

## **An Open Letter to the President of Confederation of Indian Industry (CII) on the Third International Conference on Counterfeiting & Piracy**

To

**Mr. Venu Srinivasan**

The President

Confederation of Indian Industry (CII)

The Mantosh Sondhi Centre, 23,

Institutional Area, Lodi Road

New Delhi - 110 003

Dear Mr. Srinivasan,

We understand that Confederation of Indian Industry (CII) is hosting the Third International Conference on Counterfeiting and Piracy from 19-20th August 2009 in partnership with the Embassy of the United States and the Quality Brand Protection Committee (QBPC), China. As stated in the invitation letter the primary objectives of the conference are: 1) to initiate coordinated action for cross border enforcement; 2) to highlight the importance of protection of intellectual property rights (IPRs); 3) to combat the growing threat of piracy and counterfeiting; 4) to facilitate a global meeting of customs officials across the globe; 5) to recommend the creation and setting up of a governmental “National Brand Protection” group; 6) to serve as a forum to discuss legal guidelines related to the prosecution of IPR infringement and to eliminate ‘loopholes’ within the existing laws; and 7) to strengthen cooperation between enforcement agencies and chalk out strategies for enforcement agencies a industry action both at national & international level. We also understand that this international conference is part of CII Intellectual Property Division’s special initiative on enforcement of IPRs. As part of this special initiative CII aims at “engaging government to create conducive legislative measures, policy levels reform and impressing [upon them] to adopt stringent enforcement initiatives and exemplary punitive and monetary measures to further safeguard and secure the interest of industry”. CII also wants to “create a global partnership to synergise efforts of international community and to support and participate in India's efforts in combating counterfeiting both at domestic and international levels”. We, the undersigned, representing various civil society organizations in India, write this letter to express our strong reservation on the conference as well as on CII’s special initiative on IP enforcement. Without raising any question on CII’s right to organize events we would like to convey the following concerns with regard to the conference and CII’s initiative on IP enforcement.

Many of the above mentioned objectives of the conference and the special initiative are directed towards the enhancement of intellectual property (IP) standards like coordinated action on border measures, common guidelines for prosecution of IP infringement, exemplary punitive and monetary measures, etc. In other words, enhancement of IP standards means using more public money to protect private rights; very often protecting the monopoly over intangible property rights of multinational corporations (MNCs).

As you may be aware, MNCs and their developed country hosts are currently engaged in the implementation of a multi-pronged strategy to enhance IP enforcement standards.<sup>1</sup> This is similar to the MNC’s initiatives in the mid 80s to enhance international IP protection, which resulted in the Agreement on Trade-Related aspects of Intellectual Property Rights (TRIPS). Unlike the 80s, now

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<sup>1</sup>See Susan K Sell, *The Global IP Upward Ratchet, Anti-counterfeiting and Piracy Enforcement Efforts: The State of Play*. Available at [http://www.iqsensato.org/wp-content/uploads/Sell\\_IP\\_Enforcement\\_State\\_of\\_Play-OPs\\_1\\_June\\_2008.pdf](http://www.iqsensato.org/wp-content/uploads/Sell_IP_Enforcement_State_of_Play-OPs_1_June_2008.pdf)

MNCs and developed countries use multiple forums to pursue the objective of enhancement of IP enforcement standards. Some developed countries have unilaterally enhanced their IP enforcement strategy to force other countries, especially developing countries, to accept the same through various multilateral organizations, namely the World Customs Organization (WCO), World Health Organization (WHO), Universal Postal Union (UPU), Interpol, WIPO and WTO. Developed countries are also using Free Trade Agreements (FTAs), Bilateral Agreements on IP Enforcements as well as financing lobbyist studies, conferences and policy recommendations to impose higher IP enforcement standards. These efforts for the enhancement of IP enforcement standards are a matter of grave concern for the people of developing countries and their governments. By partnering with the US Embassy and Quality Brand Protection Committee of China (QBPC)<sup>2</sup> in the organization of this conference, CII is allowing itself to play in the hands of MNCs and some developed countries, whose interests do not match with that of India industries and that of the Indian people.

As you are aware, the Government of India is taking a very strong position in resisting enhancement of IP enforcement standards in all the multilateral forums. India along with like-minded developing countries successfully pushed back TRIPS-plus<sup>3</sup> IP enforcement agenda at WCO and WHO. India is also trying its level best to convince other developing countries the need to stick to TRIPS-compliant standards rather than adopting TRIPS-plus enforcement standards. In the wake of the controversial generic drug seizures by EU customs authorities, India has also raised the issue of TRIPS-plus IP enforcement standards contained in the EU IP Enforcement Directive at least two times at the TRIPS Council.<sup>4</sup> The Indian political leadership has unequivocally raised its concern over the enhancement of IP enforcement standards at other forums also.<sup>5</sup> In adopting this stance, the Government of India has cited public interest as well as the operating freedom of Indian industry as its justifications.<sup>6</sup> By partnering at this vital stage with an MNC lobby group and a heeding to developed country governments, CII is not acting in furtherance of the legitimate public interests of Indian domestic industry and the Indian people.

It is a well-evidenced fact that TRIPS-plus enforcement standards adversely impact not only legitimate trade between nations (as shown by the EU seizures) but also the day-to-day life of millions of people especially in India and other developing countries.<sup>7</sup> Unfounded IP enforcement measures would adversely impact access to life saving medicines and educational materials. Thus the IP enforcement measures also have the potential to deny right to development to people in the global South. Hence an organization like CII should not view IP as only a business tool but should look at the larger scheme of things especially in the social and economic realities of India. In fact, by promoting enhancement of IP enforcement standards CII is advocating a policy, which would

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<sup>2</sup>QBPC barely qualifies as a representative of Chinese interest, as it is comprised of more than 180 multinational member companies. See [http://www.qbpc.org.cn/About\\_QBPC/Introduction/2008-08/01\\_116.html](http://www.qbpc.org.cn/About_QBPC/Introduction/2008-08/01_116.html).

<sup>3</sup> 'TRIPS-plus' refers to any protection of IPRs that surpasses the standards and requirements spelt out in WTO-TRIPS provisions.

<sup>4</sup> See Jonathan Lyn, *India Brazil raise EU drug Seizures issue at WTO*, available at <http://www.livemint.com/2009/02/04232721/India-Brazil-raise-EU-drug-se.html>

<sup>5</sup> *Indian Minister of State for External Affairs Broaches Seizures of Generics at ECOSOC*, available at <http://www.keionline.org/blogs/2009/07/08/india-ecosoc-seizures/#more-2404>

<sup>6</sup> Indian Commerce Secretary's Speech to the African Community Ambassadors. available at [http://www.centad.org/focus\\_77.asp](http://www.centad.org/focus_77.asp). Also see the statement of the Brazilian Ambassador to the WTO condemning the drug seizures. Available at: <http://www.ip-watch.org/weblog/2009/03/05/concerns-continue-over-generics-drug-seizures-as-legality-debates-begin>

<sup>7</sup> For two very recent examples, see *Intellectual Property Enforcement: International Perspectives*, Xuan Li & Carlos Correa (eds.) (2009); Anand Grover, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/HRC/11/12 (2009).

violate the right to health, the right to knowledge, as also the right to development.

We would also like to point out that Indian pharmaceutical industry is one of the victims of TRIPS-plus IP enforcement standards. In 2008 alone, 17 consignments<sup>8</sup> were seized in transit at Europe using the EU Directive on IP Enforcement, which allows seizure of goods in transit.<sup>9</sup> These consignments were being exported from developing countries (such as India and Brazil) to other developing countries, and the contents of the consignments are perfectly legal in both the exporting as well as the importing nations. These highly questionable seizures resulted in the crisis of health programmes as it resulted in delays in and prohibitive costs of access to life-saving medicines in developing countries of Africa and Latin America. CII can barely claim to be representative of the interests of Indian industry if it ignores such episodes and partners with self-promoting MNCs and developed countries' governments to advocate for the enhancement of IP enforcement standards.

In the light of above-mentioned issues, we request you to consider the following:

**Rejecting the TRIPS-plus enforcement agenda in toto.** We demand CII, Federation of Indian Chambers of Commerce and Industry (FICCI), Associated Chambers of Commerce and Industry (ASSOCHAM) and other Indian business associations to reject any and all attempts of bringing in a TRIPS-plus enforcement agenda in India, in the interests of Indian industry and the Indian people.

**Completely disengaging from any collaborative efforts with foreign institutions to further TRIPS-plus standards of IP protection in India and also abstaining from any engagements on the anti-counterfeiting efforts with foreign agencies.** CII should attempt to engage with domestic institutions and build national consensus before engaging with foreign institutions with the claim of representatives of Indian industry

**Take necessary proactive steps to safeguard the interests of access to medicine and access to knowledge along with interest of the Indian domestic industry.**

**Participate in a more creative discussion on IP and development rather than simply accepting the simplistic and largely discredited view that stronger IP regime leads to more innovation and is a necessary condition for socio-economic development.**

**CC: Anjan Das**

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**CC. Shri. P. Chidambaram**

Minister  
Ministry of Home Affairs  
Government of India  
North Block, Central Secretariat  
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<sup>8</sup> Jyoti Datta, *16 out of 17 drug consignment seizures in the Dutch were from India available at <http://www.thehindubusinessline.com/2009/06/08/stories/2009060851700300.htm>*

<sup>9</sup> The EC Regulation No 1383/2003 allows for seizure of goods in transit.

**CC. Shri G. K. Pillai**  
Secretary Justice  
Department of Justice  
Ministry of Home Affairs  
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**CC: Shri Naresh Dayal,**  
Secretary, Dept. of Health and Family Welfare  
Ministry of Health and Family Welfare  
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**CC: Shri Ajay Shankar**  
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New Delhi – 110 011

**Signatories to this letter:**

1. **Centre for Trade and Development (Centad), New Delhi**
2. **Centre for Internet and Society, Bangalore**
3. **National Working Group on Patent Laws, New Delhi**
4. **Lawyers Collective (HIV/AIDS Unit)**
5. **All India Drug Action Network (AIDAN)**
6. **International Treatment Preparedness Coalition (ITPC), India**
7. **Consumers Association of India, Chennai**
8. **IndoJuris Law Offices, Chennai**
9. **All Indian People's Science Network, New Delhi**
10. **Delhi Science Forum**
11. **Alternative Law Forum, Bangalore**

12. **Knowledge Commons**
13. **Moving Republic**
14. **IT for Change**
15. **Centre for Health and Social Justice(CHSJ), New Delhi**
16. **Navdanya, New Delhi**
17. **Support for Advocacy and Training to Health Initiatives (SATHI)**
18. **Centre for Enquiry Into Health and Allied Themes (CEHAT)**
19. **Initiative for Health Equity & Society**
20. **International Peoples Health Council ( South Asia )**
21. **Drug Action Forum – DHARWAD, Karnataka**
22. **LOCOST, Baroda**
23. **Dr. Mira Shiva, New Delhi**
24. **Tina Kuriakose, PhD Scholar, Jawaharlal Nehru University, New Delhi**
25. **Dr Gopal Dabade, Dharwad**
26. **Dinesh Abrol, Scientist NISTADS, CSIR, New Delhi**
27. **Madhavi Rahirkar, Lawyer/Consultant, Pune**
28. **Gautam John, Bangalore**
29. **Achal Prabhala, Bangalore**