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IPA has challenged the USTR's assessment of India's intellectual property protection regime and suggested that India received severe treatment than other countries solely on the basis of its treatment of patented pharmaceuticals, which it says meet international obligations.

The secretary general of the IPA, Mr D G Shah, remarked that the USTR had removed the Philippines from its 2014 Special 301 watch list, but maintained India on its priority watch list.

According to the USTR's watch list a priority list have been created under its trade legislation to answer to its obligation to identify countries which it deems do not provide adequate and effective protection for US intellectual property rights. The Special 301 report displaying those lists was first published in 1989. Countries placed on the priority watch list "become the focus of increased bilateral attention concerning the problem areas," the USTR website said.

USTR, in April, had announced that it has removed the Philippines from the Special 301 watch list. The country was listed continuously since 1994, and was first listed in 1989, the release said. The removal from the watch list resulted from a series of "significant legislative and regulatory reforms by the Philipines to enhance the protection and enforcement of intellectual property rights in the country," said the release.

According to the 2014 Special 301 report, "In 2014, 10 countries are on the Priority Watch List and 27 countries are on the Watch List." Of those, "several countries, including Chile, China, India, Indonesia, Thailand, and Turkey, have been listed every year since the Report's inception."

Mr Shah's paper notes that the Pharmaceutical Research and Manufacturers of America (PhRMA), in its submission [pdf] to the USTR on Special 301, formulated complaints about India and the Philippines that were very similar. In particular, they pointed out narrow standards of patentability, lack of regulatory data protection, and issues with patent enforcement and drug

regulatory approval.

The only difference, according to Mr Shah, is the use of compulsory licensing by India, while the Philippines, due to its lack of manufacturing capabilities, has been using parallel importations.

Compulsory licences for pharmaceutical products are used in certain cases by governments that allow the production of a patented product without the consent of the patent owner, according to the World Trade Organization. Compulsory licences are one of the flexibilities for patent protection permitted under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

The WTO defines parallel importations to designate products that are manufactured abroad and imported without the permission of the IP right holder.

PhRMA classified the Philippines under "watch list" and India under "priority foreign country," along with Turkey. According to the USTR, countries designated as priority foreign countries are "potentially subject to an investigation under the Section 301 provisions of the Trade Act of 1974."

According to Mr Shah, the USTR report on India is "full of inaccuracies," and "India's disagreement on some IP issues with the US is reduced to 'difficulties in attaining constructive engagement' and 'challenging environment'."

The USTR "has completely ignored several steps taken by India to bring transparency and accountability in the IP administration; to improve efficiency and speed through recruitment and training; and modernization of IP offices," the paper said.

Mr Shah's paper lists the steps allegedly taken by India to improve its IP policy framework, in particular: the digitisation of all IP records; the electronic processing of patents and trademark applications; public search facility, manuals of office practice and procedures for patents, designs and geographical indications; specialised technology groups for examination of patent applications; and exposure to international best practices.

Section 3(d) of India's Patent Act 1970 has been a recurring concern for the USTR and is mentioned in the 2014 USTR Special 301 report. Section 3(d) states that "the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant."

It is presented by India as preventing the "evergreening" of patents, preserving national policy space while satisfying its international trade obligations, and regarded by pharmaceutical companies as limiting the patentability of innovations.