



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 1 October 2012**

**14626/10  
EXT 1**

**UD 271  
PI 117  
MI 361  
JUSTCIV 169  
COPEN 206  
DROIPEN 110  
WTO 335**

**PARTIAL DECLASSIFICATION**

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of document: 14626/10 RESTREINT UE

dated: 7 October 2010

new status: Public

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Subject: 11th round of the Anti-Counterfeiting Trade Agreement (ACTA)  
Negotiations, Tokyo (Japan), 23 September – 1 October 2010

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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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**NOTE**

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from : General Secretariat of the Council  
to : Working Party on Customs Union (Customs Legislation and Policy)  
Subject : 11th round of the Anti-Counterfeiting Trade Agreement (ACTA) Negotiations,  
Tokyo (Japan), 23 September – 1 October 2010

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Delegations will find attached a summary report on the above meeting, transmitted by the Commission services.

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PARTIALLY DECLASSIFIED  
ON 07 August 2012

ANNEX

Summary Report

Subject: Anti-Counterfeiting Trade Agreement Negotiations  
11<sup>th</sup> round, Tokyo, 23 September – 1 October 2010

The 11<sup>th</sup> round of ACTA (Anti-Counterfeiting Trade Agreement) negotiations took place in Tokyo, Japan from 23 September to 1 October 2010. In addition to the Commission and several Member States (including Belgium), all ACTA parties (Japan, the United States, Switzerland, Canada, Australia, Mexico, Singapore, Korea, Morocco, and New Zealand) were represented at the round. The first few days were spent tidying up outstanding technical issues and the discussions on the more significant issues started on 27 September. Immediately, the proceedings slowed down and over the following days, the division between the EU and like-minded countries, advocating a strong text reinforcing IPR enforcement and other Parties looking to conclude quickly, on the basis of the lowest common denominator.

Customs issues played centre-stage, with difficult and lengthy discussions on the scope of the border measures and the situations where customs should intervene. Texts were eventually stabilised (see annex).

The articles incorporated into the consolidated text provided for border enforcement of IPR in general and are not restricted to trademarks and copyrights. [

**NOT DECLASSIFIED**

With regard to import and export, the provisions do go beyond TRIPS in a significant manner, as mandatory controls at export are introduced, though it is nuanced. Although customs should provide for export controls, there is no obligation to provide for this on the basis of an application for action. ]

Issues in all other areas of the text also proved difficult to conclude. Nevertheless, around 5 A.M. on 2 October, the consolidated text that had been circulated with a covering note from the Chair was accepted *ad referendum*, subject to a few specific reservations. The EU placed reserves on a few points, notably the articles contained in “Chapter 2, Section 2” on “Scope of the Border measures” and “Border measures”. The text of these two articles are annexed.

The consolidate text will need to be examined further internally with a view to assessing the overall interest to the EU of the final package.

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**Article 2.X Scope of the border measures**

In providing, as appropriate, and consistent with a Party's domestic system of IPR protection and without prejudice to the requirements of the TRIPS Agreement, for effective border enforcement of intellectual property rights, a Party should do so in a manner that does not discriminate unreasonably between intellectual property rights and that avoids the creation of barriers to legitimate trade.

**Article 2.X Border Measures**

Each Party shall provide procedures for import and export shipments:

- a. by which customs authorities may act upon their own initiative, to suspend the release of suspect goods; and
- b. where appropriate, by which right holders may request the competent authorities to suspend the release of suspect goods.

Each Party may provide procedures for suspect goods in transit or in other situations where the goods are under Customs control:

- a. by which customs authorities may act upon their own initiative, to suspend the release of, or to detain, suspect goods; and
- b. where appropriate, by which right holders may request the competent authorities to suspend the release of, or to detain, suspect goods.

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