# 1AC for Round 5

### Inherency

#### Contention 1- Inherency

#### In September of 2012, Obama used his power under Exon-Florio to prohibit a Chinese company named Ralls from operating wind turbines in the United States. Ralls has sued the President and the Treasury Department’s CFIUS committee. The Court is about to rule against their challenge to national security restrictions on wind production.

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December 19, 2012 Wednesday SECTION: COMMENTARY LENGTH: 932 words HEADLINE: Commentary: Butter Creek wind energy projects BYLINE: Jeanne Chamberlain BODY: The court battles continue concerning development of the Butter Creek wind farm projects in Morrow County. The unusual case stems from President Obama’s Sept. 28 order requiring that Ralls Corp., owned by two Chinese nationals, divest its ownership in the projects. This is the first time in several decades that a president has used his authority to block such an investment. Now, the projects’ owner has sued Obama in the United States District Court for the District of Columbia. A decision on the government’s effort to bring the case to a quick end is expected shortly. This case presents several cautions for wind farm developers, not the least of which is that national security interests may be raised in seemingly unlikely circumstances. More importantly, significant hurdles can arise when foreign investors proceed without prior approval from the Committee on Foreign Investment in the United States and it later determines that it has jurisdiction. In 2009, Oregon Wind Farms LLC initiated development of four separate wind farm projects south of Boardman in Morrow County. The companies had easements with local landowners to access and construct the projects, power purchase agreements with PacifiCorp, interconnection agreements permitting connection to PacifiCorp’s grid, transmission interconnection agreements and various necessary permits and approvals. In 2010 and 2011, the Federal Aviation Administration issued a “Determination of No Hazard” for each of the 20 planned turbines in the Butter Creek development. The FAA review process includes review by the Department of Defense. The United States Navy maintains a restricted airspace and bombing zone in the general vicinity of the Butter Creek development. That zone is used by a military aircraft base out of Naval Air Station Whidbey Island, over 200 miles northwest of the restricted airspace. It has been reported that the military uses the area to test drones and electronic warfare aircraft that jams radar. Only one of the four Butter Creek projects is inside the restricted airspace. Shortly after Ralls acquired the projects in December 2010, the U.S. Navy expressed concerns regarding the location of the Butter Creek development within restricted airspace, and advocated moving the wind farm to reduce airspace conflicts with military aircraft training in the area. Ralls agreed, and moved the wind farm to a new location. Construction of the turbines began in April 2012. Ralls provided CFIUS with notice of its acquisition of the wind farms on June 28. CFIUS, an interagency executive branch committee created by the Defense Production Act of 1950, is empowered to review and consider the impact of foreign investments in U.S. companies on national security. In a July 25 order, CFIUS determined there were national security risks to the United States as a result of the transaction. In compliance with the CFIUS order, Ralls suspended construction and informed CFIUS that it was considering sale of the projects. CFIUS issued a second order that prohibited any sale without prior notice and approval. On Sept. 12, Ralls filed suit, arguing that the orders issued by CFIUS exceeded its authority. After considering the CFIUS assessment of the matter, President Obama issued the Sept. 28 order finding credible evidence that Ralls, exercising control of the project companies, might take action that threatens to impair the national security of the United States. The president ordered Ralls to divest within 90 days all interests in the project companies, their assets and operations. On Oct. 1, Ralls added President Obama as a defendant in its lawsuit. The government promptly moved to dismiss the lawsuit, alleging that the court lacks jurisdiction. Ralls alleges that CFIUS’ recommendation, and the president’s subsequent order, led to an unconstitutional deprivation of Ralls’ property. It also claims that the government discriminatorily singled out the company because it is owned by Chinese nationals. In support of its position, Ralls points out that several other wind farms exist nearby. Oregon Wind Farms itself developed nine other wind farms in the vicinity of Butter Creek, known collectively as the Echo projects. Their development has been completed and they are in commercial operation, using turbines manufactured by RE Power, a German company owned by an Indian conglomerate, and Vestas, a Danish company. Two of the Echo wind farms include turbines located inside the restricted air space. On Nov. 28, District Court Judge Amy Berman Jackson heard oral argument on the government’s motion to dismiss. Though the president’s authority to issue divestiture orders is generally not subject to judicial review, Ralls argues that the president’s order goes too far. Instead of simply prohibiting Ralls’ acquisition, the order restricts future sales related to the project and equipment on site. In addition, the order authorizes CFIUS to require Ralls to give the government access to the premises, its equipment and various business records. Most commentators anticipate that Ralls’ efforts to challenge the divestiture order will be unsuccessful and that the court will likely rule that it has no authority to second-guess President Obama on a matter concerning national security. If that happens, Ralls has said it will appeal, and the court battles will continue.

#### And, the plan is key- a judicial ruling limiting the application of CFIUS review regarding national security and energy production assets would set a precedent for all foreign investment deals. The international business community is closely watching the court on this issue.

Vigdor et al-Vinson and Elkins LLP-10/22/12

Blocking Ore. Wind Farms: Overstepping Authority?

http://www.velaw.com/uploadedFiles/VEsite/Resources/BlockingOreWindFarmsOversteppingAuthority.pdf

The Ralls Corporation, a Chinese-owned wind farm developer, has sued President Obama and the Committee on Foreign Investment in the United States, raising statutory and constitutional challenges to recent orders by the president of the United States and CFIUS that effectively require Ralls to unwind its acquisition of four wind farm projects in Oregon. This appears to be only the second order issued by a sitting U.S. president since CFIUS was established in 1975. Ordinarily, parties abandon transactions when CFIUS appears ready to recommend that the president issue a blocking order. Thus, this suit is a rarity. Although the plaintiffs face threshold barriers to having their claims heard on the merits, even a partial success could have broad significance for the review of foreign direct investment across all sectors of the economy because CFIUS approval is frequently a major concern for transactions involving foreign acquisitions of, or joint ventures with, U.S. businesses. The Ralls lawsuit challenges not only the lack of transparency in CFIUS’ procedures and decision making, but also the president’s and CFIUS’ authority to prevent or unwind a transaction involving a foreign person based on national security concerns. Further, the lawsuit indicates that CFIUS can have national security concerns regarding foreign acquisitions of even small wind turbine projects, particularly where a project site is located near a U.S. military base or other sensitive national security installation. Background on CFIUS Review Since the 1970s, Congress has authorized the president “to suspend or prohibit any covered transaction that threatens to impair the national security of the United States.” National security reviews of foreign acquisitions of U.S. businesses are conducted through CFIUS, an interagency committee with jurisdiction to review “covered transactions,” a term defined to include transactions “by or with any foreign person which could result in foreign control of any person engaged in interstate commerce in the United States.” Under the CFIUS authorizing statute, the parties to a transaction may, but are not required to, submit a joint written notice to the committee. If CFIUS determines that a notice involves a “covered transaction,” it must determine “the effects of the transaction on the national security of the United States.”If CFIUS identifies a national security concern, the parties will often agree to take measures to resolve the concern, including entering into formal, contractual “mitigation agreements” with the government. If CFIUS and the parties are unable to negotiate mitigation measures or otherwise address the concern, the committee has statutory authority to refer the matter to the president. The authorizing statute requires the president to make certain findings and to announce his decision about whether to take action in 15 days. The statute further authorizes the president to “take such action for such time as [he] considers appropriate to suspend or prohibit any covered transaction that threatens to impair the national security of the United States” and provides that the president’s findings and actions “shall not be subject to judicial review.” CFIUS Review of the Ralls Wind Farm Project Ralls is a Delaware company owned by two Chinese businessmen (Dawei Duan and Jialiang Wu, the chief financial officer and vice president of Sany Group, a Chinese manufacturer); it is named for the Texas town where they built their first wind farm. According to Ralls, its primary business purpose is to develop wind energy products for which wind turbines manufactured by Sany could be used. The Ralls complaint alleged that in early 2012, Ralls bought four small Oregon companies whose assets consisted of wind farm development rights, land rights to construct wind farms, power purchase agreements and government permits. The projects — which collectively would produce a mere 40 megawatts of power — allegedly had received other federal regulatory approvals, such as a determination by the Federal Aviation Administration that the turbine towers presented no hazard to aviation. The U.S. Navy had initially requested that Ralls voluntarily relocate one of the turbines, apparently due to proximity to certain restricted military airspace. The complaint contended that after Ralls complied with the request, the Navy recommended that Oregon issue the necessary state regulatory approvals. In response to a request from the committee in June of this year, Ralls submitted a notice to CFIUS of its (by-then-consummated) acquisition of the Oregon projects. In late July, CFIUS allegedly issued an order purporting to require Ralls to cease construction, remove all materials from the location and “immediately cease all access” to the properties. Under the order, U.S. citizens contracted by the companies were permitted to access the site “solely for purposes of removing any items from the Properties in compliance with” the order. After Ralls informed CFIUS that it was considering selling the project companies, potentially to a U.S. buyer, CFIUS issued an amended order. In addition to restating each of the previous directives, the amended order prohibited Ralls from transferring to any third party for installation at the project site, any item made by the Sany Group. The amended order also prohibited Ralls from transferring the properties themselves until all items on the properties had been removed, and Ralls gave CFIUS notice and opportunity to object to the potential buyer.The Ralls Lawsuit and the President’s order Unwinding the Transaction On Sept. 12, Ralls filed a complaint in the U.S. District Court for the District of Columbia challenging the CFIUS actions as a violation of the federal Administrative Procedure Act (APA) and an unconstitutional deprivation of property without due process. The complaint specified the CFIUS review process in some detail. The suit raised a host of challenges, asserting that CFIUS exceeded its authority by failing to give reasons for its actions; prohibiting the transaction outright, rather than imposing conditions to mitigate national security risks; and prohibiting Ralls from selling items produced by Sany even to U.S. buyers and wind farm projects without CFIUS approval, even to a U.S. buyer. The suit also alleged that the order deprived Ralls of property without due process by prohibiting further construction, use of (or even access to) the property and sale of assets on the property to which Ralls holds project development land rights. On Sept. 28, President Obama issued an executive order directing Ralls to divest its interest in the wind farm projects within 90 days (by Dec. 27). The order is an unusual event — the first time since 1990 that a U.S. president has exercised authority under the CFIUS statute to prohibit a foreign transaction on national security grounds. The president’s order revokes the interim CFIUS measures but imposes even broader restrictions. It first finds, without additional details, that Ralls and its affiliates and subsidiaries, through their control of the wind farm projects, “might take action that threatens to impair the national security of the United States.” Although the order does not specify the precise national security risk, a press release from the U.S. Department of the Treasury (the CFIUS chair agency) suggests one possibility: “The wind farm sites are all within or in the vicinity of restricted air space at Naval Weapons Systems Training Facility Boardman.” (As noted above, Ralls had initially relocated one project at the Navy’s request to avoid that airspace. Although the Navy recommended that Oregon regulators issue the necessary approvals, it cautioned that even the new location “may have negative national security implications.”) Ralls’ court filings also suggested that proximity to the naval air station was the only national security concern. The order prohibits Ralls’ already-completed acquisition of the four projects and their assets and orders Ralls to divest them within 90 days (with a possible three-month extension on such terms as CFIUS may require). The order further requires Ralls to divest all interests in the projects’ “intellectual property [and] technology.” Ralls has just 14 days to remove “all items, structures, or other physical objects (including concrete foundations),” from the four sites, and, other than CFIUS-cleared U.S.-citizen contractors performing the removal, Ralls and its employees “shall cease all access.” Ralls cannot sell the four projects if CFIUS objects.The president’s order also supplements the interim CFIUS order by providing for inspections: “[O]n reasonable notice,” the order states, U.S. government employees “shall be permitted access, for purposes of verifying compliance with this order, to all premises and facilities” of the four project companies, as well as those of Ralls, its subsidiaries, and even those of Sany Group: “(i) to inspect and copy any books, ledgers, accounts, correspondence, memoranda, and other records and documents ... that concern any matter relating to this order” and “(ii) to inspect any equipment and technical data (including software) in the possession or under the control of the Companies.” Ralls promptly amended its complaint to add the president as an additional defendant and to challenge the Sept. 28 order and moved for expedited consideration, arguing that it needed a decision on its claims before the Dec. 27 divestment deadline. Ralls also submitted discovery requests seeking all documents in the government’s possession “relating to Ralls, Sany, or the [wind farm] Project Companies,” as well as details about the president’s evidence of a national security threat and what “actions” the U.S. government believes Ralls “might take” to threaten U.S. national security. The government argued that the court lacks power to hear the claims because, under the CFIUS statute, the president’s actions are not subject to judicial review. On Oct. 3, the district court set an expedited schedule for the government’s motion to dismiss, with the first brief due on Oct. 29 and a hearing scheduled for Nov. 28. The court put all discovery on hold (including Ralls’ requests described above) until it decides the motion. Looking Forward If successful, the lawsuit could have broad implications on a number of different grounds. First, the plaintiffs challenge the president’s and CFIUS’ procedures for reviewing transactions. Ralls objects to the president and CFIUS’ failure to provide any “evidence or explanation for its determination[s]” that the transaction was a “covered transaction” (and thus under CFIUS jurisdiction), that the transaction poses national security risks and that those risks cannot be mitigated by less restrictive means than the overbroad (in Ralls’ view) measures in the amended order. The challenges should be understood in the context that CFIUS review is generally confidential (CFIUS does not disclose even the fact that a review was requested). When CFIUS has a national security concern, the committee will often explain to parties that there is evidence of a national security concern but, in the interest of national security, the committee often will not share the reasoning or evidence with the parties. Here, Ralls is complaining about the inability to hear or understand the issues and seeking additional information in court through (now-stayed) discovery. If successful, the suit could increase the transparency of the review — such as a requirement that the committee articulate for the parties a justification for orders or recommendations to the president, beyond a bare finding of “national security risk.” If this were to come to pass, such disclosure could open the door to fruitful mitigation discussions. Second, and more fundamentally, the possibility that CFIUS actions could be subject to even a limited form of judicial review would reflect a sea change in CFIUS practice. As a practical matter, lawsuits seeking to challenge actions by CFIUS are rarely brought.[1] CFIUS’ authorizing statute, the Foreign Investment and National Security Act of 2007, gives the president authority to suspend or prohibit any covered transaction based on his finding of national security risks and states that his actions and supporting findings “shall not be subject to judicial review.” The Ralls complaint is based, in part, on the notion that CFIUS can be subject to judicial review through the APA even after the president has acted — particularly where, as here, CFIUS purported to issue an order under its own authority. Ralls also seeks review of the president’s actions on the ground that they exceed his statutory authority. Whether any aspects of this suit can proceed in a federal court will be the central issue presented by the government’s motion to dismiss. The plaintiffs will likely draw support from the background presumption that “final” agency actions are subject to judicial review. Finally, Ralls challenged the scope of CFIUS’ and the president’s remedial authority. The company asserts that only the president, not CFIUS, may suspend or prohibit a transaction and that CFIUS exceeded its authority to “mitigate” threats to U.S. national security in issuing the various restrictions in the interim orders. Ralls also argued that the president overstepped his authority to “suspend or prohibit” a transaction by ordering removal of equipment from the site and prohibiting access and by prohibiting Ralls from selling “to any third party” any items produced by the Sany Group. Such an order, Ralls asserted, oversteps both the limitation that CFIUS and the president may review only transactions that involve acquisition of control by a foreign person (as the order covers purchases by U.S. buyers) and the limitation that such review applies only to acquisition of a U.S. business (since the order applies to “items” produced by Sany Group). Ralls also challenged the president’s authority to authorize broad searches of Ralls, the Sany Group and affiliated entities. The challenge reflects the unusual posture of this case, in which CFIUS — and then the president — issued unilateral orders rather than negotiating “consensual” mitigation with the parties upon threat that CFIUS would recommend that the president take action to block the transaction. Any judicial decision that limited CFIUS or the president’s remedial power to impose national security related mitigation conditions would be of great interest to the investment community. CFIUS practitioners and the business community should watch this case closely. The plaintiffs will face significant threshold arguments from the government that the actions are nonreviewable and that the case should be dismissed. But if even one of Ralls’ claims survives dismissal, it could have significant economic and legal effects for U.S. national security review of foreign investment. Remarkably, this important development arises in the context of a CFIUS challenge to the acquisition of a nascent alternative energy project. CFIUS is charged with reviewing and investigating foreign acquisitions of critical infrastructure, including major energy assets. Small wind turbines are unlikely to fall into that category, but it is clear that CFIUS believes that foreign ownership of wind turbines could threaten national security, particularly where the assets are located near U.S. military or other sensitive installations. We believe that the case has momentous import to the U.S. business community seeking to attract capital for investment and foreign persons seeking to invest in the United States. We expect there to be opportunities for interested parties to express their views through amicus filings with the court. While we do not believe that this matter reflects a broad policy statement prohibiting foreign direct investment by Chinese companies in the U.S., it does suggest the importance of parties seeking strategic advice in advance about the full range of CFIUS risk that may be associated with a contemplated transaction and of appropriate engagement with CFIUS early in the process before a transaction is consummated. We expect further activity in this matter in late November when the court holds a hearing on the government’s motion to dismiss.

### Grid Investment 1AC

#### Advantage 1- Grid Investment

#### The Ralls wind restriction makes Chinese energy investment uncertainty inevitable. Removing national security restrictions is critical to increasing Chinese energy investment in the US.

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In President Barack Obama’s first term, economic issues were often a source of friction between the United States and China, particularly regarding clean energy. But things started off relatively well a few years ago: President Obama made his first trip to China as president of the United States in November 2009, and energy cooperation was high on the agenda. President Obama and Chinese President Hu Jintao signed multiple agreements pledging to cooperate on a range of important energy initiatives such as the U.S.-China Clean Energy Research Center and a U.S.-China renewable-energy partnership. These initiatives are important. The United States and China are the world’s biggest energy consumers and biggest greenhouse gas emitters. Our two nations have similar energy and climate problems but different comparative advantages for addressing those problems. The United States leads in cutting-edge clean energy innovation, and China leads in the rapid commercialization and deployment of those technologies. Working together on clean energy just makes sense. If U.S. and Chinese clean energy enterprises can have open access to both markets, that access will improve their abilities to achieve good economies of scale and drive down costs. If both markets are competitive, that will give enterprises in both countries strong incentives to innovate, and innovation will lead to new technologies and new business models that should speed our transition to a clean energy economy. That would be good for U.S. and Chinese consumers, good for our economies, and good for the planet as a whole. Despite those macro-level incentives to cooperate, however, things can get a bit more complicated when we actually delve into the details. Although we want to cooperate at a macro level, the United States and China are also big competitors at a market level. Both countries want to see their own companies dominate in critical industries such as solar and wind. Neither Washington nor Beijing is happy about being too reliant on energy products or services provided by foreign enterprises. Balancing cooperation with competition and our respective national ambitions is always difficult, and clean energy is no exception. Although the United States and China expanded bilateral cooperation with critical projects such as the Clean Energy Research Center, throughout President Obama’s first term we increasingly butted heads in the trade realm. U.S. steel workers filed a World Trade Organization petition against China’s wind-power equipment subsidies in 2010; U.S. solar panel and wind turbine manufacturers filed U.S. Department of Commerce countervailing duty petitions and antidumping petitions against Chinese manufacturers producing those same products in 2011; and the American Superconductor Corporation is still engaged in an ongoing legal battle with China’s Sinovel Wind Group over alleged intellectual property theft. These U.S.-China clean energy trade frictions are serious, and unfortunately they are unlikely to disappear anytime soon. China’s regime to protect intellectual property rights is still developing. Some local officials in China are still more interested in protecting local companies than in adhering to international trade laws, and China’s relative lack of administrative transparency can make the resultant trade complaints very hard to resolve. One area in which the Obama administration has proven especially adept, however, is approaching the U.S.-China relationship issue by issue without letting frustrations on one issue spill over and impede cooperation elsewhere. As my colleague Nina Hachigian recently wrote, President Obama has taken a “clear-eyed, nuanced and effective approach” toward China. Where cooperation makes sense, the president has been ready to deal. Where he feels American interests are being harmed, he has not hesitated to get tough. This is exactly what we will need more of in U.S.-China relations in the clean energy sector. We need to continue to keep an eye on clean energy trade to ensure that American companies have a level playing field, but trade frictions should not hold us back from pursuing promising opportunities with China in other areas. One of our most promising opportunities for U.S.-China clean energy cooperation is inward Chinese direct investment. Many Chinese companies want to come to the United States, directly invest in this country, and create jobs here. That is exactly what our economy needs, particularly in sectors such as renewable energy generation that generally do not pose national security concerns and will require large amounts of investment capital to develop. The problem is, however, that we do not have a good policy framework in place to encourage these investments. In President Obama’s first term, the White House signaled general support for increasing Chinese direct investment. During Vice President Joe Biden’s August 2011 China trip, for example, the vice president stated: President Obama and I, we welcome, encourage and see nothing but positive benefits flowing from direct investment in the United States from Chinese businesses and Chinese entities. It means jobs. It means American jobs. From the perspective of most potential Chinese investors, however, those general statements of welcome are not enough to make the U.S. market look like a good bet. These investors need to be able to predict how the U.S. government will respond to particular foreign-invested business models—and that requires actual policies. The only policies we have at present are the national security review policies of the Committee on Foreign Investment in the United States, which are designed to block foreign direct investments that could pose national security concerns. National security protections are very important, but we should pair those protections with additional policies designed to encourage foreign investment in the sectors where security is not an issue. In this era of economic difficulty, we should not let those opportunities go by the wayside. This issue brief will outline the opportunities and current problems in attracting Chinese direct investment and offer policy recommendations for how the United States can make the most of Chinese capital and knowledge in the clean energy sector.¶ Why encouraging inward Chinese direct investment in clean energy makes sense for the United States¶ President Obama’s administration made great strides in his first term toward building a sustainable U.S. clean energy economy that will provide jobs for middle-class Americans and reduce our nation’s dependence on foreign oil and fossil fuels. But more work is needed. Moving toward a clean energy economy in the United States will require more than $1 trillion of investment in the electricity grid, new fuels, mass transit, power generation, and manufacturing. An investment of this size will require the United States to mobilize every possible source of capital, including foreign direct investment.¶ While the United States has a sizeable investment need, Chinese investors are eager for new opportunities in foreign markets—and the U.S. market in particular. Their goals are not always perfectly aligned with ours, nor do U.S. market opportunities always perfectly meet their needs. That said, however, there are times when Chinese direct investment in the U.S. clean energy economy would be mutually beneficial.¶ Chinese enterprises would like to invest in the United States for many reasons, including:¶ Some potential investors are seeking infrastructure investments with stable returns.¶ Others are seeking access to innovative technology and processes or high-yield opportunities in manufacturing.¶ Directly investing in the United States can give Chinese enterprises a local presence and a closer relationship with U.S. consumers—two critical prerequisites for building and promoting Chinese name-brand goods and services.¶ All of these possible reasons for Chinese investment in the United States are supported by the fact that the Chinese government has amassed more than $3 trillion in foreign-exchange reserves. They cannot convert those reserve holdings into Chinese renminbi—the official currency of China—and invest them domestically without triggering inflation, so Chinese banks and enterprises are constantly looking for good investment opportunities abroad. Over the past 5 to 10 years, Chinese enterprises have grown more adept at operating in foreign markets, and that has triggered a shift from lower-yield portfolio investments—where Chinese entities buy minority shares in foreign assets—to higher-yield direct investments—where Chinese entities actually play an operational role by building and operating manufacturing plants abroad.¶ China’s total cumulative outward foreign direct investment now amounts to around $230 billion worldwide. Annual Chinese direct investments in overseas markets grew from less than $2 billion in 2004 to more than $40 billion in 2009, and some analysts predict that China’s total global stock in outward foreign direct investment could reach $2 trillion by 2020. If handled correctly, these investments could play a large role in revitalizing economies worldwide, including the U.S. economy. Overall Chinese direct investments increasing, but clean energy lags behind Chinese direct investment in the United States is already rising steadily. Annual investment has surged in recent years—from $375 million in 2004 to more than $6.5 billion in 2012, which is the largest annual total so far. As of the end of 2012, Chinese enterprises have directly invested a cumulative total of more than $22 billion in the U.S. economy. And more than 27,000 American workers are currently employed by firms in which a majority of investments come from the Chinese.¶ Among China’s current U.S. direct investments, energy is a primary focus. Energy projects accounted for about 45 percent of total inward Chinese investments in 2012. Most of these energy investments, however, are minority-share fossil-fuel acquisitions by China’s state-owned energy companies. The China National Offshore Oil Corporation, for example, has invested more than $3 billion in U.S. shale gas fields since 2010, and the China Petroleum and Chemical Corporation, or Sinopec, has invested another $2.5 billion over the same time period. Comparatively, however, Chinese investment in clean energy is very low. (see Figure 1) More work is needed to open up comparable investment opportunities in renewable energy sources, utilities, and energy efficiency. The interest is there: Chinese investments in U.S. clean energy sectors have increased significantly in recent years, from $4 million in 2006 to $264 million in 2011.¶ When you compare those investment numbers to the investment numbers for fossil fuels, however, clean energy is still just a drop in the bucket.¶ Federal policy is a problem for foreign direct investment in U.S. clean energy sectors¶ One reason Chinese direct investment in U.S. clean energy sectors still lags behind Chinese investment in U.S. fossil-fuel sectors is because our investment incentives for clean energy still do not measure up to the tax breaks and other policies supporting oil and natural gas. Leveling the playing field for clean energy technologies is still a work in progress in this nation, and that impacts foreign direct investment just as it impacts domestic investment. Additionally, the clean energy incentives that we do have are hard for most foreign companies to utilize.¶ The three main national-level U.S. clean energy incentives are the Department of Energy loan guarantee program, the production tax credit, and the investment tax credit. The U.S. Department of Energy loan guarantee program—section 1703 of the loan program—supports pre-commercial clean energy technologies by guaranteeing bank loans issued to companies pursuing those technology development projects. Department of Energy loan guarantees lower the otherwise-high investment risks associated with these companies, making them more attractive to private lenders.¶ Legally, Chinese and other foreign enterprises are eligible to receive clean energy loan guarantees from the Department of Energy as long as the project itself is located in the United States. In reality, though, in the current political climate it would be a serious liability for the Department of Energy to provide loan guarantees to a foreign company, particularly a Chinese company. U.S. politicians routinely attack clean energy deals that appear to allow Chinese companies to benefit from U.S. government funding. In 2010, for example, some U.S. senators protested a clean energy program that provided stimulus funding to U.S. wind farms that were importing their wind turbines from China. Similar protests arose last year when China’s Wanxiang Group moved to acquire A123, a U.S. battery company that had received federal clean energy funding before going bankrupt. Even when Chinese companies are not involved, the Department of Energy already has its hands full defending clean energy loan guarantees from fossil-fuel lobbying efforts. Adding Chinese companies into the mix would make that difficult job even harder. In addition to the loan guarantee program, the United States also has two renewable energy tax credits: a production tax credit and an investment tax credit. The production tax credit provides a per-kilowatt-hour tax refund for companies that generate electricity using wind, biomass, hydropower, and other renewable sources. That tax credit can substantially reduce the costs of some renewable generation projects—particularly for wind, closed-loop biomass, and geothermal projects, which can receive a tax credit of 2.2 cents per 1 kilowatt hour.¶ The investment tax credit provides a 30 percent tax credit for residential solar systems, commercial solar systems, fuel cells and small wind systems, and a 10-percent tax credit for geothermal energy, small wind turbines (those with below 2 megawatts of power), and combined heat and power systems.¶ These two tax credits are great programs for electric utilities and other companies considering investing in renewable energy. The problem is, however, that tax rebates primarily benefit big companies that are already established in the United States, that already have big tax bills, and that can pay all project costs up front and wait until the end of the year to get a rebate. That is not the case for most foreign investors. Those companies generally do not have large existing operations in the United States looking for tax breaks, and they often have limited operating capital. What those companies are looking for is incentive programs that can reduce project costs from day one.¶ China’s ENN Group, for example, recently negotiated with the Clark County Commission in Nevada to purchase 9,000 acres of public land along the Nevada/California border to build a large solar project. The land was appraised at around $3,000 to $4,000 per acre, but Clark County sold the land to ENN at $500 per acre, thus substantially lowering ENN’s cost to construct the solar facility. In exchange, in addition to constructing the new facility, ENN promised to hire local labor, buy building materials locally, and create at least 1,000 jobs for the state of Nevada. That project appears to be a win-win: The land discount enabled ENN to save money at the outset, and Nevada got a new job-creating project.¶ Similar local-level investment incentives exist across the United States. They vary by locality depending on what the individual state and local governments have to offer and what types of investments they want to attract. But it can be difficult for state and local governments to connect with Chinese investors interested in building the types of projects that make sense for their regions. Even when local governments can make those connections, the Chinese companies are often scared off by what they perceive to be a relatively high risk that their projects will be blocked for national security reasons.¶ National security reviews add another layer of uncertainty

Chinese enterprises report that one of their biggest concerns with direct investments in the United States is the national security review. The Committee on Foreign Investment in the United States includes the secretaries of treasury, homeland security, commerce, defense, state, and energy; the U.S. attorney general; the secretary of labor; and the director of national intelligence. (The latter two are nonvoting members.) The committee is tasked with reviewing foreign business acquisitions in the United States to determine if those acquisitions create any national security risks. If the committee does find a security risk, they pass those findings on to the U.S. president, who can then block or reverse the business deal. This review process has created a problem for some foreign investors in the United States, as it is difficult to predict what the committee will consider to be a national security threat. The governing regulations give the committee wide leeway to make that determination, and that makes it hard for foreign enterprises to foresee which deals will trigger security concerns. Recent regulatory reforms have expanded the committee’s focus to specifically target U.S. energy sectors, particularly the electric grid and other critical infrastructure. The committee generally considers foreign government ownership to be a red flag, so a Chinese state-owned enterprise investment in U.S. utility infrastructure, for example, would likely trigger committee review. Recent high-profile national security review cases involving Chinese enterprises include the CNOOC deal in 2005, the Huawei deals in 2007 and 2011, and the Ralls Wind Corporation deal in 2012. In 2005 CNOOC issued an unsolicited $18.5 billion bid for Unocal, a California oil company; this high bid created a political firestorm in Washington. Many U.S. policymakers questioned whether the acquisition would threaten U.S. energy security by transferring critical oil assets to the Chinese government, and the U.S. House of Representatives passed a bill calling on then-President George W. Bush to review the transaction. It became clear to CNOOC that the deal would require an extensive committee review and that the likelihood of passing that review was almost zero, so the organization dropped the offer. Chinese telecommunications equipment provider Huawei ran into similar difficulties in 2007 when it tried to acquire—with help from private equity firm Bain Capital—a minority interest in electronics manufacturer 3Com for $2.2 billion. 3Com provided Internet security software to the U.S. military, and the committee blocked the transaction due to concerns that Huawei could give the Chinese military access to U.S. defense software. Huawei ran afoul of the committee again when the company acquired cloud computing technology and 15 employees from U.S. server firm 3Leaf LLC in 2010. The U.S. Department of Defense raised concerns that Huawei might transfer 3Leaf technology secrets to the Chinese military for cyberattacks against the United States. That triggered a review of the deal, and the committee eventually forced 3Leaf and Huawei to unwind the transaction. More recently, in September 2012 President Obama issued an order forcing China’s Ralls Wind Corporation to divest a wind farm that the company had purchased in Oregon. According to the U.S. Treasury Department, which chairs the committee, the purchase of the wind farm was deemed a national security risk because the site overlooked a U.S. Navy weapons-training facility. The Committee on Foreign Investment in the United States system is designed to target and block potentially problematic foreign investment projects while letting the vast majority go forward. And in general, that is how the process works. Many foreign companies directly invest in the U.S. economy without triggering any national security concerns whatsoever, including many Chinese companies. The ENN Energy case mentioned above is one example of a Chinese direct investment project that went forward without any committee blocks. And the projects that do trigger the review process can still win approval. Wanxiang Group, a Chinese auto parts company, recently underwent a review for its planned acquisition of A123 Systems, a U.S. company that specializes in lithium-ion battery technology. Wanxiang came out of the review process with official U.S. government approval for the acquisition. Although there are plenty of success cases, however, when most potential Chinese investors see big state-owned enterprises such as CNOOC and state champions such as Huawei get tangled up in the committee’s red tape, they assume that if those giants cannot get through to the U.S. market, then smaller Chinese companies definitely would not have a chance. But the reality is that the opposite is true. Smaller, privately owned companies that do not have strong connections to the Chinese government are much less likely to trigger security concerns than their state-owned counterparts. Foreign government control is one of the key issues the committee process tries to detect. The more independent the investor, the less likely foreign government control will be a problem. Of course, nonstate investors run into problems too, just as China’s Ralls Corporation did with the Oregon wind farm project. That is where foreign firms start to get a bit confused. From the Chinese perspective, it can be hard to anticipate which projects will trigger security concerns. The end result is that many potential Chinese direct investors view the U.S. market as extremely high risk, and that deters them from launching projects that would be a win-win for both nations.

#### Specifically, this cooperative investment is key to future grid investment.

Hart 13 (Melanie Hart, Policy Analyst for Chinese Energy and Climate Policy at American Progress. She focuses on China’s science and technology development policies for energy innovation as well as its domestic energy efficiency program, environmental regulatory regime, and domestic and international responses to global climate change. Before joining American Progress, Melanie was a project consultant for the Aspen Institute. She also worked on Qualcomm’s Asia Pacific business development team, where she provided technology market and regulatory analysis to guide Qualcomm operations in Greater China, “Increasing Opportunities for Chinese Direct Investment in U.S. Clean Energy,” Feb 11, http://www.americanprogress.org/issues/china/report/2013/02/11/52576/increasing-opportunities-for-chinese-direct-investment-in-u-s-clean-energy/)

Why encouraging inward Chinese direct investment in clean energy makes sense for the United States President Obama’s administration made great strides in his first term toward building a sustainable U.S. clean energy economy that will provide jobs for middle-class Americans and reduce our nation’s dependence on foreign oil and fossil fuels. But more work is needed. Moving toward a clean energy economy in the United States will require more than $1 trillion of investment in the electricity grid, new fuels, mass transit, power generation, and manufacturing. An investment of this size will require the United States to mobilize every possible source of capital, including foreign direct investment. While the United States has a sizeable investment need, Chinese investors are eager for new opportunities in foreign markets—and the U.S. market in particular. Their goals are not always perfectly aligned with ours, nor do U.S. market opportunities always perfectly meet their needs. That said, however, there are times when Chinese direct investment in the U.S. clean energy economy would be mutually beneficial. Chinese enterprises would like to invest in the United States for many reasons, including: Some potential investors are seeking infrastructure investments with stable returns. Others are seeking access to innovative technology and processes or high-yield opportunities in manufacturing. Directly investing in the United States can give Chinese enterprises a local presence and a closer relationship with U.S. consumers—two critical prerequisites for building and promoting Chinese name-brand goods and services.

#### Increasing grid investment is critical to avoid massive nuclear meltdowns that risk extinction- outweighs the risk of nuclear war

Goldes, founder Aesop Institute, 11 (Mark Goldes, Former Research Fellow at Brandeis University, is Founder of the Aesop Institute, served as a consultant on economic development to Senator Robert F. Kennedy’s New York office. He later became Chief of Housing and Economic Development for Oakland, California, Formerly Senior Director of the Berlin Corridor control radar in Germanyfor US Air Force, “SOLAR MEGASTORMS can GENERATE a GLOBAL NUCLEAR NIGHTMARE” <http://www.opednews.com/articles/SOLAR-MEGASTORMS-can-GENER-by-Mark-Goldes-111119-448.html>)

We are unprepared and are playing Russian roulette with the sun. The NOAA sees the peak peril during the next 2 to 5 years. They state the maximum threat may occur in 2013.¶ 3 million people lost power in the recent snowstorm. 130 million could suffer long-term, life-threatening, blackouts in the USA -- and China, India, Japan, most of Europe and much of the remainder of the planet.¶ N.Y., Washington, Boston, Baltimore, Philadelphia, Atlanta, Seattle, and many other heavily populated communities could be in great peril. A similar threat to major cities and large populations exists worldwide.¶ To prevent the worst requires a massive 24/7 effort - similar to the optimum response to a major military attack on the entire earth.¶ The big problem is solar induced destruction of huge electrical transformers that take years to replace. The loss of those transformers and the long time required to restore them could black out large areas of the planet for several years.¶ Preventing this nightmare is urgent.¶ In the USA there are 5,500 of these transformers. 350 are critical. Over 20,000 such transformers may exist worldwide. New technology might protect them all.¶ Survival of millions, and numerous nations, possibly including our own, may depend on safeguarding critical grids, providing sufficient standby power to nuclear plants, and rapidly decentralizing energy! ¶ This almost unimaginable tragedy might be prevented if we quickly install newly developed technology to protect the grid and safeguard nuclear facilities. It would also be wise to decentralize electric power generation as fast as is humanly possible.¶ A map of the USA on the Aesop Institute website reflects a NASA study based on the 1921 solar storm. There are two huge areas that NASA warns can experience a total loss of the electrical grid for years. After one month without grid power nuclear plants and many other nuclear installations are in danger of life-threatening meltdowns.¶ The NASA map shows the possible effect, if one of the powerful solar emissions that may strike in this decade, smashes into our geomagnetic field. Far worse than any terror attack, the entire world is totally unprepared for such an event. Based on this NASA map 71 nuclear plants in the USA are at direct risk from a solar megastorm. These nuclear plants could be without grid electricity necessary for cooling their fuel pools. Imagine 71 Fukushima meltdowns in this country. More than 400 facilities are at risk worldwide.¶ Without including probable nuclear plant meltdowns, NASA estimated the price tag in the USA could reach $2 Trillion the first year, with 4 to 10 years required for full recovery. ¶ NOAA Assistant Secretary Kathryn Sullivan says countries should prepare for "potentially devastating effects." Sullivan, a former NASA astronaut who in 1984 became the first woman to walk in space, said in Geneva that "it is not a question of if, but really a matter of when a major solar event could hit our planet." ¶ "Widespread disruption of electric service can quickly ... endanger millions." Joseph McClelland Director, Reliability, Federal Energy Regulatory Commission.¶ This is a little publicized multi-trillion dollar, planet wide nightmare! Preventative steps could minimize the damage.¶ Radiation experts recently estimated that more than 1 million people will die from Fukushima radiation. According to Dr. Tatsuhiko Kodama, the director of the Radioisotope Center at the University of Tokyo, the amount of radiation released thus far is equivalent to more than 29 Hiroshima-type atomic bombs. "While the remaining radiation from atomic bombs decreases to one-thousandth of the original level after a year, radioactive materials from the nuclear power plant only decrease to one-tenth the original level."¶ The massive program needed would directly and indirectly provide millions of jobs and boost the staggering global economy far beyond current expectations.¶ PREVENTING THE WORST MAY MAKE THE IMPOSSIBLE POSSIBLE!¶ Cheap green electricity to supersede fossil fuels is in the birth canal - development and production might be sharply accelerated. $50 per barrel diesel from sunlight, water, CO2 and bacteria, is in pilot plant production today! Heat and eventually electricity might begin to be fueled by miniscule amounts of Nickel powder and Hydrogen from water.¶ These and other surprising positive Black Swans -- highly improbable energy innovations with huge potential implications - are being born. See MOVING BEYOND OIL and CHEAP GREEN on this website to learn more.¶ After one month without grid power, a nuclear plant poses a grave problem. Once the water has evaporated in the stored fuel ponds, meltdowns become likely, spewing deadly radiation. Unless quickly prevented by sensible action, a solar megastorm can cause this nightmare to occur at a very large number of nuclear plants and other nuclear facilities . ¶ There were huge solar flares in each of the last five months. A strong geomagnetic storm and a severe solar flare were experienced in September. The June flare covered half of the sun. An X Class flare occurred this month. Mobilizing to minimize the damage can stimulate broad support for decentralized energy production and emerging cheap green electricity. ¶ An advisor to the Japanese government reported that as a result of the Fukushima catastrophe, millions of people will have to be monitored indefinitely for radiation sickness.¶ Will a Solar Megastorm create 71 U.S. Fukushimas?¶ We face a severe potential emergency. External threats serve to unite. The world faces an unrecognized nuclear peril! Uniting to confront it can generate the missing popular and government support to generate millions of jobs and revitalize the global economy.¶ A THREAT GREATER THAN ANY TERROR ATTACK!¶ A NASA funded study by the National Academy of Sciences was titled Severe Space Weather Events--Understanding Societal and Economic Impacts. The resulting Report detailed what might happen in the event of a solar megastorm launching a powerful Coronal Mass Ejection (CME) that strikes our geomagnetic field. The study predicts blackouts that may last for years. As the map above indicates, highly vulnerable areas include most of the Eastern and Northwestern parts of the nation.¶ The NOAA estimates each 11 year sunspot cycle is capable of launching 4 "extreme" (X class) CMEs and 100 "severe" CMEs at the earth. More X class events than were anticipated have occurred in the current cycle. The most dangerous period is the next 5 years. The peak peril is predicted by some to occur in May, 2013.¶ So far, neither NASA nor NOAA have publicly acknowledged the mortal threat these events may cause as the result of multiple meltdowns of nuclear plants worldwide. To date, there is no indication that the White House, Congress, Homeland Security, the Department of Defense and/or the Nuclear Regulatory Commission have adequately prepared to prevent the horrendous effects of such a solar megastorm.¶ The recent statement by a NASA scientist that human life would not end as the result of the direct effects of a solar storm during 2012 is misleading. A solar megastorm that causes widespread meltdowns of numerous nuclear power plants can seriously end millions, if not hundreds of millions, or even billions, of lives from radioactivity. This event could very well parallel the aftermath of a nuclear weapons exchange had there been war between the USA and the USSR -- massive amounts of radioactivity carried on prevailing winds all over the planet. The issue is not the specific year. This entire 11 year sunspot cycle should be of concern.

#### More investment is key to grid resiliency- all of their impact defense assumes we can fund grid improvements.

Carson 13 (Phil, Editor-in-chief of Intelligent Utility Daily at Energy Central, “Politics, power and grid investments,” Jan 9, http://www.intelligentutility.com/article/13/01/politics-power-and-grid-investments)

I've been raving about infrastructure investment and the need for public/private partnerships, which are intimately tied together, yet don't need to be. And I'd like to acknowledge that several of the engineers in my readership routinely object when I inject politics into the discussion of grid modernization. Again, in my view, they are intimately tied together, yet needn't be. Let me suggest that we bury the term "smart grid," which is inherently part of the hype cycle we're struggling to escape, while turning to the more prosaic terms "grid modernization" and "infrastructure investment." Maybe we can conjure a more appropriate, yet still handy and glib handle for what we're discussing. (How about "Grid 2.0"? Okay, too geeky.) I raise these points because we really are at a crossroads in the United States. The power sector, drinking water sector and communications sector all require upgrading and cyber security. These are critical systems if we simply wish to stand in place. As for triumphing amid global economic competition, we need a whole new mindset. Where do the politics come in? Please read Thomas Friedman's column, "The Market and Mother Nature," in The New York Times yesterday, which juxtaposes one U.S. political party's devotion to issues around climate change, while acting as if immediate action can wait on the national debt-to-G.D.P. ratio. The other party appears totally focused on returning that ratio to rational footing, while completely denying the urgency around greenhouse gas emissions that contribute to climate change. Friedman argues that the two priorities are downplayed by the other side because, arguably, no crushing consequences have come back to bite us. Yes, yes, I know that that's "arguable" because both sides have terrific arguments. Hurricane Sandy demonstrated that extreme weather is likely to cost more to deal with post-event recovery than it would cost to address fundamentals, including infrastructure hardening and resilience. The volatility of the global and U.S. economies is likely to continue and a sudden surprise in terms of interest rates or the stock market is going to bring a chorus of "I told you sos." Addressing either issue or both is not "sexy," as the idiotic phrase goes. Yet nothing is going to be sexy if we refuse to raise and spend the funds to renew critical infrastructure and pay down the debt. My personal view is that Big Money is responsible for the Congressional impasse and that actually moving important national priorities is taking a backseat to noisy skirmishing that serves some interests via policy paralysis. Meanwhile, the American people look on, disgusted at the inaction and recriminations. Enter: the power industry. Where are the leaders who will provide the basis for an adult conversation about public/private partnerships that avoid the mistakes of the past and repeat the documented successes? The time is ripe for the argument that links economic growth and infrastructure renewal. Note that Congress right now is poised to return to pass legislation appropriating some $50 billion for recovery work, post-Sandy. Language under consideration, I'm told, spells out that the money should not be spent in a business-as-usual manner, but that projects relating, say, to the power grid, need to implement grid modernization to maximize hardening and resiliency. In other words, we shouldn't turn this event and its response into a scene from "Groundhog Day," where we're doomed to repeat ourselves at great cost. I'm not advocating another stimulus spend, nor a top-down command-and-control scenario. As a people, however, we need highly visible leadership with a cogent argument that our destiny cannot abide crumbling infrastructure. Nothing spectacular here, certainly, in these meager remarks. I'm not even hammering readers with a variety of numbers to illustrate the point. Just reiterating the logic: we're living on our laurels and they've withered. Perhaps it's a sign of our times that articulating the simplest role of government—acting for the people where no market force or other entity can do the job—and the call for rational investment stands out like a cry in the wilderness. But the fact remains today that shenanigans in politics and a seemingly universal popular desire to avoid the simplest conclusions about our direction and economic vitality are in fact derailing our future greatness. I see no reason why power sector leaders shouldn't muster a clear message that getting smart about the grid and the needed investments to modernize it are the keys to our American future.

#### More private investment will be critical for grid modernization- public stimulus spending wont cut it

Kovacs 10 (William L. Kovacs, senior vice president of the U.S. Chamber of Commerce’s Environment, Technology, and Regulatory Affairs Division., Jan 21, “Smartgrid Modernization Requires Regulatory Reform,” http://news.heartland.org/newspaper-article/2010/01/21/smartgrid-modernization-requires-regulatory-reform)

The fledgling smartgrid for electricity got some feathers on its wings in October 2009 with the federal government’s investment in projects covering a wide variety of areas, including advanced metering infrastructure; customer systems such as demand-response capabilities; electric distribution systems, transmission systems, and equipment manufacturing; and integrated and crosscutting systems. In all, a hundred private companies, utilities, manufacturers, cities, and other partners were recipients of the $3.4 billion government investment, which together with matching private support amounts to a funding initiative of more than $8 billion to get the grid modernization effort underway. This is laudable, but far more investment will be needed--perhaps trillions of dollars, the bulk of it coming from the private sector--to fully modernize the nation’s grid system, and the undertaking will take decades. If there is a sensible regulatory structure, business and industry stand ready to make the needed investments.

#### IF TIME---- The grid is at high risk for failure- investment is needed quickly.

Gunther 13 (Erich,Chairman and CTO, Co-Founder, EnerNex; Chairman, DOE GridWise Architecture Council; IEEE Fellow, PES Board Member, New Podcast: Modernizing the North American Grid, Feb 6, 2013, http://gridinsights.energycentral.com/detail.cfm/New-Podcast-Modernizing-the-North-American-Grid?id=100)

Aging electric utility infrastructure in the United States is taking its toll on our society and economy. Recent storms like Hurricane Sandy, with tens of thousands of people without power for many weeks, illustrate just how susceptible today’s grid has become to low-occurrence, high-impact events. Training a greater number of qualified line crews available to respond to an emergency is a necessary first step to get ready for the next Sandy. But utilities also need to invest in better ICT infrastructure and design better management processes, in order to scale up when needed. Recently I discussed the issues of disaster response, utility core and ICT infrastructure, reliability assessment, interoperability, standards, big data, and cybersecurity in this podcast on Grid Insights. Listen to it here. I also want to note that grid modernization, however you define it, has seen peaks and valleys of investment throughout modern history. At this current moment, we’re staring at a pretty big hill. A large percentage of the core basic infrastructure (poles, wires, transformers, and substations) has already exceeded its design lifetime. Just replacing this infrastructure in the US, even accounting for increased efficiencies, will cost north of $1.5 trillion by 2030; some say $2 trillion. Regulators also need to be willing to fund the systems that forward-looking utilities are proposing in order to make the grid more intelligent. Some good news is that from the point of view of incorporating information technology into the industry, utilities have made some great strides, rural coops in particular. But large utilities are also doing their part in funding and testing new technologies on a scale necessary to ensure that they are safe, effective, deployable, and cost-effective.

### TPP Adv

#### Advantage 2- the Trans-Pacific Partnership

#### CFIUS is an important test case for judicial review-the plan has large precedent potential

Bracken 12 (Len, Suit Filed Against CFIUS Order Seen As Trial Balloon in National Security Law, Oct 25, http://www.bartsfisher.com/pdf/040.pdf)

The civil complaint recently filed by the Chinese-owned Ralls Corp. against the president, the Committee on Foreign Investment in the United States (CFIUS), and the secretary of the treasury involving the purchase of four wind farms in Oregon can be seen as a "well-picked trial balloon" to test whether a CFIUS order is subject to judicial review, Bart Fisher, a professor and practitioner of international trade law, told BNA Oct 9. CFIUS conducts national security reviews of foreign investment in the United States. The Treasury Department Sept. 28 announced a presidential order prohibiting the acquisition and ownership of four wind farm project companies by Ralls Corp., its owners, its subsidiaries, and its affiliates following CFIUS reviews. A related presidential order directed Ralls to divest its interest in the wind farm project companies (189ITD, 10/1/12). Treasury said the president took this action pursuant to Section 721 of the Defense Production Act of 1950, as amended by the Foreign Investment and National Security Act of 2007, because wind farm sites are all within or in the vicinity of restricted air space at Naval Weapons Systems Training Facility Boardman in Oregon. The Oct 1 complaint challenges the issuance of an order by CFIUS as violating the Administrative Procedure Act and the United States Constitution, and the issuance of an order by President Obama as violating Section 721 of the Defense Production Act of 1950, as amended, and the United States Constitution (Ralls Corp. v Obama, D.D.C., Case No. l:12-cv-01513-ABJ, 10/1/12). The statute governing CFIUS states that actions and findings of the president are not subject to judicial review, but this part of the statute has not been tested in court. Fisher noted that case filed in the U.S. District Court for the District of Colombia raises the profile of the CFIUS order and the contention that Chinese investors are discriminated against in the United States. He said the second count of the four counts, alleging violation of the Administrative Procedure Act, stands the best chance if arbitrary and capricious agency action can be proven. "The courts are reluctant to side against the executive branch in cases like this that raise issues of national security and executive discretion," Fisher said, citing the political-question doctrine and the Curtiss-Wright doctrine. The political -question doctrine is the judicial principle that a court should refuse to decide issues involving the discretionary powers by the executive or legislative branch of government. The CurtissWright doctrine stems from the 1936 Supreme Court case United States v. Curtiss-Wright Export Corp.in which the court established in its decision the principle of executive supremacy in national security and foreign affairs. "The case is, however, winnable if Ralls can prove the decision is without any rational basis," Fisher said. He added that proving there is no rational basis for the decision is difficult because a bureaucrat can usually find some rationale, but the case is being closely watched for a potential precedent-setting effect.

#### The plan sets a precedent for limiting national security exemptions in other areas including Freedom of Information Act requirements.

Zaring-Assistant Professor, Wharton School-9

SOUTHERN CALIFORNIA LAW REVIEW Vol. 83:81 CFIUS AS A CONGRESSIONAL NOTIFICATION SERVICE

<http://lawgip.usc.edu/assets/docs/contribute/83_1ZaringforWebsite.pdf>

C. CFIUS AND THE INTERNATIONAL LEGAL DEFINITION OF NATIONAL SECURITY National security, or its typical international treaty variant “essential security,” is a term that few international lawyers have dared to define, although it is the excuse commonly used to avoid a variety of legal obligations. Although, since the onset of the war on terror, national security law has assumed prominence, 209 it is still the subject of little international law scholarship. Can CFIUS’s practice help define the outer bounds of this term? The answer is important. Treaty after treaty contain requirements that can be breached in the interest of national security. For example, NAFTA Article 2102 contains an explicit national security exception. 210 The U.S. Department of State has released a formal policy statement for its bilateral investment treaties (“BITs”), positing that “the United States Government preserves its right to protect its essential security interests,” regardless of its other investment treaty obligations, 211 and Article XXI of the General Agreement on Tariffs and Trade (“GATT”) broadly permits a state to take “any action which it considers necessary for the protection of its essential security interests,” regardless of the trade rules set forth in the treaty. 212 These exceptions are infrequently invoked, perhaps thankfully. 213 But other international institutions have produced their own cautious judgments on what might constitute national security. For example, the European Court of Human Rights has affirmed that the European Convention’s “Contracting States may not, in the name of the struggle against espionage and terrorism, adopt whatever measures they deem appropriate.” 214 The International Covenant on Civil and Political Rights contains a similar provision. 215 Scholars such as William Burke-White, Andreas von Staden, Susan Rose-Ackerman, and Benjamin Billa have considered how to interpret these provisions, raising questions about whether they even can be interpreted or if they are instead entirely discretionary and thus need no interpretation. 216 National security, as a term, matters in many other contexts. Domestically, the interests of national security exempt the United States from the requirements of the Freedom of Information Act, 217 the Federal Tort Claims Act, 218 and even the APA. 219 Regarding economic regulation, it is worth noting that Congress’s constitutional authority to regulate trade with foreign nations has not prevented the president from exercising considerable influence on, for example, what can be exported and to whom. 220 Under the Export Administration Act of 1979 (“EAA”), 221 the president has the “ability to block most exports to certain nations or to control the shipment of specific technologies and goods to any country. This power provides the President with an effective weapon for economic warfare, one he can use unhindered.” 222 The justification for the president’s responsibility here also lies in his control over national security. What does the term national security mean to the United States? Generalizations require some caution, but if CFIUS can provide insight into what the United States deems important about its national security, one must distinguish between the legal principles CFIUS must apply—which do not define national security at all (quite intentionally)—and the practice of the Committee, as evidenced by its own work and its dealings with Congress. This practice suggests that national security can best be implemented in institutions staffed by American citizens, with access rights given to American law enforcement and intelligence agencies. And although it is undoubtedly related to protectionist sentiments, Congress appears to believe, perhaps more so than does the executive, that national security requires the domestic sourcing of some industrial goods and the domestic ownership of some natural resource extractors. Defense contractors, raw materials providers, and high-technology industries are all particularly likely to be included in this encompassing view of what national security means in economic terms. While all of this is contingent on the specific interpretations employed by those in office within the various branches, it does provide some evidence of how CFUIS and other executive agencies might define national security and identify some limits on the term in the future. As we have seen, the idea that limits on national security can be discerned has implications for an important array of domestic, international, and legal obligations. V. CONCLUSION In the final part of this Article, I have considered the implications of what the actual operation of America’s foreign investment approval regime means for a variety of theories about domestic administrative law and international legal obligation. CFIUS matters not just to Wall Street lawyers and foreign governments. The way it works—and the way that Congress controls it—also offers insights into themes that go to the heart of the organization of the administrative state and the nature of international legal obligations. These are big implications to come from a small and obscure government committee that few know much about. But as we have seen, CFIUS is more than just a peculiar institution with foreign investment oversight responsibilities. It may also represent a different approach to formulating controlling policymaking in national security.

#### National Security exemptions undermine FOIA’s ability to challenge secrecy in TPP negotiations

Levine-Stanford Law-4/6/12

Bring in the Nerds: Secrecy, National Security and the Creation of International Intellectual Property Law Cardozo Arts & Entertainment Law Journal, Vol. 30, No. 2, p. 105, 2012

<http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2038020>

The first observation is the amplified use of formal secrecy as an international lawmaking construct, which, like Lessig‘s closed code environment, hides its systems of operation—its texts, its negotiation sessions, its discussions and debates—from, the public and, more significantly for purposes of this Article and a modern conception of transparency and accountability, unaffiliated public experts (hereinafter, the ―nerds‖). In this formal construct, those entities lack the ability to gain access to useful information like negotiating texts and proposals because the law allows a tiered approach to information access to persist, with chosen advisors having significantly more access to information than the public and its nerds. Therefore, under such circumstances, if the public and nerds want to offer any input at all, they must use methods, like letters, written statements and grassroots organizing usually associated with more transparent open-code processes like U.S. domestic lawmaking. This procedural situation creates needless tension as the public and its nerds desire to offer input but have no formal way to do so. Thus, the input is offered informally to whatever entities that might listen, like rogue actors such as the press who eschew the closed environment, rather than those most in need of the input, like the actual people at the negotiating table. This is an understandable reaction, as it is difficult to design an effective way to offer input to a closed environment that, by definition, is not open to inspection by or input from those outside of it. Thus, a problem emerges: the law, the code, that is created has the veneer of open code, and will be enforced as if it were created as open code, even though it is effectively closed from the perspective of significant stakeholders like the public at large and its experts, the nerds. The mechanisms of secrecy that make international IP lawmaking opaque derive from alleged United States national security concerns that would arise if information like draft agreements were made public. Because of those concerns, these documents are born presumptively secret. This secrecy establishes an unfortunately adversarial relationship between the excluded public and the government from the outset, as those excluded from access have only one formal option: to request access from an entity, in this case the USTR, that has wide discretion under FOIA to deny the request. As such, the only means of public access to these documents, other than by an unauthorized leak with its attendant problems of accuracy and veracity, is by challenging their FOIA exemption status. Thus, from the very beginning, a sense that one‘s input is not welcome is established, even before an ultimate decision is reached about the application of the national security exemption. Therefore, secrecy as a policymaking tool has the immediate negative effect of establishing a hierarchy of input that places the public and its experts significantly below the government‘s chosen advisors who have access to information without regard to its alleged national security sensitivity. FOIA allows the public‘s request for information about the substantive U.S. position in international IP law negotiations like ACTA and TPP to be treated as the functional equivalent of asking for information about how to build a weapon of mass destruction. As discussed in this Article, this treatment fundamentally misconceives and damages the relationship between the public and its representatives, international IP lawmaking, and international lawmaking more generally, without demonstrably benefitting U.S. national security. In fact, there are arguments suggesting that such secrecy damages U.S. national security as much as it benefits it, primarily through the creation of unbalanced law and the weakening of the U.S.‘s position as a fair arbiter in international relations.

This secrecy allows corporate interests to hijack the process, locking in restrictive intellectual property provisions.

Levine-Stanford Law-4/6/12

Bring in the Nerds: Secrecy, National Security and the Creation of International Intellectual Property Law Cardozo Arts & Entertainment Law Journal, Vol. 30, No. 2, p. 105, 2012

<http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2038020>

Importantly, this Article does not suggest that all information regarding international IP lawmaking should be disclosed to the public.11 However, the current state of affairs goes too far the other way. While there might be legitimate concerns about foreign diplomatic relations that warrant careful analysis and on occasion some secrecy, particularly with regard to foreign government information held by the U.S., the international lawmaking process‘ blanket treatment as an omnibus national security event has lead to fundamental problems of transparency and accountability that make up the second major observation of this Article. While the public has been prevented from seeing negotiating texts and proposals because of proffered national security concerns, ―cleared advisors,‖ chosen by the USTR and made up almost exclusively of industry representatives, have presumably had access to those documents or relevant portions thereof.12 In the case of the cleared advisors for the referenced international agreements, they are almost exclusively IP industry representatives who, as a community, generally seek increasingly restrictive IP laws.13 < Foot note included > 13James Love, Who USTR Clears to See Secret Text for IPR Negotiations? (Such as TPPA), KNOWLEDGE ECOLOGY INT‘L (Feb. 16, 2012, 8:49 AM), http://keionline.org/node/1362 (―After reviewing the names [of members of several USTR ITACs] (many of whom are former employees of USTR and other government trade offices), you can evaluate the USTR claim that none of them are ‗lobbyists‘ . . . . ―); see also Rashmi Rangnath, PK and EFF Tell Congress: Secret Negotiations Harm the Public Knowledge, PUB. KNOWLEDGE (Aug. 6, 2009), http://www.publicknowledge.org/node/2593 (―[I]ndustry groups such as the [Recording Industry Association of America (RIAA)], the [Motion Picture Association of America (MPAA)], and PhRMA (Pharmaceutical Research and Manufacturers of America) are members of ITAC 15 [which covers IP rights] while public interest representatives, with the exception of one public health representative, are excluded. This gives the IP industry an opportunity to lock in its favored provisions into trade agreements, even when those provisions reflect controversial or unsettled interpretations of U.S. law.‖). < end footnote > This information asymmetry makes the story told by Sean Flynn above particularly egregious. There is nothing stopping Flynn‘s American University School of Law‘s Program on Information Justice and IP (PIJIP) from hosting another workshop for TPP negotiators. But when PIJIP is unable to access draft TPP negotiating texts and proposals and is simultaneously asked to move its event so that an entity that does have access to negotiating texts through proxies can host a de facto lobbying event, the public should be concerned. The same nerds that were needed in the SOPA and PIPA debates are undoubtedly needed in the closed negotiations surrounding TPP. Thus, stories like Flynn‘s underscore both a perception and reality of special treatment for certain interests. Indeed, as has been amply documented,14 FOIA enables different standards of transparency and accountability between government and public versus some private entities that are deemed ―cleared advisors,‖ allowing for more information shared with, and therefore more input coming from, chosen private entities than the public and its nerds.

#### Scenario One: Disease

#### Lack of transparency in negotiations undermine efforts to build in protections for global disease prevention---This year is key and the TPP will set a precedent for future agreements

Balasegaram-Director MSF access campaign-13

tradinG away HealtH: tHe trans-PaciFic PartnersHiPaGreeMent (tPP)

<http://www.doctorswithoutborders.org/publications/reports/2013/Access_Briefing_TPP_ENG_2013.pdf>

Unless damaging provisions are removed before negotiations are finalized, the TPP agreement is on track to become the most harmful trade pact ever for access to medicines in developing countries. The TPP trade deal is currently being negotiated between the U.S. and ten other Pacific Rim nations. The negotiations are being conducted in secret, but leaked drafts of the agreement include aggressive intellectual property (IP) rules that would restrict access to affordable, life-saving medicines for millions of people. Proposed by U.S. negotiators, the IP rules enhance patent and data protections for pharmaceutical companies, dismantle public health safeguards enshrined in international law and obstruct price-lowering generic competition for medicines. As a medical humanitarian organization working in nearly 70 countries, Doctors Without Borders/Médecins Sans Frontières (MSF) is concerned about the impact these provisions will have on public health in developing countries where MSF works, and beyond. Governments have a responsibility to ensure that public health interests are not trampled by commercial interests, and must resist pressures to erode hard-fought legal safeguards for public health that represent a lifeline for people in developing countries. MSF urges the U.S. government to withdraw–and all other TPP negotiating governments to reject–provisions that will harm access to medicines. A Dangerous Global Precedent The TPP is likely to become one of the largest trade pacts ever, encompassing 11 countries today, and potentially open to all 21 Asia-Pacific Economic Cooperation (APEC) nations. Thailand is in the process of joining, and Japan and the Philippines are actively considering it. Additional countries will be allowed to join later – apparently, however, without the right to amend the text. Billed as a model for future trade agreements across the globe, the TPP could set damaging precedents with serious implications for many developing countries. FLAWED PROCESS SET To CONCLUDE in 2013 The negotiations, which began in 2010, are being conducted in secret, without opportunity for public scrutiny, even though the pact will affect at least half a billion people. TPP negotiators now want the agreement finalized by October 2013. In the field of health, generic competition saves lives. As a medical treatment provider, MSF relies on affordable, quality generic medicines to treat many diseases, including tuberculosis, malaria, HIV/AIDS and other infections that afflict the poorest and most vulnerable populations. Major international treatment initiatives and agencies, including the Global Fund to Fight AIDS, Tuberculosis and Malaria, the U.S. President’s Emergency Plan for AIDS Relief (PEPFAR) program, UNITAID, and UNICEF, also depend heavily on affordable generic drugs to scale up urgently needed treatment programs. For example, more than 98% of the antiretroviral medicines purchased by PEPFAR to treat HIV/AIDS are low-priced, quality-assured generic medicines. Robust generic competition was instrumental in bringing down the price of the first generation of antiretroviral medicines by 99% over ten years1 , a key factor that allowed HIV/AIDS treatment to be scaled up to more than eight million people in developing countries today. But many newer medicines are locked up by patent monopolies that protect high prices for manufacturers and keep vitally important medicines out of reach for people in developing countries. Governments that pay for treatment programs, either directly or by funding global health treatment initiatives, have both an interest and a responsibility to ensure that new roadblocks are not put in the way of generic competition, or they risk jeopardizing the effectiveness of the very programs they support. The availability of generic medicines in a particular country depends on a complex structure of laws and regulations, including those governing patents and other intellectual property rights. Many of these regulations are influenced by trade and other types of international agreements. In 1995, the World Trade Organization’s TRIPS agreement2 imposed minimum IP standards across the globe for the first time, including the obligation to grant patent monopolies for pharmaceutical products. Importantly, TRIPS includes legal safeguards that give countries some leeway in overcoming IP barriers when they hinder access to medicines, and flexibility in balancing commercial interests and public health. Subsequently, governments have made multiple commitments3 reaffirming the importance of protecting public health over commercial interests. roBUst Generic coMPetition is a catalyst For aFFordaBle Medicines… …BUt coMMitMents to PUBlic HealtH and MecHanisMs to ProMote coMPetition are continUally eroded By coMMercial interests factor that allowed HIV/AIDS treatment to be scaled up to more than eight million people in developing countries today. But many newer medicines are locked up by patent monopolies that protect high prices for manufacturers and keep vitally important medicines out of reach for people in developing countries. Governments that pay for treatment programs, either directly or by funding global health treatment initiatives, have both an interest and a responsibility to ensure that new roadblocks are not put in the way of generic competition, or they risk jeopardizing the effectiveness of the very programs they support. Yet the legal tools and safeguards used to counterbalance commercial interests in favor of public health are continually under attack. Developing countries that try to promote the use of generics are frequently the target of litigation by pharmaceutical firms4 and are subject to diplomatic pressures, such as the threat of sanctions, by Western governments seeking to protect commercial interests.5 These same forces seek to impose new and ever more restrictive IP rules, known as TRIPS-plus provisions, on developing countries. TriPS-plus provisions serve to extend monopoly protection beyond what is required by international agreements and to create new kinds of monopolies, even after patent-based monopolies have expired or where they never existed. For pharmaceuticals and other health commodities, stronger IP standards mean extended patent monopolies and delayed generic competition, and that translates into higher prices for people who need medicines, for longer periods of time. The TPP represents the most far reaching attempt to date to impose aggressive TriPS-plus iP standards that further tip the balance towards commercial interests and away from public health. in developing countries, where people rarely have health insurance and must pay for medicines out of pocket, high prices keep lifesaving medicines out of reach and are often a matter of life and death. MSF URGES ALL GOVERNMENTS NEGOTIATING THE TPP TO: remove TriPS-plus requests: TPP negotiators should not agree to final text that includes TRIPS-plus provisions, which can severely limit access to medicines in developing countries. Instead, TPP negotiators must insist on language that protects public health safeguards and enables developing countries to effectively balance commercial interests and public health. increase transparency: Trade negotiations that affect public health must be conducted with adequate levels of transparency and public scrutiny, including providing access to the negotiating texts. Fulfill previous commitments to access to medicines: TPP negotiators should ensure that the final text is aligned with global health priorities and specifically mentions and honors relevant public health commitments, including the 2001 WTO Doha Declaration on TRIPS and Public Health and the 2008 WHO Global Strategy and Plan of Action on Public Health, Innovation, and Intellectual Property. In addition, the U.S. should adhere to its own May 10, 2007 New Trade Policy, which includes a commitment to refrain from imposing some of the most damaging TRIPS-plus provisions on developing countries.

#### Disease pandemics risk extinction.

Steinbruner 1998

John D., Senior Fellow at Brookings Institution, “Biological weapons: A plague upon all houses,” Foreign Policy, Dec 22, LN

It is a considerable comfort and undoubtedly a key to our survival that, so far, the main lines of defense against this threat have not depended on explicit policies or organized efforts. In the long course of evolution, the human body has developed physical barriers and a biochemical immune system whose sophistication and effectiveness exceed anything we could design or as yet even fully understand. But evolution is a sword that cuts both ways: New diseases emerge, while old diseases mutate and adapt. Throughout history, there have been epidemics during which human immunity has broken down on an epic scale. An infectious agent believed to have been the plague bacterium killed an estimated 20 million people over a four-year period in the fourteenth century, including nearly one-quarter of Western Europe's population at the time. Since its recognized appearance in 1981, some 20 variations of the HIVvirus have infected an estimated 29.4 million worldwide, with 1.5 million people currently dying of aids each year. Malaria, tuberculosis, and cholera-once thought to be under control-are now making a comeback. As we enter the twenty-first century, changing conditions have enhanced the potential for widespread contagion. The rapid growth rate of the total world population, the unprecedented freedom of movement across international borders, and scientific advances that expand the capability for the deliberate manipulation of pathogens are all cause for worry that the problem might be greater in the future than it has ever been in the past. The threat of infectious pathogens is not just an issue of public health, but a fundamental security problem for the species as a whole.

#### Their defense doesn’t assume Asia which is uniquely vulnerable to pandemics

Asia Business Council ‘10

Containing Pandemic and Epidemic Diseases in Asia

http://www.asiabusinesscouncil.org/docs/DiseaseBriefing.pdf

How prepared is Asia for pandemic and epidemic diseases? While efforts by national governments and international organizations to prevent and control pandemics in the region have been instrumental in mitigating disaster in the short-term, they have also exposed more systemic weaknesses that call into question Asia’s preparedness for future outbreaks. Future preparedness is important, because infectious diseases of a global or regional nature threaten the health and lives of large numbers of people as well as paralyze economic activity. Asia is particularly susceptible due to increasing migration and global travel, high population density in urban areas, more rapid spread of tropical diseases because of climate change, and underdeveloped healthcare systems. However, accurate calculations of what and how much effort and money to invest in preparedness and response plans are also important, as overreaction has proven to be costly. The key question, then, is how governments, international organizations, and businesses in the region can collaborate to build systemic safeguards against pandemics and epidemics, as well as ensure rapid action to minimize economic and social costs when unexpected diseases hit.

#### Scenario Two: Agriculture

Lack on public input in negotiations locks in dysfunctional agriculture policy

Hansen-Kuhn-Institute for Agriculture and Trade Policy-3/4/13

Who’s at the Table? Demanding Answers on Agriculture in the Trans-Pacific Partnership

<http://www.iatp.org/documents/who%E2%80%99s-at-the-table-demanding-answers-on-agriculture-in-the-trans-pacific-partnership>

The Trans-Pacific Partnership (TPP) has the potential to become the biggest regional free-trade agreement (FTA) in history, both because of the size of the economies participating in the negotiations and because it holds open the possibility for other countries to quietly “dock in” to the existing agreement at some point in the future. What started as an agreement among Brunei Darussalam, Chile, New Zealand and Singapore in 2005 has expanded to include trade talks with Australia, Canada, Malaysia, Mexico, Peru, the United States and Vietnam. Japan and Thailand are considering entering into the negotiations, and others are waiting in the wings. As of 2011, the eleven countries already involved in the TPP account for 30 percent of world agricultural exports and 20 percent of imports.1 And yet, despite the potential of this agreement to shape (and in very real ways override) a vast range of public policies, there has been very little public debate on the TPP to date. Despite the precedents set under the World Trade Organization (WTO), the Free Trade Area of the Americas (FTAA), and the Anti-Counterfeiting Trade Agreement, among others, governments have refused to release negotiating texts. Public input has been limited to those civil society participants who are able to attend the periodic “listening sessions” or make brief presentations at negotiating sessions (without access to the negotiating texts they hope to influence). Media attention on agriculture and the TPP has focused on New Zealand’s insistence on access to U.S. dairy markets. While important, this debate is much too narrow. The TPP is not only about lowering tariffs. If implemented, it would expand protections for investors over consumers and farmers, and severely restrict governments’ ability to use public policy to reshape food systems. The fundamental causes of recent protests across the globe over food prices, the rising market power of a handful of global food and agriculture corporations, as well as the dual specters of rising hunger and obesity around the world, point to the need to transform the world’s food systems—not to lock the current dysfunction in place. There is no agriculture chapter in the TPP. Instead, rules affecting agriculture, food systems and food safety are woven throughout the texts. Very little is known about the content of those drafts. As a starting point, however, farmers, consumers, and legislators should ask questions, and demand answers.

#### This collapses Asian food security

GRAIN Briefing, 2001 (March, Intellectual Property Rights: Ultimate Control of Agricultural R&D in Asia, <http://www.grain.org/briefings/?id=35>)

Patent proponents keep banging on about the importance of IPR for access and innovation. But this is a smokescreen. If access was the issue, then the evidence stands against IPR: it restricts the flow of germplasm, reduces sharing between breeders, erodes genetic diversity, and, all in all, stifles research. What is actually at issue is the question of whose interests agriculture R&D should serve. IPRs are suited to the profit strategies of the global seed conglomerates that want to dominate agricultural production worldwide. The transnational seed companies are building vast industrial breeding networks in all major crops and, with their economies of scale and ownership over technology through IPR, they will shut local private and public breeders out of the commercial market. For them, IPR is simply a means for controlling the market and extracting more profit from it.

On the other hand, IPRs are entirely inadequate as an incentive for research into sustainable agriculture. By their very nature, IPRs inhibit and easily destroy innovation on farms – the centres of research and development for sustainable agriculture. There are plenty of options for rewarding innovation that encourage pro-farmer research and development, but IPR is not one of them. These options are being articulated by farmers and organizations working with them but disregarded by governments rushing to comply with TRIPS – with severe implications for the region’s long term food security.

Asian governments urgently need to wake up to the inherent threats of IPR over genetic resources, take a look at other options which would better serve the interests of their people, and start implementing a truly pro-people agricultural R&D agenda.

The impact collapses civilization

Brown-Worldwatch-‘9

Lester R, founder of the Worldwatch Institute and the Earth Policy Institute “Can Food Shortages Bring Down Civilization?” Scientific American, May

The biggest threat to global stability is the potential for food crises in poor countries to cause government collapse. Those crises are brought on by ever worsening environmental degradation. One of the toughest things for people to do is to anticipate sudden change. Typically we project the future by extrapolating from trends in the past. Much of the time this approach works well. But sometimes it fails spectacularly, and people are simply blindsided by events such as today's economic crisis. For most of us, the idea that civilization itself could disintegrate probably seems preposterous. Who would not find it hard to think seriously about such a complete departure from what we expect of ordinary life? What evidence could make us heed a warning so dire--and how would we go about responding to it? We are so inured to a long list of highly unlikely catastrophes that we are virtually programmed to dismiss them all with a wave of the hand: Sure, our civilization might devolve into chaos--and Earth might collide with an asteroid, too! For many years I have studied global agricultural, population, environmental and economic trends and their interactions. The combined effects of those trends and the political tensions they generate point to the breakdown of governments and societies. Yet I, too, have resisted the idea that food shortages could bring down not only individual governments but also our global civilization. I can no longer ignore that risk. Our continuing failure to deal with the environmental declines that are undermining the world food economy--most important, falling water tables, eroding soils and rising temperatures--forces me to conclude that such a collapse is possible. The Problem of Failed States Even a cursory look at the vital signs of our current world order lends unwelcome support to my conclusion. And those of us in the environmental field are well into our third decade of charting trends of environmental decline without seeing any significant effort to reverse a single one. In six of the past nine years world grain production has fallen short of consumption, forcing a steady drawdown in stocks. When the 2008 harvest began, world carryover stocks of grain (the amount in the bin when the new harvest begins) were at 62 days of consumption, a near record low. In response, world grain prices in the spring and summer of last year climbed to the highest level ever. As demand for food rises faster than supplies are growing, the resulting food-price inflation puts severe stress on the governments of countries already teetering on the edge of chaos. Unable to buy grain or grow their own, hungry people take to the streets. Indeed, even before the steep climb in grain prices in 2008, the number of failing states was expanding [see sidebar at left]. Many of their problem's stem from a failure to slow the growth of their populations. But if the food situation continues to deteriorate, entire nations will break down at an ever increasing rate. We have entered a new era in geopolitics. In the 20th century the main threat to international security was superpower conflict; today it is failing states. It is not the concentration of power but its absence that puts us at risk. States fail when national governments can no longer provide personal security, food security and basic social services such as education and health care. They often lose control of part or all of their territory. When governments lose their monopoly on power, law and order begin to disintegrate. After a point, countries can become so dangerous that food relief workers are no longer safe and their programs are halted; in Somalia and Afghanistan, deteriorating conditions have already put such programs in jeopardy. Failing states are of international concern because they are a source of terrorists, drugs, weapons and refugees, threatening political stability everywhere. Somalia, number one on the 2008 list of failing states, has become a base for piracy. Iraq, number five, is a hotbed for terrorist training. Afghanistan, number seven, is the world's leading supplier of heroin. Following the massive genocide of 1994 in Rwanda, refugees from that troubled state, thousands of armed soldiers among them, helped to destabilize neighboring Democratic Republic of the Congo (number six). Our global civilization depends on a functioning network of politically healthy nation-states to control the spread of infectious disease, to manage the international monetary system, to control international terrorism and to reach scores of other common goals. If the system for controlling infectious diseases--such as polio, SARS or avian flu--breaks down, humanity will be in trouble. Once states fail, no one assumes responsibility for their debt to outside lenders. If enough states disintegrate, their fall will threaten the stability of global civilization itself.

#### And, IPR development causes massive pesticide use, monocultures, and destroys biodiversity

Tarasofksy and House, Chatham House Analysts, 2005 (June, Report on Trade, Environment and Intellectual Property Rights, <http://www.riia.org/pdf/research/sdp/R-IPRs.pdf>)

There are several strands to the argument that the TRIPS Agreement and other IPRs impact adversely on biodiversity, in particular agricultural biodiversity: ***IPRs promote harmful agri-chemical use***. The claim is made that IPRs encourage the development of seeds by industry based on hybrids and other modern varieties that depend on the use of agrochemicals to achieve high yield. This claim is countered, however, by the experience with the Green Revolution that encouraged high yield varieties that were not IPR protected. ***IPRs are an incentive to develop genetically modified crops, which may be harmful to biodiversity****.* This can also lead to growth in an accompanying market for pesticides. A well-known example is Monsanto’s Roundup Ready products (soybeans, canola, and cotton). Buyers of those products were contractually required to purchase a Roundup pesticide.14 Although the counter-claim is made that genetically modified seeds can also lead to the development of varieties that require less pesticide use,15 not all environmentalists are convinced. These concerns have been catalogued as follows: (a) encouraging excessive use of herbicides that may kill other plant varieties and species, (b) accelerating the development of resistance among pests, (c) creating the possibility of herbicide resistant genes crossing over to other plants, and (d) linkages between these products and other proprietary agriculture inputs represents a shift to more capital intensive agriculture, that increases the cost of farming.16 In addition, there have been developments in technology that enable the creation of “terminator” seeds, which cannot be re-harvested. However, as a result of controversies, “terminator” technologies are not being applied at present.17 ***IPRs are an incentive for the development of monocultures****.* It has been claimed that there is a connection between IPRs and centralised research and crop breeding which diminishes the diversity of available seed.18 Further, it is argued that IPRs contribute to creating incentives for the private sector to create uniformity in seed varieties. This trend is the result of business strategies that seek to ensure maximum demand for their products. **Decreased crop diversity could lead to erosion of genetic, insect, soil, and ecosystem diversity**. It has been argued that IPRs can also encourage displacement of wild diversity of traditional local and landrace varieties.19 However, the counter argument is that using high yield varieties reduces pressure to convert biodiverse ecosystems into agricultural land. In any event, the precise impact of IPRs in the decision-making of both breeders and farmers in this context has yet to be empirically measured.

#### Causes extinction

Fowler and Mooney, Rural Advancement Fund International, 1990, (Shattering: Food, Politics, and the Loss of Genetic Diversity p. ix)

While many may ponder the consequences of global warming, perhaps the biggest single environmental catastrophe in human history is unfolding in the garden. While all are rightly concerned about the possibility of nuclear war, an equally devastating time bomb is ticking away in the fields of farmers all over the world. Loss of genetic diversity in agriculture—silent, rapid, inexorable—is leading us to a rendezvous with extinction*—to the doorstep of hunger on a scale we refuse to imagine.*To simplify the environment as we have done with agriculture is to destroy the complex interrelationships that hold the natural world together. Reducing the diversity of life, we narrow our options for the future and render our own survival more precarious.

### Solvency

#### Our aff is a prerequisite security K---

#### The frame of Chinese investment as coming from a monolithic, hostile nation-state action makes American security policy a self-fulfilling prophecy that sees acts of aggression behind every business move and investment deal.

Pan 2007

Chengxin, School of International and Political Studies, Faculty of Arts, Deakin University, What Is Chinese About Chinese Business? Implications for U.S. Responses to China’s Rise, Asia Research Centre, CBS, Copenhagen Discussion Papers

From the global production network perspective, not only does the assumption of a zero-sum game between China and the United States become problematic, but the notion of the so-called ‘Chinese business practices’ becomes problematic, as what is often termed as ‘Chinese business practices’ may be seen as a product of the interactions between Chinese and transnational companies, including U.S. companies. For instance, the Unocal bids by CNOOC, a state-owned company in China, has been seen as a proof of China’s sinister business strategy to undermine U.S. national security. Yet, what is less well-known is that Goldman Sachs, whose CEO Henry Paulson is currently U.S. Treasury Secretary, was involved in financing the aborted CNOOC-Unocal deal (Hawkins 2006). In this sense, Chinese companies’ acquisitions of natural resources in various parts of the world, while drawing much alarm and criticism in the U.S. and elsewhere, are nothing uniquely Chinese. As Michael Klare explains, the United States, Britain, France, Japan, and other Western oil-importing countries have long competed among themselves for drilling rights in overseas producing areas…. China may be a newcomer to this contest, but is not behaving noticeably differently from the other oil-seekers. Indeed, the “National Energy Policy” announced by President George W. Bush on May 17, 2001, calls for US officials to conduct the same sort of diplomatic quest in pursuit of foreign energy as that now being undertaken by Chinese officials (Klare 2006:182). Understood this way, threatening to retaliate against ‘China’ is not only unlikely to eliminate those ‘Chinese’ business practices, but it could in fact provide further impetus to them. It is in this sense that I consider the policies based on a unitary Chinese economic Other counterproductive and potentially dangerous. Again take the American nationalistic responses to CNOOC’s Unocal for example. By effectively declaring to the Chinese that North America is off limits, American policy-makers sent ‘precisely the wrong message to China’s modernizing managerial class and encourage highly damaging … tendencies in China, including nationalism, mercantilism and distrust of the international markets’ Harding et al 2006:64). Similarly, Hadar notes that ‘by taking steps to derail the Unocal-CNOOC deal, Washington is helping set in motion what could be only described as a self-fulfilling prophecy’ (2005). Since no amount of U.S. legislation would be able to reduce the global production demand for energy in China, China would seem to ‘have no choice in light of the US policies but to form special economic or foreign policy relationships’ with the so-called ‘rogue states’ (Hadar 2005). Of course, this in turn could confirm the suspicion of China many Americans have long held, thereby giving rise to a vicious cycle of mutual suspicion and hostility. Starting out with the image of a homogeneous Chinese Other and consistently acting upon it, hawkish policy-makers in Washington could well succeed in bringing out a more unified rival in China down the road.

#### ---And our advantage specifically accesses their impacts--Freedom of information is a prerequisite to the alternative --- Access to information key to check the worst forms of corporate governance.

Amoroso 1973

Frank, The Freedom of Information Act: Shredding the Paper Curtain, St. John’s Law Review, Issue 4 Volume 47, May, Number 4, http://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=3017&context=lawreview

Acquisition of information and control over its dissemination are the hallmarks of political power. While information control has always been a strategic concomitant of political power, the pervasiveness of modem mass media has rendered it invaluable. Thus, the first objective of any revolutionary force is to gain control of the information-dispensing apparatus. The manner in which information is administered within a particular society is indicative of the form of government which exists in that country. Where strict censorship and control of information exists, an authoritarian government will inevitably reside. Conversely, where information is freely accessible, representative government flourishes. In the United States, the principle that information is the currency of power is reflected in the vital issues of the day.1

#### ---Aff is a prerequisite to the critique --- Unchecked IPR commodifies cultural forms maintaining a hegemonic worldview and actively precluding meaningful dissent.

Macmillan 2003

Fiona, Professor of Law, Birkbeck College, University of London, “Copyright’s Commodification of Creativity,” http://www.oiprc.ox.ac.uk/

So the media and entertainment industry controls and homogenises what we get to see, hear and read. In so doing it is likely that it also **controls the way we construct images of our society and ourselves.**94 The scope of this power is reinforced by the industry s assertion of control over the use of material assumed by most people to be in the intellectual commons. The irony is that the reason people assume such material to be in the commons is that the copyright owners have force-fed it to us as receivers of the mass culture disseminated by the mass media. The more powerful the copyright owner the more dominant the cultural image, but the more likely that the copyright owner will seek to protect the cultural power of the image through copyright enforcement. **The result is that not only are individuals not able to use, develop or reflect upon dominant cultural images, they are also unable to challenge them by subverting them.**95 This is certainly unlikely to reduce the power of those who own these images. As an example of this type of concern Waldron96 uses the case of Walt Disney Prods v Air Pirates.97 In this case the Walt Disney Corporation successfully prevented the use of Disney characters in Air Pirates comic books. The comic books were said to depict the characters as active members of a free thinking, promiscuous, drugingesting counterculture . 98 Note, however, that the copyright law upon which the case was based does not prevent this depiction only, it prevents their use altogether. Waldron comments: The whole point of the Mickey Mouse image is that it is thrust out into the cultural world to impinge on the consciousness of all of us. Its enormous popularity, consciously cultivated for decades by the Disney empire, means that it has become an instantly recognizable icon, in a real sense part of our lives. When Ralph Steadman paints the familiar mouse ears on a cartoon image of Ronald Reagan, or when someone on my faculty refers to some proposed syllabus as a Mickey Mouse idea, they attest to the fact that this is not just property without boundaries on which we might accidentally encroach but an artifact that has been deliberately set up as a more or less permanent feature of the environment all of us inhabit.99 Coombe describes this corporate control of the commons as monological and, accordingly, destroying the dialogical relationship between the individual and society: Legal theorists who emphasize the cultural construction of self and world — the central importance of shared cultural symbols in defining us and the realities we recognize — need to consider the legal constitution of symbols and the extent to which we can be said to share them. I fear that most legal theorists concerned with dialogue objectify, rarefy, and idealize culture , abstracting it from the material and political practices in which meaning is made. Culture is not embedded in abstract concepts that we internalize, but in the materiality of signs and texts over which we struggle and the imprint of those struggles in consciousness. This ongoing negotiation and struggle over meaning is the essence of dialogic practice. Many interpretations of **intellectual property laws quash dialogue by affirming the power of corporate actors to monologically control meaning by appealing to an abstract concept of property.** Laws of intellectual property privilege monologic forms against dialogic practice and create significant power differentials between social actors engaged in hegemonic struggle. If both subjective and objective realities are constituted culturally — through signifying forms to which we give meaning — then we must critically consider the relationship between law, culture, and the politics of commodifying cultural forms.100

#### Advocating against existential risks is the most ethical- we have a moral obligation to future generations to put all our focus on avoiding extinction.

Bostrum 12 (http://www.theatlantic.com/technology/archive/2012/03/were-underestimating-the-risk-of-human-extinction/253821/)

Some have argued that we ought to be directing our resources toward humanity's existing problems, rather than future existential risks, because many of the latter are highly improbable. You have responded by suggesting that existential risk mitigation may in fact be a dominant moral priority over the alleviation of present suffering. Can you explain why?

Bostrom: Well suppose you have a moral view that counts future people as being worth as much as present people. You might say that fundamentally it doesn't matter whether someone exists at the current time or at some future time, just as many people think that from a fundamental moral point of view, it doesn't matter where somebody is spatially---somebody isn't automatically worth less because you move them to the moon or to Africa or something. A human life is a human life. If you have that moral point of view that future generations matter in proportion to their population numbers, then you get this very stark implication that existential risk mitigation has a much higher utility than pretty much anything else that you could do. There are so many people that could come into existence in the future if humanity survives this critical period of time---we might live for billions of years, our descendants might colonize billions of solar systems, and there could be billions and billions times more people than exist currently. Therefore, even a very small reduction in the probability of realizing this enormous good will tend to outweigh even immense benefits like eliminating poverty or curing malaria, which would be tremendous under ordinary standards.

## Plan

#### Plan: The Federal judiciary should substantially reduce restrictions on wind production by holding that economic security should be excluded from the definition of national security in Exon Florio.

# 2ac

### 2AC Courts can’t reduce

#### ---We meet-the plan interprets FINSA to exclude wind power from the definition of national economic security. It legally removes wind power from the statutory restriction which is distinct from just not enforcing a regulation.

#### ---FINSA is written broadly to include energy assets. The plan limits the scope of its application by excluding wind power. Their definition doesn’t apply because it’s about striking down a law not interpreting one.

Jackson-Congressional Research Service-9/26/12

The Committee on Foreign Investment in the United States (CFIUS)

<http://www.fas.org/sgp/crs/natsec/RL33388.pdf>

Factors for Consideration

The Exon-Florio provision includes a list of twelve factors the President must consider in deciding to block a foreign acquisition. These factors are also considered by the individual members of CFIUS as part of their own review process to determine if a particular transaction threatens to impair the national security. This list includes the following elements: (1) domestic production needed for projected national defense requirements; (2) the capability and capacity of domestic industries to meet national defense requirements, including the availability of human resources, products, technology, materials, and other supplies and services; (3) the control of domestic industries and commercial activity by foreign citizens as it affects the capability and capacity of the U.S. to meet the requirements of national security; (4) the potential effects of the transactions on the sales of military goods, equipment, or technology to a country that supports terrorism or proliferates missile technology or chemical and biological weapons; and transactions identified by the Secretary of Defense as “posing a regional military threat” to the interests of the United States; (5) the potential effects of the transaction on U.S. technological leadership in areas affecting U.S. national security; (6) whether the transaction has a security-related impact on critical infrastructure in the United States: (7) the potential effects on United States critical infrastructure, including major energy assets; (8) the potential effects on United States critical technologies; (9) whether the transaction is a foreign government-controlled transaction; (10) in those cases involving a government-controlled transaction, a review of (A) the adherence of the foreign country to nonproliferation control regimes, (B) the foreign country’s record on cooperating in counter-terrorism efforts, (C) the potential for transshipment or diversion of technologies with military applications,; (11) the long-term projection of the United States requirements for sources of energy and other critical resources and materials; and (12) such other factors as the President or the Committee determine to be appropriate.36 Factors 6-12 that were added through P.L.-110-49 potentially broaden significantly the scope of CFIUS’ reviews and investigations. Previously, CFIUS had been directed by Treasury Department regulations to focus its activities primarily on investments that had an impact on U.S. national defense security. The additional factors, however, incorporate economic considerations into the Exon-Florio process in a way that was specifically rejected when the measure initially was adopted and refocuses CFIUS’s reviews and investigations to consider the broader rubric of economic security. In particular, CFIUS is now required to consider the impact of an investment on critical infrastructure as a factor for considering recommending that the President block or postpone a transaction. Critical infrastructure is defined in broad terms within the measure as: “any systems and assets, whether physical or cyber-based, so vital to the United States that the degradation or destruction of such systems or assets would have a debilitating impact on national security, including national economic security and national public health or safety.”

#### ---C/I---The Courts make law and can legally narrow the scope of a statute

West's Encyclopedia of American Law, edition 2. Copyright 2008

http://legal-dictionary.thefreedictionary.com/statute

Laws created through judicial opinion stand in contradistinction to laws created in statutes. Case law has the same legally binding effect as statutory law, but there are important distinctions between statutes and case law. Case law is written by judges, not by elected lawmakers, and it is written in response to a specific case before the court. A judicial opinion may be used as precedent for similar cases, however. This means that the judicial opinion in the case will guide the result in similar cases. In this sense a judicial opinion can constitute the law on certain issues within a particular jurisdiction. Courts can establish law in this way when no statute exists to govern a case, or when the court interprets a statute. Judicial opinions also provide legal authority in cases that are not covered by statute. Legislatures have not passed statutes that govern every conceivable dispute. Furthermore, the language contained in statutes does not cover every possible situation. Statutes may be written in broad terms, and judicial opinions must interpret the language of relevant statutes according to the facts of the case at hand. Regulations passed by administrative agencies also fill in statutory gaps, and courts occasionally are called on to interpret regulations as well as statutes. Courts tend to follow a few general rules in determining the meaning or scope of a statute. If a statute does not provide satisfactory definitions of ambiguous terms, courts must interpret the words or phrases according to ordinary rules of grammar and dictionary definitions. If a word or phrase is technical or legal, it is interpreted within the context of the statute. For example, the term interest can refer to a monetary charge or ownership of property. If the term interest appears in the context of a statute on real estate ownership, a court will construe the word to mean property ownership. Previous interpretations of similar statutes are also helpful in determining a statute's meaning. Statutes are not static and irreversible. A statute may be changed or repealed by the lawmaking body that enacted it, or it may be overturned by a court. A statute may lapse, or terminate, under the terms of the statute itself or under legislative rules that automatically terminate statutes unless they are reapproved before a certain amount of time has passed.

#### ---Their interpretation over limits-It arbitrary excludes an agent for no reason. Court action is intrinsically linked to energy policy as demonstrated by the Ralls case, recent OCS decisions, etc. It is predictable and educational. Legal education is important for a comprehensive understanding of the topic.

#### ---We meet---the Court can “reduce restrictions”- contextual evidence

Shim 96 (Yumee, Mountain States Legal Foundation v. Glickman: When a Tree Falls in the Forest, is Anything Left (Of) Standing?, Fall, 1996, 15 Temp. Envtl. L. & Tech. J. 277)

Specifically, plaintiffs alleged that the implementation of the Guidelines would drive up the price of available timber, which would damage their economic well-being as well as the "quality of life of lumber-dependent communities." Additionally, plaintiffs claimed that the Guidelines were environmentally unsound because they would increase the risk of disease and wildfire. Finally, plaintiffs "argued that a favorable ruling by [the] Court [would] redress their injuries because striking down the Guidelines [would] reduce restrictions on timber harvesting, do less damage to the environment, and force the agency to comply with the procedural commands of NFMA and NEPA ...." Id.

#### ---Reducing restrictions can mean not enforcing them

Berger 1 Justice Opinion, INDUSTRIAL RENTALS, INC., ISAAC BUDOVITCH and FLORENCE BUDOVITCH, Appellants Below, Appellants, v. NEW CASTLE COUNTY BOARD OF ADJUSTMENT and NEW CASTLE COUNTY DEPARTMENT OF LAND USE, Appellees Below, Appellees. No. 233, 2000SUPREME COURT OF DELAWARE776 A.2d 528; 2001 Del. LEXIS 300April 10, 2001, Submitted July 17, 2001, Decided lexis

We disagree. Statutes must be read as a whole and all the words must be given effect. 3 The word "restriction" means "a limitation (esp. in a deed) placed on the use or enjoyment of property." 4 If a deed restriction has been satisfied, and no longer limits the use or enjoyment of the property, then it no longer is a deed restriction -- even though the paper on which it was written remains. [\*\*6] Thus, the phrase "projects containing deed restrictions requiring phasing…," in Section 11.130(A)(7) means presently existing deed restrictions. As of June 1988, the Acierno/Marta Declaration contained no remaining deed restrictions requiring phasing to coincide with improvements to the transportation system.

### 2AC Restrictions on Production

#### ---We meet-the plan specifies a reduction of restrictions on wind production. There is no other way to read it and the plan should be the ultimate arbiter of this question.

---We meet-statutory restriction

#### A. Statutory restriction is a control or limit

Business Dictionary ‘13

http://www.businessdictionary.com/definition/statutory-restriction.html

statutory restriction

Control or limits imposed on an activity under its ruling legislation.

B. The plan removes a statutory restriction on wind production

Greguras-KLgates LLP-3/1/13

What Chinese Cleantech Companies Need to Know about CFIUS Review in 2013

<http://www.klgates.com/files/Publication/0f625ea6-f867-4aad-9915-acc67e789c40/Presentation/PublicationAttachment/1fb6f0da-9bcd-4776-9aa6-8f88476219f1/Corporate_Alert_03012013.pdf>

The third question is very open-ended and subject to the changing political climate. While “national security” is not defined, FINSA explicitly interpreted it to include issues related to critical infrastructure and critical technology. In addition to the traditional concerns about defense technologies, experience since enactment of FINSA suggests that transactions involving major energy production assets, telecommunications infrastructure, and cutting-edge information technologies receive high levels of scrutiny. CFIUS is not only attentive to directly relevant factors such as the industry of the transaction, but also the ownership background. Even geographical proximity to sensitive facilities may trigger CFIUS concerns. In 2009, Northwest Non-ferrous International Investment Company, a subsidiary of China's largest aluminum producer, Aluminum Corp of China Co., abandoned its proposed $26.5 million acquisition of 51% ownership of Firstgold, a Nevada-based mining company, after complaints that the four ore fields were located too close to the Fallon Naval Air Station and other sensitive security and military facilities. Another example is the denial of Sany/Ralls’s wind farm projects. CFIUS determined that one of the construction sites was in restricted airspace used by the U.S. Navy while the other three sites were within 5 miles of it. CFIUS’ decisions are based on a multifactor balancing test, rather than a bright-line rule. It is susceptible to changing political and public policy concerns and is more stringent towards acquirers from countries that historically are at odds with U.S. national security interests, such as China. In the Sany/Ralls’s complaint, it argued that “numerous other wind farms using foreign-made turbines and with foreign ownership are located in or near the Navy’s restricted airspace. At least seven foreign made turbines are located within the restricted airspace, like one of Ralls’ planned wind farms. At least thirty foreign-made turbines are located near the restricted airspace, the same distance from the restricted airspace (if not closer) than Ralls’ three other planned wind farms…. The federal government has not imposed on these similarly situated turbines or wind farms, or their owners or developers—including foreign-made turbines and foreign owners or developers—any prohibitions or restrictions similar to those imposed on Ralls……”7

#### ---Our interpretation is Superior-our restriction is grounded in the Foreign Investment and National Security Act. It requires affirmatives to be based in legislative restrictions and excludes regulatory red tape cases.

---The plan removes restrictions on the production of wind power---the issue in Ralls and the action of the plan are about prohibiting energy production not administrative hurdles.

Clement et al-Ralls Complaint-‘12

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF ‘12

<http://online.wsj.com/public/resources/documents/RallsFiledAmendedComplaint.pdf>

C. Ralls’s Acquisition and Development of the Butter Creek Projects 58. Plaintiff Ralls is in the business of identifying market opportunities throughout the United States for the development and construction of windfarms in which the wind turbines of Sany Electric, its affiliate, can be used. Through such actions, Ralls seeks to demonstrate the quality and reliability of Sany turbines to the U.S. wind industry, particularly with respect to important features like turbine run time. The Butter Creek Projects are ideal for this purpose given the existence of numerous other nearby windfarms using competitor turbines, thus providing for a direct and immediate comparison to competitor products. For that reason, Ralls decided to include the Butter Creek Projects within the portfolio of windfarm projects it intends to develop at locations throughout the United States. 59. In December 2010, Oregon Windfarms sold its interests in the Project Companies to Terna Energy USA Holding Corporation (“Terna”), a Delaware corporation owned by Terna Energy SA, a publicly traded Greek company. 60. In March 2012, Terna sold its membership interests in the Project Companies to Intelligent Wind Energy, LLC (“IWE”), a Delaware limited liability company that was owned by U.S. Innovative Renewable Energy, LLC (“USIRE”), a Delaware limited liability company owned by a U.S. citizen. USIRE then sold IWE to Ralls. 61. At the time Ralls purchased the Project Companies from Terna, the companies’ assets continued to consist solely of easements with local landowners to access their property and construct windfarm turbines; power purchase agreements with the local utility, PacifiCorp; generator interconnection agreements permitting connection to PacifiCorp’s grid; transmission interconnection agreements and agreements for the management and use of shared facilities with other nearby windfarms; and necessary government permits and approvals to construct windfarm turbines at particular locations. There was no on-going business concern associated with the Project Companies; they were essentially “greenfield” development projects. 62. Shortly after Ralls acquired the Project Companies, the United States Navy expressed concerns regarding the location of the Lower Ridge windfarm, the sole Butter Creek project located within the restricted airspace. 63. The Navy advocated moving the Lower Ridge windfarm to “reduce airspace conflicts between the Lower Ridge wind turbines and low-level military aircraft training.” 64. Although the Navy indicated that it had no authority to require such a move, Ralls agreed, at significant expense and effort, to move the Lower Ridge Windfarm to a new location. 65. Moving the Lower Ridge Windfarm to its new location required Ralls to obtain additional approvals from the Oregon Public Utility Commission. The Navy wrote to the Oregon Public Utility Commission on Ralls’s behalf, emphasizing its concern that the placement of the wind turbines at either location “may have negative security implications” but recommending that the requested approvals issue. The Navy added that it “appreciat[ed]” Ralls’s “cooperation and consideration” in agreeing to move the Lower Ridge windfarm. 66. The Navy did not express concerns to Ralls about any of the three other windfarms, all of which are located outside the restricted airspace. 67. Construction of the turbines at the Butter Creek Projects began on April 23, 2012. 68. Once completed, the Butter Creek projects will consist of four separate windfarms—Pine City, Mule Hollow, High Plateau, and Lower Ridge—each with five turbines. Each turbine will generate 2.0 megawatts (“MW”) of power, for a total of ten MW per windfarm, or a modest 40 MW from all windfarms combined. Each windfarm will also include related systems to allow for power production and interconnection to the PacifiCorp transmission grid in the western United States under long-term contracts with PacifiCorp. 69. Neither Ralls nor the Project Companies will control or have access to PacifiCorp’s transmission grid. 70. PacifiCorp itself owns thousands of MWs of wind energy generating facilities, and nearly 10,600 MW of total generating assets. Once constructed, Ralls’s 40 MW of wind generated power will comprise approximately 0.37% of PacifiCorp’s total generating capacity, and approximately 2.3% of its wind energy generating capacity. 71. Ralls intends to continue pursuing windfarm development opportunities in the United States and acquiring existing windfarm greenfield companies to do so, in the manner of its acquisitions of the Project Companies. III. THE CFIUS AND PRESIDENTIAL ORDERS REGARDING THE TERNARALLS TRANSACTION A. The CFIUS Orders 72. On June 28, 2012, Ralls and Terna submitted a voluntary notice to CFIUS informing CFIUS of Ralls’s recent acquisition of the Project Companies. Ralls included all of the information required by 31 C.F.R. § 800.402(c), including facts set forth above. 73. In the weeks that followed submission of the voluntary notice, CFIUS asked Ralls and Terna a number of follow-up questions, as to all of which Ralls and Terna timely provided responses. 74. Ralls was provided one opportunity to meet with CFIUS during this period; a meeting was held on June 29, 2012. During that meeting, CFIUS did not provide or discuss with Ralls any evidence it had obtained or was reviewing in connection with any supposed national security risks purportedly raised by Ralls’s acquisition of the Project Companies. 75. On July 25, 2012, CFIUS issued an Order Establishing Interim Mitigation Measures regarding the Terna-Ralls transaction on July 25, 2012 (“July Order”). See Ex. 4. 76. The July Order stated that CFIUS had determined that the Terna-Ralls transaction was a “covered transaction” and that “there are national security risks to the United States that arise as a result of the Transaction.” Id. at 1. 77. The July Order stated that, as a result of the CFIUS determination, the “Companies,” which the July Order defined as Ralls and the Project Companies:  “Shall immediately cease all Construction and Operations, and shall not undertake any further Construction and Operations, at the Properties” (defined as any of the sites on which the Project Companies proposed to construct windfarms);  “Shall remove all stockpiled or stored items from the Properties no later than July 30, 2012, and shall not deposit, stockpile, or store any new items at the Properties”; and  “Shall immediately cease all access, and shall not have any access, to the Properties.” Id. 78. The July Order added that “[n]otwithstanding the foregoing, U.S. citizens contracted by the Companies and approved by CFIUS may access the site until July 30, 2012, solely for the purposes of removing any items from the Properties in compliance with” the July Order. Id. at 1-2. 79. As authority for its action, CFIUS cited “Section 721, and Executive Order 11858 of May 7, 1975, as amended by Executive Order 13456, 73 Fed. Reg. 4677 (Jan. 23, 2008).” Id. at 1. CFIUS cited no other authority for its action. 80. The July Order provided that it “is enforceable, through injunctive relief, criminal or civil penalty, or otherwise, pursuant to section 721, the Executive Order, the CFIUS regulations, 18 U.S.C. § 1001, or any other applicable law.” Id. at 2. 81. In compliance with the July Order, Ralls immediately suspended construction at the windfarms. By that point, Ralls had completed installation of all five turbine foundations at the Upper Plateau windfarm, had partially installed all five turbine foundations at the Pine City windfarm, and had partially installed two turbine foundations at the Lower Ridge windfarm. All foundations were designed and installed to fit Sany turbines. 82. On July 26, 2012, in a good-faith effort to address CFIUS’s concerns, Ralls informed CFIUS that it was considering selling the Project Companies, with several American buyers having expressed interest. Ralls believed that a sale of the Project Companies would address CFIUS’s concerns in issuing the July Order, and it requested CFIUS’s guidance on the matter. On July 31, 2012, Ralls informed CFIUS that it intended to complete transfer of the Project Companies to a U.S. buyer as early as the end of that week. 83. After being advised of Ralls’s good-faith effort, on August 2, 2012, CFIUS issued an Amended Order Establishing Interim Mitigation Measures (the “August Order”). See Ex. 5. 84. The August Order expanded the definition of “Companies” to include the Project Companies, Ralls and its subsidiaries, and the Sany Group (including Sany Electric and Sany Heavy Industries). Id. at 1. 85. The August Order also added more prohibitions to the previous Order, stating that in addition to the prior prohibitions, the Companies:  “[S]hall not deposit, stockpile, or store any new items at the Properties, any lay down site identified by the Companies in any information or communication submitted to CFIUS, or at any location that is closer to the R5701 Restricted Airspace than the lay down site that is farthest from the R5701 Restricted Airspace”;  “Shall not sell or otherwise transfer or propose, or otherwise facilitate the sale or transfer to any third party for use or installation at the Properties of any items made or otherwise produced by the Sany Group”; and  “Shall not complete a sale or transfer of the Project Companies or their assets to any third party until: (i) All items deposited, installed, or affixed (including concrete foundations) on the Properties subsequent to the acquisition by Ralls of the Project Companies have been removed from the Properties; (ii) the Companies notify CFIUS of the intended recipient or buyer; and (iii) the Companies have not received an objection from CFIUS within 10 business days of notification.” Id. at 2. 86. As with the previous July Order, the August Order cited as authority for its directives “Section 721, and Executive Order 11858 of May 7, 1975, as amended by Executive Order 13456, 73 Fed. Reg. 4677 (Jan. 23, 2008).” Id. at 1. As before, the August Order cited no other authority for its directives. 87. Also as with the previous July Order, the August Order provided that it “is enforceable, through injunctive relief, criminal or civil penalty, or otherwise, pursuant to section 721, the Executive Order, the CFIUS regulations, 18 U.S.C. § 1001, or any other applicable law.” Id. at 3. 88. At no point has CFIUS ever provided or discussed with Ralls any evidence it obtained or reviewed in connection with the supposed national security risks raised by Ralls’s acquisition of the four windfarms. Nor has Ralls had any opportunity to review or rebut such evidence, t

he conclusions CFIUS has drawn from that evidence (aside from its general conclusion regarding supposed “national security risks”), or the reasoning CFIUS has used to reach such conclusions. 89. On July 30, 2012, pursuant to Section 721(b)(2), CFIUS commenced an investigation of the Terna-Ralls transaction. 90. On September 13, 2012, at the end of the 45-day investigation phase, CFIUS transmitted a report to the President describing CFIUS’s assessment of the purported risks to national security posed by the transaction. Ralls has never seen this report, nor has it had any opportunity to rebut its allegations or the supposed facts on which its conclusions are premised. B. The Presidential Order 91. On September 28, 2012, President Barack H. Obama issued an order entitled, “Order Regarding the Acquisition of Four U.S. Wind Farm Project Companies by Ralls Corporation” (the “September Order”). See Ex. 6. 92. In Section 1 of the September Order, entitled “Findings,” the President identified the Sany Group as “a Chinese company affiliated with Ralls” and Messrs. Duan and Wu as “citizens of the People’s Republic of China and senior executives of the Sany Group, who together own Ralls.” He defined Ralls and the Sany Group (including Sany Electric and Sany Heavy Industries) as the “Companies.” Id. § 1(a). 93. The President then stated that “[t]here is credible evidence” that “leads [him] to believe” that Ralls, Sany, and Messrs. Duan and Wu, “through exercising control of” the Project Companies, “might take action” that “threatens to impair the national security of the United States.” Id. The President further stated that “[p]rovisions of law,” aside from Section 721 and the International Emergency Economic Powers Act, “do not … provide adequate and appropriate authority for [the President] to protect the national security in this matter.” Id. § 1(b). The Order provided no further findings. 94. In Section 2 of the September Order, entitled “Actions Ordered and Authorized,” the President ordered a litany of actions to be taken against the Companies and Messrs. Duan and Wu. 95. The President ordered that “[t]he transaction resulting in the acquisition of the Project Companies and their assets by the Companies or Mr. Wu or Mr. Duan is hereby prohibited,” as was “ownership by the Companies or Mr. Wu or Mr. Duan of any interest in the Project Companies and their assets, whether directly or indirectly.” Ex. 6 § 2(a). To “effectuate this order,” the President ordered Ralls to divest “all interests” in (i) the Project Companies; (ii) the Project Companies’ “assets, intellectual property, technology, personnel, and customer contracts”; and (iii) “any operations developed, held, or controlled … by the Project Companies at the time of, or since, their acquisition.” Id. § 2(b). Such divestment is required to occur not later than 90 days of the order’s issuance. Id. 96. In addition to prohibiting Ralls’s acquisition of the Project Companies, the President ordered that the Companies:  “shall … remove from the properties … all items, structures, or other physical objects or installations of any kind (including concrete foundations) that the Companies or persons on behalf of the Companies have stockpiled, stored, deposited, installed, or affixed thereon,” within 14 days of the order’s issuance, id. § 2(c);  “shall cease all access, and will not have any access, to the Properties,” except for U.S. citizens contracted by the Companies and approved by CFIUS who could access the properties “solely for the purposes of” removing items, id. § 2(d);  “shall not sell or otherwise transfer, or propose to sell or otherwise transfer, or otherwise facilitate the transfer of, any items made or otherwise produced by the Sany Group to any third party for use or installation at the Properties,” id. § 2(e); and  “shall not complete a sale or transfer of the Project Companies or their assets to any third party until: (i) all items, structures, or other physical objects or installations of any kind (including concrete foundations) that the Companies or persons on behalf of the Companies have stockpiled, stored, deposited, installed, or affixed on the Properties have been removed from the Properties and the Department of Defense has notified the Companies that it has verified the Companies’ certification of such removal … (ii) Ralls notifies CFIUS in writing of the intended recipient or buyer; and (iii) Ralls has not received a provisional or final objection from CFIUS to the intended recipient or buyer within 10 business days of the [preceding] notification,” id. § 2(f). 97. Finally, the President also ordered that “until such time as the divestment is completed,” CFIUS is “authorized to implement measures it deems necessary and appropriate to verify that operations of the Project Companies are carried out in such a manner as to ensure protection of the national security interests of the United States.” Id. § 2(h). Such measures “include but are not limited” to requiring the Companies and the Project Companies to permit government employees to “access … all premises and facilities of the Project Companies and the Companies located in the United States” so as to:  “inspect and copy any books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the Companies or the Project Companies that concern any matter relating to this order”;  “inspect any equipment and technical data (including software) in the possession or under the control of the Companies or the Project Companies”; and  “interview officers, employees, or agents of the Companies or the Project Companies concerning any matter relating to this order.” Id. 98. The President further provided in the September Order that “[t]he Attorney General is authorized to take any steps necessary to enforce this order.” Id. § 2(i). 99. The President also stated that CFIUS’s previous July Order and August Order “are hereby revoked.” Id. § 3. 100. At no point between September 13, 2012—the date CFIUS transmitted its report to the President—and September 28, 2012—the date the President issued the September Order— did CFIUS, the President, or any person or entity acting on behalf of CFIUS or the President provide or discuss with Ralls any evidence that CFIUS, the President, or any person or entity acting on their behalf obtained or reviewed in connection with the supposed national security risks that Ralls’s acquisition of the four windfarms purportedly raises. In addition, Ralls had no opportunity during that period to review or rebut any such evidence. 101. At no point has Ralls ever had any opportunity to view, review, respond to, or rebut the “credible evidence” identified in the September Order that led the President to conclude that the Companies, Mr. Duan, or Mr. Wu “might” take action that “threatens to impair” the national security of the United States. 102. At no point since voluntarily filing its notice of the Terna-Ralls transaction with CFIUS on June 28, 2012, has Ralls ever had any opportunity to view, review, respond to, or rebut any evidence obtained or reviewed by any individual or entity acting on behalf of the federal government concerning supposed “national security risks” raised by Ralls’s acquisition of the four windfarms. At no point has Ralls had any opportunity to view, review, respond to, or rebut any reasoning offered by the federal government for its actions or the conclusions reached by the federal government, aside from the government’s general, vague, and unsupported determination that the acquisition raises “national security risks.” 103. Ralls emphatically denies that its acquisition of the Project Companies was intended to or will have or raise any risks or threats regarding the national security of the United States, and it denies that any credible evidence of such intent or effect exists. The sole purpose and effect of Ralls’s acquisition of the Project Companies was to provide a means for the demonstration of Sany turbines as superior in quality and reliability to competitor products, particularly with respect to important features like turbine run time. The Butter Creek Projects are ideal for this purpose given the existence of numerous other nearby windfarms using competitor turbines, thus providing for a direct and immediate comparison to competitor products. In so doing, Ralls also intended to provide an economically viable commercial project that provides clean, renewable energy for the American market and creates jobs for American workers in support of the American economy. The unlawful and unauthorized actions of the federal government eviscerate these innocuous—indeed, laudable—goals. 104. Plaintiff realleges and incorporates by reference the allegations contained in all of the preceding paragraphs. 105. The Declaratory Judgment Act provides that, in a case of actual controversy within its jurisdiction, a United States court may declare the rights and other legal relations of any interested party seeking such declaration. 28 U.S.C. § 2201(a). 106. The Administrative Procedure Act (“APA”) provides that “[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.” 5 U.S.C. § 702. 107. The APA also provides that “final agency action for which there is no other adequate remedy in a court” is “subject to judicial review.” Id. § 704. 108. The APA further provides that a reviewing court shall “hold unlawful and set aside agency action, findings, and conclusions” found to be, inter alia, “(A) arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; [or] (D) without observance of procedure required by law.” Id. § 706(2). 109. CFIUS constitutes an “agency” whose final actions are reviewable under the APA. 110. The August Order constitutes “final agency action” that is subject to judicial review. CFIUS consummated its decisionmaking process by determining that the Terna-Ralls transaction is a “covered transaction,” that there are national security risks to the United States that arise as a result of the transaction, and that severe, prohibitive, and immediate restrictions are necessary to prevent these purported national security risks. Furthermore, the August Order determined Ralls’s rights and obligations, and legal consequences flow from the August Order: it expressly provided for its enforcement in court, and violating its terms could have exposed Ralls to significant penalties. 111. Ralls suffered legal wrong as a result of the August Order because CFIUS lacked statutory authority to prohibit the Terna-Ralls transaction, versus proposing measures that mitigate any national security risks. 112. CFIUS’s powers under Section 721 are limited; it may only “negotiate, enter into or impose, and enforce” an agreement or condition “in order to mitigate any threat to the national security of the United States that arises as a result of the covered transaction.” Id. § 2170(l)(1)(A). 113. By ordering Ralls immediately to cease all construction at the project sites, remove all equipment from the sites, and cease all access to the sites (including communications with persons at the sites), CFIUS in the August Order did not merely mitigate any national security risks associated with the transaction; its actions were tantamount to prohibiting the transaction entirely, a power CFIUS does not possess under statute or regulation. 114. Section 721 purports to provide only the President with the extraordinary authority to suspend or prohibit a transaction, not CFIUS. By issuing the August Order, CFIUS improperly arrogated this extraordinary power to itself. 115. CFIUS also exceeded its statutory authority by purporting to restrict transactions not within its purview. Section 1(d) of the August Order barred Ralls from “sell[ing] or otherwise transfer[ring] … to any third party for use or installation at” the windfarms “any items made or otherwise produced by the Sany Group.” Ex. C, at 2. Under Section 721, however, CFIUS’s oversight is limited to transactions “by or with any foreign person which could result in foreign control of any person.” 50 U.S.C. app. § 2170(a)(3). Because future transactions in which Ralls sells or transfers “any items made or otherwise produced by the Sany Group” would not “result in foreign control of any person,” CFIUS lacks the authority to impose restrictions on (much less outright bar) such transactions. 116. Similarly, Section 1(e) of the August Order barred Ralls from “complet[ing] a sale or transfer of the Project Companies or their assets to any third party” absent CFIUS approval. Ex. C, at 2. But CFIUS lacks the authority to impose restrictions regarding the future sale or transfer of the Project Companies or their assets “to any third party.” CFIUS’s jurisdiction extends only to transactions “which could result in foreign control.” 117. The September Order issued by the President does not prevent judicial review of the lawfulness of the August Order because there is a reasonable expectation that Ralls will be subject to substantially similar CFIUS orders in the future, and the lawfulness of such orders cannot be fully litigated prior to their expiration or revocation. 118. The physical and regulatory takings of Ralls’s property interests constitute unconstitutional takings in violation of the U.S. Constitution, deprive Ralls of its property interests absent due process, and violate Ralls’s constitutional right to equal protection, or at a minimum raise grave doubts about the constitutionality of the government action, though this constitutional question is avoided by a judicial determination that CFIUS violated the APA in issuing the August Order. 119. Likewise, just as federal courts will construe statutes where possible to avoid serious doubt of their constitutionality, so too CFIUS has an obligation to exercise its powers in a way that does not raise serious constitutional concerns. CFIUS’s actions in violation of its statutory authority resulted in a constitutionally problematic prohibition that is avoided by finding CFIUS’s conduct in violation of the APA 120. Plaintiff realleges and incorporates by reference the allegations contained in all of the preceding paragraphs. 121. Ralls suffered legal wrong as a result of the August Order because the August Order arbitrarily and capriciously offered no evidence or explanation for its determination that the Terna-Ralls transaction is a “covered transaction,” its determination that national security risks to the United States arise as a result of the transaction, its determination to impose prohibitive restrictions on the Terna-Ralls transaction tantamount to barring it outright, or its determination to impose categorical restrictions when less burdensome alternatives were available under existing provisions of law that adequately and appropriately protect national security. 122. The August Order instead simply recited, in a conclusory manner, that Ralls’s acquisition of the Project Companies “constitutes a ‘covered transaction’ for purposes of Section 721,” and that “there are national security risks to the United States that arise as a result of the Transaction,” and imposed a list of draconian obligations. 123. This failure to provide any explanation or evidence for CFIUS’s conclusions is a violation of the APA’s requirement of reasoned decisionmaking, particularly given the lengthy and detailed list of factors that CFIUS must consider when determining whether a transaction could harm national security. See 50 U.S.C. app. § 2170(b)(1)(A)(ii), (f). 124. The August Order also constituted arbitrary and capricious action because it provided no explanation why CFIUS ignored readily available, adequate, and appropriate alternative measures short of outright prohibiting the transaction. Among such measures would have been invocation of 10 U.S.C. § 2663(d), which provides the Secretary of the Navy with authority to acquire interests in land, such as the interests in the properties on which the windfarms would be located, when the need is urgent, the acquisition is needed in the interest of national defense, and the acquisition is required to maintain the operational integrity of a military installation. 125. The August Order further constituted arbitrary and capricious action because it prohibitively restricted Ralls’s acquisition of the Project Companies after the federal government previously assented to the transaction. Prior to Ralls’s acquisition, the FAA provided “Determinations of No Hazard” (which included Department of Defense review), and shortly after Ralls’s acquisition, the Navy objected to the location of one windfarm (and stated no objections concerning the other three) but assented after Ralls relocated it at its own cost. The August Order rescinded the Navy’s prior assent and invalidated the FAA’s prior approval, without offering any explanation for this sudden shift in course. 126. The August Order was further arbitrary and capricious in prohibiting Ralls’s future sale of “any items made or otherwise produced by the Sany Group” that would be used at the properties and in prohibiting Ralls’s future sale of the Project Companies or their assets to any third party absent CFIUS approval. These restrictions and remedies concerning future transactions were entirely unrelated to CFIUS’s limited power to review covered transactions and mitigate purported national security risks. 127. The September Order issued by the President does not prevent judicial review of the lawfulness of the August Order because there is a reasonable expectation that Ralls will be subject to substantially similar CFIUS orders in the future, and the lawfulness of such orders cannot be fully litigated prior to their expiration or revocation. 128. Moreover, because CFIUS is responsible for providing a factual analysis and recommendation for action to the President, the arbitrary and capricious nature of CFIUS’s analysis, decisionmaking, and recommendation fatally infected the President’s own decisionmaking, findings, and order. 129. As a result of this and all other legal wrongs wrought by the August Order, Ralls incurred significant injury. Ralls was prohibited from undertaking any further construction or operations on its property, it was required to remove all of its belongings from the property, it was unable to use the property for storage, it was prohibited from accessing the property, it was prohibited from selling or transferring the primary goods to be used in erecting the windfarms, and it was not permitted to sell or transfer the other assets of the Project Companies to any third party until all items were removed (including the concrete foundations that it has expended funds to install), the companies notified CFIUS, and CFIUS did not object. Accordingly, the August Order eviscerated Ralls’s property rights, including, inter alia, its easements with local landowners to access their property and construct windfarm turbines; power purchase agreements with the local utility, PacifiCorp; generator interconnection agreements permitting connection to PacifiCorp’s grid; transmission interconnection agreements and agreements for the management and use of shared facilities with other nearby windfarms; and necessary government permits and approvals. 130. The physical and regulatory takings of Ralls’s property interests constitute unconstitutional takings in violation of the U.S. Constitution, deprive Ralls of its property interests absent due process, and violate Ralls’s constitutional right to equal protection, or at a minimum raise grave doubts about the constitutionality of the government action, though this constitutional question is avoided by a judicial determination that CFIUS violated the APA in issuing the August Order. 131. Likewise, just as federal courts will construe statutes where possible to avoid serious doubt of their constitutionality, so too CFIUS has an obligation to exercise its powers in a way that does not raise serious constitutional concerns. It is arbitrary and capricious for CFIUS to fail to consider adequate and available alternatives that would accommodate the government’s security concerns without raising problems under the Constitution, and for CFIUS to give no explanation or provide any factual support for its decision to reject these alternatives in favor of a constitutionally problematic prohibition. 132. Plaintiff realleges and incorporates by reference the allegations contained in all of the preceding paragraphs. 133. In Section 721, Congress conferred upon the President limited authority. The President may only “take such action for such time as the President considers appropriate to suspend or prohibit any covered transaction.” Neither any other provision of Section 721, nor the implementing regulations, nor any Executive Order grants the President any powers beyond “suspend[ing] or prohibit[ing]” a “covered transaction.” 134. In the September Order, the President ordered that the “transaction resulting in the acquisition of the Project Companies and their assets” is “prohibited.” To “effectuate” this order, the President ordered Ralls to divest “all interests” in the Project Companies. 135. The September Order went much further than “prohibit[ing]” the pertinent covered transaction, however. The President also ordered Ralls to remove from the relevant properties all items, including concrete foundations, and prohibited any access to the properties except to remove items. That order thus exceeds the President’s conferred authority to “suspend or prohibit” a “covered transaction.” 136. The President also prohibited Ralls from selling or transferring any items made by the Sany Group to any third party—even an American party—for use at the properties. That order not only is unrelated to “suspend[ing] or prohibit[ing]” the pertinent “covered transaction”—Ralls’s acquisition of the Project Companies—but is unrelated to any “covered transaction.” Neither Section 721 nor any regulation or Executive Order gives the President the power to dictate the terms of (much less prohibit) future transactions, particularly those that are not “covered transactions” as defined by Section 721 or those that are merely sales of individual items. That order thus exceeds the President’s conferred authority to “suspend or prohibit” a “covered transaction.” 137. The President also prohibited Ralls from selling the Project Companies or their assets to “any third party”—even an American party—until it removed all items from the properties and it obtained approval by CFIUS of the proposed buyer. Neither Section 721 nor any regulation or Executive Order gives the President the power to dictate the terms of future transactions, particularly those that are not “covered transactions” as defined by Section 721 or those that are merely sales of assets. That order thus exceeds the President’s conferred authority to “suspend or prohibit” a “covered transaction.” 138. The President also authorized CFIUS to “implement measures it deems necessary and appropriate to verify that operations of the Project Companies are carried out in such a manner as to ensure protection of the national security interests of the United States.” Specifically, the President authorized CFIUS to require the Companies and Project Companies to allow government employees to access their premises to inspect and copy books, accounts, documents; inspect any equipment and technical data, including software; and interview officers, employees, or agents of the Companies or Project Companies, anywhere within the United States. Neither Section 721 nor any regulation or Executive Order gives the President the power to impose, directly or indirectly, future restrictions on or future oversight of the everyday business activities of entities that previously engaged in a covered transaction. That order thus exceeds the President’s power to “suspend or prohibit” a “covered transaction,” in addition to purporting to authorize searches and seizures in violation of the Fourth Amendment of the Constitution. 139. The foregoing ultra vires actions exceed the limited power that Congress conferred upon the President in Section 721, that the Department of the Treasury has promulgated in implementing regulations, or that even prior Executive Orders have recognized. The President’s ultra vires actions facially violate Section 721, related regulations, and related executive orders. 140. The President’s unlawful ultra vires actions have caused and will cause injury to Ralls. As a result of the President’s ultra vires actions, Ralls is prohibited from accessing and developing real property that it is otherwise legally entitled to access and develop; it must expend substantial sums of money to remove items from the windfarm sites, including concrete foundations; it is prohibited from selling Sany products to any future purchaser for use at the properties; it cannot freely convey the Project Companies to a third party; and it must provide government employees unfettered access to its books, documents, equipment, technical data, software, and officers, employees, and agents anywhere within the United States. 141. The President’s ultra vires actions are a direct and proximate cause of these injuries. 142. The foregoing ultra vires actions and resulting injuries will also occur if and when Defendants CFIUS or Timothy F. Geithner, or any persons acting on their behalf or on behalf of the President, implement or enforce any ultra vires actions of the President set forth in the September Order, as the September Order expressly contemplates. 143. Judicial review of this claim is available notwithstanding Section 721(e) because the President’s ultra vires actions exceed the authority conferred to him by Congress and the United States Constitution. 144. Plaintiff realleges and incorporates by reference the allegations contained in all of the preceding paragraphs. 145. The Fifth Amendment to the United States Constitution states that “[n]o person shall be … deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V. 146. Ralls possesses numerous valid property interests and property rights by virtue of its acquisition of the Project Companies, including but not limited to the Project Companies themselves; easements with local landowners to access their property and construct windfarm turbines; power purchase agreements with the local utility, PacifiCorp; generator interconnection agreements permitting connection to PacifiCorp’s grid; transmission interconnection agreements and agreements for the management and use of shared facilities with other nearby windfarms; and necessary government permits and approvals to construct windfarm turbines at particular locations 147. CFIUS’s issuance of the August Order eviscerated these property rights. The August Order required Ralls to remove all items from the properties and prohibited Ralls from physically accessing the property, undertaking any further construction or operations on the property, selling or transferring the primary goods to be used in constructing the windfarms, and selling or transferring the other assets of the Project Companies to any third party until all items are removed, the companies notify CFIUS, and CFIUS does not object. 148. The President’s issuance of the even broader September Order has further eviscerated these property rights. The September Order prohibits Ralls’s acquisition of the Project Companies entirely and forces Ralls to divest “all interests” in (1) the Project Companies; (2) the Project Companies’ assets, intellectual property, technology, personnel, and customer contracts; and (3) any operations developed, held, or controlled, whether directly or indirectly, by the Project Companies at the time of, or since, Ralls’s acquisition. Like the August Order, the September Order also requires Ralls to remove all items from the properties and prohibits Ralls from physically accessing the property, undertaking any further construction or operations on the property, selling or transferring the primary goods to be used in constructing the windfarms, and selling or transferring the other assets of the Project Companies to any third party until all items are removed, the companies notify CFIUS, and CFIUS does not object. The September Order further requires Ralls to give government employees physical access to its premises and those of the Project Companies for the purposes of inspecting documents, inspecting equipment and technical data (including software), and interviewing personnel anywhere within the United States. 149. The August Order and September Order entirely extinguish Ralls’s valid property rights and property interests. As a direct and proximate result of the orders, Ralls cannot use its property for the purpose for which it was acquired; in fact, it cannot use its property for any purpose whatsoever, nor may it benefit from the various rights it has acquired. Instead, it must divest all such property, forgo all benefits of the property, and submit to invasions of its property. 150. Ralls was not afforded due process prior to the issuance of the August Order or September Order and the resulting deprivation of its property interests. At no point prior to the issuance of the August Order or September Order did CFIUS, the President, any individual or entity acting on their behalf, or any individual or entity acting on behalf of the federal government ever disclose to Ralls any of the evidence obtained or reviewed during CFIUS’s or the President’s review. At no point has Ralls ever had an opportunity to view, review, respond to, or rebut any evidence any such individual or entity has obtained or reviewed in reaching their determinations that Ralls’s acquisition of the Project Companies raises “national security risks,” nor has Ralls been given meaningful notice or hearing prior to those determinations. 151. Neither the August Order nor the September Order identifies any of the evidence upon which either CFIUS or the President relied in reaching their determinations, nor do they provide any explanation for those determinations or any opportunity for Ralls to respond to or rebut those determinations. 152. Neither order, moreover, explains why existing provisions of law do not provide adequate and appropriate authority to protect the national security, nor do they provide Ralls an opportunity to respond to or rebut the reasons why such provisions of law are purportedly insufficient. 153. The issuance of the August Order and September Order has directly and proximately deprived Ralls of its property absent due process of law, in violation of the Fifth Amendment to the U.S. Constitution. 154. The foregoing deprivation of Ralls’s property absent due process will also occur if and when Defendants CFIUS or Timothy F. Geithner, or any persons acting on their behalf or on behalf of the President, implement or enforce any actions of the President set forth in the September Order, as the September Order expressly contemplates. 155. The September Order issued by the President does not prevent judicial review of the constitutionality of the August Order because there is a reasonable expectation that Ralls will be subject to substantially similar CFIUS orders in the future, and the lawfulness of such orders cannot be fully litigated prior to their expiration or revocation. 156. Judicial review of this claim is available notwithstanding Section 721(e) because the President’s actions resulting in the deprivation of Ralls’s property absent due process violate the United States Constitution. 157. Plaintiff realleges and incorporates by reference the allegations contained in all of the preceding paragraphs. 158. The Due Process Clause of the Fifth Amendment to the United States Constitution forbids the federal government to deny equal protection of the law. 159. The constitutional guarantee of equal protection requires that persons who are similarly situated receive equal treatment from the federal government. 160. The August Order and September Order constitute unconstitutional violations of Ralls’s right to equal protection of the law because Ralls and its affiliates and executives have unfairly and unjustly been treated differently from similarly situated persons. 161. Numerous other windfarms using foreign-made turbines and with foreign ownership are located in or near the Navy’s restricted airspace. At least seven foreign-made turbines are located within the restricted airspace, like one of Ralls’s planned windfarms. At least thirty foreign-made turbines are located near the restricted airspace, the same distance from the restricted airspace (if not closer) than Ralls’s three other planned windfarms. At least five of these foreign-made turbines are part of a windfarm (Pacific Canyon) that was foreign-owned at the time of construction and is currently foreign-owned. 162. Nearly 900 additional turbines, moreover, are located within 11 miles of the restricted airspace, like Ralls’s proposed turbines. Upon information and belief, dozens if not hundreds of these turbines are foreign-made and foreign-owned. 163. The federal government has not imposed on these similarly situated turbines or windfarms, or their owners or developers—including foreign-made turbines and foreign owners or developers—any prohibitions or restrictions similar to those imposed on Ralls by the August Order and September Order. The federal government has only imposed such prohibitions and restrictions on Ralls. 164. Because the August Order and September Order impose different treatment on Ralls compared to similarly situated persons, they violate Ralls’s constitutional right to equal protection under the law. 165. The foregoing violation of Ralls’s right to equal protection will also occur if and when Defendants CFIUS or Timothy F. Geithner, or any persons acting on their behalf or on behalf of the President, implement or enforce any actions of the President set forth in the September Order, as the September Order expressly contemplates. 166. The September Order issued by the President does not prevent judicial review of the constitutionality of the August Order because there is a reasonable expectation that Ralls will be subject to substantially similar CFIUS orders in the future, and the lawfulness of such orders cannot be fully litigated prior to their expiration or revocation. 167. Judicial review of this claim is available notwithstanding Section 721(e) because the President’s actions resulting in the violation of Ralls’s right to equal protection violate the United States Constitution

#### ---Counter-interpretation—restrictions include limiting conditions

Plummer 29 J., Court Justice, MAX ZLOZOWER, Respondent, v. SAM LINDENBAUM et al., Appellants Civ. No. 3724COURT OF APPEAL OF CALIFORNIA, THIRD APPELLATE DISTRICT100 Cal. App. 766; 281 P. 102; 1929 Cal. App. LEXIS 404September 26, 1929, Decided, lexis

The word "restriction," when used in connection with the grant of interest in real property, is construed as being the legal equivalent of "condition." Either term may be used to denote a limitation upon the full and unqualified enjoyment of the right or estate granted. The words "terms" and "conditions" are often used synonymously when relating to legal rights. "Conditions and restrictions" are that which limits or modifies the existence or character of something; a restriction or qualification. It is a restriction or limitation modifying or destroying the original act with which it is connected, or defeating, terminating or enlarging an estate granted; something which defeats or qualifies an estate; a modus or quality annexed by him that hath an estate, or interest or right to the same, whereby an estate may be either defeated, enlarged, or created upon an uncertain event; a quality annexed to land whereby an estate may be defeated; a qualification or restriction annexed to a deed or device, by virtue of which an estate is made to vest, to be enlarged or defeated upon the happening or not happening of a particular event, or the performance or nonperformance of a particular act.

#### ---Their interpretation over limits

#### A. Their interpretation destroys affirmative ground because there are few true prohibitions on energy production. Most of their examples like wind permitting, OCS drilling, etc are questions of administrative hurdles not statutory bans.

#### B. Err affirmative-Incentives have been gutted by the states counterplan-err on the side of affirmative innovation and not DOD SMRs. They exclude regulatory obstacles that de-facto block production which is the heart of the literature.

#### ---Reasonability---The affirmative removes a significant obstacle to production on wind production---You should evaluate topicality like a disad and make them win a real ground and limits impact argument about the aff.

### A2 Security --- 2ac Frontlines

#### CFIUS review requires determinist securitization of energy assets --- That’s Carroll --- The plan halts the material expansion of securitization into foreign investment and energy policy. Mean’s their self-fulfilling prophecy/serial policy failure impacts are descriptive of the status quo, not the affirmative--- that’s **Pan 2007 THE PLAN IS NEGATIVE STATE ACTION**

#### ---Permutation Do Both --- <Reject militarist security framing> & <Aff>.

#### ---The permutation solves best --- Combining securitization with criticism renegotiates the logic of security and solves their impact while avoiding legitimate contextualized dangers.

Trombetta 2008

Maria Julia, Environmental security and climate change: analyzing the discourse, Cambridge Review of International Affairs, 21:4, 585-602

The recognition and constitution of a problem as a threat implies the identification of the political community that deserves protection, the legitimization of the means to provide security and eventually their institutionalization. Some of these aspects are more settled and consolidated than others, as are the different logics of security, such as the antagonistic, emergency-based one evoked by the Copenhagen School. These developed because, within a particular context, they were the most effective response against a specific representation of threats. This, however, does not mean that they are not open to negotiation when challenged by a new environment and threats. Climate change poses threats that are largely uncertain, diffuse, difficult to quantify and yet potentially catastrophic. This reflects the logic of a risk society portrayed by Beck. This article has explored how the practices associated with security are challenged by the attempts to transform environmental crises and climate change into a security issue, and has shown how appeals to security have emphasized the relevance of preventive, nonconfrontational measures and the importance of other actors than states in providing security. A potentially nonessentialist approach like securitization, which focuses on the social process that specifies threats, can be relevant in studying how various environmental issues gain priority and mobilize social action. However, the Copenhagen School identifies the ‘securityness’ of security with a specific logic determined by the realist tradition. In this way the School has imposed a problematic fixity that tends to essentialize an historical- and sector-specific understanding of security and the practices legitimized by it. Even if this logic is still relevant, the analysis of environmental security discourses and the securitization of climate change have shown that transforming an issue like climate change into a security issue is not about applying a fixed meaning of security and the practices associated with it. Rather, it is a reflexive and contextualized process that generates meanings and practices.

#### **---alt cant include the aff- if it does tis a voting issue for affirmative ground and education from cost benefit analysis**

#### **---Providing transparency for the TPP is a prerequisite to the K --- Prevents backdoor negotiations that uniquely enable technocratic energy policy.**

Chin 2012

Allison, President of the Sierra Club, The Trans-Pacific Partnership Trade Pact: an affront to democracy, Sierra Club Yodeler, http://theyodeler.org/?p=5819

Members of the public who register with the U.S. Trade Representative are allowed limited face time with the negotiators: they can display information at a table for a couple of hours, make a short presentation, and attend a briefing by trade negotiators. I appreciate these opportunities, and I’ll take advantage of them. However, presence is not the same as transparency and participation. When nearly every American is shut out from seeing the language of the pact, it’s impossible to call this an open process. While even members of Congress can’t see the specific contents of the pact, hundreds of business executives—from Halliburton to the National Coal Council—are all actively involved in shaping the TPP. And, just like the trade negotiators, these corporate executives are sworn to secrecy by law, creating a deeper rift between this inner circle and the public. Since corporations are shaping the trade pact, it’s no surprise they’re the ones being protected by its rules. A leaked version of this pact’s chapter on investment reveals that it would allow foreign corporations to sue governments for unlimited cash compensation over nearly any law that the corporation argues could hurt its expected future profits. In backroom, closed-door tribunals without public comment or participation, corporations would be able to bypass domestic court systems and challenge policies put in place democratically by elected officials. What will that mean? Imagine, for example, a foreign oil corporation suing the American government in a foreign tribunal for hundreds of millions of dollars over new American regulations that protect our land and water from drilling. The oil, gas, and mining industries are likely to champ at the bit over the potential of this pact. The gas industry, in particular, could profit and pollute even more under the TPP. That’s because the pact would likely mean automatic approval of liquefied-natural-gas export permits to participating countries without any economic or environmental review or federal approval from the Department of Energy. Increased exports would mean a significant increase of domestic hydraulic fracturing, or fracking, the dirty and violent process that dislodges gas deposits from shale formations and is known to contaminate drinking water and pollute the air we breathe. Liquefied natural gas has a carbon footprint as large as coal, further contributing to climate disruption and keeping the world dependent on more fossil fuels rather than switching us to clean, renewable energy. It’s time to have a real conversation about how to engage in responsible trade. Government officials tout the TPP as a “21st-century agreement” – but there’s nothing innovative about keeping the public in the dark. We must restore the basic principles of democracy to protect the public and the environment – even if it’s inconvenient for some large corporations.

#### ---Freedom of information is good --- Critical internal link to preservation of democracy and halt conservative takeover.

Mendel 1999

Toby, Head of the UN ARTICLE 19’s Law Programme, The Public's Right to Know: Principles on Freedom of Information Legislation, http://www.article19.org/data/files/pdfs/standards/righttoknow.pdf

Information is the oxygen of democracy. If people do not know what is happening in their society, if the actions of those who rule them are hidden, then they cannot take a meaningful part in the affairs of that society. But information is not just a necessity for people – it is an essential part of good government. Bad government needs secrecy to survive. It allows inefficiency, wastefulness and corruption to thrive. As Amartya Sen, the Nobel Prize-winning economist has observed, there has not been a substantial famine in a country with a democratic form of government and a relatively free press. Information allows people to scrutinise the actions of a government and is the basis for proper, informed debate of those actions.

#### ---Fear is the greatest force for good in preventative medicine --- Multiple empirical examples prove it saves lives.

Richards 2001

Edward P., Executive Director, Center for Public Health Law, Professor of Law, University of Missouri Kansas City School of Law, Bioterrorism and the Use of Fear in Public Health, http://biotech.law.lsu.edu/blaw/bt/epr\_bioterror01.pdf

In 1910, Rosenau, the father of preventive medicine in the United States, wrote: "Fear is lessening, but we would not want it to disappear entirely, for while it is a miserable sensation, it has its uses in the same sense that pain may be a marked benefit to the animal economy, and in the same sense that fever is a conservative process. Reasonable fear saves many lives and prevents much sickness. It is one of the greatest forces for good in preventive medicine, as we shall presently see, and at times it is the most useful instrument in the hands of the sanitarian." Public health professionals remain ambivalent about the use of fear to advance public health and safety. Fear, in the form of "neutral" information about health is the primary tool for fighting tobacco use. In food safety, the main goal has been to reassure the public. In HIV control, there is an attempt at a balance of terror: you should be afraid enough of HIV to take personal precautions, but not afraid enough to want to restrict others.

#### ---Environmental Securitization is key to prevent the marginalization of environmental concerns and re-politicize/transform security.

Trombetta 2008

Maria Julia, Environmental security and climate change: analyzing the discourse, Cambridge Review of International Affairs, 21:4, 585-602

The Copenhagen School warns about the risk of securitization and distinguishes between securitization—‘meaning the issue is presented as an existential threat, requiring emergency measures and justifying actions outside the normal bounds of political procedure’—and politicization—‘meaning the issue is part of public policy, requiring government decision and resource allocations’ (Buzan et al 1998, 23–24). The School warns that ‘when considering securitizing moves such as “environmental security” . . . one has to weigh the always problematic side effects of applying a mind-set of security against the possible advantages of focus, attention, and mobilization’ (29) and Waever’s normative suggestion is: ‘less security, more politics!’ (Waever 1995, 56). In the case of the environment this suggestion is problematic. It can lead to the depoliticization and marginalization of urgent and serious issues, while leaving the practices associated with security unchallenged. Many appeals to environmental security have been made not only with the intent of prioritizing issues but also with that of transforming the logic of security and the practices associated with it. And yet, when applied to environmental issues, the process of securitization does not seem to be analytically accurate. The Copenhagen School, in its empirically driven analysis of various sectors in Security: a new framework for analysis, has identified several peculiarities in the environmental sector (Buzan et al 1998, 71–94). Amongst these peculiarities the most noticeable is that few appeals to environmental security have mobilized exceptional measures or inscribed enemies in any context. The Copenhagen School has suggested that when the environment is involved, ‘“emergency measures” are still designed and developed in the realm of ordinary policy debates’ (83). This suggests that issues can be politicized through an appeal to security, a problematic development for the Copenhagen School, which argues that ‘transcending a security problem by politicising it cannot happen through thematization in security terms, only away from such terms’ (Waever 1995, 56). Even if the School tends to dismiss these as failed securitizations, this seems to show that the transformation of an issue into a security issue can follow different modalities and different logics, which eschew the confrontational logic of the national security model suggested by the School. Through the appeal to security, other logics, which characterize different contexts, can be brought into existence and new actors can gain relevance in security policies.

### CP

#### perm do both

doesn solve – funding-

links to pts- funding

#### Micro-grid fails---unreliable and quality problems

BIESI 11 Brookings Institution Energy Security Initiative, The Hoover Institution Shultz-Stevenson Task Force on Energy Policy, "Assessing the Role of Distributed Power Systems in the U.S. Power Sector", October, media.hoover.org/sites/default/files/documents/Distributed-Energy.pdf

Microgrid¶ Generation technologies are central to discussions around distributed energy systems. However, controls, infrastructure and demand side management are also an integral part of the broader discussion. The term ‘microgrid,’ is used to refer to a smaller version of a main or central electrical grid that much like its larger counterpart, consists of interconnected electrical loads and distributed energy generation resources that are typically controlled by a central control system. A microgrid may operate independently as its own self-contained entity, or may be interconnected with an adjoining central utility grid or neighboring microgrid. ¶ The concept of the microgrid is often associated with a power system in developing countries where the centrally managed grid is weak or inadequate. However, microgrid architectures are deployed in the United States including in various communities such as university campuses, hospitals, industry and military. Fully 74 percent of the global microgrid market dollars were spent in North America in 2010. 40¶ Although not a specific technology in itself, the notion of the microgrid is a system comprised of software, controls and hardware infrastructure including sensors, inverters, switches and converters. The microgrid and its primary components form the platform that is necessary for the integration of distributed generation resources with the local loads consuming the energy. The benefits of such architectures lie in the fact that they can be locally operated and controlled independent of a centrally managed utility. Such architecture enables distributed power systems, whether they operate on a stand-alone basis, or as an integrated component of a larger central grid.¶ 1.4 Functional Risks of DPS Technology Despite the policy support and cost declines in technology, DPS applications are constrained by several fundamental technical and functional factors. These factors give rise to risks associated with power quality, “dipatchability” and reliability. Some of the most important technical risks of widespread DPS deployment and integration are listed below. ¶ Power Quality¶ Some DPS technologies rely on power electronic devices, such as AC-to-DC or DC-to-AC converters. If such devices are not correctly set up, the integration of DPS power can result in a harmonic distortion and in operational difficulties to loads connected to the same distribution systems. 41¶ Reactive Power Coordination¶ With the proper system configuration and network interface, DPS can bring relief to the power system by providing close proximity power support at the distribution level. However, some renewable generation sources such as wind can worsen the reactive coordination problem. Wind generators have asynchronous induction generators designed for variable speed characteristics and, therefore, must rely on the network to which they are connected for reactive power support.42¶ Reliability and Reserve Margin¶ Intermittent power generation such as solar and wind is non-dispatchable. It is thus necessary to maintain sufficient generation reserve margins in order to provide reliable power generation. If there is a high level of distributed generation deployment, reserve margin maintenance can be a problem.

#### Microgrid’s reliance on multiple inputs fails

Amora 10 Ramon, Department of Electrical and Computer Engineering, Mississippi State University, “Controls for microgrids with storage: Review, challenges, and research needs”, Renewable and Sustainable Energy Reviews Volume 14, Issue 7, September 2010, Pages 2009–2018

Microgrids installations and integration in LV distribution systems will increase significantly in future. Consequently, distribution systems will have different characteristics from the current conventional distribution systems. The difference will be more significant with increased number of microgrids. Thus, suitable control strategies must be designed to anticipate this difference [50].¶ Besides to optimize system operation electrically, microgrid controls also aim to optimize production and consumption of heat, gas, and electricity in order to improve overall efficiency [22]. Moreover, controlling a large number of microsources having different characteristics will be very challenging due to the possibility of conflicting requirement and limited communication [6]. In case of decentralized or centralized controllers, control action required with probable lost input parameters will be surely challenging.¶ Transitions from grid-connected to islanded modes of operation are likely to cause large mismatches between generation and loads, causing a severe frequency and voltage control problem. The “plug-and-play” capability may also create serious problem if the connection and disconnection processes involve big number of microsources at the same time [6].

#### Failure to rule for Ralls would send a dangerous signal undermining judicial review of the executive.

Abassi, chief counsel-Cause of Action, 12 (Amber, Chief Counsel for Regulatory Affairs-Cause of Action, BRIEF OF OREGON WINDFARMS, LLC,KENT MADISON, WILLIAM J. DOHERTY, AND IVAR CHRISTENSENAS AMICI CURIAE IN SUPPORT OF PLAINTIFF, Nov 12, http://www.scribd.com/doc/113087608/Ralls-v-CFIUS-Brief-in-Support-of-Motion-to-Participate-as-Amici-Curiae)

C. Judicial review is a necessary prophylactic against the Executive Branch asserting extra-constitutional authority in a manner inimical to basic separation of-powers principles. The stakes of this case are high. If this Court concludes that actions taken pursuant to 50 U.S.C. Appx. § 2170 are not subject to judicial review—even to determine whether due process has been honored or whether the Executive Branch’s actions were ultra vires—this will create a dangerous imbalance in our system of checks and balances: taken to its logical conclusion, such a holding would allow the Executive Branch to take literally any action regarding any matter that conceivably involved a transaction that conceivably involved a foreign person. 9 Only meaningful judicial review of the Executive Branch’s actions under the statute can effectively check the broad authority over U.S. citizens’ and businesses’ transactions “by or with” foreign nationals that 50 U.S.C. Appx. § 2170 confers on the Executive Branch and ensure that the statute is applied in a manner that is consistent with the Constitution and federal law. If this Court concludes that it does not have jurisdiction to adjudicate Ralls’s constitutionally based claims, it will not only set a dangerous precedent that threatens to undermine fundamental separation-of-powers principles that are essential to our constitutional scheme but give the Executive Branch tacit authority to ignore inconvenient constitutional and statutory constraints on its ability to deprive persons of property or liberty without due process of law. Such an unprecedented abdication of the judicial role would not only concentrate power in the Executive Branch in the precise manner that the Framers sought to avoid but undermine the property rights protections and confidence in the rule of law that are necessary for American enterprises and their foreign business partners to create a prosperous tomorrow.

#### That risks unchecked unilateralism in national security policy.

Landau 12 (Joseph, Associate Professor, Fordham Law School, CHEVRON MEETS YOUNGSTOWN: NATIONAL SECURITY AND THE ADMINISTRATIVE STATE, 92 B.U.L. Rev. 1917)

Although certain Chevron-backers in theory call for a statutory, not constitutional, solution to national security problems, they advocate deference even when “there is no interpretation of a statutory term[,] but simply a policy judgment by the executive.”351 This expansive theory of Chevron not only rests on a dubious doctrinal foundation352 but is at times virtually indistinguishable from a theory of unilateral executive power that disregards entirely Youngstown’s centrality to national security law. As Chevron-backers such as Posner and Sunstein explain, “in the domain of foreign relations, the approach signaled in Chevron should apply even if the executive is not exercising delegated authority to make rules or conduct adjudications,” a point that is strengthened by “considerations of constitutional structure [that] argue strongly in favor of deference to the executive”353 and that “makes the argument for deference stronger than in Chevron itself.”354 By advocating a vast policy space for the Executive that supplants congressional legislation whenever statutory authority is absent, their argument comes closer to the brand of pure and unalloyed executive unilateralism that the Court has rejected throughout the post-9/11 decisions.355 Their enthusiasm for single-branch approaches causes them to espouse a theory outside the mainstream understanding of Chevron that undermines the “realistic and middle-ground alternative” that an administrative law approach can bring to the polarized debate between executive unilateralists and civil libertarians.356 Perhaps it should not be surprising, then, that some Chevron-backers also support broader theories of executive unilateralism. For example, John Yoo, who has argued for a model of foreign affairs law based on executive unilateralism,357 also makes the case for Chevron deference in national security jurisprudence.358 While Chevron-backers often resist the comparison of their administrative law theory of national security jurisprudence with executive unilateralism,359 the lack of any strict delegation requirement, and the replacement of that requirement with strong deference to the Executive on functionalist grounds, begs the question Chevron was meant to solve in the first place through legislative delegations. Hence, it seems entirely reasonable to draw parallels between the advocacy of Chevron, at least in its most extreme articulation, with an argument favoring the consolidation of all national security powers into a single branch. The risks are especially apparent when Chevron-backers push their argument for broad deference from the realm of statutory ambiguity – where there is at least plausible (if contested) justification for agency or presidential self-expansion – to cases of legislative silence. Although Chevron-backers argue that “[t]he executive is in the best position to reconcile the competing interests at stake, and in the face of statutory silence or ambiguity, Congress should therefore be presumed to have delegated interpretive power to the executive,”360 this purely functional understanding of Chevron disregards its formal foundation. Given Congress’s apparent disinterest in authorizing, much less reversing, executive national security policy through legislation since 9/11,361 the Chevron-in-national-security argument, as a practical matter, collapses into a theory of single-branch governance.

#### That kills heg- Bush Doctrine proves.

Ikenberry 2005 G John, IR Prof @ Princeton, Why Bush Grand Strategy Fails, 8-10-2005, http://www.princeton.edu/~gji3/ikenberryWhyBushForeign%282%29.pdf

America’s power advantages – massive, useable, and enduring -- are what gave rise to the ambitions of Bush grand strategy. Indeed, extraordinary power is needed if the United States is to simultaneously pursue a strategy of unipolar rule and reduce its exposure to global rules and institutions. To get other countries to bend to American goals, the U.S. must be able to successfully threaten, induce, coerce, and punish other states – and it must be able to go it alone when other states refuse to cooperate. The emergence of the United States as an unrivaled global power did give Bush administration officials confidence that they could lead a global order on their own terms. Washington could do so not by operating within consensual rules and cooperative frameworks but by wielding a big stick.37

But this Bush administration vision is premised on a radical misreading of functional power realities. The flipping of the Westphalian system does give the United States extraordinary global influence. Its military power is without peer or precedent. But in economic and political realms the world is not unipolar at all. The failure of the Bush administration to get Turkey and Russia to cooperate in the run-up to the Iraq war is revealing. In the end, American leverage over Russia and Turkey was extraordinary limited. Both countries have more important trade and economic relationships with the European Union. They are also fledgling democracies that are sensitive to heavy-handed pressure tactics. Even Bush officials must be surprised at how little of America’s unipolar power could be turned into useable diplomatic and political influence.38 More generally, the American overestimation of its own power reinforces the contraction in Bush grand strategy between its unipolar and nationalist visions. In an echo of the classic problem of great power overextension, overconfidence in American power leads to bold imperial-hegemonic ambitions which flounder because that power is not sufficiently great to overcome foreign resistance and dwindling domestic support. These failures, in turn, reinforce American nationalism and global disengagement.39

The rise of unipolar American power is paradoxical: the collapse of the Soviet Union and the end of the Cold War did make the U.S. a superpower without peer but it also eliminated a geopolitical threat that made countries in Europe and East Asia fully dependent on American security protection. To go back to our post-Westphalian town: the U.S. is the town’s only sheriff and the locks are off the doors – but in addition to this, the town’s biggest menace to public safety has disappeared. So the town worries a great deal about the sheriff’s conduct while their dependence on him for protection has decreased. Old bargains and restraints erode. The United States is powerful enough to block, disrupt, and punish. But in the absence of cooperation by other states, Washington is doomed to a cycle of foreign policy failure and declining public approval which further reduces the availability of useable American power – and the entire grand strategic vision is thrown into crisis.

#### Collapse of US leadership risks war in every major flash point.

Brzezinski 12

[Zbignbiew Brzezinski, national security advisor under U.S. President Jimmy Carter, January/February 2012, “8 Geopolitically Endangered Species”, Foreign Policy, <http://www.foreignpolicy.com/articles/2012/01/03/8_geopolitically_endangered_species?page=full>,

With the decline of America's global preeminence, weaker countries will be more susceptible to the assertive influence of major regional powers. India and China are rising, Russia is increasingly imperially minded, and the Middle East is growing ever more unstable. The potential for regional conflict in the absence of an internationally active America is real. Get ready for a global reality characterized by the survival of the strongest. 1. GEORGIA American decline would leave this tiny Caucasian state vulnerable to Russian political intimidation and military aggression. The United States has provided Georgia with $3 billion in aid since 1991 -- $1 billion of that since its 2008 war with Russia. America's decline would put new limitations on U.S. capabilities, and could by itselfstir Russian desires to reclaim its old sphere of influence. What's more, once-and-future Russian President VladimirPutin harbors an intense personal hatred toward Georgian President Mikheil Saakashvili. At stake: Russian domination of the southern energy corridor to Europe, possibly leading to more pressure on Europe to accommodate Moscow's political agenda; a domino effect on Azerbaijan.  2. TAIWAN Since 1972, the United States has formally accepted the mainland's "one China" formula while maintaining that neither side shall alter the status quo by force. Beijing,however, reserves the right to use force, which allows Washington to justify its continued arms sales to Taiwan. In recent years, Taiwan and China have been improving their relationship. America's decline, however, would increase Taiwan's vulnerability, leaving decision-makers in Taipei more susceptible to direct Chinese pressure and the sheer attraction of an economically successful China. That, at the least, could speed upthe timetable for cross-strait reunification, but on unequal terms favoring the mainland. At stake: Risk of a serious collision with China.  3. SOUTH KOREA The United States has been the guarantor of South Korea's securitysince it was attacked in 1950 by North Korea, with Soviet and Chinese collusion. Seoul's remarkable economic takeoff and democratic political system testify to the success of U.S. engagement. Over the years, however, North Korea has staged a number of provocations against South Korea, ranging from assassinations of its cabinet members to the 2010 sinking of the South Korean warship Cheonan. So America's decline would confront South Korea with painful choices: either accept Chinese regional dominance and further reliance on China to rein in the nuclear-armed North, or seek a much stronger, though historically unpopular, relationship with Japan out of shared democratic values and fear of aggression from Pyongyang and Beijing. At stake: Military and economic security on the Korean Peninsula; a general crisis of confidence in Japan and South Korea regarding the reliability of existing American commitments.  4. BELARUS Twenty years after the fall of the Soviet Union, Europe's last dictatorship remains politically and economically dependent on Russia. One-third of its exports go to Russia, on which it is almost entirely reliant for its energy needs. At the same time, President Aleksandr Lukashenko's 17-year dictatorship has stood in the way of any meaningful relations with the West. Consequently, a marked American decline would give Russia a virtually risk-free opportunity to reabsorb Belarus. At stake: The security of neighboring Baltic states, especially Latvia.  5. UKRAINE Kiev's relationship with Moscow has been as prone to tension as its relationship with the West has been prone to indecision. In 2005, 2007, and 2009, Russia either threatened to or did stop oil and natural gas from flowing to Ukraine. More recently, President Viktor Yanukovych was pressured to extend Russia's lease of a naval base at the Ukrainian Black Sea port of Sevastopol for another 25 years in exchange for preferential pricing of Russian energy deliveries to Ukraine. The Kremlin continues to press Ukraine to join a "common economic space" with Russia, while gradually stripping Ukraine of direct control over its major industrial assets through mergers and takeovers by Russian firms. With America in decline, Europe would be less willing and able to reach out and incorporate Ukraine into an expanding Western community,leaving Ukraine more vulnerable to Russian designs. At stake: The renewal of Russian imperial ambitions.  6. AFGHANISTAN Devastated by nine years of brutal warfare waged by the Soviet Union, ignored by the West for a decade after the Soviet withdrawal, mismanaged by the medieval Taliban, and let down by 10 years of halfhearted U.S. military operations and sporadic economic assistance, Afghanistan is in shambles. With 40 percent unemployment and ranking 215th globally in per capita GDP, it has little economic output beyond its illegal narcotics trade. A rapid U.S. troop disengagement brought on by war fatigue or the early effects of American decline would most likely result in internal disintegration and an external power play among nearby states for influence in Afghanistan. In the absence of an effective, stable government in Kabul, the country would be dominated by rival warlords. Pakistan and India wouldmore assertively compete for influence in Afghanistan -- with Iran also probably involved. At stake: The re-emergence of the Taliban; a proxy war between India and Pakistan; a haven for international terrorism. 7. PAKISTAN  Although Islamabad is armed with 21st-century nuclear weapons a

nd held together by a professional late 20th-century army, the majority of Pakistan is still pre-modern, rural, and largely defined by regional and tribal identities. Conflict with India defines Pakistan's sense of national identity, while the forcible division of Kashmir sustains a shared and profound antipathy.Pakistan's political instability is its greatest vulnerability, and a decline in U.S. power would reduce America's ability to aid Pakistan's consolidation and development. Pakistan could then transform into a state run by the military, a radical Islamic state, a state that combined both military and Islamic rule, or a "state" with no centralized government at all. At stake: Nuclear warlordism; a militant Islamic, anti-Western, nuclear-armed government similar to Iran's; regional instability in Central Asia, with violence potentially spreading to China, India, and Russia. 8. ISRAEL and the GREATER MIDDLE EAST America's decline would set in motion tectonic shifts undermining the political stability of the entire Middle East. All states in the region remain vulnerable to varying degrees ofinternal populist pressures, social unrest, and religious fundamentalism, as seen by the events of early 2011. If America's decline were to occur with the Israeli-Palestinian conflict still unresolved, the failure to implement a mutually acceptable two-state solution would further inflame the region's political atmosphere. Regional hostility to Israel wouldthen intensify. Perceived American weakness would at some point tempt the more powerful states in the region, notablyIran or Israel, to preempt anticipated dangers. And jockeying for tactical advantage could precipitate eruptions by Hamas or Hezbollah, which could then escalate into wider and bloodier military encounters. Weak entities such as Lebanon and Palestine would pay an especially high price in civilian deaths. Even worse, such conflicts could rise to truly horrific levels through strikes and counterstrikes between Iran and Israel. At stake: Direct Israeli or U.S. confrontation with Iran; a rising tide of Islamic radicalism and extremism; a worldwide energy crisis; vulnerability of America's Persian Gulf allies.

### 2AC Agenda Politics

#### Won’t Pass – GOP labor union dispute

Sargent 3/22/13 (Greg, journalist for the Washington post with previous experience at talking points memo, New York magazine, and the New York Observor, “A bait and switch on immigration reform” <http://www.washingtonpost.com/blogs/plum-line/wp/2013/03/22/a-bait-and-switch-on-immigration-reform/>)

Here’s something to keep an eye out for: Republicans who favor immigration reform carefully laying the groundwork to blame someone other than themselves — unions, Obama, etc. — if the heat from the right gets too intense and forces Republican officials to bail on reaching a reform compromise. Buzzfeed and Politico both report that Republicans are criticizing unions for insisting on various worker protections as part of the guest worker program that is expected to be a key part of of any immigration reform compromise. Business groups and Republicans are claiming that unions are asking for too much and are on the verge of killing the whole effort. “I don’t think it’s any secret that in the past, unions killed immigration reform,” says Marco Rubio, referencing disagreements over the failed reform effort in 2007 (which actually was primarily killed by conservative Republican opposition). I”m not buying it. My guess is that what’s really going on here is that Republicans need to be able to say they were not to blame if the right ultimately doesn’t allow them to reach a deal with Democrats on the real core issue — the path to citizenship.

#### No link- a. Obama is the defendant in Ralls- the plan rules against him

Zhao 12 (Kun, Update on Ralls Corporation v. CFIUS, et al., Nov 27, http://www.uschinalawblog.com/index.php/2012/11/27/update-on-ralls-corporation-v-cfius-et-al/)

On September 12, 2012, Ralls Corporation (“Ralls”) filed a lawsuit in the United States District Court for the District of Columbia against the Committee on Foreign Investment in the United States (“”CFIUS”) and Timothy F. Geithner, in his official capacity as the Chairperson of CFIUS, alleging that CFIUS’ order which prohibited Ralls from accessing the project site and continuing operations and construction work at acquired properties are in violation of the Administrative Procedure Act and unconstitutional deprivation of private property without due process. In the complaint, Ralls seeks a declaratory judgment enjoining enforcement of the order issued by CFIUS. The case is significant because it is first direct challenge to the validity of an order issued by CFIUS pursuant to the Defense Production Act. The following is an account of recent developments in the case. On September 13, 2012, Ralls filed a motion for a temporary restraining order and preliminary injunction to enjoin the enforcement of CFIUS’ order. On September 19, 2012, Ralls and CFIUS reached an agreement which allows Ralls to conduct limited preliminary activities at the acquired properties. On the same day, Ralls withdrew its motion for a temporary restraining order and preliminary injunction. On September 28, 2012, President Obama issued an order which prohibited Ralls’ acquisition and ordered Ralls to divest all interests acquired in the transaction. The order further directed Ralls to cease all operations at the acquired properties and remove all items, structures or physical objects from the acquired properties. On October 1, 2012, Ralls amended its complaint to add President Obama as a defendant. It continued to pursue its lawsuit on the ground that the actions of CFIUS and President Obama are in violation of Administrative Procedure Act, beyond authority conferred under the Defense Production Act, and unconstitutional deprivation of private property without due process. Defendants’ answer to Ralls’ amended complaint is due by December 8, 2012.

#### Means Obama wouldn’t take any blame- he and the GOP are on the same side in support of national security restrictions.

Newsmax 13 (Republicans Upset Over Approval of Chinese Buyout of US Energy Company,

http://www.newsmax.com/Newsfront/chinese-clean-energy-buyout/2013/01/29/id/487957)

Republican anger is growing over the decision to give a Chinese company government approval to buy a U.S. clean-energy corporation. They are worried that Wanxiang America’s takeover of A123 Systems of Waltham, Mass., could affect national security, because of its military contracts. Though A123’s military operations weren’t included in the purchase, Republican congressmen said military information may be inseparable from A123’s commercial work. The Committee on Foreign Investment in the United States (CFIUS) authorized Wanxiang America’s $257 million purchase of A123 Systems’ automotive, energy storage, commercial, and government operations, the Chinese company announced Tuesday, according to The Hill. CFIUS is an interagency panel led by the Treasury Department that has the authority to strike down deals with foreign companies if they threaten national security. Some Republican legislators urged CFIUS to block the buyout for exactly that reason.

#### Court action provides political cover for Obama to deflect controversy

Pacelle, Prof-Political Science-Georgia Southern, 2002 (Richard L., Prof of Poli Sci @ Georgia Southern University, The Role of the Supreme Court in American Politics: The Least Dangerous Branch? 2002 p 175-6)

The limitations on the Court are not as significant as they once seemed. They constrain the Court, but the boundaries of those constraints are very broad. Justiciability is self-imposed and seems to be a function of the composition of the Court, rather than a philosophical position. Checks and balances are seldom successfully invoked against the judiciary, in part because the Court has positive institutional resources to justify its decisions. The Supreme Court has a relatively high level of diffuse support that comes, in part, from a general lack of knowledge by the public and that contributes to its legitimacy.[6] The cloak of the Constitution and the symbolism attendant to the marble palace and the law contribute as well. As a result, presidents and Congress should pause before striking at the Court or refusing to follow its directives. Indeed, presidents and members of Congress can often use unpopular Court decisions as political cover. They cite the need to enforce or support such decisions even though they disagree with them. In the end, the institutional limitations do not mandate judicial restraint, but turn the focus to judicial capacity, the subject of the next chapter.

#### Future wind fights are inevitable in Congress

National Journal 13 (Battle Over Wind Subsidy Leaves Industry Bruised, Jan 3, http://www.nationaljournal.com/congress/influence/battle-over-wind-subsidy-leaves-industry-bruised-20130103)

Sen. Mark Udall, D-Colo., who is the most outspoken supporter of the policy in Congress and gave almost 30 floor speeches on the issue over the last several months, said he remains committed on a way forward. “I plan on pushing my colleagues this year to pursue a multiyear extension in conjunction with a well-crafted phase-out,” Udall said to National Journal. “Such a phase-out would need to provide market certainty, and I believe that is the direction we need to head.” Toward the end of last year, Xcel lobbied lawmakers on a proposal that would have replaced the production tax credit with a combination of an investment tax credit and a customer renewable credit. The investment tax credit would be given to renewable-energy developers to help finance projects, and the customer renewable credit would be awarded to utilities that integrate more wind and solar onto the grid in order to incentivize such renewable-energy integration. The two credits combined would cost the government between $6 billion and $7 billion over 10 years. The one-year extension will cost taxpayers about $12 billion over 10 years. “There is some merit to that,” said the wind-energy lobbyist about Xcel’s proposal. “Maybe that is a way to compromise and get utilities more supportive of tax credits for renewable energy.” Udall expressed initial support for the proposal last month, but at that point he—and all other congressional wind backers—was focused chiefly on extending the PTC. Another big problem lurking in the background for the wind industry is what, if any, legislative vehicle they can use to advance their proposal, if and when the industry can agree on a way forward. But that’s a fight for another day.

#### Obama just lost on his labor appointments and Republicans are using it against him in Congress.

Costa 1-31-13 (Robert, is National Review’s Washington editor. He manages NR’s Capitol Hill bureau and reports on the White House, Congress, and campaigns. Politico and Washingtonian magazine recently cited him as one of the capital’s best reporters, “Senate GOP Battles Obama’s NLRB Appointees,” http://www.nationalreview.com/corner/339378/senate-gop-battles-obamas-nlrb-appointees-robert-costa)

Senate Republicans continue to hammer President Obama for his recess appointees to the National Labor Relations Board.¶ On Wednesday, Senator Roy Blunt of Missouri introduced the “Advise and Consent Restoration Act,” which would “eliminate the salaries” of the controversial appointees. GOP senators Ted Cruz, Mike Lee, Jim Inhofe, Pat Roberts, and Tim Scott are cosponsors.¶ Republicans are furious that the NLRB is going to treat these appointees as voting members, even though a federal court recently ruled that the appointments are unconstitutional.

### 2AC China Wind DA (w CE adv)

#### No link- the aff doesn’t claim to create a larger US wind market or to increase competitiveness vis-à-vis China- our 1ac Hart ev says growth can be mutual and complementary

#### Their impact is inevitable- the Ralls restriction signals hostile US-China energy relations- only more foreign investment assures the economic interdependence that keeps international trade flowing- 1ac Hart ev from 2013

#### N/U-the Chinese wind industry is screwed because of domestic reasons

Bloomberg 12 (The Downside of China's Clean Energy Push, Nov 21, http://www.businessweek.com/articles/2012-11-21/the-downside-of-chinas-clean-energy-push)

So what’s China gotten for its money so far? Clean power, and plenty of it. The country now has the capacity to generate 6.2 gigawatts of solar power and 68.3 gigawatts of wind, enough to replace the equivalent of about 50 coal-fired power plants. By comparison, the U.S. has 5.7 gigawatts of installed solar capacity and 51.6 gigawatts of wind power, according to trade association and government figures. The downside is that China’s $30 billion solar power industry is overbuilt and heavily in debt. Analysts say even billions of dollars in new government loans may not be able to pull it out of the hole. Suntech Power Holdings (STP), the world’s largest solar panel maker, announced in September it would cut or reassign 1,500 workers at its photovoltaic cell factory in Wuxi. Suntech is counting on a $32 million loan from local authorities to avoid more job losses. To stay solvent, LDK Solar (LDK), China’s second-largest maker of solar wafers, was forced to sell a 20 percent stake to a renewable energy investor part-owned by the city of Xinyu, where LDK is headquartered. The support comes as the companies prepare to report combined 2012 losses of $987 million. China’s central government has weighed in, pledging 30 billion yuan (about $4.8 billion) in subsidies to keep large manufacturers afloat, says Wang Sicheng, vice director of China Renewable Energy Industries Association. Regional governments are loath to let their local solar panel makers fail. Yet policymakers in Beijing would prefer to consolidate the industry into a dozen large players from about 50. Job creation has been a secondary goal of China’s renewables program, and the Worldwatch Institute, a global environmental research concern, estimates that about a million people have found work in cleantech, 600,000 of them in solar. The idea of the bailouts is to preserve those jobs, yet clearly thousands have already been lost and more are in jeopardy. LDK and Suntech both have balance sheets “so egregious” they would be “imminent bankruptcy candidates if they were American or European,” says Pavel Molchanov, an analyst at Raymond James & Associates. The companies didn’t respond to requests for comment. Molchanov believes infusions of government money won’t stop the losses until China grapples with its massive overcapacity—the same glut of panels that cut global prices by half in the last two years and drove U.S. solar panel makers such as Solyndra out of business. “Every province, every city, every bank is going to try to protect their vested interest as best they can,” he says. “That’s why kicking the can down the road has been the dynamic so far.” Aaron Chew, an analyst at Maxim Group in New York, concurs: “The government’s subsidy plan is better than nothing, but I don’t think it will save the industry as it’s still not profitable.” The nation’s investments in wind power are faring no better. One-quarter of China’s wind farms are not connected to a power grid—a reflection of poor planning, insufficient transmission lines, and technical concerns by regional utilities that the intermittency of wind power can be disruptive to normal operations. Wind-related power failures have caused blackouts in three provinces, while exploding equipment has been blamed in the deaths of several workers, according to local press accounts. China Datang Corporation Renewable Power, a state-owned wind energy developer, saw first-half 2012 profits plunge 76 percent, in part because regional utilities simply don’t have the capacity to accept all the energy it produces. China’s wind turbine manufacturers, responsible for 40 percent of the world’s output, are suffering a double squeeze, as demand has stalled both at home and abroad. Sinovel Wind Group, the world’s largest wind turbine maker by market value, posted a $45 million third-quarter loss this year on an 82 percent drop in sales—its largest loss since its initial public offering in January 2011.

#### Turn- China CANT be a leader in wind power because its shut out of the US market by the restriction THAT THE PLAN REMOVES.

Rapoza 13 (Kenneth, economics reporter for the Dow Jones, Forbes, Wall Street Journal and Barron's, First Solar, Now China Wind Power In Washington's Crosshairs, Forbes, Jan 16, http://www.forbes.com/sites/kenrapoza/2013/01/16/first-solar-now-china-wind-power-in-washingtons-crosshairs/)

China wants to become a leader in alternative sources of energy, both as an end user and product developer. But it’s biggest obstacle these days is not its own government, or cheaper competition from coal. It’s Washington DC. Last year, President Obama slapped tariffs on China solar panel makers deemed to be undercutting their American rivals with cheaper goods. As a result of Washington’s barrier to entry and budget cuts for solar energy in Europe, the world’s biggest Made in China solar companies lost billions. Trina Solar (TSL) went from nearly $700 million in market cap last year to $400 million currently. The company’s shares have fallen by more than 40 percent. By comparison, Tempe, Arizona based First Solar (FSLR) shares fell by 23 percent over the last 12 months. With Chinese solar companies now limping through the U.S. market, Washington has set its sights on wind power. Obama denied permits for a privately held China firm to build a wind farm in green-as-can-be Oregon. The majority of Chinese investments in the United States have either been approved or have not required any approval at all. State oil giant CNOOC (CEO) is in the U.S. oil business. But when it comes to clean energy, something the U.S. proclaims it wants to be a leader in, China is not welcome. One reason may be strategic. China is focused on becoming a world leader in alternative energy technology. It’s high cost, high value for an economy known as the world’s assembly line. High cost, high tech products is where the U.S. wants to be. It’s not that Washington doesn’t want green energy from China. It just wants U.S. firms to do it, and not Chinese rivals, who have been able to do it cheaper thanks to labor laws and other regulations in their favor. China has more wind power capacity than another nation on earth. It currently has around 68 gigawatts of wind power while the No. 2 U.S. has about 46 gigawatts. But Chinese companies looking for new markets, and extra cash to expand, are going to have to rely on their home market. On December 18, the U.S. Department of Commerce imposed stiff tariffs on Chinese-made wind towers. The department said Chinese exporters were selling utility-scale wind towers in the at margins 45 to 70 percent cheaper than their U.S. counterparts. In response, the department set deposit rates for cash, used as surety for goods, ranging from 34.33 to 60.02 percent on the towers and additional countervailing duties of 21.86 to 34.81 percent to offset Chinese government subsidies. Speaking with China Daily in Beijing recently, Zheng Kangsheg, secretary of the board of directors for the publicly traded $3.5 billion wind powerhouse, Titan Wind Energy (SHE: 002531) said, “With rates of duty like this, it’s impossible for the products of Chinese wind tower manufacturers to enter the U.S. (Our) market share will definitely decline sharply,” he added. Titan’s shares are up over 7 percent this year and 34.87 percent in the last 12 months. This is a company on the march. A 2012 investigation into anti-dumping and countervailing duties found that Titan Wind Energy gained sales revenue of $58.4 million from its U.S. exports of utility-scale wind towers in 2011, accounting for 38.64 percent of its operating revenue that year. The company will now attempt to expand its market share in Europe, the Asia-Pacific region and Africa to offset the predicted losses in the U.S., the company said. The department’s decision has added to the tough times being experienced by Chinese wind power equipment manufacturers as a result of overcapacity. Washington’s anti-China wind stance has made matters worse for a sector that seems to have done what China does best: overbuild, and overbuild quick. China Ming Yang Wind Power Group (MY), one of the world’s top 10 wind turbine manufacturers by sales, reported a gross profit of 137.2 million yuan in the third quarter of 2012, a fall of 55.1 percent from 305.6 million yuan for the corresponding period in 2011, blaming weak demand for wind turbine generators in China. Shares are down 42.9 percent over the last year. Sinovel Wind Group Co (SHA: 601558), another leading Chinese manufacturer in large-scale onshore, offshore and inter-tidal wind turbines, reported a net loss of 280.3 million yuan during the same period. Shares of the company’s stock are down 18.7 percent. Beijing has since raised the technical bar for wind farms to connect to their energy grid, and now industry experts predict that a larger number of companies will be forced out of the sector altogether in the next three years, trade barriers or not. China is still seen as one of the major global markets for wind energy, both as an end-user and as a producer. It’s just that, if it wants to spread the cheer of cleaner air

#### The plan causes cooperative investment and interdependence not conflict.

Hart 13 (Melanie Hart, Policy Analyst for Chinese Energy and Climate Policy at American Progress. She focuses on China’s science and technology development policies for energy innovation as well as its domestic energy efficiency program, environmental regulatory regime, and domestic and international responses to global climate change. Before joining American Progress, Melanie was a project consultant for the Aspen Institute. She also worked on Qualcomm’s Asia Pacific business development team, where she provided technology market and regulatory analysis to guide Qualcomm operations in Greater China, “Increasing Opportunities for Chinese Direct Investment in U.S. Clean Energy,” Feb 11, http://www.americanprogress.org/issues/china/report/2013/02/11/52576/increasing-opportunities-for-chinese-direct-investment-in-u-s-clean-energy/)

One of our most promising opportunities for U.S.-China clean energy cooperation is inward Chinese direct investment. Many Chinese companies want to come to the United States, directly invest in this country, and create jobs here. That is exactly what our economy needs, particularly in sectors such as renewable energy generation that generally do not pose national security concerns and will require large amounts of investment capital to develop. The problem is, however, that we do not have a good policy framework in place to encourage these investments. In President Obama’s first term, the White House signaled general support for increasing Chinese direct investment. During Vice President Joe Biden’s August 2011 China trip, for example, the vice president stated: President Obama and I, we welcome, encourage and see nothing but positive benefits flowing from direct investment in the United States from Chinese businesses and Chinese entities. It means jobs. It means American jobs. From the perspective of most potential Chinese investors, however, those general statements of welcome are not enough to make the U.S. market look like a good bet. These investors need to be able to predict how the U.S. government will respond to particular foreign-invested business models—and that requires actual policies. The only policies we have at present are the national security review policies of the Committee on Foreign Investment in the United States, which are designed to block foreign direct investments that could pose national security concerns. National security protections are very important, but we should pair those protections with additional policies designed to encourage foreign investment in the sectors where security is not an issue. In this era of economic difficulty, we should not let those opportunities go by the wayside.

#### Doesn’t collapse relations- no spillover between issues

Hart 13 (Melanie Hart, Policy Analyst for Chinese Energy and Climate Policy at American Progress. She focuses on China’s science and technology development policies for energy innovation as well as its domestic energy efficiency program, environmental regulatory regime, and domestic and international responses to global climate change. Before joining American Progress, Melanie was a project consultant for the Aspen Institute. She also worked on Qualcomm’s Asia Pacific business development team, where she provided technology market and regulatory analysis to guide Qualcomm operations in Greater China, “Increasing Opportunities for Chinese Direct Investment in U.S. Clean Energy,” Feb 11, http://www.americanprogress.org/issues/china/report/2013/02/11/52576/increasing-opportunities-for-chinese-direct-investment-in-u-s-clean-energy/)

One area in which the Obama administration has proven especially adept, however, is approaching the U.S.-China relationship issue by issue without letting frustrations on one issue spill over and impede cooperation elsewhere. As my colleague Nina Hachigian recently wrote, President Obama has taken a “clear-eyed, nuanced and effective approach” toward China. Where cooperation makes sense, the president has been ready to deal. Where he feels American interests are being harmed, he has not hesitated to get tough.

### 2AC Wind DA Link Answers

#### No link- we do not cause commercialization of wind- no ev on the 1nc or 1ac on this

#### Wind production is really high now- it was 45% of all new generation in 2012

Clean Technica 13 (Wind Power Tops In New US Generation Capacity For 2012, Jan 18, http://cleantechnica.com/2013/01/18/wind-power-tops-in-new-us-generation-capacity-for-2012/)

With key federal tax credits due to expire at year-end 2012, US wind energy developers brought a total of 45 projects online with a total rated generating capacity of 3,095 megawatts (MW) in December. That amounts to more than double the amount of coal-fired generation capacity and some 34% more than natural gas-fired electricity generation capacity, according to the US Federal Energy Regulatory Commission (FERC) Office of Energy’s Energy Infrastructure Update for December 2012. Statistics for the entire year are no less impressive. Nearly 10,700 MW of wind power capacity came online in 2012 as compared to 4,510 MW for coal and 8,746 MW of natural gas-fired capacity. In total, 40.5% of new US electricity generation capacity came from wind power installations as compared to 33.1% for natural gas. In other words, as Adam hinted in December would be the case, wind power was #1 for new US electricity production in 2012.

#### FDI in wind now

Holloway 3/21/13

Japanese bank to fund first U.S. offshore wind farm, James Holloway-Open University, with a B.Sc. in Technology and a Diploma in Design and Innovation, March 21, 2013, http://www.gizmag.com/cape-cod-wind-farm/26753/

Not having a section devoted to cures for insomnia, Gizmag tends to pass over press releases about investment agreements. Tuesday's announcement that the Bank of Tokyo-Mitsubishi UFJ (BTMU) is to find somewhere in the order of US$ 2 billion for the Cape Wind is extremely interesting, however, as it means the U.S. should finally build its first offshore wind farm, with construction slated to commence before the year's end. The Cape Wind project, which should now see the construction of some 130 wind turbines in Nantucket Sound, a patch of the Atlantic Ocean to the south of Cape Cod, Massachusetts. The farm is expected to have an installed capacity (essentially the maximum theoretical output) of 468 MW. This would put the Cape Wind farm firmly up there with the largest offshore farms in existence, though several, much larger still, have been proposed for Northern Europe and East Asia. It's claimed that Cape Wind will provide three quarters of the electricity demand of the Cape and Islands region of southeast Massachusetts. It's intended that the turbines will be located at Horseshoe Shoal, several miles off the Cape Cod coast. The project has already been signed off by the U.S. Department of the Interior.

#### And exports will take too long

Friedman 3/13/12 (George, stratfor, Ph.D in government at Cornell, “America is Becoming a Natural Gas Exporter and Geopolitical Player in Asia” http://www.thecuttingedgenews.com/index.php?article=72361)

If production continues to increase beyond any increasing demands, the next logical step would be to start exporting natural gas, but this presents a logistical problem. The simplest way to transport natural gas is via pipeline, and while the United States has pre-existing natural gas collection and distribution systems for relatively easy domestic transport, its physical separation from markets in Europe and Asia, where the cost of natural gas is higher, makes exporting to those regions difficult. LNG is one option for export, but the United States currently has only one, small, old liquefaction plant, inconveniently located in Alaska. At least seven new sites have applied to the Department of Energy to be allowed to liquefy and export natural gas, and two of these, in Freeport, Texas, and Sabine Pass, La., could be partially online by 2015 or 2016 and have a maximum combined exporting capacity of approximately 30 bcm per year. New liquefaction plants are costly -- the Sabine Pass facility is expected to cost $6 billion -- but higher market prices abroad will help companies recoup their initial investment sooner. The planning and construction of an LNG export facility can take anywhere from three to seven years, though delays are likely. Concerns over the environmental impact of the LNG plant and associated infrastructure threaten to delay the start of construction for a facility in Jordan Cove, Ore., and with five of the seven planned facilities being located on the coast of the Gulf of Mexico, there is the potential for hurricane damage to delay the construction process. Even without delays, full export capacity will not be reached for years.

#### No support for exports in the foreseeable future and long timeframe

Dlouhy 7/16/12 (Jennifer A., staffwriter, “Natural gas glut a dilemma for Obama” http://www.chron.com/business/article/Natural-gas-glut-a-dilemma-for-Obama-3706576.php)

WASHINGTON - The drilling boom that has led to a glut of natural gas and sent prices to 10-year lows is causing a quandary for the Obama administration, which is struggling to decide whether - and how much - the U.S. should share the bounty with foreign countries. Although the Energy Department recently approved Houston-based Cheniere Energy's plans to begin exporting liquefied natural gas from its Sabine Pass terminal in southwest Louisiana, the government has put off verdicts on similar applications from at least seven other companies. Administration officials say they'll make those decisions after they get the results of a study commissioned by the Energy Department on how allowing companies to sell U.S.-produced natural gas overseas would affect prices for American consumers. The study is due out this summer. "We want analysis to drive decisions," White House energy adviser Heather Zichal said at a recent forum. The administration supports domestic natural gas and isn't opposed to exports, she said, but also is committed to "protecting American consumers and making sure we're sending the right signal to industry and the manufacturing sector." The dilemma is politically treacherous in an election year and struggling economy. Although the United States already exports some natural gas - mostly by pipelines to Mexico and Canada - the flurry of proposals to liquefy natural gas for tanker shipment and sell it to foreign consumers would mean a big jump in exports. Applications filed with the Energy Department could put the United States on track to export about 16 billion cubic feet of liquefied natural gas each day - nearly a quarter of U.S. daily production in 2011. But few expect all of those proposals to win federal approval, and it could be years before construction is finished on even those projects that win the green light. Experts at IHS CERA say the realistic potential market for exports from the U.S. and Canada is 4 billion to 5 billion cubic feet per day by 2020. An Energy Information Administration report released in January concluded that exporting natural gas would cause prices to climb in the U.S. According to the agency, consumers' electricity bills would increase by 1 percent to 3 percent from 2015 to 2035 and industrial prices would climb 9 percent to 28 percent. Unlike crude, which is a globally traded commodity, natural gas is traded on non-integrated markets, resulting in huge price variations in different places. The prospect of selling natural gas in Asian and European markets at five times its price in the U.S. is enough to make most domestic producers giddy. Energy companies and analysts have argued that current U.S. natural gas prices are unsustainable. It closed Friday at $2.874 per million British thermal units in trading on the New York Mercantile Exchange. The opposing argument is that exports could cause prices to spike, sending electricity bills upward and jeopardizing a resurgence in domestic manufacturing tied to abundant, cheap natural gas. Manufacturers that use natural gas to fuel their plants and as a building block to make other products were hit hard over the past two decades by volatile swings in prices, which last peaked over $15 in 2005. Because any position risks alienating important constituencies - energy producers and manufacturers as well as voters - few elected officials are pushing the issue.

#### Russian FDI policy explicitly models CFIUS

Gill et al 2009

Franklin E., retired Research Professor of Law, University of New Mexico School of Law and Chief Corporate Financial Counsel, Sun Company, Inc. The International Lawyer Vol 43 No 2 Summer 2009, Russia and Ukraine, http://www.americanbar.org/content/dam/aba/multimedia/international\_law/docs/committees/russia\_eurasia/russiaeurasiayir.authcheckdam.pdf

One of Vladimir Putin’s last acts in his capacity as Russia’s president was to sign into law, on April 29, 2008, a new federal statute requiring foreign investors wishing to acquire a substantial stake in “strategically significant” enterprises in Russia to seek advance government approval for any such acquisition.13 The law has been criticized as likely to have a chilling effect on already-wary foreign investors and further amplify the Russian Government’s power to control economic activity for political ends.14 Defenders of the law point out that many, if not most, countries have adopted some measures to restrict foreign investors’ acquisition rights in certain strategically vital spheres of economic activity.15 The United States, for instance, has maintained, since 1988, its own governmental review procedure for foreign investments affecting national security interests, under the so-called “Exon-Florio” provisions,16 and has recently en-acted amendments to the procedure designed to expand the scope of this review.17 Indeed, the official Explanatory Note to Russia’s Foreign Investment in Strategic Enterprises Law (FISEL) expressly refers to the “analogous” nature of the U.S. legislation.18 In assessing the features and likely impact of the new Russian law, it might therefore be instructive, particularly for U.S.-based observers, to compare its provisions and their implementation to those of Exon-Florio. Both Russia’s FISEL and the United States’ Exon-Florio provisions permit their respective governments to reject foreign investment transactions deemed to threaten national security interests.19 There are quite a few significant differences, however, in how the two laws are structured.

#### FDI is key to Russian oil and gas modernization – capital intensive.

Heinrich and Pleines 2012

Dr. Andreas Heinrich and Dr. Heiko Pleines are working at the Research Centre for East European Studies at the University of Bremen, The Political Challenges of an Oil Boom: the Resource Curse and Political Stability in Russia RUSSIAN ANALYTICAL DIGEST No. 113, 15 May 2012 http://www.css.ethz.ch/publications/pdfs/RAD-113.pdf

With no relevant legislation in place, all post-Soviet states saw production sharing agreements (PSAs) as the preferred means of regulating FDI in oil and gas production, because these case-specific agreements are immune to administrative and legislative changes in the host country. Although host governments and investors may have complementary interests, as both profit from rising oil or gas production,

there are limits to reciprocity. On the one hand, big multi-national companies can have an information advantage, as they often have a better understanding of the nature of deposits, the technical challenges and the amount of profits to be expected. On the other hand, oil and gas projects are characterized by large capital investments. Thus, the host government might use the (sunk) assets as ‘hostages’ to extract increased resource rents and/or limit foreign ownership through forced divestment and expropriation of assets. The Russian state has been markedly indecisive concerning foreign direct investment in the oil and gas industry, swinging between a desperate need for investment in order to modernise one of the most important sectors of the Russian economy and a fear of surrendering control over this important sector to foreign interests. Which aspect dominated was influenced by general political and economic trends. Until 1992, when enthusiasm for market reforms was growing, the legal foundations for joint ventures were laid. When public sentiment against capitalism and a sell-out to foreign investors was rising, restrictions on foreign investment were tightened. When the financial crisis of 1998 made foreigners the only possible source of cash, a more attractive PSA law was enacted rather smoothly. Increased earnings, resulting from the rise in world market prices for oil, then again cooled the interest in foreign direct investment in the industry. In a turn to resource nationalism the role of state companies in the industry was increased.

### Ozone Add On

#### Wind solves NO2 emissions.

**Sovacool 11** (Benjamin K., Assistant Professor at the Lee Kuan Yew School of Public Policy, part of the National University of Singapore. He is also a Research Fellow in the Energy Governance Program at the Centre on Asia and Globalization, The Hidden Factors That Make Wind Energy Cheaper than Natural Gas in the United States, The Electricity Journal, Volume 24, Issue 9, November 2011, Pages 84–95)

With uncertainty around natural gas and power prices as the economy recovers, wind's long-term price stability is even more valued.¶ Such close competition between wind and natural gas has led to some contradictory and confusing statements from energy experts. Taking just two examples, Elizabeth Salerno, director of industry data and analysis for the American Wind Energy Association, commented earlier this year that “wind's costs have dropped over the past two years, with power purchase agreements being signed in the range of 5 to 6 cents per kilowatt-hour recently. With uncertainty around natural gas and power prices as the economy recovers, wind's long-term price stability is even more valued. We expect that utilities will move to lock in more wind contracts, given the cost-competitive nature of wind in today's market.”12 Conversely, Sherle Schwenninger, director of economic growth programs at the New America Foundation, stated the opposite this summer when he said that “it makes no economic sense … to subsidize the installation of imported wind turbines when natural-gas-fired generators can produce an equivalent amount of energy for one-third to one-half the cost.”13¶ Which side is right? In an attempt to contribute to the debate, this study looks at a broader set of costs and benefits associated with natural gas and wind energy including human health, wildlife, and climate change implications. We compare two sources of energy at two locations: natural-gas-fired peaking plants run by Pacific Gas & Electric (PG&E) in California with the wind energy from 580 MW Altamont Pass, and combined cycle natural-gas-fired power plants operated by Idaho Power with the 12 MW Sawtooth wind farm.¶ As discussed below, we find that negative externalities, associated with air-pollution-related health effects and climate change, add about 2–12 cents per kWh for natural-gas-fired generation, depending on the location of the wind farms and other factors. These readily quantifiable negative externalities, while not a full accounting of all possible externalities, suggest that the cost of natural-gas-fired electricity exceeds that of wind power.¶ II. Human Health and Air Pollution¶ A significant benefit of wind power compared to natural gas is the almost complete elimination of fossil-fuel-related emissions. Natural gas combustion directly emits fine particulate matter less than 2.5 microns in diameter (PM2.5) as well as noxious gases such as **sulfur dioxide** (SO2), **nitrogen oxides** (NOx), **volatile organic carbons** (VOCs), and **ammonia** (NH3) that contribute to secondary PM2.5 and ozone formation. Both PM2.5 and ozone have serious health consequences. PM2.5 is more harmful and it is easier to model, so the present analysis focuses on PM2.5, and simply notes that our estimate of the air-pollution-related health impacts of natural gas is an underestimate to the extent that it does not include ozone.

**That’s key to avoid ozone destruction.**

**Thompson 12** (Andrew J. Thomson et al, May 2012. 1School of Biological Sciences, Norwich Research Park, University of East Anglia. Biological sources and sinks of nitrous oxide and strategies to mitigate emissions, Philosophical Transactions of the Royal Society of Biological Sciences, 367.1593, p. 1157-1168)

N2O concentrations in the atmosphere are rising steadily with consequences not only for global warming but also for **ozone destruction**. The paper by Portmann et al. [[72](http://rstb.royalsocietypublishing.org/content/367/1593/1157.full#ref-72)] reports the effects of N2O, together with other gases CO2, CH4 and halocarbons, on stratospheric ozone levels over the past 100 years and predicts its future evolution using a chemical model of the stratosphere. This model and the underlying chemistry are set out in their paper. It is concluded that, as halocarbons return toward pre-industrial levels, N2O and CO2 are likely to play the **dominant roles** in ozone depletion. They show, however, that there are nonlinear interactions between these gases that preclude the unambiguous separation of their effects on ozone. For example, the chemical destruction of O3 by N2O is buffered by the thermal effects of CO2 in the middle stratosphere by approximately 20 per cent. Nonetheless, it is clear that N2O is expected to be **the largest** ozone-destroying compound in the foreseeable future. Hence, successful mitigation of release of anthropogenic N2O provides a more important opportunity for reduction in future ozone depletion than any of the remaining uncontrolled halocarbon emissions.

**Ozone depletion causes extinction.**

**Greenpeace 95** (“Full of Homes: The Montreal Protocol and the Continuing Destruction of the Ozone Layer,” http://archive.greenpeace.org/ozone/holes/holebg.html)

When chemists Sherwood Rowland and Mario Molina first postulated a link between chlorofluorocarbons and ozone layer depletion in 1974, the news was greeted with scepticism, but taken seriously nonetheless. The vast majority of credible scientists have since confirmed this hypothesis. The ozone layer around the Earth shields us all from harmful ultraviolet radiation from the sun. Without the ozone layer, **life on earth would not exist**. Exposure to increased levels of ultraviolet radiation can cause cataracts, skin cancer, and immune system suppression in humans as well as innumerable effects on other living systems. This is why Rowland's and Molina's theory was taken so seriously, so quickly - the stakes are literally the **continuation of life on earth**.

### Chemical Industry Add On

#### Wind power can serve as a hedge against natural gas price shocks and volatility

**Berry**, **5** (David, Energy Project, Western Resource Advocates, Energy Policy, “Renewable Energy as a Natural Gas Price Hedge: The Case of Wind,”April, vol. 22, no. 6, pp. 799-807)

3. Renewable energy as a price hedge

Renewable energy with **low and stable prices** can serve as a hedge against natural gas price volatility and against natural gas price increases. Table 1 shows the major non-hydro renewable energy technologies in the United States as of early 2003. Biomass technologies comprise the most generating capacity and much of that capacity is located at industrial or agricultural sites, using timber residue or agricultural waste as fuel. Wind is second in terms of generating capacity. About 60% of the US wind generating capacity in early 2003 was located in California and Texas. Other states with over 100 MW of wind capacity on line in mid-2003 are: Minnesota, Washington, Oregon, Iowa, Wyoming, New Mexico, and Kansas. Geothermal energy is currently concentrated in California, Nevada, Utah, and Hawaii. Nearly all of the solar electric generation is found at one solar thermal project in California, with the rest consisting mostly of photovoltaic generating capacity, the majority of which is located in Arizona and California. Table 1. Generating capacity of US non-hydro renewable energy projects Of these major non-hydro renewable energy resources, wind energy is among the lowest cost per kWh generated in 2003, assuming continuation of the production tax credit, and it is expected to be the largest component of growth of renewable energy in the next few years (Navigant Consulting, Inc., 2003, p. 11, 17). Other low cost technologies include landfill gas (included in biomass in Table 1), and biomass co-firing with coal ( Navigant Consulting, Inc., 2003, p. 11). Any low cost renewable energy technology with stable prices that displaces significant volumes of natural gas could be used as a price hedge. Because wind energy is expected to grow rapidly in the next few years, it is reasonable to evaluate wind energy as a price hedge. A hedge is a mechanism to reduce the risk of paying high prices for natural gas in the future. However, wind is not a perfect substitute for gas-fired energy. Wind does not blow on demand and is available only intermittently. Thus, wind energy can only be used when it is available and cannot reliably displace all gas generation. The hedge provided by wind is similar to a financial swap (Bolinger et al., 2002) in that a resource with a stable price is substituted for a resource with a highly volatile price. If a utility uses wind as a hedge against volatile natural gas prices, it foregoes savings when gas prices are low but avoids paying high prices when gas prices are high. A wind hedge, as it has developed so far, does not provide the utility with the option of taking wind energy only when gas prices are high. As discussed further below, utilities typically take all the energy output from a wind facility regardless of gas prices

#### High gas prices jack the chemical sector

**Bezdek and Wendling, 04** – work for Management Information Services Inc. (Roger and Robert, PUBLIC UTILITIES FORTNIGHTLY, “The Case Against Gas Dependence”, April, lexis)

Moreover, two articles last year in Public Utilities Fortnightly that addressed natural gas supply, demand, and price issues seemed to confuse the solution with the problem. Robert Linden noted that high gas prices would lead to "demand destruction" in the industrial sector, which would, in part, counterbalance increasing power sector demand. n17 He further stated, "This price-induced demand destruction can be added to the other causes of reduced gas demand, including the closure of industrial facilities using natural gas as a feedstock." n18 Similarly, John Herbert, after noting that high natural gas prices have forced U.S. fertilizer plants to shut down, stated, "As fertilizer and other chemical plants continue to shut down, this will reduce demand for natural gas and increase overall supplies." n19 Both authors are correct in pointing out that high natural gas prices will tend to reduce industrial natural gas demand as industrial plants shut down, and that this will temper future natural gas price increases. However, the "destruction" of the nation's industrial sector is an extremely serious problem for the United States; it is not a "solution" to the natural-gas pricing problem. We should be very concerned with the strongly negative impact high natural gas prices are having on the U.S. industrial sector and the potential implications of this for the U.S. economy. Despite all of the hype in recent years about the new economy, the information economy, the service economy, etc., manufacturing is, by far, the most critical sector of the U.S. economy, and it creates the broad foundation upon which the rest of the economy grows. n20 Manufacturing drives the rest of the economy, provides a disproportionate share of the nation's tax base, generates innovation, and disseminates new technology throughout the economy. The average manufacturing job creates 4.2 jobs directly and indirectly throughout the economy, whereas the average service and retail job generates about one other job, directly and indirectly. The manufacturing sector uses 40 percent of the natural gas consumed in the United States, and virtually every manufacturing industry is heavily dependent on natural gas as a fuel, feedstock, and, increasingly, as a source of electricity generation. Price spikes in the cost of natural gas and electricity in the fall of 2000 precipitated the current manufacturing recession. During the past three years, this sector has been severely affected, losing more than 2.5 million jobs. n21 The current manufacturing recovery is slower than the first year of any recovery in 40 years. n22 Manufacturing is suffering from intense global competition and cannot pass though increased energy costs via product price increases. Reliance on low-cost natural gas has been an often-unrecognized factor in the U.S. manufacturing sector's global competitiveness, and an ample supply of reasonably priced natural gas is critical to its competitiveness. This sector is bearing the brunt of the energy impacts of the natural gas crisis and is suffering from a triple whammy: High natural gas prices are causing industrial electricity prices to increase, the cost of natural gas as a feedstock and fuel is greatly increasing manufacturing costs, and industrial operations are the first to be cut off from natural gas supplies when winter emergencies occur. The natural gas crisis has become a matter of exporting profits and jobs to countries with cheaper natural gas. Thus, the impact of high natural gas prices is, indeed, to destroy the U.S. industrial sector. However, instead of viewing this as an effect that will serve to moderate future natural gas price increases, this must be viewed as a very serious problem resulting from high natural gas prices. To the extent natural gas demand and prices are being driven by the increasing use of gas for electric power generation, the solution should be to substitute other fuels, such as nuclear and coal in this sector, and not to accept demand destruction in the nation's industrial sector. The case against natural gas for electricity generation is quite clear. Specifically: . The use of gas for electricity generation is forecast to more than double by 2025, and, according to both EIA and industry analysts, this demand increase may not be achievable. Natural gas imports are forecast to increase dramatically over the next two decades and, at a time when we are concerned about the nation's increasing dependence on imported oil, America is becoming increasingly dependent on imported natural gas from the same politically unstable regions that contain most of the world's oil supplies. . The increasing use of gas for electric power generation is placing strains on natural gas supplies and the gas transmission and distribution infrastructure, and this will further hinder the provision of adequate gas supplies. . This increasing use is causing the price of natural gas to increase and to become more volatile. Increased prices and price volatility are having adverse consequences for natural gas consumers and are resulting in market disruptions. Gas price volatility will likely increase in the future, thus causing further market disruptions . Natural gas shortages and price volatility can have adverse economic and employment effects, and they can increase U.S. dependence on imported oil. . High natural gas prices are having a devastating impact on U.S. manufacturing industries, and this should be viewed as the most serious effect of the current (and future) gas crisis.

#### Extinction

**Baum 99** – editor-in-chief of the American Chemical Society's Chemical and Engineering News [Rudy M. Baum, C&E News, “Millennium Special Report,” 12-6-99, http://pubs.acs.org/hotartcl/cenear/991206/7749spintro2.html]

The pace of change in today's world is truly incomprehensible. Science is advancing on all fronts, particularly chemistry and biology working together as they never have before to understand life in general and human beings in particular at a breathtaking pace. Technology ranging from computers and the Internet to medical devices to genetic engineering to nanotechnology is transforming our world and our existence in it. It is, in fact, a fool's mission to predict where science and technology will take us in the coming decade, let alone the coming century. We can say with finality only this: We don't know. We do know, however, that we face enormous challenges, we 6 billion humans who now inhabit Earth. In its 1998 revision of world population estimates and projections, the United Nations anticipates a world population in 2050 of 7.3 billion to 10.7 billion, with a "medium-fertility projection," considered the most likely, indicating a world population of 8.9 billion people in 2050. According to the UN, fertility now stands at 2.7 births per woman, down from 5 births per woman in the early 1950s. And fertility rates are declining in all regions of the world. That's good news. But people are living a lot longer. That is certainly good news for the individuals who are living longer, but it also poses challenges for health care and social services the world over. The 1998 UN report estimates for the first time the number of octogenarians, nonagenarians, and centenarians living today and projected for 2050. The numbers are startling. In 1998, 66 million people were aged 80 or older, about one of every 100 persons. That number is expected to increase sixfold by 2050 to reach 370 million people, or one in every 24 persons. By 2050, more than 2.2 million people will be 100 years old or older! Here is the fundamental challenge we face: The world's growing and aging population must be fed and clothed and housed and transported in ways that do not perpetuate the environmental devastation wrought by the first waves of industrialization of the 19th and 20th centuries. As we increase our output of goods and services, as we increase our consumption of energy, as we meet the imperative of raising the standard of living for the poorest among us, we must learn to carry out our economic activities sustainably. There are optimists out there, C&EN readers among them, who believe that the history of civilization is a long string of technological triumphs of humans over the limits of nature. In this view, the idea of a "carrying capacity" for Earth—a limit to the number of humans Earth's resources can support—is a fiction because technological advances will continuously obviate previously perceived limits. This view has historical merit. Dire predictions made in the 1960s about the exhaustion of resources ranging from petroleum to chromium to fresh water by the end of the 1980s or 1990s have proven utterly wrong. While I do not count myself as one of the technological pessimists who see technology as a mixed blessing at best and an unmitigated evil at worst, I do not count myself among the technological optimists either. There are environmental challenges of transcendent complexity that I fear may overcome us and our Earth before technological progress can come to our rescue. Global climate change, the accelerating destruction of terrestrial and oceanic habitats, the catastrophic loss of species across the plant and animal kingdoms—these are problems that are not obviously amenable to straightforward technological solutions. But I know this, too: Science and technology have brought us to where we are, and only science and technology, coupled with innovative social and economic thinking, can take us to where we need to be in the coming millennium. Chemists, **chemistry, and the chemical industry**—what we at C&EN call the chemical enterprise—**will play central roles in addressing these challenges**. The first section of this Special Report is a series called ["Millennial Musings"](https://mail.kinkaid.org/Redirect/pubs.acs.org/hotartcl/cenear/991206/7749muse1.html) in which a wide variety of representatives from the chemical enterprise share their thoughts about the future of our science and industry. The five essays that follow explore the contributions the chemical enterprise is making right now to ensure that we will successfully meet the challenges of the 21st century. The essays do not attempt to predict the future. Taken as a whole, they do not pretend to be a comprehensive examination of the efforts of our science and our industry to tackle the challenges I've outlined above. Rather, they paint, in broad brush strokes, a portrait of scientists, engineers, and business managers struggling to make a vital contribution to humanity's future. The first essay, by Senior Editor Marc S. Reisch, is a case study of the [chemical industry's ongoing transformation to sustainable production.](https://mail.kinkaid.org/Redirect/pubs.acs.org/hotartcl/cenear/991206/7749sustain.html) Although it is not well known to the general public, the chemical industry is at the forefront of corporate efforts to reduce waste from production streams to zero. Industry giants DuPont and Dow Chemical are taking major strides worldwide to manufacture chemicals while minimizing the environmental "footprint" of their facilities. This is an ethic that starts at the top of corporate structure. Indeed, Reisch quotes Dow President and Chief Executive Officer William S. Stavropolous: "We must integrate elements that historically have been seen as at odds with one another: the triple bottom line of sustainability—economic and social and environmental needs." DuPont Chairman and CEO Charles (Chad) O. Holliday envisions a future in which "biological processes use renewable resources as feedstocks, use solar energy to drive growth, absorb carbon dioxide from the atmosphere, use low-temperature and low-pressure processes, and produce waste that is less toxic." But sustainability is more than just a philosophy at these two chemical companies. Reisch describes ongoing Dow and DuPont initiatives that are making sustainability a reality at Dow facilities in Michigan and Germany and at DuPont's massive plant site near Richmond, Va. Another manifestation of the chemical industry's evolution is its embrace of life sciences. Genetic engineering is a revolutionary technology. In the 1970s, research advances fundamentally shifted our perception of DNA. While it had always been clear that deoxyribonucleic acid was a *chemical,* it was not a chemical that could be manipulated like other chemicals—clipped precisely, altered, stitched back together again into a functioning molecule. Recombinant DNA techniques began the transformation of DNA into just such a chemical, and the reverberations of that change are likely to be felt well into the next century. Genetic engineering has entered the fabric of modern science and technology. It is one of the basic tools chemists and biologists use to understand life at the molecular level. It provides new avenues to pharmaceuticals and new approaches to treat disease. It expands enormously agronomists' ability to introduce traits into crops, a capability seized on by numerous chemical companies. There is no doubt that this powerful new tool will play a major role in [feeding the world's population](https://mail.kinkaid.org/Redirect/pubs.acs.org/hotartcl/cenear/991206/7749food.html) in the coming century, but its adoption has hit some bumps in the road. In the second essay, Editor-at-Large Michael Heylin examines how the promise of agricultural biotechnology has gotten tangled up in real public fear of genetic manipulation and corporate control over food.

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Baker Botts-INTERNATIONAL TRADE UPDATE-10/1/12

President Obama Blocks Chinese-Owned Wind-Farm Development

http://www.bakerbotts.com/file\_upload/Update201210IntlTrade-PresidentObamaBlocksChinese-OwnedWind-FarmDevelopment2.htm

On a more general point, CFIUS has moved to adopt a much more expansive view of what constitutes a U.S. business under FINSA in the Ralls case, and this arguably extends beyond CFIUS’ own guidance issued in 2008. As described in the filings with the court, Ralls acquired the rights to develop several wind-farm installations (permits and some contracts, primarily). The acquisition as described by Ralls does not appear to involve the bundle of tangible assets that would normally constitute a business, such as employees or buildings.

Exon Florio gives president authority to prohibit

Francisco-Jones Day-8

<http://www.jonesday.com/exon-florio-alert-regulations-implementing-finsa-take-effect-12-24-2008/>

Exon-Florio Alert: Regulations Implementing FINSA Take Effect

The Exon-Florio amendment to the Defense Production Act ("DPA"), enacted in 1988, authorized the President to investigate the impact of foreign acquisitions of U.S. businesses on national security and to suspend or prohibit acquisitions that might threaten the national security. In 1988, President Reagan delegated the investigative authority to CFIUS, an interagency group established in 1975 to monitor and coordinate U.S. policy on foreign investment in the United States. In 1991, the Treasury Department, as chair of CFIUS, issued regulations to implement Exon-Florio. In 1992, the so-called "Byrd amendment" required CFIUS to investigate mergers, acquisitions, or takeovers by persons controlled by or acting on behalf of a foreign government if the transaction resulted in control of a person engaged in interstate commerce in the U.S. that could affect national security.

This includes restrictions on energy investment that threaten “national economic security”

Jackson-Congressional Research Service-9/26/12

The Committee on Foreign Investment in the United States (CFIUS)

<http://www.fas.org/sgp/crs/natsec/RL33388.pdf>

Factors for Consideration

The Exon-Florio provision includes a list of twelve factors the President must consider in deciding to block a foreign acquisition. These factors are also considered by the individual members of CFIUS as part of their own review process to determine if a particular transaction threatens to impair the national security. This list includes the following elements: (1) domestic production needed for projected national defense requirements; (2) the capability and capacity of domestic industries to meet national defense requirements, including the availability of human resources, products, technology, materials, and other supplies and services; (3) the control of domestic industries and commercial activity by foreign citizens as it affects the capability and capacity of the U.S. to meet the requirements of national security; (4) the potential effects of the transactions on the sales of military goods, equipment, or technology to a country that supports terrorism or proliferates missile technology or chemical and biological weapons; and transactions identified by the Secretary of Defense as “posing a regional military threat” to the interests of the United States; (5) the potential effects of the transaction on U.S. technological leadership in areas affecting U.S. national security; (6) whether the transaction has a security-related impact on critical infrastructure in the United States: (7) the potential effects on United States critical infrastructure, including major energy assets; (8) the potential effects on United States critical technologies; (9) whether the transaction is a foreign government-controlled transaction; (10) in those cases involving a government-controlled transaction, a review of (A) the adherence of the foreign country to nonproliferation control regimes, (B) the foreign country’s record on cooperating in counter-terrorism efforts, (C) the potential for transshipment or diversion of technologies with military applications,; (11) the long-term projection of the United States requirements for sources of energy and other critical resources and materials; and (12) such other factors as the President or the Committee determine to be appropriate.36 Factors 6-12 that were added through P.L.-110-49 potentially broaden significantly the scope of CFIUS’ reviews and investigations. Previously, CFIUS had been directed by Treasury Department regulations to focus its activities primarily on investments that had an impact on U.S. national defense security. The additional factors, however, incorporate economic considerations into the Exon-Florio process in a way that was specifically rejected when the measure initially was adopted and refocuses CFIUS’s reviews and investigations to consider the broader rubric of economic security. In particular, CFIUS is now required to consider the impact of an investment on critical infrastructure as a factor for considering recommending that the President block or postpone a transaction. Critical infrastructure is defined in broad terms within the measure as: “any systems and assets, whether physical or cyber-based, so vital to the United States that the degradation or destruction of such systems or assets would have a debilitating impact on national security, including national economic security and national public health or safety.”

### China DA

2. China’s military is dependent on its economy – If the economy collapses they wouldn’t be able to fund a war.

New York Post 6/1/99 http://www.papillonsartpalace.com/chinaspy.htm

How are we to make China pay for its wanton act of aggression? The obvious way is to kill its application to join the World Trade Organization and to revoke Most Favored Nation status when it comes up for renewal. We learned from Ronald Reagan's successful fight against the Soviet Union that the soft underbelly of a Communist system is its economy. China could not afford to keep the military establishment it has if it could not count on regular, huge trade deficits with the United States. The Chinese Army is as much an economic as a military institution. Weaken Beijing's economy and you weaken its military.

3. China’s economy is literally bulletproof – It can recover from any crisis.

McKay et al 04- Professsor with the Monasha Asia Institute, Monash University, director of the Austraian APEC Study Centre and is currently with Analysis International, a think tank and new research group –2004 (John, Towards China Inc? Assessing the Implications for Africa, ed by G. Mills and N. Skidmore, p. 59-60 )

China’s economic growth is undoubtedly the driving force in the global economy at present. The economy’s recovery after the severe acute respiratory syndrome (SARS) outbreak has been impressive. The gross domestic product (GDP) growth forecast for 2003 is 7.5%. China’s trade surplus in July 2003 amounted to $1.6 billion, with an export value increase of 30.6% to $38.11 billion over July 2002. Import growth is equally dramatic, with imports in the same period increasing 35.3% to $36.51 billion, Continuous trade surpluses have led to China accumulating the largest foreign exchange reserves of any economy at $331 billion. This phenomenal growth achieved despite SARS indicates that the Chinese economy is proving itself to be crisis resistant.