

EU/Australia, Canada, Japan, Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland and United States Anti-Counterfeiting Trade Agreement (ACTA)

2011/0167(NLE) - 23/08/2011 - Legislative proposal

PURPOSE: to conclude the Anti-Counterfeiting Trade Agreement (ACTA) between the European Union and its Member States, Australia, Canada, Japan, South Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland and the United States of America.

PROPOSED ACT: Council Decision.

BACKGROUND: it is estimated that **Europe is losing more than €8 billion annually through counterfeit goods** flooding into its market. Statistics published by the European Commission in July 2011 show a tremendous upward trend in the number of shipments suspected of violating IPRs. Customs in 2010 registered around 80 000 cases, a figure that has almost doubled since 2009. More than 103 million fake products were detained at the EU external border. An OECD study on the global level of counterfeiting and piracy from 2009 estimates that international trade in counterfeit goods grew from just over USD 100 billion in 2000 to USD 250 billion in 2007. This amount is larger than the national GDPs of about 150 countries.

On 14 April 2008, the Council authorised the Commission to negotiate a plurilateral anti-counterfeiting trade agreement on behalf of the Union and its Member States. Those negotiations have been concluded and the Anti-Counterfeiting Trade Agreement between the European Union and its Member States, Australia, Canada, Japan, South Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland and the United States of America was initialled on 25 November 2010 after 11 rounds of negotiations.

The European Parliament has also been kept regularly informed on developments via its Committee on International Trade (INTA) and on 24 November 2010, the European Parliament adopted a [Resolution supporting ACTA](#).

IMPACT ASSESSMENT: no impact assessment was carried out.

LEGAL BASIS: the first subparagraph of Article 207(4), in conjunction with Article 218(6)(a)(v) of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: this draft Decision aims to conclude, on behalf of the EU, the Anti-Counterfeiting Trade Agreement (ACTA) between the European Union and its Member States, Australia, Canada, Japan, South Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland and the United States of America.

ACTA aims to establish a **comprehensive international framework that will assist the EU in its efforts to effectively combat the infringement of intellectual property rights (IPR)**. This infringement undermines legitimate trade and the EU's competitiveness with the subsequent negative repercussions on growth and jobs.

ACTA includes **state-of-the-art provisions on the enforcement of IPR**, including provisions on civil, criminal, border and digital environment enforcement measures, robust cooperation mechanisms among

ACTA Parties to assist in their enforcement efforts, and the establishment of best practices for effective IPR enforcement.

Although ACTA does not modify the EU *acquis*, because EU law is already considerably more advanced than the current international standards, it will introduce a new international standard, building upon the World Trade Organisation's TRIPS Agreement (adopted in 1994). Thus, it will provide benefits for EU exporting rightholders operating in the global market who currently suffer systematic and widespread infringements of their copyrights, trademarks, patents, designs and geographical indications abroad.

ACTA will only address the way companies and individuals can enforce their rights in court, at the borders or via the internet. It will not create new IP rights, nor will it define their acquisition, duration, scope of protection, registration, etc. ACTA countries will enforce the rights as they are defined domestically.

At the same time, ACTA is a balanced agreement, because it fully respects the rights of citizens and the **concerns of important stakeholders** such as:

- consumers,
- internet providers,
- partners in developing countries.

As regards medicines: ACTA does not prevent poor countries from buying cheap medicines. There are no provisions in ACTA that could directly or indirectly affect the legitimate trade in generic medicines or, more broadly, global public health.

As regards the Internet: ACTA is not about checking or monitoring private communication on the internet. It will not censor websites. It is not about how individual citizens use the internet. It will not lead to limitations of fundamental rights (e.g. control of laptops of air passengers at borders, monitoring of internet traffic). The respect of fundamental rights such as privacy, freedom of expression and data protection is expressly mentioned as a basic principle of the agreement.

Competence: ACTA contains a number of provisions on criminal enforcement that fall within the scope of Article 83(2) TFEU. Those parts of the agreement, in distinction to those parts falling under Article 207, fall under the area of shared competences (Article 2(2) TFEU). Where a matter falls under shared competence either the European Union or Member States may legislate and adopt legally binding acts. Regarding the signature and conclusion of ACTA, the Commission has opted not to propose that the European Union exercise its potential competence in the area of criminal enforcement pursuant to Article 83(2) TFEU. The Commission considers this appropriate because it has never been the intention, as regards the negotiation of ACTA to modify the EU *acquis* or to harmonise EU legislation as regards criminal enforcement of intellectual property rights. For this reason, the Commission proposes that ACTA be signed and concluded both by the EU and by all the Member States.

BUDGETARY IMPLICATIONS: this proposal has no impact on the EU budget.