

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508
November 29, 2011

Mr. James Love
Knowledge Ecology International
1621 Connecticut Avenue, NW, Suite 500
Washington, D.C. 20009

Dear Mr. Love:

Thank you for bringing to my attention your concerns about a paragraph referencing least-developed countries (LDCs) in the May 1, 2011 Special 301 report. It appears that a misunderstanding may have resulted from language that has appeared in Special 301 reports for many years, with small variations. I am grateful to you for raising the issue, and have instructed my staff to work to improve the relevant language in next year's report.

I note that the block quotation in your letter omits certain context, including that which is provided by text that immediately precedes the language you quoted.

The full relevant text reads as follows, with the paragraph break that your letter omitted prior to the last two sentences included, and with emphasis added to the four categories of WTO members mentioned in the text:

Developed country members were required to implement the TRIPS Agreement fully as of January 1, 1996. Developing countries were given a transition period for many obligations until January 1, 2000, and in some cases, until January 1, 2005. Nevertheless, certain members are still in the process of finalizing implementing legislation, and many are still engaged in establishing adequate and effective IPR enforcement mechanisms.

Recognizing the particular challenges faced by least-developed countries (LDCs), in 2005 the United States worked closely with them and other WTO members to extend the implementation date for these countries from January 2006 to July 2013. The LDC members in turn pledged to preserve the progress that some have already made toward TRIPS Agreement implementation. Additionally, the LDC members have until 2016 to implement their TRIPS Agreement obligations for patent and data protection for pharmaceutical products, as proposed by the United States at the Doha Ministerial Conference of the WTO. The United States looks forward to the successful completion of this transition.

The United States will continue to work with WTO members and expects further progress in the near term towards completing their TRIPS Agreement implementation process. However, in those instances in which additional progress is not achieved, the United States will consider alternative means of encouraging implementation, including the possibility of recourse to WTO dispute settlement.

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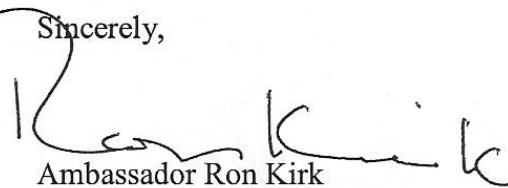
As the quotation above makes clear, the last paragraph refers to "WTO members," and is not limited to the "LDC members" which are, in any event, the beneficiaries of TRIPS transition periods.

While I stand by the language of the 2011 report and previous reports, I also believe that your letter points to an opportunity to clarify further the relevant language in future reports. I have therefore instructed my staff to update and clarify the 2012 Special 301 report to reduce the chances that readers might misunderstand underlying U.S. positions. My staff would welcome your suggestions on how best to do that, or on any other relevant matter, as a part of the upcoming public comment process leading to the 2012 Special 301 report.

I can also assure you that I am sympathetic to the many challenges faced by our LDC trading partners in implementing obligations under the *Agreement on Trade-Related Aspects of Intellectual Property Rights*. In this spirit, the United States, working closely with LDCs, supported the TRIPS Council consensus of November 17 on a draft decision for adoption at the upcoming WTO Ministerial on December 15-17, inviting the Council to consider fully LDCs' request for an extension of the TRIPS Agreement transition period for implementation.

Thank you again for bringing this matter to my attention, and for helping to improve the clarity of USTR's Special 301 report. My staff is available to meet with you to discuss these matters further, if needed.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Kirk". The signature is fluid and cursive, with a large initial "R" and "K".

Ambassador Ron Kirk