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EXCISE

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PAGE 01 OF 01

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 TAGS: KIPR, ETRD, EINV, ECON, DR
 SUBJECT: DOMINICAN CONGRESSIONAL LEADERS CLAIM THEY WANT TRIPS-
 COMPLIANT IPR LEGISLATION, BUT WILL THEY MAKE THE NECESSARY FIXES?

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

SUMMARY

1. [REDACTED] IN AN EFFORT TO ENSURE THAT CONGRESSIONAL LEADERS WERE AWARE OF SHORTCOMINGS IN PENDING INTELLECTUAL PROPERTY RIGHTS LEGISLATION PRIOR TO THEIR VOTING ON IT, CHARGE INVITED [REDACTED] TO THE EMBASSY TO DISCUSS THE MATTER. WHILE BOTH PRESIDENTS ASSURED US THAT THEY WOULD TAKE THE STEPS NECESSARY TO MAKE THE LAW COMPLY WITH THE DOMINICAN REPUBLIC'S COMMITMENTS UNDER THE WTO AGREEMENT ON TRADE RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS), COMMENTS BY SOME OF THEIR COLLEAGUES LEFT US SKEPTICAL. END SUMMARY.

SENATE HAS ALREADY PASSED DEFICIENT PATENT LEGISLATION

2. [REDACTED] ON NOVEMBER 10, THE CHARGE HOSTED [REDACTED] IN ORDER TO MAKE CLEAR TO THEM THE IMPORTANCE OF PASSING TRIPS-COMPLIANT IPR LEGISLATION. THE CHARGE EMPHASIZED THE FACT THAT TRIPS WAS A MULTILATERAL OBLIGATION TO WHICH THE DOMINICAN GOVERNMENT HAD COMMITTED, AND THAT THEREFORE ANY OF OVER A HUNDRED COUNTRIES COULD BRING THE DR TO WTO DISPUTE RESOLUTION IF IT FAILS TO PASS AND IMPLEMENT ADEQUATE LEGISLATION. SHE ALSO REMINDED THE SENATORS THAT UNILATERAL BENEFITS UNDER THE CARIBBEAN BASIN INITIATIVE AND GENERALIZED SYSTEM OF PREFERENCES WERE CONTINGENT ON HIGH LEVELS OF IPR PROTECTION. THE CHARGE NOTED TWO SPECIFIC SHORTCOMINGS OF THE BILL AS SENT TO THE LEGISLATURE BY THE FERNANDEZ ADMINISTRATION: A REQUIREMENT THAT FOREIGN PATENT HOLDERS PUT UP A BOND IN ORDER TO BRING A SUIT; AND A FAILURE TO INCLUDE CERTAIN REQUIRED SAFEGUARDS BEFORE ISSUING A COMPULSORY LICENSE. SHE REFERRED ALBUQUERQUE TO THE REPORT PREPARED BY U.S. IPR EXPERT DORIS LONG (WHICH HAD BEEN ARRANGED BY OUR PUBLIC AFFAIRS SECTION AND FUNDED BY AID) FOR A MORE COMPLETE EXPLANATION OF THE BILL'S PROBLEMS FROM THE PERSPECTIVE OF TRIPS COMPLIANCE.

3. [REDACTED] RESPONDED THAT BECAUSE OF THE NEED TO PASS IPR LEGISLATION BEFORE THE JANUARY 1, 2000 DEADLINE, THE SENATE HAD SEPARATED OUT FROM THE COMPLEX AND CONTROVERSIAL MARKET ORDERING LEGISLATION TWO SEPARATE BILLS ON INDUSTRIAL PROPERTY (COVERING PATENTS AND TRADEMARKS) AND COPYRIGHT. THE INDUSTRIAL PROPERTY BILL WAS MODIFIED, FROM THE VERSION PRESENTED BY THE GOVERNMENT, TO TAKE INTO ACCOUNT COMMENTS MADE DURING THE PUBLIC HEARING ON THE PROPOSED BILL. THE SENATE HAS PASSED THE INDUSTRIAL PROPERTY BILL, FOLLOWING TWO READINGS, AND SENT IT TO THE CHAMBER OF DEPUTIES FOR ITS APPROVAL. [REDACTED] ASSURED US, HOWEVER, THAT ANY FAILINGS IN THE BILL COULD BE CORRECTED WHEN

IT GOES TO A JOINT (I.E., SENATE/DEPUTIES) COMMISSION FOR RECONCILIATION. HE PROMISED TO SEND US A COPY OF THE BILL IN THE FORM PASSED BY THE SENATE.

4. [REDACTED] RESPONDING TO THE POINT ABOUT THE FOREIGN PATENT HOLDER HAVING TO POST A BOND, ONE OF [REDACTED] SENATE COLLEAGUES EXPLAINED THAT THIS WAS A REQUIREMENT OF NATIONAL LAW. EMBOFF IN TURN EXPLAINED THAT SUCH A PROVISION VIOLATES THE NATIONAL TREATMENT REQUIREMENTS OF GATT, AND THAT AS A SIGNATORY TO GATT, THE DR IS REQUIRED TO COMPLY WITH THIS PROVISION. COMMENT: THIS KIND OF COMMENT SUGGESTS, HOWEVER, THAT MANY SENATORS STILL DO NOT UNDERSTAND THE NEED TO CONFORM NATIONAL LEGISLATION TO INTERNATIONAL TREATIES, AND NOT JUST TO THE DEMANDS OF NATIONAL INTERESTS. END COMMENT.

WILL DEPUTIES DO THE RIGHT THING?

5. [REDACTED] ON NOVEMBER 15, CHARGE HOSTED [REDACTED] DEPUTIES RAFAELA ALBUQUERQUE (A DISTANT COUSIN OF THE SENATE) AND TWO OTHER DEPUTIES FOR A SIMILAR SESSION. WITH THE BENEFIT OF AN ANALYSIS OF THE INDUSTRIAL PROPERTY LEGISLATION AS PASSED BY THE SENATE THAT REVEALED THAT IT STILL SUFFERED SEVERAL CRITICAL SHORTCOMINGS, THE CHARGE TOOK AN EVEN MORE DIRECT APPROACH. SHE EXPLAINED TO HER GUESTS THAT THE CONGRESS HAD A CHOICE: IT COULD EITHER SUPPORT THE INTERESTS OF A SMALL GROUP OF IPR PIRATES, OR SUPPORT THE INTERESTS OF THE FREE TRADE ZONE EXPORTERS WHO COULD BE HURT BY TRADE SANCTIONS IF ADEQUATE IPR LEGISLATION IS NOT PASSED AND IMPLEMENTED. [REDACTED] NOTING THAT HER DISTRICT INCLUDED SEVERAL FREE TRADE ZONES, INDICATED THAT SHE WAS EAGER TO FIX THE LEGISLATION TO MAKE IT TRIPS-COMPLIANT.

6. [REDACTED] HOWEVER, EXPRESSED CONCERN ABOUT CHANGING THE SECTIONS ON COMPULSORY LICENSING. HE SUGGESTED THAT SUCH PROVISIONS WERE NECESSARY TO PREVENT ANTICOMPETITIVE PRACTICES BY PATENT HOLDERS. THE CHARGE EXPLAINED THAT THE GRANT OF A PATENT DOES, IN FACT, GRANT CERTAIN MONOPOLY RIGHTS TO THE PATENT HOLDER AS AN INCENTIVE TO PRODUCE INNOVATIVE PRODUCTS. THE INDUSTRIAL PROPERTY LAW AS PASSED BY THE DOMINICAN SENATE, HOWEVER, GOES TOO FAR IN PERMITTING COMPULSORY LICENSES, BY MAKING THEM VIRTUALLY AUTOMATIC

180 DAYS AFTER AN UNSUCCESSFUL APPLICATION TO THE PATENT HOLDER FOR A LICENSE.

7. [REDACTED] COMMENT. DESPITE ALL THE EFFORTS WE HAVE MADE TO CONVINCE THE GOVERNMENT AND THE CONGRESS OF THE IMPORTANCE OF PASSING TRIPS-COMPLIANT IPR LEGISLATION, AND OF THE CHANGES NEEDED TO MAKE IT COMPLIANT, WE ARE NOT YET CONFIDENT THAT THE FINAL PRODUCT WILL PASS THE TEST. THE LOCAL PHARMACEUTICAL ASSOCIATION (INFADOMI) CONTINUES TO CARRY OUT AN INTENSE LOBBYING EFFORT, INCLUDING LARGE ADS IN MORNING NEWSPAPERS, TO PROMOTE THEIR RIGHT TO PIRATE, AS IT WERE. PERHAPS ONLY A WTO TRIBUNAL, OR A SERIOUS THREAT BY THE U.S. TO WITHHOLD TRADE PREFERENCES, CAN SEND HOME THE MESSAGE THAT INTERNATIONAL COMMITMENTS MUST BE TAKEN SERIOUSLY. NEVERTHELESS, WE WILL CONTINUE TO USE EVERY OPPORTUNITY TO GET ACROSS THE MESSAGE THAT IN TODAY'S GLOBALIZED ECONOMY, ALMOST-TRIPS-COMPLIANT IPR LEGISLATION IS NOT GOOD ENOUGH. END COMMENT.

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Dept. of State, RPS/IPS, Margaret P. Grafeld, Dir.
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