

ROUTINE
ACTION

UNCLASSIFIED

DEPARTMENT OF COMMERCE

EXCISE

INCOMING

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0001381470

DC08263 072/2131Z

ACTION: 4322-01

INFO: 534-01 REV-01 4110-01 4320-01 4121-01 6132-01 6330-01 6610-01
6710-01 6720-01 OTEC-01 PTO-01 SEC-01

AMADS AMADS 072/2131Z (TOTAL COPIES: 14)

OO RUCPDOC

DE RUEHOG #1085/01 0722041

ZNY CCCCC ZZH

O 132041Z MAR 98

FM AMEMBASSY SANTO DOMINGO

TO RUEHC/SECSTATE WASHDC IMMEDIATE 9096

RUCPDOC/USDOC WASHDC

INFO RUEHPU/AMEMBASSY PORT AU PRINCE 0650

BT

SECTION 01 OF 02 SANTO DOMINGO 001085

DEPT FOR ARA/CAR. ARA/EPSC MUSKOVITZ, EB/IPC SCHMIDT
DEPT PLS PASS TO USTR BURCKY

E.O. 12958: DECL:

TAGS: KIPR DR

SUBJECT: 1998 SPECIAL 301 PROCESS: STATUS OF DOMINICAN
LAW AND OTHER IPR NOTES

REF: STATE 35119

CLASSIFIED BY: CHARGE D'AFFAIRES A.I. LINDA E. WATT.:
REASON: 1.5 (D).

1. (U) ON MARCH 9, ECO/POL COUNSELOR ACCOMPANIED BY
ECONOFF CALLED ON

TO DELIVER
REFTEL TALKING POINTS AS WELL AS COPIES OF THE TWO
PETITIONS RELATING TO THE DR RECEIVED BY USTR.

STATUS OF IPR LEGISLATION

2. DESCRIBED AT LENGTH THE PROCESS THE
GODR HAS GONE THROUGH IN PREPARING THE INDUSTRIAL
PROPERTY BILL, A PROCESS DESCRIBED AS TRANSPARENT.
POINTED TO INDUSTRY AND COMMERCE'S
HELPLESSNESS TO THIS EMBASSY WHEN WE INTERVENED IN 1997
TO WIN A POSTPONEMENT OF THE COMMENT PERIOD ON THE BILL
AFTER THE GODR HAD SENT IT OUT TO DOMESTIC AND FOREIGN
FIRMS WITH AN IMPOSSIBLY SHORT DEADLINE. UNDERLINED THAT THE FINAL TEXT HAS THE IMPRIMATUR OF
WIPO. REPEATED THE CLAIM THAT INDUSTRY AND
COMMERCE SECRETARY BONETTI HAS HANDED THE BILL
PERSONALLY TO PRESIDENT FERNANDEZ WHO STILL HAS IT ON
HIS DESK. SAID THE BILL WILL NOT BE SUBMITTED
TO THE CONGRESS AS A PART OF THE COMMERCIAL CODE BUT
WILL INSTEAD BE SUBMITTED AS STAND ALONE LEGISLATION.

3. THE ACTUAL WHEREABOUTS OF THE BILL AS WELL AS
HOW THE GODR PLANS TO ADVANCE IT TO THE CONGRESS RAISES
QUESTIONS FOR OTHER PLAYERS IN LOCAL LEGAL CIRCLES
HOWEVER. ECONOFF MET WITH A MEMBER OF THE COMMISSION
FORMED BY THE PRESIDENT IN 1997 TO UPDATE THE
COMMERCIAL CODE (CODIGO DE ORDENAMIENTO DE MERCADOS).
(NOTE: THE COMMISSION WAS ORIGINALLY SUPPOSED TO
COMPLETE ITS WORK ON THE CODE BY MAY. THE DEADLINE WAS
ADVANCED TO DECEMBER AND THE COMMISSION NOW SEEMS TO BE
WORKING TOWARDS AN APRIL/MAY COMPLETION TARGET.)
ACCORDING TO THIS SOURCE, THE COMMISSION HAS WORKED ON
THE ASSUMPTION THAT THE INDUSTRIAL PROPERTY BILL WILL
BE INCORPORATED AS A PIECE OF THE CODE. THE
COMMISSION, HOWEVER, HAS YET TO SEE IT. THE COMMISSION
CHAI HAS CLAIMED SHE HAS BEEN UNABLE TO LOCATE THE
DOCUMENT ON THE PRESIDENT'S DESK (COMMENT: NOR DOES
SHE SEEM TO HAVE ASKED INDUSTRY AND COMMERCE FOR A
COPY). SOURCE IS OPENLY SKEPTICAL THAT THE GODR IS

MAKING ANY REAL EFFORT TO ADVANCE THE LEGISLATION.

IS WORKING ON
THE UPDATE OF THE 1987 COPYRIGHT LAW AND RELATED
REGULATIONS WHICH WILL BE INCLUDED IN THE COMMERCIAL
CODE. INFORMED ECONOFF THAT THERE IS
OPPOSITION FROM OTHER COMMISSION MEMBERS TO INCLUDING
PROVISIONS SUCH AS A PROHIBITION AGAINST PARALLEL
IMPORTS WHICH HE DESCRIBED AS A PARTICULAR INTEREST OF
THE MPA. NOTED THAT THE CODE WILL BE
"CONTROVERSIAL IN EVERY PART." UPON COMPLETION THE
DRAFT WILL BE SENT TO THE IDB FOR COMMENT AND THEN
OPENED TO THE PUBLIC. EMBASSY WILL SEEK TO OBTAIN A
COPY.

PHARMACEUTICALS

5. THE LACK OF REAL MOVEMENT ON THE LEGISLATIVE
FRONT IS MIRRORED IN OTHER AREAS. THE LEGAL COUNSEL
FOR EFID, THE ASSOCIATION REPRESENTING U.S. AND OTHER
MULTINATIONAL PHARMACEUTICAL COMPANIES IN THE DR,
INFORMED ECONOFF THAT THE GODR HAS ISSUED ONLY ONE
PHARMACEUTICAL PATENT (REPORTEDLY FOR A HAIR GROWTH
PRODUCT) SINCE THE PASSAGE OF THE RESOLUTIONS AT YEAR
END 1996 AND EARLY 1997 APPLYING TO THE ISSUANCE OF
HEALTH REGISTRATIONS. THE SECRETARIAT FOR PUBLIC
HEALTH CONTINUES TO ISSUE HEALTH REGISTRATIONS
REGARDLESS OF THE PATENT OWNERSHIP OF THE SUBSTANCES IN
QUESTION. EFID'S DOMESTIC LEGAL ACTION AGAINST THE
RESOLUTIONS HAS BEEN SLOWED BY AN INTERVENTION BY
INFADOMI. THE ASSOCIATION REPRESENTING THE INDUSTRY
PIRATES, WHICH HAS CLAIMED TO THE COURT THAT THEIR
CLIENTS WILL BE SIGNIFICANTLY AFFECTED.

6. INFADOMI SEEMS TO HAVE SIGNIFICANT CLOUT AT THE
SECRETARIAT OF INDUSTRY AND COMMERCE. SOURCES HAVE
SHOWN ECONOFF THE NUMEROUS DRAFTS OF THE INDUSTRIAL
PROPERTY BILL THAT CIRCULATED IN 1997. ONE IS MARKED
"LATEST VERSION INCORPORATING INFADOMI SUGGESTIONS

(ULTIMA VERSION INCORPORA SUGERENCIAS INFADOMI)." NO
OTHER ORGANIZATION SEEMS TO HAVE RECEIVED SUCH SPECIAL
TREATMENT.

INFADOMI IS REPORTED TO HAVE
CONTRIBUTED SIGNIFICANTLY TO THE PRESIDENT'S 1996
CAMPAIGN. IS THUS BELIEVED TO BE
PLAYING FOR TIME TO PREVENT THE PRESIDENT FROM HAVING
TO TAKE A PUBLIC POSITION.

7. PLAYERS IN THE LOCAL PIRATE PHARMACEUTICAL
INDUSTRY SEEM TO HAVE NOT ONLY GONE ON THE OFFENSIVE AT
HOME BUT ARE ALSO POTENTIALLY PLAYING A
DISPROPORTIONATELY ACTIVE ROLE IN HEMISPHERIC CIRCLES.
THE PRESIDENT OF INFADOMI IS NOW ALSO
THE PRESIDENT OF ALIFAR, THE ASOCIACION LATINO
AMERICANO DE INDUSTRIAS FARMACEUTICAS. THE UMBRELLA
ASSOCIATION REPRESENTING LOCAL COMPANIES IN THE REGION.
A LOCAL ATTORNEY WHO PARTICIPATED IN THE BUSINESS
FORUMS ASSOCIATED WITH THE CARTAGENA AND BELO HORIZONTE
MINISTERIAL MEETINGS, HAS EXPRESSED HIS CONCERN ABOUT
THE ELOQUENCE OF INFADOMI MEMBER HO CHI MINH VEGA,
COMMENTING THAT VEGA'S PRESENTATIONS HAVE CHANGED
DECISIONS TAKEN AT IPR WORKSHOPS. IN RECENT CHAMBER OF
COMMERCE MEETINGS CONVENED TO PREPARE FOR THE SAN JOSE
MINISTERIAL, INFADOMI REPRESENTATIVES HAVE ARGUED
PUBLICLY THAT THERE IS NO RUSH TO COMPLY WITH A TRIPS-
CONSISTENT IPR REGIME BEFORE THE YEAR 2000 AND THAT THE
GODR SHOULD REQUEST AN EXTENSION TO THAT DEADLINE.

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ENFORCEMENT

8. SEPTEL REPORTS ON THE STATUS OF ENFORCEMENT EFFORTS AGAINST CABLE AND VIDEO PIRACY. NOTWITHSTANDING THE FORMATION OF A SPECIAL IPR UNIT IN THE OFFICE OF THE DISTRICT ATTORNEY, ENFORCEMENT ACTIONS HAVE BEEN FEW AND FAR BETWEEN. LOCAL SOURCES PRAISE EFFORTS ON THE PART OF THE CURRENT DIRECTOR OF THE COPYRIGHT OFFICE (OFICINA DEL DERECHO DE AUTOR) BUT HE HAS LITTLE REAL ENFORCEMENT AUTHORITY AND NEXT TO NO RESOURCES. ATTORNEYS WORKING IN THIS AREA ALSO REPORT THAT A REQUIREMENT THAT FOREIGNERS MUST POST A BOND IN ORDER TO INITIATE LEGAL ACTION IS ALSO A SIGNIFICANT DETERRENT TO REAL ENFORCEMENT.

COMMENT

9. (C) NOTWITHSTANDING EFFORTS ON THE PART OF THE SECRETARIAT OF INDUSTRY AND COMMERCE TO CONVINCE US THAT THE GODR HAS MADE A COMMITTED EFFORT TO ENACT AN INDUSTRIAL PROPERTY BILL, WE REMAIN SKEPTICAL ABOUT ANY REAL INTENT TO MOVE FORWARD ON IPR ISSUES IN THE ABSENCE OF SIGNIFICANT PRESSURE FROM THE U.S. AND/OR OTHER GOVERNMENTS. WATT

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