

New Release of IPR Chapter of India-EU Free Trade Agreement

Centre for Internet and Society | 2011-01-12

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A draft of the IPR chapter of the EU-India FTA, made publicly available for the first time (PDF, 296Kb), provides insight into India's response in July 2010 to several EU proposals on intellectual property protection and enforcement. The consolidated draft which was prepared to serve as the basis of talks that took place from July 12-14, 2010, in New Delhi, reveals parties' negotiating stances in response to preliminary positions put forth earlier (see IPR Chapter May draft).

In particular, this draft reflects India's rejection of many EU proposals that would require India to:

- exceed its obligations under the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), e.g by providing data exclusivity for pharmaceutical products;
- impose radical enforcement provisions, such as liability of intermediary service providers, border measures for goods in transit, and raised norms for damages and injunctions; or
- require legislative change, e.g., on data protection, and to accommodate the full EU demands on geographical indicators.

A chart compiled by CIS comparing proposed language by India and the EU in several provisions with TRIPS can be found here (PDF, 402 Kb).

Sources close to the negotiations have also confirmed that during the July talks India reiterated its refusal to go beyond TRIPS, and its refusal to discuss issues that require changes to Indian law. India appears to have also reiterated that it could not finalise FTA copyright provisions before passage of the Copyright Amendment Bill in the Indian Parliament.

It is hard to assess the current state of the negotiations on IP or to measure the outcomes of subsequently held talks without access to recent drafts, a public record of deliberations, or the schedule of full and intersessional rounds taking place. However, from press and other statements attributed to the European

Commission and Indian officials after the December 2010 EU-India Summit in Brussels, it appears that:

- both parties plan to conclude the FTA, the biggest ever for the EU, by Spring 2011;
- the EU has not relaxed its pursuit of at least some "TRIPS plus" provisions such as data protection for pharmaceuticals
- a mutually agreed solution to India's WTO case against the EU over the seizure of generic medicines may be round the corner. Its impact on the FTA is open to speculation.

Because the India-EU FTA is likely to set a new precedent for future trade agreements between developed and developing countries, and with enormous stakes for patients across the globe, India and the EU need to get it right and ensure no provision runs counter to the interests of millions of citizens.

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