

This is to briefly report on the fifth round of ACTA negotiations that took place on 16-17 July in Rabat, hosted by Morocco.

Meeting opened by two Moroccan Ministers (Min. of Trade and Min. of Communication - also Government Spokesman), who stressed the need for making ACTA an inclusive agreement, extending it to developing countries and including technical assistance. Brief protocol reception with Ministers only for EU, US and JPN heads of delegation.

Summary

Issues discussed: International cooperation; Enforcement Practices; Institutional Structure, Accessions and Transparency

Generally a "calm" meeting, since the issues in the agenda were not the most complex or contentious. The question of scope was not discussed in depth but continues to divide the membership, with EU and CH insisting on wide IP coverage and the others wanting only copyright and trademarks. US appear not to be in a hurry to conclude, unlike JPN.

Progress on International Cooperation and Enforcement Practices, but US presented some comments very late and will still come back, therefore chapters not yet closed. EU detailed proposals on these two chapters well received.

Progress on the more bureaucratic sections of the chapter on Institutional Structure, but general scepticism about real possibilities of integrating ACTA in an existing multilateral institution (WTO, WIPO or even OECD)

On Accession of new countries, Parties agreed that priority should go to the speedy conclusion of ACTA and new Members should only enter once the agreement is concluded (tentatively the first half of 2010). At the margins, PRES and a couple of MS (UK, SP) not comfortable with COM expressing preference for this option since they claim that there was no agreed position at 133. COM replied that it had heard MS in 133 and then decided on the basis of its mandate to coordinate the negotiation. In any event, new accessions require a consensus of all ACTA parties and in this case they were all against.

On Transparency, no agreement yet on the release of negotiating texts, but OK for additional steps such as the release of agendas.

Internet text should be produced by US in mid/late September. Next round in Seoul in 4-6 November.

Participants: Australia, Canada, the European Union (COM+PRES+8 MS), Japan, Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland, and the United States.

COM delegation was led by Trade () and included Markt ().

PRES represented by Swedish Ministry of Justice. 8 other MS attended (UK, FI, ES, NL, RO, GR, FR, DE). SW (opening only) and GR Ambassadors attended.

One coordination meeting with MS before the beginning of the round and generally cooperative and constructive atmosphere with PRES, although there were no issues of MS competence in the agenda.

1. International Cooperation

US are still looking at this chapter. They want it to be concrete and ambitious. They will probably come back with proposals.

Several parties (US, SGP, NZ) repeated (like in all previous rounds) their preference for a limited scope. Surprisingly Morocco supported the limited scope option, although they are usually GI supporters [on the margins they explained that their problem is with the inclusion of patents/pharmaceuticals, due to NGO and public opinion pressure]. EU, supported by CH, stressed need for a scope including all rights covered by TRIPs. JPN (in an effort of neutrality) called attention to article 69 TRIPs, on enforcement cooperation, which covers all IP rights.

AUS not favourable to our proposal to pay particular attention to "health and safety" infringements.

US proposed new language alternative to EU's article 3.4, slightly broader but maybe acceptable. These US changes were not available in advance.

MOR distributed a paper on technical assistance. We will react later.

2. Enforcement Practices

US made substantial last-minute comments on this chapter that need additional consultation (management of risk, transparency, etc.)

MEX, CH, MOR, AUS supported EU concerns regarding disclosure of customs applications. Several parties also joined our concerns on the publication of judicial decisions. We stressed this is sensitive to several MS.

US asked how we inform public that IP rights exist and that they are being protected at the border?

Curiosity around EU proposal for "environmental concerns" when dealing with the destruction of infringing goods. No definitive views but well received.

3. Institutional arrangements

Discussion on how realistic is it to expect joining ACTA to pre-existing institutions. EU proposals seriously considered by US and others and our efforts to develop this chapter (periodic evaluation, task-force observer status) were appreciated.

There were questions to the EU about the role and functioning of the proposed "task-force". EU replied that the purpose was not to make ACTA a simple legal treaty, but to give it instead some responsibility in the monitoring of implementation and enforcement tasks for the future. This could be achieved by an ad hoc task-force of experts appointed by the ACTA Council.

4. Final Provisions

Discussions on the formulation "Intergovernmental Organisation" and on how ACTA should foresee the participation of the EU. Two possibilities: either include language on accession by intergovernmental organisations or mention that ACTA is open to WTO members. EU can accept any of the two.

On languages, most parts seem to accept "English" as a preferential language. CAN pushes for WTO languages (EN, FRA, ES). However, the moment there are proposals to expand, everybody wants their language listed. EU remained silent [in our written comments we proposed "English only"].

5. Accessions

a) Accession to on-going negotiations

US, MEX, CH, JPN, EU, AUS expressed preference for concluding fast with the present membership ("train has left the station"). EU stated additionally that countries that requested accession so far would create difficulties. Possible exception for UAE, Jordan and Uruguay. Morocco expressed preference for having more DCs on board. General agreement for a final attempt with these countries.

b) Accession once treaty is concluded

US, JPN preliminary comments are in favour of WTO compliance as preferential criterion (not WIPO).

6. Transparency

US proposed that transparency paper be updated at next round to include internet chapter and then be released. On disclosure of negotiating texts, they are not yet ready to release them but are still considering that option "further along the way". US proposed making the agendas public.

During the meeting, a relatively detailed report of what was being discussed appeared on *Inside US Trade*. US appeared embarrassed, since they suspect the leak came from a Congressional staffer.

CH in favour of disclosure when text is consolidated. AUS, NZ, CAN in favour of rapid disclosure.

JPN, MOR and KOR not in favour of disclosing negotiating documents before the end of negotiations.

EU supports transparency efforts but has no final decision regarding release of negotiating documents [internal consultations on-going to ensure consistency with requests for access to documents in FTA negotiations].

7. Next Steps

Next round in Korea on 4, 5 and 6 November. Following round could be in the week 11-15 January, in Mexico (possibly Guadalajara).

US proposed agenda for Korea: Internet, criminal, civil and transparency, but not border measures.

Internet text should be released by US in mid to end September. Updates of other negotiating documents to be released by JPN and CAN as well.

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Progress on International Cooperation and Enforcement Practices, but US presented some comments very late and will still come back with more, therefore chapters not yet closed. EU detailed proposals on these two chapters well received.

Progress on the more bureaucratic sections of the chapter on Institutional Structure, but general scepticism about real possibilities of integrating ACTA in an existing multilateral institution (WTO, WIPO or even OECD), at least on the short term.

On Accession of new countries, Parties agreed that priority should go to the speedy conclusion of ACTA and new Members should only enter once the agreement is concluded (tentatively the first half of 2010).

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CH in favour of disclosure when text is consolidated. AUS, NZ, CAN in favour of rapid disclosure.

JPN, MOR and KOR not in favour of disclosing negotiating documents before the last stages of the negotiations. Their concern appears to be with the creation of a precedent for their FTA negotiations.

EU supports transparency efforts but has no final decision regarding release of negotiating documents [internal consultations on-going].

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US proposed agenda for Korea: Internet, criminal, civil and transparency, but not border measures.

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