

This is to briefly report on the fourth round of ACTA negotiations that took place on 15-18 December in Paris, hosted by the EU.

Summary :

1. Very good organisation of the meeting by PRES, in beautiful room at Musée d'Orsay and with meeting **opened by FR Minister of Commerce Mme. Idrac** (speech enclosed), who issued a positive and ambitious opening statement. **Good relation with PRES**; daily (and largely un-necessary) coordination meetings with MS. At end, several MS expressed appreciation about a positive round, good COM chairing of the meeting and PRES organisation.
2. Detailed first discussion of draft texts on institutional structure, international cooperation and enforcement practices. Continuation of discussion on penal and civil enforcement measures. First general discussion (not yet based on legal drafting) of **internet enforcement**. With this agenda, all the subjects foreseen for the future agreement have been discussed at least once before the end of 2008 (negotiations started in June 2008)
3. On **penal enforcement**, pursuant to negotiating guidelines, Presidency (France) presented the EU joint position. EU's colourful and enthusiastic presentation (by Chair of Council's JLS Counsellors) managed to focus discussion on formal aspects of the matter rather than on the weak substance of EU proposal (barely at the level of WTO/TRIPs commitments).
4. Good progress on the less sensitive chapters like **institutional chapter** (clear preference around the table for a structure as simplified and light as possible); **international cooperation** and **enforcement practices**. Also some good progress on the **civil enforcement** chapter, where the main outstanding point is the broad scope vs. narrow scope disagreement between EU (+CH) on one side and most of the other ACTA partners on the other.
5. **Internet** discussion remained very general, with countries sharing explanations about their regimes and no real negotiation. Most ACTA partners want the future chapter to be equally general. **US seems to have lost some enthusiasm for detailed internet provisions. Anyway, US was much less "pushy" in this round, clearly waiting to see if new administration will remain as committed to ACTA as the present one.**

6. Morocco offered to organise the next round, around the second week of March 2009. Japan pushing for 3 rounds before Summer break, but others not very enthusiastic about this perspective.
7. General deadline for written contributions is 16 February 2009. EU to contribute on enforcement practices, international cooperation and possibly Internet

Participants: Australia, Canada, the European Union (COM+PRES+16 MS+Council Sec), Japan, Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland, and the United States.

COM delegation, who chaired the meeting, was led by Trade () and included Markt (), JLS () and INFOS (). Excellent atmosphere and cooperation among the COM services, with valuable contributions on their respective chapters.

PRES represented by French Ministry of Economie et Finances () and 3 experts (INPI, Justice). 17 other MS attended (DE, IT, UK, FI, CZ, LV, ES, BE, IRL, LIT, PT, SK, SW, HU, NL, RO, PO) the first 6 represented by capital-based experts.

Details: Discussion on on **penal enforcement** led by EU PRES, managing to steer debate to the form and structure of the future chapter (largely cosmetic) and away from substance (where EU joint position is rather weak). Agreement that further work will be necessary before the next round to fill-in the sophisticated structure proposed by the EU and agreed by the other partners. On substance, it was apparent that EU cannot commit to go much further than WTO/TRIPs level, but others did not complain too vocally about it [comment 1: this is maybe due to US low-profile at this round, while waiting for guidance from new administration.] [comment 2: to be noted that EU (Council) position of limiting penal enforcement to copyright and trademarks will no doubt have negative effects on COM's position when defending a broad coverage of all IP rights - including GIs and patents - on other chapters of ACTA].

Discussions on less sensitive chapters like **international cooperation** and **enforcement practices** were relatively consensual. EU and others will submit comments in writing before next round, but chapters should be easy to conclude. On **institutional matters** the discussion was equally smooth, with most partners agreeing that ACTA structure must be as light and simple as possible. [comment: discussions here will be of a more internal nature, with France insisting on the creation of a heavier permanent

structure (task-force + secretariat) and trying to gather support from other MS].

EU, US and JPN reported on the good inter-session progress made to clean the **civil enforcement** chapter of some brackets and to simplify its structure. This was acknowledged as a positive step towards an agreeable chapter. Main difficulty remains the scope coverage for certain enforcement instruments.

On **internet enforcement**, discussion was based on a questionnaire submitted by US to assess the different IP regimes applicable in the ACTA members. EU (MARKT and INSO) provided brief explanation of EU acquis and indicated which areas are not yet harmonised. EU will consider whether or not to reply in writing to questionnaire. If that is the case, COM will provide draft reply to be completed by MS on areas of their competence. Other partners like CAN, NZ and CH want a simple chapter on this issue, including some principles but not focusing on detailed provisions. They made particular reference to need of avoiding the creation of substantive provisions on digital rights management or protection devices (ACTA is about enforcement, not substantive law). US indicated that they may provide a draft legal chapter for the next round, but left it open. *[comment: US seems to have difficulties with this chapter. They are clearly less enthusiastic than at the beginning when they intended to propose the adoption of the detailed provisions of the US-Korea FTA agreement]*

Other issues discussed:

- **Consultation of stakeholders / transparency:** EU raised the issue once more, talking about concerns expressed by stakeholders, MEPs and certain MS governments regarding the confidentiality of ACTA documents. CH, AUS, NZ and CAN also in favour of more transparency. US and JPN not ready to release negotiating documents ("*a negative precedent for other negotiations*"). In the end, parties agreed that CH, CAN, US and JPN will work on a kind of summary that may be made public. All agreed that a final ACTA text would be made public before its formal "signature", to allow for public reactions.

- **Timing :** Morocco offered to host the next round, tentatively on the 2nd week of March. JPN proposed that parties agree on having 3 rounds before the summer break, but others did not show support [comment: on the margins, CZ PRES mentioned possibility of round in Prague around June 2009.

Relations with MS: Very good work with PRES respecting separation of powers and intervening only on penal enforcement

issues, as stipulated in negotiating guidelines. Daily (and not very useful) coordination meetings, with IT, DE and UK occasionally complaining of lack of coordination. Several of these complaints were directed to PRES, but they also criticised COM in the case of "civil enforcement". In the end, however, the general impression was that this has been a productive round, with concrete progress in several chapters. 18 MS present, mostly represented by IP or Justice experts.

Next Steps: COM to prepare written comments to papers on international cooperation and enforcement practices. Need to discuss with MS if we reply in writing to internet questionnaire. Since all these issues touch on some non-harmonised areas, we will need to coordinate with CZ PRES. Deadline to send comments to ACTA partners is 16 February. PRES will need to work on formal adoption of EU position on penal measures, since it remains a non-paper due to SW blocking its adoption.

Also enclosed, the final joint press release, the opening statement by Minister Idrac and a news report.

ACTA – Report on 4th Round of negotiations, Paris 15-18 Dec. 2008

Participants:

Australia, Canada, the European Union (COM+PRES+16 MS+Council Sec), Japan, Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland, and the United States.

COM delegation, who chaired the meeting, was led by DG Trade ([redacted]) and included Markt ([redacted]), JLS ([redacted]) and INFISO ([redacted]).

PRES represented by French Ministry of Economie et Finances (Beauroy) and 3 experts (INPI, Justice).

17 MS attended (DE, IT, UK, FI, CZ, LV, ES, BE, IRL, LIT, PT, SK, SW, HU, NL, RO, PO) the first 6 represented by capital-based experts.

Summary :

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2. Detailed first discussion of draft texts on **institutional structure, international cooperation and enforcement practices**. Continuation of discussion on **penal and civil enforcement** measures. First general discussion (not yet based on legal drafting) of **internet enforcement**. With this agenda, all the subjects foreseen for the future agreement have been discussed at least once before the end of 2008 (negotiations started in June 2008)
3. On **penal enforcement**, pursuant to negotiating guidelines, Presidency (FR) presented the EU joint position. EU Chair (COM) managed to secure agreement on formal aspects of the matter (new commonly agreed structure).
4. Good progress on the less sensitive chapters like **institutional chapter** (clear preference around the table for a structure as simplified and light as possible); **international cooperation and enforcement practices**. Also some good progress on the **civil enforcement** chapter, where the main outstanding point is the broad scope vs. narrow scope disagreement between EU (+CH) on one side and most of the other ACTA partners on the other.
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partners want the future chapter to be equally general. US seems to have lost some enthusiasm for detailed internet provisions. Anyway, US was much less "pushy" in this round, clearly waiting to see if new administration will remain as committed to ACTA as the present one.

6. On **consultation of stakeholders / transparency**, EU raised the issue once more. Parties agreed that CH, CAN, US and JPN will work on a summary that may be made public. All agreed that a final ACTA text would be made public before its formal "signature", to allow for public reactions.
7. General deadline for written contributions is 16 February 2009. EU to contribute on **enforcement practices, international cooperation** and possibly **Internet**.

Regarding the latter, COM's view is that – without providing detailed replies to the numerous questions made by the US - we may send written comments summarising the EU law, indicating which areas are harmonised and which are not.

For all the above issues, COM is ready to prepare a first draft and submit it for comments to MS within the coming couple of weeks.

8. **Morocco** offered to host the next round, around the second week of March 2009. **Japan** pushing for 3 rounds before Summer break, but others not very enthusiastic about this perspective.
