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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.2.2008  
SEC(2008) 255 final/2

DECLASSIFIED PART

**RECOMMENDATION FROM THE COMMISSION TO THE COUNCIL**

**to authorise the Commission to open negotiations of a plurilateral  
anti-counterfeiting trade agreement**

## A. EXPLANATORY MEMORANDUM

1. The protection of intellectual property rights (IPR) is important not only for promoting innovation and creativity, but also for developing employment and improving competitiveness. It should allow the inventor or creator to derive a legitimate profit from his/her invention or creation while maintaining an appropriate balance between protection and access to intellectual property, exclusive rights and competition. It should also allow the widest possible dissemination of works, ideas and new know-how. At the same time, it should not hamper freedom of expression, the free movement of information, or the protection of personal data.
2. However, without effective means of enforcing intellectual property rights, innovation and creativity are discouraged and investment diminished. It is therefore necessary to ensure that the substantive law on intellectual property, which is nowadays largely part of the *acquis communautaire*, is applied and enforced effectively internationally.
3. The proliferation of infringements of intellectual property rights poses an ever-increasing threat to the sustainable development of the world economy. The consequences of such infringements include (1) depriving legitimate businesses and their workers of income; (2) discouraging innovation and creativity; (3) threatening consumer health and safety; (4) providing an easy source of revenue for organized crime; and (5) loss of tax revenue.
4. At international level, all Member States, as well as the Community itself as regards matters within its competence, are bound by the Agreement on Trade-Related Aspects of Intellectual Property (the TRIPS Agreement), approved, as part of the multilateral negotiations of the Uruguay Round, by Council Decision 94/800/EC(3) and concluded in the framework of the World Trade Organisation (WTO).
5. The TRIPs Agreement contains, in particular, provisions on the means of enforcing intellectual property rights, which are minimum common standards applicable at international level and implemented in all Member States.
6. There are also international conventions to which all Member States are parties and which also contain provisions on the means of enforcing intellectual property rights. These include, in particular, the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works, and the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations.
7. Having identified IPR as one of their key competitive assets, there is a growing concern in the European Union, as well as in several other countries, about the increasing misappropriation of the intellectual property of their most competitive industries around the world. This led to a number of initiatives on the multilateral (WTO, G8, Organisation for Economic Co-operation and Development (OECD), World Health Organisation (WHO)), bilateral (Free Trade Agreements with high IPR standards, IPR dialogues, technical assistance) and even unilateral (US 301 Special, EU Priority countries' list) fields. In the last few months, there have been new calls

for a strengthening of the international IPR framework, namely in the framework of the G8 and the OECD.

8. The main proposal for the strengthening of IPR enforcement practices and rules is an initiative presented by the United States of America and Japan for a new Anti-Counterfeiting Trade Agreement (ACTA).
9. ACTA will establish, among nations committed to strong IPR protection, a common standard for IPR enforcement to combat global infringements of intellectual property rights by increasing international cooperation and coordination among enforcement authorities, promoting technical assistance and partnerships with industry, defining the framework of practices that contribute to effective enforcement of IPRs, and strengthening relevant IPR enforcement measures themselves. This last chapter should include provisions on civil, criminal and customs measures, as well as procedural rules. It also includes provisions on dispute settlement. ACTA's enforcement measures will apply, at least to those IP rights covered by Part III (Enforcement of IPR) of the TRIPs Agreement. However, it is not foreseen to include in the scope of ACTA any rules regarding the substantive protection of intellectual property rights.
10. It is important for the European Union to be at the forefront of efforts to improve IPR enforcement and to work with other partners to make them as effective as possible. It would be politically damaging to do otherwise. Joining the ACTA negotiating process will send a strong message of our concern for the key competitiveness tool that is IPR. But, more importantly, it will have positive effects on the situation in the field, resulting from the increased level of cooperation between enforcement authorities and from the harmonised high standards of IPR enforcement.

(Recommendation and annex: EU RESTRICTED)