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 INFO RUCPDOG/USDOC WASHDC
 RUEHPU/AMEMBASSY PORT AU PRINCE 1412
 RUEHGV/USMISSION GENEVA 0087
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SECTION 01 OF 03 SANTO DOMINGO 001454

DEPT FOR WHA/EPSC SULLIVAN AND EB/IPC CROWIN
 DEPARTMENT PLS PASS TO USTR BURCKY
 USDOC FOR THE US PATENT AND TRADEMARK OFFICE
 US MISSION GENEVA FOR USTR

E.O. 12958: DECL: 3/15/2004

TAGS: KIPR ETRD DR

SUBJECT: 1999 SPECIAL 301: EMBASSY COMMENTS ON
 PETITIONS

REF: A. STATE 32921. B. SANTO DOMINGO 646

1. (U) CLASSIFIED BY PAUL LARSEN. ECONOMIC/POLITICAL COUNSELOR; REASON: 1.5(D).
2. (SBU) SUMMARY AND COMMENT: THE EMBASSY HAS REVIEWED THE 1999 SPECIAL 301 SUBMISSIONS RELATING TO THE DOMINICAN REPUBLIC. IN OUR VIEW, THE GODR IS DOING A LITTLE BETTER, BUT NOT WELL ENOUGH. WHILE CONSCIOUSNESS ON THE ISSUE IS GROWING (BASEBALL GREAT SAMMY SOSA HAS HIMSELF GONE TO THE NEWSPAPERS IN THE PAST YEAR TO UNDERLINE HIS OWNERSHIP OF HIS NAME AND IMAGE), ENFORCEMENT, WITH THE EXCEPTION OF THE EXAMPLES DETAILED BELOW, IS STILL LAX AND HAPHAZARD. IN ADDITION, THE FERNANDEZ ADMINISTRATION HAS SUBMITTED LEGISLATION TO THE DOMINICAN CONGRESS THAT WILL, IF PASSED, MAKE IT IMPOSSIBLE FOR THE GODR TO MEET ITS TRIPS OBLIGATIONS. WHILE THE GODR HAS TAKEN SEVERAL ACTIONS IN THE PAST TWO MONTHS (I.E. REPEALING EXECUTIVE BRANCH RESOLUTIONS RELATING TO PHARMACEUTICALS AND ANNOUNCING A RENEWED CAMPAIGN AGAINST BROADCAST PIRACY) THAT CLEARLY SEEM TO BE DRIVEN BY 301, WE BELIEVE THE DOMINICAN REPUBLIC SHOULD BE MAINTAINED ON THE SPECIAL 301 PRIORITY WATCH LIST. WE URGE, HOWEVER, THAT IN WHATEVER PUBLIC COMMENTS USTR ULTIMATELY MAKES ON THE DR IPR SITUATION, IT POSITIVELY CITE THE FORMATION OF THE SANTO DOMINGO DISTRICT ATTORNEY IPR UNIT AND, PARTICULARLY, THE ONGOING WORK OF NATIONAL COPYRIGHT OFFICE DIRECTOR DR. PEDRO FELIZ MONTES DE OCA. END SUMMARY AND COMMENT.
3. (U) WE HAVE REVIEWED THE 1999 SPECIAL 301 SUBMISSIONS RELATING TO THE DOMINICAN REPUBLIC RECEIVED FROM THE INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) AND THE PHARMACEUTICAL RESEARCH AND MANUFACTURERS OF AMERICA (PHARMA). THE INDUSTRY COMMENTS ARE GENERALLY ACCURATE AND DESERVE ATTENTION.

EXTENT OF THE PROBLEM

4. (U) DOMINICANS ARE VIOLATING INTELLECTUAL PROPERTY RIGHTS IN EVERY AREA. AS NOTED BY IIPA, COPYRIGHT PIRACY IS ENDEMIC. BUSINESS SOFTWARE PIRACY IS WIDESPREAD, AS IS THE PIRACY OF VIDEOS, THE THEFT OF SATELLITE SIGNALS, AND CABLE PIRACY. ACCORDING TO

MEMBERS OF THE RECORDING INDUSTRY ASSOCIATION OF AMERICA, WHO RECENTLY VISITED SANTO DOMINGO, THE DOMINICAN MUSIC MARKET IS STILL PRIMARILY A CASSETTE MARKET MADE UP OF ALMOST 100 PERCENT PIRATED PRODUCTS. THE RIAA MEMBERS SPECULATED THAT AS DOMINICANS START BUYING MORE CDS, THE PIRATING OF THIS MEDIUM WILL GROW ALTHOUGH IT IS UNLIKELY THAT PIRATED OPTICAL MEDIA ARE BEING PRODUCED IN THE DOMINICAN REPUBLIC AT THIS TIME. TRADEMARKS, ESPECIALLY OF APPAREL AND FOOTWEAR, ARE ALSO ROUTINELY VIOLATED.

5. (U) PATENTS HAVE ALSO BEEN ROUTINELY VIOLATED. THE PHARMACEUTICAL INDUSTRY, IN PARTICULAR, HAS FACED A TROUBLING SITUATION IN THAT MANY OF ITS PROBLEMS HAVE BEEN THE RESULT OF THE GODR ITSELF VIOLATING DOMINICAN PATENT LAW. WHILE THE PROBLEM OF PHARMACEUTICAL PRODUCT PIRACY PREDATES THIS GOVERNMENT, THE FERNANDEZ ADMINISTRATION ITSELF REGULARIZED THE PRACTICE WITH EXECUTIVE BRANCH RESOLUTIONS PASSED IN LATE 1996 AND EARLY 1997 (RESOLUTION NUMBERS 11-96 AND 2-97) WHICH PERMITTED THE HEALTH DEPARTMENT (SESPAS) TO ISSUE MARKETING PERMITS (THE SO-CALLED "REGISTRO SANITARIO") FOR PHARMACEUTICAL PRODUCTS REGARDLESS OF THE OWNERSHIP OF THE PATENT.

CHANGES IN THE PAST YEAR

6. (U) THERE HAVE BEEN SOME SUCCESSES IN THE PAST YEAR THAT DESERVE RECOGNITION IN OUR VIEW. IN JULY 1998, AN INTELLECTUAL PROPERTY UNIT WAS ESTABLISHED IN THE SANTO DOMINGO DISTRICT ATTORNEY'S OFFICE. WHILE THE IIPA, AND OTHERS, HAVE EXPRESSED DISAPPOINTMENT IN ITS PERFORMANCE TO DATE, WE DO NOT THINK THAT EIGHT MONTHS IS TIME ENOUGH TO DISCOUNT THE WORK OF THE UNIT, STAFFED AT THIS TIME BY ONE OVER-BURDENED AND INEXPERIENCED ASSISTANT DISTRICT ATTORNEY. U.S. IPR SPECIALIST DORIS LONG, ASSOCIATE PROFESSOR OF THE JOHN MARSHALL LAW SCHOOL, WORKED FOR A WEEK WITH THE IPR UNIT IN JANUARY IN A PROGRAM ORGANIZED BY USIS AT THE REQUEST OF THE DISTRICT ATTORNEY. PROFESSOR LONG REPORTED EXCELLENT ATTENDANCE AND INTEREST IN SEMINARS WITH JUDGES AND OTHER LEGAL PROFESSIONALS. SHE ALSO IDENTIFIED OTHER TRAINING NEEDS, SUCH AS TRAINING IN HOW TO CONDUCT SEIZURES, THAT USIS PLANS TO ADDRESS WITH OTHER PROGRAMS IN 1999.

7. (SBU) WE WOULD ALSO LIKE TO LAUD THE ONGOING WORK OF DR. PEDRO FELIZ, THE DIRECTOR OF THE NATIONAL COPYRIGHT OFFICE, ONDA. SINCE THE BEGINNING OF THE FERNANDEZ ADMINISTRATION (PREDATING THE PRESSURE BROUGHT BY THE SPECIAL 301 PROCESS), DR. FELIZ HAS BEEN VIRTUALLY A ONE MAN SHOW IN SUPPORT OF ENDING COPYRIGHT PIRACY. IN 1998, ONDA CONDUCTED RAIDS ON SELLERS OF PIRATED AUDIO TAPES AND CDS, AS WELL AS ON USERS OF PIRATED SOFTWARE. WHEN 1998 TELECOMMUNICATIONS LEGISLATION EXPANDED HIS OVERSIGHT FUNCTIONS TO INCLUDE VIDEOS, DR. FELIZ IMMEDIATELY TOOK ACTION WITH SEVERAL RAIDS AGAINST VIDEO CLUBS RENTING PIRATED PRODUCTS. AT YEAR END 1998, FELIZ APPROACHED THE EMBASSY TO REQUEST THAT WE WEIGH IN WITH THE GODR ABOUT HIS BUDGET BECAUSE HIS OFFICE CONSISTENTLY DOES NOT RECEIVE THE AMOUNTS BUDGETED IN THE NATIONAL BUDGET. FELIZ HAS REPORTEDLY KEPT HIS OFFICE GOING AT TIMES OUT OF HIS OWN POCKET.

8. (SBU) IN ITS OWN SPECIAL 301 SUBMISSION, THE GODR IS LIKELY TO MAKE MUCH OF RECENT DEVELOPMENTS THAT HAVE CLEARLY BEEN DRIVEN BY THE 301 PROCESS. AS REPORTED REFTEL B, IN EARLY FEBRUARY THE GODR REPEALED THE RESOLUTIONS REFERRED TO IN PARA. 3 ABOVE WHICH HAVE, IN OUR VIEW, CONSTITUTED GODR SANCTION OF PHARMACEUTICAL PIRACY. INDUSTRY SOURCES TELL US SESPAS HAS SLOWED IF NOT YET STOPPED ITS ISSUANCE OF PERMITS SINCE THE RESOLUTIONS WERE REPEALED. THEY BELIEVE, IN ADDITION,

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THAT SESPAS STAFF IS PREPARING TO RECOMMEND TO THE HEALTH SECRETARY THAT NO FURTHER PATENT-INFRINGING PERMITS BE ISSUED.

9. (U) THE DIRECTORATE GENERAL OF TELECOMMUNICATIONS ALSO RECENTLY MET WITH COMMERCIAL AND CABLE TV STATIONS TO TAKE CONCRETE ACTION AGAINST BROADCAST PIRACY. AFTER A THREE-MONTH "GRACE PERIOD," THE STATIONS WILL FINALLY BE REQUIRED TO PRESENT DOCUMENTATION OF BROADCAST RIGHTS. THE GRACE PERIOD WILL BE UP IN MAY. WE PLAN TO WATCH THIS CLOSELY TO SEE WHAT ENFORCEMENT ACTION THE GODR TAKES -- PARTICULARLY AGAINST ONE STATION THAT HAS BEEN AN EGREGIOUS PIRATE BUT IS OWNED BY AN INFLUENTIAL GOVERNMENT SUPPORTER.

NEXT STEPS

10. (U) WE BELIEVE, HOWEVER, THAT THE PRIMARY BATTLE HAS NOW SHIFTED TO THE NEW LEGISLATION NOW BEFORE THE DOMINICAN CONGRESS. AS THE IIPA NOTES, THE LEGISLATION FIXES A NUMBER OF SHORTCOMINGS IN CURRENT DOMINICAN COPYRIGHT LAW. IN THE AREA OF TRADEMARKS AND PARTICULARLY OF PATENTS, HOWEVER, THE PACKAGE NOW BEFORE THE CONGRESS HAS SERIOUS DEFECTS WHICH, IF IT IS ENACTED IN ITS PRESENT FORM, WILL MAKE IT IMPOSSIBLE FOR THE GODR TO COMPLY WITH ITS YEAR 2000 TRIPS OBLIGATIONS.

11. IN ADDITION TO USTR'S ACTIONS IN THE 301 PROCESS, WE SUGGEST THAT WIPO BE REQUESTED TO REVIEW THE DOMINICAN LAW. GODR OFFICIALS HAVE STATED THAT THE CURRENT DRAFT LEGISLATION HAS THE IMPRIMATUR OF WIPO WHICH WE DOUBT. WIPO IS WELL RESPECTED HERE AND A FEW INSISTENT WORDS FROM THEM WOULD HELP ENORMOUSLY TO CREATE AN UNDERSTANDING THAT SOMETHING HAS GONE WRONG. THE RISK IS THAT INFADOMI, THE LOCAL ASSOCIATION REPRESENTING THE PIRATE PHARMACEUTICAL INDUSTRY, MAY SEEK TO PAY OFF MEMBERS OF CONGRESS TO GET RAPID PASSAGE OF THE LAW.

✓ AND HAS MAINTAINED CLOSE CONTACTS WITH THE SECRETARIAT OF INDUSTRY AND COMMERCE WHICH IS PUSHING THE LEGISLATION.

12. (U) FINALLY, WE URGE THAT USTR AND OTHER USG AGENCIES TELL U.S. FIRMS TO GET MORE INVOLVED IN PROVIDING US WITH CONCRETE EXAMPLES WE CAN USE IN OUR INTERACTIONS WITH THE GODR. WE HAVE LITTLE DOUBT THAT THE PERSISTENCE OF EFID (THE ASSOCIATION REPRESENTING THE MULTINATIONAL PHARMACEUTICAL COMPANIES) -- AND PARTICULARLY MERCK SHARP AND DOHME, AND PFIZER -- HAS PLAYED AN IMPORTANT ROLE IN WINNING SOME CHANGE IN THE SITUATION WITH PHARMACEUTICAL PATENTS. THE VIDEO INDUSTRY HAS RECENTLY PROVIDED US FOR THE FIRST TIME WITH SPECIFIC EXAMPLES OF ILLEGAL BROADCASTS OF FIRST RUN FILMS. WE THINK THIS HAS PLAYED A PART IN PUSHING TELECOMMUNICATIONS TO TAKE RENEWED ACTIONS AGAINST BROADCAST PIRACY.

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