

Anti Counterfeiting Trade Agreement

Content of ACTA

There's only been one round of negotiations so there's little text as yet. It appears that there *is* text relating to the border measures provisions, but it's not finalised. In response to calls to release more information about the content, DFAT said that because of the stage of the negotiations, they were not at liberty to give out any more information. They don't agree that negotiations are occurring in a secretive manner - and say it's just that the negotiations are confidential at this stage. As a result of this, they weren't able to provide us with much information as they said this would "flag" their negotiation positions. What DFAT did say was:

- There's no text relating to ISPs or online infringement yet. However that doesn't necessarily mean these issues are not on the table
- They said that the only area where patents have been discussed is under border measures. That is, whether or not patents will be subject to border measures.
- Speaking about the wikileaks document, they confirmed this was an early discussion paper circulated by proponents of the ACTA.

Australia's position on ACTA

DFAT was unwilling to provide much information as they said this would flag their position in the negotiations. What they did say:

- They are supportive of an 'enhanced international standard of enforcement' that would probably not be much higher than the current standard in Australia
- They are supportive of an agreement that would lower piracy and counterfeiting and so see it as important that countries with lower levels of enforcement will come on board
- They are supportive of the ACTA providing a higher benchmark for IP enforcement but they would not be supportive of provisions that targeted individuals and impinged on their privacy.
- DFAT supports provisions targeted at actual "commercial scale" infringements and would not be supportive of provisions that altered the definition of "commercial scale" so that it could encompass lesser infringements (eg only private commercial gain).
- They do not support increased border control provisions as are seen in the wikileaks document, but they didn't seem opposed to an increase per se (ie they might support more minor increases).
- They said they could not reveal whether they would support extension of powers to seize and destroy equipment since this issue was still being negotiated.
- They have not committed to signing the agreement. They continue to negotiate with the option to sign on or not, depending on the final text.

When will we see text?

They don't know. As negotiations are in their early stage it might not be very soon. They noted Japan had said they wanted it tabled in at the G8 in July (which won't be happening) and the US Trade Representative has said they want it finalised by December 2008. DFAT couldn't say when we might see text though.

Consultation

They will engage in further formal consultation through the Joint Standing Committee on Treaties (JSCOT) but are currently also open to submissions on the merits (or otherwise) of the ACTA, which they will take into account in their negotiations. There will also be another consultative meeting in mid July.

Comments

Following the meeting, it's still not clear whether ACTA will merely entrench existing TRIPS-Plus standards in Australia - or whether it will end up a TRIPS-Double-Plus agreement, which will have higher standards.

The other thing that came out of this meeting is that we won't be getting much concrete information about the context of the ACTA from DFAT anytime soon. However, DFAT did say that if they receive submissions now, they will take the submissions into account as they negotiate the ACTA. I think it's important for the ADA to put in a submission that addresses the possible/probable areas of concern in this treaty.

As came up at the meeting, it's somewhat difficult to make submissions about the ACTA without knowing the much about the proposed content. However, we can probably draw on the wikileaks document, and past US Free Trade Agreements for ideas about possible content.

Other important developments raised in the meeting

- The Chile-Australia Free Trade Agreement has a TRIPS-Plus chapter on IP (but less prescriptive than AUSFTA).
- Submissions to JSCOT due mid-July.
- Australia has made submissions in the WTO dispute between the US and China over IP enforcement. This is important, as it will give us an idea of the content of the base obligations on TRIPS on IP enforcement.
- The ASEAN agreement will have a chapter on IP - which will be "modestly" above the TRIPS norms.
- Various other free trade agreements contemplated with a variety of other Southeast Asian countries.