engaged in the improper and anticompetitive conduct, was portrayed as a victim.

The U.S. Government made its preliminary ruling that Bombardier had engaged in anticompetitive conduct and recommended the application of hefty duties (-300%) against Bombardier as punishment.' The preliminary ruling suggested that Boeing was well within its rights to bring the claim, despite being the larger and more powerful market 'player. Even still, the international and domestic press toward Boeing and the U.S. was pointedly negative. High profile national leaders, including British Prime Minister Theresa May, threatened trade wars against the U.S. and warned Boeing that continued action could jeopardize its contracts.85 Ultimately, the U.S. International Trade Commission ("USITC") reversed its position and issued a decision against Boeing.86 The surprise ruling, which was contrary to their initial recommendation, calls into question whether the USITC succumbed to the immense political pressure surrounding the issue."

Critiques aside, the benefit of anti-dumping policies is that they can be effective even without a supranational system of power. Much like a country's standard trade tariff systems, the duties are imposed by that country without requiring any coordination or cooperation from other countries." However, unlike standard trade tariff systems, anti-dumping measures are still an acceptable application of a country's power because they are not precluded by trade agreements." In light of the recent economic struggles of the Western world and resulting protectionist views, there seems to be no incentive for countries to subvert the trend toward increased anti-dumping enforcement.

### 2NC – No Competition Protectionism

#### No protectionist anti-trust – it backfires on domestic industries and it’s too cumbersome to enforce

Bradford ’12 [Anu H. Bradford; 2012; Henry L. Moses Distinguished Professor of Law and International Organization at the Columbia Law School; Research handbook on the economics of antitrust law; "Antitrust Law in Global Markets," https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=2977&context=faculty\_scholarship]

Other authors have questioned that trade fl ows could lead to biased antitrust enforcement. Einer Elhauge and Damien Gerardin note that the effects doctrine compromises states’ ability to engage in systematic underenforcement or overenforcement.135 If a net- exporting country were to enact overly lax antitrust laws, its producers would still be subject to the antitrust laws of the importing jurisdiction, assuming their activities have an eff ect on that market.136 The prospect of a concurrent jurisdiction by importing jurisdictions renders net- exporting countries’ underenforcement irrelevant, steering them towards optimal regulation.137 Elhauge and Geradin point out that the importing jurisdiction also has optimal incentives to regulate as long as it embraces the consumer welfare standard.138

Michael Trebilcock and Edward Iacobucci question whether trade defi cits or surpluses would ever determine countries’ preferred level of antitrust regulation, given that trade imbalances usually constitute only a small percentage of any nation’s GDP.139 John McGinnis notes that tr ade fl ows have a tendency to fl uctuate, and doubts that countries amend their antitrust laws in response to their changing trade balances.140 McGinnis further argues that trade- flow bias would be infeasible to apply in practice, considering that it is often difficult to categorize a multinational corporation as ‘domestic’ or ‘foreign’. Hence, exercising bias against a ‘foreign’ corporation may have the unintended eff ect of harming the corporation’s many domestic shareholders and employees.141 Anu Bradford points out that biased policies may have similar unintended consequences on domestic industries that rely on intermediate goods, since such goods comprise approximately 50% of the total imports in developed countries.142 Thus, if a country is a net- importer, predisposed to adopt overly strict antitrust laws, those strict antitrust laws would not only target the foreign producers attempting to penetrate the market but also domestic firms that depend on imported goods as inputs or raw materials.143 This criticism, if accepted, suggests that trade flows have, at best, only a marginal effect on countries’ level of antitrust regulation.

#### No stats for protectionism

Bradford et al ’17 [Anu H. Bradford; Robert J. Jackson Jr.; Jonathon Zytnick; 7/23/17; Henry L. Moses Distinguished Professor of Law and International Organization at the Columbia Law School; Professor of Law and Director, Program on Corporate Law & Policy at Columbia Law School; Ph D Candidate in Economics at Columbia University; "Is EU Merger Control Used for Protectionism? An Empirical Analysis." https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=3094&context=faculty\_scholarship]

As noted above, the Commission has routinely been criticized for being particularly interventionist when a firm based in the United States is a party to the transaction. This could be, for instance, because of the inevitable economic and political rivalry between two major economic powers that (combined) host the majority of the world’s major companies. Some critics also suggest that the EU is particularly envious of the US technological dominance and the demonstrated success of the many IP-rich US firms that risk leaving less innovative European companies behind.23

We therefore repeat our above regressions with a constructed dummy variable for whether the merger has a US-based acquirer and an EU-based seller. Table 7 mirrors Table 4 and compares mergers with US acquirers and EU sellers with all other mergers in the sample. Again, we find nothing but negative effects of US-based acquirer and EUbased seller on probability of Commission challenge, which suggest that, if anything, mergers with US acquirers and EU sellers are less likely to be challenged.

[Insert Table 7 Here.]

It is again instructive to further partition the dataset. In Table 8, we partition the mergers with non-EU acquirers and EU sellers into those with US acquirers and those with nonUS non-EU acquirers, and compare these different categories against the baseline of mergers with EU acquirers and EU sellers. The table shows that, compared to mergers with EU acquirers and EU sellers, neither the acquisitions of EU firms by US-based acquirers nor the acquisitions of US firms by US-based acquirers face greater likelihood of Commission intervention.

[Insert Table 8 Here.]

In Table 9, we find no evidence of protectionism when we include an interaction term with high-tech industries. The lack of evidence of protectionism remains when we perform the analysis using the primary place of business instead of the Commission’s designated nationality, or when we designate the nationality of the firms based on the acquirer’s ultimate parent’s place of business instead of that of the direct acquirer’s. Appendix Table 11 contains additional robustness checks.

## Resources

### 2NC – No Potash Cartel

#### Their ev is describing something that happened in the 2000s before the cartel was broken up – Michigan reads blue

Kwok 15 – (Tiffany Kwok, PhD Candidate @ University of Birmingham; published 2015, Edinburgh Student Law Review 2, no. 4, “Export Cartels: Analysing the Gap in International Competition Law and Trade,” doa: 6-9-2021) url: https://heinonline.org/HOL/P?h=hein.journals/edinslr2&i=474&a=dW1uLmVkdQ

(4)) Qualitative Effects of Export Cartels on Foreign Markets

Export cartels can also have qualitative effects on the market in addition to the heavy economic burden already sustained, particularly in developing countries. For instance, Canada's potash export cartel, which was in operation for forty years, faced significant criticism from the media and academics alike. PotashCorp used its jointly owned subsidiary Canpotex in order to coordinate sales with American companies Mosaic Co. and Agrium Inc. into export markets beyond North America. 14 Uralkali, Russia's largest producer of fertiliser quickly followed with a similar strategy of price fixing and production cuts. These cartels accounted for approximately 70% of the global trade in potash. 15 Due to the nature of potash itself, the geographical supply is highly concentrated, with Canada owning 52% of the world's known reserves, Russia owning 21%, Belarus owning 9% and Germany owning 8.4%.16 Therefore, countries without such reserves would be more heavily dependent on imports from other countries in order to meet their needs. This is problematic as potash is essential in the production of fertiliser used in the agricultural industry.

During a period of eighteen months, between January 2008 and October 2009 while the cartel was active, the price of potash increased by more than 400%.7 In order to maintain these high prices, both PotashCorp and Uralkali announced temporary production cuts in January 2012.18 These decisions had a devastating effect on developing countries such as India and China, who rely on imports in order to sustain their demands and are one of the largest consumers of potash in the world.

In 2011, Feng Mingwei, the deputy general manager of Sinofert Holdings Limited, the largest fertiliser importer in China stated, 'our dependence on imported potash fertiliser is a threat to our national food security.' 19 The issue with China's food supply was attributed to the monopolisation of the international exporters and the resultant increases in the international prices of potash.

Frederic Jenny identified three factors that an export cartel in the agricultural industry could contribute directly to food shortages in developing countries.20 First, higher incomes in developing economies, such as China and India, necessitate an increased demand in food consumption. Second, global population will increase from seven billion to more than nine billion by 2050, resulting in a further increase in demand for food. Third, due to industrial development, the amount of land available for agricultural purposes is steadily shrinking, placing a greater burden on the remaining farmland. This is especially problematic for developing countries as agricultural yields are typically much lower than those in developed countries. The problem is further exacerbated by the fact that potash has no convenient substitutes and therefore, in the long run, demand is fairly inelastic. 21

It follows therefore that if consumers of potash in developing countries are forced to pay a higher price on potash imports, they may not be able to afford the quantities of potash needed in order to sustain their food supply.

In response to the potash export cartel, India temporarily ceased its imports in 2009 and threatened to do so again in 2010.22 However, the country is entirely dependent on potash imports in order to meet the food needs of its population. As a result, its withdrawal from importation had little effect on the potash producers given their awareness that India could not sustain it for long without endangering its own crops. In such a situation, imposing Indian competition law and sanctioning the potash cartel would likely have created more problems than solutions. Export cartel members may have reacted to such a strategy by raising export prices to India in order to recover any monetary fines that may be imposed on them. It is also difficult to guarantee that sanctioning one export cartel will prevent cartelists from employing similar anticompetitive behaviours in India in the future. 23

#### Geopolitical and strategic disincentives mean it won’t be reestablished

Zhang ’17 [John; 7/5/17; Writer for Seeking Alpha; “Why The Potash Cartel Remains Dead (For Now),” https://seekingalpha.com/article/4085807-why-potash-cartel-remains-dead-for-now]

The potash market was thrown into turmoil after the break-up of the Belarusian Potash Company in mid-2013.

In the past three years, there have been numerous indications that both companies would negotiate a resurrection of the cartel, but none of them have materialized.

There are structural and geopolitical reasons why the cartel is unlikely to be re-established in the near future.

Ironically, the re-establishment of the BPC might encourage more potash production, leading to even lower medium- and long-term prices.

Each time the press has reported about negotiations between Uralkali and Belaruskali regarding potentially forming a new cartel, the share price of potash producers have spiked (I, II, III, IV, V). Each time, they gave back their gains once talks amounted to nothing. It's extremely puzzling that even though these failed talks have become commonplace, potash observers still assign some degree of credibility to these negotiations, as evidenced by the price movements of potash majors such as Potash Corp. (POT), Agrium (AGU) and Mosaic (MOS) during the most recent negotiations two weeks ago.

It is clear that most potash bulls continue to hope for a re-establishment of the BPC, but ascertaining the validity of this view requires deeper analysis of why the cartel collapsed the first place. The 2013 break-up of the Belarusian Potash Cartel is an intriguing incident, particularly because the arrangement had been very lucrative for both Belaruskali and Uralkali. However, a more in-depth analysis of the break-up shows it is not likely to be revived until certain financial and geopolitical conditions are met.

The Cartel's Collapse

From 2005 to 2013, BPC was the most powerful cartel in the global potash industry, with the ability to restrain and control supply, thus dictating prices across multiple markets. The cartel controlled roughly a third of global potash supply, and had the lowest cost among all large global producers.

In 2013, Uralkali unexpectedly pulled out from the cartel without informing Belaruskali. The result was nothing short of disastrous for their partner, who found their entire senior sales and marketing department empty in the morning. Although BPC served as the global trading arm for both producers, the executive suite was staffed mainly with Uralkali employees. They were the key persons who held the responsibility of maintaining customer relationships, negotiating contracts and expanding their client network.

Hence, the break-up was extremely bitter for the Belarusian side, and senior executives within the company resented the actions taken by their Russian counterparts. According to the Wall Street Journal, the break-up had severe effects on Belaruskali's subsequent marketing and sales. For instance, they were not invited to bid for China's annual contract in 2014, and would "turn up at conferences and not know anyone".

Undoubtedly, this created severe mistrust between the two companies, with particularly strong resentment from the Belarusian side. According to various insiders, subsequent negotiations that attempted to revive the cartel in 2013 and 2014 were plagued with blame-pushing and spiteful rhetoric.

Unequal Partners And Conditions For Cooperation

Although mistrust and resentment are clear hurdles to the revival of a cartel, the larger obstacle relates to the balance of power between both partners.

Although BPC was the trading and marketing arm for both companies prior to its breakup, Uralkali was also marketing its potash products through their own trading arm - Uralkali Trading. Although this was permitted under the framework of the agreement, it allowed Uralkali to vary output and adapt flexibly to market demands, enabling them to be markedly more profitable compared to their partner.

This arrangement made both parties unequal partners, particularly since Uralkali already had higher export volumes compared to Belaruskali. Since then, the Belarusian side has insisted on sales parity as a condition for resuming the cartel, since that is the only way to ensure both parties have an equal economic stake in the cartel. The Belarusian side has also repeatedly said that the entity should be located in Belarus.

Currently, production figures are still far apart, with Uralkali producing 11.7 million tonnes in 2016 and Belaruskali producing 10 million tonnes. Given that Belaruskali is operating close to full capacity, Uralkali would need to reduce their production, which is a thorny issue for management who has embarked on a volume-over-price strategy since late-2013. The cartel entity would also have to be located on either Belarusian or neutral entity, and be the exclusive trading arm for both partners to prevent a repeat of 2013.

Different Goals And Incentives

The long-term problem behind a Belaruskali-Uralkali partnership remains their incentives. As a privately-held company, Uralkali is incentivized to maximize shareholder profit over the long term, but Belaruskali has very different motivations as an economic apparatus of the Belarusian state. This crucial difference led to a significant conflict in 2013.

Back in late-2012, Belarus lost a key portion of their export income when Russia forced them to reduce the business of re-exporting petroleum products refined from Russian crude oil. This caused a large decline in the country's export revenue, which meant Belarus needed to export more potash to compensate for the decrease.

Subsequently, the Belarusian president passed a presidential decree allowing entities other than BPC to market potash exports. Although there remains a lack of concrete evidence that Belarus was channeling significant exports outside BPC, it signaled to the Uralkali Board that they were likely to pursue that course of action, if they hadn't already. In response, Uralkali accused Belaruskali of exporting potash to the Chinese outside of their BPC arrangement (Uralkali's CEO and board specifically cite decree no. 556 as their rationale and justification for pulling out of BPC).

The suspicion was exacerbated by the fact that Uralkali's stakeholders were not satisfied with the results of their price-over-volume strategy up till that point. Management lamented the loss of market share to alternative suppliers, which were aggressively ramping up production due to historically-high potash prices. A combination of these factors pushed Uralkali's management to make a preemptive move by quitting the cartel and quickly establishing new contracts with the Chinese and other key potash clients.

Hence, the conflicting incentives of Belaruskali and Uralkali's owners mean that geopolitical factors generate significant break-up risks for a cartel, even if it was to be re-established. Given that Belarus' foreign exchange reserves are at decade-lows with a persistent negative balance of trade, they have a greater incentive than ever to export increasing volumes of potash. In fact, Belaruskali has been operating near full capacity (estimated to be around 11 million tonnes) since 2014, with larger scheduled capacity increases at their Petrikov deposits in 2019 and 2020. Unlike NA producers, they have not idled mines or implemented cutbacks on capacity utilization, signaling their desire for greater output if the market is able stomach an increase.

It is difficult to understate the economic importance of Belaruskali to the national economy - they accounted for over $3B in export revenue last year, which is roughly 60% of Belarus' entire foreign exchange reserve. With a monthly trade deficit between $300-$400M, the country's reserves are dangerously close to being exhausted within a year or two macroeconomic pressures persist. Any internal or external shocks could create severe dislocation in the country's exchange rates and trade. As such, the state has a strong incentive to export as much potash as they can to build their reserves and balance trade flows.

In this context, Belaruskali is essentially a foreign exchange operation that enables the country to convert Belarusian rubles (used to pay costs of production) for USD and Euros (which they receive as payment for potash). With extremely low cash costs of production, Belarus has every incentive to ramp up production and increase capacity, whilst Uralkali is beginning to regret the results of their volume-over-price strategy. This has resulted in Belaruskali increasing output from 7 million tonnes in 2013 to nearly 10 million tonnes in 2014. The continued divergence in goals means a reunion is unlikely for now.

The Potash CapEx Cycle

Due to historically high prices from 2008 to 2013, a large number of greenfield and brownfield mines came into the market, funded by large miners such as BHP Billiton (NYSE:BHP). After BHP's attempt to buy Potash Corp. was blocked in 2010, the company announced a massive undertaking to develop and extract potash from the Jansen mine (note this was back in late-2013 when prices were much higher). Since then, the company has sunk $3.8B in CapEx into the project, even as potash prices drift lower. Management seems committed to the project in a classic sunk-cost fallacy reasoning and believes potash prices will recover.

BHP was not alone in their quest to produce potash - K+S began developing their large Bethune mine in 2013, and has begun production just a few months ago. This explains why the industry remains plagued with oversupply from numerous mines and low utilization rates, as many producers plowed money into developing potash resources in the past few years.

The cycle has yet to turn as new projects remain profitable at current prices, particularly in countries with lower production costs such as Turkmenistan (who recently built a new mine with plans for more). As it stands, production capacity has to decline further in order to reduce available supply before prices can balance out. Until the effects of lower CapEx are felt years later, potash prices are not likely to rebound.

Ironically, this analysis suggests that a re-establishment of the BPC cartel might be worse for potash prices since it encourages more development of more potash projects in a favorable price environment. As with most cyclical markets, the only cure for low prices is lower prices, which eventually leads to higher prices.

Conclusion

The BPC cartel is unlikely to be re-established unless both parties can agree on the following conditions:

Sales and export parity between both partners.

An entity incorporated in Belarus or a neutral territory.

Cartel must have the exclusive right to market the potash of both companies.

Alignment of incentives with regard to balancing volumes and prices. This requires the absence of geopolitical motivations that would conflict with the goals of Uralkali's private shareholder-driven aims.

Although I can foresee a scenario under which these four conditions will be met, it is unlikely to be achieved in the near future. The issues are complex and mistrust is deep, with neither side having a strong enough incentive to compromise since both remain largely profitable. As such, shareholders in North American potash producers should stop holding out hope for a new cartel to save them from this downcycle.

## outreach

### No Harmonization Spillover

#### No one wants to harmonize other regulatory areas of law

Martin ’21 [Thomas Martin; 2019; LLB, Queens University Belfast; Dissertation for Master of Laws at the University of British Columbia; "Is global convergence of competition law the answer? How East Asian challenges demonstrate the limitations of the convergence strategy," https://open.library.ubc.ca/soa/cIRcle/collections/ubctheses/24/items/1.0396863]

Before this thesis further develops the case for maintaining regulatory divergence in competition law, it is important to recognise some of the main points in favour of developing a global approach to competition enforcement. The adoption of competition law by large swathes of jurisdictions has given rise to challenges for global corporations. Damien Geradin notes that the decentralised globalisation of antitrust has had three major implications for global corporations.326 First, it has increased the cost of doing business and the complexity of large-scale competition investigations, which now have a multi-jurisdictional component.327 Second, it has increased the risk of contradictory decisions where a firm’s behaviour is reviewed by different antitrust authorities under different sets of rules.328 And thirdly, it has increased the likelihood that some decisions will be guided by protectionist motives.329 However, competition law is far from the only area of business regulation that faces the problem of cross-jurisdictional regulatory inconsistencies. In fact, these inconsistencies are a fact of life for multinational corporations and are present in most areas of law, including corporation law, tax law, labour law, products liability law, securities regulation, and environmental law.330 Yet, as noted by Braithwaite and Drahos, there has been much less clamour for harmonization in these other areas of law, with corporation law, for example, relatively free from efforts at harmonization.331 Furthermore, this thesis would argue that for international convergence of competition law to be totally feasible and beneficial, there would have to be an international consensus on the objectives of competition law. As this research has demonstrated from the analysis of Japan, South Korea, and China, such a consensus is lacking. Indeed, Oliver Budzinski has argued that “there neither is, nor can ever be, an ultimately ‘right’ competition theory.”332

### Squo Solves

#### Existing agreements and coop solve

Bradford ’12 [Anu H. Bradford; 2012; Henry L. Moses Distinguished Professor of Law and International Organization at the Columbia Law School; Research handbook on the economics of antitrust law; "Antitrust Law in Global Markets," https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=2977&context=faculty\_scholarship]

Also the opportunity costs of forgoing global antitrust rules are relatively low.223 Most states – the strong antitrust jurisdictions in particular – can apply their domestic antitrust laws extra- territorially as long as their respective domestic markets are affected by the alleged anticompetitive conduct. Extra- territorial enforcement by the importing jurisdiction limits externalities stemming from any underenforcement of antitrust laws by the exporting jurisdiction.224 Further, the existing bilateral agreements and voluntary multilateral cooperation within the OECD and the ICN have enhanced convergence and reduced the frictions arising from decentralized enforcement. While voluntary guidelines and case- by- case cooperation may have their limits, they may lower the opportunity cost enough to make the expected benefi ts of a global antitrust regime no longer worthwhile.225 Paul Stephan also argues that international rules are unnecessary because there are sufficient market incentives for states to refrain from over- and underenforcement of their antitrust rules. For instance, a state that chooses to protect domestic producers against welfare- enhancing competition does so at the expense of future investment and innovation, the welfare of its consumers, and the competitiveness of its industries. 226

### 2NC – AT: Say Yes to Non-Binding/Opt-In

#### 1NC Sokol is about non-binding commitments – says everyone says no to them

#### Countries are more likely to say no to non-binding US action – they don’t trust the US to enforce the agreement

Guzman ’98 [Andrew T; 1998; Law Professor at UC-Berkeley; New York University Law Review, “Is International Antitrust Possible?” vol. 73, no. 5]

Countries will be hesitant to enter into international agreements if those agreements can be circumvented simply by adjusting the levels and methods of enforcement. 122 In the United States, for example, the existence of civil jury trials would make it virtually impossible for American negotiators to promise fair treatment of foreigners in antitrust enforcement. Whether or not juries treat foreigners differently from Americans, 123 if foreign negotiators believe that they do, negotiations will become more difficult. Additionally, agreements that address enforcement levels and require minimum enforcement standards are likely to be difficult to negotiate.12 4

Footnote 124:

124 The enforcement structure of American law illustrates the difficulty of ensuring comparability and fairness in enforcement efforts across countries and firms, whether local or foreign. See Joseph P. Griffin, United States Antitrust Laws and Transnational Business Transactions: An Introduction, 21 Int'l Law. 307, 312-14 (1987) (describing federal, state, and private antitrust enforcement procedures). Several different enforcement organs exist in the United States, including the FTC, the Department of Justice, the states, and private parties. As a result of these numerous enforcement mechanisms, it would be difficult to construct an international agreement that would offer foreign signatories assurances as to the manner of antitrust enforcement.

Footnote 124 ends:

An additional problem is that certain enforcement regimes make it difficult for a country to control the enforcement of its own laws. For example, the antitrust laws of the United States are enforced by private parties, states, and various federal agencies. This system makes it difficult for the United States government to bind itself to any particular enforcement strategy. The Parker doctrine,12 s for example, allows states to create exemptions from the federal antitrust laws for particular industries. The ability of states to exempt these industries from compliance with federal antitrust laws makes foreign governments less confident in American negotiators because they lack the authority to remove these state exemptions.

#### They’ll only say yes to the weakest possible agreement

Bradford ’12 [Anu H. Bradford; 2012; Henry L. Moses Distinguished Professor of Law and International Organization at the Columbia Law School; Research handbook on the economics of antitrust law; "Antitrust Law in Global Markets," https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=2977&context=faculty\_scholarship]

Consequently, opposition to a global antitrust regime revolves around several related perceptions: that divergences across states loom too great, that such a regime would represent the lowest common denominator, that the global regime would not entail sufficient net benefits to make it a priority, or that it would magnify agency problems or even subject antitrust rules to trade policy. These reasons, taken together, help us understand why efforts to negotiate an international antitrust agreement have failed. Still, the idea of international antitrust governance continues to invite vibrant scholarly discussion. The last section of this chapter will sketch possible directions for that discussion going forward.

#### Also proves either the squo is sufficient or everyone says no

Murray ’19 [Allison Murray; 05/2019; Loyola Law School, Los Angeles, Juris Doctor; "Given Today’s New Wave of Protectionism, is Antitrust Law the Last Hope for Preserving a Free Global Economy or Another Nail in Free Trade’s Coffin?" <https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=1785&context=ilr>]

Given these historically failed and haphazard attempts, it is not likely that a uniform antitrust law can be adopted globally. China, the U.S., and the E.U. all subscribe to varying versions of free trade and what constitutes an appropriate method of enforcement. Further still, the national values significantly differ between these countries. In China, national security terms and the promotion of national industry is paramount.' Similarly, the U.S., while not allowing for the same breadth of application as China in its national security terms, seems determined to preserve its domestic laws despite the clear preference of other nations for E.U. competition laws. 134

B. Informal Harmonization and Cooperation

Efforts to informally harmonize international competition laws have continued despite the failure of formal international laws. The Organization for Economic Cooperation and Development (“OECD”) and the United Nations Conference on Trade and Development (“UNCTAD”) each adopted codes that outlined negotiations and agreed to competition law principles.135 The codes were completely informal and non-binding.136 Although the OECD’s latest recommendations for antitrust cooperation were revised relatively recently in 1995, the agreement is still a “law . . . of the softest variety.”137 This is in part because Western industrialized nations seek to address anticompetitive behavior, while the burgeoning countries are more concerned with promoting economic development and regulating multinational corporations.138

The International Competition Network (“ICN”) is another institution that encourages cooperative action on antitrust principles.139 However, the ICN, much like other informal networks, does nothing to limit or minimize the protectionist behaviors of countries, which is common in the face of uncertainty and lack of consensus on topics such as antitrust.140

Lack of enforceability aside, these negotiations and cooperative efforts “established a framework that has been reasonably successful and has set the stage for more binding commitments on a bilateral basis.”141 The fact of the matter is that there is no economic model that is globally or unanimously accepted by all nation-states, so there can be no truly successful global harmonization.142 To internationalize the law, even in an informal capacity, would require the policy behind the laws to be agreed upon.143 How can one agree to perfect and protect an economic policy that is not itself uniform amongst all nations?144

# Cp

### 2NC – AT: Links to Development DA

#### The CP puts the onus on developed countries and reduces the cost to developing antitrust regimes

Sokol ’09 [D. Daniel Sokol; 2009; 1 Assistant Professor, University of Florida Fredric G. Levin College of Law; University of Florida Legal Studies Research Paper, “What Do We Really Know About Export Cartels and What is the Appropriate Solution?” No. 2009-05]

This process would put the onus of enforcement on developed world countries— those countries that are more likely to have explicit or implicit export cartel exemptions. These countries are better able to absorb the cost of enforcement and have the knowledge and agency capacity to undertake review rather than developing world countries that are more likely to lack both evidence and effective enforcement tools. When a developed world country has an export cartel immunity, this raises the cost of domestic enforcement among younger antitrust agencies to a point in which the developing world agency cannot act to prevent overcharges by the cartel in its market. Because of the cost of information, it is much easier for developed world countries that have export cartel exemptions to keep track of companies that apply for such immunities. Antitrust agencies undertake enforcement actions ex-ante in a number of other situations, such as business review letters or pre-merger notification.

### 2NC – AT: Say No

#### Say no applies way more to the aff than the CP – if the logic of their say yes arguments is true, countries would be more likely to say yes to the CP

#### Everyone says yes – the CP avoids the reasons countries say no to the plan and incentivizes cartel bans.

Sayekti ’15 [Cenuk; August; Doctor of Philosophy in Law, Bachelor of Laws from Universitas Islam Indonesia; Macquarie Law School Faculty of Arts, “The Harmonization of Competition Policy in ASEAN Economic Community: Problems and Prospects”; KP]

Legal procedure and substance are interrelated; where there is harmonisation of substantive law without harmonisation of legal procedure, and vice versa, the harmonisation of the system will be fruitless in the long run.187 According to Crane, harmonising procedural law is less threatening to national jurisdiction, more modifiable, and less of a compromise on ideological principle compared to substantive law harmonisation.188 Further, harmonisation of procedural law and enforcement practices provides some benefits, such as simplifying merger requirements for firms. It also offers a framework for member states of the economic community to have formal competition law norms.189

In cases of cross-border mergers, the role of procedural law harmonisation is significant.190 The marked increase in the number of jurisdictions that have adopted merger review regimes makes it increasingly likely that multiple competition authorities will review cross-border M&As.191 In 2000, the International Competition Policy Advisory Committee (ICPAC) issued a Final Report, of which Annex 2-C comprised competition law merger notification systems from worldwide jurisdictions. In 1999, Annex 2-C showed that 67 countries had a form of merger notification system. Of these, only nine countries had voluntary notification systems, and 11 countries had provisions for mandatory notification of M&A transactions that met the post-closing requirement.192 The remaining 57 countries had provisions for merger mandatory pre- closing notification systems.193

The Annex described that the majority of jurisdictions had chosen to implement systems involving mandatory pre-closing merger notification. The widespread preference for such regimes may well reflect the following considerations, as stated in Chapter 3 of the ICPAC’s Final Report:

Advance notice is viewed as useful to competition authorities because it permits them to evaluate and either prohibit or restructure potentially anticompetitive transactions before the transaction is implemented. In this way, competition authorities avoid the widely acknowledged difficulties that accompany attempts to restore competition by unscrambling the eggs after allegedly anticompetitive transactions have been completed. Reliance on premerger notification systems to provide advance notice of proposed transactions is based in large part on the recognition that competition authorities have neither the time nor the resources to monitor all business transactions in an attempt to identify those that pose a threat to competition. Nor do they can detect those midnight mergers that are consummated without public notice. Moreover, it is not practical to place the burden of notification on concerned competitors and customers. Reliance on these entities to provide advance notice may prove imperfect either because these entities may not know about transactions before their consummation or because the transactions costs incurred by these entities in notifying the competition authorities may outweigh any benefits obtained by having the proposed transactions reviewed. For these reasons, many jurisdictions view premerger notification regimes as the most efficient way of systematically obtaining advance notice of potentially anticompetitive transactions.194

### 2NC – Solvency – Top Level

#### The CP avoids the pitfalls of both hard and soft law and only requires a paper record rather than US enforcement action

Sokol ’09 [D. Daniel Sokol; 2009; 1 Assistant Professor, University of Florida Fredric G. Levin College of Law; University of Florida Legal Studies Research Paper, “What Do We Really Know About Export Cartels and What is the Appropriate Solution?” No. 2009-05]

Battling export cartels requires a new approach from either existing hard law or soft law solutions. This Article advocates mandatory notification and transparency of export cartels by the WTO. Countries would require legitimate export joint ventures (even those with only an implicit exemption) to undertake a robust business review clearance from their home jurisdiction that would provide immunity for a set period of time based on the proposed business plan. Business review clearance would be publicly available. To have the immunity renewed past the initial period, companies involved in the joint venture would be required to provide evidence that the venture is not participating in anticompetitive activities abroad. This proposal is not the same as the developing world essentially buying the developed world agencies’ enforcement of export cartels. My proposal is more modest in that it would require fewer market access trade offs because the only function of the developed world antitrust agency is to create transparency and a paper record on export cartels. It would be up to the antitrust agency of the importing country to take steps against any potential anticompetitive behavior by export cartels. This proposal therefore reduces the cost of information for detection of export cartels.

#### CP solves sufficiently – notification regimes avoid the worst of all worlds.

Levenstein ‘5 [Margaret C. Levenstein and Valerie Suslow; 2005; Professor at Stephen M. Ross School of Business and Institute for Social Research, University of Michigan, and Researcher at NBER; Professor at Stephen M. Ross School of Business, University of Michigan; American University International Law Review, “The Changing International Status of Export Cartel Exemptions,” vol. 20 no. 4; KP]

A few countries, such as the United States and Australia, continue to offer explicit export exemptions. Two questions arise: Is this antiquated or protectionist thinking on the part of these "hold out" countries, or is it the correct policy stance? Do we want explicit exemptions, implicit exemptions, or no exemptions at all? Many would argue that we should have no exemptions: allowing firms to fix prices for domestic or export purposes should be illegal. But if we cannot achieve that goal in the near future, it may be worse, not better, to have countries moving to implicit exemptions if "implicit" implies no notification, no ongoing oversight, and increased uncertainty regarding a firm's vulnerability to foreign antitrust prosecution. If there are explicit exemptions, they should be based on considerations of global welfare, rather than "beggar-thy-neighbor" strategies.5 Countries should work together either to agree to eliminate export exemptions or to adopt explicit exemptions that are jointly monitored. The current patchwork of implicit and explicit exemptions is the least favored approach.

#### It builds support for cartel bans and uses shaming tactics to deter.

Sokol ‘9 [Daniel; 2009; Assistant Professor, University of Florida Fredric G. Levin College of Law; University of Florida Legal Studies Research Paper, “What do we really know about export cartels and what is the appropriate solution?” no. 5]

Compliance costs for reporting might have the secondary effect of creating support for increased competition advocacy to limit immunities in the first place. After all, if there is no anticompetitive effect, why have the exemption in the first place? One response may be that small companies may be risk averse and may not have the ability to afford sophisticated antitrust counsel about joint export situations.66 Such a claim may or may not be true. The impact of export cartels is on the foreign country but foreign antitrust agencies lack the capacity to make the determination for themselves if there is an anticompetitive harm as a result of the export cartel. The WTO prohibition would provide a policy lever to push for increased domestic policy change in export cartels and provide arguments for competition advocacy to limit any negative effects of such cartels. Competition advocacy would expose the true cost of such policies and make repeal more likely. It might also create shaming penalties. Suppose a well-known company like Proctor & Gamble was engaged in such an export cartel. The foreign antitrust agency could publicize that the export cartel members, including Proctor & Gamble, overcharge the poor.67 Though shaming might work if export cartel members are large corporations, shaming might have a more limited effect with smaller companies.

### 2NC – Solvency – Top Level

#### The CP avoids the pitfalls of both hard and soft law and only requires a paper record rather than US enforcement action

Sokol ’09 [D. Daniel Sokol; 2009; 1 Assistant Professor, University of Florida Fredric G. Levin College of Law; University of Florida Legal Studies Research Paper, “What Do We Really Know About Export Cartels and What is the Appropriate Solution?” No. 2009-05]

Battling export cartels requires a new approach from either existing hard law or soft law solutions. This Article advocates mandatory notification and transparency of export cartels by the WTO. Countries would require legitimate export joint ventures (even those with only an implicit exemption) to undertake a robust business review clearance from their home jurisdiction that would provide immunity for a set period of time based on the proposed business plan. Business review clearance would be publicly available. To have the immunity renewed past the initial period, companies involved in the joint venture would be required to provide evidence that the venture is not participating in anticompetitive activities abroad. This proposal is not the same as the developing world essentially buying the developed world agencies’ enforcement of export cartels. My proposal is more modest in that it would require fewer market access trade offs because the only function of the developed world antitrust agency is to create transparency and a paper record on export cartels. It would be up to the antitrust agency of the importing country to take steps against any potential anticompetitive behavior by export cartels. This proposal therefore reduces the cost of information for detection of export cartels.

#### CP solves sufficiently – notification regimes avoid the worst of all worlds.

Levenstein ‘5 [Margaret C. Levenstein and Valerie Suslow; 2005; Professor at Stephen M. Ross School of Business and Institute for Social Research, University of Michigan, and Researcher at NBER; Professor at Stephen M. Ross School of Business, University of Michigan; American University International Law Review, “The Changing International Status of Export Cartel Exemptions,” vol. 20 no. 4; KP]

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#### Exporting US antitrust law is bad—we should let countries develop their own specific form of atrust. Treat this as an impact turn to the third advantage

### 2NC – Link – Export Cartels

#### The aff’s blanket approach to export cartels uniquely triggers the link – aff arguments assume data based on US export cartels

Jensen-Eriksen ’13 [Niklas Jensen-Eriksen; Nov. 2013; University of Helsinki, Department of Philosophy; Revue économique; “A Potentially Crucial Advantage: Export Cartels as a Source of Power for Weak Nations,” vol. 64, 3, p. 1085-1104]

Cartels are often described as "conspiracies against the public," but some ob- servers have gone even further. Graeme Samuel, the chairman of the Australian Competition and Consumer Commission stated in 2007 that, "cartels are theft -usually by well-dressed thieves."1 When the links between German cartels and Hitler's regime became known during the 1940s, many observers concluded that cartels can even threaten the democratic development of nations.2 Yet, as Jeffrey Fear has stated, "studying cartels through the lens of conspiracy does a severe injustice to their empirical reality and short-circuits many important theoretical questions."3 It is argued in this article that cartels are in fact tools that can be used for a variety of purposes, both negative and positive, even by the same actors. Scholars have usually focused their attention on the activities of those cartels that were set up by large companies of dominant industrial countries like Germany or the United States, and discussed how these cartels helped their members to exploit customers in their extensive domestic markets as well as globally. Yet, if one looks at the activities of export cartels set up by weak com- panies in small or undeveloped countries, one sees that a very different picture starts to emerge. Cartels can offer crucial advantages to those newcomers who are trying to break into international markets dominated by vast industrial giants from developed countries.

In the beginning of the 20th century, the Finnish pulp, paper and board compa- nies realised that they were too weak and inexperienced to compete as individual actors in the international markets against major foreign competitors.4 Hence, the Finnish companies decided to join forces and form organisations that they called export (or sales) associations. According to Simon J. Evenett, Marga- ret C. Levenstein and Valerie Y. Suslow, "[e]xport cartels are associations of firms that cooperate in the marketing and distribution of their product to foreign markets."5 This definition is typical, and as the Finnish associations were engaged in precisely these activities, scholars have tended to call them export cartels.6

At a time when Finnish pulp and paper industrialists decided to pool their forces, the European countries placed few restrictions on the ability of their com- panies to set up cartels. Since the 1950s, most countries have introduced strict competition laws regulating or banning the formation of cartels that might distort trade in their domestic markets. Y et, companies are still usually allowed to set up national export cartels, if their impact is limited to foreign markets. These cartels can increase exports and hence national welfare,7 without harming domestic consumers (at least not directly),8 and therefore individual countries have no motive to ban them unilaterally.9

However, countries are not only involved in export but also in import trade, and hence many of them have been willing to consider a general international ban. Furthermore, as governments have become increasingly willing to attack anticompetitive practices and to remove various trade barriers, export cartels have begun to appear as strange anomalies. It is therefore not surprising that since the end of the 1980s, policymakers and scholars have considered whether export cartels should be treated the same as other cartels. No consensus has emerged.10 As several scholars have noted, the available empirical evidence on the actual effects and activities of export cartels is very limited,11 and it is therefore difficult to offer firm conclusions on what impact they have on economic development and world trade.

Theodore J. Kreps argued in 1945 that, "it would be desirable if some part of the energy now spent on dogmatic discussions concerning the benefits and evils of cartels could be channelled into economic, historical, statistical research."12 La- ter scholars have indeed often been able to distance themselves from dogmatic views. In fact, they distance themselves better than Kreps who claimed stoutly that, history has proved the "cartel justifiers" are "grossly in error"13 -and have recognised that export cartels can have both positive and negative effects. 14 Yet, Aditya Bhattacharjea complained in 2004 that there was still only limited empiri- cal evidence on the prevalence, efficiency justifications and effects of export car- tels, and that theoretical literature on the subject is "scanty."15 Since then, some scholars have tried to expand our understanding on the theoretical foundations of export cartels, and develop ways to tackle them. The literature and the empirical evidence, however, remain disappointingly limited and inconclusive. Scholars have tended to rely on government-collected data, but most countries do not even require the registration of export associations, and if they do, this information is confidential.16 Hence, the data compiled by governments are of limited use.

Researchers analysing the significance and activities of export cartels have tended to rely mainly on data based on the US export cartels. These studies have produced somewhat conflicting results, but they do suggest that the formation of export cartels has failed to increase US exports substantially, and that these asso- ciations consist mainly of, or are dominated by, large firms. US authorities and legislators hoped that the formation of export cartels would lead to an increase in exports and that they would help small companies to step into world markets, but these goals have only been met on a limited scale.

Yet, we cannot rely only on US data, if we want to come to some general conclusions about the significance of export cartels or on whether they should be treated similarly to other cartels. Nor is it likely that any particular simple data set can offer sufficient information on the impact of export cartels. Like any other long-lasting economic institutions, cartels can have varied effects on socie- ties. Detailed case studies on various countries could help us to better unders- tand the activities of these associations and their impact on international trade and national economic development. In this article, we will look at one country, Finland, where export cartels played a crucial part in the economy.

The famous US export cartels covered only a small part of their country's export trade. In the early 1930s, they handled approximately 19 percent of the country's exports, but by 1981 this share declined to 2 percent.18 In contrast, Finnish foreign trade was dominated by the export cartels for most of the 20th century, which makes Finland a particularly interesting case for this kind of investigation. But what impact did these cartels have on the competitive posi- tion of the Finnish producers or on the economy of the country? Did they have negative political or economic repercussions for Finland or for international trade? Did they promote the cartelization of world paper trade?

It is argued that the co-operative strategy was highly successful: the small agricultural peripheral country gradually became one of the leading producers of pulp and paper in the world, and a developed industrial nation. The associa- tions could also be used as defensive barriers, for example, against attempts by Hitler's Germany to expand its economic influence in Northern Europe during the Second World War. In short, it is argued that cartels can be a source of power for weak nations, and that this aspect is often overlooked in current public discussions about cartels, which tend to emphasise their negative effects. This article is based on published works and on government and business documents.

### 2NC – Link – Harmonization

#### Developing countries incur high costs

Phan ’17 [Thanh; 2017; Sessional Instructor in International Law at the University of Victoria, PhD candidate at the Law Faculty, University of Victoria, Canada, Doctoral fellow at the Centre for International Governance Innovation, former transnational merger investigator and FTAs negotiator at the Vietnam Competition Authority, Vietnam; Houston Journal of International Law, “Realism and International Cooperation in Competition Law,” vol. 40; KP]

Third, developing countries may incur higher costs than developed countries in adjusting their competition regimes to meet standards specified in an international agreement.163 For example, amending domestic laws and building capacity for antitrust agencies to enforce an agreement are costly for negotiating countries.164 Complying with an international agreement would probably not be much of a burden on developed countries that have competition law regimes generally consistent with international competition law standards. 165

Fourth and finally, countries participating in an international agreement may also incur "sovereignty costs," which deprive a country of certain measures of independence in decision making or require a country to change domestic laws as concessions to other countries

#### Creates economic and political tradeoffs which also turns the case and ensures limited cooperation

Kretzmer ’19 [Tevia; June 25; Master of Laws at the University of Chicago Kent, Attorney at Lanham-Love; Social Science Research Network, “To What Extent, If at All, Is It Desirable or Realistic to Aim for a Global Agreement on Competition Policy?” https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3404131]

The substantial costs associated with developing and implementing a global competition policy have not gone unnoticed. For many countries, a cost-benefits analysis needs to take place, especially when a number of factors can increase the costs, time and political difficulties associated with establishing a harmonised agreement.63 The associated costs can also be categorised, with direct costs, out-of-pocket costs, opportunity costs as well as political costs all forming part of the general outlay that would be required to implement such a competition policy.64 This begs the question why any developing country would undertake such a commitment, especially with such limited resources and expertise. Ultimately, states will only cooperate when it is both in their respective interests and a benefit can be gained from such cooperation.65 This inherent selfishness means a global competition policy is merely a farfetched misconception, which is frustrating when one considers the benefits such an agreement could yield. As Noonan succinctly explains, ‘An agreement on core competition law principles could facilitate the acceptance that foreign competition laws are bona fide and not contrary to public policy in the recognising state.’66

### 2NC – Link – Autonomy

#### Harmonization undermines regulatory autonomy – that adversely effects developing countries and prevents effective convergence

Martin ’21 [Thomas Martin; 2019; LLB, Queens University Belfast; Dissertation for Master of Laws at the University of British Columbia; "Is global convergence of competition law the answer? How East Asian challenges demonstrate the limitations of the convergence strategy," https://open.library.ubc.ca/soa/cIRcle/collections/ubctheses/24/items/1.0396863]

This project’s discussion about the differing attitude towards competition law in the East Asian region is not meant to suggest that companies in these countries do not compete, because they certainly do. Instead, it illustrates that the belief in the inherent merit of competition is not necessarily universally shared. Therefore, in countries that do not share this belief, such as Japan, South Korea, or China, “competition is generally considered a means to a higher end and not an end itself.”333 As seen in the analysis of East Asia, this higher end tends to evolve around a set of particular economic goals, whether it be consumer welfare, economic development, national competitiveness or protection of employment.334 Of course, this thesis does not argue that competition laws should be preoccupied with broader economic or non-economic policy goals. Competition law should not be principally concerned with the broader political implications of economic concentration, nor should it be primarily focused on protecting employment or the development of national competitiveness.335 The main focus of competition law must always be “the protection of the competitive process and the enhancement of societal welfare.”336 However, this thesis acknowledges that just because the protection of the competitive process is the main focus of competition law, that does not mean that it is the exclusive focus for many jurisdictions. While some jurisdictions choose to exclude any secondary non-market-related goals entirely, other jurisdictions, the particularly developing nations, adopt a broader conception of goals of their competition laws.337 Furthermore, within the group who incorporate non-marketrelated goals in their competition laws, each jurisdiction may accord different weights to these goals, so there is no one correct approach.338 For instance, Professor Barry Rodger asserts that “competition law is not necessarily solely concerned with the fulfilment of economic ideals,” politics and economics “have played a significant role in the formation of competition policy.”339 According to Thomas K. Cheng, this multitude of potential approaches to competition law poses a serious dilemma for the convergence strategy.340 Convergence increases the costs resulting from the loss of national regulatory prerogative and at the same time reduces a jurisdictions ability to ascertain the correct balance of goals for themselves, thus it is unlikely that the benefits of convergence will outweigh its costs.341 Finally, a global consensus on the specific goals of competition law becomes even more elusive when you consider the high number of developing countries who have, or are currently in the process of, adopting competition law. Policy goals that are particularly relevant to developing countries include economic development, poverty reduction, and inclusive growth.342 These are goals, however, that have not been given particular priority in the industrialized nations and, therefore, are not reflected in the global ‘best practices’ of competition law that are pushed by the convergence strategy. This thesis argues that the specific economic and political characteristics in developing countries requires specific recognition when adopting competition law and thus, the merits of global competition convergence have been overstated.

### 2NC – AT: CWS Good

#### No warrant for how the CWS is flexible enough—they reference a card they never read and we have awesome ev that it’s better for countries to develop their own regimes

#### Exporting standards fails – circumvention is common and devastating

Martin ’21 [Thomas Martin; 2019; LLB, Queens University Belfast; Dissertation for Master of Laws at the University of British Columbia; "Is global convergence of competition law the answer? How East Asian challenges demonstrate the limitations of the convergence strategy," https://open.library.ubc.ca/soa/cIRcle/collections/ubctheses/24/items/1.0396863]

This collaborative process between outside technical advisors and local experts may seem relatively straightforward in theory, but Steven Van Uytsel is careful to highlight three elements that could threaten the process in jurisdictions that are developing a competition law.317 First, it is important to realise that this collaborative approach to creating a more contextualised or tailormade competition law will naturally take a long time.318 Before a competition law can be formulated, a country’s characteristics should be mapped and Michal S. Gal and Eleanor M. Fox have identified the four characteristics that need to be mapped which are related to: economics, institutions, politics and sociocultural elements.319 The economic characteristics relate to the ideology and methodology of market control, barriers to trade, the vulnerability of the market and wealth distribution.320 The institutional characteristics may concern any shortage in human or financial resources, whether it’s a lack of financial institutions that guide market activity or well-functioning courts.321 With regards to politics, Gal and Fox refer to political instability, which may distract a government from problems related to the market or corruption that can lead to barriers for firms that are not favoured by the political elite.322 Finally, for sociocultural characteristics, it is important to recognise that there may be a conflict between competitive values and other cultural values within the adopting jurisdiction and that competition may have a different meaning among cultures or be les valued than business collaboration.323 Second, Van Uytsel warns that even if the outside technical advisors and local experts succeed in elaborating an understanding of the countries characteristics and attach the necessary legislative implications to these characteristics, there is still a risk that a well-balanced draft can be torn apart by different interests or misunderstandings once it enters the legislative process.324 Therefore, it is imperative that drafters do not let what could easily be an implementable provision become unnecessarily complex. Third, by adapting existing competition laws or tailoring a competition law to a country’s context, there is a risk that the enforcement of the competition law may initially go through somewhat of a trail and error stage.325 However, as we have seen in examination of Japan and South Korea, where the competition legislations were heavily influenced by the United States, there was still an extended period of trial and error and inconsistent enforcement that spanned across many decades.

#### Developing countries have comparative advantages in designing competition laws adapted to their nations’ needs and aligned with i-law.

Fox ’17 [Eleanor; February 14; Walter J. Derenberg Professor of Trade Regulation at New York University School of Law; *Law and Contemporary Problems,* “Competition Policy: The Comparative Advantage of Developing Countries,” <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2916452>; KS]

Most developing countries now have competition laws.1 They, like all countries, face questions of design for their national laws and for their connection to the world.

This article argues, perhaps surprisingly, that developing countries have a comparative advantage in designing competition systems that are well adapted to their nations and to the modern world. Into the thick forest of enormous handicaps of developing countries,2 this article shines a light on two points at which developing countries’ incentives are better aligned than those of developed countries with positive development of the law. The sole burden of this article is to uncover these two points of light.

The subject can be separated into two parts: inward-looking—developing a sound national system, and outward-looking—developing a system for the connectivity of national markets to their regional and international environment. For the inward-looking phase, this article observes that developing countries are not constrained by path dependence in designing and implementing a competition law because their competition systems are sufficiently young and unformed. Without the baggage of law-on-the-books, these countries have a clear path to choose their overall goal for controlling market power and its abuses and the route to get there, informed as they wish by existing models. They have the unencumbered opportunity to build a system based on what conduct harms them the most. They can define important but elastic concepts such as “efficiency” in their own terms. In tailoring law to their needs, they have a flexibility unconstrained by path dependence.3

This article makes a similar but different claim regarding the outward-looking aspects of developing countries’ competition regimes. The claim is even more dramatic: Developing countries are better incentivized than are developed countries to craft workable solutions at the trade-and-competition interface in both regional arrangements and the world system. The argument starts from the observation that a huge swath of their market problems are cross-border problems, and that law and norms would ideally be commensurate with the scope of the affected market. The developed world is straight-jacketed or blindered from addressing the problems that arise from the gap between global markets and national-only competition regimes. A century of strategies fueled by vested interests keeps vision at a national level. In contrast, developing countries cannot afford to ignore trade-and-competition problems. Whereas the United States (the principal developed country example used throughout this article)4 functionally segregates the disciplines of trade and of competition and even cultivates their separateness,5 developing countries feel the immediate impact of restraints on competition, trade, and investment—local and foreign, public and private—as one juggernaut.6 They naturally develop integrated visions. For them, world connectivity requires an integrated vision.

### 2NC – AT: Link Turn – Econ

#### Undermines development strategy BUT the benefits are overstated for emerging economies in particular

Cheng ’12 [Thomas; 1/1/12; Assistant professor at the Faculty of Law of the University of Hong Kong; Chicago Journal of International Law; "Convergence and Its Discontents: A Reconsideration of the Merits of Convergence of Global Competition Law," vol. 12, https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1362&context=cjil]

Dynamic markets are less likely to be found in developing countries than in industrialized nations. Most sectors of developing country economies are dominated by a handful of firms."' The lack of a well-functioning capital market, which is the case in many developing countries, means that new entrants may have difficulty in obtaining financing. 70 The dearth of skilled human capital may constrain a new firm's ability to establish itself and compete. Rapid market entry is hence by no means assured. Even if a new firm successfully establishes a foothold in the market, it may be no match for the well-funded and wellconnected incumbent firms. This means that Justice Scalia's pronouncement in Veri7on Comm Inc v Law Offices of Curtis . Trinko, LLP,'7 1 that temporary monopoly profit could be beneficial because it attracts new market entrants and entrepreneurial activities, rings hollow in developing countries. 7 2 There may be no market entry in response to the existence of monopolistic profit. This lack of market dynamism has important implications for regulating abuse of dominance in developing countries. It calls for a more aggressive abuse of dominance enforcement agenda. The dearth of potential market entrants means that incumbents will have greater incentive to harm existing rivals, as the payoff will be substantial after existing rivals are eliminated. It also means that it is more important to protect these competitors, as they are vital, perhaps even indispensable, to keeping the market competitive. 13

Most developing countries possess little of what development economists call innovative capacity: the ability to come up with novel products or production processes.17 4 Most of them possess no more than imitative capacity, that is, the ability to imitate a technology that has been invented elsewhere, usually a developed country."' The lack of innovative capacity means that the social calculus behind the grant of patent protection needs to be recalibrated. If there are no inventors to take advantage of the innovation incentives offered by the patent system, competition law rules on intellectual property exploitation need not be as deferential to the preservation of innovation incentives as their developed country counterparts. This is a crucial qualification to the patentcompetition interface because the need to preserve innovation incentives is the most forceful argument offered to defend potentially anticompetitive patent exploitation practices in developed nations. This means that developing countries may have greater leeway in regulating these practices.

Many developing countries have pursued industrial policy as a growth strategy. There has been much academic discussion about the merits of such policy. Some notable commentators, such as Professors Michael Porter and Simon Evenett, have cast serious doubt on the efficacy of industrial policy, while others take a more sanguine view of it."' This Article does not attempt to resolve the debate. Instead, it focuses on the ramifications of industrial policy on competition law enforcement. To the extent that industrial policy is in place, competition law analysis needs to take into account how such policy distorts the competitive dynamics of the markets."' This may require adjustment in enforcement priority or even legal principles.

#### Complex legal mechanisms water down competition law in developing states – convergence prevents strict enforcement

Cheng ’12 [Thomas; 1/1/12; Assistant professor at the Faculty of Law of the University of Hong Kong; Chicago Journal of International Law; "Convergence and Its Discontents: A Reconsideration of the Merits of Convergence of Global Competition Law," vol. 12, https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1362&context=cjil]

The lack of expertise, experience, and resources in the enforcement infrastructure means that bright-line rules, as opposed to nuanced rule of reason analysis, may be more appropriate.183 This may reduce the range of analytical options at the disposal of the enforcement authority when tackling a competition law issue. For instance, a per se approach for resale price maintenance may be more suitable for developing countries. While the majority in Leegin forcefully argued that RPMs are procompetitive in a sufficient number of instances that per se treatment is not appropriate,' most developing countries do not have the resources to devote to the investigation and analysis of every instance of RPM. If a sufficient proportion of RPMs is anticompetitive, such jurisdictions should opt for a per se rule.

The choice of welfare standard in merger review may similarly need to be adjusted. To the extent that the authority's independence is in doubt, Neven and Roller have argued that a consumer welfare standard will be more appropriate.' This is because the pro-consumer bias of the standard will counteract the effective lobbying by business interests, thereby creating a more balanced outcome. Market dynamism also affects the choice of welfare standard in merger review. Professor Bruce Lyons has demonstrated that a consumer welfare standard is generally preferable only when the market is large and there are alternative efficiency-enhancing mergers available in the market. He notes that "[i]f there are only two firms, the [total welfare standard] is always superior because the proposed merger has no alternatives.""' The relative weight of these considerations is likely to vary by country, or perhaps even by market.'

### 2NC – Internal

#### Convergence undermines poverty relief and equal growth

Cheng ’12 [Thomas; 1/1/12; Assistant professor at the Faculty of Law of the University of Hong Kong; Chicago Journal of International Law; "Convergence and Its Discontents: A Reconsideration of the Merits of Convergence of Global Competition Law," vol. 12, https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1362&context=cjil]

The important question, again, is: What are the implications of these economic and political characteristics of developing countries for the convergence of competition law? The implications for procedural and normative convergences are likely to be limited.8 o The relevance for substantive convergence, however, is immense. On a more general level, if developing countries are to take poverty alleviation and the pursuit of inclusive growth seriously, they may need to adopt a more interventionist approach to competition law enforcement than has been practiced in established jurisdictions. Fox and Rodger have both noted that a non-interventionist enforcement approach generally preserves the existing distribution of wealth and economic structure.'"' This is obviously undesirable for developing countries, many of which have deleteriously unequal wealth distribution.' 8

### 2NC – AT: Export Cartels Bad

#### CP solves it and this isn’t responsive to the DA

### 2NC – SDGs

#### SDGs solve numerous existential threats and prevent governance failures

Moyo, 16—Board member of 3M and Chevron, holds a PhD in Economics from Oxford and a Masters from Harvard, was named to the list of Time 100 Most Influential People (Dambisa, “Implementing the Sustainable Development Goals is an imperative,” https://www.oecd.org/development/implementing-sustainable-development-goals-imperative.htm, dml)

On 25 September 2015, the 193 countries of the United Nation’s General Assembly adopted the Sustainable Development Goals (SDGs). This comprehensive set of goals aims to “end poverty, protect the planet, and ensure prosperity for all” as part of a new development agenda. Each goal has specific targets to be achieved by 2030, and by including education, health, poverty, climate change and the gender divide on the list of 17 goals, the SDGs place in stark light some of the seemingly intractable challenges facing the world.

No reasonable person will find any of the SDGs to be inherently objectionable. In our modern, interconnected and global society, we should care about redressing all manner of issues plaguing economic growth and placing continual human progress at risk.

Like their predecessors, the Millennium Development Goals, the SDG framework affirms explicitly the international community’s commitment to attaining societal ideals. But more crucially, the SDGs impose specific, easily measurable and observable targets that can be monitored to gauge progress towards meeting the goals.

This is an imperative, as policy makers have tended to struggle with implementing global policy initiatives in the past. Implementation challenges are partly a manifestation of co-ordination failures among different countries, particularly when individual nation states place their own short-term interests ahead of other countries, and the global good. Protectionist trade policies, such as the US Farm Bills and the EU’s Common Agriculture Policy whereby countries impose tariffs and quotas that favour local farmers but hurt foreign farmers, are just one example of poor global co-ordination. Such failures can cost hundreds of billions of dollars in lost jobs, incomes and deleterious effects on global growth.

Also, shortfalls against globally agreed policy goals may reflect poorly defined objectives that do not adequately take the local context into consideration. Thus inasmuch as the SDGs offer an ever-more refined approach to global objectives that local stakeholders played some role in setting, they enhance the chances of broader success.

The SDGs are all the more critical to framing practical solutions now, at a time when the world’s advanced economies continue to suffer under the weight of high, unsustainable debts and deficits, weak labour markets and declining productivity. And they are critical at a time when emerging economies, in which 90% of the world’s population (most of them under 25) live have seen their growth rates dip below the 7% per year needed to make a real dent in poverty.

Job-eroding technology, worsening income inequality, demographic shifts, depleting natural resources and environmental impacts all contribute to an unsettling backdrop for the world economy.

There is also the rise of radicalised terrorism, disorderly migration across Europe and the serious challenge of accommodating 60 million refugees, the highest number globally since the Second World War. All of this and the resurgence in political and social instability throughout the world (according to the Economist Intelligence Unit, 65 out of 150 countries face high or very high instability) underline the urgency of delivering on the SDGs.

The SDGs should serve as a reference point and a global compass for policy makers as they navigate a complex, dynamic, and difficult economic and political backdrop. After all, unless we meaningfully implement the SDGs, the fundamental macroeconomic trajectory and geopolitical arc of the global community will be in peril.

"Transforming our world" was the tag line of the 2030 agenda for the United Nation’s sustainable development goals. It remains an appropriate rallying cry for governments, the private sector, civil society, and most of the world’s citizens. Ultimately, the UN’s SDGs will be judged by how effectively they address the manifold challenges impacting the world today and threatening the world tomorrow.

### 2NC – Turns Case – Top Level

#### Development diffuses multiple existential risks -- d doesn’t assume the changing nature of conflict

UNSC ’17 [United Nations Security Council. Prevention, Development Must Be at Centre of All Efforts Tackling Emerging Complex Threats to International Peace, Secretary-General Tells Security Council. December 20, 2017. https://www.un.org/press/en/2017/sc13131.doc.htm]

Prevention and development must be at the centre of all efforts to address both the quantitative and qualitative changes that were emerging in threats around the world, the Secretary‑General of the United Nations told the Security Council today, as some 60 Member States participated in an all‑day debate tackling complex contemporary challenges to international peace and security.

António Guterres said the perils of nuclear weapons were once again front and centre, with tensions higher than those during the Cold War. Climate change was a threat multiplier and technology advances had made it easier for extremists to communicate. Conflicts were longer, with some lasting 20 years on average, and were more complex, with armed and extremist groups linked with each other and with the worldwide threat of terrorism. Transnational drug smugglers and human traffickers were perpetuating the chaos and preying on refugees and migrants.

The changing nature of conflict meant rethinking approaches that included integrated action, he said, stressing that prevention must be at the centre of all efforts. Development was one of the best instruments of prevention. The 2030 Agenda for Sustainable Development would help build peaceful societies. Respect for human rights was also essential and there was a need to invest in social cohesion so that all felt they had a stake in society.

He also emphasized that women’s participation was crucial to success, from conflict prevention to peacemaking and sustaining peace. Where women were in power, societies flourished, he pointed out. Sexual violence against women, therefore, must be addressed and justice pursued for perpetrators.

Prevention also included preventive diplomacy, he said, noting that the newly established High-level Advisory Board on Mediation had met for the first time. The concept of human security was a useful frame of reference for that work, as it was people‑centred and holistic and emphasized the need to act early and prioritize the most vulnerable.

“Let us work together to enhance the Council’s focus on emerging situations, expand the toolbox, increase resources for prevention, and be more systematic in avoiding conflict and sustaining peace,” he said, emphasizing the need for Council unity. Without it, he said, the parties to conflict might take more inflexible and intransigent positions, and the drivers of conflict might push situations to the point of no return.

Japan’s representative, Council President for December, spoke in his national capacity, noting that in the 25 years since the end of the Cold War, there had been a rise in complex contemporary challenges to international peace and security. That included the proliferation of weapons of mass destruction, the expansion of terrorism, and non‑traditional challenges such as non‑State actors and inter‑State criminal organizations.

### 2NC – Turns Trade

#### SDGs are key to resilient trade networks

Carius, et al, 18—Founder and Managing Director, Adelphi (Alexander, with Daria Ivleva, Benjamin Pohl, Lukas Rüttinger, Stella Schaller, Dennis Tänzler and Janani Vivekananda, “A Foreign Policy Perspective On The Sustainable Development Goals,” https://www.adelphi.de/en/system/files/mediathek/bilder/A%20Foreign%20Policy%20Perspective%20On%20The%20Sustainable%20Development%20Goals%20-%20Brief%20-%20adelphi.pdf, dml)

External economic promotion is perhaps one of the primary foreign policy priorities of the majority of OECD countries. On the one hand, international trade is a crucial factor in economic output and safeguards many domestic jobs, while on the other, trade and global economic links create trust and help stabilise international relations and enable peace. Each of the SDGs affect the promotion of foreign trade and investment – at all points of the supply chain (e.g., ensuring the sustainable supply of resources such as timber or energy for production, promoting sustainable consumption), as well as in terms of ensuring the stability of markets and investment conditions (e.g. safe cities, effective institutions, partnerships between governments and private sector). Foreign trade and investment are also an integral part of peacebuilding and sustainable peace. Although the SDGs are intrinsically linked to any efforts to promote foreign trade and investment, these links do not reflect in foreign policy or SDG implementation.

The implications of the SDGs under review on promoting foreign trade and investment:

◊ Energy transition processes can help to form mutual interdependencies. Investments in energy transition may support foreign and trade interests of countries able to offer technological solutions and willing to cooperate and promote economic interdependencies. (see SDG 7)

◊ Consumption and production patterns entail a network of codependencies – both positive and negative. While global supply chains are very efficient, they also bear significant risks of supply shocks. These shocks need to be planned and accounted for and gradually reduced through trade and investment promotion. (see SDG 12)

◊ Companies will play a pivotal role in increasing the sustainability of consumption and production, e. g. respect human rights and consider the environmental footprint. Efforts from the US, the EU, and the OECD to increase due diligence of companies, for example companies operating in the business of so-called “conflict minerals”, are essential starting points. (see SDG 12)

### 2NC – Turns Hotspots

#### Development failures turn every hotspot

ODNI 17

Office of the Director of National Intelligence, National Intelligence Council unclassified strategic assessment of global trends, authored by ODNI personnel including the Chairman of the NIC, THE NEAR FUTURE: TENSIONS ARE RISING, 2017, https://www.dni.gov/index.php/global-trends/near-future

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

Within countries, tensions are rising because citizens are raising basic questions about what they can expect from their governments in a constantly changing world. Publics are pushing governments to provide peace and prosperity

more broadly and reliably at home when what happens abroad is increasingly shaping those conditions.

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

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

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

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

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

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

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

Central and South America. Although state weakness and drug trafficking have and will continue to beset Central America, South America has been more stable than most regions of the world and has had many democratic advances—including recovery from populist waves from the right and the left. However, government efforts to provide greater economic and social stability are running up against budget and debt constraints. Weakened international demand for commodities has slowed growth. The expectations associated with new entrants to the middle class will strain public coffers, fuel political discontent, and possibly jeopardize the region’s significant progress against poverty and inequality

Activist civil society organizations are likely to fuel social tensions by increasing awareness of elite corruption, inadequate infrastructure, and mismanagement. Some incumbents facing possible rejection by their publics are seeking to protect their power, which could lead to a period of intense political competition and democratic backsliding in some countries. Violence is particularly rampant in northern Central America, as gangs and organized criminal groups have undermined basic governance by regimes that lack capacity to provide many basic public goods and services. Outlook: Central and South America are likely to see more frequent changes in governments that are mismanaging the economy and beleaguered by widespread corruption. Leftist administrations already have lost power in places like Argentina, Guatemala, and Peru and are on the defensive in Venezuela, although new leaders will not have much time to show they can improve conditions. The success or failure of Mexico’s high-profile reforms might affect the willingness of other countries in the region to take similar political risks. The OECD accession process may be an opportunity—and incentive— for some countries to improve economic policies in a region with fairly balanced age demographics, significant energy resources, and well-established economic links to Asia, Europe, and the United States. An Inward West? Among the industrial democracies of North America, Europe, Japan, South Korea, and Australia, leaders will search for ways to restore a sense of middle class wellbeing while some attempt to temper populist and nativist impulses. The result could be a more inwardly focused West than we have experienced in decades, which will seek to avoid costly foreign adventures while experimenting with domestic schemes to address fiscal limits, demographic problems, and wealth concentrations. This inward view will be far more pronounced in the European Union, which is absorbed by questions of EU governance and domestic challenges, than elsewhere. The European Union’s internal divisions, demographic woes, and moribund economic performance threaten its own status as a global player. For the coming five years at least, the need to restructure European relations in light of the UK’s decision to leave the EU will undermine the region’s international clout and could weaken transatlantic cooperation, while anti-immigration sentiments among the region’s populations will undermine domestic political support for Europe’s political leaders. Questions about the United States’ role in the world center on what the country can afford and what its public will support in backing allies, managing conflict, and overcoming its own divisions. Foreign publics and governments will be watching Washington for signs of compromise and cooperation, focusing especially on global trade, tax reform, workforce preparedness for advanced technologies, race relations, and its openness to experimentation at the state and local levels. Lack of domestic progress would signal a shift toward retrenchment, a weaker middle class, and potentially further global drift into disorder and regional spheres of influence. Yet, America’s capital, both human and security, is immense. Much of the world’s best talent seeks to live and work in the United States, and domestic and global hope for a competent and constructive foreign policy remain high. China. China faces a daunting test—with its political stability in the balance. After three decades of historic economic growth and social change, Beijing, amid slower growth and the aftereffects of a debt binge, is transitioning from an investment-driven, export-based economy to one fueled by domestic consumption. Satisfying the demands of its new middle classes for clean air, affordable houses, improved services, and continued opportunities will be essential for the government to maintain legitimacy and political order. President Xi’s consolidation of power could threaten an established system of stable succession, while Chinese nationalism—a force Beijing occasionally encourages for support when facing foreign friction—may prove hard to control. Outlook: Beijing probably has ample resources to prop up growth while efforts to spur private consumption take hold. Nonetheless, the more it “doubles down” on state owned enterprises (SOEs) in the economy, the more it will be at greater risk of financial shocks that cast doubt on its ability to manage the economy. Automation and competition from lowcost producers elsewhere in Asia and even Africa will put pressure on wages for unskilled workers. The country’s rapidly shrinking working-age population will act as a strong headwind to growth. Russia. Russia’s aspires to restore its great power status through nationalism, military modernization, nuclear saber rattling, and foreign engagements abroad. Yet, at home, it faces increasing constraints as its stagnant economy heads into a third consecutive year of recession. Moscow prizes stability and order, offering Russians security at the expense of personal freedoms and pluralism. Moscow’s ability to retain a role on the global stage—even through disruption—has also become a source of regime power and popularity at home. Russian nationalism features strongly in this story, with A Chinese man rides a bike among luxurious cars. China’s dramatic economic growth has highlighted greater gaps between rich and poor. President Putin praising Russian culture as the last bulwark of conservative Christian values against the decadence of Europe and the tide of multiculturalism. Putin is personally popular, but approval ratings of 35 percent for the ruling party reflect public impatience with deteriorating quality of life conditions and abuse of power. Outlook: If the Kremlin’s tactics falter, Russia will become vulnerable to domestic instability driven by dissatisfied elites— even as a decline in status suggests more aggressive international action. Russia’s demographic picture has improved somewhat since the 1990s but remains bleak. Life expectancy among males is the lowest of the industrial world, and its population will continue to decline. The longer Moscow delays diversifying its economy, the more the government will stoke nationalism and sacrifice personal freedoms and pluralism to maintain control. An Increasingly Assertive China and Russia. Beijing and Moscow will seek to lock in temporary competitive advantages and to right what they charge are historical wrongs before economic and demographic headwinds further slow their material progress and the West regains its footing. Both China and Russia maintain worldviews in which they are rightfully dominant in their regions and able to shape regional politics and economics to suit their security and material interests. Both have moved aggressively in recent years to exert greater influence in their regions, to contest the US geopolitically, and to force Washington to accept exclusionary regional spheres of influence—a situation that the United States has historically opposed. For example, China views the continuing presence of the US Navy in the Western Pacific, the centrality of US alliances in the region, and US protection of Taiwan as outdated and representative of the continuation of China’s “100 years of humiliation.” Recent Sino-Russian cooperation has been tactical, however, and is likely to return to competition if Beijing jeopardizes Russian interests in Central Asia and as Beijing enjoys more options for cheap energy supply beyond Russia. Moreover, it is not clear whether there is a mutually acceptable border between what China and Russia consider their natural spheres of influence. Meanwhile, India’s growing economic power and profile in the region will further complicate these calculations, as New Delhi navigates relations with Beijing, Moscow, and Washington to protect its own expanding interests. A Chinese development firm—with links to the Chinese Government and People’s Liberation Army— today announced that it recently purchased the uninhabited Cobia Island from the Government of Fiji for $850 million. Western security analysts assess that China plans to use the island to build a permanent military base in the South Pacific, 3,150 miles southwest of Hawaii. Russian assertiveness will harden anti-Russian views in the Baltics and other parts of Europe, escalating the risk of conflict. Russia will seek, and sometimes feign, international cooperation, while openly challenging norms and rules it perceives as counter to its interests and providing support for leaders of fellow “managed democracies” that encourage resistance to American policies and preferences. Moscow has little stake in the rules of the global economy and can be counted on to take actions that weaken US and European institutional advantages. Moscow will test NATO and European resolve, seeking to undermine Western credibility; it will try to exploit splits between Europe’s north and south and east and west, and to drive a wedge between the United States and the EU. Similarly, Moscow will become more active in the Middle East and those parts of the world in which it believes it can check US influence. Finally, Russia will remain committed to nuclear weapons as a deterrent and as a counter to stronger conventional military forces, as well as its ticket to superpower status. Russian military doctrine purportedly includes the limited use of nuclear weapons in a situation where Russia’s vital interests are at stake to “deescalate” a conflict by demonstrating that continued conventional conflict risks escalating the crisis to a large scale nuclear exchange. In Northeast Asia, growing tensions around the Korean Peninsula are likely, with the possibility of serious confrontation in the coming years. Kim Jong Un is consolidating his grip on power through a combination of patronage and terror and is doubling down on his nuclear and missile programs, developing long-range missiles that may soon threaten the continental United States. Beijing, Seoul, Tokyo, and Washington have a common incentive to manage security risks in Northeast Asia, but a history of warfare and occupation along with current mutual distrust makes cooperation difficult. Continued North Korean provocations, including additional nuclear and missile tests, might worsen stability in the region and prompt neighboring countries to take actions, sometimes unilaterally, to protect their security interests. Competing Views on Instability

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

One consequence of post-Cold War disengagement by the United States and the then-USSR, was a loss of external support for strongmen politics, militaries, and security forces who are no longer able to bargain for patronage. Also working against coercive governments are increased demands for responsive and participatory governance by citizens no longer poor due to the unprecedented scale and speed of economic development in the nonindustrial world. Where political and economic development occurred roughly in tandem or quick succession, modernization and individual empowerment have reinforced political stability. Where economic development outpaced or occurred without political changes—such as in much of the Arab world and the rest of Africa and South Asia—instability ensued. China has been a notable exception. The provision of public goods there so far has bolstered political order but a campaign against corruption is now generating increasing uncertainty and popular protests have grown during the past 15 years. Russia is the other major exception—economic growth—largely the result of high energy and commodity prices—helped solve the disorder of the Yeltsin years.

US experience in Iraq and Afghanistan has shown that coercion and infusions of money cannot overcome state weakness. Rather, building a stable political order requires inclusiveness, cooperation among elites, and a state administration that can both control the military and provide public services. This has proved more difficult than expected to provide.

### 2NC – Turns Warming

#### SDG progress is key to effective climate action

Liu, 19—Under-Secretary-General for Economic and Social Affairs, United Nations (Zhenmin, “Aligning SDG and climate action,” https://www.sustainablegoals.org.uk/aligning-sdg-and-climate-action/, dml)

Ultimately, it is governments that have the primary responsibility for defining policies and systems that promote the achievement of the SDGs and climate goals in a transparent, accountable and inclusive way. The Global Conference on Strengthening Synergies between the Paris Agreement and the 2030 Agenda for Sustainable Development (held from 1 to 3 April 2019 in Copenhagen) and the 2019 Climate Action Summit of the UN Secretary-General (to be held on 23 September in New York) mark important opportunities to align the climate and SDG processes. They are also key moments in raising ambition and stimulating action from stakeholders at the global, regional and country levels.

The 2030 deadline will determine our pathway to climate change. Now just a decade away, it underlines the urgency of action if we are to stay as close as possible to the 1.5°C target. Both the 2030 Agenda and the Paris Agreement define time-bound and specific global targets, are grounded in scientific knowledge, recognise the importance of multi-stakeholder implementation and acknowledge that there is no one-size-fits-all approach. But, most importantly, both initiatives appreciate that they can be deeply complementary to each other at various levels. We therefore need to plan all our action to advance progress on the SDGs in the context of climate action and concentrate on maximising the co-benefits.