

# RESTREINT UE



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 7 April 2010**

## **NOTE**

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**from:            Presidency**  
**to:                delegations**

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**Subject :**  
**Pluri-lateral Anti-Counterfeiting Trade Agreement**  
**(ACTA) - Chapter 2**  
**Criminal Provisions**

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In view of the 8th Negotiating Round on the above mentioned Agreement, which will take place on 12-16 April in Wellington, New Zealand, delegations find attached a negotiating document representing the position of Member States of the European Union on Chapter 2 "criminal provisions" of the Agreement.

**NEGOTIATING DOCUMENT REPRESENTING THE POSITION OF THE  
MEMBER STATES OF THE EUROPEAN UNION ON THE CRIMINAL  
PROVISIONS CHAPTER**

**CHAPTER 2**

**Section 3: Criminal enforcement**

**Article 2.14: Criminal offences**

*1.- The position of the Member States of the European Union is still under examination*

2.- Each Party shall provide for criminal procedures and penalties to be applied in cases of wilful, unauthorised 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 goods or in relation to services which are identical to goods or services for which the trademark is registered.

3.- Unauthorised cam-cording

(Deleted)

## **Article 2.15: Liability, penalties and sanctions**

### 1.- Liability of legal persons

(i) 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.

(ii) Subject to the legal principles of the Party, the liability of legal persons may be criminal or non-criminal.

(iii) Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the criminal offences.

### 2.- Inciting, aiding and abetting

The provisions of this section shall apply to inciting, aiding and abetting the offences referred to in Article 2.14.

### 3.- Penalties and sanctions

(i) For the offences referred to in Article 2.14, each Party shall provide for effective proportionate and dissuasive penalties. The available penalties shall include imprisonment and monetary fined<sup>1</sup>.

(ii) For legal persons held liable under Article 2.15.1, each Party shall provide for effective, proportionate and dissuasive sanctions, including monetary sanctions.

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<sup>1</sup> Negotiator's note: This does not imply an obligation for a Party to provide for the courts a possibility to impose both penalties in parallel.

## **Article 2.16: Seizure, forfeiture/confiscation and destruction**

### 1.- 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 or related rights goods, any related materials and implements 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.

Each Party shall, if a prerequisite for such an order, according to its national law, is the identification of the items, ensure that the order need not determine the items that are subject to seizure in more detail than necessary to allow their identification for the purpose of the seizure.

### 2.- Forfeiture/confiscation and destruction

(i) For the offences referred to in Article 2.14, each Party shall provide that its competent authorities shall have the authority to order confiscation/forfeiture and/or destruction of all counterfeit trademark goods or pirated copyright or related rights goods, of materials and implements 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.

(ii) Each Party shall ensure that the counterfeit trademark goods and pirated copyright or related rights goods that have been confiscated/forfeited under this subparagraph shall, if not destroyed, be disposed of outside the channels of commerce, under the condition that the goods are not dangerous for the health and security of persons.

(iii) Each Party shall further ensure that confiscation/forfeiture and destruction under this subparagraph shall occur without compensation of any kind of the defendant.

(iv) Each Party may provide that its judicial authorities have the authority to order the confiscation/forfeiture of assets the value of which corresponds to that of such assets derived from or obtained directly or indirectly through the infringing activity.

**Article 2.17: *Ex officio* criminal enforcement**

Each Party shall provide that its competent authorities may act upon their own initiative to initiate investigation and/or legal action with respect to the offences prescribed in article 2.14, at least in case of significant public interest, in accordance with national law.

**Article 2.18: 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.