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* Professor, University of Buenos Aires.
I. Introduction

The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS") brought about a very important change in international standards relating to intellectual property rights. Because of its far-reaching implications, particularly with respect to developing countries, the agreement has been one of the most controversial components of the WTO system. Strong disagreements on the scope and content of the Agreement emerged during the Uruguay Round negotiations, both between developed and developing countries and among developed countries themselves. Implementation of the Agreement and its review under the "built-in agenda" have also been contentious with regard to many aspects.

The developed countries (notably the United States) insisted upon the negotiation and adoption of standards on intellectual property rights ("IPRs") in the Uruguay Round, based on the argument that strengthened protection of IPRs would promote innovation as well foreign direct investment ("FDI") and technology transfer to developing countries. Although the TRIPS Agreement only became effective in advanced developing countries on January 1, 2000, meaning that there has not been much time to assess its impact, most developing countries seem to remain unconvinced about the benefits that they will obtain from the implementation of the new IPR standards. Moreover, many of them fear that the costs to be paid may be too high, particularly in critical areas such as public health. Essentially, many developing countries feel that despite the balance sought in some provisions, the Agreement mainly benefits technology-rich countries. There are a number of reasons for these concerns.

First, higher levels of IPR protection do not appear to lead to tangible increases of FDI in or technology transfer to developing countries. The evidence on the relationship between IPR protection on the one hand and FDI and technology transfer on the other continues to be inconclusive. In addition, the share of developing countries in world research and development expenditures remains very low (only four percent of the total). Certainly, IPRs may promote innovative activities to the extent that they offer the promise of extraordinary benefits based on the temporal exclusion of competitors. But in order for those benefits to be realized, an adequate industrial and technological infrastructure must exist at the national level, which is not the case in most developing countries. There is also strong evidence suggesting that most of the rewards from innovation are reaped by a small minority of successful companies, while the majority of innovative efforts confer

2 The U.S. government has stated that:

   apart from stimulating innovation, however, a strong IPR regime—particularly a strong patent regime—can also produce other benefits for countries, regardless of whether the countries are developed or developing. For example, countries that have strong patent regimes are more effective in attracting investments and market entry by innovative companies. The reasons for this are fairly simple—patents provide a greater capacity for the innovator to compete based on the innovation. If the innovator cannot use the innovation to provide a market advantage, there is a disincentive to enter the market, particularly where others in that market can charge lower prices because they do not need to recover the costs of research and development, nor invest in new research and development.

3 See, e.g., Keith Maskus, INTELLECTUAL PROPERTY RIGHTS IN THE GLOBAL ECONOMY 87–141 (2000).