

ACTA – EU Stakeholders’ Consultation Meeting. 21 May 2009. Brussels

About 150 EU ‘stakeholders’ attended the meeting in Brussels on 21 May following the publication by the EU and other negotiating parties of a “Summary of Key elements under discussion” - clearly designed to assuage criticisms of the ACTA process as being ‘secretive’. The meeting was also held to manifest some momentum to the process which has undeniably been stalled by the lack of any real progress on key issues and the postponement of recent meetings due to ‘the change of administration in Washington’. Marques was represented by Anti-Counterfeiting and Parallel Trade Team member John Anderson who compiled this short report.

The EC podium was led by Luc Devigne of DG Trade supported by Pedro Velasco Martins and Alexandra Iliopoulou also of DG Trade along with Benoit Lory of DG Markt and Christian Tournier of DG Justice, Liberty and Security. The meeting took the form of a brief introduction by Mr Devigne and then a run through the “Summary of Key Elements” with questions after each section.

See http://ec.europa.eu/trade/issues/sectoral/intell_property/acta_en.htm

The introduction and questions highlighted the key challenges for the ACTA process. Firstly the lack of unity within the EU for an agreement on criminal sanctions and secondly the lack of a balanced base for the whole process: that is to say that even if the EU can agree a common position, the final Agreement will still only be among ‘the converted’ (albeit representing a substantial portion of world trade). I am not sure of the value of a potential ACTA without China, India, Brazil or Russia for example. My view is that IPR protection and enforcement in the negotiating countries (apart from, ironically, one or two EU member states!) is pretty much as effective as it can be in current circumstances. Mr Devigne confirmed that Jordan and the UAE had withdrawn from negotiations before the substantive talks got under way

The EC also has an issue about the inclusion of ALL IPRs (but with exclusions for criminal sanctions) and with enforcement on the internet. As with criminal sanctions, the EC has no EU legal framework within which to discuss the latter.

To answer a question about the timeline for the negotiations, the EC were vague. Mr Devigne said that that “7 out of 8 G8 governments had indicated that the negotiations should be completed by the end of 2008”. Mr Devigne added that getting the content right was more important than the timeline. (And since there has been very little progress on content; it could be argued that the whole process is stalled rather ominously in no mans land). There was a fair amount of nugatory discussion about the legal base for the Treaty and some specific semantics for example on damages and liability – none of which is really relevant until the strategic issues (criminal sanctions; the internet and application to an eventual wider base have been agreed). Some industry representatives repeated the calls for Free Trade Zones, shippers; export as well as import and goods in transit to be addressed and the answers were suitably positive but a little vague. Mr Devigne was also slightly enigmatic answering questions on what must be regarded as rhetorical issues such as ‘Why is ACTA plurilateral rather than multilateral under e.g the WTO?’ Answer: “TRIPS is a minimum standard whereas ACTA will build enforcement standards.....”

However, the main questions remained unanswered; there was no indication of a resolution of the internal EU positions on criminal sanctions and the internet and, more significantly, no indication of when the negotiations will be resumed – and thus how the treaty base would eventually be widened. The postponed January meeting in Morocco rescheduled for ‘May’ has been postponed again. The reason given: that the USA (Obama administration) are still not ready.

There is a good reportage on the meeting at:

<http://www.ip-watch.org/weblog/2009/04/22/european-commission-on-acta-trips-is-floor-not-ceiling/>