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MOTION FOR A RESOLUTION

to wind up the debate on the statement by the Commission
pursuant to Rule 110(2) of the Rules of Procedure
on the Anti-Counterfeiting Trade Agreement (ACTA)

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United in diversity

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European Parliament resolution on the Anti-Counterfeiting Trade Agreement (ACTA)

The European Parliament,

- having regard to Articles 207 and 218 of the Treaty on the Functioning of the European Union (TFEU),
 - having regard to the Charter of Fundamental Rights of the European Union,
 - having regard to its resolution of 10 March 2010 on the transparency and state of play of the ACTA [Anti-Counterfeiting Trade Agreement] negotiations,
 - having regard to its decision of 20 October 2010 on the revision of the framework agreement on relations between the European Parliament and the European Commission,
 - having regard to the plenary debate of 20 October 2010 on the Anti-Counterfeiting Trade Agreement,
 - having regard to the 2 October 2010 draft of the Anti-Counterfeiting Trade Agreement,
 - having regard to the European Ombudsman's decision on complaint 90/2009/(JD)OV relating to access to ACTA documents,
 - having regard to Council Regulation (EC) No 1383/2003,
 - having regard to the Inter-Institutional Agreement on Better Law-Making between Parliament, the Council and the Commission (2003/C 321/01),
 - having regard to the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS),
 - having regard to Rules 115(5) and 110(2) of its Rules of Procedure,
- A. whereas the fight against counterfeiting represents a key element in the EU political strategy with a view to ensuring justice, a level playing field for our producers, the maintenance of employment for citizens and respect for the rule of law,
- B. whereas, in order to be more effective, the fight against counterfeiting – which is a worldwide phenomenon – requires stronger international cooperation among the major world players,
- C. whereas, despite several attempts to achieve a multilateral approach – which remains the main goal in the EU strategy – this could not be pursued because of resistance and opposition from other global players, and whereas the plurilateral agreement therefore seems to be the best way of addressing specific concerns at an international level,

- D. whereas, as the Commission has repeatedly stated, ACTA is concerned solely with enforcement measures and does not include provisions modifying the substantive intellectual property rights (IPR) law of the EU or the other ACTA parties, but rather establishes, for the first time, a comprehensive international framework to assist the parties in their efforts to combat IPR infringements effectively, and it does not therefore imply any change to the *acquis communautaire*,
- E. whereas, in many areas, including provisions for the digital sector and the scope of compulsory border measures, ACTA goes beyond the scope of TRIPS and therefore affords right-holders better protection,
- F. whereas, after strong representations by Parliament, the level of transparency of the ACTA negotiations was fundamentally improved and, since the negotiating round in New Zealand, Parliament has been fully informed of the course of the negotiations; and whereas it took cognisance of the negotiated text one week after the conclusion of the last round in Japan,
- G. whereas the negotiated text reflects the main concerns expressed by Parliament over recent months, including on issues such as the observance of fundamental rights, privacy and data protection, respect for the important role of free Internet, the importance of safeguarding the role of service providers, and the need to safeguard access to medicines – a reference to the Doha Declaration on the TRIPS Agreement and Public Health, adopted on 14 November 2001, having been incorporated into the preamble to the agreement,
- H. whereas the Commission has repeatedly affirmed the importance of enforcing the protection of geographical indications (GIs); whereas it has been agreed by parties to the agreement that ACTA will provide for the enforcement of GIs,
- I. whereas the Commission, as guardian of the Treaties, is obliged to uphold the *acquis communautaire* when negotiating international agreements affecting legislation in the EU, and whereas the Commission has committed itself to providing immediate and full information to Parliament at every stage of negotiations on international agreements,
- J. whereas it is crucial to ensure that the development of IPR enforcement measures is accomplished in a manner that does not impede innovation or competition, undermine IPR limitations and personal data protection, restrict the free flow of information or unduly burden legitimate trade,
- K. whereas any agreement reached by the EU on ACTA must comply fully with the *acquis communautaire*, and this relates particularly to legal obligations imposed on the EU with respect to privacy and data protection, notably as provided for in Directive 95/46/EC, Directive 2002/58/EC and the case law of the European Court of Human Rights and the Court of Justice,
- L. whereas, as a result of the entry into force of the Lisbon Treaty in December 2009, Parliament will have to give consent to the ACTA text prior to the agreement's entry into

force in the EU,

1. Welcomes the release of the 2 October 2010 draft of the Anti-Counterfeiting Trade Agreement following the Tokyo negotiating round and expects the Commission to release to Parliament and the public the finalised ACTA text following the technical negotiation meeting in Sydney from 30 November to 3 December 2010;
2. Reiterates that combating counterfeiting is a priority in its internal and international political strategy and that international cooperation is a key issue in the attainment of this goal;
3. Is fully aware that the agreement negotiated will not solve the complex and multi-dimensional problem of counterfeiting; considers, however, that it is a step in the right direction;
4. Welcomes the Commission's repeated statements that enforcement of the ACTA provisions – especially those on copyright enforcement procedures in the digital environment – will be fully in line with the *acquis communautaire* and that neither personal searches nor the so-called 'three strikes' procedure will be introduced by this agreement; points out that no ACTA signatory, and particularly not the EU, may be mandated by the agreement to introduce a 'three strikes' or similar regime;
5. Welcomes the fact that the deliberative draft text of 2 October 2010 confirms, in its preamble, ACTA's aim of providing effective and appropriate means of IPR enforcement, complementing the TRIPS agreement and taking into account differences in the respective legal systems and practices of the ACTA parties; and insists on the fact that the principles set out in the Doha Declaration on the TRIPS Agreement and Public Health, adopted on 14 November 2001 by the WTO at its Fourth Ministerial Conference, held in Doha, Qatar, are the building blocks underpinning the ACTA deliberative draft text of 2 October 2010 and that, therefore, any enforcement of ACTA should comply with these principles;
6. Emphasises that ACTA will not change the EU *acquis* in terms of IPR enforcement, because EU law is already considerably more advanced than the current international standards, and that it therefore represents an opportunity to share best practices and guidelines in this area;
7. Considers ACTA as a tool for making the existing standards more effective, thus benefiting EU exports and protecting right-holders when they operate in the global market, where they currently suffer systematic and widespread infringement of their copyrights, trademarks, patents, designs and GIs;
8. Stresses the importance, for European companies and employment in the EU, of protecting GIs; acknowledges the efforts made by the Commission to include the protection of GIs within the scope of ACTA;
9. Finds it regrettable that, in its Article 1.X, the agreement does not define 'counterfeit geographical indications', as this omission could create confusion or at least complicate the tasks of administrative and judicial authorities in the interpretation and enforcement

of ACTA;

10. Welcomes the inclusion of the word ‘may’ in Article 2.14.3 (‘Each party may provide criminal procedures and penalties [...]’);
11. Welcomes the fact that the parties agreed, following EU insistence, that the criminalisation of ‘camcording’ should be merely optional (Articles 2.14.3 and 2.15);
12. Notes the decision delivered by the European Ombudsman in case 90/2009, in which the complainant was a Dutch foundation, including the statement that ‘disclosure of the documents would have a negative effect on the prevailing climate of confidence on ACTA negotiations and that open and constructive cooperation might be hampered’, and continues to believe, in this regard, that the right balance needs to be struck, in international trade negotiations, between transparency and confidentiality;
13. Welcomes the fact that ACTA membership is not exclusive and that additional developing and emerging countries may join, thus promoting widespread IPR protection and enhancing the fight against counterfeiting worldwide; considers that, in the future, ACTA could potentially attain a multilateral level;
14. Emphasises that any decision taken by the Commission as part of the ACTA Committee must lie within the scope of the *acquis* and may not unilaterally change the content of ACTA; considers therefore that any proposed change to ACTA would need to be adopted by Parliament and the Council in accordance with Article 207 and 218, TFEU;
15. Calls on 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;
16. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the states parties to the ACTA negotiations.