



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 26 September 2012

**5075/1/10
REV 1 ADD 1 EXT 1**

**JUSTCIV 8
AUDIO 10
COMPET 4
CONSOM 2
COUR 6
CULT 17
SURE 1
EF 1
ECOFIN 9
MI 13
PI 2
TELECOM 6
UD 72**

PARTIAL DECLASSIFICATION

of document:	5075/1/10 REV 1 ADD 1 RESTREINT UE
dated:	8 March 2010
new status:	Public
Subject:	Technical analysis concerning negotiations on the Anti-Counterfeiting Trade Agreement (ACTA)

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



ANNEX

**COUNCIL OF
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Brussels, 8 March 2010

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REV 1 ADD 1 EXT 1 (26.09.2012)**

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NOTE

from:	General Secretariat of the Council
to:	Working Party on Civil Law Matters
Subject:	Technical analysis concerning negotiations on the Anti-Counterfeiting Trade Agreement (ACTA)

I. Origin and framework

1. In recent years, the proliferation of counterfeit and pirated goods in international trade has been growing. However, it has become increasingly difficult to address the issue of protection and enforcement of intellectual property rights (hereinafter referred to as "IPR") in the existing multilateral fora such as the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO).

2. In 2006 Japan and the USA launched the idea of a new plurilateral treaty, the Anti-Counterfeiting Trade Agreement (hereinafter referred to as "the ACTA"), to define effective international standards for enforcing IPR. This should in particular address today's challenges, in terms of increasing international cooperation and strengthening the framework of practices in this area. The ACTA aims to build on existing international rules in the area of intellectual property, in particular the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (WTO/TRIPS Agreement).
3. Negotiations started in June 2008 and negotiating partners are striving to reach an agreement as soon as possible in 2010.
4. The following parties are currently involved in the negotiations: the European Union and its Member States, Australia, Canada, Japan, Republic of Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland and the United States. The ACTA will be open to accession by other interested countries.
5. It should be noted that, as agreed between the ACTA partners, the negotiating papers are not public documents and therefore should be treated with reserve.

II. Elements on the content of the ACTA

6. It appears from the draft consolidated text of the agreement that the "Civil Enforcement" Section refers mainly to providing judicial authorities the ability to order/take specific actions for the enforcement of IPR and to the rules around using those powers. The issues under discussion in this section include:
 - The scope of the section (which IPR will be covered by the provisions of this section);
 - The conditions for judicial authorities to issue injunctions;
 - The possibility to order the infringer to pay damages and the question of how to determine the amount of damages;
 - The conditions for judicial authorities to order other remedies

- The conditions for judicial authorities to order the infringer to provide information relating to the infringement;
 - The conditions for judicial authorities to order provisional measures.
7. Where the "Civil Enforcement" Section will focus on the laws that should be in place to promote better civil enforcement of IPR, the Chapter on "Enforcement Practices" refers to the methods used by authorities to apply those laws.
8. The Section on "Special Requirements Related to the Enforcement Intellectual Property Rights in the Digital Environment" is intended to address some of the special challenges that new technologies pose for the enforcement of IPR, including the role of internet service providers in combating copyright piracy.
9. The Chapter on International Cooperation refers notably to the following types of issues:
- The recognition that international enforcement cooperation is crucial in this area;
 - The cooperation among the competent authorities of the Parties concerned with the enforcement of IPR, consistent with existing international agreements;
 - The sharing of relevant information among the Parties in accordance with international rules and national privacy laws.
10. The Chapter on Institutional Arrangements refers to the institutional set up, including questions such as monitoring the implementation of the agreement and whether to form a secretariat.

III. Negotiations by the EU

11. On 14 April 2008 the Council adopted a Recommendation authorising the Commission to open negotiations of a plurilateral anti-counterfeiting trade agreement (7759/08 RESTREINT UE WTO 49 PI 15 UD 48 MI 101 JUSTCIV 56 COPEN 52 DROIPEN 29).

15. Finally it should be noted that the European Data Protection Supervisor submitted on 24 February 2010 an opinion to the Presidents of the Council of the EU, the European Commission and the European Parliament.

IV. State of play of the negotiations

16. At the 7th round of the ACTA negotiations which was held in Guadalajara, Mexico, on 26-29 January 2010, the parties confirmed that they remained committed to conclude the agreement in 2010¹.

¹ See Press Statement on the 7th Round of Negotiations on ACTA.

17. It should be noted that the Civil Enforcement chapter was discussed thoroughly. The other issues on the agenda were: Enforcement in the Digital Environment (discussed on the basis of comments provided by most parties to US proposal), Border Measures and the issue of transparency.
18. The following round will be held in New Zealand on 12-16 April 2010. It will be devoted to Civil Enforcement, Enforcement Procedures in the Digital Environment, Border Measures and Criminal Measures.

V. Preparation for the 8th round in the Council

19. A "Friend of the Presidency" meeting took place on 18 February 2010 in order to deal with Civil Enforcement, Enforcement in the Digital Environment and Criminal Enforcement in view of the next round.
20. Discussions will also take place in various experts formats, including the Working Party on intellectual property (copyright) on 5 March 2010.
21. The Trade Policy Committee (deputies) will oversee the preparations of negotiations, including the wrap-up of the discussions in the various expert formats, possibly on 12 and/or 31 March 2010.

VI. Conclusion

22. The Committee on Civil Law Matters (General Questions) is invited to take note of the state of play of the negotiations on the ACTA.

Current draft structure of ACTA¹

CHAPTER ONE

INITIAL PROVISIONS AND DEFINITIONS

CHAPTER TWO

LEGAL FRAMEWORK FOR ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

Section 1: Civil Enforcement

Section 2: Border Measures

Section 3: Criminal Enforcement

Section 4: Special Measures Related to Technological Enforcement Means and the Internet

CHAPTER THREE

INTERNATIONAL COOPERATION

CHAPTER FOUR

ENFORCEMENT PRACTICES

CHAPTER FIVE

INSTITUTIONAL ARRANGEMENTS

CHAPTER SIX

FINAL PROVISIONS



¹ This draft structure reflects the current state of the negotiations and does not prejudice the final structure and content of the agreement.