

ACTA – Report of the 7th Round of negotiations Guadalajara, 26-29 January 2010

This is to report on the seventh round of ACTA negotiations that took place on 26-29 January 2010.

Summary

Participants: Australia, Canada, the European Union (COM+PRES+7 MS), Japan, Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland, and the United States.

COM delegation was led by Trade () and included Markt (), Info () and Taxud (). **Excellent atmosphere and cooperation among the COM services**, with valuable contributions on their respective chapters.

PRES represented by Spanish PermRep, Ministry of Justice and Customs services. 7 other MS attended (UK, FI, SW, FR, DE, IT, CZ). **Also very good cooperation with PRES.**

Issues discussed:

1. Civil enforcement
2. Border (customs) enforcement
3. Enforcement in the Digital Environment (hereinafter referred to as "Internet");
4. Transparency

Long meeting with detailed technical discussions, which allowed progress, but parties not yet ready for major concessions. Due to lack of time, internet discussions could not be concluded. May be necessary to envisage inter-session work with **US and JPN** to try to address delicate and complex issues of scope (covering all IP rights or not). If this issue is addressed **(a big "if") among the big 3**, then there would be momentum to conclude the agreement within a few months.

1. The **civil enforcement chapter** was discussed very thoroughly. It was possible to agree additional language, but when entering into the detail of the different mechanisms (provisional measures, injunctions, calculation of damages) progress became slow due to the different technical concepts of each legal system. Major remaining obstacles are scope (EU, **CH** offensive) and pre-established/punitive damages (**US offensive**).
2. The **customs chapter** was discussed in detail for the first time in more than one year. Good progress on items like exemptions for personal luggage (a sensitive issue in the public opinion). EU proposing a more organised and logical structure

of the chapter, not always well understood by others. **Main difficulties** are scope (EU, CH offensive) and coverage of transit and export (CAN, AUS, NZ, SGP defensive).

3. The internet chapter was discussed for the first time on the basis of comments provided by most parties to US proposal. The second half of the text (technological protection measures) was not discussed due to lack of time. Discussions still focus on clarification of different technical concepts, therefore, there was not much progress in terms of common text. US and EU agreed to make presentations of their own systems at the next round, to clarify issues. **Major differences** are on scope (EU, CH and JPN offensive) and concrete requirements for ISPs to benefit from liability safe-harbours, such as disabling access and notice & takedown (US offensive).
4. Some progress on transparency, where parties agreed to update and improve the Joint Summary issued a few months ago in order to include the issues discussed in the last two rounds and to add a rebuttal of the main unjustified rumours circulating about ACTA (control of laptops, iPods at the border; compulsory "three-strike rule" for internet infringers, etc.). However, there is no agreement yet on the release of negotiating texts, since US decided not to ask for it (they considered it after the leaks of last year) and KOR and SGP oppose it. NZ offered to organise a meeting of stakeholders during the next round.

There were two coordination meetings with MS, with UK and SW supporting more transparency and asking COM for a proactive role. COM noted that it was favourable to more transparency (more stakeholders' meetings, etc.) but regarding the release of negotiating documents it had a clear line after discussion at the TPC, which was to "*not oppose the release of documents if there was a consensus in that sense*".

Next Steps

Next (8th) round in New Zealand on 12-16 April. Parties agreed tentatively to a 5 day round, covering a detailed discussion of **internet, civil, customs and penal** measures.

The subsequent (9th) round should take place in Geneva, possibly on the week of 7 June, before the TRIPs Council.

Parties remain committed to **conclude ACTA in 2010**.

A revised version of the consolidated negotiating text will be circulated within days by the US. Parties should comments by **12 March**. CAN and CH to circulate revised draft of the Joint Summary in two weeks, for comments.

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The rotating Presidency was represented by Spanish PermRep, Ministry of Justice and Customs services. 7 other MS attended (UK, FI, SW, FR, DE, IT, CZ). Very good cooperation with the Presidency.

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1. Civil enforcement
2. Border (customs) enforcement
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