CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

THOMAS J. DONOHUE
PRESIDENT AND
CHIEF EXECUTIVE OFFICER

1615 H STREET, N.W.
WASHINGTON, D.C. 20062-2000

February 13, 2009

The Honorable Peter F. Allgeier
Acting U.S. Trade Representative
600 17th Street, NW
Washington, DC 20508

Dear Mr. Ambassador:

I am pleased that the U.S. Chamber and USTR have such a close working relationship and appreciate all the support you have given the business community during your time in office.

Recently, the Indonesian government issued several ministerial decrees that will restrict international trade by denying market access for U.S. companies that depend on intellectual property rights (IPR) protection. They will have negative consequences for U.S. business in both the pharmaceutical and film industries.

In November 2008, the Indonesian Public Health Ministry issued health decree NO 1010/MENKES/PER/XI/2008. The decree requires pharmaceutical companies to manufacture their drugs in Indonesia as a prerequisite to being able to register products with the Indonesian Food and Drug Control Agency. The decree sets a two-year phase in period, after which, existing companies that do not manufacture in Indonesia will no longer be able to continue supplying life-saving drugs to Indonesians.

Given that many foreign pharmaceutical companies operate with business licenses as wholesalers in Indonesia, we expect the decree to have a significant impact on U.S. pharmaceutical sales in Indonesia. Companies must decide either to leave the market, move their manufacturing facilities to Indonesia, or grant local companies the right to register their products with the government, which poses a host of legal and intellectual property concerns. Furthermore, in meetings of pharmaceutical companies with the Indonesian FDA, it has become clear that drugs manufactured abroad will face more difficulties in getting their import licenses. If drugs can be manufactured locally, we are concerned that the registration for imports will not be renewed.

The Chamber's pharmaceutical member companies have tried to engage the Indonesian government in dialogue to solve the problems caused by the decree. Although our members have met with the ministry, there has been no progress to date. In the meantime, new drug registrations of pharmaceutical products from the affected companies are being "held," effectively preventing them from getting on the market. The more time that passes, the longer the Indonesian market will remain closed to some of these life-enhancing and life-saving medicines.

Intellectual property protection is also a concern of pharmaceutical companies when considering where to build manufacturing facilities. Indonesia has a significant counterfeit pharmaceutical trade. In 2005, it is estimated that counterfeit medicines made up approximately 25% of the $2 billion pharmaceutical market in Indonesia. The risk that patents and trademarks will not be protected is high enough to dissuade pharmaceutical companies from directly investing in Indonesia.

On a second issue, the Ministry of Culture and Tourism in November 2008 issued decree PM.55/PW.204/MKP/2008, which dictates that all theatrical movie prints are to be produced locally and bans the importation of any theatrical movie prints that are not produced in Indonesia.

Movie companies invest millions of dollars in making and marketing films. In order to recoup this investment, they must be able to ensure that the highest quality films are delivered to audiences. Unfortunately, Indonesia has only two printing facilities, both of which do not currently meet the quality or security standards of our film member companies. As a result, most foreign films are printed outside of Indonesia and this decree will essentially ban imports of these movies. Not only will this negatively impact the global motion picture industry by reducing their exports to Indonesia, but it will also affect Indonesian movie theaters that depend on foreign films for their revenue.

Furthermore, film piracy is a major problem for film companies, both domestic and international. Since each motion picture company has stringent security regulations, they prefer to retain control over the reproduction of their films.

We at the U.S. Chamber encourage you to consider these two regulations when reviewing the state of intellectual property rights (IPR) in Indonesia for the annual "Special 301" report, which calls on the U.S. Trade Representative to identify those countries that deny "fair and equitable market access" to U.S. persons who rely on intellectual property protection. Pharmaceutical and film companies everywhere rely on IPR protection for their products. Because these new Indonesian regulations require our member companies to either invest directly in Indonesia or be excluded from the Indonesian market altogether, it essentially denies them fair and equitable market access.

The U.S. Chamber hopes that you will positively consider our request. If you have any questions, please do not hesitate to have your staff contact Mr. Daniel VerSchneider, associate director for Southeast Asia, by phone at (202) 463-5846 or email at dverschneider@uschamber.com.

I appreciate your consideration of this matter and look forward to seeing you again soon.

Sincerely,

Tom

Thomas J. Donohue