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Uruguay Round TRIPs: A Bibliographic Essay

William M. Walker*

The Uruguay Round of multilateral trade negotiations began with a special ministerial meeting of the Contracting Parties to the General Agreement on Tariffs and Trade (GATT)¹ held in Punta del Este, Uruguay, on September 20, 1986. "Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods" (TRIPs)² is a designated subject for negotiation in the Uruguay Round. The inclusion of intellectual property rights in the Uruguay Round is the culmination of a process that began during the Tokyo Round. While the Tokyo Round was in progress, the United States and the European Community reached a tentative accord on various issues related to commercial counterfeiting; however, no agreement on commercial counterfeiting resulted from the Tokyo Round.³ This essay discusses selected materials on the development of TRIPs as a subject for negotiation in the Uruguay Round and sources of current information on the progress of negotiations.

For the purposes of this essay, the materials are organized into three categories. The first, "Milestone Documents," consists of GATT documents that mark major milestones to date in the Uruguay Round. The second, "Reports and Books," includes United States Government reports and several books, most of which are collections of essays, on the Round. Finally, "Law Reviews and Other Periodicals," mentions se-

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1. General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A3, T.I.A.S. No. 1700, 55 U.N.T.S. 187 [hereinafter GATT].

2. *Ministerial Declaration on the Uruguay Round, Declaration of 20 September 1986 (Min. Dec.)*, GATT, BASIC INSTRUMENTS AND SELECTED DOCUMENTS [BISD]: THIRTY-THIRD SUPP. 19, 25 (1987) [hereinafter *1986 Ministerial Declaration*], reprinted in 25 I.L.M. 1623, 1626 (1986) (The text first appeared in 41 GATT FOCUS 2, 4 (1986).).

3. Bradley, *Intellectual Property Rights, Investment, and Trade in Services in the Uruguay Round: Laying the Foundations*, 23 STAN. J. INT'L L. 57, 64 (1987).

lected law review publications and other periodical sources that are particularly useful for current information.

One problem in tracking GATT developments is that many of the organization's documents are initially restricted. Among the documents that are generally restricted are drafts and proposals prepared and circulated by the parties during negotiations. This can make it especially difficult for researchers to gather information on the progress of current GATT negotiations. The actual *Decisions* of the Contracting Parties are not restricted and some documents are automatically derestricted after a certain period of time.⁴ There are also procedures for derestriction of documents, but a contracting party or an intergovernmental organization can request that a document remain restricted.⁵

Two GATT publications that are generally available and helpful are: *GATT Focus*,⁶ a newsletter published eight to ten times per year, and the *Annual Supplement to Basic Instruments and Selected Documents*.⁷ The *Annual Supplement* publishes selected non-restricted documents. Two commercial publications that are very good for current developments in the negotiations and that sometimes include texts of documents are BNA's *World Intellectual Property Report*,⁸ published monthly, and the *International Trade Reporter: Current Reports*,⁹ published weekly. Information usually appears in *International Trade Reporter* first because of the frequency of issue. Activities of the GATT with respect to intellectual property also appear occasionally in BNA's *Patent, Trademark & Copyright Journal*,¹⁰ also published weekly, although its coverage of GATT negotiations on intellectual property matters is less thorough than that of either of its sister publications.

Milestone Documents

The first group of materials related to TRIPs and the Uruguay Round are those that mark milestones in the origin and progress of the Round. A convenient first milestone is the Thirty-Eighth Session of the Contracting Parties held at Geneva on November 22-30, 1982. In the *Ministerial Declaration* adopted on November 29, the Contracting Par-

4. See *Derestriction of Documents*, GATT Doc. L/2737 (January 25, 1967).

5. *Id.*

6. Published since 1981 by the GATT Secretariat.

7. Published since 1981.

8. Published since 1987.

9. Published since 1984.

10. Published since 1970.

ties established their priorities for the 1980's.¹¹ One priority was an instruction to the "Council to examine the question of counterfeit goods . . . to determin[e] the appropriateness of joint action in the GATT framework on the trade aspects of commercial counterfeiting . . .

"¹² The *Ministerial Declaration* also directed the Director-General of the GATT to consult with the Director-General of the World Intellectual Property Organization (WIPO) to clarify any legal and institutional issues.¹³

The Contracting Parties adopted the *Ministerial Declaration on the Uruguay Round*¹⁴ at a Special Session on September 20, 1986, in Punta del Este, Uruguay to launch the Uruguay Round of Multilateral Trade Negotiations. The *Declaration* established a Trade Negotiations Committee (TNC) that was required to hold its first meeting on or before October 31, 1986, and to complete negotiations within four years.¹⁵ In addition, the *Declaration* established the Group of Negotiations on Goods (GNG), reporting to the TNC, to carry out negotiations on trade in goods, including TRIPs.¹⁶

The following January, in the *Decisions of 28 January 1987*, the GNG set up fourteen individual groups to negotiate each of the subjects assigned to the GNG.¹⁷ The *Decisions* also established a "Negotiating Plan" for each of the fourteen groups, including the TRIPs group, setting out the "Negotiating Objective" and "Principal Stages of the Negotiating Process."¹⁸

11. *Ministerial Declaration Adopted on 29 November 1982 (L/5424)*, GATT, BISD: TWENTY-NINTH SUPP. 9 (1983), reprinted in 22 I.L.M. 445 (1983) (The text first appeared in 18 GATT FOCUS 1, 2 (1982).)

12. *Id.* at 19, 22 I.L.M. 449.

13. *Id.*, 22 I.L.M. at 449. In November 1983, the Director-General of the GATT commissioned seven eminent persons, including Senator Bill Bradley, to prepare a report on problems facing the international trading system. TRADE POLICIES FOR A BETTER FUTURE: PROPOSALS FOR ACTION (1985), reprinted in 24 I.L.M. 716 (1985). Although it does not specifically mention intellectual property, the report added impetus to the movement toward a new round of trade negotiations. The report, also known as the "Leutweiler Report," is not considered an official GATT publication and was initially published with financial donations from various sponsors. See also, TRADE POLICIES FOR A BETTER FUTURE: THE "LEUTWEILER REPORT", THE GATT AND THE URUGUAY ROUND (1987) (includes the text of the Report and some of the working papers prepared for the Leutwiler Group).

14. *1986 Ministerial Declaration*, supra note 2.

15. *Id.* at 19, 25 I.L.M. at 1624.

16. *Id.* at 27, 25 I.L.M. at 1627.

17. *Decision of 28 January 1987*, GATT, BISD: THIRTY-THIRD SUPP. 31 (1987).

18. *Id.* at 45-46.

In April 1989, the TNC completed its Midterm Review of the Uruguay Round negotiations. Two documents of interest resulted from the review. The first is the *Discussion Paper on Uruguay Round of Trade Negotiations Released by GATT Director General Arthur Dunkel March 22*,¹⁹ which was the draft proposal for discussion at the Midterm Review in the areas of intellectual property, agriculture, and safeguards. The second is the *Framework Agreements Adopted April 8, 1989 at Midterm Review of Uruguay Round Negotiations Under General Agreement on Tariffs and Trade in Geneva*,²⁰ designating the issues to be covered in the continuing Uruguay Round negotiations on TRIPs.²¹

Reports and Books

There are several reports and books describing the state of the GATT at the commencement of the Uruguay Round and the prospects for negotiations during the Round. These provide background information helpful in understanding the issues involved in the negotiations.

In 1984, the GATT Secretariat began compiling background information on trade in counterfeit goods, including submissions from delegations and other international organizations. A report, *The Effects of Foreign Product Counterfeiting on U.S. Industry: Final Report on Investigation No. 332-158 Under Section 332(b) of The Tariff Act 1930*,²² by the United States International Trade Commission was part of the United States submission.²³ Among the objectives of the report were the identification of United States product sectors facing competition from counterfeit products from abroad, the identity of states primarily responsible for the counterfeiting, and an inventory of international agreements covering counterfeiting.²⁴

The World Bank published a collection of essays, *The Uruguay Round: A Handbook on the Multilateral Trade Negotiations*,²⁵

19. 6 Int'l Trade Rep. (BNA) 404 (Mar. 29, 1989).

20. 6 Int'l Trade Rep. (BNA) 469 (Apr. 12, 1989). A report on the *Framework Agreements* and the text of the portion pertaining to TRIPs also appears in 3 World Intell. Prop. Rep. (BNA) 108 (1989).

21. *Id.* at 471, 3 World Intell. Prop. Rep. (BNA) 108, 109.

22. U.S. INT'L TRADE COMMISSION, USITC Pub. No. 1479, THE EFFECTS OF FOREIGN PRODUCT COUNTERFEITING ON U.S. INDUSTRY: FINAL REPORT ON INVESTIGATION NO. 332-158 UNDER SECTION 332(B) OF THE TARIFF ACT OF 1930 (1984) [hereinafter *Effects of Foreign Products Counterfeiting*].

23. Bradley, *supra* note 3, at 68-69.

24. *Effects of Foreign Product Counterfeiting*, *supra* note 22, at i.

25. THE URUGUAY ROUND: A HANDBOOK FOR THE MULTILATERAL TRADE NEGOTIATIONS (J. Finger & A. Olechowksi eds. 1987) [hereinafter URUGUAY ROUND

designed "to encourage informed developing country participation in the round."²⁶ The work is divided into three parts: "Background," "GATT's Approach to Trade Negotiations," and "Subjects for Negotiation in the Uruguay Round." The third part includes a chapter describing the intellectual property issues to be negotiated in the Round.

At the request of the Subcommittee on International Trade of the Senate Finance Committee, the Congressional Budget Office prepared a report entitled *The GATT Negotiations and U.S. Trade Policy*.²⁷ This report gives an overview of the trade talks. The third chapter, "High-Technology Trade," contains a discussion of intellectual property rights and United States bargaining positions in the trade talks.

Intellectual Property Rights: Global Consensus, Global Conflict,²⁸ has a chapter entitled "Intellectual Property Rights in the New GATT Round," that considers the advantages of the GATT framework, United States objectives, and United States strategy in the Uruguay Round. This book also has chapters devoted to Argentina, Brazil, India, Mexico, Korea, Singapore, and Taiwan, that discuss each country's existing intellectual property regime, prospects for reform, and GATT considerations.

The general perspectives of the GATT, the European Community, the United States, and the developing countries towards the Uruguay Round are reviewed in *Conflict and Resolution in US-EC Trade Relations at the Opening of the Uruguay Round*.²⁹ This compilation not only reviews the perspectives of various parties toward the GATT, but also compares United States and European Community viewpoints on TRIPs³⁰ and other selected issues in the Round.

In *The GATT Negotiations 1986-90: Origins, Issues & Prospects*,³¹ the author begins with the aftermath of the *Ministerial Declaration of November 29, 1982*, and discusses the events leading up to the Punta del Este meeting. This book is recent enough to summarize the progress of negotiations, including TRIPs negotiations, until just prior to the December 1988 Midterm Meeting in Montreal.

HANDBOOK].

26. Conable, *Forward to URUGUAY ROUND HANDBOOK*, *supra* note 25.

27. CONG. BUDGET OFFICE (1987).

28. (R.M. Gadbaw & T. Richards eds. 1988).

29. (S. Rubin & M. Jones eds. 1989) [hereinafter US-EC TRADE RELATIONS].

30. See, e.g., Greenwald, *The Protection of Intellectual Property Rights in the GATT and the Uruguay Round: The US Viewpoint*, in US-EC TRADE RELATIONS, *supra* note 29, at 229. Carl, *Intellectual Property Rights in the Uruguay Round: The EC Viewpoint*, in US-EC TRADE RELATIONS, *supra* note 29, at 229.

31. S. GOLT (1988).

Law Reviews and Other Periodicals

As is the case with Reports and Books, the materials currently available in law reviews generally discuss the events leading up to the Round and prospects for the negotiations rather than the present state of the negotiations. For current news of the negotiations, periodicals other than law reviews are the best source.

A most useful law review article, and perhaps one of the most useful sources of any kind in understanding the antecedents of TRIPs in the Uruguay Round is Jane A. Bradley's *Intellectual Property Rights, Investment, and Trade in Services in the Uruguay Round: Laying the Foundations*.³² Bradley traces the consideration of intellectual property rights within the GATT framework from the beginnings during the Tokyo Round, when no agreement on commercial counterfeiting could be reached, through the adoption of the *Ministerial Declaration on the Uruguay Round*. The text of the *Ministerial Declaration* is reprinted in an Appendix to the article.³³

More recently, in *The Community and the Uruguay Round*,³⁴ K.R. Simmonds wrote of the Uruguay Round from the European Community perspective. The article was written during the very early stages of the Round and is not limited to TRIPs considerations. Simmonds also includes the text of the 1986 *Ministerial Declaration* in an Appendix.³⁵

Two useful law review notes are: *Intellectual Property Rights and the GATT: United States Goals in the Uruguay Round*,³⁶ and *International Intellectual Property Protection: An Integrated Solution to the Inadequate Protection Problem*.³⁷ The first note includes a discussion of the functions of the GATT with respect to international trade that is helpful in understanding how the GATT might work to protect intellectual property rights. The second compares the developed countries' preference for a GATT approach to the international protection of intellectual property rights with the developing countries' preference for a WIPO approach.

The best sources for current information on the progress of the Round are *GATT Focus*³⁸ (eight to ten issues per year), *World Intellectual*

32. Bradley, *supra* note 3.

33. *Id.* at 88.

34. Simmonds, *The Community and the Uruguay Round*, 25 COMMON MARKET L. REV. 95 (1988).

35. *Id.* at 108.

36. Note, 21 VAND. J. TRANSNAT'L L. 367 (1988).

37. Note, 29 VA. J. INT'L L. 517 (1989).

38. *Supra* note 6.

*Property Report*³⁹ (monthly), and *International Trade Reporter*⁴⁰ (weekly).

In late 1987, three successive issues of *GATT Focus* carried a three-part summary of TRIPs.⁴¹ Each part is only a page or two long, but together they comprise a succinct statement of TRIPs issues. *GATT Focus* has a regular section on the Uruguay Round that provides a summary of recent developments in each of the negotiating groups. For example, the November/December 1988 issue noted and briefly summarized two proposals relating to TRIPs submitted in October 1988 by the United States and by the Nordic Group.⁴²

Both *International Trade Reporter* and *World Intellectual Property Report* covered the proposals on TRIPs submitted by the European Community in July 1988,⁴³ and by the Nordic Group in October 1988.⁴⁴ *World Intellectual Property Reporter* carried a report on the October 1988 United States proposal⁴⁵ and also reprinted the text;⁴⁶ however, there is no mention of the October 1988 United States proposal in *International Trade Reporter*.

The problems that arose with the Uruguay Round Midterm Review were covered by both *International Trade Reporter* and *World Intellectual Property Report*. In October 1988, *International Trade Reporter*

39. *Supra* note 8.

40. *Supra* note 9.

41. *The Uruguay Round File: Trade in Counterfeit Goods and Other Trade-Related Aspects of Intellectual Property* (pts. 1-3), 48 *GATT Focus* 3 (Jul./Aug. 1987), 49 *GATT Focus* 2 (Sept./Oct. 1987), 50 *GATT Focus* 2 (Nov. 1987).

42. *Uruguay Round: Dispute Settlement and Agricultural Reform Proposals Among New Negotiating Submissions*, 58 *GATT Focus* 6 (1988).

43. *Intellectual Property: EC Presents Detailed Proposal for GATT Coverage of Intellectual Property Rights*, 5 *Int'l Trade Rep.* (BNA) 1012 (July 13, 1988); *European Community: EC Submits Proposal for Protection of Intellectual Property Rights by GATT*, 2 *World Intell. Prop. Rep.* (BNA) 136 (Aug. 1988).

44. *Intellectual Property: Nordic Countries Attempt to Break Deadlock on Bringing Intellectual Property into GATT*, 5 *Int'l Trade Rep.* (BNA) 1402 (Oct. 19, 1988); *GATT Activities: Nordic Countries Try to Break Deadlock on Intellectual Property Issues in GATT*, 2 *World Intell. Prop. Rep.* (BNA) 213 (Nov. 1988).

45. *GATT Activities: U.S. Revises Proposal on Intellectual Property*, 2 *World Intell. Prop. Rep.* (BNA) 208 (Nov. 1988).

46. *GATT Activities: U.S. Submission to the Negotiating Group on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods*, 2 *World Intell. Prop. Rep.* (BNA) 209 (Nov. 1988). This United States proposal was actually a revision of an earlier proposal submitted by the United States in October 1987. *United States: U.S. Proposal for Negotiations on Trade-Related Aspects of Intellectual Property Rights*, 1 *World Intell. Prop. Rep.* (BNA) No. 3, at 12 (Nov. 1987) (text of the proposal).

published a summary of the various parties' anticipated positions on TRIPs for the December 1988 meeting in Montreal.⁴⁷ At that meeting the parties failed to reach agreement on negotiating guidelines for the next stage of talks and suspended negotiations until April 1989. *International Trade Reporter* gave details of the Montreal meeting and the positions of the parties.⁴⁸ *World Intellectual Property Report* printed a short article focused on the status of TRIPs.⁴⁹ On April 8, 1989, the parties met in Geneva and reached agreement on the negotiating guidelines. *International Trade Reports* carried both a summary of developments at the continuation of the Midterm Meeting and the full text of the *Framework Agreements*.⁵⁰ *World Intellectual Property Report* published a summary of developments related to TRIPs and the TRIPs portion of the *Framework Agreements*.⁵¹

Coverage of TRIPs by *International Trade Reporter* and *World Intellectual Property Report* overlaps somewhat, with *International Trade Reporter* covering all aspects of the Uruguay Round negotiations and *World Intellectual Property Report* focusing on TRIPs issues in the negotiations. Reliance on one without the other to stay abreast of TRIPs developments would probably be unwise. While the more detailed approach to TRIPs of *World Intellectual Property Report* is important, the broader coverage of *International Trade Reporter* is useful in understanding TRIPs issues in the context of the overall negotiations. Because *International Trade Reporter* is published weekly, it will often have the first report of TRIPs developments, but the monthly *World Intellectual Property Report* may have a more extensive report.

Conclusion

Detailed analysis of developments in the Uruguay Round TRIPs negotiations will likely await the conclusion of the Round. Even then, it

47. GATT: *Intellectual Property is Priority Issue for Midterm Review*, *Canadian Official Says*, 5 Int'l Trade Rep. (BNA) 1402 (Oct. 19, 1988).

48. GATT: *GATT Officials Decide to Postpone Conclusion of Uruguay Round Midterm Review Until April*, 5 Int'l Trade Rep. (BNA) 1617 (Dec. 14, 1988).

49. GATT *Activities: Midterm Review Ends Without Agreement on Protection of Intellectual Property*, 3 World Intell. Prop. Rep. (BNA) 16 (Jan. 1989).

50. GATT: *Negotiators Break Deadlock in Key Areas, Approve Guidelines for Uruguay Round Talks*, 6 Int'l Trade Rep. (BNA) 442 (April 12, 1989); *Framework Agreements Adopted April 8, 1989 at Midterm Review of Uruguay Round Negotiations Under General Agreement of Tariffs and Trade in Geneva*, 6 Int'l Trade Rep. (BNA) 469 (April 12, 1989).

51. GATT *Activities: GATT Agrees to Establish Standards for Intellectual Property Protection*, 3 World Intell. Prop. Rep. (BNA) 108 (May 1989).

may be difficult to trace all the steps toward any final agreement on TRIPs resulting from the Round since some materials may remain restricted. In the meantime, the best sources for information on day-to-day developments in the negotiations are the current periodicals and newsletters that track GATT activities.

APPENDIX: SOURCES CITED

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