



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 13 September 2012**

**7759/08  
EXT 3**

**WTO 49  
PI 15  
UD 48  
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Subject: Recommendation from the Commission to the Council to authorise the Commission to open negotiations of a plurilateral anti-counterfeiting trade agreement

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Delegations will find attached the partially declassified version of the above-mentioned document.

  

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**ANNEX**

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**"I/A" ITEM NOTE**

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from : Article 133 Committee  
to : Permanent Representatives Committee/Council  
No. Cion prop. : 7095/08 PI 11 UD 35 MI 83 JUSTCIV 36 COPEN 41 DROIPEN 20 WTO 36  
RESTREINT UE  
Subject : Recommendation from the Commission to the Council to authorise the  
Commission to open negotiations of a plurilateral anti-counterfeiting trade  
agreement

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1. The Commission submitted on 20 November 2007 a Recommendation from the Commission to the Council to authorise the Commission to open negotiations of a plurilateral anti-counterfeiting trade agreement.<sup>1</sup> A revised version of the Recommendation was submitted to the Council by the Commission on 29 February 2008.<sup>2</sup>

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<sup>1</sup> Doc. 15486/07 PI 47 UD 116 MI 303 JUSTCIV 311 COPEN 165 DROIPEN 112  
WTO 249 RESTREINT UE

<sup>2</sup> Doc. 7095/08 PI 11 UD 35 MI 83 JUSTCIV 36 COPEN 41 DROIPEN 20 WTO 36  
RESTREINT UE

2. The Recommendation was examined by the Article 133 Committee (Deputies) at several meetings. The Recommendation was also examined by the Working Party on Intellectual Property. Following the discussion at the meeting of the Article 133 Committee (Deputies) on 17 March 2008, all delegations could agree on the text on the basis of a compromise proposal by the Presidency.
3. It is therefore suggested that the Permanent Representatives Committee invite the Council, as an "A" item at a forthcoming meeting, to:
  - authorise the Commission to negotiate a plurilateral Anti-Counterfeiting Trade Agreement;
  - agree that, on matters falling within the competence of Member States, the Presidency, on behalf of the Member States, fully participate in the negotiations as specified in the attached negotiating directives;
  - appoint relevant committees to assist in this task;
  - issue the appended negotiating directives in Annex I, and,
  - decide to enter the Joint Statement in Annex II into its minutes.

## ANNEX I

### **DIRECTIVES FOR THE NEGOTIATION 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. The Community and Member States will strive for the creation of a task-force to review the implementation of ACTA. 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. The Community and Member States will contribute to promote this expansion of ACTA's membership, especially to emerging economies.

#### **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 Commission - on behalf of the European Community and its Member States - will coordinate the overall negotiations of ACTA. On matters of Community competence, the Commission shall conduct the negotiations in consultation with the Article 133 Committee, as coordinating Committee, and other relevant committees, such as the Working Party on Intellectual Property and the Working Parties competent in judicial and police cooperation in criminal matters and shall report regularly to these committees on the progress of the negotiations according to their fields of expertise.
7. On matters falling within the competence of Member States, including *inter alia*:
  - 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, on behalf of the Member States, will fully participate in the negotiations. Member States may attend negotiating sessions. The negotiating documents shall be established through the Article 133 Committee, as coordinating Committee, and other relevant committees, according to their expertise, such as the Working Party on Intellectual Property and the Working Parties competent in judicial and police cooperation in criminal matters.

## **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 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.

**NOT DECLASSIFIED**

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