

## Basic information

**2011/0167(NLE)**

NLE - Non-legislative enactments  
Decision

Procedure lapsed or withdrawn

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

### Subject

3.50.15 Intellectual property, copyright  
6.20.01 Agreements and relations in the context of the World Trade Organization (WTO)  
6.20.02 Export/import control, trade defence, trade barriers  
6.20.05 Multilateral and plurilateral economic and trade agreements and relations  
7.30.30.10 Action against counterfeiting

### Geographical area

Australia  
Canada  
Japan  
Mexico  
Morocco  
New Zealand  
Singapore  
South Korea  
Switzerland  
United States

## Key players

European Parliament

### Committee responsible

**INTA** International Trade

### Rapporteur

MARTIN David (S&D)

### Appointed

29/02/2012

### Shadow rapporteur

FJELLNER Christofer (PPE)

RINALDI Niccolò (ALDE)

ANDERSDOTTER Amelia  
(Verts/ALE)

KAMALL Syed (ECR)

### Committee for opinion

**DEVE** Development

### Rapporteur for opinion

ZAHRADIL Jan (ECR)

### Appointed

22/09/2011

**ITRE** Industry, Research and Energy

ANDERSDOTTER Amelia  
(Verts/ALE)



09/01/2012

**JURI** Legal Affairs

REGNER Evelyn (S&D)

11/07/2011

	<b>LIBE</b> Civil Liberties, Justice and Home Affairs	DROUTSAS Dimitrios (S&D)	05/12/2011
Council of the European Union	<b>Council configuration</b>	<b>Meetings</b>	<b>Date</b>
	Foreign Affairs	3154	2012-03-16
European Commission	<b>Commission DG</b>	<b>Commissioner</b>	
	Trade	DE GUCHT Karel	

Key events			
Date	Event	Reference	Summary
24/06/2011	Preparatory document	COM(2011)0380 	Summary
23/08/2011	Legislative proposal published	12195/2011	Summary
14/02/2012	Committee referral announced in Parliament		
16/03/2012	Debate in Council		Summary
30/05/2012	Additional information		Summary
21/06/2012	Vote in committee		
22/06/2012	Committee report tabled for plenary, 1st reading/single reading	A7-0204/2012	Summary
03/07/2012	Debate in Parliament	CRE link	
04/07/2012	Decision by Parliament	T7-0287/2012	Summary
04/07/2012	Results of vote in Parliament		
07/03/2015	Proposal withdrawn by Commission		

Technical information	
<b>Procedure reference</b>	2011/0167(NLE)
<b>Procedure type</b>	NLE - Non-legislative enactments
<b>Nature of procedure</b>	Consent by Parliament
<b>Legislative instrument</b>	Decision
<b>Legal basis</b>	Treaty on the Functioning of the EU TFEU 218-p6a Treaty on the Functioning of the EU TFEU 207-p4
<b>Stage reached in procedure</b>	Procedure lapsed or withdrawn
<b>Committee dossier</b>	INTA/7/06356


Documentation gateway				
European Parliament				
Document type	Committee	Reference	Date	Summary

Committee draft report		<a href="#">PE486.174</a>	12/04/2012	
Amendments tabled in committee		<a href="#">PE487.983</a>	07/05/2012	
Amendments tabled in committee		<a href="#">PE489.411</a>	10/05/2012	
Amendments tabled in committee		<a href="#">PE489.544</a>	21/05/2012	
Amendments tabled in committee		<a href="#">PE489.406</a>	31/05/2012	
Committee opinion	<a href="#">LIBE</a>	<a href="#">PE480.574</a>	04/06/2012	
Committee opinion	<a href="#">JURI</a>	<a href="#">PE487.684</a>	04/06/2012	
Committee opinion	<a href="#">DEVE</a>	<a href="#">PE478.666</a>	05/06/2012	
Committee opinion	<a href="#">ITRE</a>	<a href="#">PE483.518</a>	05/06/2012	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A7-0204/2012</a>	22/06/2012	<a href="#">Summary</a>
Text adopted by Parliament, 1st reading/single reading		<a href="#">T7-0287/2012</a>	04/07/2012	<a href="#">Summary</a>

#### Council of the EU

Document type	Reference	Date	Summary
Document attached to the procedure	<a href="#">12196/2011</a>	23/08/2011	
Legislative proposal	<a href="#">12195/2011</a>	23/08/2011	<a href="#">Summary</a>

#### European Commission

Document type	Reference	Date	Summary
Preparatory document	<a href="#">COM(2011)0380</a> 	24/06/2011	<a href="#">Summary</a>

#### Additional information

Source	Document	Date
National parliaments	<a href="#">IPEX</a>	
European Commission	<a href="#">EUR-Lex</a>	

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

2011/0167(NLE) - 24/06/2011 - Preparatory document

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

**PROPOSED ACT:** Council Decision.

**BACKGROUND:** further to the adoption of the negotiating directives by the Council on 14 April 2008, negotiations were launched on 3 June 2008. The agreement was concluded on 15 November 2010 and the text was initialled on 25 November, after 11 rounds of negotiations.

The EU Member States were kept informed of the negotiations orally and in writing. The European Parliament has also been kept regularly informed on developments via its Committee on International Trade (INTA) and by Commissioner De Gucht in three plenary debates in 2010. On 24 November 2010, the European Parliament adopted a [Resolution supporting ACTA](#).

IMPACT ASSESSMENT: no impact assessment was carried out.

LEGAL BASIS: Article 207 (4), 1st subparagraph, in conjunction with Article 218(6)(a)(v) of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: 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,
- 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 right holders operating in the global market who currently suffer systematic and widespread infringements of their copyrights, trademarks, patents, designs and geographical indications abroad.

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 and partners in developing countries.

**Competences:** 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**.

The Commission's position as regards ACTA and Article 83(2) TFEU is without prejudice to the position of the Commission on future exercise by the EU of the shared competences foreseen by Article 83(2) TFEU as regards other initiatives.

**Conclusion and signature:** 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 IMPLICATION: this proposal has no implication for the EU budget.

## **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.

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

2011/0167(NLE) - 16/03/2012

The Council **took stock of the situation regarding the signature and ratification** of the anti-counterfeiting trade agreement (ACTA) between the EU and Australia, Canada, Japan, the Republic of Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland and the United States.

ACTA establishes an international framework for improving the enforcement of intellectual property right laws and creating improved international standards for action against large-scale infringements of intellectual property. Negotiations were concluded in November 2010 and the agreement was signed by the EU and 22 Member States in Tokyo on 26 January 2012.

**On 22 February, the Commission decided to refer ACTA to the Court of Justice to verify its compatibility with the EU treaties and in particular with the Charter of Fundamental Rights.**

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

2011/0167(NLE) - 22/06/2012 - Committee report tabled for plenary, 1st reading/single reading

The Committee on International Trade adopted the report drafted by David MARTIN (S&D, UK) in which it **declines to consent to the conclusion of the Anti-Counterfeiting Trade Agreement** between the European Union and its Member States, Australia, Canada, Japan, Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland and the United States of America.

To recall, ACTA is a trade agreement which addresses commercial-scale counterfeiting and online piracy by coordinating global enforcement of existing copyright violation laws. It is purported by the Commission that it will not require European legislation to be changed, but will coordinate procedures at borders to deal with large-scale counterfeiting. Counterfeiting and piracy have increased substantially and continue to do so.

The consequences of the growth in these illegal activities range from economic losses to health and safety dangers. The European Union has much to lose without efficient and enforced global coordination in copyright protection.

According to Members, Europe cannot compete in the global economy without adequate protection for European fashion, car parts, films and music. In this regard, international agreements dealing with any aspect of criminal sanctions, online activity or intellectual property must clearly define the scope of the agreement and the protection of individual liberties, in order to avoid unintended interpretations of the agreement.

The report states that the unintended consequences of the ACTA text is a serious concern. On individual criminalisation, the definition of “commercial-scale”, the role of internet service providers and the possible interruption of the transit of generic medicines, Members maintain doubts that the ACTA text is as precise as is necessary. The intended benefits of this international agreement are far outweighed by the potential threats to civil liberties.

**Given the vagueness of certain aspects of the text and the uncertainty over its interpretation, Members consider that the European Parliament cannot guarantee adequate protection for citizens' rights in the future under ACTA.**

Therefore, the committee recommends that the European Parliament declines to give consent to ACTA. It hopes the European Commission will therefore come forward with new proposals for protecting IP.

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

2011/0167(NLE) - 04/07/2012 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a legislative resolution on the draft Council decision on the conclusion of the Anti-Counterfeiting Trade Agreement between the European Union and its Member States, Australia, Canada, Japan, the Republic of Korea, the United Mexican States, the Kingdom of Morocco, New Zealand, the Republic of Singapore, the Swiss Confederation and the United States of America.

Parliament declines, by 39 votes to 478, with 165 abstentions, to consent to the conclusion of the Agreement.

This was the first time that Parliament exercised its Lisbon Treaty power to reject an international trade agreement. Its rejection means that neither the EU nor its individual member states can join the agreement.

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

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**LEGAL BASIS:** Article 207 (4), 1st subparagraph, in conjunction with Article 218(6)(a)(v) of the Treaty on the Functioning of the European Union (TFEU).

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**BUDGETARY IMPLICATION:** this proposal has no implication for the EU budget.