# 1AC: Ohio Valley

## Contention 1: WTO

#### Section 211 has kept the U.S. in noncompliance with TRIPS for a decade

Riley 07

Michael, JD candidate at the University of Miami. “Cigars and Rum: Hazardous to the Health of Intellectual Property Law? How the Cohiba Cigar and Havana Club Rum Cases Reveal a 'Carve-Out' for Intellectual Property Disputes with a Cuban Nexus” The University of Miami Inter-American Law Review, Vol. 38, No. 2 (Winter, 2006/2007), pp. 457-486)

On July 7, 1999, the European Community formally took issue with Section 211 before the WTO. In doing so, it was alleged that the United States had not conformed with several articles of the TRIPS agreement. According to the WTO, "The WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), negotiated in the 1986-94 Uruguay Round, introduced intellectual property rules into the multilateral trading system for the first time." The agreement also established how signatories are to protect trademarks specifically, by "defining] what types of signs must be eligible for protection as trademarks, and what the minimum rights conferred on their owners must be." Further, "[m]arks that have become well-known in a particular country enjoy additional protection." In its complaint, the European Union articulated twelve arguments in alleging that Section 211 violated six provisions of the TRIPS agreement. The United States responded by "rejecting] the claims of the European Communities in their entirety." Internally, however, the U.S. Trade Representative's office seemed to have doubts, as a leaked memo suggested. "Noting the provision was approved to address 'a longstanding dispute between the Cuban government and Bacardi rum,' the memo [admitted that] 'the language is problematic because it violates our obligations under the TRIPs agreement.'" Of the inconsistencies alleged by the European Union, the WTO Dispute Settlement Panel (DSP) found that Section 211 violated a single provision of the TRIPS agreement, Article 42. The Panel found that under Section 211(a)(2), a potential right-holder "is effectively prevented from having a chance to substantiate its claim, a chance to which a right holder is clearly entitled under Article 42, because effective civil judicial procedures mean procedures with the possibility of an outcome which is not preempted a priori by legislation." In other words, Section 211 wrongly denied "access to U.S. courts for trademark holders to settle trademark disputes." On cross-appeals, the Appellate Body considered the Panel Report's conclusions. The Appellate Body reversed the findings of the DSP regarding Article 42 of the TRIPS agreement, but did conclude that Section 211 was not in conformance with two other provisions, stating: In such a measure, that WTO Member must accord "no less favourable treatment" to the nationals of all other WTO Members than it accords to its own nationals, and must grant to the nationals of all other WTO Members "any advantage, favour, privilege or immunity" granted to any other WTO Member. In such a measure, a WTO Member may not discriminate in a way that does not respect the obligations of national treatment and most-favoured-nation treatment that are fundamental to the TRIPS Agreement. In doing so, the Appellate Board held that the U.S. statute "was discriminatory because it forced Cuban nationals to undergo a Section 211 hearing before granting them access to U.S. courts to enforce their trademark rights, while U.S. nationals were not required to undergo this hearing." The Appellate Board applied the same logic when determining that Section 211 was inconsistent with the TRIPS agreement's most-favored-nation provision. The Board agreed with the European Union that Section 211 favored "U.S. successors-in-interest to trademarks the same or substantially similar to confiscated trademarks by exempting them from the additional requirements imposed on Cuban and other foreign successors-in-interest." The United States was ordered to bring Section 211 into compliance with international treaty agreements, and was initially given until January 3, 2003 to do so. Since then, there have been several extensions, though Section 211 remains in force. While the United States has been threatened with European trade retaliation, there has been no realization of those threats.

#### U.S. failure to comply with the WTO ruling on Havana Club undermines the credibility of the dispute settlement body.

New 13

New, 3/26/2013 (William – Intellectual Property Watch, United States Chided As TRIPS Scofflaw at WTO, Intellectual Property Watch, p. <http://www.ip-watch.org/2013/03/26/united-states-chided-as-trips-scofflaw-at-wto/>)

“The conduct of the United States unscrupulously discredits the WTO dispute settlement system and also constitutes an affront to the intellectual property rights,” an ambassador from Cuba said today at the WTO. At a WTO Dispute Settlement Body meeting today, a number of WTO members fired shots at the US delegation for its continued failure to change its laws to comply with WTO rulings that found it out of compliance onintellectual property-related issues. This includes the case involving a rum trademark dating back over a decade, and a more recent case involving a US online gambling ban that led a WTO panel to authorise the Caribbean nation of Antigua and Barbuda to extract payment by not protecting US IP rights until it complies. The irony of the US as IP scofflaw was not lost on competitors like Antigua and Barbuda or Cuba, which said the US slackness discredits its IP rights enforcement campaign as well as the very WTO dispute settlement process itself. “It is very ironic to observe the United States projecting laws on intellectual property, despite keeping violations as egregious as Section 211,” under which the Bacardi Company continues to market rum labelled Havana Club, a mark which is otherwise owned by Cuba and partners. “This is one of the most famous cases of trademark counterfeiting and conducting misleading advertising by a company backed by the US legislation.” The lack of any substantive change by theUnited States in today’s report to the DSB “is irrefutable proof that this country has [done] nothing during more than 11 years to comply with the DSB recommendations and rulings, which ruled the incompatibility of ‘Section 211 of the Omnibus Appropriations Act of 1998′ with the TRIPS Agreement and the Paris Convention,” the Cuban ambassador to the WTO said in a translated statement. TRIPS is the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights. Cuba has interest in the rum case because it is a part owner of the rum trademark everywhere in the world except the United States. “The legislative projects to which the US delegation makes reference in their reports each month remain stagnant because it does not constitute a priority or real interest for the administration or the Congress of that country,” Cuba said. “However, by their displaying of incoherent foreign policy, we frequently observe how that Member promotes initiatives in terms of ‘enforcement of intellectual property rights.’” For instance, Cuba said the recently announced US-European Union trade agreement contains the goal of “maintaining and promoting a high level of protection” of IPRs, and said this bilateral trade agreement should be “critically question[ed].” Even the 27-member European Union weighed in on the Section 211 case, thanking the US for its report and adding the hope that “US authorities will very soon take steps towards implementing the DSB ruling and resolve this matter.” The EU also urged that the US comply with another IP case – Section 110(5) of the US Copyright Act – which involved the US commercial practice of playing music recordings, such as Irish music, aloud in bars without paying royalties. “We refer to our previous statements that we would like to resolve this case as soon as possible,” the EU said. Venezuela joined Cuba in condemning the United States for its failure to comply with the rum case, and raised deep concerns about a continued lack of action. “This situation is unacceptable, disappointing, and worrying, not only because it affects a developing country member of this organisation, but also for the grave repercussions against the credibility of DSB and the multilateral system of trade,” Venezuela said in its statement (unofficial translation).

#### Repeal is necessary to TRIPS compliance

Taylor 04

Emily, J.D. Candidate, 2004, Northwestern University School of Law; B.A. Duke University, 2001. “The Havana Club Saga: Threatening More than Just "Cuba Coke"” http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1578&context=njilb)

Certainly, the potential for future U.S. investment in Cuba is threatened by acts such as § 211 and the Helms-Burton Act. Additionally, however, the United States may find itself facing current opposition from other countries in other trade areas in response to the U.S.'s actions regarding Cuba. It is these larger implications that show the true extent of damages resulting from non-compliance with the AB decision. If the United States refuses to comply with its obligations under the TRIPS Agreement, the consequences that it faces could extend beyond simply Cuba. For these reasons, the United States should comply with the TRIPS Agreement by repealing § 211. Although the United States might be able to comply with the TRIPS Agreement and the AB mandate by altering § 211 to extend to U.S. nationals as well as Cuban and other foreign nationals, there is still a risk that the United States would face repercussions of its actions in other arenas. 47 Therefore, the United States should repeal § 211 in order to fully comply with its obligations under the TRIPS Agreement and under the WTO Dispute Settlement system.

#### Compliance with TRIPS is key to the credibility and survival of the WTO

Levy 2k

Charles S. Levy, Partner, Wilmer, Cutler & Pickering, Washington, D.C., 2000

[“Implementing Trips--A Test of Political Will,” Law and Policy in International Business, 31 Law & Pol'y Int'l Bus. 789, Lexis]

The significant **noncompliance with TRIPS** that we are facing now **poses a challenge to the WTO** **members** **by testing their commitment to IP protection and to the WTO system itself**. Those of us who believe in strong IP protection and who worked hard to negotiate this agreement need to ensure that our objective in TRIPS, to ensure a minimum standard of adequate *and* effective IP protection, not be undercut. Even more broadly, WTO members as a whole need to support TRIPS; **if they fail to hold members to their commitments in TRIPS, the WTO**  [\*790]  itself **loses prestige, revealing itself to be either unable or unwilling to enforce the agreements that its members negotiate**. **If the WTO is to maintain any credibility or power** in the future**, it has to be able to deliver on the agreements that its members negotiate**. This is especially significant if the WTO moves into new areas that may also require members to adopt new legal or regulatory systems.

### Scenario 1 is Protectionism

#### Collapse of the TRIPS system causes global protectionism

Straus 06

Professor of Law at the Universities of Munich and Ljubljana2006

[Joseph, also Chairman of the Managing Board of the Munich Intellectual Property Law Center and Director at the Max Planck Institute for Intellectual Property, Competition and Tax Law in Munich, The John Marshall Law School Review of Intellectual Property Law, Fall, 2006 6 J. Marshall Rev. Intell. Prop. L. 1 lexis]

Eleven years after the WTO Global Economic Order was established, with GATT 1994 and TRIPs as its main pillars, everyone should realize that international trade, with open and opening markets, is tightly linked to the international system of intellectual property protection. Due to the already achieved level of globalization, GATT 1994 and TRIPs have become practically inseparable. If the achieved status, which, as empirical data shows, has brought mostly advantages for the developing countries, and their further development are not to be endangered, every attempt to disjoin intellectual property protection from the development of international trade should cease. In view of the effects of globalization on job markets, particularly felt in industrialized nations on account of job loss from the displacement of production and R&D to threshold and developing countries, the benefits of globalization for the national economies of the industrialized countries are not easily communicable, [102](http://web.lexis-nexis.com.turing.library.northwestern.edu/universe/document?_m=fac6f42432633d2b2223d98f1aa277a3&_docnum=1&wchp=dGLbVlz-zSkVb&_md5=8e0f97736b79d9026cf4585ebf2d2d12#n102)especially as their interests are not always congruent with the interests of internationally active businesses. Attempts to overturn the laboriously achieved balance, which by all means benefits the developing countries, could produce a boomerang effectin favor of those in industrial nations who already want to betake themselves to protectionism and isolationism no matter how incorrect the latter may be from an objective point of view. [**103**](http://web.lexis-nexis.com.turing.library.northwestern.edu/universe/document?_m=fac6f42432633d2b2223d98f1aa277a3&_docnum=1&wchp=dGLbVlz-zSkVb&_md5=8e0f97736b79d9026cf4585ebf2d2d12#n103) It is easy to envision what this would mean for  [\*15]  countries such as Bangladesh, Cambodia, Macao, or Pakistan, who make sixty to eighty percent of their exports with textiles and clothing, and are already fully exposed to the overpowering competition from China and India as a result of the abolition of quota regulations on December 31, 2004. [**104**](http://web.lexis-nexis.com.turing.library.northwestern.edu/universe/document?_m=fac6f42432633d2b2223d98f1aa277a3&_docnum=1&wchp=dGLbVlz-zSkVb&_md5=8e0f97736b79d9026cf4585ebf2d2d12#n104)

#### Trade protectionism causes nuclear war

Panzner 8

Michael, faculty at the New York Institute of Finance, 25-year veteran of the global stock, bond, and currency markets who has worked in New York and London for HSBC, Soros Funds, ABN Amro, Dresdner Bank, and JPMorgan Chase, “Financial Armageddon: Protect Your Future from Economic Collapse,” p. 136-138)

The rise in isolationism and protectionism will bring about ever more heated arguments and dangerous confrontations over shared sources of oil, gas, and other key commodities as well as factors of production that must, out of necessity, be acquired from less-than-friendly nations. Whether involving raw materials used in strategic industries or basic necessities such as food, water, and energy, efforts to secure adequate supplies will take increasing precedence in a world where demand seems constantly out of kilter with supply. Disputes over the misuse, overuse, and pollution of the environment and natural resources will become more commonplace. Around the world, such tensions will give rise to fullscale military encounters, often with minimal provocation. In some instances, economic conditions will serve as a convenient pretext for conflicts that stem from cultural and religious differences. Alternatively, nations may look to divert attention away from domestic problems by channeling frustration and populist sentiment toward other countries and cultures. Enabled by cheap technology and the waning threat of American retribution, terrorist groups will likely boost the frequency and scale of their horrifying attacks, bringing the threat of random violence to a whole new level. Turbulent conditions will encourage aggressive saber rattling and interdictions by rogue nations running amok. Age-old clashes will also take on a new, more heated sense of urgency. China will likely assume an increasingly belligerent posture toward Taiwan, while Iran may embark on overt colonization of its neighbors in the Mideast. Israel, for its part, may look to draw a dwindling list of allies from around the world into a growing number of conflicts.

#### Empirically true --- WTO prevents the trade breakdowns that fuel conflict

Sevilla 07

Christina Sevilla, Asst. U.S. trade representative for intergovernmental affairs 2007 [stefan a. riesenfeld symposium 2007: article: “The WTO Doha Development Agenda: What is at Stake”, 25 Berkeley J. Int'l L. 425, LEXIS]

The economic history of the 20th century provides a potent demonstration of the vast benefits of trade liberalization for hundreds of millions around the world and a dramatically painful lesson on the global costs of trade barriers. In 1930, the United **S**tates **imposed** unprecedented **trade barriers** in the mistaken belief that U.S. producers "could not successfully compete against foreign producers due to lower foreign wages and production costs". n5 At that time, the U.S. Congress passed the Smoot-Hawley Tariff Act, which erected high tariff walls to shield the U.S. market from foreign competition. n6The consequences were disastrous. Trading **partners retaliated** by protecting their own markets from foreign imports. **World trade fell by 70 percent** in the early 1930s, throwing tens of millions out of work, **deepening the** Great **Depression, and** **fuelling the political tensions that helped give rise to W**orld **W**ar **II**. n7 Since then, successive American presidents and Congresses have laid the foundations and forged consensus for peaceful economic cooperation and shared prosperity through the General Agreement on Tariffs and Trade (GATT) and its successor institution, the **W**orld **T**rade **O**rganization.From its original 23 founding members under the GATT in 1947, today's WTO has grown to 150 members at every level of development, representing every region of the globe, with [\*428] more than two dozen additional countries currently seeking to join. n8The goal remains the same: lower barriers to trade and spur new trade flows among nations, thereby unlocking the benefits of economic growth and development on the broadest basis. Trade **rules** also **provide certainty, transparency, and predictability in international commerce, help foster the rule of law, and allow for countries to settle their trade disputes peacefully**

### Scenario 2 is Regionalism

#### Collapse of the WTO doesn’t end trade --- it results in great-power regionalism and spheres of influence

Baldwin 08

Baldwin, 7/1/08 [Richard Edward Baldwin has been Professor of International Economics at the Graduate Institute, Geneva, since 1991 and Policy Director of CEPR since 2006, “The WTO tipping point”, http://www.voxeu.org/index.php?q=node/1345]

The World **T**rade **O**rganisation is losing its place at the centre of the global trading system. Absent reforms, the rules-based architecture of international trade may collapse into a “might makes right” affair. Policymakers worldwide are focused on the finishing the Doha trade talks and thisis certainly important. The world trade system, however, faces a much larger threat – the erosion of WTO centricity. One reads much about protectionist backlashes yet the truth is that trade liberalisation is as popular as ever among policymakers.The new century has seen massive liberalisation of trade in goods and services – much of it by nations that disparaged trade liberalisation for decades. But unlike last century, almost none of this has occurred under the WTO’s aegis. Poor nations have cut their tariffs, opened their services sectors, and embraced foreign investment unilaterally or in bilateral trade agreements. Rich nations have relied on regional trade deals to achieve their market-opening goals. The deals signed this century are not commercially important, but this will change if the European Union’s Asian initiatives succeed, especially if the United States feels compelled to follow suit. The emerging trade powers – China, India, and Brazil – have had worryingly favourable experiences with unilateralism and regionalism in the new century while their commitment to multilateralism is relatively untested. The one part of the WTO system that works well – the dispute settlement mechanism – is increasingly used as a substitute for negotiated liberalisation with the result that de facto compliance by the United States, European Union and others is eroding. To date, these changes seem more like challenges than threats. The key players believe the world trade system will continue to be anchored by the WTO’s shared values, such as reciprocity, transparency, non-discrimination, and the rule of law. WTO-anchorage allows each member to view its own policies as minor derogations. Yet, at some point derogations become the new norm. The steady erosion of the WTO’s centricity will sooner or later bring the world to a tipping point– a point beyond which expectations become unmoored and nations feel justified in ignoring WTO norms since everyone else does. A polycentric trading system? No one knows what happens beyond the tipping point. My guess is that trade would continue to grow and the system would continue to function – but not equally well for all nations. Before the GATT was set up in 1947, the Great Powers settled trade disputes by gunboats or diplomats depending upon the parties involved. Only the naïve thought market access should be reciprocal or fair. A return to this “Belle Époque” extreme is unlikely, but a new Great Powers trade system is likely to emerge. Its core will be the US and EU networks of bilateral trade deals. Domestic special-interest groups, newly freed from WTO constraints, would push the EU and US templates in divergent directions. Regional arrangements of the new trade powers and Russia could diverge even more markedly, since WTO norms have never fully been internalised by their domestic special-interest groups. This would be a world of “spheres of influence” and bare-knuckle bargaining.

#### China perceives regionalism as US containment - causes US-China war

Fred **Bergsten**, Director, Institute for International Economics, "A new strategy for APEC," 9-6-200**5**, http://www.iie.com/publications/papers/bergsten0905apec.pdf

The **U**nited **S**tates may simultaneously be launching FTA talks with one or more Southeast Asian countries, most likely Indonesia and/or Malaysia. China is likely to perceive such a series of US initiatives as a “surround China” or even “**containment**” strategy in the economic domain, intensifying its concerns over the “**surround China” strategy**that the**U**nited **S**tates is already pursuing in the security domain, raising fundamental **problems for trans-Pacific relations** and exacerbating the more immediate **United States–China conflict** already noted.

#### Extinction

**Straits Times, 00** (Ching Cheong, Straits times, July 25 2000, l/n)

The high-intensity scenario postulates **a cross-strait war escalating into a full-scale war between the US and China.** If Washington were to conclude that splitting China would better serve its national interests, then a full-scale war becomes unavoidable. **Conflict on such a scale would embroil other countries far and near and -horror of horrors -raise the possibility of a nuclear war. Beijing has already told the US and Japan privately that it considers any country providing bases and logistics support to any US forces attacking China as belligerent parties open to its retaliation**. **I**n the region, this means South Korea, Japan, the Philippines and, to a lesser extent, Singapore. **If China were to retaliate, east Asia will be set on fire.** And the conflagration may not end there as opportunistic powers elsewhere may try to overturn the existing world order. **With the US distracted, Russia may seek to redefine Europe's political landscape. The balance of power in the Middle East may be similarly upset by the likes of Iraq. In south Asia, hostilities between India and Pakistan, each armed with its own nuclear arsenal, could enter a new and dangerous phase**. Will a full-scale Sino-US war lead to a nuclear war? According to General Matthew Ridgeway, commander of the US Eighth Army which fought against the Chinese in the Korean War, the US had at the time thought of using nuclear weapons against China to save the US from military defeat. In his book The Korean War, a personal account of the military and political aspects of the conflict and its implications on future US foreign policy, Gen Ridgeway said that US was confronted with two choices in Korea -truce or a broadened war, which could have led to the use of nuclear weapons. If the US had to resort to nuclear weaponry to defeat China long before the latter acquired a similar capability, **there is little hope of winning a war against China 50 years later, short of using nuclear weapons. The US estimates that China possesses about 20 nuclear warheads that can destroy major American cities. Beijing also seems prepared to go for the nuclear option.** A Chinese military officer disclosed recently that **Beijing was considering a review of its "non first use" principle** regarding nuclear weapons. Major-General Pan Zhangqiang, president of the military-funded Institute for Strategic Studies, told a gathering at the Woodrow Wilson International Centre for Scholars in Washington that although the government still abided by that principle, there were strong pressures from the military to drop it. He said **military leaders considered the use of nuclear weapons mandatory if the country risked dismemberment as a result of foreign intervention.** Gen Ridgeway said that **should that come to pass, we would see the destruction of civilisation.**

### Scenario 3 is Multilateralism

#### WTO credibility key to the inclusion of growing economies into multilateral talks on trade and agreements

The Economist 13

The Economist, US newspaper on international politics and business news and opinion. ‘The other conclave Can the WTO save itself from irrelevance?” http://www.economist.com/news/finance-and-economics/21573549-can-wto-save-itself-irrelevance-other-conclave 3/16/2013

But the fundamental source of strain on the multilateral system is the shifting economic balance of power. Emerging markets came into their own early in the Doha round, rejecting unappealing rich-world offers.They will play a still larger role in future talks. Seven of the nine nominees to replace Mr Lamy hail from developing countries (the favourites include candidates from Brazil, Indonesia and Mexico). Despite decades of fast growth, both China and India rank as “middle income” on measures of GDP per person. They are reluctant to abandon the trade safeguards common in developing economies. And even as they flex their diplomatic muscles, division and weakness are apparent. Many industrialising economies share the rich world’s fear of cheap Chinese exports. As multilateral talks fester, regional trade agreements are thriving. This summer America and the European Union will begin official talks on the Transatlantic Trade and Investment Partnership (TTIP), with hopes of completing a deal by end-2014. America is also working on a Trans-Pacific Partnership (TPP), which seeks to deepen ties across many large Pacific-rim economies. Japan is reportedly about to join the talks; China will not be involved. These megadeals are not the only regional talks that are in train (see table). Pragmatism surely explains some of this surge: participants frustrated by stagnant multilateral talks are anxious to do deals where they can. Yet realpolitik cannot be discounted. The TTIP gives America and Europe the chance to establish ground rules for resolving non-tariff trade barriers, which include everything from quotas to export subsidies and licensing schemes, without having to accommodate the likes of China. Rules adopted between them on emerging trade issues, related to service industries and online commerce, could become an international standard, free of meddling from emerging economies.The optimistic take among the WTO candidates, all of whom refuse to declare Doha dead, is that these regional deals may create a new sense of urgency around multilateral talks, much as deeper North American and European integration encouraged progress on the Uruguay round. The threat of isolation could prompt emerging markets to rethink their reluctance to liberalise heavily protected parts of their economies. Expectations for a WTO ministerial conference scheduled for December in Bali, in Indonesia, are rising. A new openness to piecemeal negotiation, taking success where it can be achieved, may yield meaningful gains in areas such as “trade facilitation”—efforts to reduce the logistical costs of trade through things like harmonised border controls and streamlined customs procedures. It is too early for such giddy speculation. Emerging markets may still be reluctant to accept a deal without the reassurance of a “post-Bali process”. Advanced economies, they worry, will get what they want out of Bali and then let emerging markets twist in the wind as they pursue more palatable regional agreements. To revive the Doha round, the next head of the WTO will need to inject some novelty. Bringing fresh issues into the talks—on environmental or currency matters, for instance—could pique advanced-economy interest and bring a new energy to multilateral talks. The aim must be reinvention without sacrificing the WTO’s mission or credibility. On that, at least, there is some common ground with the choice that faced the cardinals this week.

#### Multilateral institutions prevent great power nuclear war

The Toronto Star 04

“The end of war”, 12-30-04, lexis

War is deeply embedded in our history and our culture, probably since before we were even fully human, but weaning ourselves away from it should not be a bigger mountain to climb than some of the other changes we have already made in the way we live, given the right incentives. And we have certainly been given the right incentives: The holiday from history that we have enjoyed since the early '90s may be drawing to an end, and another great-power war, fought next time with nuclear weapons, may be lurking in our future.. The "firebreak" against nuclear weapons use that we began building after Hiroshima and Nagasaki has held for well over half a century now. But the proliferation of nuclear weapons to new powers is a major challenge to the stability of the system. So are the coming crises, mostly environmental in origin, which will hit some countries much harder than others, and may drive some to desperation. Add in the huge impending shifts in the great-power system as China and India grow to rival theUnited States in GDP over the next 30 or 40 years and it will be hard to keep things from spinning out of control. With good luck and good management, we may be able to ride out the next half-century without the first-magnitude catastrophe of a global nuclear war, but the potential certainly exists for a major die-back of human population. We cannot command the good luck, but good management is something we can choose to provide. It depends, above all, on preserving and extending the multilateral system that we have been building since the end of World War II. The rising powers must be absorbed into a system that emphasizes co-operation and makes room for them, rather than one that deals in confrontation and raw military power. If they are obliged to play the traditional great-power game of winners and losers, then history will repeat itself and everybody loses.Our hopes for mitigating the severity of the coming environmentalcrises also depend on early and concerted global actionof a sort that can only happen in a basically co-operative international system.When the great powers are locked into a military confrontation, there is simply not enough spare attention, let alone enough trust, to make deals on those issues, so the highest priority at the moment is to keep themultilateral approach alive and avoid a drift back into alliance systems and arms races. And there is no point in dreaming that we can leap straight into some never-land of universal brotherhood; we will have to confront these challenges and solve the problem of war within the context of the existing state system.

#### There’s no alternative to a multilateral trade system --- collapses causes instability and great power conflict.

Panitchpakdi 04

Panitchpakdi, 2/26/2004 Supachai – secretary-general of the UN Conference on Trade and Development, American Leadership and the World Trade Organization, p. <http://www.wto.org/english/news_e/spsp_e/spsp22_e.htm>

The second point is that strengthening the world trading system is essential to America's wider global objectives. Fighting terrorism, reducing poverty, improving health, integrating China and other countries in the global economy — all of these issues are linked, in one way or another, to world trade. This is not to say that trade is the answer to all America's economic concerns; only that meaningful solutions are inconceivable without it. The world trading system is the linchpin of today's global order — underpinning its security as well as its prosperity. A successful WTO is an example of how multilateralism can work. Conversely, if it weakens or fails, much else could fail with it. This is something which the US — at the epicentre of a more interdependent world — cannot afford to ignore. These priorities must continue to guide US policy — as they have done since the Second World War. America has been the main driving force behind eight rounds of multilateral trade negotiations, including the successful conclusion of the Uruguay Round and the creation of the WTO. The US — together with the EU — was instrumental in launching the latest Doha Round two years ago. Likewise, the recent initiative, spearheaded by Ambassador Zoellick, to re-energize the negotiations and move them towards a successful conclusion is yet another example of how essential the US is to the multilateral process — signalling that the US remains committed to further liberalization, that the Round is moving, and that other countries have a tangible reason to get on board. The reality is this: when the US leads the system can move forward; when it withdraws, the system drifts. The fact that US leadership is essential, does not mean it is easy. As WTO rules have expanded, so too has as the complexity of the issues the WTO deals with — everything from agriculture and accounting, to tariffs and telecommunication. The WTO is also exerting huge gravitational pull on countries to join — and participate actively — in the system. The WTO now has 146 Members — up from just 23 in 1947 — and this could easily rise to 170 or more within a decade. Emerging powers like China, Brazil, and India rightly demand a greater say in an institution in which they have a growing stake. So too do a rising number of voices outside the system as well. More and more people recognize that the WTO matters. More non-state actors — businesses, unions, environmentalists, development NGOs — want the multilateral system to reflect their causes and concerns. A decade ago, few people had even heard of the GATT. Today the WTO is front page news. A more visible WTO has inevitably become a more politicized WTO. The sound and fury surrounding the WTO's recent Ministerial Meeting in Cancun — let alone Seattle — underline how challenging managing the WTO can be. But these challenges can be exaggerated. They exist precisely because so many countries have embraced a common vision. Countries the world over have turned to open trade — and a rules-based system — as the key to their growth and development. They agreed to the Doha Round because they believed their interests lay in freer trade, stronger rules, a more effective WTO. Even in Cancun the great debate was whether the multilateral trading system was moving fast and far enough — not whether it should be rolled back. Indeed, it is critically important that we draw the right conclusions from Cancun — which are only now becoming clearer. The disappointment was that ministers were unable to reach agreement. The achievement was that they exposed the risks of failure, highlighted the need for North-South collaboration, and — after a period of introspection — acknowledged the inescapable logic of negotiation. Cancun showed that, if the challenges have increased, it is because the stakes are higher. The bigger challenge to American leadership comes from inside — not outside — the United States. In America's current debate about trade, jobs and globalization we have heard a lot about the costs of liberalization. We need to hear more about the opportunities. We need to be reminded of the advantages of America's openness and its trade with the world — about the economic growth tied to exports; the inflation-fighting role of imports, the innovative stimulus of global competition. We need to explain that freer trade works precisely because it involves positive change — better products, better job opportunities, better ways of doing things, better standards of living. While it is true that change can be threatening for people and societies, it is equally true that the vulnerable are not helped by resisting change — by putting up barriers and shutting out competition. They are helped by training, education, new and better opportunities that — with the right support policies — can flow from a globalized economy. The fact is that for every job in the US threatened by imports there is a growing number of high-paid, high skill jobs created by exports. Exports supported 7 million workers a decade ago; that number is approaching around 12 million today. And these new jobs — in aerospace, finance, information technology — pay 10 per cent more than the average American wage. We especially need to inject some clarity — and facts — into the current debate over the outsourcing of services jobs. Over the next decade, the US is projected to create an average of more than 2 million new services jobs a year — compared to roughly 200,000 services jobs that will be outsourced. I am well aware that this issue is the source of much anxiety in America today. Many Americans worry about the potential job losses that might arise from foreign competition in services sectors. But it’s worth remembering that concerns about the impact of foreign competition are not new. Many of the reservations people are expressing today are echoes of what we heard in the 1970s and 1980s. But people at that time didn’t fully appreciate the power of American ingenuity. Remarkable advances in technology and productivity laid the foundation for unprecedented job creation in the 1990s and there is no reason to doubt that this country, which has shown time and again such remarkable potential for competing in the global economy, will not soon embark again on such a burst of job-creation. America's openness to service-sector trade — combined with the high skills of its workforce — will lead to more growth, stronger industries, and a shift towards higher value-added, higher-paying employment. Conversely, closing the door to service trade is a strategy for killing jobs, not saving them. Americans have never run from a challenge and have never been defeatist in the face of strong competition. Part of this challenge is to create the conditions for global growth and job creation here and around the world. I believe Americans realize what is at stake. The process of opening to global trade can be disruptive, but they recognize that the US economy cannot grow and prosper any other way. They recognize the importance of finding global solutions to shared global problems. Besides, what is the alternative to the WTO? Some argue that the world's only superpower need not be tied down by the constraints of the multilateral system. They claim that US sovereignty is compromised by international rules, and that multilateral institutions limit rather than expand US influence. Americans should be deeply sceptical about these claims. Almost none of the trade issues facing the US today are any easier to solve unilaterally, bilaterally or regionally. The reality is probably just the opposite. What sense does it make — for example — to negotiate e-commerce rules bilaterally? Who would be interested in disciplining agricultural subsidies in a regional agreement but not globally? How can bilateral deals — even dozens of them — come close to matching the economic impact of agreeing to global free trade among 146 countries? Bilateral and regional deals can sometimes be a complement to the multilateral system, but they can never be a substitute. There is a bigger danger. By treating some countries preferentially, bilateral and regional deals exclude others — fragmenting global trade and distorting the world economy. Instead of liberalizing trade — and widening growth — they carve it up. Worse, they have a domino effect: bilateral deals inevitably beget more bilateral deals, as countries left outside are forced to seek their own preferential arrangements, or risk further marginalization. This is precisely what we see happening today. There are already over two hundred bilateral and regional agreements in existence, and each month we hear of a new or expanded deal. There is a basic contradiction in the assumption that bilateral approaches serve to strengthen the multilateral, rules-based system. Even when intended to spur free trade, they can ultimately risk undermining it. This is in no one's interest, least of all the United States. America led in the creation of the multilateral system after 1945 precisely to avoid a return to hostile blocs — blocs that had done so much to fuel interwar instability and conflict. America's vision, in the words of Cordell Hull, was that “enduring peace and the welfare of nations was indissolubly connected with the friendliness, fairness and freedom of world trade”. Trade would bind nations together, making another war unthinkable. Non-discriminatory rules would prevent a return to preferential deals and closed alliances. A network of multilateral initiatives and organizations — the Marshal Plan, the IMF, the World Bank, and the GATT, now the WTO — would provide the institutional bedrock for the international rule of law, not power. Underpinning all this was the idea that freedom — free trade, free democracies, the free exchange of ideas — was essential to peace and prosperity, a more just world. It is a vision that has emerged pre-eminent a half century later. Trade has expanded twenty-fold since 1950. Millions in Asia, Latin America, and Africa are being lifted out of poverty, and millions more have new hope for the future. All the great powers — the US, Europe, Japan, India, China and soon Russia — are part of a rules-based multilateral trading system, greatly increasing the chances for world prosperity and peace. There is a growing realization that — in our interdependent world — sovereignty is constrained, not by multilateral rules, but by the absence of rules.

### Scenario 4 is Food Security

#### WTO improves food security --- self-sufficiency fails

Supachai **Panitchpakdi**, Director General, Why trade matters for improving food security, 4-13-0**5**, WTO NEWS: SPEECHES — DG SUPACHAI PANITCHPAKDI, http://www.wto.org/english/news\_e/spsp\_e/spsp37\_e.htm

Today there is, however, the realisation that a sustainable domestic food supply cannot be ensured by each government acting individually. History has repeatedly shownthat protectionism and isolation from world markets have never been the right answer. Food self-sufficiency is **not equivalent to food security**. The goal of self-sufficiency is illusory in today's world where a vast range of inputs constitute the full production equation. Nor is any country insulated from sudden adverse climatic effects which can dramatically reduce domestic agricultural output. Past, as well as present, experience shows us that food security is best achieved in an economically integrated and politically interdependent world.In an interdependent world the effects of any deficit or surplus in food production in one country can be spread over a broad range of countries. The burdens of short-term fluctuations and longer-term structural change are thereby reduced. Economic integration also keeps the cost of inputs for production down and ensure that markets will remain open at critical moments.

#### Global war

Bill **Van Auken**, 4/15/0**8** [Politician and activist for the Socialist Equality Party and was a presidential candidate in the U.S. election of 2004, “Amid mounting food crisis, governments fear revolution of the hungry”,  [http://taraqee.wordpress.com/2008/04/16/amid-mounting-food-crisis-governments-fear-revolution-of-the-hungry/](http://www.countercurrents.org/auken310708.htm)

If food prices go on as they are today, then the consequences on the population in a large set of countries, including Africa, but not only Africa, will be terrible. Hundreds of thousands of people will be starving. Children will suffer from malnutrition, with consequences all of their lives,” Dominique Strauss-Kahn, the International Monetary Fund managing director, told an April 12 press conference in Washington. He warned that governments “will see what they have done totally destroyed and their legitimacy facing the population destroyed also.” Strauss-Kahn added: “So it’s not only a humanitarian question. It is not only an economic question. It is also a democratic question. Those kind of questions sometimes end into war.” “In just two months,” World Bank President Robert Zoellick said in an opening speech to the meeting of finance ministers, “rice prices have skyrocketed to near historical levels, rising by around 75 percent globally and more in some markets, with more likely to come. “In Bangladesh, a 2-kilogram bag of rice,” he said, holding up such a bag, “now consumes about half of the daily income of a poor family.” He added that wheat prices had increased by 120 percent, more than doubling the cost of a loaf of bread. “If food prices go on as they are today, then the consequences on the population in a large set of countries … will be terrible,” said Zoellick. The “international community will also need to take urgent and concerted action in order to avoid the larger political and security implications of this growing crisis,” United Nations Secretary-General Ban Ki-moon told international finance and trade officials at a UN meeting following the weekend talks in Washington. The United Nations Special Rapporteur on the Right to Food Jean Ziegler offered among the bleakest prognoses for the continuing crisis. “We are heading for a very long period of rioting, conflicts (and) waves of uncontrollable regional instability marked by the despair of the most vulnerable populations,”he told the French daily Liberation Monday. He pointed out that, even before the present crisis, hunger claimed the life of a child under the age of 10 every 5 seconds, and 854 million people in the world were seriously undernourished. What was now posed, Ziegler warned, is “an imminent massacre.” While finance ministers from the US and Europe indicated agreement that the crisis was severe, there was no indication that the major capitalist powers have any plan to mount the kind of effort needed to stave off a humanitarian catastrophe. The White House announced Monday that it is releasing $200 million in emergency food aid in response to a World Bank appeal for funding to make up for the shortfall in food assistance caused by soaring prices. The amount—roughly what the US spends in half a day on its war to conquer Iraq—is less than a drop in the bucket in the face of thelooming global catastrophe.

## Contention 2: IPR

#### Repeal key to intellectual property leadership for US

Pava 2011 (Mindy Pava, Executive Symposium Editor, Emory International Law Review; J.D. Candidate, Emory University School of Law (2011); B.S., Northwestern University (2004). “COMMENT: THE CUBAN CONUNDRUM: PROPOSING AN INTERNATIONAL TRADEMARK REGISTRY FOR WELL-KNOWN FOREIGN MARKS” LexisNexis 2011)

With an outright repeal of Section 211, the United States could again prove that it honors its multilateral international agreements. Furthermore, the United States would set a precedent by showing other nations that different nations should honor each other's trademarks - even if the two in question are not allies for other political reasons. n262 Bill Reinsch, president of the National Foreign Trade Council, has called for a full repeal of Section 211 as a means of the United States reasserting itself as an international intellectual property [\*667] leader.n263 In testimony before the U.S. Senate Committee on the Judiciary, Reinsch stated that the United States exports the most products, and therefore, has the most to lose if a weak international regime fails to protect trademark rights. n264 ""The U.S. has been the world leader in arguing for intellectual property ... . [Section 211] has destroyed our moral authority.'" n265 Unlike its human rights abuses, Cuba's actions in the intellectual property arena have not resulted in outrage from the international community. Cuba has consistently upheld trademark protections, despite tense political relationships with other nations. Trademarks from U.S. companies have long been honored in Cuba, and the Cuban government has refused to register marks that Cuban companies have applied for that serve as substantially similar versions of U.S. trademarks for Jell-O and Kraft, for example. n266 Despite the embargo, more than five thousand U.S. trademarks have been registered in Cuba, n267 as businesses want their mark protected from trademark pirates and anticipate the ability to do business in Cuba immediately following the embargo's end. n268Because the United States is the world's intellectual property leader, the nation has the most to lose if other countries decide to violate established trademark practices. The Cuban government has upheld U.S. trademark protections in the past, causing the passage of Section 211 and the Second Circuit's ruling in the Havana Club rum case to anger Fidel Castro. In a May 1999 speech, Castro threatened to create a trademark for a Cuban version of Coke, n269 which he viewed as an infringement of a U.S. trademark in the same way that U.S. companies are authorized to violate established Cuban trademarks such as Havana Club rum and Cohiba cigars. n270 If the Cuban government halted the recognition of U.S. trademarks, Cuba could become a haven for trademark pirates who steal American marks. While Cubans argue that such a move would simply treat U.S. trademarks in the same way that the United States manages marks originating in Cuba, that type of reprisal would be devastating for U.S. businesses because of the substantial profit earned abroad from intellectual property exports. [\*668] Intellectual property exports play a prominent and increasingly significant role in the U.S. economy, as one trade organization estimated that U.S. intellectual property exports to foreign markets accounted for $ 126 billion in 2007, an eight-percent jump in comparison to the previous year. n271 Intellectual property foreign sales exceeded the foreign sales of other notable U.S. industries, such as aircraft, automobiles, and agricultural products. n272 Intellectual property-related industries, furthermore, accounted for 6.44% of the entire gross domestic product of the United States. n273Because intellectual property-related exports, and their corresponding trademarks, serve as such a vital part of the U.S. economy, the United States cannot afford to have its intellectual property threatened and subjected to reprisals.

#### It spills over reinforces global IPR and trade objectives

Reinsch 10 (Bill Reinsch, president of the National Foreign Trade Council, representing some 400 companies on focuses--and focuses on trade policy issues, a member of the U.S.-China Economic and Security Review Commission. “DOMESTIC AND INTERNATIONAL TRADEMARK IMPLICATIONS OF HAVANA CLUB AND SECTION 211 OF THE OMNIBUS APPROPRIATIONS ACT OF 1999.” HEARING BEFORE THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES ONE HUNDRED ELEVENTH CONGRESS SECOND SESSION. MARCH 3, 2010. http://www.gpo.gov/fdsys/pkg/CHRG-111hhrg55221/html/CHRG-111hhrg55221.htm)

Repealing 211 would deny the Castro regime any rationale for retaliating against trademarks of U.S. companies and thereby increase the likelihood that the Cuban government will continue to uphold its obligations under international intellectual property agreements. H.R. 1103, in contrast, would seek to apply Section 211 to both U.S. nationals and foreign trademark holders. However such an amendment has significant drawbacks compared to repeal, the main one being that it would not address any of the inconsistencies of Section 211 with the Inter-American Convention. It would also lead to increased litigation and legal uncertainty at home, which I detail in--at some length in my written statement, Mr. Chairman, including the discussion of the zombies that Mr. Lehman referred to. Finally, Mr. Chairman, Section 211 and H.R. 1103 benefit only a single a company and promise no benefits for U.S. business. Rather, they will make it more difficult for U.S. companies to enforce their trademarks and trade names in U.S. courts against counterfeiters and infringers, keep U.S. companies exposed to the risk of legal uncertainty and retaliation abroad, and continue putting U.S. law to cross- purposes with longstanding principles of intellectual property protection and trade policy objectives of the U.S. government and the business community. Repeal is the only action that will provide full compliance with all current U.S. trade obligations and deny other governments any rationale for retaliation. In addition, it is important to point out, as Mr. Orr did, repeal would not take sides in the underlying dispute over the Havana Club trademark and it would not settle that question. Rather, it would return that question to the Patent and Trademark Office and to the courts where it belongs.

### Scenario 1 is disease

#### First is innovation --- IPR incentivizes research and development. Copycat drugs don’t fill-in.

Kaufmann 08

Kaufmann, 4/23/2008 (Judith – retired foreign service officer and former director of the U.S. State Department’s Office of International Health Affairs, Intellectual Property Rights and the Pharmaceutical Industry, Focus on Intellectual Property Rights, p. <http://iipdigital.usembassy.gov/st/english/publication/2008/04/20080429230451myleen0.4181027.html#axzz2ZG5uBh4Z>)

Drugs that cure AIDS and many other diseases are available precisely because of patent protection. Patent protections encourage research and development by offering the possibility that a pharmaceutical company's investment will be repaid, a powerful incentive to companies to invest millions and millions of dollars into risky research and development of these medications. Without patent protection, other manufacturers could copy new drugs immediately. Since their costs are minimal, they can offer their versions at a reduced price, seriously hurting the ability of the company that developed the drug to recoup its costs. In addition, those years in which a company's patented products are protected can help generate the funding that makes research into the next generation of drugs possible. Drug companies are not only doing the research that has helped so many, they are ensuring that drugs reach those most in need through donations. In 2003 alone, the U.S. pharmaceutical industry donated more than $1.4 billion in medicines and services to people in more than 40 least developed countries. Drug companies also are helping poorer countries through a variety of innovative public-private partnerships. These partnerships include the African Comprehensive HIV/AIDS Partnership in Botswana, in which the government of Botswana, the Bill & Melinda Gates Foundation, and the Merck Company support prevention programs, health-care access, and treatment of HIV/AIDS, with Merck donating two antiretroviral drugs for treatments. The Onchocerciasis Control Program, in turn, has greatly reduced transmission of "river blindness" throughout West Africa by combining a spraying program and the donation of the drug Mectizan by Merck & Co., Inc. These are but some examples of the ways in which the research-based drug industry has regularly lowered its prices to the poorest nations of the world and has increased drug companies' partnership with governments and with nongovernmental organizations to ensure that drugs reach those in need. Generic medicines and copycat drugs are not always the answer for those seeking an alternative to a patent-protected drug. Generics, independently developed drugs that contain the same active substance as the original brand-name drug, are marketed in accordance with patent law and identified either by their own brand name or by their internationally approved nonproprietary scientific name. Copycat drugs usually simply copy the original drug manufacturer in the countries with weak intellectual property protection. Patented drugs often have passed much more rigorous licensing requirements than so-called generics. Why "so-called"? Because not all drugs that claim to be so are identical and not all are subject to the stringent inspection process that guarantees that they contain the same amount of active ingredients and work in the same way. Manufacturers of some of these drugs have not had to invest in the extensive testing required of the research-based industry even before their drug can be marketed. Of course, there are many reliable manufacturers of generic drugs. The United States, for instance, has a thriving generic drug industry, fully regulated and inspected by the U.S. Food and Drug Administration. Building on the enormous investment already made by the research-based pharmaceutical industry, copycat drugs can lower drug prices, but they do nothing to guarantee that new drugs will be available when they are needed. Copycat drugs do nothing to ensure that scientific innovation translates into new treatments that may be less toxic and more effective. Rather, they reduce incentives to research and thus discourage new products. And make no mistake: The manufacturers of generic or copycat drugs are not in business to be generous; they, too, are reaping profits. Their profits, however, are not being used to further scientific knowledge and find new cures.

#### Second is trademark protection. Strong trademark protection is the best defense against counterfeit drugs.

Powell 10

Powell, February 2010 (Adam – Research Fellow for the Law & Bioscience Project, J.D. Candidate at the University of California, Hastings College of the Law, Benchmark Legislation: A Measured Approach in the Fight Against Counterfeit Pharmaceuticals, Hastings Law Journal, p. Lexis-Nexis)

Traditionally, the first line of defense for pharmaceutical companies is a portfolio of strong intellectual property rights. Much of the legislation and criminal sanctions discussed below depend on pharmaceutical companies adequately protecting their intellectual property. This provides the company with private redress as well as the ability to fully utilize government aid and criminal prosecution. Some forms of intellectual property are uniquely suited for preventing counterfeit drugs from entering the market. Antoinette Konski, an expert in global intellectual property protection, asserts that, while patents are considered the first line of defense, they are actually less practical at enforcing rights against counterfeiters than other types of intellectual property protection. n122Patent protection rewards innovation and generally grants the patent holder a right to exclude others from manufacturing, using, importing, selling, or offering for sale an exact or close copy of a patented technology. n123 However, patent protection is relatively ineffective for [\*766] patented drugs because counterfeiters do not copy the active ingredient and usually replace it with a cheaper ingredient. n124 Additionally, generic drug manufacturers, who often manufacture drugs after the patent term expires, have no recourse through the patent system. n125 By contrast, trademarks seek to protect exactly what counterfeiters target: brand recognition. For this reason, Konski argues that trademark protection is the most valuable type of intellectual property that can be used to combat counterfeiting. n126A pharmaceutical company may obtain a trademark on the color or shape of pills as well as brand names, designs, and symbols. n127This allows pharmaceutical manufacturers, including generic drug companies, to register and protect all unique aspects of their products. In contrast to most patent lawsuits, in many countries the trademark owner can have counterfeit goods, documents, and equipment immediately seized after bringing suit. n128 Furthermore, if a person knowingly infringes a trademark in the process of trafficking counterfeit drugs, criminal sanctions are increased from a maximum of three years in prison to a maximum of ten years in prison. n129 In addition, obtaining and enforcing trademark rights is typically much less costly and time-consuming than patent prosecution and infringement actions. n130This unique combination makes trademarks particularly well suited as a first line of defense for drug manufacturers. Copyrights only protect works of authorship such as literary, musical, dramatic, pictorial, graphic, sculptural, cinematic, and architectural works. n131 As a result, only package inserts may be protected and are of little use in preventing the drug from reaching the public. n132 In the world of counterfeit drugs, that amounts to virtually no protection. Thus, in addition to educating customers, pharmaceutical companies can best protect their intellectual property and ensure maximum punishments for criminals by maintaining strong trademarks.

#### Third is harmonization. IPR harmonization undermines the ability to market counterfeit drugs.

Ferrill 07

Ferrill, Spring 2007 (Elizabeth – Law Clerk to the Honorable Liam O’Grady, Magistrate Judge, U.S. District Court for the Eastern District of Virginia, Clearing the Swamp for Intellectual Property Harmonization: Understanding and Appreciating the Barriers to Full TRIPS Compliance for Industrializing and Non-Industrializing Countries, University of Baltimore Intellectual Property Law Journal, p. Lexis-Nexis)

In 1994, the Agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPS) was created. n2 TRIPS requires all 150 members n3 of the World Trade Organization (WTO) to provide minimal standards of protection for intellectual property (IP). n4TRIPS is part of the larger WTO framework that promotes trade liberalization. n5 Through a series of [\*138] agreements designed to lower trade tariffs and eliminate other barriers to trade, the WTO strives to improve standards of living of all members, expand production of and trade in goods and services, and sustain development, especially in developing countries worldwide. n6 Most economists view trade liberalization as a means to wealth maximization. n7 If each country produces what it is best at producing, then output of efficiently produced products is higher worldwide. n8 Hence, countries that are the most efficient producer of a certain good would produce that good and trade with other countries for those goods it produces more efficiently, all without the cost of trade barriers. n9 Yet, countries are reluctant to unilaterally lower their trade barriers. n10To avoid this problem, the WTO established rules for reciprocal [\*139] lowering of trade barriers. n11In the realm of intellectual property, harmonization, defined as the standardization of intellectual property laws, is analogous to trade liberalization. If every country were to respect and protect the intellectual property rights of all other countries, inventors and creators would have the maximum incentive to create, mutually benefiting the world. More than a decade after its ratification, there remains tension and widespread noncompliance with TRIPS, as many countries continue to not enforce foreign IP rights, despite the potential benefits of harmonization. Counterfeiting, n12 which could be mitigated by such enforcement, costs the world economy about $ 600 billion annually and includes a multitude of products, such as pharmaceuticals, DVDs, software, toys, spare parts for cars and aircraft, and apparel. n13 This prompts the question of why complying with TRIPS and curbing counterfeiting and pirating has been so difficult over the past decade. There are a number of possible explanations.

#### Counterfeit drugs bolster antibiotic resistance.

Washington Post 13

Washington Post, 2/5/2013 (How fake drugs cause the spread of untreatable TB in developing countries, p. <http://www.washingtonpost.com/blogs/worldviews/wp/2013/02/05/how-fake-drugs-cause-the-spread-of-untreatable-tb-in-developing-countries/>)

Tuberculosis, a disease that destroys lung tissue, is more commonly associated with the Victorian era than with the modern age. Today, TB can be cured with several heavy rounds of antibiotics, but the emergence of drug-resistant strains of the disease in India and other countries around the world have raised alarm among health workers. One culprit in the rise of untreatable TB is counterfeit drugs, which can undermine treatment efforts by packing insufficient active ingredients to fully kill off bacteria, breeding new, stronger super-strains of the disease. Though the scourge of counterfeit malaria drugs has shaken up the public health world in recent years, researchers are now turning their attention to fake TB drugs, as well, as cases of drug-resistant TB have emerged in both the developing world and in higher-income cities such as London and Moscow. A new study published in the International Journal of Tuberculosis and Lung Disease found that 16.6 percent of tuberculosis drugs in Africa, 10.1 percent in India and 3.9 percent in other middle-income countries were “failures,” meaning they had less than 80 percent of the active ingredient necessary to treat the disease. “The biggest determinant of drug quality is wealth [of the country],” said one of the study’s lead authors, Roger Bate, an economist who researches international health policy with the American Enterprise Institute. The study analyzed drugs in 17 countries — those that are home to about 60 percent of the world’s total cases of multidrug resistant TB. Over the past five years, teams of researchers have been purchasing antibiotics at random pharmacies in each of the countries and testing the medicines’ active ingredients. (To find the samples for middle-income countries, researchers visited Bangkok, Beijing, Istanbul, Moscow and Sao Paulo.) When patients take these fake drugs, they remain sick longer or die. In some patients, germs multiply and morph into new strains, making them harder and more expensive to treat.

#### Antibiotic resistance is a doomsday scenario involving superbugs and life-threatening infections that cause extinction

Castillo 11

Castillo, 10/28/2011 (Rafael, Doomsday scenario with ‘superbugs’, Philippine Daily Inquirer, p. http://business.inquirer.net/27353/doomsday-scenario-with-%E2%80%98superbugs%E2%80%99)

From time to time, we get reports about emerging superbugs—microbes which are resistant to most antibiotics. This is no trivial problem which we can just brush aside. As the World Health Official (WHO) warns, the world may find itself in an era where there are no effective drug treatments for many infections. Simple as it sounds, it looks pretty much of a doomsday scenario. That means that even common infections like respiratory tract or urinary tract can progress to potentially life-threatening infections because the bug can’t be controlled by any antibiotic anymore. Bacteria will have their grand heyday, and everyone—especially the elderly, the children and those with compromised immune systems—is ill-fated prey to these ogre microbes.

#### Infectious diseases are inevitable. Rapid evolution and adaptation risk extinction

Walsh 13

Walsh, 7/10/2013 (Bryan, From AIDS to SARS to MERS, Emerging Infectious Diseases Remain a Dire Threat, Time, p. http://science.time.com/2013/07/10/from-aids-to-sars-to-mers-emerging-infectious-diseases-remain-a-dire-threat/)

Now the world is facing another emerging infectious disease. MERS — Middle East respiratory syndrome — is in the same family of coronaviruses as SARS, which killed at least 775 people after it emerged in China in late 2002. MERS, which first appeared in Saudi Arabia in September, has been kicking around the Middle East for nearly a year, infecting at least 79 people. It causes fever, cough and shortness of breath, and so far it has been a killer — about half the confirmed cases so far have resulted in death. On July 9 the World Health Organization (WHO) convened an emergency meeting to determine whether the new coronavirus that causes MERS constitutes a “public-health emergency of international concern,” as WHO assistant director general Dr. Keiji Fukuda put it. (For more about MERS, read the WHO’s latest update.) The good news is that a recent report published in the Lancet indicates that the virus has a relatively low level of infectiousness — less so than the measles and strong cases of the flu — which may limit its potential to ignite a global pandemic. A similar lack of infectiousness also kept SARS from becoming a lasting global menace, though the disease did cause nearly $50 billion in damages. But there’s no guarantee that MERS won’t mutate or worsen over time. And even if it doesn’t, there will always be new infectious diseases waiting to emerge, as Drs. David Morens and Anthony Fauci warn in a new paper: While it has become possible to eradicate certain infectious diseases [smallpox and the veterinary disease rinderpest], and to significantly control many others [dracunculiasis, measles, and polio, among others], it seems unlikely that we will eliminate most emerging infectious diseases in the foreseeable future. Pathogenic microorganisms can undergo rapid genetic changes, leading to new phenotypic properties that take advantage of changing host and environmental opportunities. Influenza viruses serve as a good example of emerging and re-emerging infectious agents in their ability to rapidly evolve in response to changing host and environmental circumstances via multiple genetic mechanisms. New ‘founder’ influenza viruses appear periodically, cause a pandemic, raise widespread population immunity, and then, in response to human immune pressures, evolve and persist for decades using multiple genetic evolutionary mechanisms to sustain continual immune escape. The 1918 influenza pandemic virus is one example: over the past 95 years, its descendants have evolved continually by antigenic drift, intrasubtypic reassortment, and antigenic shift, the latter producing new pandemics in 1957 and 1968. Even the genetically complex 2009 pandemic H1N1 influenza virus is a descendant of the 1918 virus. Such continuous genetic hyperevolution forces us to develop new influenza vaccines containing new antigens on an annual basis. Morens and Fauci — the latter of whom was on the front lines of the battle against AIDS in the early 1980s — track the threat of both emerging and re-emerging infectious diseases. Dengue and West Nile viruses are two of the latter. Dengue first emerged in Africa centuries ago, but was brought over to the Americas thanks to the slave trade, most likely through infected slaves who seeded the mosquito population in North America when they arrived. (Both dengue and West Nile are transmitted via mosquitoes.) Changing health conditions allow old diseases to become more dangerous — because of the immune suppression that results from HIV infection, fungal diseases like cryptococcal meningitis, which a healthy person would be able to fight off, have become leading causes of death in HIV hot spots like sub-Saharan Africa. The dream of eliminating infectious disease is dead. The global community has spent billions of dollars to try to finally stamp out polio, but that disease has proved stubborn. And the growth of globalization has given infectious disease a boost. As we push into wild places like the rainforests of central Africa, human beings come into contact with exotic species with exotic germs. Air travel — which grows each year — puts nearly every corner of the planet, no matter how remote, within a day of a major city. Population growth of both people and domestic animals like chickens and pigs means all the more fuel for new microbes to feast on, and makes it easier for viruses to leap across the species barrier. If we’re lucky, MERS will be another viral dead end, not contagious enough to do lasting global damage. But as experts like Morens and Fauci know, we won’t be lucky forever.

### Scenario 2 is Pharmaceuticals

#### Current trends of innovation in pharmaceutical industry will be key to preventing a bioterror attack.

Doug Bandow, San Diego Union- Tribune, March 27, 2005, A strong pharmaceutical industry is the best defense against pandemics, senior fellow at the Cato Institute and a former special assistant to President Reagan, <http://www.signonsandiego.com/uniontrib/20050327/news_lz1e27bandow.html>

Gurinder Shahi, a doctor in Singapore, explained: "Given how little we know about SARS and the reality that it is killing people, **it is justified for us to be daring and innovative in coming up with solutions." Daring innovation is most likely in a competitive, profit-driven market. For instance, Pfizer worked with the U.S. National Institute of Allergy and Infectious Diseases to test 350 compounds developed as part of an earlier project to cure the common cold**. NIAID also collaborated with the California biotech company Vical Inc. to test a new, experimental vaccine that has protected mice from the disease. Adventis and Merck as well as laboratories around the world began working to develop vaccines. Indeed**, most of today's medicines exist only because there is a bevy of sophisticated pharmaceutical companies devoted to finding drugs to heal the sick**. Progress has been particularly dramatic in recent years. For instance, **two decades ago not one drug was available to fight AIDS. Today 74 have been approved and another 83 are in development**. **Equally significant has been the impact of pharmaceuticals on the elderly**. People not only live longer; they live better. And no small reason is the explosion of new prescription drugs. **More than 800 medicines are in development to combat diseases of aging.** The benefits of such advances are obvious. ColumbiaUniversity's Frank Lichtenberg figures that fully 40 percent of the increase in average lifespan between 1986 and 2000 is due to new drugs. In many cases medicines directly forestall death. The impacts of other drugs on patients are more subtle, but still important. **There's less pain, greater self-esteem, less nausea, improved well-being, and even lower health care expenditures for other treatments**. And these benefits are shared by families and care-givers as well as the ill. One important research area is to control the adverse impacts of other drugs. Reported Daniel Rosenberg in The Wall Street Journal, "Now, venture capitalists are focusing on the side effect treatment market, funding companies at the cutting edge of such research." There is nausea, obviously, as well as other, equally serious conditions. For instance, oral mucosities involves sores in the mouth that makes eating, drinking and talking difficult. Neuropathy is a strange feeling in arms and legs that can become debilitating. "Side effects can be very serious, and as painful as the pain of the disease itself. If people are unable to eat or swallow, they find it difficult to continue the treatment," explained Rosenberg. But**this progress hasn't come cheap**. **Last year, the American industry alone devoted $38 billion to R&D.** According to a 2003 study published in The Journal of Health Economics: **"Between the time research begins to develop a new prescription medicine until it receives approval from the FDA to market the drug in the U.S., a drug company typically spends $802 million"**over 10 to 15 years. That's nearly four times the expense in 1987. Active in the fight are not just industry giants such as Pfizer and Merck. AVI BioPharma, Inc., a Portland, Ore. biotechnology firm, began looking at SARS after having worked on the West Nile virus. Small firms backed by venture capital are focusing on the side effect market since "In the past, drug companies haven't seen a lot of money in treating side effects that only affect a minority of cancer patients," reported Rosenberg. **Yet at a time when the world may have narrowly escaped a potential viral epidemic in the form of SARS – and faces the prospect of biological terrorism – the drugmakers are under siege in America.** Rhetorically, they have been lumped with the tobacco companies by demagogic politicians, as if firms which make products that heal are the same as those which make products that kill. The explosion of liability lawsuits is another problem. Henry Miller of the Hoover Institution points out that the number of vaccine makers has fallen by almost three-fourths since 1967. The basic problem, he notes, is that "compared to therapeutic drugs, vaccines traditionally offer low return on investment but high exposure to legal liability." This is the major reason we were left so vulnerable to the failure of Chiron, the British firm that was producing flu vaccine. Underlying the widespread political assault is a panoply of distorted and even false claims. The industry is not uniquely profitable and its returns are broadly commensurate with the cost of raising capital. Complaints about rising drug expenditures are common, even though people routinely spend more for a dinner out than on a typical prescription. Moreover, the primary reasons total drug outlays are rising is not because of price hikes on existing medicines, but because Americans are buying new products and using more old ones. Other myths abound. The drugmakers actually spend more on R&D than marketing. They devote far more money to finding drugs than does the National Institutes of Health. What makes the concerted assault against pharmaceutical concerns so perverse is that Washington claims it understands the importance of pharmaceutical research. Dianne Murphy, director of the FDA's Office of Counterterrorism & Pediatric Drug Development, said of drugmakers working on bioterrorism: "we want them to come in and talk to us when the drug is barely a glimmer in a scientist's eye." Yet Washington's threat to void the patent for Cipro in the midst of the 2001 anthrax scare was a warning to firms that no good deed is likely to go unpunished. Indeed, the better the deed (more effectively dealing with a deadlier disease), the greater the likely punishment (losing the hard-won return on the underlying research). **The United States is essentially the last pharmaceutical free market among leading industrialized states**. **Price and use controls pervade Europe and other industrialized states, including Canada and Japan**. **In Europe**, observed Wall Street Journal reporter Stephen D. Moore, "**Innovative cancer drugs have gotten bogged down even earlier in the system**." He adds: "Many European countries also attempt to restrict demand after new medicines reach pharmacy shelves. Drugs can be saddled with tight prescribing rules to limit consumption. Patients across Europe are fighting for improved access to older drugs such as Taxol, the world's top-selling anticancer drug." Thus, **the vast majority of drug innovation derives from the American market. That will end, however, if government arbitrarily seizes – directly, through domestic restrictions, or indirectly, through "reimportation" of American drugs from countries with price controls** – **the fruit of industry R&D, thereby cutting industry prices and profits. Investment will fall. Which will mean less research and development. And fewer life-saving products.** Life is uncertain and arbitrary; SARS demonstrated that flying on the wrong plane and sitting next to the wrong person could become a death sentence. And potentially many more people will die if new, even deadlier infectious diseases emerge, whether avian flu or something else. Yet **theresources are available to prevent or ameliorate any such outbreak**. Writes Dr. Joseph DiMasi of TuftsUniversity: **"a rapid expansion of scientific discoveries and technologic advances has given the pharmaceutical industry unprecedented opportunities to innovate.**Combinatorial chemistry, high-throughput screening and genomics have provided a technologic platform that is highly conducive to growth in innovation. However, given typical lengths for the drug discovery and development processes, most of the fruits of these efforts will likely not be realized for years to come."**Reaping** those **long-term benefits to protect people worldwide will require the aid** of America's much-vilified **pharmaceutical industry**. **If critics succeed in disabling the drugmakers, we will all be at risk.** It's time those who benefit from industry research stopped treating drugmakers as the enemy.

#### Bioterrorism causes extinction

Ochs 2 – MA in Natural Resource Management from Rutgers University and Naturalist at Grand Teton National Park [Richard, “BIOLOGICAL WEAPONS MUST BE ABOLISHED IMMEDIATELY,” Jun 9, http://www.freefromterror.net/other\_articles/abolish.html]

Of all the weapons of mass destruction, the genetically engineered biological weapons, many without a known cure or vaccine, are an extreme danger to the continued survival of life on earth.Any perceived military value or deterrence pales in comparison to the great risk these weapons pose just sitting in vials in laboratories. While a "nuclear winter," resulting from a massive exchange of nuclear weapons, could also kill off most of life on earth and severely compromise the health of future generations, they are easier to control. Biological weapons, on the other hand, can get out of control very easily, as the recent anthrax attacks has demonstrated. There is no way to guarantee the security of these doomsday weapons because very tiny amounts can be stolen or accidentally released and then grow or be grown to horrendous proportions. The Black Death of the Middle Ages would be small in comparison to the potential damage bioweapons could cause. Abolition of chemical weapons is less of a priority because, while they can also kill millions of people outright, their persistence in the environment would be less than nuclear or biological agents or more localized. Hence, chemical weapons would have a lesser effect on future generations of innocent people and the natural environment. Like the Holocaust, once a localized chemical extermination is over, it is over. With nuclear and biological weapons, the killing will probably never end. Radioactive elements last tens of thousands of years and will keep causing cancers virtually forever. Potentially worse than that, bio-engineered agents by the hundreds with no known cure could wreck even greater calamity on the human race than could persistent radiation. AIDS and ebola viruses are just a small example of recently emerging plagues with no known cure or vaccine. Can we imagine hundreds of such plagues? HUMAN EXTINCTION IS NOW POSSIBLE.

#### U.S. nuclear policies aren’t stable – a biological attack ensures widespread nuclear retaliation

Potter 10 (William Potter, Sam Nunn and Richard Lugar Professor of Nonproliferation Studies and Director of the James Martin Center for Nonproliferation Studies at the Monterey Institute of International Studies (MIIS), author or editor of seventeen books, including Nuclear Power and Nonproliferation, Dismantling the Cold War, and the Four Faces of Nuclear Terrorism. serves on the Nonproliferation Panel of the U.S. National Academy of Sciences Committee on International Security and Arms Control, member of the Council on Foreign Relations and served for five years on the UN Secretary-General’s Advisory Board on Disarmament Matters, member of the International Advisory Board of The Center for Policy Studies in Russia, advisor to the delegation of Kyrgyzstan at the 1995 NPT Review and Extension Conference and the 1997, 1998, 1999, 2002, 2003, 2004, 2007, 2008, and 2009 sessions of the NPT Preparatory Committee, as well as at the 2000 and 2005 NPT Review Conferences, Winter 2010, “In Search of the Nuclear Taboo: Past, Present, and Future”, cns.miis.edu/other/potter\_william\_100115\_IFRI\_pp31.pdf)

In the case of the United States, the reorientation appears to have ¶ been prompted by concerns about chemical and biologicalweapons ¶ programsin a number of U.S. adversaries.¶ 24¶ The first clear indication of this new twist in U.S. nuclear policy – often ¶ referred to as “calculated ambiguity” – was contained in testimony by ¶ Secretary of Defense William Perry before the U.S. Senate Committee on ¶ Foreign Relations in March 1996. According to Perry’s oral remarks, the U.S. ¶ appeared ready to retaliate with nuclear weapons should any country be ¶ foolish enough to use chemical weapons against the United States.¶ 25¶ This ¶ perspective was reiterated the following month when one of Perry’s senior ¶ assistants, Harold Smith, asserted that a new weapon in the U.S. nuclear¶ arsenal, the B-61 bomb, would be the “weapon of choice” for destroying the ¶ alleged underground chemical weapons plant at Tarhunah, Libya.¶ 26¶ ¶ This shift in U.S. doctrine also appears to have been reinforced as a ¶ consequence of an inter-agency bureaucratic battle over the wisdom of ¶ offering U.S. negative security assurances in the form of a protocol to the ¶ Treaty of Pelindaba, the African Nuclear Weapons Free Zone Treaty that ¶ was concluded in 1996. Although the United States ultimately signed the ¶ protocol without any formal reservation, a senior White House official ¶ subsequently explained that the protocol “will not limit options available to the ¶ United States in response to an attack by an ANFZ [African NuclearWeapon-Free Zone] party using weapons of mass destruction”.¶ 27¶ As Scott ¶ Sagan notes, this unilateral interpretation was based on the legal doctrine of ¶ ‘belligerent reprisal’”, a formula also employed “to justify changes in the U.S. ¶ nuclear war plan guidance, issued in December 1997, which ordered military ¶ planners to target non-nuclear states that are suspected to have chemical ¶ and biologicalweapons”.¶ 28¶ This posture of threatening to use nuclear ¶ weapons to destroy enemy stockpiles of chemical or biological weapons ¶ remained intact during the Bush administration and found expression in a ¶ variety of official documents including the “National Strategy to Combat ¶ Weapons of Mass Destruction” released in December 2002 and the Joint ¶ Chiefs of Staff 2005 draft “Doctrine for Joint Nuclear Operations”.¶ 29¶ One also can discern changes in Russian and Indian nuclear ¶ doctrine that closely parallel the evolution of U.S. thinking regarding the use ¶ of nuclear weapons against non-nuclear threats. A significant milestone in ¶ the Russian case was the abandonment of Soviet doctrinal declaratory ¶ policy regarding no-first use, a revision formalized in Russia’s 1993 Military ¶ Doctrine.¶ 30¶ This stance was further refined in the 2000 Military Doctrine, ¶ which provides for nuclear weapons use “in response to the use of nuclear ¶ weapons or other weapons of mass destruction against Russia and/or its ¶ allies, and in response to a large-scale conventional aggression in ¶ situations critical to the national security of the Russian Federation”.¶ 31¶ The change in nuclear doctrine is less definitive in the Indian case, ¶ but one can identify an evolution in a direction away from a narrow focus on ¶ deterring exclusively nuclear threats. In its original formulation, India’s draft ¶ nuclear doctrine embraced “no-first- use” and identified its central goal as ¶ deterrence of threat or use of nuclear weapons by any state or entity ¶ against India or its armed forces.¶ 32¶ Since 2003, however, there are ¶ indications that Indian doctrine has been modified to expand the threat of ¶ nuclear weapons use to deter or retaliate against an adversary’s chemical ¶ or biological weapons.¶ 33¶ ¶ China has been far more circumspect in the public articulation of any ¶ changes in its nuclear doctrine, and continues to maintain its strict adherence ¶ to a policy of no-first use. During the past five years, however, there are ¶ indications of an internal debate over the wisdom of this policy, and a number ¶ of nongovernmental Chinese experts have expressed the view that China ¶ should threaten to use – and be prepared to use – nuclear weapons if ¶ subject to some forms of non-nuclear attacks. The circumstances for such ¶ use typically are not spelled out, but on occasion have been linked to threats ¶ Taiwan may pose to targets such as the Three Gorges Dam.¶ 34¶ Reliance on nuclear weapons to reinforce deterrence against ¶chemical and biological weapons may produce the desired effect. However, ¶ there also is reason to believe that efforts to expand the contingencies ¶ under which nuclear violence is contemplated willnot only undermine the ¶ NPT but increase the likelihood of actual nuclear use. This danger results ¶ from what Scott Sagan calls the “commitment trap” in which “the United ¶ States (or conceivably other nuclear weapons possessors) cannot make its ¶ nuclear threats credible without simultaneously increasing the risk that its ¶ nuclear weapons will be used in the event of a chemical or biological ¶ attack” – even when it would prefer not to do so.¶ 35¶ In other words, “a ¶ president’s deterrent threat does not just reflect a commitment to retaliate; it ¶ creates a commitment”.

## Plan Text

#### Thus the plan: The United States Federal Government should substantially increase its economic engagement toward the government of Cuba by repealing Section 211 of the 1998 Omnibus Appropriations Act.

## Contention 3: Solvency

#### Now is key – Other countries are criticizing the U.S.’s failure to resolve the Havana Club case.

Agence France Presse, 6/25/**2013** (EU, Cuba spar with US over ‘Havana Club’ rum, p. Lexis-Nexis)

The European Union and Cuba locked horns with theUnited States on Tuesday at theWorld Trade Organization, 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.

#### The plan can restore IP credibility without removing the current embargo.

**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. n286At 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 withoutsacrificing 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 theCuba 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 theUnited States to become fully compliant with the provisions in the TRIPS agreement, and show the WTO'sDispute 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. n292An 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.

#### Eliminating the Cuban IP policy allows the U.S. to harmonize IP rights globally.

**Riley**, Winter **2007** (Michael – J.D. Candidate at the University of Miami, Cigars and Rum: Hazardous to the Health of Intellectual Property Law?: How the Cohiba Cigar and Havana Club Rum Cases Reveal a ‘Carve-Out’ for Intellectual Property Disputes with a Cuban Nexus, The University of Miami Inter-American Law Review, p. Lexis-Nexis)

The Havana Club controversy has been cited as one obstacle that for several years caused the United States to hesitate before ratifying the agreement. n175 After "overwhelming support ... in both the U.S. government and the business community," the U.S. Senate finally assented to its terms. n176 As has been observed, this "translated into access for American trademark owners to global protection via a system that does not compromise the U.S.'s jurisdiction over its own territory. On a global level, the Protocol provides a truly viable model for the internationalization of trademark law." n177 The Madrid Protocol furthered the purpose of intellectual property law by creating an efficient system to protect rights and consumers. n178 Based on the use of the system, it has proven quite successful - on October 27, 2006, WIPO announced that it had registered its 900,000th mark. n179 Preserving the value of intellectual property requires some degree of uniformity of enforcement, and the United States' Cuban 'carve-out' runs counter to the international trend to harmonize intellectual property law. While the Cuban-French joint venture may have lost its Havana Club registration in the United States, it still maintains those rights in other parts of the world. n180 Bacardi's efforts to claim the Havana Club mark outside of the United States demonstrates how complicated, confusing, and costly 'carve-outs' to intellectual property law can become. n181 Creating a patchwork of intellectual property decisions will further undermine the consumer protection purposes of trademark law. A world in which marks may convey varying standards of quality depending on whether consumers are in Mexico, Canada, America, Bermuda, South Korea or France will weaken brand [\*481] value and serve as a disincentive to invest in intellectual property. A trend of country-specific 'carve-outs' would also serve as an affront to the efforts of many to harmonize the world's intellectual property. Through the support of the Madrid Protocol, businesses and governments have sought to balance the individual rights of nations to set their own intellectual property laws with the need for an internationally consistent system. n182 By choosing the foreign policy goal of isolating the Castro regime over the policy objectives inherent withintrademark law, the United States' Cuban 'carve-out' upsets this balance.

#### Congressional action is the best mechanism for repealing section 211

Carroll 2k (Daniel O. Carroll is a member of Schenck, Price, Smtih & King's Health Care Law Practice Group as well as the Corporate Practice Group. Mr. Carroll also co-chairs the Firm's Pharmaceutical Industry and Pharmacy Practice Group. Daniel. “RECENT DEVELOPMENT: Havana Club Holding, S.A. v. Galleon, S.A.: District Court Orders Up "One Havana Club Rum and Whatever Congress Is Having"” Tulane Journal of International and Comparative Law. Spring, 2000 8 Tul. J. Int'l & Comp. L. 507 LexisNexis)

The judicial application of section 211 seems to be in accordance with the traditional notions of the federal legislature's power concerning foreign affairs. However, its international implications are much more controversial and cannot be ignored. After performing a judicial balancing act with the international considerations and aspects of congressional authority, it seems that the strong political support for the current Cuban foreign policy made the court's decision to defer to the political branches an easy one. n166 The effects of the court's deference to Congress may prove to be the catalyst for political debate about the desirability of such a statute. Lobbyists' efforts to maintain broad, stable, and predictable trademark protection are likely to increase because of the decision by the court to apply section 211 with full force. Although this legislation reinforces the already potent Cuban embargo, it may also have the undesirable effect of adversely impacting the economic interests of American companies and international trade, specifically in Cuba. Section 211 may warrant legislative reconsideration by Congress due to the possible restraints on U.S. trade, as well as the vulnerable position in which some U.S. companies may find themselves after retaliatory measures are enforced. Since the court's decision is in accordance with applicable jurisprudence, the plaintiffs are not likely to obtain a remedy through the judiciary. Relief, if any, is more likely to come from the legislature. n167 Considering the courts' def-erence to the judgment of the political branches regarding foreign affairs,the judiciary would [\*531] prefer any relief obtained by the plaintiffs in contravention of section 211 originate in Congress. Although there is strong support for the current Cuban foreign policy, this specific provision may fall out of popular favor when its negative international im-plications are realized. As world markets become integrated through globalization and the goal of international free trade becomes a reality, it will become more difficult to practice a purely bilateral trade policy. If judicial application of section 211 proves to have undesirable effects on international trade, Congress is likely to reconsider the law's utility. After such legislative reconsideration, plaintiffs, like those in the noted case, might obtain the valuable trademark pro-tection they seek in the competitive U.S. markets.