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#### CP: Member nations of the World Trade Organization should enter into a prior and binding consultation with the World Health Organization over reducing intellectual property protections by limiting drug innovators to one market exclusivity of their choice for their drug. Member nations will support the proposal and adopt the results of consultation.

#### WHO says yes

WHO 06 [(World Health Organization, specialized agency of the United Nations responsible for international public health) “Public health, innovation and intellectual property rights,” Report of the Commission on Intellectual Property Rights, Innovation, and Public Health, 2006] JL

Though difficult to discern from incremental innovation in practice, socalled “evergreening” is importantly different. As usually understood, “evergreening” occurs when, in the absence of any apparent additional therapeutic benefits, patent-holders use various strategies to extend the length of their exclusivity beyond the 20-year patent term. President Bush, in 2002, provided a working definition while announcing reforms in response to a Federal Trade Commission (FTC) report (73) on delays to the entry of generic products onto the market:

The FTC...discovered that some brand name drug manufacturers may have manipulated the law to delay the approval of competing generic drugs. When a drug patent is about to expire, one method some companies use is to file a brand new patent based on a minor feature, such as the color of the pill bottle or a specific combination of ingredients unrelated to the drug’s effectiveness … In the meantime, the lower-cost generic drug is shut out of the market … This is not how Congress intended the law to work. Today, I’m taking action to close the loopholes, to promote fair competition and to reduce the cost of prescription drugs in America … These steps we take today will not undermine patent protection. Instead, we are enforcing the original intent of a good law. Our message to brand name manufacturers is clear: you deserve the fair rewards of your research and development; you do not have the right to keep generic drugs off the market for frivolous reasons (81).

Evergreening can occur in a number of ways but typically, as noted by President Bush, it arises when companies file and obtain patents, subsequent to the original patent, on other aspects of the same compound or reformulations of the original compound in ways that might be regarded as of no incremental therapeutic value, but which are nevertheless patentable. For instance, strategies include a similar but different dosage form such as capsules rather than tablets, salts, esters, or crystals (polymorphs) of the same product or other changes dependent on the ingenuity of the formulators and the lawyers. These types of strategies occur in almost all jurisdictions, especially for lucrative products (see Box 4.7) (82, 83).

Where there is a linkage between the patent system and the procedures for approving new drugs (for example, in Canada and the United States), the policy issues take a particular form. In the United States, for instance, the Federal Trade Commission catalogued a number of instances where generic entry was delayed by up to fi ve years by successive stays of up to 30 months on the entry of a generic competitor (see Box 4.7). These stays were provided automatically under the United States law if a brand-holder challenged the generic company for infringement, until the changes announced by President Bush reduced this to one stay only.

These linkage arrangements are essentially supplementary to the patent system. But they alter the way in which the patent system operates for pharmaceutical products.15 Nevertheless, the final decisions on patent validity and infringement cases lie with the courts. This means that any change to tackle evergreening at its roots requires measures to reduce the likelihood of such patents being granted or, if granted, of being upheld in the courts. While, as previously stated, some forms of incremental innovation might be important in terms of patient benefit, faced with the reality of the TRIPS agreement, developing countries need to consider how their own patent laws may deal with this issue. Patents on minor developments are used, often aggressively, by some patent holders to delay or block generic competition. Small and medium-sized generic firms in developing countries, in particular, are generally unable to sustain costly and lengthy legal challenges, and opt to avoid fields where litigation may arise. The outcome may be the reduction or suppression of competition and, in some cases higher prices for patients.

#### Consultation displays strong leadership, authority, and cohesion among member states which are key to WHO legitimacy

Gostin et al 15 [(Lawrence O., Linda D. & Timothy J. O’Neill Professor of Global Health Law at Georgetown University, Faculty Director of the O’Neill Institute for National & Global Health Law, Director of the World Health Organization Collaborating Center on Public Health Law & Human Rights, JD from Duke University) “The Normative Authority of the World Health Organization,” Georgetown University Law Center, 5/2/2015] JL

Members want the WHO to exert leadership, harmonize disparate activities, and set priorities. Yet they resist intrusions into their sovereignty, and want to exert control. In other words, ‘everyone desires coordination, but no one wants to be coordinated.’ States often ardently defend their geostrategic interests. As the Indonesian virus-sharing episode illustrates, the WHO is pulled between power blocs, with North America and Europe (the primary funders) on one side and emerging economies such as Brazil, China, and India on the other. An inherent tension exists between richer ‘net contributor’ states and poorer ‘net recipient’ states, with the former seeking smaller WHO budgets and the latter larger budgets.

Overall, national politics drive self-interest, with states resisting externally imposed obligations for funding and action. Some political leaders express antipathy to, even distrust of, UN institutions, viewing them as bureaucratic and inefficient. In this political environment, it is unsurprising that members fail to act as shareholders. Ebola placed into stark relief the failure of the international community to increase capacities as required by the IHR. Guinea, Liberia and Sierra Leone had some of the world's weakest health systems, with little capacity to either monitor or respond to the Ebola epidemic.20 This caused enormous suffering in West Africa and placed countries throughout the region e and the world e at risk. Member states should recognize that the health of their citizens depends on strengthening others' capacity. The WHO has a central role in creating systems to facilitate and encourage such cooperation.

The WHO cannot succeed unless members act as shareholders, foregoing a measure of sovereignty for the global common good. It is in all states' interests to have a strong global health leader, safeguarding health security, building health systems, and reducing health inequalities. But that will not happen unless members fund the Organization generously, grant it authority and flexibility, and hold it accountable.

#### WHO is critical to disease prevention – it is the only international institution that can disperse information, standardize global public health, and facilitate public-private cooperation

Murtugudde 20 [(Raghu, professor of atmospheric and oceanic science at the University of Maryland, PhD in mechanical engineering from Columbia University) “Why We Need the World Health Organization Now More Than Ever,” Science, 4/19/2020] JL

WHO continues to play an indispensable role during the current COVID-19 outbreak itself. In November 2018, the US National Academies of Sciences, Engineering and Medicine organised a workshop to explore lessons from past influenza outbreaks and so develop recommendations for pandemic preparedness for 2030. The salient findings serve well to underscore the critical role of WHO for humankind.

The world’s influenza burden has only increased in the last two decades, a period in which there have also been 30 new zoonotic diseases. A warming world with increasing humidity, lost habitats and industrial livestock/poultry farming has many opportunities for pathogens to move from animals and birds to humans. Increasing global connectivity simply catalyses this process, as much as it catalyses economic growth.

WHO coordinates health research, clinical trials, drug safety, vaccine development, surveillance, virus sharing, etc. The importance of WHO’s work on immunisation across the globe, especially with HIV, can hardly be overstated. It has a rich track record of collaborating with private-sector organisations to advance research and development of health solutions and improving their access in the global south.

It discharges its duties while maintaining a dynamic equilibrium between such diverse and powerful forces as national securities, economic interests, human rights and ethics. COVID-19 has highlighted how political calculations can hamper data-sharing and mitigation efforts within and across national borders, and WHO often simply becomes a convenient political scapegoat in such situations.

International Health Regulations, a 2005 agreement between 196 countries to work together for global health security, focuses on detection, assessment and reporting of public health events, and also includes non-pharmaceutical interventions such as travel and trade restrictions. WHO coordinates and helps build capacity to implement IHR.

#### Cross apply the Millet 17 card from case for disease causes extinction.

#### WHO diplomacy solves great power conflict

Murphy 20 [(Chris, U.S. senator from Connecticut serving on the U.S. Senate Foreign Relations Committee) “The Answer is to Empower, Not Attack, the World Health Organization,” War on the Rocks, 4/21/2020] JL

The World Health Organization is critical to stopping disease outbreaks and strengthening public health systems in developing countries, where COVID-19 is starting to appear. Yemen announced its first infection earlier this month, and other countries in Africa, Asia and the Middle East are at severe risk. Millions of refugees rely on the World Health Organization for their health care, and millions of children rely on the WHO and UNICEF to access vaccines.

The World Health Organization is not perfect, but its team of doctors and public health experts have had major successes. Their most impressive claim to fame is the eradication of smallpox – no small feat. More recently, the World Health Organization has led an effort to rid the world of two of the three strains of polio, and they are close to completing the trifecta.

These investments are not just the right thing to do; they benefit the United States. Improving health outcomes abroad provides greater political and economic stability, increasing demand for U.S. exports. And, as we are all learning now, it is in America’s national security interest for countries to effectively detect and respond to potential pandemics before they reach our shores.

As the United States looks to develop a new global system of pandemic prevention, there is absolutely no way to do that job without the World Health Organization. Uniquely, it puts traditional adversaries – like Russia and the United States, India and Pakistan, or Iran and Saudi Arabia – all around the same big table to take on global health challenges. It has relationships with the public health leaders of every nation, decades of experience in tackling viruses and diseases, and the ability to bring countries together to tackle big projects. This ability to bridge divides and work across borders cannot be torn down and recreated – not in today’s environment of major power competition – and so there is simply no way to build an effective international anti-pandemic infrastructure without the World Health Organization at the center.

## 1NC

#### Biotech industry strong now.

Cancherini et al. 4/30 [(Laura, Engagement Manager @ McKinsey & Company, Joseph Lydon, Associate Partner @ McKinsey & Company, Jorge Santos Da Silva, Senior Partner at McKinsey & Company, and Alexandra Zemp, Partner at McKinsey & Company), “What’s ahead for biotech: Another wave or low tide?“, McKinsey & Company, 4-30-2021, https://www.mckinsey.com/industries/pharmaceuticals-and-medical-products/our-insights/whats-ahead-for-biotech-another-wave-or-low-tide] TDI

As the pandemic spread across the globe in early 2020, biotech leaders were initially pessimistic, reassessing their cash position and financing constraints. When McKinsey and BioCentury interviewed representatives from 106 biotech companies in May 2020,4 half of those interviewed were expecting delays in financing, and about 80 percent were tight on cash for the next two years and considering trade-offs such as deferring IPOs and acquisitions. Executives feared that valuations would decline because of lower revenue projections and concerns about clinical-trial delays, salesforce-effectiveness gaps, and other operational issues.

Belying this downbeat mood, biotech has in fact had one of its best years so far. By January 2021, venture capitalists had invested some 60 percent more than they had in January 2020, with more than $3 billion invested worldwide in January 2021 alone.5 IPO activity grew strongly: there were 19 more closures than in the same period in 2020, with an average of $150 million per raise, 17 percent more than in 2020. Other deals have also had a bumper start to 2021, with the average deal size reaching more than $500 million, up by more than 66 percent on the 2020 average (Exhibit 3).6

What about SPACs?

The analysis above does not include special-purpose acquisition companies (SPACs), which have recently become significant in IPOs in several industries. Some biotech investors we interviewed believe that SPACs represent a route to an IPO. How SPACs will evolve remains to be seen, but biotechs may be part of their story.

Fundamentals continue strong

When we asked executives and investors why the biotech sector had stayed so resilient during the worst economic crisis in decades, they cited innovation as the main reason. The number of assets transitioning to clinical phases is still rising, and further waves of innovation are on the horizon, driven by the convergence of biological and technological advances.

In the present day, many biotechs, along with the wider pharmaceutical industry, are taking steps to address the COVID-19 pandemic. Together, biotechs and pharma companies have more than 250 vaccine candidates in their pipelines, along with a similar number of therapeutics. What’s more, the crisis has shone a spotlight on pharma as the public seeks to understand the roadblocks involved in delivering a vaccine at speed and the measures needed to maintain safety and efficacy standards. To that extent, the world has been living through a time of mass education in science research and development.

Biotech has also benefited from its innate financial resilience. Healthcare as a whole is less dependent on economic cycles than most other industries. Biotech is an innovator, actively identifying and addressing patients’ unmet needs. In addition, biotechs’ top-line revenues have been less affected by lockdowns than is the case in most other industries.

Another factor acting in the sector’s favor is that larger pharmaceutical companies still rely on biotechs as a source of innovation. With the top dozen pharma companies having more than $170 billion in excess reserves that could be available for spending on M&A, the prospects for further financing and deal making look promising.

For these and other reasons, many investors regard biotech as a safe haven. One interviewee felt it had benefited from a halo effect during the pandemic.

More innovation on the horizon

The investors and executives we interviewed agreed that biotech innovation continues to increase in quality and quantity despite the macroeconomic environment. Evidence can be seen in the accelerating pace of assets transitioning across the development lifecycle. When we tracked the number of assets transitioning to Phase I, Phase II, and Phase III clinical trials, we found that Phase I and Phase II assets have transitioned 50 percent faster since 2018 than between 2013 and 2018, whereas Phase III assets have maintained much the same pace. There could be many reasons for this, but it is worth noting that biotechs with Phase I and Phase II assets as their lead assets have accounted for more than half of biotech IPOs. Having an early IPO gives a biotech earlier access to capital and leaves it with more scope to concentrate on science.

Looking forward, the combination of advances in biological science and accelerating developments in technology and artificial intelligence has the potential to take innovation to a new level. A recent report from the McKinsey Global Institute analyzed the profound economic and social impact of biological innovation and found that biomolecules, biosystems, biomachines, and biocomputing could collectively produce up to 60 percent of the physical inputs to the global economy. The applications of this “Bio Revolution” range from agriculture (such as the production of nonanimal meat) to energy and materials, and from consumer goods (such as multi-omics tailored diets) to a multitude of health applications.

#### Secondary patents are key to innovation – recouping development costs and new applications of existing medicines

Richards et al 20 [(Kevin T., Associate Solicitor at the US Patent and Trademark Office, former legislative attorney at CRS, JD from UVA School of Law) “Drug Pricing and Pharmaceutical Patenting Practices,” Congressional Research Service, 2/11/2020] JL

Defenders of evergreening respond that the term is "inherently pejorative" because it creates the impression that pharmaceutical companies are exploiting the patent system.157 Defenders contend that there is nothing inherently suspect about secondary patents, which must meet the same requirements for patentability and pass through the same examination procedures as any other patent.158 Indeed, those requirements bar a secondary patent on an obvious variation of the primary patent or on another product or invention already available to the public.159 "[I]t is often the case," defenders contend, "that the value of a follow-on patent is comparable to, or even might exceed, that of a primary patent."160 One example arguably supporting this view is the drug Evista (raloxifine). Evista was "initially studied as a potential treatment for breast cancer" but, in 1997, FDA approved the drug for the prevention of osteoporosis.161 At that time, there were only a few years left on Evista's initial patent, which was filed in 1983.162 If the brand could not patent the new use (i.e., for prevention of osteoporosis), one commentator has argued that insufficient incentives would have existed to make the investment in R&D necessary to bring the drug to market.163

Defenders also argue that the ability to receive a patent on a later-developed formulation provides a significant incentive to address problems with the original formulation. For example, the original formulation of Lumigan, which is used to treat glaucoma, resulted, at times, in sufficiently severe red eye that patients would discontinue its use.164 Researchers subsequently developed an improved formulation with significantly decreased risk of this side effect.165 Defenders of secondary patents contend that without the possibility of patent protection, there would have been little incentive to perform this sort of research due to the significant costs involved.166

Secondary patents are also defended on the grounds of being necessary to recoup development costs. A recent study found that even though the patent term is generally twenty years, delays in PTO and FDA approval can decrease the nominal Orange Book patent term to 15.9 years, and generic competition can result in an effective market exclusivity of only 12.2 years.167 This effective market exclusivity is less than the sixteen years that one commentator suggests is necessary to recoup the brand's fixed costs for research, development, and clinical testing.168

#### Biopharmaceutical innovation is key to prevent future pandemics and bioterror.

Marjanovic and Feijao 20 [(Sonja Marjanovic, Ph.D., Judge Business School, University of Cambridge. Carolina Feijao, Ph.D. in biochemistry, University of Cambridge; M.Sc. in quantitative biology, Imperial College London; B.Sc. in biology, University of Lisbon.) "How to Best Enable Pharma Innovation Beyond the COVID-19 Crisis," RAND Corporation, 05-2020, https://www.rand.org/pubs/perspectives/PEA407-1.html] TDI

As key actors in the healthcare innovation landscape, pharmaceutical and life sciences companies have been called on to develop medicines, vaccines and diagnostics for pressing public health challenges. The COVID-19 crisis is one such challenge, but there are many others. For example, MERS, SARS, Ebola, Zika and avian and swine flu are also infectious diseases that represent public health threats. Infectious agents such as anthrax, smallpox and tularemia could present threats in a bioterrorism context.1 The general threat to public health that is posed by antimicrobial resistance is also well-recognised as an area in need of pharmaceutical innovation. Innovating in response to these challenges does not always align well with pharmaceutical industry commercial models, shareholder expectations and competition within the industry. However, the expertise, networks and infrastructure that industry has within its reach, as well as public expectations and the moral imperative, make pharmaceutical companies and the wider life sciences sector an indispensable partner in the search for solutions that save lives. This perspective argues for the need to establish more sustainable and scalable ways of incentivising pharmaceutical innovation in response to infectious disease threats to public health. It considers both past and current examples of efforts to mobilise pharmaceutical innovation in high commercial risk areas, including in the context of current efforts to respond to the COVID-19 pandemic. In global pandemic crises like COVID-19, the urgency and scale of the crisis – as well as the spotlight placed on pharmaceutical companies – mean that contributing to the search for effective medicines, vaccines or diagnostics is essential for socially responsible companies in the sector. 2 It is therefore unsurprising that we are seeing industry-wide efforts unfold at unprecedented scale and pace. Whereas there is always scope for more activity, industry is currently contributing in a variety of ways. Examples include pharmaceutical companies donating existing compounds to assess their utility in the fight against COVID19; screening existing compound libraries in-house or with partners to see if they can be repurposed; accelerating trials for potentially effective medicine or vaccine candidates; and in some cases rapidly accelerating in-house research and development to discover new treatments or vaccine agents and develop diagnostics tests.3,4 Pharmaceutical companies are collaborating with each other in some of these efforts and participating in global R&D partnerships (such as the Innovative Medicines Initiative effort to accelerate the development of potential therapies for COVID-19) and supporting national efforts to expand diagnosis and testing capacity and ensure affordable and ready access to potential solutions.3,5,6 The primary purpose of such innovation is to benefit patients and wider population health. Although there are also reputational benefits from involvement that can be realised across the industry, there are likely to be relatively few companies that are ‘commercial’ winners. Those who might gain substantial revenues will be under pressure not to be seen as profiting from the pandemic. In the United Kingdom for example, GSK has stated that it does not expect to profit from its COVID-19 related activities and that any gains will be invested in supporting research and long-term pandemic preparedness, as well as in developing products that would be affordable in the world’s poorest countries.7 Similarly, in the United States AbbVie has waived intellectual property rights for an existing combination product that is being tested for therapeutic potential against COVID-19, which would support affordability and allow for a supply of generics.8,9 Johnson & Johnson has stated that its potential vaccine – which is expected to begin trials – will be available on a not-for-profit basis during the pandemic.10 Pharma is mobilising substantial efforts to rise to the COVID-19 challenge at hand. However, we need to consider how pharmaceutical innovation for responding to emerging infectious diseases can best be enabled beyond the current crisis. Many public health threats (including those associated with other infectious diseases, bioterrorism agents and antimicrobial resistance) are urgently in need of pharmaceutical innovation, even if their impacts are not as visible to society as COVID-19 is in the immediate term. The pharmaceutical industry has responded to previous public health emergencies associated with infectious disease in recent times – for example those associated with Ebola and Zika outbreaks.11 However, it has done so to a lesser scale than for COVID-19 and with contributions from fewer companies. Similarly, levels of activity in response to the threat of antimicrobial resistance are still low.12 There are important policy questions as to whether – and how – industry could engage with such public health threats to an even greater extent under improved innovation conditions.

## 1NC

#### WTO is near consensus on fisheries subsidies – success will require continued focus, flexibility, and cooperation among members

WTO 7/15 [(World Trade Organization) “WTO members edge closer to fisheries subsidies agreement,” News and Events, 7/15/2021] JL

During an all-day meeting with 104 ministers and heads of delegation, WTO members pledged to conclude the negotiations soon and certainly before the WTO's Ministerial Conference in early December, and to empower their Geneva-based delegations to do so. Members also confirmed that the negotiating text currently before them can be used as the basis for the talks to strike the final deal.

“I feel new hope this evening. Because ministers and heads of delegation today demonstrated a strong commitment to moving forward and doing the hard work needed to get these negotiations to the finish line. I applaud you for this. In 20 years of negotiations, this is the closest we have ever come towards reaching an outcome — a high-quality outcome that would contribute to building a sustainable blue economy,” said Director-General Ngozi Okonjo-Iweala.

“One fundamental conclusion that I draw from your interventions today is that members are ready to use the text as the basis for future negotiations. A second takeaway from today was that there is universal agreement about the importance of the food and livelihood security of artisanal fishers in developing and least developed countries. The prospect for a deal in the autumn ahead of our Ministerial Conference has clearly improved.”

The UN Food and Agriculture Organization estimates that one-third of global fish stocks are overfished and most of the rest is fully exploited. This is up from 10% in 1970 and 27% in 2000. Depleted stocks threaten the food security of low-income coastal communities, and the livelihoods of poor and vulnerable fishers who must go further and further from shore only to bring back smaller and smaller hauls.

Each year, governments hand out around $35 billion in fisheries subsidies, two-thirds of which go to commercial fishers. These subsidies keep at sea vessels which would otherwise be economically unviable. World leaders in 2015 made a fisheries subsidies agreement by 2020 part of the Sustainable Development Goals and trade ministers reaffirmed this pledge in 2017.

The negotiations on fisheries subsidies disciplines have been ongoing for nearly 20 years. Although there has been recent progress thanks to the intensive work that led to the development of the negotiating text on which members are working, the lack of political impetus in the talks to close the remaining gaps inspired Director-General Okonjo-Iweala to call this meeting of ministers.

Among the thorniest issues to resolve has been how to extend special and differential treatment to developing and least developed country WTO members while preserving the overall objective of enhanced sustainability of the oceans. Ministers said that the livelihoods and food security of poor and vulnerable artisanal fishers in developing and least developed countries were of great importance, as was preserving the sustainability objective of the negotiations.

Amb. Santiago Wills of Colombia, who chairs the Rules Negotiating Group overseeing the fisheries subsidies negotiations, said he had received some valuable inputs from the discussions. He now has greater clarity on the path forward and the next steps that would be required to harvest an agreement. He will be consulting with the Director-General and WTO members about charting the path forward for the next stage of the talks.

“I am very heartened by the responses and messages that we have heard today. What we sought from ministers today was political guidance to help close these negotiations soon. And we did hear that guidance. We have been given the ingredients to reach a successful conclusion; a commitment to finish well ahead of our Ministerial Conference a text that can be the platform for this final stage of the negotiations and fully empowered heads of delegations in Geneva. This represents a real success,” said Amb. Wills.

The Director-General said that delegations needed to prepare for an intensive period of line by line negotiations.

“As we enter this new phase of text-based discussions, the responsibility to conclude these negotiations is truly in the hands of members. To get from here to an agreement, it will be your job to find the necessary trade-offs and flexibilities. A successful outcome by MC12 is ultimately your responsibility,” she said. “The world is watching. The fisheries subsidies negotiations are a test both of the WTO's credibility as a multilateral negotiating forum and of the trading system's ability to respond to problems of the global commons.  If we wait another 20 years, there may be no marine fisheries left to subsidise — or artisanal fishing communities to support.”

#### IP disputes fragment WTO unity and trade off with subsidies negotiation

Patnaik 3/12 [(Priti, journalist in Geneva, Switzerland, master’s in Development Studies from The Graduate Institute in Geneva and a master’s in Business and Economic Reporting from New York University) “Could Vaccine Nationalism Spur Disputes At The WTO?” Geneva Health Files, 3/12/2021] JL

To protect domestic manufacturers and constituencies, countries may resort to filing disputes, if only to send a signal to other members, experts believe. To be sure, this is not only about vaccines. Going forward, export restrictions on raw materials can have implications for therapeutics as well. So the threat of a dispute may be a tool to deal with competition for scarce medical products during the pandemic, experts say.

Although trade restrictive measures are short-sighted and not a preferred policy option, governments see them as powerful instruments to meet political goals, to send a message to domestic stakeholders, sources said.

“My hunch is that all countries are sort of sitting on both sides of the fence. On the one hand, governments would like to maintain the discretion and the ability to impose export restrictions if they need to or if they think they need to. Whether that is medical products or personal protective equipment. On the other hand, everybody dislikes it when other countries impose export restrictions. So I think there is enough of an incentive for countries to sit down and negotiate,” one legal expert noted.

Sources also pointed to political declarations last year where WTO members came together and said that they would not impose restrictive trade measures. “In order to be constructive, countries decided that they were going to signal to members that will not introduce exports restrictive measures even though it may be expedient to do so,” one trade expert said. The way out, some feel, is to find solution to placing limits on export restrictions.

It is not just trade restrictive measures that could result in trade disputes. The heated political discussions on the TRIPS waiver at WTO is also aggravating the potential for disputes, according to experts involved in litigations in international trade in Geneva. Therefore these ostensibly independent processes, can catalyse disputes.

“The waiver discussion is very heated and it is aggravating the discussion on the EU's export restrictions. If the waiver succeeds, then the opposing members cannot do anything about it. So they will be looking at other ways to beat up on behavior they do not like on the COVID-19 front,” one trade law expert said.  Do not rule out disputes against supporters of the TRIPS waiver proposal, in case the waiver is adopted, the source added.

In their statement at the WTO General Council meeting last week, the EU said, “In order to ensure that vaccines and their ingredients are not directed to export destinations in unjustified volumes, the European Union had no choice but to introduce a transparency mechanism on Covid-19 vaccine export transactions.” The EU has said that the measures are WTO-consistent.

It added “Since the entry into force of the scheme on the 1 February, we have received 150 requests for export authorisation. All of them have been accepted. I repeat, all of them.” This week, the European Commission extended transparency and authorisation mechanism for exports of COVID-19 vaccines.

The EU is also a part of the Ottawa Group proposal on Trade and Health that also spells out commitments towards export restrictions. (See also *E.U. Exports Millions of Covid Vaccine Doses Despite Supply Crunch at Home*)

“Members bring disputes all the time, even when they know that it's going to take a long time to get a result and often they bring a dispute as leverage for negotiations. Filing a dispute does not mean they are looking for a solution. It does not mean the dispute will be litigated all the way to the end,” a trade lawyer said.

It could also result in a negotiated arrangement, like it was in 2001 in the U.S.-Brazil case. “Why did the U.S. bring a case against Brazil? It gave them leverage in negotiations, and to satisfy domestic stakeholders,” the lawyer added.

The impasse at the Appellate Body may not be a deterrent for countries to dissuade countries from bringing a dispute, some believe.

“The Appellate Body not being functional is not a problem. Countries have recourse to Article 25 under the Dispute Settlement Understanding (DSU) that provides for ‘expeditious arbitration as a alternate means to dispute settlement’,” a source involved in the WTO litigation process said. (The EU, for example, is a signatory to the Multi-party interim appeal arbitration arrangement, MPIA.)

While disputes may take up precious energy and resources of members already stretched in fighting to address the pandemic, it may likely be a strategy to address trade protectionism. Not all agree.

“I think the law is not really an answer here, I hate to say that because I'm a lawyer. But I really don't think the law is an answer because the law is so generically drafted right that and it's politically so sensitive. Which WTO panel will tell a member that restricting vaccines is not legitimate? It will ultimately harm the legitimacy of the trading system,” the person added.

#### Overfishing causes SCS war – WTO agreement solves

Cohen and Floyd 1/27 [(Sam, J.D. student at Harvard Law School, BA in history from Yale University, surface warfare officer in the U.S. Navy, and Steve, joint J.D./LL.M. in national security law at Georgetown University Law Center, lieutenant commander in U.S. Naval Intelligence) “Water Wars Special: How IUU Fishing Increases the Risk of Conflict, Lawfare, 1/27/2021] JL

The Food and Agriculture Organization of the United Nations has classified one-third of the world’s marine fisheries as overfished. The impact of unsustainable fishing is especially acute in the South China Sea, where coastal fisheries have lost 70 to 95 percent of their stocks since the mid-20th century and catch rates have declined by 70 percent throughout the past two decades. Furthermore, the sea’s coral reefs, which nurture critical feeding grounds for fish stocks, decline by 16 percent every 10 years. As traditional fishing grounds prove less fruitful, fishermen venture farther from shore and operate in contested areas. Indeed, when China faced dwindling coastal stocks in the 1990s, Beijing embarked on a massive shipbuilding effort; and President Xi Jinping continues to exhort Chinese fishermen to “build bigger ships and venture even farther into the oceans and catch bigger fish.” Such efforts incentivize IUU activity, heighten competition for increasingly scarce resources and feed an escalating cycle that accelerates stock depletion.

In the South China Sea, with its kaleidoscope of disputed claims, China’s excess capacity and IUU fishing practices exacerbate a particularly volatile environment. Depleted fishing stocks force fishermen to operate further from shore and increase the chance of violent encounters. Filipino authorities have intercepted Chinese boats illegally fishing off Palawan, and Philippine President Rodrigo Duterte claimed that Chinese fishermen intentionally rammed a Filipino fishing boat and left its crew stranded in the sea in 2019. Three years earlier, the Chinese Coast Guard rammed an Indonesian patrol boat attempting to interdict Chinese fishermen. As the Vietnamese government actively encourages fishermen to contest China’s expansive maritime claims, the Chinese Coast Guard expelled nearly 1,200 fishing boats from the northern half of the South China Sea last summer. During one such encounter, a Chinese Coast Guard vessel repeatedly rammed a Vietnamese fishing boat and sent its 17-person crew overboard. It’s true that fishing subsidies did not create the region’s historic animosities. But the activities these subsidies support add fuel to an already smoldering fire.

Dwindling stocks of fish, unsustainable practices and IUU fishing constitute a global crisis and increase the risk of maritime conflict. But this risk can be mitigated through international cooperation: A World Trade Organization (WTO) agreement on fishing subsidies would address a fundamental cause of these fishing-related problems and create a binding legal framework through which members could seek relief.

#### SCS conflict draws in the US and goes nuclear – extinction

Carter 20 (John Carter has been an economics and finance journalist for more than 40 years. Prior to joining the South China Morning Post, he worked for Market News International for more than 33 years, first as Washington Bureau Chief, then as European Managing Editor in Frankfurt, Germany and finally as Asian Managing Editor working out of Beijing, Global Impact newsletter: escalating conflict in the South China Sea, https://www.scmp.com/economy/article/3102323/global-impact-newsletter-escalating-conflict-south-china-sea)

If you want to start a world war, a good way to do it is to mix the escalating conflict between two of the world’s greatest military powers with the grievances of a half-dozen smaller countries over territorial claims. That’s the current situation in the South China Sea, the massive body of water that stretches more than 4,000km (2,485 miles) from mainland China in the north to Indonesia in the south – about the same distance between London and Chicago. China has claimed the vast majority of the South China Sea as its exclusive territory, including areas claimed by six other governments – Brunei, Indonesia, Malaysia, the Philippines, Taiwan, and Vietnam – that consider them part of their own exclusive economic zones. A map of the conflicting claims can be seen in this graphic presentation, while the history of China’s territorial disputes, including in the South China Sea, is explained in this video. China considers the South China Sea one of its “core” interests, of equal importance as Taiwan, Tibet and Xinjiang, meaning it is ready to go to war to defend it. It has marked the territory by a “nine dash line” on its maps, and even on its passports, angering its neighbours. China needs the oil and mineral wealth hidden beneath the South China Sea to supply its rapid economic recovery, as well as the fishing catch needed to feed the country’s 1.4 billion stomachs. An international tribunal ruled in 2016 that China did not have the right to claim the South China Sea as its sovereign territory, a ruling that China has pointedly rejected. To secure this vast sea area, China has turned uninhabited atolls and half-submerged rock formations into forward military bases, as personally directed by President Xi Jinping. Regular Chinese sea patrols monitor the area, driving away fishing boats from other nations from what it considers its exclusive fishing area. The intrusion of China into what other Asian nations consider their sovereign territory has caused tensions in the region to ratchet up, with the 10 members of the Association of Southeast Asian Nations (Asean) increasingly pushing back, at times with violent confrontations. The US has flatly rejected Chinese claims to the South China Sea, and has dramatically stepped up its military presence in the area. Each side has warned the other of the dangers of further escalation, with the US sanctioning Chinese firms that helped build China’s island outposts. Rarely a week goes by without a US warship sailing near Chinese held outputs as part a “freedom of navigation” exercise, shadowed by Chinese vessels the entire way. Confrontations have brought warships from both nations within a few metres of each other, a dangerous situation that could easily get out of hand. Tensions have ratched up recently, with the Chinese and US navies holding exercises in the region at the same time. In a provocation move, the Chinese test fired several of its “aircraft carrier killer” missiles in a clear warning to the US to back off its “interference” in the South China Sea. And some Asean nations are starting to push back against Chinese “intrusions” into their territorial waters, threatening to draw the US deeper into local disputes, though the group as a whole is trying to avoid picking sides in the US-China confrontation. The latest incident occurred this week, with Indonesia’s foreign ministry lodging an official protest after a Chinese coastguard ship spent two days sailing through Indonesia territorial waters. Chinese military commands have been ordered not to shoot first in any confrontation with the US military, but with heavily armed warships and planes constantly patrolling the area, even a small error in judgment could lead to a shooting war. And with the US presidential election less than two months away, there is no sign that tensions between two of the world’s largest militaries will de-escalate any time soon.