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China, India To Raise Concerns At WTO About "TRIPS-Plus" Measures, ACTA

By William New on 3 June 2010 @ 10:18 pm

China and India, two increasingly potent players on the global economic stage, next week plan to voice concerns at the World Trade Organization about efforts by developed countries to push poorer trading partners beyond their WTO commitments on trade and intellectual property rights, so-called TRIPS-plus measures.

The issue has been placed on the agenda of the 8-9 June Council on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

"The idea is to raise concerns about all the TRIPS-plus [activity] around us," said a developing country official familiar with the issue. This includes bilateral and regional free trade agreements and "its culmination in the form of ACTA," the Anti-Counterfeiting Trade Agreement being negotiated among a group of mostly developed WTO members (led by the United States and the European Union, which are actively negotiating bilaterals).

The issue is coming up in part now that non-negotiating governments have seen the draft text of ACTA since its release in April under public interest pressure. "Now we have a basis for a systematic analysis," the official said.

Key areas of concern to be raised include: a lowering of the threshold for criminal cases, damages, transit issues, and cross-referencing in the European Union, the official said. The latter refers to the recently completed EU-CARIFORUM agreement that the official said will make it necessary for the Caribbean countries to effectively implement ACTA without having been involved in the ACTA negotiation. [*Update*: this refers to Article 139(1) of the EU-CARIFORUM Economic Partnership Agreement, [available here](#) ^[1].]

The TRIPS Council is a venue for discussing any issue related to the 1994 WTO TRIPS Agreement, which set out terms for respecting IP rights but also contains flexibility for countries to be able to override it if they deem it in their national interest.

To China and India, the official said, TRIPS-plus issues "constrain flexibilities and undermine the balance of rights in the TRIPS Agreement."

The April 2010 public version of ACTA is [available here](#) ^[2] [pdf].

Countries negotiating ACTA include: Australia, Canada, the European Union and its 27 member states, Japan, Mexico, Morocco, New Zealand, Singapore, South Korea, and Switzerland.

India and Brazil recently filed a dispute settlement case at the WTO against the EU for customs measures that have led to stoppages of legitimate generic medicines passing through from India to developing countries out of concern that the generics infringed IP rights of European brand-name drugmakers ([IPW, WTO/TRIPS, 12 May 2010](#) ^[3]).

China this week came under fire in its biennial WTO trade policy review from the US and EU for lax IP rights enforcement and possibly discriminatory encouragement for domestic innovation ([IPW, WTO/TRIPS, 3 June 2010](#) ^[4]).

Next week's TRIPS Council meeting also includes a usual list of issues related to the longstanding Doha Round trade negotiations at the WTO, and another new issue, a wish by some developing countries to hold a workshop to examine why a 2003 TRIPS amendment intended to help poor countries obtain affordable medicines more easily has almost never been used ([IPW, WTO/TRIPS, 31 May 2010](#) ^[5]).

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[3] *IPW*, WTO/TRIPS, 12 May 2010: <http://www.ip-watch.org/weblog/2010/05/12/counterfeit-medicines-in-wto-dispute-process-heating-up-at-who/>

[4] *IPW*, WTO/TRIPS, 3 June 2010: <http://www.ip-watch.org/weblog/2010/06/03/as-wto-reviews-china-eu-us-criticise-its-policy-on-innovation-ip-rights/>

[5] *IPW*, WTO/TRIPS, 31 May 2010: <http://www.ip-watch.org/weblog/2010/05/31/drug-access-waiver-debate-looms-for-june-trips-council-meeting/>

[6] WTO TRIPS Council Considers Workshop On Public Health Amendment: <http://www.ip-watch.org/weblog/2010/03/02/wto-trips-council-considers-workshop-on-public-health-amendment/>

[7] China Tells WTO: Obligations Fulfilled On IP Dispute Case: <http://www.ip-watch.org/weblog/2010/03/22/china-tells-wto-obligations-fulfilled-on-ip-dispute-case/>