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The Impact of ACTA upon Consumers

About 11 economies, only four of them developing economies, including the US, the European Union and Japan are currently negotiating the Anti Counterfeiting Trade Agreement (ACTA), a plurilateral agreement to create a higher standard for enforcement of Intellectual Property Rights (IPRs) than envisaged in the Trade Related Aspects of Intellectual Property Rights (TRIPs) Agreement of the World Trade Organisation (WTO). It aims to create its own governing body outside the existing international organisations dealing with IPRs such as the WTO and the World Intellectual Property Organisation (WIPO). It is feared that the ACTA will knock out the safeguards in the TRIPs agreement and expand the scope much beyond counterfeits and pirated products, to all IPRs. Such standards of enforcement can impair the access to generic medicines, agricultural trade and the use of educational material or information that are crucial for addressing many of the development challenges in the South.

A fair reading of the draft of ACTA leads to a conclusion that it is hostile to the public interest in a number of critical areas of global public policy. It reframes various provisions contained in the existing global treaties 'in a more restrictive and anti-consumer way' and iniquitously tilts the balance of favour of IPRs holders' vis-à-vis the consumers. Such standards of enforcement, therefore, can impair the access to generic medicines, agricultural trade and the use of educational material or information that are crucial for addressing many of the development challenges in the South. This paper, therefore, is an attempt to address the potential impact that ACTA could have on the rules under the WTO and WIPO. Also, it will discuss the effects of ACTA on the consumers of party and non-party nations in the areas of trademarks, copyrights, and patents.

Introduction

The ACTA is a bold attempt to create the means to enforce IPRs, but may very well have grave impact upon consumers. ACTA has completed its 9th round of negotiations in Switzerland. Most of the world is only able to watch and guess what is happening in each round of negotiations which, if passed, will bring tremendous change to Intellectual Property Law, international trade, and privacy rights. It would form a new, arguably redundant, intergovernmental organisation on the world stage. While its inspirations stem from the WTO's Agreement on TRIPs, ACTA would run as a separate treaty to serve as a means to enforce stringent IPRs. After this 9th round, the parties are nearing agreement on most substantive areas but still have a major dispute remaining over scope.

ACTA does not reflect proper balance in IPR protection and poses a threat to consumers by violating their privacy, serving as a trade barrier, and limiting key access to

essential medicines. This paper will address the potential impact ACTA could have on the rules under the WTO and WIPO. Also, it will discuss the effects of ACTA on the consumers of party and non-party nations in the areas of trademarks, copyrights, and patents. The comments here are based upon the drafts of ACTA leaked from the 8th and 9th rounds of negotiation, with some commentary on recommendations from prior drafts.

ACTA – What is the Point?

The primary goal of ACTA is to create an international framework for the enforcement of IPRs. A March 2010 fact sheet released by the US Trade Representative states multiple goals for ACTA: protecting public health and consumer safety through strict enforcements on patents and trademarks, address piracy on the internet and beyond and create a framework for international cooperation in regards to enforcement of IPRs. International cooperation extends to agreements on how to address violations at the borders of party nations,

making a set of best practices for law enforcement agencies and creating a legal framework that supports ACTA's goals.

i) Stringent Enforcement Upsets Balance of IPR Protection

The enforcement of IPRs through ACTA is presented in several strict means. According to ACTA Chapter 2, both civil and criminal remedies can be sought for violation of IPRs. The means of enforcement for criminal and civil violations are notably different, with civil requiring judicial involvement before the destruction of goods whereas a criminal accusation only involves border authorities. Another proposed remedy is that internet service providers could be opened up to liability in case one of their users is found violating copyright law. Injunctions can be obtained for offenses that are imminent. Remedies can be sought for violations even where they are not connected to commercial use, so long as they were wilful violations. Such stringent enforcement is impractical because it severely limits the use of goods.

ii) Does ACTA's Scope Stretch Beyond TRIPs?

Party nations to ACTA argue that ACTA is not an expansion of scope presented in TRIPs (See US Trade Memos). In the released draft from the 9th round of negotiations, Chapter 1 Section B Article 1.X defines IP to refer 'to all categories of intellectual property that are subject of Sections 1 through 7 of Part II of the TRIPs agreement.' Those parts are: 1. Copyright and Related Rights, 2. Trademarks, 3. Geographical Indications, 4. Industrial Designs, 5. Patents, 6. Layout-Designs (Topographies) of Integrated Circuits, and 7. Protection of Undisclosed Information.

Although the parameters of 'IPRs' are set above, ACTA itself does not in its entirety apply in all sections to all seven types of IP. In the most recent draft, there is clear disagreement as to the scope of what rights should be covered in specific sections, especially in the area of enforcement. The most notable standoff is between the EU and US with the former pushing for extensive patent protection and the latter fighting adamantly against it. This disagreement on scope could ultimately cause the negotiations to collapse.

The agreement in Chapter 1, Section A, Article 1.3 (1) is also explicitly not to prejudice the existing law of an ACTA party nation in the areas of availability, acquisition, scope and maintenance of intellectual property rights. Furthermore, it does not create IPRs where they do not exist in party nations. While this means that if a country has existing exceptions to the enforcement of IPRs, those exceptions could still stand without violating ACTA,

Box 1 : Timeline

It was first announced in 2007 that ACTA negotiations would begin and the first round of negotiations began in June 2008. Negotiations have been held all over the world, from Geneva to Washington, DC to Tokyo. As talks have continued, so have the parties involved. Presently, known parties to ACTA negotiations are Australia, Canada, EU nations, Japan, Mexico, Morocco, New Zealand, Republic of Korea, Singapore, Switzerland, and the US.

The US Trade Representative has expressed a desire to complete negotiations by the end of 2010, but the feasibility of this timeline will not be determined until the vital issue of scope can be finalised. Also, while the representatives at the negotiations may initially agree, that does not ensure ACTA's passage. The largest block, the EU, may not be able to get approval from the European Parliament. In March 2010, a resolution saying that certain ACTA content should be changed passed in the European Parliament with a 663-13 vote. The changes made in this round will be crucial to whether or not the EU can back ACTA.

enforcement procedures contained in ACTA for the IPRs available under national laws would prevail over less stringent enforcement procedures in national laws. Consumers in countries without standing exceptions, however will face difficulties.

ACTA also vary from TRIPs in that it contains enforcement measures that go beyond commercial activities when considering violations. Such extension of enforcement into private non-commercial activities can adversely affect the everyday consumer, especially when government funding will be spent to pursue minor offenders.

iii) Formation of Coalitions Against ACTA

At present, there are multiple consumer groups that have spoken out against ACTA, including Consumers International, Consumers Union, the Consumers Union of Japan, National Consumer Council (UK), TransAtlantic Consumer Dialogue, and Consumer Electronics Association. Other civil society groups active on issues like technology, public interest, and medical aid have also fought heartily against ACTA.

While there are likely to be numerous nations upset by their lack of an invitation to participate in the negotiations or with the kind of measures envisaged in the treaty, only two countries have formally spoken up. India and China have jointly spoken out against ACTA in the TRIPs

Council in the WTO. Only a few days before their stance was made, India had sounded the horn for other countries to stand together against ACTA.

The joint complaint of India and China against ACTA included points related only to the potential impact on the WTO and TRIPs' authority. They brought the issue to the TRIPs Council because of a concern that it conflicts with TRIPs Art 1.1, along with other WTO agreements. TRIPs was carefully designed to create a balance of rights and obligations with appropriate exceptions to the rule, argue India and China. ACTA undermines that balance. Because of strict border provisions in ACTA, non-party nations would be subject to ACTA rules when their goods are in shipment, which could cause a distortion in trade if not a more stringent barrier to international trade because of the fear that goods would be stopped in transit. Public health could suffer as ACTA does not reflect similar flexibilities as TRIPs does when it comes to flexibilities relating to access to medicines. ACTA's focus on enforcement could not only remove government's freedom to allocate their resources judiciously, but also bind developing nation parties to enforce ACTA when they lack the means to do so.

Perhaps one of the biggest fears of ACTA is the precedent it would set for other agreements of this nature. WTO's TRIPs Agreement and treaties passed by WIPO seem more than enough to address international IP issues. Some have argued that ACTA is a form of policy laundering, having more powerful nations write the agreement as they wish and then bully other nations into signing on a later date, once it is much more difficult to change the text of the agreement.

iv) Why Consumers Should be Worried About ACTA?

Nations that are currently not parties to ACTA negotiations obviously will not be forced to sign (notwithstanding policy laundering accusations). However, if a developing nation does decide to sign onto ACTA, its consumers could face several new frustrations. ACTA allows courts to give injunctions for 'imminent' violations of IPRs. It is unprecedented to allow courts, for example, to stop internet service providers from providing service to people even before any violation has occurred.

A highly contentious provision was the three strikes provision, which was removed when the 8th draft leaked, but still remains as a concern because of its severe nature. Under this provision, even if a citizen of an ACTA party nation violates an IPR while using the internet for personal use only, completely disconnected from commercial distribution, a mere three offences could get her

permanently banned from using the internet in any ACTA party nation. That would be carried out by punishing providers who offer the three-time offenders any sort of service.

Because of the opening up of liability to internet service providers if someone is caught using their service in violation of ACTA, consumers may find that the cost has been shifted to them, increasing their expense for access to the internet. Also, there is some legitimate fear that internet service providers will have to turn over users that violate ACTA to authorities without a warrant.

The proposal for changes in digital locks is another idea that does not appear in the most recent draft. While it would protect copyrights, generally speaking, it would make items that were legally purchased by the consumer more limited in use. This will especially be an issue for disabled consumers, limiting their access to information because copying into a more accessible form will be illegal.

Consumers may also be concerned that their privacy will be violated, not only in their use of the internet, but also at border stations. Fears of mp3s and laptops getting searched for pirated information at customs borders could be a reality with the current draft of ACTA. As long as it was wilfully copied, then the consumer could face strict penalties.

Once material is found that is alleged to be in violation of ACTA, it can be destroyed by the authorities. There is no appeals process for this destruction of goods, and no compensation is to be offered in cases of mistake. The 9th draft offers more protection when goods are collected for civil purposes, requiring the influence of the judiciary, but criminal concerns can still initially be addressed by border authorities.

v) ACTA Loses Proper IP Balance

The law surrounding IP, just like the law surrounding property itself, is about balance. ACTA will distort the balance between the IPR owners and the consumers because of the lack of written exceptions. The low availability of due process for consumers skews that relationship even further. ACTA's demands for enforcement may also force a formula-driven assessment of damages for violations harmonising enforcement across nations but perhaps not justified in the light of diversity of seriousness of each individual violation. The provisions on damages in ACTA will also limit governments in their ability to be flexible and will impede trade and innovation in ACTA party nations.

Box 2 : Transparency Concerns

The Setting of a Dangerous Precedent

Both drafts from the 8th and 9th round of ACTA negotiations were leaked to the public, and not formally released. Typically, multilateral negotiations are discussed in 'full light', giving interest groups the chance to weigh in. In ACTA, bigger corporations have been given that chance, to give an informed opinion, but the public interest groups were not given that chance until the 8th round. Perhaps the lack of a balanced representation of stakeholders has caused ACTA to become so unbalanced in form and atypical of other treaties regarding IPRs. Even the responses from consumer groups to ACTA cannot be properly heard by ACTA representatives because they are all a little behind the times and may ignore larger issues in the most recent draft. Also, because there has been a lack of transparency in the process, the public cannot be assured that public policy concerns have even been sought to be addressed. The secrecy element of ACTA has fuelled fear and concern about its content and possible passage.

Because ACTA has been created outside the existing intergovernmental organisations, it does not have to adhere to any sort of democratic process in its matter of construction. This small group of nations can lock in the policy as they see fit and then open it up to others to join after the document is essentially fixed in nature (although, of course, an amendment process does exist). A final concern with process is that ACTA is designed to be put into action in countries with and without established IP law alike. ACTA's lack of party government flexibility and exceptions will have tremendous impact upon developing nations that sign on which do not have the proper legislative process to enforce IPRs while including proper exceptions.

Trade barriers will substantially impact developing nations dependent on imports and exports of vital goods (like medicines) because goods wrongfully determined to be pirated or counterfeit could be destroyed by authorities. The border search policy, as discussed earlier, will require customs agents to serve as a judge of both law and facts as they address possible patent infringements and suspected copyright and trademark violations.

vi) Do Developing Nations Have Any Incentive to Join ACTA?

The consumers who will feel the greatest impact of ACTA will of course be those who are citizens of a party nation. But what is the likelihood of a developing nation signing onto ACTA? Beyond the policy laundering concerns, there are some tenable arguments for developing countries signing onto ACTA. It should be noted, however, that no ACTA party has specifically mentioned a desire to recruit developing countries or least developed countries (LDCs); it is discussed here because of the obvious benefits to ACTA nations should countries like China, India, and Brazil sign on.

Because ACTA ensures enforcement of IPRs, more investors might be drawn to areas in which they had no interest before because now they know their investments will be more secure. There is a contingency written into the draft from 8th round of negotiations specifically for developing nations offering some help in funding for enforcement of IPRs. Because there is no set formula indicating proportionally what will be offered, this offer may or may not be appealing. An offer to help pay one percent of enforcement costs is markedly different from

an offer to pay 75 percent of enforcement costs. This issue was not fully developed in the 9th round of negotiations.

Developing nations may have an interest in signing onto ACTA to protect their own consumers from counterfeit goods. When consumers see a trademarked product, they trust that the good is what it claims. With a high concentration of counterfeit goods in the marketplace, specifically in the areas of food product and medicines, quality and safety of goods is important. It is possible that developing nations may find an appeal in that.

A developing nation may not want to join ACTA at this point because its opportunity to influence drafting is now limited. Furthermore, any nation that signs on to ACTA will have to wait up to 180 months to get out of ACTA. Thus, despite any positive impacts of ACTA, as a whole, it does not look like an appealing treaty for the developing world.

vii) Impact on WTO/WIPO

The issues with ACTA and the WTO and WIPO extend beyond what India and China discussed at the TRIPS Council. In some places it directly conflicts with international law, while in other places the conflict is more indirect. These conflicts, though some are seemingly harmless on their face, will cause confusion in international trade leaving nations to question the supremacy of ACTA. In terms of the Vienna Convention on Interpretation of Treaties, an earlier treaty among the parties applies only to the extent that its provisions are compatible with those of the earlier treaty. Hence, ACTA

parties will be obliged to follow its provisions even if they are in conflict with the provisions of treaties under the WTO or WIPO to which they are signatories.

ACTA directly conflicts with the TRIPs Agreement because, it allows seizures according to the law of 'the party providing the procedures' whereas TRIPs Art. 52 says that law in that circumstance should come from 'the country of importation.' What happens if there is a dispute between an ACTA and non-ACTA party? Can a non-ACTA party be assured that if their trade crosses the borders of an ACTA party that they will be treated fairly under existing international law?

TRIPs has many protections and safeguards to protect consumers from abuse relating to enforcement by providing judicial discretion (see Art. 41.1, 48.1, 48.2, 50.3, 53.1). ACTA lacks similar protections. TRIPs ensures the promotion of public interests through Art. 44.2 by limiting the remedies against unauthorised use, but ACTA does not have an equivalent. ACTA does not give guarantee for balance and proportionality in enforcement measures like TRIPs' Arts. 46, 47. Full balance in ACTA, between the IPR holder, the consumer, and greater society, also does not exist like the balance encouraged by TRIPs Arts. 7, 8, 41.2. These issues could again oblige ACTA members to follow its provisions rather than the TRIPs provisions, and cause the questioning of which law trumps another in disputes between party and non-party nations.

The WTO Doha Declaration on TRIPs and Public Health and World Health Assembly Resolution 61.21 also conflicts with ACTA because they promise countries the chance to use the flexibilities and exceptions in TRIPs 'to the full'. This idea was put forward so that access to medicines would not be limited. ACTA deprives a nation of its capacity to seek flexibilities to the fullest.

ACTA creates a new and separate intergovernmental organisation, which seems to be redundant and unnecessary. TRIPs already covers a lot of ground that ACTA seeks to address, including enforcement measures albeit at a broad level and giving sufficient discretion to WTO members. Furthermore, WIPO is perhaps a more appropriate venue for addressing needs specific to IPRs. The WIPO Development Agenda recommendation 45 gave a commitment to 'approach intellectual property enforcement in the context of broader societal interests and especially developmental-oriented concerns.' ACTA in no way mirrors that commitment.

ACTA's conclusion will perhaps shift focus away from the WIPO. ACTA Chapter 1 Sec A Art 1.1 says, 'Nothing in this Agreement shall derogate from any international obligation of a Party with respect to any other Party under

existing agreements to which both Parties are party.' This may solve issues between two party nations but leaves the problem open of a party and non-party in a dispute. Even between parties, it veers in favour of stricter enforcement of IPRs than envisaged under TRIPs, thus changing the balance of interests negotiated in TRIPs. The flexibilities available in TRIPs in favour of consumer interests, such as those relating to access to affordable medicines, may be compromised in ACTA party states.

Although WIPO treaties regarding the internet were passed back in 1996 and are in very much need of repair, WIPO is the right forum to achieve that objective. Many nations may agree that WIPO needs to set new standards regarding internet use and IP, but abandoning WIPO in favour of ACTA may not be helpful considering the smaller number of parties in ACTA. WIPO has a much larger membership and has an established democratic process.

viii) Trademarks

The reason that trademarks are recognised as IP is to protect consumers from being deceived about the source of goods and services and to give the trademark owners an incentive to produce quality goods and services. Generally, to be a trademark, it must be distinctive, i.e. capable of distinguishing goods or services of one undertaking from another.

Without any sort of trademark protection, there can be misplaced consumer trust, leading to risky situations. Furthermore, the lack of trademark protection can be a hindrance to sustainable economic development because investors with the real product may offer their product at a higher price, but confused consumers continue to purchase the cheaper product with the false trademark, so investors will be wary to enter that economy.

Safety should be a matter of concern to the government. However, those in developing countries that are not party to ACTA do not need to have concern over their non-involvement because some trademark protections already exist through TRIPs and the Paris Convention for the Protection of Industrial Property. The only real incentive for a nation to join ACTA to protect trademarks would be if it is able to afford enforcement with assistance from other ACTA nations (which is still not guaranteed at this point). Actually, without help, a developing country or LDC could suffer by joining action because of its pledge to spend its resources on matters that are not top priority in their country.

Non-party consumers may feel the impact of ACTA because of the strict border measures. If the customs official makes a wrong decision and destroys legal goods, there will be no remedy. This could not only increase the

cost of trade but also be a barrier to trade, hurting the consumer with higher prices and a more limited access to certain goods.

ix) Copyrights

Copyrights are protected as IP so as to encourage the creative effort of authors by giving them an incentive to produce works that will benefit the public. The requirements of a copyright are typically originality, work of authorship and fixation. To prove copyright infringement, a plaintiff would usually have to prove ownership of a valid copyright and show that the copying of the material was unauthorised.

Through copyrights, consumers are given assurance of authenticity. A non-party to ACTA has copyright protection through the TRIPs Agreement and the Berne Convention. Similar to trademarks, if a country hopes to get funding to enforce copyright protections beyond what they currently do, they may join ACTA.

The WIPO Copyright Treaty obliges Parties to provide legal protection and remedies against the circumvention of effective technological measures used by authors in connection with the exercise of their rights. The Digital Millennium Copyright Act of the US protects not only such effective technological measures but also production or sale of devices that may be used for decrypting such technological measures, an activity that is not explicitly prohibited under the WIPO law. ACTA may globalise this 'anti-circumvention' provision in a more stringent manner than necessary, as it does not list the exemptions that even the US law allows. Its impact will spread beyond ACTA countries because such devices are more likely to be produced in ACTA party nations. This may threaten innovation, competition, availability of free software, hurt open access business models, and hamper enjoyment of user rights and choice. There is also a fear that tolerance of invasive surveillance by internet service providers without court oversight or due process will spread.

ACTA could also impact non-party consumers when they travel to party nations. At the border, they could face criminal and civil penalties and have their goods destroyed if it is believed that they are violating IPRs. Resident aliens would have to be aware of the three strikes provision, which could carry over to all other ACTA parties, if this provision re-emerges in the 9th round of ACTA negotiations.

ACTA may have a chilling effect upon innovation because creators may be concerned that their work is not original enough to be accepted in ACTA nations. Non-ACTA countries may lose access to many copyrighted works that are not for sale internationally, depriving consumers

of the opportunity for further knowledge and enjoyment. As a result of the above, consumer groups have protested loudly against ACTA's enforcement provisions regarding copyrights.

x) Patents

Patents are recognised as IP to encourage creative effort of inventors by giving them an incentive to produce inventions that will benefit the public. Typically, to get a patent, it is required that it must be patentable subject matter and have utility, novelty, and non-obviousness. The patent holder gets an exclusive right to commercialise it for the next 20 years in return for disclosing the invention and the process of carrying out the invention to the public, so that it can be used for further innovation by others.

It should be noted that 'the US continues to oppose extending provisions on criminal and border enforcement against trademark counterfeiting and copyright piracy to cover patents or other forms of intellectual property.' (USTR Press Release, April 16, 2010.) That makes it possible that if the US gets its way in negotiations, patents may not be covered under ACTA. Many scholars, civil society groups, and public servants agree that expanding the scope of counterfeiting policy to patents is inappropriate.

If ACTA is passed with patents in it, then it could threaten global access to affordable medicines. Medicines could be seized on suspicion of a patent violation, which would impact the availability of generic drugs in developing countries. The makers of generic drugs may be discouraged from producing them because liability will be extended to innocent active pharmaceutical ingredient suppliers whose materials may be used in mislabelled products without their knowledge. ACTA also limits the exceptions and flexibilities on injunctions which would de-link the cost of research and the development from a product's price.

ACTA can impact patents in the same way it impacts non-parties through copyrights and trademarks. It can have a chilling effect and hurt trade as it applies to goods in transit. A key area that a developing nation would have interest in medicines would be to address those with insufficient or wrong ingredients which result from regulatory challenges, but ACTA does not address that matter.

xi) Creeping Legislation

The WIPO Conventions on industrial rights and copyrights as well as the minimum standards of IP protection under the TRIPs Agreement of the WTO are available to guide developing countries in regulating

enforcement of IPRs. This guidance and the experience particularly since the coming into force of the TRIPs Agreement has brought forth many fears of creeping legislation, including adoption of national IP laws not necessarily conducive to the national development strategies, and sometimes more stringent than required under the TRIPs Agreement (TRIPs Plus). Instances of bilateral and regional trade and investment agreements between developed and developing countries where TRIPs Plus IPRs and enforcement measures are being sought in developing countries in exchange of additional market access for goods and services are increasing.

Even though IPRs are territorial in application, such creeping legislation has become a reality. This has resulted in voluble criticism against strong enforcement of existing international IP treaties. New efforts to concretise the flexibilities in these treaties in favour of public interest and national development priorities emerged, culminating in an amendment to the TRIPs Agreement in 2005 to re-emphasise these flexibilities in ensuring public health. Efforts by some developed countries to introduce regular discussions in the TRIPs Council to strengthen the enforcement of IPRs have, on the other hand, been thwarted by concerted action by developing countries. They have also succeeded in establishing a development agenda in WIPO to bring a balance between private rights and public interest including consumer interest, and have acted in a more coherent fashion to steer ongoing negotiations of new WIPO treaties towards their interests. Demanders of stronger enforcement of IP laws, mainly big multinationals from the developed countries, no longer find the existing forums like WIPO and WTO conducive to their interests.

ACTA negotiations are outside the democratic and rule based international organisations dealing with IPRs. Very few developing countries are currently part of the ACTA negotiations. However, if ACTA comes into force, there will be pressure on non-parties to follow suit or lose out on potential foreign investments and their businesses will be deprived of benefits of innovation and latest

technologies. There are various ways in which ACTA will induce such creeping legislation. Best endeavour provisions have been introduced in the draft text for capacity building and technical assistance for improving enforcement and even assisting developing countries in developing national laws and regulations. Flexibilities in the WIPO treaties and the TRIPs Agreement are missing from the ACTA text. While generic provisions enabling use of flexibilities in national laws have been inserted, many of those are negated by more specific enforcement provisions. These will prevail over the generic flexibility provisions in the same way as generic provisions balancing producer and consumer rights and public interest in the TRIPs Agreement (e.g. Articles 7, 8 and 30).

As a consequence, the ACTA negotiations are of interest not only to those developing countries which are parties to the negotiations or may be inclined to join the agreement at a later stage, but even those which may not have any such intentions.

xii) Conclusion

The world is waiting as ACTA negotiations continue, but consumers cannot be sure exactly as to how it will impact them until the bulk of the text is more set. Its implications on the WTO and WIPO are only starting to be foreseen. The secretive formation and negotiation surrounding ACTA has caused further alarm. What is known, however, is that ACTA can impact consumers in non-party nations by having its border enforcement measures serve as a sort of trade barrier. Consumers will also be impacted in their access to generic medicine if patents are to be included in the final draft. The draft from the 9th round of negotiations revealed the huge divide between negotiating parties regarding scope, therefore, it is possible that they will not reach the goal of concluding negotiations within 2010. In the meantime, more countries need to stand up and speak for themselves, as India and China did, while they still have the opportunity to be heard and their concerns possibly reflected in the ACTA text.

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