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INFO: 534-01 RFM-01 4121-01 3134-01 1000-01 4110-01 3300-01 4320-01
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FM AMEMBASSY SANTO DOMINGO

TO RUEHC/SECSTATE WASHDC 7449

RUEATRS/DEPT OF TREASURY WASHDC

INFO RUEHGV/USMISSION GENEVA 0137

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SANTO DOMINGO 001103

PASS TO USTR FOR C. VOLTMER

E.O. 12958: DECL: 03/21/05

TAGS: KIPR, ECON, DR

SUBJECT: AMBASSADORS' CRITIQUES OF PATENT LEGISLATION
 WELCOMED BY DOMINICAN CONGRESSIONAL LEADERS, BUT PROSPECTS
 FOR AN IMPROVED BILL REMAIN UNCERTAIN

CLASSIFIED BY POL/ECONCOUNS PAUL B. LARSEN, REASON 1.5(D)

REF: STATE 51065

SUMMARY

1. AMBASSADOR MANATT HOSTED AN "INFORMATIONAL MEETING" FOR LEADING MEMBERS OF THE DOMINICAN CONGRESS, AND REPRESENTATIVES OF EIGHT OTHER EMBASSIES, TO EXCHANGE IDEAS ON IMPROVING THE DRAFT PATENT LEGISLATION NOW UNDER CONSIDERATION IN THE CHAMBER OF DEPUTIES. ALTHOUGH THE MESSAGES FROM THE DIPLOMATS WERE CLEAR AND IN ACCORD, THE RESPONSES FROM THE MEMBERS OF CONGRESS RANGED FROM DISAGREEMENT TO DISINGENUOUSNESS, WITH A GREAT DEAL OF BEWILDERMENT IN BETWEEN. THE MEMBERS OF CONGRESS AGREED TO FORM A BILATERAL COMMISSION TO STUDY THE BILL FURTHER, AND TO SEEK EXPERT ASSISTANCE FROM THE WORLD TRADE ORGANIZATION, TO TRY TO OBTAIN A TRIPS-COMPLIANT BILL. WE REMAIN SKEPTICAL THAT THERE IS ENOUGH SUPPORT IN CONGRESS FOR A GOOD PATENT LAW TO OVERCOME INERTIA - AND THE PRESSURES OF A VOCAL DOMESTIC PHARMACEUTICAL INDUSTRY - IN THE NEAR FUTURE. END SUMMARY.

NINE AMBASSADORS, ONE MESSAGE: FIX THE BILL!

2. AMBASSADOR MANATT BEGAN THE DISCUSSION BY EMPHASIZING THE IMPORTANCE OF AN EFFECTIVE INTELLECTUAL PROPERTY PROTECTION REGIME TO DEVELOPING THE INVENTIVENESS OF THE DOMINICAN PEOPLE, AND TO ATTRACTING THE KIND OF HIGH-TECH INVESTMENT THE DOMINICAN REPUBLIC DESIRES. HE ALSO BROUGHT PARTICIPANTS UP-TO-DATE ON THE STATUS OF CARIBBEAN BASIN INITIATIVE ENHANCEMENT LEGISLATION IN THE U.S. CONGRESS, AND EXPRESSED HIS HOPE THAT IMPROVEMENTS IN THE DOMINICAN IPR REGIME WOULD ENABLE THE COUNTRY TO BENEFIT FROM SUCH LEGISLATION IF AND WHEN PASSED.

3. (U) EMBASSY STAFF THEN PRESENTED A CRITIQUE OF THE CURRENT DRAFT PATENT LAW (I.E., THE VERSION PASSED BY THE SENATE LAST FALL AND NOW UNDER CONSIDERATION IN THE CHAMBER OF DEPUTIES) DRAWING ON REFTEL TALKING POINTS. STAFF ALSO PROVIDED INFORMATION ON THE GSP PETITION UNDER REVIEW AT USTR, THE "SPECIAL 301" PROCESS, AND THE REVIEW OF IPR LEGISLATION BEING UNDERTAKEN BY THE WTO. STAFF ALSO RESPONDED TO A LETTER THAT DOMINICAN MINISTER OF INDUSTRY AND TRADE LUIS BONETTI HAD SENT TO THE CONGRESS, AND LATER HAD PUBLISHED IN LOCAL NEWSPAPERS, URGING PASSAGE OF THE PATENT BILL IN ITS PRESENT FORM. ACCORDING TO BONETTI'S

LETTER, THE CURRENT BILL HAD BEEN ENDORSED AS TRIPS-COMPLIANT BY A REPRESENTATIVE OF THE WORLD INTELLECTUAL PROPERTY ORGANIZATION AT AN IPR SEMINAR FOR THE DEPUTIES LAST DECEMBER. OUR PUBLIC AFFAIRS OFFICER CONTACTED WIPO AND WAS INFORMED THAT NOT ONLY HAD NO ONE FROM WIPO ENDORSED THE BILL, THEY HAD NOT EVEN READ IT.

4. (U) AMBASSADOR THEN ASKED FRENCH AMBASSADOR FRANCOIS-XAVIER DENIAU AND JAPANESE AMBASSADOR MASATO AKAZAWA TO EACH SAY A FEW WORDS. DENIAU, SPEAKING ON BEHALF OF THE EU COUNTRIES, REITERATED THE POINTS HE HAD MADE TO THE PRESIDENT OF THE CHAMBER OF DEPUTIES RAFAELA ALBURQUERQUE A FEW WEEKS EARLIER. HE SHARED WITH ALL PRESENT AN AIDE MEMOIRE THAT DRAWS ATTENTION TO SEVERAL SHORTCOMINGS IN THE DRAFT PATENT LAW. THESE INCLUDE THE VIOLATION OF THE NATIONAL TREATMENT PROVISION BY REQUIRING FOREIGN PATENT HOLDERS TO POST A BOND IN ORDER TO PROTECT THEIR RIGHTS, THE LACK OF PROTECTION FOR CONFIDENTIAL INFORMATION, THE REQUIREMENT THAT PATENT HOLDERS PRODUCE WITHIN THE COUNTRY, THE LACK OF JUDICIAL REVIEW OF DECISIONS RELATED TO PATENT RIGHTS, AND THE OVERLY BROAD PROVISIONS RELATING TO COMPULSORY LICENSES. HE ALSO NOTED THAT CURRENT DOMINICAN IPR LAWS PREJUDICE EUROPEAN PHARMACEUTICAL COMPANIES. THE JAPANESE AMBASSADOR INDICATED THAT HIS GOVERNMENT HAD ONLY BEGUN TO STUDY THE DOMINICAN PATENT BILL, BUT URGED PASSAGE OF A HIGH-STANDARDS BILL IN ORDER TO ENCOURAGE NEW INVESTMENT, PARTICULARLY BY HIGH-TECH INDUSTRIES, THAT WILL SUPPORT CONTINUED RAPID GROWTH OF THE DOMINICAN ECONOMY.

CONGRESS: NOW YOU TELL US!

5. RESPONDED FIRST - SOMEWHAT TONGUE IN CHEEK - BY NOTING HIS PRIDE THAT SUCH POWERFUL COUNTRIES (THE U.S., EU, UK, FRANCE, GERMANY, ITALY, SPAIN, JAPAN, AND KOREA WERE REPRESENTED AT THE MEETING) WERE TAKING SUCH KEEN INTEREST IN THE PATENT LAW OF A SMALL DEVELOPING COUNTRY LIKE HIS. WHO HAD BEEN ALMOST THEATRICAL ATTENTIVE DURING THE PRESENTATIONS (OSTENTATIALLY SEEKING CLARIFICATIONS AND REQUESTING ADDITIONAL PAPER TO TAKE DOWN HIS NOTES), NOTED THAT THE BILL AS PASSED BY HIS CHAMBER WAS NEARLY IDENTICAL TO THE VERSION SUBMITTED BY THE GOVERNMENT, AND THAT PRESIDENT FERNANDEZ HAD TOLD HIM THE LAW COMPLIED WITH ALL INTERNATIONAL OBLIGATIONS. HE THANKED THE PARTICIPANTS FOR FINALLY PRESENTING HIM WITH SUCH DETAILED SUGGESTIONS FOR IMPROVING THE BILL, AND PROMISED TO SET UP A BILATERAL COMMISSION TO FURTHER STUDY THE MATTER. HE ALSO SUGGESTED SEEKING THE ASSISTANCE OF A WTO EXPERT TO PROVIDE GUIDANCE ON THE REQUIREMENTS OF TRIPS. HE ASSURED THE GROUP THAT HE WANTS TO RESPECT INTERNATIONAL OBLIGATIONS - AN ASSURANCE HE HAS MADE DURING THE SEVERAL EARLIER PRESENTATIONS OF THE SAME MATERIAL THAT WE AND OTHERS HAVE MADE AND ABOUT WHICH HE APPARENTLY HAS FORGOTTEN.

6. OTHER RESPONSES WERE TROUBLING IN THEIR OWN WAY.

TWO OF THE BETTER-INFORMED MEMBERS OF THE GROUP, TOOK ISSUE WITH SOME OF THE SPECIFIC POINTS RAISED IN THE PRESENTATIONS. THEY BELIEVE TRIPS GIVES COUNTRIES THE RIGHT TO ESTABLISH THE ECONOMIC GROUNDS, AS WELL AS THE HEALTH AND SAFETY GROUNDS, ON WHICH COMPULSORY LICENSES MAY BE GRANTED. THUS, THE PROVISION IN THE DOMINICAN PATENT BILL AUTHORIZING A COMPULSORY LICENSE AFTER 180 DAYS IF THE PATENT HOLDER DOES NOT GRANT A LICENSE ON COMMERCIALLY REASONABLE TERMS IS, IN THEIR VIEW, A LEGITIMATE MEANS FOR PREVENTING MONOPOLISTIC ABUSE BY THE PATENT HOLDER. THEY SIMILARLY SEE THE PROVISION IN DOMINICAN LAW REQUIRING FOREIGN (BUT NOT DOMESTIC) LITIGANTS TO POST A BOND AS A WAY OF LEVELING THE PLAYING FIELD BETWEEN FOREIGN INTERESTS WITH FEW ASSETS IN THE COUNTRY AND RESIDENTS OVER WHOM THE COURTS CAN EXERT THEIR POWER. EVEN SOME OF THOSE WHO INDICATED A DESIRE FOR TRIPS-COMPLIANT LEGISLATION, SUCH AS SEEMED CONFUSED BY THE ARGUMENTS OF THE DOMESTIC AND

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INTERNATIONAL PHARMACEUTICAL COMPANY PARTISANS, AND
EXPRESSED A WISH FOR WTO TECHNICAL ASSISTANCE THAT WOULD
LEAD THEM TO THE RIGHT RESULT.

WILL CONGRESS DO THE RIGHT THING?

7. WE WILL CONTINUE TO PRESS THE GOVERNMENT TO ADMIT
THAT ITS ORIGINAL PATENT BILL WAS SERIOUSLY FLAWED, IN
HOPES THAT IT WILL WORK WITH THE CONGRESS TO REDRAFT A
BETTER VERSION. WE WILL ALSO CONTINUE TO REMIND CONGRESS
AND THE GOVERNMENT THAT THE U.S. WILL SOON BE FORCED TO
MAKE DECISIONS, BASED ON A REVIEW OF THE DOMINICAN IPR
REGIME, THAT COULD HAVE A NEGATIVE IMPACT ON THE DOMINICAN
ECONOMY. WE WILL RENEW OUR CALLS ON CONGRESS TO TAKE
ACTION ON THE COPYRIGHT BILL WHICH APPEARS TO SUBSTANTIALLY
COMPLY WITH TRIPS, NOT BE SUBJECT TO CRITICISM FROM ANY
DOMESTIC SOURCE, BUT MYSTERIOUSLY DOES NOT SEEM TO MAKE IT
TO EITHER LEGISLATIVE BODY'S AGENDA. WITH LESS THAN TWO
MONTHS TO GO BEFORE PRESIDENTIAL ELECTIONS, HOWEVER, IT IS
HARD TO IMAGINE THAT THIS LEGISLATION, WHICH TOOK THE
GOVERNMENT FIVE YEARS TO DRAFT AND WHICH THE CONGRESS HAS
BEEN BATTLING BACK AND FORTH FOR OVER FIVE MONTHS WITHOUT
MAKING ANY OF THE MOST NECESSARY CHANGES, WILL BE APPROVED
IN ACCEPTABLE FORM IN THE NEAR FUTURE.

MANATT

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