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Intellectual Property Rights and the GATT: United States Goals in the Uruguay Round

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NOTES

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TABLE OF CONTENTS

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I. INTRODUCTION

The recent escalation of piracy[1] in the international arena of high technology intellectual property[2] (IP) has propelled the issue of protection of IP rights to the forefront of discussion in both domestic and international trade.[3] Those who are knowledgeable about IP matters do not

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1. The term "piracy" has been defined as "the reproduction and sale of copyright material without the consent of author or publisher." PUBLISHERS ASS'N AND THE INT'L FED'N OF PHONOGRAM AND VIDEOGRAM PRODUCERS ON BEHALF OF THE U.K. ANTI-PIRACY GROUP, INTERNATIONAL PIRACY—THE THREAT TO THE BRITISH COPYRIGHT INDUSTRIES 5 (1986). Incidents of piracy have been well documented and their effect on the economies of the developed countries has been substantial. The President's Commission on Industrial Competitiveness reported that:

> Today, the need to protect intellectual property is greater than ever. A wave of commercial counterfeiting, copyright and design infringement, technology pirating and other erosions of intellectual property rights is seriously weakening America's comparative advantage in innovation. A recent study by the International Trade Commission estimates that American business loses almost $8 billion and 131,000 jobs annually through counterfeiting alone.

1 PRESIDENT'S COMM'N ON INDUS. COMPETITIVENESS, GLOBAL COMPETITION: THE NEW REALITY 21 (1985) [hereinafter GLOBAL COMPETITION] (report of the President's Comm'n on Indus. Competitiveness). For a discussion of how piracy affects the international economics of the production and sale of high technology intellectual property see *infra* notes 11-14 and accompanying text.

2. The term "intellectual property" will be designated herein as "IP" for purposes of convenience only. The reader should distinguish this usage of the term IP from the usage of IP by other authors to denote "industrial property" under the Paris Convention for the Protection of Industrial Property. The term "intellectual property" includes patent, trademark, trade dress, copyright, and trade secret protection. U.S. Council for Int'l Business, Comm. on Intellectual Property, A New Round of Multilateral Trade Negotiations: Priorities for Intellectual Property 2 (Mar. 1986) [hereinafter Priorities for IP] (Committee on Intellectual Property). High technology IP consists of computer software, microcomputer chips, and other such copyrightable products of recent technological progress. Although some question remains, even among the developed nations, whether these forms of IP are the proper subject of copyright protection, see generally Samuelson, *Creating a New Kind of Intellectual Property: Applying the Lessons of the Chip Law to Computer Programs*, 70 MINN. L. REV. 471 (1985), this Note will assume that these forms of IP are protectable under copyright. For a more international perspective on this issue, see Nimmer & Krauthaus, *Classification of Computer Software for Legal Protection: International Perspectives*, 21 INT'L LAW. 733 (1987).

3. This interest is shown by both public and private actions. For example a conference held by the Center for the Study of Foreign Affairs focused on the topic of the General Agreement on Tariffs and Trade [hereinafter GATT], *see infra* note 19, and Intellectual Property. *State Department Program Examines "GATT and Intellectual Property,"* 31 Pat., Trademark & Copyright J. (BNA) 497 (Apr. 10, 1986) [hereinafter *GATT and IP*]. A July 15, 1986 Regional Forum on Intellectual Property held by the United States Council for International Business, *see infra* note 170, and various hear-

doubt the importance of the protection of IP rights to the developed countries. Some have spoken candidly of the crucial role that IP, especially computer software and other related high technology IP, is playing and will continue to play in the economic growth and expansion of the developed countries.[4] President Reagan has identified IP rights as a matter requiring attention in both bilateral and multilateral trade talks,[5] and the Office of the United States Trade Representative has announced plans to move forward on every possible front to increase protection abroad for domestic IP rights.[6]

Protection of new forms of IP has traditionally lagged behind the development of that property, and the emerging area of high technology IP is certainly no exception. The industrialized nations that produce high technology IP are the only nations which give significant attention to the protection of this IP. Developing countries, as importers of IP, have found it in their interest to provide only a minimum level of protection for IP, if indeed they provide any protection at all.[7]

Although copyright is a relatively young branch of law, it serves an important role in the development of artistic, cultural and literary works. In balancing the two public interests involved in copyright law—the interest of protecting the rights accorded to the copyright owner and the reasonable demands of society[8]—various justifications for the existence of copyright protection have evolved to satisfy the political, cultural and social needs of distinct nations.[9] Copyright, in some form or another, has found its way into the laws of most of the more developed nations of the world. The United States rests its justification for copyright on the theory that copyright law exists more for the promotion of the public good

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ings by the House of Representatives and the Senate further portend the key role that intellectual property will play in the future of international trade and the economy of the United States. *See, e.g., infra* note 15.

4. *See* Mossinghoff, *The Importance of Intellectual Property Protection in International Trade*, 7 B.C. INT'L & COMP. L. REV. 235, 235 (1984); Dam, *The Growing Importance of International Protection of Intellectual Property*, 21 INT'L LAW. 627 (1987).

5. *See, e.g.*, Tokyo Economic Declaration, 22 WEEKLY COMP. PRES. DOC. 584, 587 (May 6, 1986); Message to the Congress, 22 WEEKLY COMP. PRES. DOC. 163, 165 (Feb. 6, 1986).

6. *See* OFFICE OF THE U.S. TRADE REPRESENTATIVE, ADMINISTRATION STATEMENT ON THE PROTECTION OF U.S. INTELLECTUAL PROPERTY RIGHTS ABROAD (Apr. 3, 1986) [hereinafter ADMINISTRATION STATEMENT].

7. *See GATT and IP*, *supra* note 3, at 497; Dam, *supra* note 4, at 630.

8. S. STEWART, INTERNATIONAL COPYRIGHT AND NEIGHBOURING RIGHTS 5 (1983).

9. *Id.* at 3-4.

and less for the advantage of an individual author or artist.[10]

Protection of IP rights is basically the province of domestic law.[11] However, without an effective means of protecting these rights in the world market, an exporter of IP could lose a substantial amount of return through piracy of the IP in a single nation that imposes little or no restrictions on such activities. The owner of IP rights is handicapped in such a situation since, among other things, the pirate is able to forego the initial start-up costs in time, research or creativity. The owner's loss of return may be magnified if individuals in the "pirate nation"[12] are able to get their counterfeits into other markets worldwide and undersell the original producer. In this way, absent proper import control by the "protecting nations,"[13] a "weak link" in the chain of the international protection scheme can cause substantial economic harm. This potential for economic harm has been greatly heightened in recent decades by the growing interdependence of the world economic structure. Thus, although protection of IP rights belongs in the province of domestic law, effective protection of IP rights in a world characterized by growing market interdependence rests on international agreements.[14] The international conventions dealing with the problem are designed to solidify international consensus on issues surrounding IP protection. Thus, international conventions have set minimum standards that participating nations are willing to implement through their domestic legal systems.

Although there is general agreement among domestic interest groups that the IP rights of United States authors and artists must be more stringently protected, the question of how best to protect those rights is far from settled.[15] With the withdrawal of the United States from the

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10. This is the economic theory of copyright law. *See* Mazer v. Stein, 347 U.S. 201 (1954). In this case, Justice Reed speaking for the Court stated:

> The economic philosophy behind the clause empowering Congress to grant patents and copyrights is the conviction that encouragement of individual effort by personal gain is the best way to advance public welfare through the talents of authors and inventors in "Science and useful Arts." Sacrificial days devoted to such creative activities deserve rewards commensurate with the services rendered.

Id. at 219.

11. Buck, *Copyright, Harmonization and Revision: 'International Conventions on Copyright Law,'* 9 INT'L BUS. LAW. 475, 475 (1981).

12. For purposes of this Note, "pirate nation" means a nation which either provides no protection for IP, or an inadequate level of protection.

13. For purposes of this Note, "protecting nation" means a nation that is committed to the protection of IP rights.

14. Buck, *supra* note 11, at 475; Mossinghoff, *supra* note 4, at 235.

15. *See Intellectual Property and Trade: Hearings Before the Subcomm. on Courts, Civil Liberties, and the Administration of Justice of the House Comm. on the Judiciary,*

United Nations Educational, Scientific, and Cultural Organization (UNESCO) in December 1984,[16] and the failure of the Copyright Revision Act of 1976[17] to bring United States copyright law into compliance with the principles of the Berne Convention,[18] United States authors and inventors stand in a precarious position worldwide as they attempt to protect their work product. The result of this chain of events has been that the Reagan Administration and others are looking to the General Agreement on Tariffs and Trade[19] (GATT) for the protection that the United States business community both demands and requires.[20]

Some nations are already seeing the advantages of acknowledging IP rights in international trade, and it is likely that many more will follow once they find that the benefits of protection of IP produced by their own nationals outweighs the advantages of piracy.[21] Until those developing countries find it in their interest to stringently protect IP rights, the United States will have to exert international pressure, either through domestic action or by way of bilateral or multilateral negotiation, in order to protect the rights of its own citizens. In the absence of adequate

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99th Cong., 2d Sess. 1-3 (1986) [hereinafter *Intellectual Property Hearings*]. Some measures proposed in Congress may have adverse effects on world trade or violate international trade agreements of the United States.

16. UNESCO serves as the Secretariat for the Universal Copyright Convention to which the United States adheres. *See infra* note 52. For greater discussion of the ramifications of the withdrawal of the United States from UNESCO, see *infra* notes 83-98 and accompanying text.

17. 17 U.S.C. §§ 101-810 (1976) [hereinafter Copyright Revision Act of 1976]. Although the Copyright Revision Act of 1976 made substantial advances toward bringing the United States into line with the Berne Convention, problems remain in several aspects of the legislation that are inconsistent with that Convention. For further discussion of these discrepancies, see *infra* notes 55-60 and accompanying text.

18. The Berne Convention, officially titled the "Convention Concerning the Creation of an International Union for the Protection of Literary and Artistic Works," was completed on September 9, 1886. The text of the Berne Convention is reprinted in 4 M. NIMMER, NIMMER ON COPYRIGHT app. 27 (1985) [hereinafter Berne Convention].

19. General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. (5) A3, T.I.A.S. No. 1700, 55 U.N.T.S. 187. GATT was developed following World War II, and since has stood as the major document controlling trade among the Western nations and much of the rest of the world community.

20. *See generally* Dam, *supra* note 4.

21. Mossinghoff, *supra* note 4, at 236-37. High technology IP has become a "trade problem" and thus is subject to the dynamics of such problems. These dynamics often mean that a nation will "put domestic priorities first and only later understand that national actions favoring them [i.e., the domestic priorities] can seriously erode their own international trade interests." Dam, *supra* note 4, at 630. Convincing pirate nations to forego the short-term advantages of disregarding IP rights will be a major hurdle for the United States in the new round of GATT negotiations.

foreign domestic law, and without compliance under an international agreement, the United States has recently been forced to resort to bilateral pressure in efforts to slow the piracy and counterfeiting of domestically produced IP.[22] Such action, although often effective, does not carry with it the legitimacy and comprehensiveness that the world trading system requires.

The GATT now offers the United States the opportunity to gain for IP protection this much-needed legitimacy and comprehensiveness. A new round of comprehensive negotiations under the GATT was begun in 1987, which will allow the United States to push both for the strengthening of the existing GATT structure and for the inclusion within that structure of new substantive areas—such as IP rights—not formerly covered by the GATT. This round of negotiations has been termed the Uruguay Round,[23] because the agenda for the talks was set at Punta del Este, Uruguay. To date, the United States has been successful in getting IP rights, as well as other substantive and procedural matters, onto the bargaining table,[24] but it likely will take years for the GATT members to negotiate terms for IP protection that are satisfactory to a majority of member nations.[25] Thus, the Uruguay Round will be an ongoing process in which the negotiation of IP rights will be commingled with the negotiation of other substantive and procedural issues.[26] The United States therefore must be prepared to make concessions in other areas if it is to insure protection of valuable IP rights.

This Note concentrates on the international process in which the United States must operate in order to protect IP rights through the GATT. As such, the Note does not concentrate on domestic legislation,

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22. The most obvious recent example is the successful effort of the United States to pressure South Korea to grant United States companies improved patent protection. More recently the United States has been joined by the European Community which is also demanding greater patent protection in South Korea. *Withdrawal of GSP Treatment Threatened to Get Korea to Improve Patent Protection,* 4 Int'l Trade Rep. (BNA) 1167 (Sept. 23, 1987).

23. *See Talks on Work Program for new GATT Round Break Down, Discussions to Resume Jan. 19,* 4 Int'l Trade Rep. (BNA) 9 (Jan. 7, 1987); Remarks in an Interview With Representatives of Le Figaro, Together With Written Responses to Questions, 21 WEEKLY COMP. PRES. DOC. 1155, 1159 (Sept. 30, 1985) [hereinafter Representatives of Le Figaro]; Remarks on Signing the Proclamation, 22 WEEKLY COMP. PRES. DOC. 653, 654 (May 19, 1986) (stating that the new round of negotiations should have a comprehensive agenda).

24. *See infra* notes 143-44 and accompanying text.

25. The last round of GATT negotiations took six years to complete. *See infra* text accompanying notes 100-01.

26. *See infra* notes 143-44 and accompanying text.

but rather on the international minimum standards that the United States will seek in the Uruguay Round. Since the enforcement mechanisms pertaining to IP protection pose problems under the present GATT structure, and since the improvement of these mechanisms will be the key to the effective control of piracy under the GATT, the Note concentrates heavily on this area. Even if the new round of negotiations yields no improvement of the enforcement mechanisms, the inclusion of IP rights in the GATT will provide a valuable tool for the United States as it pressures pirate nations to tighten their domestic legislation. The GATT thus holds out the hope that it can provide both increased direct protection as well as an excellent forum for the United States to show greater resolve to protect the rights of its authors and inventors. The sections that follow provide the historical background of United States policy in the area of copyright law, which is necessary to fully understand the goals of the United States as it faces the Uruguay Round.

II. The Development of Methods of Protecting Intellectual Property in the United States

A. *A Historical View of Protection of Intellectual Property in United States Domestic Law*

The United States has not always been as interested in protecting the rights of authors, artists and inventors as it is today, especially those rights of foreign authors.[27] In its early history, the United States strictly limited protection to works that were published and authored by United States citizens.[28] The first United States Copyright Act[29] in 1790 (Copyright Act of 1790), was thus a model of protectionism and ideological isolationism. Perhaps this policy of adapting copyright law to fit only domestic needs is not as surprising when the "have-not" position of the United States at that time is taken into account. As further evidence that United States copyright law was tailored to fit domestic needs, protection under the Copyright Act of 1790 was limited to cover only maps, charts, and books—items well-suited to continental expansion.[30] For over one

27. *See, e.g.*, Hoffenberg v. Kaminstein, 396 F.2d 684 (D.C. Cir. 1965), *cert. denied*, 393 U.S. 913 (1968); *Oversight on International Copyrights: Hearings Before the Subcomm. on Patents, Copyrights and Trademarks of the Senate Comm. on the Judiciary*, 98th Cong., 2d Sess. 8, 28 (1984) [hereinafter *Report on Intellectual Property Rights to the Senate*] (Report of the U.S. Copyright Office entitled *To Secure Intellectual Property Rights in World Commerce*).

28. Copyright Act of 1790, ch. 15, §§ 1, 5, 1 Stat. 124, 124-25.

29. *Id.* § 5, 1 Stat. at 124.

30. *Id.* § 5, 1 Stat. at 125.

hundred years, section 5 of the Copyright Act of 1790, which denied copyright protection to works "written, printed, or published by any person not a citizen of the United States," was the policy of United States copyright law.

Pressure for reform of this copyright policy grew both internally[31] and externally[32] during this one hundred year period. This pressure was largely due to the bilateral nature of copyright protection. Since a growing number of American authors wished to enjoy protection in foreign nations, it was necessary for them to advocate change in domestic laws. Without United States protection of the rights of noncitizens, foreign nations would be unwilling to extend protection to authors of the United States.[33] Perhaps it was this pressure, combined with the growing world commitment to the protection of IP rights[34] that led the United States to alter its position in 1891.

The Chace Act[35] of 1891 (Chace Act) provided two paths, in its section 13, by which foreign authors could gain protection for their works. The first was the so-called national treatment provision. Under this provision, authors who were citizens of nations extending copyright protection to citizens of the United States would receive protection under United States law on substantially the same basis.[36] The second path was a provision that allowed for protection of works where the nation representing the author was a party to an international agreement providing for reciprocity in the granting of copyright. The agreement had to be open to United States participation.[37]

Under either path the President of the United States was given the power to determine whether the conditions for reciprocity of protection had been met by a particular nation.[38] The President was to make this

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31. *See, e.g.*, S. REP. No. 179, 24th Cong., 2d Sess. (1837), *reprinted in* G. PUTNAM, THE QUESTION OF COPYRIGHT 33 (3d ed. 1904).

32. *See, e.g.*, S. REP. No. 134, 24th Cong., 2d Sess. (1837), *reprinted in* R. BOWKER, COPYRIGHT, ITS HISTORY AND LAW 341 (1912).

33. *Report on Intellectual Property Rights to the Senate, supra* note 27, at 29 ("A principal consequence of [the early United States copyright] policy was that American works were not protected outside of the United States.").

34. This was evidenced by the signing of the Berne Convention for the Protection of Copyright by ten nations on September 9, 1886. *See infra* note 62 and accompanying text.

35. Chace Act of 1891, ch. 565, 26 Stat. 1106.

36. *Id.* § 13, 26 Stat. at 1110.

37. *Id.* No President has ever used the power under this provision regarding an "open" international agreement to issue a proclamation allowing for protection of a foreign author's works.

38. *Id.*

determination when the laws of a nation granted nationals of the United States substantially the same protection as it gave to those of its own nationals.[39] Under the Chace Act, and pursuant to subsequent revisions of the copyright law, the President established bilateral copyright relations with thirty-five nations.[40]

The two paths for protection under the Chace Act remained subject to traditional United States barriers to copyright protection designed to appease the fears of domestic printers and publishers. Thus, equal treatment of foreign authors meant that they, like the United States authors, would have to comply with the notice, registration, renewal, and recordation aspects of United States copyright law.[41] While in theory these requirements were applied on an equal basis to domestic and foreign publishers, in practice, because of the fact that foreign publishers had to learn United States law and often had to travel greater distances, it was more difficult for foreign publishers to comply.[42]

In addition to these traditional barriers, the Chace Act protected the interests of United States printers and publishers in an even more dramatic way by adding the "manufacturing clause" as a further formality.[43] This clause provided that authors were required to deposit two copies of a book, or other specified work, each of which had to be manufactured in the United States, with the Library of Congress.[44] Importation into the United States of works by foreign authors not manufactured

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39. *Report on Intellectual Property Rights to the Senate, supra* note 27, at 30.

40. *Id.* These early bilateral agreements have contemporary significance since they provide protection to works published prior to the effective date of the Universal Copyright Convention, *infra* note 52. Article XIX of the Universal Copyright Convention preserves these bilateral relations by providing that the Universal Copyright Convention "shall not abrogate multilateral or bilateral conventions or arrangements in effect between two or more Contracting States." If terms in the Universal Copyright Convention and a pre-existing bilateral agreement conflict, the terms of the Universal Copyright Convention control. *See* Dixon, *The Universal Copyright Convention and United States Bilateral Copyright Arrangements, reprinted in* UNIVERSAL COPYRIGHT CONVENTION ANALYZED 113 (T. Kupferman & M. Foner ed. 1955). Since the enactment of the Universal Copyright Convention, the United States has utilized the bilateral method of copyright protection with only one nation—the People's Republic of China.

41. Chace Act of 1891, § 3, 26 Stat. at 1107. *See also Report on Intellectual Property Rights to the Senate, supra* note 27, at 30.

42. *Report on Intellectual Property Rights to the Senate, supra* note 27, at 30.

43. Chace Act of 1891, § 3, 26 Stat. at 1107. This provision has been the major stumbling block for United States participation in the Berne Convention. The failure of the Copyright Revision Act of 1976, *see supra* note 17, to remove the manufacturing clause from United States law reflects the continued concerns of domestic book manufacturers and printers.

44. Chace Act of 1891, § 3, 26 Stat. at 1107.

in the United States was thereafter prohibited, subject to certain exceptions.[45] This provision provided the most substantial barrier to foreign authors and printers.

Protection afforded foreign authors was improved somewhat in the years after the Chace Act. The Copyright Act of 1909[46] made some minor concessions to foreign authors. That Act reinforced the notion that the President could proclaim protection to a foreign nation's citizens. Thus, the "reciprocal" treatment provision was retained and foreign states granting copyright protection to United States citizens on substantially the same grounds as granted to its own citizens were eligible to receive the benefit of the Presidential proclamation.[47] The Copyright Act of 1909 also allowed an alien author or proprietor to copyright his or her work in the United States, even if his or her nation had not been proclaimed, provided the author was domiciled in the United States at the time of first publication.[48]

However, section 16 of the Copyright Act of 1909 retained the manufacturing clause, subject to certain exceptions.[49] For example, section 15 excepted from the domestic manufacture provision "books of foreign origin in a language or languages other than English."[50] The Copyright Act of 1909 eased this burden on foreign publishers somewhat, by introducing special "ad interim" protection for books published abroad in English before publication in the United States.[51] Under these provisions, foreign publishers were allowed to publish works outside the United States, and yet retain a short-term copyright within the United States by depositing a copy of the work. This allowed the publisher time to decide if publication of an American edition, under the terms of the manufacturing clause, would be desirable. Article III, section 1 of the Universal Copyright Convention[52] (UCC) created the most notable ex-

45. *Id.* § 3, 26 Stat. at 1107-08.

46. Copyright Act of 1909, ch. 320, 35 Stat. 1075.

47. *Id.* § 8(b), 35 Stat. at 1077.

48. *Id.* § 8(a), 35 Stat. at 1077.

49. *Id.* § 16, 35 Stat. at 1079.

50. *Id.* § 15, 35 Stat. at 1078-79.

51. *Id.* §§ 21-22, 35 Stat. at 1080. *See also* Grove Press, Inc. v. Greenleaf Publishing Co., 247 F. Supp. 518, 521 (E.D.N.Y. 1965).

52. Universal Copyright Convention, Sept. 6, 1952, 6 U.S.T. 2731, T.I.A.S. No. 3324, 216 U.N.T.S. 132, *reprinted in* 4 M. NIMMER, *supra* note 18, at app. 24, *amended by* Universal Copyright Convention, July 24, 1971, 25 U.S.T. 1341, T.I.A.S. No. 7868, *reprinted in* 4 M. NIMMER, *supra* note 18, at app. 25 [hereinafter Universal Copyright Convention].

ception to the manufacturing clause.[53] This section eliminated the manufacturing requirement for foreign authors claiming protection through the UCC.[54] However, the UCC did not come into effect until 1955.

Under the Copyright Revision Act of 1976,[55] the manufacturing clause remains, but in a more limited form, in section 601. For example, under that section, the scope of the manufacturing provisions extends only to literary works in English by authors domiciled in the United States. The section thus serves to prevent domestic authors from publishing their works at less expense in nations abroad. The manufacturing provisions are further limited by section 601(d). Under that section, a work that has not been published in the United States is not automatically excluded from protection, although relief for infringement may be precluded.[56] In spite of the efforts of some to do away with the manufacturing clause altogether,[57] domestic pressure groups have thus far been successful in their efforts to maintain its inclusion.[58]

The history of United States domestic law on copyright is thus largely the story of a net copyright importer. Export markets for IP emanating from the United States were few.[59] Film, music and sound recording industries focused on domestic markets, and the strength of these markets made it unnecessary, or less profitable, for domestic producers to look beyond the borders of the United States.[60] The current efforts to bring United States copyright law into line with established international conventions, especially the Berne Convention, is to a great extent a recognition of the shifting position of the United States in the area of international trade in IP.

B. *United States Involvement in International Conventions for the Protection of Intellectual Property*

From the foregoing, it accurately may be inferred that the United States historically has preferred treating copyright issues through bilateral relations with individual nations, and not through multilateral con-

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53. *Id.* at art. III(1), *reprinted in* 4 M. NIMMER, *supra* note 18, at app. 24.

54. *Id. Cf.* Copyright Revision Act of 1976, *supra* note 17, 17 U.S.C. at § 104(b)(2).

55. *See supra* note 17.

56. *Id.* 17 U.S.C. at § 601(d).

57. *See generally Report on Intellectual Property Rights to the Senate, supra* note 27.

58. *See* Act of July 13, 1982, Pub. L. No. 97-215, 96 Stat. 178 (Congressional override of President Reagan's veto of extension of manufacturing clause); *see also* H.R. REP. No. 575, 97th Cong., 2d Sess., pts. 1-2 (1982).

59. *Report on Intellectual Property Rights to the Senate, supra* note 27, at 32.

60. *Id.*

ventions on the subject. Until 1955, this bilateral stance dominated United States attitudes on copyright protection. Since that time, however, the United States has become more interested in multilateral approaches to the issue. Today, although bilateral relations still exist, and are sometimes still utilized, multilateral conventions have become the dominant means employed by the United States in its attempts to protect the IP rights of its citizens. It is not possible to discuss all of the multilateral treaties that have been either accepted or rejected by the United States.[61] Although other conventions may have a bearing on the protection of United States high technology IP abroad, this Note must limit itself to a discussion of the two major conventions—the Berne Convention and the UCC. The substantive provisions of these two conventions likely will provide considerable guidance to the negotiators at the Uruguay Round.

1. The Berne Convention and Prospects for United States Participation

The first multilateral copyright treaty was signed in Berne, Switzerland in 1886.[62] The treaty has since become known as the Berne Convention, and to date it has had two additions and five revisions.[63] The current revision was made at Paris in 1971, and has been ratified by seventy-six nations.[64] The Berne Convention is thus the guiding force in the field of copyright law for a substantial portion of the world's trading nations. The Secretariat for the Berne Convention is the World Intellectual Property Organization (WIPO), a specialized agency of the United Nations.[65] WIPO has gained respect in the international community for the professionalism of its leadership. The United States never has joined

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61. One author has summarized those treaties as follows:

> The Berne and Universal Conventions cover rights for authors, composers, artists and film-makers. They give no protection to makers of sound-recordings, performers or broadcasting organisations, but these are covered by the Rome Convention of 1961 which deals with what are colloquially known as 'neighbouring rights'. Also there is the Phonograms Convention of 1971 which gives rights to record-makers. . . . There also exists a Convention protecting space satellite broadcasts which was concluded in Brussels in 1974.

Buck, *supra* note 11, at 475.

62. M. BOGUSLAVSKY, COPYRIGHT IN INTERNATIONAL RELATIONS 55 (1979). *See also supra* note 18.

63. DuBoff, Winter, Flacks & Keplinger, *Out of UNESCO and into Berne: Has United States Participation in the Berne Convention for International Copyright Protection Become Essential?*, 4 CARDOZO ARTS & ENT. L.J. 203, 204 (1985) [hereinafter DuBoff].

64. *Id.* The Berne Convention has been revised in 1908, 1928, 1948, 1967, and 1971.

65. *Id.* at 212-13.

the Berne Convention.[66] Despite efforts by legislators at various times[67] to bring United States domestic law into line with the Berne Convention in order to allow for ratification by the United States, domestic pressure groups have succeeded in preserving the formalities of United States law that preclude United States participation.[68] If the United States is to prove to the world that it is committed to the protection of IP rights, it must seriously consider reforming its domestic laws to allow for adherence to the Berne Convention. A renewed movement by domestic groups toward this goal is already apparent.[69]

The purpose of the Berne Convention, as set out in its preamble, is to bring the nations of the world together in an effort "to protect, in as effective and uniform a manner as possible, the rights of authors in their literary and artistic works."[70] In order to obtain these objectives, the Berne Convention employs five identifiable methods.[71] The underlying and most significant principle is that of national treatment. Under this principle, each member nation must give the same treatment to the nationals of the other member nations as it gives to its own nationals.[72] The practical effect of this provision is that those authors receiving better protection abroad will seek to gain better protection in their own domestic law, thereby improving worldwide protection incrementally over time

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66. Attempts have been made by participants in the Berne Union (i.e., Berne Convention member nations) to negotiate with the United States and bring the United States into the Berne Union. Each time, however, the members of the Berne Union have chosen to stand by the principles of the Berne Convention, rather than conform to the United States position. *Id.* at 213.

67. *See, e.g.*, Goldman, *The History of U.S.A. Copyright Law Revision From 1901 to 1905*, in 2 STUDIES ON COPYRIGHT 1101 (Arthur Fisher memorial ed. 1963). This study illustrates that revision movements have been aimed chiefly at bringing United States law into line with the Berne Convention. Those attempts came to a peak in the years 1909 through 1924. Legislative attempts in the years 1924 to 1940 also provide examples of the futility of efforts to bring the United States into line with the Berne Convention principles. *Id.*

68. *See generally supra* notes 27-60 and accompanying text. The withdrawal of the United States from UNESCO may spark renewed interest among legislators toward adherence to the Berne Convention.

69. *See generally* DuBoff, *supra* note 63. *But see Pressing Issue: Publishers Mobilize to Foil Revision of Copyright Law*, Wall St. J., Nov. 3, 1987, at 35, col. 4 [hereinafter *Pressing Issue*].

70. Berne Convention, preamble, *reprinted in* 4 M. NIMMER, *supra* note 18, at app. 27.

71. S. STEWART, *supra* note 8, at 87-88.

72. Berne Convention, art. 5(1), *reprinted in* 4 M. NIMMER, *supra* note 18, at app. 27. *See also* S. STEWART, *supra* note 8, at 87.

and solidifying world consensus.[73]

The principle of reciprocity, the second method utilized by the Berne Convention, alters national treatment somewhat. Under this principle, a nation may limit the protection granted to a foreign national to that level bestowed upon its own citizens in the foreign nation of the person seeking its domestic protection.[74] This allows a member nation to treat foreigners as their own governments would have treated them under similar circumstances. This result is often the product of political pressure from domestic interest groups who are receiving substandard protection in the foreign nation.[75] If used extensively, this principle could have obvious detrimental effects on the process of incremental expansion of protection of IP rights.

The third and fourth methods employed by the Berne Convention to achieve its objective are somewhat related. They are the establishment of minimum rights in the substantive clauses of the Berne Convention[76] and the principle of automatic protection.[77] These two provisions combine to give authors and artists substantive protections—such as moral rights, translation rights and public performance rights—without a requirement of compliance with formalities as a precondition.[78] These provisions have given the United States the most trouble in its attempts to bring its laws into line with the Berne Convention. Both the substantive rights (most notably the moral rights provisions) and the lack of formalities have consistently proved to be hurdles too high for domestic United States law.

The fifth and final method employed by the Berne Convention is the provision for the making of reservations.[79] Thus, under article 27 of the Berne Convention, member nations may make reservations to the introduction of new rights where such reservations are necessitated by their domestic laws. These reservations may later be withdrawn when domestic law is brought into line with the Berne Convention.

Although the United States has not fallen in line with the principles of the Berne Convention, and has therefore been unable to join the Berne Union, protection has not been wholly denied to citizens of the United States. Under the "backdoor to Berne," opened by the 1908 revision of

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73. S. STEWART, *supra* note 8, at 87.

74. *Id.*

75. *Id.*

76. For a detailed analysis of the substantive provisions, see 3 M. NIMMER, *supra* note 18, at § 17.04[D] (1981), and S. STEWART, *supra* note 8, at 108-22.

77. S. STEWART, *supra* note 8, at 87-88.

78. *Id.*

79. *Id.* at 88.

the Berne Convention in Berlin,[80] a citizen of a non-member nation, such as a United States citizen, may receive the protection offered by the Berne Convention. Under the Berlin revision, protection was extended to works first published in any member state regardless of the nationality of the author or artist. Since Canada became a member of the Berne Convention in 1928, it has served as the "backdoor" for United States producers of IP, who are able to gain protection both internationally and domestically by simultaneous publication in this Berne member nation and the United States.[81] Though subject to criticism as being unjust to member nations of the Berne Convention, the "backdoor" method of protection remains viable today.

The Berne Convention remains the principle document for the protection of IP rights among the major trading nations. The problems with inconsistent domestic legislation, fueled by pressure from the manufacturing and publishing industries, combined with the continued existence of effective bilateral relationships, the availability of the "backdoor" protection and the successful negotiation of the Universal Copyright Convention[82] in 1952 have all played a part in the failure of the United States to join the Berne Union.

2. The Universal Copyright Convention and Its Failings

The failure of the United States to align its domestic law with the principles of the Berne Convention induced movement toward the negotiation of the Universal Copyright Convention.[83] The inability of the United States to join the Berne Union and other international agreements on the protection of IP rights caused great concern among domestic groups specially affected in the international community.[84] The UCC therefore applied a lower level of protection to authors and artists[85] in order to allow the United States and other similarly situated nations to adhere to its principles, and was thought of by at least one prominent figure in United States copyright law as a bridge to the Berne Convention.[86] Even within the UCC itself the supremacy of the Berne Conven-

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80. *See Report on Intellectual Property Rights to the Senate, supra* note 27, at 41.

81. *Id.* at 42. Although article 6(1) of the Paris Act of the Berne Convention allows a member nation to deny protection to works by nationals of non-member nations, this power of retaliation has never been invoked. *See id.* at 43-44.

82. *See infra* notes 83-87 and accompanying text.

83. *See supra* note 52.

84. *See* Houghton Mifflin Co. v. Stackpole Sons, Inc., 104 F.2d 306 (2d Cir. 1939).

85. Buck, *supra* note 11, at 475.

86. Maintaining this position was Arthur Fisher, the Register of Copyrights at the

tion was never in doubt. Under the "Berne safeguard clause," composed of article XVII and the "Appendix Declaration" attached thereto, Berne member nations are prohibited from denouncing the Berne Convention in favor of the UCC.[87] Thus, where a dispute arises between nationals of Berne members, the Berne Convention will rule.

The UCC, like the Berne Convention, deals with the rights afforded authors, composers, artists and film-makers.[88] Unlike the Berne Convention, however, the UCC makes no attempt to set out detailed minimum standards of protection.[89] When the commitment to provide "adequate and effective protection," as stated in article I, and the principle of national treatment of article II, are read together, the result is that the level of protection depends largely on the domestic law of the nation where protection is sought.[90] Under the present version of the UCC, however, to be "adequate," member nations must grant certain basic rights, such as minimum duration rights, the translation right, the reproduction right, the public performance right and the broadcasting right.[91]

The UCC differs in a fundamental way from the Berne Convention. Under the UCC it is the member states who have the obligation to provide adequate protection. Under the Berne Convention, the individual authors and artists of member nations may seek the protection offered by the Berne Convention "regardless of the national legislation of the country where the protection is claimed."[92] Reliance on domestic legislation is the basis of much criticism levied against the UCC, as it provides a fur-

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time of the Universal Copyright Convention and one of its principal architects. *See* DuBoff, *supra* note 63, at 211.

87. Ringer, *The Role of the United States in International Copyright—Past, Present, and Future,* 56 GEO. L.J. 1050, 1062 (1968).

88. Buck, *supra* note 11, at 475. The rights of makers of sound-recordings, performers and broadcasting organizations are covered elsewhere. *See supra* note 61 and accompanying text.

89. Buck, *supra* note 11, at 476.

90. S. STEWART, *supra* note 8, at 137.

91. *Id.* These rights represent the "bundle" of rights accorded the copyright owner and author. The minimum duration right is the number of years that the copyright will last, usually 50 years plus the life of the author or artist. The translation right gives the author the exclusive right to make or authorize translations of the work. The reproduction right similarly grants the author the right to make or authorize the reproduction of the work. The public performance right gives the author or artist rights in the "performance" of the work in "public." Although "performance" and "public" are defined terms in copyright law, the import under this right clearly is to grant the author or artist control over who may perform his or her work and how and where his or her work will be performed. Finally, the broadcasting right similarly grants the author or artist rights in the broadcast of their works in the various media.

92. *Id.*

ther barrier to the eventual alignment of the UCC with the Berne Convention. At least one author has declared that, as a result of the UCC's reliance on domestic legislation, the minimum rights granted by the present version of the UCC are not true minimum rights as that term is used in the Berne Convention.[93]

The UCC, which came into effect in 1955, brought to an end the era of bilateralism which had characterized United States copyright policy since 1889.[94] The United States now would be guided in its relations with other nations by the terms of the UCC, unless a particular nation refused to join the UCC. In such a case, any preexisting bilateral relationship between the United States and the non-signatory would govern their relations. Had the United States not withdrawn from UNESCO, this system may have continued to work well for the United States as it maintained efforts to bring domestic law in line with the Berne Convention.

UNESCO is the Secretariat of the UCC, and thus is the organization charged with the administration of that convention.[95] The United States withdrew from participation in UNESCO in December 1984.[96] The most significant question raised by this withdrawal is whether the membership of the United States in the UCC is still valid.[97] Although the United States has signified that it intends to adhere to the UCC,[98] rejection of this stance by the other member nations could lead to a void in the protection of IP produced by domestic artists and authors. This result could be effected either through a denial of membership by the other member nations, or by a termination of the power of the United States to form future provisional changes in the UCC. Such a result could hardly occur at a worse time, given the growing significance of high technology IP to the United States balance of trade.

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93. *See, e.g., id.* at 137-38, 138 n.6.

94. *See supra* note 40; DuBoff, *supra* note 63, at 211.

95. *See* E. PLOMAN & L. HAMILTON, COPYRIGHT: INTELLECTUAL PROPERTY IN THE INFORMATION AGE 86 (1980).

96. *U.S. Notifies UNESCO of Intent to Withdraw*, 84 DEP'T ST. BULL. No. 2083, at 41 (1984).

97. *See U.S. Participation in International Scientific, Educational, Cultural and Communications Fields in the Absence of U.S. Membership in UNESCO: Report by the Congressional Research Service to the Subcomm. on Human Rights and International Organizations and the Subcomm. on International Operations of the House Comm. on Foreign Affairs*, 99th Cong., 1st Sess. 64 (1985) (addressing the issue of United States participation in UNESCO copyright and related rights meetings after the United States withdrawal). *See also* DuBoff, *supra* note 63, at 212.

98. *See* DuBoff, *supra* note 63, at 212 n.63.

III. The General Agreement on Tariffs and Trade and Its Importance to the United States

A. *The GATT and International Trade*

The GATT[99] is the main document regulating trade among the market economy nations of the world. The comprehensive set of codes contained in the original text of the GATT has been changed periodically at the instigation of member nations.[100] The most recent of these changes came about in the Tokyo Round of negotiations from 1973 to 1979. The GATT is administered by an international organization known as "the GATT." Procedures under the GATT "provide for extensive exchanges of information, regular review of key subject areas, and ad hoc consultations on particular concerns."[101] The GATT's dispute settlement procedure is the last resort for governments involved in a trade dispute. This procedure is termed "the panel procedure," and consists of third-party adjudication of legal claims.[102]

Presently, the GATT is a stranger to the international infrastructure that protects the rights of authors and artists. Further, incorporation of provisions dealing with IP rights is inconsistent with the GATT as it now stands.[103] There also exists a significant portion of the membership of the GATT—i.e., the Third World generally—that opposes the inclusion of IP rights into that instrument.[104] The problems involved in attempting to incorporate IP rights into the GATT are thus structural and technical as well as political. If the commitment of the developed nations succeeds in installing some sort of IP code into the GATT structure, the key to that code's effectiveness will be in the enforcement provisions be-

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99. *See supra* note 19.

100. Hudec, *GATT Dispute Settlement After the Tokyo Round: An Unfinished Business*, 13 CORNELL INT'L L.J. 145, 146 (1980).

101. *Id.* at 147.

102. *Id.*

103. *GATT and IP, supra* note 3, at 497 (Summary of remarks by Robert E. Hudec, professor of law at the University of Minnesota and former general counsel in the Office of the United States Trade Representative).

104. "Third World countries have argued that the World Intellectual Property Organization—the United Nations body mandated to oversee copyright and patent matters—should be the forum for such discussions, and that GATT should concentrate on trade in goods and services." *EC and Japan Present Intellectual Property Proposals for Uruguay Round Negotiations*, 4 Int'l Trade Rep. (BNA) 1499, 1499 (Dec. 2, 1987) [hereinafter *EC and Japan Proposals*]. The European Economic Community and Japan, however, generally have supported United States efforts to include IP matters into the Uruguay Round of negotiations and have submitted IP proposals of their own. *Id.*

hind it.[105] It is the prospect of effective enforcement that has drawn the public and private sectors in the United States to the GATT.[106]

B. *Enforcement Under the GATT*

Although the GATT has a formal system for the settlement of disputes, the record of past performance under this system has not been exemplary.[107] Violations of either the express provisions, or the "spirit," of the GATT have led to greater violations in retaliation.[108] All authorities agree that if the GATT is to be an effective force in the protection of IP rights in the global community, its provisions for enforcement must be substantially strengthened.[109]

With all the difficulties involved in negotiating and incorporating IP protection into the GATT, and the past record of inadequate enforcement, it is appropriate to ask whether it is worth the trouble to pursue protection of IP rights in this forum. Both the United States government[110] and private interest groups[111] have determined that it is very much worth the trouble. Besides the issues of non-participation in the Berne Convention, and the erosion of United States influence in the UCC, there are many solid reasons to look to the GATT for protection

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105. "The procedures for dispute settlement have a special importance, however, for they are the ultimate test of rule enforcement and thus set the tone for treatment of the rules in the rest of GATT affairs, and in national capitals where critical compliance decisions are actually made." Hudec, *supra* note 100, at 147.

106. H. STALSON, INTELLECTUAL PROPERTY RIGHTS AND U.S. COMPETITIVENESS IN TRADE 55 (1987) (National Planning Association, Committee on Changing International Realities).

107. Schermers, *Strengthening GATT*, 20 COMMON MKT. L. REV. 393, 393 (1983) (editorial comment). *See also* Hudec, *supra* note 100, at 150.

108. Schermers, *supra* note 107, at 394.

109. These authorities have called for a general and comprehensive overhaul of the GATT dispute settlement process. *See USTR Yeutter Says Uruguay Round Should Seek Reform of Dispute Settlement Mechanism*, 4 Int'l Trade Rep. (BNA) 1595 (Dec. 23, 1987). One author has summarized the proposals for reform as follows:

> (1) the implementation of measures to provide for greater reliance on mediation; (2) the establishment of a voluntary arbitration mechanism; (3) the imposition of tighter deadlines for various stages of the dispute settlement process; (4) greater use of non-governmental experts as panelists; (5) the use of a "consensus-minus-two" rule for adoption of panel reports; and (6) the adoption of a declaration by the contracting parties to the GATT, affirming their commitment to abide by dispute settlement procedures.

Bliss, *GATT Dispute Settlement Reform in the Uruguay Round: Problems and Prospects*, 23 STAN. J. INT'L L. 31, 31-32 (1987).

110. *See generally* ADMINISTRATION STATEMENT, *supra* note 6.

111. Priorities for IP, *supra* note 2, at 6.

of IP rights on the global level. In the words of President Reagan, "The GATT has been the linchpin of the postwar trade system."[112] The President and many others see the GATT as the solution to many current trade problems, but only if the GATT undergoes some fundamental changes.[113] Proposed changes, especially changes in the dispute settlement process of the GATT, are the subject of the new GATT round of negotiations. Private interests in the United States are among those who perceive advantages to a new strengthened GATT.[114] According to these private interest groups, the new GATT round of negotiations is currently the most desirable forum for discussion of IP protection, since that agreement "has the institutional and organizational elements necessary to enforce and monitor" any IP code that would result from the negotiations.[115]

Although the dispute settlement procedures of the GATT likely will undergo substantial and necessary changes under the Uruguay Round,[116] the Multilateral Trade Negotiations Subsidies Code[117] (Subsidies Code or Code) is likely to be the model for any enforcement provisions that will back the IP code. The Subsidies Code is a product of the Tokyo Round of GATT negotiations[118] and represents a substantial advance toward solidifying the enforcement provisions of the GATT. To better understand the enforcement provisions as they are today and the changes that are necessary if these provisions are to be truly successful, it is important to examine the historical development of, and the theories behind, enforcement under the GATT.

The GATT system is set up on a "balance of benefits" concept.[119] Under this concept the member nations of the GATT have contracted to

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112. Representatives of Le Figaro, *supra* note 23, at 1159.

113. *Id.*

114. *See, e.g.*, CBS, Inc., U.S. Trade Policy: Copyright Infringement and the GATT (Feb. 24, 1986) [hereinafter CBS Report] (report submitted to Services Policy Advisory Committee); U.S. Council for Int'l Business, A New Round of Multilateral Trade Negotiations: Recommended U.S. Business Objectives, Statement of the United States Council for International Business (Apr. 18, 1985) [hereinafter CIB Report] (policy statement).

115. Priorities for IP, *supra* note 2, app. II, at 6.

116. *See supra* note 109 and accompanying text.

117. Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, Apr. 12, 1979, *reprinted in* H.R. Doc. No. 153, 96th Cong., lst Sess., pt. I, 257 (1979) [hereinafter Subsidies Code].

118. The negotiations were open to certain non-member nations, but were dominated by the GATT. Hudec, *supra* note 100, at 146-47 n.2.

119. Hudec, *Regulation of Domestic Subsidies Under the MTN Subsidies Code*, in INTERFACE THREE: LEGAL TREATMENT OF DOMESTIC SUBSIDIES 3 (D. Wallace, Jr., F. Loftus & V. Krikorian ed. 1984).

gain mutual benefits in their trading relations. When one member nation takes actions that operate to the detriment of another member nation, even where the actions were perfectly legal under the GATT, the offended nation may take counter measures of a magnitude sufficient to counter those of the offending nation.[120] A nation may thus violate the GATT not only by violating a clear legal obligation (a direct violation), but also by nullifying a benefit to another member nation (termed a "nonviolation nullification and impairment"). The line between these two types of infraction is not always clear, but this poses little problem since both types of infraction are treated similarly under the GATT procedures and remedies provisions.[121] In either case, the offending member may be subjected to a court hearing where damages are assessed on a finding of damage to the offended member. Under this formal ruling, the member nations may allow the offended nation to take "compensatory" measures.[122]

Although these procedures could be utilized to redress a variety of issues where a "benefit" has been impaired, the only issues that the member nations have been inclined to litigate are those related to tariff concession benefits.[123] Further, under this litigation, GATT members are entitled to reduce benefits somewhat in their ordinary course of domestic policy. The policy behind the balance of benefits principle thus favors some flexibility in its implementation, and member nations are expected to bear some of the risk of future benefit-impairing actions by the other member nations.[124]

Just how far a member nation may go in its benefit-impairing actions is not clear, but given the propensity of the member nations to litigate only tariff concessions, there has been a trend among member nations toward the development of more subtle means of impairing the benefits of other GATT members—most notably, non-tariff barriers (NTBs). NTBs include barriers such as import quotas, internal taxes and restrictions, state trading, subsidies (i.e., government subsidation of goods produced domestically intended for export), and administrative formalities. Using these barriers, GATT member nations may impose additional

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120. *Id.*

121. *Id.*

122. *Id.* Though "compensatory" in theory, such a ruling is generally considered a diplomatic defeat.

123. *Id.* at 6-7.

124. *The Australian Subsidy on Ammonium Sulphate*, U.N. Doc. No. GATT/CP.4/39 (1950), *reprinted in* 2 GENERAL AGREEMENT ON TARIFFS AND TRADE: BASIC INSTRUMENTS AND SELECTED DOCUMENTS 188, 193, U.N. Sales No. GATT/1952-4 (1952).

costs on foreign producers without openly violating the tariff provisions of the GATT.

The Subsidies Code was developed to address the growing problem created by the use of NTBs.[125] The use of these barriers caused great enough alarm among the member nations and posed a sufficient threat to the liberal trading system intended by the GATT that the member nations were forced to choose between negotiating new enforcement codes or watching the entire system collapse.[126] The Subsidies Code expands on the notion that actions by one government may lead to actionable claims even though those actions were perfectly legal.[127] This expansion is based on the "nonviolation nullification and impairment" remedy discussed above, which appears in article XXIII (1)(b) of the GATT. Because the Code sets up a dispute settlement system without clearly setting out the rules governing GATT member action, it has been referred to as "regulation-without-obligation."[128] Since member nations are reluctant to give up their domestic prerogatives in this area, the Code allows each nation the greatest possible latitude, while offering redress to those member nations directly harmed by offending NTBs. As such, the Subsidies Code achieves some international discipline over domestic NTBs, while avoiding repugnant "thou-shalt-not" rulemaking.[129] The advances in dispute settlement embodied in the Subsidies Code are easily transferable to other issues under the GATT and will undoubtedly provide the basis for the enforcement provisions of the new IP code that results from the new round of negotiations.

The Subsidies Code was not a radical departure from the traditional dispute settlement system. The reforms primarily were limited to "selective adjustments designed to enhance [the panel's] efficiency and impact."[130] Also, the Code expressly allows use of domestic subsidies "to achieve [social, economic] . . . and other important objectives which [the member nations] consider desirable."[131] This provision must be read in conjunction with another directly following it, which states that the signatories "recognize" that establishment of a domestic subsidy may cause injury to a domestic industry of another signatory, may seriously

125. Hudec, *supra* note 100, at 153-54.

126. *Id.* The current round of negotiations is under similar pressure that a collapse will occur unless the dispute settlement process is further modified. Bliss, *supra* note 109, at 31.

127. Hudec, *supra* note 119, at 1.

128. *Id.* at 2.

129. *Id.* at 1.

130. Hudec, *supra* note 100, at 158.

131. Subsidies Code, *supra* note 117, at art. 11(1).

prejudice the interests of another signatory, or may nullify or impair benefits accruing to another signatory.[132] Any such result would give rise to a cognizable cause of action by the offended party.[133] These three causes of action are particularly relevant where the domestic subsidy "would adversely affect the conditions of normal competition."[134] The Code imposes what may be called quasi-obligations on signatories to "seek to avoid causing" an actionable adverse consequence, and to "weigh, as far as practicable, . . . possible adverse effects on trade."[135] While these provisions may support the legitimacy of the nullification type remedy and give credence to the notion that "freedom from such adverse consequences is a type of 'benefit' that signatories can 'reasonably expect' to have under the Code," they are not the critical portions of the dispute settlement process.[136]

Articles 12 and 13 of the Code comprise the remedial procedure. Article 12(3) provides a cause of action for each of the three adverse consequences listed above.[137] Invocation of one of these causes of action leads to the consultation procedure, whereby the parties are encouraged to resolve their differences in an informal manner. If this procedure does not produce results within sixty days, article 13(2) "provides for automatic invocation of the conciliation and dispute settlement procedures."[138] Under the dispute settlement procedures, a panel will make a fact finding on the issue and determine whether the domestic subsidy has been installed in violation of one of the three causes of action. The ruling of the panel is then sent to the Committee on Subsidies and Countervailing Measures which makes an independent determination of infringement, and may, "under Articles 13(4) and 18(9), issue recommendations and authorize countermeasures."[139]

While the specific causes of action under the Subsidies Code may be subject to varying interpretations,[140] which have corresponding effects on the scope of the causes of action, the primary importance of the Code for purposes of this Note is the process by which disputes are handled. The system of consultations, conciliation and dispute settlement (with panel determinations), and Committee review (with power to make recommen-

132. *Id.* at art. 11(2).
133. *See infra* note 137 and accompanying text.
134. Subsidies Code, *supra* note 117, at art. 11(2).
135. *See id.* at arts. 8(3) and 11(2). *See also* Hudec, *supra* note 119, at 8.
136. *See* Hudec, *supra* note 119, at 8.
137. Subsidies Code, *supra* note 117, at art. 12(3).
138. Hudec, *supra* note 119, at 9.
139. *Id.*
140. *Id.* at 9-18.

dations and authorize countermeasures) is likely to be the process on which the new IP code will be based.

IV. THE URUGUAY ROUND OF GATT NEGOTIATIONS

A. *The General Significance of the Uruguay Round*

The Uruguay Round of GATT negotiations (Uruguay Round), begun in 1987, is the eighth round of multilateral trade negotiations in the GATT's history.[141] In 1985, the Uruguay Round was already being termed as potentially the most comprehensive and significant trade round in the history of GATT.[142] In addition to improvement and clarification of existing GATT articles, and the inclusion of trade related aspects of IP rights, the United States sought the inclusion of the following subjects: (1) greater liberalization of the agriculture policies of member nations; (2) trade related investment measures; (3) trade in services; and (4) modification and strengthening of the GATT's dispute settlement mechanisms.[143] When the United States representatives returned from the Ministerial meeting at Punta del Este, Uruguay, United States Ambassador Yeutter reported that the negotiating team had been successful in getting all of these topics on the formal agenda for the negotiations.[144]

The main impetus for the new round was the economic environment resulting from the recession of the early 1980s combined with increasing violations of international trade policies.[145] Both developed and developing nations are now looking to a major revision of the GATT as the only solution to the deterioration of international trade.[146] Such a major revision will take years of negotiation to accomplish, and, as with prior rounds of negotiations, will leave some issues unresolved.

Although the Uruguay Round carries with it the promise of a comprehensive reorganization of world trade policy, it is essentially the logical outgrowth of the Tokyo Round, and the "unfinished business" of that

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141. GENERAL AGREEMENT ON TARIFFS AND TRADE, GATT ACTIVITIES 1985: AN ANNUAL REVIEW OF THE WORK OF THE GATT, at 6, U.N. Sales No. GATT/1986-2 (1986) [hereinafter GATT ACTIVITIES].

142. *Id.*

143. Holmes, *The Office of the Trade Representative: Recent Legal Developments*, 20 INT'L LAW. 1351, 1352-53 (1986).

144. *Results of the GATT Ministerial Meeting Held in Punta del Este, Uruguay: Hearings Before the Subcomm. on Trade of the House Comm. on Ways and Means*, 99th Cong., 2d Sess. 3, 12-15 (1986) (statement of Hon. Clayton Yeutter, United States Trade Representative).

145. GATT ACTIVITIES, *supra* note 141, at 6.

146. *Id.* at 7-9.

Round.[147] If the Uruguay Round is to make a lasting improvement in the area of international trade, it must not only deal effectively with this "unfinished business," but the member nations must accept the "give and take" of negotiation on a substantially broader scope of issues.

B. *Objectives of the United States*

As stated above, the United States is seeking to achieve a major overhaul of GATT provisions as well as a dramatic increase in the scope of GATT coverage through the Uruguay Round.[148] Intellectual property rights are but one prong of this desired restructuring of the world trading system. Thus the attention of the negotiators at the Uruguay Round will be divided between a number of important subjects, including IP. Under these circumstances, it is important to understand the precise importance of greater IP protection to the United States, the goals of the United States in this area, and the methods that the United States intends to use to achieve these goals in the negotiations. This subsection will address each of these issues.

The United States has publically and officially acknowledged the importance of IP rights, not only to the United States economy, but to the international trading system in general. In addition to the authorities cited earlier,[149] one United States official has stressed that the protection of IP rights "is rapidly becoming one of the most critical trade and investment issues of this decade and beyond."[150] The United States has thus stressed the issue of IP protection as a trade issue.[151] Under this view, infringement is not only seen in the traditional sense as a cultural, scientific and technical matter, but also as a trade barrier.[152] Such a view allows the issue of IP protection more easily to be adapted to a GATT-type solution, since the GATT is specifically designed to cover trade issues.

The current official position of the United States government on IP protection issues basically is as follows:

(1) "Losses as a result of counterfeiting and piracy to the trading system as a whole have been extensive and are growing."[153]

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147. *Id.* at 6-7.

148. *See supra* notes 142-44 and accompanying text.

149. *See, e.g., supra* notes 3-4 and accompanying text.

150. *Intellectual Property Hearings, supra* note 15, at 51 (statement of Harvey E. Bale, Jr., Assistant United States Trade Representative).

151. *See* H. STALSON, *supra* note 106, at 51.

152. *Id.*

153. *U.S. Framework Proposal to GATT Concerning Intellectual Property Rights,*

(2) These losses are caused primarily by inadequate international norms and lack of effective means for enforcing international obligations.[154]
(3) This process in turn causes "trade distortions" and "impairment of concessions previously negotiated."[155]
(4) Although present means of protecting IP—such as the Berne Convention—have made advances in raising the level of protection available today, these means lack the mechanisms for effective dispute settlement and enforcement.[156]
(5) The GATT should include IP as a supplement to these existing international IP conventions and agreements in order to "facilitate the increased protection of intellectual property and thereby substantially reduce trade distortions."[157]

This policy emphasis on the issue of "trade distortion" represents a shift in focus for the United States. Although "fairer global trade" consistently has been a high priority for this administration,[158] officials have also stressed the more traditional goals of IP protection. Thus, in a statement made by the Office of the United States Trade Representative in April 1986, the following were listed specifically as desirable effects of increased IP protection in the world community:

* Adequate and effective protection fosters creativity and know-how, encouraging investment in research and development and in new facilities.
* Innovation stimulates economic growth, increases employment and improves the quality of life.
* Technological progress is a critical aspect of U.S. competitiveness as well as freer and fairer global trade.
* In developing countries, improved intellectual property protection can foster domestic technologies and attract needed foreign know-how and investment.[159]

By focusing on the trade aspects of increased IP protection and the ad-

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4 Int'l Trade Rep. (BNA) 1371, 1371 (Nov. 4, 1987) [hereinafter *U.S. Framework Proposal*]. This Framework Proposal is the most authoritative document on United States policy to date. Although the United States proposal refers to the GATT IP code as an "intellectual property Amendment" or as the "Agreement," this Note will use the term "GATT IP code" or "IP code" to describe all proposals for the inclusion of IP rights into the GATT.

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. *See* ADMINISTRATION STATEMENT, *supra* note 6, at 1.

159. *Id.* These administrative pronouncements closely parallel proposals for a GATT IP code made by various private interest groups in the United States. *See, e.g.*, CBS Report, *supra* note 114; CIB Report, *supra* note 114.

vantages GATT's enforcement procedures would offer, the United States undoubtedly is responding to accusations that GATT is not the proper forum for IP matters.[160] Such a stance does not, however, prevent the United States from looking to approaches outside the GATT such as possible participation in the Berne Union,[161] continued bilateral negotiations, or even unilateral action.[162] Nor does this approach preclude the United States from already looking beyond the Uruguay Round to a GATT of an even greater scope and level of effectiveness.[163]

The mechanics of the United States Framework Proposal to GATT covering IP rights[164] deserve special attention. Under this proposal, the United States has established goals and objectives for a GATT IP code and has also set out implementation methods for the GATT IP code. The framework proposal also sets out suggested substantive standards for each of the IP areas to be covered by the code.[165]

The "objectives" of the framework proposal are centered around the reduction of "distortions of and impediments to legitimate trade in goods and services caused by deficient levels of protection and enforcement of intellectual property rights."[166] More specifically, the proposal establishes a number of concrete objectives. Central among these is that member nations must recognize and implement standards for IP protection, including provisions for the effective enforcement of the established

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160. *See supra* note 104 and accompanying text. The problem of legitimizing the inclusion of IP in the GATT is likely to "haunt" the United States throughout the negotiations. Even domestically there remains some debate as to the appropriateness of dealing with IP rights in the GATT forum. *Compare Cutting Brazil From GSP Wouldn't Jeopardize U.S. Leverage on Informatics, Yeutter Says*, 4 Int'l Trade Rep. (BNA) 1426, 1427 (Nov. 18, 1987) (stating that the GATT is preferable due to its "built-in dispute settlement mechanism") *with GATT Round Ineffective Way to Resolve Issues Internationally, U.S. Copyright Official Says*, 4 Int'l Trade Rep. (BNA) 417, 417-18 (Mar. 25, 1987) (stating that GATT panel findings are often ignored by the United States and that bilateral efforts or even the Berne Convention are more effective for IP protection).

161. ADMINISTRATION STATEMENT, *supra* note 6, at 4.

162. *Id.* at 5.

163. *Yeutter Calls for Stronger, Broader GATT Mandate at Annual Meeting to Review Trade*, 4 Int'l Trade Rep. (BNA) 1486, 1486 (Dec. 2, 1987).

164. *See U.S. Framework Proposal, supra* note 153.

165. *Id.* at 1373.

166. *Id.* at 1371. The notion that protection of IP rights is closely tied to "legitimate trade in goods and services" is undoubtedly designed to attract more support for the inclusion of IP into the GATT from the Third World. The Third World generally approves the inclusion of goods and services in the GATT discussions, but has been reluctant to support the inclusion of IP. *See supra* note 104.

rights.[167] The development of the IP code's substantive standards is discussed below. The enforcement proposal includes the further objectives of increased implementation by member nations of border measures designed to catch infringing goods before they enter the nation's domestic markets, as well as the expansion of international notification, consultation, surveillance and dispute settlement procedures for the protection of IP rights.[168] The proposal contains the further objective of encouraging non-signatory governments to adopt the standards of and join the agreement reached in the IP code.[169] This objective obviously is aimed at those nations (especially Third World nations) who initially will be unwilling to join the IP code for domestic political and economic reasons.[170]

Under the United States framework proposal, the above objectives are to be implemented through multilateral consultation and dispute settlement mechanisms among the signatories under the GATT and through domestic enforcement measures.[171] In general, the GATT's multilateral consultation and dispute settlement mechanisms should have the following attributes: (1) they should be open to any party to the agreement who has a claim under the IP code; (2) they should include provisions allowing recourse to technical experts where necessary in dispute settlement; and (3) they should allow an aggrieved party to reasonably retaliate in the event that another party does not comply with dispute settlement recommendations.[172] Domestic enforcement measures will be

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167. *U.S. Framework Proposal, supra* note 153, at 1371.

168. *Id.* Each of these procedural measures is designed to improve the actual protection afforded copyright owners. Obviously, if a nation "looks the other way" as counterfeit goods are imported, it will be very difficult latter to "recapture" the goods from the domestic market. Thus, tighter controls at the border of all nations will make copyright protection more effective and efficient.

The general proposal calling for the expansion of international notification, consultation, surveillance, and dispute settlement procedures seeks greater international cooperation in the full range of procedural safeguards necessary to copyright protection. If copyrights could be recorded in a centralized location, this would facilitate the surveillance of possible piracy of the works recorded. Under such a centralized system, a unified dispute settlement procedure has obvious advantages in speed, efficiency and consistency.

169. *Id.*

170. This provision closely parallels a privately initiated IP code proposal released in 1986. U.S. Council for Int'l Business, GATT Code for the Protection of Copyright (July 15, 1986) [hereinafter CIB Draft] (outline presented as part of the Council's Regional Forum on Intellectual Property in Chicago). The CIB Draft differs from the *U.S. Framework Proposal* in that it would allow developing nations to sign the code immediately, but defer compliance in certain defined areas for a specified length of time. *Id.* at 2.

171. *U.S. Framework Proposal, supra* note 153, at 1371.

172. *Id.* at 1371-72.

centered on the member nation's duty to discover and deal with counterfeit and pirate goods at that nation's borders. The domestic enforcement measures generally should include the like treatment, both substantively and procedurally, of foreigners and the party's nationals under domestic law.[173] The domestic grievance procedure should be fair, open and should not involve any undue delays that would prejudice the rights of the complaining party.[174] In the event that the domestic tribunal finds for the complaining party, domestic law should provide for a full and speedy remedy.[175] This remedy should include injunctive relief, monetary damage awards, and seizure and destruction of infringing goods where appropriate.[176]

The substantive provisions of the IP code would be drawn from existing international conventions tempered and adjusted by consideration of the domestic law of the member nations.[177] Thus, while the framework proposal allows the GATT negotiations to draw on the experience of existing international agreements, the proposal clearly states that member nations should be allowed to take their own domestic law into account in the final determination of the level of protection they will accept. Although such a calculus is necessary in a negotiating environment such as the GATT, it could prove a major "stumbling block" in the entire process. The United States itself will be pushing for provisions substantially different from those prevailing in the industrialized West.[178]

The United States framework proposal also includes an annex con-

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173. *Id.* at 1372.

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.* As with the provision encouraging non-signatories to join the IP code, *see supra* note 170 and accompanying text, the recommended sources of substantive law closely parallel provisions proposed under the CIB Draft, *see supra* note 170. Under the CIB draft, the IP standards would involve the incorporation into the code of already established minima of protection from the Berne Convention and the Universal Copyright Convention. Provisions such as national treatment, independence of protection, terms of protection, rights of translation and reproduction rights could thus be incorporated by reference to one of the prior conventions, or individually enumerated. Other substantive terms, such as moral rights and broadcasting rights, which are not the subject of international consensus, would also be placed on the bargaining table. *Id.* at 1.

178. As just one example, the United States has been unable to accept the concept of "moral rights" that has been a part of Berne Convention standards for some time. Moral rights allow authors and artists to object to distortions or mutilations of or other derogatory action against their works that would be prejudicial to their honor or reputation. *See Pressing Issue, supra* note 69.

taining specific suggestions for substantive provisions in the areas of patents, trademarks, copyrights, trade secrets and semiconductor chip layout-design protection.[179] However, these provisions are couched in general terms and it is not likely that the United States will be prepared to go much beyond the current domestic level of protection in its stance on the appropriate level under the proposed GATT IP code.[180] In other words, under the GATT negotiating process proposed by the United States, member nations would look to their own domestic law first and foremost and then to international agreements such as the Berne Convention only if allowed by domestic imperatives.

Two remaining provisions of the United States framework proposal deserve attention here. The first relates to the application of the code to emerging technologies. Under the United States proposal, the code would allow sufficient flexibility to encompass new forms of technology and creativity as they appear.[181] Without such a provision the GATT IP code would be completely inadequate to protect producers of more modern high technology IP; every technological breakthrough that was not covered by the code would erode its purpose.

The other provision deals with the transfer of technology and technical assistance among member nations.[182] Under the United States proposal, parties to the IP code "would undertake to provide technical assistance in the implementation of the obligations of the [IP code] to *Parties* that request such assistance *under mutually agreed terms.*"[183] In addition, parties "with economic assistance programs would undertake to include in their programs means" by which other "*Contracting Parties*" may improve their IP regimes.[184] Thus, the United States would limit a party's obligation to provide assistance to situations where the parties agree bilaterally, and more importantly, to situations where each party has joined the GATT IP code agreement.[185] This places the Third

179. *U.S. Framework Proposal, supra* note 153, at 1373.

180. This is especially true given the current hostility of powerful domestic pressure groups toward change in the United States laws. *See Pressing Issue, supra* note 69.

181. *U.S. Framework Proposal, supra* note 153, at 1372. A similar provision appeared in the CIB Draft, *supra* note 170, at 1. This provision should not cause a great deal of trouble in the Uruguay Round.

182. *U.S. Framework Proposal, supra* note 153, at 1372.

183. *Id.* (emphasis added).

184. *Id.* (emphasis added).

185. Compare this provision with the CIB Draft, *supra* note 170, which calls for the establishment of bilateral *and multilateral* technical assistance programs. *Id.* at 2. The official United States proposal likely has omitted provision for a multilateral system because it perceives that a loss of control over important technology transfers would result

World in the awkward position of having to join the IP code in order to gain even a potential benefit in terms of access to technology and development of their own IP potential.

C. *Countervailing Concerns of Other GATT Members*

"Negotiation" is the operative word of the Uruguary Round. Given the broad scope of these negotiations[186] and the extremely divergent interests of the member nations, the Uruguay Round promises to be quite complex. Throughout the negotiating process, the United States thus must be aware of the concerns of the other member nations. These concerns will affect the substantive provisions of the IP code as well as the overall emphasis placed on IP issues in relation to the other pressing issues of the talks.

The United States got some strong support in its effort to include IP when the European Community (EC) and Japan presented their own IP proposals in November 1987.[187] Although these proposals are less detailed than that of the United States, they are important "because they mean the three major players in the [negotiations] have now recognized that intellectual property has a key role to play in world trade."[188] With the inclusion of these two additional proposals, IP rights are almost assured of substantial discussion in the negotiations.

Substantively, the Japanese proposal is somewhat more detailed than that of the EC. The Japanese proposal specifically sets guidelines for the protection of semiconductor chips and states three major guidelines for the IP negotiations.[189] These guidelines include: (1) the continuation of most-favored-nation treatment as already found in the GATT; (2) the installation of national treatment into the IP code; and (3) the "assurance of transparency, by which countries would give all other countries access to information on intellectual property rights available domestically."[190] The EC proposal generally called for a major adaptation of existing GATT articles to allow the inclusion of IP matters.[191] The EC proposal would employ dispute settlement procedures similar to those already existing under GATT and also would include transparency

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if such a provision were adopted.

186. *See supra* notes 142-44 and accompanying text.

187. *EC and Japan Proposals, supra* note 104, at 1499.

188. *Id.*

189. *Id.* at 1500.

190. *Id.*

191. *Id.*

along similar lines as the Japanese proposal.[192] Under the EC proposal, the World Intellectual Property Organization[193] would play a key role in the negotiations.[194]

The developing nations of the GATT likely will provide the most formidable barrier to the effective inclusion of IP issues into the GATT.[195] Developing nations, as may be expected, are more concerned with achieving a more effective GATT under the previous terms than adding such issues as IP protection and other issues such as trade in services.[196] The developing nations have consistently argued that WIPO is the appropriate forum for the discussion of IP rights.[197] This position, however, substantially has been undercut by the proposals presented by the EC and Japan.[198] Thus it appears that the developing nation members of the GATT will now have to concentrate on negotiating terms more favorable to their interests in the IP code, since the inclusion of some sort of IP code now seems inevitable.

V. CONCLUSION

Although the trade advantage of the United States in many high technology IP areas has diminished somewhat in recent decades, IP still forms the base of much of the United States exports and provides many domestic jobs.[199] While offering advantages to the United States trading stance, this fact has put the United States in a vulnerable position with regard to the protection against piracy of its IP, especially the high technology forms of IP. Piracy has traditionally been a problem in all IP matters, but the ease with which pirates may reproduce high technology IP and the growing interdependence of the world economic community have created special contemporary problems for the producers of high technology IP.[200] The realization of these problems, combined with pressure from domestic interest groups, has forced the United States government to take a strong stance on the issue of IP protection.

Increased export of high technology IP thus has required the United

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192. *Id.*
193. *See supra* text accompanying notes 65-66.
194. *EC and Japan Proposals, supra* note 104, at 1500.
195. CBS Report, *supra* note 114, at 14.
196. *See* GATT ACTIVITIES, *supra* note 141, at 8.
197. H. STALSON, *supra* note 106, at 55.
198. *EC and Japan Proposals, supra* note 104, at 1499-1500.
199. *See* GLOBAL COMPETITION, *supra* note 1, at 11-16. *See also supra* notes 59-60 and accompanying text.
200. *See supra* notes 11-14 and accompanying text.

States to engage in negotiation with the world community to gain greater protection for its domestically produced IP. No longer may the United States rely on unilateral protectionist measures, as it did in its early history,[201] or even bilateral agreements to effectively protect its interests in the IP area. If the United States is to reach its goal of greater protection for IP through fairer and freer trade in the IP area, it must confront the world community with its proposals, engage in the process of multilateral negotiation and use the results of these negotiations in its disputes with other nations. It is through this process that the United States will be able to legitimate its stance on IP protection and achieve its goals in the Uruguay Round.

Although the full effect of the United States withdrawal from UNESCO has yet to be determined, the United States has already begun to concentrate more heavily in other multilateral fora. A renewed effort to bring the United States into the Berne Union has begun, but domestic protectionist groups have been successful thus far in halting this drive.[202] Although continued efforts to bring domestic law into line with the Berne Convention should remain a high priority and an ultimate goal of the United States, shorter term solutions that conform more to the existing reality of United States domestic concerns will provide the most immediate results. Thus, the successful inclusion of IP rights into the GATT, combined with the inclusion of effective enforcement measures under that agreement, currently must carry the highest priority for the United States.

It is precisely the promise of effective enforcement that makes the GATT so attractive to both public and private interest groups in the United States.[203] Unfortunately, the history of enforcement under the GATT does not offer the brightest hopes for protection of IP rights.[204] With a major commitment by the member nations, however, this forum may gain greater effectiveness. An IP code modeled after the Subsidies Code[205] will provide the most flexible, effective and familiar method of protecting IP rights. Such a system is the likely result of the Uruguay Round, with further modification and improvements left for future negotiations.

How the United States reacts to the challenge posed by the Third World in the IP negotiations will profoundly affect the character and

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201. *See supra* notes 27-60 and accompanying text.
202. *See, e.g., Pressing Issue, supra* note 69.
203. *See* H. STALSON, *supra* note 106 and accompanying text.
204. *See supra* notes 107-09 and accompanying text.
205. *See supra* note 117.

coverage of the GATT IP code. The first line taken by the United States representatives should be to advocate the advantages of stringent IP protection for both the developed and developing nations. The United States must identify its goals as those of the global community. However, since many developing nations will be unprepared, or unable due to domestic priorities, to join the United States in its quest for more stringent IP protection, the United States must be prepared to take a fairly hard line on IP rights. Under this approach, the United States must be prepared to sacrifice the participation of some developing nations in the hope that later they will find it in their interest to join. In other words, the United States should not allow its desire to gain participation by the widest number of nations to cause a compromise in the standards of protection, dispute settlement or enforcement mechanisms under the IP code.

The United States received a great boost in its efforts when the EC and Japan made their own proposals for a GATT IP code,[206] but the GATT negotiations process still holds many dangers for the future IP code. Besides the danger posed by the Third World to the substantive provisions of the IP code, there is the danger that the entire subject of IP rights itself will get misplaced as the negotiators pursue the other important goals of the Uruguay Round. The United States must be prepared to push hard for an effective IP code.

The pursuit of protection of IP rights is a valuable goal both for the United States and the rest of the world community. Such rights promote creativity and the advancement of knowledge, as well as fuel the domestic economy and improve the position of the United States vis-à-vis the other trading nations of the world. With the growing interdependence of the global economy, there is no time like the present to lay the foundation for a system of dispute settlement of such trade matters. Economic interdependence will continue to increase, and the problems of international trade in, and piracy of, high technology IP will increase alongside. As one of the most powerful IP exporters, it is vital for the United States to gain greater international protection for its high technology IP. At present, the GATT is the best forum for the United States to show the world community that it is serious about IP protection and is committed to curbing the piracy of what has become an important element in the United States economy.

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206. *See supra* notes 187-94 and accompanying text.