# 1AC – Comity Balancing

## Plan – 1AC

The United States federal government should substantially increase prohibitions on anticompetitive business practices by the private sector by at least expanding the scope of its core antitrust laws in accordance with a comity balancing test.

## Cartels – 1AC

Advantage One is Cartels.

#### Lateral energy regimes cause extinction.

Koranyi ’16 [David; 2016; Chief Advisor of City Diplomacy for the Mayor of Budapest, former Director of the Atlantic Council's Eurasian Energy Futures Initiative; Atlantic Council Strategy Paper, “A US Strategy for Sustainable Energy Security,” <https://espas.secure.europarl.europa.eu/orbis/sites/default/files/generated/document/en/AC_SP_Energy.pdf>]

The United States should work toward a global energy system that is characterized by the reduction of excessive price volatility on global energy markets and the minimization of the impact of geopolitical upheavals. This requires the introduction of more competition, transparency, liquidity, better rules and regulations for energy trade, and the stabilization of global energy trading routes in concert with other key stakeholders. The liberalized global energy trade would be coupled with transparent and efficiently functioning global and regional markets. This necessitates energy market integration and interconnections in Europe, Asia, Africa, and Latin America alike to enhance regional synergies and create markets. This integration process should be supported by US experience and technical assistance.

It is of utmost importance to ensure that competition is not distorted, with special regard to cartelization in the regional and global gas markets. The United States should promote global principles for competition in the energy markets to reduce the risk of cartelization and price setting, cripple the disruptive ability of irresponsible players on the market, enhance security of supplies, and promote open and efficiently functioning markets.

Monitoring the implementation of global and regional climate agreements; promoting dialogue and cooperation between consumer and producer countries; introducing and enhancing dispute resolution mechanisms; increasing transparency and reducing volatility on the international energy markets; and devising international standards of physical and cyber energy infrastructure protection will be at the center of the US international energy governance agenda. Therefore, international institutions that serve US national interests need to be strengthened further with special regard to the International Energy Agency (IEA), the United Nations Sustainable Energy for All Initiative (SE4All,) the International Renewable Energy Agency (IRENA), and the Energy Charter Treaty. In particular, the IEA’s mandate, organization, and budget should be reinforced to allow the organization to conduct a global energy dialogue with all key stakeholders, and to play a robust role in facilitating the exchange of best practices in green technology deployment, energy efficiency, and other key issues in the context of the Paris Climate Agreement.

As the energy sector undergoes a fundamental transformation, new global actors emerge and play a decisive role in how to produce and consume energy and control the climate. The new ‘lateral energy regime’ vastly widens the circle of interested and invested actors and influencers.58 This new paradigm requires a fundamentally different approach to governance on all levels: local, national, and international. The United States should invest in the empowerment and inclusion of constructive new actors to co-govern the energy space, while depowering spoiler actors, such as terrorist organizations that target energy infrastructure. Designing a new model for public-private-people-partnerships (PPPP) is essential to managing the complex interplay between the traditional and new producers, transporters, and consumers of energy—municipal and regional governments and civil society actors.

Conclusion

The first of the Atlantic Council Strategy Paper Series, Dynamic Stability: US Strategy for a World in Transition, identified the protection of global commons by the United States as critically important for both material and moral reasons. It rightly argued that “it is important to include climate in the definition of global commons.”59 That paper defined ‘dynamic stability’ as the key conceptual framework to deal with a fast-changing ‘Westphalian-Plus’ world and argued for “harnessing change to preserve the liberal international order.”60

Harnessing change in the energy sector expeditiously is an existential issue for all humanity. Dynamic stability in the US energy sector would mean leveraging the unique natural bounty and technological prowess of the United States and using the very momentum created by the unconventional hydrocarbon revolution to gradually pivot away from fossil fuels. Leaving the current system unreformed and unmodernized will threaten the security and well-being of American citizens, hurt the US economy at home, and isolate the United States internationally. By compromising on market-friendly public policy measures and leveraging the low oil price environment, the United States can introduce the right incentives into the energy system to shepherd an accelerated energy transition into a more modern, low-carbon energy era that still relies heavily on natural gas—particularly during the transition—and nuclear power to provide baseload generation and counter seasonal intermittency.

#### Energy wars go global – extinction.

Klare ‘11 [Michael; June 28; professor at Hampshire College; “Prepare for a world energy war,” https://grist.org/climate-energy/2011-06-28-prepare-for-a-world-energy-war/]

Think of us today as embarking on a new Thirty Years’ War. It may not result in as much bloodshed as that of the 1600s, though bloodshed there will be, but it will prove no less momentous for the future of the planet. Over the coming decades, we will be embroiled at a global level in a succeed-or-perish contest among the major forms of energy, the corporations which supply them, and the countries that run on them. The question will be: Which will dominate the world’s energy supply in the second half of the 21st century? The winners will determine how — and how badly — we live, work, and play in those not-so-distant decades, and will profit enormously as a result. The losers will be cast aside and dismembered.

Why 30 years? Because that’s how long it will take for experimental energy systems like hydrogen power, cellulosic ethanol, wave power, algae fuel, and advanced nuclear reactors to make it from the laboratory to full-scale industrial development. Some of these systems (as well, undoubtedly, as others not yet on our radar screens) will survive the winnowing process. Some will not. And there is little way to predict how it will go at this stage in the game. At the same time, the use of existing fuels like oil and coal, which spew carbon dioxide into the atmosphere, is likely to plummet, thanks both to diminished supplies and rising concerns over the growing dangers of carbon emissions.

This will be a war because the future profitability, or even survival, of many of the world’s most powerful and wealthy corporations will be at risk, and because every nation has a potentially life-or-death stake in the contest. For giant oil companies like BP, Chevron, ExxonMobil, and Royal Dutch Shell, an eventual shift away from petroleum will have massive economic consequences. They will be forced to adopt new economic models and attempt to corner new markets, based on the production of alternative energy products, or risk collapse or absorption by more powerful competitors. In these same decades, new companies will arise, some undoubtedly coming to rival the oil giants in wealth and importance.

The fate of nations, too, will be at stake as they place their bets on competing technologies, cling to their existing energy patterns, or compete for global energy sources, markets, and reserves. Because the acquisition of adequate supplies of energy is as basic a matter of national security as can be imagined, struggles over vital resources — oil and natural gas now, perhaps lithium or nickel (for electric-powered vehicles) in the future — will trigger armed violence.

#### Globalized supply chains are hyper-vulnerable to anticompetitive conduct – it’ll shock battery markets.

Umbach ’18 [Frank; September 2018; Ph.D. and Research director of the European Centre for Energy and Resource Security; Konrad Adenauer Foundation, “Energy Security in a Digitalised World and its Geostrategic Implications,” p. 15-16]

Rising Dependencies on Raw Material Supply Security

The worldwide electrification of the transport and other industry sectors, the development of a new generation of batteries for electricity storage as well as the digitalization of the industries, including the spread of robotics and artificial intelligence systems in the industry (‘industry 4.0’) will further boost the worldwide demand for CRMs such as lithium, cobalt and others. As a result, it might create new and unprecedented challenges, including bottlenecks and supply shortages, for the global supply chains of the CRMs on each stage ranging from mining to processing, refining and manufacturing.

The production of CRMs is geopolitically - compared with the concentration of conventional oil and gas resources - more challenging and problematic as currently 50% of CRMs are located in fragile states or politically unstable regions. Moreover, security of supply risks are not just constrained to primary natural resources and CRMs but also to the import of semimanufactured and refined goods as well as finished products. Manipulated prices, restricted supplies and attempts at cartelization of CRM markets with wide-ranging negative economic consequences are not restricted just to producing and exporting countries. Powerful states and private companies have also been responsible for non-transparent pricing mechanisms for many precious CRMs. Global supply chains have become ever more complex due to the blurring of boundaries between physical and financial markets and weakly governed market platforms. These market imperfections lead to the manipulation of prices and threaten the stability of the future security of supply of CRMs.

Given China’s status as the world’s largest battery producer, and as the leading nation in the electrification of the national transport sector, it may increase the dependencies of the European and U.S. carmakers on China. The dependence on CRMs such as lithium, cobalt, graphite, rare earth and others will equally rise. Those geopolitical impacts have already been highlighted in 2010–2011, when China in the midst of escalating diplomatic conflict with Japan stopped all exports of Rare Earth Elements (REEs) to the world’s biggest importer and blackmailed Tokyo diplomatically by instrumentalising its status as the world’s largest producer and exporter of REEs. It has sent a troubling message to the world that the new rising Asian economic and military power might not respect international law, the existing global rules of the WTO and that Beijing may not politically be willing to accept the regional and global responsibilities that grow with its emerging superpower status. Over the last months, China has further strengthened its efforts to control the entire global supply chain of lithium, from owning international mines to the production of lithium up to manufacturing of batteries and EVs.

#### Risk is increasing – supply disruptions cascade.

O’Sullivan ’17 [Meghan; 2017; Harvard Kennedy School of Government and Indra Overland Norwegian Institute of International Affairs; Columbia Center on Global Energy Policy, “The Geopolitics of Renewable Energy,” <https://energypolicy.columbia.edu/sites/default/files/CGEPTheGeopoliticsOfRenewables.pdf>]

As the transition to renewable energy accelerates, cartels could develop around materials critical to renewable energy technologies. Even if these cartels were unable to generate as much impact as OPEC did with oil in years past, they might be able to exert influence over consumers of these materials. Some materials critical for renewable energy technologies are also critical in other sectors, such as consumer products and weaponry, raising the potential for competition between sectors as well.

Rare earth elements (including dysprosium, neodymium, terbium, europium and yttrium) are often considered to be critical components of renewable energy hardware.7 Ironically, rare earth elements are not rare. They are found in many countries, including China, Russia, Australia, the United States, Brazil, India, Malaysia and Thailand. However, two countries—China and Russia—together hold 57% of global reserves, while the largest remaining country, Australia, holds a mere 2.4% of global reserves.8 Furthermore, rare earths are found in dilute concentrations and are often difficult to separate, making mining, production and processing difficult and capital intensive. Today almost all mining, production and processing of rare earths is in China. Rare earths mined elsewhere generally must be exported to China for processing and then re-imported.9 As demand for renewable energy technologies continues to increase, countries may be inclined to hold rare earth elements in reserve for themselves and compete over these resources.

#### Next gen batteries solve grid stability and blackouts.

Beall ‘18 [Abigail; 2018; Journalist, citing Dr Emma Kendrick, a materials chemist at the University of Warwick; China Dialogue, "The race to develop the next generation battery," https://www.chinadialogue.net/article/show/single/en/10808-The-race-to-develop-the-next-generation-battery]

Alongside electric cars, grid storage is another area where large-scale batteries will play an increasingly important role. The amount of renewable power from solar and wind at any given time depends on the weather, which makes it intermittent. Batteries can help stabilise grids by storing energy efficiently.

“Sodium-ion batteries could be an inexpensive alternative to lithium-ion in the grid storage market,” says Ms Cheng. Sodium-ion batteries work in a similar way to lithium-ion but use sodium instead, which is more readily available. Dr Emma Kendrick, a materials chemist at the University of Warwick, is looking into the sodium-ion battery. “This is a low-cost alternative to lithium-ion batteries,” she says. “It is still in its infancy but there are opportunities to perform research into the manufacturability and durability of the technology.” Flow batteries are another alternative.

“Flow batteries are also attractive options since they can be easily scaled up to provide high capacity," says Ms Cheng, adding: "They contain two chemical compounds that are separated by a membrane. The compounds can flow through the membrane, creating chemical energy, but they can also move back to where they started, which recharges the battery."

There are many other options. In February this year, scientists at the University of California Irvine created gold nanowire batteries that can withstand more recharging than ever before, hundreds of times within their lifetime. The team hopes this will one day lead to batteries that can last indefinitely.

Graphene may also be a component of the battery of the future. A Spanish company called Grabat says their graphene batteries can provide power for an electric vehicle to travel 500 miles on a single charge. For comparison, Tesla’s Model 3 can travel 215 miles on one charge.

While nobody can predict exactly what the next generation of batteries is going to look like, there is a huge amount of work going into solving the problem.

#### They insulate networks through resilience measures.

Urry ‘17 [Amelia; February 22; Associate editor of science and technology; Wired, "Inside the Race to Build the Battery of Tomorrow," https://www.wired.com/2017/02/researchers-racing-build-battery-future/]

And here’s what a better battery stands to win: a cleaner, more reliable power system, which doesn’t rely on fossil fuels and is more robust to boot.

Every time you flip a light switch, you tap into a gigantic invisible web, the electrical grid. Somewhere, at the other end of the high-voltage transmission lines carrying power to your house, there’s a power plant (likely burning coal or, increasingly, natural gas) churning out electricity to replace the electrons that you and everyone else are draining at that moment.

The amount of power in our grid at any one time is carefully maintained—too much or too little and things start to break. Grid operators make careful observations and predictions to determine how much electricity power plants should produce, minute by minute, hour by hour. But sometimes they’re wrong, and a plant has to power up in a hurry to make up the difference.

Lucky for us, it’s a big, interconnected system, so we rarely notice changes in the quality or quantity of electricity. Imagine the difference between stepping into a bucket of water versus stepping into the ocean. In a small system, any change in the balance between supply and demand is obvious — the bucket overflows. But because the grid is so big—ocean-like—fluctuations are usually imperceptible. Only when something goes very wrong do we notice, because the lights go out.

Renewable energy is less obedient than a coal- or gas-fired power plant—you can’t just fire up a solar farm if demand spikes suddenly. Solar power peaks during the day, varies as clouds move across the sun, and disappears at night, while wind power is even less predictable. Too much of that kind of intermittency on the grid could make it more difficult to balance supply and demand, which could lead to more blackouts. Storing energy is a safety valve. If you could dump extra energy somewhere, then draw from it when supply gets low again, you can power a whole lot more stuff with renewable energy, even when the sun isn’t shining and the wind isn’t blowing. What’s more, the grid itself becomes more stable and efficient, as batteries would allow communities and regions to manage their own power supply. Our aging and overtaxed power infrastructure would go a lot further. Instead of installing new transmission lines in places where existing lines are near capacity, you could draw power during off-peak times and stash it in batteries until you need it.

Just like that, the bucket can behave a lot more like the ocean. That would mean—at least in theory—more distributed power generation and storage, more renewables, and less reliance on giant fossil-fueled power plants.

#### Solar storms and EMP strikes are inevitable and outweigh nuclear war – batteries solve.

MM ’15 [Microgrid Media; September 15; Energy media source, citing the former Director of the CIA; Microgrid Media, “Grid Will Not Survive Inevitable Geomagnetic Storm or EMP Attack,” microgridmedia.com/grid-will-not-survive-geomagnetic-storm-or-emp-attack/]

But as former Director of Central Intelligence James Woolsey warned in his recent congressional testimony, “The EMP threat is as real as the Sun and as inevitable as a solar flare.”

The Congressional EMP Commission, called it “one of a small number of threats that has the potential to hold our society seriously at risk” and “is capable of causing catastrophe for the nation.” These are not one commissions findings, but represent a consensus from studies by the Congressional Strategic Posture Commission, the National Academy of Sciences, the Department of Energy, the National Intelligence Council, a U.S. Federal Energy Regulatory Commission report coordinated with the Department of Defense and Oak Ridge National Laboratory, and numerous other reports.

With such overwhelming political and scientific consensus, it may come as a shock that nothing has been done to protect America from a power outage that could last several years. You may also be surprised that your energy bill could be paying the lobby efforts to keep it that way.

The Hundred Year Geomagnetic Solar Storm The worst disasters are often the result of natural events which occur less than every hundred years. The hundred year earthquake doesn’t remind us to build away from fault lines. The hundred year tsunami doesn’t remind us to build nuclear reactors above the inundation zone. Likewise, the hundred year solar storm did not remind us to build an electric grid capable of surviving it. Solar storms, or Geomagnetic Disturbances (GMD) are the result of a solar wind shock wave or a magnetic cloud interacting with the earth’s magnetic field. While solar storms happen as frequently as northern lights, experts are most concerned about a rare solar super-storm, like the 1921 Railroad Storm. The National Academy of Sciences estimates that if the Railroad Storm were to occur today, there would be a nationwide blackout for 4-10 years. The most powerful geomagnetic storm on record is the 1859 Carrington Event. Estimates are that Carrington was about 10 times more powerful than the 1921 Railroad Storm and 100 times more powerful than anything the modern grid has experienced. The Carrington Event was a worldwide phenomenon, causing forest fires from flaring telegraph lines, burning telegraph stations, and destroying the freshly laid telegraph cable at the bottom of the Atlantic Ocean.

According to Woolsey, a solar super-storm like the Carrington Event today would “collapse electric grids and life-sustaining critical infrastructures worldwide, putting at risk the lives of billions.”

A Close Call

In July 2014, NASA reported that Earth narrowly escaped another Carrington Event. Indeed, a Carrington-class coronal mass ejection crossed the path of the Earth, missing our planet by just three days. NASA assessment is that the resulting storm would have been catastrophic.

We are overdue for a hundred-year solar storm like the Carrington Event. NASA puts the likelihood of such a geomagnetic super-storm at 12 percent per decade, virtually guaranteeing that if we don’t experience a catastrophic geomagnetic super-storm, our children will. In his congressional testimony, Dr. Richard Garwin of the IBM Thomas J. Watson Research Center emphasized that “a once-per-century event could occur next week,” urging action to reduce the impact on the bulk power system.

Weaponized Electromagnetic Pulse (EMP)

If the threat of a natural geomagnetic super-storm wasn’t enough, the electric grid is equally fragile to an electromagnetic pulse attack. There are ways in which an EMP threat is more serious than a conventional nuke threat. Deterrence may not work at all because we may not know where the pulse came from. If everything goes dark, it could be a solar event or it could be North Korea. It could be launched from a freighter off one of our coasts or from a northern satellite designed to go unnoticed. We may never know.

“An EMP attack is one of a small number of threats that has the potential to hold our society seriously at risk” and “Is capable of causing catastrophe for the nation.” — Congressional EMP Commission

“We talk a lot about a Nuclear Bomb in Manhattan, and we talk about a cyber-security threat to the grid in the Northeast. All these things would probably pale in comparison to the devastation that an EMP attack could put on Americans” — James Woolsey, Former Director of Central Intelligence

How Likely is an Electromagnetic Pulse Attack?

EMP nuclear attacks are an open part of cyber warfare doctrine in several countries.

Russian General Vladimir Slipchenko, in his military textbook ‘No Contact Wars’ describes the combined use of cyber viruses and hacking, physical attacks, non-nuclear EMP weapons, and ultimately nuclear EMP attack against electric grids and critical infrastructures as a new way of warfare that is the greatest Revolution in Military Affairs (RMA) in history. Like Nazi Germany’s Blitzkrieg (“Lightning War”) Strategy that coordinated airpower, armor, and mobile infantry to achieve strategic and technological surprise that nearly defeated the Allies in World War II, the New Blitzkrieg is, literally and figuratively an electronic “Lightning War” so potentially decisive in its effects that an entire civilization could be overthrown in hours. According to Slipchenko, EMP and the new RMA renders obsolete modern armies, navies and air forces. For the first time in history, small nations or even non-state actors can humble the most advanced nations on Earth.

China’s military doctrine sounds an identical theme. According to People’s Liberation Army textbook World War, the Third World War–Total Information Warfare, written by Shen Weiguang (allegedly the inventor of Information Warfare), “Therefore, China should focus on measures to counter computer viruses, nuclear electromagnetic pulse…and quickly achieve breakthroughs in those technologies…”

Iran in a recently translated military textbook endorses the theories of Russian General Slipchenko and the potentially decisive effects of nuclear EMP attack some 20 times. An Iranian political-military journal, in an article entitled “Electronics To Determine Fate Of Future Wars,” states that the key to defeating the United States is EMP attack and that, “If the world’s industrial countries fail to devise effective ways to defend themselves against dangerous electronic assaults, then they will disintegrate within a few years… American soldiers would not be able to find food to eat nor would they be able to fire a single shot.”

North Korea appears to have practiced the military doctrines described above against the United States–including by simulating a nuclear EMP attack against the U.S. mainland. Following North Korea’s third illegal nuclear test in February 2013, North Korean dictator Kim Jong-Un repeatedly threatened to make nuclear missile strikes against the U.S. and its allies. In what was the worst ever nuclear crisis with North Korea, that lasted months, the U.S. responded by beefing-up National Missile Defenses and flying B-2 bombers in exercises just outside the Demilitarized Zone to deter North Korea. On April 9, 2013, North Korea’s KSM-3 satellite orbited over the U.S. from a south polar trajectory, that evades U.S. early warning radars and National Missile Defenses, at the near optimum altitude and location to place an EMP field over all 48 contiguous United States.

Recently, a North Korean vessel was disrupted in Panama carrying missiles that would have been capable of carrying out an EMP attack off the coast of America. When approached out of suspicion of drug smuggling, they resisted and the captain attempted suicide. Why Hasn’t Anything Been Done? At least five US Government studies have concluded that the threat of an EMP attack is real and needs to be acted upon, but alarmingly little has been done. NERC has prevented states from taking action and kept acts bottled up and not able to be passed by congress. Texas State Senator Bob Hall, a former USAF Colonel and himself an EMP expert, has called the lobby efforts of the electric utilities in this matter as “equivalent to treason.” “As a Texas State Senator who tried in the 2015 legislative session to get a bill passed to harden the Texas grid against an EMP attack or nature’s GMD, I learned first hand the strong control the electric power company lobby has on elected officials.” What Can Be Done To Protect Critical Infrastructure?

There is a lot that can be done to harden the grid, ranging from fast warning systems to hardening the trains that deliver coal. The grid may become more secure by trends already happening with distributed renewable energy and microgrids. Long run lines, such as the electric grid are the most vulnerable to an EMP or geomagnetic storm. “Microgrids are an important part of the solution,” said Dr. George H Baker of Resilient Societies. Reminding us that microgrids can be relatively large.

For example, my own city, Harrisonburg, has the capability to isolate itself from the grid and run critical services on local gas-turbine generators.

The bulk power system in the United States is reliable but not resilient. Like most systems, the way to be resilient is by having a robust, decentralized network with built in flexibility. Although it’s not what electric utilities want to hear, Americans will remain at risk until communities can meet all critical loads without the bulk power system.

#### Grid resilience stops civilizational collapse.

Weiss and Weiss ’19 [Matthew and Martin; May 29; National Sales Director at United Medical Instruments, UMI and Research assistant at the American Jewish University; Neurosurgeon at UCLA-Olive View Medical Center; Energy, Sustainability, and Society, “An assessment of threats to the American power grid,” vol. 9]

Consequences of a sustained power outage

The EMP Commission states “Should significant parts of the electrical power infrastructure be lost for any substantial period of time, the Commission believes that the consequences are likely to be catastrophic, and many people will die for the lack of the basic elements necessary to sustain life in dense urban and suburban communities.” [67].

Space constraints preclude discussion on how the loss of the grid would render synthesis and distribution of oil and gas inoperative. Telecommunications would collapse, as would finance and banking. Virtually all technology, infrastructure, and services require electricity.

An EMP attack that collapses the electric power grid will collapse the water infrastructure—the delivery and purification of water and the removal and treatment of wastewater and sewage. Outbreaks that would result from the failure of these systems include cholera. It is problematic if fuel will be available to boil water. Lack of water will cause death in 3 to 4 days [68].

Food production would also collapse. Crops and livestock require water delivered by electronically powered pumps. Tractors, harvesters, and other farm equipment run on petroleum products supplied by an infrastructure (pumps, pipelines) that require electricity. The plants that make fertilizer, insecticides, and feed also require electricity. Gas pumps that fuel the trucks that distribute food require electricity. Food processing requires electricity.

In 1900, nearly 40% of the population lived on farms. That percentage is now less than 2% [69]. It is through technology that 2% of the population can feed the other 98% [68]. The acreage under cultivation today is only 6% more than in 1900, yet productivity has increased 50 fold [69].

As stated by Dr. Lowell L Wood in Congressional testimony:

“If we were no longer able to fuel our agricultural machine in the country, the food production of the country would simply stop, because we do not have the horses and mules that used to tow agricultural gear around in the 1880s and 1890s”. “So the situation would be exceedingly adverse if both electricity and the fuel that electricity moves around the country……… stayed away for a substantial period of time, we would miss the harvest, and we would starve the following winter” [70].

People can live for 1–2 months without food, but after 5 days, they have difficulty thinking and at 2 weeks they are incapacitated [68]. There is typically a 30-day perishable food supply at regional warehouses but most would be destroyed with the loss of refrigeration [69]. The EMP Commission has suggested food be stockpiled for a possible EMP event.

A prescription for failure

Even if all the recommendations of the Congressional EMP Commission were implemented, there is no guarantee that the grid will not sustain a prolonged collapse. There should therefore be contingency plans for such a failure.

There is also another consideration. The foundational pillars of prior American nuclear defense policy, in today’s climate, are of uncertain validity. Mutual assured destruction is the Maginot line of the 21st century. Nonproliferation will prove difficult to resurrect.

The consequences of a widespread nuclear attack have been positioned to the public as massive deaths from blast effects, and then further lingering deaths from the effects of radiation. We suspect there will be no electricity, and there will be no electricity for a very long time.

There should be an actionable plan in anticipation of a possible prolonged collapse of the grid—a retro-structure and a skill set to provide a framework for survival. Our sense is there is no plan.

#### Current interpretations of FTAIA undermine global deterrence against cartels.

Murray ’17 [Sean; 2017; J.D. from Fordham University, B.A. from Vassar College; Fordham International Law Journal, “With a Little Help from my Friends: How a US Judicial International Comity Balancing Test Can Foster Global Antitrust Redress,” vol. 41]

IV. SHORTCOMINGS OF THE CURRENT JURISPRUDENCE

Although clarity was one of Congress’ goals in enacting the FTAIA, the statute as drafted is anything but clear, and the FTAIA itself has contributed to the ill-defined boundaries of the effects doctrine. The FTAIA has produced a number of circuit splits, one of which was decided by Empagran.151 Other circuit splits currently exist, including one between the Seventh and Ninth circuits concerning the interpretation of the FTAIA’s requirement that anticompetitive behavior have a “direct, substantial, and reasonably foreseeable effect” on US commerce which the Supreme Court has so far abstained from resolving.152 As explained in Minn-Chem, Inc. v. Agrium Inc., the “substantial” and “reasonably foreseeable” prongs have produced little dispute and are relatively straightforward.153 Rather, what it takes to show “direct” is less clear.154 The Seventh Circuit took the position that, like in tort law, recovery should be cut off for injuries that are too remote from the cause of an injury and held that the term “direct” means only “a reasonably proximate causal nexus.”155

To the contrary, the Ninth Circuit in United States v. LSL Biotechnologies looked to the Supreme Court’s definition of “direct” from a different statute germane to international relations.156 Drawing from dictionary definitions and language in the Foreign Sovereign Immunities Act that is similar to that in the FTAIA, the court held that an effect is “direct” if “it follows the immediate consequence of the defendant’s activity.”157 This definition was subsequently utilized by the Ninth Circuit in its decision in United States v. Hsiung (the criminal prosecution of the defendants in Motorola Mobility), which expressly rejected Minn-Chem’s “reasonably proximate causal nexus” approach and reiterated instead the broader “immediate consequence” test.158

A. Problems Arising from the Circuit Split

Using Minn-Chem’s definition of “direct,” however, has produced a questionable holding in Motorola Mobility.159 In that case, a US company, Motorola, brought a claim under Section 1 of the Sherman Act, alleging that it was the victim of price-fixing among foreign manufacturers of liquid crystal display (“LCD”) panels used as components in the manufacture of cellphones.160 The LCD panel manufacturers had already been found guilty of participating in an illegal cartel, and those convictions were affirmed in Hsiung.161 Motorola was a major purchaser of LCD panels, but had purchased most of the price-fixed products through its majority-owned foreign subsidiaries.162 Only one percent of its purchases were made directly by Motorola in the United States and incorporated into cellphones also sold in the United States.163 The other ninety-nine percent of its purchases were made abroad.164 Of those purchases, forty-two percent were incorporated into phones destined for the United States, while the remainder were used to make phones sold abroad.165

In its first stab at the appeal of the lower court’s decision, the Seventh Circuit following Minn-Chem’s definition of “direct” held that anticompetitive behavior affecting intermediary products, rather than final products, could not have a “direct” effect on US commerce.166 After additional consideration likely influenced by the DOJ’s concern with the initial holding and its implications for international cartel enforcement, the court vacated the first opinion and opted for a different approach to the same conclusion.167 Summarizing that the case involved “components [that] were sold by their manufacturers to their foreign subsidiaries, which incorporated them into the finished product to Motorola for resale in the United States,” Judge Posner branded the wrongful conduct, effect, and injury as entirely extraterritorial because Motorola and its subsidiaries did not function as one enterprise.168 Therefore, the court construed Motorola as an indirect purchaser, barred from bringing a claim under the Sherman Act by virtue of the holding in Illinois Brick Co. v. Illinois,169 and concluded that the entire transaction falls outside of the FTAIA’s exception, though recognizing that the effect on US commerce may, perhaps, be “direct.”170

But, the court’s reliance on Illinois Brick was no better than its initial attempt to characterize the effect of the LCD cartel on US commerce. Several points suggest Motorola Mobility was wrongly decided, including inconsistencies with US precedent and statutes. In holding that Motorola and its subsidiaries did not function as one enterprise because they are governed by the different laws of the countries in which they are incorporated and operated, Judge Posner disregarded the Supreme Court’s central holding in Copperweld Corp. v. Independence Tube Corp.171 Copperweld’s progeny have found a corporation and its wholly owned subsidiaries to be a “single entity” with “complete unity of interest” and, similarly, have also found a lack of relevant differences between a corporation and its wholly owned subsidiary for Sherman Act analysis.172 Additionally, for non-wholly owned subsidiaries, courts relying on Copperweld have treated a parent and its non-wholly owned subsidiary as a single entity for antitrust purposes where the parent held a controlling majority of the subsidiary’s stock.173

In addition to precedent, other US antitrust statutes treat parents and subsidiaries as one entity. The Hart-Scott-Rodino Antitrust Improvement Act (“HSR”) requires a business acquiring another business in a transaction meeting certain thresholds to file a premerger notification with the government.174 If the acquiring business is controlled by a parent corporation, the HSR mandates that the “ultimate parent entity” file the notification regardless of the nationality of the acquired business.175 Furthermore, appearing to be influenced by Copperweld, the HSR does not require filing for the merger of two wholly owned subsidiaries with a common parent.176

Motorola also argued that it was the “target” of the illegal conduct or, alternatively, the direct victim because its subsidiary “passed on” the cartel-inflated portion of the original purchase price to Motorola.177 In Illinois Brick, which also contemplated the offensive use of the illfated pass-on theory in US antitrust jurisprudence, Justice White surmised that a situation in which the pass-on defense “might be permitted” is where the direct purchaser is owned or controlled by its customer.178 Posner, highlighting the semantic difference between “might be” and “is,” brushed this off as meaningless.179

The Motorola Mobility decision has negative consequences for US antitrust law, non-US subsidiaries of American parents relying on US law for potential recovery, US businesses operating internationally with international subsidiaries, and consumers. In essence, the Seventh Circuit announced a broad rule that eliminates private antitrust remedies where the first purchase of a price-fixed component occurs offshore, drastically mitigating the ability of US antitrust law to deter harmful foreign conduct targeting US markets.180 Is Posner really suggesting that American businesses are only protected by US antitrust law when the domestic parent itself engages in such wholly foreign transactions?181

Moreover, the Seventh Circuit’s decision creates a glaring inconsonance with the Ninth Circuit’s in what should be similar outcomes to similar cases. Despite justifying its second decision the Seventh Circuit by warning that “rampant extraterritorial application of U.S. law ‘creates a serious risk of interference with a foreign nation’s ability to independently regulate its own affairs,’” the court did not delve into any meaningful comity analysis.182 Particularly troubling is that while concerned with the prospect of “rampant extraterritoriality,” the court gives no attention to whether Motorola would be able to recover abroad or, more importantly, whether the cartels’ host countries have any incentive to prosecute “when their nationals engage in hardcore cartel conduct directed at a huge U.S. consumer market” that caused harm in that, opposed to its own, market.183

B. Comity Analysis: A Possible Solution to Interpreting the FTAIA?

Ultimately, the Seventh Circuit may have initially reached a more reasonable conclusion in its first decision of Motorola Mobility had the court taken a different interpretational approach, such as one taken by the Supreme Court. Because the FTAIA’s effect test reflects an evaluation of a US jurisdictional claim, a possible method of aiding the courts’ construction of what a “direct” effect entails may be to follow Empagran’s example and in fact employ a comity analysis.184 The two most recent comity principle constructions, as discussed, are in Hartford Fire and Empagran. However, the different comity approaches the Supreme Court undertakes in both cases result in standards that are under-inclusive and over-inclusive, respectively.

The Supreme Court’s approach in Hartford Fire suggested the unhelpfulness, if not irrelevance, of comity if there was no true conflict of laws.185 Hartford Fire’s comity test is under-inclusive in the sense that comity considerations would rarely be triggered, perhaps only in cases where a foreign state established laws mandating anticompetitive behavior.186 Indeed, the First Circuit in Nippon Paper suggested that Hartford Fire had “stunted” the growth of comity in antitrust, and Professor Eleanor Fox proclaimed that “[the decision in Hartford Fire] gives U.S. jurists and enforcers license to disregard the interests of non- Americans.”187

Empagran’s comity analysis, on the other hand, may be rigidly over-inclusive to the point where important US antitrust law objectives, such as deterrence and remedy, may go unserved. Turning its back on the Supreme Court’s previous holdings in Continental Ore and Pfizer, the decision’s use of comity may in fact have created “a handicap going forward [that] would lead to under-deterrence as well as unfairness.”188 As Judge Higginbotham’s dissent in Den Norske v. HeereMac stresses, the FTAIA does not alter Pfizer’s affirmation of foreign plaintiffs’ ability to sue under the Sherman Act, which was expressly approved in the statute’s legislative history.189

#### Accounting for foreign penalties prevents over-enforcement and ensures global anti-cartel cohesion.

Huizing ‘18 [Pieter Huizing; 2018; PhD student at Leiden University and a senior associate at the antitrust department of Allen & Overy LLP; "InnoLux v AU Optronics: comparing territorial limits to EU and US public enforcement of the LCD cartel," https://academic.oup.com/antitrust/article-abstract/6/2/231/4964994]

The LCD cases show that in respect of cartel conduct by multinational corporations involving their worldwide sales, the existence of a certain domestic connection to justify the exercise of jurisdiction is almost a given. It is therefore not surprising that a multitude of authorities will generally be able to assert jurisdiction over truly global cartel behaviour. Without any jurisdictional or territorial delineation between authorities on ‘who sanctions what and by how much’, domestic enforcement of international cartel conduct is bound to lead to potential or actual overlapping punishment. It is easy to see how the fining methodologies used by the Commission and the DOJ can result in the same sales being taken into account more than once for the purposes of sanctioning the same overall conduct. Such double-counting increases risks of over-enforcement and disproportionate overall punishment. To ensure that on an international level the overall penalty fits the severity of the crime, it is submitted that authorities targeting the same conduct in parallel should avoid unilaterally aiming for the maximum fine available without having any regard for the level of punishment and deterrence achieved by sanctions imposed elsewhere. This is necessary not only to safeguard overall proportionality of fines, but also with a view to comity considerations. Maintaining an isolated and expansive view on cartel enforcement may have been justifiable when antitrust laws were effectively enforced in only a few countries in the world. But with over 125 jurisdictions with active cartel enforcement, this may be the time for the European and American authorities to start adopting a more modest approach.132 As noted by Connor in the context of his support for the Motorola Mobility judgment: [h]aving invited the world to join the effort to prohibit and prosecute cartels, and that invitation having been enthusiastically accepted, it is good manners/ policy that the competition regimes set up around the globe—which continue to develop—be given due respect and that the views of our partners be given serious consideration.133 The need for international coordination of extraterritorial cartel enforcement is a hot topic in the global antitrust community. It is a recurring theme on antitrust conferences and a key focus of the advocacy efforts of international organizations such as the ICN, the OECD, and the International Bar Association (IBA). The focus of such efforts has often been on cooperation in respect of the investigation stages and less on coordination in respect of the scope and level of punishment.134 But there are more and more calls for authorities to also coordinate their cartel penalties. For example, during the OECD Roundtable on Cartels Involving Intermediate Goods in October 2015, several delegates highlighted ‘the importance of taking into account fines or sanctioning decisions already imposed by other competition agencies to minimise concerns about the fairness and proportionality of fines levied in multijurisdictional cases’.135 In June 2016, the Japanese Ministry of Economy, Trade and Industry (METI) published a report on its research into the enforcement of international cartels, in view of the ‘growing concern about overlapping application of competition laws or imposition of multiple surcharges by several countries’.136 Based on its research, the Ministry proposed increased coordination between authorities to take into account concurrent penalties. In December 2016, both the IBA and the American Bar Association (ABA) in their comments on the proposed new DOJ and FTC Antitrust Guidelines for International Enforcement and Cooperation called upon the US authorities to stress the need for cooperation regarding sanctioning of international cartel cases to avoid over-deterrence or double-jeopardy.137 Furthermore, also in December 2016, in one of the key submissions for the OECD’s 15th Global Forum on Competition, Hwang Lee specifically pressed for increased efforts by competition authorities to coordinate fining decisions in parallel proceedings.138 These examples indicate that—while moving slowly—progress is made in recognizing the need for commonly accepted principles for coordination between authorities in the sanctioning of international cartels.

Since internationally agreed principles on the coordination of cartel fines are yet to be developed, national self-restraint is currently required to limit the risks resulting from parallel enforcement of international cartels. Such self-restraint can be exercised in respect of any of the three elements assessed in this article: asserting jurisdiction, defining the territorial scope of punished conduct, and setting the fine.139 The Japan Fair Trade Commission (JFTC), for example, has explained that it cannot currently take into account sanctions imposed by other authorities in determining its own fine because it lacks the discretion to do so.140 However, in view of international comity, the JFTC does consider enforcement action elsewhere in respect of the same international cartel to decide whether it will also take action. Similarly, in Australia– where cartel fines are set by the court—the authority exercises prosecutorial discretion by considering whether it is more appropriate to leave enforcement activities to jurisdictions where the harm of a cartel was felt most immediately.141 In contrast, the Korean Fair Trade Commission does not consider sanctions imposed elsewhere for the decision whether or not to bring an enforcement action, but it does have the discretion to consider foreign fines in calculating the surcharge it imposes.142 The DOJ has indicated that when a sanction in respect of the same cartel is first imposed outside the USA, it may take this into account if the sanction accounts for the harm to businesses and consumers in the USA and therefore satisfies deterrent interests of the USA.143 Terzaken and Huizing have suggested altering this latter approach by focusing on whether there is any residual deterrence need following penalties already imposed elsewhere, not on whether specific national harm was considered in the fining methodology applied by a foreign authority.144

As an alternative to taking into account penalties imposed elsewhere, Bentley and Henry have proposed that authorities should solely take into account sales for the purposes of fine calculation if such sales meet the applicable jurisdictional tests.145 This seems a sensible proposal. While it is true that the basis for asserting jurisdiction can be separated from the basis for calculating a fine, as explicitly reasoned by the ECJ, it is hard to justify partly relating a penalty to conduct that in itself would not have a sufficient territorial nexus to trigger potential prosecution. In analogy to the Seventh Circuit’s assessment of Motorola’s damages claims, it is difficult to accept that foreign sales without such nexus can still be taken into account as part of domestic enforcement as long as they happened to take place alongside some import commerce. Internationally, it may not even be all that controversial to require authorities to calculate cartel fines on the basis of only those sales that create a sufficient jurisdictional link to their territory. A recent survey by the International Competition Network (ICN) already shows that many jurisdictions maintain the view that only the direct sales of cartelized products should form the basis of a cartel fine in all or most cases.146

Bentley and Henry consider their solution to be simpler than requiring authorities to take into account fines already imposed elsewhere. But it is submitted that this is still needed even if authorities only take into account sales that pass the applicable jurisdictional tests, as this does not avoid situations where more than one authority claims jurisdiction.147 This is especially the case where authorities apply a broad interpretation of a qualified effects test. In such situations, the same sales may still be taken into account more than once. And even if authorities avoid any double counting of sales, international alignment of sanctions may still be required to ensure overall proportionality and an optimal level of deterrence. A truly coordinated approach to international cartel enforcement should therefore more comprehensively focus on the ultimate outcome of the overall enforcement.

It goes beyond the scope of this article to discuss at what level cartel fines must be set to achieve both proportionality and optimal deterrence. And it must be noted that it has not been empirically tested whether overlapping cartel fines imposed in multiple jurisdictions actually create a problem of over-deterrence or whether global cartels are (still) more likely to benefit from under-deterrence.148 But it is clear that an optimal overall penalty for a global cartel is not automatically achieved by the accumulation of several national fines for the same cartel that were considered optimal by the respective authorities. First, such accumulation would likely mean that the overall fine amount increases in a certain proportion to the additional amount of affected sales in the sanctioning jurisdictions. However, proportionality and deterrence are complex principles that not necessarily (directly) related to the level of sales achieved with the cartelized products. Proportionality is typically linked to the elements of culpability of the offender and the harm caused by the offence.149 Optimal deterrence is typically linked to the expected gains from the offence and the probability of detection and punishment.150 So it is not obvious to see why in the pursuit of a proportionate and deterrent penalty, the fine amount should increase in direct proportion to the level of affected sales. It may well be that a proportionate and deterrent fine has already been achieved despite not covering all potentially affected sales. In this context, the Business and Industry Advisory Committee to the OECD reasoned that ‘once any jurisdiction sets a fine at an appropriate and proportionate level, another jurisdiction imposing penalties on top of that needs to strike a proper balance’.151 Second, several authorities may take the same factors into account in increasing a fine for deterrence purposes, such as the size of the undertaking. A single authority may determine that for a cartel fine to actually ‘hurt’, it should amount to at least 3 per cent of an undertaking’s total turnover. But if five authorities use this approach in respect of the same global cartel, the total fine amounting to 15 per cent of the total turnover may hurt much more than what was considered necessary by each individual authority.152 Thirdly, many authorities apply a maximum fine amount that is related to the total turnover of an undertaken (eg the cap of 10 per cent as applied by the Commission). Such a cap serves to ensure fines are not excessive or disproportionate153 and to limit the risks of undue financial difficulties and insolvency (and hence lessened competition) as a result of a fine. But if five authorities were to impose fines for the same global cartel up to a 10 per cent cap, the total fine amounting to 50 per cent of the undertaking’s turnover is still quite likely to jeopardize the viability of the undertaking and quite likely to be (perceived as) disproportionate in relation to the size of its economic activities.154

In AU Optronics, Judge Illston in her discretion decided that USD 500 million was sufficiently deterrent and not excessive, even though the fining guidelines had recommended a fine between USD 936 and 1872 million. Her decision was also based on the penalties and financial impact already incurred by AUO in other proceedings, something explicitly not taken into account in the DOJ sentencing recommendation. Rather than rigidly applying the domestic fining guidelines, she appears to have adopted a comprehensive approach that considered the overall proportionality of punishment for AUO’s cartel conduct and the residual deterrence need. While the EU and US authorities also seem willing to incidentally and on an ad hoc basis take a step back in view of foreign enforcement,155 sound enforcement policies that are aimed to achieving an overall appropriate fine by taking into account the international context of cartel sanctioning are still lacking.156 It is submitted that the development of such policies is necessary not only to ensure consistency in enforcement practices but also to increase legal certainty, predictability of sanctions, and confidence in the proportionality of international cartel enforcement.

#### Coordination is key to insulate global supply chain disruptions.

Alford 18 [ROGER ALFORD Deputy Assistant Attorney General Antitrust Division U.S. Department of Justice. "Antitrust Enforcement in an Interconnected World." https://www.justice.gov/opa/speech/file/1029821/download]

Today, I would like to speak at more length about the third principle—recognizing the global impact of antitrust enforcement. Just as Korea and the world have fundamentally changed since the 1988 Seoul Olympics, so too has global antitrust enforcement. In 1988 there was no International Competition Network, and only a handful of competition agencies were active, as much of the world continued to embrace highly-regulated or command economies. As President Ronald Reagan put it, the attitude of governments at the time was “if it moves, tax it, if it keeps moving, regulate it, and if it stops moving, subsidize it.”7 But as companies competed on an ever more global scale, countries became ever more committed to market-based economies and to enforcing competition laws. Today there are more than 130 different jurisdictions with antitrust agencies. A merger of two multinational firms can trigger merger filings and reviews in a dozen or more jurisdictions. Cartels affecting the global supply chain may involve companies engaged in illegal activity in countries separated by thousands of miles, numerous time zones, and multiple languages. Unilateral conduct enforcement in one jurisdiction has the potential to affect marketing and licensing practices not just in that jurisdiction, but around the world.

For antitrust enforcers, this means that international coordination and cooperation are more important than ever. Without these tools, the uncertainty associated with divergent approaches to enforcement has potentially significant costs for globally active companies, and the risks of inconsistent and potentially conflicting remedies are high. Antitrust enforcers who do not consider the global impact of their enforcement decisions can create inefficiencies that ultimately harm consumers throughout our interconnected world.

#### Global integration is under siege from foreign conduct – targeting international cartels is key.

Ryu ‘16 [Jae Hyung; Fall 2016; J.D. Candidate (2017), Washington University School of Law, St. Louis, Missouri; Wake Forest Journal of Business and Intellectual Property Law; “Deterring Foreign Component Cartels in the Age of Globalized Supply Chains,” vol. 17, no. 1, https://heinonline.org/hol-cgi-bin/get\_pdf.cgi?handle=hein.journals/wakfinp17&section=6]

The context of the antitrust statutes requires that the importation of finished products incorporating price-fixed components be treated as part of the import inclusion. The FTAIA's legislative history suggests that the drafters assumed that import commerce had a direct and substantial effect on U.S. commerce-the very kind of effect that the antitrust statutes were designed to regulate and deter. 1 One of the drafters sought to ensure that anticompetitive conduct in import commerce would remain subject to the Sherman Act because its effect would invariably reach American consumers. 1 16 Hence, the FTAIA came with a caveat that the statute would affect non-import foreign conduct. 1 Furthermore, the drafters wanted to impress upon the public that foreign non-import conduct may be subject to the Sherman Act only if it had a direct, substantial, and foreseeable effect on U.S. commerce.H8 By equating import commerce with non-import conduct that has a direct, substantial, and foreseeable effect on U.S. commerce, the drafters evinced an understanding that import commerce already had that similar requisite direct effect to be subject to the Sherman Act.119 Even under the paradigm in 1982 when the FTAIA was drafted, import trade or commerce was presumed to have a direct effect on U.S. commerce and thus be deserving of broad protection. 1 2 0

Yet, that was under the traditional paradigm, which neatly divided economies by national boundaries, and manufacturing processes were more or less confined within the national boundaries.121 However, today's economic reality is different. 122 The FTAIA serves to delineate the contours of the Sherman Act's extraterritorial reach. 1 2 3 Production chains have become global and largely foreign component manufacturing and assembly into finished products all occur outside the United States.124 Few of these of components are actually imported into the United States directly. 125 Nevertheless, because globalized supply chains are so prevalent in today's world economy that the U.S. economy will inevitably be affected if foreign cartels price fix components; it would subsequently raise the prices of affected finished products as well.126 This kind of internationally interdependent economy of today's scale was not envisioned when the FTAIA was drafted; therefore, the application of the statute should be updated to better reflect today's context in which globalized supply chains reigns.127

Moreover, trade has become a much more important component of the U.S. economy. Since 1982, merchandise trade's portion in the United States' gross domestic product ("GDP") has increased by more than fifty percent to reach nearly a quarter of the GDP.128 Therefore, undue influence on U.S. imports will have a much more significant impact on the U.S. economy than it could have had when the FTAIA was enacted.129 The health of the U.S. economy depends more on trade than before, and when components are manufactured and incorporated into finished products largely outside the United States, foreign cartel activities over component prices will have a significant amount of sway on the U.S. economy. This, in turn, provides grounds for the United States to be more vigilant and aggressively enforce the U.S. antitrust laws against foreign component cartel activities.130

#### Integrated supply chains deescalate great-power war – isolation tips every flashpoint.

Khanna ‘16 [Parag; April 19; Senior Research Fellow in the Centre on Asia and Globalisation at the Lee Kuan Yew School of Public Policy at the National University of Singapore; National Interest, “From War to Tug-of-War: The Global Fight for Connectivity,” https://nationalinterest.org/feature/war-tug-war-the-global-fight-connectivity-15831]

Here is my prediction: Taiwan won’t cause World War III. Nor will Kashmir, nor the Senkaku Islands, nor the nonexistent Iranian nuclear bomb. We aren’t very good at predicting wars. The wars that have broken out in the recent past—the U.S. invasion of Afghanistan and Iraq after 9/11, Russia invading Ukraine, the proxy war under way in Syria—weren’t predicted by anyone.

Furthermore, applying ancient wisdom such as the “Thucydides trap” only gets us so far. In 2015, respected Harvard professor Graham Allison published a study covering five hundred years of geopolitical power transitions and found that war broke out between the “ruling” power and its “rising” challenger in twelve out of sixteen cases. Based on these historical odds, war between the United States and China is likely but not inevitable. The most important strategy to avoid sleepwalking into World War III, Allison’s brilliant paper urged, is a “long pause for reflection.” Let’s take that pause.

This isn’t 1914. In our haste to make analogies to a century ago, we have neglected the differences. European nations traded heavily across each other prior to World War I, but they did so as vertically integrated mercantile empires drawing on raw materials from their own vast colonies. They traded in finished goods without outsourcing production to each other. We did not have today’s internationally distributed manufacturing networks in 1914. The nineteenth and twentieth centuries brought trade interdependence; in the twenty-first century, we have complex supply chain dispersal as well—including among rival superpowers.

Even more than trade, it is investment that determines the stability of relations. Under a Cold War geopolitical paradigm, rivals wouldn’t invest in each other either; the United States and the Soviet Union certainly didn’t. But today’s robust flows of global investment among friends and enemies—“frenemies”—highlight how we have shifted from a Westphalian world to a supply-chain world. This financial and investment integration comes in the form of the trillions of dollars of assets invested in each other’s currencies and equities, as well as the tangible, productive capital—factories, real estate, banks, agriculture—they have bought and built inside other’s territory to efficiently and profitably access their markets.

If the United States and China were to go to war, the most immediate casualty would be Walmart, America’s largest retailer, 70 percent of whose merchandise is imported from China. Walmart has also been buying e-commerce companies such as Yihaodian.com to boost sales in China. The world’s most valuable company, Apple (also American), would also see its stock plummet, with so much of the market sentiment around its potential linked to growth in China. Two other American technology giants, Google and Facebook, would have to give up their cherished dreams of equal access behind China’s “Great Firewall,” and Hollywood studios, already accused of self-censorship to gain investment such as Dalian Wanda’s recent purchase of Legendary Entertainment for $3.5 billion, would find themselves banned from the world’s fastest-growing film market.

Approximately 60 percent of the Fortune 500’s revenues come from overseas sales, and the recently ratified Trans-Pacific Partnership (TPP) agreement is an American-led effort to nudge Asia’s share of America’s exports up even higher—with the potential for China itself to eventually join the trade area. As of March 2016, China imports American shale oil supplies from Texas. Direct confrontation is thus not in anyone’s interest so long as China needs peace for growth, America needs China for its hardware and everyone relies on shipping through the South China Sea.

Supply chains thus diminish the incentives for conflict. Leaders think twice, and step back from the brink. The growing depth of global cross-border trade and investment make geopolitics much more complex than in previous eras. When Presidents Obama and Xi held a 2013 summit at Sunnylands in California and spoke of aspiring toward “a new kind of great power relationship,” that was a reflection of the current reality—not a future scenario.

The common-sense truth is that while leaders talk about “red lines” for public consumption, and navies come dangerously close to trading direct fire, global market integration churns forward, knowing that there are two kinds of mutually assured destruction at play: military and economic. Military maneuvers don’t tell us enough about what drives leverage among great powers nor what they are willing to fight over. The tangled complexities of today’s system force leaders to think beyond borders and make functional calculations about the cost-benefit utility of their strategies—knowing full well that supply-chain warfare involves not just an enemy “over there” but also one’s own deep interests “over there.”

Waiting for World War III thus recalls Samuel Beckett’s Waiting for Godot, in which Vladimir and Estragon resolve to hang themselves if Godot does not arrive—so they simply sit endlessly. Their would-be savior, of course, never comes, but the protagonists never actually commit suicide either.

It is well documented that the number and frequency of interstate wars has fallen to nearly zero. Equally important, but far less discussed, is our ability to ring-fence conflicts, containing them at the local or regional level rather than allowing them to spillover too widely or escalate too sharply. The one genuine international conflict of the past several years, between Russia and Ukraine, is an example of this. Russia has not invaded the Baltics, marched into Poland, shut off gas to Europe in the winter or otherwise cleaved the European Union. Russia lacks the capacity to do so, and knows the repercussions of overreach.

The Arab world also continues to seize daily headlines. Syria is undeniably a regional proxy war, meaning that chaos there will continue. But it is not likely that Sunni powers such as Turkey and Saudi Arabia will directly escalate against Russia and Iran, whose forces are backing Bashar al-Assad’s Alawite regime. Saudi Arabia and Iran are also jockeying in Iraq, marking yet another chapter in Iraq’s destruction that began with the 1980s Iran-Iraq War, the disastrous invasion of Kuwait in 1990, the U.S. invasion in 2003 and brutal insurgency ever since. But Iraq, too, will not become the flash point that triggers war among great powers. While all of these conflicts are tragic, none of them, civil or international, are of world-historical significance.

A far more important driver of the long-term geopolitical positioning among key powers is not their role in any of these minor wars, but how they play the great supply-chain tug-of-war that is a far more pervasive reality than international warfare. Tug-of-war is an apt metaphor for our times. The world’s oldest team sport, its rituals are recorded in ancient stone etchings from Egypt to Greece to China to Guinea. Often conducted in resplendent royal ceremonies, tug-of-war was used by the soldiers of great armies to build strength in preparation for combat. In the eighth century, the Tang dynasty emperor Xuanzong was known to pit over five hundred warriors on each side of a rope over 150 meters long.

The rope in today’s geopolitical tug-of-war is connectivity. States want to control the transportation, energy and communications infrastructures and markets that enable them to acquire resources, access markets and move up the value chain. We don’t fight over the borders that divide us, but rather pull and yank the supply chains that connect us. While very few societies are at war, all societies are caught in this global tug-of-war, competing over the flows of money, goods, resources, technology, knowledge and talent transpiring between them.

Wars of connectivity are won by economic master planning rather than military doctrine. Think about it: twenty-first-century China is not a superpower because of the size of its military arsenal, but because it has become the central hub for the world’s manufacturing and electronics supply chains, built a sizeable trade surplus and enormous currency reserves, and penetrated most of its neighbors through robust infrastructure networks and become their main foreign investor and export destination. Do you have any clue how many nuclear weapons China has? Exactly: It doesn’t matter. But you probably know a fair bit by now about how China builds special economic zones, buys and steals foreign technology, and capitalizes companies with billions of dollars to ramp up quickly and capture global markets that range from solar panels to mobile handsets.

Britain’s elite Royal Military Academy Sandhurst publishes a manual of strategies for success in tug-of-war, pointing out that a good team “synchronizes its movements to the point that their pull feels like it comes from a single, unified being.” Does America act like this? Do Washington politicians, the Fed, Wall Street bankers, Texas oil companies, Silicon Valley tech companies and the other players on America’s team act like a single, unified being? Or does China do it better? Tug-of-war is won slowly and carefully. Smart teams dig in their heels to hold ground and tire out opponents while collectively taking small steps to ultimately gain control.

Tug-of-war is still war without end, a marathon without a finish line. Winston Churchill once advised that it is always better to “jaw-jaw” than to “war-war,” meaning diplomacy is preferable to conflict. Today’s world is a hybrid of the two: It is an endless tug-tug.

The future of global stability hinges on whether great powers think and act in terms of sovereignty or supply chains—if they learn the benefits of fighting tug-of-war instead of the real thing. It is no doubt unwise to argue that World War III is a passé risk. However, as the French scholar Raymond Aron argued, nuclear deterrence and the benefits of hindsight are crucial in warding against the uncontrolled escalations of the twentieth century or even harrowing episodes such as the Cuban missile crisis. Furthermore, China’s neo-mercantilism today is quite different from the zero-sum European colonial mercantilism of centuries ago: It is the pursuit of catch-up modernization rather than global hegemony. China seeks foreign raw materials and technology, not foreign territory. The smoother the supply chains, the more satisfied China will be.

A hyperconnected, multipolar world is uncharted and dangerous territory, but the paradox of tug-of-war may be that the longer it goes on, the more everyone wins. If we play our cards right, North Korea will become a supply-chain condominium of China and South Korea and other investors variously exploiting its tremendous mineral and agricultural resources while modernizing its nascent manufacturing capacity. India and Pakistan will revive the historic Grand Trunk Road of trade linkages stretching from Afghanistan to Bangladesh, and complete the natural gas pipeline from Iran via Pakistan to India. China and Taiwan will deepen their supply chain linkages and accept the outstanding differences in political systems. And China and Japan will settle their historical grievances through generational change in leadership, and accept with maturity the obvious hierarchy of Asia’s future.

Today’s world is full of tension, strife and hostility: nuclear standoffs, terrorist insurgencies, collapsing states and tragic civil conflicts. It is healthy to remind ourselves that many of our ongoing flash points could potentially escalate through unpredictable chain reactions into global conflagration. But it is even more important to pay attention to what we are doing that prevents the unintended slide into disaster—and do more of it. The future of global stability hinges on whether we continue global supply-chain integration and content ourselves with waging tug-of-war rather than the real thing. The world’s oldest team sport has an admirable track record: almost nobody has ever died playing it.

## Indigenous Regimes – 1AC

Advantage Two is Indigenous Regimes.

#### Ambiguous unreliable enforcement inhibits anti-cartel cohesion and undermines foreign regulatory institutions.

Briggs & Bitton ‘15 [John; Daniel; 2015; Antitrust and litigation counsel of choice for dozens of major companies in the United States, Asia, Europe and Scandinavia. Client demand for his work has focused on antitrust, M&A and complex civil litigation; An attorney who represents clients in the San Francisco, California area; "Heisenberg’s Uncertainty Principle, Extraterritoriality and Comity." https://thesedonaconference.org/sites/default/files/publications/Heisenberg%27s%20Uncertainty%20Principle\_Extraterritorialty%20and%20Comity.16TSCJ327.pdf]

In a variety of settings foreign governments have expressed and are expressing concerns about the extraterritorial application of U.S. law. The United States occupies a unique position in global trade and finance. The United States also has enacted far-reaching legislation involving commerce, banking and finance, business conduct, mergers and acquisitions, foreign corrupt practices, and a variety of other matters. The extraterritorial application of laws in these areas challenges the sovereignty of other nations and is often viewed as offensive. In antitrust, the United States’ influence is the result of its status as the world’s largest importer of goods and services.18 In finance, this influence is the result of the U.S. dollar’s status as the international unit of account: “Pretty much any dollar transaction— even between two non-US entities—will go through New York City at some point, where it comes under the jurisdiction of US authorities.”19

The rampant extraterritorial application of U.S. laws has ruffled the feathers of foreign governments for a long time, beginning essentially with the cluster of private and government actions in the Uranium cartel cases back in the 1970’s and 1980’s. Close American allies, including Australia, Canada, France, South Africa, the UK, and others, reacted with hostility to the extraterritorial activism of the domestic judiciary by enacting “blocking” and “claw back” legislation.20 Such reactions included the enactment of laws by the United Kingdom and Canada that prohibit enforcement of foreign judgments awarding multiple damages21 and laws passed by the United Kingdom, France, Australia, and the Canadian provinces of Quebec and Ontario that limit or prohibit the removal of documents in response to a foreign order.22

More recently, a number of governments have expressed their concerns about the application of U.S. laws abroad through amicus briefs, including Australia, Belgium, Canada, China, France, Germany, Japan, the Netherlands, South Korea, Switzerland, Taiwan, and the United Kingdom:23 most of the United States’ top fifteen trading partners.

These foreign governments have expressed a fairly wide variety of concerns about the potential for extraterritorial application of U.S. laws to interfere with those governments’ policy decisions on such matters as liability, procedure, and damages. While most governments have regulatory regimes in place to police, for example, securities fraud and cartel behavior, these differ in many regards both from the American approach and also from each other, reflecting different cultural, social, and economic factors. These differences include the required showing for liability (e.g., definition of materiality in securities fraud cases),24 procedural protections (e.g., class-action formation and punitive) damages.26 Applying U.S. law to actors, conduct, and effects appropriately considered under a set of foreign laws undermines a foreign government’s ability to govern its own domain and, in the end, becomes an affront to its sovereignty.

Stepping on the toes of foreign governments’ regulatory regimes also risks stymying the international development of policies and regulations beneficial to the United States. Countries without well-developed regulatory apparatuses are less likely to develop them if the behavior is already policed by private plaintiffs in the United States or if the apparatuses would see their policy choices effectively overruled by U.S. policies.27

Foreign governments have also taken the view that extraterritorial application of treble damages threatens to undermine their own enforcement efforts. For example, they claim availability of private treble damages in the United States against their national companies for local conduct may have a detrimental effect on foreign leniency programs. These programs are a key tool for them in rooting out cartel activity, which has traditionally proven difficult to detect and prosecute.28 “These leniency policies seek to balance the interests of disclosure, deterrence, and punishment,” but “disclosure and reform are greatly hindered when a company risks the imposition of treble damages in a U.S. court for confessing to another nation or authority that it has participated in an international conspiracy.”29 When that reach is expanded outside of U.S. consumers in a U.S. court, “the prospect of ruinous civil liability in U.S. courts far outweighs the benefits most companies would receive from participating in an amnesty program.”30 And as Germany and Belgium informed the Supreme Court in Empagran,31 “[h]istorically, other nations have bristled at extraterritorial applications of United States antitrust laws. These concerns have resulted in foreign governments taking a number of measures to counter what they perceive to be an illegitimate encroachment into their sovereignty.”32

#### That cracks sustainable development and poverty relief.

Cheng ‘12 [Thomas; 2012; assistant professor at the Faculty of Law of the University of Hong Kong; "Convergence and Its Discontents: A Reconsideration of the Merits of Convergence of Global Competition Law." 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; Jan. 2020; Director of the MPhil in Engineering for Sustainable Development at Cambridge; Australian National University, Canberra, Australia; “The importance of achieving foundational Sustainable Development Goals in reducing global risk,” Volume 115, 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.

#### Particularly in Africa – solves famine.

Nwuneli ‘18 [Ndidi Okonkwo Nwuneli; 2018; Co-Founder of AACE Food Processing & Distribution, Managing Partner of Sahel Consulting Agriculture & Nutrition, Founder of LEAP Africa, and a 2018 Aspen Institute New Voices fellow; Project Syndicate; "The High Cost of Food Monopolies in Africa," https://www.project-syndicate.org/commentary/africa-monopoly-food-prices-by-ndidi-okonkwo-nwuneli-2018-08]

One reason for the distortion is the price of food relative to income. As Africa urbanizes, people are buying more imported semi- or fully processed foods, which cost more than locally produced foods. And in most countries, wages have not kept pace with inflation.

But the primary cause is poor public policy: African governments have failed to curb the power of agribusinesses and large food producers, a lack of oversight that has made local agriculture less competitive. In turn, prices for most commodities have risen.

The absence of antitrust laws, combined with weak consumer protection, means that in many countries, only two or three major companies control markets for items like salt, sugar, flour, milk, oil, and tea . The impact is most pronounced in African cities, where prices for white rice, frozen chicken, bread, butter, eggs, and even carbonated soft drinks are at least 24% higher than in other cities around the world. These prices hit consumers both directly and indirectly (owing to pass-through of higher input costs by food conglomerates and service providers).

The Food and Agriculture Organization of the United Nations (FAO) has long argued that food security and fair pricing depends on markets that are free from monopolistic tendencies. The OECD concurs, and has frequently called on authorities to address “anti-competitive mergers, abuse of dominance, cartels and price fixing, vertical restraints, and exclusive practices” in the food sector. And yet, in many African countries, this advice has rarely been heeded.

To be sure, this is not a new problem. Between 1997 and 2004, for example, the FAO counted 122 allegations of “anti-competitive practices” in 23 countries in Sub-Saharan Africa. Violations included a “vertical monopoly” in the Malawi sugar sector, price fixing in Kenya’s fertilizer industry, and a “buyer cartel” in the Zimbabwean cotton industry. And, despite the considerable attention such cases have received, the underlying problems persist.

According to the World Bank, more than 70% of African countries rank in the bottom half globally for efforts to protect “market-based competition.” While 27 African countries and five regional blocs do have antitrust laws on the books, enforcement is rare. The remaining countries have no regulations at all and have made little progress in drafting them.

There is one notable exception: South Africa. Since 1998, the country’s Competition Act has prohibited any company controlling at least 45% of the market from excluding other firms or seeking to exercise control over pricing. Violators face penalties of up to 10% of their earnings, and during the last two decades, some of the biggest companies in the country – including Tiger Brands, Pioneer Foods, and Sime Darby – have been penalized. As Tembinkosi Bonakele, head of South Africa’s Competition Commission, noted last year, the government is “determined to root out exploitation of consumers by cartels,” especially in the food industry.

Other countries should follow South Africa’s lead. Companies and special-interest groups will always seek to benefit from the absence of regulation. The need for reform is greatest in countries like Nigeria and Ghana, where food expenditures are high and food-industry pressure is most pronounced. Fortunately, there is growing recognition of the need to address these challenges. Babatunde Irukera, Director General of the Consumer Protection Council in Nigeria, recently asserted that, “In a large vibrant and loyal market such as Nigeria, the absence of broad competition regulation is tragic. Unregulated markets in competition context constitute the otherwise ‘legitimate’ vehicle for both financial and social extortion.”

Reducing the prices of staple food by even a modest 10% (far below the average premium cartels around the world charge) by tackling anticompetitive behavior in these sectors, or by reforming regulations that shield them from competition, could lift 270,000 people in Kenya, 200,000 in South Africa, and 20,000 in Zambia out of poverty. Such a policy would save households in these countries over $700 million (2015 US dollars) a year, with poor households gaining disproportionately more than rich ones.

#### It's existential – state collapse, refugees, terror, and Chinese spheres of influence, only institutional barriers solve.

Perez ‘18 [Alexandra; 2018; Pepperdine University, School of Public Policy. Masters in Public Policy at Pepperdine. Project Manager, Health Policy at Cato Institute; "Food Security as U.S. National Security: Why Fragile States in Africa Matter." https://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1169&context=ppr]

The United States’ role in foreign affairs is guided by an interest to keep the general peace around the world while protecting national security and economic interests. Stability in regions such as sub-Saharan Africa is crucial to national security, and one way to keep peace is by supplying the basic human need of food. According to the Fund for Peace, the three most fragile states in 2017 were in Africa— the Central African Republic, South Sudan, and Somalia. 1 Several other African countries are fragile, suffering from standard measures of instability, such as widespread corruption, weak institutions, and resource scarcity. Together, these problems create displacement, human-rights violations, and power vacuums where non-state actors can flourish. These issues should concern the United States not only for moral reasons, but also because they negatively affect American interests. Food aid and agricultural systems must be used as a tool to promote peace in Africa to decrease the region’s burden on the United States and to help stabilize a region that is often referred to as a lost continent.

With bipartisan support, the Global Food Security Act became law in July of 2016. It requires the President and appropriate agencies—including USAID, State Department, and the Office of US Trade—to formulate a plan to address food-insecure countries and report on that plan annually.2 The bill cited the Worldwide Threat Assessment of the US Intelligence Community (2014): “[l]ack of adequate food will be a destabilizing factor in countries important to US national security that do not have the financial or technical abilities to solve their internal food security problems.”3 Though it is uncertain whether annual reports will continue under the Trump administration, the US has demonstrated (at least through the Global Food Security Act) that it views food security as a matter of national security. According to the most recent Worldwide Threat Assessment, Africa is among the regions most susceptible to terrorism, especially in Somalia and South Sudan.4 This paper explores the ways in which food insecurity can enable conflict, how the US can improve the ways it offers food aid, and why African food security is in America’s national security interest.

Consequences of Food Insecurity

Enforcing and communicating a universal conception of human rights by any party is difficult. Nevertheless, US national security strategy has placed an emphasis on human rights in recent years. The former Secretary of State under President George W. Bush, Condoleezza Rice, once remarked that: “[f]or the United States, supporting international development is a vital investment in the free, prosperous, and peaceful international order that fundamentally serves our national interest.”5 Fragile regimes in Africa cannot successfully maintain themselves, let alone pose an immediate threat to the United States. However, these regimes are likely to seek alliances with adversaries that may pose a threat, such as China, creating a region of the world adverse to American interests and values.

Secondly, migrant and refugee flows are concerns for the United States due to their economic and social consequences. While many of the most serious cases of refugee crises today are nowhere near the US, they do affect some of the United States’ key allies around the globe. A clear example of this is Syrian migration into NATO member countries. In addition to military conflict, bipartisan research has shown that climate can also contribute to mass migrations by impacting harvest yields in regions still reliant on subsistence agriculture. For example, the famines in Somalia and Yemen have sparked emigration caused by food insecurity. Such crises may not be front page news compared to violent conflicts in surrounding states, but they present just as real a threat.

The third reason why the US should care about weak states is that terrorist organizations thrive in such environments. Since September 11, 2001, US national security policy has been primarily driven by the war on terror. While the fear of a repeat attack on American soil has calmed since 2001, the threat of terrorism is still present, and the United States must be proactive to stay ahead of terrorist threats. Terrorists thrive in weak state environments because either the lack of rule of law inhibits the host state’s ability to act against them, or because corrupt governments refuse to act, such as when Sudan provided refuge to Osama bin Laden in the 1990s.6 As a developing region, Africa is full of potential, and the United States will have to decide whether it will help it stabilize or allow it to become a refuge and breeding ground for terrorism.

Africa can potentially threaten or support American interests. As stated above, food insecurity in Africa creates problems for the US. The potential to politically align with other major powers, the destabilizing effect of refugees on the US and its allies, and the propensity to breed terrorism are all reasons to take Africa seriously as a national security concern. US interests include promoting international market economies that it can easily access, so to increase economic power at home. If the US ignores stability measures in Africa, this could negatively affect both American security interests and global economic growth, 7 which are both American priorities. The US needs a strategy that promotes food security in fragile states to address these concerns.

Food prices in Africa are expected to rise in the next few years due to famine,8 which means there is a risk that instability will grow, heightening the security concern to the United States. Food insecurity, like any social ailment, does not necessarily cause instability, but the two do reinforce each other. Obviously, American food assistance by itself cannot solve every problem in these fragile states. Success will ultimately depend on these countries establishing and enforcing the rule of law and shoring up government legitimacy. That said, nation building is not a viable option in this region, as the US has already committed itself to this in the Middle East and largely failed. The US can, however, provide developmental aid to help promote stability and provide a foundation for future institutional growth. Therefore, it is important that the US not only maintain food security efforts in weak states but also incentivize recipient behavior that will make such aid more effective.

#### Food shocks and refugee waves cause extinction.

Cribb ’19 [Julian; October 3; Principal of Julian Cribb & Associates, Fellow of the Australian Academy of Technological Sciences and Engineering, former Director of National Awareness at the Commonwealth Scientific and Industrial Research Organisation; Food or War, “Food as an Existential Risk,” Ch. 6]

Although actual numbers of warheads have continued to fall from its peak of 70,000 weapons in the mid 1980s, scientists argue the danger of nuclear conflict in fact increased in the first two decades of the twenty-first century. This was due to the modernisation of existing stockpiles, the adoption of dangerous new technologies such as robot delivery systems, hypersonic missiles, artificial intelligence and electronic warfare, and the continuing leakage of nuclear materials and knowhow to nonnuclear nations and potential terrorist organisations.

In early 2018 the hands of the ‘Doomsday Clock’, maintained by the Bulletin of the Atomic Scientists, were re-set at two minutes to midnight, the highest risk to humanity that it has ever shown since the clock was introduced in 1953. This was due not only to the state of the world’s nuclear arsenal, but also to irresponsible language by world leaders, the growing use of social media to destabilise rival regimes, and to the rising threat of uncontrolled climate change (see below).12

In an historic moment on 17 July 2017, 122 nations voted in the UN for the first time ever in favour of a treaty banning all nuclear weapons. This called for comprehensive prohibition of “a full range of nuclear-weapon-related activities, such as undertaking to develop, test, produce, manufacture, acquire, possess or stockpile nuclear weapons or other nuclear explosive devices, as well as the use or threat of use of these weapons.”13 However, 71 other countries – including all the nuclear states – either opposed the ban, abstained or declined to vote. The Treaty vote was nonetheless interpreted by some as a promising first step towards abolishing the nuclear nightmare that hangs over the entire human species.

In contrast, 192 countries had signed up to the Chemical Weapons Convention to ban the use of chemical weapons, and 180 to the Biological Weapons Convention. As of 2018, 96 per cent of previous world stocks of chemical weapons had been destroyed – but their continued use in the Syrian conflict and in alleged assassination attempts by Russia indicated the world remains at risk.14

As things stand, the only entities that can afford to own nuclear weapons are nations – and if humanity is to be wiped out, it will most likely be as a result of an atomic conflict between nations. It follows from this that, if the world is to be made safe from such a fate it will need to get rid of nations as a structure of human self-organisation and replace them with wiser, less aggressive forms of self-governance. After all, the nation state really only began in the early nineteenth century and is by no means a permanent feature of self-governance, any more than monarchies, feudal systems or priest states. Although many people still tend to assume it is. Between them, nations have butchered more than 200 million people in the past 150 years and it is increasingly clear the world would be a far safer, more peaceable place without either nations or nationalism. The question is what to replace them with.

Although there may at first glance appear to be no close linkage between weapons of mass destruction and food, in the twenty-first century with world resources of food, land and water under growing stress, nothing can be ruled out. Indeed, chemical weapons have frequently been deployed in the Syrian civil war, which had drought, agricultural failure and hunger among its early drivers. And nuclear conflict remains a distinct possibility in South Asia and the Middle East, especially, as these regions are already stressed in terms of food, land and water, and their nuclear firepower or access to nuclear materials is multiplying.

It remains an open question whether panicking regimes in Russia, the USA or even France would be ruthless enough to deploy atomic weapons in an attempt to quell invasion by tens of millions of desperate refugees, fleeing famine and climate chaos in their own homelands – but the possibility ought not to be ignored.

That nuclear war is at least a possible outcome of food and climate crises was first flagged in the report The Age of Consequences by Kurt Campbell and the US-based Centre for Strategic and International Studies, which stated ‘it is clear that even nuclear war cannot be excluded as a political consequence of global warming’. 15 Food insecurity is therefore a driver in the preconditions for the use of nuclear weapons, whether limited or unlimited.

A global famine is a likely outcome of limited use of nuclear weapons by any country or countries – and would be unavoidable in the event of an unlimited nuclear war between America and Russia, making it unwinnable for either. And that, as the mute hands of the ‘Doomsday Clock’ so eloquently admonish, is also the most likely scenario for the premature termination of the human species.

Such a grim scenario can be alleviated by two measures: the voluntary banning by the whole of humanity of nuclear weapons, their technology, materials and stocks – and by a global effort to secure food against future insecurity by diverting the funds now wasted on nuclear armaments into building the sustainable food and water systems of the future (see Chapters 8 and 9).

#### African instability causes nuclear war – AND terror.

Mead ‘13 [Walter; 12/15/13; James Clarke Chace Professor of Foreign Affairs and Humanities, Bard College; The American Interest; “Peace in The Congo? Why the World Should Care,” <https://www.the-american-interest.com/2013/12/15/peace-in-the-congo-why-the-world-should-care/>]

One of the biggest questions of the 21st century is whether this destructive dynamic can be contained, or whether the demand for ethnic, cultural and/or religious homogeneity will continue to convulse world politics, drive new generations of conflict, and create millions more victims. The Congo conflict is a disturbing piece of evidence suggesting that, in Africa at least, there is potential for this kind of conflict. The Congo war (and the long Hutu-Tutsi conflict in neighboring countries) is not, unfortunately alone. The secession of South Sudan from Sudan proper, the wars in what remains of that unhappy country, the secession of Eritrea from Ethiopia and the rise of Christian-Muslim tension right across Africa (where religious conflict often is fed by and intensifies “tribal”—in Europe we would say “ethnic” or “national”—conflicts) are strong indications that the potential for huge and destructive conflict across Africa is very real.

But one must look beyond Africa. The Middle East of course is aflame in religious and ethnic conflict. The old British Raj including India, Pakistan, Bangladesh, Burma and Sri Lanka offers countless examples of ethnic and religious conflict that sometimes is contained, and sometimes boils to the surface in horrendous acts of violence.

Beyond that, rival nationalisms in East and Southeast Asia are keeping the world awake at night.

The Congo war should be a reminder to us all that the foundations of our world are dynamite, and that the potential for new conflicts on the scale of the horrific wars of the 20th century is very much with us today.

The second lesson from this conflict stems from the realization of how much patience and commitment from the international community (which in this case included the Atlantic democracies and a coalition of African states working as individual countries and through various international institutions) it has taken to get this far towards peace. Particularly at a time when many Americans want the US to turn inwards, there are people who make the argument that it is really none of America’s business to invest time and energy in the often thankless task of solving these conflicts.

That might be an ugly but defensible position if we didn’t live in such a tinderbox world. Someone could rationally say, yes, it’s terrible that a million plus people are being killed overseas in a horrific conflict, but the war is really very far away and America has urgent needs at home and we should husband the resources we have available for foreign policy on things that have more power to affect us directly.

The problem is that these wars spread. They may start in places that we don’t care much about (most Americans didn’t give a rat’s patootie about whether Germany controlled the Sudetenland in 1938 or Danzig in 1939) but they tend to spread to places that we do care very much about. This can be because a revisionist great power like Germany in 1938-39 needs to overturn the balance of power in Europe to achieve its goals, or it can be because instability in a very remote place triggers problems in places that we care about very much. Out of Afghanistan in 2001 came both 9/11 and the waves of insurgency and instability that threaten to rip nuclear-armed Pakistan apart or with trigger wider conflict India. Out of the mess in Syria a witches’ brew of terrorism and religious conflict looks set to complicate the security of our allies in Europe and the Middle East and even the security of the oil supply on which the world economy so profoundly depends.

Africa, and the potential for upheaval there, is of more importance to American security than many people may understand. The line between Africa and the Middle East is a soft one. The weak states that straddle the southern approaches of the Sahara are ideal petri dishes for Al Qaeda type groups to form and attract local support. There are networks of funding and religious contact that give groups in these countries potential access to funds, fighters, training and weapons from the Middle East. A war in the eastern Congo might not directly trigger these other conflicts, but it helps to create the swirling underworld of arms trading, money transfers, illegal commerce and the rise of a generation of young men who become experienced fighters—and know no other way to make a living. It destabilizes the environment for neighboring states (like Uganda and Kenya) that play much more direct role in potential crises of greater concern to us.

#### Plan solves underdevelopment of foreign antitrust regimes – that balances sovereignty with consumer welfare while encouraging the development of nascent regimes abroad.

Murray ’17 [Sean; 2017; J.D. from Fordham University, B.A. from Vassar College; Fordham International Law Journal, “With a Little Help from my Friends: How a US Judicial International Comity Balancing Test Can Foster Global Antitrust Redress,” vol. 41]

With nowhere else to go, private litigants have naturally flocked to the United States for remedial assistance, creating an issue for developing antitrust regimes.12 Several implications attend foreign plaintiffs seeking recovery in the United States. American courts have recognized the importance of allowing foreign plaintiffs to bring claims in the United States under the Sherman Act.13 Before 2004, there was a significant chance that parties injured abroad by global cartels that directly harmed the United States would be able to sue in US courts to recover their losses.14 But, as illustrated above, private litigants applying US antitrust law for redressing harm that occurred abroad create tensions over sovereignty with other countries.15

Moreover, bringing claims to the United States strips valuable opportunities for young foreign antitrust regimes to develop their own jurisprudence, depressing the effectiveness of global antitrust enforcement and stalling the emergence of private redress.16 Worldwide jurisdictions are increasingly recognizing the importance of private rights of action to enforcement efforts.17 Within the past ten years several countries have expanded private parties’ ability to recover harm from unlawful anticompetitive behavior by allowing collective action.18 However, private actions remain rare in many developing antitrust jurisdictions with little, if any, precedent establishing the basis for compensatory damages or discovery.19

In response to international criticism of the statute’s unbridled transnational application, the United States has curtailed the Sherman Act’s reach both judicially and legislatively.20 Judicially, courts looked to international comity, the practice of taking into account the interests of other nations.21 The Ninth Circuit was the first court to invoke international comity in Timberlane Lumber Co. v. Bank of America, N.T. & S.A., which used an interest-balancing test to determine whether exercising jurisdiction was proper.22 Legislatively, Congress enacted the Foreign Trade Antitrust Improvements Act of 1982 (“FTAIA”), which attempts to delimit and define the cross-border reach of US antitrust laws by introducing an objective test under the effects doctrine.23 Powerful arguments can be advanced in the American interest for applying US antitrust laws beyond US borders, including adequately protecting American competition and consumers, deterring inimical foreign anticompetitive behavior affecting the United States, especially in an increasingly globalized economy, and providing remedial measures to US victims of such conduct.24 However, these interests in providing protection and redress are counterbalanced by equally important rationales for limiting the extraterritorial span of US antitrust law, such as costly overregulation, avoiding international disputes, allowing nascent worldwide antitrust regimes to develop to beget increased antitrust enforcement, and avoiding harmful interference with antitrust regulators’ amnesty programs.25

The aforementioned responses to these competing concerns have been ambiguous, inconsistent, and over-inclusive or under-inclusive.26 In particular, the poorly worded FTAIA has created more problems than it has solved, including inconsistent holdings, wrongly decided cases, and disagreements among the circuit courts over interpreting the statute’s language.27 The most recent interpretational difficulty involves determining what constitutes a “direct” domestic effect under the FTAIA. Some courts have held that “direct” takes on a broader meaning, where conduct causing domestic effect need only be an “immediate consequence.”28 In comparison, other courts have narrowly interpreted the statute’s “direct” domestic effect requirement as calling for “a reasonably proximate causal nexus,” drawing from tort law to exclude an injury that is too remote from the injury’s cause.29 The most recent appellate decision involving the FTAIA, Motorola Mobility LLC v. AU Optronics Corp., has contributed to the statute’s confusion.30 There, the Seventh Circuit held that a US parent company failed to show that it suffered direct injury as a result of foreign anticompetitive conduct, despite the fact that price-fixed component products were purchased by its majority-owned foreign subsidiaries to be incorporated into final products purchased by the US parent and sold to US customers.31

Nevertheless, various delineations already exist that suggest a solution to the inconsistency is attainable and may be designed to enhance global antitrust enforcement through greater availability of worldwide private redress. What is apparent from the succession of decisions from Hartford Fire Insurance Co. v. California32 to F. Hoffman-La Roche Ltd. v. Empagran S.A. (Empagran)33 is that the FTAIA grey area has been sufficiently tapered to allow for the return of a comity balancing test to appropriately reconcile the conflicting interests at hand in the residual universe of cases.34 This Note argues that Hartford Fire, its progeny, and Empagran form confining parameters on the applicability of the FTAIA, namely that cases that do not involve a US party, domestic effect, and domestic injury arising from that effect will fail the FTAIA’s exemption test. Moreover, because the FTAIA’s “direct, substantial, and reasonably foreseeable” effect test can be construed as a proxy for the United States’ prescriptive jurisdiction interest, comity analysis is helpful in its interpretation.35 Thus, claims which are based on exclusively non-US conduct that questionably has a “direct effect” on US commerce resulting in the plaintiff’s injury are more properly decided not by the courts’ current focus on statutory interpretation, but rather by a Timberlane-style ad hoc fact-intensive balancing test that contemplates factors more suitable to the modern global economy and promoting international dialogue.36

In sum, this Note proposes the introduction of a new international comity balancing test into US antitrust jurisprudence with the aim of fostering and strengthening global antitrust enforcement and private redress. It does so in four parts. Following this introduction, Part II briefly summarizes the expansion of US antitrust extraterritorial application. Next, Part III discusses various developments undertaken to limit and demarcate the reach of US antitrust law. Part IV raises issues arising from those efforts that have resulted in inconsistent and questionable holdings. Finally in Part V, by analyzing and synthesizing the existing precedent, this Note contends that a judicial international comity balancing test would most appropriately determine the propriety of US antitrust extraterritoriality for particular types of private recompense cases that are problematic under the current framework.

#### A balancing test is goldilocks – harmonizes extraterritorial reach with international comity, generates global antitrust enforcement, AND it link-turns the Trade DA.

Murray ’17 [Sean; 2017; J.D. from Fordham University, B.A. from Vassar College; Fordham International Law Journal, “With a Little Help from my Friends: How a US Judicial International Comity Balancing Test Can Foster Global Antitrust Redress,” vol. 41]

Chiefly, this balancing test would supplement the FTAIA. The underlying impetus for the FTAIA’s enactment – responding to international criticism of expansive US extraterritorial jurisdiction and to calls for recognizing foreign sovereignty where the basis for US prescriptive jurisdiction is weak – functions as this balancing test’s modus operandi. While the difficulty in interpreting “direct” has instigated its introduction, the balancing test does not attempt to shed any more light on the FTAIA’s contemplation of “direct.” Instead, it provides an alternative framework to properly apply the FTAIA where the statute’s language makes it impossible to do so.

As was the balancing test in Timberlane, a balancing test here may also be criticized as leaving too much discretion over political inquiries (i.e., foreign policy considerations) to the judiciary rather than to the executive and legislative branches, where such decisions may rightly belong.200 Professor William Dodge, while asserting that US courts should engage in judicial unilateralism rather than international comity considerations, points out that the judiciary plays an important complementary role to a country’s political branches by encouraging dialogue and negotiation between sovereigns.201 Though Congress and antitrust agencies may be better suited than courts to take account of the interest of other nations, courts are nonetheless faced with the task of weighing those interests when judging a party’s right to redress in private antitrust litigation.202

Footnote 201:

201. Dodge, supra note 2, at 106-07. American courts are also well-versed in taking into account foreign interests through allowing sovereign representatives to articulate official positions in litigation. See, e.g., Empagran, 542 U.S. at 167-68 (relying on non-US government amicus curiae briefs asserting national interests in considering international comity); In re Vitamin C Antitrust Litig., 837 F.3d at 179 (“When, as in this instance, we receive from a foreign government an official statement explicating its own laws and regulations, we are bound to extend that explication the deference long accorded such proffers received from foreign governments.”); BREYER, supra note 7, at 92 (“Since there is no Supreme Court of the World, national courts must act piecemeal, without direct coordination, in seeking interpretations that can dovetail rather than clash with the working of foreign statutes. And so our Court does, and should, listen to foreign voices, to those who understand and can illuminate relevant foreign laws and practices.” (emphasis added)).

“Judicial unilateralism,” as defined by Professor Dodge, implies that courts should only consider whether or not the forum’s legislature intended to regulate the conduct at issue without regard to foreign interests. See Dodge, supra note 2, at 104-05 (“[A] court should apply a statute extraterritorially whenever doing so appears to advance the purposes of the statute and should not worry about resolving conflicts of jurisdiction with other nations.”); see also supra note 16.

End of footnote 201.

The balancing test should be an exercise in both comity and cooperation, an attempt to harmonize counterpoints in the debate over antitrust extraterritoriality. As Professor Fox posits, the question is not “when should we defer to the inconsistent interests of other nations?” but rather “how can the antitrust jurisdictions of the world work together to maximize their shared interest in competitive markets, to the benefit of consumers and robust or potentially robust business?”203 Indeed, this comports with Supreme Court’s current approach to comity analysis of harmonization rather than avoiding conflict among laws.204 Accordingly, the test will have a slightly different focus than the one constructed by the Ninth Circuit in Timberlane, which reflects an outdated period of international antitrust regulation lacking potent modern enforcement tools such as amnesty programs. It will, however, encourage the growth of overall worldwide antitrust enforcement, both public and private, which ultimately contributes to properly functioning international markets.205

The challenge of achieving proper adjudication of an antitrust claim consisting of conduct and injury in two different jurisdictions is that national laws must conform to a market that ignores national borders.206 With this in mind, the goal should be to promote adjudication in the most efficient locale in an effort to maximize world welfare, foster growth of antitrust jurisdictions, and avoid overregulation.207 There are currently over 120 antitrust jurisdictions, many of which are new antitrust jurisdictions or have enacted fresh laws allowing for greater access to private redress, such as Israel (2006), China (2008), the European Union (2014), the United Kingdom (2015), and Hong Kong (2015).208 Letting the laws of these jurisdictions develop and inculcate international standards for antitrust enforcement strengthens the deterrence of anticompetitive behavior and the ability of injured parties to seek recompense.209 Achieving greater international involvement in turn would ostensibly mitigate some of the need behind extraterritorial application of US antitrust law.210

Footnote 209:

209. See, e.g., First, supra note 16, at 732-34 (arguing that international political consensus is integral to effective international antitrust enforcement and that the case-by-case common law process of law development is the optimal path to that consensus in the absence of a single system of or approach to market place regulation); Org. for Econ. Co-operation & Dev., Recommendation of the Council Concerning Effective Action Against Hard Core Cartels 2 (May 1998), http://www.oecd.org/daf/competition/2350130.pdf [https://perma.cc/35HUTEWZ] (last visited Oct. 26, 2017) (“[C]loser co-operation is necessary to deal effectively with anticompetitive practices in one country that affect other countries and harm international trade.”). As noted above, while national recourse for compensating private loss is currently available in a minority of antitrust jurisdictions, it is increasingly acknowledged as a necessary tool for under-resourced national competition authorities. See Pheasant, supra note 11, at 59 (explaining that the European Commission “decided that it would be appropriate to enhance the role of private enforcement to support and supplement public enforcement of the competition rules” given insufficient resources for governmental competition authorities); Edward Cavanagh, Antitrust Remedies Revisited, 84 OR. L. REV. 147, 153-54 (2005) (“Congress created the private right of action to supplement public enforcement because it was aware that the government would not have the necessary resources to uncover, investigate, and prosecute all violations of antitrust laws.”); see also supra note 25.

End of footnote 209.

#### Adopting a balance test remedies inconsistent application of the FTAIA’s ‘direct effect’ criterion, incorporating foreign interests into U.S. antitrust law and stimulating global enforcement.

Murray ’17 [Sean; 2017; J.D. from Fordham University, B.A. from Vassar College; Fordham International Law Journal, “With a Little Help from my Friends: How a US Judicial International Comity Balancing Test Can Foster Global Antitrust Redress,” vol. 41]

VI. Conclusion

This Note argues that in order to create a suitable environment for international private redress an international comity balancing test should be introduced into US jurisprudence through the opportunity provided by the FTAIA “direct effect” criterion. Though the United States has historically acted as the world’s courtroom for victimized private parties to seek recovering of antitrust injury, worldwide jurisdictions are beginning to develop their own legal regimes of antitrust enforcement, deterrence, and private recompense. To encourage this development, US courts should embrace the current Supreme Court’s approach to comity as one predicated upon global harmonization rather than conflict avoidance.

The recent efforts of resolving the “direct effect” definition dispute have been unfruitful and have ultimately produced puzzling decisions, including one in which foreign defendants were subject to criminal liability under the Sherman Act but not civil liability. The proposed balancing test responds to the current confusion stemming from these efforts by providing an alternative framework through which to realize the statute’s purpose. While the late Justice Scalia cautioned against using comity balancing tests to determine whether to properly subject foreign defendants to US antitrust law, limiting parameters provided by existing case law establish sufficient conditions to permit a balancing test.

This balancing test would guide courts in determining the propriety of extraterritorial application of US antitrust law for specific cases involving proscribed foreign anticompetitive conduct under the auspices of promoting the development of global antitrust enforcement and maximizing world economic welfare. However, instead of weighing traditional comity considerations as in Timberlane, the comity balancing test proposed in this Note would focus instead on these objectives, i.e., promoting the development of global antitrust enforcement and maximizing world economic welfare, as an extension of the Supreme Court’s harmonization approach. Ultimately, the balancing test would better allow the United States to contemplate and incorporate foreign interests in whether to apply US antitrust law, promoting international dialogue and encouraging growth of foreign private antitrust recourse.

## 2AC

### Advantage CP – 2AC

#### Competition is key to development – otherwise, market concentration coopts it.

NYU ’14 [NYU School of Law; October 24; Conference Program featuring numerous speakers; *NYU School of Law, “*ANTITRUST IN EMERGING AND DEVELOPING COUNTRIES FEATURING CHINA, INDIA, MEXICO, BRAZIL, SOUTH AFRICA...” <https://www.law.nyu.edu/sites/default/files/upload_documents/conference%20summary.pdf>; KS]

ANTITRUST POLICY IN EMERGING AND DEVELOPING COUNTRIES

Dr. Santiago Levy Algazi illustrated that development and long-term growth is about productivity rather than a country’s labor force and capital investment by comparing South Korea and Latin America. In the 1970s through the 1990s, South Korea succeeded in narrowing the gap of per capita income with the United States, by increasing its level of productivity. Analyzing the same parameters in Latin America, despite high capital investments, a large labor force, and high rates of savings, per capita income in Latin America lagged behind the United States and South Korea. Dr. Levy identified low productivity as the reason behind the lack of economic growth and income disparity.

Economic models in the 1990s related productivity and GDP to the technology available to the economy and factors of production (including education, human capital, and the stock of capital goods available). Subsequent research added another factor to understanding economic growth and productivity – the environment. An enabling environment, described by Dr. Levy as the context in which economic activity takes place, plays a key role in increasing productivity. Aspects of environment include how workers and firms interact, labor regulation, social insurance, access to credit, tax policies, and competition and regulation in the markets for goods, services, and inputs. Environment is largely the factor dividing the developed countries and developing countries in terms of efficiently utilizing labor and capital. In his view, development is not about accumulating capital and educating workers. Instead, development depends on how a country constructs its competition policy and other institutions, how it regulates its workers, and how they interact in creating output.

Dr. Levy then demonstrated how the absence of competition policy in a country often will lead to monopolies – driving employment and productivity down – and in some cases will concentrate political power in the hands of a few. The concentration of economic and political power, in turn, can generate policies that are inefficient and anticompetitive. One example he provided was credit – where there is limited collateral, credit may be allocated to inefficient projects championed by the rich, whereas other efficient projects may go unfunded. Competition policy plays a key role in preventing this concentration of economic and political power and supports efficient markets and democracy.

Competition policy was identified by Dr. Levy as an important component of a development strategy for emerging and developing countries because of its impact on the environment. Its absence can limit productivity. A vigorous competition policy, on the other hand, can make the difference between “crony capitalism” and healthy institutions and markets.

#### Funding for fusion energy R&D is misguided – cartel

Umbach 18 [GIS Expert Dr. Frank Umbach is the research director of the European Centre for Energy and Resource Security (EUCERS) at King’s College, London; adjunct senior fellow at the S. Rajaratnam School of International Studies (RSIS) at the Nanyan Technological University (NTU) in Singapore; senior associate at the Centre for European Security Strategies (CESS GmbH), Munich; executive advisor of Proventis Partners GmbH, Munich; and a visiting professor on “EU Energy (External) Policies and Governance” at the College of Europe in Natolin/Warsaw (Poland). "Energy Security in a Digitalised World and its Geostrategic Implications." https://www.kas.de/documents/265079/265128/Energy+Security+in+a+Digitalised+World+and+its+Geostrategic+Implications+Final.pdf/07691140-d019-4f4c-5363-795d9aeea361?version=1.0&t=1541645390708]

Furthermore, security of supply risks are not just constrained to primary natural resources and CRMs but also to the import of semi-manufactured and refined goods as well as finished products. Market imperfections in the form of manipulated prices, restricted supplies and attempts at cartelisation of CRM markets with wide-ranging negative economic consequences are not restricted just to producing and exporting countries. Powerful state and private companies have also been responsible for opaque pricing mechanisms for many precious CRMs. With ever more complex global supply chains, blurred boundaries between physical and financial markets, and weakly governed market platforms, the manipulation of prices, trading houses, major producers and financial institutions have increased and are threatening the stability of the future security of supply of CRMs.102 Those challenges and risks need no longer to be analysed just for concepts and strategies of raw material supply security, but need to be addressed and framed in a larger context as part of new holistic energy security concepts as Western countries and the world will become ever more dependent on a stable supply of those CRM for the digitalisation of the energy and other industrial sectors.

#### R&D cannot solve – damages key.

Leonardo ’16 [Lizl; Fall; Associate Attorney at Armstrong Teasdale LLP with experience representing domestic and international clients on various legal matters involving equity transactions, acquisitions, franchise matters, other corporate matters and related transactions; *DePaul Law Review; “*A Proposal to the Seventh and Ninth Circuit Split: Expand the Reach of the U.S. Antitrust Laws to Extraterritorial Conduct that Impacts U.S. Commerce,” <https://via.library.depaul.edu/cgi/viewcontent.cgi?article=4008&context=law-review>; KS]

The Seventh Circuit ruling also addressed policy arguments that are pertinent in today’s global economy. It held that foreign subsidiaries could bring suit to seek remedies under the laws of the country where they operated, and in light of this, the United States must not overextend its reach. Rather, it should allow foreign countries to govern conduct that occurs exclusively within their borders.343 However, the court failed to consider that allowing a private company to pursue claims under U.S. antitrust law would detect and deter the formation of cartels.344 Treble damages are available under U.S. antitrust law.345 The adversaries of this proposition argue that this would presume the inadequacy of the antitrust laws of foreign countries.346 They argue that foreign countries, with the help of the United States, set up their own antitrust laws and continue to improve these laws throughout the years; thus, these foreign laws must prevail in dealing with foreign anticompetitive conduct.347 While it is true that the United States has taken on a role to help foreign countries develop their own antitrust laws, the Seventh Circuit’s ruling presumes that fines and criminal prosecutions, both here and abroad, are sufficient to deter global cartels.348

The truth is, collective laws across the nations are still inadequate to protect U.S. companies and consumers, primarily because many nations still do not have laws against international price-fixing cartels.349 In fact, only a limited number of countries allow private companies to bring private antitrust claims for damages.350 On the other hand, existing antitrust laws in many other countries are insufficient because the penalties are significantly lower than those in the United States; therefore, this discrepancy fails to deter foreign companies from forming international price-fixing cartels.351 The financial gains from a conspiracy far outweigh the maximum criminal and civil fines imposed by other countries’ antitrust laws.352

The presence of price-fixing conspiracies for products such as LCDs, automotive parts, vitamins, and DRAM illustrate these ineffective antitrust laws.353 Companies engaged in these conspiracies know how the system works and will repeatedly participate in cartels without more rigid rules in place, such as that of the Ninth Circuit’s.354 The Seventh Circuit’s logic seems misplaced when focused on the availability (or the lack thereof) of the laws in foreign countries where the conduct occurred. The antitrust laws of the United States have nothing to do with the adequacy or inadequacy of other countries’ antitrust laws. Rather, they have everything to do with the fact that U.S. consumers were injured.

In Empagran, the U.S. Supreme Court held that extraterritorial application of U.S. antitrust law should be limited to balance the “legitimate sovereign interests of other nations.”355 One of the fears is that foreign plaintiffs with no relation to domestic commerce would flock to the United States to recover damages, which would be too costly given the already scarce judicial resources.356 The Seventh Circuit emphasized the principle of international comity and brought up the same concern in its Motorola opinion.357 However, the enactment of the FTAIA, particularly the “gives rise to” requirement, already accounts for this concern.358 This second requirement of the FTAIA ensures that all causes of action that have domestic effects to the United States are the proximate causes to those effects.359 Congress, therefore, made sure that unnecessary suits are not filed in U.S. jurisdictions, while not overstepping into another country’s interests.360 In Motorola, it is undisputed that the defendants’ conduct had domestic effects, as the inflated prices paid by the foreign purchases were ultimately passed on to U.S consumers.361 Motorola purchased over $5 billion worth of panels, over fifty percent of which eventually entered U.S. commerce.362 What seems to be a small increase in the price of the panels nonetheless would have a substantial effect on the market.363 Furthermore, the defendants were business executives engaged in global supply chains.364 If they did not already, they should have known that the artificially inflated price of these LCD panels targeted to reach the United States (as alleged by Motorola) would have an impact on the U.S. market.365

Moreover, it does not appear that these cases have raised serious comity concerns; despite the DOJ’s prosecution of the foreign companies and their employees, no foreign government has stepped forward expressing deep concerns about the overreaching enforcement of antitrust law.366 This is not to say that courts must forget about the importance of international comity when analyzing antitrust cases. International comity ensures that the United States does not overstep into foreign countries’ authority when extending the reach of U.S. antitrust laws.367 In fact, the United States has proactively assisted foreign countries in their efforts to capture more anticompetitive conduct.368 However, despite the need to “tread softly” in this arena, the United States must put down its foot and continue to litigate claims of anticompetitive conduct by foreign companies, so long as the foreign anticompetitive conduct satisfies the requirements of the FTAIA.369

Limiting the extent of the FTAIA, as the defendants contended and the Seventh Circuit ruled, would significantly destabilize the enforcement of antitrust law—“a central safeguard for the Nation’s free market structures,” which “is ‘as important to the preservation of economic freedom and our free-enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms.’”370 The Seventh Circuit, in ruling that a “component” is not “direct” enough to provide sufficient basis for liability under the statute, precluded any claim that involved components of finished goods imported into the United States from being brought under the Sherman Act.371 In effect, the court has made a per se rule that claims based on foreign conduct regarding a component of finished goods that eventually reach the United States have no place in the United States’ jurisdiction.372 This sweeping decision has negative ramifications in the detection of cartels, the protection of U.S. consumers, and the development of the international business community.373

The Ninth Circuit’s logic and reasoning should prevail in subsequent cases. It allows for a more rigid, yet necessary, rule in the rapid growth of the economy. By the Ninth Circuit’s logic, foreign cartels that harm U.S. commerce will be reached by U.S. antitrust laws. Treble damages will disincentivize these foreign companies from pursuing anticompetitive conduct; products will not be overpriced as a result of cartels’ price-fixing; transactions among domestic and/or foreign producers will be much smoother because both parties are at ease. U.S. Supreme Court involvement, interpreting how the FTAIA applies to non-import trade, would provide answers to questions that federal courts have been struggling to answer for many years, and it would reverberate the United States’ firm position against conspiracies that adversely impact U.S. consumers and the U.S. economy.

### AI CP – 2AC

#### AI can’t replace agency decision making.

1NC Massarotto, 21 — University of Iowa business professor

[Giovanna, international expert on antitrust law and economic regulation in the field of information technology, affiliate of the UCL Centre for Blockchain Technologies, and Ashwin Ittoo, University of Liege professor, Machine Learning, Natural Language Processing (NLP) specialist, "Gleaning Insight from Antitrust Cases Using Machine Learning," Stanford Computational Antitrust, Vol 1., 2021, https://law.stanford.edu/wp-content/uploads/2021/03/Computational-Antitrust-Article-2-Gleaning-Insight-1.pdf, accessed 7-3-21]

Abstract. The application of AI and Machine Learning (ML) techniques is becoming a primary issue of investigation in the legal and regulatory domains. Antitrust agencies are in the spotlight because they represent the first arm of government regulation in that they reach new markets before Congress has had time to draft a more specific regulatory scheme. A question the antitrust community is asking is whether antitrust agencies are equipped with the appropriate tools and powers to face today’s increasingly dynamic markets. Our study aims to tackle this question by building and testing an antitrust machine learning (AML) application based on an unsupervised approach, devoid of any human intervention. It shows how a relatively simple algorithm can, in an autonomous manner, discover underlying patterns from past antitrust cases by computing the similarity between these cases based on their measurable characteristics. Our results, achieved with simple algorithms, show much promise from the use of AI for antitrust applications. AI, in its current form, cannot replace antitrust agencies such as the FTC. Instead, it is a valuable tool that antitrust agencies can exploit for efficiency, with the potential to aid in preliminary screening, analysis of cases, or ultimate decision-making. Our contribution aims to pave the way for future AI applications in market regulation, starting with antitrust regulation. Government adoption of emerging technologies, such as AI, appears to be key for ensuring consumer welfare and market efficiency in the age of AI and big data.

#### It can’t account for values and assumptions – and the models are biased

Sorkin et al ’21 [Andrew; Jason Karaian; Michael J. de la Merced; Lauren Hirsch; Ephrat Livni; 2/11/21; All writers for the New York Times; The New York Times; “Can Jane Fraser Fix Citigroup?” https://www.nytimes.com/2021/02/11/business/dealbook/jane-fraser-citigroup.html]

The intriguing idea of ‘computational antitrust’

If those policing Big Tech had tools as powerful as companies do, they might detect and prevent anti-competitive activity more effectively. Many antitrust agencies around the world are underfunded and overwhelmed, contending with massive amounts of information and fast-moving markets. Automation is a way to “fight fire with fire,” according to Thibault Schrepel, the leader of a new “computational antitrust” project at Stanford.

Fifty antitrust agencies are joining the project, including the U.S. Justice Department, along with legal scholars and computer scientists. They will publish research in a new journal, compare notes on internal practices, hold a workshop and issue a report on what they learn in a year. But Dr. Thibault imagines the work continuing for decades, evolving with technology.

There is a lot of data to be collected, shared and used in new ways, said Eleanor Fox of Columbia, who is on the project’s advisory board. Intelligent automation could produce more nuanced antitrust analyses, by measuring the effects of mergers on particular socioeconomic groups, for example. But she also warned about “the tyranny of numbers,” noting that the project will force participants to consider what cannot be reduced to a figure. “When you talk about data, you also have to talk about values,” she said. “And assumptions.”

Felix Chang of Cincinnati University has been working on automated antitrust reviews for a few years, mining a Harvard database of court cases to spot patterns in language that provide “a fresh take” on how the law is applied. Mr. Chang also has reservations about automation in the law — it’s “cool” and “creative,” he said, but the programs can be biased and their results are only as good as the data sets they are based on.

#### AIs have less intelligence than a cockroach

Copeland and Gregersen 20 – B.J. Copeland, Professor of Philosophy and Director of the Turing Archive for the History of Computing, University of Canterbury, Christchurch, New Zealand. Erik Gregersen, senior editor at Encyclopaedia Britannica, specializing in the physical sciences and technology. Before joining Britannica in 2007, he worked at the University of Chicago Press on the Astrophysical Journal.

B.J. Copeland (author), Erik Gregersen (editor). “Is Strong AI Possible?” Britannica, Updated August 11, 2020, https://www.britannica.com/technology/artificial-intelligence/Is-strong-AI-possible

The ongoing success of applied AI and of cognitive simulation, as described in the preceding sections of this article, seems assured. However, strong AI—that is, artificial intelligence that aims to duplicate human intellectual abilities—remains controversial. Exaggerated claims of success, in professional journals as well as the popular press, have damaged its reputation. At the present time even an embodied system displaying the overall intelligence of a cockroach is proving elusive, let alone a system that can rival a human being. The difficulty of scaling up AI’s modest achievements cannot be overstated. Five decades of research in symbolic AI have failed to produce any firm evidence that a symbol system can manifest human levels of general intelligence; connectionists are unable to model the nervous systems of even the simplest invertebrates; and critics of nouvelle AI regard as simply mystical the view that high-level behaviours involving language understanding, planning, and reasoning will somehow emerge from the interaction of basic behaviours such as obstacle avoidance, gaze control, and object manipulation.

#### The transition to superintelligence is rapid, opaque, and would cause universal extinction

James Daniel **Miller 18**. Based at Smith College, South Deerfield, Massachusetts. 10/11/2018. “When Two Existential Risks Are Better than One.” Foresight. Crossref, doi:10.1108/FS-04-2018-0038.

2. The dangers of unfriendly powerful artificial general intelligence Unlike with whatever wetware runs the human brain, it would be relatively easy to make changes to a PAGI’s software. PAGI could even make changes to itself. Such selfmodification could possibly allow PAGI to undergo an intelligence explosion where it figures out how to improve its own intelligence, then, as it gets smarter, it figures out new ways to improve its intelligence. It has been theorized that through recursive self-improvement a PAGI could go from being a bit smarter than humans to becoming a computer superintelligence in a matter of days (Good, 1965; Yudkowsky, 2008). If our understanding of the laws of physics is correct, the universe contains a limited amount of free energy, and this free energy is necessary to do any kind of work and most types of computing. Consequently, it has been theorized that most types of computer superintelligences would have an instrumental goal of gathering as much free energy as possible to further whatever ultimate goals they had (Omohundro, 2008). Humanity’s continued existence uses free energy. Consequently, if a PAGI did not have promoting human welfare as a goal, it would likely see humanity’s continuing existence as rival to its terminal values. A PAGI that wanted to maximize its understanding of, say, chess would further this end by exterminating mankind and using the atoms in our bodies to make chess computing hardware. A PAGI that wanted to maximize the number of paperclips in the universe would likewise kill us, not out of malice, but to align the atoms in our bodies with its objective. The term “paperclip maximizer” has come to mean a PAGI that seeks to use all the resources it can get for an objective that most humans would not consider worthwhile (Arbital Contributors, 2017). A PAGI that was smarter than humans, but not yet smart enough to take over the world, would have an incentive to hide its abilities and intentions from us if it predicted that we would turn the PAGI off if it scared us. Consequently, the PAGI might appear friendly weak, and unambitious right until it launches a surprise devastating attack on us, by taking what has been called a “treacherous turn” (Bostrom, 2014, pp. 116-119).

#### That outweighs

Milan M. **Ćirković 19**. Future of Humanity Institute, Faculty of Philosophy, University of Oxford. 01/01/2019. “Space Colonization Remains the Only Long-Term Option for Humanity: A Reply to Torres.” Futures, vol. 105, pp. 166–173.

Perhaps a skeptic wants to believe (as a kind of anti-agent Moulder, of the X-Files’ fame) that extraterrestrial intelligence is nonexistent or vanishingly rare? To begin with, it would be strange to bet the long-term future of humanity on such a technical astrobiological issue, on which we can exert no influence whatsoever. Extraterrestrial life either exists or it does not, irrespectively of any amount of our ethical or political hand-wringing. So, lacking specific information for one or the other, we should certainly make strategies for both options. Further, the advances of astrobiology over the last quarter century offer many reasons for cautious belief in the conclusion that life and intelligence are reasonably abundant in astrophysically and astrochemically permissible ecosystems. Some of the arguments to that effect are summarized in Ćirković (2012).11 Even if, by some quirk of astrobiological evolution, humanity is the first intelligent species to arise in the Milky Way (as, for instance, per the well-known argument of Carter, 1983, 2008), following Torres’s advice and relinquishing space colonization will simply ensure that the second, third, or 275th intelligent species to evolve will indeed colonize the Galaxy instead of humans. If, on the other hand, Torres is wrong and it is possible to colonize the Galaxy in a peaceful and prosperous manner, humanity might survive on Earth in a kind of zoo or preserve, surrounded by friendly and considerate interstellar aliens – but obviously failing to realize its creative potential (which would also count as an existential catastrophe in Bostrom’s taxonomy).12 There is simply no way out of that quandary, unless one is a creationist who believes that humanity originated by Divine supernatural act and there is exactly zero probability of abiogenesis/noogenesis occurring elsewhere. In general, no naturalistic utilitarian calculus of various scenarios for the future of humanity could be complete if it does not take extraterrestrial intelligence into account.

### States CP – 2AC

#### CP is certainly preempted

O’Rourke ‘10 [Ken; 3/3/10; Senior Partner, O'Melveny & Myers LLP, an international law firm specializing in antitrust; “United States: The FTAIA In State Court: A Defense Perspective,” https://www.mondaq.com/unitedstates/trade-regulation-practices/95030/the-ftaia-in-state-court-a-defense-perspective?utm\_source=pocket\_mylist]

As federal courts tighten the reins on private antitrust actions, some antitrust plaintiffs are focusing their attention on litigating in state court. And they are being creative about how to avoid removal to federal court.1 Yet, as antitrust plaintiffs turn to state court and state law, they are likely to face some of the same federal doctrines they would prefer to avoid.

One federal doctrine sure to arise in state court antitrust actions when there are allegations or damages based on cross-border conduct is the Foreign Trade Antitrust Improvements Act ("FTAIA").2 The FTAIA defines the limits on the reach of the Sherman Act in cases involving foreign trade and commerce.

The FTAIA's parameters continue to evolve as litigants and the courts wrestle with new variations of the basic allegation that international price-fixing or overseas monopolistic conduct "caused" domestic injury on which a Sherman Act claim is based.

Congress enacted the FTAIA in 1982, some 92 years after the enactment of the Sherman Act. The FTAIA operates by "removing" anticompetitive conduct in foreign trade or commerce (other than import trade or import commerce) "from the Sherman Act's reach," unless that same conduct also causes direct, foreseeable and substantial injury to domestic trade or commerce within the United States, U.S. import commerce, or exporting activities of American exporters.3

A threshold question is whether these limitations similarly restrict the extraterritorial application of state antitrust laws. Defendants will argue that the state antitrust laws cannot permissibly extend to reach conduct or give rise to damages that Congress has placed beyond the reach of federal antitrust law under the FTAIA.

The defendants' argument goes like this. First, under the Supremacy Clause of the U.S. Constitution,4 federal law preempts state law even in the absence of an express preemption provision when, "under the circumstances of [a] particular case, [the challenged state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."5

Second, the FTAIA's legislative history establishes that Congress had multiple objectives when enacting the statute. One objective was to ensure that the risk of Sherman Act liability did not prevent American exporters and other firms doing business abroad from entering into advantageous "business arrangements (such as joint selling arrangements), however anticompetitive, as long as those arrangements adversely affect only foreign markets."6

Another objective was to eliminate "ambiguity in the precise legal standard to be employed in determining whether American antitrust law is to be applied to a particular transaction."7

Congress sought to adopt a "clear benchmark ... for businessmen, attorneys and judges as well as [U.S.] trading partners"8 with the "ultimate purpose" of "promot[ing] certainty in assessing the applicability of American antitrust law to international business transactions and proposed transactions."9

A third objective was to promote international comity by acknowledging and respecting the prerogatives of other nations to establish and apply their own standards for regulating and remediating alleged restraints of trade in their own markets.10

Congress believed that respecting such foreign sovereign regulatory prerogatives would ultimately best serve U.S. interests by "encourage[ing] our trading partners to take more effective steps to protect competition in their markets."11

Applying state antitrust laws to regulate foreign trade or commerce excluded from federal antitrust jurisdiction by the FTAIA arguably would frustrate every one of these objectives.

American exporters and other businesses engaged in foreign trade or commerce could have no confidence that restraints exempted from federal antitrust attack would not be subject to alternative antitrust attack under the laws of one or more U.S. states. Businesses, therefore, would be deterred from entering into arrangements that Congress intended to enable.

Likewise, ambiguity in the "standard to be employed" for assessing the extraterritorial application of "American antitrust law" would not only persist, but would be multiplied fifty times.

And the imposition of as many as 50 states' antitrust laws on foreign trade or commerce clearly would negate the federal objectives of international comity and respect for foreign regulation of foreign markets.

At every level then, the application of state antitrust laws to foreign trade or commerce exempted by the FTAIA from federal antitrust regulation would "stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" in enacting the FTAIA.12

Plaintiffs likely will counter these preemption arguments by pointing out that there is a presumption against preemption and that Congress did not expressly overrule any state antitrust law when enacting the FTAIA.

True, Congress did not address the reach of state antitrust laws, one way or the other, when it enacted the FTAIA. However, the Sherman Act has always extended to "commerce with foreign nations,"13 and was subject to a large body of pre-FTAIA case law addressing the limitations on its extraterritorial reach.14

By contrast, state antitrust laws such as California's Cartwright Act do not expressly reference foreign commerce and have no comparable history of being applied to it.

Congress, therefore, had no cause to be concerned that states would attempt to apply state antitrust laws to foreign trade or commerce exempted from federal regulation by the FTAIA.

Even if there had been such a concern, Congress would have been amply justified in anticipating that the doctrine of implied obstacle preemption — well established when the FTAIA was enacted in 198215 — would resolve any conflict.16

#### No authority to change the FTAIA.

Greenfield et al ‘15 [Leon B; Spring; Partner in the Washington, D.C. office of WilmerHale; *Antitrust,* “Foreign Component Cartels and the U.S. Antitrust Laws: A First Principle Approach,” <http://awa2016.concurrences.com/IMG/pdf/foreign-component-cartels-and-the-us-antitrust-laws.pdf>; KS]

State Indirect Purchaser Claims

Given that the Illinois Brick doctrine bars most indirect pur- chaser claims under federal antitrust laws, the question of whether U.S. antitrust laws should apply to component sales in wholly foreign markets will often arise in the context of indirect purchaser suits under state antitrust laws that recog- nize such claims. For instance, as described above, in the TFT-LCD Panel MDL, a class of self-styled indirect pur- chasers of TFT-LCD panels brought claims based on their purchases of finished products containing price-fixed panels. These private actions were brought under various state antitrust laws. Although the FTAIA is a creature of federal, not state law, we believe that its underlying principles dictate that cartel conduct in foreign component markets is not actionable under state antitrust law either.

When the court in the TFT-LCD Panel MDL addressed the indirect purchaser claims before it (discussed above), it held that the claims met the FTAIA’s domestic effects test.54 It, therefore, did not reach the question of whether these state law claims could reach foreign conduct that the Sherman Act could not.55 In our view, the fundamental analysis does not change regardless of whether component indirect purchaser actions are brought under state law, including Illinois Brick repealer statutes.

First, on their own terms, state antitrust laws—similar to federal antitrust statutes—regulate conduct that distorts the competitive process in markets that are within the state’s regulatory reach, not price levels within its borders standing alone.56 That being so, Illinois Brick repealer laws cannot properly be read to authorize suits by state residents claiming pass-on injuries derived from distortion of foreign markets that the state’s antitrust laws do not reach.57 Repealer statutes merely allow indirect purchasers to recover if they can prove that—as a result of pass-on—they were actual economic vic-tims of conduct that violates the state’s antitrust laws.58 They do not make wholly foreign conduct a violation of state law or provide redress for purely downstream effects, in and of themselves.59

Moreover, the principle that U.S. antitrust laws regulate only U.S. markets should apply even more strongly to state antitrust laws because the states do not have any role in reg- ulating commerce involving foreign nations, much less the wholly foreign commerce involved in many component car- tels.60 If state antitrust laws were permitted to reach into for- eign markets when federal laws do not, that would circum- vent national policy regarding the appropriate bounds of U.S. antitrust laws established by Congress and the President, which have exclusive authority over foreign commerce and U.S. foreign policy.61 Allowing the antitrust laws of the 50 states, the District of Columbia, and U.S. territories to reg- ulate purely domestic conduct within other countries’ economies would result in a cacophony of uncertainty to the application of U.S. antitrust laws overseas, precisely the problem that Congress enacted the FTAIA to address.62

### DOJ DA – 2AC

#### Sherman Act violations can be prosecuted civilly or criminally – the aff affects civil prosecution which is distinct from DOJ enforcement

Simmons ‘18 [Jay; 2018; Executive Senior Editor, Southern California Law Review, J.D. Candidate, University of Southern California Gould School of Law; Southern California Law Review; “What's in a Claim: Challenging Criminal Prosecutions under the FTAIA's Domestic Effects Exception,” vol. 92, p. 128-168]

A final consideration concerns the distinct remedies that the overall statutory scheme envisions for civil and criminal antitrust violations. According to regulators' conception of the Sherman Act and its penalties, violations "may be prosecuted as civil or criminal offenses," and punishments for civil and criminal offenses vary. 153 For example, available relief under the law encompasses penalties and custodial sentences for criminal offenses, whereas civil plaintiffs may "obtain injunctive and treble damage relief for violations of the Sherman Act." 154 Regulators also recognize that the law envisions distinct means of enforcing criminal and civil offenses under the Sherman Act. For example, the DOJ retains the "sole responsibility for the criminal enforcement" of criminal offenses and "criminally prosecutes traditional per se offenses of the law."1'55 In civil proceedings, private plaintiffs and the federal government may seek equitable relief and treble damage relief for Sherman Act violations. 156

#### The plan solves the tradeoff link – private litigation takes cases off the government’s docket.

Harrington ‘15 [Joseph; January 29; Patrick T. Harker Professor, Department of Business Economics & Public Policy, at The Wharton School, University of Pennsylvania; *CPI Antitrust Chronicle*, “The Comity-Deterrence Tradeoff and the FTAIA: Motorola Mobility Revisited,” <https://www.competitionpolicyinternational.com/the-comity-deterrence-trade-off-and-the-ftaia-motorola-mobility-revisited/>; KS]

Of greater relevance is the second reason for the lack of public enforcement, which is that the government suspects unlawful collusion but chooses not to litigate. The Antitrust Division of the U.S. Department of Justice (“DOJ”) has limited resources, which means all possible cases cannot be pursued. Furthermore, the presence of a resource constraint impacts the type of cases that are pursued. These days, the DOJ’s caseload is heavily oriented to cases involving the leniency program but not all forms of collusion lend themselves to a firm receiving amnesty. A member of a hard-core cartel engaged in a per se offense can expect to receive leniency if it is the first to come forward but there are many cases of collusion that do not involve behavior that is per se unlawful. Given the lower threshold for a conviction in a civil case, private litigation has been, and will continue to be, essential in prosecuting these less flagrant, but no less harmful, forms of collusion.  
While it is difficult to document case selection by the DOJ, there is certainly evidence consistent with it being a substantive factor. In noting that the DOJ obtained convictions in 92 percent of 699 cases filed over 1992 to 2008, Professors Robert Lande and Joshua Davis comment:17

The DOJ appears much more willing to tolerate a false negative (a failure to prosecute a violation of the antitrust laws) than a false positive (litigating a case when in fact there was no violation). In other words, it appears the DOJ chooses not to pursue litigation in many meritorious cases, perhaps at least in part because it lacks the necessary resources. This may well create a need for private litigation as a complement to government enforcement of the antitrust laws.

#### No case flood – the hurdle is high to plead a case – and if there are case floods, the case definitely outweighs

Harrington ‘15 [Joseph; January 29; Patrick T. Harker Professor, Department of Business Economics & Public Policy, at The Wharton School, University of Pennsylvania; *CPI Antitrust Chronicle*, “The Comity-Deterrence Tradeoff and the FTAIA: Motorola Mobility Revisited,” <https://www.competitionpolicyinternational.com/the-comity-deterrence-trade-off-and-the-ftaia-motorola-mobility-revisited/>; KS]

In their analysis of 60 recent large private antitrust suits, Professors Lande and Davis documented that 40 percent of them were initiated by the plaintiffs (that is, they did not follow a government case).18 By way of example, the current prosecution of the vitamin C cartel, which is composed of Chinese manufacturers, has been exclusively conducted by customers (who have antitrust standing under the FTAIA exception of “import commerce”). After eight years of private litigation, the government has yet to bring a case. In early 2013, the U.S. District Court for the Eastern District of New York found the defendants guilty and assessed damages of $54 million, which were then trebled to $162 million. As reported in The New York Times:19

James T. Southwick, a lawyer at Susman Godfrey who represented the plaintiffs in the case, said he hoped the judgment would encourage the Justice Department to investigate Chinese cartels “and begin treating Chinese cartels the same as they treat cartels from the rest of the world.”

That a cartel may be prosecuted by customers but not the government has occurred and will continue to occur.

Once private litigation is eliminated as an option, a most troubling scenario may then arise: Suspected collusion continues without interruption because the government chooses not to bring a case and, by virtue of the Seventh Circuit’s decision, U.S. consumers are prohibited from bringing a case. The Seventh Circuit seems to have missed this possibility and instead focused on the contrary concern that giving Motorola standing would cause a flood of cases:20

The mind boggles at the thought of the number of antitrust suits that major American corporations could file against the multitudinous suppliers of their prolific foreign subsidiaries if Motorola had its way.

This prognostication misses the mark in two ways. First, there will be a mind-boggling number of antitrust suits only if there is a mind-boggling number of cartels, in which case it is quite appropriate that our minds are boggled with litigation. Of course, plaintiffs can pursue suits lacking merit but that would not seem to be a serious concern in a post-Twombly world where the hurdle is high to plead a case. Second, as I have sought to argue, there is a very real concern of too few cases which not only means that cartels are less deterred but also that uncovered cartels are allowed to continue unabashed.

#### No budget and mergers thump.

Goolsbee ’20 [Austan; September 30; Professor of economics at the University of Chicago’s Booth School of Business, has been a Department of Justice antitrust consultant, and was an adviser to President Barack Obama; *New York Times,* “Big Companies Are Starting to Swallow the World,” <https://www.nytimes.com/2020/09/30/business/big-companies-are-starting-to-swallow-the-world.html>; KS]

First, the enforcement budget for antitrust actions was already stretched way too thin even before the current crisis began. That budget has been falling for years and is lower now than it was two decades ago. The entire antitrust division of the Justice Department and the F.T.C. are being forced to operate on less than a single company like Facebook brings in over a few days. In the last 10 years, the number of merger filings (which notify the authorities of an intended merger) has almost doubled, but the number of enforcement actions taken by the government has actually fallen.

#### Unbalanced regulatory fight.

Kantrowitz ’20 [Alex; September 17; Writer for *Big Technology*; *Big Technology,* “‘It’s Ridiculous.’ Underfunded FTC and DOJ Can’t Keep Fighting the Tech Giants Like This,” <https://bigtechnology.substack.com/p/its-ridiculous-underfunded-us-regulators?utm_campaign=post&utm_medium=email&utm_source=twitter>; KS]

As politicians, the press, and the public scrutinize the tech giants and grow wary of their power, the most important organizations tasked with restraining them — the U.S. regulatory agencies — aren’t getting enough funding to do the job.

“The agencies are severely resource-constrained,” Michael Kades, an-ex FTC trial lawyer who spent 11 years at the agency, told Big Technology.

The Federal Trade Commission and Department of Justice’s antitrust division have a combined annual budget below what Facebook makes in three days. The FTC runs on less than $350 million per year, the DOJ’s antitrust division on less than $200 million. Facebook made $18 billion last quarter alone.

The funding disparity between the tech giants and their regulators leads to an unbalanced fight, current and ex-staffers said: The agencies can’t investigate the tech giants to the extent they’d like. They might shy away from complex cases fearing a resource-draining battle. And when they investigate the tech giants, they often see former colleagues with intricate knowledge of their strategy and ability to act (or lack thereof) representing these companies. Without significant budget increases, the tech giants may well continue to act unrestrained with little fear of repercussions.

“DOJ is under-resourced, FTC it’s ridiculous,” one ex DOJ-staffer told Big Technology.

### Business Confidence DA – 2AC

#### COVID thumps.

Simon ’21 [Ruth; August 13; New York-based reporter for The Wall Street Journal, where she covers small business and entrepreneurship; *Wall Street Journal,* “Delta Variant Drops Small-Business Confidence to Lowest Level Since March,” <https://www.wsj.com/articles/delta-variant-drops-small-business-confidence-to-lowest-level-since-march-11628868656>; KS]

Small-business confidence dropped in August to its lowest level since early spring, as the rise in Covid-19 cases due to the highly transmissible Delta variant put a damper on expectations and turned entrepreneurs more cautious.

Thirty-nine percent of small-business owners expect economic conditions in the U.S. to improve in the next 12 months, down from 50% in July and 67% in March, according to a survey of more than 560 small businesses for The Wall Street Journal by Vistage Worldwide Inc., a business coaching and peer advisory firm.

The measure is one part of a broader confidence index that also tracks metrics such as small-business owners’ outlook for their companies and their investment and hiring plans. That overall figure remains positive, but fell to its lowest level since March.

#### 1 – CEO confidence.

Nolen ’21 [Melanie C; September 13; Research director for Chief Executive Group and research editor for Corporate Board Member and Chief Executive magazines. She has two decades of experience writing for the corporate and financial industry across Canada and the United States; *Chief Executive,* “CEO Confidence Continues To Slide In September As Labor, Washington And Covid Worries Grow,” <https://chiefexecutive.net/ceo-confidence-continues-to-slide-in-september-as-labor-washington-and-covid-worries-grow/>; KS]

CEO sentiment over the prospects of business in the U.S. continued to slide in September. Uncertainties relating to Covid-19 variants and the lack of skilled workers—or the availability of any workers at all—remain a concern for many, but our September reading of CEO sentiment shows growing frustration with Washington. A large number of CEOs surveyed say the current administration’s policies are hurting businesses and the overall U.S. economy—and could stall growth over the next 12 months.

Those are the key findings from Chief Executive’s latest poll of 491 U.S. CEOs, fielded September 7-8. CEOs’ assessment of current business conditions fell 3 percent this month, to 6.6 out of 10 on our 10-point scale—the lowest they’ve been since March.

Similarly, CEOs’ forecast for business conditions by this time next year declined by another percentage point, to 6.7 out of 10—expecting conditions to be only 1.5 percent better than it is today. That is nearly 8 percent lower than they had projected earlier this year, when the initial rounds of vaccination sparked hope that we would soon return to a sense of normalcy.

America’s business chiefs cite rising labor costs and availability, potential tax increases and increased regulations as some of the reasons for their declining rating. The growing focus on Washington is perhaps not surprising since half of the CEOs polled listed the economy as one of the issues most likely to influence the successful execution of their strategy in the year ahead—only preceded by labor costs and shortages (63%). In third place are Covid considerations, such as new variants, renewed mandates/restrictions, workplace safety, etc., (48%) followed by supply chain issues (40%).

“Economic growth in 2021 has benefitted substantially from federal and state fiscal stimulus, and the rebound from Covid-19-induced economic contraction in the first half of 2020. As stimulus is withdrawn, growth will slow,” says D Michael Wilson, president and CEO of Prince International, a large producer of engineered minerals and specialty chemicals based in Houston, Texas. He also believes growth will be impacted “by the ongoing struggle to find qualified workers [which] continues to impact our ability to meet demand. While widely understood to be an issue for small businesses, restaurants, and travel and leisure, skilled labor shortages are also significantly impacting manufacturing.”

Chris Matthews, CEO of family-owned manufacturer National Custom Hollow Metal Doors & Frames based in Little Rock, Arkansas, agrees that there are significant challenges for the manufacturing sector because, he says, “this administration is killing incentives in traditional manufacturing…unless you are in ‘green’ technologies.”

“The current administration seems to be oblivious to the current reality that most, if not all, domestic businesses are contending inflation and difficulty hiring. I don’t see this changing the next three years,” says John W. Gessert, president and CEO of American Plastic Toys.

“The success of Biden passing unfavorable tax policy is in my mind the one thing that could quickly derail our strong economic recovery,” says Jim Nelson, president of Parr Instrument Company, a manufacturer of laboratory instruments in Moline, Illinois.

“While our company has rebounded during the pandemic, I have noticed that with the news of the new surges in the Delta variant that clients are becoming reluctant to spend again. They are fearful of the unknown. Therefore, that could make the overall business environment weaker in 2022,” says Karen Cole, CEO of Assura, a cybersecurity services firm based in Richmond, Virginia.

For Dann H Bowman, president and CEO of Chino Commercial Bank in California, expectations that business conditions will worsen by this time next year are due to “the deterioration of productive efficiency,” he says. “When a large part of the working force is not producing goods and services, the result is reduced supply. This reduced supply constrains economic recovery. Throwing money at the problem only results in rapidly rising prices and monetary inflation; not an improved standard of living,” he says.

Matt Ashwood, executive chairman of BFC Solutions, says wage inflation and continuing supply chain issues are primarily why he foresees business conditions to fall to a 4 out of 10—or “weak” according to our 10-point scale. “Despite an increase of 25%+ in wages, we still can’t get enough workers to fill all of our positions,” he says.

#### 2 – Consumer confidence.

Yadoo ’21 [Jordan; August 27; Reporter at Bloomberg News; *Aljzazeera,* “US Consumer Sentiment Falls to Near-Decade Low in August,” <https://www.aljazeera.com/economy/2021/8/27/us-consumer-sentiment-falls-to-near-decade-low-in-august>; KS]

U.S. consumer sentiment remained weak in late August amid ongoing concerns over inflation and the coronavirus pandemic.

The University of Michigan’s final sentiment index fell to a near-decade low of 70.3 during the month from 81.2 in July, data released Friday showed. The figure was in line with the preliminary reading and just below the median estimate of 70.8 in a Bloomberg survey of economists.

“Consumers’ extreme reactions were due to the surging Delta variant, higher inflation, slower wage growth, and smaller declines in unemployment,” Richard Curtin, director of the survey, said in a statement.

“The extraordinary falloff in sentiment also reflects an emotional response, from dashed hopes that the pandemic would soon end and lives could return to normal without the re-imposition of strict Covid regulations,” he said.

If the slide in confidence translates to a pullback in spending, economic growth may decelerate further in the coming months.

The survey period, July 28 to Aug. 23, also coincided with the Taliban’s takeover of Afghanistan and the start of the chaotic evacuation operation of U.S. and Afghan citizens.

Respondents said they expect inflation to rise 2.9% over the next five to ten years, a three-month high. They expect prices to advance 4.6% over the next year – just shy of the 4.7% seen in the July survey, which was the highest in more than a decade.

Severe supply chain disruptions and a broader reopening of the economy have fueled swift price gains for a variety of goods and services. Soaring rents and home prices are further burdening Americans’ finances.

Meantime, the recent surge in Covid-19 cases has disrupted return-to-office and back-to-school plans, forced the cancellation of events and led many cities to reintroduce mask mandates.

A measure of expectations dipped further in the second half of the month, falling to 65.1 from 65.2 in the preliminary reading, still the lowest since 2013. The current conditions gauge improved slightly from the initial reading but remains its weakest since April of last year at 78.5.

An alternative gauge of consumer sentiment — which places greater emphasis on views of the labor market — will be released by the Conference Board Tuesday.

#### Comity produces convergence – increases business certainty, investments, and innovation.

Ginsburg & Taladay ’18 [Douglas and John; September 28; Senior Judge, United States Court of Appeals for the District of Columbia Circuit, Chairman of the Global Antitrust Institute’s International Board of Advisors, and a former Assistant Attorney General in charge of the Antitrust Division of the U.S. Department of Justice; Partner and Co-Chair of the Antitrust and Competition Law Practice at Baker Botts LLP, Chair of the Business and Industry Advisory Committee to the OECD’s Competition Com- mittee, Chair of the United States Council for International Business Competition Committee, and Co- Chair of the ABA Section of Antitrust Law’s Procedural Transparency Task Force; *George Mason Law Review,* “THE ENDURING VITALITY OF COMITY IN A GLOBALIZED WORLD,” <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3257019>; KS]

Without comity as an effective tool to avoid tensions, divergent reme- dies by different competition agencies are likely to lead to poor enforcement outcomes. Not only will they give rise to increased costs and inefficiencies for agencies and businesses, they ultimately will impede business certainty, and result in diminished investments and reduced innovation. This means everyone loses—businesses, antitrust enforcement agencies, and consumers.

### Trade DA – 2AC

#### Lack of clear, predictable antitrust application forwards inefficient business practices.

Murray ’17 [Sean; November 17; Fordham University School of Law (J.D.); *Fordham International Law Journal;* “With a Little Help from my Friends: How a US Judicial International Comity Balancing Test Can Foster Global Antitrust Redress,” <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2690&context=ilj>; KS]

III. EFFORTS TO LIMIT THE SHERMAN ACT’S CROSS-BORDER APPLICATION

Though the deterrence and redress achieved through Alcoa’s effects doctrine seemingly justify its place in US jurisprudence, the doctrine has been subject to three main criticisms.94 First, critics have argued that the effects doctrine is contrary to established principles of international law, which at the time were firmly based on pure territoriality.95 Second, critics have pointed out that the effects doctrine does not take into account foreign interests.96 The failure to account for these interests, critics argue, enables courts to mask the true reasons underlying their decisions or to openly slight foreign interests.97 Finally, critics have complained that Alcoa’s effects test has lacked clarity and predictability.98 In particular, lower courts have reformulated the test from an intent and effect test to either a direct and substantial effect test or have only required fictional general intent.99 Moreover, decisions of the courts have varied on the type of effect required.100

In addition to these criticisms, the application of the Sherman Act to foreign defendants’ conduct, often legal under the laws of their own sovereigns, prompted controversy among US trading partners.101 Non- US litigants were concerned with the US government’s power to fine and imprison non-US defendants as well as the ability of US plaintiffs to subject non-US companies to expensive discovery and treble- damage exposure.102 As a consequence, US trading partners enacted legislation blocking discovery and permitting defendants to “claw back” the treble-damages portion of any private recovery that might be awarded by a US court.103

Other calls for restraint have also emerged. In its amicus brief for Empagran, the DOJ maintained that US antitrust extraterritoriality as it pertains to private litigation, and with it the treble damage feature, may deter leniency applicants that greatly aid cartel prosecution.104 Consequently, the agency argues, cartel crackdown efforts would suffer because the threat to cartels from leniency-applicant turncoats deters more cartels than would higher penalties.105 Others have cautioned against negative consequences of overregulation, which in turn may harm efficiency and consumers as much as the anticompetitive behavior antitrust laws proscribe.106 The growth of effects jurisdiction has expanded the number of different jurisdictions in which regulatory claims must be satisfied.107 This proliferation increases the cost of doing business internationally: firms must spend more time and money crafting and maintaining antitrust compliance programs, defending in lawsuits alleging illegal anticompetitive conduct, and completing cross-border transactions subject to merger reviews.108

#### Plan makes international trade effective.

Leonardo ’16 [Lizl; Fall; Associate Attorney at Armstrong Teasdale LLP with experience representing domestic and international clients on various legal matters involving equity transactions, acquisitions, franchise matters, other corporate matters and related transactions; *DePaul Law Review;”* A Proposal to the Seventh and Ninth Circuit Split: Expand the Reach of the U.S. Antitrust Laws to Extraterritorial Conduct that Impacts U.S. Commerce,” <https://via.library.depaul.edu/cgi/viewcontent.cgi?article=4008&context=law-review>; KS]

Moreover, having a more consistent approach in cases like this will strengthen and harmonize the partnership across nations. Needless to say, the cooperation between these countries can play a significant role in attaining this objective. Bilateral agreements between the countries have proven that, though challenging, implementing this stricter rule is not impossible.423 International trade rules, such as the General Agreement on Tariffs and Trade (GATT), World Trade Or- ganization (WTO), Organization for Economic Cooperation and De- velopment (OECD), and agreements between countries, imply the general acceptance of this proposal.424 The rapid growth in globaliza- tion has forced governments to institute and enforce policies that both protect domestic products from multinational firms and encourage the domestic firms to compete internationally, in furtherance of interna- tional trade.425

One of the partnerships the European Union (EU) and the U.S. governments are currently working on is called the Transatlantic Trade and Investment Partnership (T-TIP).426 Its aim is to further de- velop the strong relationship nations have and leverage that relation- ship to boost economic growth and international competitiveness.427 The agreement purports to provide greater transparency around trade and investment regulation while ensuring the quality of the prod- ucts.428 As part of the agreement, the governments seek to eliminate all tariffs, other duties, and charges on trade in various products be- tween the United States and the European Union.429

The proponents of T-TIP point out that the elimination of tariffs and quotas will, among other things, entail lower costs of import to each of the regions, put products from one area “on equal footing” with the products from another, create more jobs, lower the unem- ployment rate, increase competitiveness, and improve the overall growth of members of the agreement.430 Although the agreement seems ambitious at this time, it intends to link two of the world’s larg- est economies to generate a third of the world’s GDP.431 Critics ar- gue, however, that the deregulation of several national laws—possibly resulting in lower consumer standards, as well as compromised laws covering intellectual property, food safety, privacy and data collection, and democratic legitimacy—are all steps in the wrong direction.432

Having an established rule that foreign companies’ non-import trade conduct can be subjected to U.S. antitrust laws, as long as the conduct had an “immediate consequence” on U.S. commerce, could mitigate the risks associated with the opening of U.S. and EU mar- kets. Foreign companies that will be encouraged to invest in the United States as a result of T-TIP will have an understanding of the laws and the possible repercussions of any business transaction in which they take part. These companies do not need to determine if and how any of their strategic decisions can be subjected to either the Seventh or Ninth Circuit rulings before securing deals or signing agreements. The certainty will provide companies with notice and un- derstanding of how the law affects their decisions, thereby making their investments less risky. In return, investments could become safer, eventually having a favorable impact on the continued develop- ment of the world economy.