Statement of the U.S. Chamber's Global Intellectual Property Center

ON: "A Tangle of Trade Barriers: How India's Industrial Policy is Hurting U.S. Companies"

TO: U.S. House Committee on Energy and Commerce Subcommittee on Commerce, Manufacturing, and Trade

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The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides opportunities, not threats. In addition to the American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on issues are developed by Chamber members serving on committees, subcommittees, councils, and task forces. Nearly 1,900 businesspeople participate in this process.

Summary

As the Chamber's intellectual property (IP) champions, the Global Intellectual Property Center (GIPC) strives to highlight IP as a critical driver of trade, jobs, competitiveness, investment, and overall economic growth.

In 2010, the then-President of India declared the next 10 years to be India's "Decade of Innovation." However, India's policies are inconsistent with their former President's statement. Over the last 18 months, particular policy, regulatory, and legal decisions have deteriorated their IP system, making India an outlier in the international community.

Last December, the Chamber released an International IP Index, *Measuring Momentum*, which compared IP environments across the globe. The study found that India consistently ranked last, behind Brazil, China, and Russia among nearly every indicator used in the study.

The GIPC has heard from over a dozen industry trade associations, representing tens of thousands of companies who have strong concerns about the deteriorating IP environment in India. These concerns include:

- The passage of copyright legislation, which failed to implement the World Intellectual Property Organization (WIPO) copyright treaty.
- The threat faced by film, music, and software piracy, which results in hundreds of millions of dollars in lost revenue.
- A national manufacturing policy, which allows Indian clean tech companies to call for compulsory licensing for patented technology of international companies.
- The recent policy, regulatory, and legal decisions, which undermined IP protections in the bio-pharmaceutical sector.

From the revocation of patents to the staggering rates of piracy, India stands alone as an international outlier in IP policies.

The GIPC urges the U. S. administration to defend global IP standards and utilize every diplomatic tool available to encourage the government of India to strengthen their IP protections and respect global IP standards. Further, we call on the Indian government to protect IP, encourage innovation, and return to the path of developing a knowledge-based economy.

Introduction:

Thank you Chairman Terry, Ranking Member Schakowsky, and distinguished members of the Subcommittee on Commerce, Manufacturing, and Trade.

The U.S. Chamber of Commerce appreciates your leadership and the opportunity to testify today on how India's industrial policies are hurting U.S. companies.

My name is Mark Elliot, and I am the Executive Vice President of the U.S. Chamber of Commerce's Global Intellectual Property Center (GIPC).

GIPC was established in 2007 as a division of the U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations.

Importance of IP:

As the Chamber's intellectual property champions, the GIPC strives to highlight the importance of intellectual property, or IP, in creating jobs, saving lives, advancing economic growth and development around the world, and generating breakthrough solutions to global challenges.

Particularly related to the jurisdiction of this committee, IP is a critical driver of trade, jobs, competitiveness, investment, and overall economic growth.

In fact, there are several studies that provide clear evidence and data to demonstrate the positive and cumulative economic impact of IP in the United States and abroad.

According to the U.S. Department of Commerce, U.S. intellectual property industries accounted for:

- $5 trillion or 34.8 percent of U.S. GDP;
- 60 percent of U.S. exports;
- 40 million American jobs; and
- These are good jobs, jobs that pay 42 percent higher wages than in other industries.

A study by the Organisation for Economic Co-operation and Development (OECD) concludes that a 1 percent change in the strength of a national IP environment, based on a statistical index, is associated with a 2.8 percent increase in foreign direct investment inflow.

In short, IP drives knowledge economies and creates jobs.

India's IP Environment:

In 2010, the then-President of India declared the next 10 years to be India's "Decade of Innovation."

The GIPC applauds the former President's recognition that innovation drives a knowledge-based economy. Notably, IP protections are critical to protecting innovation, encouraging investment, and spurring economic growth.

Unfortunately, India's policies are inconsistent with their former President's statement. Over the last 18 months, particular policy, regulatory, and legal decisions have deteriorated their IP system, making India an outlier in the international community.

Last December, the Chamber released an International IP Index, *Measuring Momentum*, which compared IP environments in 11 key markets.

This is the first comprehensive review of all policy sectors where IP is important. Our review covered all aspects of IP—patents, trademarks, copyright, and trade secrets. The study found that India consistently ranked last, behind Brazil, China, and Russia among nearly every indicator used in the study.

This trend is bad for India, bad for investment potential, and bad for international trade.

Multi-Industry Concerns:

I would like to provide a few specific examples of policies, across many industries, which are affecting the IP environment in India and causing concerns throughout the business community.

- With respect to the Copyright legislation that passed last year, though that was greatly needed, the end result failed to achieve the intent of the legislation, which was to implement the WIPO copyright treaty.

- The motion picture industry continues to face piracy on two significant fronts in India. First, India lacks appropriate legislation to deal with the sale of camcorder reproductions taken in movie theatres. In fact, India accounts for more than half of the forensic matches of illicit camcorder recordings in the Asia Pacific region. Secondly, India is among the top ten countries in the world for Internet piracy.

- The recording and music groups estimate a total of $431 million in lost revenue in 2011 to piracy.

- The reported rate of PC software piracy in 2011 was 63 percent in India, with a commercial value of unlicensed U.S. software in India estimated to be more than $2.9 billion.

- The green technology sector is also facing challenges. According to India's new National Manufacturing Policy, a domestic clean tech company has the option to ask the government to issue a compulsory license for a patented technology under one of the following two conditions: (1) if the patent holder is not providing the technology at a reasonable rate, or (2) if the technology is <u>not</u> being "worked on" in India.

- India's tax policies with respect to IP are part of this story and the GIPC urges the Committee's attention.

    - Specifically, I would call attention to India's tax policies related to compensation for captive development centers. U.S. multinationals generally assign routine development work to their India development centers. The development centers bear no financial risk for their development work and do not own any of the resulting IP rights. Accordingly, they are compensated on the internationally accepted cost-plus method. India's tax authorities are increasing their application of the profit-split method to determine development center compensation, effectively allocating a portion of the U.S. parent's IP profit to India. India's development centers operate similarly to other international development centers and should be similarly compensated on the internationally-recognized cost-plus basis to reduce controversy and minimize double taxation.

- Within the bio-pharmaceutical industry, there have been many recent examples and a clear pattern of deterioration of IP rights:

    - In March 2012, the Indian Patent Board issued its first ever compulsory license on Nexavar, a Bayer drug used for cancer treatment. While the Patent Board claimed to be acting in accordance with the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement, the fact that Nexavar is not manufactured locally is not a condition for issuing a compulsory license under TRIPS.

    - Pfizer has been fighting to keep its Sutent patent in force against revocation decisions of the Indian Patent Office in September 2012.

    - In November 2012, the Delhi High Court ruled against Roche in the patent infringement case for Tarceva, an innovative lung cancer drug. While the patent for the drug was valid, the Court ruled the generic did not infringe Roche's patent.

    - Most recently, in April 2013, the Indian Supreme Court denied a patent on a Novartis cancer drug, Glivec, even though the patent is recognized and valid in 40 other countries.

<u>Not Access, But Exports:</u>

Despite what some will have you believe, India's actions are not about access to medicines.

In many of these cases, the drug maker gave the drug to Indian consumers either free of charge or at a greatly reduced cost. In the case of Glivec, Novartis provided the leukemia drug to 95 percent of the 16,000 patient population for free, while the remaining 5 percent was heavily subsidized.

The annual cost for Glivec generic treatment is approximately $2,100 or three to four times the average annual income in India. Thus, it is actually more expensive for Indian patients to obtain access to these medicines after patent revocation than it was before.

Furthermore, while the Indian government claims their IP policies are about investment in innovation, India's expenditure on healthcare—6.8 percent of the total government expenditure (according to the World Health Organization)—is remarkably low and well below the expenditure of other developing countries.

For example, Brazil's government spends 10.7 percent and China spends 12.1 percent on healthcare. Thus, the Indian government's motivation may not be as altruistic as it seems.

In a report issued to their investors, a major pharmaceutical company called upon the Indian government to "announce a long term and unambiguous policy or guideline on compulsory license so that this important tool can be effectively used." This same company generates over 50 percent of its revenue from international markets. Clearly, some in India see compulsory licensing as a revenue generating opportunity.

India: The Outlier:

While some may claim that these are all unrelated policy, regulatory, and legal decisions, the fact remains that this is only happening in India.

From the revocation of patents to the staggering rates of piracy, India stands alone as an international outlier by global IP standards.

Investment:

For IP-intensive industries, the protection of IP rights is one of the most important factors to consider when investing in a particular market.

The GIPC has heard from over a dozen industry trade associations, representing tens of thousands of companies, across a variety of industries that the erosion of IP rights may impact their decision to invest in India.

There are leaders in India that recognize the importance of investment in innovation. On May 11, the current President of India noted that "India's innovation bottom line is not very encouraging as the number of patent applications filed annually in leading countries like U.S. and China is roughly 12 times more than that of India." He then called on the private sector to increase their share of spending on research and development to the levels prevalent in other economies such as the United States, Japan, and South Korea. The Chamber commends the President for his vision and urges his government to implement IP policies to match the President's rhetoric.

To encourage private sector investment in India, the government must consider implementing IP protections at the same levels as enjoyed by the United States, Japan, and South Korea.

Conclusion:

India is a highly valued strategic partner for the United States and is an important market for U.S. companies.

International companies would like to continue to find ways to invest there. But, enough is enough.

The GIPC urges the Administration to defend global IP standards and utilize every diplomatic tool available to encourage the government of India to strengthen their IP protections and respect global IP standards.

Further, we call on the Indian government to protect IP, encourage innovation, and return to the path of developing a knowledge-based economy.

Thank you.