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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.

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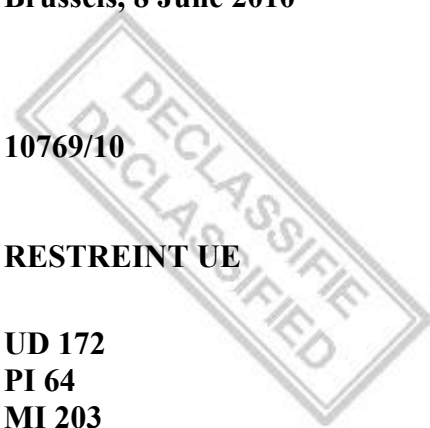
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NOTE

from : General Secretariat
to: Working Party on Customs Union (Customs Legislation and Policy)
on: 15 June 2010

Subject : 9th Round of Anti-Counterfeiting Trade Agreement (ACTA) Negotiations,
Lucerne (Switzerland), 28 June - 1 July 2010
– Border measures

Delegations will find attached a draft coordinated position in view of the above meeting, transmitted by the Commission services.

Note on ACTA (Anti-Counterfeiting Trade Agreement) – Border Measures

Introduction

The 9th round of ACTA negotiations is scheduled to take place in Lucerne from 28 June - 1 July. Chapter 2, Section 2: Border Measures is included on the agenda and following good progress at the round in New Zealand, the outstanding differences between the parties are limited. This note contains a short summary of the different articles contained in the Border Measures, together with the suggested line to take (LTT).

In all cases, the LTT should reflect the underlying EU position on this section, namely that the border measures should reflect the level of enforcement, as well be compatible with the related customs procedures established in Council Regulation 1383/2003 and its implementing provisions. The numbering of the articles reflects the latest version of the text, which emerged from the discussions at the last round.

Article 2.X: Scope of the border measures

Overall agreement on this article remains dependent on the overall scope of the Agreement, with regard to the type of intellectual property right. Some delegations remain intent on restricting the rights to trademarks and copyrights. This article also provides for the situations where customs should control for possible IPR infringements.

LTT (Line to take): The line to take on the scope of the Agreement is dealt with in the Trade Policy Committee. The EU maintains that the overall scope should be broad and that border measures should provide for the possibility to control for a wide variety of IPR.

With regard to the situations where customs should control for possible IPR infringements, Regulation 1383/2003 provides for customs to control goods that are under their supervision (Article 1 of the Regulation refers).

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Article 2.X: *De Minimis* Provision

Consensus was reached to have a separate article providing for a *de minimis* provision and that a provision concerning small quantities of goods of a non-commercial nature contained in travellers' personal luggage should be included. This is in line with current EU legislation. However, several parties also insisted to include a reference to small consignments, as provided for in TRIPS.

LTT: Explain that customs need to address the growing number of cases involving IPR infringing goods sold over the internet and that such language would not be helpful. Resist inclusion of any reference to small consignments.

Article 2.X: Provision of information from the right holder

Following repeated EU requests, it was agreed to modify the structure of the border measures chapter to take account of the EU position with regard to the provision of information by right holders to customs.

Consensus was reached on a new article entitled 'Provision of information from right holder', which covered the situations where customs requested information in the framework of applications for action.

LTT: The article is acceptable.

Article 2.6: Application by right holder

With the additional article concerning information, this article no longer poses significant difficulties for the EU. Differences remain with regard to certain references in the text, mostly due to the overall issue of scope.

LTT: Maintain compatibility with Regulation 1383/2003 but show flexibility on language.

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Article: 2.7: Ex-Officio Action

This article is broadly acceptable. Some brackets remain due to the outstanding issue of scope.

LTT: Maintain compatibility with Regulation 1383/2003 but show flexibility on language.

Article: 2.X:

This article was tabled at the last round and concerns cooperation between competent authorities. There was little support from other parties.

LTT: Considering the difficulty in assessing how such a system would be applied in practise, the EU should not support such a proposal at this stage in the negotiations.

Article 2.9: Security or Equivalent Assurance

Consensus was reached on this article, with only minor exceptions, again connected to the outstanding issue of scope.

LTT: The article is acceptable.

Article 2.10: Determination as to Infringement

Consensus was reached on this article.

LTT: The article is acceptable.

Article 2.11: Remedies

Differences remain on the language concerning the disposal of infringing goods outside of the normal channels of commerce.

LTT: This is not problematic for the EU. Support either text, as both are acceptable.

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Article 2.12: Fees

Consensus was reached on this article. However, some delegates suggested further discussions might be required with a view to adding an additional paragraph. This would be dependent on future developments in the negotiations on the section concerning civil enforcement.

LTT: Current text is acceptable.

Article 2.13: Disclosure of information

Consensus was reached on this article, subject to scrutiny reservations from certain parties.

LTT: This article is acceptable.

Article 2.14: Liability of Competent Authorities

This draft article was initially proposed to limit the liability of customs when carrying out its duties in a normal manner, with regard to IPR enforcement. An alternative text was tabled at the last round, which might be seen as the imposition of liability on customs, rather than its' limitation.

LTT: Defend initial proposal. However, if consensus cannot be reached on the substance of the initial proposal, insist on the removal of this article completely.