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Speaking Points: State of play of negotiations on the Anti-Counterfeiting Trade Agreement (ACTA)

*Check Against Delivery
Seul le texte prononcé fait foi
Es gilt das gesprochene Wort*

European Parliament, Committee on Civil Liberties (LIBE)

Brussels, 13 July 2010

Thank you for inviting me to your Committee today. I have noted the interest of the LIBE Committee in ACTA, and have heard the concerns expressed by several of its Honourable Members. I therefore welcome this occasion to have a frank conversation with you today.

I have always been a staunch defender of civil liberties and the rule of law, so you will understand that I would not defend an agreement if there were any reason to suspect that it would adversely impact on civil liberties.

I will come back to this point later. First, let me recall the context of these negotiations. What we are negotiating with ACTA is an agreement which we think will be important to safeguard the EU's competitiveness on the world market.

Indeed, if we want to remain a competitive economy, we will have to rely on innovation, creativity and brand exclusivity. This is one of our main comparative advantages on the world market. So, we need the tools to ensure that this comparative advantage is adequately protected in our main export markets.

And this is about issues of concern to EU citizens: not only jobs, but also security, health and incentives to stay creative and innovative.

The reality is that EU citizens will benefit from ACTA - this is not about creating a "Big Brother", as some have depicted it

What we are aiming at is simply setting an international standard in intellectual property rights enforcement that is reasonable, balanced and effective, to such an extent that it can attract emerging economies to adhere to it in future, so as to ensure that innovation is adequately protected in those markets that matter. This is the ultimate objective, on which I am sure we all agree.

You will all have seen the draft text of ACTA that was released last April and I hope that this has reassured you. I also hope that it has allowed you to verify that the main principles that lead the Commission in these negotiations, and which I have already set out in plenary, have been strictly followed.

By way of reminder:

Firstly, the objective of ACTA is to address **large-scale infringements** of intellectual property rights which have a significant commercial impact, it is not about controlling travellers on the content of their laptops or their music player. It will not lead to limitation of civil liberties or harassment of consumers. In case some of you have lingering doubts, I would be very happy to hear your arguments, and to see concrete examples of where the current text of ACTA would affect civil liberties.

Second, **ACTA is only about enforcement** of intellectual property rights. It will **not** include provisions modifying **substantive** intellectual property law. It should set minimum rules on how innovators can enforce their rights in courts, at the borders or over the internet. For example, ACTA will ensure that a European fashion designer, artist or automobile manufacturer can see his rights adequately safeguarded when confronted with counterfeiting of his creations outside Europe.

Third, **ACTA must remain in line with the EU acquis**, including the current level of harmonisation of IPR enforcement, the e-commerce Directive, the Regulatory Telecom Framework, and, last but not least, the applicable EU legislation on data protection and privacy. In this respect, let me be very clear that ACTA will **not** oblige its signatories to apply a "**3 strikes rule**" or a "*graduated response*" system to fight copyright infringements and internet piracy – as you can verify from the text

Fourth, we will make sure that ACTA does not hamper access to **generic medicines**. I know that ACTA has been linked to recent incidents in one of our Members States whereby, on the basis of EU customs law, generic medicines destined for developing countries had been detained when in transit in the EU.

We understand why it is in the interest of India and Brazil to try to make an amalgamation between ACTA and the WTO consultations they launched in order to score a political point, but ACTA simply does not address these issues. There is consensus among the ACTA negotiators that ACTA should not address controls of patents by customs, which means ACTA cannot serve as a basis to interfere with trade in generic medicines. Furthermore, ACTA will be consistent with the Declaration on TRIPS and Public Health.

I also take this opportunity to briefly report the results of the 9th round of ACTA negotiations that took place in Luzern, between 28 June and first July.

There was good progress on the negotiating text, but occasionally at the expense of the level of ambition of ACTA. The EU's objective to remain within the boundaries of the EU *acquis* is being successfully held.

In fact, in areas like the internet chapter, where there was no previously agreed text in the multilateral framework, EU legislation has been a very useful source of inspiration for the kind of compromise language that should be in an agreement like ACTA.

However, on important areas, such as enforcement at the border it is becoming clear that a consensus between the ACTA parties will only be reachable on the basis of the lowest-common denominator, given the variety of views and practices on this issue with the various ACTA participants.

Another area where discussions have been disappointing in terms of the EU interests is regarding the intellectual property rights that will be covered by the agreement. The EU has a wide and diversified basis of right-holders. A farmer producing geographical indications or a textile company creating designs are also victims of counterfeiting and also need to be covered by better enforcement rules.

The problem is that several of our partners insist that only copyright and trademarks "deserve" to be included in ACTA. We strongly disagree and will continue to firmly push for these offensive EU interests to be respected.

The next round will likely take place at the end of July, in Washington. Although we are approaching the end-game, at least a couple more rounds will be required to conclude the negotiations.

On **transparency**, the EU has convinced its partners to release the negotiating text. This was a strong request from your side and I am happy that we could deliver and that the text was released in April.

Regrettably, at the last round, one ACTA Party was opposed to the update of the publicly released text reflecting the progress made in Luzern. The Commission regrets this unilateral decision and considers that it is counterproductive, since it may bring back unfounded rumours and suspicions. The work done in Luzern was on the basis of the available text and as I said, it was mostly a matter of reaching compromise where different options were on the table – no new provisions were added.

This being said, we will share the text with the European Parliament, and you will continue to be adequately informed.

For the latest text, we have provided it to the INTA secretariat, where members of INTA, in line with the mechanism put in place between us and INTA to circulate sensitive negotiating documents. The text will be put at your disposal. I emphasise that this text is for your eyes only, and should not circulate outside the Parliament. This is of course the condition under which we share this text with you.

I encourage further contacts with interested Members of this Parliament. Yesterday's technical debriefing on the Luzern round provided by my staff is an example of the dialogue I am seeking with you and your peers.