World Trade and World IP Law and Institutions
FINAL EXAMINATION

William O. Hennessey December 15, 2006

DIRECTIONS:

This is a two-hour examination. (3 hours for qualified ESL speakers) Students are allowed to bring any materials they wish into the examination except laptop computers or writable memory devices. Students may not speak to or ask assistance of one another during the examination. Answers should be written in a blue exam booklet. Do not put your name or any other identifying device on your exam booklet -- just your exam number. Do not write "MIP," "2L", or "Class of '08" etc. on the booklet. You should keep your answers BRIEF AND TO THE POINT, but there are no page limitations. ***Just answer the question. Do not answer a question that was not asked.*** *Write on one side of a bluebook page only.*

Select three (3) of the following five (5) questions (40 minutes for each question):

1. "To some extent, the treatment of well-known marks in Article 6*bis* [of the Paris Convention] is a derogation from the principle of territoriality." (textbook, p. 187, following the text of Article 6*bis*) Please explain, based upon the cases we have read.

2. Why does Verstrynge (p. 633) assert that the rule of national treatment of the Berne Convention, when combined with the unanimity rule for its modification, constitutes "the insurance policy of copyright"?

3. Article 1.1 TRIPS states that:

> "Member States may, but shall not be obliged to, implement in their domestic law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement."

Article 3 TRIPS requires a Member State to accord "national treatment" to nationals of other Member States, and Article 4 TRIPS requires it to accord MFN treatment equally and unconditionally to *all* Member States. In what situations covered in this course may a WTO Member accord IP-related benefits that are more extensive than TRIPS protection only to nationals of *selected* other member states, or to its own national but *no* foreign nationals at all, and yet not contravene TRIPS' national and MFN treatment provisions?

4. What is meant by the term "back door to Berne" (p. 531) and why was it once deemed necessary for American copyright owners?

5. In your own words, briefly explain what are the major concerns expressed by the European Communities about how Ecuador applied Article 22.3 of the Dispute Settlement Understanding in Sections A, B, C, and D of *European Communities - Regime for the Importation, Sale and Distribution of Bananas* (Casebook pp. 890-898), and how does the Decision of the Arbitrators address those four concerns. (The text of Article 22.3 DSU is attached to this examination.)

Article 22 TRIPS

Compensation and the Suspension of Concessions

...3. In considering what concessions or other obligations to suspend, the complaining party shall apply the following principles and procednres:

(a) the general principle is that the complaining party should first seek to suspend concessions or other obligations with respect to the same sector(s) as that in which the panel or Appellate Body has found a violation or other nullification or impairment;

(b) if that party considers that it is not practicable or effective to suspend concessions or other obligations with respect to the same sector(s), it may seek to suspend concessions or other obligations in other sectors under the same agreement;

(c) if that party considers that it is not practicable or effective to suspend concessions or other obligations with respect to other sectors under the same agreement, and that the circumstances are serious enough, it may seek to suspend concessions or other obligations under another covered agreement;

(d) in applying the above principles, that party shall take into account:

(i) the trade in the sector or under the agreement under which the panel or Appellate Body has found a violation or other nullification or impairment, and the importance of such trade to that party;

(ii) the broader economic elements related to the nullification or impairment and the broader economic consequences of the suspension of concessions or other obligations;

(e) if that party decides to request authorization to suspend concessions or other obligations pursuant to subparagraphs (b) or (c), it shall state the reasons therefor in its request. At the same time as the request is forwarded to the DSB, it also shall be forwarded to the relevant Councils and also, in the case of a request pursuant to subparagraph (b), the relevant sectoral bodies;

(f) for purposes of this paragraph, "sector" means:
(i) with respect to goods, all goods;
(ii) with respect to services, a principal sector as identified in the current "Services Sectoral Classification List" which identifies such sectors;
(iii) with respect to trade-related intellectual property rights, each of the categories of intelleetual property rights covered in Section 1, or Section 2, or Section 3, or Section 4, or Section 5, or Section 6, or Section 7 of Part II, or the obligations under Part III, or Part IV of the Agreement on TRIPS;

(g) for purposes of this paragraph, "agreement" means:
(i) with respect to goods, the agreements listed in Annex 1A of the WTO Agreement, taken as a whole as well as the Plurilateral Trade Agreements in so far as the relevant parties to the dispute are parties to these agreements;
(ii) with respect to services, the GATS;
(iii) with respect to intellectual property rights, the Agreement on TRIPS.