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Intellectual Property Aspects of Canada-U.S. Competitiveness in the World Context

*Richard M. Brennan**

There are many factors which affect the international competitiveness of countries such as Canada and the United States. Today I am going to share with you some views that will demonstrate that adequate and effective intellectual property rights protection is fundamental both to competitiveness and to increased economic development around the world.

It has been my experience that when a person specializes in a field their concentration becomes so intense that they often tend to lose some perspective. At such times a person needs to step back and look at the big picture as well as the details. I would like to look at the international economic arena of today and what it might look like twenty years from now and include an examination of how the protection of intellectual property fits into the picture. I will use a zoom lens and a time capsule to provide the various perspectives.

Starting with the widest possible angle, and then moving in closer, several different perspectives of some important international economic issues will begin to develop. Along the way, I hope to also give a better understanding of the General Agreement on Tariffs and Trade ("GATT") negotiations on intellectual property in the Uruguay Round.

By starting in outer space with the zoom lens and taking a look at the planet Earth, the viewer realizes rather mixed signals are being sent. Although there is economic activity on the planet, it is quite unevenly distributed and major underlying tensions can be felt. International trade rules established forty years ago are breaking down because of widespread nationalism and protectionism. Currency relationships continue to cause discontinuities in trading and employment patterns. Counterfeit and pirated goods account for almost \$150-200 billion of the world market, demonstrating a rampant disregard for intellectual property rights. The bickering between the developed countries of the north and developing countries of the south continues on such basic issues as trade, investment and intellectual property rights.

Interestingly, from this vantage point there are some significant developments going on that the viewer cannot perceive. One way to get a better grasp of these current developments is to convert the zoom lens into a time capsule and jump forward twenty years to the year 2008.

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From this vantage point the events of 1988 can be analyzed and reflected upon with a historical perspective.

First, there will have been a population explosion. The population of planet Earth will continue to increase dramatically into the year 2008 from roughly 5.5 billion people to over 7 billion. More significantly, in the year 2008 over 5 billion of those people will be living in what are now called developing countries.

Next, a knowledge explosion will have occurred. Over the next twenty years alone mankind's additions to knowledge will far exceed all knowledge developed since time began. A subset of this will be the communications and the transportation explosions. It is simply mind boggling that fresh cut roses from Israel can compete in the New York City flower market — everyday!

By being a bit self-serving, it can be said that the knowledge, communications and transportation explosions will happen because of continuing advances in what we call intellectual property. Being rather mercantile, some would say that the population explosion in the developing countries represents a sizable portion of future markets for the advanced nations. Others take an objective view and say that one way to maintain the advanced nations' standards of living is to help the developing nations develop. Economic development is high on the agenda of most developing countries. Of course, an infusion of technology, investment, and an environment that encourages, respects and protects the rights of such investors is also required.

From this distant vantage point out in space, twenty years in the future, one could conclude that there truly is a *potential* win-win situation. Developed and developing nations could all benefit by working together.

Next, the viewer zooms in a little closer to a point where all the players can be viewed, but a fairly broad perspective is maintained. This is the international agreements range. Do these agreements really work? On balance the answer is probably "yes," with a wide variation in effectiveness. Can or should these international agreements be improved upon? My answer would be a resounding "yes."

I would like to zoom in just a bit closer and take a look at the GATT. The GATT was formed in 1947. It attempted to set forth guidelines and rules that would provide some order to world trade. About every seven to ten years the GATT and its ninety member countries have held a round of multilateral trade negotiations. Such a round was just started late in 1986 and is called the Uruguay Round because the first organizational meeting was held in Punta del Este. At the urging of the United States, the other GATT members were persuaded to include intellectual property protection as an agenda item for these international negotiations.

Should intellectual property rights be included within the GATT as

an international trade problem? I certainly think so. Intellectual property has two basic dimensions; the first is that of the creation and ownership of the right itself and how that right is protected. The second is the movement of that product or creation in international commerce and how that should be protected. There is no doubt that the international trafficking of counterfeit and pirated goods is a very serious international trade problem and must be directly addressed. Currently the only international organization that handles trade problems is the GATT. There is the potential to do something meaningful and useful within the GATT with the Uruguay Round.

The easiest way to summarize how well the GATT has worked is to quote from a 1985 analysis which GATT did of itself. One of the findings was that: "The trading rules set under the GATT *are increasingly ignored or evaded.*" The GATT rules were based on competition among companies in open markets. I believe that there is not one nation in the world today completely adhering to this precept, including the United States. Nationalism, mercantilism, and protectionism seem to be the rule rather than the exception.

There are three perspectives to consider in international trade negotiations: time, importance, and attitudes. If the Uruguay Round takes four years to complete, that will be the year 1990. The next round could be expected to begin in the late 1990s and be completed shortly after the beginning of the 21st century. These current negotiations will set the tone, the guidelines, and the rules that will take the world community through this volatile and critical period of population and knowledge explosions that has already been entered.

What about attitudes? Are all nations enthusiastic about improving the GATT system and about improving intellectual property protection? My reading would lead me to conclude that hardly any nations are really enthusiastic. The United States is once again exercising a leadership role reluctantly supported by other countries of the developed world. Most of the developing countries have always been ambivalent in their approach to these multilateral negotiations. They enjoy receiving further trade concessions from the developed nations but are quite reluctant to trade away their own protective devices and support systems.

This is a rather discouraging observation and my hope is that it turns out to be inaccurate. I can only surmise that the nations of the world have become so dependent on the evasion of the trading rules that they cannot see how to go back to the sound basic economic rules of the GATT without totally disrupting their economies. I am reminded of a story I heard some years ago of how the Eskimos protect themselves from the wolves at night. The Eskimos would place their sharp dagger's hilt down in the ice around their igloos and put a drop of blood on the exposed blade. As the wolves smelled the blood and began licking it, they soon found out they were licking their own blood. This is what states are doing to themselves in the trade area as well as the intellectual

property area. Agriculture subsidies around the world are but one useful example.

What can be done about this attitudinal problem? It will take some real statesmanship and strong leadership, not only by leaders of nations, but also by leaders of labor, industry, and agriculture within each of these nations in order to change this. There has to be a consensus that the system is broke and it is in everyone's long-term interest to fix it. It will mean giving up special subsidies and protection. It will require compromises from all sectors. This can be accomplished with a minimum of trauma and dislocation by phasing out some of these practices over time.

There is a need for leaders on all nations to adopt a long-term view and attitude similar to that which prevailed at Bretton Woods in 1947. Most of the key regimes which have provided some economic disciplines in the international arena over the last forty years were established by the Bretton Woods Agreement. This is an extremely ambitious idea; one that many might label altruistic or idealistic. However, I make this suggestion after reflecting on the results of the Tokyo Round of multilateral trade negotiations which started in 1974 and were concluded in 1979. As an active participant in these negotiations, if I were to grade the GATT nations on how well they improved the international trading system in the Tokyo Round, they would receive a "D minus" bordering on an "F." The world cannot afford to again expend a similar amount of time and energy without realizing some truly dramatic improvements in the international trading system.

Finally, the viewer should focus the zoom lens on one of the microcosms on the planet, namely the GATT Uruguay Round of negotiations on intellectual property. As the result of special efforts by industry leaders, the issue of intellectual property protection was put on the GATT agenda at Punta del Este. It not only remains on the agenda but it has moved up to become one of the most important issues being considered within these GATT negotiations.

The first major development in the negotiations was the tabling of a "concepts paper" by the United States. In summary, this concept paper put forth the U.S. view on why improved intellectual property protection is important, and in very general terms, what should be included in a final GATT agreement. A GATT code setting forth standards or norms that would apply to each and all facets of intellectual property is envisioned. These would be high standards, to a large extent mirroring current standards or laws found in the advanced nations of the world. The GATT code would also include standards on enforcement measures.

To date, most of the GATT discussions on intellectual property have been among the advanced nations of the world — the "friendlies." After a favorable review of the U.S. concepts paper the friendlies asked for more specifics. A more detailed proposal was prepared by the United States at the beginning of this year, setting forth very specific proposals for patents, copyrights, etc.

International negotiations on intellectual property rights are both complex and sensitive. Many of the advanced nations of the world have had such laws on their books for decades or centuries. Recognizing both the complexities and sensitiveness of the situation, the U.S. negotiating team came up with an excellent idea. They invited the friendly countries, about twenty of them, to send both trade and intellectual property experts to the United States to discuss the more specific standards developed by the United States at the beginning of the year. Over seventy delegates met in Washington from March 7-11, 1988. The meeting, from all reports, was most successful and useful. A great number of new ideas and suggestions were received on such thorny ideas as compulsory licensing of patents.

However, the developing countries have provided opposition to increased intellectual property protection. Brazil and India have taken on a leadership role in opposing any significant progress on intellectual property in the GATT negotiations. The Group of 77, as the developing nations have come to be known, are by no means a monolithic unit. In fact, many developing countries do not share the view of Brazil and India. I will return to the developing countries in a moment.

Next the viewer must once again use the time capsule to go into the future to evaluate where these negotiations are headed and what various results might be expected. The progress to date among the advanced nations is encouraging. These nations are becoming increasingly aware of the long-term importance of adequate and effective intellectual property protection. It is possible at this juncture to envision at the end of the GATT negotiations an intellectual property code which would be signed and agreed to *only* by the advanced nations.

There are some who believe this would be satisfactory. I do not share this view. It is simply rearranging the songs in the hymnals — we would still be singing in the same choir of the advanced nations. Yet the major problems of counterfeiting and piracy are in the developing countries. The ideal success is to have a GATT code with high standards to which both developed and developing countries can sign and adhere.

Counterfeiting and piracy are simply various forms of theft. Counterfeiting and piracy are going on in virtually every nation of the world, but there is no doubt that the most egregious offenders are found in the developing countries. A fair question at this point is to ask why should the developing countries adhere to the values of the advanced nations concerning intellectual property protection. One reason is because increased economic development in the developing countries is in the enlightened self-interest of all the nations of the world. To the developing countries it means needed jobs and enhancement of their standard of living. For the advanced nations, the developing countries represent future markets and growth. Also, the two explosions of the next two decades — population and knowledge — contain within them very serious ramifications. The socio-political ramifications of 5 billion people living in the

developing countries should be very sobering to the 2 billion that will be living in the advanced nations. It is both a potential problem and a potential opportunity. The knowledge explosion we are going through is so dramatic that the developing countries which refuse to provide effective intellectual property protection could well find themselves hopelessly behind in technology and unable to catch up.

Another reason for the developing countries to support intellectual property protection is that the advanced nations of the world and the enterprises within these countries have limited resources. These limited resources will be put into developing countries which provide a favorable environment for business. Transfer of technology is one of the initial, essential steps in achieving economic development. Therefore, adequate and effective protection of intellectual property rights is a key element in establishing a favorable economic environment. Those developing countries which do so will be favored for investment over those that do not. This type of trade-off, of course, exists in the world today.

Finally, the intellectual property laws and regulations of the advanced nations have proven to be effective in fostering economic development within and among those advanced nations. What is being proposed in these GATT negotiations is the acceptance and adherence to an international code of intellectual property protection and enforcement which will prove to be a very positive force in encouraging and enhancing economic development.

Unlike other trade matters, there is no form of accommodation or compromise in the intellectual property area. For example, on the issue of export subsidies a phase-out of subsidies over a period of time can be negotiated. Within the GATT context you cannot have higher standards for one group of countries than for another group. Stealing is stealing; you cannot issue a license for some to steal at the expense of others. In a way I am reminded of the time when Willy Sutton was asked "Why do you rob banks?" to which he responded, "Because that's where the money is." An international set of standards and norms which all nations can follow is needed. We are not seeking harmonization of all nations' intellectual property laws; rather we are seeking a high level of minimum standards above which there can be variations among nations.

It is my hope that the leaders of the developing countries will see the value of agreeing to a GATT code on intellectual property rights. The world no longer has time for the anti-multinational corporation polemics of the 1960s and 1970s.

Finally, as the viewer zooms back to the here and now, it is obvious that adequate and effective intellectual property protection around the world is the keystone to economic development and to retaining the international competitiveness of countries such as Canada and the United States. Competitiveness is undermined by the loss of sales and earnings due to rampant counterfeiting and piracy.

The Uruguay Round is addressing many important issues. Adequate intellectual property protection is a needed basic ingredient to the transfer of technology and needed economic development. Therefore, we should approach these intellectual property negotiations with the highest sense of priority and urgency and with the specific objective of making important changes which will, over the long-term, be to the benefit of both developing and advanced nations.

I appreciate your patience and thank you for joining me on this hectic and eclectic odyssey.

