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# NAFTA's Provisions Affecting Intellectual Property: Are They Working as Intended

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## INTRODUCTION

### NAFTA'S PROVISIONS AFFECTING INTELLECTUAL PROPERTY: ARE THEY WORKING AS INTENDED?

*Dirk Barrett\**

Good morning, ladies and gentlemen. It is nice to be here today. It is a beautiful day. It is clear and crisp; the sun is shining, and it is great to put on a tie on a Saturday and come into a law school classroom.

Anyway, on to our subject this morning. NAFTA, of course, is known to the public principally as a so-called Free Trade Agreement, and indeed one of its principal purposes and effects is, in the words of a treaty, to eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the parties.

The effect of free trade is not just higher sales and profits for some active trading nations. More importantly, with the increased efficiency resulting from specialization, free trade leads to increased prosperity for the public at large in the trading nations.

As Professor Paul Simonson has said, over the long-run, free trade and higher productivity raise living standards for everyone. Gradually, countries have realized that international trade is one of the surest roads to economic prosperity. But, of course, trade is not the only way to prosperity.

Again, turning to Professor Simonson, he has identified what he calls the four wheels of growth that play a role in economic development. These are human resources, which this conference talked about last year; natural resources; capital formation; and technology.

And free trade benefits not just the merchants, but the public at large. So does the economic development resulting from the effective application of these four factors to an enriched existence for the general public and not just for the economic actors involved in their development and use.

Significantly, two of these factors, capital formation and technology,

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are dealt with in the NAFTA in the investment of intellectual property chapters.

The importance of technological advances to economic growth is well-known. Perhaps less well-appreciated is the positive effect that strong intellectual property protection plays in fostering technological division.

By placing restrictions on the ability of would-be copiers to exploit the fruits of one's efforts, strong intellectual property laws create a positive incentive to the development of technological advances and other economically positive efforts that are so important to increase prosperity.

Thus, it is significant that the NAFTA, in addition to fostering trade, mandates that the parties have laws establishing prescribed levels of protection for patents and inventions, trade secrets, works that embody original expression of ideas, and other economical beneficial intangible developments. It is noteworthy that the treaty requires the parties to make available, under the national laws, effective means to enforce these intellectual property rights. So one hopes that with the passage of time, experience with the NAFTA will show, particularly with respect to Mexico, that NAFTA's provisions on trade, investment, and intellectual property protection will make it appropriate to rename it the North American Economic Development Agreement.

With that brief review of undergraduate economics, I want to introduce our speakers on the subject of intellectual property. We are privileged to have two government officials, each of whom has been closely involved in his country's efforts to deal with intellectual property in an international trade context.

Our first speaker is Mr. Joseph Papovich. He has had a distinguished career in the office of the U.S. Trade Representative. Earlier in his career, he was involved with Middle Eastern affairs, relations with organized labor, and the negotiation of the Multilateral Steel Agreement. During the NAFTA negotiations he participated in the agricultural section of the agreement. Currently he is Deputy Assistant Trade Representative for Intellectual Property in the office of the USTR, and in his current position he leads the U.S. delegation to the TRIPs Council and chairs the interagency committee conducting the Special 301 reviews.

Our next speaker from Canada is Dr. Allen Hertz. He has a B.A. in history B.A. from McGill University, and both a Masters and Ph.D. of International Affairs from Columbia. He also has a law degree from Cambridge University in England, with a Master of Laws from the University of Toronto. He subsequently taught at the City University of Hong Kong, where he lectured on international, constitutional, and intel-

lectual property law.

With respect to our subject, more immediately, he was on the Canadian NAFTA negotiating delegation in the field of intellectual property. He has been working recently on the Canadian delegation in the IPA to the Free Trade Agreement of the Americas. And, again, up until very recently, he has been a senior property advisor to the Department of Foreign Affairs in Canada. In the last few months, I understand, he has changed positions with the executive in Canada and has joined the Privy Council Office in the very important area of Provincial Federal Government Relations. He is, of course, still very current on the developments of intellectual property and trade.

