TRADE NEGOCIATIONS STUDIES:

DOCUMENTS RELEASED UNDER THE ACCESS TO INFORMATION ACT, MAY 21, 1986

STUDY NO. 4:

Measures relating to intellectual property. (Dept. of Consumer and Corporate Affairs. Bureau of Policy co-ordination. March 12, 1985.)

TRADE NEGOCIATIONS STUDIES:

DOCUMENTS RELEASED UNDER THE ACCESS TO INFORMATION ACT,

MAY 21, 1986

STUDY NO. 4:

Measures relating to intellectual property. (Dept. of Consumer and Corporate Affairs. Bureau of Policy co-ordination. March 12, 1985.)

4

Consommation et Corporations Canada
Consumer and Corporate Affairs Canada

Bureau de la Coordination des politiques
Bureau of Policy Co-ordination

Policy Research, Analysis and Liaison Directorate
24th Floor
Place du Portage, Phase I
50 Victoria Street
Hull, Quebec
K1A 0C9

Votre référence / Your file

Notre référence / Our file
W 12124-1

March 12, 1985

Mr. A.L. Halliday
Department of External Affairs (UGEA)
Lester B. Pearson Building
Tower "C", 4th Floor
125 Sussex Drive
Ottawa, Ontario
K1A 0G2

Dear Tony:

Please find attached a suggested insertion to the paper on issues relating to a possible Canada/United States Free Trade Area Treaty.

As you will see, this insertion deals exclusively with the topic of intellectual property. It is intended to serve as Section 10 of Part B (Barrier Coverage) of the paper. We have not attempted to provide a list of all of the specific intellectual property issues which have arisen in the Canada/U.S. context in recent years. Such a listing would not, in our view, be appropriate given the nature and content of the rest of the paper.

If you or any members of your staff would like further information or clarification, please feel free to contact either me or Frank McDonald (at 7-4242).

Yours sincerely,

Original signé par
Original Signed by
DAVID S. McCRACKEN

David S. McCracken
Director General

Attach.

Canada

CCA-1959

DRAFTED BY: FRANK McDONALD DATE: MARCH 11, 1985

APPROVED BY: [signature] DATE: [illegible] 12/85

DEADLINE/PURPOSE: INPUT TO PAPER BY EXTERNAL ON A POSSIBLE CUFT TREA

EXPLANATION: THIS IS IN RESPONSE TO A REQUEST FROM TONY HALLIDAY

APPROVED: [signature]
D.S. McCracken

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.

.../2

The "national treatment" provision of the GATT is of considerable relevance. It prescribes that there should be no discrimination against imports with respect to laws, regulations and requirements affecting the internal offering for sale, distribution or use of products. Canada has made representations in the GATT relating to the aforementioned Section 337 of the U.S. Tariff Act. Both the Semiconductor Chip Protection Act and the 1984 Trade Act indicate that the U.S. is slowly moving away from "national treatment" and towards reciprocity in their treatment of intellectual property.

Precedent FTAs have not contained specific provisions relating to the protection of intellectual property. However, all have "national treatment" provisions with language similar to that of GATT Article III.

[EXEMPT
Sec 15(1)]

As indicated earlier, the primary U.S. concern relates to the lower level of protection afforded to certain forms of intellectual property in Canada. It could be expected that the U.S. would use the occasion of a CUFTA negotiation to seek Canadian commitments to increase such levels of protection. The costs and benefits of any such changes should be fully assessed, as should the impact of any U.S. commitments regarding "national treatment". Intellectual property issues have not been discussed in Canadian commentaries.

Trade Liberalization Between Canada and the United States: The Implications for Canadian Consumers and Consumer Protection Policies

This paper is intended to provide background information on two major consumer related topics which are relevant to the possible upcoming Canada/U.S. trade liberalization discussions between Canada and the United States. The first topic is the impact which trade liberalization would have on consumers. The second is the possible role of the harmonization of Canadian and United States consumer protection policies in the trade liberalization process.

As a group, Canadian consumers have much to gain as a result of the elimination of barriers to trade between Canada and the United States. This gain can be expected to express itself in the main through improvements in real incomes due to reduced prices, enhanced quality, and increased availability of the products consumed. These benefits have, to some extent, been estimated in a number of studies directed to discerning the effects of trade liberalization on Canada and Canadians. For the purpose of this submission, Professor Tim Hazledine of the University of British Columbia was asked to provide a synthesis and analysis of the conclusions of these studies in order to indicate the magnitude of potential benefits to consumers. The results of this review are summarized in Part I of this submission while Profesor Hazledine's report is appended for those that wish to examine his presentation in greater depth.

With regard to the second topic, it is to be noted that there are a great many private and public standards setting agencies at different levels of political jurisdiction in Canada and the United States. The standards which are set and administered by these agencies, both on a compulsory and voluntary basis, are commonly intended to protect the consumer or the consumer's interests.

EXEMPT
Sec. 15(1)

Part II of this submission provides a brief sketch of this issue with the object of gauging its magnitude and, where possible or practical, harmonization. In making this

presentation, it should be recognized that the subject is both extensive and complex, so that it represents little more than an outline of the issue; it can be elaborated upon in response to the government's priorities for bilateral trade negotiations when they are established.

PART I

Estimates of Consumer Benefits

A. Summary of Results

Studies covering the potential quantitative benefits to consumers of free trade between Canada and the United States suggest gains ranging from very small numbers up to 9% of Canadian GNP.* However, the differences in their predictions can be traced to differences in key assumptions built into the analytical models used in the studies. The key assumptions are those related to the likely effects of free trade, firstly on the pricing of Canadian produced goods and services and, secondly on the costs and productivity of Canadian producers.

On pricing, much depends on the extent to which lower import prices (after removal of tariffs) would force domestic (Canadian) producers to reduce the prices of their output. Assumptions on pricing range from one extreme to the other. Neoclassical general equilibrium models (Boadway & Treddenick) assume no direct impact of import prices on competing domestic output, of which the prices are assumed to be determined solely by domestic costs. At the other extreme is the partial equilibrium 'law-of-one-price' model, which has import and domestic prices moving exactly in step, so that cost factors have no role to play.

Harris and Cox, and Hazledine, assume 'mixed' pricing -- in their models both competing imports and domestic costs influence domestic producers' prices.

On the cost side, the results depend on whether the initial cut in prices when tariffs are eliminated forces domestic industries to improve their productivity in order to remain competitive. Neoclassical models assume essentially no productivity effect, and law-of-one-price models have only the marginal efficiency gains from cutting

---

* For a listing of the authors surveyed see the reference section of the appended paper by T. Hazledine, September 1985.

back highest-cost units of output. But the Wonnacotts and Harris and Cox predict enormous productivity improvements -- amounting to elimination of the Canada/United States productivity differential -- as lower prices force firms to rationalize the number of product lines and build scale-efficient plants.

The quantitative findings of the studies, related to these assumptions, can be conveniently summarized in the following table:

Summaries of Gains from Free Trade
(as percentage of G.N.P.)

	Cost Performance Assumptions		
Pricing Assumptions	Pessimistic: no cost effect, or marginal effect	Middle of Road: some rationalization or change in input costs	Optimistic: full equality of U.S./Canada costs
Pessimistic: no price effect on domestic output	Boadway & Treddenick -- 0.0% (a) Williams -- 2.3% Brown & Whalley -- 1.6% (b)		
Middle of Road: 'mixed pricing'		Hazledine -- 4% (c)	Cox & Harris -- 9%
Optimistic: 'law-of-one-price'	Scenario A -- 0.35% Scenario B -- 1.25% Magee -- 2% (d)	Effective protection: Dauphin, Wilkinson & Norrie (no free trade impact figures)	Wonnacott -- 7-9%

Notes:

(a) Estimated on Unilateral Free Trade only
(b) figures are for world, not Canada
(c) Multilateral Free Trade
(d) for U.S.

Scenario A assumes that with free trade U.S., prices will have no effect on Canadian industries which previously priced independently of both U.S. and world prices.

Scenario B assumes that with free trade U.S. prices will affect the pricing policies of such industries.

B. Evaluation of Assumptions

While emphasizing the importance of the qualitative agreement reached by the studies on the consumer benefits of free trade, Hazledine raises the following problems with regard to the effects of the assumptions made in the various studies on the accuracy of their results:

> In relation to pricing, all the models used assume that Canada is a price taker for its imports (i.e. that Canada pays United States or world prices) and thus that Canadians bear the full cost of our own tariff. However, the empirical evidence to support this assumption is limited. Moreover, it seems plausible, in a world in which countries frequently complain about each other dumping imports at below domestic costs, that firms exporting to Canada absorb at least some of our tariff. This point is important since in most of the models, the size of the fall in import prices determines the size of the fall in domestic prices induced by free trade.
>
> Evidence supporting the argument that free trade will force Canadian producers into rationalizing to achieve greater productivity, is conflicting. The Canada/United States auto pact, for example, resulted in product specific economies of scope -- savings that result from specialization on fewer products coupled with longer production runs. This process caused productivity levels in Canadian auto-plants to rise from 70% to 100% of U.S. levels between 1967 and the mid 70s. On the other hand, the Canadian farm machinery industry, operating under conditions close to free trade for decades, has not closed the gap on its United States counterpart. Moreover, while tariffs fell several percentage points as a result of the Kennedy Round, the gap between Canadian and United States labour productivity appears not to have narrowed in the corresponding period.
>
> It has been estimated that, on average, about two thirds on average of foreign tariff costs are absorbed by Canadian exporters. In the event of such tariffs being eliminated, exporters will thus be better off but may not increase their sales or benefit from the economies of scale expected in some of the studies.
>
> The studies appear to have taken little account of the possibility, under bilateral free trade, that the higher price of imports from the rest of the world still subject to tariff, may dilute the incentive for importers of United States goods to pass on the full bilateral tariff cuts.

Finally, it should be made clear that the studies reviewed by Hazledine focus mainly on the effects of tariff elimination in terms of deadweight or static benefits and costs. Consequently, a great deal of room remains for consideration of the potential benefits to be gained from removal of nontariff barriers and for examining the effects of trade liberalization in a dynamic framework. In the absence of relevant studies, no quantifiable estimate can be made of the full benefits associated with the removal of nontariff barriers or of the influence borne by shifts in parameters such as demand or supply relationships. However, there is no doubt that the benefits of eliminating nontariff barriers would be significant and that failure to take this consideration into account in the studies renders their estimates conservative. Failure to take kynamic influences into account is, of course, a reflection on the state of the economic art rather than on the scholars cited by Hazledine.

C. Qualifications and Extensions

Hazledine's main conclusion is that "there is a strong consumer case for a bilateral free trade agreement with the United States". Although he points out that "it is a case that can easily be over-sold", he qualifies this by noting that all studies have led to the conclusion that such trade liberalization would yield net benefits to Canadians, especially those in the lower income groupings, and that even studies which forecast modest gains translate into billions of dollars of benefits. While Hazledine acknowledges that liberalization of trade in individual sectors would be of particular importance to consumers, he discounts studies of the likely impact of free trade on individual industries as incapable of yielding "hard, believable facts to the policy debate" and suggests that "it is impossible to predict with any great assurance just who the losers and gainers will be". In this regard, he suggests that "consumers should push for a comprehensive free trade agreement in the belief that ... such will lead to a significant improvement in overall economic efficiency".... While suggesting that actual net gains from bilateral trade liberalization may be even smaller than estimated as a result of the Tokyo Round, "so too is the downside risk of adjustment disruptions smaller than the opponents of free trade would have us believe".

Hazledine attempts to provide a balanced treatment of the consumer's interests not only in terms of the foregoing considerations but also from the vantage of other aspects. He notes that multilateral free trade arrangements would be superior on the basis of larger benefit flowing to consumers as well as from the vantage of minimizing trade

diverting distortions, but nevertheless encourages pursuit of free trade arrangements with the United States. He also considers the possible trade-off between price and availability in meeting consumers' interests and the implications of less than full employment situations and developmental or infant industry justifications for subsidies and protection in recognition of the shortfall of economic analysis. Although Hazledine disregards studies of the regional impact of free trade as being directed to producer rather than consumer interests, in the context of his discussion of agricultural and food and beverage products he notes that provincial restraints on international as well as interregional trade are significant and questions whether the nine provinces that recently endorsed bilateral free trade are willing to bring such restraints to the negotiating table.

The task set for Hazledine, it might be emphasized in order to provide further balance, was to analyze and report on Canadian studies that revealed consumers' interest in freer international trade, particularly in a Canada-United States context. As he himself notes, the literature reflects the imperfect state of the economic art and is replete with gaps in relevant information. Still, this evidence uniformly qualitatively supports the conclusion that freer trade between Canada and the United States would not only serve the interest of Canadians, but, in particular, Canadians as consumers. In achieving this result, free trade between two countries does not represent "a great leap into the unknown" but "a relatively modest and quite logical last step in a long historical process towards free movement of goods between these two closely-linked economies".

Part II

Harmonization of Standards

Standards relating to the quality, performance or distribution of particular products are commonly established to protect the consumer's interest or the culture and environment in which the consumer lives. The right to establish such standards is recognized in Article XX of the GATT.

In most cases, such standards are stated in a positive vein in terms of minimum requirements. However, they can also be stated as "thou shalt not" prohibitions as in the case of laws related to marketing practices such product misrepresentation or misleading advertising. And as already noted, standards can be privately or publicly set and administered and be either compulsory or voluntary.

Even though they adhere closely to the provisions of the GATT, international differences in standards serve to impede if not restrict international trade. Such differences in standards frequently raise the cost of production and distribution by adding costs associated with meeting particular requirements and shortening production runs. Accordingly, they can be construed as a nontariff barrier to trade which serves as an offsetting cost of protecting consumers. That it is generally desirable to eliminate arbitrary differences in standards, either directly or by reconciliation of standards acceptance procedures, was acknowledged during the Tokyo Round through the adoption of an agreement related to standards by a number of signatory countries.

Although Canada and the United States are both signatories to this agreement, in the context of trade liberalization between Canada and the United States the issue of differences in standards takes on special significance. Fortunately, in many cases standards in the two nations can be expected to be identical or very similar, so that the difficulties associated with achieving harmonization are not as great as they would be if the cultures of the two countries differed greatly. However, it is also expected that differences due to substantial cultural disparities the do exist, such as those associated with Canada's bilingualism policy, would be respected and, thereby, excepted. Climate and other differences in geographic conditions may also provide a sustainable justification for differences in standards.

EXEMPT
Sec. 15(1)

However, it should also be acknowledged, as suggested above, that harmonization is not new. Aside from the GATT agreement on standards, the International Standards Association, for example, has encouraged the setting of world wide standards for many products over a long period of time. As for the Canada-United States context, it should also be recognized that Canadian standards meet or exceed United States standards so that harmonization would not be unidirectional. Nevertheless, more rigorous standards do not necessarily mean standards that yield greater protection to the consumer; therefore, lowering as well as raising standards may be appropriate in a harmonization exercise. Next, in some cases it can be expected that differences in standards are illusory rather than real insofar as only differences in wording and phraseology are involved. Finally, as in the case of adoption of the metric system, harmonization is already underway; in effect, differences in weights and measure may not represent an issue in the long term since it remains for the United States to accelerate the process of change so as to close the gap with Canada.

It should be kept firmly in mind that standards afford real protection to consumers. However, costs associated with differences in standards should be examined from the vantage of eliminating such costs, where possible or practical, without sacrificing protection.

EXEMPT
Sec. 15(1)

III

Conclusions

Hazledine's review of Canadian studies on the effects of trade liberalization from the viewpoint of the consumer's interest reveals that estimates of net benefits range from between very little to about nine percent of G.N.P., but never negative. He noted that this literature remains in an imperfect state, and this becomes very evident in the failure to adequately account for the benefits which would derive from the elimination of nontariff barriers. In spite of this, the uniformity of the conclusions of the studies reviewed provides very strong support for the conclusion that freer trade between Canada and the United States would serve the interests of Canadians, particularly Canadians as consumers.

EXEMPT
Sec. 15(1)

Trade and Intellectual Property

As the results of the Tokyo Round of multilateral trade negotiations under the GATT have taken effect by reductions in tariff barriers, the non-tariff barriers to trade have assumed greater prominence.

Among such non-tariff barriers is intellectual property which is recognized under the GATT as a non-tariff barrier with the right of Parties reserved in this area, enabling them to adopt or enforce measures necessary for the protection of patents, trade marks and copyright, subject to certain specified conditions.

The protection of intellectual property has for many years been used by countries, particularly, the United States, as a means to protect their domestic industries from imports.

EXEMPT
Sec. 15 (1)(a)

The protection of intellectual property rights in foreign countries has for some 100 years been considered to be essential by the world's leading trading nations for the

securing of markets in those countries and the protection of investment.

These countries, including Canada, have relied on the Paris Convention for the Protection of Industrial Property, first established in 1883, to provide a minimum level of protection for patents and trade marks among the signatory countries. Through a series of revisions to this Convention, this level of protection has increased.

The leading trading countries, particularly the United States, have concluded that the level of protection available through the Paris Convention has reached its zenith and that such Convention is no longer suitable to meet the demands for increased protection of intellectual property rights, particularly in the area of high technology.

In addition countries have seen the need to harmonize intellectual property laws among countries in order to simplify procedures to obtain intellectual property rights in a number of countries.

The United States, for a number of reasons, has experienced an increase in their trade deficit over the last few years. In the belief that its domestic intellectual

property legislation is not adequately dealing with this problem, this country has introduced a number of new legislative measures in the intellectual property area. Also it is seeking to have the perceived deficiencies of the international system addressed by having intellectual property placed on the agenda of the next round of multilateral trade negotiations of the GATT.

Canada and the United States, as a result of the agreement between the two countries at Quebec in March 1985, have agreed to co-operate in this area. The use of counterfeit trade marks in international trade was mentioned specifically in the Quebec Agreement and Canada has been co-operating with the United States in meetings of experts of GATT in Geneva to deal with this matter.

Although less is known concerning the activities of the European Economic Community, it is believed to be similarly concerned about impediments to trade and the effect of intellectual property on international trade. Trade within the community does not appear to have been adversely affected by intellectual property in view of articles 36 and 85 of the Treaty of Rome which tend to override the protection of intellectual property if it impedes trade between the member countries. [EXEMPT Sec. 13(1)(b)]

EXEMPT
Sec. 13(1)(b)

In response to the initiative of the United States to have intellectual property placed on the agenda of the next round of multilateral trade negotiations it has been proposed that Canada participate in a quadrilateral meeting of a group of experts to consider the relationship between intellectual property and trade.

It is in Canada's interest to participate in any international discussions directed toward improved international mechanisms to deal with the distorting effects of national or group measures relating to the enforcement and protection of intellectual property rights. In preparing for any such discussions, Canada must be less concerned with the protection of intellectual property per se and place more emphasis on the importance of intellectual property in enhancing trade, in order to be more in line with the thinking of countries such as the United States and Japan.

The Nielsen Task Force has stated that all intellectual property statutes be revised. It is of particular importance that the revision of these statutes be linked to

the discussions on intellectual property in relation to trade.

A number of issues have already been identified for consideration in revising these statutes which could or should be discussed within the context of trade matters and in respect of which a policy decision must be made. A partial list of such issues is as follows:

Patents

1. Compulsory Licensing of Pharmaceutical Patents

In 1969 the Patent Act was revised to permit the compulsory licensing of pharmaceutical patents in order to increase competition in these products and thereby reduce the price which was much higher in Canada than other countries. The revision resulted in many licenses being issued and a moderation in the price of the drugs caused by these licences. The drug companies which own the patents, largely foreign multinational companies, charge that the royalty they receive does not adequately cover their loss of income nor are they able to recover their research and development costs.

As a result of the lobbying of these drug companies and their national governments, the government agreed to review the relevant provisions of the Patent Act. To do this, a commission of enquiry was established (the Eastman Commission) which issued its report in the spring of 1985. This Report is now being considered and proposals for revisions to the Patent Act are now being prepared by the Department of Consumer and Corporate Affairs.

Since a number of national governments are involved in discussions with us, it will probably be necessary or desirable to discuss this on a multilateral basis.

2. Patent Cooperation Treaty

Canada's adherence to this Treaty will permit Canadians to obtain patent protection in the member countries by the filing of one application. Similarly foreign inventors will be able to obtain patent protection in Canada after our adherence. Each application filed is subjected to an international search by an authorized international searching authority and, for those countries that have agreed to the acceptance of international examination, the application will be subject to examination by an international examination authority.

The Nielsen Task Force indicated that Canada should join the Patent Co-operation Treaty and accept both searches and examination done by an international authority. The United States has just sought the legislative authority to become an international searching and examination authority.

[EXEMPT
Sec. 15(1)]

3. Protection of Biotechnology

Many countries, including Canada, are currently reviewing their patent legislation to consider how this technology should be protected. A paper on the subject has recently been produced by an interdepartmental committee. This paper is being considered by Consumer and Corporate Affirs with a view to initiating discussions on the subject.

It would no doubt be desirable to discuss this on a multilateral basis to achieve some harmonization on the protection to be given to this technology.

Trade Marks

1. Use of Counterfeit Trade Marks in International Trade

The United States and the European Economic Community have for a number of years been attempting to obtain an international agreement on this subject. Notwithstanding the fact that it is covered by the Paris Convention, the parties believe that an agreement under the GATT would be more effective.

Canada does not have a problem in this area since our industries are not being adversely affected and the remedies available are sufficient to deal with the matter.

However, Canada has co-operated with the United States and the European Economic Community and is currently assisting these countries in meetings of experts of the GATT in Geneva.

2. Parallel Importation of Goods

Under Trade Mark Law it is possible for the owner of a trade mark, particularly a multinational corporation, to arrange the ownership of the trade mark so as to create exclusive national markets and thereby artificially higher prices by excluding the importation of lower priced goods.

The United States has generally not permitted this practice but it is currently reviewing the situation.

The European Community does not permit this practice in trade among its membership but has reserved its position in respect of products from non-member states.

The Canadian Trade Marks Act is silent on the subject and we are currently considering an amendment to disallow trade marks being used in this fashion.

It would be desirable to discuss this multilaterally to achieve some harmony of treatment on the subject.

3. Protection of Appellations of Origin

For many years, the Europeans have wanted us to provide better protection for their appellations of origin. Recently the United States has requested that we protect the name Bourbon. In both cases the Europeans and the Americans want protection under the Food and Drug regulations. We have resisted these requests on the basis that they already can obtain protection under the certification mark provisions of the Trade Marks Act and that such protection is more effective than under the Food and Drug regulations.

A multilateral agreement on this subject is being negotiated under the Paris Convention but it appears unlikely that such negotiations will be successful.

A multilateral approach would seem desirable on this subject, along the lines being discussed under the Paris Convention.

Copyright

1. Unauthorized Retransmission of Broadcast Signals

At present it is believed that the Canadian Copyright Act does not cover retransmission of broadcast signals by media such as cable. The White Paper on Copyright, From Gutenberg to Telidon, published in May 1984, discusses this matter in some detail but did not make any recommendation, with the matter referred to a Parliamentary Committee set up to consider it. The Department of Communications has primary responsibility for this subject and a further briefing from this Department could be obtained.

2. Protection of Computer Technology

This subject covers those areas of computer technology not currently covered by the Patent Act. Of particular

interest but without limiting this subject matter, is the protection of computer programs and the protection of semiconductor chips technology both of which have been considered to fall under the rubric of copyright.

(a) Protection of Computer Programs

Computer programs in readable form are protected under the current Copyright Act. The protection of programs which are in machine readable form is less clear. Again the Copyright White Paper has discussed this issue and recommended that computer programs in readable form continue to enjoy full copyright protection with programs in machine readable form being subject to protection for five years from date of creation. This matter is being considered by the Parliamentary Committee which has not issued its report.

It would probably be desirable to consider this on a multilateral basis in order to harmonize our law with a number of countries.

(b) Semi Conductor Chip Protection

The United States has passed the "Semiconductor Chip Protection Act 1984." This Act provides that the Secretary

of Commerce can extend interim protection to nationals of other countries if it is found:

1. that the foreign country is making good faith efforts and reasonable progress toward (a) entering into a treaty providing protection of mask works or (b) enacting legislation similar to the Semiconductor Chip Protection Act;

2. That nationals and others of the foreign nation are not engaged in the misappropriation of masked works; and

3. That issuing the orders (granting interim protection for the masked work of foreign nationals) would promote international comity with respect to the protection of masked works.

Canada has obtained an order from the United States obtaining interim protection of masked work on behalf of Canadians on the condition that we propose legislation to protect such works in Canada by June 12, 1986. The work program to put this legislation in place has yet to be established.

We should continue to pursue this issue on a bilateral basis with the United States and perhaps a multilateral basis to obtain a treaty on the subject.

By linking these issues to our international discussions in relation to trade the policy decisions are more likely to be in concurrence with the policies of our trading partners. Also it is believed that we would be in a better position to negotiate in respect of measures adopted by others which we consider distorts trade with these countries. Of particular significance is section 337 of the United States Tariff Act which enables owners of intellectual property to obtain import bans on the basis of an infringement of their rights. There are indications that the United States has or will be utilizing other legislation to restrict imports on the basis of intellectual property rights, such as the 1984 Trade Act.

Informal discussions with the private sector have indicated their general agreement with this approach.

It is therefore recommended:

F. That an interdepartmental committee be established to:

(a) make recommendations on the advisability of discussing matters bilaterally or multilaterally and co-ordinate the formulation of the position to be taken by Canada in any negotiations.

(b) consider and make recommendations in respect of the advisability of Canadian adherence to any new international arrangement in respect of intellectual property as such arrangements affect trade.

(c) co-ordinate the formulation of policy necessary for Canada to carry out any obligations incurred in the negotiations.

The above committee should be represented by senior officials of the departments involved and in particular External Affairs; Consumer and Corporate Affairs with representation from Communications in respect of Copyright.

It is also recommended that the private sector be given the opportunity to participate in the activities of this Committee, particularly organizations such as the International Business Council of Canada, the Canadian Manufacturers' Association and the Patent and Trade Mark Institute of Canada.