

Greens/EFA calls for ACTA transparency

Reason for the call

The state of play in the ACTA negotiations require an immediate political response since no texts have been made publicly available from the last round.

Background

The Anti-Counterfeiting Trade Agreement is a plurilateral agreement aimed at establishing effective enforcement of intellectual property rights. The 9th round of negotiations on the proposed agreement was held last week from June 28 - July 1, 2010, in Lucerne, Switzerland. Participants in the negotiations included Australia, Canada, Japan, Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland and USA. The EU was represented by the Commission and the Presidency.

The agreement to date includes Initial Provisions, General Obligations, Civil Enforcement, Border Measures, Criminal Enforcement, Enforcement Measures in the Digital Environment, International Cooperation and Institutional Arrangements[1]. The text of the 9th round has not yet been published. According to a news story[2], only one delegation resisted the public release of the draft ACTA text. Previously, the draft consolidated text has been released after the 8th round negotiations in Wellington, New Zealand albeit without country positions.

Concerns

The text of the 8th round was published in April thanks in large part to the grand majority vote on the Common Resolution of 10 March 2010 initiated by the Greens/EFA and based on our draft text. Despite claims by negotiators to the contrary, a technical analysis of the text by a broad international community of experts, academics and civil society, as espoused in the Washington Communique[3], concluded that:

- ACTA will interfere with citizens' fundamental rights and liberties
- ACTA is not consistent with the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)
- ACTA will increase border searches or interfere with cross-border transit of legitimate generic medicines
- ACTA strongly encourages "graduated response" disconnections of people from the internet

The Communique has been signed by eleven (11) Greens/EFA ACTA Working Group MEPs and also by MEP Arif in his capacity as spokesperson for the S&D members of the INTA Committee. It is likely this critique is still valid as the June 28 briefing by ACTA negotiators did little to mitigate the concerns of civil society and showed few signs of common understanding[4] other than sharing that there was a consensus to exclude patents from border measures. Further, China and India raised serious concerns[5] at the TRIPS Council in June, consistent with the analysis of the Washington Communique. India has threatened to organise a group of developing countries against ACTA and countries such as China, Pakistan and Brazil spoke out publicly at a June 28 event in Geneva organised by KEI and IQsensato[6]. At the same meeting, China also presented its proposal for a WTO Decision on the "Relationship between the TRIPS Agreement and Intellectual Property Provisions of bilateral, plurilateral Trade Agreements." WIPO Director General, Francis Gurry commented on the need for a

multilateral approach to solving problems of international scope, especially in cases where the most vulnerable countries are affected[7].

Greens/EFA therefore demand the Commission to...

- suspend further talks until an understanding on transparency is reached whereby all texts emerging from negotiations will be automatically shared with the public, recognising that negotiating countries are working towards finalising the agreement expeditiously
- hold a hearing specifically to address the concerns of developing countries regarding ACTA and the undermining of a balanced IP enforcement regime
- conduct an analysis the possible implications for democracy and the rule of law in third countries of the proposals on ISP liability
- conduct an analysis on ACTA's relationship to TRIPS and its impact on non-party countries and the international IP and enforcement norms
- make a study on the impact of ACTA on developing countries and technology transfer
- discontinue the alienation of experts, academia and civil society from the ACTA process and provide opportunities to participate through public comment processes, regular briefings and sharing of texts

...and invites the Commission to find solutions to the problems ACTA will purportedly solve by...

- returning to and investing in multilateralism to reach an international solution to problems of counterfeiting that have a particularly broad geographic scope
- negotiating directly with the countries where counterfeit goods originate
- inviting academia and civil society to all negotiation rounds and hold meetings on record (e.g. briefings or through accreditation) engaging in regular technical consultations

...and in seeking the Parliament's support:

- limit ACTA to counterfeit, remove patents from ACTA
- meet the conditions lined out in the Common Resolution
- address the critique of the Washington Communique

Adopted in Strasbourg 20100707

References:

- [1] "Agreed Press Release", 20100702 <http://trade.ec.europa.eu/doclib/html/146292.htm>
- [2] "ACTA Negotiators Vow To Mesh With National-Level Rights; Withhold New Text," IP-Watch, 20100702, <http://www.ip-watch.org/weblog/2010/07/02/acta-negotiators-vow-to-mesh-with-national-level-rights-withhold-new-text/>
- [3] Urgent ACTA Communique, 20100623 <http://www.wcl.american.edu/pijip/go/acta-communique>
- [4] Notes from Meeting with ACTA Negotiators, 20100628, <http://www.wcl.american.edu/pijip/go/blog-post/notes-from-meeting-with-acta-negotiators>
- [5] India's intervention to the WTO TRIPS Council, 20100610, <http://keionline.org/node/864>
- [6] Geneva workshop on ACTA, 20100628, <http://keionline.org/node/858>
- [7] "ACTA A Sign Of Weakness In Multilateral System, WIPO Head Says," IP-Watch, 20100626, <http://www.ip-watch.org/weblog/2010/06/30/acta-a-sign-of-weakness-in-multilateral-system-wipo-head-says/>