

10) Measures Relating to Intellectual Property

Intellectual property legislation; such as that respecting copyright, patents and trademarks; establishes the degree of protection provided to holders (both domestic and foreign) of these rights. Goods and services embodying these various forms of intellectual property include both consumer commodities and inputs to industrial production. The importance of this latter category should not be overlooked. More than 90% of Canadian patents, for example, cover products and services which serve as inputs.

The U.S.A. grants stronger protection to certain forms of intellectual property than does Canada. As a result, situations can arise in which goods legally produced in Canada would infringe upon United States legislation if exported to the U.S.A. For example, U.S. semiconductor chip designs are protected under the Semiconductor Chip Protection Act of 1984 (which amends the U.S. Copyright Act). Canada does not provide such protection for semiconductor chip designs. Accordingly, a Canadian product embodying a U.S. semiconductor chip design could infringe U.S. law if exported to the United States.

There are some aspects of U.S. legislation (or its enforcement) which provide stronger protection against allegedly infringing imports than against allegedly infringing domestic products. The most notable example in this regard are the remedies under Section 337 of the U.S. Tariff Act of 1930.

The U.S. has made clear, in a number of different settings, that it believes that its trade interests are being adversely affected by the lower level of protection of certain intellectual property rights in a number of other countries, including Canada. This belief motivated the enactment of the U.S. Trade Act of 1984. This legislation authorizes the President, under certain circumstances, to effect trade retaliation against countries that do not provide "adequate and effective protection" for U.S. intellectual property rights holders. The U.S. has also made it clear that it would like to see intellectual property issues, particularly as they pertain to high-technology goods and services, discussed in the upcoming new round of GATT. Measures to thwart trade in counterfeit goods have received significant attention from the U.S. in this context.