



Council of the
European Union

Brussels, 11 November 2019
(OR. en)

7175/09
DCL 1

JAI 130
DROIPEN 12
WTO 45
SERVICES 11
COASI 29
PI 15

DECLASSIFICATION

of document: 7175/09 RESTREINT UE/EU RESTRICTED

dated: 5 March 2009

new status: Public

Subject: Bilateral FTAs

- Inclusion of criminal provisions against violations of Intellectual Property Rights in the free trade agreement currently under negotiation with the Republic of Korea.

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

RESTREINT UE



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**JAI 130
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OUTCOME OF CONSULTATIONS

of : Justice and Home Affairs Counsellors

on : 3 March 2009

No prev. doc : 5428/09 JAI 21 DROIPEN 4 WTO 16 SERVICES 6 COASI 8 PI 3
RESTREINT UE

Subject : Bilateral FTAs

- Inclusion of criminal provisions against violations of Intellectual Property Rights in the free trade agreement currently under negotiation with the Republic of Korea.
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I. INTRODUCTION

The Justice and Home Affairs Counsellors met on 3 March 2009 to continue examination of the above mentioned issue on the basis of a document prepared by the Commission services and bearing the number DS 162/09 RESTREINT UE (Secretariat POLCOM). In particular, the Presidency, after recalling that there has been consensus between the Member States in the framework of Article 133 Committee that criminal provisions with regard to violations of Intellectual Property Rights should be included in the FTA under negotiation with Korea, sought the views of delegations on following questions posed with regard to this issue:

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- Need for modification of the current mandate/negotiating Directives as set out in document 8602/07 WTO 82 SERVICES 33 COASI 61 RESTREINT UE. In particular it was queried whether the mandate/Negotiating directives should contain a general or a more detailed reference to the criminal provisions.
- Assignment of the Commission or the Presidency with the negotiation of the criminal law provisions, on behalf of the Member States, which would result to a modification of the mandate/Negotiating directives.
- Comments on the content of the criminal provisions as set out in the meeting document prepared by the Commission services (DS 162 /09 RESTREINT UE).

II. OUTCOME OF THE DISCUSSIONS

a) Modification of the mandate

The large majority of delegations welcomed a modification of the mandate/Negotiating directives along the lines of the mandate pertaining to the Anti-counterfeiting Trade Agreement (ACTA) which is currently under negotiation. Delegations expressed preference for a general reference of the inclusion of criminal provisions in the mandate/Negotiating directives.

SE, expressing a preliminary position, agreed with the above mentioned approach and at the same time wondered about the interpretation to be given to Article 34 (2) (a) with regard to the procedure to be followed for the modification of the mandate.

b) Definition of the assigned negotiator for the criminal provisions

A large majority of delegations preferred that the Presidency be the one to be tasked, on behalf of the Member States, with the negotiation of the criminal provisions to be included in the FTA with Korea.

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c) Comments on the Content of the criminal provisions

A large majority of delegations agreed with a narrow scope of Intellectual Property Rights to be protected by the proposed criminal provisions, while IT and FR, regretting this less ambitious approach, indicated that they could be flexible on this issue.

Furthermore, the JHA Counsellors, while expressing for the most, preliminary positions, welcomed the part of criminal provisions proposed by the Commission¹, drafted along the lines of the criminal provisions' text proposed to be included in the (ACTA)² Agreement but expressed doubts on the part titled "Other Enforcement Measures". In particular, Member States, wondering about the obligation for their respective national legislation to be aligned to those provisions, expressed their concerns thereon, irrespective from the fact that these provisions are not mandatory.

Finally, most delegations, while wondering about the scope of application of the "rendez-vous clause", provision, expressed their satisfaction with it. Many delegations however, underlined that the period of two years provided for in the "rendez-vous clause" was too short for such a revision.

III. CONCLUSION

Closing discussions, the Chair indicated that the Outcome of the consultations will be notified to the Article 133 Committee for information and further action.

¹ DS 162/09 RESTREINT UE.

² As set out in the non -paper prepared by the French Presidency, dated 3 December 2008, which was discussed during the 4th Negotiations' Round on ACTA Agreement, in Paris.