



HOUSE OF COMMONS
CANADA

**THE CANADA-EUROPEAN UNION
COMPREHENSIVE ECONOMIC AND TRADE
AGREEMENT, THE ANTI-COUNTERFEITING
TRADE AGREEMENT, AND ISSUES REGARDING
CULTURAL DIVERSITY**

**Report of the Standing Committee on
Canadian Heritage**

**Hon. Michael Chong, M.P.
Chair**

MARCH 2011

40th PARLIAMENT, 3rd SESSION

Published under the authority of the Speaker of the House of Commons

SPEAKER'S PERMISSION

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Standing Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Additional copies may be obtained from: Publishing and Depository Services
Public Works and Government Services Canada
Ottawa, Ontario K1A 0S5
Telephone: 613-941-5995 or 1-800-635-7943
Fax: 613-954-5779 or 1-800-565-7757
publications@tpsgc-pwgsc.gc.ca
<http://publications.gc.ca>

Also available on the Parliament of Canada Web Site
at the following address: <http://www.parl.gc.ca>

**THE CANADA-EUROPEAN UNION
COMPREHENSIVE ECONOMIC AND TRADE
AGREEMENT, THE ANTI-COUNTERFEITING
TRADE AGREEMENT, AND ISSUES REGARDING
CULTURAL DIVERSITY**

**Report of the Standing Committee on
Canadian Heritage**

**Hon. Michael Chong, M.P.
Chair**

MARCH 2011

40th PARLIAMENT, 3rd SESSION

STANDING COMMITTEE ON CANADIAN HERITAGE

CHAIR

Hon. Michael Chong

VICE-CHAIRS

Carole Lavallée

Pablo Rodriguez

MEMBERS

Charlie Angus

Scott Armstrong

Patrick Brown

Bonnie Crombie

Dean Del Mastro

Royal Galipeau

Roger Pomerleau

Blake Richards

Scott Simms

CLERKS OF THE COMMITTEE

Graeme Truelove

Richard Dupuis

LIBRARY OF PARLIAMENT

Parliamentary Information and Research Service

Marion Ménard, Analyst

Michael Dewing, Analyst

THE STANDING COMMITTEE ON CANADIAN HERITAGE

has the honour to present its

EIGHTH REPORT

Pursuant to its mandate under Standing Order 108(2) and the motion adopted by the Committee on Tuesday, November 30, 2010, the Committee has studied the Canada-European Union Comprehensive Economic and Trade Agreement, the Anti-Counterfeiting Trade Agreement, and Issues Regarding Cultural Diversity and has agreed to report the following:

TABLE OF CONTENTS

CANADA-EUROPEAN UNION COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT, THE ANTI-COUNTERFEITING TRADE AGREEMENT, AND ISSUES REGARDING CULTURAL DIVERSITY	1
CHAPTER 1: INTRODUCTION	1
1.1 Committee Mandate	1
1.2 Comprehensive Economic and Trade Agreement with the European Union	2
1.3 The Convention on the Protection and Promotion of the Diversity of Cultural Expressions	2
1.4 The Anti-Counterfeiting Trade Agreement.....	2
CHAPTER 2: SUMMARY OF TESTIMONY.....	3
2.1 Negotiations on the Comprehensive Economic and Trade Agreement with the European Union.....	3
2.2 Negotiations on the Anti-Counterfeiting Trade Agreement	6
CHAPTER 3: CONCLUSION	10
3.1 Main Points of the Testimony	10
CHAPTER 4: THE COMMITTEE'S RECOMMENDATIONS.....	11
APPENDIX A: LIST OF WITNESSES	13
APPENDIX B: LIST OF BRIEFS	15
REQUEST FOR GOVERNMENT RESPONSE	17
DISSENTING OPINION OF THE CONSERVATIVE PARTY OF CANADA	19

CANADA-EUROPEAN UNION COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT, THE ANTI-COUNTERFEITING TRADE AGREEMENT, AND ISSUES REGARDING CULTURAL DIVERSITY

CHAPTER 1: INTRODUCTION

1.1 Committee Mandate

On November 30, 2010, the House of Commons Standing Committee on Canadian Heritage (hereafter the Committee) approved the following motion:

That, pursuant to Standing Order 108(2), the Committee invite the Minister of Canadian Heritage, the Minister of International Trade or their representatives, the Coalition for Cultural Diversity and any other relevant witnesses to appear in order to:

Determine the status of negotiations on the free trade agreement with the European Union and ensure that the agreement on cultural diversity promoted and signed by Canada is respected;

Find out the position of Canada's negotiators in talks to sign the Anti-Counterfeiting Trade Agreement (ACTA).

That the Committee report its findings to the House.¹

The Committee held hearings on January 31 and February 7, 2011. It heard from the Honourable Peter Van Loan, the Minister of International Trade and officials from the Department of Foreign Affairs and International Trade: Steve Verheul, Chief Trade Negotiator, Canada-European Union; Robert Ready, Director General, Intellectual Property and Services Trade Policy Bureau; and Edith St-Hilaire, Director, Intellectual Property Trade Policy Division. The Committee also heard from Charles Vallerand, Executive Director of the Coalition for Cultural Diversity; and Daniel Drapeau, Counsel with the firm Smart & Biggar.

This report gives brief overviews of the proposed Comprehensive Economic and Trade Agreement (CETA) Canada is negotiating with the European Union (EU), the United Nations Educational, Scientific and Cultural Organization (UNESCO) *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, and ACTA. It then provides a summary of the testimony heard on CETA and ACTA. In the conclusion, the main points raised in the testimony are reviewed. In the final chapter, the Committee makes five recommendations.

1 *Minutes of Proceedings*, Committee, Meeting No. 33, November 30, 2010.

1.2 Comprehensive Economic and Trade Agreement with the European Union

In 2009, Canada and the EU launched negotiations toward a CETA on goods, services, investments, government contracts, and several other sectors. In January 2011, Minister Van Loan announced that the next round of negotiations would be held in April 2011.

The negotiations address a wide range of issues, including trade in goods and services; investment; government procurement; regulatory cooperation; intellectual property; temporary entry of business persons; competition policy and other related matters; labour; and environment.²

1.3 The Convention on the Protection and Promotion of the Diversity of Cultural Expressions

In 2005, a majority of the Member States of UNESCO adopted the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*. Canada was the first country to officially accept the convention.³

The objective of the convention is to protect and foster cultural diversity at a time of trade globalization. To quote the Government of Canada:

The text addresses Canada's fundamental objectives: it recognizes the double nature—economic and social—of cultural goods and services; it confirms the right of governments to adopt policies in support of cultural expression; and it places the agreement on equal footing with the other treaties while respecting existing obligations. The text also recognizes the link between culture and development⁴.

1.4 The Anti-Counterfeiting Trade Agreement

In 2007, the government joined a number of its trading partners in discussions toward the ACTA. The objective is “to put in place international standards for enforcing intellectual property rights in order to fight more efficiently the growing problems of counterfeiting and piracy.”⁵

2 Department of Foreign Affairs and International Trade, “Canada-European Union: Comprehensive Economic and Trade Agreement Negotiations,” February 8, 2011, <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/eu-ue/can-eu.aspx>.

3 Government of Canada, “*The Convention on the Protection and Promotion of the Diversity of Cultural Expressions*,” August 13, 2008, <http://www.canadainternational.gc.ca/unesco/committee-comite.aspx?lang=eng>.

4 Ibid.

5 Department of Foreign Affairs and International Trade Canada, *Anti-Counterfeiting Trade Agreement*, December 9, 2010, http://www.international.gc.ca/trade-agreements-accords-commerciaux/fo/intellect_property.aspx?lang=eng.

The ACTA is being negotiated by a group of trading partners: Australia, Canada, the European Union and its 27 Member States, Japan, Mexico, Morocco, New Zealand, Republic of Korea, Singapore, Switzerland and the United States. They completed a legal verification of the finalized ACTA text in December 2010.⁶ It would be up to each country to decide whether and when to bring ACTA into force.⁷

The ACTA concentrates on three areas:

- Cooperation among the ACTA parties to address the challenges of cross-border trade in counterfeit and pirated goods;
- Establishing a set of enforcement best practices that are used by authorities; and
- A legal framework of enforcement measures.⁸

According to the Department of Foreign Affairs and International Trade:

- The ACTA is intended to focus on commercially-oriented counterfeiting and piracy. There is evidence to suggest that organized criminal organizations are increasingly involved in the manufacture, distribution, and sale of these illegal goods.
- Counterfeiting and piracy not only take place in the physical world, but also increasingly in the digital environment. ACTA cannot be regarded as an agreement that only focuses on the Internet. The ACTA aims to address the problem of counterfeiting and piracy as a whole, and seeks to cover each of its dimensions.⁹

CHAPTER 2: SUMMARY OF TESTIMONY

2.1 Negotiations on the Comprehensive Economic and Trade Agreement with the European Union

Minister Van Loan said the CETA negotiations with the EU are “the single most significant trade initiative Canada has undertaken since the Canada-U.S. Free Trade Agreement.”¹⁰ He said the agreement would boost Canada’s gross domestic product by \$12 billion annually and increase the two-way trade between Canada and the EU by 20%

6 Ibid.

7 Department of Foreign Affairs and International Trade Canada, *Anti-Counterfeiting Trade Agreement—Fact Sheet*, April 1, 2010, <http://www.international.gc.ca/trade-agreements-accords-commerciaux/fo/IP-factsheet-fiche.aspx?lang=en>.

8 Ibid.

9 Ibid.

10 *Minutes of Proceedings*, Committee, Meeting No. 37, 40th Parliament, 3rd Session, January 31, 2011, 1535.

on an annual basis. The Minister noted that the sixth round of negotiations had taken place earlier in January and that further meetings would take place over the coming months.

On the subject of culture, Minister Van Loan said that fears about losing our culture were raised at the time of the signing of the Canada-US Free Trade Agreement, but that these fears had not come to pass and that our culture is alive and well. He said that Canada has had long-standing cultural relations with many countries.

Minister Van Loan also noted that Canada is a leader in developing conventions of the United Nations, including the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*. He said this convention “recognizes the importance of cultural diversity issues to international social and economic development. It gives countries like Canada the right to adopt policies and measures to protect and promote the diversity of cultural expressions.”¹¹ He added that the Member States of the EU understand the importance of culture and its place in society.

Regarding the place of culture in the CETA negotiations, Minister Van Loan said:

I can assure the members of this committee, and all Canadians, that any trade agreement we conclude with the European Union will preserve our respective abilities to pursue domestic cultural policy objectives. Our government remains squarely committed to defending our cultural interests—including in all our trade agreements.¹²

In response to questions, Minister Van Loan reiterated that the government wishes “to obtain protection for our culture and our cultural industries in the same fashion as has been the case in previous free trade agreements.”¹³ He said the EU, with 27 Member States, has a strong interest to protect and preserve their culture. He also said that Canada was “seeking cultural exemptions¹⁴ and protections for the programs that we have in Canada, and seeking to protect any future programs that any government, provincial or federal, might wish to institute provided it's done with the objective of supporting Canadian culture.”¹⁵ He noted, however, that because the agreement being negotiated is much broader than the North American Free Trade Agreement (NAFTA), the provisions in NAFTA cannot be dropped into it.¹⁶

With respect to culture, Minister Van Loan said that the only area of substance the EU is seeking to negotiate is the support Canada provides for its publishing industry. He

11 Ibid., 1540.

12 Ibid.

13 Ibid., 1545.

14 A cultural exemption takes culture "off the table" in international trade negotiations. See Foreign Affairs and International Trade Canada, “New Strategies for Culture and Trade Canadian Culture in a Global World,” February 1999, <http://www.international.gc.ca/trade-agreements-accords-commerciaux/fo/canculture.aspx>.

15 *Minutes of Proceedings*, Committee, Meeting No. 37, 40th Parliament, 3rd Session, January 31, 2011, 1605.

16 Ibid., 1555.

said the government is seeking to have these support programs covered by an exemption.¹⁷

On the subject of consultations with the provinces, Minister Van Loan said they had been consulted and they are at the table participating in the negotiations. He mentioned Quebec specifically, saying that it had been able to offer its views on issues being discussed. Minister Van Loan also said there had been a wide range of consultations within the government, including with the Department of Canadian Heritage.¹⁸ He also said that consultations had been conducted with cultural groups such as the Association of Canadian Publishers, Magazines Canada, and the Canadian Conference of the Arts.¹⁹

In his testimony, Mr. Vallerand from the Coalition for Cultural Diversity noted that Canada was the first country to ratify the UNESCO *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* and is actively involved in implementing the convention.

He said the negotiations between Canada and the EU raised two urgent issues. The first is the need to build North-South cooperation and to ensure that Southern countries and UNESCO have the financial resources to support the implementation process.

The second issue he raised dealt with developing the jurisprudence for the convention. He said: "These trade negotiations are so important because the Canadian government has, right from the outset, clearly focused on developing an extensive, broad modern trading relationship with a significant economic partner."²⁰ He went on to say, "it would be unfortunate to see the gains made through the convention negotiated away or weakened by a potential free-trade agreement."²¹ However, he said the Coalition on Cultural Diversity was reassured by government commitments to negotiate a complete exemption for culture.

Mr. Vallerand talked about the challenges involved in negotiating such an exemption. He said the EU Member States have a different view of the cultural exemption, and are asking for clarification in order to understand how it would apply across the agreement.²² He pointed out, for example, that the Europeans take a narrower view of what constitutes "audiovisual."²³ In Mr. Vallerand's view, Canada should not change its

17 Ibid.

18 Ibid., 1550.

19 Ibid., 1600.

20 *Minutes of Proceedings*, Committee, Meeting No. 39, 40th Parliament, 3rd Session, February 7, 2011, 1530.

21 Ibid.

22 Ibid.

23 Ibid., 1540.

position, but continue to provide leadership in advocating a complete exemption.²⁴ He reiterated:

[T]he real issue here is developing the jurisprudence that I referred to earlier. This is important because there are very few legal texts, court decisions or international trade mechanisms that establish or recognize the legitimacy or even the very existence of the UNESCO Convention that we fought so hard to achieve.

Not only should the clause be watertight, we would suggest it also be reviewed and modernized to include new types of cultural industries, such as the new media and convergence.²⁵

Mr Vallerand said this jurisprudence could be achieved by including a reference to the “necessary consistency between the exemption, [the] UNESCO Convention and the trade agreement.”²⁶ At the same time, he said this proposal would need to be examined by legal experts to ensure it would not create problems with existing bilateral trade agreements.²⁷

Mr. Vallerand said that gaining the exemption should be the primary goal. He also said that further talks to explore a detailed protocol should involve cultural experts and not be limited to trade officials.²⁸ As he explained:

[T]he danger is that an exemption agreement be followed immediately by discussions on a protocol. This might tempt those whose business initiatives have been stymied by the exemption to interfere in the debate on cultural co-operation. There could be attempts to link the substance or format of the exemption with that of the protocol. The exemption and the protocol need to be dealt with in separate frameworks. They are totally different concepts.²⁹

Mr. Vallerand also called for the necessary multi-year funding to monitor the co-operation agreement.³⁰

2.2 Negotiations on the Anti-Counterfeiting Trade Agreement

In his appearance before the Committee, Minister Van Loan discussed Canada’s position in the ACTA negotiations. He said:

We have governed our negotiating position based on Canada's existing law as well as legislation on copyright that is going through the parliamentary process.

24 Ibid., 1530.

25 Ibid.

26 Ibid.

27 Ibid.

28 Ibid.

29 Ibid., 1550.

30 Ibid., 1530.

We participated in the negotiations. What was arrived at is an agreement that by and large corresponds with those parameters that will allow for more effective cooperation with other countries in enforcing those intellectual property rights—again, to the benefit of the creators. We are waiting to see what happens to our own legislative processes before we proceed to the final stages of signing, because in order to sign we would obviously have to be comfortable that we can support that treaty with Canadian law.³¹

On the ACTA itself, Minister Van Loan said:

The ACTA negotiation reflects the interests of a number of countries that feel they are in the vanguard, shall we say, of protecting intellectual property rights and protecting creators' rights. The concern is that there are other countries out there for which the actual protection has fallen short of the objectives of parties such as the European Union countries or Canada, which place a high value on that. We all know that there are countries where copyright infringement has become quite widely practised.

The objective of the countries involved was to create a group that raises the bar for intellectual property rights and for intellectual property rights enforcement in particular. That was the motive behind the anti-counterfeiting agreement, the ACTA. Obviously we support that. We view ourselves as being among those who place a higher value on creators' rights. That was the reason for involvement.³²

On the subject of transparency of the negotiations, the Minister said: "Canada was always of the view that those should have been made public, but of course they could not be made public without the agreement of all the parties. We're pleased that most of those elements eventually did get made public in such a fashion that the public did have an opportunity to comment on them."³³

Asked what the impact on ACTA would be if Bill C-32 (the Copyright Modernization Act) were not passed, Minister Van Loan responded: "[I]f we did not have a legal basis to support the commitments or obligations under the active agreement, we would not be able to sign it. We will have to be able to undertake the legal obligations that it contemplates. Bill C-32, as it currently sits, supports the obligations that come under ACTA."³⁴

In his testimony, Robert Ready, Director General of the Intellectual Property and Services Trade Policy Bureau at the Department of Foreign Affairs and International Trade, explained that trade in counterfeit and pirated goods is growing steadily and that these activities "have a significant negative impact on innovative and creative industries, Canadian employment, government and corporate revenues, and, in some cases, public health and safety."³⁵

31 *Minutes of Proceedings*, Committee, Meeting No. 37, 40th Parliament, 3rd Session, January 31, 2011, 1550.

32 *Ibid.*, 1555.

33 *Ibid.*

34 *Ibid.*, 1605.

35 *Ibid.*, 1615.

He went on to say that in the negotiations, the government has supported strong intellectual property rights. It also said the government undertook significant consultations through online means, by hosting round table consultations, and by holding consultations with other stakeholders on request. Regarding the agreement itself, he said it is in the process of being translated into the languages of the various participants. Mr. Ready concluded his remarks by saying:

[T]he ACTA represents a significant and positive step forward in the fight against illicit global trade in counterfeit and pirated goods. It does this by providing an international instrument that will enhance international cooperation and establish new international standards for the enforcement of intellectual property rights. These standards are complementary to existing international initiatives.

Canada's participation in the ACTA negotiations stems from the recognition that illicit trade is a real and growing problem requiring concerted international action. By being at the table, Canada has been able to influence and contribute to the outcome of the negotiations.³⁶

In response to questions, Mr. Ready noted there are elements of Bill C-32 that "relate to Canada's ability to comply with terms of WIPO [World Intellectual Property Organization] agreements, and that, as they're carried over into the provisions of the ACTA, wouldn't be sufficient if the legislation wasn't passed."³⁷ He also said:

We believe that the framework created in the ACTA is sufficiently broad to provide for the proposals that are currently in the legislative committee on Bill C-32, and sufficiently broad to address the different ways in which the various member countries of the ACTA grouping deal with some of these issues, which aren't the same across the membership.

We believe that a basic level of framework is provided by the ACTA, with scope for implementation in a Canadian context and in other countries.³⁸

As to the impact ACTA would have, Edith St-Hilaire, Director of the Intellectual Property Trade Policy Division at the Department of Foreign Affairs and International Trade and Canada's negotiator of the ACTA, gave the examples that it would allow for customs officials to share information with rights holders. It would also allow for the destroying of counterfeit goods.³⁹

With regard to Internet Service Provider (ISP) liability, Ms. St-Hilaire said the ACTA will not change what is in the current legislative framework, but will give the authority to order the ISP to identify the subscriber who used the service for infringing activities.⁴⁰ The ISP would provide the information to the right holders.⁴¹ She elaborated by saying: "It is up

36 Ibid., 1620.

37 Ibid., 1625.

38 Ibid., 1630.

39 Ibid., 1625.

40 Ibid.

41 Ibid., 1630.

to each government to decide what the repercussions are if the provider does not meet the requirements.... [T]hese provisions act as a floor that countries will rely on and will adapt them in their own legislation. In some cases, the consequences will be assessed at a national level and not necessarily in terms of the agreement.⁴²

She also said: “ACTA adds to what we have already at the international level. It builds upon what we have in the WTO [World Trade Organization], the TRIPS [Trade-Related Aspects of Intellectual Property Rights] agreement, the trade-related aspects of intellectual property.”⁴³

Mr. Daniel Drapeau, Counsel with Smart & Biggar, said the ACTA agreement was launched because the WIPO is paralyzed by a North-South conflict, with the North wanting intellectual property protection and the South wanting access to intellectual property and the protection of traditional knowledge and culture. Also, the WIPO does not have compulsory powers.⁴⁴

Mr. Drapeau testified that when it comes to counterfeiting, the Europeans do not view Canada any better than the Americans do.⁴⁵ He said the reason the ACTA negotiations are being conducted behind closed doors is that it is “a lot less embarrassing for us if the comments are made privately than if they’re made publicly.”⁴⁶ He went on to say that some believe ACTA was brought about to bring Canada in line, and he said Canada’s customs program are weak when it comes to anti-counterfeiting.⁴⁷

Mr. Drapeau identified a number of problems. He said that customs has no power to seize counterfeits and no power to destroy. In addition, he said Canada does not have a system of recordal of rights at the border.⁴⁸ He urged Canada to correct the shortcomings in its anti-counterfeiting system.⁴⁹

Mr. Drapeau also talked about the lack of criminal dispositions under the *Trade-marks Act*. He said fighting counterfeiters under civil terms alone does not work. He went on to say:

[F]rom a deterrence point of view—which I think is the worst part of our system—we have no statutory damages under the *Trade-marks Act*. The maximum penalty under the *Copyright Act* is \$20,000, which is completely not comparable to the profits that are made

42 Ibid., 1650.

43 Ibid., 1640.

44 *Minutes of Proceedings*, Committee, Meeting No. 39, 40th Parliament, 3rd Session, February 7, 2011, 1605.

45 Ibid., 1600.

46 Ibid., 1610.

47 Ibid.

48 Ibid., 1620.

49 Ibid., 1625.

by counterfeiting, and this maximum amount has been awarded only three times, in three cases where the plaintiffs were represented by our firm, since 2006.⁵⁰

He also pointed out that: “Copyright is good for the life of the author, plus 50 years. Trademarks can potentially be eternal. So you have a lot of rights’ owners who will rely on trademarks rather than copyright.”⁵¹

On the subject of Bill C-32, Mr. Drapeau said, “ACTA aims to ‘responsibilize’ various people, including Internet service providers, and to provide remedies against anti-circumvention devices. When one reads Bill C-32, one gets the impression that the aim is to ‘de-responsibilize’.”⁵² While he agreed that Bill C-32 would comply with ACTA, he said “we’re not ahead of the curve. We’re not showing the way to anybody.”⁵³ He noted that Bill C-32—which only deals with the *Copyright Act*—does not address the trademark issues or the customs issues related to combating counterfeiting.⁵⁴

CHAPTER 3: CONCLUSION

3.1 Main Points of the Testimony

On the subject of the proposed CETA Canada is negotiating with the EU, the Committee heard that negotiations will resume in April 2011. Minister Van Loan assured the Committee that the government remains committed to defending Canadian cultural interests in all trade agreements. Specifically, he said the government is seeking cultural exemptions and protections for Canada’s programs that support Canadian culture.

Minister Van Loan also said that the only area the EU is seeking to negotiate is the support Canada provides for its publishing industry, and that the government is seeking to have these support programs covered by an exemption.

Mr. Vallerand from the Coalition for Cultural Diversity said he was reassured by government commitments to negotiate a complete exemption for culture, which he said should be its primary goal. At the same time, he stressed the need to develop the jurisprudence that would strengthen the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*. He said this jurisprudence could be achieved by including a reference to the consistency between the exemption, the UNESCO Convention, and the trade agreement. He also said this proposal would need to be examined by legal experts to ensure it would not create problems with existing bilateral trade agreements.

50 Ibid., 1610.

51 Ibid., 1615.

52 Ibid., 1620.

53 Ibid.

54 Ibid., 1635.

On the subject of the ACTA, Minister Van Loan and officials from the Department of Foreign Affairs and International Trade testified that trade in counterfeit goods was having a significant negative impact on innovative and cultural industries. They emphasized that the ACTA would allow for more effective cooperation with other countries in enforcing intellectual property rights. For example, it would allow for customs officials to share information with rights holders and would allow for the destroying of counterfeit goods. Regarding Internet copyright infringement, the ACTA would also give the authority to order ISPs to identify subscribers who use the service for infringing activities. They also testified that Bill C-32 (the Copyright Modernization Act), in its current form, would support the obligations under ACTA.

In his testimony, Mr. Drapeau, Counsel with Smart & Biggar, testified that one of the reasons the ACTA negotiations are being conducted is to bring Canada on board. He said that Canada's customs programs are weak when it comes to anti-counterfeiting. He noted that customs have no power to seize counterfeits and no power to destroy. In addition, he said Canada does not have a system of recordal of rights at the border.

Regarding Bill C-32, he said it would comply with ACTA. However, Bill C-32 only deals with the *Copyright Act*, and he noted that it does not address the trademark issues or the customs issues related to combating counterfeiting.

CHAPTER 4: THE COMMITTEE'S RECOMMENDATIONS

The Committee would like to thank the witnesses for their contribution to the study.

On March 9, 2011, the Committee adopted the following recommendations:

RECOMMENDATION 1

The Committee calls on the Government of Canada to fully respect cultural diversity treaties and calls on the Government to reaffirm its commitment to fully uphold UNESCO obligations while negotiating any present or future trade agreements.

RECOMMENDATION 2

The Committee calls on the Government of Canada to ensure that, in any present or future trade agreements, Canada retains the right to set domestic cultural and telecommunications policies, including the right to establish programs and incentives to support our domestic cultural industries.

RECOMMENDATION 3

The Committee calls on the Government of Canada to ensure that domestic copyright policies are not part of any present or future trade negotiations; that Canada's commitments to the implementation of the Anti-Counterfeiting Trade Agreement (ACTA) are limited to the

agreement's focus on combating international counterfeiting and commercial piracy efforts; and that the Government of Canada retains the right to maintain domestic copyright policies that have been developed within the framework of its commitments to the World Intellectual Property Organization and the Berne Convention.

RECOMMENDATION 4

The Committee recommends that the Government of Canada examine our trademark laws and the enforcement of those laws to ensure that the necessary tools are in place to combat counterfeiting.

RECOMMENDATION 5

The Committee recommends that the Government of Canada conduct its negotiations in a way that provides for greater transparency and public input.

**APPENDIX A
LIST OF WITNESSES
Third Session, 40th Parliament**

Organizations and Individuals	Date	Meeting
Department of Foreign Affairs and International Trade Hon. Peter Van Loan, Minister of International Trade Robert Ready, Director General, Intellectual Property and Services Trade Policy Bureau Edith St-Hilaire, Director, Intellectual Property Trade Policy Division Steve Verheul, Chief Trade Negotiator, Canada-European Union	2011/01/31	37
Coalition for Cultural Diversity Daniel Drapeau, Counsel, Smart & Biggar Charles Vallerand, Executive Director	2011/02/07	39

**APPENDIX B
LIST OF BRIEFS
Third Session, 40th Parliament**

Organizations and Individuals

Coalition for Cultural Diversity

McOrmond, Russell

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant Minutes of Proceedings ([Meeting Nos. 37, 39 and 46](#)) is tabled.

Respectfully submitted,

Hon. Michael Chong, M.P.

Chair

Dissenting Opinion: Canada—European Union Comprehensive Economic and Trade Agreement, the Anti-Counterfeiting Trade Agreement, and Issues Regarding Cultural Diversity

The Conservative members of the standing committee on Canadian Heritage, from the outset have believed this study regarding the Canada-European Union trade negotiations as well as the Anti-Counterfeiting Trade Agreement should never have been brought to the Heritage Committee for study. These are both issues which could have been more accurately and more effectively examined by the members of the International Trade committee. The government members therefore also disagree with the 4 recommendations attached to the report.

