

17 June 2009

**Shri Anand Sharma,
Hon'ble Minister of Commerce and Industry**

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**Re: Release of a US business funded study on India's patent law
at USIBC Summit**

Shri Anand Sharma,

We are writing to you to express grave concern over reports carried in several Indian newspapers highlighting your attendance and participation at the release of a US business funded study on India's patent law at the USIBC Summit.

The study reportedly, *"reasons that Section 3(d) of India's Patents Act, which prevents incremental pharmaceutical innovations from receiving patent protection inhibits development of safer, more efficacious and more useful drugs for Indian patients."*

This is not a new allegation made by US based pharmaceutical industry and their representatives. Nor is it accurate.

As you are aware Section 3(d) of India's patent law is a key public health safeguard introduced by the Indian Parliament in the 2005 amendments to the Patents Act, 1970. The Indian Parliament recognized public health concerns regarding "evergreening" – a common practice of pharmaceutical companies to extend their patent monopolies on known medicines by making insignificant or minor changes and accordingly introduced Section 3(d). This provision acts as a check on pharmaceutical companies obtaining patent monopolies for medicines that are not actual inventions, such as combinations or slightly modified formulation of existing medicines.

According to a Press Release from the Ministry of Commerce (4 April 2005) referring to the amendments to the patent legislation, *"...in order to prevent "evergreening" of patents for pharmaceutical substances, provisions listing out exceptions to patentability (or what cannot be patented) have been suitably amended so as to remove all ambiguity as to the scope of patentability"*.

Section 3(d) is being used by public interest and patients groups to ensure that frivolous patents are not granted in India. Moreover, the Indian government put up a strong defence of this provision in a legal challenge by a multinational pharmaceutical company before the Madras High Court. The challenge to Section 3(d) was rejected by the Court, which recognized the importance of the provision in light of the obligation on the Indian government to protect the right to life and health of all citizens. The Court held, *"We have borne in mind the object which the Amending Act wanted to*

achieve, namely....to provide easy access to the citizens of this country to lifesaving drugs and to discharge their Constitutional obligation of providing good health care to its citizens.”

Accordingly news reports that the Minister of Commerce and Industry will be participating in this meeting are of great concern. It is unclear whether the Commerce Ministry has perused the contents of this study and is endorsing the same. Certainly your presence at this meeting is being used in the media to imply an endorsement of this study.

We request that you immediately clarify the position of the Commerce Ministry on this report.

Section 3(d) and other public health safeguards in India's patent law directly impact the lives of millions of patients not only in India but across the developing world who rely on access to safe, effective and affordable medicines from India. We trust that the Ministry of Commerce and Industry will take all steps and actions to continue to defend this key provision of Indian law.

Sincerely,

Indian Network for People living with HIV/AIDS (INP+)
Cancer Patients Aid Association (CPAA)
National Working Group on Patent Laws
Lawyers Collective HIV/AIDS Unit
Delhi Network of Positive People (DNP+)
Trade and Public Health Team, Centre for Trade and Development
Initiative for Health, Equity and Society
All India Drug Action Network
International Peoples Health Council, South Asia
Diverse women for diversity
SATHI-CEHAT

*Encl: Copy of news article - 'New Study on protecting drugs in India,'
The Hindu, 17 June 2009*

**Cc: Ms. Meera Shankar,
Hon'ble Ambassador of India to the US
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