



**COUNCIL OF
THE EUROPEAN UNION**

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

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

¹ Document declassified by the European Commission on 27 July 2012.

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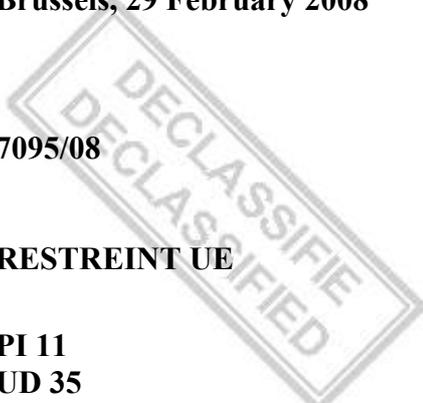
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COVER NOTE

from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 27 February 2008

to: Mr Javier SOLANA, Secretary-General/High Representative

Subject: Recommendation from the Commission to the Council to authorise the
Commission to open negotiations of a plurilateral anti-counterfeiting trade
agreement

Delegations will find attached Commission document SEC(2008) 255 final.

Encl.: SEC(2008) 255 final



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.2.2008
SEC(2008) 255 final

RESTREINT UE

RECOMMENDATION FROM THE COMMISSION TO THE COUNCIL

**to authorise the Commission to open negotiations of a plurilateral
anti-counterfeiting trade agreement**

A. EXPLANATORY MEMORANDUM

1. The protection of intellectual property rights (IPR) is important not only for promoting innovation and creativity, but also for developing employment and improving competitiveness. It should allow the inventor or creator to derive a legitimate profit from his/her invention or creation while maintaining an appropriate balance between protection and access to intellectual property, exclusive rights and competition. It should also allow the widest possible dissemination of works, ideas and new know-how. At the same time, it should not hamper freedom of expression, the free movement of information, or the protection of personal data.
2. However, without effective means of enforcing intellectual property rights, innovation and creativity are discouraged and investment diminished. It is therefore necessary to ensure that the substantive law on intellectual property, which is nowadays largely part of the *acquis communautaire*, is applied and enforced effectively internationally.
3. The proliferation of infringements of intellectual property rights poses an ever-increasing threat to the sustainable development of the world economy. The consequences of such infringements include (1) depriving legitimate businesses and their workers of income; (2) discouraging innovation and creativity; (3) threatening consumer health and safety; (4) providing an easy source of revenue for organized crime; and (5) loss of tax revenue.
4. At international level, all Member States, as well as the Community itself as regards matters within its competence, are bound by the Agreement on Trade-Related Aspects of Intellectual Property (the TRIPS Agreement), approved, as part of the multilateral negotiations of the Uruguay Round, by Council Decision 94/800/EC(3) and concluded in the framework of the World Trade Organisation (WTO).
5. The TRIPs Agreement contains, in particular, provisions on the means of enforcing intellectual property rights, which are minimum common standards applicable at international level and implemented in all Member States.
6. There are also international conventions to which all Member States are parties and which also contain provisions on the means of enforcing intellectual property rights. These include, in particular, the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works, and the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations.
7. Having identified IPR as one of their key competitive assets, there is a growing concern in the European Union, as well as in several other countries, about the increasing misappropriation of the intellectual property of their most competitive industries around the world. This led to a number of initiatives on the multilateral (WTO, G8, Organisation for Economic Co-operation and Development (OECD), World Health Organisation (WHO)), bilateral (Free Trade Agreements with high IPR standards, IPR dialogues, technical assistance) and even unilateral (US 301 Special, EU Priority countries' list) fields. In the last few months, there have been new calls

for a strengthening of the international IPR framework, namely in the framework of the G8 and the OECD.

8. The main proposal for the strengthening of IPR enforcement practices and rules is an initiative presented by the United States of America and Japan for a new Anti-Counterfeiting Trade Agreement (ACTA).
9. ACTA will establish, among nations committed to strong IPR protection, a common standard for IPR enforcement to combat global infringements of intellectual property rights by increasing international cooperation and coordination among enforcement authorities, promoting technical assistance and partnerships with industry, defining the framework of practices that contribute to effective enforcement of IPRs, and strengthening relevant IPR enforcement measures themselves. This last chapter should include provisions on civil, criminal and customs measures, as well as procedural rules. It also includes provisions on dispute settlement. ACTA's enforcement measures will apply, at least to those IP rights covered by Part III (Enforcement of IPR) of the TRIPs Agreement. However, it is not foreseen to include in the scope of ACTA any rules regarding the substantive protection of intellectual property rights.
10. It is important for the European Union to be at the forefront of efforts to improve IPR enforcement and to work with other partners to make them as effective as possible. It would be politically damaging to do otherwise. Joining the ACTA negotiating process will send a strong message of our concern for the key competitiveness tool that is IPR. But, more importantly, it will have positive effects on the situation in the field, resulting from the increased level of cooperation between enforcement authorities and from the harmonised high standards of IPR enforcement.

B. RECOMMENDATION

In the light of the above, the Commission hereby recommends:

- that the Council authorise the Commission to negotiate a plurilateral Anti-Counterfeiting Trade Agreement.
- that the Presidency of the Council of the European Union, on behalf of the Member States, be associated to the negotiations as specified in the attached negotiating directives.
- that the Council appoint a special committee to assist in this task, and;
- that the Council issue the appended negotiating directives.

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ANNEX

DIRECTIVES FOR THE NEGOTIATION BY THE COMMISSION OF A PLURILATERAL ANTI-COUNTERFEITING TRADE AGREEMENT

Vehicle

1. A plurilateral Anti-Counterfeiting Trade Agreement.

Parties

2. In the initial phase, ACTA will be negotiated among a number of interested trading partners in setting out the parameters for an enforcement system that will fight IPR infringements effectively. Preliminary contacts have taken place between the United States of America, Japan, Canada, Switzerland and the European Union.
3. At a second phase, but still before the launch of the negotiations, it is intended to outreach to other developed and developing countries sharing the concerns of the above mentioned partners. ACTA will be negotiated among this enlarged group of countries. Mexico, South Korea, Australia, New Zealand, Uruguay, Morocco and Singapore have participated in preparatory meetings.
4. At a third phase, i.e. once ACTA is concluded, other countries would have the option to join the agreement as part of an emerging consensus in favour of a strong IPR enforcement standard.

Provisions

5. Provisions will be organised into three main categories:
 - 5.1. *International Cooperation*: Cooperation among the parties to the agreement is a key component of the agreement – including sharing of information and cooperation between national law enforcement authorities, capacity building and technical assistance and cooperation with the private sector.
 - 5.2. *Enforcement Practices*: It is necessary to establish enforcement practices that promote strong intellectual property protection in coordination with right holders and trading partners. Such “best practices” would support the respective application of the relevant legal tools by both authorities and right-holders, as outlined by the Legal Framework. Examples: public/private advisory groups; raising of consumer public awareness; fostering of IPR expertise within law enforcement structures; publication information on enforcement procedures and actions; promotion of domestic coordination between enforcement agencies; destruction of IP infringing goods and seizure of implementing materials.
 - 5.3. *Legal Framework*: It is essential to have a strong and modern legal framework so that law enforcement agencies, the judiciary, and private citizens have the most up-to-date tools necessary to effectively bring counterfeiters and pirates to justice. Parties will agree on provisions designed to ensure that authorities and right holders have appropriate tools for strong IPR enforcement, particularly in the following areas:

- Customs enforcement
- Civil and administrative enforcement
- Criminal enforcement
- Specific measures regarding optical disc piracy, Internet distribution and information technology and other means used for the infringement of IPR (including those regarding pharmaceutical products, designs and geographical indications)
- Dispute settlement
- Special measures for developing countries

Structure and organisation of the negotiations

6. The European Commission - on behalf of the European Community and its Member States - will be in charge of the overall negotiations of ACTA. The Commission shall conduct the negotiations in consultation with the Article 133 Committee and other relevant committees, such as the Working Party on Intellectual Property and shall report regularly to these committees on the progress of the negotiations.
7. On matters relating to the determination of:
 - the type and level of criminal penalties to be applied by ACTA parties for infringements of intellectual property rights;
 - dispositions on penal procedural law;
 - dispositions on cooperation between national enforcement authorities extending beyond those foreseen in Community legislation;

the Presidency of the Council of the European Union, on behalf of the Member States, will be fully associated to the negotiation. On these matters, the negotiating documents shall be established through the Article 133 Committee and other relevant committees, such as the Working Party on Intellectual Property.

Start and conclusion of negotiations

8. It is foreseen to start the formal negotiating process, including all the countries that may have decided to join ACTA after the outreach process in February 2008.
9. The European Commission and Member States will not put deadline constraints ahead of their goal to reach an agreement allowing for the effective improvement of the fight against IPR infringements internationally.