



**COUNCIL OF
THE EUROPEAN UNION**

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DECLASSIFICATION

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Subject:	Plurilateral Anti-counterfeiting Trade Agreement (ACTA) -Chapter 2: Draft criminal provisions

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

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

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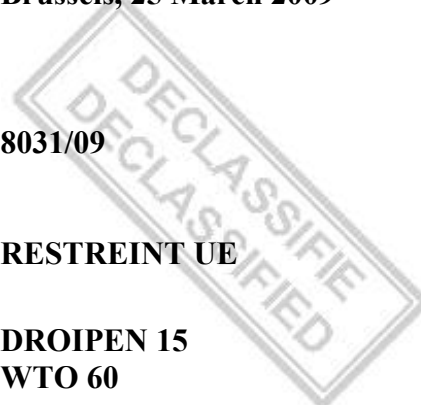
**COUNCIL OF
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Brussels, 25 March 2009

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NOTE

from : Presidency
to : delegations

Subject : Plurilateral Anti-counterfeiting Trade Agreement (ACTA)
 -Chapter 2: Draft criminal provisions

Delegations will find attached the negotiating document representing the position of Member States of the European Union on criminal provisions to be included in ACTA.

NEGOTIATING DOCUMENT REPRESENTING THE POSITION OF THE MEMBER STATES OF THE EUROPEAN UNION ON CRIMINAL PROVISIONS, IN VIEW OF THE NEXT NEGOTIATING ROUND ON ACTA AGREEMENT

Brussels , 19 March 2009

**Anti-Counterfeiting Trade Agreement
Legal Framework for Enforcement of Intellectual Property Rights**

Section 1: Civil Enforcement

[CIRCULATED]

Section 2: Border Measures

[CIRCULATED]

Section 3: Criminal Enforcement

ARTICLE 2.14 - SCOPE OF CRIMINAL ENFORCEMENT

- (1.1) This section lays down criminal provisions to ensure the enforcement of trademark, copyright and related rights.
- (1.2) Each Party shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting and copyright or [related rights piracy] on a commercial scale.
- (1.3) **SPECIFIC CASES**
- (a) **Unauthorized cam-cording**
(deleted)

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(b) **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 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.

ARTICLE 2.15 - LIABILITY OF LEGAL PERSONS

- (1.1) 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 2.14.
- (1.2) Subject to the legal principles of the Party, the liability of legal persons may be criminal or non-criminal.
- (1.3) Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the criminal offences.

ARTICLE 2.16 - COMPLICITY

The provisions of this section shall apply to complicity of the offences referred to in Article 2.14.

ARTICLE 2.17 - SEIZURE

In case of an offence referred to in Article 2.14, 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.

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ARTICLE 2.18 - PENALTIES

For the offences referred to in Article 2.14, each Party shall provide for penalties that include sentences of imprisonment and/or monetary fines that are effective proportionate and dissuasive.

ARTICLE 2.19 - CONFISCATION

- (1) For the offences referred to in Article 2.14, 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) Each 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 2.20 - *EX OFFICIO* CRIMINAL ENFORCEMENT

(deleted)

ARTICLE 2.21 - RIGHTS OF THE DEFENDANT

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