

ROUTINE

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DEPARTMENT OF COMMERCE

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PAGE 01 OF 01

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INFO: RFM-01 534-01 3134-01 500-01 4121-01 4110-01 4320-01 5110-01
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FM AMEMBASSY SANTO DOMINGO

TO RUEHC/SECSTATE WASHDC 5836

INFO RUCPDOG/USDOC WASHDC

RUEHGV/USMISSION GENEVA 0111

RHEHAAA/WHITEHOUSE WASHDC

BT

SANTO DOMINGO 003939

DEPT FOR WHA/CAR (R. FRETZ) AND EB
 DEPT ALSO PASS AA/LAC AND LAC/CAR
 WHITE HOUSE FOR SPECIAL ENVOY MACKAY

E.O. 12958: DECL: 9/09/04

TAGS: KIPR, ETRD, WTO, USTR, DR

SUBJECT: IMPLEMENTING TRIPS OBLIGATIONS IN THE DOMINICAN REPUBLIC

CLASSIFIED BY CHARGE LINDA WATT, REASON 1.5(D).

REFTEL: STATE 164771

1. PURSUANT TO REFTEL REQUEST, EMBASSY OFFICERS HAVE MET RECENTLY WITH THE ATTORNEY GENERAL, OFFICIALS IN THE MINISTRY OF INDUSTRY AND COMMERCE, FOREIGN MINISTRY OFFICIALS, MEMBERS OF THE NATIONAL CONGRESS, LEADING BUSINESS REPRESENTATIVES, AND THE TWO LEADING PRESIDENTIAL CANDIDATES AND THEIR STAFFS, TO EMPHASIZE THE IMPORTANCE OF TIMELY IMPLEMENTATION OF THE DOMINICAN REPUBLIC'S OBLIGATIONS UNDER THE TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS AGREEMENT (TRIPS). ALL OF THE GOVERNMENT AND CONGRESSIONAL REPRESENTATIVES ASSURED US OF THEIR COMMITMENT TO ADOPT LEGISLATION THAT WOULD BRING THE DR'S IPR REGIME INTO COMPLIANCE WITH TRIPS REQUIREMENTS BY THE JANUARY 1, 2000 DEADLINE. UNFORTUNATELY, THE CURRENT DRAFT OF THE LEGISLATION FALLS SHORT IN SEVERAL SIGNIFICANT RESPECTS OF WHAT IS NEEDED FOR THE DR TO BE TRIPS COMPLIANT. ALSO, ENFORCEMENT, A KEY ELEMENT OF IMPLEMENTATION, HAS IMPROVED RECENTLY BUT IS STILL INCONSISTENT.

INDICATED HIS AWARENESS OF THIS PROBLEM AND SUGGESTED THAT FOREIGN TECHNICAL ASSISTANCE WOULD BE REQUIRED IN THE EARLY STAGES TO ENSURE ADEQUATE IMPLEMENTATION.

2. EMBASSY TOOK FULL ADVANTAGE OF THE AID/USIS-SPONSORED VISIT OF DORIS LONG, AN IPR EXPERT AND ASSOCIATE PROFESSOR AT THE JOHN MARSHALL SCHOOL OF LAW IN CHICAGO, TO REINFORCE THE MESSAGE THAT FULL AND TIMELY IMPLEMENTATION OF TRIPS IS IN THE BEST INTERESTS OF THE DR. PROFESSOR LONG DISTRIBUTED TO GOVERNMENT OFFICIALS, INDUSTRY REPRESENTATIVES, AND OTHERS HER REPORT ON A COMPREHENSIVE STUDY SHE MADE COMPARING THE DRAFT REVISION TO THE DR IPR LAW WITH THE REQUIREMENTS OF TRIPS. HER CONCLUSION WAS THAT ALTHOUGH THE DRAFT LEGISLATION GOES A LONG WAY TOWARD MEETING TRIPS OBLIGATIONS, IT FALLS SHORT IN SEVERAL KEY RESPECTS. THE PROPOSED LEGISLATION FAILS TO COVER ALL PATENTABLE INVENTIONS (NOTABLY PHARMACEUTICAL ROUCT), FAILS TO PROTECT ALL REQUIRED RIGHTS OF PATENTEES, GRANTS COMPULSORY LICENSES WITHOUT REQUIRED SAFEGUARDS, DOES NOT COMPLY WITH TIME PERIODS, NATIONAL TREATMENT PRINCIPLES, AND OTHER PROTECTIONS FOR COPYRIGHT HOLDERS, PROVIDES INADEQUATE PROTECTION FOR FAMOUS TRADEMARKS, FAILS TO PROHIBIT THE USE OF GEOGRAPHIC INDICATIONS ON WINES AND SPIRITS, AND FAILS TO PROVIDE ADEQUATE ENFORCEMENT PROVISIONS. HER CONCLUSIONS WERE CHALLENGED, PARTICULARLY BY THE OFFICIALS IN CHARGE OF IPR MATTERS IN THE MINISTRY OF INDUSTRY AND COMMERCE, WHO NOTED THAT THE LEGISLATION HAD BEEN REVIEWED BY SEVERAL EXPERTS ON IPR MATTERS, AND HAD BEEN DECLARED TRIPS-COMPLIANT BY A REPRESENTATIVE OF THE WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO). EMBASSY OFFICIALS AND

PROFESSOR LONG RESPONDED THAT WIPO HAS NO AUTHORITY OVER TRIPS IMPLEMENTATION, AND THAT THE DR SHOULD CAREFULLY CONSIDER THE SHORTCOMINGS IN THE PROPOSED LEGISLATION IN ORDER TO AVOID AN ADVERSE DECISION BY A WTO DISPUTE SETTLEMENT PANEL.

3. DISCUSSIONS WITH LEADING PRESIDENTIAL CANDIDATES WERE MORE POSITIVE. CURRENT FRONT-RUNNER HIPOLITO MEJIA OF THE DOMINICAN REVOLUTIONARY PARTY (PRD) EXPRESSED STRONG SUPPORT FOR IMPLEMENTATION OF TRIPS OBLIGATIONS. HE ASSURED PROFESSOR LONG AND EMBASSY OFFICIALS THAT HIS PARTY, WHICH CURRENTLY CONTROLS CONGRESS, WOULD SEE TO IT THAT THE PROPOSED IPR LEGISLATION WOULD GET PROMPT AND APPROPRIATE ACTION. DANILO MEDINA, THE CANDIDATE OF CURRENT PRESIDENT FERNANDEZ' DOMINICAN LIBERATION PARTY (PLD), ALSO AGREED ON THE IMPORTANCE OF COMPLYING WITH TRIPS, AND ORDERED THAT STEPS BE TAKEN TO ENSURE THAT THE DRAFT LEGISLATION MEETS THE REQUIREMENTS.

4. COMMENT. WITH THE OBVIOUS EXCEPTION OF THE REPRESENTATIVES OF THE COMPANIES ENGAGED IN IPR VIOLATIONS, THE GOVERNMENT AND INDUSTRY LEADERS WITH WHOM WE SPOKE EMPHASIZED THE GENERAL IMPORTANCE OF RECOGNIZING INTELLECTUAL PROPERTY RIGHTS AS A NECESSARY ASPECT OF SECURING THE CONTINUED DEVELOPMENT OF THE DR, AND THE PARTICULAR IMPORTANCE OF COMPLYING WITH THE DR'S OBLIGATIONS UNDER TRIPS. MOST PRIVATE SECTOR AND GOVERNMENT REPRESENTATIVES ALSO RECOGNIZED THE CONNECTION BETWEEN THE CARIBBEAN BASIN INITIATIVE (CBI) AND IPR COMPLIANCE. THEY ALSO NOTED THAT SPECIAL ENVOY MACKAY HAD EMPHASIZED THE IMPORTANCE OF ADEQUATE IPR LEGISLATION DURING HIS RECENT VISIT.

5. COMMENT CONTINUED. WE HEARD ONLY A FEW COMPLAINTS THAT THERE WAS NOT SUFFICIENT TIME OR RESOURCES TO MEET THE TRIPS REQUIREMENTS. WE ARE THUS CAUTIOUSLY OPTIMISTIC THAT THE POLITICAL WILL EXISTS, EVEN IN THIS PRE-ELECTION CLIMATE, TO TAKE THE STEPS NECESSARY TO PASS FULLY TRIPS-COMPLIANT LEGISLATION AND EVENTUALLY TO ENFORCE IT ONCE PASSED. THE POSSIBILITY OF FUTURE TRADE SANCTIONS - WHICH COULD ALWAYS BE BLAMED ON A U.S. OR OTHER DEVELOPED COUNTRY INDIFFERENT TO THE PLIGHT OF THE DOMINICANS - VERSUS THE MORE IMMEDIATE APPEALS OF THE STILL-POWERFUL IPR PIRATES, MAKES FOR AN UNCERTAIN POLITICAL CALCULUS. THE GOOD FAITH EFFORT THE GOVERNMENT HAS MADE TO DRAFT THE NECESSARY LEGISLATION, HOWEVER, ITS RECOGNITION OF THE NEED TO PROTECT IPR IN ORDER TO ATTRACT HIGH TECH BUSINESS, AND ITS RECENT ACTIONS AGAINST VIDEO PIRATES, SUGGEST THAT THE DR MAY NOW AT LEAST BE HEADED IN THE RIGHT DIRECTION. END COMMENT. WATT

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