WORLD TRADE AND WORLD IP LAW AND INSTITUTIONS
FINAL EXAMINATION

William O.Hennessey December 9, 2002

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 memory devices. Students may not "borrow" materials from, speak to, or ask assistance of one another during the examination. Answers should be written in a blue exam booklet. Do <u>not</u> put your name or any other identifying device on your exam booklet -- just your exam number. Do not write "MIP," "2L", or "Class of '02" etc. on the booklet. You should keep your answers BRIEF AND TO THE POINT, but there are no page limitations Write on one side of a bluebook page <u>only</u>.

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

1.In the case, *India -- Patent Protection for Pharmaceutical and Agricultural Products*, the WTO Appellate Body stated (in accordance with Article 1.1 TRIPS Agreement), "Members...are free to determine how best to meet their obligations under the *TRIPS Agreement*. And, as a Member, India is 'free to determine the appropriate method of implementing' its obligations under the *TRIPS Agreement* within the context of its own legal system." Why, then, did the AB not accept India's interpretation of Indian law but rather ruled in favor of the United States?

2.In *United States -- Section 211 Omnibus Appropriations Act of 1998 ("Havana Club")*, the WTO Appellate Body found Section 211(a)(2) to contain a *prima facie* violation of both Article 2.1 of the Paris Convention and Article 3.1 of the TRIPS Agreement. Why is the same behavior a violation of *both* the Paris Convention and the TRIPS Agreement and how is that significant to the outcome of the decision?

3. The Preamble of the TRIPS Agreement states that the Members "recogniz[e] that intellectual property rights are private rights." What evidence is there in the text of the TRIPS Agreement (and in the dispute resolution practices of the World Trade Organization based on the obligations in the TRIPS Agreement) that this is true, and what limits does the agreement place on private rights? Cite specific examples of such evidence.

4. Please comment on the following statement from the reading materials (p. 79) and on its relevance to international intellectual property law in the 21st Century.

> "To accept the principle of national treatment is implicitly to accept the proposition that states may differ in their substantive laws, but that international cooperation between states on important matters is itself valuable consideration...."

5. What do *Robertson v. General Electric Co.* and *General Motors Corp. v. Ignacio Lopez de Arriortua* reveal about the extent to which the Paris Convention is self-executing in the U.S.?