

Wikileaks on USTR negotiations with India Commerce Minister Anand Sharma

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Among the cables recently published by Wikileaks is one written on November 24, 2009, detailing negotiations between USTR and Anand Sharma, the Cabinet Minister for Commerce and Industry of the Government of India. The complete cable is available here: <http://wikileaks.org/cable/2009/11/09NEWDELHI2375.html>

Below, I highlight a few sections of the cable dealing with IPR issues. One concerns discussions between USTR official Stan McCoy and India Industry Joint Secretary Gopal Krishna, concerning the pharmaceutical company Gilead's efforts to patent "incremental innovations." The notes in the cable reported that "Both sides agreed that it was advantageous to patent incremental innovation."

"Finally, on patent and data protection, the discussion focused primarily on U.S. pharmaceutical company Gilead's rejected patent application for incremental innovations. Both sides agreed that it was advantageous to patent incremental innovation and, in Gilead's case, that appropriate procedures, such as review appeal, under the Indian Patent Act would be followed. Both sides also agreed to discuss this issue in the future, including general discussions on the scope of patentable subject matter, Indian Patent Office decisions on cases under Section 3(d) of the Patent Act, and any future issues that may arise."

This and other excerpts follow:

SUBJECT: USTR KIRK AND MINISTER SHARMA REACTIVATE TRADE POLICY FORUM, 2009-11-24 12:24

1. (SBU) Summary. On October 26, United States Trade Representative (USTR) Ambassador Ron Kirk led an interagency delegation to India for the first Trade Policy Forum (TPF) meeting with the GOI since February 2008. Noting the 20 months between TPF meetings, USTR Kirk and Minister of Commerce and Industry Anand Sharma stressed the need to meet more often and for Focus Groups leads to either resolve old disputes or elevate them to Ministers to resolve and focus on areas where they could make progress. The U.S. side proposed a "Framework for Cooperation on Trade and Investment" agreement for possible signing during Prime Minister (PM) Singh's late November visit, which the GOI welcomed. The delegations also discussed possible "deliverables" for the PM visit

such as renewal of the bilateral IPR MOU and a Traditional Knowledge Digital Library (TKDL) agreement. USTR Kirk expressed the longer-term objective of creating the conditions so that India becomes one of United States top 10 trading partners, up from its current rank of 18. (Note: While signing the Framework Agreement appears delayed until early 2010, the IPR MOU, an IPR Action Plan, and the TKDL agreement were all signed on the margins of the PM visit.)

End Summary.

Innovation and Creativity Focus Group

12. (U) The Innovation and Creativity Focus Group, led by Assistant USTR Stanley McCoy and Industry Joint Secretary Gopal Krishna, had amicable and constructive discussions on a wide range of intellectual property rights issues of concern to both sides, including those which have contributed to India's presence on the Priority Watch List. Both sides agreed to move forward on all these issues.

13. (SBU) USG concerns centered on amendments to the copyright law, optical disc legislation, and patents and data protections. The GOI agreed to a substantive discussion of the draft copyright law after it introduces the amendments to Parliament in November as the GOI is bound by internal regulations not to discuss it beforehand. (Note: The Copyright Bill was on the list as one of 62 bills scheduled to be introduced to Parliament, which opened on November 19. End Note.) The GOI, however, assured the USG that the drafts of the copyright amendments considered USG concerns on WIPO Internet Treaties, although the GOI was non-specific on the content. Regarding the draft Optical Disc (OD) legislation, the GOI noted several difficulties it was having including technical, legal, and procedural issues, state government involvement, and other areas. The USG agreed to provide further details and guidance on Source ID code on blank discs, camcording, and related issues via a DVC. Finally, on patent and data protection, the discussion focused primarily on U.S. pharmaceutical company Gilead's rejected patent application for incremental innovations. Both sides agreed that it was advantageous to patent incremental innovation and, in Gilead's case, that appropriate procedures, such as review appeal, under the Indian Patent Act would be followed. Both sides also agreed to discuss this issue in the future, including general discussions on the scope of patentable subject matter, Indian Patent Office decisions on cases under Section 3(d) of the Patent Act, and any future issues that may arise.

14. (SBU) The GOI raised several issues with the USG including piracy of Indian music and movies, the Google book settlement, the Traditional Knowledge Digital Library (TKDL) access agreement, the misappropriation of the practice of yoga, and the treatment of traditional medicines. On piracy, the GOI offered to provide the USG with a list of websites which are used for piracy of Indian music and films, which the USG agreed to pass on to the appropriate U.S. law enforcement officials. The USG agreed to share with the GOI its views on the Google book settlement case that it submitted to the U.S. court where the case is being tried as the USG has its own concerns about this settlement. Both sides agreed that the TKDL agreement is ready for signing (Note: The signing occurred during the Prime Minister Singh's visit. End note). Regarding patents for the practice of yoga, the USG was able to show that copyrights granted were for yoga-related products like printed material and equipment, which would not interfere with the practice of yoga in India. Finally, the two sides decided that a discussion of traditional medicines was a topic for the SFG.

Keywords: USTR / India / Anand Sharma