
The Parliament of the Commonwealth of Australia
Joint Standing Committee on Treaties

Report 126

Treaty tabled on 21 November 2011

Anti-Counterfeiting Trade Agreement (Tokyo on 1 October 2011)

June 2012
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Membership of the Committee

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Mr Jamie Briggs MP

Senator Scott Ludlam

Mr Laurie Ferguson MP
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Senator the Hon Lisa Singh

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Senator Matthew Thistlethwaite

Ms Sharon Grierson MP

Senator Anne Urquhart

Mr Harry Jenkins MP
(from 7/2/12)

Senator Dean Smith
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Ms Melissa Parke MP

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Resolution of Appointment

The Resolution of Appointment of the Joint Standing Committee on Treaties allows it to inquire into and report on:

- a) matters arising from treaties and related National Interest Analyses and proposed treaty actions and related Explanatory Statements presented or deemed to be presented to the Parliament;
- b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:
 - (i) either House of the Parliament, or
 - (ii) a Minister; and
- c) such other matters as may be referred to the committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.



List of recommendations

3 The National Interest Analysis

Recommendation 1

That National Interest Analyses of treaties clearly intended to have an economic impact include an assessment of the economic benefits and costs of the treaty, or, if no assessment of the economic benefit of a treaty has been undertaken, a statement to that effect, along with an explanation as to why it was not necessary or unable to be undertaken.

Recommendation 2

That the Australian Government commissions an independent and transparent assessment of the economic and social benefits and costs of the *Anti-Counterfeiting Trade Agreement*.

5 Copyright

Recommendation 3

That, in circumstances where a treaty includes the introduction of new criminal penalties, the treaty's National Interest Analysis justify the proposed new penalties.

Recommendation 4

That the Australian Government publishes the individual protections that will be read into the *Anti-Counterfeiting Trade Agreement* (ACTA) from the *Trade-Related Aspects of Intellectual Property Rights Agreement* and how the protections will apply in relation to the enforcement provisions contained in ACTA.

Recommendation 5

That the Australian Government clarify and publish the meaning of “aiding and abetting” as it applies to the *Anti-Counterfeiting Trade Agreement*.

Recommendation 6

That the Australian Government clarify and publish the meaning of “commercial scale” as it applies to the *Anti-Counterfeiting Trade Agreement*.

6 Intellectual Property

Recommendation 7

In the event that the Australian Government ratifies the *Anti-Counterfeiting Trade Agreement (ACTA)*, the Government prepares legislation to:

- Exclude patents from the application of the civil enforcement and border measures parts of ACTA;
- Ensure that products produced in Australia as a result of the invalidation of a patent or part of a patent in Australia are not subject to the counterfeiting prohibition in ACTA; and
- Ensure that the expression ‘counterfeit’ in ACTA is not applied to generic medicines entered or eligible for entry on the Australian Register of Therapeutic Goods.

8 Conclusion

Recommendation 8

That the *Anti-Counterfeiting Trade Agreement* not be ratified by Australia until the:

- Joint Standing Committee on Treaties has received and considered the independent and transparent assessment of the economic and social benefits and costs of the Agreement referred to in Recommendation 2;
- Australian Law Reform Commission has reported on its Inquiry into Copyright and the Digital Economy; and the
- Australian Government has issued notices of clarification in relation to the terms of the Agreement as recommended in the other recommendations of this report.

Recommendation 9

In considering its recommendation on whether or not to ratify the *Anti-Counterfeiting Trade Agreement (ACTA)*, a future Joint Standing Committee on Treaties have regard to events related to ACTA in other relevant jurisdictions including the European Union and the United States of America.

