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POLICY BRIEF

Reining In Market-Distorting Federal Regulation

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In July 2021, President Joseph R. Biden issued an executive order on competition,[1] directing federal agencies to act to improve the state of competition in a wide variety of economic sectors and thereby shifting the role of federal competition policy beyond mere antitrust enforcement toward more proactivity and regulation. In light of this shift, we believe that an examination of policies and regulations that disrupt economic competition is warranted.

The Biden executive order postulates the need for intensified regulatory activity to correct perceived anticompetitive business behavior. However, the order fails to recognize that certain federal programs are the cause of competitive harm, not its cure. Many of these programs undermine competition and distort markets, and some even establish federally backed monopolies that are immune from antitrust oversight.[2] These monopolies raise prices for consumers, reducing American economic welfare. For example, in mail delivery, cross-country shipping, agricultural production, and agricultural marketing,[3] the government has set up significant barriers to entry and broad immunity from antitrust law for some incumbent enterprises. This setup runs counter to the underlying procompetitive philosophy of American antitrust law, which the Supreme Court has called "the Magna Carta of free enterprise."[4] It undermines "a fair, open, and competitive marketplace," which, as the Biden executive order acknowledges, "has long been a cornerstone of the American economy."[5]

In this policy brief, we introduce and discuss the economic effects of five key market-distorting laws and regulations: the Jones Act, the monopoly in first-class mail by the US Postal Service, agricultural marketing orders, the Sugar Act, and antidumping laws. The industries captured within these statutory and regulatory frameworks are subject to some of the oldest economic restrictions on free trade in the American regulatory thicket, and the economic impact of these restrictions has not gone unfelt in the past century. They are not, however, the only examples of economically harmful federal market-distorting schemes.[6] A discussion of some other welfare-inimical programs, though beyond the scope of this policy brief, merits future attention.

We close the brief by recommending that the Biden administration's regulatory review experts conduct a cost-benefit evaluation of the five key laws and regulations we highlight. On the basis of that evaluation, the administration should consider program-specific regulatory reforms and propose to Congress legislative changes to make the benefits of those laws and regulations worth the costs (or recommend the statutory elimination of programs that cannot be so changed). Similar evaluations should be performed of other government programs that substantially distort markets.

BACKGROUND

Federal anticompetitive regulations have been on the books for a long time, and their effect is felt just as much today as ever. The Postal Service has maintained a monopoly on delivering first-class mail since the country's founding, and this anticompetitive distortion has bled over into the package delivery market more recently. Through cross-subsidization (using the extra revenue from high prices in one market to offset low prices in another) and operating at a loss, the Postal Service has been able to undercut rivals in the package delivery market and maintain substantial market share. Jones Act shipping requirements have artificially increased the price of shipping goods around the United States, contributing in no small part to the shipping shortage seen in the wake of the COVID-19 pandemic. Agricultural marketing orders and cartelization of agricultural markets (in particular, the statutorily created sugar cartel) artificially increase prices and decrease quantity and quality of food products in a time when inflation is leading to higher prices at supermarkets. Finally, antidumping laws extend the market power of domestic firms, insulating them from international competition and raising prices for consumers. The only parties benefited by antidumping laws are domestic producers, who can keep prices higher and quality lower than would otherwise be tolerated in the market.

All told, these governmentally dictated distortions raise the prices of goods and services for American consumers, leading to unstable economic outcomes on the back of a global economic shock. As policymakers become increasingly focused on the private-sector market distortions causing economic instability, they need to pay attention to the institutional framework through which the government is exacting harm on consumers by maintaining antitrust immunity for firms in sectors of the economy that lack innovation and competition. These statutory distortions and immunities have for decades led to the same types of anticompetitive conduct and harm that the current administration is seeking to crack down on in the private sector.

JONES ACT

A pair of articles by the editorial board of the *Wall Street Journal* has thrust the Jones Act (also known as section 27 of the Merchant Marine Act of 1920) back into the public consciousness.[7] The articles center on a loophole in the Jones Act that enforcers are seeking to plug at a time when shipping costs and delays are near all-time highs.[8] The case involves fish from Alaska, and the loophole involves Canadian railways, but the harm to the domestic shipping economy from the Jones Act can be felt far beyond the seafood industry.

The Jones Act requires that domestic maritime shipping be fulfilled by ships that are built, crewed, owned, and flagged in the United States. It was passed under the guise of national security[9]—which, in the 1920s, may have been an appropriate goal—to ensure that during a time of war sufficient shipping capacity could be commandeered by the military to facilitate efficient military transportation throughout the nation. However, in the modern age, the US Navy has built sufficient capacity to obviate the Jones Act.[10] Furthermore, Jones Act ships are ill suited for military emergencies. The military values speed, ease of navigation, and versatility, and these oceangoing ships are suited only for slow voyages to and from deepwater ports.[11]

The restrictions prevent the use of non-US ships in situations where it is most crucial. As a result, cargo coming from outside the United States must be first offloaded completely and then reloaded onto a different ship if further ocean transportation is desired. This process significantly increases costs and turnaround time at ports. Another frequently used option is to unload the cargo and simply put in on a truck, sending it on its way by road instead of sea, even if the cargo's destination is closer to another port. This too, however, results in inefficiencies because reloading the cargo onto trucks for transportation out of the port takes time as well.

The size of the Jones Act–eligible fleet exacerbates these limitations. According to the US Department of Transportation, the Jones Act–eligible fleet capable of oceangoing voyages comprised just 96 ships as of 2021.[12] This is minute in comparison to the world merchant fleet, which, as of 2019, contained 43,779 ships, leaving the United States with a 0.4 percent share of the world total.[13] Under the Jones Act, only these 96 ships may transport goods between domestic ports by ocean.

If the restrictions were removed, port efficiency would skyrocket. Ships would be able to unload only the cargo bound for that single port, leaving the remaining cargo untouched, and proceed to the next port. Even better, intraport cargo could be loaded in the place of the unloaded cargo, removing the need to transport cargo between ports by rail or truck.

At this time, ports are suffering from overcrowding and an inability to unload and reload ships quickly enough.[14] Even worse, ports are being used as storage facilities for empty ships and cargo containers, waiting for enough cargo so that they can finally make a return voyage.[15] These ships, left in wait for an economically viable return trip, could be used for domestic shipping up, down, and between the US coasts.

This minimal reliance on shipping infrastructure raises shipping prices and strains supply chains within the country. As of 2017, only 2 percent of US domestic freight was transported by sea, in large part owing to the Jones Act restrictions.[16] In the European Union, where there is no such restriction on freight transportation among member countries, that figure is closer to 40 percent.[17] Without the sufficient scale to reduce per-unit costs in the ocean-shipping market, prices will remain high.

Land-based freight prices have hit all-time highs in recent months, and alternative means of shipping would reduce the pressure on these delicate supply chains.[18] Reducing these artificial barriers to competition and using waterborne transportation of cargo could relieve pressure on supply chains, reduce costs, and ultimately benefit consumers by making products available more quickly and at lower costs.

POSTAL SERVICE

The Postal Service's damage to competition is unlike that of the Jones Act in two respects. First, the Postal Service has a complete monopoly on first-class mail. It is illegal for any other entity to deliver first-class mail to a mailbox. Second, the Postal Service can use its monopoly in first-class mail to cross-subsidize its other operations, leveraging higher prices for first-class mail to hold express mail and package prices at uncompetitively low levels. These two factors effectively suppress competition in the shipping and delivery markets by driving out would-be competitors. By pricing below cost, the Postal Service forces competitors wishing to enter the market to charge a similarly low, unsustainable price, causing new market entrants to fail before they have an opportunity to compete. Furthermore, the Postal Service can borrow money directly from the US Treasury at subsidized rates and is exempt from state and local sales, income, and property taxes. These two financial benefits have allowed the Postal Service to operate at a loss for the better part of a decade without having to reduce costs.

The Postal Service has been in continuous operation since 1775 and has been the sole provider of delivery services for mail since 1782. In 1934 this monopoly was expanded to residential and business mailboxes, requiring Postal Service postage to deliver to a mailbox.

Some commentators claim that the operation of the Postal Service benefits from economies of scale (costs that are lower because of its large size) and not anticompetitive cross-subsidization.[19] These commentators, however, fundamentally misunderstand the alternative scenarios by which anticompetitive actions are measured. Postal Service prices must be measured against a counterfactual world in which either package delivery or first-class mail is the *only* product offered to determine whether the price charged is sufficient for sustaining the business.[20] Under this standard, there is evidence that the Postal Service artificially suppresses the price of its package delivery services and artificially increases the price of its first-class mail services by underreporting the share of costs associated with package delivery. Since 2007, the Postal Service has been required to set aside enough revenues from its package delivery services (the competitive side of the business) to pay 5.5 percent of its institutional costs,[21] a percentage that has remained fixed even while the volume of packages has increased significantly.[22] Meanwhile, the volume of first-class mail (the monopoly side of the business) has decreased dramatically since 2007, yet the attribution of costs has remained the same. Package services, as of 2016, make up around 30 percent of the Postal Service's revenue, but account for only 5.5 percent of the institutional costs.

This accounting trick (misallocating costs to the monopoly side of the business) has been well documented and understood for decades.[23] The Postal Service appears to use common assets—workers, delivery trucks, and so forth—to fulfill transactions from both sides of its business but places nearly all the costs on the monopoly side of its business. In other words, the Postal Service is using an inflated measure of costs to increase the price of first-class postage, increase revenue, and funnel some of that increased revenue into the package business. This allows the price of postage for packages to remain artificially lower than that of the competition while turning a profit on paper. If the competitive side of the market did not have access to the shared resources from the monopoly side, these rates would likely not be high enough to support the business.

Acting against federal postal monopolies is not novel. In the 1990s Germany's postal service was fined for using profits from its monopoly products to subsidize competitive products.[24] Following the action against the German postal service, the company was partially privatized in 2000, and Germany removed the postal monopoly in 2008. Other European countries have followed along this trend toward opening their postal markets for competition, including France, Japan, the Netherlands, New Zealand, Sweden, and the United Kingdom.[25] Officials from some of these countries note decreases in market share and increases in competition, along with better resource utilization and innovation associated with removing their postal monopolies.[26]

A simple solution would be to force the Postal Service to correctly account for costs, which would likely increase the price of package delivery and decrease the price of first-class mail in the process. However, this solution would likely exacerbate the current shipping crisis, leading to even higher shipping costs and longer wait times. The other alternative is to remove the Postal Service's monopoly on first-class mail, opening the market to competition and forcing both the Postal Service and potential market entrants to cut costs and increase innovation. Greater automation in package handling could become widespread, and new products and services could become available, such as a monthly fee to opt out of bulk mail and advertising.

Each of these solutions would virtually eliminate the harms of cross-subsidizing. Private firms cross-subsidize different aspects of their businesses all the time by, for example, supporting not-yet-profitable ventures into new markets or investing in research and innovation. Cross-subsidization is not inherently harmful to consumers, but it can be when it is done in place of competition, not because of competition. Other companies may cross-subsidize operations to be competitive in a new market, but they are always constrained by their other operations: cross-subsidize too much, and they risk losing money in the original market and making way for new competitors. The Postal Service, however, has an absolute monopoly over first-class mail. No matter how much it overcharges consumers, funneling money into cross-subsidies instead of innovation, competitors may not enter the market and restrain its actions. Therefore, the Postal Service can undercut potential competitors without regard for the consequences to competition. This lack of competitive pressure is the exact reason governmentally shielded cross-subsidies between monopolistic and competitive businesses are so damaging—the cross-subsidizing company cannot be effectively stopped.

AGRICULTURAL MARKETING ORDERS

Like it does with mail delivery, government also imposes restrictions on agricultural production. Marketing orders are essentially a restriction on the production and sale of fruits, vegetables,[27] and certain other crops, aimed at maintaining "orderly market conditions."[28] Industry groups collude to set volume limitations in the name of price stability,[29] seeking to maintain consistent stocks of food and to reduce perishability.

Marketing order schemes undermine the ability of agricultural producers to respond to market incentives, harming both farmers and consumers. Imagine, for example, that farmers have an incredible season, producing significantly more than planned, and would like to sell that extra crop to gain more money and invest back in their farms. If farmers try to sell more crops than allowed, they will be hit with fines by the federal government.[30] Alternatively, imagine that intermediaries in the supply chain are eating away at farmers' profits, and they believe that they can do a better job marketing, packaging, and selling all their crops, not just a volume-controlled portion. Taking on this responsibility themselves would be good for farmers and their customers because farmers could sell everything they produce and because customers would thus enjoy lower prices and more abundance. However, fines would still be levied in this situation because farmers went around the system and tried to strike out on their own.

Several high-profile cases involving farmers trying to market their own products have arisen,[31] and the General Accounting Office (now the Government Accountability Office) has reviewed some of the marketing orders involved in those cases to determine their benefits and shortcomings. The GAO finds that although some orders have a positive effect by increasing consumer confidence through quality standards,[32] many have adverse consequences. Numerous marketing orders suppress competition by preventing entry into agricultural product markets and cause market distortions by determining when, and if, products go to market.[33] Whereas the quality of some products may have increased over time, so too has waste. In 1981 the *New York Times* reported that more than 40 percent of California's record orange crop was dumped as waste,[34] a fact that strikes squarely at one rationale for these orders: the reduction of wasted crop.

What initially may have seemed to be a good idea (setting output and quality standards in a time when infrastructure and advertising limitations made markets arguably less efficient than they are now) is not needed at all in the modern economy.[35] Modern shipping infrastructure has developed sufficiently to make cross-country or even international transportation of agricultural products routine. Barring accidents in transportation, products generally get to their destination fresh and on time. Quality, too, is less of an issue today than in the past. Farmers, packagers, and store owners can advertise on quality, and consumers can choose the product that is right for them.

Although critics of this argument may say that current marketing orders are not as restrictive as in the past because volume controls generally have been suspended,[36] there is nothing in the law to preclude the return of those controls. Additionally, quality controls do little more in the modern economy than suppress competition. In an economy without said controls, consumers would be free to make decisions around quality and price, potentially opting for a lower-quality good for a lower price. Food safety standards would still apply, ensuring the food produced is of high enough quality for human consumption. However, in the current economy, food that does not meet marketing order standards is not sold, even if it is fit for human consumption. Whether an orange, for example, meets the standards can depend on its firmness, surface appearance, color, or 10 other characteristics,[37] and the viability of other produce depends on many other characteristics.

At a time when many farmers are being financially buried,[38] these marketing orders are another nail in their proverbial coffin. Although restricting quantity raises prices, these increased prices are not realized by the farmer. Quality standards reduce the amount of produce that qualifies for sale, so farmers must overproduce to have enough qualifying produce to sell. Doing so results in higher production costs and more wasted produce that never makes it to market, costs that are not offset by any increase in the end price of produce.

Consumers lose out too, facing higher prices at the supermarket and less choice in the produce aisle. Reducing the restrictions placed on farmers, allowing them to sell their produce as they want, in both quality and volume, would bring more freedom and choice into the agricultural market. New competitors would enter the market, begetting lower prices, greater innovation, and higher aggregate quality. Consumers would have freedom of choice and would align their wallets with the quality of produce that works for them at prices that they deem reasonable. Better still, farmers would be able to realize economies of scale and spread their costs over more units, reducing the cost for even the highest-quality produce.

THE SUGAR ACT

The Sugar Act of 1934 (also known as the Jones-Costigan Amendment) directly imposes significant harm on the American economy. Using the act's various restraints on the US sugar market, the government acts as a cartel enforcer, coordinating and directing the sale of sugar in the

United States. Specifically, the government restricts output through quotas and forced storage and imposes enormous tariffs on imports of sugar,[39] causing the price of sugar in the United States to be double the price of sugar of equivalent quality on the world market.[40]

Beginning in 1937 as a Great Depression–era policy aiming to stabilize the sugar market and ensure sufficient revenue for sugar-producing firms, the Sugar Act confers on the federal government command-and-control style tools to manipulate the market for sugar.[41] Proponents of this policy claim that it is important for economic stability and that it ensures sugar price stability over the long term.[42] Claims of widespread volatility in the world price of sugar have been used as justification for the act, as has the assertion that the scheme imposes zero burden on taxpayers. Although it is true that tax dollars do not directly support the sugar industry, the policy is far from costless.

The current price of sugar outside the United States sits at about 19 cents per pound, according to the Federal Reserve Bank of St. Louis.[43] The price of sugar inside the United States is 37 cents per pound.[44] Even when one looks at average prices over time, the world price has never eclipsed the US price. The smallest gap in prices, occurring in 2013, resulted in an overcharge of around 20 percent. The largest, occurring in 2002, resulted in an overcharge of more than 300 percent. Although it is true that the policy was enacted to stabilize prices over time, doing so comes at the expense of US businesses and consumers. For a sugar-using business to be profitable, the additional cost of sugar must be passed on to customers, causing US consumers to pay significantly higher prices and to demand less sugar and fewer sugar-using products.[45]

Owing to the incredibly high costs of production caused by artificially inflated sugar prices, numerous businesses have moved their production outside the United States.[46] A US Department of Commerce study highlights three significant market distortions stemming from the Sugar Act.[47] First, sugar-intensive industries are losing jobs. For every sugar production job saved by the current sugar policies, three jobs are lost in downstream businesses. Second, sugar costs are among the top reasons for business relocation among sugar-intensive industries. Because the cost of sugar is significantly less in Canada and Mexico, there has been a mass exodus of soda and confectionary producers in recent decades. Third, imports of final goods containing sugar have skyrocketed. Because the price of manufacturing, shipping, and distributing imported sugar-based goods is significantly cheaper than that of domestic goods, demand for such imports has been on the rise. This puts domestic firms at a distinct disadvantage.

American sugar policy, much like agricultural marketing orders, is a clear example of wasteful special-interest protectionism. Sugar producers, for decades, have successfully lobbied for anticompetitively high prices and anticompetitively low quantities, thereby substantially harming the economy. Not only can the expatriation of domestic manufacturing cause significant harm, but so too can the competitive harm imposed on companies that remain within the United States. The high price of US sugar allows international manufacturers to outcompete domestic businesses. Repealing the Sugar Act, and thereby reducing artificial restrictions on sugar production, would decrease the price of sugar, allow domestic firms to produce at competitive prices, bring jobs back to the American economy, and save American consumers money.

ANTIDUMPING LAWS

Domestic firms have an incentive to stave off international competition and support public policies that reduce demand for international products. In a free market, companies must compete on the merits of their products, offering products that are inexpensive, high quality, or both. This competitive interplay increases consumer welfare by allowing consumers to choose the price they are willing to pay, for the quality level they are willing to tolerate, from the firm they want to support.

Many domestic firms, however, do not operate in a free market, at least not under current trade laws. Special industry-specific tariffs, known as antidumping duties, are designed to protect American producers within an industry against foreign competitors' "dumping" of a large supply of competing goods on the US market for a low price.[48] Dumping, which is defined by the World Trade Organization as pricing a product below cost when exporting but at or above cost when selling in the domestic market,[49] is a form of price discrimination, but real-world evidence is lacking that competition (as opposed to certain domestic competitors) is harmed by such behavior.[50] There may be various reasons why a firm prices below cost, such as promoting a new product in a new market or setting a price target for long-run price goals. These examples, though, do not indicate an attempt by foreign firms to monopolize the domestic industry they are entering. Furthermore, because antidumping law definitions do not accurately describe economic costs, the law does not truly deal with economic predation.[51]

Furthermore, antidumping policies may have a negative effect on domestic industries down the supply chain. Firms across the United States use raw materials bought from international suppliers, transforming those materials into final products that they then sell internationally. When the price of those raw materials is artificially high because of antidumping tariffs, noncompetitive markets, or both, the price of final goods also increases. This double whammy harms US consumers, but it also hurts the international competitiveness of domestic firms. When international buyers shop for goods, a US good that is double the price of a non-US good of similar quality is less attractive.

CONCLUSION AND RECOMMENDATION

The federal government is an economic force to be reckoned with. Over the past century, federal programs have significantly reshaped many sectors of the US economy. In light of the White House's renewed focus on the competitiveness of the US economy, attention needs to be paid to the competitive harm flowing from government initiatives, not just from private industry actions.

We recommend specifically that the administration direct the Office of Information and Regulatory Affairs (1) to undertake cost-benefit analyses of the five laws and regulations we highlight within this policy brief and (2) to recommend substantive changes to or wholesale elimination of any programs that do not pass cost-benefit muster.[52] On the basis of those recommendations, we further recommend that the president submit to Congress appropriate legislation calling for specific reforms designed to eliminate the anticompetitive features of those laws and regulations. Where programs are so distortive of competition that they do not merit being salvaged (likely candidates being, for example, the Jones Act, agricultural marketing orders, and the Sugar Act), we believe that the president should call for their statutory repeal. The White House should also identify and submit for similar review other federal programs that substantially distort competition. Such actions would advance the broad goal of the Biden executive order on competition, which recognizes that "the American promise of a broad and sustained prosperity depends on an open and competitive economy."[53]

More generally, the White House and Congress should seriously assess the current regulatory landscape before introducing new regulations and controls on economic activity. Without proper consideration, a new round of regulations dictating the operation of the economy will likely have the same effects as the last round: less competition, higher prices, and lower quality. The solution to at least some aspects of America's competition problem may be closer to home than policymakers realize.

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NOTES

1. Promoting Competition in the American Economy, Exec. Order No. 14036, 86 Fed. Reg. 36987 (July 9, 2021).
2. Various statutory provisions set forth in title 39 of the US Code delineate the United States Postal Service's monopoly for letter delivery and describe its other responsibilities.
3. For an overview of antitrust immunities and their downsides, see John Roberti, Kelse Moen, and Jana Steenholdt, "The Role and Relevance of Exceptions and Immunities in U.S. Antitrust Law" (participant statement, Roundtable on Exemptions and Immunities from Antitrust Laws, Washington, DC, March 14, 2018); Christine A. Varney, "Antitrust Immunities" (remarks, 11th Annual Conference of the American Antitrust Institute: Public and Private: Are the Boundaries in Transition?, Washington, DC, June 24, 2010). Varney states, "Just as private constraints on competition can be harmful to consumer welfare, so can government restraints. Thus, the use of such restraints should be minimized."
4. United States v. Topco Assocs., Inc., 405 U.S. 596, 610 (1972).
5. Promoting Competition in the American Economy, Exec. Order No. 14036, 86 Fed. Reg. 36987.
6. For a review of market-distorting schemes, see Eleanor Fox and Deborah Healey, "When the State Harms Competition—The Role for Competition Law," *Antitrust Law Journal* 79, no. 3 (2013): 769–820.
7. "Mr. Biden's Fish Story," *Wall Street Journal*, September 9, 2021; "A Jones Act Fish Story, Chapter Two," *Wall Street Journal*, October 3, 2021.
8. Henry Ren, "Higher Shipping Costs Are Here to Stay, Sparking Price Increases," *Bloomberg*, April 12, 2021.
9. Merchant Marine Act of 1920, Pub. L. No. 66-261 § 27, 41 Stat. 988, 999 (1920).
10. The US Navy expects to have a fleet of 305 ships by the end of 2021 and has a long-term goal of 350 ships by 2049. Hope Hodge Seck, "Active Ships in the US Navy," Military.com, June 23, 2021.
11. Colin Grabow, Inu Manak, and Daniel J. Ikeson, "The Jones Act: A Burden America Can No Longer Bear (Policy Analysis No. 845, Cato Institute, Washington, DC, June 28, 2018).
12. US Department of Transportation, *United States Flag Privately Owned Merchant Fleet Report*, 2021, 2.
13. US Department of Transportation, Bureau of Transportation Statistics, "Number and Size of the U.S. Flag Merchant Fleet and Its Share of the World Fleet" (dataset), accessed November 29, 2021, https://www.bts.gov/content/number-and-size-us-flag-merchant-fleet-and-its-share-world-fleet.
14. Costas Paris, "Ocean Shipping Rates Fall, but Ports Are Still Jammed," *Wall Street Journal*, November 15, 2021. Paris states, "Dozens of ships packed with everything from Christmas trees to electronics and heavy machinery are still waiting for weeks to unload at big gateways like Los Angeles and Long Beach, Calif."
15. Lisa Baertlein, "As Port of Los Angeles Import Backups Ease, Empty Containers Pile Up," *Reuters*, November 16, 2021.
16. "How Protectionism Sank America's Entire Merchant Fleet," *Economist*, October 5, 2017.
17. "How Protectionism Sank America's Entire Merchant Fleet."
18. Vince Golle, "Freight Rates in U.S. Jump by Most in More Than 15 Years," *Bloomberg*, September 13, 2021.
19. Robert Atkinson argues that the assertion "that USPS should price packages as if it was operating a completely separate, and more expensive, delivery network . . . is based on faulty reasoning that confuses network economies of scale with subsidies." Robert D. Atkinson, *Why the Postal Service Is Not Subsidizing Package Delivery* (Washington, DC: Information Technology and Innovation Foundation, 2019), 2.
20. According to the European Regulators Group for Postal Services, "There may be harmful cross-subsidisation between two products with common costs, if the price of one product is greater than the Stand-Alone Costs ('SAC') of that product, while the price of the other product is lower than its Incremental Costs ('IC')"; and the basic framework for assessing the case is twofold: "it would be excessive for a company to charge a price for a product which is higher than the costs (including opportunity costs) it would have incurred if it had had to produce only that product and

nothing else; and it would be economically inefficient for that company to charge a price for a product which does not even cover the incremental cost of producing that product." European Regulators Group for Postal Services, *ERGP Report on the Cross-Subsidization*, October 4, 2019, 12.

21. Robert J. Shapiro, *Declaration before the Postal Regulatory Commission in the Matter of the Institutional Cost Contribution Requirement for Competitive Products*, 2018. The Postal Service's institutional costs consist of general overhead costs that cannot be attributed to a specific product offering. These include delivery costs. The other side of the cost structure, attributable costs, consist of costs that can be traced directly to either the competitive or monopolistic side of the business. As of 2017, 57 percent of the Postal Service's costs could be attributed to a specific product, leaving 43 percent designated as overhead.

22. Shapiro, *Declaration before the Postal Regulatory Commission*, 9.

23. Timothy J. Brennan, "Cross-Subsidization and Cost Misallocation by Regulated Monopolists," *Journal of Regulatory Economics* 2, no. 1 (1990): 37–51.

24. European Regulators Group for Postal Services, *ERGP Report on the Cross-Subsidization*, 29.

25. Chris Edwards, "Privatizing the U.S. Postal Service" (Tax and Budget Bulletin No. 75, Cato Institute, Washington, DC, April 2016), 2.

26. Alex Kalevi Dieke, Antonia Niederpruem, and James I. Campbell, "Study on Universal Postal Service and the Postal Monopoly, Appendix E" (George Mason University School of Public Policy, November 2008), *passim*.

27. Koretoff v. Vilsack, 614 F.3d 532, 534–35 (D.C. Cir. 2010).

28. 7 U.S.C. § 601, 602(1) (2012). Formation of "an orderly flow of [the commodity] to market throughout its normal marketing season to avoid unreasonable fluctuations in supplies and prices."

29. 7 U.S.C. § 602(4) (2012); General Accounting Office, "The Role of Marketing Orders in Establishing and Maintaining Orderly Marketing Conditions" (GAO/RCED-85-57, Government Accountability Office, Washington, DC, July 31, 1985), 3.

30. Michael McMenamin, "Tedious Fraud: Reagan Farm Policy and the Politics of Agricultural Marketing Orders" (Policy Analysis No. 30, Cato Institute, Washington, DC, December 6, 1983).

31. For more background on these cases, see Alden F. Abbott, *Time to Repeal Agricultural Marketing Orders* (Washington, DC: Heritage Foundation, 2015).

32. General Accounting Office, "Role of Marketing Orders."

33. General Accounting Office, 12–14.

34. General Accounting Office, 14–15; Ann Crittenden, "Growers' Power in Marketing Under Attack," *New York Times*, March 25, 1981.

35. General Accounting Office, "Role of Marketing Orders," 28.

36. "Commodities Covered by Marketing Orders," Agricultural Marketing Service, US Department of Agriculture, https://www.ams.usda.gov/rules-regulations/moa/commodities.

37. US Department of Agriculture, *United States Standards of Grades of Oranges (California and Arizona)*, December 27, 1999.

38. Alan Samuels, "'They're Trying to Wipe Us Off the Map.' Small American Farmers Are Nearing Extinction," *Time*, November 27, 2019.

39. According to Remy Jurenas, "the domestic production sector accepted mandatory limits on the amount of sugar that processors can sell . . . in return for the assurance of price protection." Exceeding these limits would result in the mandatory storage of the excess sugar until that stock is approved for sale. Remy Jurenas, *Sugar Policy and the 2008 Farm Bill* (Washington, DC: Congressional Research Service, 2008), 5–7.

40. Two tariff rates apply, the steeper of which applies out-of-quota sugar, which is assessed at over 15 cents per pound. John C. Beghin and Amani Elobeid, *Analysis of the US Sugar Program* (Washington, DC: American Enterprise Institute, 2017), 6.

41. Chris Edwards lays out the various tools the government uses to control the sugar market, such as guaranteeing prices, production quotas, and import restrictions. He concludes that "the sugar industry is a cartel that is centrally planned from Washington." Chris Edwards, "The Sugar Racket" (Tax and Budget Bulletin No. 46, Cato Institute, Washington, DC, June 2007).

42. For an overview of the rationalizations for the Sugar Act, see Colin Grabow, "Candy-Coated Cartel" (Policy Analysis No. 837, Cato Institute, Washington, DC, April 10, 2018), 6.

43. Federal Reserve Bank of St. Louis, "Global Price of Sugar, No. 11, World" (dataset), accessed November 29, 2021, https://fred.stlouisfed.org/series/PSUGAISAUSDM.

44. Federal Reserve Bank of St. Louis, "Global Price of Sugar, No. 16, US" (dataset), accessed November 29, 2021, https://fred.stlouisfed.org/series/PSUGAUSAUSDM.

45. According to Calros Trejo-Pech, "as US sugar prices became more expensive relative to world sugar prices, sugar-using firm financial performance improved. This suggests that US sugar-using firms pass on higher costs to consumers when relative prices increase or do not pass on discounts to consumers when relative sugar prices decrease." Carlos J. O. Trejo-Pech et al., "The Impact of US Sugar Prices on the Financial Performance of US Sugar-Using Firms," *Agricultural and Food Economics* 8, no. 16 (2020): 14.

46. Ron Nixon, "American Candy Makers, Pinched by Inflated Sugar Prices, Look Abroad," *New York Times*, October 30, 2013.

47. US Department of Commerce, *Employment Changes in U.S. Food Manufacturing: The Impact of Sugar Prices*, 2006.

48. For a more in-depth view of these policies, see Alden F. Abbott, "U.S. Antidumping Law Needs a Dose of Free-Market Competition" (Backgrounder No. 3030, Heritage Foundation, Washington, DC, July 17, 2015).

49. "Technical Information on Anti-Dumping," World Trade Organization, accessed December 1, 2021, https://www.wto.org/english/tratop_e/adp_e/adp_info_e.htm.

50. According to Daniel Ikenson, "One would be hard-pressed to find any real-world examples of dumping causing competitive markets to become monopolistic." Daniel J. Ikenson, "Protection Made to Order: Domestic Industry's Capture and Reconfiguration of U.S. Antidumping Policy" (Trade Policy Analysis No. 44, Cato Institute, Washington, DC, December 21, 2010), 3.

51. Antidumping law definitions of cost do not accurately reflect true economic costs, which are a more accurate measure of predation. Abbott, "U.S. Antidumping Law Needs a Dose of Free-Market Competition"; Ikenson, "Protection Made to Order"). What's more, antidumping principles are at odds with American antitrust law's definition of predatory pricing, which requires both below-cost pricing and a likelihood of recoupment. Brooke Group Ltd. v. Brown & Williamson Tobacco Corp. No. 92-466, 509 U.S. 209 (1993).

52. The Office of Information and Regulatory Affairs "is the United States Government's central authority for the review of Executive Branch regulations." Office of Information and Regulatory Affairs (website), accessed November 29, 2021, https://www.whitehouse.gov/omb/information-regulatory-affairs/.

53. Exec. Order No. 14036, 86 Fed. Reg. 36987, 36987–89 (July 14, 2021).