

DG Trade public hearing on the “Protection and enforcement of IPR in third countries

Today, DG Trade held a public hearing on the “Protection and enforcement of IPR in third countries” from 9.00-13.30, at the Albert Borschette Conference Centre in Brussels

Health Action International (HAI) Europe attended the hearing and was given the opportunity to present.

The hearing was a welcome, but rare, opportunity to engage directly with the Commission on its external trade policies. It was chaired by Anders C. Jessen, Head of Unit for Public Procurement and Intellectual Property at DG Trade, who was appointed last October. The opening tone of the meeting was one of willingness to engage, which was welcomed, in particular by the civil society groups present. There was sufficient time devoted to discussion, and an opportunity for six stakeholder presentations at the start of the meeting, of which HAI Europe was the sole civil society voice.

HAI Europe’s Terri Beswick gave a presentation which emphasized the following points:

Urging the EU:

- to use caution in exporting their acquis on enforcement to third countries
 - not to require other countries to adhere to ACTA through for example bilateral trade agreements

In response to the presentation there was more openness from DG Trade in acknowledging the possibility of negative development impacts, but without assuming responsibility for determining those impact as part of their mandate.

The presentation also noted:

- the absence of reliable data on IP infringements

A number of presentations from industry representatives continued to conflate counterfeiting and quality and safety issues. HAI Europe made further interventions reiterating the need for a separation of these issues, both in discussions around IP enforcement, and in data that is used to justify enforcement initiatives in order to present a more balanced picture of the impact of infringements.

- the costs and negative impact on health of additional IP enforcement measures

Technical assistance programmes were highlighted by the Commission as important tools of enforcement. But HAI Europe again intervened to outline the problems with this approach. Namely, that the use of development funds to 'train' IP enforcement agents was an inappropriate use of funds that are ultimately diverting public resources of third countries and EU public aid funds towards protecting private rights of European industries. We also noted that the negative impact on competition from overreaching IP enforcement could have the perverse effect of requiring increased EU development aid to cover the higher costs of medicines from monopoly medicines markets.

- the need for impact studies on the costs and welfare implications of IP Enforcement, urging the Commission to engage in impact studies.

The Commission's response to our call for impact studies to measure the welfare implications of IP enforcement was disappointing. They maintained that, as external consultants conduct the Commission's impact studies, it was the responsibility of the consultancies to determine which subjects were worthy of investigation. We strongly believe that the Commission should take on the task of establishing data on the welfare costs associated with its own IP enforcement strategy. The need is even more pressing given the Commission's increasing activity on pushing for new heights of IP enforcement standards.

- the lack of civil society inclusion in the consultation processes around enforcement, urging the Commission to be more inclusive.

The Commission was open to more civil society input and noted the low participation of civil society groups in comparison to industry. However, it is not currently doing enough to ensure that the significant asymmetry of resources that allow commercial actors to dominate in consultation mechanisms is addressed through better outreach to civil society groups that have valid and legitimate contributions to make on trade policy. We believe that a better balance in input to Commission policies is a vital part of securing more balanced EU trade policy, and call on DG Trade to put in place proactive outreach strategies for actors that are underrepresented in consultation processes.

Many of the concerns raised in our presentation were also noted in the ADE report http://trade.ec.europa.eu/doclib/docs/2010/november/tradoc_147053.pdf, and evaluation of the Commission's IP Enforcement Strategy in third countries, which was commissioned by the European Commission itself and published in November 2010. The report takes a critical of the EU Strategy and notes the dilution of goodwill from third countries caused by a dogmatic approach adopted by EU trade staff.