**1AC**

**Plan**

**The federal judiciary of the United States should declare Section 211 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for 1999 unconstitutional.**

**Advantage 1 is Intellectual Property**

**Now is the key time to eliminate section 211—Cuba has convinced the EU to push for WTO settlement on its behalf and other nations are looking for a precedent**

**EU Business 6-25**

[2013, “EU, Cuba spar with US over 'Havana Club' rum”, <http://www.eubusiness.com/news-eu/wto-cuba-us-patent.pet>, accessed 8-11-13]

(GENEVA) - **The E**uropean **U**nion **and Cuba locked horns with the U**nited **S**tates on Tuesday **at the W**orld **T**rade **O**rganization, **slamming Washington's long failure to void a trademark law affecting the rum business.**¶ **The battle centres on a 1998 law which allows a US brand of rum to use the "Havana Club" name** despite it already being owned by a company based in Cuba, **which is in business with France's** Pernod **Ricard group.**¶ **The law was struck down by the WTO in 2002**.¶ The WTO oversees respect for the rules of global commerce amongst its 159 member nations, and in 1999 was asked by the EU to assess whether the law was out of line.¶ **The US law on intellectual property rights allows companies to use trademarks even if they were previously registered to Cuban companies.**¶ Cuba has been under US sanctions since 1960, the year after Fidel Castro came to power and installed a communist state, seizing the property of US individuals and companies.¶ The WTO wrapped up its complex dispute settlement process in 2002, finding fault with the legislation, and **the US was ordered to adapt it within a reasonable period of time.**¶ **As the plaintiff, the EU agreed multiple extensions of the deadline set for Washington to act.**¶ **But at a dispute settlement hearing on Tuesday, its trade diplomats told the WTO that it was time for Washington to settle the issue**, officials said.¶ **Although Cuba is not formally a plaintiff, its trade diplomats also told the session that enough was enough, a message echoed by members, including China.**

**211 and its precedent undermines international trademark law**

**Macaw 2000**

[Misha Gregory, Trustees of Boston University, Fall, Boston University International Law Journal, “NOTE: THE NEW RUM WAR: HAVANA CLUB AS A THREAT TO THE U.S. INTEREST IN INTERNATIONAL TRADEMARK HARMONIZATION”, accessed 8-6-13, lexis]

**Harmonization furthers the basic trademark functions of identifying and distinguishing goods in the far-flung international market. By allowing manufacturers to use the same trademark in connection with goods and services,** regardless of the particular jurisdiction in which those goods and services are offered, **the basic policy goals of trademarks are served: the trademark comes to embody the standard of quality** associated with the manufacturer's goods and services; consumers are able to rely on the trademark as an accurate source of information about the product; and consumers are able to rely on the trademark as a safeguard against the confusing or deceptive practices of other manufacturers. **These policy goals** of trademarks **are particularly important in the international marketplace, where the link** **between consumer and manufacturer is at its most attenuated and consumers often have no other source of information** about the product other than what is on the packaging.

**Section 211 undermines these basic functions** of trademarks **by creating a situation where, like that patchwork system, trademarks have a different legal status** **in the U**nited **S**tates **than abroad. If a trademark owner does not comply with the 211 consent requirement and the OFAC licensing procedures, a trademark otherwise validly protected in other international jurisdictions will not be protected in the U**nited **S**tates. **Taking the international market as a whole, these trademarks will no longer be able to adequately identify and distinguish their goods and services, because the trademarks will have different meanings to consumers depending on whether they are in the U**nited **S**tates **or in a foreign market.** If the trademark has a different meaning depending on the particular jurisdiction, consumers in the international market will no longer be able to rely on the trademark as embodying the reputation for quality of a particular manufacturer, as conveying accurate information about a product, or as a safeguard against confusion or deception among different products.

[\*329] Again, **to see how 211 undermines the basic functions of trademarks, one need look no further than the Havana Club litigation. As a result of the application of 211 to bar HCH from asserting U.S. trademark rights in the Havana Club trademark and trade name, the trademark and trade name now have separate identities inside and outside the U**nited **S**tates. **Within the United States, the trademark and trade name identify rum produced by Bacardi, and serve to distinguish Bacardi's rum from that of other manufacturers. Outside of the United States, the trademark and trade name serve to identify rum produced by HCH, and to distinguish HCH's rum from that of other manufacturers.** When confronted with a bottle of rum labeled with the Havana Club trademark or trade name, consumers can no longer be sure which company's reputation for quality is implied, what information about the rum is being conveyed, and which company the rum actually originates from.

**Refusing to recognize Cuban intellectual regime collapses harmonization globally, collapses the US economy and bolsters the Castro Regime**

**Adams 02**

[Ashley C., Fall, North Carolina Journal of International Law & Commercial Regulation, “NOTE: Section 211 of the Omnibus Appropriations Act: The Threat to International Protection of U.S. Trademarks”, accessed 8-8-13, lexis]

1. Effect on the Harmonization Movement and the U.S. Economy

**Because of the United States's activism with respect to the implementation and enforcement of international intellectual property protection, it has widely been viewed as a leader in the area.** n180 As a leader, many **countries look to the U**nited **S**tates **to set the standard.** **These countries could see Section 211 as an indication that the protection of intellectual property rights is necessary - except when it doesn't suit their purpose. This response could impede, and** perhaps **reverse, progress in terms of** [\*244] **harmonizing international intellectual property protection.** **The danger is even more evident in the context of developing countries**, which have even less incentive to protect the intellectual property of developed nations. n181

2. The U.S. Economy

**As fewer countries value international intellectual property protection, the U.S. economy will have more problems.** Moreover, the danger of counterfeited goods is not the only problem the U.S. economy could experience if Section 211 is enforced. **The U.S. stands to lose foreign investments as it loses credibility and legitimacy. Countries that look down upon U.S. foreign policy could choose to take their investments elsewhere such as to countries that have chosen to abide by obligations to other nations,** even when it does not suit them. n182 At the very least, **foreign investors will be wary of investing in the U**nited **S**tates **because of uncertainty as to whether the U**nited **S**tates **will continue to recognize their intellectual property rights.** n183

3. Castro's Regime

**The benefit from the non-recognition of U.S. trademarks is not the only benefit the Castro regime could reap from the continued application of Section 211.** Indeed, **Section 211 is helping Castro bond with the Cuban citizens.** Section 211 **combined with the United States's stance toward Cuba becomes a tie that binds for Cubans.** Like the Cuban embargo in general, the Castro regime has reached "quasi-martyr status **by permitting its subjects to focus on an external enemy,** namely **the U**nited **S**tates." n184

**International trademark legitimacy and harmonization key to the global economy**

**Macaw 2000**

[Misha Gregory, Trustees of Boston University, Fall, Boston University International Law Journal, “NOTE: THE NEW RUM WAR: HAVANA CLUB AS A THREAT TO THE U.S. INTEREST IN INTERNATIONAL TRADEMARK HARMONIZATION”, accessed 8-6-13, lexis]

Since the end of the Cold War, **the business enterprise has emerged as the major actor on the world stage.** n190 **The driving force in the world economy has shifted from superpowers to super-markets**, and the initiative for fundamental economic change now comes more from companies than capitals. n191 **Government has become a supporting player**, no longer making all the key economic decisions in the global economy. n192 Already, **more than $ 1 trillion in financial transactions crosses borders every day.** n193 The very idea of globalization is no longer a buzz-word; international trade is growing twice as fast as world production, and overseas investment is increasing at least twice as fast as trade. n194

The economic incentives for global operations are substantial. n195 **In the case of U.S. manufacturing** firms, **sales by companies with foreign activities** [\*323] **grow twice as rapidly** as those of strictly domestic firms. n196 **Their profits are also higher.** n197 There are strong links between overseas trends and domestic developments. n198 To an extent not fully appreciated by the public, many well-known U.S. firms already depend on overseas markets for the bulk of their revenues. n199 A large array of companies report that more than half of their profits arise from overseas business. n200 And perhaps more importantly, an almost equally large listing of big US-based corporations have more than one-half of their assets in foreign countries. n201

**Among the key exports of the United States to the international economy is U.S. intellectual property.** **In 1999, U.S. exports in the form of royalties and licensing revenue exceeded $ 37 billion -- topping** such traditional blue chip items as **aircraft and telecommunications equipment.** n202 Morevoer, **the intellectual property trade surplus**, or exports minus imports, **is running at about $ 25 billion annually and growing.** n203 **The importance of the intellectual property component of the U.S. economy becomes apparent when intellectual property exports are compared with** more **traditional** U.S. **exports.** For example, the U.S. surplus with Japan in intellectual property topped $ 4 billion last year, while the U.S. trade deficit with Japan in goods was $ 5.5 billion for January of 2000 alone. n204 Further, **the increasing importance of the information economy stands to boost the importance of U.S. intellectual property exports.** **The current lead of the United States in Internet and e-commerce innovation, compared with the rest of the world, creates the potential for global licensing and royalty revenue to explode.** n205

However, **just as apparent as the impressive value of U.S. intellectual property in the world market is the fact that the U.S. loses billions of dollars a year in exports because of the inadequate protection of intellectual property rights** in foreign countries. n206 The problem is exacerbated by the fact that developing countries often see little incentive to protect the rights in intellectual property exported by developed countries. n207 [\*324] These countries view ready access to intellectual property as important to development, whereas the enforcement of intellectual property law is considered a burden on development. n208 Further, the importation of intellectual property often is viewed as a tool to dominate and exploit the economic potential of the importing countries. n209 Finally, intellectual property frequently is simply too new of a concept in many developing countries to have become a legal tradition. n210 For these reasons, developing countries often resist allocating scarce government resources to the enforcement of intellectual property rights. n211

**Trademarks are a key intellectual property export of the United States in the international economy.** By identifying the source of goods placed in commerce and distinguishing among the goods of different manufacturers, n212 they perform several key functions for U.S. businesses seeking to establish an international presence. First, **trademarks encourage the production of quality goods** and services by allowing foreign consumers to connect a product with its U.S. manufacturer. n213 Because consumers reward quality products with continued patronage, U.S. manufacturers have an incentive to keep quality high. n214 As a result, **trademarks come to embody the reputation of the U.S. manufacturer.** Second, **trademarks reduce the foreign consumer's cost of searching for information about U.S. products.** n215 **Information, and the time required to acquire it, are not costless. A trademark comes to embody all of the information a foreign consumer associates with a U.S. product**, allowing the consumer to rely on the trademark rather than investigate each purchasing decision anew. Third, **trademarks protect foreign consumers against confusion and deception.** n216 A trademark ensures that the brand information received by consumers is accurate, preventing the consumer from purchasing a product with the mistaken belief that it comes from a U.S. source, when in actuality it comes from another source. Finally, **trademarks are essential to the functioning of a competitive international economy.** n217 **Without trademarks and the policy goals they serve, competition in product quality could not exist.** By allowing consumers worldwide to make rational, informed purchasing decisions, **trademarks foster** [\*325] **the entry of U.S. manufacturers into the competition for consumer attention in international markets.**

**Economic collapse causes protectionism and great power wars**

**Green and Schrage 09** (Michael J. & Steven P, May 26, Senior advisor @ CSOS and assoc. Prof @ Georgetown, CSIS Scroll chair and senior official with the US Trade Reps., It's not just the economy, Asia Times Online, http://www.atimes.com/atimes/asian\_economy/kc26dk01.html)

Facing the worst economic crisis since the Great Depression, analysts at **the World Bank and** the US **C**entral **I**ntelligence **A**gency **are** just **beginning to contemplate** the ramifications for **international stability if there is not a recovery** in the next year. For the most part, the focus has been on fragile states such as some in Eastern Europe. However, **the Great Depression taught us that a downward global economic spiral can** even **have jarring impacts on great powers.** It is no mere coincidence that **the last great global economic downturn was followed by the most destructive war in human history**. **In the 1930s**, economic desperation helped fuel **autocratic regimes and protectionism** in a downward economic-security death spiral that **engulfed the world in conflict**. This spiral was aided by the preoccupation of the United States and other leading nations with economic troubles at home and insufficient attention to working with other powers to maintain stability abroad. Today's challenges are different, yet 1933's London Economic Conference, which failed to stop the drift toward deeper depression and world war, should be a cautionary tale for leaders heading to next month's London Group of 20 (G-20) meeting. There is no question the US must urgently act to address banking issues and to restart its economy. But the lessons of the past suggest that we will also have to keep an eye on those **fragile threads** in the international system that **could begin to unravel if the financial crisis is not reversed** early in the Barack Obama administration and realize that economics and security are intertwined in most of the critical challenges we face. A disillusioned rising power? Four areas in Asia merit particular attention, although so far the current financial crisis has not changed Asia's fundamental strategic picture. **China is not replacing the US as regional hegemon**, since the leadership in **Beijing is too nervous about the political implications of the financial crisis** at home to actually play a leading role in solving it internationally. Predictions that the US will be brought to its knees because China is the leading holder of US debt often miss key points. **China's currency controls and full employment/export-oriented growth strategy give Beijing few choices other than buying US Treasury bills or harming its own economy**. Rather than creating new rules or institutions in international finance, or reorienting the Chinese economy to generate greater long-term consumer demand at home, Chinese leaders are desperately clinging to the status quo (though Beijing deserves credit for short-term efforts to stimulate economic growth).

**Intellectual property protection is key to environmental innovation and distribution—only way for businesses to make a profit**

**Johnson and Lybecker 09** [Daniel and Kristina, economists at Colorado College, August 16, Colorado College, “Innovating for an uncertain market: A literature review of the constraints on environmental innovation”, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1454882>, accessed 1-26-14]

In conclusion, **there is virtually unanimous consent among economists that strong**¶ **intellectual property rights are an essential prerequisite to the development of environmental**¶ **technologies.** The **dissenting voices** (e.g. Hutchinson, 2006) make the valid claim that patent law¶ increases the cost of technology acquisition by consumers or intermediary producers, but **do not**¶ **explain how technology arrives more cheaply by another means.** **Given that innovation is costly**¶ **and risky, there is quite simply no alternative to IPRs proposed in the literature that will**¶ **adequately encourage eco-innovation.** Given that IPRs are necessary, there are potential¶ alterations that we should consider to make IPRs work more effectively for eco-innovation in¶ particular. Financial awards, or the clearer distinction between primary research and cumulative¶ / application research could both be avenues for policy consideration.

**Innovation is key to solve warming**

**Norris and Jenkins 9**, \*Project Director at the Breakthrough Institute, \* Director of Energy and Climate Policy, The Breakthrough Institute,(Teryn and Jessie, “ Want to Save the World? Make Clean Energy Cheap,” Huffington Post, March 10, <http://www.thebreakthrough.org/blog/2009/03/want_to_save_the_world_make_cl.shtml>)

Whatever the cause, **we have very little chance of overcoming climate change without enlisting young innovators at a drastically greater scale**. Simply put, **they represent one of the most important catalysts for creating a clean energy economy and achieving long-term prosperity**. The reason is this: **at its core, climate change is a challenge of technology innovation. Over the next four decades, global energy demand will approximately double. Most of this growth will happen in developing nations** as they continue lifting their citizens out of poverty and building modern societies. **But** **over the same period, global greenhouse gas emissions must fall dramatically to avert the worst consequences of climate change.** Shortly before his untimely death in 2005, the Nobel Prize-winning physicist Richard Smalley coined this the "Terawatt Challenge": increasing global energy production from roughly 15 terawatts in 2005 to 60 terawatts annually by 2100 in a way that simultaneously confronts the challenges of global warming, poverty alleviation, and resource depletion. **The single greatest obstacle** to meeting the Terawatt Challenge **is the "technology gap" between dirty and clean energy sources.** Low-carbon energy technologies remain significantly more expensive than fossil fuels. For example, solar photovoltaic electricity costs up to three to five times that of coal electricity, and plug-in hybrid and electric vehicles can be twice as expensive as their gasoline-fueled competitors. **Unless this technology gap is bridged and clean energy technologies become affordable and scalable, poor and rich nations alike will continue opposing significant prices on their carbon emissions and will continue relying primarily upon coal and other fossil fuels to power their development. This will virtually assure massive climate destabilization**. So **the task is clear: to avoid climate catastrophe and create a new energy economy, we must unleash our forces of innovation** - namely, scientists, engineers and entrepreneurs- **to invent a new portfolio of truly scalable clean energy technologies, chart new paths to bring these technologies to market, and ensure they are affordable enough to deploy throughout the world.**

**Advantage 2 is the Rule of Law**

**Section 211 is unconstitutional—Separation of Powers and Equal Protection Clause**

**Kaldes, 01**

[Peter J., Spring, The Journal of Law and Commerce, “RUM WARS: THE TRANSATLANTIC BATTLE OVER SECTION 211”, accessed 8-8-13, lexis]

**Section 211 on its face, presents interesting questions of constitutionality.** Although a U.S. court has adjudicated the question otherwise, n141 **Section 211 may still violate the separation of powers doctrine. Under the U.S. Constitution, the role of the legislature is to enact laws and it is for the judiciary to apply those laws in determining the outcome in particular cases.** n142 **The specific rule to be applied in this case comes from U**nited **S**tates **v. Klein.** n143 There, **the Court ruled that Congress is precluded from "usurping the adjudicative function assigned to the federal courts under Article III."** n144 [\*279] Further, **"Congress [may not] specifically direct the U.S. courts to reach a particular result in individual cases."** n145

Here, **Congress has impermissibly stretched the bounds of, if not outright violated, this rule.** **By passing Section 211, Congress has "specifically directed the U.S. courts to reach a particular result in individual cases."** n146 **One need only look to those who drafted Section 211 to determine that a "particular result" was desired in this "individual case."** Here, **it was Bacardi lawyers**, rivals to HCH, along with senators from Florida, a state with a high population of Cuban- Americans, **who in the late hours of the 1998 congressional session**, without an introduction or hearings, **subtlely inserted Section 211** into the Omnibus Appropriations Act. It becomes clear that **the only result these actors desired was to blunt HCH's attempts to enforce in U.S. courts its rights to the Havana Club trademark.** Since Section 211 ultimately passed, and with no legislative history to prove otherwise, **it becomes quite clear that Congress violated the separation of powers doctrine by "directing particular results in [this] individual case," in other words, preventing HCH from seeking recourse in U.S. courts.**

**The second constitutional issue raised involves the Fourteenth Amendment because Section 211 may also violate the Equal Protection Clause.** **Where the federal government makes a classification,** **which**, if it were a state, **would violate the Fourteenth Amendment's Equal Protection Clause, the Court has treated this as a violation of the Fifth Amendment's Due Process Clause**, n147 triggering varying degrees of judicial scrutiny depending upon the nature of the governmental classification involved. **Most applicable to Section 211 is the "rational basis" standard because this lowest-level of scrutiny is generally applied to statutes that involve economic issues and classifications.** n148 Under the "rational basis" standard, **the Court asks only whether it is conceivable that the classification bears a rational relationship to a government interest that is not prohibited by the Constitution.** n149 If the government can articulate a rational basis, the statute will likely survive scrutiny under the Constitution.

**Section 211 has profound constitutional implications for any U.S. citizen wanting to register a trademark in the United States. It implicates equal** [\*280] **protection concerns because it denies a cause of action for those "designated nationals" or "successor[s]-in-interest" of property confiscated by any government without just compensation or permission of the original owner.** n150 **Excluding a class of citizens from sharing in the benefits of U.S. law on the basis of how they came to earn their trademark violates the equal protection guarantees of the U.S. Constitution.** This classification of "successor-in-interest" is devoid of any conceivable "rational relationship" to a legitimate state interest, the standard used to rebut the presumption of validity most legislation enjoys. Here, there is only one plausible state interest. Section 211 arguably furthers the U.S. interest of the weakening of Castro's totalitarian Communist regime. Although this may have been a strong governmental interest at the height of the Cold War, forty years later it no longer seems rational. Toppling another government, by forbidding access to domestic courts, seems hardly what the forefathers intended.

**SOP and Rule of Law maintain US soft power by improving foreign partnerships**

**Ikenberry 01** (G. John, Professor of Politics and International Affairs - Princeton University “Getting Hegemony Right” The National Interest, 3/12)

This bleak vision of backlash and strategic rivalry is not destiny. Indeed, the most striking fact of international life in the decade since the end of the Cold War is that **stable and cooperative relations between the democratic great powers continue largely unabated.** In some ways **these relations have actually deepened, such as with the creation of the World Trade Organization and the expansion of intergovernmental working groups** under the auspices of the G-7. One reason for this is simple enough: **There is a broad convergence of interests among the advanced industrial countries, all of which share deeply held common commitments to economic openness, democracy and multilateral management of global issues**. The huge start-up costs of establishing an alternative to the U.S.-centered system also probably deter the other major states. A critical ingredient in stabilizing international relations in a world of radical power disparities is the character of America itself. The United States is indeed a global hegemon, but because of its democratic institutions and political traditions it is--or can be--a relatively benign one. Joseph **Nye's arguments on "soft power" of course come to mind here, and there is much to his point**. But, in fact, **there are other, more significant aspects of the American way in foreign policy that protect the United States from the consequences of its own greatness**. When other major states consider whether to work with the United States or resist it, the fact that it is an open, stable democracy matters. **The outside world can see American policymaking at work and can even find opportunities to enter the process and help shape how the overall order operates.** Paris, London, Berlin, Moscow, Tokyo and even Beijing--in each of these capitals officials can readily find reasons to conclude that an **engagement policy toward the United States will be more effective than balancing against U.S. power**. America in large part stumbled into this open, institutionalized order in the 1940s, as it sought to rebuild the postwar world and to counter Soviet communism. In the late 1940s, in a pre-echo of today's situation, the United States was the world's dominant state--constituting 45 percent of world GNP, leading in military power, technology, finance and industry, and brimming with natural resources. But **America** nonetheless **found itself building world order around stable and binding partnerships.** Its calling card was its offer of Cold War security protection. **But the intensity of political and economic cooperation between the United States and its partners went well beyond what was necessary to counter the Soviet threat.** As the historian Geir Lundestad has observed, the expanding American political order in the half century after World War II was in important respects an "empire by invitation." **The remarkable global reach of American postwar hegemony has been at least in part driven by the efforts of European and Asian governments to harness U.S. power, render that power more predictable, and use it to overcome their own regional insecurities.** The result has **been a vast system of America-centered economic and security partnerships**. Even though the United States looks like a wayward power to many around the world today, it nonetheless has an unusual ability to co-opt and reassure. Three elements matter most in making U.S. power more stable, engaged and restrained. First, **America's** mature **political institutions** organized **around the rule of law have made it a relatively predictable and cooperative hegemon**. The pluralistic and regularized way in which U.S. foreign and security policy is made reduces surprises and allows other states to build long-term, mutually beneficial relations. The **governmental separation of powers creates a shared decision-making system that opens up the process and reduces the ability of any one leader to make abrupt or aggressive moves toward other states.** An active press and competitive party system also provide a service to outside states by generating information about U.S. policy and determining its seriousness of purpose. The **messiness of a democracy can**, indeed, **frustrate American diplomats and confuse foreign observers.** But over the long term, **democratic institutions produce more consistent and credible policies**--policies that do not reflect the capricious and idiosyncratic whims of an autocrat. Think of the United States as a giant corporation that seeks foreign investors. It is more likely to attract investors if it can demonstrate that it operates according to accepted accounting and fiduciary principles. **The rule of law and the institutions of policymaking in a democracy are the political equivalent of corporate transparency and accountability**. Sharp shifts in policy must ultimately be vetted within the policy process and pass muster by an array of investigatory and decision-making bodies. **Because it is a constitutional, rule-based democracy, outside states are more willing to work with the United States**--or, to return to the corporate metaphor, **to invest in ongoing partnerships.** This **open and decentralized political process works in a second way to reduce foreign worries about American power.** It creates what might be called "voice opportunities"--that is, **opportunities for political access and, with it, the means for foreign governments and groups to influence the way Washington's power is exercised.** In 1990 the political analyst Pat Choate wrote a bestseller entitled Agents of Influence, detailing the supposedly scandalous ways in which Japanese ministries and corporations were manipulating the American political process. High-priced lobbyists were advancing Tokyo's commercial interests within the hallowed halls of the American capital and undermining the pursuit of the U.S. national interest. Today Washington is even more inundated by foreign diplomats and revolving-door lobbyists working to ensure that the interests of America's partners are not overlooked. Looked at from the perspective of the stable functioning of America's hegemonic order, Choate was actually describing one of the brilliant aspects of the United States as a global power. **By providing other states opportunities to play the game in Washington, they are drawn into active, ongoing partnerships that serve the long-term strategic interests of the United States.**

**Collapse causes transition wars**

**Ikenberry, Professor of International Affairs at Princeton University, 05**

(G. John, 4th December 2005 “The Rise of China, Power Transitions and the Western Order” pg 5-6 <http://www.scribd.com/doc/7257921/Ikenberry-Rise-of-China-Power-Transitions-and-the-Western-Order>)

**International order can be understood as a hierarchical political system that reflects the interests of the dominant state or states. Change occurs as great powers rise and decline and as they struggle over the rules and institutions of order**. Robert Gilpin provides a classic account of the dynamics of international relations in these terms. **The history of world politics is marked by a succession of powerful – or hegemonic – states that rise up to organize the international system**. As Gilpin argues, “the evolution of any system has been characterized by successive rises of powerful states that have governed the system and have determined the patterns of international interactions and established the rules of the system.”4 **Steady and inevitable shifts in the distribution of power among states gives rise to new challenger states who eventually engage the leading state in hegemonic war, which in turn gives rise to a new hegemonic state that uses its dominant position to establish an order favorable to its interests**. Within a hegemonic order, rules and rights are established and enforced by the power capacities of the leading state. **Compliance and participation within the order is ultimately ensured by the range of power capabilities available to the hegemon** – military power, financial capital, market access, technology, and so forth. Direct coercion is always an option in the enforcement of order, but less direct “carrots and sticks” are also mechanisms to maintain hegemonic control. Gilpin also argues that a wider set of resources – ideology and status appeals – are integral to the perpetuation of hegemonic order.5 But **the authority of the hegemonic state and the cohesion of the hegemonic order are ultimately based on the preeminent power of the leading state. The hierarchical system is maintained as long as the leading state remains powerful enough to enforce the rules and institutions of order. When hegemonic power declines, the existing order begins to unravel and break apart**. As Gilpin contends, “a precondition for political change lies in a disjuncture between the existing social system and the redistribution of power toward those actors who would benefit most from a change in the system.”6 **The power transition leads to geopolitical struggles and security competition that ultimately culminate in hegemonic war** – and the emergence of a new leading state that organizes the international system according to a new logic.

**Solvency**

**The plan can restore IP credibility without removing the current embargo—only complete removal solves**

**Pava 2011** (Mindy – Executive Symposium Editor for the Emory International Law Review, J.D. Candidate at Emory University School of Law, The Cuban Conundrum: Proposing an International Trademark Registry for Well-Known Foreign Marks, Emory International Law Review, p. Lexis-Nexis)

2. **Does Section 211 Erode the** United States**'s International Standing**? Since Fidel Castro's ascension to power, U.S. policymakers have considered Cuba a strategic threat. n284 However, no other countries observe the U.S. embargo with Cuba, n285 and the UN General Assembly has voted to condemn the embargo by a substantial margin every year since 1992. n286 **At a time when the** United States **needs as many allies abroad as possible**, some have argued that **the** United States **has further isolated itself by deviating from international intellectual property principles in favor of upholding the Cuban embargo. In passing Section 211** in particular, Bill **Reinsch of the National Foreign Trade Council argued that the** United States **has set a poor standard in telling the rest of the world that limiting trademark protection is appropriate based on solely political reasons**. n287 [\*671] Section 211, in effect, we believe, tells the world that it is okay to limit trademark protection in certain obviously political circumstances. **There are no doubt a lot of other countries who would welcome that message and would be happy to use it as an excuse to remove trademarks** in situations that are politically important to them. **This is not a message that we should be sending**. n288 Although this Comment is not calling for international agreements to invariably supersede federal law, given that fundamental issues of state sovereignty would be impacted by such an assertion, states should engage in a balancing test. In weighing the loss of reputation and prestige in the international intellectual property community versus the effect on national security in weakening the Cuban embargo, or at least allowing the country to have some level of trademark registration ability within the United States for its well-known marks, the United States has determined that federal law takes precedence over its international obligations. However, perhaps **the** United States **can compromise** in a way that allows for the condemnation of Cuba's human rights record **without sacrificing its international standing as an intellectual property leader. It is possible** for the United States **to repeal Section 211 without loosening the other restrictions** inherent **in the** Cuba **embargo. A full repeal of Section 211** n289 - **and not the narrow fix that would only rid Section 211 of its discriminatory language** n290 - **would allow the** United States **to become fully compliant with the provisions in the TRIPS agreement, and show the WTO's** Dispute Settlement Body **that lawmakers have taken action** to propose the changes requested in the appellate body's ruling of more than seven years ago. The repeal of Section 211 would reestablish the same framework for the registration of foreign well-known marks that existed in the first four decades of the Cuban embargo. The Cuban government would possess the ability to register trademarks associated with nationalized businesses with the U.S. PTO, but only to the extent that those businesses would retain priority rights to the marks in a post-embargo marketplace. **Because the embargo as a whole would still exist, no company associated with Cuba's** communist **government would be able to sell its product within the** United States; **however, the companies would not lose their intellectual property rights** to their well-known marks before the embargo is lifted. Furthermore, in conjunction with the repeal of Section 211, the United [\*672] States should strongly condemn Cuba's recent human rights abuses, such as the continued imprisonment of political opponents n291 and the hunger-strike death. n292 **An intellectual property compromise** from the United States **is not a carte blanche for Cuba to behave however it wants in the human rights arena**, and the United States should make that clear.