



Committee on International Trade
The Chairman

AM/ZU
D(2011) 35697

312222 18.07.2011

Mr. Christian Pennera
Jurisconsult
Legal Service of the European Parliament

Subject: "Anti-Counterfeiting Trade Agreement" (ACTA)

Dear Mr Pennera,

I would like to request your Service's opinion on the issue of the Anti-Counterfeiting Trade Agreement (ACTA). On 24 June 2011, the Commission forwarded its proposal to the Council (COM(2011)380 - 2011/0167(NLE)), and the Council has just referred it to Parliament under the consent procedure.

As you are certainly aware, the EU and a number of other WTO members began working on ACTA in 2007. The negotiating parties are Australia, Canada, the EU, Japan, Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland and the USA. ACTA will provide a WTO-plus legal framework (in addition to the TRIPS) against counterfeiting and piracy and harmonised rules on civil and criminal enforcement and on customs procedures, as well as improved cooperation between authorities and stakeholders.

In this context, the Committee on International Trade would appreciate to know your opinion on the following matters:

- The legal base or bases for adopting the ACTA. The Commission's proposal is based on Article 207 (4), 1st subparagraph, in conjunction with Article 218(6)(a)(v) TFEU. I wonder whether the Legal Service agrees with this choice.
- The conformity of ACTA with the EU Acquis with regard to (a) border measures, (b) the criteria for damages in ACTA in relation to the criterion of "*appropriateness of the damage to the actual prejudice suffered*" as envisaged in Directive 2004/48/EC, and (c) criminal measures.

- The conformity of ACTA with the existing international obligations of the EU and its member states: How does the Legal Service evaluate the relationship between ACTA and the TRIPS Agreement?
- Finally, Parliament and myself have received various requests from NGOs and Interest Groups for access to ACTA preparatory works as well as requests that all relevant preparatory documents (drafts distributed by the European Commission and associated briefing notes from the Commission) received by the Parliament should be published and/or communicated directly to Stakeholders as soon as possible: Is the Commission obliged to publicly disclose preparatory works and previous versions of ACTA, according to the Vienna Convention on Law of Treaties? Is the European Parliament obliged to disclose documents that originate from another EU institution?

I thank you in advance for your cooperation.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'Vital Moreira', written in black ink.

Vital Moreira