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DROIPEN 21
WTO 70
COASI 56

DECLASSIFICATION

of document: 8602/09 RESTREINT UE/EU RESTRICTED
dated: 8 April 2009
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Subject: Free Trade Agreement with Korea.
- Draft provisions on criminal enforcement

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**

Brussels, 8 April 2009

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OUTCOME OF PROCEEDINGS

of : Permanent Representatives Committee (Part II)
on : 7 April 2009

Subject : Free Trade Agreement with Korea.
- Draft provisions on criminal enforcement

1. On 7 April 2009, the Permanent Representatives Committee (Part II) examined the draft criminal provisions on criminal sanctions for infringements of Intellectual Property Rights to be included in the above mentioned Free Trade Agreement with Korea, on the basis of document 8442/09 DROIPEN 19 WTO 66 COASI 49 RESTREINT UE.

2. From the discussions in the meeting it arose that a compromise could be reached on the text as set out in the Annex to the present Outcome of proceedings.

SUB-SECTION 2 CRIMINAL ENFORCEMENT

ARTICLE 10.24.1 SCOPE OF CRIMINAL ENFORCEMENT

1. This section lays down criminal provisions to ensure the enforcement of trademark, copyright and related rights.
2. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting and copyright piracy on a commercial scale.

ARTICLE 10.24.2 GEOGRAPHICAL INDICATIONS, DESIGNS AND COPYRIGHT RELATED RIGHTS COUNTERFEITING

Subject to its national or constitutional law, each Party shall consider adopting measures to establish the liability for geographical indications, designs and copyright related rights counterfeiting. Subject to the legal principles of the Party, the liability may be criminal or non criminal.

ARTICLE 10.24.3 SPECIFIC CASES

Importation and domestic use in the course of trade of counterfeit labels

Each Party shall provide for criminal procedures and penalties to be applied in cases of wilful importation and domestic use in the course of trade on a commercial scale of counterfeit labels,

- i) to which a mark has been applied, which is identical to or cannot be distinguished from a trademark registered in its territory, and
- ii) which are intended to be used on either the goods or services which are identical to goods or services for which the trademark is registered.

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ARTICLE 10.24.4 LIABILITY OF LEGAL PERSONS

1. Each Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for the offences referred to in Article 10.24.1.
2. Subject to the legal principles of the Party, the liability of legal persons may be criminal or non-criminal.
3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the criminal offences.

ARTICLE 10.24.5 AIDING AND ABETTING

The provisions of this section shall apply to aiding and abetting of the offences referred to in Articles 10.24.1.

ARTICLE 10.24.6 SEIZURE

In case of an offence referred to in Article 10.24.1, each Party shall provide that its competent authorities shall have the authority to order the seizure of suspected counterfeit trademark goods or pirated copyright goods, any related materials and implements predominantly used in the commission of the alleged offence, documentary evidence relevant to the alleged offence and any assets derived from, or obtained directly or indirectly through the infringing activity.

ARTICLE 10.24.7 PENALTIES

For the offences referred to in Article 10.24.1, each Party shall provide for penalties that include sentences of imprisonment and/or monetary fines that are effective proportionate and dissuasive ;

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ARTICLE 10.24.8 CONFISCATION

1. For the offences referred to in Article 10.24.1, each Party shall provide that its competent authorities shall have the authority to order confiscation and/or destruction of all counterfeit trademark goods or pirated copyright goods, of materials and implements predominantly used in the creation of counterfeit trademark goods or pirated copyright goods, of the assets derived from, or obtained directly or indirectly, through the infringing activity.
2. Each Party shall ensure that the counterfeit trademark goods and pirated copyright goods that have been confiscated under this subparagraph shall, if not destroyed, be disposed outside the channels of commerce, under the condition that the goods are not dangerous for the health and security of persons.
3. Party shall further ensure that confiscation and destruction under this subparagraph shall occur without compensation of any kind of the defendant.
4. Each Party may provide that its judicial authorities have the authority to order the confiscation of assets the value of which corresponds to that of such assets derived from or obtained directly or indirectly through the infringing activity.

ARTICLE 10.24.9 RIGHTS OF THE DEFENDANT AND THIRD PARTIES

Each Party shall ensure that the rights of the defendants and third parties shall be duly protected and guaranteed.

ARTICLE 10.24.10 RENDEZ -VOUS CLAUSE

The Parties commit to start negotiations with the aim of reviewing this clause within three years of the entry into force of this Agreement.