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Subject: 9th round of Anti-Counterfeiting Trade Agreement (ACTA) Negotiations,
Lucerne, Switzerland 28 June -1 July 2010
-Border measures

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

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NOTE

From : General Secretariat

To : Working Party on Customs Union (Customs Legislation and Policy)

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WTO 212 RESTREINT UE

Subject : 9th round of Anti-Counterfeiting Trade Agreement (ACTA) Negotiations,
Lucerne, Switzerland 28 June -1 July 2010
- Border measures

Delegations will find attached a report on the above meeting, transmitted by the Commission services.

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ANNEX

Subject: Anti-Counterfeiting Trade Agreement Negotiations
9th round, Lucerne, Switzerland, 28 June -1 July 2010

Introduction

The ninth round of ACTA (Anti-Counterfeiting Trade Agreement) negotiations took place in Lucerne, Switzerland from 28 June-1 July 2010. In addition to the Commission and some Member States (including Spain and Belgium), Switzerland, the United States, Japan, Canada, Australia, Mexico, Singapore, Korea, Morocco, and New Zealand were all represented at the round.

The proposed agenda provided for discussions on the section on border measures in plenary and an additional breakout session was added during the course of the round to look at certain points.

General

Good progress had been made on the border measures in the previous round and there was some expectation that this section might be concluded here. In the event, progress was minimal. The overall discussions on the scope of ACTA, as well as on a fundamental part of the customs section (the situations where customs would be expected to intervene to enforce IPR), were totally unsatisfactory as far as the EU was concerned. In plenary, several parties insisted that ACTA should only cover trademark and copyright infringements.

Following strong pressure from the United States, the parties agreed tentatively to hold the next round in Washington at the end of July and a further, possibly final round in Japan, mid-September.

Detail

The numbering reflects the version of the text following the previous round in Wellington.

Article 2.X: Scope of the border measures

This article, initially proposed by the EU was not discussed, though in plenary, the overall scope of ACTA was debated and the EU was isolated in its efforts to cover a wide range of IPR. Several delegates insisted ACTA should only cover trademarks and copyrights.

With regard to the situations where customs should control for possible IPR infringements, the issue was raised in the breakout session in the context of the articles dealing with applications for action and ex-officio. Several parties reserved their positions about accepting mandatory provisions concerning customs control at export. The compromise proposal put forward was that customs should control imports and could control exports and in-transit situations. The Commission delegate did not support this proposal, though pointed out that there were several other situations not covered by this proposal, where goods were under customs supervision (such as free zones.).

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Taking into account the fact that some delegates do not control for IPR purposes other than at import, that one party does not provide for ex-officio action and that currently, a significant number of parties want to restrict ACTA to the enforcement of trademarks and copyrights, it is difficult to see ACTA strengthening customs enforcement of IPR at all.

Article 2.X: De Minimis Provision

Despite lengthy discussions and strong interventions by the EU in plenary and in the breakout session, there was no agreement to delete the reference to small consignments from this article.

Article 2.X: Provision of information from the right holder

There was no discussion as this article was considered to be acceptable to all parties.

Article 2.6: Application by right holder

In addition to inconclusive discussions about the scope of the border measures, there was some discussion about the time period for applications, due to one party's system, which provides for applications to cover single shipments. Apart from the unsatisfactory positions of several parties on the scope, the provisions concerning the applications are not problematic.

Article: 2.7: Ex-Officio Action

As with the previous article, the bracketed text mainly concerns references to the scope.

Article: 2.X:

This article was tabled at the last round and concerns cooperation between competent authorities where suspect shipments are found whilst in transit. The inclusion of such a provision was questioned by one party, suggesting that it would be difficult to accept the inclusion of such a provision in an agreement, to which other parties might sign up to at a later date. The concept appeared to touch on mutual administrative arrangements, which required dedicated provisions not least with regard to requirements on data protection.

Despite little support, it was agreed that the article might be discussed further in the context of international cooperation.

Article 2.9: Security or Equivalent Assurance

Consensus was reached on this article previously, with only minor exceptions, again connected to the outstanding issue of scope. Some further minor cleaning was done to the text (addition of a phrase at the request of Singapore relating to judicial orders).

Article 2.10: Determination as to Infringement

There was no discussion as this article was considered to be acceptable to all parties.

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Article 2.11: Remedies

Some minor changes were made and agreement was reached on this article, which is in line with EU legislation (enforcement Directive).

Article 2.12: Fees

The footnote was removed from the title and the article was considered to be acceptable to all parties.

Article 2.13: Disclosure of information

Consensus was reached at the previous round on this article, subject to scrutiny reservations from certain parties. Though the text appeared to be acceptable to all parties, some reservations remained.

Article 2.14: Liability of Competent Authorities

The EU delegate proposed to remove these provisions and there was agreement from all other parties to delete the article. However, later on in the breakout session, one party indicated that it would introduce another proposal on the same issue. A copy (almost identical to the EU's initial proposal) was shown to the EU delegate in the margins, though it was not clear whether this would be presented formally. For now at least, the article has been removed.

Conclusion

The text of the section concerning border measures is shaping up in an acceptable manner. However, the scope (the types of IPR and the situations where customs could intervene) covers the most important part of this section and here key EU objectives will not be met unless many of the other parties shift their positions significantly.

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