

Anti-Counterfeiting Trade Agreement (ACTA)
Non-Paper on institutional issues under the Agreement

Introduction

During the informal meeting of the Anti-Counterfeiting Trade Agreement (hereafter referred to as ACTA, or “the Agreement”), in Berne, Switzerland, on March 11-12, 2008, negotiating partners discussed a number of institutional issues to be eventually considered under Chapter Five of the Agreement (“Institutional Arrangements”), such as, *inter alia*, monitoring and evaluation, dispute settlement, and accession, as well as the various options to address them. In giving consideration to how these issues could be addressed, Canada offered to prepare a non-paper outlining the various options that negotiating partners might like to consider.

It is noted that the various issues to be addressed under the Agreement will require some level of administrative commitment from each of the Parties, and have been enumerated in view of Parties’ existing IP and enforcement-related requirements, arising from both treaty obligations and from domestic law, with a view to reducing the overall administrative burden on each Party. As such, it is noted that this list is non-exhaustive, and in that light, Canada welcomes the input of other ACTA partners to develop a more comprehensive review of the various options available under the Agreement.

Contact Points for Parties

Objective

To facilitate communications between Parties on ACTA matters.

It is recommended that each Party designate contact point(s), which will identify the office or official responsible for the matter and assist, as necessary, in facilitating communications with other Parties.

ACTA Oversight Council

Objective

To provide a forum for the administration of various governance issues under the Agreement. Functions of the Council could include:

- (a) supervising ACTA implementation (and also considering amendments, interpretations, and modifications);
- (b) establishing and delegating responsibilities to ad hoc working groups;

- (c) assisting with resolving any disputes that may arise regarding the interpretation of application of ACTA;
- (d) ensuring that ACTA avoids duplication of other international efforts regarding IP enforcement;
- (e) seeking input from non-governmental persons or groups, particularly with respect to best practices in the field of intellectual property enforcement;
- (f) endorsing best practice guidelines for implementing ACTA;
- (g) supporting the efforts of international organizations active in the field of intellectual property enforcement;
- (h) assisting non-Party governments with developing assessments of the benefits of accession to ACTA; and
- (i) adopting its own rules of procedure.

During formal ACTA negotiations, negotiating partners might like to consider the following items relating to the establishment of the Council:

Composition:

It is recommended that the Council be comprised of senior-level officials from each of the Parties to the Agreement. This would presumably include current negotiating partners (provided that they become Parties when the Agreement enters into force), and all future Parties acceding to the Agreement.

Negotiating partners may also wish to consider how best to coordinate issues among a larger Council. It is noted that the number of Parties may increase significantly, as accession is granted to additional countries. As such, another option might be to appoint a smaller group of Parties to the Council, on either a permanent or rotating basis.

Frequency of meetings:

- It is proposed that the Council meet in regular session every year, with sessions to be held at a mutually-agreed location. Special sessions could also be a possibility.

Location of meetings:

Negotiating partners may wish to consider where meetings of the Council of Parties will be held. For example, will meetings be hosted on a rotating basis by Parties to the Agreement, or will these be hosted permanently in one location?

Chair:

It is proposed that the Parties annually select an individual from one of the Parties to the Agreement to serve as Chair of the Council for one year.

Negotiating partners may also like to consider the various rules of procedure for the Chair of the Council, such as whether the Chair will be selected on a rotating basis, whether the order in which Parties serve as Chair will be pre-determined or subject to the vote of the Council, as well as whether the Chair will be eligible to serve for more than one term successively.

Vice-Chairs:

It is proposed that the Parties annually select two individuals from Parties to the Agreement to serve as Vice-Chairs of the Council for one year, to assist in the functions of the Chair of the Council, and to serve in this capacity in the Chair's absence.

Negotiating partners may wish to consider whether individuals from the same country as the current Chair will be eligible for selection as Vice-Chair.

Similar to the considerations regarding the Chair, negotiating partners may also like to consider whether Vice-Chairs will be selected on a rotating basis, whether the order in which Parties serve as Vice-Chair will be pre-determined or subject to the vote of the Committee, as well as whether Vice-Chair will be eligible to serve for more than one term successively.

Secretariat:

It is proposed that, similar to the G8, the country that the Chair is selected from serve the various functions of the Secretariat on an annual basis, such as arranging and hosting meetings, as well as other matters related to the ongoing administration of the Agreement.

Decision-making:

It is proposed that decisions of the Council and committees, working groups, and other bodies established under ACTA would be taken by consensus of the Parties, except as the Parties may otherwise agree. Negotiating partners might also consider how to address instances where a decision cannot be arrived at by consensus, for example, by way of majority vote.

Observers:

Negotiating partners might also consider the possibility of admitting civil society and relevant stakeholders to meetings of the Council as accredited observers, or

alternatively, whether the involvement of these actors should instead be carried out through domestic channels. Another option could be the organization of public events to exchange views on the various issues addressed under the Agreement, similar in nature to the Public Symposiums held by the WTO.

Monitoring and Evaluation

Objective

To regularly review and evaluation of implementation of each Party's obligations under the Agreement, and to ensure the transparency of each Party's national laws and regulations through regular monitoring.

Negotiating partners may wish to consider the following items related to monitoring and evaluation:

Review by the Committee of Parties:

It is proposed that the Council meet at least once every calendar year, for the purposes of the continuous review and evaluation of Parties' implementation of obligations under the Agreement, as well as to evaluate Parties' efforts to meet best practices in criminal enforcement, civil enforcement, and border measures.

Order of Monitoring and Evaluation:

Negotiating parties may wish to consider the order in which Parties to the Agreement will be subject to review. For example, Parties may be reviewed on a rotating, pre-determined basis, or could be subject to *ad hoc* review upon request by a Party to the Agreement.

Frequency of Monitoring and Evaluation:

Negotiating partners may wish to consider how often Parties to the Agreement will be subject monitoring and evaluation by the Council.

Level of Development:

Partners may also wish to consider whether Parties' respective level of development will influence how often, and when, they will be subject to review. For example, depending on special and differential treatment provisions under the Agreement, developing and least developed countries may be granted a longer period of time between reviews.

Dispute Settlement

Objective

To resolve implementation issues through oversight by the Committee of Parties and/or other cooperative mechanisms.

Canada is considering this issue, and will propose options in due course. In the meantime, Canada would welcome proposals and options for dispute settlement procedures from negotiating partners, to facilitate discussion on this issue at future negotiating sessions.