# 1AC

### WTO Credibility – 1AC

#### Contention One: WTO Credibility

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

**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 on intellectual 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 the United 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).

#### Only a credibility dispute settlement mechanism prevents rampant protectionism.

**Lawrence**, March **2007** (Robert – Albert L. Williams Professor of International Trade and Investment at the Harvard Kennedy School of Government, The United States and the WTO Dispute Settlement System, p. 5-6)

But this “safety valve” argument is shortsighted. The use of antidumping suits is a game that more than one nation can play: In the absence of the WTO’s dispute settlement tribunals, U.S. trading partners would obstruct U.S. exports by resorting to their own “fair-trade” measures, and U.S. resentment of the trading system would be heightened. Enforceable rules offer the best hope of forestalling a tit-for-tat use of protective barriers that would further contribute to the deterioration of support for trade. In sum, and contrary to what many policymakers suppose, vigorous dispute settlement tribunals make the revival of the Doha Round more likely. The importance of enforceable multilateral rules is evident from the era in which they were absent. The lack of agreed-upon enforcement procedures under the original treaty of the postwar trading system—the General Agreement on Tariffs and Trade (GATT)—engendered considerable U.S. frustration. There were innumerable bilateral conflicts with the European Union over its Common Agricultural Policy (CAP) and with Japan over its closed market. These were extremely difficult to resolve. In response, the United States implemented laws such as Section 301 of the Trade Act of 1974 and the Super 301 provisions of the Omnibus Trade and Competitiveness Act of 1988. These provisions sought to remove “unreasonable and unjustifiable” barriers to U.S. exports by threatening unilateral trade sanctions.3 While these measures met with mixed results, they did help convince other countries of the merits of establishing a more effective system at the WTO, which was created to succeed GATT in 1995.4 The WTO provides more benefits to the United States than GATT did. Its provisions cover more issues that are of interest to the United States: The WTO includes rules on standards and technical barriers to trade; it protects intellectual property; it covers agriculture and services. But the biggest advantage of the WTO is that it includes a mechanism to enforce these rules: the dispute settlement system. This has reduced the need for the United States to resort to unilateral retaliatory measures, limiting an important source of tension between the United States and its partners and so generating a significant foreign-policy dividend. Indeed, it is striking that since the advent of the dispute settlement system, the United States has generally abided by its agreement not to impose unilateral trade sanctions against WTO members without WTO authorization.5 Naturally, the system has not been able to solve all the disputes that have arisen. But it has at least been able to contain the effects of these disputes. By authorizing retaliation but limiting its size, the WTO helps to prevent conflicts in which both parties and the trade system as a whole could be severely damaged. The shift from bilateral to multilateral enforcement helps secure the legitimacy of the trading system and reduces the political costs associated with bilateral dispute settlement. It helps the United States itself keep protectionist impulses at bay. It is also particularly useful for dealing with disputes with America’s largest trading partners, such as the European Union, Japan, China, India, and Brazil, with which the United States has not signed free trade agreements. And yet, despite these considerable strengths, support for the WTO and its dispute settlement system remains fragile. This report describes how that system operates, considers the arguments of its critics, and finally provides some recommendations for improvement.

#### WTO credibility prevents protectionism and trade bloc conflicts.

**Blustein**, 12/7/**2008** (Paul – journalist in residence at the Global Economy and Development Program at the Brookings Institution, Don’t Trade Recession for Depression, Washington Post, p. Lexis-Nexis)

The Doha Round's travails also pose significant risks to the WTO itself. For all its flaws, the WTO is a crucial linchpin of stability in the global economy. It is the current embodiment of the multilateral trading system that was established after World War II to prevent a reversion to the grim days of the 1930s. The WTO's rules keep a lid on the import barriers of its member countries, and members take their trade disputes to WTO tribunals for adjudication rather than engaging in tit-for-tat trade retaliation. The WTO is also the guardian of the "most favored nation" principle, under which member nations pledge to treat one another's products on a nondiscriminatory basis -- a valuable bulwark against trade blocs of the sort that stoked rivalries among the great powers during the '30s. The WTO's centrality to the global trading system is already under some doubt, thanks to the proliferation in recent years of bilateral and regional trade agreements. More than 400 of these are currently in force, ranging from the big and well known (such as NAFTA) to the small and ridiculous (such as the Singapore-Jordan free trade agreement). Governments are increasingly tempted to think of these pacts as reasonable substitutes for multilateralism, especially as disillusionment deepens with the WTO's ability to foster new global deals. Although the WTO is not about to disintegrate overnight, its authority might erode to the point that member nations start to flout their commitments and ignore the rulings of WTO tribunals. That would greatly increase the threat of trade wars and hasten a breakdown in the system that has helped keep trade blocs and protectionism at bay.

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

**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.

#### Credible WTO prevents nuclear war.

**Copley News** Service, 12/1/**1999** (Commentary, p. Lexis-Nexis)

For decades, many children in America and other countries went to bed fearing annihilation by nuclear war. The specter of nuclear winter freezing the life out of planet Earth seemed very real. Activists protesting the World Trade Organization's meeting in Seattle apparently have forgotten that threat. The truth is that nations join together in groups like the WTO not just to further their own prosperity, but also to forestall conflict with other nations. In a way, our planet has traded in the threat of a worldwide nuclear war for the benefit of cooperative global economics. Some Seattle protesters clearly fancy themselves to be in the mold of nuclear disarmament or anti-Vietnam War protesters of decades past. But they're not. They're special-interest activists, whether the cause is environmental, labor or paranoia about global government. Actually, most of the demonstrators in Seattle are very much unlike yesterday's peace activists, such as Beatle John Lennon or philosopher Bertrand Russell, the father of the nuclear disarmament movement, both of whom urged people and nations to work together rather than strive against each other. These and other war protesters would probably approve of 135 WTO nations sitting down peacefully to discuss economic issues that in the past might have been settled by bullets and bombs. As long as nations are trading peacefully, and their economies are built on exports to other countries, they have a major disincentive to wage war. That's why bringing China, a budding superpower, into the WTO is so important. As exports to the United States and the rest of the world feed Chinese prosperity, and that prosperity increases demand for the goods we produce, the threat of hostility diminishes. Many anti-trade protesters in Seattle claim that only multinational corporations benefit from global trade, and that it's the everyday wage earners who get hurt. That's just plain wrong. First of all, it's not the military-industrial complex benefiting. It's U.S. companies that make high-tech goods. And those companies provide a growing number of jobs for Americans. In San Diego, many people have good jobs at Qualcomm, Solar Turbines and other companies for whom overseas markets are essential. In Seattle, many of the 100,000 people who work at Boeing would lose their livelihoods without world trade. Foreign trade today accounts for 30 percent of our gross dom estic product. That's a lot of jobs for everyday workers. Growing global prosperity has helped counter the specter of nuclear winter. Nations of the world are learning to live and work together, like the singers of anti-war songs once imagined. Those who care about world peace shouldn't be protesting world trade. They should be celebrating it.

#### Multilateral cooperation prevents great power wars that make extinction inevitable.

**Dyer**, 12/30/**2004** (Gwynne – former senior lecturer in war studies at the Royal Military Academy Sandhurst, The End of War, The Toronto Star, p. Lexis-Nexis)

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 the United 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.

#### Multiple studies prove that the risk of war is less probable in a world of economic interdependence.

**Griswold**, 4/20/**2007** (Daniel – director of the Center for Trade Policy Studies, Trade, Democracy and Peace, p. http://www.freetrade.org/node/681)

A little-noticed headline on an Associated Press story a while back reported, "War declining worldwide, studies say." In 2006, a survey by the Stockholm International Peace Research Institute found that the number of armed conflicts around the world has been in decline for the past half-century. Since the early 1990s, ongoing conflicts have dropped from 33 to 17, with all of them now civil conflicts within countries. The Institute's latest report found that 2005 marked the second year in a row that no two nations were at war with one another. What a remarkable and wonderful fact. The death toll from war has also been falling. According to the Associated Press report, "The number killed in battle has fallen to its lowest point in the post-World War II period, dipping below 20,000 a year by one measure. Peacemaking missions, meanwhile, are growing in number." Current estimates of people killed by war are down sharply from annual tolls ranging from 40,000 to 100,000 in the 1990s, and from a peak of 700,000 in 1951 during the Korean War. Many causes lie behind the good news--the end of the Cold War and the spread of democracy, among them--but expanding trade and globalization appear to be playing a major role in promoting world peace. Far from stoking a "World on Fire," as one misguided American author argued in a forgettable book, growing commercial ties between nations have had a dampening effect on armed conflict and war. I would argue that free trade and globalization have promoted peace in three main ways. First, as I argued a moment ago, trade and globalization have reinforced the trend toward democracy, and democracies tend not to pick fights with each other. Thanks in part to globalization, almost two thirds of the world's countries today are democracies--a record high. Some studies have cast doubt on the idea that democracies are less likely to fight wars. While it's true that democracies rarely if ever war with each other, it is not such a rare occurrence for democracies to engage in wars with non-democracies. We can still hope that has more countries turn to democracy, there will be fewer provocations for war by non-democracies. A second and even more potent way that trade has promoted peace is by promoting more economic integration. As national economies become more intertwined with each other, those nations have more to lose should war break out. War in a globalized world not only means human casualties and bigger government, but also ruptured trade and investment ties that impose lasting damage on the economy. In short, globalization has dramatically raised the economic cost of war. The 2005 Economic Freedom of the World Report contains an insightful chapter on "Economic Freedom and Peace" by Dr. Erik Gartzke, a professor of political science at Columbia University. Dr. Gartzke compares the propensity of countries to engage in wars and their level of economic freedom and concludes that economic freedom, including the freedom to trade, significantly decreases the probability that a country will experience a military dispute with another country. Through econometric analysis, he found that, "Making economies freer translates into making countries more peaceful. At the extremes, the least free states are about 14 times as conflict prone as the most free." By the way, Dr. Gartzke's analysis found that economic freedom was a far more important variable in determining a countries propensity to go to war than democracy. A third reason why free trade promotes peace is because it allows nations to acquire wealth through production and exchange rather than conquest of territory and resources. As economies develop, wealth is increasingly measured in terms of intellectual property, financial assets, and human capital. Such assets cannot be easily seized by armies. In contrast, hard assets such as minerals and farmland are becoming relatively less important in a high-tech, service economy. If people need resources outside their national borders, say oil or timber or farm products, they can acquire them peacefully by trading away what they can produce best at home. In short, globalization and the development it has spurred have rendered the spoils of war less valuable. Of course, free trade and globalization do not guarantee peace. Hot-blooded nationalism and ideological fervor can overwhelm cold economic calculations. Any relationship involving human beings will be messy and non-linier. There will always be exceptions and outliers in such complex relationships involving economies and governments. But deep trade and investment ties among nations make war less attractive.

### IP Leadership – 1AC

#### Contention Two: IP Leadership

#### 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 the United States on Tuesday at the World 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.

#### Section 211 erodes IPR credibility by encouraging other nations to violate norms.

**Esper**, 3/3/**2010** (Mark – Executive Vice President of the Global Intellectual Property Center, Domestic and International Implications of Havana Club and Section 211, of the Omnibus Appropriations Act of 1999, Testimony to the House Committee on the Judiciary, p. <http://judiciary.house.gov/hearings/pdf/Esper100303.pdf>)

Unfortunately, Section 211 of the FY 1999 Omnibus Appropriations Act has put the United States in violation of its international treaty obligations and needlessly endangers the intellectual property rights of American companies. Further, it undermines the United States’ credibility when we argue in defense of IP laws in U.N. organizations and when dealing with other governments. Not surprisingly, this is what can happen when legislative provisions are passed without debate, hearings, or consideration by the appropriate House and Senate committees of jurisdiction. International Obligations The World Trade Organization (WTO) has ruled that Section 211 violates two basic principles of the Trade Related Aspects of Intellectual Property (TRIPS) agreement, the international agreement between WTO members that governs intellectual property: national treatment and most-favored nation status. The WTO's ruling is based on the fact that Section 211 only prohibits Cuban owners of Cuban-origin trademarks and their successors-in-interest to assert rights to such marks in the U.S. and not U.S. nationals or nationals of other countries. The WTO gave the Congress until January 3, 2003 to provide a remedy that would make Section 211 compliant with TRIPs. Both the Bush and Obama administrations have acknowledged that this is a matter that must be addressed and committed to working with the United States Congress with respect to appropriate statutory measures that would resolve this matter. Moreover, we understand the United States has appeared before the WTO more than twenty times assuring the body that it would honor its obligations and get into compliance. While the WTO and U.S. trading partners have repeatedly pressed the Administration to work with Congress to provide a remedy that would make Section 211 compliant with TRIPS, the U.S. has yet to comply. As the WTO has noted, Section 211 invites arbitrary treatment of U.S. trademarks overseas. It also provides a model for other countries that wish to make it more difficult for U.S. intellectual property holders to protect and enforce their rights abroad. Still, seven years later, the world’s foremost proponent of a rules-based international trading system managed by the WTO—the United States—has not fixed this problem. Section 211 also puts the United States in breach of its obligations under the General Inter-American Convention for Trademark and Commercial Protection, a reciprocal intellectual property agreement signed in 1929 that governs trademark protection between the United States and Cuba to this day, and which gives Cuba the legal opportunity to withdraw the protections it currently provides U.S. trademarks. The Cuban government has threatened in the past to retaliate against American companies with interests in Cuba, jeopardizing trademark protection for over 5,000 U.S. trademarks currently registered in Cuba by more than 400 American companies. Few realize that the United States is the largest supplier of food and agricultural products to the Cuban people, with American companies exporting approximately $500 million in food and agricultural goods each year. For U.S. companies exporting branded foods to the Cuban people, a threat by the Cuban government to retaliate over this issue remains a concern. Any retaliation would, of course, endanger their trademarks as well as the status of other U.S. brand owners’ marks currently registered in Cuba. Lastly, it is fair to add that Section 211 is an invitation to other countries to adopt similar provisions that discriminate against U.S. trademarks on political grounds, thereby endangering U.S. trademarks globally and undermining our status as an international champion of intellectual property protection.

#### The Havana Rum case spills over --- it undermines the United States’ ability to uphold IP law globally.

**Esper**, 3/3/**2010** (Hearing of the House Judiciary Committee, Domestic and International Trademark Implications of Havana Club and Section 211 of the Omnibus Appropriations Act of 1999, Chaired by Representative John Conyers (D-MI), Witnesses: Mark Orr – Vice President of North American Affairs at Pernod Ricard USA, Bruce Lehman – former assistant secretary of commerce and expert counsel for Bicardi USA, Mark Esper – executive vice president of the Global Intellectual Property Center at the U.S. Chamber of Commerce, William Reinsch – president of the National Foreign Trade Council, John Veroneau – partner at Covington & Burling LLP, Federal News Service, p. Lexis-Nexis)

MR. ESPER: Well, I think we need to take a look at the big picture here. And the big picture is what is the future of America's credibility within the World Trade Organization and with the IP laws that undergird it, and how do we want to approach intellectual property rights? How do we want to be treated -- and our companies treated -- vis-a-vis other nations, and how they regard it? And again, I think there are some key facts in dispute. I know it was just mentioned that the Supreme Court made a decision with regard to confiscation of American property. My reading of the case here is that there was not a confiscation of property, that the trademark was abandoned and it was legally re- registered by someone else. And secondly, that it was not American property; it was the property of foreign nationals. So to me, those are two key parts, two key elements in dispute by all sides here that, again, if left to the courts -- we should leave it to the courts to decide was the trademark owned or was it abandoned, what is the legal status of different parties involved, and let the courts decide it. REP. CONYERS: You sound as much like a lawyer as anybody else here this afternoon. I can't help but worry about what's going to happen to any reciprocity to our brands. If we start doing this, I don't know how we're going to tell everybody else that they've got to adhere to the WTO, except in our case this is special. We're going to legislate. We don't want to wait for the courts. MR. ESPER: Right, Mr. Chairman. That's the concern of our members who have trademarks not only in Cuba, but other countries around the world. The Chamber is constantly involved in debate and negotiations as an outside party in negotiations all around the world, where we're trying to uphold IP laws and norms and defend them. Needless to say, our IP -- our intellectual property, our rights, are constantly under challenge from countries, governments, from activists involved in this issue. And so it's very important to us, as the Global IP Center, to constantly fight for strong IP laws, to defend them, and to make sure that we preserve those protections for America's innovators, for our creators, for all those people out there, our workers who are creating this ingenuity, these innovations that are really driving our economic growth. And this is just -- this Section 211 is just another example of something that chips away at our ability to credibly make those arguments in multilateral form.

#### *Subpoint A* – Biotech

#### U.S. credibility is critical to strong IP protections for agriculture.

**Stein**, Spring **2005** (Haley – J.D. Northwestern University School of Law, Intellectual Property and Genetically Modified Seeds: The United States, Trade, and the Developing World, Northwestern Journal of Technology and Intellectual Property, p. Lexis-Nexis)

IP rights are likewise at the forefront of the United States' trade agenda, just as they are priorities on the private seed industry's agenda. n3 The United States is seen as having the strongest protections for IP rights world-wide. n4 Agribusinesses in the United States [\*161] wield an enormous amount of power in shaping IP biotechnology policies, as recent trade agreements reflect. n5 Increased investment and unprecedented returns on these investments in agricultural biotechnology have brought issues of IP protection to the forefront. Agricultural biotechnology is a technique used by scientists to create, improve, or modify plants. Genetic engineering is one example of a biotechnological technique. For centuries, farmers have used selective breeding to improve seed production. Recent advances in science and technology now allow genetic engineers to easily and precisely move genes to improve plants and seeds. n6 Agricultural biotechnology has enormous economic and humanitarian potential: "the great hope for genetically engineered crops is that they will feed the world." n7 There are vast benefits: more productive harvests, improved food quality (such as vitamin-enriched products), and decreased dependence on environmentally dangerous chemicals and pesticides. n8 Yet there are many unknowns regarding genetically modified foods. There is no scientific confirmation that these foods are safe and many countries are adamantly opposed to the marketing of genetically altered foods. n9 There are also fears of increased resistance to pesticides, adaptation of insects, unknown environmental impacts, and detrimental effects on the plants' gene pool. n10 The ability of humans to genetically manipulate seeds through science has altered the agricultural landscape for both large farming corporations and small family farms. While genetic modification provides many advantages for small farmers, particularly in developing countries, there are likewise many drawbacks. n11 Agribusiness domination of the global seed market and aggressive campaigns to promote broad patenting rights for biotech seeds and plants challenge traditional farming practices such as seed saving and seed sharing. Up to this point, the United States' has been the most vocal advocate of bolstering these IP rights on the international front.

#### IPR harmonization is a pre-requisite for the development of innovative and widespread biotech.

**Kerle 2007** (Clemens – research fellow at the Institute for Public International Law and International Relations at the Johannes Kepler University of Linz, International IP Protection for GMO – a Biotech Odyssey, Columbia Science and Technology Law Review, p. Lexis-Nexis)

3.1.2. The persuasiveness of pro-harmonization arguments in the GMO context The above alleged disadvantages are, in the case of IPR harmonization for GMOs, arguably almost negligible. Furthermore, the disadvantages that do exist are principally, at least to some extent offset by "dynamic" advantages. Three main benefits will be identified here, n162 which are particularly significant with regard to GMOs. First, stronger IPRs provide more incentives for inventors, both locally and regionally. It is often argued that IP as an incentive for innovation does not work in the developing world, as these countries simply lack the "stock of local inventors." n163 Unquestionably, R&D capacities are generally disproportionately larger in the developed world. But contrary to many other areas such as pharmaceutical research, the differences [\*179] are smaller and a significant amount of sophisticated agricultural research has been conducted locally, mainly within public institutions, since the end of World War II. n164 So far, little has been achieved with regard to GMOs, but local scientific competence, or at least a basis for such, seems to exist. n165 And the picture slowly begins to change. Alliances between local researchers and multinational firms are emerging, conducting research towards GM rice and wheat for the developing world. n166 A factor that would likely contribute to the further foundation of such collaborations is the role of IPRs in the creation and recognition of (intellectual) assets, which, again, is of particular relevance in the biotechnological sector. n167 Merges illustratively defines IPRs as the "crown jewels" n168 of many small firms. If entrepreneurs in the developing world would acquire these valuable assets, they would become more attractive partners, and more influential in a partnership. Cooperation would be the only way for international players to share in the profit from such local intellectual assets. The importance of local incentives for research on new plant varieties apt for the tropics is underlined by Abbott; n169 analogous conclusions for the creation of GMOs can arguably be drawn. Therefore, "it must be recognized that biotechnology . . . will not evolve without IPRs, unless there is much more public sector research than seems plausible . . . IP protection is thus a necessary component of a global trade regime in a high technology era;" n170 Investigating the implausibility of sufficiently large spending on public research is beyond the scope of this paper. Nevertheless, it is worth noting one convincing reason for this, elucidated by Scotchmer: IPR protection abroad encourages private investors to undertake research in products in order to earn profits also in foreign markets. As public sponsors are mainly concerned with domestic welfare, they spend too little overall. Therefore, "the expanded [IP] rights are a partial remedy to the fact that R&D spending is [\*180] suboptimal in a fragmented world." n171 Overall, the pace of progress would likely increase through private investment if incentives were raised and IPR-protected assets were created locally. n172 International IP protection is an essential prerequisite for sufficient innovation. This is even more so with regard to inventions with geographically confined applicability. Without the possibility of profits stemming from sales to other countries in that area, they will not be developed privately (to a satisfactory extent). Second, stronger IP standards can encourage foreign direct investment. While the general ability of stronger IPRs to attract additional FDI must be regarded as ambiguous, n173 some empirical studies suggest that IP regimes have this effect in "Mansfield"-sectors, n174 where the industry relies heavily on IPRs due to simple reproducibility and the necessity of large investments in product development. n175 Biotechnology can be classified as such. For existing products, weak IPR systems increase the risk of copying, reproduction or imitation. They also provide the IP owner with little ability to prevent a (potential) licensee from entering direct competition if he breaches the license. Therefore, should the respective firm aim to profit from a market with weak IPRs, it would prefer to establish local distributional systems for (irreproducible) end products, rather than invest in local production. FDI is thus to some extent replaced by exports. n176 As far as possible, this would also be the case for GMOs and derived products. As for future research, the fact that the specific conditions (e.g., climate, soil) for which a new GMO will be invented are only found in the developing world provides a significant comparative cost advantage. It would require large efforts to artificially recreate similar environments in temperate climates, particularly if field trials are taking place. If foreign investors want to profit from market opportunities for transgenic [\*181] organisms in developing markets, this fact encourages them to direct their investments to these regions, and pursue the necessary research locally. Third, effective IPRs can encourage technology transfer. Fink and Braga show that in order to reap benefits, even from radical biotechnological innovation, by marketing a downstream product, internationally active firms will rely on technology licensing with local firms, as these breakthrough inventions require adaptation to regional conditions. Adequate IPRs will arguably enforce such cooperation and increase the number of biotechnological research partnerships. n177 While other factors such as public support to strengthen local research capacities are at least equally important, effective patents must be regarded as essential. As shown above, firms will be reluctant to license valuable knowledge otherwise. All the arguments made so far indicate that strengthening GMO patents would increase innovative activity, and consequently, the number of patent applications and awarded patents. The resulting publication of highly sophisticated technological knowledge would disseminate this information. n178 As mentioned above, a fairly advanced research framework focusing on traditional agricultural biotechnology already exists in many of these countries. What is perhaps currently lacking is the knowledge necessary for the creation of useful GMOs. But as soon as more GMO patents are published, local scientists should be able to appropriate some of this knowledge and become more inventive in this field themselves, ultimately without their northern partners.

#### Strong agricultural research prevents food insecurity and armed conflict in failed states.

**Pinstrup-Anderson**, 3/2/**2006** (Per – professor at Cornell University, The Impact of Technological Change in Agriculture on Poverty and Armed Conflict, Charles Valentine Riley Memorial Lecture Series, p. <http://intlag.tamu.edu/images/riley06.pdf>)

According to Borlaug (2004), “we cannot build world peace on empty stomachs.” And, I would argue, we cannot fill stomachs without agricultural science and technology. There is no doubt that without the contributions of past agricultural research and technology, a large share of the current world population would not have survived. But does empty stomachs or, if you like, poverty, hunger, and food insecurity really contribute to instability? Intuitively, the answer is yes. Poverty, hunger and food insecurity, together with a very unequal distribution of incomes, land, and other material goods, generate anger, hopelessness, and a sense of unfairness and lack of social justice. This, in turn, provides a fertile ground for conflict which can be exploited by individuals and groups with a desire to cause conflict— whether it is armed rebellion, civil war, revolution, or national or international terrorism. This is not to say that poor and hungry people are terrorists. Rather, the point is that the existing human misery and perceived unfairness serve as a moral and political foundation for those who, for whatever reasons, wish to promote armed conflict and terrorism. People with nothing to lose may also be willing to be recruited to execute violent acts if they are convinced that it would contribute to justice for the population group of interest or it would serve a higher goal, including those promoted by religion and politics. Armed conflict is a major deterrent to economic development and poverty alleviation in many developing countries. Spillovers from these national conflicts contribute to conflicts in neighboring countries and international terrorism, particularly if they occur in failed states. Given the very high costs of armed conflict and terrorism in both economic and humanitarian terms, it is critically important to find ways to end current conflicts and reduce the probability of new ones. Unfortunately, the explanation of why armed conflicts occur has tended to focus on symptoms, such as religious or tribal differences or political rivalry, rather than the underlying causes. In fact, the understanding of the underlying causes is very limited and research that has been done on the matter has not resulted in anything close to a consensus. There is, for example, no agreement on whether poverty and related human misery contribute to armed conflict and terrorism. Since agricultural research and technology plays a critical role in reducing poverty and food insecurity, it may also play an important role in reducing armed conflicts and terrorism, if poverty— as I will argue in this paper—is an important contributor to conflict and terrorism. A simplified illustration of my hypothesis is shown in Figure 1.

#### Failed states escalate to nuclear conflict

**Dean**, May **1995** (Jonathan – Adviser on International Security Issues for the Union of Concerned Scientists, and former ambassador to East-West Arms Controls Negotiation, A Stronger UN Strengthens America, The Bulletin of Atomic Scientists, p. <http://www.thebulletin.org/issues/1995/ma95/ma95.dean.html>)

Experts throughout the world expect growing population pressures and increasing environmental stress to develop over the coming decades into intense, far-reaching social unrest and regional conflict. Economic development is the solution, however slow and uncertain it may be in coming. But the world also needs effective regional conflict-prevention procedures. Left on its own, regional violence can lead to confrontation and even war between the great powers, including the United States, as might occur, for example, in the event of conflict between Ukraine and Russia or between China and its neighbors. In the final analysis, unchecked regional violence and the fear of further violence will lead more states to develop nuclear weapons. In past decades, this process occurred in Israel, South Africa, India, Pakistan, Iraq, and presumably, in North Korea. A world with 20 or 30 nuclear weapon states would not only make a more effective global security system impossible, it would lead the present nuclear weapon states to modernize and increase their weapons-and it would markedly increase the vulnerability of the United States to direct attack. Instead of shrugging at human fallibility, accepting war as inevitable, and reacting after it happens, U.S. policy should aim at establishing an international peacekeeping system that can head off an increasing number of conflicts.

#### Biotech innovations prevent multiple scenarios for extinction.

**Trewavas**, 6/5/**2000** (Anthony – Institute of Cell and Molecular Biology at the University of Edinburgh, GM is the Best Option We Have, AgBioWorld, p. <http://www.agbioworld.org/biotech-info/articles/biotech-art/best_option.html>)

But these are foreign examples; global warming is the problem that requires the UK to develop GM technology. 1998 was the warmest year in the last one thousand years. Many think global warming will simply lead to a wetter climate and be benign. I do not. Excess rainfall in northern seas has been predicted to halt the Gulf Stream. In this situation, average UK temperatures would fall by 5 degrees centigrade and give us Moscow-like winters. There are already worrying signs of salinity changes in the deep oceans. Agriculture would be seriously damaged and necessitate the rapid development of new crop varieties to secure our food supply. We would not have much warning. Recent detailed analyses of arctic ice cores has shown that the climate can switch between stable states in fractions of a decade. Even if the climate is only wetter and warmer new crop pests and rampant disease will be the consequence. GM technology can enable new crops to be constructed in months and to be in the fields within a few years. This is the unique benefit GM offers. The UK populace needs to much more positive about GM or we may pay a very heavy price. In 535A.D. a volcano near the present Krakatoa exploded with the force of 200 million Hiroshima A bombs. The dense cloud of dust so reduced the intensity of the sun that for at least two years thereafter, summer turned to winter and crops here and elsewhere in the Northern hemisphere failed completely. The population survived by hunting a rapidly vanishing population of edible animals. The after-effects continued for a decade and human history was changed irreversibly. But the planet recovered. Such examples of benign nature's wisdom, in full flood as it were, dwarf and make miniscule the tiny modifications we make upon our environment. There are apparently 100 such volcanoes round the world that could at any time unleash forces as great. And even smaller volcanic explosions change our climate and can easily threaten the security of our food supply. Our hold on this planet is tenuous. In the present day an equivalent 535A.D. explosion would destroy much of our civilisation. Only those with agricultural technology sufficiently advanced would have a chance at survival. Colliding asteroids are another problem that requires us to be forward-looking accepting that technological advance may be the only buffer between us and annihilation.

#### *Subpoint B* – Disease

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

**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.

#### A strong IPR regime solves disease in three ways –

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

**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**, 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. n122 Patent 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. n126 A pharmaceutical company may obtain a trademark on the color or shape of pills as well as brand names, designs, and symbols. n127 This 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. n130 This 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**, 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). n4 TRIPS 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. n10 To avoid this problem, the WTO established rules for reciprocal [\*139] lowering of trade barriers. n11 In 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**, 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 risks extinction.

**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.

#### TB spread risks extinction.

**Kalombo 2007** (Lonji – CSIR senior researcher and PhD candidate in applied science/chemical engineering at the University of Pretoria, CSIR researcher Lonji Kalombo in the fight against TB, p. <http://www.csir.co.za/researcher_profiles/LonjiKalombo.html>)

According to Kalombo, the dreaded TB is a real threat for humanity. "TB kills someone every 20 seconds - more than 2 million each year, according to the World Health Organization (WHO)", he says. In addition, the deadly combination of HIV/Aids and TB complicates the management of the disease. Being an airborne disease, the Mycobacterium tuberculosis (M. tuberculosis) causative agent of the pandemic easily gets entry into the body through airways. This explains why more than two billion people worldwide (one third of the population) are infected with TB at a dormant stage until external factors such as malnutrition, diabetes and HIV trigger its activity by compromising the immune system. This causes bacteria to enter and activate clinical symptoms of the disease. According to WHO, more than eight million people develop active TB annually. "HIV/Aids not only renders TB more lethal, it also complicates it by generating extra-pulmonary TB (affecting the brain, spine and bones), which is not easy to combat as these bacteria are located in 'hide-aways', almost unreachable and hampering its early detection when using conventional diagnostics.

### Plan – 1AC

#### The United States Federal Government should repeal Section 211 of the Omnibus Appropriations Act of 1998.

### Plan – 1AC Final

#### The United States federal government should reduce restrictions on the registration or renewal of trademarks or trade names in connection with a business confiscated by the government of Cuba.

### Solvency – 1AC

#### Contention Three: Solvency

#### Repealing Section 211 restores U.S. IP credibility by setting a precedent against trademark abuse.

**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)

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. n268 Because 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.

#### 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 within trademark law, the United States' Cuban 'carve-out' upsets this balance.

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

# 2AC WTO

#### Cuba and the EU are criticizing US non-compliance

William New, The Intellectual Property Watch Monthly Reporter, Published on 26 March 2013, “United States Chided As TRIPS Scofflaw At WTO” http://www.ip-watch.org/2013/03/26/united-states-chided-as-trips-scofflaw-at-wto/

The lack of any substantive change by the United 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].”

#### Criticism is growing

Agence France-Presse June 25, 2013 French news agency “EU, Cuba spar with US over 'Havana Club' rum at WTO” http://www.globalpost.com/dispatch/news/afp/130625/eu-cuba-spar-us-over-havana-club-rum-at-wto

The European Union and Cuba locked horns with the United States on Tuesday at the World 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.

#### Failure to take corrective actions threatens trademarks globally

Federal News Service March 3, 2010

REPRESENTATIVE JOHN CONYERS “Hearing of the House Judiciary Committee, Domestic and International Trademark Implications of Havana Club and Section 211 of the Omnibus Appropriations Act of 1999” LexisNexis

There are at least two measures introduced into the Congress in connection with this subject. One is by chairman of Ways and Means, Charles Rangel; the other is by Debbie Wasserman Schultz, formerly introduced previously by our former member, Mr. Wexler.¶ One method deals with the repeal of the law, the repeal of Section 211, and the other is one that attempts to modify the existing law.¶ You remember that Mr. Castro sold the Bacardi trademark to a French company, Pernod. The World Trade Organization, through its international property -- their court, in effect, held that the United States violated international rights. And so we're found to be in violation of international obligations, from one point of view.¶ The United States takes its treaty obligations, of course, seriously, and there has been agreement to take corrective action, and the question that brings us here is what corrective action we should take.¶ The European Union court, in effect, has held off taking any action on their part as they wait to determine what it is that we're going to do.¶ So I'm left with these further observations, and then I'll yield to Bob Goodlatte: The seizure of property by Castro was unjust, obviously, and no one should be able to profit from that wrongdoing. And what we are trying to focus on is how the Judiciary Committee should recommend to the House how we should move forward.¶ We have treaty obligations, and the one thing that hangs over all of our heads is the fact that if we don't uphold these obligations, there could be some grave implications of what will happen around the world with our own trademarks if we don't resolve this in a effective and fair manner.

#### Repeal solves WTO obligations and takes away pretext for Castro’s retaliation

Federal News Service March 3, 2010

MR. REINSCH “Hearing of the House Judiciary Committee, Domestic and International Trademark Implications of Havana Club and Section 211 of the Omnibus Appropriations Act of 1999” LexisNexis

Repeal of Section 211 would remedy the U.S. breach of obligations under the General Inter-American Convention for Trademarks and Commercial Protection as well as WTO rules, and remove any pretext for the Castro regime to retaliate against trademarks currently registered in Cuba by U.S. companies.¶ Repeal would ensure continued U.S. leadership on intellectual property issues by bringing the U.S. into compliance with all existing treaty obligations and by exemplifying high standards for intellectual property protection, including our commitment not to assign trademarks based on political criteria. It would also reaffirm that trademarks decisions properly are the responsibility of the Patent and Trademark Office and the courts.

#### Repeal is key to US WTO leadership

**Federal News Service** March 3, 20**10**

“Hearing of the House Judiciary Committee, Domestic and International Trademark Implications of Havana Club and Section 211 of the Omnibus Appropriations Act of 1999” LexisNexis

REP. COBLE: Mr. Orr, will the repeal of Section 211 enhance or diminish respect for intellectual property rights, in your opinion? MR. ORR: Congressman, I think it will enhance respect for intellectual property rights in two respects, because it will restore the full authority of the courts to sort out competing claims to intellectual rights, and important intellectual property rights. And frankly, once again, from the standpoint of the United States, it will reestablish our leadership in encouraging others to promote the stronger protection of intellectual property. Right now we are the laughingstock of the WTO membership. In Geneva there isn't a month that goes by in the dispute settlement body in which such paradigms of intellectual property protection like India and China and Brazil draw attention to the fact that we have not complied with our obligations and we have created, for narrow parochial purposes, an opening to protect the interests of one company over another. So yes, sir, I think repeal would certainly strengthen protection for intellectual property

#### **Failure to give the Havana Club trademark back to Cuba could lead to US withdrawal from the WTO and European trade war**

Dinan 2002 (Donald R. Dinan, Adjunct Professor Of Law, Georgetown University Law Center, Specializing in international trade law, intellectual property law, and litigation. Fordham International Law Journal “An Analysis of the United States-Cuba “Havana Club” Rum Case Before the World Trade Organization” http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1873&context=ilj 2002)

The United States-Cuba “Havana Club” trademark dispute has been one of the more contro-¶ versial and potentially divisive cases before the World Trade Organization (’WTO’) to date. In¶ that case, the European Union (’EU’) filed a complaint against the United States alleging that a¶ law which prohibited the registration and enforcement in the United States of a Cuban trademark,¶ ’Havana Club’ rum, which was licensed to the French company, Pernod-Ricard, S.A. (’Pernod-¶ Ricard’), was in violation of the WTO Agreement, which protected the intellectual property rights¶ of WTO Members and their nationals. The case intertwined enforcement of the U.S. Cuban em-¶ bargo; U.S. domestic politics, particularly in the state of Florida; U.S. national security concerns¶ with U.S. trade obligations under the WTO; and U.S. relations with the EU. Essentially, the EU¶ was asking the WTO to invalidate the U.S. law, which had been passed by the U.S. Congress to¶ implement the Cuban embargo and to protect the national security of the United States. If the¶ WTO rules that a country’s law violates a WTO Agreement, then that country has to change the¶ law, pay compensation, or suffer retaliation. An adverse ruling by the WTO could have had the¶ effect of nullifying the U.S. law and overturning the Federal Court of Appeals decision upholding¶ it. This would have caused serious repercussions in the United States and could have led to calls¶ for the United States withdrawal from the WTO, or at least to demands for fundamental changes to¶ the WTO’s powers. It also could have led to a trade war with the EU. This Article will analyze the¶ controversy before the U.S. courts and the WTO, and the structure of the WTO and its dispute set-¶ tlement system. In particular, the Article will review the decision of the U.S. Court of Appeals for¶ the Second Circuit, which upheld the U.S. law, and the ruling of the WTO Dispute Panel, which¶ upheld and struck down portions of that law. The Article will also review the decision of the WTO¶ Appellate Body, which affirmed the right of the United States not to enforce trademarks that had¶ been confiscated, while also ruling that the U.S. law was discriminatory in its effect on foreigners,¶ and thus, in violation of the WTO agreements. The Article will also discuss the political ramifica-¶ tions of the case for the United States, both internationally and domestically. The true importance¶ of the Havana Club case is that it shows the interplay between domestic politics, international pol-¶ itics, and international trade law. This Article will argue that intellectual property rights and their¶ international enforcement are dictated to a large degree by the interests of the intellectual property¶ right holders and by politics, rather than by the application of a normative system of law adopted¶ and applied on the basis of sound legal principles.

#### 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. n268 Because 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. n273 Because 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.

#### Continued use of section 211 by the US will jeopardize future trade and credibility

Alfaro 2008 (CARLOS ENRIQUE ALFARO, partner at Alfaro-abogados. “PANEL: PANEL # 4: INTELLECTUAL PROPERTY AND THE RULE OF LAW” Arizona Board of Regents Arizona Journal of International and Comparative Law. LexisNexis 2008)

DR. CARLOS ENRIQUE ALFARO: First of all, thank you very much for inviting me to be a part of this event. I would also like to thank LexisNexis for their effort to promote the rule of law within every country of the world. I apologize for preparing and giving my presentation in English even though I am a Latin American. I am going to talk about a very special case called the United States--Section 211 Omnibus Appropriations Act of 1998. n14 This case is important because it involves the United States, Cuba, the European Union, the World Trade Organization, and the Agreement on Trade-Related Aspects of Intellectual Property of 1985, or TRIPS. n15 TRIPS is important because it can trigger retaliatory measures and can be used as an excuse by other governments to violate existing IP regulations. What caught our attention about the Bacardi case was the fact that the United States is charged with violating the very same international trademark protections that were historically created to protect the United States from abuses of other less-developed countries in the 20th century. It has been claimed and disputed (in court cases and under the WTO-DSB) that Section 211 violates the Inter-American Convention of 1929 and the WTO Treaty of 1995 and provides both Cuba and the [\*376] European Union with the legal basis for denying protection to U.S. trademarks in their territories. First, it is important to clarify that despite the political hostility between the United States and Cuba, both countries have respected the intellectual property rights they helped establish at the Inter-American Convention. More than 400 American companies have registered close to 5000 trademarks in Cuba, such as McDonald's, Coca-Cola, Pepsi, and even Starbucks. This number is increasing as restrictions on sales to Cuba are expected to be lifted in the near future. On the other hand, Cuban trademarks have also been registered in the US Trade Office for many years without issue. But this situation can change with the Bacardi n16 case. As I said before, the legislation could set up a precedent that other countries can use to cancel trademarks or to interfere for political reasons with intellectual property rights. Arab countries could cancel trademark rights for companies friendly to Israel. Pakistan could do the same with countries friendly with India. Curiously enough, Brazil is presently studying a congressional bill that authorizes the president to temporarily apply sanctions to companies and citizens of any country against which the WTO has authorized Brazil to take retaliatory measures. Sanctions could remain in place until the offending country abides by the WTO's curative directives and become available to Brazil. Allow me to provide little of history about the Bacardi case. The conflict began when leaders in the Cuban revolution expropriated all company-owned property. The two companies that produced rum in Cuba were the Havana Club owned by the Arechabala family and Bacardi, owned by the Bacardi family. Both lost their companies and they went into exile in the United States. Although the Arechabala family kept its trademark for a while, they allowed it to expire in 1973 (even though renewal would have probably only cost them $ 25). When the Arechabala family lost their company in Cuba, they applied and obtained trademark rights in the United States in 1976. Later, they formed a joint venture with Pernod Ricard from France and founded the Havana Club Holding. They transferred the trademark rights to the holding company, and the joint venture eventually registered its trademark in 183 countries. Meanwhile, Bacardi transferred its distillery operations to Puerto Rico in order to secure tariff benefits on a territory that technically belonged to the United States. This move allowed the firm to maintain its brand name when it left Cuba. The Bacardi headquarters were then registered tax-free in Bermuda and [\*377] were later moved to Miami. In Miami, Bacardi became a very important company by establishing strong political connections. In the mid-90's, however, the sale of Havana Club through Cuba Export Pernod Ricard's venture exceeded sales of Bacardi in Europe, and Havana Club sales became a threat to the sales of Bacardi all over the world. Then, Bacardi began to sell Havana Club brand rum, which it produced in the Bahamas through a joint venture called Galleon, Bacardi & Co. Havana Club International sued Bacardi in the Southern District of New York and Bacardi temporarily stopped selling the Havana Club trademark in the United States. Bacardi then found the Arechabala family heirs in Spain and sought to form a joint venture or buy their trademarks or some kind of rights so that Bacardi could sell Havana Club rum in the United States. As a result of Bacardi's efforts, Jose Arechabala International was founded in Liechtenstein in 1997 and this new company sold Bacardi trademarks that the Arechabala family had long since relinquished. Less than one year after, by coincidence, Senator Forforia introduced Section 211 to prohibit Cuban nationals or their known Cuban successors in interest from protecting certain trademarks or trade names in the United States. Under Section 211, unless the original owners have explicitly consented, the US Patent and Trademark Office is prohibited from accepting or renewing registration applications (for trademarks, trade names, or commercial names) presented by Cuban nationals or their successors in interest who acquire the trademark or trade names from the Cuban government where the trademark or trade name had been used in connection with property confiscated without compensation on or after January 1st, 1959. Section 211 also prohibits US corporations from considering any false order or enforcing trademarks or claims of Cuban nationals or their successors in interest. Section 211 was challenged by the European community as being inconsistent with U.S. obligations under the Agreement on Trade-Related Aspects of Intellectual Property of 1985, or TRIPS. n17 A World Trade Organization panel rejected most of the EC's claims except in deciding that Section 211(a)(2) was inconsistent with Article 42 of the TRIPS Agreement. Both the European Union and the United States appealed the decision, and the appellate body of the WTO held that Section 211 was not inconsistent with Article 42 but was inconsistent with (1) the national treatment requirements of the TRIPS agreement and the Paris Convention as amended in 1967, and (2) the most favored nation requirements of the TRIPS agreement. Under articles 21 and 22 of the understanding on [\*378] the rules and procedures governing the settlement of disputes, the WTO member whose measure is found to be inconsistent with WTO obligation must inform the DSB of its intentions with regard to the implementation of the rulings and recommendations of the DSB. The implementation is to take place within a reasonable period. The WTO has since requested that the U.S. alter its legislation in accordance with the appellate ruling. In March 2002, the U.S. agreed to comply with the WTO requirements by January 2003. Since then, however, the U.S. has requested several extensions. The international treaty, international property rights, and international law give states the right of retaliation if violations continue. If the U.S. Congress does not in due time approve a law that modifies Section 211 and comply with the international tribunal decision, Cuba has the right to retaliate against U.S. trademarks in Cuba. Cuba could, for example, sell its version of U.S. trademarked photos in island stores. These photos could filter in other markets and could produce similar situations to the photographs that we saw recently in Brazil. Others feel that the Bacardi case and the U.S. delay in adopting the WTO recommendations could set the precedent for other countries to cancel trademarks or play politics with international law. Fortunately, Section 211 was inactive, and Cuba has not attempted to violate the intellectual property protection of the U.S. trademarks. It is waiting for the enactment of the U.S. law that will modify Section 211. However, if Section 211 is not amended, Cuba will likely retaliate and jeopardize the potentially profitable future trade between the U.S. and Cuba. Thank you.

#### WTO key to promote democracies, lower poverty, higher life expectancy, and FREEDOM!

Moore 2005 (Mike Moore, a former Prime Minister of New Zealand and WTO Director-General from 1999 to 2002. "Ten Years of the WTO: a success story of global governance." Internationale Politik und Gesellschaft 2 http://library.fes.de/pdf-files/id/ipg/02857.pdf 2005)

The Wto is at the center of the debate about democracy because of its successes, not its failures. More and more countries want to participate. More and more people recognize that the Wto matters. More actors – businesses, trade unions, church groups, environmentalists, development ngos – want the multilateral system to reflect their causes and their concerns. The wto is not a »global government«; but it is a key forum in which governments cooperate globally. It is not a »world democracy« –in the sense of being a government of the world’s people – but it is the most democratic international body in existence today. It provides an answer to perhaps the central political question of our time, concerning how to manage a globalizing world when democracy remains rooted in the nation-state. In a way, the wto – together with an expanding web of other global treaties and agreements – is more interesting than a new layer of government. From trade to the environment, human rights to war crimes, the world is moving towards rules, not power, towards persuasion, not coercion – a world of mutual respect, rights, and freedoms. Institutions for a »Free World« This looks like a brave new world, but its roots can be traced back over half a century. The generation that emerged from the devastation of the Second World war pledged »never again.« They dreamed of creating a new kind of global order based on common and universal values – of law, cooperation, shared prosperity, and individual rights. They launched the Marshall Plan, in which for the first time in modern history the victors rebuilt their former enemies – the opposite of what had happened under the ill-fated Treaty of Versailles. They created a constellation of international institutions that, half a century later, are the bedrock of our global order today: the un, the International Monetary Fund (imf), the World Bank, and the General Agreement on Tariffs and Trade (Gatt), now the Wto. This system was the embodiment of a revolutionary idea: that freedom – free democracies, free markets, the free co-existence of nations and peoples – was the surest guarantee of peace, and that a free world could, in turn, only be built on the foundations of the international rule of law. It is sometimes easy to forget – when even the Cold War is a fading memory – how spectacularly successful that idea has been. The United Nations Development Programme (undp) reminds us that poverty has been reduced more in the past 50 years than in the previous 500. Life expectancy in the developing world has risen by over 20 years, and living standards by 190 percent. Literacy is up 34 percent in China, 33 percent in India, 39 percent in Sub-Saharan Africa, and 41 percent in North Africa. In the first half of the 20th century, there were but a handful of democracies, and the future seemed a contest between the twin totalitarianisms of fascism and communism. By the century’s end, 120 of the 192 governments in the world were electoral democracies. Never before in human history have so many people enjoyed the freedom of the market-place and the ballot box.

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

The economist 3/16/2013 (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 round9. 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.

# 2AC IPR Leadership

#### Cuban retaliation possible

Federal News Service March 3, 2010

MR ESPER “Hearing of the House Judiciary Committee, Domestic and International Trademark Implications of Havana Club and Section 211 of the Omnibus Appropriations Act of 1999” LexisNexis

Section 211 also puts the United States in breach of its obligations under the General Inter-American Convention for Trademark and Commercial Protection, a reciprocal IP agreement signed in 1929 that governs trademark protection between the United States and Cuba to this day, and which gives Cuba the legal opportunity to withdraw the protections it currently provides U.S. trademarks. The Cuban government has threatened in the past to retaliate against American companies with interests in Cuba, jeopardizing trademark protection for over 5,000 U.S. marks currently registered in Cuba by more than 400 American companies.Few realize that the United States is the largest supplier of food and agricultural products to the Cuban people, with American companies exporting approximately $500 million in food and agricultural goods each year.

For U.S. companies exporting branded foods to the Cuban people, a threat by the Cuban government to retaliate over this issue remains a concern. Any retaliation would, of course, endanger their trademarks as well as the status of other U.S. brand-owners' marks currently registered in Cuba.

#### Cuba could retaliate at any time for the US refusal to give the Havana Club trademark back, costing the US millions

Haggman 8/30/2006 (Matthew Haggman, writer for McClatchy Newspapers, financial post: legal post; pg FP7. “Trademarks in Cuba in peril: Retaliation feared for U.S. refusal to accept rum brand” LexisNexis 8/30/2006)

Now some fear the recent U.S. refusal to renew the Havana Club rum trademark claimed by a Cuban joint venture and Bacardi's launch of Havana Club -- a brand it also claims -- has placed the delicate balance of respecting other nations' trademarks in jeopardy. The recent developments also raise the possibility of Cuban retaliation, experts say. Bacardi's fight with Cubaexport, a Cuban company that partnered with French liquor giant Pernod Ricard in 1993 to sell the rum around the world, has been simmering in U.S. courts, U.S. Congress and in the World Trade Organization for a decade. But the United States' recent decision to invalidate Cubaexport's Havana Club trademark registration really fanned the flames. "Our government has done a real injustice that will come back to bite a lot of other companies," said William Reinsch, president of the National Foreign Trade Council. The council, which is based in Washington, represents corporate members such as Microsoft, Wal-Mart, Caterpillar and General Motors. But Patricia Neal, a Bacardi spokeswoman, rejected the notion that the rum company's efforts endanger other companies' trademarks in Cuba. "All companies would fight to protect their brand," she said. On Aug. 3, the U.S. Patent and Trademark Office said the Havana Club trademark would be "cancelled/expired," although Cubaexport had filed its renewal application correctly with a US$500 fee and on time. The U.S. Patent Office refused to accept the renewal after J. Robert McBrien, the acting director of the Office of Foreign Assets Control, wrote the office had received guidance from the U.S. State Department "informing us that it would be inconsistent with U.S. policy." That decision stems from a provision called Section 211 that was inserted in a 1998 budget bill. Sometimes called the "Bacardi Bill," Section 211 has been criticized as a measure solely aimed at benefiting the rum giant. Now the recent Havana Club denial has raised concerns that Cuba could return the favour by cancelling U.S. trademark registrations based on the communist nation's own "policy" considerations. Cuba could, for instance, cancel the trademarks for Levi's jeans or Heinz ketchup and sell its version in island stores. Those products could filter into other markets, too, harming U.S. companies that have long sought to keep fakes off store shelves abroad, said the U.S. National Foreign Trade Council. Such a scenario could force U.S. companies to spend millions defending trademarks in many different countries and make the Cuba market ever more difficult to enter if it ultimately transitions into a market economy. And some think that day may be sooner rather than later due to leader Fidel Castro's shaky health. "Some day Cuba could say, `The heck with it, we will not honour any of these (U.S.) registrations, because you guys are not honoring ours,"' said Jesus Sanchelima, a Miami lawyer who has represented U.S. companies in trademark cases in Cuba. Cuba has threatened retaliation before. In 2001, in a heated moment during Cuba's long-standing dispute with Bacardi, Mr. Castro said he had given instructions to the Cuban rum industry to begin producing Bacardi. And he threatened that other U.S. brand names could be in jeopardy. "Here we can produce Palmolive, any toothpaste." There's no evidence that he made good on that threat but Cuba did briefly produce its own Bacardi rum after the revolution. "This decision (on the Havana Club renewal) invites retaliation by Cuba," said Mr. Reinsch. "We have been assuming that they were waiting to see the outcome of this case before doing anything. Now that there is an outcome, they will probably come to a decision."

#### Cuba retaliation for the Havana Club trademark could cause a steal of US trademarks hurtin business and future relations

Carter 6/17/1999 (Tom Carter, writer for The Washington Times, PART A; WORLD; GLOBAL TRADE & COMMERCE; Pg. A16 “Court ruling stirs battle over what goes in Cuba Libre; Castro may answer with own Coke” LexisNexis 6/17/1999)

Cuban President Fidel Castro has threatened to start making fake Coca-Cola in retaliation for a ruling in a U.S. federal court in April that gave rights to the name "Havana Club" rum to Bacardi Ltd. in the United States. The ruling, by federal district Judge Shira A. Scheindlin of Manhattan, threatens to undermine a $50 million joint venture communist Cuba has with the French liquor conglomerate Pernod Ricard S.A., which in true capitalist fashion made and sold more than 1 million cases of Havana Club rum around the world last year. Bacardi accuses Pernod of making ersatz Havana Club rum, and trading on a reputation and trademark stolen during the revolution by Cuba from a family now in exile. Its lawyers say, with the ruling in New York, they are "looking into" challenging Pernod over the Havana Club trademark in other countries. "How is this different from the rights of Jews whose property was confiscated by the Nazis?" said Doug Gibson, attorney for Bacardi Ltd., last week. "These are laws France has upheld for years." Mr. Castro, France and the European Union see the U.S. ruling as a violation of international trademark agreements. And Mr. Castro threatens chaos. "I hope no one complains if one day we begin to produce Coca-Cola," said Mr. Castro in a speech in May, where he addressed the dispute. "We might be able to make it better, and on the can we'll put: Cuban Coca-Cola." This kind of talk scares the legal briefs off American companies, 400 of which have trademarks registered in Cuba, in anticipation of the day when the United States and Cuba have better diplomatic and trade relations.

#### **Continued failure to repeal section 211 could cause not only Cuba but other countries to start stealing trademark rights – The US wont be able to criticize**

Farhadian 12 (Sarah L. Farhadian, J.D. candidate, Benjamin N. Cardozo School of Law (2013); Editor in Chief, Cardozo Arts & Ent. L.J. Vol. 31; B.A., magna cum laude, Brandeis University (2007). “NOTE: STEALING BACARDI'S THUNDER: WHY THE PATENT AND TRADEMARK OFFICE SHOULD STOP REGISTERING STOLEN TRADEMARKS NOW♦” Yeshiva University Cardozo Arts & Entertainment Law Journal LexisNexis 2012)

As a result of American courts' seemingly unwavering application of the extraterritoriality exception, some have suggested that the codification in Section 211 of the principle that the United States will not recognize the expropriation of property within its territory, at best is unnecessary, and at worst, gives ammunition for retaliation by foreign governments. n149 Those espousing the repeal of Section 211 further argue that the issue of expropriation as it relates to trademark rights in the United States should be kept in the courts. n150 However, these calls for repeal are premature, as Section 211 provides a much-needed rule of decision not only for federal courts, but also for the PTO.

#### Flexibility in IPR harmonization solves for limitations in developing countries – India and TRIPS proves

Kapczynski 09(Amy, Associate Professor of Law at Yale Law School, “Harmonization and Its Discontents: A Case Study of TRIPS Implementation in India’s Pharmaceutical Sector,” California Law Review, http://www.californialawreview.org/assets/pdfs/97-6/2KapczynskiFINAL.pdf)

Those who support upward harmonization argue that it will have positive effects on trade, foreign direct investment, and global innovation. 2 Opponents contend that such harmonization could ossify the imperfect IP system of the North and impede development. 3 The most acute criticisms of the trend have focused on the potential impact of TRIPS on health. Because TRIPS requires developing countries to provide patents on pharmaceuticals, it has the potential to limit the access of patients in those countries to less expensive generic versions of new medicines. The effects of the TRIPS Agreement, however, depend on empirical questions that have yet to receive much attention in the literature: Can TRIPS in fact oblige developing countries to “harmonize” their IP laws with those of developed countries? 4 Will the Agreement achieve the primary goal that most agree was set for it—to require developing countries to adopt IP regimes comparable to those in developed countries? 5 Conversely, how much flexibility does the legalistic framework of TRIPS offer developing countries, not only in theory but also in practice? 6 This is an opportune moment to address these questions because we are entering a new age of implementation in international IP law. TRIPS transition periods for developing countries have mostly expired, 7 new multilateral harmonization efforts have foundered, 8 and conversations have shifted toward topics of implementation and enforcement. 9 The refrain that TRIPS is a “harmonizing agreement” implies that the Agreement will bring the laws and practi ces of WTO members into substantial conformity with one another. There is, of course, room for skepticism. Some proponents of TRIPS suggest that develo ping countries will cheat by failing to enforce the Agreement or by ignoring its requirements. 10 Experts in international IP law have emphasized instead that TRIPS leaves significant “wiggle room” for developing countries, and that, if pressured, these countries may invoke its flexibilities to resist the Agreement’s objectives. 11 To date, the academic conversation about the harmonizing power of TRIPS has been largely theoretical, based on predicted effects and the formal flexibilities available under the Agreement. 12 This Article advances that literature by adopting an empirical case study approach, based on field research and interviews in one key location: the pharmaceutical sector in India. The location is well suited to an inquiry into the dynamics and limits of harmonization under TRIPS, for several reasons. It is in the domain of pharmaceuticals that the Agreement is arguably the most consequential and controversial. As we will see, India has exceptionally strong motivation and capacity to implement TRIPS in a fashion that responds to local needs. 13 Many developing countries, particularly the poorest ones, have adopted IP laws that are more restrictive than TRIPS requires. 14 India has instead mapped out an extraordinary array of TRIPS flexibilities, some of which are unknown elsewhere in the world. The primary aim of the Article is to contribute to the international IP literature by enriching our understanding of the nature and utility of TRIPS flexibilities, and of the potential for TR IPS to serve as a harmonizing force. It demonstrates, first, that TRIPS offers developing countries substantially more formal flexibility in the domain of pharmaceuticals than has commonly been recognized. To date, conversations ab out TRIPS flexibilities have focused largely on the mechanism of compulsory licensing. 15 I use the Indian example to detail several other important flexibilities that have received much less attention in the literature, including limits on patentable subject matter, expansive procedural opportunities to challenge patents, and restrictions on injunctive remedies. 16 Using these flexibilities, countries could facilitate substantial competition in the pharmaceutic al sector without the need to ever issue a compulsory license.

#### IPR harmonization key to the economy-competiveness, new technology, and growth Abbott 9/8/2005 [Alden F. Abbott-Associate Director for Policy and Coordination Bureau of Competition Federal Trade Commission, September 8, 2005, “The Harmonization of Intellectual Property Rights and Competition Policy: A Unified Approach to Economic Progress”, Before the APEC High-Level Symposium on IPR Xiamen, People’s Republic of China, http://www.ftc.gov/bc/international/docs/abbottipchina.pdf]

This symposium on intellectual property rights is very timely, as intellectual property has a critical role in furthering economic progress and the welfare of the world’s citizens. The reason is simple. Intellectual property typically is both a key input into and a byproduct of successful innovation, which is a principal factor in fostering a dynamic, growing economy. Innovation promotes consumer welfare and economic efficiency in a number of ways. It drives down costs through the development of more efficient production and distribution techniques. It stimulates economic growth by bringing to market new products desired by consumers and the business community. And it can limit the creation and exercise of market power by fostering the development of new technologies that permit new entrants to leapfrog the advantages and entry barriers enjoyed by entrenched dominant firms. Intellectual property, therefore, is a highly valued asset, and it has been granted substantial legal protection by the nations of the world. It is important that we preserve those protections. Intellectual property rights increasingly are implicated in standard setting and licensing arrangements. For example, standards that enable the interoperability of products or services, such as the telecommunications network or your mobile phone system, often incorporate multiple technologies protected by intellectual property rights, often held by more than one person or entity. The licensing of intellectual property rights may substantially influence the way in which new technologies are disseminated and, in turn, affect the introduction of new products and services in the marketplace. IPR licensing arrangements frequently are associated ith the introduction of standards. In short, standard-setting and IPR licensing policies may greatly affect the development of new goods and services, future innovation, and the competitiveness of markets.

* **Strong IPR’s increase innovation and economic development  
  Hassan, Yaqub, and Diepeveen** 12/20**09** [Emmanuel Hassan**-** Directorate General for Regional Policy at European Commission, Ohid Yaqub- Visiting Fellow at the University of Sussex Science and Technology Policy Research, Stephanie Diepeveen- Honorary Research Fellow at RAND Europe and PhD Candidate at [University of Cambridge](http://uk.linkedin.com/company/university-of-cambridge?trk=ppro_cprof), December 2009, “Intellectual Property and Developing Countries A review of the literature”, UK Intellectual Property Office and the UK Department for International Development, p. 14, http://www.ipo.gov.uk/ipresearch-ipdevelop-200912.pdf]

Commonly, FDI and trade are seen as key determinants for economic development and poverty reduction in developing countries. Inward FDI can generate important spillovers for developing economies, resulting in the upgrading of domestic innovative capacity, increased R&D employment, better training and support to education. For most developing countries, international trade allows them to acquire high value-added goods through importation that are necessary for economic development, but which are not produced domestically. In turn, exports allow developing countries to transform underutilised natural resources and surplus labour into foreign exchange, in order to pay for imports to support economic growth. Consequently, a central aim of the literature has been to examine how stronger IPRs in developing countries can give incentives to firms in developed countries to undertake cross-border investment in, and to export their goods to, these countries. Recalling the ambiguous relationship between IPRs and the individual strategies of single firms from a theoretical point of view, researchers have investigated empirically the effects of stronger IPRs on inward FDI in developing countries and exports from developed to developing countries. The empirical evidence suggests that stronger IPRs may affect positively the volume of FDI and exports, particularly in countries with strong technical absorptive capabilities where the risk of imitation is high. When such risk is weak, particularly in the poorest countries, firms in developed countries do not seem to be sensitive to the level of protection in developing countries. Using disaggregated data on FDI and trade, the empirical literature also shows that the stronger IPRs impact on the composition of FDI and trade. First, stronger IPRs seem to encourage FDI in production and R&D rather than in sales and distribution. Second – and more surprisingly – stronger IPRs do not have any effect on the exports of hightechnology products. There are at least two explanations for this somewhat surprising result. Many high-tech products are difficult to imitate, thereby international trade for these products is less sensitive to the level of protection than for other products. Furthermore, firms in developed countries may choose to distribute their high-tech products through FDI or licensing, instead of exporting them directly

#### Counterfeit pharmaceuticals hurts the world economy-harmonization of IPR’s solves Ferrill 4/1/2007 [Elizabeth D. Ferrill-lawyer who has appeared before the U.S. International Trade Commission (ITC), the U.S. Court of Appeals for the Federal Circuit, and the Patent Trial and Appeals Board of the U.S. Patent Trademark Office, April 4, 2007, “137 Clearing the Swamp for Intellectual Property Harmonization: Understanding and Appreciating the Barriers to Full TRIPS Compliance for Industrializing and Non-Industrialized Countries”, University of Baltimore Intellectual Property Law Journal, http://www.finnegan.com/resources/articles/articlesdetail.aspx?news=1357e3dd-4e50-4eb7-839b-473a8f658b29]

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,12which 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.13This 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. One oft-stated explanation is that the world is full of thieves and freeloaders who violate IP laws because copying is cheaper than creating new content.14 This theory maintains that not only do industrializing countries engage in unfair trade,15 but they are morally bankrupt as well because they do not adhere to the rule of law.16Perhaps this is an overly simplistic answer. Another possible explanation is that countries which harbor pirates do not understand their obligations under TRIPS, and perhaps more education on enforcement would lead to enhanced enforcement strategies. However, the U.S. Trade Representative (USTR) provides extensive technical assistance and training on how to implement the TRIPS agreement **\*140** to developing countries who are trade partners with the U.S. This assistance includes education about the provisions of the treaty as well as assistance in drafting enforcement laws.17 But the USTR maintains the "Priority Watch List" or "Watch List," listing those countries that engage in "onerous and egregious" acts which violate TRIPS and are not engaged in "good faith negotiations" to address the problem.18 As the 2006 report lists thirteen countries on the Priority Watch List and thirty-four on the Watch List, the assistance of the USTR alone does not appear to be solving the problem of noncompliance.19 A third explanation is that the barriers to compliance with TRIPs are more complicated than they first appear. One commentator, Robert Baldwin, has likened trade liberalization to draining a swamp: "as successful pumping efforts leads to a fall in the water level (tariffs), they also reveal rocks, stumps and other obstacles (non-tariff barriers) that lie below the surface."20 By standardizing a minimum level of IP protection and enforcement, TRIPS has eliminated much of the differences between IP laws throughout the world, i.e. "draining the water." However, other non-tariff barriers now seem to be impeding the progress of compliance with TRIPS and eventual IP harmonization. Thus, while the WTO can regulate the tariffs and standardize some aspects of IP, the rocks and stumps remain; ready to complicate full compliance with TRIPS. One source of these non-tariff barriers may be the fact that the Western concept of intellectual property is simply incompatible with how some countries view intellectual property.21 Consequently, the transition to TRIPS is particularly hard because it requires not only writing new laws, but also a shift in the world's view of intellectual property.22 For many **\*141** industrializing23 and nonindustrialized countries, the implementation of TRIPS has revealed a host of substantial barriers which may explain the rampant non-compliance. This paper will examine the factors influencing industrializing and nonindustrialized countries' view of IP which contributed to the non-tariff barriers in the first place. While these countries can do little to stop the migration to IP harmonization, a better understanding of the origin of these barriers could facilitate a smoother transition to true compliance with TRIPS. This paper will begin with a brief background on TRIPS, the problem of piracy and counterfeiting, and the foundation of Western ideas of intellectual property, upon which TRIPS is based. Next, using examples from around the world, it will discuss the influential factors which shaped the non-tariff barriers including: type of government, the influence of religion, and the effect of regional problems. Finally, the paper will close with a discussion of methods to overcome the non-tariff barriers towards full compliance with TRIPS in an effort to achieve worldwide IP harmonization.

#### IPRs incentivizes foreign investment in developing countries-key to economic development Chun 11 [Dongwook Chun- Cornell Law School Inter-University Graduate, 2011, “Patent Law Harmonization In The Age Of Globalization: The Necessity And Strategy For A Pragmatic Outcome”, . Cornell Law School Inter-University Graduate Student Conference Papers, p. 4, http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1074&context=lps\_clacp]

Nowadays, it is apparent that most countries and companies consider patents a very important tool for economic development. For example, international patent applications have increased by 75% in the last 10 years. 13 In this situation, a fragmented patent system fails to provide effective and efficient protection, and the resulting dissatisfaction provides the basis for discussing international patent harmonization. Accordingly, developed countries have initiated international discussions to harmonize several issues of domestic discretion such as the technical character of inventions, the definition of prior art and exclusions from patentability. 14 They also argue that only by adopting strong intellectual property protection can developing countries hope to attract foreign direct investment essential to their economic development. 15 Many developing countries, however, are strongly against this idea, claiming that harmonization would only benefit a few developed countries at the expense of the developing countries. For example, one research points out that the United States was the major beneficiary of the TRIPS agreement, whereas developing countries were major contributors. 16 Moreover, they claim that it is still arguable whether a strong intellectual property regime would actually lead to foreign direct investment. 17 For these reasons, the 1950s saw a great number of newly independent developing countries fighting to free themselves from the bondage of the Paris Conventions to which their colonial masters had committed them. 18 Although membership of the conventions may have served the economic interests of the colonialists, the newly independent nations did not believe that it served theirs. 19 To confront these conflicts, it is necessary to scrutinize the economic aspect of patent harmonization from a global economy’s points of view. Based on this analysis, it is imperative to review the necessity of harmonization, and create a strategy that realizes harmonization with minimum costs and conflicts. In this article, we will discuss the economic aspects of patents in the international arena, and focus on the strategies adopted by the patent system in the globalizing world economy. Through this research, it is possible to find rationales and measures to implement the harmonization of patent systems between countries with different patent laws. 20

#### US IPRs are key to 40% of US GDP

Glenn D. Sacks and Steven L. Henning, 02/05/2013 Glen is a CPA with over 30 years of experience and Steven is a CPA with over 20 years of experience “REAPING THE FULL BENEFITS OF INTELLECTUAL PROPERTY” http://www.markspaneth.com/publications/reaping-the-full-benefits-of-intellectual-property

Most Americans are unaware that intellectual property-intensive businesses account for nearly $6 trillion in value added, roughly equivalent to 40 percent of the U.S. GDP and greater than the GDP of any other nation in the world other than China. The opportunities contained in intellectual property (“IP”) resources, including patents, have led our businesses to shift focus from land and material resources to IP resources. Make no mistake: IP is a key driver of our economy. IP-intensive industries directly and indirectly support 40 million jobs, or nearly 30 percent of all U.S. jobs. These are jobs that pay well. According to the U.S. Department of Commerce, the average weekly wage in IP-intensive industries overall is 42 percent higher than in other industries, including 73 percent for patent industry jobs and 77 percent for copyright industry jobs. Moreover, IP is critical to our balance of trade, as goods from IP-intensive industries account for 60 percent of all U.S. exports.

#### Strong IPR enforcement is key to attracting biotech investment

ROY ZWAHLEN 05/29/2013 Manager of Intellectual Property and Technology Transfer policy at Biotechnology Industry Organization “IP in Latin America: Growing Recognition of the Importance of IP to Innovation” http://www.biotech-now.org/public-policy/patently-biotech/2013/05/ip-in-latin-america-growing-recognition-of-the-importance-of-ip-to-innovation-2#

The Inter-American Dialogue’s daily Latin America Advisor recently asked the question “How seriously do Latin American countries protect IP rights?” The editors asked various stakeholders about the U.S. Trade Representative’s Special 301 Report and its evaluation of Latin America’s protection of IP rights. BIO’s Director for International Affairs, Meredith Fensom, commented on the growth of the innovative biotechnology sectors in Latin America and the critical role intellectual property plays. ”The presence of more than 60 countries during BIO’s recent International Convention indicates a growing recognition that the biotechnology industry has a bright future. Countries throughout the Americas have identified the development of their innovative biotechnology sectors as a national priority. The policy environment in each country is of paramount importance as biotechnology research and development requires significant investments of time and financial resources and countries are competing to attract this investment. Effective protection and enforcement of intellectual property rights are essential ingredients.

#### IPRs are key to the economy – support key industries

Tom Bird October 8, 2012,an intern for the International Relations Task Force. “Intellectual Property: The Innovation Economy’s Engine for Growth and Job Creation” http://www.americanlegislator.org/intellectual-property-the-innovation-economys-engine-for-growth-and-job-creation/

IP also creates high-paying American jobs! A recent GIPC study “IP Creates Jobs for America” has a state by state breakdown of what IP means in your state with state-specific statistics illustrating just how significant IP’s effects are from coast to coast. The study results indicate that wages in IP-intensive industries are 30% higher than similar jobs in non-IP industries. These jobs are found in numerous business sectors, including fashion, automotive, medical, energy, entertainment, electronics, biotech, consumer goods, and green technologies and account for 55 million U.S. jobs and over 45% of total employment.

#### IPRs are key to the economy and innovation

Rep. Marsha Blackburn (R-Tenn.) 07/09/13 “White House must strengthen foundation of US innovation” http://thehill.com/special-reports/innovation-a-intellectual-property-july-2013/309999-white-house-must-strengthen-foundation-of-us-innovation-

Last year the U.S. Chamber of Commerce released a report highlighting how U.S. industries reliant on intellectual property supported more than 55 million jobs, contributed to $5.8 trillion in economic output and accounted for nearly 74 percent of total exports. These figures prove what should be obvious: Strong intellectual property (IP) rights are essential to expanding economic growth and fostering innovation. Without strong IP protections, innovation will diminish and so will America’s economic greatness. Our future economic success and global competitiveness will depend on whether we adequately protect private property rights and the rule of law in the new virtual economy. America has always been a society that rewards good ideas and protects property rights in a free-market capitalist system, not one premised on permission-less innovation where others can free-ride or take someone’s creation without even asking.

#### IPRs are key to agricultural development

Douglas Nelson 4/19/13 Senior Advisor for Trade, Intellectual Property and Strategic Issues at CropLife America “CropLife America: Intellectual Property Rights Essential to Agriculture” http://www.farmchemicalsinternational.com/article/33903/croplife-america-intellectual-property-rights-essential-to-agriculture

As the agricultural sector introduces new crop protection technologies and innovations across the globe, it is vital to protect intellectual property rights (IPR) that encourage private-sector investment in R&D and advance modern agriculture. CropLife America (CLA), the trade association representing the manufacturers, formulators and distributors of crop protection products in the U.S., is actively involved in this issue alongside the World Trade Organization (WTO), trade partners and industry stakeholders. The protection and promotion of IPR ensures that the manufacturers and developers of valuable agricultural products can create new, innovative and efficacious inputs that are protected from counterfeit and unfair disclosure. Protection of the regulatory data that innovators are required to submit to national regulatory authorities has led to significant agricultural benefits, including: Productivity of corn, wheat, soybean and other crops that has grown exponentially over the past several decades with the development of fertilizers and new herbicides.

#### IPRs are key to agriculture and the environment

Catherine Saez, 18 February 2013 Intellectual Property Watch Reporter “Monsanto, Myriad: Two US Legal Cases Shaking Biotech Industries” http://www.ip-watch.org/2013/02/18/monsanto-myriad-two-us-legal-cases-shaking-biotechnology-industries/

Agriculture is at the cutting edge of technology, said Gary Baise, counsel of record for the American Soybean Association, which filed an amicus curiae brief[pdf], along with some other national associations, such as corn, wheat and sugarbeet, asking that the judgment of the US Court of Appeal for the Federal Circuit be upheld. The Court of Appeal ruled in favour of Monsanto. “Plant biotechnology is the future of American agriculture,” the amicus curiae brief said. IP is key to the industry and has generated major advances, said Baise, contributing to cost reduction, but also helping protect the environment, and reducing pollution and climate change. He said farmers were prepared to pay more for patented seeds as since the introduction of biotechnology, the productivity “has risen enormously,” and farmland value has “skyrocketed in the US.”

#### IPRs are key to climate change innovations

International Renewable Energy Agency, Agency implementing climate change initiatives and facilitating meetings between countries since 2008“Intellectual property rights and renewable energy technologies deployment” http://www.irena.org/menu/index.aspx?mnu=Subcat&PriMenuID=30&CatID=79&SubcatID=254

Innovation is essential for the accelerated deployment of renewable energy technologies. Protection of intellectual property rights (IPR) is a valuable instrument to promote innovation. IPR refers broadly to the ownership of intellectual findings, including industrial, scientific, literary and artistic work. Patents, which are part of IPR, provide ownership rights for technology inventions for a certain time period and within a certain jurisdiction. By protecting technological development and market introductions, patents stimulate further innovation. Patents are also a rich source of information for technological inventions and innovation, which can be used to assess developmental trends and future directions of technologies.

#### IPRs are key to medicinal innovation

Paul Howard staff writer for medical progress today May 28, 2013 “Ranbaxy, intellectual property rights, and access to quality medicines.” http://www.medicalprogresstoday.com/intellectual-property-rights-and-innovation/

The cost and time required to develop new medicine can run into the billions of dollars and take over a decade. To protect their enormous sunk costs, pharmaceutical and biotech companies must be confident that competitors will not be able to launch copycat or generic versions of those medicines before they have been able to recoup their costs and make a profit. Intellectual property rights – limited terms of patent protection during which companies can market their products without competition – have been instituted to encourage investment in R&D intensive fields like drug development. MPT will discuss and explain the linkage between patents and other forms of intellectual property and incentives for medical innovation, and show how the “virtuous cycle” of patent expiration and innovation encourages companies to invest in new therapies while ensuring that consumers benefit from the wide availability of low cost generics.

#### Strong IPRs are a prerequisite to getting international pharmaceutical investment in developing countries and starting domestic investment

Tim Wilsdon Et Al. 12, Vice President to CRA (Charles River Associates , an international investment consulting firm )Jim Attridge Independent Pharmaceuticals Professional , Eva Fiz Consulting Associate at Charles River Associates, Satomi Ginoza Associate at Charles River Associates. “Policies that encourage innovation in middle-income countries" http://www.ifpma.org/fileadmin/content/Publication/2012/CRA\_Policies\_that\_encourage\_innovation\_in\_middle-income\_countries\_Web.pdf

International companies would only invest in research in locations with sufficiently ¶ strong IP. This is one of the reasons that China has been relatively more successful at ¶ attracting inward investment in research (relative to India—where product patents ¶ were only recognised in 2005 and whose IP regime is perceived as less strong by international companies). For domestic innovators more heavily reliant on rewards from ¶ their domestic marketplace, the importance of IP is even greater. ¶ To a lesser extent the decision regarding the location of clinical trials depends on the ¶ protection during the trial process. The overall IP protection plays a role in prioritizing clinical trial sites, since all else equal companies would rather conduct trials in ¶ countries that would honour their patents. ¶ Therefore, based on our interviews, if the objective is to develop an innovative biopharmaceutical industry (either by domestic companies or investment by international companies), intellectual property is a necessary building block.

#### IPRs are key to innovation which is a prerequisite to cheap generics

PhRma N.D. PhRMA, the Pharmaceutical Research and Manufacturers of America, represents the country’s leading biopharmaceutical researchers and biotechnology companies. Intellectual Property Protections Are Vital to Continuing Innovation in the Biopharmaceutical Industry” http://www.phrma.org/innovation/intellectual-property

Drug research and development leads to the discovery of tomorrow’s life-changing and life-saving new medicines. Biopharmaceutical intellectual property (IP) protections, such as patents and data protection, provide the incentives that spur research and development. They help ensure that the innovative biopharmaceutical companies that have invested in life-saving medicines have an opportunity to justify their investments. Intellectual property protections also help companies secure the resources for future investments in research, giving hope to patients who await tomorrow’s innovative medicines. The existing framework of intellectual property policies—including the recently amended patent law and the inclusion of 12 years of data protection for innovative biologics in the health reform law—are necessary to support future R&D investment . These policies provide incentives that spur biopharmaceutical innovation, leading to new treatments and eventually generics—and biosimilars.

#### IPR harmonization is key to life-saving drugs in developing countries-medicines for HIV and cancer prove Rovira 04 [Juan Rovira-MD in Ophthalmology, 2004, "Trade Agreements, Intellectual Property, and the Role of the World Bank in Improving Access to Medicines in Developing Countries," Yale Journal of Health Policy, Law, and Ethics: Vol. 4: Iss. 2, Article 12. http://digitalcommons.law.yale.edu/yjhple/vol4/iss2/12/?utm\_source=digitalcommons.law.yale.edu%2Fyjhple%2Fvol4%2Fiss2%2F12&utm\_medium=PDF&utm\_campaign=PDFCoverPages]

The price of medicines is one of the main barriers to treatment access for many poor people in developing countries due to their low purchasing power and the limited availability of public or private insurance in poor countries. It has been estimated that between fifty percent and ninety percent of pharmaceutical expenditures in developing countries are paid for out-of-pocket. In developed countries, on the other hand, over seventy percent of such expenditures are funded through insurance or other reimbursement schemes. Patents and other mechanisms of market exclusivity facilitate the acutely problematic pricing of new drugs: Intellectual property rights (IPR) and regulatory protections grant a temporary monopoly to a rightholder, thereby allowing prices to be set well above marginal and direct manufacturing costs. Although the majority of essential drugs - as defined by the World Health Organization's essential drug list - are off-patent, there are some important and even life-saving drugs (such as those for HIV/AIDS and cancer) and vaccines that are patent-protected. In recent years, research intensive industries and the developed countries in which they are located have made a strong push for international IPR harmonization. Harmonization of IPR amounts to pressures for developing countries to raise their IPR protection to developed-country levels. This trend has taken place in the last decade in the multilateral context of the World Trade Organization's (WTO) Trade- Related Aspects of Intellectual Property Rights (TRIPS) Agreement. In recent years, developed countries have also pushed to increase patent protection beyond the levels required by TRIPS - known as "TRIPS-plus" provisions - when negotiating bilateral free trade agreements (FTAs).

#### IPR benefits developing countries – facilitates both absorption of foreign technology and domestic innovation

Hassan et al 9 (EMMANUEL HASSAN - Directorate General for Regional Policy at European Commission, OHID YAQUB - visiting fellow at SPRU, University of Sussex, STEPHANIE DIEPEVEEN - Analyst at RAND Europe, December 2009, “Intellectual Property and Developing Countries: A review of the literature,” Rand Europe, http://www.ipo.gov.uk/ipresearch-ipdevelop-200912.pdf)

The empirical literature has examined the effects of IPRs on technological progress through these two main channels: technology absorption (i.e. international technology transfer) and technology creation (i.e. domestic innovation). The empirical evidence suggests that stronger IPRs in developing countries may encourage international technology transfer through market-based channels, 1 particularly licensing, at least in countries with strong technical absorptive capacities. In the context of strong IPRs, firms in developed countries are more inclined to transfer their technologies to developing countries through licensing rather than through exports and FDI, since such rights allow them to retain control over their technologies. In the presence of weak IPRs, multinationals in developed countries seem to prefer to retain control over their technologies through intra-firm trade with their foreign affiliates in developing countries or FDI. Nevertheless, the historical evidence shows that many developing countries have benefited from international technology transfer through non-market-based channels, especially reverse engineering and imitation, thanks to weak IPR regimes. The empirical literature also shows that stronger IPRs can encourage domestic innovation, at least in emerging industrialised economies. Nevertheless, the empirical literature suggests the existence of a non-linear function (i.e. a U-shaped curve) between IPRs and economic development, that initially falls as income rises, then increases after that.

#### IPR harmonization incentivizes foreign investment in developing countries

Hassan et al 9 (EMMANUEL HASSAN - Directorate General for Regional Policy at European Commission, OHID YAQUB - visiting fellow at SPRU, University of Sussex, STEPHANIE DIEPEVEEN - Analyst at RAND Europe, December 2009, “Intellectual Property and Developing Countries: A review of the literature,” Rand Europe, http://www.ipo.gov.uk/ipresearch-ipdevelop-200912.pdf)

Stronger intellectual property righ ts can create ownership advantages. Investment by firms is more likely when host countries have strong IP protection, as this protection reduces the risks of imitation and leads to a relatively larger net demand for protected products (Primo Braga and Fink, 1998a ). Therefore, IPRs po sitively affect the volume of FDI by enabling foreign firms to compete effectively with indigenous firms that possess ownership advantages (Smarzynska Javorcik, 2004). Stronger intellectual property righ ts can create location advantages. Not only do IPRs positively affect the volume of FDI, but they also influence where multinationals decide to locate that investment. IPRs are territorial in nature and hence differ across national boundaries. In this regard, stronger IPRs in some developing countries can be a location advantage that will positively affect multinationals’ decisions (Primo Braga and Fink, 1998a). On the contrary, developing countries characterised by weak IPRs will be less attractive locations for foreign firms. However, in the context of TRIPS, it is reasonable to think that the trend toward harmonisation of IPRs within TRIPS would offset such location advantages. In this sense, countries with weaker protection would become more attractive as they strengthen their IPRs, and the relative attractiveness of those with strong IPRs already in existence would fall (Maskus, 2004). Stronger intellectual property rights can incr ease quality of foreign direct investment. IPRs affect the composition of FDI. Strong protection may encourage FDI in high technology sectors, where such rights play an important role. In addition, it may shift the focus of FDI projects from distribution to manufacturing (Smarzynska Javorcik, 2004).

#### Trademark standoff damages U.S. and Cuban economies-leads to war

**Taylor 04** [Emily Taylor-Northwestern University School of Law and B.A. Duke University,2004**, “**Havana Club Saga: Threatening More than Just "Cuba Coke", Northwestern Journal of International Law & Business, LexisNexis]

Allowing Cuba to stop recognizing U.S. trademarks could have negative repercussions for American business as well as for consumers in Cuba and possibly elsewhere. First, American companies doing business in Cuba could be economically harmed by the inability to enforce their exclusive rights to trademarked materials. Companies using well-known brand names such as "Coca-Cola(R), Aunt Jemima(R), Huggies(R), Weight Watchers(R), Kool-Aid(R), Reebok(R), Nike(R), and United Airlines(R)" all operate in Cuba and rely upon trademarked materials. n118 If Cuba fails to recognize these trademarks, counterfeit products could be manufactured and marketed in Cuba free from litigation. n119 In addition, the removal of trademark protections could result in harm to consumers. n120 Counterfeit products of sub-standard quality, including [\*528] "drugs . . . alcohol, construction materials, and components for cars, airplanes, and even space shuttles," could pose substantial risks to consumers. n121 Finally, freeing Cuban companies to take advantage of U.S. trademarked materials could provide an economic benefit to the Cuban government. n122 This would not only be contrary to the goals of the Cuban embargo with regard to economic isolation of Cuba, but would also be a political victory for Castro, contrary to the embargo's goal of destabilizing his totalitarian regime. n123 D. Future Effects in Cuba In addition to these immediate effects, allowing a trademark standoff with Cuba to proceed into a war of retaliation could be detrimental to American interests in the future of Cuba. Although the international community has agreed with the United States on the need for a democratic government in Cuba and has condemned the human rights violations of the current regime, many countries continue to develop trade relations with Cuba. n124 These countries have adopted a policy of engagement instead of isolation in dealing with Cuba. n125 The United States "remains the only developed country that prohibits its corporations from investing in Cuba." n126 The fact that foreign investors are already establishing themselves in Cuba, combined with the refusal to respect American trademarks could make it difficult for American corporations to invest in a post-embargo Cuba. n127 [\*529] E. International Effects Another international effect of U.S. non-compliance is the detriment it will have on efforts to harmonize intellectual property protections worldwide. n139 The United States has traditionally been a "staunch supporter" of harmonizing intellectual property protections, n140 especially in light of the volume of globalized marketing and trading that affects the U.S. economy. n141 Through harmonization of the processes and protections of intellectual property, businesses can more easily engage in such transnational transactions. Refusal to comply with its obligations under the TRIPS Agreement would represent a break in U.S. policy of working toward harmonization; the resulting retaliation could discard the progress achieved through the TRIPS Agreement. Finally, the U.S.'s willingness to renege on its obligations under the TRIPS Agreement sends a mixed message to developing countries which often have little incentive to apply the protections to intellectual property mandated by developed countries. n142 If the rules of the agreement are not followed by one if its strongest supporters, less enthusiastic countries may decide that they are not bound by the agreement either.

Intellectual property rights are key to the economy  
Bradica 02 [Joseph Bradica-lawyer , 2002, “HAVANA CLUB RUM: ONE STEP BACK FOR U.S. INTERNATIONAL TRADEMARK POLICY”, Temple International and Comparative Law Journal, LexisNeixs]

#### In today's global economy, where ideas and knowledge are an increasingly important part of trade, the protection and enforcement of intellectual property rights has taken center stage. n7 Intellectual property rights are the rights given to persons over the creations of their minds. n8 They usually give the creator an exclusive right over the use of one's creation for a certain period of time. n9 Copyrights for paintings, films and books; patents for inventions; and trademarks for product logos and brand names provide the protection necessary to foster continuing exploration into science, design, and technology. n10 This exploration has provided new markets for consumers and producers, not just in the next town, but in the next continent - thanks to a global economy. Although today's booming global economy has been widely accepted and embraced as redefining the way business is conducted, it has also produced unmistakable tension every time the innovations in trade outgrow the innovations in law. n11 For example, international trade and global marketing are vital to the success of any company seeking to obtain or maintain an economic and competitive advantage in today's global marketplace. n12 However, the lack of uniform protection for intellectual property rights limits the effectiveness of such trading and marketing by creating barriers to trade, unfair [\*149] competition, and unprecedented dispute resolution decisions. n13 These indirect effects were the source of growing concern in international economic relations, as intellectual property became more important in the business community. n14 This concern culminated in the implementation of the TRIPS Agreement by members of the WTO. n15

**Key to economy-U.S. loses billions of dollars due to inadequate property rights**Macaw 2K [Misha Gregory Macaw-trustees of Boston University, 2000, “THE NEW RUM WAR: HAVANA CLUB AS A THREAT TO THE U.S. INTEREST IN INTERNATIONAL TRADEMARK HARMONIZATION”, Boston University International Law Journal, LexisNexis]

A. The US Interest in Protecting Trademarks Internationally. Since the end of the Cold War, the business enterprise has emerged as the major actor on the world stage. n190 The driving force in the world economy has shifted from superpowers to super-markets, and the initiative for fundamental economic change now comes more from companies than capitals. n191 Government has become a supporting player, no longer making all the key economic decisions in the global economy. n192 Already, more than $ 1 trillion in financial transactions crosses borders every day. n193 The very idea of globalization is no longer a buzz-word; international trade is growing twice as fast as world production, and overseas investment is increasing at least twice as fast as trade. n194 Among the key exports of the United States to the international economy is U.S. intellectual property. In 1999, U.S. exports in the form of royalties and licensing revenue exceeded $ 37 billion -- topping such traditional blue chip items as aircraft and telecommunications equipment. n202 Morevoer, the intellectual property trade surplus, or exports minus imports, is running at about $ 25 billion annually and growing. n203 The importance of the intellectual property component of the U.S. economy becomes apparent when intellectual property exports are compared with more traditional U.S. exports. For example, the U.S. surplus with Japan in intellectual property topped $ 4 billion last year, while the U.S. trade deficit with Japan in goods was $ 5.5 billion for January of 2000 alone. n204 Further, the increasing importance of the information economy stands to boost the importance of U.S. intellectual property exports. The current lead of the United States in Internet and e-commerce innovation, compared with the rest of the world, creates the potential for global licensing and royalty revenue to explode. n205 However, just as apparent as the impressive value of U.S. intellectual property in the world market is the fact that the U.S. loses billions of dollars a year in exports because of the inadequate protection of intellectual property rights in foreign countries. n206 The problem is exacerbated by the fact that developing countries often see little incentive to protect the rights in intellectual property exported by developed countries. n207 [\*324] These countries view ready access to intellectual property as important to development, whereas the enforcement of intellectual property law is considered a burden on development. n208 Further, the importation of intellectual property often is viewed as a tool to dominate and exploit the economic potential of the importing countries. n209 Finally, intellectual property frequently is simply too new of a concept in many developing countries to have become a legal tradition. n210 For these reasons, developing countries often resist allocating scarce government resources to the enforcement of intellectual property rights. n211

## A2 Offense

### A2 Ozone Turn

#### 1. WTO won’t strike down MEAs.

**Morici 2002** (Peter – Professor of International Business at the R.H. Smith School of Business at the University of Maryland, Reconciling Trade and the Environment in the World Trade Organization, p. 87)

However, relying on these principles alone is wrought with peril. If two laws impose conflicting requirements to achieve separate public purposes, and a court determines the obligations of one trump the other, opportunities may be lost to balance the objectives of both laws. In particular, the opportunity may be lost to achieve most of what each law intended. In domestic law, legislatures can move fairly quickly to address such circumstances, but in international law, where cultures collide and consensus is required, corrective action may take decades to accomplish. Suppose the WTO dispute settlement panel, relying on the fact that GATT 1994 came later in time than the Montreal Protocol, determined the latter’s trade measures were illegal. Where would that leave the global trading community? Generally, the WTO has avoided relying on these principles. Through the work of the CTE, members have wrestled with the conflicts between WTO and MEA obligations and recognized the need to balance their sometimes competing objectives. At the 1996 Singapore Ministerial Meeting, WTO members endorsed the following CTE recommendation: The CTE endorses and supports multilateral solutions based on international cooperation and consensus as the best and most effective way for governments to tackle environmental problems of a transboundary or global nature. WTO Agreements and multilateral environmental agreements (MEAs) are representative of efforts of the international community to pursue shared goals, and in the development of a mutually supportive relationship between them, due respect must be afforded to both. In Shrimp-Turtle, the Appellate Body reiterated this recommendation and recognized the coequal status of MEAs and WTO agreements. By relying extensively on the former to reach aspects of its findings, it essentially imported public international environmental law into WTO jurisprudence. In addition, at the 1996 Singapore Ministerial Conference, WTO members also endorsed the CTE finding that members do have a right to bring to the WTO dispute settlement process conflicts arising from trade measures applied pursuant to MEAs; however, it would be preferable to resolve those disputes through procedures provided by the MEAs: While WTO Members have the right to bring disputes to the WTO dispute settlement mechanism, if a dispute arises between WTO Members, Parties to an MEA, over the use of trade measures they are applying between themselves pursuant to the MEA, they should consider trying to resolve it through the dispute settlement mechanisms available under the MEA. Improved compliance mechanisms and dispute settlement mechanisms available in MEAs would encourage resolution of any such disputes within the MEA. No trade action taken pursuant to a major MEA has resulted in a formal dispute settlement proceeding in the WTO. One motivation is the desire of WTO members not to undermine environmental treaties they have ratified. However, it should be recognized that, generally, MEAs have not established dispute settlement processes capable of providing claimants with remedies as effectively as does the WTO dispute settlement process. The WTO Appellate Body has demonstrated a willingness and capacity to address the competing trade and environmental objectives, and claimants with a grievance, be they individuals or sovereign states, will seek out the forums most capable of addressing their claims.

#### 2. No impact to ozone.

**Lieberman**, 9/14/**2007** (Ben – Senior Policy Analyst on Energy and the Environment at the Heritage Foundation, Ozone: The Hole Truth, p. <http://www.heritage.org/research/commentary/2007/09/ozone-the-hole-truth>)

Environmentalists have made numerous apocalyptic predictions over the past several decades, virtually none of which has come to pass. Yet each time, the greens and their political allies proclaim victory, arguing that their preventive prescriptions averted disaster. Such is the case with the 1987 Montreal Protocol On Substances That Deplete The Ozone Layer (Montreal Protocol). The lurid predictions of ozone depletion-induced skin cancer epidemics, ecosystem destruction and others haven't come true, for which Montreal Protocol proponents congratulate themselves. But in retrospect, the evidence shows that ozone depletion was an exaggerated threat in the first place. As the treaty parties return to Montreal for their 20th anniversary meeting it should be cause for reflection, not celebration, especially for those who hope to repeat this "success story" in the context of global warming. The treaty came about over legitimate but overstated concerns that chlorofluorocarbons (CFCs, a then-widely used class of refrigerants) and other compounds were rising to the stratosphere and destroying ozone molecules. These molecules, collectively known as the ozone layer, shield the earth from excessive ultraviolet-B radiation (UVB) from the sun. The Montreal Protocol's provisions were tightened in 1990 and again in 1992, culminating with a CFC ban in most developed nations by 1996. So what do we know now? As far as ozone depletion is concerned, the thinning of the ozone layer that occurred throughout the 1980s apparently stopped in the early 1990s, too soon to credit the Montreal Protocol. A 1998 World Meteorological Organization (WMO) report said that, "since 1991, the linear [downward] trend observed during the 1980s has not continued, but rather total column ozone has been almost constant …" However, the same report noted that the stratospheric concentrations of the offending compounds were still increasing through 1998. This lends credence to the skeptical view, widely derided at the time of the Montreal Protocol, that natural variations better explain the fluctuations in the global ozone layer. More importantly, the feared increase in ground level UVB radiation has also failed to materialize. Keep in mind that ozone depletion, in and of itself, doesn't really harm human health or the environment. It's the concern that an eroded ozone layer will allow more of the sun's damaging UVB rays to reach the earth that led to the Montreal Protocol. But WMO concedes that no statistically significant long-term trends have been detected, noting earlier this year that "outside the polar regions, ozone depletion has been relatively small, hence, in many places, increases in UV due to this depletion are difficult to separate from the increases caused by other factors, such as changes in cloud and aerosol." In short, the impact of ozone depletion on UVB over populated regions is so small that it's hard to detect. Needless to say, if UVB hasn't gone up, then the fears of increased UVB-induced harm are unfounded. Indeed, the much-hyped acceleration in skin cancer rates hasn't been documented. U.S. National Cancer Institute statistics show that malignant melanoma incidence and mortality, which had been undergoing a long-term increase that predates ozone depletion, has actually been leveling off during the putative ozone crisis. Further, no ecosystem or species was ever shown to be seriously harmed by ozone depletion. This is true even in Antarctica, where the largest seasonal ozone losses, the so-called Antarctic ozone hole, occur annually. Also forgotten is a long list of truly ridiculous claims, such as the one from Al Gore's 1992 book "Earth in the Balance"that, thanks to the Antarctic ozone hole, "hunters now report finding blind rabbits; fisherman catch blind salmon."

## A2 Biotech Bad

### A2 Biotech Hurts Small Farmers

#### Their Yaffe card is from 1991 and doesn’t assume new technology which safeguards against the problems their card claims – minute chance of an impact

#### GM crops specifically benefit poor farmers

**Plaue ’12** [Noah Plaue, Graduate from Cornell University in History and English, Correspondent for Business Insider, Genetically Modified Crops Are Good For Poor Farmers In India, http://www.businessinsider.com/genetically-modified-crops-poor-farmers-in-india-2012-7#ixzz2awDlofsJ]

There is a pretty heated debate going on over the use of genetically modified crops.¶ The disagreements tend to focus on the long-term implications.¶ But in the short-term, one thing seems to be true: genetically modified crops give dirt-poor farmers across the world a chance at a better life.¶ In a new report published in Proceedings of the National Academy of Sciences, researchers at the Georg-August-University of Goettingen tracked the use of genetically modified cotton by smallholder farmers in India over the course of six years.¶ They found that farmers using the genetically enhanced Bt (Bacillus thuringiensis) cotton increased their cotton yields by 24 percent and their overall profits by 50 percent. They also saw an 18 percent increase in household consumption (meaning small farmers spent about $321 more per year). ¶ The study disputes a common argument that genetically modified crops will hurt small-scale farmers who eventually won't be able to pay for the crops that were grown on their own land. ¶ In fact, in 2011, 90 percent of Indian cotton fields, the majority of which are owned by small farmers, were growing Bt cotton.¶ According to the study, both government intervention in seed prices and increases in competition for the new technology help to boost the profit lines for these farmers. Both factors, therefore, must be encouraged in order for genetically mutated crops to make sense on a larger scale. ¶ While the use of GMOs in agriculture remains a contentious issue — there are innumerable environmental, health and socio-economic issues — one thing is clear: genetically mutated crops can mean a brighter future for poor farmers across the world.

### A2 Bio-D

#### Biotech solves biodiversity

**EuropaBio** **’11** [EuropaBio is a board of management made up of member companies, represented through national Associations Council and horizontal SME Platform of 1800+ SMEs at a Member State Level, 3/14/11, Biodiversity – GM crops help reduce the impacts of agriculture on biodiversity, http://www.europabio.org/agricultural/positions/biodiversity-gm-crops-help-reduce-impacts-agriculture-biodiversity#sthash.eRcH7M6G.dpuf]

A new peer-reviewed literature review on the impacts of GM crops on biodiversity revealed that they can help reduce the impacts of agriculture. “Impacts of GM crops on biodiversity,” by Janet E. Carpenter, was published in the scientific journal, GM Crops. ¶ In the article, Carpenter describes research that shows that GM crops can help farmers increase their yields, leaving more land for biodiversity to thrive. They also help to decrease tillage, which preserves soil and moisture. Without GM crops, an additional 2.64 million hectares would be needed for agriculture globally, researchers estimate. Moreover, mounting evidence shows that GM crops do not have significant adverse effects for non-target organisms, such as soil organisms, non-target herbivores, and bees.In addition, GM crops can help suppress pests on neighbouring farms where conventional crops are grown.¶ Following a thorough review of 155 peer-reviewed articles, Carpenter found that “commercialised GM crops have reduced the impacts of agriculture on biodiversity, through enhanced adoption of conservation tillage practices, reduction of insecticide use and use of more environmentally benign herbicides, and increasing yields to alleviate pressure to convert additional land into agricultural use.”¶ The top findings include:¶ 1. By increasing yields on existing farmland, biotech crops help preserve natural habitats and our¶ world’s biodiversity.¶ 2. Biotech crops help facilitate conservation tillage practices, preserving soil and moisture.¶ 3. Biotech crops have not decreased crop diversity.¶ 4. Plant biotechnology is a powerful tool to help feed a growing world, sustainably.¶ 5. Bt crops can provide area-wide target pest suppression, reducing crop losses and the need for pest¶ control measures.¶ 6. Mounting evidence shows that biotech crops have no significant adverse effects on non-target¶ organisms.¶ KEY FINDINGS AND EXAMPLES¶ 1. By increasing yields on existing farmland, biotech crops help preserve natural habitats and¶ our world’s biodiversity.¶ • A large and growing body of literature has shown that the adoption of biotech crops has¶ increased yields. A recent study of peer-reviewed literature comparing yields of biotech and¶ conventional crops found that:¶ – 74 percent of results showed positive results for adopters of biotechnology versus nonadopters.¶ When just developing countries are compared, this figure rises to 82 percent.¶ 2¶ – The average yield increases for farmers range from 16 to 30 percent in developing¶ countries, and up to seven percent in developed countries.¶ • Researchers estimate that 2.64 million hectares of land would probably be brought into grain¶ and oilseed production if biotech traits were no longer used.¶ 2. Biotech crops help facilitate conservation tillage practices, preserving soil and moisture.¶ • In the U.S., herbicide-tolerant crops made it easier and less risky to adopt conservation tillage¶ and no-till. Between 1996 and 2008, adoption increased from 51 to 63 percent of planted¶ soybean acres.¶ • A survey of 610 soybean growers across 19 U.S. states found that growers of glyphosateresistant¶ soybeans made 25 percent fewer tillage passes than growers of conventional¶ soybeans.¶ • In Argentina, the introduction of glyphosate-tolerant soybeans increased no-till adoption from¶ about 1/3 of soybean acreage in 1996 to over 80 percent in 2008.¶ 3. Biotech crops have not decreased crop diversity.¶ • The impact of the introduction of biotech crops on crop diversity has not been thoroughly¶ studied.¶ However, the small number of studies that have been done found that the introduction of¶ biotech crops has not decreased crop diversity.¶ • From a broader perspective, biotech crops may actually increase crop diversity by enhancing¶ underutilized alternative crops, making them more suitable for widespread domestication.¶ 4. Plant biotechnology is a powerful tool to help feed a growing world, sustainably.¶ • Biotech crops can continue to decrease the pressure on biodiversity as global agricultural¶ systems expand to feed a world population that is expected to continue to increase for the next¶ 30 to 40 years.¶ • In addition to the potential benefits of expanded adoption of current technology, several¶ pipeline¶ technologies offer additional promise of alleviating the impacts of agriculture on biodiversity.¶ For example:¶ – Bt eggplant, which is expected to increase yield and reduce insecticide applications, is¶ currently under¶ consideration by Indian regulators.¶ – Drought and salinity tolerance technologies would alleviate the pressure to convert high¶ biodiversity areas into agricultural use by enabling crop production on suboptimal soils.¶ 3¶ 5. Bt crops can provide area-wide target pest suppression, reducing crop losses and the¶ need for pest control measures.¶ • Evidence of regional suppression of European corn borer and corn earworm was gathered¶ from an area of Maryland, where Bt corn adoption was over 60 percent.¶ • Populations of European corn borer have also declined in the Midwestern U.S. stemming from¶ long-term plantings of Bt corn. Researchers found that the majority of pest suppression benefits¶ of Bt corn adoption accrued to non-Bt corn growers in the area.¶ • In a 10 year study in Arizona, researchers concluded that Bt cotton suppressed pink bollworm,¶ a major pest, with densities declining only in regions where Bt cotton was abundant.¶ • In China, analysis from 1992 to 2007 indicated that the planting of Bt cotton was associated¶ with a significant decrease in regional outbreaks of cotton bollworm in multiple crops.¶ 6. Mounting evidence shows that biotech crops have no significant adverse effects on¶ non- target organisms.¶ • The potential impact of Bt crops on soil organisms is well studied, however few or no effects¶ on soil organisms have been reported.¶ • Studies of the potential impact of Bt crops on non-target herbivores and beneficials have not¶ detected significant adverse effects, and no evidence of landscape-level effects.¶ • Field studies have confirmed that the abundance and activity of parasitoids and predators are¶ similar in Bt and non-Bt crops.¶ • In a Canadian study, no differences in bee larval survival, adult recovery and pupal weight

### AT: Biotech 🡪 Disease Resistance

#### Resistance genes inevitable and no impact – empirical evidence

**Chassy and Tribe ’12** [Dr. Chassy, PhD in food microbiology and a professor of nutritional sciences at the University of Illinois at Urbana-Champaign. He received his B.A. in chemistry from San Diego State University, and his Ph.D. in biochemistry from Cornell University. Dr. Chassy previously worked as a research chemist in the U.S. National Institutes of Health’s National Institute of Dental Research, and he has served as a member of the U.S. Food and Drug Administration’s Food Advisory Council, and as a councilor and a member of the executive committee for the Institute of Food Technologists. Dr. Chassy was head of the Department of Food Science and Human Nutrition at the University of Illinois from 1989-2000, and he served as an Assistant Dean in the College of Agricultural, Consumer and Environmental Sciences from 2000-2009. Dr. Tribe is a senior lecturer in food science, food safety, biotechnology and microbiology in the Department of Microbiology and Immunology at the University of Melbourne, Australia. He received his B.Sc. in biochemistry and chemistry and a Ph.D. in applied molecular genetics at the University of Melbourne. Dr. Tribe’s current research focuses on food risk analysis and management, with a particular emphasis on the risks of microbes in food and epidemics caused by bacterial pathogens. He has been active in the Australian Society for Microbiology, and he previously served as vice-president and as a member of the Council of Directors of the Australian Biotechnology Association, Review: Genetic Roulette, http://academicsreview.org/reviewed-content/genetic-roulette/]

Genetically modified foods pose a negligible risk of increasing infectious diseases caused by antibiotic resistant bacteria.¶ [See Genetic Roulette’s False Claims at Bottom of Page](http://academicsreview.org/reviewed-content/genetic-roulette/section-5/5-5-gm-foods-and-antibiotic-resistant-bacteria/#claims)¶ Analysis of Peer-Reviewed Research:¶ Some transgenic crops contain antibiotic resistance genes as selection markers that were used during the process of transgene construction. The proliferation in gut bacteria of these markers would require first the uptake of the functional resistance gene by a gut bacterium, and then a selective advantage for that bacterium to survive and multiply. The improbability of the gene transfer has already been mentioned in earlier sections. The consequences of the very improbable transfer should be judged against the background of antibiotic resistance already present in intestinal bacteria. Our gut already contains billions of bacteria carrying resistances to kanamycin and ampicillin, the two most commonly used antibiotic marker genes in GM crops. There is a huge reservoir of ampicillin resistance genes in soil and these can be readily transmitted to gut bacteria. Current medical opinion is that the antibiotic markers used in commercialised crops do not pose any infectious disease risk.¶ Jeffrey Smith’s treatment this topic is an unfortunate attempt to confuse the public about the top priority for countering antibiotic resistant bacteria (Saylers 1996, Salyers, Whitt 2005) — which is to avoid overusing and misusing antibiotics.¶ 1. GM foods will not change antibiotic resistance in bacteria. Expert scientific opinion has repeatedly reaffirmed that the presence of antibiotic resistance genes in GM foods is unable to change the level of antibiotic resistance present in gut bacteria (Bennett PM and others 2004, EFSA 2004, Salyers A (n.d.), van den Eede and others 2004).¶ 2. Genetic Roulette avoids explaining why regulatory authorities have approved the markers currently used in crops. Smith avoids mentioning expert advice and evidence that contradicts his assertions about antibiotic resistance, and does not provide access to the detailed and extensive deliberations that led to approvals of crops having antibiotic markers (Bennett and others 2004. EFSA 2004, Goldstein and others 2005, Miki , McHugh 2004, Ramessar and others 2007, Salyers (n.d.), van den Eede and others 2004).¶ 3. Antibiotic resistant bacteria are numerous in the gut whether or not there is any antibiotic marker in GM food. The antibiotic resistance genes present in genetically modified foods are already easily found in any human intestine in a form that frequently moves around between different bacteria and can easily take up residence in new bacteria. Bacteria will frequently contain small chromosomes called plasmids that commonly carry genes for antibiotic resistance. These plasmids can replicate by injecting copies of themselves into other bacteria without exposing their DNA to digestive juices. Once injected into a new bacteria that they can replicate independently. Plasmids are widely known to be involved in the spread of antibiotic resistance in bacteria. Their spread is promoted by the use of antibiotics and it is massive overuse of antibiotics that is the main factor promoting the spread of diseases that cannot be treated by antibiotics (Bennett and others 2004, Saylers 1996, Salyers, Whitt 2005).¶ 4. Huge numbers of diverse antibiotic resistance genes are present in soil bacteria. Most antibiotic resistance probably comes from soil bacteria, and the genes they carry genes can readily be disseminated from one species of bacteria to another on plasmids. The presence of genes providing resistance to ampicillin and related antibiotics is a well-investigated example. These genes are frequently found in soil bacteria. Growing genetically modified corn containing the ampicillin marker gene has no influence on abundance of this gene in soil bacteria (Demanèche and others 2008).¶ Bennett PM and others, Working Party of the British Society for Antimicrobial Chemotherapy (2004). An assessment of the risks associated with the use of antibiotic resistance genes in genetically modified plants: report of the Working Party of the British Society for Antimicrobial Chemotherapy. J Antimicrob Chemother. 2004 Mar;53(3):418-31. Epub 2004 Jan 28.”…the argument that occasional transfer of these particular resistance genes from GM plants to bacteria would pose an unacceptable risk to human or animal health has little substance. We conclude that the risk of transfer of AR genes from GM plants to bacteria is remote, and that the hazard arising from any such gene transfer is, at worst, slight.”

## A2 GMOs Bad

### A2 GMO’s 🡪Antibiotic Resistance

#### GMOs do not cause antibiotic resistance

**Chassy and Tribe ’12** [Dr. Chassy, PhD in food microbiology and a professor of nutritional sciences at the University of Illinois at Urbana-Champaign.  He received his B.A. in chemistry from San Diego State University, and his Ph.D. in biochemistry from Cornell University.  Dr. Chassy previously worked as a research chemist in the U.S. National Institutes of Health’s National Institute of Dental Research, and he has served as a member of the U.S. Food and Drug Administration’s Food Advisory Council, and as a councilor and a member of the executive committee for the Institute of Food Technologists. Dr. Chassy was head of the Department of Food Science and Human Nutrition at the University of Illinois from 1989-2000, and he served as an Assistant Dean in the College of Agricultural, Consumer and Environmental Sciences from 2000-2009. Dr. Tribe is a senior lecturer in food science, food safety, biotechnology and microbiology in the Department of Microbiology and Immunology at the University of Melbourne, Australia.  He received his B.Sc. in biochemistry and chemistry and a Ph.D. in applied molecular genetics at the University of Melbourne.  Dr. Tribe’s current research focuses on food risk analysis and management, with a particular emphasis on the risks of microbes in food and epidemics caused by bacterial pathogens.  He has been active in the Australian Society for Microbiology, and he previously served as vice-president and as a member of the Council of Directors of the Australian Biotechnology Association, Review: Genetic Roulette, <http://academicsreview.org/reviewed-content/genetic-roulette/section-5/5-5-gm-foods-and-antibiotic-resistant-bacteria/>) KS

Some transgenic crops contain antibiotic resistance genes as selection markers that were used during the process of transgene construction. The proliferation in gut bacteria of these markers would require first the uptake of the functional resistance gene by a gut bacterium, and then a selective advantage for that bacterium to survive and multiply. The improbability of the gene transfer has already been mentioned in earlier sections. The consequences of the very improbable transfer should be judged against the background of antibiotic resistance already present in intestinal bacteria. Our gut already contains billions of bacteria carrying resistances to kanamycin and ampicillin, the two most commonly used antibiotic marker genes in GM crops. There is a huge reservoir of ampicillin resistance genes in soil and these can be readily transmitted to gut bacteria. Current medical opinion is that the antibiotic markers used in commercialised crops do not pose any infectious disease risk.¶ Jeffrey Smith’s treatment this topic is an unfortunate attempt to confuse the public about the top priority for countering antibiotic resistant bacteria (Saylers 1996, Salyers, Whitt 2005) — which is to avoid overusing and misusing antibiotics.¶ 1. GM foods will not change antibiotic resistance in bacteria. Expert scientific opinion has repeatedly reaffirmed that the presence of antibiotic resistance genes in GM foods is unable to change the level of antibiotic resistance present in gut bacteria (Bennett PM and others 2004, EFSA 2004, Salyers A (n.d.), van den Eede and others 2004).¶ 2. Genetic Roulette avoids explaining why regulatory authorities have approved the markers currently used in crops. Smith avoids mentioning expert advice and evidence that contradicts his assertions about antibiotic resistance, and does not provide access to the detailed and extensive deliberations that led to approvals of crops having antibiotic markers (Bennett and others 2004. EFSA 2004, Goldstein and others 2005, Miki , McHugh 2004, Ramessar and others 2007, Salyers (n.d.), van den Eede and others 2004).¶ 3. Antibiotic resistant bacteria are numerous in the gut whether or not there is any antibiotic marker in GM food. The antibiotic resistance genes present in genetically modified foods are already easily found in any human intestine in a form that frequently moves around between different bacteria and can easily take up residence in new bacteria. Bacteria will frequently contain small chromosomes called plasmids that commonly carry genes for antibiotic resistance. These plasmids can replicate by injecting copies of themselves into other bacteria without exposing their DNA to digestive juices. Once injected into a new bacteria that they can replicate independently. Plasmids are widely known to be involved in the spread of antibiotic resistance in bacteria. Their spread is promoted by the use of antibiotics and it is massive overuse of antibiotics that is the main factor promoting the spread of diseases that cannot be treated by antibiotics (Bennett and others 2004, Saylers 1996, Salyers, Whitt 2005).¶ 4. Huge numbers of diverse antibiotic resistance genes are present in soil bacteria. Most antibiotic resistance probably comes from soil bacteria, and the genes they carry genes can readily be disseminated from one species of bacteria to another on plasmids. The presence of genes providing resistance to ampicillin and related antibiotics is a well-investigated example. These genes are frequently found in soil bacteria. Growing genetically modified corn containing the ampicillin marker gene has no influence on abundance of this gene in soil bacteria (Demanèche and others 2008).¶ Bennett PM and others, Working Party of the British Society for Antimicrobial Chemotherapy (2004). An assessment of the risks associated with the use of antibiotic resistance genes in genetically modified plants: report of the Working Party of the British Society for Antimicrobial Chemotherapy. J Antimicrob Chemother. 2004 Mar;53(3):418-31. Epub 2004 Jan 28.”…the argument that occasional transfer of these particular resistance genes from GM plants to bacteria would pose an unacceptable risk to human or animal health has little substance. We conclude that the risk of transfer of AR genes from GM plants to bacteria is remote, and that the hazard arising from any such gene transfer is, at worst, slight.”¶

### A2 Pusztai

#### Pusztai’s claims proved wrong by multiple experts

**Chassy and Tribe ’12** [Dr. Chassy, PhD in food microbiology and a professor of nutritional sciences at the University of Illinois at Urbana-Champaign.  He received his B.A. in chemistry from San Diego State University, and his Ph.D. in biochemistry from Cornell University.  Dr. Chassy previously worked as a research chemist in the U.S. National Institutes of Health’s National Institute of Dental Research, and he has served as a member of the U.S. Food and Drug Administration’s Food Advisory Council, and as a councilor and a member of the executive committee for the Institute of Food Technologists. Dr. Chassy was head of the Department of Food Science and Human Nutrition at the University of Illinois from 1989-2000, and he served as an Assistant Dean in the College of Agricultural, Consumer and Environmental Sciences from 2000-2009. Dr. Tribe is a senior lecturer in food science, food safety, biotechnology and microbiology in the Department of Microbiology and Immunology at the University of Melbourne, Australia.  He received his B.Sc. in biochemistry and chemistry and a Ph.D. in applied molecular genetics at the University of Melbourne.  Dr. Tribe’s current research focuses on food risk analysis and management, with a particular emphasis on the risks of microbes in food and epidemics caused by bacterial pathogens.  He has been active in the Australian Society for Microbiology, and he previously served as vice-president and as a member of the Council of Directors of the Australian Biotechnology Association, Review: Genetic Roulette, <http://academicsreview.org/reviewed-content/genetic-roulette/section-1/1-1-pusztais-flawed-claims/>) KS

Based on flawed and inconclusive experiments with rats, Arpad Pusztai makes claims about genetically engineered potatoes.¶ See Genetic Roulette’s False Claims at Bottom of Page¶ Analysis of Peer-Reviewed Research:¶ A panel of experts, the Royal Society and food-safety scientists in regulatory agencies around the world, all have concluded that the study does not demonstrate that the GM potatoes were unsafe in any way. Although Pusztai travels around the globe fear-mongering about the dangers of GM crops, it is ironic that even if his study were correct, it would only prove that those specific potatoes were unsafe, and not that all GM crops are unsafe as he seems to be claiming. For the record, the potatoes in question were a research project; they were never submitted to regulators and they were never commercialized.¶ Experts say no scientific conclusion can be made from the work. Two separate expert panels reviewed this research and concluded that both the experimental design and conduct of the experiments were fatally flawed, and that no scientific conclusion should be drawn from the work (Royal Society 1999; Fedoroff and Brown 2004). Smith fails to tell us this. When The Lancet published the work, editors there published a critical analysis in the same issue (Kuiper 1999). The media has devoted little time and space to these critical analyses of Pusztai’s claims.¶ No differences were seen between the groups of animals. Experts who reviewed the data stated that there were no meaningful differences between control and experimental groups, that the same cellular differences could be seen in all groups—GM-fed or not—and that too few animals were used to allow statistical significance to be achieved (Royal Society 1999)¶ Flawed study design and improper diets doomed the study to failure. The diets were protein-deficient and different groups of rats received different diets. Some rats were fed raw potatoes – raw potatoes are toxic to rats and might cause disturbances to gastrointestinal cells. Three different varieties of potatoes were fed to the three different groups of rats (Royal Society 1999).¶ Science should be published in peer-reviewed literature and not on TV. Scientists are expected to submit their findings to peer-review and publication in scientific journals. In their review of the Pusztai claims, the Royal Society concluded that scientists should submit their work to journals (Royal Society 1999). Peer-review is not always a guarantee that researchers’ conclusions are sound either. Lancet published the paper by Ewen and Pusztai over the objections of reviewers: (news.bbc.co.uk/1/hi/sci/tech/472192.stm). Perhaps in some misguided sense of fairness or balance, some journals have published unsound papers that make claims about the safety of GM crops (Shantharum and others 2008).

### A2 Europe hates GMO’s

#### Biotechnology growing in Europe

**Croplife ’12** [Croplife International is a global federation representing the plant science industry, led by companies BASF, Bayer cropScience, Dow AGroSciences, DuPong, FMC, etc, February 7, 2012, Small Holder Brussels, 7 February 2012 — With the majority of biotech crops being grown by small¶ holder farmers in developing countries, plant biotechnology is playing a significant role in¶ helping small-scale farmers improve their incomes and quality of life while employing¶ sustainable agricultural practices. In 2011, of the 16.7 million farmers worldwide growing¶ 160 million hectares of biotech crops, 90 percent were small holder farmers in 19 developing¶ countries, according to the International Service for the Acquisition of Agri-Biotech¶ Applications (ISAAA).¶ “For the world’s farmers, biotech crops offer the opportunity to produce more food and¶ improve incomes while being good stewards of their land,” said Denise Dewar, Executive¶ Director for Plant Biotechnology at CropLife International. “For over a decade, farmers with¶ access to plant biotechnology have enjoyed reduced input costs, increased crop productivity¶ and higher incomes, which has led to improvements in the home, and for families and¶ communities.”¶ In 2011, 19 of the 29 countries growing biotech varieties were located in the developing¶ world. These countries represented the largest growth in biotech plantings, adopting the¶ technology twice as fast as industrialized countries, according to ISAAA. “For the world’s¶ neediest farmers, improving yields with less labour not only provides better incomes but a¶ higher quality of life,” said Dewar. “With more than 90 percent of farmers re-purchasing¶ biotech seed year after year — coupled with the increase in global biotech crop acreage — it’s¶ obvious that farmers recognize multiple benefits from plant biotechnology.”¶ Global biotech crop acreage is at a record high and governments worldwide have continued to¶ support the benefits their farmers, the environment, and larger populations receive from plant¶ biotechnology. Growth of the technology worldwide includes: European Union¶ • Biotech corn plantings in Portugal increased by 60 percent and by 26 percent of the¶ total corn cropland in Spain in 2011.¶ • The EU has adopted a low-level presence policy for biotech crops in animal feed¶ imports and approved 11 new biotech crops for import including six corn, three¶ soybean and two cotton varieties.

### A2 GMO’s 🡪 Bacteria Resistance

**GMOs don’t lead to bacteria resistance**

**Chassy and Tribe ’12**[Dr. Chassy, PhD in food microbiology and a professor of nutritional sciences at the University of Illinois at Urbana-Champaign.  He received his B.A. in chemistry from San Diego State University, and his Ph.D. in biochemistry from Cornell University.  Dr. Chassy previously worked as a research chemist in the U.S. National Institutes of Health’s National Institute of Dental Research, and he has served as a member of the U.S. Food and Drug Administration’s Food Advisory Council, and as a councilor and a member of the executive committee for the Institute of Food Technologists. Dr. Chassy was head of the Department of Food Science and Human Nutrition at the University of Illinois from 1989-2000, and he served as an Assistant Dean in the College of Agricultural, Consumer and Environmental Sciences from 2000-2009. Dr. Tribe is a senior lecturer in food science, food safety, biotechnology and microbiology in the Department of Microbiology and Immunology at the University of Melbourne, Australia.  He received his B.Sc. in biochemistry and chemistry and a Ph.D. in applied molecular genetics at the University of Melbourne.  Dr. Tribe’s current research focuses on food risk analysis and management, with a particular emphasis on the risks of microbes in food and epidemics caused by bacterial pathogens.  He has been active in the Australian Society for Microbiology, and he previously served as vice-president and as a member of the Council of Directors of the Australian Biotechnology Association, Review: Genetic Roulette, [http://academicsreview.org/reviewed-content/genetic-roulette/](http://academicsreview.org/reviewed-content/genetic-roulette/" \t "_blank)]

Transgenes do not have special mechanisms that allow them to survive in the gut over the long-term¶ See Genetic Roulette’s False Claims at Bottom of Page¶ Analysis of Peer-Reviewed Research:¶ In this section Jeffrey Smith makes several misleading claims to support his supposition that transgenes from plants can take up permanent residence in gut bacteria. He wrongly claims that the 35S promoter used to drive some transgenes in genetically engineered plants will give a unique advantage to plant genes and enable them to be expressed in bacteria in the gut. Smith seems unaware that there are numerous promoters similar to 35S in many different plants, so this remote possibility already occurs with conventional foods. He also speculates about the herbicide tolerant genes from plants becoming established in gut bacteria, but this is completely unrealistic because miniscule herbicide concentrations in the gut will not select for herbicide tolerant bacteria. His idea that antibiotic markers from transgenic plants will provide transgenes with ability to permanently reside in the gut should be assessed against the already very high frequency of antibiotic resistance in the existing gut microbial flora. Smith is so desperate to create the impression that transgenes have been detected in gut bacteria that to support his case, he relies on 8-year-old press reports that have never been worth mentioning as evidence of risk. These old stories have never been validated in the peer- reviewed scientific literature.¶ 1. Absence of herbicide in the gut means that the herbicide resistance genes offer no selective advantage to bacteria. Genetic Roulette argues that genes conferring herbicide tolerance from transgenic plants could out allow bacteria capturing these genes to have a permanent advantage over the other gut bacteria. Fortunately, the part of herbicide treated plants we use as food — the seed — contains only a minute fraction of any herbicide residues that stay in the plant (Ruhland M and others 2004). Additionally, health regulations place limits on the amount of herbicide that can be present in food. Further dilution of the minute amounts of herbicide residues takes place when food is cooked and eaten as part of diets. Thus there is no effective concentration of herbicide present in the gut. The absence of herbicides in our gut means that bacteria that acquire the herbicide tolerance gene have no selective advantage, and would not be able to proliferate in the highly competitive environment of the gut.¶ 2. Origins of replication cannot provide plant transgenes a mechanism to proliferate rapidly in the gut. Plasmids are small bacterial chromosomes used by genetic engineers to manipulate DNA and portions of plasmids have often been added to the genomes of genetically modified plants. This section of Genetic Roulette is concerned with the risk that plasmid DNA from genetically engineered plants may accidently get back into gut bacteria. To understand this issue, it important to remember that to be permanently carried in a strain of bacteria, a bacterial mini-chromosome (the plasmid) needs a DNA segment called the “origin of replication”. Without an origin of replication, the mini-chromosome cannot be transmitted permanently in a strain of bacteria.¶ Genetic Roulette argues that plant transgenes containing an origin of replication may help proliferation of transgenes in gut microbes. It explains that such sections of plasmids contained in the origins of replication that are used by the plasmids to proliferate permanently in microbial cells. However for this origin of replication to work in bacteria a circular form of DNA has to be regenerated from the transgene, and in plant cells the transgene does not exist as the circle. It is highly unlikely that the circle can reform. This provides a barrier against assembly of plasmids from plant transgenic DNA (Bennett and others 2004, Thomson 2001, van den Eede and others 2004). Many transgenic plants are constructed without the use of plasmids or plasmid origins of replication and have no capacity to proliferate in bacteria.¶ 3. Transgenes are no more likely than other plant genes to function in bacterial DNA. Genetic Roulette argues that the cauliflower mosaic virus 35S promoter used to drive transgene expression can work in bacteria, and that this would provide a unique ability for genes coupled with this promoter to work in bacteria. Not so. As discussed in Section 2.5, there are numerous fragments of Cauliflower mosaic related viruses (with similar promoters) inserted into plant genomes, so the presence of the 35S promoter in transgene does not provide a unique possibility for plant genes to be active in bacteria, should the extremely rare event take place involving transfer of a plant gene to a gut bacterium occur as argued by Smith (Gayral and others 2008, Hansen and others 2005, Staginnus , Richert-Pöggeler 2006, Staginnus and others 2007).¶ 4. Permanent colonization of the gut as imagined by Smith is highly unlikely. Continual flow of food through the gut ensures that colonization of the gut by bacteria is transient. Additional unused capabilities, such as new genes, would place a burden on the bacteria and special advantages are needed to overcome this burden. Biologists call this a “fitness cost.” A cell that wastes its resources using genes that aren’t needed will be selected against. This acts against permanent establishment of genetically altered bacteria in the gut.¶ 5. Existing overuse of antibiotics is the main driving force for high numbers of antibiotic resistant bacteria being present in gut flora. For acquired transgenes to be retained by bacteria it is necessary for them to confer an advantage in the highly competitive gut environment. Antibiotic resistance genes from plants confer no new advantage on gut bacteria, because the gut bacteria already possess antibiotic resistance genes (Bennett and others 2004; Berche 1998; Calva and others1996).¶ 6. No movement of a functioning transgene from plants to bacteria to bacteria has ever been reported in the peer-reviewed scientific literature. To add credibility to his arguments, Smith tries to create the impression that transgenes have been detected in gut bacteria but because no full-length working plant transgene has ever been properly described in the scientific literature as being transmitted to a bacterium, he has to rely on less trustworthy sources of information. In this section he resorts to citing newspaper and TV reports of supposed gene movement into bacteria from plants, but produces no genuine scientific publication. The May 2000 press comments by Professor H. H. Kaatz on gene fragments supposedly being detected in bee microbes have never been confirmed by peer-reviewed scientific papers. This claim is in fact only made by anti-GMO activists. Plant transgene movement to bacteria has never been verified.

#### No transfer of genes from food to bacteria to human

**Chassy and Tribe ’12**[Dr. Chassy, PhD in food microbiology and a professor of nutritional sciences at the University of Illinois at Urbana-Champaign.  He received his B.A. in chemistry from San Diego State University, and his Ph.D. in biochemistry from Cornell University.  Dr. Chassy previously worked as a research chemist in the U.S. National Institutes of Health’s National Institute of Dental Research, and he has served as a member of the U.S. Food and Drug Administration’s Food Advisory Council, and as a councilor and a member of the executive committee for the Institute of Food Technologists. Dr. Chassy was head of the Department of Food Science and Human Nutrition at the University of Illinois from 1989-2000, and he served as an Assistant Dean in the College of Agricultural, Consumer and Environmental Sciences from 2000-2009. Dr. Tribe is a senior lecturer in food science, food safety, biotechnology and microbiology in the Department of Microbiology and Immunology at the University of Melbourne, Australia.  He received his B.Sc. in biochemistry and chemistry and a Ph.D. in applied molecular genetics at the University of Melbourne.  Dr. Tribe’s current research focuses on food risk analysis and management, with a particular emphasis on the risks of microbes in food and epidemics caused by bacterial pathogens.  He has been active in the Australian Society for Microbiology, and he previously served as vice-president and as a member of the Council of Directors of the Australian Biotechnology Association, Review: Genetic Roulette, http://academicsreview.org/reviewed-content/genetic-roulette/]

Transfer of complete transgenes to bacteria in the human gut has not been demonstrated¶ See Genetic Roulette’s False Claims at Bottom of Page¶ Analysis of Peer-Reviewed Research:¶ Jeffrey Smith predicts dire outcomes based on the experiments reported by Trudy Netherwood. Unfortunately, Smith does not have an understanding of how promiscuous bacteria are in taking up foreign DNA. Bacteria are famous among modern biologists for their ability to take up new DNA. He is worried about expression of plant genes in gut bacteria but doesn’t realize that no whole or complete plant gene was detected in bacteria by Netherwood and colleagues. He does note that Trudy Netherwood and colleagues decided that “It is highly unlikely that the gene transfer events seen will alter gastrointestinal function or pose a risk to human health” but disagrees with their conclusions. Smith is mistaken about the main facts on which his concerns are based. Bacteria are very promiscuous in the way they capture genes from other organisms. The appearance of a plant gene fragment in gut bacteria is unremarkable and poses no new risk to human health given the capture of novel DNA is part of the normal lifestyle of bacteria that inhabit the gut. Ordinary DNA vastly outnumbers transgene DNA in our diets, so hazards of the type Genetic Roulette is worrying about are miniscule compared to the risks from dietary DNA transferring to bacteria. Consuming genes and DNA has not caused any harm for the aeons that humans have been eating food, and we have developed excellent mechanisms for coping with it.¶ 1. Smith repeatedly imagines findings that are not in the scientific paper which he quotes. Jeffrey Smith believes that the Netherwood paper describes gut bacteria in which “the transgene was stable and appeared to produce safe herbicide-tolerant protein.” He also believes that “The bacteria were cultured in a medium containing glyphosate, the active ingredient of Roundup herbicide. The survival of the bacteria suggests that it had become “Roundup Ready,” i.e. that the transgene promoter was functioning in the bacteria and that the transgene was switched on, actively producing herbicide-tolerant protein within the human gut.” Both these claims are false. Trudy Netherwood’s article explicitly states that “It should be noted that these bacteria contained only a fragment of the [herbicide tolerant] gene, the full-length gene was not detected in these microbes.” Glyphosate herbicide was not used in their culture media for growing the microbes despite Smith’s assertion that it was.¶ 2. Confused thinking provides a platform for scaremongering. False ideas about production of protein by gut bacteria lead Smith to scaremonger about an imagined herbicide tolerance protein in bacteria being allergenic. The small gene fragments detected in these gut bacteria by Trudy Netherwood cannot lead to production of the full herbicide tolerant protein. Readers will be reassured that there is no possibility of allergenicity when they realize that no new proteins will be produced by these bacteria. Unfortunately Smith also repeats this same confused thinking while partly contradicting himself in a later section of Genetic Roulette (Section 5.6).¶ 3. Bacteria are promiscuous and have the ability to take in DNA from any organism. Besides getting his facts wrong about bacteria and their proteins, Jeffrey Smith is wrong in claiming that the Netherwood paper overturns “long standing assumptions that genes would not transfer to human gut bacteria”. Smith is in error by about 15 to 20 years about when these out-of date views vanished from scientific thinking. Four years before Netherwood and colleagues published their study, Howard Ochman and colleagues (Ochman and others 2000) while reviewing the remarkable bacterial mechanisms for scavenging genes from other organisms, wrote “Through these mechanisms, virtually any sequences, even those originating in eukaryotes or Archaea, can be transferred to, and between, bacteria.” In making that statement Howard Ochman was quoting references going back to at least 1991. Genetic Roulette does not reflect the rapid progress in microbiology and genetics over the last several decades. Smith’s lack of knowledge of bacterial genetics is understandable for someone with no professional training in biology, but he should have sought scientific advice from bacterial geneticists and checked his facts before making such claims in a book that purports to give advice about public health.¶ 4. Movement of DNA fragments is certainly not a novel event in biology nor is it necessarily dangerous. The modern science of genome analysis provides abundant evidence that movement of genes and gene-fragments between species are universal features of life on earth. There is no reason to believe that movement of fragments of genes into bacteria is unique to genetically engineered DNA. Neither is there a reason to suppose that there is any tangible risk posed by gene fragments from genetically engineered DNA of plants that have been detected in bacteria. Many bacteria have ability to take up DNA from the environment, and there are numerous examples of non-transgenic DNA moving between different organisms (Citizendium 2007a, Gladyshev and others 2008, Keeling, and Palmer 2008, Koonin EV and others (2001), Ochman and others 2000). Jeffrey Smith himself quotes experiments in which such DNA fragments were detected in human tissue. The human stomach bacterium Helicobacter for instance, is well known for its ability to scavenge genes from other organisms. Given the promiscuity of bacteria in taking up DNA, it is hard to construe appearance of a soybean gene fragment in gut bacteria as a novel risk.¶ 5. Non-transgenic foods have DNA too! Genetic Roulette’s discussion of this topic is another example of biased risk assessment where risks from transgenic DNA are considered without paying attention to similar risks already present in natural situations. The great bulk of DNA in our diets poses a far greater burden of DNA fragment traffic compared to the minor amounts of transgenic DNA present in GM crops present in our food. In transgenic maize for example, the newly introduced DNA is outnumbered by about a million-fold by pre-existing maize DNA (Thomson 2001).

## Disease Impact

#### Antibiotic resistant tuberculosis is untreatable

The Economist 8/31/2012 [The Economist, August 31, 2012, “When back-ups fail”, http://www.economist.com/blogs/babbage/2012/08/tuberculosis]

TUBERCULOSIS is hardly a new scourge. Lately, however, the disease—caused by bacteria that travel through air and attack the lungs—has become much harder to fight. Drugs that once quashed the bugs have become, if not completely useless, then only sporadically effective. A big new study, published in the Lancet, provides a global portrait of the bacteria’s resilience. Tracy Dalton of America’s Centres for Disease Control and Prevention (CDC) led the far-flung research team, working with scientists from Peru, the Philippines, South Korea, Russia, Estonia, Latvia, South Africa and Thailand. Other studies have reported a rise in bacteria resistant to drugs. Use of back-up drugs, in turn, has bred resistance to the back-ups. Dr Dalton set out to tally where these bacteria were most prevalent and just how resistant they had become. The findings are not encouraging. Dr Dalton and her colleagues examined patients from eight countries. Researchers collected sputum, the polite word for coughed-up mucus, then shipped it to the CDC to test the bacteria’s response to drugs. In total, 43.7% of the 1,278 patients did not respond to at least one so-called second-line drug, used when the most popular medicines fail. The results varied widely from one country to another. In Thailand the figure was 33.3%; in Latvia a staggering 62% of samples showed resistance. Dr Dalton also looked at extensively drug-resistant, or XDR, tuberculosis, which is almost untreatable, failing to respond to back-ups to the back-ups. Researchers observed XDR tuberculosis in 6.7% of patients, ranging from 0.8% in the Philippines to 15.2% in South Korea. Worryingly (but unsurprisingly), resistance was higher in those countries which had had access to second-line drugs for a longer period of time. This suggests that, unchecked, it is only a matter of time before XDR tuberculosis arises in countries where second-line drugs arrived more recently, such as Thailand and the Philippines. On an individual basis, the best predictor of whether drugs would work in a patient was whether he had been treated for tuberculosis before. Other risks included factors such as unemployment and alcohol use. This may be because these patients would be less likely to adhere to a strict medical regimen, giving bacteria a chance to evolve around existing drugs. The study, however troubling, offers only an incomplete picture. India and China, home to the largest number of tuberculosis cases, are not included.

#### TB is spreading-we must act now to stop it

**Boseley** 3/21/20**12** [Sarah Boseley, March 21, 2012, “Drug-resistant TB spreading fast around the globe”, The Guardian, http://www.guardian.co.uk/society/sarah-boseley-global-health/2012/mar/21/tuberculosis-drug-resistance]

We should never have stopped being alarmed by tuberculosis, but a certain complacency set in when antibiotics stopped it in its tracks across Europe and the United States. That was when people believed in magic bullets. Now TB is back in ever more lethal forms. Multidrug resistant strains of the disease have evolved, sometimes because patients have not been given a full six months course of treatment for their regular TB. MDR-TB can take as long as two years to treat and the antibiotics needed are not available in the poorest countries. According to the latest observations this week by Médecins Sans Frontières ahead of World TB Day on Saturday, MDR-TB is spreading at a frightening rate. MSF says its own doctors are shocked. The data is patchy, but it is hard to dispute the trend: MSF president Dr Unni Karunakara says: Wherever we look for drug resistant TB we are finding it in alarming numbers, suggesting current statistics may only be scratching the surface of the problem. With 95 percent of TB patients worldwide lacking access to proper diagnosis, efforts to scale-up detection of MDR-TB are being severely undermined by a retreat in donor funding – precisely when increased funding is needed most. We need new drugs, new research, new programmes, and a new commitment from international donors and governments to tackle this deadly disease. Only then, will more people be tested, treated and cured. The world can no longer sit back and ignore the threat of MDR-TB. We must act now.

#### Infectious disease is spreading now-can pass drug resistance trait to other bacteria

**Grady** 3/5/20**13** [Denise Grady-NYT reporter, March 5, 2013, “Deadly Bacteria That Resist Strongest Drugs Are Spreading”, http://www.nytimes.com/2013/03/06/health/deadly-drug-resistant-infections-rise-in-hospitals-report-warns.html?\_r=0]

Deadly infections with bacteria that resist even the strongest antibiotics are on the rise in hospitals in the United States, and there is only a “limited window of opportunity” to halt their spread, health officials warned Tuesday. The bacteria, normally found in the gut, have acquired a lethal trait: they are unscathed by antibiotics, including carbapenems, a group of drugs that are generally considered a last resort. When these resistant germs invade parts of the body where they do not belong, like the bloodstream, lungs or urinary tract, the illness may be untreatable. The death rate from bloodstream infections can reach 50 percent. Dr. Thomas R. Frieden, director of the Centers for Disease Control and Prevention, called the organisms “nightmare bacteria” during a telephone news conference, and noted that they could pass their trait for drug resistance — encoded in a scrap of genetic material called a plasmid — along to other bacteria.

#### TB is spreading at a terrifying pace according to the World Health Organization Kelland 9/13/2011 [Kate Kelland, September 13, 2011, “Dangerous TB spreading at alarming rate in Europe: WHO”, http://www.reuters.com/article/2011/09/13/us-tuberculosis-europe-idUSTRE78C7VD20110913]

Launching a new regional plan to find, diagnose and treat cases of the airborne infectious disease more effectively, the WHO's European director warned that complacency had allowed a resurgence of TB and failure to tackle it now would mean huge human and economic costs in the future. "TB is an old disease that never went away, and now it is evolving with a vengeance," said Zsuzsanna Jakab, the WHO's Regional Director for Europe. "The numbers are scary," Lucica Ditiu, executive secretary of the Stop TB Partnership told a news conference in London. "This is a very dramatic situation." TB is currently a worldwide pandemic that kills around 1.7 million people a year. The infection is caused by the bacterium Mycobacterium tuberculosis and destroys patients' lung tissue, causing them to cough up the bacteria, which then spreads through the air and can be inhaled by others. Cases of multidrug-resistant (MDR-TB) and extensively drug-resistant TB (XDR-TB) -- where the infections are resistant to first-line and then second-line antibiotic treatments -- are spreading fast, with about 440,000 new patients every year around the world.

# 2AC Solvency

#### Repeal is key to solve Cuban IPR backlash, and WTO effectiveness.

Federal News Service March 3, 2010

“Hearing of the House Judiciary Committee, Domestic and International Trademark Implications of Havana Club and Section 211 of the Omnibus Appropriations Act of 1999” LexisNexis

REP. COBLE: Thank you, Mr. Orr.¶ Let me finally bring Dr. Esper and Mr. Reinsch in on this question.¶ How likely is it -- strike that. Different question.¶ What happens, gentlemen, if we don't amend 211 or repeal it, and what will the WTO do, Doctor and Mr. Reinsch?¶ MR. REINSCH: In other words, if you do nothing and the status quo continues?¶ REP. COBLE: Yeah.¶ MR. REINSCH: I think, in terms of international reaction -- Mr. Orr is probably in a better position to talk about what the WTO will do.¶ There's been an informal truce, if you will, for the last several years. At some point the E.U. may run out of patience and they'll be in a position, as with other cases where a country doesn't comply, to retaliate.¶ They'll have to make an initial judgment about how much that would be and in what form, and then the United States would probably object and there would be a substantial period of arguing about it that would result in some E.U. action against us, along with anybody else who wanted to climb aboard the train.¶ The other piece, of course, is what the Cubans might do, which is, I think, far more significant potentially in dollar terms, because of the U.S. trademarks that are registered there, and the fact that because of TSRA, the Trade Sanctions Reform Act that Congress enacted in 2000 as I recall, there is now beginning on the agriculture side -- agricultural -- branded agricultural commodities are flowing to Cuba in small amounts, so this is actually an issue there.¶ Nobody knows what they'll do. My sense is that they're waiting for Congress to resolve this issue before they will act. And so if you -- once you act definitively, I think they'll know, do what they think is best..

# Cuban Relations Cards

#### U.S.- Cuba Relations Not Improving

Jesse Serwer- Editor and Writer, July 1, 2013, Rum Wars: Havana Club Vs… Havana Club, LargeUp,

http://www.largeup.com/2013/07/01/rum-wars-havana-club-vs-havana-club/

For years, two different [Havana Club rums](http://www.largeup.com/2011/11/01/toppa-top-10-top-rum-part-two/2/) have been produced in two different countries by two different companies. A legacy of the now 53-year-old U.S.-Cuba trade embargo, the situation has recently been the subject of [a battle between the US and the EU](http://www.globalpost.com/dispatch/news/afp/130625/eu-cuba-spar-us-over-havana-club-rum) (along with Cuba) on the floor of the World Trade Organization. That product, made in Puerto Rico by Bacardi and sold solely in the U.S., became the subject of trademark violation litigation by Pernod Ricard, after U.S. courts allowed the once-Cuban rum behemoth to use the name. The World Trade Organization struck down that ruling in 2002, but the U.S. has yet to comply, and the dispute remains unsettled, with the U.S. continuing to permit Bacardi use of the Havana Club name.

Last year [it was reported](http://www.huffingtonpost.com/2012/06/13/bacardi-havana-club-rum_n_1592027.html) that this lingering remnant of the Cold War was over. However, it turns out that’s not the case: just last week, the Havana Club war [returned to the floor of the WTO, and things got heated](http://www.largeup.com/2013/07/01/rum-wars-havana-club-vs-havana-club/relations%20between%20the%20world's%20superpowers%20have%20been%20strained%20over%20how%20to%20package).

#### **U.S. and Cuba Still Disputing**

Peter Orsi- Associated Press correspondent in Havana, June 5, 2012, Havana Club rum trademark has Cuba, U.S. at odds, Huff Post, http://www.tampabay.com/news/business/economicdevelopment/havana-club-rum-trademark-has-cuba-us-at-odds/1233800

There was the Cold War, the Bay of Pigs and the Cuban Missile Crisis, and there is still no end in sight to U.S.-Cuban animosity. Now a bitter dispute over a sweet-tasting spirit appears to be nearing an end game after more than a decade of legal wrangling. Time and again, U.S. courts have ruled against Cuba in its fight to control the U.S. rights to the trademark Havana Club, the island's flagship rum brand, which is sold in more than 120 countries around the world — but not in the United States. "The United States' disrespectful attitude in divesting the legitimate Cuban owners of the Havana Club brand can put at risk the brand and patent rights of American companies in our country," said Maria de los Angeles Sanchez, director of Cuba's office of intellectual property. "Cuba reserves the right as a sovereign nation to act at the appropriate moment." Cuba sued the U.S. government, but lost. When the U.S. Supreme Court declined to review the ruling, a 30-day countdown began after which the patent office can cancel the trademark.

Rum Conflict Between U.S. and Cuba Gone Too Far

Agence France-Presse- June 27, 2013, EU, Cuba spar with US over ‘Havana Club’ rum, New Age,

http://newagebd.com/detail.php?date=2013-06-27&nid=54589#.UcuIgtiLhYU

The European Union and Cuba locked horns with the United States on Tuesday at the World Trade Organisation, 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. Washington’s trade diplomats countered that the relevant bills were before US lawmakers, and that the country was working to resolve the issue. But critics said that lodging bills could not be considered falling into line, saying Washington had had ample time to comply. The 1998 law banned Havana Club Holdings, a joint venture between Pernod Ricard and Havana Rum and Liquors of Cuba, which owns the Havana Club trademark, forcing it to defend its business in US courts against the Bacardi-Martini group. As late as May 2012, the US Supreme Court refused to hear a Pernod Ricard  appeal of the law, allowing Bacardi to keep selling its Havana Club brand of rum inside the United States. Bacardi-Martini, based in Bermuda, has been distributing its rum in the US under the Havana Club brand name since 1994.

#### **Tensions Between Cuba and U.S. Increasing**

Times Wire Reports, February 10, 2000, Rum-Label Decision Likely to Irk Cuba, Los Angeles Times,

http://articles.latimes.com/2000/feb/10/news/mn-62942

In a decision that could increase tensions between the U.S. and Cuba, a U.S. appeals court in New York upheld Bermuda-based liquor firm Bacardi & Co.'s right to use Cuban rum labeled Havana Club in the U.S. The ruling, dated last Friday, found that a Cuban-French joint venture had no rights to the trademark in the United States and that Bacardi could sell rum under the Havana Club name. Cuba has accused Bacardi of behaving like a "pirate firm," and last year the Havana government threatened to stop protecting U.S. trademarks registered there. Brands including Coca-Cola, Marlboro and McDonald's are legally registered in Cuba. The original Havana Club firm was confiscated by Fidel Castro's government without compensation, according to Bacardi.

Conditions are Growing Worse- Good Relations Lead to Good Economy

Michael Parenti- American political scientist, historian, and cultural critic, September 2004, U.S. Aggression & Propaganda Against Cuba, Z Magazine,

<http://www.thirdworldtraveler.com/Caribbean/US_Aggression_Cuba.html>

In recent times, U.S.-Cuban relations have gone from bad to worse. For over four decades Washington policymakers have treated Cuba with unrelieved antagonism. Better relations with the U.S. would bring the Cubans more trade, technology, and tourism, and the chance to cut their defense expenditures. In other words, the people reap much of the benefits of the tourist trade-as is true of the export earnings from Cuban sugar, coffee, tobacco, rum, seafood, honey, nickel, and marble. When forced to choose between democracy without capitalism or capitalism without democracy, U.S. rulers unhesitatingly embrace the latter-although they also prefer the legitimating cloak of a limited and well-controlled "democracy" when possible.

All this should remind us that the greatest enemies of peace and democracy are not in Havana; they are in Washington.

# 2AC Counterplans

### Courts CP

#### 1. Perm – do both

#### 2. The perm shields politics.

**Perine**, 6/12/**2008** (Katherine – staff at CQ Politics, Congress Unlikely to Try to Counter Supreme Court Detainee Ruling CQ Politics, p. <http://www.cqpolitics.com/wmspage.cfm?docID=news-000002896528&cpage=2>)

Thursday’s decision, from a Supreme Court **dominated by Republican appointees**, gives Democrats further cover against GOP sniping. “This is something that the court has decided, and very often the court **gives political cover to Congress**,” said Ross K. Baker, a Rutgers University political science professor. “You can simply point to a Supreme Court decision and say, ‘**The devil made me do it**.’ ”

#### 3. Agent CPs are a voter --- they steal aff ground and shift the debate away from topic education.

#### 4. No solvency – Congress overturns the CP.

**Dunoff 2008** (Jeffrey – Visiting Senior Research Scholar, Program in Law and Public Affairs and Visiting Professor at Woodrow Wilson School, Charles Klein Professor of Law and Government and Director of the Institute for International Law and Public Policy at Temple University Beasley School of Law, The Impact of WTO Law in Domestic Legal Orders, p. 7-8)

Like previous bills implementing trade agreements, URAA was accompanied by a Statement of Administrative Action (SAA). URAA provides that the SAA “shall be regarded as an authoritative expression by the United States concerning the interpretation and application of the Uruguay Round Agreements and this Act in any judicial proceeding in which a question arises concerning such interpretation and application.”21 The SAA explains that “[i]f there is a conflict between U.S. law and any of the Uruguay Round agreements, . . . the implementing bill makes clear that U.S. law will take precedence.” The SAA also addresses the effect of dispute reports: Reports issued by panels or the Appellate Body under the DSU have no binding effect under the law of the United States and do not represent an expression of U.S. foreign or trade policy. . . . If a report recommends that the United States change federal law to bring it into conformity with a Uruguay Round agreement, **it is for the Congress to decide whether any such change will be made**. Finally, the SAA provides that “neither federal agencies nor state governments are bound by any finding or recommendation included in such reports” and “panel reports do not provide legal authority for federal agencies to change their regulations or procedures or refuse to enforce particular laws or regulations . . . .”22 These provisions are reinforced by statements in the legislative history confirming Congress’ intention to severely constrain the use of WTO law in U.S. courts. For example, the legislative history provides that the Uruguay Round agreements are “non-self-executing” and that “any dispute settlement findings that a U.S. statute is inconsistent with an agreement also cannot be implemented **except by legislation approved by the Congress** unless consistent implementation is permissible under the terms of the statute.” In short, there can be **little doubt** that Congress intended to severely constrain the domestic legal effect of WTO law and dispute settlement reports. In particular, the terms of the implementing legislation, Statement of Administrative Action, and legislative history all evidence Congress’s strong intention that (1) as a matter of domestic law, the United States’s WTO obligations **do not trump inconsistent federal law** and (2) private parties cannot use WTO dispute reports in domestic litigation to challenge government actions. Rather, in the event that a U.S. law is found to be WTO-inconsistent, the URAA contemplates that any changes to U.S. law or policy will come through political, rather than judicial, processes.

#### 5. Perm – do the CP --- the plan does not mandate an agent

#### 6. No solvency – CP is not perceived

**deLisle**, Winter **2002** (Jacques – University of Pennsylvania Law School, 52 DePaul L. Rev. 473, p. Lexis-Nexis)

It still might be supposed that courts roving about enforcing an expanding body of international legal norms might be especially dangerous in the American context because of the unusually high levels of independence and power that U.S. courts enjoy as a coequal and (on some accounts) unaccountable branch. The potential for courts to derange the nation's foreign policy might seem to be commensurately greater. But it is far from clear that this is so. True, the structure of governmental power and the extensive autonomy of courts in the United States may still seem **exotic and hard** to imagine in much of the world, especially in China and many of the other authoritarian regimes that have been the foci of human rights litigation. But that does not mean that foreign governments and their leaders fail to comprehend the U.S. structure. It does not mean that they view court decisions **as of a piece with U.S. foreign policy** as articulated by the executive branch or Congress because they see courts as agents of the political branches (as they arguably are in China and many ATCA target countries). Nor does it mean that they view judicial opinions as on par with legislative or presidential pronouncements because they view courts as the equal of the political branches in foreign policy (as a highly simplistic version of American constitutional law and politics might suggest). Indeed, these two imaginable foreign views of U.S. courts are contradictory. Moreover, there is considerable evidence that the PRC has a reasonably accurate and sophisticated understanding of U.S. separation of powers principles. In these circumstances, it is unwarranted and unwise - and would unnecessarily constrain and  [\*546]  undermine the political branches' conduct of foreign policy - to accept at face value statements from foreign governments (including notably China) that exaggerate opportunistically their incomprehension of U.S. separation of powers law, and that express shock and offense at judicial decisions (or, for that matter, congressional expressions of opinion that do not become law) and that purport to construe them as expressions of the foreign policy positions of the American government. 211

#### 7. CP can’t take Section 211 off the books.

**Treanor and Sperling**, December **1993** (William and Gene, Prospective Overruling and the Revival of “Unconstitutional” Statute, Columbia Law Review, p. Lexis-Nexis)

The most noted instance in which the revival issue was resolved by a court involved the District of Columbia minimum wage statute pronounced unconstitutional in Adkins. After the Court reversed Adkins in West Coast Hotel, President Roosevelt asked Attorney General Homer [\*1913] Cummings for an opinion on the status of the District of Columbia's statute. The Attorney General responded, The decisions are practically in accord in holding that the courts have no power to repeal or abolish a statute, and that notwithstanding a decision holding it unconstitutional a statute continues to remain on the statute books; and that if a statute be declared unconstitutional and the decision so declaring it be subsequently overruled the statute will then be held valid from the date it became effective. n43

#### 8. That tanks solvency.

**Craig**, 7/13/**2004** (Larry, Testimony before the United States Senate Committee on the Judiciary, p. <http://www.judiciary.senate.gov/hearings/testimony.cfm?id=4f1e0899533f7680e78d03281ffc2ea6&wit_id=4f1e0899533f7680e78d03281ffc2ea6-0-2>)

Second, Section 211 is a positive danger to U.S. trademarks because, until it is taken off the statute books, the U.S. will remain in violation of the Inter-American Convention for the Protection of Trademarks. Section 211's violation will place thousands of U.S. trademarks registered in Cuba in serious jeopardy.

#### 9. Court rulings undermine multilateral trade.

**Dunoff**, 8/31/**2006** (Jeffrey – Charles Klein Professor of Law at Temple University, Can Domestic Court Defiance Strengthen International Tribunals?, Opinio Juris, p. <http://opiniojuris.powerblogs.com/archives/archive_2006_08_27-2006_09_02.shtml>)

But even if enhanced compliance is the goal (a position I challenge below), it is not clear that domestic court enforcement is a sensible strategy. A central difficulty is that we do not know the relationship between private enforcement in domestic courts and state enforcement through WTO proceedings. In particular, we do not know whether domestic and international actions would act as compliments or as substitutes. For example, the AB held that U.S. measures supporting cotton farmers, and EC measures supporting sugar production, constitute unlawful export subsidies. If foreign agricultural interests could challenge these subsides as **GATT-illegal in domestic courts**, might Brazil or other states be **less inclined** to file similar actions in Geneva? There are both theoretical and practical reasons to believe that private, **domestic actions could crowd out Geneva-based actions**. But this suggests a curious result: If the possibility of domestic actions had the effect of displacing WTO dispute settlement proceedings, then opening domestic courts to WTO-related claims could – ironically – decrease the net amount of litigation to enforce WTO norms. One final, albeit important, consideration merits attention. WTO dispute settlement is simply one element of a **much larger trade regime**. Drawing on an argument John Ruggie developed, I argue the WTO system is characterized by “embedded legalism” – that the DSU’s commitment to rule-based dispute settlement is embedded within a **larger WTO commitment** to the political management of trade relations. As I’ll argue in more detail at APSA, domestic court use of WTO law threatens to disembed the WTO’s rule-orientation from its larger political context, at significant cost to the trade regime.

### Commissions CP

**Reject the team—punish them for making this argument to deter it in future rounds**

#### 1—Permutation: do both - The United States Congress should establish an independent bipartisan commission empowered to submit to Congress recommendations for international economic policy. Congress and the executive will delegate authority to the commission to create recommendations and allow 90 days to pass legislation maintaining existing legislative baselines. The Commission should recommend to Congress that the United States federal government should repeal Section 211 of the Omnibus Appropriations Act of 1998.

That’s net beneficial – by removing the ability for congress to revise the plan, shields the link to politics even better because congress can just blame the commission. There’s no net benefit from uncertainty in this counterplan – the permutation solves all their offense.

#### 2—The counterplan is functionally a delay counterplan: it mandates plan implementation in all but the narrow circumstances in which congress *revises* the commission recommendation. Even outright congressional rejection still results in the plan.

#### 3—Permutation: do the counterplan. Delay counterplans don’t compete. Doesn’t contest the idea that repealing Section 211 is a good idea.

#### Fairness—forces the aff to rely on external instead of internal offense—changing normal mechanism means the aff must predict and research disads to every variation on delay instead of disads to the aff or parts of the aff. Contrived—only done to avoid the politics DA

#### **Topic education—** creates an incentive for neg teams to research normal means CPs instead of debating case which dodges the debateover whether economic engagement with latin america is a good or bad idea which is the core question of the resolution.

#### Should means “ought to”

American Heritage Dictionary 2004

http://dictionary.reference.com/search?q=should

should    ( P )   aux.v. Past tense of shall Used to express obligation or duty: You should send her a note. Used to express probability or expectation: They should arrive at noon. Used to express conditionality or contingency: If she should fall, then so would I. Used to moderate the directness or bluntness of a statement: I should think he would like to go. Usage Note: Like the rules governing the use of shall and will on which they are based, the traditional rules governing the use of should and would are largely ignored in modern American practice. Either should or would can now be used in the first person to express conditional futurity: If I had known that, I would (or somewhat more formally, should) have answered differently. But in the second and third persons only would is used: If he had known that, he would (not should) have answered differently. Would cannot always be substituted for should, however. Should is used in all three persons in a conditional clause: if I (or you or he) should decide to go. Should is also used in all three persons to express duty or obligation (the equivalent of ought to): I (or you or ~~he~~) should go. On the other hand, would is used to express volition or promise: I agreed that I would do it. Either would or should is possible as an auxiliary with like, be inclined, be glad, prefer, and related verbs: I would (or should) like to call your attention to an oversight. Here would was acceptable on all levels to a large majority of the Usage Panel in an earlier survey and is more common in American usage than should. ·Should have is sometimes incorrectly written should of by writers who have mistaken the source of the spoken contraction should've. See Usage Note at if. See Usage Note at rather. See Usage Note at shall.

#### “Should” implies suggestion, not certainty – prefer common meaning.

Words and Phrases 2003 Vol. 39 Supp. Pamphlet pg. 276

C.A.2 (N.Y.) 1999 – Common meaning of the term “should” suggests or recommends a course of action, while ordinary understanding of “shall” describes a course of action that is mandatory, and, in absence of clear manifestation of intent on part of Sentencing Commission to attribute to “should” a meaning contrary to the common one, the term should be given its usual meaning when interpreting sentencing guidelines and application notes. U.S.S.G. S 1B1.1 et seq., 18. U.S.C.A. – U.S. v. Maria, 186 F.3d 65 –Sent & Pun 661, 665.

#### 4—Double bind – either plan is unpopular and Congress says no, or plan is popular and there’s no link to politics

Glassman and Straus 13 (Matthew Eric - Analyst in American National Government, Government and Finance Division, Jacob R. - analyst on the Congress at the Congressional Research Service and an adjunct lecturer at The Johns Hopkins University, January 22nd, “Congressional Commissions: Overview, Structure, and Legislative Considerations,” Congressional Research Service, http://www.fas.org/sgp/crs/misc/R40076.pdf)

A third criticism of commissions is that they have high costs and low returns. Congressional commission costs vary widely, ranging from several hundred thousand dollars to over $10 million. Coupled with this objection is the problem of congressional response to the work of a commission; in most cases, Congress is under no obligation to act, or even respond to the work of a commission. If legislators disagree with the results or recommendations of a commission’s work, they may simply ignore it. In addition, there is no guarantee that any commission will produce a balanced product; commission member s may have their own agendas, biases, and pressures. Or they may simply produce a mediocre work product. 46 Finally, advisory boards create economic and legislative inefficiency if they function as patronage devices, with Members of Congress using commission positions to pay off political debts.

47

#### 5—Commissions aren’t binding – Congress says no and partisanship anyway

Hennessey 10 (Keith - Lecturer at the Stanford Graduate School of Business and the Stanford Law School, former Assistant to the President for Economic Policy and Director of the National Economic Council, January 10th, “Error of Commission,” http://keithhennessey.com/2010/01/20/error-of-commission/)

The President’s commission does not create any binding fast-track process. Leader Reid cannot unilaterally bind 100 Senators to an up-or-down vote and no amendments. Even if a commission were to produce unanimous recommendations, Republicans should fear that a Democratic Senate majority would use those recommendations as a starting point, substitute even more tax increases for whatever spending cuts are in the recommendations, and then pass the bill. Scott Brown’s election as the 41st vote has little effect on this dynamic, since the changes would probably happen in committee. Any commission created by Executive Order has this weakness: it cannot bind Congress. Only Congress can tie itself to the mast.

#### Use of commissions kills transparency and subverts the democratic process

Glassman and Straus 13 (Matthew Eric - Analyst in American National Government, Government and Finance Division, Jacob R. - analyst on the Congress at the Congressional Research Service and an adjunct lecturer at The Johns Hopkins University, January 22nd, “Congressional Commissions: Overview, Structure, and Legislative Considerations,” Congressional Research Service, http://www.fas.org/sgp/crs/misc/R40076.pdf)

A second concern about commissions is that they are not democratic. This criticism takes three forms. First, commissions may be unrepresentative of the general population; the members of most commissions are not elected and may not reflect the variety of popular opinion on an issue. 44 Second, commissions lack popular accountability. Unlike Members of Congress, commission members are often insulated from the electoral pressures of popular opinion. Finally, commissions may not operate in public; unlike Congress, their meetings, hearings, and investigations may be held in private. 45

#### No solvency and causes controversy – links to politics

Mayer 7 (Kenneth – Professor of Political Science at the University of Wisconsin-Madison, December, “THE BASE REALIGNMENT AND CLOSURE PROCESS: IS IT POSSIBLE TO MAKE RATIONAL POLICY?” John Brademas Center for the Study of Congress, http://users.polisci.wisc.edu/kmayer/Professional/Base%20Realignment%20and%20Closure%20Process.pdf)

The second question is whether the BRAC model can succeed in other policy areas, where Congress has been similarly unable to act. The success of the BRAC process has spurred many efforts to replicate it on other controversial issues. In 1999, I argued that independent commissions have a poor record; there have been very few instances where they have actually resolved legislative impasses (Mayer 1999). 5 The problem is that legislators are usually reluctant to delegate substantial policy authority, at least without strong procedural safeguards and ongoing monitoring. The conditions that made BRAC successful were the consensus on the goals, agreement about what precise policy steps were necessary, and the narrow range (at least initially) of the policy making authority. These conditions are rarely present, and clearly do not apply to, say, efforts to create BRAC -like commissions on entitlement reform, where there is intense controversy over both goals and specific policies. The “conventional wisdom” about the BR AC process is thus incomplete. On the one hand, the process successfully ended a longstanding impasse, and forced efficiencies by emphasizing general welfare over particularized benefits. But the standard explanation of why Congress willingly delegated so much authority – the narrow decision space, an d the neutrality of the process – apply mostly to the early rounds: the later BRAC commissions exercised authority over a broad range of defense issues, extending far beyond the distributional question of which bases would be closed. The process also became increasingly politicized, with municipal and community groups lobbying the commission with the same strategies applied to members of Congress, and allegations of logrolling and political pressure. The in creasing complexity of the decision making process, and concerns about politicization, have undoubtedly played a role in Congress’ reluctance to consider further BRAC rounds.

### Narrow Fix CP

#### Only a full repeal solves IP credibility

**Esper**, 3/3/**2010** (Mark – Executive Vice President of the Global Intellectual Property Center, Domestic and International Implications of Havana Club and Section 211, of the Omnibus Appropriations Act of 1999, Testimony to the House Committee on the Judiciary, p. <http://judiciary.house.gov/hearings/pdf/Esper100303.pdf>)

Recommended Action

Only complete repeal of Section 211 will provide full compliance with all current United States trade obligations, ensure no retaliation or penalties against the United States or American companies, and safeguard our nation’s reputation as a strong defender of the global system of IP rights, laws, and norms. Some have proposed amending Section 211 to achieve only WTO compliance by applying it to both U.S. nationals and foreign trademark holders. However, this is an incomplete solution as it does not solve our noncompliance with the InterAmerican Convention—which I mentioned earlier—because Section 211 denies trademark registration and renewal on grounds other than those permitted under this treaty.

#### Only a full repeal guarantees compliance --- the CP causes uncertainty and litigation.

**Reinsch**, 3/3/**2010** (Bill – president of the National Foreign Trade Council, member of the U.S.-China Economic and Security Review Commission, Hearing of the House Judiciary Committee, Domestic and International Trademark Implications of Havana Club and Section 211 of the Omnibus Appropriations Act of 1999, Chaired by Representative John Conyers (D-MI), Witnesses: Mark Orr – Vice President of North American Affairs at Pernod Ricard USA, Bruce Lehman – former assistant secretary of commerce and expert counsel for Bicardi USA, Mark Esper – executive vice president of the Global Intellectual Property Center at the U.S. Chamber of Commerce, William Reinsch – president of the National Foreign Trade Council, John Veroneau – partner at Covington & Burling LLP, Federal News Service, p. Lexis-Nexis)

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 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 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 at cross purposes with long-standing 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.

#### Amending Section 211 causes Cuban retaliation.

**Craig**, 7/13/**2004** (Larry – Republican Senator from Idaho, Testimony before the United States Senate Committee on the Judiciary, p. <http://www.judiciary.senate.gov/hearings/testimony.cfm?id=4f1e0899533f7680e78d03281ffc2ea6&wit_id=4f1e0899533f7680e78d03281ffc2ea6-0-2>)

A repeal of Section 211 simply returns the question of ownership to the courts where it belongs. Indeed if Section 211 had not been enacted several weeks before trial in the Havana Club dispute, the ownership of that trademark would have been judicially determined over five years ago. It is time to repeal Section 211 and let the company that engineered that law - to the extent that it has a case - go tell it to a judge and let Congress out of the trademark dispute resolution business. So far Cuba has continued to honor U.S. trademarks - even though it is entitled by international law to suspend the obligations it owes U.S. companies under the Convention. However, if Congress fails to repeal Section 211 and merely amends the law in a WTO-specific fashion (as S. 2373 proposes), it will thereby reaffirm the U.S. breach of the Inter-American Convention vis-à-vis Cuba. At that point Cuban forbearance can be expected to end. The result will very likely be disastrous for U.S. companies with trademarks registered in Cuba.

# 2AC Disads

## A2 Brazil DA

### 2AC Brazil Turn

#### All of the cards are pre-2013 – this means that the don’t assume the recent riots regarding Brazilian fiscal irresponsibility – they’re functionally useless because they don’t take into account any relevant factors surrounding Brazil’s soft power

#### **Brazil economic decline is inevitable – old ev is useless**

Latin Finance, 7/8/13, Latin American news source, “Brazil unrest threatens economic decline: Cardoso”, <http://www.latinfinance.com/Article/3228143/Brazil-unrest-threatens-economic-decline-Cardoso.html#.Uf8ku5LFVsl>] [MN]

Former Brazilian president Fernando Henrique Cardoso has lashed out at the government's response to a wave of social unrest sweeping the nation, warning that a mishandling of the crisis could exact a heavy toll on an economy already suffering from weak growth. In an exclusive interview with Latin Finance, Cardoso said: ‘There is a lack of a clear vision to deal with the crisis. I think it will have [a negative impact], because it just increases the level of doubt among decision makers: What is going to happen? Where is this going to lead?’ His comments — his sharpest yet on the issue -follow moves by President Dilma Rousseff to head off the crisis, including last week proposing a referendum on political reform as a way to address growing public calls for an end to corruption. Cardoso said: ‘The reaction of the government has been quite strange because it only sees this from a political angle.’ The former president said the commodity-fueled growth bonanza may have run its course and that living standards have failed to keep up with the government's rhetoric on Brazil's growth miracle. He added that the protest movement reﬂects a deeper malaise plaguing Brazilian society, 10 years after the rise to power of Rousseff’s predecessor, former leftwing Workers‘ Party leader Luizlnacio Lula da Silva. Brazilian authorities are now facing ‘a reality shock’, he added. ‘There is a dual reality: what the government and the ofﬁcial media say- everything is marvelous, Brazil is the world's seventh largest economy. This is true in a way, but you cannot forget that the society has not improved as fast as the economy-there is a lot of insecurity, violence, the quality of employment is not that great, the day to day life is harder than the general picture would lead people to believe. It's a process of cognitive dissonance, as psychologists would say.’ Protests erupted early June following a 6% increase in public transport fares in S50 Paulo, which Cardoso said proved to be a ‘short circuit which later sparked a ﬁre‘. Although the price hikes were later rescinded, unrest spread to major cities across the nation, with mass protests expressing outrage at the contrast between the roughly $12 billion price tag for the 2014 football World Cup and the poor quality of public services, including health and education.

#### Soft power and economic decline don’t mix

Joseph S. Nye, Autumn 1990, He is the co-chair of the Center for a New American Security Cyber Security Project, on the International Editorial Board of the Cambridge Review of International Affairs, the editorial board of Foreign Policy, the Board of Directors of the Council on Foreign Relations, [Foreign Policy, No. 80, Twentieth Anniversary: “Soft Power”, http://www.jstor.org/stable/pdfplus/1148580.pdf?acceptTC=true ] [MN]

These studies suggest that the effect of World War II lasted about a quarter century and that most of the decline worked its way through the system by the mid-1970s. In fact, the big adjustment of American commitments occurred with then President Richard Nixon's withdrawal from Vietnam and the end of the convertibility of the dollar into gold. The dictionary tells us that power means an ability to do things and control others, to get others to do what they otherwise would not. Because the ability to control others is often associated with the possession of certain re- sources, politicians and diplomats commonly define power as the possession of population, territory, natural resources, economic size, military forces, and political stability. For ex- ample, in the agrarian economies of eight- eenth-century Europe, population was a criti- cal power resource since it provided a base for taxes and recruitment of infantry. Traditionally the test of a great power was its strength in war. Today, however, the defi- nition of power is losing its emphasis on mili- tary force and conquest that marked earlier eras. The factors of technology, education, and economic growth are becoming more signifi- cant in international power, while geography, population, and raw materials are becoming somewhat less important.

### AT: Border Wars

#### Brazil can’t resolve border disputes – IIRSA proves

Baker Institute Conference Report, December 2011, Published by the James A. Baker III Institute for Public Policy of Rice University: “Americas Project 2011 21st Century Borders in the Americas”, <http://bakerinstitute.org/publications/LAI-pub-AP11ConferenceReport-English-122211.pdf>] [MN]

Where does the problem arise? Nine years before, during the first Summit of the Presidents of South America, held from August 30 to September 1, 2000, in Brasilia, the attending states created the “Initiative for the Integration of American Regional Infrastructure” (IIRSA), an inter-institutional mechanism for the coordination of intergovernmental projects and actions of the 12 South American countries. The purpose of the initiative was to construct a common agenda for promoting projects involving the integration of infrastructure, transportation, energy, and communications.13 One part of the infrastructure project identified by the IIRSA was the construction of a highway more than 300 kilometers long that would pass through part of a rain forest and link regions that remain inaccessible in Bolivia.14 The highway was supposed to facilitate and promote the transit of goods and people, linking, in part, the Pacific and Atlantic Oceans. However, the proposed highway also traversed the indigenous territory of the Isiboro Sécure (Tipnis) National Park, which is subject to the special prior consultation system. Indigenous communities organized an opposition force, resulting in a 600-kilometer march to the capital city of La Paz to request that the project be halted or diverted to avoid indigenous territory.15 Some 100 indigenous people marched for 68 days from Tipnis, and civil society peacefully joined the protests. As a result of the controversy, two ministers and one vice-minister resigned from the government and a general was removed from his post. Ultimately, the Bolivian government was forced block the construction of the highway, even when faced with pressures within the Brazilian government, which financed the project. This example shows that regional development needs can interfere with local development needs, creating border conflicts when two legitimate interests clash.

### AT: No Econ Collaspe

#### Brazil’s currency is unstable – they’re still vulnerable to economic collapse

Bloomberg, 6/5/13, news source, [Bloomberg: News, “Brazilian Real’s Decline Prompts Intervention after Bond Tax Cut”, <http://www.bloomberg.com/news/2013-06-05/brazil-real-drops-as-global-weakness-offsets-scrapped-bond-tax.html>] [MN]

Brazil’s real approached a four-year low, prompting the central bank to intervene in the currency market after the government’s removal of a 6 percent tax on foreign investors failed to produce a sustained rally. The currency fell 0.1 percent to 2.1277 per U.S. dollar after swinging between a 1.9 percent gain and a 1.1 percent decline. It touched 2.1492, compared with the four-year intraday low of 2.1495 on May 31. Swap rates on the contract maturing in January 2015 rose 13 basis points, or 0.13 percentage point, to 9.10 percent, a one-year high. The yield on Brazil’s local fixed-rate debt due in 2023 dropped 15 basis points to 10.31 percent. The real fluctuated as signs of sputtering global growth sapped demand for emerging-market assets, erasing the biggest intraday rally this year. That surge was sparked by the government’s removal of the so-called IOF tax on foreign investors who buy Brazilian bonds in the domestic market. President Dilma Rousseff said that the nation has a floating exchange rate and isn’t adopting measures to contain the dollar. “The fact that the real is weaker on the day after these measures, not only the IOF but also intervention, tells you how bad the market sentiment is,” Marcela Meirelles, a Latin America strategist at TCW Group Inc., which oversees $128 billion of assets, said by phone from Los Angeles. The central bank sold 27,500 currency swap contracts worth $1.38 billion out of 40,000 offered after selling 17,600 contracts worth $877 million on May 31 in its first intervention in the foreign-exchange market since March.

### AT: Trade Blocs

#### Brazil soft power decline is inevitable – Mercosur instability

Council on Foreign Relations, 7/31/12, [CFR: “Mercosur: South America's Fractious Trade Bloc”, <http://www.cfr.org/trade/mercosur-south-americas-fractious-trade-bloc/p12762>] [MN]

Paraguay's president, Fernando Lugo, was impeached and removed from office in June 2012 after seventeen people were killed in a clash between landless farmers and policemen who were trying to evict them. The Chamber of Deputies and the Senate cited this event, as well as insecurity, nepotism, and a controversial land purchase, to vote 76 to 1 to prosecute and dismiss Lugo within two days. Some sources consider that all this was taken as a pretext to expel Lugo. But several Mercosur members rejected Lugo's removal, arguing that it was undemocratic, and suspended Paraguay from Mercosur until the next presidential elections take place in April 2013. What are the implications of Venezuela joining as a full member? Venezuela's entrance has caused tension within the trade bloc. The country first asked to join Mercosur in 2004. A part-membership agreement, the Protocol of Adhesion of Venezuela to Mercosur, was approved in 2006 by Argentina, Brazil, and Uruguay. Paraguay, citing a lack of democracy in Venezuela, refused to grant the country full membership. It was not until June 2012, when Paraguay was suspended from the bloc, that Venezuela became a full member of Mercosur. The move has been viewed by many observers as an institutional blow to the union. Uruguayan Vice President Danilo Astori said that the move "could have important consequences for the future, since the institutional framework of Mercosur is so weak that it becomes useless."

### AT: Solves Disease

#### No solvency – without repealing section 211, Cuba will become a haven for trademark pirates, turns Brazil – their drugs will be counterfeited causing the same immunity leading to extinction – that’s Pava 11

### AT: Political Stability

#### Brazilian economic collapse and political instability is happening now – no soft power

Bill Van Auken, 6/23/13, researcher/writer for Global Research: Centre for Research on Globalization, [Global Research: Centre for Research on Globalization: “The Mass Protests in Brazil and the Crisis of Revolutionary Leadership”, <http://www.globalresearch.ca/the-mass-protests-in-brazil-and-the-crisis-of-revolutionary-leadership/5340087>] [MN]

Over the past week, Brazil has witnessed its largest protests since the end of the military dictatorship in 1985. This eruption of mass struggles has exposed, above all, the crisis of revolutionary leadership in the working class The initial trigger for the escalating protests was an increase in bus fares, which was subsequently rolled back in an attempt to dissipate social unrest. Nonetheless, Thursday saw somewhere between one and two million people take to the streets of Rio de Janeiro, Sao Paulo and dozens of other cities across the country, pressing demands for greater investment in education and health care and venting popular anger over the billions being lavished on World Cup stadiums at the expense of the people In many instances, demonstrators were met with brutal repression, including tear gas, rubber bullets and cavalry charges. Popular mobilizations of such sweeping dimensions cannot be explained merely by the immediate events that triggered them—in this case, a 20-cent rise in bus fares; in the case of Turkey, the move to bulldoze Istanbul’s Gezi Park. They are rooted in the deep-going contradictions of these societies, which have been immensely sharpened by the historic crisis of global capitalism. Brazil, like Turkey, has been hailed in recent years as an economic success story. Yet the “Brazilian miracle” appears to have hit the wall. While it has created some 50 billionaires and over 150,000 millionaires, it has proven incapable of resolving the legacy of imperialist oppression and economic backwardness in relation to the basic social infrastructure. Limited social assistance programs that have been hailed for reducing the rate of extreme poverty and creating a new “middle class” have done little to alter Brazil’s status as one of the most socially unequal countries on the face of the planet. There are growing signs of economic crisis, with the growth rate falling to 0.9 percent in 2012 and 0.6 percent for the first quarter of this year. Industrial production has fallen 0.3 percent, bringing with it layoffs and hiring freezes. Consumer spending is falling, as the majority of the population faces mounting debts. Inflation has risen to an official rate of 6.5 percent, with the cost of basic necessities rising far more steeply.

## A2 Politics DA

### Government Shudtdown

#### Collapse is all hype—budget cuts are just leverage against Obamacare

**Terkel, 7/30**/13 (Amanda Terkel—Senior Political Reporter and Politics Managing Editor at The Huffington Post; “Government Shutdown Will Not Shut Down Obamacare, Says New CRS Report”; Huff Post; pg.; http://www.huffingtonpost.com/2013/07/30/government-shutdown-report\_n\_3677943.html)

If a government shutdown were to occur during calendar year 2014, the lapse in funding would not automatically suspend the requirement of the individual mandate," the report said. "In other words, during the time period that the government is shut down, taxpayers who fall within the coverage of the individual mandate would still be accruing penalties for any months in which they lacked minimum essential coverage."¶ In recent days, Sen. Mike Lee (R-Utah) has been leading an effort to essentially [shut down the government](http://www.huffingtonpost.com/2013/07/28/mike-lee-obamacare_n_3667329.html" \t "_hplink) unless Obamacare is repealed. He wants Republicans to refuse to pass a continuing resolution that would keep the federal government open beyond Sept. 30 if it includes funding for the implementation of the Affordable Care Act. He already has the backing of about a dozen Republican senators.¶ Lee's plan, however, has also engendered significant criticism from his fellow Republicans.¶ "The strategy that has been laid out is a good way for [Republicans to lose the House](http://thehill.com/blogs/blog-briefing-room/news/313845-coburn-government-shutdown-would-destroy-the-gop" \t "_hplink)," Sen. Tom Coburn (R-Okla.) recently [told the Washington Examiner](http://m.washingtonexaminer.com/coburn-defund-obamacare-campaign-dishonest-hype/article/2533554" \t "_hplink).¶ Coburn's office [released](http://www.coburn.senate.gov/public/index.cfm/2013/7/congressional-research-service-government-shutdown-does-not-shut-down-obamacare" \t "_hplink) the CRS report on Tuesday.¶ Like other [critics](http://www.nationalreview.com/corner/354742/goldberg-not-fantastic-argument-shutdown-government-over-obamacare-nro-staff" \t "_hplink) of Lee's plan, Coburn has argued that holding up the government's operations over Obamacare is unrealistic, since Democrats still control both the presidency and the Senate and have vowed not to let Obamacare be defunded.¶ "[It's not an achievable strategy](http://m.washingtonexaminer.com/coburn-defund-obamacare-campaign-dishonest-hype/article/2533554" \t "_hplink)," Coburn told the Examiner. "It's creating the false impression that you can do something when you can't. And it’s dishonest."¶ Last week, Sen. Richard Burr (R-N.C.) called it the "[dumbest idea](http://www.huffingtonpost.com/2013/07/25/richard-burr-mike-lee_n_3653870.html?1374781479" \t "_hplink)" he'd ever heard.

#### Government shutdown is all hype

**Giokaris, 8/6**/13 (John Giokaris—six years experience working in writing/publishing, having previously worked at Law Bulletin Publishing, the Tribune Company and Reboot Illinois; “Republican Threat to Shut Down Government Over Obamacare is a Bluff They Can’t Win”; PolicyMic; http://www.policymic.com/articles/58183/republican-threat-to-shut-down-government-over-obamacare-is-a-bluff-they-can-t-win)

September 9. Back in March, the House easily passed legislation to extend federal funding through September 30 by a vote of 318-109, which sailed through the Senate 73-26. That leaves Congress three weeks to come up with a resolution to extend federal funding again or risk a partial government shutdown (I say "partial" because nothing critical – Social Security checks, military, FBI, etc. – gets affected. In fact, less than 25% of federal workers would stay home in a “government shutdown”).¶ What’s grabbing national headlines lately is a threat from a minority of congressional Republicans (12 Senate Republicans and 71 House Republicans, to be exact, or 12% of the Senate and 16% of the House) to “shut down the government” if they can’t pass a measure to defund Obamacare in the upcoming spending bill.¶ While I’m sure the media will love dramatizing this for the next eight weeks, this will all be hype without much action, for three simple reasons: 1) The minority of Republicans threatening this don’t have the votes to do it; 2) Many other Republicans rightfully understand that this would backfire on the GOP if it became a reality; and 3) It would ultimately prove futile anyway since the measure wouldn’t get passed by a Democratic majority Senate or President Barack Obama (like the 40 other attempts to repeal the law).¶

#### Government shutdown won’t happen—republicans concede

**Kapur, July 30th**, 2013 (Sahil Kapur—a congressional reporter for TPM, covered politics and public policy for numerous publications including The Guardian and The Huffington Post; “Conservatives Concede Defeat In Obamacare Shutdown Fight”; TPM; <http://tpmdc.talkingpointsmemo.com/2013/07/conservatives-admit-defeat-in-obamacare-shutdown-battle.php> )

Multiple conservatives leading the charge to shut down the government if Obamacare isn’t defunded have begun to admit it’s a lost cause as senior Republicans put the kibosh on the plan.¶ Sen. Ted Cruz (R-TX) lamented Monday afternoon that Republicans are too “scared” to follow through with the plan to withhold support for funding the government after the Sept. 30 deadline unless Obamacare is defunded.¶ “The problem right now is we don’t have Republicans willing to stand up and do this,” he said on The Andrea Tantaros Show, a conservative talk radio program. “We need 41 Republicans in the Senate or 218 Republicans in the House, to stand together, to join me, to join Mike Lee, to join Marco Rubio, all of whom have said, we will not vote for a single continuing resolution that funds even a penny of Obamacare.”¶ Late last week, Sen. Rand Paul (R-KY) laughed out loud when Sean Hannity of Fox News asked if Republicans have the “courage” to stand tough against legislation that funds Obamacare.¶ “Frankly, probably not,” the senator said.¶ As far as they’re concerned, these two lawmakers are pressing on with their demands, along with 10 other senators who signed a letter by Sen. Mike Lee (R-UT) pledging not to fund the government unless it excludes appropriations to implement the Affordable Care Act. But they’re far short of a critical mass and facing headwinds not just from Democrats but from GOP leaders who recognize the perils of shutting down the government over Obamacare.¶ Senior Republicans are deriding the plan as “dumb,” “silly” and a “temper tantrum,” warning that it will fail and damage the party’s prospects in the upcoming 2014 elections.¶ “[I]t’s dishonest,” conservative Sen. Tom Coburn (R-OK) told the Washington Examiner, dismissing the plan as “a denial of reality mixed with a whole bunch of hype.”¶ Even so, the base isn’t officially giving up. A letter signed by more than 50 influential conservatives — including heavyweights like Heritage Action, Club For Growth and FreedomWorks and Grover Norquist’s Americans for Tax Reform — calls on House Speaker John Boehner (R-OH) and Majority Leader Eric Cantor (R-VA) “to include language fully defunding Obamacare when they consider their upcoming legislation to fund the government.”¶ The divisions reflect the GOP’s catch-22 over Obamacare. After riling up their base and repeatedly promising to spare no effort to thwart the health care law, they face the wrath of conservatives for refusing to put themselves on the line in service of the cause, despite daunting political odds. Some conservative activists say they feel played by the GOP for regularly invoking Obamacare to raise money but failing to fight it when it counts.¶ “I think I want to challenge Obamacare on all fronts, but that’s a bridge too far for me,” Sen. Lindsey Graham (R-SC) told TPM in the Capitol on Tuesday. “As much as I want to replace Obamacare I’m not going to deny Social Security payments, funding of the military and the FBI at a time of great national security concerns. I think that’s a bridge too far.”¶ Sen. Richard Shelby (R-AL) didn’t take a definitive stance, telling TPM, “I hope we wouldn’t shut down the government, but I’d like to shut out Obamacare.”¶ Sen. Saxby Chambliss (R-GA) told TPM that “Obamacare is not working” and “needs to be fixed.” But when pressed on whether it’s worth risking a government shutdown over, he demurred: “I’m not going to get that far.”¶ At his RedState.com blog, conservative activist and Fox News contributor Erick Erickson has a series of posts expressing his anger and contempt toward Republicans for caving and, in his view, bamboozling conservatives about their commitment to stopping Obamacare.¶ “They will send you fundraising appeals telling you to stand with the GOP against Obamacare, please send them money,” he wrote on Sunday night. “But when confronted with the challenge of opposing continuing funding of the government if that funding goes to Obamacare, their testicular fortitude runs down their leg and out the door. They rally their usual op-ed voices to call conservative dumb. They preemptively surrender. They behave worse than the French.”

#### Sequester doesn’t hurt the economy

**Science Daily, July 23rd**, 2013 (Science Daily, award-winning site has earned the loyalty of students, researchers, healthcare professionals, government agencies, educators and the general public around the world; “Sequester Has Minimal Impact On Federal Regulatory Spending, New Report Finds”; <http://www.sciencedaily.com/releases/2013/07/130723134245.htm>)

Regulatory agencies' budgets are growing faster than inflation in 2013, despite concerns about the sequester," observed report authors Melinda Warren of Washington University in St. Louis and Susan Dudley of George Washington University. "Their budgets are projected to continue growing in 2014, due to a combination of new legislative authorities and presidential priorities."¶ The estimated cost of running regulatory agencies in fiscal year 2013 is $56.4 billion, an inflation-adjusted increase of 0.9 percent over 2012 spending. President Barack Obama's proposed budget for regulatory agencies increases to $59.4 billion in 2014.¶ The on-budget cost of regulation is detailed in a new report, Sequester's Impact on Regulatory Agencies Modest: An Analysis of the U.S. Budget for Fiscal Years 2013 and 2014.¶ The annual report is published by the Weidenbaum Center on the Economy, Government and Public Policy at Washington University in St. Louis and the George Washington University Regulatory Studies Center.¶ This report presents more than 50 years of data on the expenditures and staff employed to run federal regulatory agencies. These data are extracted from the Budget of the United States Government, prepared annually by the Office of Management and Budget and submitted by the president to the Congress.¶ This is the 35th edition of the report tracking the spending and staffing for the regulatory agencies as documented in the president's budget. It includes data from 1960-2014.¶ The largest regulatory budget increases in 2013 and 2014 are going to:¶ -The Food and Drug Administration (with more than $600 million additional outlays each year to implement the Food Safety Modernization Act of 2011).¶ -The Patent and Trademark Office, which the America Invents Act of 2011 authorized to set its own fees (with increases of $399 million in FY 2013 and $293 million in 2014).¶ -Customs and Border Protection (with increases of $115 million in FY 2013 and $542 million in FY 2014).¶ -Financial agencies to which the Dodd-Frank Wall Street Reform and Consumer Protection Act granted new authority, particularly the Securities and Exchange Commission (more than $250 million each year), the Comptroller of the Currency ($18 million in 2013 and $368 million in 2014), and the Consumer Financial Protection Bureau ($116 million in 2013 and $158 million in 2014).¶ Staffing at regulatory agencies is projected to increase in both the current and next fiscal years.¶ -Federal regulatory agencies employ an estimated 282,070 people in FY 2013, a 1.6 percent increase over FY2012. The Budget requests an additional 0.7 percent increase in FY2014, bringing personnel to 284,085.¶ -Financial regulators (particularly the Consumer Financial Protection Bureau, the Commodity Futures Trading Commission, and the Securities and Exchange Commission) are set to increase personnel significantly (more than 2,000 new staff for those three agencies over two fiscal years). The Federal Deposit Insurance Corporation faces significant staff reductions in both 2013 and 2014 that would bring its staffing levels back to what they were in 2008 and 2009.¶ -The Patent and Trademark Office continues to grow, with more than 2,000 new employees projected over the 2 years.¶ -The Food and Drug Administration is projected to add more than 1,000 people each year (reflecting a growth rate of 7.5 percent in 2013 and 6.9 percent in 2014).¶ -Within the Department of Homeland Security, only Customs and Border Protection is budgeted for more staff in 2014. Its employment increased by 790 people in 2013 and another 990 in 2014. The 2014 Budget requests more than a 900-person reduction at Immigration & Customs Enforcement after an increase of 100 employees in 2013.¶ This report tracks the "regulators' budget," that portion of the fiscal budget devoted to developing and enforcing federal regulations that alter private sector behavior, from 1960 to 2014. Though these on-budget costs of regulation represent a small fraction of the full cost of regulations to society and do not provide information on regulations' benefits, the time-series data presented here offer useful insights into the growth and composition of regulation over the last 54 years, as well as current priorities.¶ These data cover agencies whose regulations primarily affect private sector activities, and expressly excludes budget and staffing associated with regulations that govern taxation, entitlement, procurement, subsidy, and credit functions. For example, the Internal Revenue Service, the Social Security Administration, and the Department of Defense are not included, although they issue regulations.¶ The Department of Health and Human Services Center for Medicaid and Medicare Services (CMS), while issuing about one-third of all the final regulations published in a typical year, has traditionally been excluded because its regulations have primarily addressed the allocation of entitlements.

### Repeal Popular

#### The repeal is popular-House of Representatives and U.S. businesses agree

**Taylor 04** [Emily Taylor, [Emily Taylor-Northwestern University School of Law and B.A. Duke University, 2004, “Havana Club Saga: Threatening More than Just "Cuba Coke", Northwestern Journal of International Law & Business, LexisNexis]

The United States could also comply with the AB ruling by repealing 211. A number of parties have supported this option, including the Congressional Working Group, a bipartisan group comprised of 40 [\*526] members of the U.S. House of Representatives. n101 The Congressional Working Group characterized 211 as an "improper intervention in a private trademark matter in favor of a foreign interest." n102 In addition, USA\*Engage, a "coalition of over 650 United States businesses engaged in trade and investment abroad," supports the repeal of 211. n103 The organization favors the repeal of 211 over its alteration in order to achieve treaty compliance because of potential "retaliation by foreign countries" which would remove the protections of U.S. trademarks abroad found in "bilateral and multilateral agreements outside of TRIPS." n104

### Politics 2AC – PC Not Key

#### Studies prove that political capital barely affects the outcome of legislation

**Beckmann and Kumar**, September **2011** (Matthew – associate professor of political science at the University of California, Irvine, and Vimal – professor of economics at the Indian Institute of Technology, Opportunism in Polarization: Presidential success in Senate Key Votes, 1953-2008, Presidential Studies Quarterly, Vol. 41, Iss. 3, p. 488-503) [John the Stupek]

The final important piece in our theoretical model—presidents' political capital—also finds support in these analyses, though the results here are less reliable. Presidents operating under the specter of strong economy and high approval ratings get an important, albeit moderate, increase in their chances for prevailing on “key” Senate roll-call votes (b = .10, se = .06, p < .10). Figure 4 displays the substantive implications of these results in the context of polarization, showing that going from the lower third of political capital to the upper third increases presidents' chances for success by 8 percentage points (in a setting like 2008). Thus, political capital's impact does provide an important boost to presidents' success on Capitol Hill, but it is certainly not potent enough to overcome basic congressional realities. Political capital is just strong enough to put a presidential thumb on the congressional scales, which often will not matter, but can in close cases.

### Politics 2AC – Winners Win

#### Winners win.

**Halloran 10** (Liz, Reporter – NPR, “For Obama, What A Difference A Week Made”, National Public Radio, 4-6, <http://www.npr.org/templates/story/story.php?storyId=125594396>) [John the Stupek]

Amazing what a win in a major legislative battle will do for a president's spirit. (Turmoil over spending and leadership at the Republican National Committee over the past week, and the release Tuesday of a major new and largely sympathetic book about the president by New Yorker editor David Remnick, also haven't hurt White House efforts to drive its own, new narrative.) Obama's Story Though the president's national job approval ratings failed to get a boost by the passage of the health care overhaul — his numbers have remained steady this year at just under 50 percent — he has earned grudging respect even from those who don't agree with his policies. "He's achieved something that virtually everyone in Washington thought he couldn't," says Henry Olsen, vice president and director of the business-oriented American Enterprise Institute's National Research Initiative. "And that's given him confidence." The protracted health care battle looks to have taught the White House something about power, says presidential historian Gil Troy — a lesson that will inform Obama's pursuit of his initiatives going forward. "I think that Obama realizes that presidential power is a muscle, and the more you exercise it, the stronger it gets," Troy says. "He exercised that power and had a success with health care passage, and now he wants to make sure people realize it's not just a blip on the map." The White House now has an opportunity, he says, to change the narrative that had been looming — that the Democrats would lose big in the fall midterm elections, and that Obama was looking more like one-term President Jimmy Carter than two-termer Ronald Reagan, who also managed a difficult first-term legislative win and survived his party's bad showing in the midterms. Approval Ratings Obama is exuding confidence since the health care bill passed, but his approval ratings as of April 1 remain unchanged from the beginning of the year, according to [Pollster.com](http://www.pollster.com/polls/us/jobapproval-obama.php). What's more, just as many people disapprove of Obama's health care policy now as did so at the beginning of the year. According to the most recent numbers: Forty-eight percent of all Americans approve of Obama, and 47 disapprove. Fifty-two percent disapprove of Obama's health care policy, compared with 43 percent who approve. Stepping Back From A Precipice Those watching the re-emergent president in recent days say it's difficult to imagine that it was only weeks ago that Obama's domestic agenda had been given last rites, and pundits were preparing their pieces on a failed presidency. Obama himself had framed the health care debate as a referendum on his presidency. A loss would have "ruined the rest of his presidential term," says Darrell West, director of governance studies at the liberal-leaning Brookings Institution. "It would have made it difficult to address other issues and emboldened his critics to claim he was a failed president." The conventional wisdom in Washington after the Democrats lost their supermajority in the U.S. Senate when Republican Scott Brown won the Massachusetts seat long held by the late Sen. Edward Kennedy was that Obama would scale back his health care ambitions to get something passed. "I thought he was going to do what most presidents would have done — take two-thirds of a loaf and declare victory," says the AEI's Olsen. "But he doubled down and made it a vote of confidence on his presidency, parliamentary-style." "You've got to be impressed with an achievement like that," Olsen says. But Olsen is among those who argue that, long-term, Obama and his party would have been better served politically by an incremental approach to reworking the nation's health care system, something that may have been more palatable to independent voters Democrats will need in the fall. "He would have been able to show he was listening more, that he heard their concerns about the size and scope of this," Olsen says. Muscling out a win on a sweeping health care package may have invigorated the president and provided evidence of leadership, but, his critics say, it remains to be seen whether Obama and his party can reverse what the polls now suggest is a losing issue for them.

### Winners Win 1AR

#### Group the winners win debate –

#### Winning controversial battles generates Obama’s capital. Each win makes Obama stronger and allows him to pass other bills. That’s Halloran 10.

#### All their “plan controversial” links feed our turn. Controversial wins swings Dems

**Sargent**, 8/23/**2010** (Greg, Why is left so disappointed in Obama?, The Washington Post, p. http://voices.washingtonpost.com/plum-line/2010/08/politico\_channels\_professional.html) [John the Stupek]

The fetishizing of bipartisanship, and the hope that a few Republicans could be induced to back his agenda, is also what led Obama to avoid taking a strong, bottom-line stand on core principles, such as the public option. White House advisers also seemed reluctant for Obama to stake real political capital on provisions that were likely to fail, which also contributed to his mixed messages on core liberal priorities. To be clear, I tend to think this critique is overstated: Obama has passed the most ambitious domestic agenda since FDR, and there are some grounds for believing that the White House got as much as it possibly could have. But my bet is that if the White House hadn't fetishized bipartisanship early on; if Obama had drawn a sharper contrast with the GOP from the outset; and if he had taken a stronger stand on behalf of **core priorities even if they were destined for failure**, his lefty critics would be more willing to give him the benefit of the doubt.

#### Wins spill over.

**Marshall and Prins**, September **2011** (Bryan – associate professor of political science at Miami University of Ohio, and Brandon – professor of political science at the University of Tennessee, Power or Posturing? Policy availability and congressional influence on U.S. presidential decision to use force, Presidential Studies Quarterly, p. ProQuest) [John the Stupek]

Presidents rely heavily on Congress in converting their political capital into real policy success. Policy success not only shapes the reelection prospects of presidents, but it also builds the president's reputation for political effectiveness and fuels the prospect for subsequent gains in political capital (Light 1982). Moreover, the president's legislative success in foreign policy is correlated with success on the domestic front. On this point, some have largely disavowed the two-presidencies distinction while others have even argued that foreign policy has become a mere extension of domestic policy (Fleisher et al. 2000; Oldfield and Wildavsky 1989) Presidents implicitly understand that there exists a linkage between their actions in one policy area and their ability to affect another. The use of force is no exception; in promoting and protecting U.S. interests abroad, presidential decisions are made with an eye toward managing political capital at home (Fordham 2002).

#### Steamroller effect – Reagan proves.

**Green** **2010** – professor of political science at Hofstra University (David Michael Green, 6/11/10, " The Do-Nothing 44th President ", http://www.opednews.com/articles/The-Do-Nothing-44th-Presid-by-David-Michael-Gree-100611-648.html) [John the Stupek]

Moreover, there is a continuously evolving and reciprocal relationship between presidential boldness and achievement. In the same way that nothing breeds success like success**, nothing sets the president up for achieving his or her next goal better than succeeding dramatically on the last go around.** This is absolutely a **matter of perception**, and you can see it best in the way that Congress and especially the Washington press corps fawn over **bold and intimidating presidents** like Reagan and George W. Bush. The political teams surrounding these presidents understood the psychology of power all too well. They knew that by simultaneously creating a **steamroller effect** and feigning a clubby atmosphere for Congress and the press, they could leave such hapless hangers-on with only one remaining way to pretend to preserve their dignities. By jumping on board the freight train, they could be given the illusion of being next to power, of being part of the winning team. And so, with virtually the sole exception of the now retired Helen Thomas, this is precisely what they did.

#### Changes voting calculations.

**Ornstein**, 5/15/**2001** (Norman – resident scholar at the American Enterprise Institute, How is Bush Governing, Transition to Governing Project, p. www.aei.org/research/tgp/events/eventID.281,projectID.12/transcript.asp) [John the Stupek]

What flows from that as well is, use every bit of political capital you have to achieve early victories that will both establish you as a winner, because the key to political power is not the formal power that you have. Your ability to coerce people to do what they otherwise would not do. Presidents don't have a lot of that formal power. It's as much psychological as it is real. If you're a winner and people think you're a winner, and that issues come up and they're tough but somehow you're going to prevail, they will act in anticipation of that. Winners win.

### Winners Win 1AR – Ext – Controversial Plans Good

#### Winning on controversial issues creates presidential strength.

**Morris and McGann**, 12/15/**2010** (Dick and Eileen, Obama the weak, p. http://bcfoley.blogspot.com/2010/12/obama-weak.html) [John the Stupek]

Moving to the center is not a two-dimensional process. It has a third dimension -- the difference between **strength and weakness**. In the course of coming in from the cold of his **extreme** far-left **positions**, the president looks like a wimp, **abandoning his** long-held **views** in the face of electoral defeats, adverse court rulings, recalcitrant Democrats and strong, united Republican opposition. And **wimps don't win**. When Bill Clinton moved to the center, he arrived in triumph. After vanquishing the Republican Congress during the government shutdown of 1995-1996, he agreed to a balanced budget deal with Newt Gingrich and Trent Lott. But it was his deal, along his lines, on his principles. When he signed a welfare reform bill, he did so after **beating back and vetoing two Republican bills** that coupled reform with harsh cuts in Medicaid. After he got a bill **on his own terms**, he signed it. Barack Obama's "**compromise**" with the Republicans over the Bush tax cuts is no more of a compromise than was the deal Emperor Hirohito cut with Gen. Douglas MacArthur on the deck of the battleship Missouri after the atomic bombing of Hiroshima and Nagasaki. **It was a surrender**, not a compromise. It was submission, not triangulation. Obama is checkmated as long as Republicans hold firm, **challenge him on solid grounds** anchored in public opinion and remain united. He can either lose the election of 2012 because he is an obstinate ideologue who won't compromise and won't abandon his socialist principles or he can lose it because he does surrender and is **too weak to be president**.

#### Must be a bully to win.

**Franken**, **9/21**/2011 (Bob - Emmy-winning television reporter, Poll results finally put some life in Obama, Sacramento Bee, p. http://www.sacbee.com/2011/09/21/3929302/bob-franken-poll-results-finally.html) [John the Stupek]

Does anybody remotely care that it was Teddy Roosevelt who came up with the term "bully pulpit"? Well, he did, to describe the uniquely prominent platform available to a very powerful officeholder, like, say, a president. President Barack Obama is trying to shout from his these days, but he might want to remember that a bully pulpit works only if the user is willing to be a bully.

### Winners Win 1AR – Link Shield

#### Only risk of a turn --- capital will quickly dissipate if not spent

**Mitchell 9** (Lincoln, Assistant Professor in Practice at International Law – Columbia University, “Time for Obama to Start Spending Political Capital”, Huffington Post, 6-18, http://www.huffingtonpost.com/lincoln-mitchell/time-for-obama-to-start-s\_b\_217235.html) [John the Stupek]

Political capital is not, however, like money, it cannot be saved up interminably while its owner waits for the right moment to spend it. Political capital has a shelf life, and often not a very long one. If it is not used relatively quickly, it dissipates and becomes useless to its owner. This is the moment in which Obama, who has spent the first few months of his presidency diligently accumulating political capital, now finds himself. The next few months will be a key time for Obama. If Obama does not spend this political capital during the next months, it will likely be gone by the New Year anyway. Much of what President Obama has done in his first six months or so in office has been designed to build political capital, interestingly he has sought to build this capital from both domestic and foreign sources. He has done this by traveling extensively, reintroducing to America to foreign audiences and by a governance style that has very cleverly succeeded in pushing his political opponents to the fringes. This tactic was displayed during the effort to pass the stimulus package as Republican opposition was relegated to a loud and annoying, but largely irrelevant, distraction. Building political capital was, or should have been, a major goal of Obama's recent speech in Cairo as well. Significantly, Obama has yet to spend any of his political capital by meaningfully taking on any powerful interests. He declined to take Wall Street on regarding the financial crisis, has prepared to, but not yet fully, challenged the power of the AMA or the insurance companies, nor has he really confronted any important Democratic Party groups such as organized labor. This strategy, however, will not be fruitful for much longer. There are now some very clear issues where Obama should be spending political capital. The most obvious of these is health care. The battle for health care reform will be a major defining issue, not just for the Obama presidency, but for American society over the next decades. It is imperative that Obama push for the best and most comprehensive health care reform possible. This will likely mean not just a bruising legislative battle, but one that will pit powerful interests, not just angry Republican ideologues, against the President. The legislative struggle will also pull many Democrats between the President and powerful interest groups. Obama must make it clear that there will be an enormous political cost which Democrats who vote against the bill will have to pay. Before any bill is voted upon, however, is perhaps an even more critical time as pressure from insurance groups, business groups and doctors organizations will be brought to bear both on congress, but also on the administration as it works with congress to craft the legislation. This is not the time when the administration must focus on making friends and being liked, but on standing their ground and getting a strong and inclusive health care reform bill. Obama will have to take a similar approach to any other major domestic legislation as well. This is, of course, the way the presidency has worked for decades. Obama is in an unusual situation because a similar dynamic is at work at the international level. A major part of Obama's first six months in office have involved pursuing a foreign policy that implicitly has sought to rebuild both the image of the US abroad, but also American political capital. It is less clear how Obama can use this capital, but now is the time to use it. A cynical interpretation of the choice facing Obama is that he can remain popular or he can have legislative and other policy accomplishments, but this interpretation would be wrong. By early 2010, Obama, and his party will, fairly or not, be increasingly judged by what they have accomplished in office, not by how deftly they have handled political challenges. Therefore, the only way he can remain popular and get new political capital is through converting his current political capital into concrete legislative accomplishments. Health care will be the first and very likely most important, test.

#### Capital evaporates without use --- victories key to replenish it

**Lindberg 4** (Tod, Research Fellow – Hoover Institution and Editor – Policy Review Magazine, “Spending Political Capital”, Washington Times, 12-7, Lexis) [John the Stupek]  
Now, in the usual metaphor of political capital, presidents who have it often make the mistake of trying to "hoard" it. They put their political capital in a safe place in order to bolster their personal popularity. They do not "risk it" in pursuit of political victories, whether on their policy agenda or for controversial judicial appointments, etc. And therein, in the conventional application of the metaphor, lies peril. For political capital, when hoarded, does not remain intact but rather diminishes over time through disuse. It "wastes away" - and with it, a president's popularity and reputation. Therefore, again in the conventional use of the metaphor, it is mere prudence for a president to "invest" his political capital. Only by seeking political victories and winning them by such judicious investment can a president maintain and even increase his political capital. Who dares wins. This is, of course, a most mellifluous metaphor for the activists in the president's camp. It promises reward for ambitious action and warns against the high price of a lack of ambition. In fact, it almost sounds like a sure thing: The president takes his political capital, invests it and reaps a mighty return. Striking it is, then, that Mr. Bush came in for only half of the metaphor: He believes he possesses political capital, but rather than invest it, he proposes to spend it. I think this innovation may be an improvement. It removes the implicit expectation of an automatic return on the use of political capital. Because in reality, one may spend one's political capital and lose it - specifically, if things don't turn out the way you hope, namely, in glorious victory. Mr. Bush, I submit, knows something about this. He spent down a huge reserve of political capital, virtually the whole of his post-September 11 stash, to take the country to war in Iraq, and he very nearly lost everything: Surely, had Sen. John Kerry beaten him by even the narrowest of margins, the result would have been described as a repudiation of Mr. Bush and his policies. No, there is nothing automatic about getting a return on your investment of political capital, if by return you mean more of that selfsame political capital. But you can indeed buy something by spending your capital: the end of the Saddam regime, or perhaps Social Security or tax reform. Perhaps you get a return on what you spend in terms of enhancement of your political strength, but perhaps you just end up weakened. Even so, you may think that what you are trying to accomplish is worth the price.

### Winners Win 1AR – Answers To – Capital Finite

#### Lame duck wins prove PC regenerates.

**Crowley**, 1/25/**2011** (Michael – staff writer at Time, State of the Union Preview, Times, p. http://www.time.com/time/nation/article/0,8599,2044249,00.html) [John the Stupek]

That doesn't mean they aren't important. The short term matters, too. And that may be especially true at this transitional — and perhaps pivotal — moment in Barack Obama's presidency. Over the past three months Obama has resurrected a presidency that seemed in danger of failure. With his successes in the lame duck Congress last month, his winning response to the Tucson massacre, and a steady new trickle of economic optimism, he has reclaimed some of the political capital snatched from him in the November elections. Witness his rising approval rating, and the way Republicans — having enjoyed their cathartic vote to repeal health care in the House — are now arguing amongst themselves about what budget cuts they actually dare to enact. But this remains a fragile political moment for the president. The economic recovery is painfully slow. The public is still skeptical about big government and debt-fueled spending. The war in Afghanistan is unpopular, Middle East peace is elusive as ever, and China seems to be overtaking the U.S. on the global stage. (See pictures of Barack Obama's college years.)

#### Capital is regenerative.

**Singer 9** (Jonathan, Editor – MyDD and JD – University of California, Berkeley, “By Expending Capital, Obama Grows His Capital”, MyDD, 3-3, http://www.mydd.com/story/2009/3/3/191825/0428) [John the Stupek]

Peter Hart gets at a key point. Some believe that political capital is finite, that it can be used up. To an extent that's true. But it's important to note, too, that political capital can be regenerated -- and, specifically, that when a President expends a great deal of capital on a measure that was difficult to enact and then succeeds, he can build up more capital. Indeed, that appears to be what is happening with Barack Obama, who went to the mat to pass the stimulus package out of the gate, got it passed despite near-unanimous opposition of the Republicans on Capitol Hill, and is being rewarded by the American public as a result. Take a look at the numbers. President Obama now has a 68 percent favorable rating in the NBC-WSJ poll, his highest ever showing in the survey. Nearly half of those surveyed (47 percent) view him very positively. Obama's Democratic Party earns a respectable 49 percent favorable rating. The Republican Party, however, is in the toilet, with its worst ever showing in the history of the NBC-WSJ poll, 26 percent favorable. On the question of blame for the partisanship in Washington, 56 percent place the onus on the Bush administration and another 41 percent place it on Congressional Republicans. Yet just 24 percent blame Congressional Democrats, and a mere 11 percent blame the Obama administration. So at this point, with President Obama seemingly benefiting from his ambitious actions and the Republicans sinking further and further as a result of their knee-jerked opposition to that agenda, there appears to be no reason not to push forward on anything from universal healthcare to energy reform to ending the war in Iraq.

#### Prefer our evidence --- there’s no evidence to support their theory of politics

**Ruby-Sachs 8** (Emma, JD – University of Chicago, “Ranking the Issues: Gay Rights in an Economic Crisis”, 11-24, http://www.huffingtonpost.com/emma-rubysachs/ranking-the-issues-gay-ri\_b\_146023.html) [John the Stupek]

The classic approach to politics is to rank priorities and measure the finite bowl of political capital. If Obama pushes hard on a [green new deal](http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=548&ArticleID=5957&l=en), he likely won't have much left for universal health care. If he backs off of serious economic regulation, then he might get more support for social programs from Republicans. Because gay civil rights struggles affect fewer individuals and relate to less quantifiable harms, it's hard to justify putting them at the top of the list. The alternative is to reject the ranked priorities political model altogether. There is little evidence that sway and support is finite in the American political system. Political capital relates to the actions of the leader, yes, but can be infinitely large or non-existent at any point in time. In some ways, the more you get done, the more the bowl of capital swells.

#### Victories build capital --- it’s not finite

**Mann 9** (Thomas, Senior Fellow in Governance Studies – Brookings Institution, “From Campaigning to Governing: Politics and Policymaking in the New Obama Administration”, 4-21, http://www.brookings.edu/speeches/2009/0421\_governance\_mann.aspx) [John the Stupek]

Ever since Franklin Roosevelt’s remarkable launch of his presidency in 1933 – fifteen major measures introduced and signed into law, unprecedented executive actions, and a riveting series of Fireside Chats – the first hundred day record has been an irresistible yardstick for measuring presidential progress. But as historian David Greenberg reminds us, no subsequent president has come close to matching FDR’s record. The most successful – Lyndon Johnson in 1965 and Ronald Reagan in 1981 – took much longer than one hundred days to achieve path-breaking but fewer and more limited policy initiatives. In Roosevelt’s case, the incomparable sense of urgency from the dire circumstances of the Depression combined with the historic magnitude of his electoral victory muted the political opposition and made his early successes possible. Nothing approaching the magnitude of these economic and political conditions has materialized to provide the basis for a comparable episode of presidential leadership. That is not to deny that how presidents begin their tenure importantly shapes their fortunes. There is something of a natural political dynamic in the presidency that dictates seizing opportunities created by their election as quickly as possible. Honeymoons with Congress and the media often end early and abruptly with some political miscue or aggressiveness by the opposition. The close proximity of the midterm election leads potentially vulnerable members of Congress to focus more intently on their own electoral fortunes by the end of the president’s first year in office. The traditional loss of seats by the president’s party in that midterm weakens his base of support in Congress for the final two years of his initial term. If re-elected, the president immediately becomes a lame duck. In reality, each presidency has its own political dynamic, shaped by the size of the initial election victory, the contours of the economy, conditions of war or peace, public impressions, and legislative victories and defeats. Political capital is not a finite commodity generated in the election and then quickly depleted in battles to enact a policy agenda. It can be replenished through early legislative victories, reassuring leadership, and improving conditions at home and abroad. Presidents have often garnered significant policy victories well after their first year in office. The challenge is to begin one’s presidency in a way that banks some initial achievable goals, avoids personal missteps and legislative defeats, and lays the political groundwork for sustained leadership throughout the life of his administration.

### Winners Win 1AR – Answers To – Long-Term Gains

#### Their evidence assumes trends in polls – our argument is that wins create a psychological effect that changes the calculations of Congress immediately. That’s the Green ev.

#### Lame-duck proves quick success.

**Wasson**, 1/12/**2011** (Erik, Jarrett: Korea FTA is first legislative priority in path to compromise, The Hill, p. http://thehill.com/blogs/on-the-money/international-taxes/137599--jarrett-korea-fta-is-first-legislative-priority-in-pathto-compromise) [John the Stupek]

Senior White House adviser Valerie Jarrett told an audience at the Brookings Institution Wednesday that the first administration legislative priority in this Congress will be passage of the U.S.-South Korea free trade agreement which the Obama administration renegotiated in December. She also outlined other areas of compromise with the GOP and did not reject Republican plans for deep spending cuts outright. “First and foremost on the horizon, in terms legislatively, I think everyone is aware we reached an agreement with South Korea on the free trade agreement,” she said. “It is going to be vitally important to have that agreement approved by Congress.” She said the administration will also look to get Congressional approval of the stalled pacts with Colombia and Panama to reignite the free trade agenda. The stalled Bush-era FTAs have long been a GOP priority. While the agreements need to be sold to Democrats who are on record opposing the FTAs, Jarrett noted the support of the United Auto Workers for the renegotiated Korea deal. “It the first time in a long time that you have had a union stand up and support a free trade agreement,” she said. The Obama administration was able to delay the phase-out in U.S. tariffs on Korean automotive imports as part of the December deal. Jarrett said the next administration priorities will be to find a way to invest in infrastructure. She said that she sees room to compromise with the new House Republican majority on green energy, education and tax reform as well as trade. On the budget deficit, Jarrett said the White House will examine the details of GOP proposals to bring 2011 spending back to 2008 levels, rather than rejecting the proposal outright. “The devil is in the details,” she said. She said the administration is concerned that early cuts could jeopardize the economic recovery so it will be examining the impact of all spending cut proposals. The adviser said the administration believes it has momentum to find workable solutions with the GOP after the productive lame-duck session of Congress, which featured the tax cut compromise, the repeal of the military’s "Don’t ask, don’t tell" policy and the Senate ratification of the New START “There is nothing like success to breed success,” she said.

#### Doesn’t make sense – Obama would tout an aggressive stance immediately after winning on the plan.

# **2AC Kritiks**

## Truth Claims

#### Even if we can’t make perfect predictions we can still gain enough information to act

**Miller 2002** (Katherine Miller – Professor of Communication at Texas A & M, Communication theories: Perspectives, processes, and contexts, p. 35-36)

If positivism, in its classical and logical forms, is largely rejected, what philosophical foundation should take its place as a framework for social research? Very different answers to this question have been proposed. Some social researchers argue that flaws in the positivist foundation require a radically different philosophy of sci- ence, one in which the realist ontology, objective epistemology, and value-free axiology of positivism are vehemently rejected and replaced with forms of inquiry that honor nominalism, subjectivism, and omnipresent values. The posi- tions of these scholars are discussed in great detail in Chapters 4 and 5 as we consider interpretive and critical petspectives on communication theory. However, some scholars believe that a rejection of positivism does not require a total rejection of realism, objectivity, and the scientific goal of value-free inquiry. However, these scholars reject the notion of absolute truth, reject the unassailable foundation of observation, and reject the assumption of an always steady and upward accumulation of knowledge. In these rejections, scholars have forged a new philosophy of science that D. C. Phillips (1987, 1990, 1992) has called post-positivism. The metatheoretical tenets of this position are discussed in the next section. Metatheoretical Commitments Ontology In Chapter 2, we discussed three ontological positions: the realist, the nominalist, and the social constructionist. To summarize, a realist believes in a hard and solid reality of physical and social objects, a nominalist proposes that the reality of social entities exists only in the names and labels we provide for them, and a social constructionist emphasizes the ways in which social meanings are created through historical and contemporary interaction. Both the realist and the social constructionist positions make contributions to the ontology of post-positivist researchers in the communication discipline. Researchers in the post-positivist tradition can be seen as realists in that they support the position that phenomena exist independent of our perceptions and theories about them (Phillips, 1987). However, this realism is tempered by the argument that humans cannot fully apprehend that reality and that the driving mechanisms in the social and physical world cannot be fully understood. As J. D. Smith (1990, p. 171) states, "Realism is essential . . . because it poses 'at least in principle, a standard by which all human societies and their beliefs can be judged: they can all have beliefs about the world which turn out to be mistaken'" (Trigg, 1985, p. 22). Phillips argues, however, that a post-positivist ontology does not deny the notions inherent in approaches advocating a "social construction of reality" (Berger & Luckmann, 1967). Rather, Phillips (1990) draws the distinction between beliefs about the reality and the objective reality (pp. 42-43). Making this distinction allows a post-positivist scholar to appreciate (and investigate) multiple realities that are constructed by social collectives through communicative inter-action. For example, a post-positivist scholar could study the ways that beliefs about the imminent end of the world influence the behaviors of mountain survivalists, members of cults, and fundamental religious groups. However, the fact that a social group has arrived at certain beliefs about the world does not make those beliefs about the social or physical world necessarily true. As Phillips (1990) notes, "It is clear that Freudians believe in the reality of the id and superego and the rest, and they act as if these are realities; but their believing in these things does not make them real" (p. 43). It could be further argued that post-positivism is consistent with social constructionist views in two important ways. First, many post-positivists would argue that the process of social construction occurs in relatively patterned ways that are amenable to the type of social scientific investigation undertaken by post-positivists. Individuals have free will and creativity but they exercise that creativity in ways that are often (though not always, certainly) patterned and predictable. In the field of mass communication, Barbara Wilson (1994) argues convincingly for this point regarding her own study of children's responses to the mass media: I believe that children's interpretations and responses are as richly individualistic as snow-flakes. However, I also believe that there are common patterns that characterize a majority of young viewers and that those patterns are as predictable and explainable as the basic process by which all those unique snowflakes are formed from water, (p. 25) Second, many post-positivists would argue that social constructions are regularly reified and treated as objective by actors in the social world. Thus, it is reasonable to study the impact of these reified constructions on our communicative lives. Tompkins (1997) has made this argument with regard to his organizational communication research with the National Aeronautics and Space Administration (NASA): The engineers, scientists, managers, bureau-crats, and other kinds of members did not believe in a socially constructed world. They believed the rockets they made did in fact go to the moon. Moreover, they believed that NASA and the contractor firms who worked for them were real. They believed that these organizations could succeed or fail by objective criteria and that their bosses could hire or fire, reward or penalize individuals—actions with real consequences, (p. 369) Thus, a social constructionist ontology is consistent with a post-positivist position that emphasizes both the patterned nature of the social construction process and the regular and predictable effects that reified social constructions have on social actors. Thus, the ontology of post-positivism is not necessarily the belief in a hard, immutable, and unchanging social world implied in a strict realist stance. Rather, a post-positivist ontology entails a belief in regularity and pattern in our interactions with others. The ways in which these regularities and patterns are studied within post-positivist theory are considered in the next section.

#### The burden of “truth claims” is to disprove the factual claims of the 1AC --- no amount of theory can replace well-warranted evidence and analysis.

**Yudkowsky 2008** (Eliezer – research fellow at Singularity Institute for Artificial Intelligence, Cognitive Biases Potentially Affecting Judgment of Global Risks, Global Catastrophic Risks, p. 111-112)

Every true idea which discomforts you will seem to match the pattern of at least one psychological error. Robert Pirsig said: "The world's biggest fool can say the sun is shining, but that doesn't make it dark out." If you believe someone is guilty of a psychological error, then demonstrate your competence by first demolishing their consequential factual errors. If there are no factual errors, then what matters the psychology? The temptation of psychology is that, knowing a little psychology, we can meddle in arguments where we have no technical expertise - instead sagely analyzing the psychology of the disputants. If someone wrote a novel about an asteroid strike destroying modern civilization, then someone might criticize that novel as extreme, dystopian, apocalyptic; symptomatic of the author's naive inability to deal with a complex technological society. We should recognize this as a literary criticism, not a scientific one; it is about good or bad novels, not good or bad hypotheses. To quantify the annual probability of an asteroid strike in real life, one must study astronomy and the historical record: no amount of literary criticism can put a number on it. Garreau (2005) seems to hold that a scenario of a mind slowly increasing in capability, is more mature and sophisticated than a scenario of extremely rapid intelligence increase. But that's a technical question, not a matter of taste; no amount of psychologizing can tell you the exact slope of that curve. It's harder to abuse heuristics and biases than psychoanalysis. Accusing someone of conjunction fallacy leads naturally into listing the specific details that you think are burdensome and drive down the joint probability. Even so, do not lose track of the realworld facts of primary interest; do not let the argument become about psychology. Despite all dangers and temptations, it is better to know about psychological biases than to not know. Otherwise we will walk directly into the whirling helicopter blades of life. But be very careful not to have too much fun accusing others of biases. That is the road that leads to becoming a sophisticated arguer - someone who, faced with any discomforting argument, finds at once a bias in it. The one whom you must watch above all is yourself. Jerry Cleaver said: "What does you in is not failure to apply some high-level, intricate, complicated technique. It's overlooking the basics. Not keeping your eye on the ball." Analyses should finally center on testable real-world assertions. Do not take your eye off the ball.

## AT: Neoliberalism K

### Alt Fails

#### Collapsing neoliberalism results in increased corporate power

Phillipe **Legrain**, special adviser to the WTO director general Mike Moore, **2000** (The WTO: Boon or Bane for the Developing World, p. http://www.focusweb.org/publications/2000/The%20WTOThe%20WTO-Boon%20or%20Bane%20for%20the%20Developing%20World.htm)

A convincing case for the WTO’s abolition must show two things. First, that the world would be **better off** without the WTO. Second, that the WTO's abolition is preferable to **any politically feasible reform**. You fail to show either. Abolishing the WTO would not **destroy globalisation, capitalism, or US corporate power**. But it would **wipe out** a forum for governments to negotiate multilateral trade rules and a mechanism for holding them to those rules. That would make **every country worse off**, but **the biggest losers would be the poor and the weak**. One benefit of rules is that they apply to big, rich countries as well as small, poor ones. When America blocked imports of Costa Rican underwear, Costa Rica appealed to the WTO. It won, and America lifted its restrictions. Do you honestly think Costa Rica would have such clout in Washington **without the WTO?** Granted, the dispute-settlement mechanism is not perfect: America has a battery of lawyers to fight its corner, whereas small countries scrimp. It should be improved. But it is already much better than the alternative: the law of the jungle, where might makes right. Another merit of WTO rules is that they tie governments’ hands. Once countries open their markets to foreign trade and investment, they cannot close them again at whim. Without this stability, companies would be reluctant to invest abroad, particularly in developing countries with a protectionist or politically unstable record. Abolishing the WTO would further **marginalise developing countries**. If there were no prospect of further multilateral liberalisation and no body to enforce existing rules, trade barriers would creep up as protectionists gain the upper hand. The world might split into hostile regional blocks, with rich-country exporters **seeking captive markets in developing countries**. Developing countries, which need access to rich-country markets more than rich countries need access to theirs, would have to join on **unfavourable terms** or be left out in the cold. In any case, there would be less trade. And less trade means slower economic growth, stagnating living standards and more people trapped in poverty – like in the Great Depression. Over the past 50 years, the 15-fold rise in world trade has driven a seven-fold rise in world output. Thanks to trade, Japan and South Korea are no longer developing countries. Jeffrey Sachs and Andrew Warner of Harvard University found that developing countries with open economies grew by 4.5 per cent a year in the 1970s and 1980s, while those with closed economies grew by 0.7 per cent a year. At that rate, open economies double in size every 16 years, while closed ones must wait a hundred. Of course, in the short term, some people lose from trade liberalisation. But in the long run, everyone gains: even the poorest South Koreans today are much richer than their counterparts 30 years ago.

#### No alternative to neoliberalism.

Yglesias 11 (Matthew, Contributor @ Think Progress, "What Is The Alternative To ‘Neoliberalism’?," 7/18, http://thinkprogress.org/yglesias/2011/07/18/272099/what-is-the-alternative-to-neoliberalism/?mobile=nc)

The fact that Doug Henwood disagrees with me about monetary policy has suddenly turned into a sprawling cross-blog discussion of “neoliberalism” and its discontents. Personally, I find the argument to be infuriatingly devoid of content, but here’s Henry Farrell’s core claim, devoid of examples:¶ Neo-liberals tend to favor a combination of market mechanisms and technocratic solutions to solve social problems. But these kinds of solutions tend to discount politics – and in particular political collective action, which requires strong collective actors such as trade unions. This means that vaguely-leftish versions of neo-liberalism often have weak theories of politics, and in particular of the politics of collective action. I see Doug and others as arguing that successful political change requires large scale organized collective action, and that this in turn requires the correction of major power imbalances (e.g. between labor and capital). They’re also arguing that neo-liberal policies at best tend not to help correct these imbalances, and they seem to me to have a pretty good case. To put it more succinctly – even if left-leaning neo-liberals are right to claim that technocratic solutions and market mechanisms can work to relieve disparities etc, it’s hard for me to see how left-leaning neo-liberalism can generate any self-sustaining politics.¶ Having read this and various people agreeing with it, I have no idea what it is that we’re disagreeing about. Neoliberals on this telling, favor progressive taxation. Non-neoliberals criticize this agenda as not politically workable in the long-term. And they counterpose as their alternative, more workable agenda, . . . what? Kevin Drum offers this effort:¶ I don’t know the answer either. But as I said a few months ago, “If the left ever wants to regain the vigor that powered earlier eras of liberal reform, it needs to rebuild the infrastructure of economic populism that we’ve ignored for too long. Figuring out how to do that is the central task of the new decade.” It still is.¶ So I really, strongly, profoundly agree with this. The moment someone comes up with a workable idea on this front, please sign me up. But if there’s no idea to debate, then there’s no idea to debate. Debating the desirability of devising some hypothetical future good idea seems kind of pointless to me.

### Ext – Alternative Fails

#### There is no coherent alternative to neoliberalism --- movements fail.

Jones 2011 (Owen – Masters at Oxford, Owen Jones: Protest without politics will change nothing, The Independent, p. www.independent.co.uk/opinion/commentators/owen-jones-protest-without-politics-will-change-nothing-2373612.html)

My first experience of police kettling was aged 16. It was May Day 2001, and the anti-globalisation movement was at its peak. The turn-of-the-century anti-capitalist movement feels largely forgotten today, but it was a big deal at the time. To a left-wing teenager growing up in an age of unchallenged neo-liberal triumphalism, just to have "anti-capitalism" flash up in the headlines was thrilling. Thousands of apparently unstoppable protesters chased the world's rulers from IMF to World Bank summits – from Seattle to Prague to Genoa – and the authorities were rattled. Today, as protesters in nearly a thousand cities across the world follow the example set by the Occupy Wall Street protests, it's worth pondering what happened to the anti-globalisation movement. Its activists did not lack passion or determination. But they did lack a coherent alternative to the neo-liberal project. With no clear political direction, the movement was easily swept away by the jingoism and turmoil that followed 9/11, just two months after Genoa. Don't get me wrong: the Occupy movement is a glimmer of sanity amid today's economic madness. By descending on the West's financial epicentres, it reminds us of how a crisis caused by the banks (a sentence that needs to be repeated until it becomes a cliché) has been cynically transformed into a crisis of public spending. The founding statement of Occupy London puts it succinctly: "We refuse to pay for the banks' crisis." The Occupiers direct their fire at the top 1 per cent, and rightly so – as US billionaire Warren Buffett confessed: "There's class warfare, all right, but it's my class, the rich class, that's making war, and we're winning." The Occupy movement has provoked fury from senior US Republicans such as Presidential contender Herman Cain who – predictably – labelled it "anti-American". They're right to be worried: those camping outside banks threaten to refocus attention on the real villains, and to act as a catalyst for wider dissent. But a coherent alternative to the tottering global economic order remains, it seems, as distant as ever. Neo-liberalism crashes around, half-dead, with no-one to administer the killer blow. There's always a presumption that a crisis of capitalism is good news for the left. Yet in the Great Depression, fascism consumed much of Europe. The economic crisis of the 1970s did lead to a resurgence of radicalism on both left and right. But, spearheaded by Thatcherism and Reaganism, the New Right definitively crushed its opposition in the 1980s.This time round, there doesn't even seem to be an alternative for the right to defeat. That's not the fault of the protesters. In truth, the left has never recovered from being virtually smothered out of existence. It was the victim of a perfect storm: the rise of the New Right; neo-liberal globalisation; and the repeated defeats suffered by the trade union movement. But, above all, it was the aftermath of the collapse of Communism that did for the left. As US neo-conservative Midge Decter triumphantly put it: "It's time to say: We've won. Goodbye." From the British Labour Party to the African National Congress, left-wing movements across the world hurtled to the right in an almost synchronised fashion. It was as though the left wing of the global political spectrum had been sliced off. That's why, although we live in an age of revolt, there remains no left to give it direction and purpose.

### AT: Neolib = Root Cause (War)

**Neoliberalism isn’t the root cause of war**

**Roberts and Sparke 3** (Susan, Professor of Geography – University of Kentucky, and Matthew, Professor of Geography – University of Washington, “Neoliberal Geopolitics,” Antipode, 35(5), p. 886-897)

Barnett’s work is our main example in this paper of a more widespread form of neoliberal geopolitics implicated in the war-making. This geopolitical world vision, we argue, is closely connected to neoliberal idealism about the virtues of free markets, openness, and global economic integration. Yet, linked as it was to an extreme form of American unilateralism, we further want to highlight how the neoliberal geopolitics of the war planners illustrated the contradictory dependency of multilateral neoliberal deregulation on enforced re-regulation and, in particular, on the deadly and far from multilateral re-regulation represented by the “regime change” that has now been enforced on Iraq. Such re-regulation underlines the intellectual importance of studying how neoliberal marketization dynamics are hybridized and supplemented by various extra-economic forces.2 Rather than making neoliberalism into a **totalizing economic master narrative**, we therefore suggest that it is vital to examine its inter-articulation with certain dangerous supplements, including, not least of all, the violence of American military force. We are not arguing that the war is completely explainable in terms of neoliberalism, nor that neoliberalism is reducible to American imperialism. Instead, the point is to explore how a certain globalist and economistic view of the world, one associated with neoliberalism, did service in legitimating the war while simultaneously finessing America’s all too obvious departure from the “end of the nation-state” storyline.

[Continues]

As we said at the start, we do not want to claim too much for neoliberalism. It cannot explain everything, least of all the diverse brutalities of what happened in Iraq. Moreover, in connecting neoliberal norms to the vagaries of geopolitics, we risk **corrupting the analytical purchase of neoliberalism** on more clearly socioeconomic developments. By the same token, we also risk obscuring the emergence of certain nonmilitarist geoeconomic visions of global and local space that have gone hand in hand with neoliberal globalization (see Sparke 1998, 2002; Sparke and Lawson 2003). But insofar as the specific vision of neoliberal geopolitics brought many neoliberals to support the war (including, perhaps, Britain’s Tony Blair as well as Americans such as Friedman), insofar as it helped thereby also to facilitate the planning and overarching coordination of the violence, and insofar as the war showed how the extension of neoliberal practices on a global scale has come to depend on violent interventions by the US, it seems vital to reflect on the inter-articulations.

### AT: Neolib = Root Cause (Inequality)

#### Neoliberalism isn't the root cause of economic inequality or crises – historical data and developments contradict

Norfield 12 (Tony, PhD Candidate in Economics @ SOAS - Univ. of London, "‘The most detailed account available’ – more praise for ‘The Failure of Capitalist Production’," http://plutopress.wordpress.com/2012/03/22/the-most-detailed-account-available-more-praise-for-the-failure-of-capitalist-production/)

Writing on the Economics of Imperialism blog, Tony Norfield praises Andrew Kliman’s The Failure of Capitalist Production as “probably the most detailed, and effective, assessment of the economic statistics behind what happened [during the economic crisis] that is available”. Norfield writes:¶ The Failure of Capitalist Production has two main theses. Firstly, it argues that the major post-war crisis of the 1970s did not result in enough destruction of capital values to provide the basis for sustained accumulation thereafter. This meant that profitability showed little, if any, sign of recovery and economic growth remained weak. This, in turn, set the stage for credit-driven, speculative bubbles, not least the biggest and most recent one that has burst with such intractable consequences. Secondly, and following from this analysis, it argues that the common radical arguments about the nature of the crisis are myths. ‘Neoliberal’ economic policies did not cut real wages and did not divert resources into finance and away from production. A close look at the data for the US finds no evidence for these assertions. Instead, the slow growth of incomes and investment is shown to be a consequence of problems with capital accumulation, problems that resulted from inadequate profitability…¶ His case is well made, and is convincing. These are critical points for an attack on the notion that mistaken government policies – or a ‘neoliberal coup’, as some writers suggest – are the root cause of the crisis. Kliman shows that the deterioration in profitability, investment, growth, etc, began in the late 1960s or in the 1970s, prior to the beginnings of the ‘neoliberal’ era that is usually dated from 1979-81 with the Reagan (US) and Thatcher (UK) political regimes.

### K = Reductive

#### Their analysis of neoliberalism is reductive – it over-simplifies complex social processes and negates possibilities for political transformation.

Barnett 5 (Clive, Faculty of Social Sciences, The Open University, Geoforum 36, “The consolations of ‘neoliberalism,’” p. 9-10, Ebsco)

The blind-spot in theories of neoliberalism—whether neo-Marxist and Foucauldian—comes with trying to account for how top-down initiatives ‘take’ in everyday situations. So perhaps the best thing to do is to stop thinking of “neoliberalism” as a coherent “hegemonic” project altogether. For all its apparent critical force, the vocabulary of “neoliberalism” and “neoliberalization” in fact provides a double consolation for leftist academics: it supplies us with plentiful opportunities for unveiling the real workings of hegemonic ideologies in a characteristic gesture of revelation; and in so doing, it invites us to align our own professional roles with the activities of various actors “out there”, who are always framed as engaging in resistance or contestation. The conceptualization of “neoliberalism” as a “hegemonic” project does not need refining by adding a splash of Foucault. Perhaps we should try to do without the concept of “neoliberalism” altogether, because it might actually compound rather than aid in the task of figuring out how the world works and how it changes. One reason for this is that, between an overly economistic derivation of political economy and an overly statist rendition of governmentality, stories about “neoliberalism” manage to reduce the understanding of social relations to a residual effect of hegemonic projects and/or governmental programmes of rule (see Clarke, 2004a). Stories about “neoliberalism” pay little attention to the pro-active role of socio-cultural processes in provoking changes in modes of governance, policy, and regulation. Consider the example of the restructuring of public services such as health care, education, and criminal justice in the UK over the last two or three decades. This can easily be thought of in terms of a ‘‘hegemonic’’ project of “neoliberalization”, and certainly one dimension of this process has been a form of anti-statism that has rhetorically contrasted market provision against the rigidities of the state. But in fact these ongoing changes in the terms of public-policy debate involve a combination of different factors that add up to a much more dispersed populist reorientation in policy, politics, and culture. These factors include changing consumer expectations, involving shifts in expectations towards public entitlements which follow from the generalization of consumerism; the decline of deference, involving shifts in conventions and hierarchies of taste, trust, access, and expertise; and the refusals of the subordinated, refer- ring to the emergence of anti-paternalist attitudes found in, for example, women’s health movements or anti-psychiatry movements. They include also the development of the politics of difference, involving the emergence of discourses of institutional discrimination based on gender, sexuality, race, and disability. This has disrupted the ways in which welfare agencies think about inequality, helping to generate the emergence of contested inequalities, in which policies aimed at addressing inequalities of class and income develop an ever more expansive dynamic of expectation that public services should address other kinds of inequality as well (see Clarke, 2004b). None of these populist tendencies is simply an expression of a singular “hegemonic” project of “neoliberalization”. They are effects of much longer rhythms of socio-cultural change that emanate from the bottom-up. It seems just as plausible to suppose that what we have come to recognise as “hegemonic neoliberalism” is a muddled set of ad hoc, opportunistic accommodations to these unstable dynamics of social change as it is to think of it as the outcome of highly coherent political-ideological projects. Processes of privatization, market liberalization, and de-regulation have often followed an ironic pattern in so far as they have been triggered by citizens’ movements arguing from the left of the political spectrum against the rigidities of statist forms of social policy and welfare provision in the name of greater autonomy, equality, and participation (e.g. Horwitz, 1989). The political re-alignments of the last three or four decades cannot therefore be adequately understood in terms of a straightforward shift from the left to the right, from values of collectivism to values of individualism, or as a re-imposition of class power. The emergence and generalization of this populist ethos has much longer, deeper, and wider roots than those ascribed to “hegemonic neoliberalism”. And it also points towards the extent to which easily the most widely resonant political rationality in the world today is not right-wing market liberalism at all, but is, rather, the polyvalent discourse of ‘‘democracy’’ (see Barnett and Low, 2004).

### AT: Neoliberalism Impact/Root Cause

#### Disregard their impact claims – attributing consequence to neoliberalism is epistemologically asinine.

Castree 6 (Noel, Professor of Geography at the University of Manchester, Environment and Planning A, volume 38, Issue 1, “From neoliberalism to neoliberalisation: consolations, confusions, and necessary illusions,” p. 1-5)

Yet in the slow (but enjoyable) process of reviewing the literature I have become increasingly confused as to the precise object of analytical attention. It is not simply that the research papers I am reading focus on different kinds of natural and altered environments (hardly surprising given the world's biophysical diversity). In addition, the political economic project driving environmental change – ‘neoliberalism’ – seems to alter its shape from paper to paper. So, although the authors whose essays and chapters I am reading appear to share a common analytical focus – their different environmental expertises notwithstanding – it turns out that this focus is rather fuzzy. This is not just an empirical issue. In theoretical terms what counts as neoliberalism does not appear to be a matter of consensus among critics in geography and cognate fields. In some cases privatisation and marketisation are the key criteria; in other cases additional features are listed among its differentia specifica. Empirically, it is no surprise to discover that, however defined, `neoliberalism' does not `ground itself' unchanged from place to place. Rather, as the case studies I have been reading show so well, its embedding in real-world situations muddies the clean lines of its conceptual specification. So far so unexceptional. Anyone with an even passing familiarity with geographical debates over previous grand abstractions – such as postmodernity, post-Fordism, or globalization – will doubtless interpret my `fuzzy concept' problem as no problem at all. Given time, it might be thought that those researchers whose empirical work I am surveying will sharpen theoretical understandings of neoliberalism by carefully specifying different modalities of `actually existing neoliberalism'. This being early days, it might be thought that we still have some way to go before research into the `nature' of neoliberalism reaches maturity. `Maturity', from this perspective, would be a situation in which a substantial body of evidence has both arisen from and altered increasingly refined conceptualisations of what neoliberalism is all about. As this involves increased theoretical complexity, then the theoretical abstraction ‘neoliberalism’ will, over time, give way to plural understandings of neoliberalisation as a really existing process rather than an ageographical thing. The end result will be that environmental geographers – like other geographers interested in neoliberalism – will move from the heavens of abstract theory to the nitty-gritty of empirical specifics ending up somewhere in between: with mid-range conceptualisations that have genuine explanatory and normative purchase. Though the above scenario is not implausible, I have nagging doubts – ones whose implications extend way beyond my immediate subject of concern. My worry is that analysts of neoliberalism's environmental impacts are travelling down a road to nowhere. The potential dead end to which I refer is not a function of the topic being researched – like any political economic project, neoliberalism will have nontrivial effects on the nonhuman world (and therefore on us). It is essential that these effects be described, explained, and evaluated. But the key question – and the basis of my concern – is what precisely produces these effects. Ostensibly it is ‘neoliberalism’ of course. But because geographical researchers of neoliberalism are rightly trying to complicate and dehomogenise this thought-abstraction, the issue of what, precisely, the object of analysis is arises. If, as Clive Barnett (2005, page 9) states, ``There is no such thing as neoliberalism!'', then we are forced to recognise one of two possibilities. The first – apropos the mid-level theory mentioned above – is that there are distinct kinds of neoliberalisation whose environmental impacts can be fairly accurately understood (even though there is unlikely to be a consistent relationship between kinds and impacts). The second is that even at this mesolevel neoliberalism can only exist as a thought-abstraction not a `real entity' because ‘it’ only ever exists in articulation with actors, institutions, and agendas that immediately call into question whether a thing called ‘neoliberalism’ – however carefully specified – can be held responsible for anything. Clearly, I am touching here upon fundamental research issues – those of ontology and epistemology – that cannot be resolved at a purely philosophical level. To date, researchers of neoliberalism in urban and economic geography have tended to resist the second possibility mentioned above (perhaps because it appears to lead to the dead end of an idiographic focus on the unique and the singular). Instead, they believe that ongoing empirical research can be synthesised and compared so that mid-level concepts will emerge. The likelihood is that the environmental geographers whose research I have recently been reading will, similarly, see the production of such grounded concepts as their long-term objective. If so, I wish to give them pause for thought – so too all those other geographers undertaking theoretically informed and theoretically relevant empirical research into neoliberalism's actually existing forms. A brief exploration of some unresolved tensions in the writings of Wendy Larner and Jamie Peck is instructive here. Economic geographers both, Larner and Peck's overview pieces on neoliberalism have enjoyed a wide readership among critical geographers (Larner, 2003; Peck 2001; 2004; see also Peck and Tickell, 2002). Both authors have tried to set agendas for current and future geographical research into neoliberalism that touch upon the source of my concern in this commentary. Larner (2003, page 510) has argued that neoliberalism needs to be given ``an identity crisis''. Following J K Gibson-Graham (1996) she argues that when critical scholars reify neoliberalism as a hegemonic, unified entity they, perversely, exaggerate its power despite their oppositional stance towards it. Her recommendation is that we take aspatial and universal conceptions of neoliberalism and render them geographical: that we pay attention to ``the different variants of neoliberalism, to the hybrid nature of contemporary policies and programmes...[and] to the multiple and contradictory aspects of neoliberal spaces, techniques, and subjects'' (page 509, emphasis in the original). However, perhaps aware that this argument can be seen to license the proliferation of disconnected case studies, she also stresses ``the important contributions of academic work focused on identifying the similarities between different forms of neoliberalism'' (page 510). The hidden tensions in Larner's argument become manifest in Peck's excellent synoptic essays on neoliberalism. He notes that neoliberalism is a ``perplexingly amorphous political economic phenomena'' (2004, page 394) because it remains unclear at what geographical scales and levels of theoretical abstraction we can identify it. As he puts it, ``While the neoliberal discourses and strategies that are mobilized in ... different settings share certain family resemblances, local institutional context clearly (and really) matters in the style, substance, origins and outcomes ...'' (page 395). This is more than a reiteration of Larner's apparently sensible attempt to give the grand abstraction `neoliberalism' an identity crisis. More than Larner, Peck wants to identify commonalities within apparent difference without succumbing to ``the fallacies of monolithism ... or convergence thinking'' (page 403). As he continues, ``While geographers tend to be rightly sceptical of spatially totalizing claims, splitting differences over varieties of neoliberalism cannot be an end in itself, not least because it begs questions about the common roots and shared features of the unevenly neoliberalized landscape that confronts us.'' What Peck seems to have in mind here is not a process of pure thought abstraction: one in which generic similarities among different neoliberalisms are identified yielding a `neoliberal model' that nowhere exists as such. Instead, he recognises that all neoliberalisations are hybrid from the outset [“even the United States represents a ‘case’, rather than the model itself'” (page 393)]. It follows for him, therefore, that “in the absence of a more careful mapping of these hybrids-in-connection, the concept of neoliberalism ... remains seriously underspecified, little more in some cases than a radical-theoretical slogan'' (page 403). It seems to me that, despite his best efforts, Peck fails to address satisfactorily some key problems in the argument that both he and Larner are advancing. In a sense both authors want to have their cake and eat it. They insist that we identify different modalities of neoliberalism without giving up on the task of discussing “the abstraction we might provisionally term neoliberalism in general'” (page 395) – where the latter now arises from a comparative consideration of empirical research rather than from a priori thought-experiments or reference to the programmatic writings of Friedman and Hayek. For my own part I see difficulties with this `both/and' agenda even as I understand the intentions behind it. Let me explain. First, part of neoliberalism's ‘perplexing amorphousness’ – whatever geographical scale or level of theoretical abstraction we are dealing with – stems from a fairly intractable inability to ‘fix’ the term's meanings and real-world referents. Unlike, say, water – which in one of its three states remains water wherever and whenever it is – neoliberalism does not possess stable characteristics. We only ‘know’ that a given phenomena is neoliberal – or has “a more than trivial degree of neoliberal content” (page 403) – because we have selected from among several definitions that other researchers or real-world actors use to specify what neoliberalism is. Because these definitions are multiple – as I noted earlier, critics usually offer between two and several criteria when defining what counts as a neoliberal idea or policy – then `the real world' can only partly function as a ‘court of appeal’ to resolve competing claims as to what is (or is not) neoliberal in degree and kind. Second, even if this were not an issue, neoliberal practices always, as Larner and Peck rightly argue, exist in a more-than-neoliberal context. The context matters because it introduces difference, path dependency, and unevenness in terms of process and outcome: neoliberalisations in the plural. But this then begs the question: what does it mean to abstract from context (again, whatever geographical scale or level of theoretical abstraction we are dealing with) in the way that Larner and especially Peck recommend? Even in Peck's subtle reading of ‘neoliberalism in general’ we confront the possibility that we are simply listing generic – albeit historically specific – characteristics found in multiple geographical contexts. Because the effects of these characteristics can only ever be understood contextually then the suspicion arises that neoliberalism depicted over and above context is a pure archetype: something unreal that has no consequences or existence in itself. This, of course, raises the key question of where context begins and where it ends. Phrased differently, it raises the question of geographical scale: at what socially constituted scale(s) does (do) discrete modes of neoliberal policy and practice exist? The answer, as the growing empirical literature shows, is that it very much depends. One of the reasons that critics see neoliberalism as tendentially hegemonic is because it has been `rolled out' by global institutions (such as the World Bank) with the (apparent) power to impose their will on whole countries. But this does not, of course, mean that it is implemented uniformly over space because of preexisting differences in the configurations of state, business, and civil society. What is more, national, regional, and local level actors in various parts of the world have enacted their own neoliberal policies in relation to specific sets of people, places, natural resources, industries, and so on. So even if neoliberal ideas have, these last twenty years, diffused out from globally powerful bodies this does nothing to alter the fact of hybridity and variety that Larner and Peck both discern. My third point, in light of this, is that it is wrong to believe that ‘larger’ geographical scales (for example, the North American Free Trade Agreement area) constitute a more uniform neoliberal landscape ‘overlaying’ more regionally and locally variable ones. The point, surely, is that even global policies and rules ‘bite’ differently all the way from the continental down to the local scales. In other words, ‘difference’ does not begin (or somehow `deepen') at the local scale alone (as implied by Perreault and Martin, 2005). Neither Larner nor Peck suggest that it does, but there is nonetheless the risk that their arguments can be seen to imply that there is a scale or scales where geographical difference ends and spatial similarity begins. As I suggested in the previous paragraph, neoliberalism is ‘impure’ at all geographical scales, meaning that the search for similarities can easily become a formal rather than substantive exercise. The way to avoid this last possibility is to do what critical realists in human geography have been doing for years. Supposing that we can agree on what neoliberalism's defining characteristics are, we start by recognising that it exists in an overdetermined socionatural universe. We therefore acknowledge that it never acts alone – only in a fairy-tale world where everything is privatised, marketised, and commodified would this not hold true. Therefore, when we identify specific variants of neoliberalism we are not examining varieties of a really existing, homogenous genus. Instead, we are doing two things. First, we are seeing how a really existing and quite widespread set of policy ideas are having conjoint effects at specific geographical scales (up to and including the global). In other words, we are examining contingently occurring processes and outcomes that may well have operated differently if the ‘neoliberal component’ had not been present. Second, this means the object of analysis in any given research project is not a mere temporary ‘variant’ of something more enduring and solid but rather a qualitatively distinct phenomenon in its own right: namely, an articulation between certain neoliberal policies and a raft of other social and natural phenomena. Rigorously pursued, a critical realist approach to neoliberalism or any other topic resists the ‘violence of abstraction’: that is, the habit of confusing epistemic discussions about a phenomenon abstracted from its contexts of operation with ontological discussions about its actual behaviour and its material effects. As the now-distant ‘localities debate’ showed, the best critical realist research does not doubt that certain phenomena cover wide spans of space and time. Instead, it insists that such phenomena are likely to be impure at all scales and this impurity must be respected not seen as a deviation from some norm or essence. How does this relate to attempts to compare different variants of neoliberalism? The answer is that critical realists would look for substantial (not formal) similarities in causal processes and contingent similarities in how those processes work out on the ground. In other words, geographical difference matters to critical realists ‘all the way down’ which is not the same as saying that the world is necessarily a patchwork of unlike parts. Critical realists, though not discussed by Peck in his recent work (though further back in time see Peck, 1996), would doubtless approach neoliberalism in the way he recommends. They would identify similarities between neoliberalisations not to suggest that the differences can be bracketed but to suggest, instead, that even with these differences substantial commonalities of process and outcome occur. Equally, though, they would be open to the evidence telling them a different story: one in which the differences make such a difference that the commonalities exist only in name (conceptually) not in actuality. In either case, it would be axiomatic that it is never `neoliberalism' alone that causes anything, but always ‘neoliberalism-plus’ – begging the empirical question of at one point of ‘impurity’ it becomes impossible to use the term neoliberal in any meaningful analytic sense. What is the relevance of all this to the relatively new research literature exploring neoliberalisms and the nonhuman world? In a recent critical review of work by Larner, Peck, and other geographic analysts of neoliberalism, Barnett (2005, pages 9-10) has made the following observation. “For all its apparent critical force'”, he argues, “the vocabulary of ‘neoliberalism’ and ‘neoliberalization’ in fact provides a double consolation for leftist academics: it supplies us with plentiful opportunities for unveiling the real workings of hegemonic ideologies in a characteristic gesture of revelation. In so doing, it invites us to align our own professional roles with the activities of various actors ‘out there’, who are always framed as engaging in resistance or contestation.'' If Barnett is right (and I think he might be) then it is important that the still-young geographical research literature on neoliberalism and nature avoids the consolations to which he refers. In a recent theme issue of this journal on neoliberalism in Latin America – in which several essays examine environmental impacts – Thomas Perreault and Patricia Martin (2005) seem drawn to these consolations despite themselves. On the one side, like Larner and Peck, they deny that neoliberalism tout court exists (only specific versions of it). Yet they also make plenary claims about ‘its' implications for the environment and its governance (page 193). What is the appeal of continuing to talk in terms of grand abstractions, even as they are being called into question? One answer is that the `bad' (that is, aspatial) habits of social science thinking continue to affect geographical thinking. As Barnett implies, academic critics are made to feel important if the object of their animus appears to be hegemonic, global, and powerful: something that demands urgent critical scrutiny. It is far less glamorous and `sexy' to have constantly to describe ones objects of analysis as multiple, complex, and varied through time and space. As David Harvey (1985, page xi) argued many years ago, spatiotemporal specificity appears to paralyse the generalising impulses of mainstream and radical social scientists (like economists and social theorists).

#### Their explanation is flawed – a focus on neoliberalism detracts from attention to the complex details of policy that enable economic exploitation.

Larner 3 (Wendy, Professor of Human Geography and Sociology, Research Director for the Faculty of Social Sciences and Law, University of Bristol, Environment and Planning D: Society and Space, volume 21, “Neoliberalism?” p. 509-510)

At the most general level, neoliberalism appears to have usurped globalisation as the explanatory term for contemporary forms of economic restructuring. Neoliberalism was understood to refer to the process of opening up national economies to global actors such as multinational corporations and to global institutions such as the IMF and World Bank. Indeed, sometimes the two terms were linked through the phrase ‘neoliberal globalisation’. This represents an advance over the earlier ‘bulldozer’ readings of globalisation that (perhaps unintentionally) underlined the inevitability of the processes involved. The term `neoliberal globalisation' makes manifest attempts to conceptualise global restructuring as a political project and to identify the actors involved. But little else appeared to be gained. Neoliberal globalisation continued to be understood as a monolithic project emanating from the `ideological heartlands' of the United States and the United Kingdom. The actors highlighted in the analyses were the usual culprits. The differences between processes such as deregulation, privatisation, and marketisation were rarely discussed, and their effects on people and places all too predictable. Neoliberalism, it was argued, is leading to the inevitable decline of democratic processes and to increased sociospatial polarisation. The more that things change, the more they stay the same. This reinscribing of the hegemonic story is even more depressing when we remember the important work of feminists and poststructuralists and their efforts to alert us to the broader implications of our theorising, and more specifically to the effects of the `globalisation script' (Gibson-Graham, 1996; see also Larner and Walters, 2003). These efforts have revealed globalisation as a complex and multiple set of economic, political, and cultural processes with contradictory consequences. Yet, just at the time when globalisation has been shown to be more specific than was previously understood (hence the turn in a wide range of social science literatures to globalisations, globalising processes, multiple globals, and so on), neoliberalism is being positioned as an apparently unified successor term. Moreover, unlike globalisation, neoliberalism operates at multiple scales. Not only is it a supranational project (neoliberal globalisation), it involves nation-state and local (particularly urban) political projects. However, in these accounts of neoliberalism, for all their geographical and scalar diversity, little attention is paid to the different variants of neoliberalism, to the hybrid nature of contemporary policies and programmes, or to the multiple and contradictory aspects of neoliberal spaces, techniques, and subjects. In this context, I have begun to worry about the work which the term `neoliberalism' is required to do in contemporary geographical literatures. In our efforts to make sense of current political-economic events, we have moved from analyses of globalisation to analyses of neoliberalism, but our labels continue to obscure the details and complexity of the processes involved. Moreover, the kinds of analyses we are currently developing help to explain just why it is we are seeing neoliberalism everywhere. In this context, it may be both intellectually and politically useful to disrupt current understandings of neoliberalism.