Anti-Counterfeiting Trade Agreement (ACTA)

List of answers by the European Commisson to written questions by the European Parliament

This list compiles the written questions by the European Parliament to the Commission, and their replies by the Commission, filed between 1 January 2010 and 31 January 2012

The list will be regularly updated

Question for written answer E-011054/2011
to the Commission
Rule 117
Zbigniew Ziobro (ECR)

Subject: Anti-Counterfeiting Trade Agreement (ACTA)

For quite some time I have been hearing of concerns regarding legal inconsistencies in the text of the international Anti-Counterfeiting Trade Agreement and the problems that these inconsistencies are causing for private citizens and SMEs.

1. Has the Commission carried out a SWOT analysis of the adoption of ACTA? If so, what were its findings?

2. What view does the Commission take of the clause requiring private firms to monitor (for example, through the use of deep packet analysis technology) and to regulate online content? Are these provisions not at odds with fundamental rights?

3. What is its assessment of ACTA in the light of the European rules drawn up by the Council on protecting and promoting the universality and openness of the internet?

4. On which ACTA provisions has the Commission submitted comments?

EN
E-011054/2011
Answer given by Mr De Gucht
on behalf of the Commission
(5.1.2012)

The Commission based its assessment on the implementation of the Anti-Counterfeiting Trade Agreement (ACTA) on the studies made for the 2004 Directive on the enforcement of Intellectual Property Rights (IPR) (Directive 2004/48/EC[1]) and for the 2006 proposal for a Directive on criminal enforcement of IPR[2] (not adopted). This is because the Commission was bound by the negotiating guidelines adopted by the Council which stipulated that it may not to go beyond the EU acquis.

Contrary to the statement by the Honourable Member, ACTA does not contain any provisions mandating the monitoring of the internet by private companies. ACTA contains provisions encouraging the development of cooperation between private stakeholders. This provision already exists in the EU acquis, in particular in the 2004 Directive on the enforcement of Intellectual Property Rights. ACTA does, also, contain the necessary safeguards to allow its Parties, including the EU, to strike an appropriate balance between all the rights and interests involved, taking into account the EU economic, political and social objectives, as well as the EU legal traditions.

ACTA is fully in line with the relevant EU legislation. For instance, it complies with the 2009 Telecom Framework Directive which guarantees the protection of the universality of the internet in accordance with the fundamental rights and freedoms of natural persons, as

[1] Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, OJ L 157, 30.4.2004.
[2] COM(2006) 0168 final

guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and general principles of EU law and now by the European Union's Charter of Fundamental Rights.

The Commission has negotiated and therefore commented the whole text of ACTA except the 4th section (Criminal section) of chapter 2 which was negotiated by the rotating Presidency of the EU.

Question for written answer P-009708/2011
to the Commission
Rule 117
Christian Engström (Verts/ALE)

Subject: ACTA safeguards and 'fair and equitable' procedures in TRIPS

In response to Parliamentary Question P-008444/2011, the Commission explains that the reference in ACTA to ‘fair’ process has the same meaning as the requirement for ‘fair and equitable’ procedures in TRIPS.

1. Can the Commission explain the specific intention of the negotiators when they removed the word ‘equitable’ and when they replaced the word ‘procedure’ with the word ‘process’?

2. Is the ‘fair process’ in ACTA meant to be identical in meaning to the enforcement procedures that TRIPS parties must make ‘available under their law’? If yes, why was the same wording not used? If the ‘process’ is meant to be different, could the Commission explain what the difference is understood to be?

EN

P-009708/2011
Answer given by Mr De Gucht
on behalf of the Commission
(14.11.2011)

1. When parties discussed the content of Article 27.2 to 27.4, they agreed that it was important to stress a number of principles, such as freedom of expression, privacy and fair process. This does not mean that the enumeration is exhaustive, as indicated by the inclusion of the expression "such as". Other principles apply to Article 27 (ACTA), and namely the general enforcement obligations foreseen in Article 6.2 ACTA, which require that procedures adopted, maintained, or applied to implement ACTA provisions shall be fair and equitable. In this context, the Commission considers that the word "process" in Article 27 covers, but is wider than, the term "procedures" in Article 6.2.

2. The Commission equally considers that the term "fair process" in Articles 27.2 to 27.4 encompasses the reference to fair and equitable procedures in Article 41 of the TRIPS Agreement[3].

[3] Agreement on Trade-Related Aspects of Intellectual Property Rights, Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization, signed in Marrakesh, 15 April 1994.

Question for written answer P-008444/2011
to the Commission
Rule 117
Christian Engström (Verts/ALE)

Subject: 'Fair process' in ACTA final text

Article 27.2 of the ACTA final text refers to the ‘fundamental principle’ of ‘fair process’.

Could the Commission explain:

1. What it understands by ‘fair process’?

2. How it came to this view? In particular, can the Commission provide references to the specific international legal texts or ACTA preparatory documents on which it bases its understanding of this ‘fundamental principle’?

EN
P-008444/2011
Answer given by Mr De Gucht
on behalf of the Commission
(13.10.2011)

The Commission's understanding of "fair process", as referred in Article 27.2 is that it is used in the same sense as in Article 41.2 of the TRIPS Agreement[4], which establishes that procedures concerning the enforcement of intellectual property rights shall be fair and equitable. ACTA being, to a considerable extent, based on the TRIPS Agreement, this was the basis for introducing in the area of internet enforcement a principle which is already common to all the ACTA members (all also members of TRIPS) when implementing general enforcement procedures.

[4] Agreement on Trade-Related Aspects of Intellectual Property Rights, Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization, signed in Marrakesh, 15 April 1994.

Question for written answer E-003780/2011
to the Commission
Rule 117
Marielle Gallo (PPE)

Subject: Anti-Counterfeiting Trade Agreement (ACTA) - compatibility with the Community acquis

In its resolution of 24 November 2010 (P7_TA(2010)0432), Parliament asked the Commission 'to confirm that ACTA's implementation will have no impact on fundamental rights and data protection, on the ongoing EU efforts to harmonise IPR enforcement measures, or on e-commerce'.

Has the Commission taken note of a petition signed by a number of University lecturers who consider that, contrary to the many statements made by the Commission, some of ACTA's provisions are not compatible with the Community acquis?

What is the Commission's response to these claims that ACTA is incompatible with the Community acquis?

Can the Commission assure Parliament that ACTA is consistent with European Union law and that it is compatible with fundamental rights and the provisions on protection of personal data?

Does ACTA strike a fair balance between the interests of all the parties as well as between business interests and citizens' rights?

EN
E-003780/2011
Answer given by Mr De Gucht
on behalf of the Commission
(7.6.2011)

The Commission is aware of the opinion by European academics referred to by the Honourable Member.

However, based on a detailed analysis by the Commission services (available on DG Trade's website[5]), the Commission considers that this opinion fails to demonstrate, in a convincing manner, that ACTA is not in line with the relevant Community *acquis* or that it raises legitimate concerns as regards certain fundamental rights.

Many of the Opinion's conclusions appear to be based on the fact that ACTA is written in more general terms than EU legislation, or that the exceptions, procedural guarantees and safeguards in ACTA are less precise, and less specific than those of the relevant EU legislation. However, in itself this does not mean that there is an incompatibility between ACTA and EU legislation.

ACTA does, in fact, contain the necessary safeguards to allow its Parties, including the EU, to strike an appropriate balance between all the rights and interests involved. Not all ACTA Parties share exactly the same view on how to put this balance into practice, which is why, rather than setting out every detail, ACTA provides the Parties with the necessary flexibility

[5] http://trade.ec.europa.eu/doclib/docs/2011/april/tradoc_147853.pdf

to establish a balance which takes account of their economic, political and social objectives, as well as their legal traditions.

The Commission considers that ACTA is fully compatible with relevant EU law. ACTA also fully respects fundamental rights and data protection. This means that, when ACTA is adopted by the EU, it will neither require changes to that acquis, nor lead to different interpretations or implementation of existing EU legislation.

In this context, the Commission refers to its written answers to P-9346/10, P-9026/10, P-5214/10, P-0683/10 and E-4292/10, and to Commissioner in charge of Trade's presentations to the European Parliament plenary of 8 September 2010 and 20 October 2010, confirming that ACTA ensures a fair balance of interests between right-holders and other parties concerned by the enforcement of intellectual property rights.

Question for written answer E-003101/2011
to the Commission
Rule 117
Marietje Schaake (ALDE), Lena Ek (ALDE), Jan Philipp Albrecht (Verts/ALE), Zuzana Roithová (PPE), Petra Kammerevert (S&D), Christian Engström (Verts/ALE) and Niccolò Rinaldi (ALDE)

Subject: Increasing IPR enforcement through ACTA will not halt piracy of media products

The recent report 'Media Piracy in Emerging Economies'[6] explains that increased enforcement is not the key to combating piracy in developing countries. One of the conclusions of the report is that piracy arises when consumer demand is not met. ACTA could criminalise consumers who are merely finding a way to gain access to cultural goods which are not available to them, due to the barriers created by redundant business models. The report also states: '[...] *The failure to ask broader questions about the structural determinants of piracy and the larger purposes of enforcement imposes intellectual, policy, and ultimately social costs. These are particularly high, we would argue, in the context of ambitious new proposals for national and international enforcement—notably ACTA*.'

1. Does the Commission agree that – considering what has been found in this report – ACTA will not achieve its goal of halting piracy in developing countries? If not, why not?

2. Does the Commission have a strategy in place to deal with a possible future assessment which would find that ACTA has failed to achieve its goals and/or is counterproductive? If not, why not?

3. Does the Commission agree that Europe should take a leading role in reforming IPRs – such as copyright – on a global scale, to better suit the digital age, to offer new business models a chance to flourish and to give artists a fair chance of exploiting their works worldwide, instead of seeking, but consistently and thoroughly failing, to protect the status quo through more enforcement? If not, why not?

4. Does the Commission agree that it risks alienating potential consumers of media products by increasing enforcement of laws which are outdated and unenforceable in the digital environment without violating some of the consumers' fundamental rights? If not, why not?

6 Find the report at http://piracy.ssrc.org/

EN
E-003101/2011
Answer given by Mr De Gucht
on behalf of the Commission
(27.5.2011)

1. The question of copyright piracy and the impact of enforcement policies in developing countries can neither be summarised only by the conclusions of the study mentioned by the Honorable Members nor solved by the Anti-Counterfeiting Trade Agreement alone. The problem is complex, there are numerous studies on the subject and their conclusions are far from unanimous. For instance a recent study by the OECD Policy Complements to the Strengthening of intellectual property rights (IPR) in Developing Countries[7] highlights "…the generally positive relationship of IPR reform to trade, foreign direct investment (FDI), technology transfer and innovation." and concludes that there is "…a tendency for IPR reform to deliver positive economic results. Reforms concerning patent protection have tended to deliver the most substantial results, but the results for copyright reform (…)were also positive and significant ". More specifically on the negative impacts of piracy and counterfeiting, another OECD study The Economic Impact of Counterfeiting and Piracy[8] stressed that "(t)he magnitude and effects of counterfeiting and piracy are of such significance that they compel strong and sustained action from governments, business and consumers. More effective enforcement is critical in this regard, as is the need to build public support to combat the counterfeiting and piracy.". This same study went on to call "…on governments to consider strengthening legal and regulatory frameworks, enhance enforcement and deepen the evaluation of policies, programmes and practices.".

   On the other hand, ACTA is not particularly focused on developing countries, at least until its membership is expanded. This is not because of the reasons pointed out in the "Media Piracy" study but because the ACTA provisions are only binding to its Parties and among the current ones, only two are developing countries (Mexico and Morocco). For this reason, ACTA will, at least in the short to mid-term have a very limited impact on the anti-piracy policies of developing countries.

2. The assessment of the impact of an international agreement like ACTA is a long-term exercise and the Commission is not considering any alternatives to it even before ACTA has been signed and entered into force.

   This being said, the Commission adopted in 2004, a Strategy for the Enforcement of IPR in Third Countries[9]. This strategy defined several ways to address IPR infringement in third countries, both legislative (multilateral, plurilateral – like ACTA - and bilateral agreements) and non-legislative (IP Dialogues, technical IPR assistance, etc.). The Strategy is currently being reviewed, on the basis of a recent study[10] and other sources of input, including a public consultation (which will complement the broader one conducted in 2010[11] regarding the EU trade policy). This review should result in the adoption of a new Commission Communication towards the end of 2011.

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[7] Cavazos Cepeda, R., D. Lippoldt and J. Senft (2010), "Policy Complements to the Strengthening of IPRS in Developing Countries", OECD Trade Policy Working Papers, No. 104, OECD Publishing.
[8] http://www.oecd.org/document/50/0,3746,en_2649_34173_39542514_1_1_1_1,00.html
[9] http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/c_129/c_12920050526en00030016.pdf
[10] http://trade.ec.europa.eu/doclib/docs/2010/november/tradoc_147053.pdf
[11] http://trade.ec.europa.eu/doclib/docs/2010/september/tradoc_146556.pdf

3. The international framework for the reward of artists for the online use of works protected by copyright and related rights was established within the World Intellectual Property Organisation (WIPO) in 1996, with the conclusion of the so-called "internet treaties" - the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. The European Commission, in its Digital Agenda, has recognised that persisting fragmentation in the Digital Single Market and current rights management and licensing practices may be raising barriers to consumers' access to digital content. For this reason, the Digital Agenda for Europe lays out a concrete set of actions aimed at fostering the development of competitive legal offer of digital content. These actions include, among others, a legislative proposal to simplify cross-border licensing and report, due by 2012 on further measures allowing EU citizens to benefit from the full potential of the Digital Single Market to promote their access to content.

4. IPR and their enforcement, require a careful balance to be struck between the interests of rightholders on the one hand and consumers of entertainment products on the other hand, while, at the same time, the general public interest has to be taken into account. It is a perpetual challenge for public authorities to maintain this balance over time in a sustainable manner with the technological and societal context changing continuously.

   In such a context it is of prime importance to enhance the understanding and awareness by digital consumers of the necessity to protect creative works, even in an online world. In addition to national efforts, the EU Observatory on Counterfeiting and Piracy will play an important role in raising such awareness.

Question for written answer E-002345/2011 to
the Commission Françoise Castex (S&D)

Subject: Access to the preparatory works of the ACTA Treaty

With regard to the response of 15 December 2010 to my written question on ACTA (P-9179/2010), I would like to make the following observations.

As the Commission has confirmed, the EU has ratified the Vienna Convention on compliance with international treaties and the ACTA agreement will be applied in accordance with this Convention.

Article 32 of the Vienna Convention refers to the 'Supplementary means of interpretation' which require access to 'supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning …' if the text 'leaves the meaning ambiguous or obscure'.

In accordance with the Vienna Convention I would like to know whether Parliament will have access to the preparatory works of the ACTA Treaty while in the process of formulating an opinion and with sufficient time before Parliament gives its opinion on the Treaty?

E-002345/2011
Answer given by Mr. De Gucht
on behalf of the Commission
(20.4.2011)

Following the entry into force of the Lisbon Treaty, precise arrangements were made between the Commission and the Parliament in order to ensure that the Parliament is fully informed, at all stages of trade negotiations, of the evolution of those negotiations, so that at the end, it is able to provide its informed consent to the Anti-Counterfeiting Trade Agreement (ACTA). In the case of the ACTA negotiations, this included the communication to the Parliament of the different versions of the text which were issued after each negotiating round, as well as reports of the negotiating rounds. Additionally, in the numerous Commission replies to oral and written questions and in its replies to two EP Recommendations and one Declaration, there are detailed considerations and explanations about the negotiations at its different stages. These documents constitute the key preparatory work of the treaty and provide detailed information about the circumstances of its conclusion.

In addition to providing these preparatory documents, the Commission services have provided dedicated briefings to interested Members of the European Parliament on all aspects of the negotiations, after the various negotiating rounds and remain available for any additional clarifications deemed necessary.

Question for written answer E-1654/2011
to the Commission David Martin (S&D)

Subject: Anti-Counterfeiting Trade Agreement (ACTA)

Within future free trade agreement (FTA) and other bilateral trade negotiations, does the Commission intend to ask partner countries to join ACTA?

E-001654/2011
Answer given by Mr De Gucht
on behalf of the Commission
(31.3.2011)

The Commission does not foresee such a request in the framework of the on-going free-trade agreement negotiations.

Question for written answer E-001812/2011
to the Commission
Lidia Joanna Geringer de Oedenberg (S&D), Françoise Castex (S&D), Catherine Trautmann (S&D) and Stavros Lambrinidis (S&D)

Subject: Impact on EU acquis of anti-counterfeiting trade agreement

The primacy of international agreements concluded by the EU over secondary law requires the European Court of Justice to interpret secondary law as much as possible in conformity with these agreements. This is also valid for mixed agreements and is independent from recognition of 'direct effect'. Therefore, once ratified, the ACTA will become a source of EU law and will be used by the ECJ in the course of preliminary rulings for interpretation and validity of secondary law.

In this context, it is of the utmost importance that the European Parliament be accurately informed as to the legal consequences of ACTA for the EU *acquis*, before giving its consent in accordance with Article 216 of the Treaty.

There still seems to be some disagreement over these consequences between the Commission – which insists that ACTA is fully compatible with the harmonised EU framework on intellectual property rights enforcement – and many legal experts, some of whom have issued an opinion (coordinated by the Institute of Legal Informatics in Hannover), highlighting numerous incompatibilities of ACTA with our legislative framework. The opinion will be sent to the EU institutions in the next few days.

Is the Commission aware of the above-mentioned opinion and if so, how does it evaluate it?

More specifically, could the Commission comment on two particular points:

1. As far as civil enforcement measures are concerned, how does the Commission explain different formulations of provisions concerning the level of damages for infringements of intellectual property rights, where ACTA adds additional criteria which are not provided for under Directive 2004/48/EC: market price or suggested retail price to be used when establishing the level of damages (Article 9(1)); and would they be cumulated with the infringer's profit (Article 9(2)), thus raising the amount of damages in comparison with the current situation?

2. How does the Commission want to ensure that provisions regarding border measures dealing with all kinds of infringements of intellectual property rights – not solely counterfeited goods – will not impede and delay the legal movement of medicines under the principle of parallel movement of goods and exhaustion of rights?

EN
E-001812/2011
Answer given by Mr De Gucht
on behalf of the Commission

The Commission is aware of an opinion of European academics (the "Opinion") on ACTA and welcomes the fact that it brings the debate on ACTA into a detailed legal analysis of its actual text.

The Commission's general assessment of this Opinion is that it overlooks the fact that ACTA is a balanced agreement, which contains the necessary safeguards to allow signatories to strike an appropriate balance between all rights and interests involved. Obviously, not all ACTA parties share exactly the same view on how to set this balance in practice, which is why, rather than prescribing in detail how to set the balance, it provides the parties with the necessary flexibility to establish this balance, in line with their economic, political and social objectives, as well as with their legal traditions.

Several examples of the provisions ensuring this balance can be found in the preamble[1] and in the body of the agreement[2];

The Commission will soon make available a detailed comment explaining why in the examples listed in the opinion the clauses of ACTA are compatible with the respective EU legislation. The Commission will also clarify that ACTA does not remove, reduce or modify any of the additional safeguards foreseen, for instance in the trade related intellectual property services (TRIPS) Agreement and in EU and Member State relevant legislation.

On the specific questions:

1. The Commission believes that there is no conflict between article 9 of ACTA and article 13 of Directive 2004/84 as they both refer to ways in which courts can come to the determination of fair damages for the injured party. Article 9 of ACTA provides a detailed list options for the judicial authorities to establish the damages. The Commission ensured that article 9 ACTA does not impose on the EU any methods not foreseen in article 13 of Directive 2004/48. This is why article 9.1 of ACTA proposes a non exhaustive ("inter alia") set of alternatives. Regarding the relation between article 9.1 and 9.2, the fact that there are different mechanisms to set the damages in the respective paragraphs does not mean that the amounts stipulated through each are cumulative and would thus raise the level of applicable damages. This is confirmed by the reference at the end of article 9.2 that the infringers' profits may be presumed to be the amount of damages referred to in 9.1.

In any event, no provision in article 9 of ACTA will require the amendment of existing EU legislation or the introduction of new rules or practices.

2. During the negotiation of ACTA, the Commission insisted on a broad definition of trademark infringements in the Border measures section of ACTA (Section 3), in order to keep the necessary flexibility in view of the on-going review of the applicable EU legislation[3] (Regulation 1383/2003). However, as correctly pointed out in the Opinion, article 13 ACTA was drafted in a way that allows the Parties to exclude certain forms of IP infringements. In the EU, this is the case for other forms of trademark infringements than counterfeiting, as well as for topographies of semiconductor products, utility models or products containing or manufactured using a third parties' undisclosed information, without consent. Consequently, there is no extension of the EU acquis and no obligation to modify Regulation 1383/2003 derives from ACTA.

Regarding any concerns derived from an alleged impact of ACTA over the principle of parallel movement of goods and exhaustion of rights, the Commission calls the attention to footnote 5 of Section 3, which stipulates, as it is the case in the TRIPS Agreement and in EU Regulation 1383/2003, that the border enforcement provisions of ACTA will not apply to parallel trade (i.e. "goods put on the market in another country by or with the consent of the right-holder").

The Commission exerted the most serious consideration and great caution to ensure that neither the border enforcement provisions nor any other ACTA provision will target legitimate trade in generic medicines either directly or indirectly. It is not the Commission's intention to use enforcement measures (be it at the border or in civil or penal litigation) to hinder the legitimate trade in generic medicines.

Question for written answer E-1447/2011
to the Commission
Christian Engström (Verts/ALE), Judith Sargentini (Verts/ALE), Sandrine Bélier (Verts/ALE) and Jan Philipp Albrecht (Verts/ALE)

Subject: Follow-up question on ACTA

In her question for written answer to the Commission P-9179/2010, Françoise Castex (SD/FR) asked: 'Could the Commission clarify to what degree ACTA is a binding or voluntary agreement, given that the US apparently does not believe its laws must be consistent with ACTA?'

The Commission answered: 'The Anti-Counterfeiting Trade Agreement (ACTA) is a binding international agreement on all its parties, as defined and subject to the rules of the Vienna Convention on the Law of Treaties (1969)'.

Is the Commission aware that the United States has not ratified the Vienna Convention on the Law of Treaties?

E-001447/2011
Answer given by Mr De Gucht
on behalf of the Commission
(22.3.2011)

Article 2.1 of ACTA clearly defines its nature as a binding international agreement, which is binding on all its signatories: "Each Party shall give effect to the provisions of this Agreement. A Party may implement in its law more extensive enforcement of intellectual property rights than is required by this Agreement, provided that such enforcement does not contravene the provisions of this Agreement."

The Commission is not aware of any statement made by the US authorities about ACTA being a voluntary agreement or about US laws not being consistent with ACTA. Such a statement was certainly never made in the course of the negotiations and is not part of the text of the agreement.

The reference to the Vienna Convention[1] in the initial reply was an answer to what the Commission understood as the general question about whether or not ACTA is formally considered to be an international agreement, binding on all its parties. The fact that the United States of America signed but have not yet ratified the Vienna Convention on the Law of Treaties has no bearing on whether or not the US is bound by this Treaty.

[1] The International Court of Justice in the Gabčíkovo-Nagymaros Project case observed that: "[The Court] needs only to be mindful of the fact that it has several times had occasion to hold that some of the rules laid down in that Convention might be considered as a codification of existing customary law" (I.C.J. Reports 1997, p. 38, para. 46). The Court's opinion, together with the relatively high number of parties to the Convention, suggests that the instrument states the current general international law of treaties.

WRITTEN QUESTION E-2079/10
by Morten Messerschmidt (EFD) to
the Commission

Subject: ACTA and its restrictions on fundamental rights

The Anti-Counterfeiting Trade Agreement (ACTA) – if it becomes a reality in its present form –will entail a violation of European citizens' right to privacy. I consider it crucially important that the proposed agreement does not force through restrictions on the right to a fair trial and does not impair fundamental rights such as the freedom of expression or the right to privacy.

ACTA in its current form provides that Internet service providers will bear liability for data which they transmit and/or host via their services, to an extent which will require the prior inspection or filtering of such data. This kind of policy must be seen as a measure which in the long term could impair consumers' fundamental rights.

The negotiations on ACTA have so far been characterised by a lack of transparency, and I should therefore like to ask the Commission to clarify the position of the current negotiations. I should also be glad if the Commission – without undue delay – would make all documents concerning ACTA publicly available.

Will the Commission clarify to what extent the ACTA agreement in its present form contains restrictions on the freedom of expression and privacy? If so, will the Commission permit this?

E-2079/10EN
Answer given by Mr De Gucht
on behalf of the Commission
(17.6.2010)

The Commission wishes to refer the Honourable Member to the statement made by the Member of the Commission responsible for Trade at the plenary debate on ACTA in Strasbourg on 9 March 2010[1] as well as to its replies to written questions E-11/10, E-147/10, E-217/10, E-726/10, E-802/10, E-1267/10, E-1391/10, E-1435/10, E-1677/10 and E-2195/10[2]. The current negotiating text of ACTA has been made public on 21 April 2010, together with a joint statement of all ACTA negotiating parties[3].

Find below: Written Questions E-11/10, E-147/10, E-217/10, E-726/10, E-802/10, E-1267/10, E-1391/10, E-1435/10, E-1677/10 and E-2195/10

[1] http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20100309&secondRef=ITEM-015&language=EN
[2] http://www.europarl.europa.eu/QP-WEB/home.jsp
[3] http://trade.ec.europa.eu/doclib/press/index.cfm?id=55

WRITTEN QUESTION E-0011/10
by Ivo Belet (PPE) to the
Commission

Subject: Three strikes proposal on the ACTA negotiating table

Concern has arisen about the scope of the negotiations on a new trade agreement against counterfeiting (ACTA). A leaked memorandum indicates that the USA wishes to include such measures as the three strikes approach (or graduated response) in order to tackle any violations of copyright on the Internet. This means that consumers' Internet subscriptions would be terminated after three warnings.

Can the Commission confirm that the US negotiating partners have tabled proposals along the lines of the three strikes approach?

What is the Commission's negotiating mandate in this regard?

Does the Commission consider the purpose of this proposal to be restricted to tackling large-scale crime without violating civil liberties, thus falling within the scope of the negotiations?

Can this proposal be reconciled with the recently adopted new telecoms legislation, particularly Article 1, which guarantees that measures relating to access to or use of telecoms services and applications respect the fundamental rights and freedoms of natural persons?

E-0011/10EN
Answer given by Mr De Gucht
on behalf of the Commission
(5.3.2010)

The final Anti-Counterfeiting Treaty Agreement (ACTA) will be the result of a compromise between the various participants in the negotiations. Proposals made by parties at some stage of the negotiations may therefore not necessarily be part of the end-result.

Against this background the Commission can nevertheless confirm, that there are no proposals on the ACTA negotiation table about the introduction of a compulsory "three-strike" or a "graduated response" system.

The Commission's own negotiating directives, which were approved by the Council, have been shared with the European Parliament in accordance with and in the Framework Agreement between the Commission and the Parliament.

The Commission can assure the Honourable Member that the EU position regarding the treatment of Intellectual Property Right (IPR) infringements on the internet in the framework of the ACTA negotiations will reflect the European acquis including the Directive on electronic commerce (Directive 200/31/EC) and the Telecoms' Regulatory Framework and its revision adopted by the Council and the European Parliament in 2009. The Commission

can therefore guarantee that the final outcome of the ACTA will be fully respectful of fundamental rights, freedoms and civil liberties.

WRITTEN QUESTION E-0147/10
by Alexander Alvaro (ALDE) to the Commission

Subject: Anti-Counterfeiting Trade Agreement (ACTA)

1. It was reported that 38 different nations have participated in discussions about the text of the proposed Anti-Counterfeiting Trade Agreement (ACTA). Why should that text be withheld from the public?

2. If there is consensus to make the proposed ACTA public, how promptly can it be made public? And had the Chairperson and Coordinators of the responsible INTA committee

full access to the documents?

3. Can an approximate timeline for the negotiation of the proposed ACTA be given?

4. Will the proposed ACTA address issues other than counterfeiting? If so, why?

5. Will the proposed ACTA make changes to substantive intellectual property law, or will it be limited to harmonising enforcement measures? If the former, why?

6. If the proposed ACTA make changes to substantive intellectual property law, why is this initiative being discussed in secret, instead of at the World Intellectual Property Organisation (WIPO)?

7. Will the proposed ACTA impose obligations with respect to the Internet, and if so, why?

8. Some commentators have claimed that the proposed agreement requires a so-called 'Three Strikes' approach, whereby Internet services or Internet access providers must terminate the access of Internet users accused of having violated copyright law. Can it be stated authoritatively that the agreement will not require or recommend a 'Three Strikes' requirement being implemented by Internet services and/or Internet access providers?

9. Certain US officials have claimed that the agreement will impose no new obligations upon the United States Government. Is it the case that the US Government would undertake no responsibilities as a result of this instrument, and if so, what benefit would accrue to the Commission by entering into such an agreement with the United States of America?

E-0147/10EN
Answer given by Mr De Gucht
on behalf of the Commission

(15.3.2010)

1. The participants in the ACTA negotiations are the EU (representing its 27 Member States), the US, Japan, Switzerland, Canada, Australia, New Zealand, Singapore, Korea, Mexico and Morocco. As is frequently the case in such plurilateral trade-related negotiations, the ACTA parties have agreed that negotiating documents would only be made public when an unanimous decision in that sense is taken by the countries participating in the negotiations. For the time being, certain participants to the negotiation remain opposed to disclosing the documents, since the text is still under negotiation. Under these circumstances, where compromises still have to be found between different countries, and where arbitrations still have to be made at country level as to the final position to be taken in the negotiations, it is not unusual that negotiations are kept confidential for a certain time.

2. At the upcoming negotiating round, the Commission will strongly insist with the other ACTA partners to agree on the release of the negotiating documents. As soon as there is a consensus about the disclosure of the ACTA negotiating documents, these documents can be immediately publicly released.

   Nevertheless, the Commission has shared with the European Parliament (particularly via the Committee on international trade) all relevant Commission documents that have been shared with the Member States through the former 133 Committee (now "Trade Policy Committee").

3. ACTA participants have publicly endeavoured to conclude the negotiation this year. Seven rounds of negotiation have taken place since the negotiations were launched in July 2008. The last negotiating round took place between 26 and 29 January 2010 in Mexico. The following round is foreseen to take place between 12 and 16 April, in New Zealand. Several additional rounds will be necessary before the likely conclusion of the negotiation, towards the end of the year.

4. The EU position is that ACTA should apply in general to infringements of all intellectual property rights (copyright and related rights, trademarks, patents, geographical indications, designs, etc). This is the scope adopted in the EU acquis about Intellectual Property Rights (IPR) enforcement (e.g. Enforcement Directive 2004/48[1], Customs Regulation 1383/2003[2]).

   Covering more than the counterfeiting of trademarks is necessary because a wide range of EU economic operators rely on economic activities that need IPR protection, e.g. high quality products (geographical indications), innovative industries (patents), fashion and design (designs) or entertainment and culture (copyright).

[1] Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, OJ L 157, 30.4.2004

[2] Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights, OJ L 196, 2.8.2003

However, in the case of penal enforcement, the EU is proposing that ACTA provisions should only apply to infringements of copyright and trademarks, consistent with the TRIPs[1] agreement. It is also important, in this context, to keep in mind that the aim of ACTA is to tackle large scale IPR infringement activities, mostly pursued by criminal organisations, and not isolated individual IPR infringement activities.

5. ACTA should only address enforcement measures. It will not include provisions modifying substantive IP law, such as the creation of new IP rights or the definition of their duration, scope of protection, registration, etc.

6. ACTA is not being negotiated at the WIPO (or at the World Trade Organization) because there was no willingness among the membership of those institutions to address the problems related to the enforcement of IPRs.

7. ACTA will indeed impose obligations with respect to the internet because of its growing importance as a means of IPR infringement. The multilateral legal framework, and namely the TRIPs agreement, was negotiated before the expansion of the internet, and it therefore lacks the minimum standards to address such problems. It is important to have an international instrument setting out a framework for addressing this type of infringement in order to make sure that international partners have the same level of protection of IPRs that the EU currently applies, with all the due guarantees provided by its acquis. Since internet content flows freely across borders, a minimum set of internet enforcement rules will allow the EU right-holders to have their intellectual creations respected in third countries and, in the case of infringements, will equip them with legal measures to defend their assets.

8. There are no proposals on the table about the introduction of a compulsory "three-strike" or "graduated response" system. The Commission will ensure that ACTA is in line with the current EU acquis and the current level of harmonisation of IPR enforcement. The three-strike system is in place or is envisaged in certain Member States but it is not part of the EU acquis.

9. The Commission considers that the US enforcement system is generally effective and efficient in the protection of certain IP rights. It is understandable that US officials state that ACTA is not a disguised means to circumvent their domestic legislative process and to revise their current laws. The European Commission has stressed the same line on numerous occasions and so has the European Parliament. An international treaty that would adopt the common standards of both the EU and US legislation in the area of IPR enforcement would still remain a most valuable contribution to the current prevailing international standard, as defined by the WTO/TRIPs Agreement.

   Additionally, ACTA is not only about improved legal standards. It is also about cooperation between enforcement authorities, the adoption of best practices or the better coordination of technical assistance. Although the EU has had very successful cooperation with the US in these areas for the last 4-5 years, the Commission believes

[1] Trade-related aspects of Intellectual Property Rights

that ACTA can also improve these important aspects of the fight against IPR infringements.

Furthermore, the United States are not the only participant in the ACTA negotiations, and the Commission hopes that, in future, countries not currently engaged in the ACTA negotiations will be able to join the agreement.

WRITTEN QUESTION E-0217/10
by Syed Kamall (ECR) to the
Commission

Subject: Anti-Counterfeiting Trade Agreement talks

I have been contacted by a constituent in relation to the Anti-Counterfeiting Trade Agreement talks currently ongoing. He is concerned about the perceived lack of transparency of these talks.

Can the Commission confirm:

1. if the EU and other ACTA participants are providing genuine, relevant and up-to-date information on the negotiations, e.g. via a website;

2. who the EU representatives are at these talks; and how constituents can find the EU's position on the various issues being discussed?

E-0217/10EN
Answer given by Mr De Gucht
on behalf of the Commission
(15.3.2010)

1. The Commission has ensured that all interested parties are involved in the process and informed about the state of play of ACTA. The Commission took the following steps:

   The Commission keeps the European Parliament regularly informed, particularly through its committee on international trade (INTA). The Commissioner as well as the Director General for Trade have addressed this issue several times in the last two years.

   The Commission also continuously informs the general public about the objectives and general thrust of the negotiations and releases summary reports after every negotiation round, as well as a detailed written state-of-play. This and other relevant information are available on the website of the Directorate-General for Trade[1].

   Additionally, the Commission organised two stakeholder conferences on ACTA (which took place on 23 June 2008 and 21 April 2009) which were open to all - citizens, industry,

[1] http://ec.europa.eu/trade/creating-opportunities/trade-topics/intellectual-property/anti-counterfeiting/

NGOs and press. In these meetings, the Commission provided substantive answers to all questions raised. Another public conference will be organised soon on 22 March 2010.

The negotiating partners, inter alia the US, Switzerland, Australia and Canada, have taken similar steps.

2. On the EU side, negotiations are led by the Directorate-General for Trade of the European Commission. Those issues under negotiation that are not harmonised at EU level, such as the penal enforcement provisions, are negotiated by the rotating Presidency of the EU (Spain, during the first semester of 2010). Representatives of the EU Member States are also present at the negotiation rounds because of the discussion on non-harmonised issues.

   As mentioned above, the Commission provides information about ACTA on the website of the Directorate-General for Trade and through meetings with stake-holders. However, details of the EU positions regarding the issues being disclosed are not publicly available, since their disclosure would undermine the protection of international economic relations for two main reasons:

   – releasing internal documents describing and addressing in detail the Commission's negotiating position vis-à-vis the other ACTA participants, as well as Commission's reflections on the positions of the other ACTA participants, could affect the position of partners and therefore the outcome of the negotiations.

   – releasing the EU comments sent to the other ACTA partners is equally not possible at the moment as these documents make direct and specific reference to the negotiating documents drafted by third parties and these third parties oppose, at this stage, the public disclosure of their negotiating positions.

WRITTEN QUESTION E-0726/10
by Carl Schlyter (Verts/ALE), Eva Lichtenberger (Verts/ALE), Christian Engström (Verts/ALE), Niccolò Rinaldi (ALDE), Daniel Caspary (PPE), Syed Kamall (ECR), David Martin (S&D), Helmut Scholz (GUE/NGL), Bernd Lange (S&D) and Robert Sturdy (ECR)
to the Commission

Subject: Anti-Counterfeiting Trade Agreement (ACTA)

The plurilateral negotiations on an Anti-Counterfeiting Trade Agreement (ACTA) are being conducted under a premise of confidentiality agreed upon by participants at the request of the US Government.

At a hearing on 12 January 2010, Commissioner-designate Karel De Gucht said that he will respect the confidentiality agreement among ACTA participants.

In preliminary discussions with Parliament on a new Inter-Institutional Framework Agreement, the Commission agreed on 27 January that it is committed to a reinforced association with Parliament, which will entail informing Parliament immediately and fully at every stage (including the definition of negotiating directives) of negotiations on international agreements, in particular on trade matters, and other negotiations involving the consent procedure, in order to give full effect to Article 218 of the Treaty on the Functioning of the European Union (TFEU), while respecting each institution's role and ensuring full compliance with new procedures and rules for the respect of the necessary confidentiality.

– How will the Commission honour its commitment to a reinforced association with Parliament with regard to the ACTA negotiations?

– When will the Commission grant Parliament access to all documents relating to ACTA, in particular the Council's negotiation mandate, the minutes of ACTA negotiation meetings, the draft chapters of ACTA and the participants' comments on the draft chapters?

– Given that the Spanish EU Presidency hopes to conclude an ACTA agreement in the first half of 2010 and that many MEPs see ACTA as an early opportunity for Parliament to exercise its new role under the TFEU, does the Commission think that Parliament should be given full access to ACTA documents before the new Inter-Institutional Framework Agreement comes into effect?

E-0726/10EN
Answer given by Mr De Gucht
on behalf of the Commission
(31.5.2010)

The Commission refers to the statement made by Trade Commissioner De Gucht in the Plenary Session of the Parliament on 9 March 2010, in which the concerns of the Parliament on transparency were acknowledged.

The Commission has in particular taken note of the Parliaments' request for making public the draft negotiating text of Anti-Counterfeiting Trade Agreement (ACTA), and agrees with the Parliament that this is the best way for the Parliament to have a clear and comprehensive picture of what is going on in these negotiations.

During the latest round of negotiations the Commission has achieved what Commissioner in charge of Trade had promised in his statement to the Parliament, i.e. that the latest version of the negotiating text be made public. All interested parties are now fully informed about the current status of the negotiations and will be able to express their concerns based on facts and not on rumours and out-of-context leaks. This draft ACTA text is available at Directorate General (DG) Trade website: http://ec.europa.eu/trade/creating-opportunities/trade-topics/intellectual-property/anti-counterfeiting/.

Additionally, the Commission wishes to point out that it has provided the Parliament, through the International Trade (INTA) Committee, with the Council's negotiating guidelines on ACTA, full reports of negotiating rounds, and in general all relevant documents, originating

from DG Trade, that have been shared with the Member States through the Trade Policy Committee.

The Commission has done this in accordance with the framework agreement and with the rules agreed between Commission and Parliament. This means that the most sensitive documents, such as the negotiating guidelines, have been made available to the Chairman and Bureau of the INTA Committee and with the Coordinators of all political groups in the INTA Committee – as agreed.

Commissioner in charge of Trade has also instructed its services to provide dedicated briefings to interested Committees, political groups and Members of Parliament who so request on all aspects of the negotiations. A few of these meetings have already taken place, and a debriefing on the results of the next negotiating round (12-16 April 2010) has taken place in Brussels on 4 May 2010.

Although the ACTA parties have recently reaffirmed their willingness to conclude the negotiations in 2010, it is difficult to predict exactly how much time will be needed to conclude the Agreement. The next round is foreseen to take place in Switzerland, during the week of 28 June 2010.

WRITTEN QUESTION E-0802/10
by John Stuart Agnew (EFD) to the
Commission

Subject: Anti-Counterfeiting Trade Agreement (ACTA) talks in Guadalajara, Mexico - January 2010

Can the Commission say what was the outcome of the 7th round of Anti-Counterfeiting Trade Agreement (ACTA) talks in Guadalajara, Mexico at the end of January 2010? Why was it necessary for the substance of the talks to be carried out in secret and for the decisions or conclusions reached at the talks to be kept from public scrutiny, which has attracted worldwide criticism? When can we expect a full report on the substantive discussions in Guadalajara?

E-0802/10EN
Answer given by Mr. De Gucht
on behalf of the Commission
(4.5.2010)

The 7th round of ACTA negotiations took place in Guadalajara, Mexico, on 26-29 January 2010. Discussions were focused on civil enforcement, customs and internet chapter and on the issue of the transparency.

The Commission has provided the European Parliament the full report of the 7th ACTA negotiating round as well as the six previous ones in accordance with the rules agreed

between the Commission and the Committee on International Trade (INTA). Furthermore, the Commission kept the European Parliament, particularly through the INTA Committee, informed since before the launch of the negotiations.

The Commission has also continuously informed the public about the objectives and general trust of the negotiations and has released detailed written state of play. This and other relevant information are available at DG trade website: http://ec.europa.eu/trade/creating-opportunities/trade-topics/intellectual-property/anti-counterfeiting/

In addition, after each negotiating round, the ACTA partners issued a press statement informing the public on the state of play of the discussions and the progress made so far. The press releases of each negotiating round are also available on the Directorate-General (DG) for Trade website: http://ec.europa.eu/trade/creating-opportunities/trade-topics/intellectual-property/anti-counterfeiting/

The latest (8th) round took place in Wellington, New Zealand, on 12/26 April 2010. During this round, the Commission obtained the agreement from the other ACTA parties to make the negotiating text public. The text was released on 21 April and is available at DG Trade website: http://trade.ec.europa.eu/doclib/press/index.cfm?id=552&serie=337&langId=en.

WRITTEN QUESTION E-1267/10 by Jeanine Hennis-Plasschaert (ALDE) to the Commission

Subject: ACTA negotiations

A number of European countries are clearly in favour of ensuring genuine transparency in respect of the much-discussed Anti-Counterfeiting Trade Agreement (ACTA), which is currently being negotiated behind closed doors. It appears, however, that they are being thwarted in this by the Commission, Germany, the United States and a number of Asian countries. Leaked information would appear to indicate that those involved in the 'secret' ACTA talks are also fundamentally divided on the 'three strikes' issue, which provides the legal basis in the context of an internal information network.

The mystery shrouding the talks is, to put it mildly, a source of resentment. It emerges that Singapore and Korea are particularly staunch advocates of secrecy, while Japan, initially an opponent of transparency, is now in favour of it. The US, however, has no intention of clarifying matters and Europe is once again divided. While expressing support for transparency, France and Italy are apprehensive regarding the implications of disclosure for talks on other free trade agreements. The United Kingdom, supported by the Netherlands, Poland, Estonia, Finland, Sweden and Austria, is unequivocally in favour but is encountering strong opposition in Europe from Germany and Denmark.

1. Does the Commission favour openness over the familiar recourse to 'backroom' negotiations? If not, why not?

2. Does the Commission agree that far-reaching speculation regarding possible substance (and the inevitable resulting protest) is attributable to the secrecy surrounding ACTA documents and negotiations? If not, why not?

3. Does the Commission intend to adopt a proactive stance in a bid to convince others of the need for transparency? If not, why not?

4. Is it true that the paragraph concerning civil proceedings has been drafted by the US and consequently bears a suspiciously close resemblance to its controversial intellectual property legislation, the Digital Millennium Copyright Act?

5. Europeans are being assured that, given the negotiated 'exemptions for personal baggage', they need have no fear of their laptops or MP3 players being subjected to border checks. Can the Commission indicate what this means precisely? If not, why not?

6. Is it true that the Commission felt moved to 'quip' that the next meeting of stakeholders should preferably be held in a football stadium so as to accommodate all those supporting ACTA critics?

E-1267/10EN
Answer given by Mr De Gucht
on behalf of the Commission
(5.5.2010)

1. Since the launch of negotiations, the Commission has continuously informed the public about the objectives and general thrust of the ACTA negotiations. The Commission has also released summary reports after every negotiation round, as well as a detailed written state-of-play of the negotiation so far. This and other relevant information are available on the website of the Directorate-General for Trade[1].

   Furthermore, the Commission organised three stakeholder conferences on ACTA (these took place on 23 June 2008, 21 April 2009 and 22 March 2010) which were open to all - citizens, industry, NGOs, press and representatives from third countries.

2. It is true that considerable speculation regarding certain alleged content of ACTA results from the fact that the negotiating documents have not yet been made public, since most rumours (imposition of graduated response for internet infringements, imposition of monitoring obligations for internet service providers, controls of laptops and ipods, etc.) refer to positions that are not supported by the EU and often not supported by any of the ACTA partners.

[1] http://ec.europa.eu/trade/creating-opportunities/trade-topics/intellectual-property/anti-counterfeiting/

3. The Commission understands that the best way for concerned parties to know what is going on in these negotiations is to have access to the draft negotiating text. For this reason, the Commission has strongly pushed for and obtained the agreement from the other ACTA parties for the release of the ACTA negotiating text to the public. This text has been made available to the public on 21 April 2010 and can be consulted on the website of the Directorate-General for Trade[1].

   All interested parties will be fully informed about the current status of the negotiations and will be able to express their concerns based on facts and not on rumours and out-of-context leaks.

4. At this stage the Commission does not wish to comment the position of other ACTA partners, however, in general terms, it is most plausible that they base their negotiating positions on their domestic legislation. The Commission's contribution to the civil enforcement chapter of ACTA is closely based on the 2004 Civil Enforcement Directive.

5. The situation for individuals, European or not, travelling in Europe will not change with ACTA. ACTA will be in line with the current EU regime for enforcement of Intellectual Property Rights – which fully respects fundamental rights and freedoms and civil liberties, such as the protection of personal data. One such example is the clause that exempts travellers from checks if the infringing goods are not part of large scale traffic. And this will not be changed by ACTA. Regarding the situation in the other ACTA parties, there is agreement for a similar clause to be included in ACTA, as already indicated in the joint press-release issued by all ACTA participants on 16 April 2010, at the end of the latest round of negotiations.

6. A Commission official has stated that it would be necessary to find large premisses to accommodate all the stake-holders interested by ACTA. Indeed, at the meeting of stake-holders that took place on 22 March 2010, there were more than 300 registered participants citizens, industry, NGOs, press and representatives from third countries. There were questions, comments and statements produced both support of ACTA and expressing concern about a number of issues.

WRITTEN QUESTION E-1391/10
by Andreas Mölzer (NI) to the
Commission

Subject: ACTA anti-counterfeiting agreement - data and consumer protection

The Commission has been holding negotiations since 2007 with the USA and other industrialised nations on the Anti-Counterfeiting Trade Agreement (ACTA), but the interim results of these have not been disclosed. Information is apparently only available to industrial lobbying organisations, but not to consumer and data protection organisations.

[1] http://trade.ec.europa.eu/doclib/press/index.cfm?id=552&serie=337&langId=en

It would appear, however, that the ACTA agreement will have a massive impact on the data protection and consumer rights of EU citizens. According to media reports, EU documents would make Internet providers responsible for controlling content on their networks, which would be a break from previous practice in the EU. The providers would apparently have civil law liability in the case of claims by the media industry and would have to take technical measures to ensure that no unlicensed content was disseminated on their networks. Evasion of copy protection measures would be made a crime or, more specifically, unlicensed file sharing would be equated with counterfeiting. There is apparently also provision for "Three Strikes Out" measures. The end result would be tantamount to permanent and total control of the content of data circulating on the Internet.

1. What is the current status of the negotiations and when does the Commission expect these to be concluded?

2. To what extent will the Commission ensure greater transparency in the ACTA negotiations?

3. How much is being done to avoid incompatibility with European Union data protection provisions?

4. Are there any plans to give data and consumer protection organisations access to the negotiation documents before the negotiations are concluded?

5. What is the Commission's opinion on file sharing, copy protection etc. and blanket suspicion of all Internet users?

6. What is the Commission's position, in principle, on "Three Strikes Out" measures?

7. Will the Commission ensure that there will be no permanent checks on all data in circulation in order to find unauthorised copies, but that such checks will only be targeted on the basis of well-founded suspicions?

E-1391/10EN
Answer given by Mr De Gucht
on behalf of the Commission
(6.5.2010)

The Commission has provided strictly equal treatment to industry, consumer and data protection organizations (e.g. Website info; stakeholders meetings).

1. Eight rounds took place since the negotiations were launched in July 2008. The next (9th) round will take place in Lucern, Switzerland, at the end of June 2010. ACTA participants have publicly endeavored to conclude the negotiations as soon as possible in 2010.

2. The Commission understands that the best way for concerned parties to know what is going on in these negotiations is to have access to the draft negotiating text. For this

reason, the Commission has strongly pushed for and obtained the agreement from the other ACTA parties for the release of the ACTA negotiating text to the public. This text has been made available to the public on 21 April 2010[1].

Furthermore, since the launch of negotiations, the Commission has continuously informed the public about the objectives and general thrust of the ACTA negotiations. The Commission has also released summary reports after every negotiation round, as well as a detailed written state-of-play of the negotiation so far. This and other relevant information are available at the above mentioned DG Trade website.

The Commission has also organised three stakeholder conferences on ACTA (they took place on 23 June 2008, 21 April 2009 and 22 March 2010) which were open to all - citizens, industry, NGOs, press and representatives from 3rd countries.

3. The Commission will ensure that ACTA will be in line with the current EU regime for enforcement of IPRs – which fully respects fundamental rights and freedoms and civil liberties, such as the protection of personal data. This being said the EU position on the issue of the protection of personal data will reflect the EU acquis including Directive 95/46/EC[2] on the protection of individuals with regard to the processing of personal data and on the free movement of such data and Directive 2002/58/EC[3] concerning the processing of personal data and the protection of privacy in the electronic communications sector.

4. Yes, as mentioned above, the Commission has published the draft negotiating text on 21 April 2010. This means that interested parties will be fully informed about the current status of the negotiations and will be able to express their positions.

5. The EU position on these issues in the ACTA negotiations will reflect the European acquis including the Directive on electronic commerce[4] and the Regulatory Telecom Framework.

6. The 'three-strike rule' or graduated response systems are not compulsory in Europe. Different EU countries have different approaches, and the Commission will keep this flexibility, while fully respecting fundamental rights, freedoms and civil liberties. In the framework of ACTA, discussions about a future internet chapter of ACTA are still on-going. However, contrary to some public allegations, there are no proposals – there is not a single reference - on the table about the introduction of a "3 strikes" or a "graduated response" system to copyright infringements over the internet.

[1] http://trade.ec.europa.eu/doclib/press/index.cfm?id=552&serie=337&langId=en
[2] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995).
[3] Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002).
[4] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ L 178, 17.7.2000).

7. The Commission reaffirms that ACTA is about tackling large scale illegal activity, often pursued by criminal organisations. It is not intended to limit civil liberties or harass consumers. ACTA will be in line with the current EU regime for enforcement of IPRs – which fully respects fundamental rights and freedoms and civil liberties, such as the protection of personal data. One example is the clause that exempts travellers from checks if the infringing goods are not part of large scale traffic. And this will not be changed by ACTA.

WRITTEN QUESTION E-1435/10
by Bernd Lange (S&D) to the
Commission

Subject: ACTA (Anti-Counterfeiting Trade Agreement) negotiations

Following the entry into force of the Lisbon Treaty in December 2009, the European Union has a new legal basis for measures dealing with intellectual property rights (Article 118) and the related criminal law provisions (Article 83). In the light of the current ACTA negotiations, I would ask the Commission to answer the following questions:

1. Should ACTA be seen as a mixed agreement, containing both criminal law provisions and provisions governing intellectual property rights?

2. Following the entry into force of the Lisbon Treaty, and in the light of standard democratic principles, in the Commission's view what is the specific legal basis justifying the non-application of Article 218 (transparency requirements in connection with the international ACTA negotiations)?

3. What measures does the Commission intend to incorporate into the ACTA agreement in order to foster the activities of European Internet service providers in third countries in such a way that freedom of opinion and information continues to be guaranteed and no situation arises in which Internet service providers can be required to make provision for general monitoring measures on their networks?

4. Does the Commission take the view that the other participants in the negotiations have the same understanding of the concept of 'no general monitoring requirement' laid down in the *acquis communautaire*? What are its reasons for taking this view?

5. Can the Commission guarantee that the dispute settlement mechanism provided for in the ACTA agreement can be employed without changes being required to the *acquis communautaire*?

6. What is the Commission's stance on provisions reportedly included in the ACTA agreement which go beyond the *acquis communautaire*, e.g. potential new requirements to be met by Internet service providers engaging in 'simple forwarding'?

E-1435/10EN
Answer given by Mr De Gucht
on behalf of the Commission
(27.4.2010)

1. The Anti-Counterfeiting Trade Agreement (ACTA) is exclusively about enforcement of intellectual property rights (IPR). It will not include provisions modifying substantive intellectual property law, such as the creation of new rights or their scope of protection of their duration. However, it should set minimum international rules on how innovators can enforce their rights in courts, at the borders or over the internet. In this respect it should include civil, customs and criminal enforcement provisions

2. The Commission has fully respected its legal obligations under the Treaties. The Commission has kept the European Parliament regularly informed on the state of play of the negotiations, particularly through the International Trade Committee, even since before the launch of the negotiations. In accordance with the Framework Agreement, the Commission has provided the Parliament with the negotiating guidelines, full reports of negotiating rounds, and in general all relevant documents, originating from the Commission, that have been shared with the Member States through the Trade Policy Committee.

3. As regards Internet Service Providers, ACTA will remain in line with the EU acquis, including the current level of harmonization of IPR enforcement, the e-commerce Directive, the Regulatory Telecom Framework, and the applicable EU legislation on data protection and privacy. In this respect, the e-commerce Directive 2000/31/EC[1] establishes that there is no general obligation to monitor infringing content for ISPs. The EU will insist on this rule. Furthermore, no ACTA party is requesting that prior monitoring or filtering is a pre-condition to benefit from liability safe-harbors.

4. The parties to the Anti-Counterfeiting Trade Agreement are still discussing their respective understanding of the technical concepts as regards "no general monitoring", to ensure that there will be coherent understanding thereof.

5. Any dispute settlement provisions that may be provided for in the ACTA will be fully in line with the EU commitments vis-à-vis the WTO and will not require any changes to the EU acquis.

6. The Commission will ensure that the EU position in the ACTA negotiations reflects the EU acquis, including the Directive on electronic commerce (Directive 2000/31 EC) and the Regulatory Telecom Framework. The Commission will therefore be unable to accept provisions introducing new requirements to be met by Internet service providers engaging in "simple forwarding".

[1] OJ L 178, 17.7.2000

WRITTEN QUESTION E-1677/10
by Christofer Fjellner (PPE) to the
Commission

Subject: Clarification of the substance of negotiations on the ACTA agreement

The negotiations on the ACTA agreement have been marked by great secretiveness, which has in turn led to rumours creating unease among the public. It is therefore of great importance that the parties involved clarify which direction the talks are taking to prevent further rumour-mongering and boost public confidence in the negotiations. In the light of this situation, will the Commission provide the following clarifications?

1. Can the EU, in the ACTA negotiations, accept rules on the criminal prosecution of individual citizens involved in breaches of copyright on the Internet? Does the Commission have a mandate in the ACTA negotiations to come to an agreement on the responsibility which Internet service providers or other Internet operators have for monitoring data traffic and preventing breaches of copyright?

2. Does the Commission believe that the agreement will regulate individual citizens' Internet activities at all?

E-1677/10EN
Answer given by Mr De Gucht
on behalf of the Commission
(12.5.2010)

1. In the case of criminal enforcement, the EU is proposing that ACTA[1] provisions should only apply to infringements of copyright and trademarks, consistently with international commitments undertaken since 1996 in the framework of the WTO Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs). The TRIPS Agreement already obliges the EU and its Member States to provide for criminal procedures and penalties for certain cases of copyright piracy and trademark counterfeiting on a commercial scale (even if they are undertaken by an individual). This being said, it is important to stress that the aim of ACTA is to tackle large scale Intellectual Property Rights infringement activities, mostly pursued by criminal organisations, and not isolated individual IPR infringement activities. It is also key to note that ACTA will not imply the criminalisation of new infringements for Member States.

The EU position in the ACTA negotiations will reflect the European acquis including the Directive on electronic commerce (Directive 2000/31 EC) and the Regulatory Framework for e-communications. In particular, the EU acquis (e-commerce Directive 2000/31/EC) establishes that there is no general obligation to monitor infringing content for ISPs. The EU will insist on the respect of this rule.

2. In so far and to the extent to which infringements of Intellectual Property Rights taking place online are covered by the EU acquis (e.g. Civil law enforcement infringements

[1] ***Anti-Counterfeiting Trade Agreement*** (***ACTA***)

covered by Enforcement Directive 2004/48 [1]) which fully respect fundamental rights, freedoms and civil liberties these may also be covered by the equivalent ACTA provisions. Also in this area, ACTA will not require new obligations for EU Member States.

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WRITTEN QUESTION E-2195/10
by Marian Harkin (ALDE) to the
Commission

Subject: The Anti-Counterfeit Trade Agreement Treaty

Can the Commission outline the procedures that are being used to negotiate the Anti-Counterfeit Trade Agreement Treaty, the parties involved, the level of transparency and the information available on this matter to the European Parliament and European citizens?

E-2195/10EN
Answer given by Mr De Gucht
on behalf of the Commission
(1.6.2010)

The goal of the ACTA negotiations (launched in 2008) is to provide an international framework that improves the enforcement of intellectual property right (IPR) laws, by improving international standards as to how to act against large-scale infringements of IPR, often conducted by criminal organisations.

The current negotiating parties of ACTA are Australia, Canada, the European Union, Japan, Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland and the United States, *i.e.* mainly the "demand side" of IPR protection. The ultimate objective is that large emerging economies, where IPR enforcement could be improved, such as China or Russia, will sign up to the global pact in the future.

On the EU side, negotiations are led by the Commission. Since certain issues under negotiation fall under Member State competence, such as certain aspects of the penal enforcement provisions, EU Member States participate in the negotiations.

With the entry into force of the Treaty on the Functioning of the EU (TFEU), trade policy falls under the ordinary legislative procedure and trade related agreements such as ACTA will require the consent of the Parliament.

The Commission keeps the Parliament regularly informed, particularly through the INTA (International Trade) committee. Trade Commissioners, as well as the Trade DG addressed this issue several times in the last 3 years. Following the entry into force of the Treaty on the Functioning of the EU (TFEU), further arrangements will have to be made between the Commission and the Parliament in order to ensure that the Parliament be fully informed, at all

[1] OJ L 157, 30.4.2004

stages of trade negotiations of the evolution of those negotiations, so that at the end, it is able to provide its informed consent to ACTA.

In the meantime, the Commission provides dedicated briefings to interested Members of the Parliament on all aspects of the negotiations. The Commission will remain at the disposal of the Honourable Members for discussion before and after each further negotiating round.

Additionally, the Commission has strongly pushed and obtained that the latest version of the negotiating text be made public. All interested parties are now fully informed about the current status of the negotiations and will be able to express their concerns based on facts and not on rumours and out-of-context leaks.

Since the launch of the negotiations, the Commission continuously informed the public about the objectives and general thrust of the negotiations. It also released summary reports after every negotiation round, as well as a detailed written state-of-play of the negotiation so far. This and other relevant information are available at DG Trade website: http://ec.europa.eu/trade/creating-opportunities/trade-topics/intellectual-property/anti-counterfeiting/

Furthermore, the Commission organised three stakeholder conferences on ACTA (they took place on 23 June 2008, 21 April 2009 and 22 March 2010, in Brussels) which were open to all - citizens, industry, Non-Governmental Organisations (ONGs) and press.

Our negotiating partners inter alia the US, Switzerland, Australia and Canada, have taken similar steps. For instance, during the round in New Zealand, on 12-16 April 2010, the hosts organised an event with the participation of the New Zealand Minister of Trade where numerous domestic and foreigner stake-holders, including a majority representing civil society, where invited and had the opportunity to discuss ACTA with the full team of negotiators from all the ACTA countries.

ACTA participants have publicly endeavoured to conclude the negotiation in 2010. Eight rounds of negotiation took place since the negotiations were launched in July 2008. The last negotiating round took place between 12-16 April 2010 in New Zealand. The next round should take place at the end of June 2010, in Switzerland.

Question for written answer E-4286/2010
to the Commission
Rule 117
Yannick Jadot (Verts/ALE), Carl Schlyter (Verts/ALE), Christian Engström (Verts/ALE), Sandrine Bélier (Verts/ALE), Karima Delli (Verts/ALE) and Oriol Junqueras Vies (Verts/ALE)

Subject: Does ACTA undermine delinkage of medicine prices and R&D costs?

The 63rd World Health Assembly in May 2010 gave the World Health Organisation (WHO) a mandate to identify new financing and incentive mechanisms for R&D, to examine proposals for delinking the price of health products from R&D costs – including through innovation inducement prizes and new open-source drug development models – and to explore instruments for global coordination and norm setting, such as a biomedical R&D treaty.

Norms for injunctions and damages laid down in the Anti-Counterfeiting Trade Agreement (ACTA) may foreclose the possibility of new 'liability rule' approaches to intellectual property rights as part of a policy framework delinking R&D costs from product prices. The ACTA text conspicuously lacks legally binding references to the Doha Declaration on the TRIPS Agreement and Public Health and the WHO Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property (WHO resolution WHA61.21).

We remain troubled by the absence of policy coherence reconciling ACTA's focus on enforcement at any cost with obligations under the Doha Declaration to interpret and implement the TRIPS Agreement 'in a manner supportive of WTO members' right to protect public health and, in particular, to promote access to medicines for all'.

We note that the Council 'Conclusions on the EU role in global health', of 10 May 2010, advocate 'exploring models that dissociate the cost of Research and Development and the prices of medicines in relation to the Global Strategy'. ACTA could constrain future policy options in this regard.

Can the Commission comment on this obvious lack of policy coherence and indicate whether the fact of the Union being party to ACTA and its negotiating positions in that context are consistent with its obligations under the other international agreements mentioned?

E-4286/10EN
Answer given by Mr De Gucht
on behalf of the Commission
(13.08.2010)

The Anti-Counterfeiting Trade Agreement (ACTA) deals exclusively with the 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 – as already defined in each of the ACTA countries - in courts, at the borders or over the Internet.

Any rules on injunctions and damages contained in the final text of the agreement will be fully in line with the EU acquis, therefore they will already be in force in Europe. ACTA will not create new obligations in Europe and will have no impact whatsoever on current debates or future policies about new liability rule approaches or about Research and Development (R&D) costs and prices for health products.

ACTA will only apply in those cases where a product is protected by intellectual property rights. In those cases where an inventor would opt for alternative approaches, other than intellectual property rights, for recovering his investment, ACTA would of course not apply.

All ACTA parties have reaffirmed in a public statement of 1 July 2010 that ACTA will be consistent with the World Trade Organization (WTO) Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement) and the Declaration on TRIPS and Public Health. They added that ACTA will not hinder the cross-border transit of legitimate generic medicines.

The WTO Declaration on TRIPs and Public Health is about how WTO Members wish to transpose their substantial TRIPs Commitments in national law. Once a choice has been made by a WTO member on, for instance, the situations under which a compulsory license can be issue for medicines, ACTA, which is about enforcing intellectual property rights in so far as they are granted and applied, can not interfere with that.

Furthermore there will be a specific reference in the ACTA text to the need for all parties to comply with the obligations of the World Trade Organisation's Agreement on Trade Related Aspects of Intellectual Property Rights, including the flexibilities and exceptions that it contains, as well as with the obligations under other existing agreements.

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ORAL QUESTION WITH DEBATE O-0026/10
pursuant to Rule 115 of the Rules of Procedure
by Carl Schlyter, on behalf of the Verts/ALE Group, Daniel Caspary, on behalf of the PPE Group, Kader Arif, on behalf of the S&D Group, Niccolò Rinaldi, on behalf of the ALDE Group, Helmut Scholz, on behalf of the GUE/NGL Group, Syed Kamall, on behalf of the ECR Group
to the Commission

Subject: Transparency and state of play of the ACTA negotiations (Anti-Counterfeiting Trade Agreement)

Parliament has on various occasions called on the Commission and Council to ensure the widest possible access to ACTA documents, notably in its reports of 18 Dec 2008 (Susta Report, P6_TA(2008)0634, paragraphs 14, 28) and 11 March 2009 (Cashman Report, P6_TA(2009)0114), paragraph 26 of which reads: 'The Commission should immediately make all documents related to the ongoing international negotiations on the Anti-Counterfeiting Trade Agreement (ACTA) publicly available'.

In its Resolution of 9 February 2010 on a Framework Agreement with the Commission (P7_TA(2009)0009) Parliament demands immediate and full information at every stage of negotiations on international agreements, in particular on trade matters and other negotiations involving the consent procedure, to give full effect to Article 218 TFEU. On 27 January 2010 the Commission gave assurances of its commitment to a reinforced association with Parliament in the terms of this resolution.

When will the Commission grant Parliament access to all primary texts relating to ACTA, in particular the ACTA negotiation mandate by the Council, the minutes of ACTA negotiation

meetings, the draft chapters of ACTA, and the comments of ACTA participants on the draft chapters?

Has the Commission carried out an impact assessment of the effect of ACTA's implementation on e-trade in the EU and worldwide? How will the Commission ensure that enforcement of ACTA internet provisions are fully in line with the *acquis* and how will it redress any incompatibilities?

Does the Commission agree that access to ACTA documents should be given to Parliament before the new Framework Agreement comes into effect?

Tabled: 24.02.2010 Forwarded:
26.02.2010 Deadline for reply:
05.03.2010

Karel De Gucht, *Member of the Commission.* – Mr President, I understand Members' concerns about the ACTA negotiations.

Let me first recall that we are negotiating this agreement in order to improve the protection of 'made in Europe' innovation in all areas where intellectual property rights can be breached. If we want to remain a competitive economy, we will have to rely on innovation, creativity and brand exclusivity. That is one of our main competitive advantages on the world market. So we need the tools to ensure that this competitive advantage is adequately protected in our main export markets.

We have tried to raise this issue for several years in multilateral organisations like the WTO or the World Intellectual Property Organisation. Those attempts have been systematically blocked by other countries. So, despite our preference for a truly global solution, we have had no other choice but to engage with a coalition of the willing.

The final agreement will only be binding on those countries that have signed, although we would of course be happy if more countries, and especially emerging economies, could subsequently join.

As I said during my hearing, those international negotiations are confidential. That is not unusual. Negotiations are about seeking an agreed outcome and require a minimum confidentiality in order for each party to feel comfortable to make concessions and/or to try out options before finally settling on an agreement.

On the other hand, I agree that Parliament needs to be adequately informed about the evolution of the negotiations. We are doing our utmost in two areas: to inform Parliament, and to convince our negotiating partners to agree to more transparency. Firstly, as regards information to Parliament, we have provided you with the negotiating guidelines, full reports on the negotiating rounds and, in general, all the relevant documents originating from DG Trade that have been shared with the Member States through the Trade Policy Committee. We have done this in accordance with the framework agreement. Also, ACTA has been discussed several times in the Committee on International Trade in the last three years.

Let me add to this that the Commission organised two stakeholder conferences on ACTA in June 2008 and April 2009, which were open to all citizens, industry, NGOs and the media. Another public conference will be organised on 22 March in Brussels.

I understand that you may feel that this is not sufficient for you to have a clear picture on where we stand in these negotiations. I have instructed my services to provided dedicated briefings with interested MEPs on all aspects of the negotiations. They will be at your disposal for discussion before and after each further negotiating round.

Secondly, I realise that the best way for you to know what is going on in these negotiations would be to read the draft negotiating text. This would give you a very clear picture of where exactly we are in those negotiations. As you probably know, there is an agreement amongst ACTA parties that the negotiating text can only be made public if all parties agree. The Commission is in favour of releasing the negotiating documents as soon as possible. However, a few ACTA negotiating parties remain opposed to early release. I strongly disagree with their approach but I cannot unilaterally breach a confidentiality commitment. My credibility as a negotiator is at stake.

Nevertheless, I will see to it that, at the next negotiating round in April, the Commission vigorously pushes its negotiating partners to agree to releasing the text, and I will raise Parliament's concerns bilaterally with ACTA parties, like the US, whom I am scheduled to meet before then. It is in the interests of all that everyone has a clear idea of what exactly these negotiations are about and even more importantly, also of what they are not about.

Finally, as regards your concerns on the substance, I would like to recall the main principles that are driving the Commission in the negotiation of this agreement.

First, the objective is to address large-scale infringements of intellectual property rights which have a significant commercial impact. It will not lead to the limitation of civil liberties or harassment of consumers.

Secondly, ACTA is only about enforcement of intellectual property rights. It will not include provisions modifying substantive intellectual property law such as the creation of new rights, the scope of protection or duration. However, it should set minimum rules on how innovators can enforce their rights in courts, at the borders or over the Internet. For example, a European fashion designer, when confronted with counterfeiting of his creations outside Europe, can ensure that his rights are adequately safeguarded abroad.

Thirdly, ACTA must, and will, remain in line with the *acquis communautaire*, including the current level of harmonisation of IPR enforcement, the e-Commerce Directive, the telecoms regulatory framework and, last but not least, the applicable EU legislation on data protection and piracy. There will be no harmonisation or changes to EU legislation through the back door.

In this sense, ACTA will have no impact on European citizens, since it will not create new obligations for the EU and no need for implementing legislation. However, it will provide our innovators increased protection in overseas markets.

I am aware of the concerns expressed by some of you about the introduction of a compulsory 'three strike' rule or graduated response to fight copyright infringements and Internet piracy.

Let me be very clear on this so there is no room for ambiguity. The three strike rule or graduated response systems are not compulsory in Europe. Different EU countries have different approaches and we want to keep that flexibility while fully respecting fundamental rights, freedoms and civil liberties. The EU does not support, and will not accept, ACTA creating an obligation to disconnect people from the Internet because of illegal downloads.

Similarly, we will make sure that ACTA does not hamper access to generic medicines. I know there has been some controversy on the impact of EU customs legislation on trade in generic medicines. As I have already told you at my hearing, that problem will be addressed in the upcoming revision of our customs legislation.

Finally, you also asked about an impact assessment on ACTA. In fact, considering that the Commission will not go beyond the *acquis communautaire*, we took as our basis the studies made for the 2004 directive on the enforcement of intellectual property rights and for the 2005 Proposal for a directive on criminal enforcement of IPR (which was not adopted).

We also considered the conclusions of the 2008 OECD study on the economic impact of counterfeiting and piracy. That study values the economy of physical internationally traded counterfeits at USD 250 billion, which is to say, more than the individual GDP of 150 countries. It also contains an exhaustive analysis of the piracy of digital contents.

In short, I hear your concerns and will defend them to the best of my ability. Your confidence and support will help me carry this important task forward.

Entire debate at:
http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20100309+ITEM-015+DOC+XML+V0//EN

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Question for written answer E-4292/2010
to the Commission
Rule 117
Yannick Jadot (Verts/ALE), Carl Schlyter (Verts/ALE), Sandrine Bélier (Verts/ALE), Christian Engström (Verts/ALE), Karima Delli (Verts/ALE) and Oriol Junqueras Vies (Verts/ALE)

Subject: Lack of safeguards in ACTA undermining access to medicines

In the WTO Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS Council), the enforcement of intellectual property rights is a topic of formal discussion including, but not limited to, discussion of the Anti-Counterfeiting Trade Agreement (ACTA). The WTO is also the forum in which India and Brazil are pursuing consultations with the EU over seizures of in-transit generic drugs on grounds of alleged patent infringement.

Our reading of ACTA is that it pursues tighter enforcement but without the balance and safeguards embodied in the TRIPS Agreement (e.g. Articles 1, 6, 7, 8, 30, 31, 40, 41, 42 and 44(2) thereof).

Certain provisions in ACTA may present barriers to trade in legitimate generic medicines by failing to provide protection for goods in transit through countries with differing national patent rules, thus allowing inappropriate seizures of medicines on the strength of mere allegations that trademarks are similar; by providing brand-name companies with inappropriate access to confidential information about suppliers or customers; or by introducing new global norms on third-party liability and criminal sanctions for aiding and abetting infringement that will deter distributors and customers from working with legitimate generic firms. Collectively these news norms may frustrate countries' efforts to avail themselves of TRIPS flexibilities to ensure access to medicine, and may conflict with the recently adopted 'Council Conclusions on the EU role in Global Health' (e.g. paragraph 16(a) thereof).

Will the Commission act on Parliament's request of 10 March 2010 for an impact assessment of ACTA and 'consult with Parliament in a timely manner about the results of the assessment'? Specifically, will it address the issue of access to medicines, including the concerns we have outlined? How will the Commission reconcile the EU's stated commitments to promoting global health with the goals being pursued in ACTA?

E-4292/10EN
Answer given by Mr De Gucht
on behalf of the Commission
(27.9.2010)

The Commission can assure the Honourable Members that there are no provisions in the Anti Counterfeiting Trade Agreement (ACTA) text being currently negotiated that could directly or indirectly affect the legitimate trade in generic medicines. This important principle has been re-affirmed in by all the ACTA negotiating parties in recent joint communiqués[1].

It is important to note in this context that ACTA will not oblige the parties to introduce customs controls (including for transit) or criminal sanctions for patent infringements. Likewise, the balance and safeguards embodied in the trade-related aspects of intellectual property rights (TRIPS) Agreement will not be affected by ACTA, since ACTA only deals with enforcement of rights, without altering the substance of those rights. Nevertheless, in order to keep the balance achieved in TRIPs, the ACTA will include a provision ensuring that it will not derogate from the Parties' obligations pursuant to that agreement, which includes provisions such as the ones of Articles 1, 6, 7, 8, 30, 31 of TRIPs, but also wider commitments such as those contained in the Doha Declaration on TRIPs and Public Health.

At this stage of the negotiations, where numerous options remain open, it is impossible to provide definitive replies to the specific situations mentioned by the Honourable Members. However, it is possible to clarify some of these issues:

Press release of 16April 2010: "ACTA […] will be consistent with the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement) and will respect the Declaration on TRIPS and Public Health".
Press release of 1 July 2010: "ACTA will be consistent with the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement) and the Declaration on TRIPS and Public Health. Participants reiterated that ACTA will not hinder the cross-border transit of legitimate generic medicines, and reaffirmed that patents will not be covered in the Section on Border Measures."

a) on the protection for goods in transit through countries with differing national patent rules – ACTA will contain no provisions on customs controls for patent infringing goods. Regarding infringement of other intellectual property rights (IPRs), it is not yet decided whether transit will be covered by ACTA or not;

b) on the inappropriate seizures of medicines on the strength of mere allegations that trademarks are similar – the introduction of the concept of "confusingly similar trademark is proposed by one of the ACTA partners but not supported by any of the other;

c) on providing brand-name companies with inappropriate access to confidential information about suppliers or customers – ACTA will clearly require that all issues regarding confidentiality and privacy of information are done in accordance with the domestic laws and previous international agreements undertaken by the Parties. EU acquis in this field (like in all others) will not be modified;

d) on the introduction of norms on third-party liability and criminal sanctions for aiding and abetting infringement that will deter distributors and customers from working with legitimate generic firms – all the norms being discussed in ACTA in this field already exist in the EU and all of its Member States and will not be modified by ACTA. ACTA's rules on third party liability will most likely apply to copyright infringements (with no impact on the pharmaceutical sector) and any rules on the criminal liability for aiding and abetting only apply to wilful infringements of copyright and trademarks on a commercial scale, which is certainly not affecting distributors of generics;

e) on the concern that collectively these news norms may frustrate countries' efforts to avail themselves of TRIPS flexibilities to ensure access to medicine, and may conflict with the recently adopted 'Council Conclusions on the EU role in Global Health' (e.g. paragraph 16(a) thereof) - there is clear language in the draft text ensuring that ACTA will not serve as a basis to interfere with the access to medicines and more particularly with the trade in generic medicines. ACTA will be consistent with the Declaration on TRIPS and Public Health of 2001, whilst, as mentioned above, there will be no obligation to apply border controls to suspected patent infringements, which is the most sensitive ²issue as regards access to medicines for countries depending on imported pharmaceuticals.

Regarding the conduct of an impact assessment of the implementation of ACTA, the Commission notes that, since it is bound not to go beyond the EU acquis it has based its assessment of the impact of ACTA on the studies made for the 2004 Directive on the enforcement of Intellectual Property Rights (Directive 2004/48/EC[1]) and for the 2006 proposal for a Directive on criminal enforcement of IPR (COM (2006)168 final) (not adopted).

[1] Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, OJ L 157, 30.4.2004.

WRITTEN QUESTION P-0090/10
by Britta Thomsen (S&D) to the Commission

Subject: The ACTA negotiations

Will the Commission inform Parliament to what extent the position of the EU in the ongoing ACTA negotiations, in particular regarding the chapters on Internet copyright, takes due account of the recently approved revised telecom package 2009/136/EC [1] , notably the amendments (Recital 29) tabled by the European Parliament with a view to safeguarding the rights of citizens not to be disconnected from the Internet simply because right holders allege that copyright infringements have occurred?

Furthermore, can the Commission say how it will ensure that the provisions (Recitals 30 and 31) in the revised telecom package that prevent monitoring by Internet Service Providers (ISP) of their customers' connections are not pre-empted or otherwise diluted by provisions in the ACTA agreement?

Finally, can the Commission explain how Parliament will be consulted on the outcome of the ACTA negotiations in a way that allows it to monitor and participate in the approval of this treaty?

P-0090/10EN
Answer given by Mr De Gucht
on behalf of the Commission
(25.02.2010)

1. Discussions in the framework of the negotiations on the Anti-Counterfeiting Trade Agreement (ACTA) about the enforcement of Intellectual Property Rights (IPRs) in the digital environment are still on-going. The EU position regarding the treatment of IPR infringements on the internet will reflect the existing EU rules, and notably the Directive on electronic commerce (Directive 2000/31/EC[2]) and the Telecoms' Regulatory Framework including its revision adopted by the Council and the European Parliament in 2009. The Commission can therefore guarantee that the final outcome of the ACTA will be fully respectful of fundamental rights, freedoms and civil liberties.

2. Compliance with the acquis communautaire will be ensured regarding any future ACTA provisions regulating the liability exemptions for Internet Service Providers and the "non monitoring obligation" principle as provided by the Directive on electronic commerce.

3. With the entry into force of the Lisbon Treaty, trade policy falls under the ordinary legislative procedure and trade related agreements such as ACTA will require the consent of the European Parliament. The Commission has kept, and will keep, the European Parliament regularly informed on the state of play of the negotiations, particularly through the committee on International Trade (INTA), even since before the launch of the ACTA negotiations.

[1] OJ L 337, 18.12.2009, p. 11.
[2] OJ L 178, 17.7.2000

Commissioners Mandelson and Ashton, as well as the Trade Director General have addressed this issue several times in the last two years. The entry into force of the Lisbon Treaty has increased the European Parliament's powers over trade policy. In order to ensure that the Parliament will be fully informed, at all stages of trade negotiations of the evolution of those negotiations, further arrangements will have to be made between the Commission and the Parliament.

Question for written answer P-4063/2010
to the Commission
Rule 117
Franziska Keller (Verts/ALE)

Subject: ACTA and ongoing WTO dispute settlement proceedings

India and Brazil have initiated action against the EU over the seizures of generic drugs in transit, through the WTO dispute settlement process. I hope that the matter will be resolved in this initial phase during the period of consultation.

Is the Commission aware of concerns voiced by India, during a Greens/EFA briefing on ACTA on 4 May, related to proposed TRIPS-plus provisions in ACTA that could threaten legitimate trade in generic medicines and global public health?

How can the Commission pursue such provisions in ACTA that clearly breach commitments under the Doha Declaration on the TRIPS Agreement and Public Health and the 'Global strategy and plan of action on public health, innovation and intellectual property' (WHA Resolution 61.21), and are obviously linked to the dispute settlement proceedings against the EU?

How will the Commission ensure that these unjustifiable provisions being pursued in ACTA, which would endanger access to medicines, will stop immediately? In Parliament's resolution on the transparency and state of play of the ACTA negotiations of 10 March 2010, we clearly asked the Commission to limit the ACTA negotiations to combating only counterfeiting. I would like to know if patents are still being considered within the scope of ACTA. I would also like to know whether the Commission has made any effort to consult with public health groups to understand their concerns regarding the impact proposed ACTA provisions could have on innovation and access to medicines.

P-4063/10EN
Answer given by Mr De Gucht
on behalf of the Commission
(8.7.2010)

The Commission is aware of very recent public statements by the Indian Government expressing general concerns about the possible negative impact of ACTA on access to medecines by developing countries.

The Commission can assure the Honourable Member that there are no provisions in the ACTA text being currently negotiated that could directly or indirectly affect the legitimate trade in generic medicines or, more broadly, global public health. This can be easily confirmed through an examination of the negotiating text, which is publicly available on the Commission's website[1].

Furthermore, this important principle has been re-affirmed in unequivocal terms by all the ACTA negotiating parties in a joint communiqué[2] released after the last negotiating round: "ACTA […] will be consistent with the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement) and will respect the Declaration on TRIPS and Public Health".

The Parliament's Resolution on the transparency and state of play of the ACTA negotiations of 10 March 2010, makes explicit reference to counterfeiting (paragraph 9), which relates to trademarks, but also to copyright (paragraph 10). With respect to both intellectual property rights (IPR), the Resolution calls on the Commission to negotiate enforcement clauses within the boundaries of applicable European Union legislation. The Commission confirms that ACTA will remain in line with the EU acquis, including the current level of harmonisation of IPR enforcement.

The Commission holds the view that it is important for ACTA to cover not only trademark counterfeiting, since a wide range of EU economic operators rely on economic activities that need various forms of intellectual property protection (e.g. geographical indications for high quality agricultural products, patents for innovative industries, designs for fashion and design based industries and copyright for the entertainment and culture sectors).

However, ACTA will not oblige the parties to introduce border measures or criminal sanctions for patent infringements (the intellectual property right that is typically at issue in the case of generic medicines). This is exactly in line with the TRIPS enforcement regime, which requires WTO Members (including India) to introduce enforcement measures against infringements of all intellectual property rights but does not extend such a comprehensive obligation to these two types of enforcement measures (border measures and criminal procedures).

Finally, the Commission confirms that it has consulted, on a number of occassions in the course of the last two years, not only with public health stake-holders and NGOs, but also with companies and associations producing generics and even with representatives of countries like Brazil and India, to ensure that ACTA would not impact the access to affordable medicines for developing countries. The Commission has, throughout this process, taken on board several proposals to clarify this goal.

Available at: http://trade.ec.europa.eu/doclib/docs/2010/april/tradoc_146029.pdf

[2] Available at: http://trade.ec.europa.eu/doclib/press/index.cfm?id=550&serie=335&langId=en

WRITTEN QUESTION P-0683/10
by Françoise Castex (S&D) to the Commission

Subject: Anti-Counterfeiting Trade Agreement

Discussions among 39 states on international measures to combat counterfeiting as part of the Anti-Counterfeiting Trade Agreement (ACTA) have just drawn to a close in Mexico.

1. The Council and Commission will have to obtain Parliament's assent at the end of the negotiations. Accordingly, does the Commission intend to release the texts adopted at the Mexico meeting and those still under negotiation in order to submit them to Parliament early enough to avoid presenting it with a *fait accompli*? If so, when will these texts and the timetable for negotiations be made public?

2. In terms of substance, will guarantees be included in order to ensure that actions in the private sphere, with no commercial implications, are not treated in the same way as the counterfeiting of material goods, which may be detrimental to consumers?

3. What guarantees are envisaged in order to ensure that the liability of technical intermediaries (such as internet service providers) for the actions of third parties is not increased beyond the level of protection afforded by Directive 2000/31/EC[1] (known as the E-Commerce Directive)?

P-0683/10EN
Answer given by Mr De Gucht
on behalf of the Commission
(14.4.2010)

1. As is frequently the case in trade-related negotiations, the Anti-Counterfeiting Trade Agreement (ACTA) parties have agreed that negotiating documents would only be made public when a unanimous decision has been taken by the countries participating in the negotiations. The Commission is in favour of releasing the negotiating documents as soon as possible. For the time being, certain negotiating partners remain opposed to disclosing the documents, but the Commission is now vigorously pushing them to agree to release the text and hopes that ACTA negotiating partners can agree on this at the occasion of the next negotiating round in mid-April 2010.

In the meantime, the Commission has shared with Parliament (particularly via the International Trademark Association (INTA) Committee) all relevant documents, originating from the Directorate-General for Trade that have been shared with the Member States through the Trade Policy Committee (formerly 133 Committee).

The Commission has also kept Parliament regularly informed on the state of play through discussions in the INTA committee.

[1] OJ L 178, 17.7.2000, p.1.

In addition to pursuing the release of the draft negotiating documents, the Commission is prepared to enter into more in depth discussions on ACTA with Parliament, through regular discussion in INTA or through dedicated informal meetings.

2. The objective of ACTA is to address large-scale infringements of intellectual property rights which have a significant commercial impact and harm consumers, and not isolated individual IPR infringement activities. ACTA will thus not lead to limitation of civil liberties or cause harm to consumers.

The Commission will ensure that ACTA is in line with the EU acquis, and in particular the current level of harmonization of intellectual property rights (IPR) enforcement, which is based on fair and proportionate rules.

3. Likewise, as regards the chapter on enforcement in the digital environment, the EU position in the ACTA negotiations will reflect the EU body of law which includes the Directive on electronic commerce (Directive 2000/31/EC) – including its rules on the liability of internet service providers and other intermediaries, the relevant provisions of the regulatory framework for electronic communications, as well as the applicable EU legislation on data protection and privacy.

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Question for written answer P-5214/2010
to the Commission
Rule 117
Filip Kaczmarek (PPE)

Subject: Anti-Counterfeiting Trade Agreement – ACTA

Many people feel that provisions contained in the Anti-Counterfeiting Trade Agreement (ACTA) make telecom operators liable for copyright infringements committed by customers using their networks.

In the Commission's view, does this mean that, in practice, operators will be required to remove internet access from customers whom they suspect of copyright infringement – without proper judicial review of such actions – in order not to incur penalties?

Could this also lead to internet traffic being filtered in order to put a stop to practices such as P2P file sharing?

Does it consider the introduction of ACTA provisions concerning the internet to be in full accordance with the *acquis communautaire*, in particular, the Charter of Fundamental Rights?

P-5214/10EN
Answer given by Mr De Gucht
on behalf of the Commission
(24.8.2010)

Regarding the responsibility and duties of Internet service providers (ISPs) such as telecommunications operators, the European Union's position in ACTA is fully in line with the relevant EU acquis as interpreted by the Court of Justice in relation to the liability of telecommunications operators for infringement of intellectual property rights[1]. In particular, the EU's position is consistent with the provisions of the Copyright in the Information Society Directive[2] including Article 8 thereof, the E-commerce Directive[3], including Articles 12 to 15, on the liability of ISPs), the Enforcement of IPR Directive[4]; the Data Protection Directives[5]; and with the provisions of the regulatory framework for electronic communications as amended in 2009 with the Telecom Reform package.

Consequently, the Commission can assure the Honourable Member that the EU's position is that ACTA should not create new requirements for telecommunication operators, such as the obligation to remove internet access from customers without judicial process or the obligation to monitor the information they transmit.

The Commission will ensure that the compliance of ACTA with the EU acquis will also include the respect for the Charter of Fundamental Rights.

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Question for written answer E-6483/2010
to the Commission
Rule 117
Sidonia Elżbieta Jędrzejewska (PPE)

Subject: ACTA

The views expressed on the negotiations being conducted by the Commission regarding the Anti-Counterfeiting Trade Agreement (ACTA) often stress the high degree of secrecy surrounding the talks. Bearing in mind the provisions of the Treaty on the Functioning of the European Union requiring the European Parliament to be kept informed of any discussions conducted by the Commission in the context of its powers under Title V of that Treaty, and in the light of the written questions previously tabled:

[1] Promusicae Case C-275/06

[2] Directive 2001/29/EC of the Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, OJ L 167, 22.6.2001

[3] Directive 2000/31/EC of the Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market , OJ L 178, 17.7.2000

[4] Directive 2004/48/EC of the Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, OJ L 157, 30.4.2004

[5] Directive 95/46 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23.11.1995, and Directive 2002/58 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), OJ L 201, 31.7.2002

1. Will the Commission initiate a dialogue with the European Parliament on the question of ACTA and, if so, when?

2. Does it consider that the conclusion of an agreement between the EU and ACTA should replace the agreement concluded between the European Union and the World Intellectual Property Organisation (WIPO) under the WIPO Copyright Treaty adopted in Geneva in 1996?

3. On the basis of the negotiations so far conducted, can it be assumed that under the terms of the agreement with ACTA, internet access and similar service providers will be required to disclose the identity of users to copyright holders?

4. How will the substance and legal effects of any agreement fit in with European information society policy?

E-6483/10EN
Answer given by Mr De Gucht
on behalf of the Commission
(14.10.2010)

1. The Commission regularly keeps Parliament informed on the progress of the negotiations particularly through the Committee on International Trade (INTA). Trade Commissioners, as well as the Trade Director-General, have addressed this issue numerous times in the last three years in regular meetings of the INTA Committee, in the Committee on Civil Liberties, Justice and Home Affairs (LIBE), as well as in Plenary (9 March 2010 and 8 September 2010). In addition, the Commission has provided several dedicated briefings to interested Members of Parliament and their staff on all aspects of the negotiations in the course of 2010, and especially after each negotiating round, to inform Parliament on the latest state of play and to exchange views (the last such meeting was held on 1 September 2010 in Brussels, as was an informal debriefing on the results of the 10th round of ACTA negotiations).

Moreover, the Commission has provided Parliament, through the INTA Committee, with all the relevant negotiating documents in line with the Framework Agreement between the Commission and Parliament.

2. ACTA will only address enforcement measures. It will not include provisions modifying substantive Intellectual Property (IP) law, such as the creation of new IP rights or the definition of their duration, scope of protection, registration, etc. Consequently, ACTA will not replace any agreement concluded under the auspices of the World Intellectual Property Organisation.

3. As stated by the Commissioner responsible for Trade in Plenary on 9 March 2010 and on 8 September 2010, the Commission will ensure that ACTA is in line with the current level of harmonisation of Intellectual Property Rights (IPR) enforcement. There will be no indirect harmonisation of EU legislation through the ACTA agreement. Therefore, the EU position in the ACTA negotiations will reflect the European acquis in the area of IPR enforcement and

any measure which concerns internet service providers and, inter alia, disclosure. These EU measures are, in particular, Directive 2001/29/EC (Copyright in the Information Society Directive) [1] , Directive 2004/48/EC (Enforcement of IPR Directive) [2] ; the relevant Data Protection Directives (Directive 2002/58/EC on the processing of personal data and the protection of privacy in the electronic communications sector privacy which complements Directive 95/46/EC)[3], the Directive on electronic commerce (Directive 2000/31/EC)[4] and, where applicable, the provisions of the regulatory framework for electronic communications (including Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services)[5].

4. The Commission is committed to ensuring full compliance of ACTA with, inter alia, the EU measures referred to above and also its policies aimed at supporting the development and the competitiveness of the European Digital Economy. As a result, ACTA will not create obstacles to the emergence and to the provision of Information Society Services in Europe.

WRITTEN QUESTION E-2033/10
by Judith Sargentini (Verts/ALE), Jan Philipp Albrecht (Verts/ALE), Carl Schlyter (Verts/ALE), Eva Lichtenberger (Verts/ALE), Christian Engström (Verts/ALE), Karima Delli (Verts/ALE), Franziska Keller (Verts/ALE), Yannick Jadot (Verts/ALE) and Sandrine Bélier (Verts/ALE)
to the Commission

Subject: Statements by Commission Vice-President Neelie Kroes concerning the negotiations on the ACTA agreement

In a Dutch newspaper interview[6], Commission Vice-President and Commissioner for the Digital Agenda Neelie Kroes stated that the European Commission should not respond to Parliament's demand for full transparency and openness concerning the negotiations on the ACTA agreement.

[1] Directive 2001/29/EC of Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, OJ L 167, 22.6.2001.
[2] Directive 2004/48/EC of Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ L 157, 30.4.2004), OJ L 195, 2.6.2004.
[3] Directive 2002/58/EC of Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), OJ L 201, 31.7.2002.
[4] Directive 2000/31/EC of Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), OJ L 178, 17.7.2000.

[5] Directive 2002/21/EC of Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), OJ L 108, 24.4.2002.

[6] Trouw of 13 March 2010: www.trouw.nl/nieuws/media-technologie/article3013555.ece/Kroes__Geen_absolute_openheid_over_Acta.html

1. Does the Commission concur with its Vice-President's statement to the effect that no response should be given to Parliament's demand for full transparency and openness concerning the negotiations on the ACTA agreement?

2. Does the Commission concur with its Vice-President's view that certain information should remain undisclosed for Parliament?

3. Is the Commission aware of the fact that the aforementioned statement implies *de facto* that the Commission must set aside its statutory obligation to inform Parliament fully, immediately and at all times, as laid down in Article 218(10) TFEU?

4. Is the Commission aware, furthermore, that the aforementioned statement is in clear contradiction with the joint resolution 'on the transparency and state of play of the ACTA negotiations'[1], which was adopted almost unanimously by Parliament?

5. Will the Commission issue a statement indicating its stance on transparency and openness relating to its (future) conduct in regard to the negotiations on the ACTA agreement? And, if so, will this imply that the earlier differing opinions and statements delivered by its Commissioners can be considered to have been revoked?

E-2033/10EN
Answer given by Mr De Gucht
on behalf of the Commission
(27.5.2010)

The Commission's position regarding the Anti-Counterfeiting Trade Agreement (ACTA) negotiations has been clearly set out by the President of the Commission during the question hour in Parliament's plenary session of April 2010 and by the Commissioner responsible for Trade during the debate following the oral question O-26/10 by Mr Schlyter and others[2] on ACTA in the plenary session of March I 2010. Furthermore, a joint communiqué by all parties to the ACTA negotiations has clarified a number of issues regarding the process and the content of the negotiations[3].

The Commission has clearly taken position in favour of making public the negotiating text of ACTA and obtained its release from its partners. The text was published on Wednesday 21 April 2010, allowing the public at large to see what is and what is not in the text, which in the Commission's view is the best way to avoid misunderstandings, rumours and distorsions[4]. While the formal response of the Commission to Parliament's resolution (P7 TA(2010)0058) is under preparation, the Commission has already delivered in action.

[1] European Parliament resolution of 10 March 2010 on the transparency and state of play of the ACTA negotiations (P7_TA(2010)0058).
[2] http://www.europarl.europa.eu/QP-WEB/application/home.do?language=EN.
[3] http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/437&format=HTML&aged=0&language=EN&guiLanguage=en.
[4] http://trade.ec.europa.eu/doclib/press/index.cfm?id=552.

In the view of the Commission, Parliament has, therefore, been fully informed as required by Article 218 (10) of the TFEU.

WRITTEN QUESTION E-3215/10
by Zbigniew Ziobro (ECR) to the
Commission

Subject: Negotiations on the Anti-Counterfeiting Trade Agreement

What is the legal basis for the Commission's current withholding of documents concerning negotiations on the Anti-Counterfeiting Trade Agreement from Parliament?

What are the Commission's negotiating priorities?

Is consideration being given to requiring internet service providers to inform law enforcement agencies when their service users are suspected of violating intellectual property rights?

Does the Commission share the concerns about the threats which the Agreement poses to the development and dissemination of free computer programs and open-source programs?

E-3215/10EN
Answer given by Mr. De Gucht
on behalf of the Commission
(23.07.10)

The European Commission has made public the latest version of the Anti-Counterfeiting Trade Agreement (ACTA) negotiating text. This draft ACTA text is available at DG Trade website: http://ec.europa.eu/trade/creating-opportunities/trade-topics/intellectual-property/anti-counterfeiting/

Additionally, the Commission has provided the European Parliament, through the Committee on International Trade (INTA Committee), all relevant documents, originating from Directorate-General on Trade, which have been shared with the Member States through the Trade Policy Committee.

The Commission's negotiating priorities for ACTA are the following:

1) ACTA must address large-scale infringements of intellectual property rights which have a significant commercial impact by setting an international standard in Intellectual Property Rights (IPR) enforcement that is reasonable, balanced and effective.

2) ACTA must set minimum rules for the enforcement of intellectual property laws (but not on substantive IP laws), *i.e.* on how innovators can enforce their rights in courts, at the borders or over the internet.

3) ACTA must remain in line with the EU acquis, including the current level of harmonisation of IPR enforcement.

For this reason, the Commission does not support the view that ACTA will undermine the development and dissemination of free or open software because ACTA will not change the EU legal framework. Free and open software will continue to develop and to be disseminated in the EU just as it has done in the past.

Regarding the responsibility and duties of internet service providers (ISPs), the European Union's position in ACTA is fully in line with the EU *acquis*, in particular with the dispositions of the E-commerce Directive[1], including article 15, which, forbids the Member States to establish a general monitoring obligation on ISPs, but leaves open the possibility for the Member States to oblige them to inform the competent public authorities of alleged illegal activities undertaken by recipients of their service or to oblige them to communicate to the competent authorities, at their request, information enabling the identification of recipients of their service with whom they have storage agreements. The European Union's position in ACTA also takes into account the other relevant EU measures which concern disclosure obligations that would apply to ISPs in the area of IPR enforcement, as interpreted by the Court of Justice. These other EU measures taken together are in particular Directive 2001/29[2] (Copyright in the Information Society Directive), Directive 2004/48[3] (Enforcement of IPR Directive) and the relevant Data Protection Directives [4] (Directive 2002/58/EC on the processing of personal data and the protection of privacy in the electronic communications sector privacy which complements Directive 95/46/EC[5]).

Two recent judgments, Promusicae (Case C-275/06) and LSG (Case C-557/07), of the Court of Justice, together interpret the above mentioned directives, and the Court held that EU law does not preclude Member States from laying down an obligation to disclose personal data in the context of civil proceedings. In any case, any measure which could be taken, as a consequence of such a disclosure, regarding end-users access to or use of, services and applications through electronic communications networks, shall be proportionate and respect the substantial and procedural conditions laid down in Article 3 (a) of the Framework Directive[6].

Question for written answer E-6187/2010
to the Commission
Rule 117
Elisabeth Köstinger (PPE)

Subject: EU-Singapore Free Trade Agreement

[1] Directive 2000/31/EC of 8 June 2000, OJ L 178, 17.07.2000
[2] OJ L 167, 22.06.2001
[3] OJ L 195, 2.06.2004
[4] OJ L 201, 31.7.2002
[5] OJ L 281, 23.11.1995
[6] Directive 2002/21/EC of 7 March 2002 on a common regulatory framework for electronic communications networks and services, OJ L 108, 24.4.2002

This March, the EU and Singapore started negotiations on a free trade agreement. Two rounds of negotiations have been held so far.

European producers fear that, once an FTA has been concluded, Singapore might become a gateway for fake and falsely marked products from other ASEAN countries to enter the EU.

In the light of these fears, the significance of the Anti-Counterfeiting Trade Agreement (ACTA), which is currently being negotiated, after the conclusion of an FTA between the EU and Singapore also comes into question.

– What action does the Commission intend to take to ensure that Singapore does not unwittingly become a staging-post for goods and fake products from other ASEAN countries?

– What effect would an FTA between the EU and Singapore have on the ACTA? Might it result in bilateral changes and/or divergences in particular areas, such as border measures?

E-6187/10EN
Answer given by Mr De Gucht
on behalf of the Commission
(15.9.2010)

The Commission's 2006 communication 'Global Europe: competing in the world' [1] had identified the markets in ASEAN countries as priority markets for European exporters and service providers. These markets show high growth rates, but are often also characterised by relatively high barriers to trade, such as elevated tariffs, regulatory obstacles, or different technical regulations. Free Trade Agreement (FTA) negotiations offer the best way to tap into this growth potential by effectively addressing some of these barriers.

Any preferences negotiated between the EU and Singapore would only apply to goods originating in Singapore. To qualify as an originating good, a good would have to meet the strict conditions under the specific rules of origin applying to the type of good in question. Goods which are merely shipped through Singapore do not meet these conditions.

Moreover, the Commission anticipates that the future FTA chapter dealing with intellectual property rights (IPR) would contain detailed rules addressing many aspects of IPR protection and enforcement. The purpose of such a comprehensive approach would be to provide for effective and efficient protection and enforcement of IPRs in Singapore. As part of such rules, relevant enforcement bodies should have the authority to limit the circulation of goods infringing IPRs. However, as the Honourable Member has mentioned, negotiations have only started a few months ago and it is too early to predict the exact outcome of these negotiations.

[1] COM(2006) 567 final

Finally, the fact that Singapore participates in the Anti-Counterfeiting Trade Agreement (ACTA) negotiations confirms its commitment to the fight against counterfeiting and piracy. The outcome of ACTA negotiations should complement and reinforce the commitments negotiated in the framework of a future EU-Singapore FTA.

Question for written answer E-3590/2010
to the Commission
Rule 117
Andreas Mölzer (NI)

Subject: Internet blocking and copyright filters

According to a *Computerworld* report[1], the EU has granted EUR 300 000 to child protection organisations all over Europe in an attempt to win their support for the plan to block the Internet. The European NGO Alliance for Child Safety Online (ENASCO) and other organisations have apparently been used to bolster the Commission's assertion that civil societies have no problem with Internet blocking. Some countries were considering that option but have now abandoned their plans because, firstly, measures of this type are easy to circumvent and, secondly, much of the material is de facto to be found in the United States and therefore would not be affected by other countries' domestic regulations.

Another problem is that blocking the Internet provides the entertainment industry with a welcome means of installing copyright filters. Now that Internet blocking has started for the purpose of combating child pornography, the industry considers that the plans peddled to that end could be widened to encompass other areas. The object of Internet blocking and copy protection software installed on computers is to rescue the US music industry's shrinking profits, and ACTA is, at any rate, to call for minimum penalties for copyright infringements in Europe. As the US audit agency has dismissed the talk of astronomical losses incurred by the industry to date on account of file sharing, exchanges, and piracy, describing such claims as incomprehensible, the idea now, apparently, is to reach the goal by a roundabout route.

1. How does the Commission respond to the accusation that it has apportioned funds in a manner tantamount to lobbying?

2. What steps will be taken to prevent copyright filters being installed by the back door?

3. Are there agreements with the United States regarding child pornography images on US servers? More specifically, how do the United States and the EU work together to combat child pornography?

E-3590/10EN
Answer given by Mrs Kroes
on behalf of the Commission

http://diepresse.com/home/techscience/internet/562137/index.do?from=suche.intern.portal

(12.07.2010)

The Commission thanks the Honourable Member for his question providing the opportunity to clarify the initiatives taken to promote child safety online and their independence from copyright enforcement policies.

In the implementation of the Safer Internet Plus programme 2005-2008, the 2007 Work Programme "invites proposals to set up a thematic network of European non-governmental organisations promoting children's rights and welfare to develop a concerted approach by sharing experience and best practices, and by developing joint strategies, in order to ensure that the needs of children are taken into account in discussions about the Internet and new media in Europe, as well as in the relevant international fora", as part of its action 3 "promoting safer online environment".

According to the terms of reference of the call for proposal, the requirements concerning the issues that the thematic network should cover are: a clear definition of the issues that are to be treated, and that are expected to be included in the following areas: fighting against online child sexual abuse material, combating online grooming, assess the effects that the evolvement of new technologies have on children's lives from a child rights perspective. The thematic network is also expected to deal with new issues concerning online child safety and to carry out consultations with children and young people.

Blocking was not mentioned among these requirements.

As a result of this call for proposals the eNACSO network was selected, and receives funding of EUR 0.3 million for the period 1/09/2008 to 31/08/2010. The content of its position papers is elaborated independently from the Commission, and may not reflect the views of the Commission.

The Commission considers that supporting child welfare organisations is necessary to ensure that children's rights, among other rights, are taken into account in a democratic debate.

In order to contribute to the fight against child abuse material the EU, through the Safer Internet programme, funds European members of the INHOPE network of hotlines where the public can report illegal content. The United States (US) hotline Cybertipline is one of the international members of this network. Reports of illegal content are exchanged between European and US hotlines in order to take action where the content is hosted. This includes transferring the reports to national law enforcement and contacting Internet Service Providers to ask them to take down this content.

All these initiatives are narrowly focused on child protection and prevention of child abuse over the internet and nothing in them would leave room to install copyright enforcement filters. The Commission believes that the issues of prevention of child abuse and copyright piracy online are distinct and require different policy reactions.

Question for written answer E-5633/2010
to the Commission
Rule 117
Sergio Berlato (PPE)

Subject: Counterfeit Murano glassware

On 26 June the Venice financial police made a massive seizure of no less than 11 million items of glassware which had been made in China, but which were being passed off as valuable Murano goods by three Venetian companies from Murano itself; their legal representatives have been reported to the police.

The fraud was detected by the provincial command of the Venice financial police, acting to protect the 'Made in Italy' label, which discovered that the glassware was being sold at highly competitive prices, at a discount of 50%, and was thus posing a serious threat to the sector's remaining traders. The original label on the products was replaced by one showing either the company's brand name or the alleged origin, Venice, or else stating 'Made in Italy'.

The counterfeiting industry is a permanent feature of the global economy, in which counterfeiting has grown over the last decade: according to data published by the (Italian) Centre for Research and Studies in Security and Crime, the turnover of the counterfeiting industry has increased by 1600%. Estimates drawn up by the Commission, which are also supported by the World Customs Organization, are that around 7% of world trade, with a value of between € 200 and € 300 billion, is accounted for by trade in counterfeit goods. Within a very specific period, namely 2000 to 2006, in the European Union alone there was an 88% increase in seizures of counterfeit goods; the number of items seized rose from 68 million in 2000 to 128 million in 2006. In Italy, in 2008 alone the financial police took 94 953 042 counterfeit items off the market.

The data set out above are worrying.

1. What does the Commission think it can do to help tackle this problem and/or what measures has it already deployed against counterfeiting?

2. Does it also consider it worthwhile to launch a study of the various solutions and innovations introduced in the product packaging sector to make counterfeiting products more difficult?

3. Finally, does it consider it worthwhile to launch an initiative within the WTO to combat such counterfeiting activities, with the aim of protecting not only intellectual property rights but also, and primarily, industry and the many jobs associated with it?

E-5633/10EN
Answer given by Mr De Gucht
on behalf of the Commission
(23.9.2010)

The issue raised by the Honourable Member encompasses several different aspects related to the protection of the name and/or the origin of the product at stake. The Commission understands that in the present case, glassware made in China had been seized when being sold in Italy under a label mentioning the brand of an Italian company, "Venice" and/or "Made in Italy".

In such a case, the action taken by the Italian police aimed at protecting the label "Made in Italy", inasmuch as this would mislead the consumer as to the true origin of the product. According to the information available to the Commission, such type of action already led in the past to the Court of Venice ruling in a preliminary injunction against a label that stated "Made in Italy-Murano-Venice", on the grounds that the product was not produced on the island of Murano.

In addition, there are other types of legal means available in the EU and in its Member States, such as the protection of IP rights, which include inter alia trademarks. "Counterfeiting" refers to the situation where a trademark, belonging to a trademark owner, has been infringed. IP rights such as trademarks and industrial designs can be used by the glassware industry to protect its products against counterfeiting. Intellectual property protection in the EU can indeed be useful to stop, through customs controls, the import into the EU of infringing products manufactured abroad. The Commission notes that "Vetro artistico di Murano" is protected in Italy by a collective figurative trademark owned by the Region of Veneto, and throughout the EU thanks to a collective EU trademark (trademark "Vetro Artistico Murano" n° 00481812, owned by the Veneto Region). However, in the present case, there is no information available as to whether the trademarks had been infringed.

Various solutions and innovations indeed exist in the product packaging sector to make counterfeiting more difficult. It is up to each industrial sector to choose the solution that is most appropriate to its specific needs, and users in the respective sectors are ideally placed to do so.

As regards protection of IP rights as such, the Commission attaches great importance to the effective protection and enforcement of IP rights of European industry in third markets, as already stated in its 2004 Communication on a "Strategy for the enforcement of intellectual property rights in third countries"[1]. In this framework, ambitious IP rights chapters are included in the bilateral trade agreements being negotiated with third countries, "IP Dialogues" and/or technical cooperation activities are set up with the authorities of certain countries, etc. Further information regarding the ongoing implementation of this strategy can be found on the website of the Directorate-General for Trade[2].

The Commission is aware of the importance of adequately protecting IP for EU competitiveness, economic growth and job creation. A few years ago, the EU launched an initiative within the World Trade Organization (WTO) in order to address the issue of enforcement of IP rights, but this initiative did not meet sufficient support among WTO membership to be further pursued. As the Honourable Member is certainly aware, the EU is currently involved in the negotiations for an Anti-Counterfeiting Trade Agreement (ACTA),

[1] http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/c_129/c_12920050526en00030016.pdf.
[2] http://ec.europa.eu/trade/creating-opportunities/trade-topics/intellectual-property/index_en.htm.

the aim of which is precisely to make the enforcement of IP rights more effective and to combat counterfeiting and piracy activities. However, the Commission does not exclude launching again in the future an initiative within the WTO to address this issue.

The Commission considers that international cooperation with relevant trading partners on customs matters is essential to ensure effective border enforcement of IP rights. In January 2009, a dedicated action plan concerning customs cooperation on IP rights enforcement was signed to strengthen cooperation between the EU and customs in China. The plan to combat the trade in counterfeit and pirated goods is structured around four key actions, involving a systematic exchange of information, the establishment of a network of customs experts at airports and seaports to target high risk consignments, an exchange of practices and the joint development of partnership with business communities in the EU and China, where the contributions from stakeholders are welcome. The Commission and the Member States' customs administrations are working closely with the Chinese administration to ensure the successful implementation of the plan.

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Question for written answer P-9459/2010
to the Commission
Rule 117
Emine Bozkurt (S&D)

Subject: ACTA (Anti-Counterfeiting Trade Agreement)

The Commission submitted the final text on ACTA (Anti-Counterfeiting Trade Agreement) on 6 October. Regarding the text of the agreement and the finalising of the details, can the Commission answer the following questions:

1. The ACTA agreement proposes an annual meeting of signatories where amendments to the Treaty can be negotiated. If that happens, how will the Commission guarantee sufficient European Parliament oversight, scrutiny and participation?

   The ACTA negotiations have so far been criticised for their lack of open debate, transparency and public participation. How does the Commission envisage the process of possible future amendments to the signed ACTA agreement?

   Will the ACTA Committee operate in an 'open, transparent and inclusive manner'? How can the Commission ensure that?

2. Generic competition is key for bringing down prices and ensuring access to affordable medicines around the world and disproportionate enforcement measures will inhibit generic competition, as seen in the Dutch, German and French medicines detention cases; taking into account also the fact that ACTA intends to set a global standard, has the Commission evaluated, through impact studies, whether or not the proposed provisions in ACTA regarding damages, injunctions and other remedies will hurt generic competition?

Can the Commission ensure, by conducting empirical studies, that ACTA's IPR enforcement measures would not be a barrier against price-reducing generic competition and would not jeopardise the free flow of legitimate medicines across borders?

More specifically, with regard to damages, does the 'suggested retail price' imply the entire market valuation rule (EMVR) for patents? Would 'damages' of this kind not dissuade generic completion and innovation?

Is the Commission considering accepting Footnote 2 {'US: For the purpose of this Agreement, Parties agree that patents do not fall within the scope of this Section.'}, which will remove patents from the civil enforcement section?

3. Regarding Article 2.18 – Enforcement in the Digital Environment – how can the provision whereby authorities can order ISPs to disclose the identity of a subscriber to a rights holder be interpreted? Will the safeguards in the article be sufficient? Does it mean that this can be done without a judicial order?

P-9459/10EN
Answer given by Mr De Gucht
on behalf of the Commission
(10.1.2012)

The Commission wishes to clarify that the final version of the ACTA text was made available to the public on 15 November 2010. It can be found on the website of the Directorate-General for Trade[1].

1. The ACTA Committee is an annual meeting, with no authority to amend ACTA, as clearly stipulated in its Article 6.4: "Each Party may propose amendments to this Agreement to the Committee. The Committee shall decide whether to present a proposed amendment to the Parties for acceptance, ratification, or approval". ACTA can only be amended if there is consensus among the parties and if the national (and EU) procedures of approval and ratification – including full respect of competencies of Member States and the Parliament – are respected. Participation in this committee should be in line with the well established practice for participation in the TRIPS[2] Council of the World Trade Organisation.

2. The Commission recalls that the purpose of the provisions proposed in ACTA is to tackle products infringing intellectual property rights, not generic products. The proposed provisions do not target medicines either directly or indirectly and it is not the intention to use enforcement measures (be it at the border or in civil or penal litigation) to hinder the legitimate trade in generic medicines.

To ensure this goal, the Commission has carefully considered and addressed concerns regarding access to medicines in developing countries. The Commission is firmly convinced that ACTA will have no negative effect on access to medicines or on the trade of legitimate generics, for the following reasons:

[1] http://trade.ec.europa.eu/doclib/docs/2010/december/tradoc_147079.pdf
[2] Agreement on Trade-Related Aspects of Intellectual Property Rights (1994) of the World Trade Organisation

– ACTA contains an express reference to the Doha Declaration on TRIPS and Public Health and incorporates the objectives and principles of Articles 7 and 8 TRIPS, which refer, inter alia, to the safeguard of public health;

– patent infringements (including when in transit) are neither covered by border controls nor by penal enforcement provisions in ACTA;

– furthermore, the final version of ACTA leaves it optional for signatories to apply the civil remedies section to patents (« .. may.. »). In other words, this means de facto that ACTA will not oblige its signatories to apply any of its provisions on patents.

These features of ACTA should allay the concerns of those who claimed throughout the negotiating process that ACTA could negatively affect access to medicines.

In addition, Article 2.2 of ACTA provides for guidelines for the judicial authorities to determine the amount of damages adequate to compensate for the injury the right holder has suffered. This provision only applies when an infringing activity has been duly established. This provision mirrors Article 13 of the IPR Enforcement Directive[1].

3. Article 27.4 (Article 2.18.4 in earlier drafts) of ACTA corresponds to existing EU legislation, in particular Article 8 of the Directive on Enforcement of IPR Directive and the Data Protection[2], eCommerce[3] and ePrivacy[4] Directives. Additionally, as the Honourable Member notes, any implementation of this ACTA provision is subject to the EU fundamental rights, namely the freedom of expression, fair process and privacy.

Regarding who is competent to order the disclosure of the information, both the EU legislation (Article 15.2 of the e-Commerce Directive) and ACTA refer to the competent (public) authorities, which will have to be determined according to Parties' legislations. In the EU context and depending on the legal framework of each Member State, these will be either judicial or administrative authorities. For instance, in the case of civil proceedings, Article 8(1) of the IPR Enforcement Directive clearly allocates this power to the competent judicial authorities.

Question for written answer P-9179/2010
to the Commission
Rule 117
Françoise Castex (S&D)

[1] Directive 2004/48/EC, OJ L 157, 30.04.2004 and OJ L 204, 4.08.2007
[2] Directive 1995/46/EC, OJ L 281, 23.11.1995
[3] Directive 2000/31/EC, OJ L 178, 17.07.2000
[4] Directive 2002/58/EC, OJ L 201, 31.07.2002

Subject: ACTA

Article 1.2 of the proposed Anti-Counterfeiting Trade Agreement (ACTA) states the following:

'Each Party shall be free to determine the appropriate method of implementing the provisions of this Agreement within its own legal system and practice.'

At recent meetings in Washington the US Trade Representative has told other US agencies, NGOs and legislators that ACTA is not binding and that its Article 1.2 allows for complete flexibility in respect of any US legal provision that might contradict ACTA.

Indeed, Articles 2.2 and 2.X of ACTA, which deal with damages and injunctions respectively, are at odds with the 'US Affordable Care Act', which places clear limits on remedies for infringements of patents on medicines. Nevertheless, the US authorities deny that ACTA requires a change in US law.

Could the Commission clarify to what degree ACTA is a binding or voluntary agreement, given that the US apparently does not believe its laws must be consistent with ACTA? Can this be interpreted as meaning that EU Member States as well need not change any item of their legislation which is not consistent with ACTA?

If this is the case and ACTA is not legally binding on the EU and the US, is it then only intended to be used as a 'point of reference' for third countries negotiating free trade agreements with the EU?

P-9179/10EN
Answer given by Mr De Gucht
on behalf of the Commission
(15.12.2010)

The Anti-Counterfeiting Trade Agreement (ACTA) is a binding international agreement on all its parties, as defined and subject to the rules of the Vienna Convention on the Law of Treaties (1969).

This is without prejudice to the fact that different provisions in ACTA define different levels of commitment by the ACTA members. Some provisions are impertative or mandatory – often using the word "shall" – while others are optional, using expressions such as "Parties may", "shall endeavour" or "shall encourage" and others still, allow for a certain level of flexibility or adaptation to existing domestic legislation, by introducing concepts such as "as appropriate" or "consistent with a Party's law". This is common practice both in international treaties and in EU legislation.

In the case of the European Union, the Commission has repeatedly stressed that the content of ACTA is either in line or less demanding than the EU acquis, therefore the Agreement is already fully implemented by the current EU legislation. This means that ACTA will not require the adoption or modification of EU legislative acts. As far as the Commission is

aware, the United States government has issued similar statements, which should not be interpreted as meaning that US laws will be inconsistent with ACTA.

On one area covered by ACTA on which there is no EU acquis, i.e. penal enforcement, it is possible that some Member States may need to adapt domestic legislation to comply with commitments they have undertaken in the negotiation of the ACTA section on penal enforcement. This section was negotiated by the rotating EU Presidency on the behalf of the Member States. However, the Commission wishes to stress that this does not concern EU legislation, since penal enforcement of Intellectual Property Right infringements is an area that is not yet harmonised in the European Union, and is still subject to the domestic legislation of Member States. In other words, there is no "EU acquis" in this area.

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Question for written answer P-9252/2010
to the Commission
Rule 117
Eva-Britt Svensson (GUE/NGL)

Subject: ACTA - misrepresentation of Ombudsman decision

In the Plenary debate on ACTA on 20 October 2010[1], the Commission referred to a decision of the Ombudsman[2] justifying the fact that ACTA had been negotiated as a trade agreement and not as an enforcement treaty. One day later, the Swedish minister of Justice said ACTA would require changes in Swedish law[3], increasing the powers of the police to act on its own to enforce intellectual property rights.

Considering that the Ombudsman agreed 'that the conclusion of the ACTA may indeed make it necessary for the EU to propose and enact legislation. In that case, the ACTA would constitute the sole or the major consideration underpinning that legislation, and citizens would have a clear interest in being informed about the ACTA', would the Commission be willing to moderate its categorical conclusion that the Ombudsman's decision supports the fact that ACTA texts have not been made publicly available during the negotiations?

P-9252/10EN
Answer given by Mr De Gucht
on behalf of the Commission
(17.12.2010)

The Commission wishes to clarify that in the Plenary debate of 20 October 2010, the Member of the Commission responsible for Trade stated "… that the Ombudsman has recently

1 Debates, Wednesday, 20 October 2010 - Strasbourg, point 16. Anti-Counterfeiting Trade Agreement (ACTA): http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20101020+ITEM-016+DOC+XML+V0//EN&language=EN

2 European Ombudsman's decision on complaint 90/2009/(JD)OV relating to denied access to ACTA documents: http://people.ffii.org/~ante/acta/ombudsman-2010-7-23.pdf

3 Dagens Nyheter, "Acta-avtalet kräver ny svensk lagstiftning": http://www.dn.se/nyheter/politik/acta-avtalet-kraver-ny-svensk-lagstiftning-1.1193058

recognised, in the precise context of the ACTA negotiations, that it was justified to maintain the confidentiality of some key negotiating documents. The Ombudsman confirmed that the preservation of confidentiality was legal and in line with the 2001 Regulation on access to documents". His statement related to the allegations that the Commission had unjustifiably conducted the ACTA negotiations without transparency and made reference to the fact that the Ombudsman concluded that there was no maladministration by the Council concerning its refusal to provide access to some ACTA negotiating documents.

Regarding the need for legislative changes in EU Member States, mentioned by the Swedish Minister of Justice, it is possible that some countries may need to adapt their domestic legislation to comply with commitments they have undertaken in the negotiation of the ACTA section on penal enforcement. This chapter was negotiated by the rotating EU Presidency on behalf of the Member States. However, the Commission wishes to stress that this does not concern EU legislation, since penal enforcement of Intellectual Property Rights (IPR) infringements is an area that is not yet harmonised in the European Union, and is still subject to the domestic legilsation of Member States. In other words, there is no "EU acquis" in this area.

Finally, the Commission re-iterates that the implementation of ACTA will not require the adoption or the revision of any new EU legislation and notes that that several versions of the ACTA texts have been made publicly available since April of 2010.

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Question for written answer P-9026/2010
to the Commission
Rule 117
Christian Engström (Verts/ALE)

Subject: ACTA corporative efforts

Article 2.18(3) of the proposed ACTA agreement states that ‘each party shall endeavour to promote cooperative efforts within the business community to effectively address’ copyright infringements in the digital environment. This text appears to mandate forms of cooperation such as extra-judicial ‘three-strikes’ mechanisms, with users being cut off from the Internet as the result of an obligation (‘shall’) on the Parties to ‘effectively address’ infringements.

This wording is not in keeping with Parliament’s resolution of 10 March 2010 on the transparency and state of play of the ACTA negotiations, which explicitly excludes such cooperative efforts.

Furthermore, it contradicts the Commission’s repeated statements to the effect that ‘three-strikes’ mechanisms are not an outcome sought by the ACTA agreement.

– How does the Commission justify the failure to act on Parliament’s resolution on ACTA?

How does the Commission plan to amend the text to explicitly exclude any interpretation permitting the introduction of ‘three-strikes’ or similar regimes, which the Commission has repeatedly said are not meant to be the subject of ACTA?

P-9026/10EN
Answer given by Mr De Gucht
on behalf of the Commission
(22.12.2010)

The Commission would like to inform the Honourable Member that it considers Article 2.18(3) of the Anti-Counterfeiting Trade Agreement (ACTA) to be in line with the provisions of Articles 16 (Codes of Conduct) and 19 (Cooperation) of the E-commerce Directive or in Article 17 (Codes of Conduct) of the Enforcement Directive, all of which promote the cooperation between concerned parties and the seeking of voluntary solutions. This was also the case for a number of initiatives undertaken by the Commission and by several Member States in the last years to establish dialogues and work on memoranda of understanding between the relevant stakeholders, which have eventually not led to the introduction of graduated response regimes.

Therefore, the Commission does not share the grounds of the question. No provision in ACTA would mandate its signatories to apply measures such as extra-judicial "three-strikes" mechanisms. Article 2.18(3) of ACTA introduces only a voluntary commitment, which ACTA parties may or may not pursue, to promote cooperation within the business community. The wording "shall endeavour" (as opposed to a plain "shall") cannot be read as imposing any obligation of result , nor it can be intended to infer that such result would inevitably be to cut-off users from the internet. The Commission's legal interpretation excludes that this provision could be read as mandating ACTA signatories to introduce "three-strikes" or similar regimes.

The Commission reaffirms that, at no stage in the ACTA negotiations were there any proposals on the table about the direct or indirect introduction of a compulsory "3 strikes" or a "graduated response" system or about an obligation to disconnect people from the internet. But even if that would have been the case, the Commission would have rejected such provisions. The Commission cannot introduce or accept in ACTA a provision explicitly excluding any interpretation permitting the introduction of "three-strikes" or similar regimes among the ACTA members. This would be in breach of the Commission's negotiating guidelines not to modify the EU legislation through the negotiation of an international agreement.

As the Honourable Member knows, "three-strikes" systems exist in certain EU Member States and are being envisaged in others, while, at the same time, other Member States oppose the use of such mechanisms. The Commission's perspective is that the existing acquis does not impose any 'three-strike rule' or graduated response systems but that it is flexible enough to allow different EU countries to have different approaches, while fully respecting fundamental rights, freedoms and civil liberties. In this respect, the text of ACTA is fully in line with the EU acquis, as requested by the Parliament.

Question for written answer E-8847/2010
to the Commission
Rule 117
Marietje Schaake (ALDE)

Subject: ACTA - a law enforcement treaty?

There is public concern worldwide about the lack of formal transparency in the ACTA negotiation process, such as illustrated in the article 'ACTA Guide, Part Three: Transparency and ACTA Secrecy', by Professor Michael Geist (see http://www.michaelgeist.ca/content/view/4737/125/). Other articles and open letters can be found at the following shortened addresses: http://bit.ly/4EdMKK, http://bit.ly/4CJv2n, http://bit.ly/bdUGlx and http://bit.ly/aQDUO2.

Parliament has repeatedly asked the Commission for transparency in the ACTA negotiations, but to no avail.

1. Does the Commission accept that an agreement which contains specific and extensive civil and criminal law enforcement measures does not qualify as a trade agreement, but as a law enforcement treaty? If not, why not?

2. Does it agree that the classification of ACTA as a trade agreement has enabled the parties to seek non-transparent negotiations? If not, why not?

3. Is it willing to contest the classification of ACTA as a trade agreement, on the grounds that it in fact seeks to regulate illegal and criminal activities? If not, why not?

4. Can it explain the legal status of the document 'Maintaining Confidentiality of Documents', which can be found at http://bit.ly/b23KAc? Does the Commission's negotiating mandate authorise it to agree to the conditions set out in this document? Is it bound by the language used in this document, for example the opening sentence: 'First, we agree that documents relating to the proposed Anti-Counterfeiting Trade Agreement (ACTA) will be held in confidence'? Did it sign this document?

5. Does it agree that by complying with other negotiating parties' demands for non-transparency, it has compromised the rules and regulations on access to information and transparency in the European Union, as laid down in the Lisbon Treaty and in Regulation 1049/2001[1]? If not, why not?

E-8847/10EN
Answer given by Mr De Gucht
on behalf of the Commission
(21.1.2011)

[1] OJ L 145, 31.5.2001, p. 43.

1. The Commission does not share the Honourable Member's views as regards lack of transparency in the conduction of the ACTA negotiations. Since the launch of negotiations (June 2008), the Commission has continuously informed the public about the objectives and general thrust of the negotiations, including the summarising of reports after every negotiation round. At the request of the Commission, the negotiating text was released for the first time in April 2010. The latest version was published on 6 October 2010.

Furthermore, the Commission organised three stakeholder conferences on ACTA which were open to all – citizens, industry, NGOs and press.

Additionally, the Commission kept the Parliament regularly informed, both at the Plenary (which the Member of the Commission responsible for Trade has addressed 3 times in the last 8 months) and through the INTA (International Trade) Committee. The Commission has provided dedicated briefings to interested Members of the Parliament on all aspects of the negotiations, after each negotiating round since March 2010.

Regarding the first question about whether ACTA qualifies as a trade agreement, the issue that needs to be settled is under which competences the Union can potentially ratify the Agreement. It is clear that the EU's competence under the common commercial policy (Article 207 TFEU), which includes "the commercial aspects of intellectual property", provides an EU competence for the matters regulated in ACTA. In this sense, therefore, ACTA can be considered a "trade" agreement.

ACTA does not require the introduction of any modification of EU legislation and will not require any legislative implementation in Europe. At the same time, it builds upon the main international standards, which are set by the Agreement on Trade- Related Aspects of Intellectual Property Rights, which is one of the World Trade Organisation's treaties. For these main reasons, it was negotiated under a general trade heading, but with the full participation of all competent Commission services.

The penal enforcement provisions were negotiated by the rotating Presidency on behalf of Member States.

2. As regards transparency, trade agreements, based on Article 207 TFEU, are subject to the same rules on transparency as applicable to other negotiations, but Article 207 requires that the Parliament be kept fully informed. International negotiations are always subject to a certain degre of confidentiality because the parties need a minimum level of confidentiality to feel comfortable enough to make concessions or to try different options.

3. As explained in the response to the first question, ACTA is a trade agreement. The fact that it falls under Article 207 means that the standard rules on ratification apply. The Commission will need to formally decide whether to propose the agreement for ratification, the Council will need to decide whether to sign and conclude the agreement, and the Parliament will be required to give its consent. To the extent that the agreement is mixed, i.e. it concerns both EU and Member States' competences, it will require ratification by the Member States.

4. The document "Maintaining Confidentiality of Documents" reflects the content of an informal agreement among the ACTA Parties expressing the understanding that intergovernmental negotiations dealing with issues that have an economic impact, may not necessarily take place in public and that negotiators are bound by a certain level of discretion.

5. Since this issue is currently the object of a court case lodged by an Member of the European Parliament against the Commission, the Commission does not wish to address the question in more detail at this stage.

However, the Commission would like to refer the Honorable Member to a recent Decision by the European Ombudsman[1] concluding that the refusal of the Council to publicly disclose certain documents related to the ACTA negotiations was justified, as making them public would have a negative effect on the prevailing climate of confidence in the negotiations, and that open and constructive co-operation might be hampered.

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Question for written answer E-8295/2010
to the Commission
Rule 117
Franziska Keller (Verts/ALE) and Oriol Junqueras Vies (Verts/ALE)

Subject: ACTA - outstanding issues

In its resolution of 10 March 2010, Parliament:

– was '*deeply concerned that no legal base was established before the start of the ACTA negotiations and that parliamentary approval for the negotiating mandate was not sought'*;

– instructed the Commission to conduct impact assessments '*prior to any EU agreement on a consolidated ACTA treaty text'*.

A Commission trade spokesperson informed MEPs that the negotiators in Tokyo had '*produced a consolidated and largely finalized text'* and that the Government of Japan had '*hosted informal meetings'* with business leaders[2];

The Commission has silently withdrawn the IPRED2 proposal for a directive on criminal sanctions (2005/0127/COD)[3].

The Commission relies on the studies produced for IPRED2 to assess the impact of implementing ACTA[4].

[1] Decision on complaint 90/2009/(JD)OV against the Council of the European Union, of 23.07.2010.
[2] http://en.act-on-acta.eu/2_October_Joint_Statement_from_all_negociating_parties
[3] http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2010:252:SOM:EN:HTML http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:252:0007:0011:EN:PDF
[4] http://en.act-on-acta.eu/E_4292_10

1. In the Commission's view, how does the legislative character of ACTA reflect on obligations under Article 15 TFEU (good governance and participation of civil society), Article 21 TEU (advancement of human rights and fundamental freedoms) and the Venice Convention (promoting democracy through law), in particular in respect of enforcement procedures and so-called 'cooperative efforts' to address infringements of intellectual property rights in the digital environment?

2. The legal basis for IPRED2 (Article 83 TFEU) does not say that Parliament and the Council may facilitate mutual recognition of criminal enforcement by means of trade agreements, but rather that the ordinary legislative procedure may establish minimum rules for the approximation of criminal laws and regulations. How will the Commission ensure that the democratic prerogatives previously envisaged for Parliament under IPRED2 are not bypassed by ACTA? Is it the Commission's view that ACTA could enter into force in the absence of any EU *acquis* in relation to criminal enforcement?

E-8295/10EN
Answer given by Mr De Gucht
on behalf of the Commission
(7.12.2010)

1. The Honorable Member refers to the "legislative character of ACTA". If this means that ACTA would introduce new legal provisions in the European Union, the Commission reiterates its constant position that ACTA neither modifies the existing EU acquis nor requires any implementing measures to ensure compliance with its provisions. The enforcement procedures, including the voluntary "cooperative efforts" to address infringements of intellectual property rights in the digital environment foreseen in ACTA are in line with the existing EU legislation.

As the Commission has explained in its detailed response to Question E-8847/10[1] the Commission has carefully ensured, at every step of the negotiations, respect for Article 15 TFEU in particular by providing regular information to civil society and access to documents on the basis of the relevant legislation. Since the entry into force of the Treaty of Lisbon, the Commission has ensured that the results of the negotiations are in line with the general principles governing external relations, on the basis of Article 205 TFEU, which in turn refers to Chapter I of Title V of the Treaty on European Union (which includes Article 21 TEU). The Commission participates in the work of the European Commission for Democracy through Law (the "Venice Commission") which is a consultative body but fails to see how ACTA would affect this work.

2. ACTA cannot enter into force before the European Parliament has given its consent. This ensures that the democratic prerogatives of the Parliament will be fully respected.

Further, the Commission does not consider that the penal chapter of ACTA will establish or replace the need for an European acquis harmonising the penal aspects of IPR infringements. The relevant ACTA chapter reflects a common understanding between the Member States which was negotiated by the rotating Presidency of the EU on behalf of the Member States.

[1] http://www.europarl.europa.eu/QP-WEB/home.jsp

There are past examples of trade related agreements on intellectual property where the EU committed to penal enforecement rules. This was, for example, the case with the World Trade Organisation's Agreement on Trade-Related Aspects of Intellectual Propery Rights (cfr. Article 61 of the TRIPS Agreement).

The Commission sees no reason why ACTA could not enter into force before penal enforcement rules are harmonised in the European Union.

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Question for written answer P-8950/2010
to the Commission
Rule 117
Jan Philipp Albrecht (Verts/ALE)

Subject: ACTA - Legal principle

Article 2.14.1 of ACTA contains a definition of commercial scale, as follows: 'For the purposes of this section, acts carried out on a commercial scale include at least those carried out as commercial activities for direct or indirect economic or commercial advantage'. Footnote 9 of ACTA says that, 'Each Party shall treat wilful importation or exportation of counterfeit trademark goods or pirated copyright goods on a commercial scale as unlawful activities subject to criminal penalties under this Article. A Party may comply with its obligation relating to exportation and importation of pirated copyright or counterfeit trademark goods by providing for distribution, sale or offer for sale of counterfeit trademark goods or pirated copyright goods on a commercial scale as unlawful activities subject to criminal penalties'.

– Has the Commission assessed the compatibility of the definition of commercial scale in ACTA with the requirements of the legality principle of criminal law?

– Does the Commission deem it appropriate to extend criminal responsibility in a footnote, as is done in Footnote 9?

P-8950/10EN
Answer given by De Gucht
on behalf of the Commission
(29.11.2010)

The relevant provisions of ACTA were negotiated by the rotating EU Presidency on behalf of the EU Member States. Therefore, the Presidency is best placed to respond to this question.

However, the Commission notes that its reading of footnote 9 is not that it extends penal responsibility to new infringements, but that it clarifies that infringements which are wilful and on a commercial scale (as already required in the main text of Article 2.14 ACTA) are to be treated as penal infringements also when they take the form of an importation or an exportation.

Question for written answer P-9024/2010
to the Commission
Rule 117
Eva Lichtenberger (Verts/ALE)

Subject: Anti-Counterfeiting Trade Agreement (ACTA)

Directive 91/250/EEC (the Software Directive) and Directive 2001/29/EC (the Information Society Directive) clearly and explicitly distinguish between anti-circumvention provisions for computer programs, which expressly preserve the Software Directive's reverse engineering provisions, and anti-circumvention provisions for other copyrighted works. Paragraphs 5 and 8 of Article 2.18 of the Anti-Counterfeiting Trade Agreement (ACTA) as at 2 October 2010 appear to provide a sufficient basis for the Commission to preserve the EU *acquis*, as it has explicitly promised to do on several occasions, and in particular to safeguard the Software Directive's special regime preserving the reverse engineering and circumvention provisions.

Given the above, and in light of the critical importance of the reverse engineering regime to fundamental EU policies relating to interoperability, competition and innovation, can the Commission explicitly confirm that the ACTA anti-circumvention provisions leave the Software Directive's special circumvention regime unaffected and preserve that directive's reverse engineering provisions, and in particular that ACTA would not require any changes to the anti-circumvention provisions of the Software Directive, the Information Society Directive or the Member States' laws implementing those provisions?

P-9024/10EN
Answer given by Mr De Gucht
on behalf of the Commission
(10.1.2011)

When negotiating the Anti-Counterfeiting Trade Agreement (ACTA), the Commission ensured compatibility with the interoperability provisions of Directive 91/250/EEC[1]. For this purpose, a specific footnote was added regarding the implementation of Article 27(5) and (6) of ACTA (the former paragraphs 2.18.5 and 2.18.6 of the draft text of 15.11.2010).

The footnote 15 in the ACTA text concerns interoperability and states that "… no Party shall be obliged to require…". This clearly ensures that there is no obligation to amend the current EU legal framework regarding interoperability.

[1] Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs, OJ L 122, 17.5.1991.

There is no doubt that this footnote should be read, like Article 6 of Directive 2001/29/EC[1], as not prohibiting those devices or activities that have a commercially significant purpose or use other than the circumvention of technical protection.

Moreover, Article 27(8) of ACTA leaves the parties with the necessary freedom to provide exceptions and limitations, and the Commission is of the opinion that the relevant provisions for computer programmes could be considered to be "appropriate limitations" within the meaning of that Article.

Therefore the limitations expressed in Article 6 of Directive 2001/29/EC and in Directive 91/250/EEC are preserved.

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Question for written answer P-8952/2010
to the Commission
Rule 117
Indrek Tarand (Verts/ALE)

Subject: ACTA - Proportionality principle with regard to copyright crimes

When proper account is taken of the proportionality principle, harmonisation of criminal penalties can only be justified when all the following elements are present:

– identity with the infringed object of protection,

– commercial activity with an intention to earn a profit,

– intent with regard to the existence of the infringed right.

Does the Commission consider that the definition of copyright crimes in ACTA meets the requirements of the proportionality principle as formulated above?

P-8952/10EN
Answer given by Mr De Gucht
on behalf of the Commission
(6.12.2010)

The ACTA chapter on criminal enforcement of Intellectual Property Rights was negotiated by the rotating EU Presidency on behalf of the EU Member States. Therefore, the Commission believes that the Presidency is best placed to provide useful information in this respect.

[1] Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, OJ L 167, 22.6.2001.

Question for written answer P-9025/2010
to the Commission
Rule 117
Oriol Junqueras Vies (Verts/ALE)

Subject: ACTA - minimum rules considered to be essential?

In 2007 the Commission launched a questionnaire addressed to the Member States in order to conduct a study [1] designed to ascertain whether the Member States consider criminal sanctions essential in order to ensure the effective implementation of EU law in the area of intellectual property rights, as required under Article 83(2) TFEU.

How will the Commission take account of the answers to the questionnaire in the context of the negotiations on the Anti-Counterfeiting Trade Agreement (ACTA)?

P-9025/10EN
Answer given by Mr De Gucht
on behalf of the Commission
(30.11.2010)

The relevant provisions of ACTA were negotiated by the rotating EU Presidency on behalf of the EU Member States. Therefore, the Presidency is best placed to respond to this question.

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Question for written answer P-9029/2010
to the Commission
Rule 117
Franziska Keller (Verts/ALE)

Subject: ACTA - competence to negotiate criminal-law measures

The Criminal Enforcement section of ACTA contains provisions on criminal procedures, criminal liability, criminal offences, criminal enforcement and penalties.

– Can the Commission explain on what legal basis these criminal-law measures are negotiated?

– Given that the provisions on aiding and abetting concern the general structure of national criminal-law systems, does the Commission consider that its mandate covers the negotiation of such provisions?

[1] See Commission reply to question P-0541/2008: http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=P-2008-0541&language=EN.

P-9029/10EN
Answer given by Mr De Gucht
on behalf of the Commission
(30.11.2010)

ACTA addresses issues that are unquestionably exclusive competences of the European Union. Therefore, the Commission needed to seek negotiating authorisation and negotiating directives from the Council in order to negotiate the Agreement. At the time the Commission sought authorisation, a debate took place with Member States as to the conduct of negotiations on certain aspects of the agreement dealing with the enforcement of intellectual property rights through criminal procedures. In April 2008, the Council authorised the Commission to negotiate ACTA, pursuant to the then Article 133 of the EC Treaty (now Article 207 TFEU) and agreed that the rotating Presidency of the EU, on behalf of the Member States, would fully participate in the negotiations on matters falling within Member States competence. Such matters included the type and level of criminal penalties to be applied by ACTA parties for infringements of intellectual property rights and dispositions on penal procedural law, but not provisions on aiding and abetting.

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Question for written answer P-9346/2010
to the Commission
Rule 117
Michèle Rivasi (Verts/ALE)

Subject: ACTA and access to medicine

The current wording on damages and other remedies in the text of the proposed ACTA (Anti-counterfeiting Trade Agreement) could open the way to excessive damages for infringement, outside current international legal standards, which could have a strong dissuasive effect on competition from generic medicine and on access to life-saving drugs. By permitting such an increase in levels of damages, the agreement effectively expands the rights of IP right-holders, thus heightening the risks that face generic competitors seeking to enter the market. The result could be to dampen innovation and curb the production and trade of generic medicines. Moreover, the proposed high levels of damages and penalties will force changes in the law of some EU Member States and are clearly incompatible with current US law.

ACTA could also continue to impede the supply of medicines to developing countries. While patents are no longer included in the Border Measures section, they are still covered by the rest of the agreement, including the provisions on civil trademark infringement, with greatly increased penalties. This means that a customs official could initiate the seizure – and, indeed, the destruction – of allegedly infringing goods without judicial review, and even without notification to the right-holder, simply on the basis of an assertion by a right-holder of a commercial trademark dispute.

Third parties face the risk of injunctions, provisional measures and even criminal penalties including imprisonment, as well as severe economic losses. This applies, for example, to suppliers of active pharmaceutical ingredients used for producing generic medicines;

distributors and retailers who stock generic medicines; NGOs which provide treatment; funders supporting health programmes; and drug regulatory authorities which examine medicines. All this could function as a significant deterrent to anyone involved in the production, sale and distribution of affordable generic medicines.

Given the possible effects on access to medicines, and on innovation, of including patents in the agreement, would the Commission consider accepting the exclusion of patents, as proposed by a number of the ACTA negotiating parties?

Will the Commission consider carrying out an assessment of ACTA's impact on access to medicine, generic competition and technological innovation?

P-9346/10EN
Answer given by Mr De Gucht
on behalf of the Commission
(14.12.2010)

The Commission has carefully considered and addressed concerns regarding access to medicines in developing countries. The Commission is firmly convinced that the Anti-Counterfeiting Trade Agreement (ACTA) will have no negative effect on access to medicines or on the trade of legitimate generics, for the following reasons:

- ACTA contains an express reference to Doha Declaration on TRIPS[1] and Public Health and incorporates the objectives and principles of articles 7 and 8 TRIPS, which refer, inter alia, to the safeguard of public health;

- Patent infringements (including when in transit) are neither covered by border controls nor by penal enforcement provisions in ACTA;

- Furthermore, the final version of ACTA leaves it optional for signatories to apply the civil remedies section to patents («..may..»). In other words, this means de facto that ACTA will not oblige its signatories to apply any of its provisions on patents.

These measures, which include several layers of safeguards, should allay the concerns of those who claimed throughout the negotiating process that ACTA could affect negatively access to medicines.

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Question for Question Time H-0541/2010
to the Commission
Part-session: November 2010
Rule 116
Carl Schlyter (Verts/ALE)

[1] Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (1994) of the World Trade Organisation.

Subject: ACTA - injunction powers going beyond those provided for in the EU acquis

In the Civil Enforcement section of the Anti-Counterfeiting Trade Agreement (ACTA), paragraph 1 of Article 2.X: Injunctions allows judicial authorities to issue an order (injunction) against a party, or a third party, to 'prevent infringing goods from entering into the channels of commerce'. This injunction power is considerably different from that existing under the EU *acquis* (Article 9 of the Intellectual Property Rights Enforcement Directive (Directive 2004/48/EC)), which permits injunctions 'to prevent any imminent infringement'. Furthermore, the third parties need to be involved in the infringement ('against an intermediary whose services are being used'). The ACTA text essentially eliminates the thresholds for injunction powers that exist under the EU *acquis*.

Given that, by laying down the thresholds for injunctions, the EU *acquis* has struck a delicate balance between enforcement and fundamental rights safeguards, how will the Commission ensure that these safeguards under the current EU *acquis* are maintained?

How will the Commission safeguard the thresholds currently provided for in the EU *acquis*?

Tabled: 20.10.2010 sv

Reply to oral question
H-0541/10
by Mr Carl Schlyter
(November 2010)

The Commission would like to clarify that Article 2.X.1 ACTA (page 6) refers to injunctions in the sense of measures taken when the court establishes an infringement ("… order against a party to desist from an infringement"), while Article 9 of the Enforcement Directive refers to provisional and precautionary measures (also described in EU law as interlocutory injunctions, hence the possible misunderstanding), which are temporary measures taken before a final decision is issued by the court. This is the reason why these two provisions make reference to different requirements, or "thresholds".

The provision dealing with injunctions in Article 2.X.1 ACTA (page 6) must be compared with the equivalent provision in Article 11 of the Enforcement Directive, while the provision addressing provisional measures in Article 9 of the Enforcement Directive is equivalent to the provision in Article 2.5.1(a) of ACTA (page 8). The Commission submits that the two ACTA provisions are fully compatible with the respective measures defined in the Enforcement Directive.

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Question for written answer P-9028/2010
to the Commission
Rule 117
Sandrine Bélier (Verts/ALE)

Subject: ACTA - preventing infringements

Article 2.5 of the Anti-Counterfeiting Trade Agreement (ACTA) states that: 'Each Party shall provide that its judicial authorities shall have the authority to order prompt and effective provisional measures: (a) against a party, or where appropriate, against a third party over whom the relevant judicial authority exercises jurisdiction, to prevent an infringement of any intellectual property rights from occurring, and in particular to prevent infringing goods from entering into the channels of commerce;'.

– What exactly does 'prevent from occurring' mean in the digital environment?

– Does it imply that ISPs have to implement technical measures in order to prevent their customers from committing infringements?

– If so, how can the Commission guarantee that the implementation of such technical measures will be compatible with respect for privacy, data protection and fundamental rights?

P-9028/10EN
Answer given by Mr De Gucht
on behalf of the Commission
(25.11.2010)

As regards the meaning, in the digital environment, of "prevent from occurring" in Article 2.18 of ACTA, paragraph 1 of that Article also makes reference to "… expeditious remedies to prevent infringements…". This Article is entirely consistent with the existing EU acquis in the field of intellectual property rights and also e-commerce. In particular, Article 8 of Directive 2001/29[1] on the harmonisation of copyright and related rights in the Information Society, Articles 3 and 9 of Directive 2004/48[2] on the enforcement of intellectual property rights and 12(3), 13(2) and 14(3) of Directive 2000/31[3] on e-commerce. These Directives all provide the possibility for national authorities or courts to order provisional measures, by way of injunctive relief to prevent or terminate an infringement of intellectual property rights in individual cases. An example of this situation would be a case where a court orders a website to remove advertisements promoting sales of counterfeit goods.

ACTA does not introduce any requirement for technical measures in the context of Article 2.18.

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Question for written answer E-9166/2010
to the Commission

[1] OJ L 167, 22.6.2001
[2] OJ L 157, 30.4.2004
[3] OJ L 178, 17.7.2000

Rule 117
Laurence J.A.J. Stassen (NI)

Subject: 'Three-strikes-out' legislation with regard to internet use

1. Is the Commission aware of French plans to raise 'three-strikes-out' legislation with its European partners?

2. Does the Commission agree that cutting access to the internet is an attack on the fundamental rights of citizens, in particular the freedom of expression? If not, why not?

3. Does the Commission agree that the 'three-strikes-out' regime is thus a disproportionately harsh punishment for the infringement of copyright? If not, why not?

4. Can the Commission give a commitment to keep plans for a 'three-strikes-out' system out of the ACTA negotiations and to resist pressure to introduce the system in some form or another at European level? If not, why not?

E-9166/10EN
Answer given by Mrs Kroes
on behalf of the Commission
(14.12.2010)

First, the Commission would like to recall that the regulatory framework for electronic communications as amended in 2009 provides that measures taken by Member States regarding end-users access' to or use of, services and applications through electronic communications networks shall respect the fundamental rights and freedoms of natural persons, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and general principles of Community law. Any of these measures regarding end-users' access to, or use of services and applications through electronic communications networks liable to restrict those fundamental rights or freedoms may only be imposed if they are appropriate, proportionate and necessary within a democratic society, and their implementation shall be subject to adequate procedural safeguards in conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms and with general principles of Community law, including effective judicial protection and due process[1].

The French model (i.e. HADOPI or the "Three-Strike law") was discussed between the French authorities and the Commission on several occasions. In the absence of any complaint and based on the information currently at its disposal, the Commission has no grounds to believe that the French scheme is contrary to EU law.

The French highest jurisdiction – the Constitutional Council – expressly recognised in its decision of 10 June 2009[2] that access to the internet nowadays is part of the fundamental

[1] Article 1(3a) of Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services ("Framework Directive"), OJ L 108, 24.4.2002.
[2] Décision n° 2009-580 DC du 10 juin 2009.

freedom of expression and communication to the extent that internet services allow participation in democratic life and the expression of ideas and opinions. As it touches upon a fundamental freedom, internet access can only be suspended through a decision of a judicial authority.

Finally, the Commission is not aware of any attempt from the French authorities to export their national approach to copyright enforcement to other Member States.

The existing acquis does not impose any "Three-Strike rule" or graduated response systems but is flexible to allow different EU countries to have different approaches, while fully respecting fundamental rights, freedoms and civil liberties. In this respect, the text of the Anti-Counterfeiting Trade Agreement (ACTA) is fully in line with the EU acquis.

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Question for written answer E-010962/2010
to the Commission
Rule 117
Alexander Alvaro (ALDE)

Subject: ACTA anti-circumvention provisions

Directive 91/250/EEC (the 'Software Directive') and Directive 2001/29/EC (the 'Information Society Directive') clearly and explicitly distinguish between anti-circumvention provisions for computer programs, which expressly preserve the Software Directive's reverse engineering provisions, and anti-circumvention provisions for other copyrighted works.

Paragraphs 5 and 8 of Article 2.18 of the Anti-Counterfeiting Trade Agreement ('ACTA') as at 3 December 2010 appear to provide sufficient basis for the Commission to preserve the *acquis communautaire*, in accordance with the European Commission's repeated and explicit promise, and in particular to safeguard the Software Directive's special regime preserving reverse engineering and circumvention provisions.

In view of the foregoing, and in light of the critical importance of the reverse engineering regime to fundamental EU policies related to interoperability, competition and innovation, can the Commission explicitly confirm that the ACTA anti-circumvention provisions leave the Software Directive's special circumvention regime unaffected and preserve that directive's reverse engineering provisions, and in particular that ACTA would not require any changes to the anti-circumvention provisions of the Software Directive, the Information Society Directive or the Member States' laws implementing those provisions?'

E-10962/10EN
Answer given by Mr De Gucht
on behalf of the Commission
(22.2.2011)

The Commission confirms the understanding of the Honourable Member that the ACTA anti-circumvention provisions leave the Software Directive's special circumvention regime

unaffected and preserve that directive's reverse engineering provisions. The Commission also confirms that ACTA does not require any changes to the anti-circumvention provisions of the Software Directive, the Information Society Directive or the Member States' laws implementing those provisions.

Indeed, as indicated by the Honourable Member, paragraphs 5 and 8 of Article 27 (previously Article 2.18) of ACTA, and in particular footnote 14, provide a clear basis to ensure a full compliance with the EU acquis.

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Question for written answer E-9197/2010
to the Commission
Rule 117
Nikolaos Salavrakos (EFD)

Subject: Greece tops counterfeit products league in the EU

Last year Greece was the EU Member State with the most seizures of counterfeit products, mainly from China. The grey economy in Greece has an estimated turnover of EUR 20 billion per year, of which Chinese counterfeit products account for EUR 9 billion. In particular, according to the latest Commission report on EU customs enforcement of intellectual property rights, Greece seized a total of 21 990 722 counterfeit articles in 2009; Greece thus heads the table of EU states affected, together with Holland, Italy and Bulgaria.

Greek customs authorities also carried out 253 arrests. As the National Confederation of Greek Commerce (ESEE) points out, these two figures taken together clearly show that there is an exceptionally large influx of counterfeit products via Greek ports.

Of all the counterfeit products entering the EU, 64.4% come from China, 14.6% from the United Arab Emirates, 4.5% from Egypt and 4.1% from Cyprus. As we have seen, the distribution networks for counterfeit products are on an international scale and are also linked to other illegal activities. They are constantly developing, making use of modern technology and exploiting loopholes in the control systems which exist in every country.

1. What measures will the Commission take to improve these controls still further, particularly in major ports, so as to increase the number of arrests?

2. What measures will the Commission take to improve international cooperation in combating these activities?

3. What support can the Commission give Greece, as well as the other countries affected, in carrying out more information campaigns aimed at raising consumer awareness of the dangers of such counterfeit products?

4. How can the Commission help improve the provision of information to the citizens of Europe on the negative impact which the trade in counterfeit products has on the market and on employment?

E-9197/10EN
Answer given by Mr De Gucht
on behalf of the Commission
(21.1.2011)

The Commission's review of Council Regulation (EC) 1383/2003 [1] concerning customs action against goods suspected of infringing intellectual property rights (IPR) at the border is nearing completion. Based upon the results of the review, the Commission expects to put forward a proposal during the first semester of 2011, to further strengthen the legislation applicable to customs enforcement of IPR, whilst at the same time ensuring the streamlining of procedures.

The Commission's basic approach on the enforcement of intellectual property rights in third countries was set out at the end of 2004, in the Strategy for the Enforcement of IPR in Third Countries and re-enforced in the 2006 Communication Global Europe[2]. It is also addressed in the Commission's Communication of November 2010 on 'Trade, Growth and World Affairs'[3].

The EU has substantially increased its work in this field, inter alia by successfully negotiating the Anti-Counterfeiting Trade Agreement (ACTA) with some of its main trading partners[4], by setting up specific dialogues with some of the key countries, such as China, Russia and Ukraine, by introducing the debate at the World Trade Organisation, by shifting technical assistance resources to enforcement and by establishing reinforced co-operation with countries sharing our concerns, such as the US and Japan..

The Commission also considers that international co-operation with relevant trading partners on customs matters is essential to ensure effective border enforcement of intellectual property rights. In particular, the Commission, together with the Member States customs administrations is developing cooperation with China, through the framework of a dedicated action plan concerning customs cooperation on IPR enforcement, that was signed with China in 2009

[1] O.J. L196 of 2.8.2003
[2] COM(2006) 567 final
[3] COM(2010) 612 final
[4] Australia, Canada, Japan, Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland and the United States