

22 October 2014

To

Shri. Narendra Modi

Hon'ble Prime Minister of India

South Block, Raisina Hill

New Delhi-110011

Fax: 23019545

SUBJECT: US-India Bilateral Relations on Intellectual Property

Dear Prime Minister Modi ji,

We, the undersigned, wish to share with you some of our concerns on India's position on intellectual property (IP), particularly in the context of bilateral relations between the United States of America and India. We gather from the US-India Joint Statement dated 30 September 2014 that the Indian Government

(a)greeing on the need to foster innovation in a manner that promotes economic growth and job creation...committed to establish an annual high-level Intellectual Property (IP) Working Group with appropriate decision-making and technical-level meetings as part of the Trade Policy Forum.

The necessity for setting up the joint Indo-US IP Working Group is not entirely clear. As the Department of Industrial Policy & Promotion (DIPP)'s press release of 3 October 2014 mentions, there is already in operation an Indo-US Trade Policy Forum since 2010. Therefore, we request your Government to kindly make the specific purpose of this joint Working Group publicly known.

We wish to further submit that the grant of decision-making powers to the new joint Working Group could be at the risk of ingression of sovereign policy space. Bilateral arrangements should not have the power to supersede domestic democratic decision-making processes mandated by the

Constitution of India. We appreciate that bilateral parleys at the political and diplomatic levels may be necessary in order to address threats of unilateral action by the US administration. But such bilateralism in the area of IP must be approached with an extremely high degree of caution.

We urge that the Government be particularly wary of higher IP standards (benefiting US corporations) that are typically demanded by the US administration and its trade negotiators in bilateral and plurilateral negotiations. The US demands clearly go beyond what the World Trade Organisation (WTO) asks for from its member countries. Several regional trade agreements or bilateral investment treaties either signed by or being negotiated by the US bear evidence to this trend. Any bilateral negotiation on IP between India and the US would definitely witness demands on India to provide for higher standards of IP protection that are not required of us by the WTO's IP agreement - TRIPS.

It is important to note that the new bilateral arrangement between the United States Government and the Government of India is being undertaken against the backdrop of heightened US political interest in India's IP regime, which has been spurred on by its business interests. Pharmaceutical and biotechnology MNCs backed by the US are the key actors on that front. India has earned phenomenal interest world over for its generic medicines -- a reputation that must be preserved. US should not decide our IP policies when it is a question of national interest and international solidarity. There have been intensified pressures on India; US putting India on its 2014 'Priority Watch List' and the current Out-of-Cycle Review (OCR) of India's IP regime being conducted by the US are recent examples of this. We fully support the position taken by Indian authorities to not go along with any such unilateral measures by the US Government. We insist that this stance of the Government of India be relentlessly maintained.

In case there is an intent to craft afresh our position on IP and its different dimensions, it should be pursued by a 'National Working Group on IP' working under the oversight of a Standing Committee of the Parliament of India. While formulating India's positions on IP we trust that the Government of India will

continue to withstand external pressures on this front. We urge the Government not to continue with the proposed annual forum on IP with the US, particularly as we do not have a matching domestic process.

The process begun under the DIPP to frame a national IP Policy, first needs to be completed independently along with public consultation. Many more stakeholders from amongst 'ordinary' peoples need to be included in the process; these include treatment activists, farmers groups, community organisations, etc. While there is no harm in having a policy statement, the policy should be consistent with the existing laws in our country and mindful of the future challenges, particularly for the generic medicines industry. While framing a national IP Policy afresh, it needs to be kept in mind that our current IP laws are already compliant with existing international laws and allied obligations. We strongly urge you not to amend India's IP statutes to reduce the flexibilities currently available to safeguard the public interest such as affordable medical products, right to food and the access to knowledge.

As you are aware, India's IP rules and their enforcement also have trans-boundary implications. As an emerging global force, as well as a responsible member of the global community, through its IP strategy India is well positioned to also articulate the concerns of many Low and Middle Income countries. The legitimate space for discussions on global IP standards is the WTO's TRIPS Council, and it is in this multilateral forum that issues of concern between different countries should be discussed. India ought to reach out to a much larger constituency, even beyond the 160 country governments represented in the WTO, through the promotion of IP-related policies that are humane and which foster people-centred and planet-sensitive 'development'.

We the undersigned, working in different sectors, would also like to collectively reiterate that higher standards of IP protection will not necessarily translate into 'economic growth and job creation' in a country such as India. IP-related policy cannot be dealt with as a mere trade issue. Sectors that entail the provision of basic human needs, such as health, agriculture, biodiversity, education, etc., can be adversely impacted by higher standards of IP protection and the dilution of flexibilities (for example, those in our

existing Patent Act). Public policy goals with respect to scientific endeavours, technology development and local innovations that offer more sustainable options for the future – such as climate-adaptive seeds and Indian Systems of Medicine, can also be severely challenged by inappropriate domestic IP strategies.

Given the multiple domestic concerns that our IP Policy must respond to, we press for your Government to kindly view it with a holistic perspective that it warrants, rather than the official approach being subsumed by the relatively narrow confines of trade and economic policy.

We earnestly entreat you to take a personal interest in this important matter.

Thank you.

Sincerely,

CONCERNED CITIZENS/GROUPS:

1. Shalini Bhutani, Legal Researcher & Policy Analyst
2. B L Das, Former Ambassador to GATT
3. Anand Grover, Director, Lawyers Collective
4. K M Gopakumar, Third World Network
5. Dinesh Abrol, National Working Group on Patent Laws
6. Prof. Jayati Ghosh, Jawaharlal Nehru University
7. Kalyani Menon-Sen, Feminist Activist & Coordinator, Campaign for Affordable Trastuzumab
8. S. Srinivasan, Low Cost Standard Therapeutics (LOCOST), Gujarat
9. Amit Sengupta, Jan Swasthya Abhiyan
10. Mira Shiva, Initiative for Health & Equity in Society and All India Drug Action Network
11. Biswajit Dhar, Professor CESP/SSS, Jawaharlal Nehru University
12. Sagari R Ramdas, Food Sovereignty Alliance - India
13. K. Pandu Dora, Adivasi Aikya Vedika
14. Kavitha Kuruganti, Alliance for Sustainable & Holistic Agriculture (ASHA)
15. Vikas Ahuja, President, The Delhi Network of Positive People
16. Loon Gangte, Regional Coordinator, ITPC-South Asia
17. Aruna Rodrigues, Sunray Harvesters

18. Suman Sahai, Gene Campaign
19. Wilfred Dcosta, Indian Social Action Forum (INSAF)
20. Surajit Mazumdar, Professor CESP/SSS, Jawaharlal Nehru University
21. Kanchi Kohli, Campaign for Conservation and Community Control over Biodiversity & Kalpavriksh
22. Kapil Shah, Jatan Trust, Gujarat & Organic Farming Association of India (OFAI)
23. S. Ashalatha on behalf of Rythu Swarajya Vedika, Telangana and Andhra Pradesh
24. Kavita Panjabi, Professor, Jadavpur University
25. Umendra Dutt, Kheti Virasat Mission, Punjab
26. Usha S., Thanal, Kerala
27. Aruna Burte, Feminist Researcher and cancer survivor
28. Nivedita Menon, Feminist Activist and Professor, Jawaharlal Nehru University
29. Gabriele Dietrich, National Alliance of People's Movements
30. Kannamma Raman, Associate Professor, Department of Civics and Politics, University of Mumbai
31. Jacob Nellithanam, Centre for indigenous Farming Systems, Chhattisgarh & Madhya Pradesh
32. Rajesh Krishnan, Coalition for a GM Free India
33. Rachna Arora from Public Awareness on GM Food (PAGMF)
34. Ashish Gupta, IFOAM Asia
35. Claude Alvares, Goa Foundation
36. M R Baiju, Democratic Alliance for Knowledge Freedom (DAKF), Kerala
37. Madhu Sarin, Forest rights researcher and policy analyst
38. P V Satheesh, Director, Deccan Development Society
39. C N Suresh Kumar, Co-Convenor, Millet Network of India (MINI)
40. C Jayasri, Coordinator, Southern Action on Genetic Engineering (SAGE)
41. A Giridhar Babu, Alliance for Food Sovereignty in South Asia (AFSSA)
42. Narsamma Masanagari, Media Coordinator, Community Media Trust
43. Bharat Mansata, Earthcare Books
44. T C James, former Director (IPRs), DIPP, Government of India
45. D. Narasimha Reddy, ICSSR National Fellow, CSD, Hyderabad
46. Mishi Choudhary, Executive Director, Software Freedom Law Centre (SFLC.IN)
47. K Ashok Rao, President, National Confederation of Officers Associations (NCOA)

48. B Ekbal, Kerala Sastra Sahithya Parishad
49. Gautam Mody, General Secretary New Trade Union Initiative
50. Sunil Abraham, Centre for Internet and Society (CIS)
51. Veena Johari, Lawyer and Legal Researcher
52. Subbiah Arunachalam, Science writer
53. Vandana Shiva, Director Navdanya Trust.
54. Manoj Pardeshi, General Secretary, National Coalition of People Living with HIV in India (NCPI+) and NMP+
55. Malini Aisola, Oxfam India
56. Manicandan, Forum Against FTAs
57. Afsar H. Jafri, Focus on the Global South

Cc:

Hon' Minister of Agriculture

Hon' Minister of Commerce and Industry

Hon' Minister of External affairs

Hon' Minister of Environment, Forests and Climate Change

Hon' Minister of Human Resources Development

Hon' Minister of Communications and Information Technology

Hon' Minister of Science and Technology

Principal Secretary, PMO

Secretary, Department of Agriculture Research and Education

Secretary, ER&DPA, Ministry of External Affairs

Secretary, Department of Commerce

Secretary, Department of Communication and Information Technology

Secretary, Department of Environment, Forests and Climate Change

Secretary, Department of Higher Education

Secretary, Department of Industry Policy and Promotion

Secretary, Department of Science and Technology

For Further Communications:-

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