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Intellectual Property Rights in Egypt

USEBC White Paper

The Intellectual Property (IP) white paper follows a series of U.S.-Egypt Business Council (USEBC) discussions with members companies in several sectors, most notably pharmaceutical, information technology, and consumer goods. The Office of the U.S. Trade Representative (USTR) has also shared with the council substantive comments for how Egypt can improve its intellectual property environment. In addition, the U.S. Chamber's Global Intellectual Property Center (GIPC) has been and will continue to be engaged at multiple stages lending their input on the substance of the discussion. The objective of the white paper is twofold: 1) to capture the IP concerns of USEBC member companies, and 2) to advocate on behalf of the companies the issues and recommendations therein to the United States and Egyptian governments.

Since passing its revised intellectual property rights law in 2002, Egypt has made important strides in improving its legal framework for intellectual property rights (IPR) protection as well as its enforcement capacity. Law 82/2002 reflects the major provisions of the Trade-Related Aspects of Intellectual Property Rights (TRIPs) Agreement and was supported by the U.S. government and the U.S. private sector.

Despite these efforts, Egypt currently lags behind many countries in the Middle East and North Africa region in terms of IPR protection and Egypt still remains on the U.S. Trade Representative's *Special 301 Watch List* for countries in which the United States has elevated concerns about IPR protection. The World Economic Forum's *Global Competitiveness Report 2010/2011* ranks Egypt 67th in terms of protection of intellectual property, down from 58th the year prior.

USTR kept Egypt on the *Special 301 Watch List* report released in 2011. In 2008, USTR dropped Egypt down from the *priority* watch list to the watch list for improvements it had made for intellectual property protection. Again in 2010, Egypt made advancements by acceding to numerous international treaties on intellectual property. Notably, Egypt founded the National Observatory for Industry Products, which inspects goods for patent and trademark infringement. Egypt also launched public awareness campaigns on counterfeit pharmaceuticals. The council applauds these efforts. Nevertheless, the USTR report cites several impediments to IP enforcement as Egypt's main obstacle, noting that judges require further training on processing IPR cases and greater protection and enforcement for pharmaceuticals patents. Additional capacity building is required to scale up the Egyptian Customs Authority, the Ministry of Culture, and the Ministry of Health.

Sector Overview

Intellectual property protection and enforcement affects multiple sectors across the Egyptian economy, namely in the pharmaceutical, consumer, packaged and luxury goods, and information technology sectors.

1. Pharmaceutical Industry

The Egyptian government has significantly accelerated the registration process for patents and the backlog of patent applications has been modernized. However, Egyptian law continues to define the data protection period as beginning at the time the market authorization application is submitted. The council strongly encourages the Egyptian Government to grant data protection from the date of market authorization, as in most other countries. Overall, the pharmaceutical industry continues to face lax enforcement of patent violations by third party companies. The council would furthermore like Egypt to adopt measures to protect data submitted to obtain marketing approval for pharmaceutical products.

The Egyptian government's price control system references 36 countries and determines the government's pricing by identifying the lowest price out of all the countries and then reduces Egypt's price by 10%. This type of price control system negatively impacts the pharmaceutical industry's ability to develop and introduce innovative products to all markets, including Egypt. In addition, the market authorization process for new medicines is still lengthy despite the intention of various ministerial decisions to reduce the registration period.

Combating counterfeit pharmaceutical products has also been an on-going problem for pharmaceutical companies that affect the integrity of medicine and consumer safety. In fact, several industries face issues of counterfeiting and other forms of illicit activity. Egypt's Customs Authority has not been sufficiently effective in curbing the entry of such products into the market nor in interdicting illicit goods that are transiting Egypt, given that Egypt is increasingly becoming a strategic commercial corridor to the immediate region, Africa and Europe. In addition to a lack of enforcement, customs officials are not adequately empowered with the proper legal authority to prevent and interdict illicit goods in transit through Egypt.

2. Consumer Goods Sector

The consumer goods sector for health care, cosmetic, food and beverage, and personal care products also face problems from third party companies that create, produce, and market counterfeit products in the local market. These products are often sold on the black market at cheaper prices with no quality assurance. Some products sold on the black market have been reported to cause adverse health effects. Further protection and enforcement against counterfeits for public health and safety are required. In addition, the judicial system needs to more vigorously prosecute manufacturers of counterfeit products, rather than let cases drag out in the court system.

Several companies have identified the problem of illicit trafficking of commercial goods affecting their brand products, including tobacco, spirits, luxury goods, textiles and apparel, and house-hold products. Smuggling not only impacts businesses, but also hampers national security and public health.

3. Information Technology Industry

In the information technology industry, Egyptian law currently has insufficient disciplines for dealing with Internet piracy of IP-related products and services, which is a growing problem as Egyptian Internet penetration increases. Egypt does not aggressively enforce entertainment and business software IP rights. Better IP protection will help develop Egypt's growing IT sector.

Recommendations

Improved IPR protection will help promote Egypt's goal of developing sectors such as information technology and consumer products and make Egypt more attractive as a regional hub for innovation. To address Egypt's remaining challenges in the area of intellectual property rights, the U.S.-Egypt Business Council proposes the following:

1. The United States should continue to provide technical assistance to Egypt to improve Egypt's ability to maintain and update its IPR laws, to implement its obligations and to enforce IPR protection at the border and internally. Assistance should be provided until such time as Egypt is no longer on the *Special 301 Watch List*. In particular:
 - The United States could provide additional support to enhance Egypt's enforcement. The U.S. Commerce Department's Commercial Law Development Program (CLDP) could sponsor a workshop to help train judges in the new Economic Courts in the adjudication of intellectual property cases. For example, in December 2010, the CLDP conducted a two-day training workshop at the Internal Trade Development Authority for trademark officers and board of appeals judges to provide an overview of the trademark system in the United States, and to address various topics, including the likelihood of confusion standard, distinctiveness of marks, and registration of trade dress.
 - Training could be undertaken to ensure that there are specialized corps of prosecutors and judges to deal with intellectual property issues, as well as improved court procedures that diminish excessive documentation requirements.
2. The United States Patent and Trademark Office (USPTO) has an Intellectual Property Rights Attaché Program in which officials are posted abroad to help promote high intellectual property rights standards and enforcement. Cairo in the past has served as the post for the Middle East and North Africa, but the position currently is vacant. We urge the U.S. government to fill this important position in Cairo as soon as possible.

3. Revisions to Egyptian law should be adopted to improve Egypt's protection and enforcement of intellectual property. In particular, we suggest the following:

- Egypt should accede to and fully implement the World Intellectual Property Organization (WIPO) Copyright Treaty and WIPO Performances and Phonograms Treaty in order to provide needed protection in the digital age and Internet environment.
- Egyptian law needs to provide explicit authority for Egyptian Customs Authority to confiscate goods in transit that violate intellectual property rights. Border Measures regulations, enforced in conjunction with Customs Laws, are unclear and subject to various interpretations. As a result, goods violating IPR (such as counterfeit goods) can find it easy to transit through Egypt. Moreover, even when IPR-violating goods are seized, Egyptian law provides that the goods may be auctioned without any determination of their authenticity. In short, counterfeit goods can re-enter the market. A more appropriate policy would be to destroy such goods.
- The Egyptian Parliament should approve amendments to the Trade Name Law to provide additional trademark protection.
- Customs should have ex-officio power to detain goods they suspect of infringing intellectual property rights and samples should be provided to trademark owners. Trademark owners should have a more active role in the detention and seizure process thus reducing burdens on customs.
- A simplified procedure for the destruction of infringing intellectual property rights should be instituted.
- Changing the destination or declared description of goods suspected of infringing intellectual property rights should not be allowed.

4. Intellectual property rights and franchising are inextricably linked, since the franchise generally depends on a strong brand/trademark for its value. Franchising has been an important mode of access to the Egyptian market for various restaurant chains, as well as other firms in areas such as automobile rentals, computer training, electronics, and hotels, among others.

- As Egypt develops a new franchise law, it is important that the law ensure that the rights of the brand/trademark owner are fully protected and that the franchise law is consistent

with Egypt's rights and obligations under its various international agreements, including the Paris Convention, the Trademark Law Treaty, the Madrid Agreement and the Madrid Protocol, the Nice Agreement, and the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

5. The Egyptian government should continue to make public health and safety a priority by reforming its health care industry. We recommend that the Egyptian government address the following:
 - Reform the government price control system of pharmaceuticals by reducing the reference range to a smaller list of countries that have similar health care systems and similar levels of economic development. Lower prices in Egypt could lead to sequential launching of products creating a treatment gap for the medical community in Egypt. High prices continue to prevent access to the innovative treatments.
 - Further modernize the regulatory process for the registration of new products and reduce the processing time for new medicines.
 - Align Egypt's regulatory standards with international and U.S. standards.
 - Provide full intellectual property protection through tightening the implementation of current IPR laws and removing any obscurity related to implementation.
 - Implement a comprehensive program to combat the counterfeit problem in the pharmaceutical sector.

6. We further recommend that Egypt sign and ratify the Singapore Treaty on the Law of Trademarks and the Vienna Agreement Establishing an International Classification System of the Figurative Elements of Marks so as to extend its trademark protection regime.

