It's always a pleasure to come again to Washington from my law school in the capital, Concord, New Hampshire, one of the few places where American presidential candidates arrive regularly to pay court and kiss the rings of the real movers and shakers in the American political process.

And is particularly interesting to be here in a week when we have a new EX-chairman of the Senate Foreign Relations Committee, and the Republican administration has just last Friday put forward a request to renew normal trade relations with the Communist government of the People's Republic of China—not just because it's good for American business but because it will effect real change in China, and because it's the right thing to do.

Franklin Pierce Law Center, named after the 14th president of the United States during whose term Commodore Matthew Perry's "black ships" opened Japan to American commerce in 1853, has an abiding interest in today's forum, because for two decades the Law Center has been on a mission to create not just adequate and effective, but strong and progressive standards for the international protection of intellectual property. Students from over 70 countries have participated in Franklin Pierce intellectual property programs and have come to appreciate the role that strong, effective intellectual property protection plays in opening up trade barriers and fostering economic development not just in the United States, but around the globe. The Greenberg Trademark Institute at Franklin Pierce, just created through the vision and generosity of former Coca-Cola chief trademark counsel Allen Greenberg, will be, I hope, a vehicle for many more programs such as today's.

International standards for the protection of intellectual property are still fragile today, but they are based upon principles solidified more than a century ago with the establishment of the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works in the 1880's. In our own hemisphere, those principles are enshrined in the Inter-American Convention for Trademark and Commercial Protection, signed right here in Washington in 1929, consented to by the US Senate, ratified by the President, and held to be self-executing by the United States Supreme Court in 1940. Cuba and the United States are parties to the convention.

Article 11 of that treaty states that:

The transfer of the ownership of a registered or deposited mark in the country of its original registration shall be effective and shall be recognized in the other contracting States, provided that reliable proof be furnished that such transfer has been executed and registered in accordance with the internal laws of the state in which such transfer took place.

Further, Article 18 of the Inter-American Convention requires that any manufacturer domiciled or established in a signatory country that uses a particular trade name or commercial name may enjoin the use of that name in another signatory country that is

identical with or deceptively similar to its trade name, and, under Article 14, that a trade or commercial name need not be registered to be protected.

Let me point to two egregious examples of violation of the rights of trademark owners, ostensibly in conformity with international law. In 1973, India (which was then and still is not a member of the Paris Union) passed a law that foreign companies may only establish a presence in that country through a joint venture in which the company had a minority holding. The Coca-Cola Company refused to disclose its trade secret formula under conditions in which it could not control the confidentiality of its proprietary information and withdrew from the Indian market. Because Coca-Cola was no longer marketing its product in India, it was deemed not to be using its mark in India, and the Coca-Cola trademark became "fair game" for Indian soft drink manufacturers to free-ride upon, notwithstanding whatever deception or confusion among consumers might ensue. The "civilized world" of intellectual property protection – including the United States -- was scandalized.

In a second instance, McDonald's corporation withdrew from South Africa during the apartheid regime in support of the peremptory norms of the "civilized world." A court there deemed that since the company was not using its "golden arches" and its trademark in that country, its intellectual property was "fair game," for other parties to free-ride on its reputation and hard-won recognition. Again the "civilized world"—including the United States -- was scandalized, and eventually the decision was overturned on appeal.

The "Golden Rule" of international intellectual property protection for the last 130 years is the principle of national treatment. The international intellectual property system has been built with the United States leading the way as one of the principal architects and the earliest signers of the Paris Convention and the states of Europe taking the lead on the Berne convention. When the World Intellectual Property Organization became a specialized agency of the United Nations in 1974, its membership became much more diverse, embracing nations at all levels of economic and legal development. The international intellectual property system took on a new character, bringing developing as well as developed nations into the discourse on the extent to which intellectual property protection promotes economic development. Two decades later we witnessed the establishment of the TRIPS Agreement in 1995, which set worldwide, but minimum, standards for protection of the intellectual property of the nationals of member nations. For the first time, members of the global trading community moved from a normative framework which had no enforcement mechanism to a system where participating states were to be held to the rule of law by the threat of sanctions for non-compliance. But as with the rule of law in any civil society, the majority of state actors in the world trading system should be expected to respect their obligations not merely because of the threat of the sanction but because of their commitment to the systemic values which the rule of law upholds.

The interpretation of intellectual property obligations has been dramatically transformed by the TRIPS Agreement of the WTO. India has been forced to set up a mechanism for the eventual patent protection of pharmaceuticals after a complaint by the United States,

and has done so. Canada was obliged to change the scope of its patent law as well and did so. But the record of the United States itself is not good. Last year, the WTO DSB ruled that the US was out of compliance with its TRIPS obligations by enacting the "Fairness in Music Licensing Act" which carved out an exception to the exclusive rights of copyright owners for small restaurants. The WTO has given the US until late July to bring its law back into compliance. The indications from Congressman Jim Sensenbrenner's office are that the US will do nothing to honor its international TRIPS obligations in that dispute and will face European retaliation. Is this the way for the country which is the greatest producer and holder of intellectual property and the biggest stake in the integrity of the international intellectual property system underpinned by TRIPS to behave?

Finally, let's consider some basic principles of the law of foreign relations in the United States. One such principle set forth in Section 115 of the Restatement (Third) of the Foreign Relations Law of the United States is that a court should not interpret a statute to be in conflict with an international obligation of the United States unless the purpose of the act to supersede the international rule is clear and that the two cannot be fairly reconciled. In the case of the United States v. the Palestine Liberation Organization in the southern District of New York in 1988, the court looked at the Anti-Terrorism Act of 1986, the purpose of which was explicitly to close down the PLO mission but where the act did not itself specifically mention the Headquarters agreement, the court found no conflict and allowed the mission to stay open. Should the principle of explicit irreconcilability of later legislation before an international obligation of the United States is violated not be applied in every circumstance?

I look forward to a stimulating discussion today of these and other issues. We're going to start off this morning with a look at how the trademark system works. Our first speaker is