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### **DECLASSIFICATION**

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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.

# RESTREINT UE



**COUNCIL OF  
THE EUROPEAN UNION**

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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 :** TRIPS+ Provisions of ACTA in the Customs Section

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Delegations will find attached, for information, a document on the above subject, transmitted by the Commission services.

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# RESTREINT UE

ANNEX

## TRIPS+ PROVISIONS OF ACTA IN THE CUSTOMS SECTION

### TRIPS+ elements

- Border measures are no longer restricted to Trademarks and Copyrights, as is the case in TRIPS. (It should be noted that there is a footnote excluding patents from the ACTA border measures.)
- Parties shall provide for ex-officio action, a feature that is not covered by equivalent TRIPS provisions on border measures.
- Parties shall provide for controls at export (though nuanced, as there is no mandatory requirement to provide for export controls based upon applications for action).
- Inclusion of goods of a commercial nature sent in small consignments, into the scope of application of the border measures. Although not specifically excluded in TRIPS, the ACTA language introduces a clear commitment to act on small consignments. This is an important element in the light of the growth in internet sales of IPR infringing products.

### Negligible TRIPS+ elements

- Effective detailed rules regarding border measure procedures (including applications for action, ex-officio action by customs and the disclosure of information to right holders). In order to fit in with the Parties' diverging systems, the provisions remain general. Whilst it is recognised that the details may be helpful, there is little in the provisions that strengthen enforcement in concrete terms.
- Obligation to provide authority to order destruction of infringing goods; the provisions concerning remedies are very similar to the equivalent TRIPS provisions. TRIPS refers to the destruction or disposal of goods in the section on border measures (and to the disposal of goods outside the channels of commerce in the section on civil remedies). ACTA border measures refers to the destruction of goods or to their disposal outside the channels of commerce. The nuances are subtle and cannot be considered to be a significant TRIPS+ element.
- Rules regarding fees for border enforcement; the agreed ACTA text on this issue states that any fees should not deter recourse to the procedures. This is a general concept that customs should respect, with regard to fees that are charged to an economic operator, for what might be considered to be services rendered. It does not add significantly to the enforcement of IPR at the border.