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U.S. Trade Laws and Intellectual Property Rights: Background

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SUMMARY

Protection of intellectual property rights is a cornerstone of U.S. trade policy. The rapid expansion of international trade during the 1980s was accompanied by a corresponding increase in awareness that U.S. intellectual property rights abroad lacked effective protection. U.S trade laws (especially "Section 337" and "Special 301") and international trade agreements protect the owners of intellectual property rights.[1] The United States Government has acted unilaterally and multilaterally in response to unfair trade practices related to intellectual property rights.

BACKGROUND

Intellectual property refers to works, inventions, product designations, or configurations that are protected by various legal forms, such as copyrights, patents, trademarks, geographical indications, industrial designs, and layout-designs (topographies) of integrated circuits. Definable literary or artistic works, discoveries, or designs can be protected through the grant of a limited exclusive right to the originator of such a work, invention, or product design. Protection of intellectual property rights under the patent law, for example, can extend to ideas that are embedded in inventions, products, and processes. By contrast, copyright protects original, creative expression but does not protect the idea contained in a work, such as a computer program. Once granted, intellectual property rights may be traded or licensed.

[1] Recent changes to U.S. and international intellectual property rights rules are analyszed in: U.S. Library of Congress. Congressional Research Service. *Intellectual Property Provisions of the GATT 1994: "The Trips Agreement."* CRS Report No. 94-302 A, by Dorothy Schrader. March 16, 1994. 38 p.; *Enforcement of Intellectual Property Rights Under the GATT 1994 TRIPS Agreement.* CRS Report NO. 94-228 A, by Dorothy Schrader. March 3, 1994. 20 p.; *Copyright Restoration for Public Domain Works.* CRS Report No. 94-645 A, by Dorothy Schrader. August 15, 1994. 28 p.

Intellectual property rights are important to many sectors of the U.S. economy, but have special importance to a core group of U.S. industries, including the sound recording, film, television, pharmaceutical, publishing, semiconductor, software, and biotechnology industries. According to Ira Shapiro, General Counsel to the U.S. Trade Representative, this core group of industries represented 4.7 percent of the U.S. economy and employed 3.3 million workers in 1991. The importance of intellectual property rights extends well beyond the core sectors to many other affiliated industries or to industries that are only partially dependent on intellectual property protection.[2] On February 13, 1995, the International Intellectual Property Alliance, a group representing 8 trade associations and more than 1,500 copyright-based companies, reported that estimated trade losses stemming from copyright piracy exceeded $8 billion in 1994.[3]

With respect to intellectual property rights, section 337 of the Tariff Act of 1930, as amended, authorizes the International Trade Commission (ITC), on the basis of a complaint or on its own initiative, to institute an investigation into unfair trade practices in import trade, such as infringement of a valid and enforceable U.S. patent, registered trademark, registered copyright, or registered mask work, for which a domestic industry exists or is in the process of being established. The ITC can issue an exclusion order if it determines a violation exists. The U.S. Customs Service is charged with enforcing exclusion orders, but is not authorized to seize infringing goods. The President may disapprove an ITC order within 60 days of its issuance for "policy reasons."[4] At the end of 1992, the ITC reported that 51 outstanding exclusion orders based on violations of section 337 were in effect, of which 33 involved patent violations. In a 1986 report, the U.S. General Accounting Office reported that litigation costs for firms seeking relief under section 337 ranged from $100,000 to $1 million. That report found that of firms with a basis for assessing the effectiveness of section 337, 35 percent were satisfied that the exclusion orders were effective in keeping infringing goods out of the United States, while two-thirds of those surveyed believed infringing goods continued to enter the country.[5]

The 1988 Omnibus Trade and Competitiveness Act contained the "Special 301" provision that requires the United States Trade Representative (USTR) to identify countries that fail to protect or enforce adequately intellectual property rights. Countries whose acts, policies, or practices have the greatest adverse

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[2] Statement of Ira S. Shapiro before the Subcommittee on International Economic Policy, Trade and Environment of the Committee on Foreign Affairs. May 3, 1994.

[3] International Intellectual Property Alliance. IIPA Identifies 42 Countries Plus the C.I.S. Which Account For Over $8.57 Billion In Trade Losses Due To Copyright Piracy in 1994. February 13, 1995.

[4] U.S. International Trade Commission. The Year In Trade 1992. 44th Report. USITC Publication 2640. July 1993. p. 93.

[5] U.S. General Accounting Office. *U.S. Firms' Views on Customs' Protection of Intellectual Property Rights*. GAO/NSIAD-86-96. May 1986. 43 p.

impact (actual or potential) are to be identified as priority foreign countries. Priority foreign countries are potentially subject to sanctions under section 301 of the Trade Act of 1974. In 1994, the USTR identified 36 countries that deny adequate or effective intellectual property rights or deny fair and equitable market access to persons who rely on intellectual property protection. Argentina, China, and India were identified as posing particularly serious problems. After a 60-day review, China was identified as a priority foreign country. On February 4, 1995, the USTR determined that China had failed to protect intellectual property rights and did not provide market access to persons who rely on intellectual property protection. The USTR determined that trade actions and sanctions would be appropriate. A last-minute agreement between the U.S. and Chinese Governments averted the imposition of sanctions. The International Intellectual Property Alliance hailed the agreement as a major victory for U.S. copyright industries.[6]

The recently concluded Uruguay Round of the General Agreement on Tariffs and Trade (GATT) established multilateral obligations for the protection and enforcement of intellectual property rights and provides that the dispute settlement procedure of the World Trade Organization (WTO) will apply to intellectual property disputes among parties to the agreement. The private sector largely approved of the agreement on intellectual property rights. Nevertheless, the GATT agreement did not resolve all of the intellectual property rights issues that are of importance to U.S. business. For example, developing countries and countries in transition from centrally planned economies will not have to implement the new standards and enforcement measures for many years. Pharmaceutical companies note that their patents may not be recognized for as many as 10 years, with a consequent loss of billions in revenues. Despite its shortcomings, the new intellectual property rights regime establishes a recognized set of rules and procedures that will cover all WTO signatories. This regime is expected to reduce U.S. reliance on unilateral trade actions under Special 301.

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[6] International Intellectual Property Alliance. Copyright Industries Support U.S.-China Agreement To Enforce Its Law Against Copyright Pirates. February 27, 1995. For an anlysis of the U.S.-China intellectual property rights dispute, see U.S. Library of Congress. Congressional Research Service. The China-U.S. Trade Dispute on Intellectual Property Rights. CRS Report No. 95-294 E, by Wayne M. Morrison. February 21, 1995. 6 p.