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AN ASSESSMENT OF THE ANTI-COUNTERFEITING TRADE AGREEMENT AND ITS EFFECTS IN THE ASIA-PACIFIC REGION

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1. Assessing the controversy over the transparency of the ACTA negotiations

The Anti-Counterfeiting Trade Agreement (ACTA) is a plurilateral agreement concerning anti-counterfeiting measures among the United States, Canada, Japan, Mexico, Republic of Korea, the Member States of the European Union (EU), Australia, Morocco, New Zealand, Singapore and Switzerland. At the time of writing the negotiation rounds of ACTA have been conducted and the abovementioned members are at various stages of ratification or enactment of the agreement (box 1).

Box 1. ACTA timeline

2007	Discussions started between selected countries
2008	Formal negotiations launched in June
2008-2010	Eleven rounds of negotiations
2010	Negotiations finalized in November
2010-	The negotiating parties follow their internal ratification procedures

Source: European Commission, 2012a.

It is not that uncommon for trade agreements to cause strong reactions, either while they are being negotiated or after they are signed varying from quiet dissatisfaction to fierce protests among the affected interest groups. ACTA as the most recent agreement to receive widespread attention from proponents as well as dissenters is a rather special case, however. Rarely has a plurilateral agreement caused mobilization of the public to such an extent that online expressions of dissatisfaction have spread like wildfire to the streets of capitals of the negotiating states. Whereas the agreement only recently began to receive attention from the public, the heated sentiments are caused not only by the agreement as it exists today but by the process in which it was brought into existence in the first place. The opponents of the agreement and much of the public perceive the already conducted negotiations as secretive "cloak and dagger" rounds of talks within an exclusive and selective group of members. It is true that very little was known of ACTA prior to 2010, as the earliest drafts of the agreement were not released to the public, and only after much clamour and uproar was a consolidated draft made public. Should ACTA have been negotiated in a different manner then, with more transparency and consultation? This question can be answered in two ways. First, it must be noted and accepted that it is not typical for trade agreements to be negotiated with excessive publicity and transparency. Hence, it can be argued that the negotiating parties were not in the wrong in holding confidential negotiations. When operating within a limited amount of negotiating parties, the confidentiality of the negotiations and the subsequent drafts are often as of quintessential importance as the trade agreements typically consist

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of concessions and compromises that the parties might not be willing to reveal or extend to other countries at that stage. In this sense, the negotiation process behind ACTA was in accordance with the normal modus operandi for trade negotiations in general. Also, it is important to note that ACTA has been negotiated outside the traditional milieus for such type of negotiations, that is, the World Trade Organization (WTO) or the World Intellectual Property Organization (WIPO). Thus, it can be argued that the same level of transparency and consultation cannot be expected of ACTA as can be in the case of other agreements negotiated within this forum.

However, because ACTA is a *sui generis* plurilateral agreement that in fact aims at creating standards which would apply not only between the parties to the agreement but also with respect to other non-party countries as presented in further detail below, it can be argued that the negotiations could have also been conducted in a more transparent manner. It is typical that negotiations where parties work towards creating standards and provisions aimed at more universal applicability – such as multilateral standard setting negotiations – are subject to more open and transparent negotiation rounds (cf. process of agreeing on the Codex Alimentarius by FAO and WHO). Also, the fact that ACTA focuses on rather disputed issues that are of significant importance, both domestically within the negotiating parties and globally, does exert pressure for the provision of transparency and stakeholder participation. The extent of the transparency and openness to which an agreement such as ACTA should be subjected is a question that defies a universally applicable answer, however. In the end, the negotiating parties of any agreement must carefully weigh and balance the need for confidentiality against the need to provide transparency for those potentially affected by the agreement. In this particular case, it is evident that the negotiating parties did not supply sufficient transparency to meet the public's demand. Whether the demand for transparency was limited to justifiable extent is another question. I argue that the negotiating parties should not be needlessly incriminated for holding their plurilateral negotiations in a confidential manner. However, perhaps a controlled dose of transparency and involvement of other parties and stakeholders would have been in order due to the nature of the agreement's subject matter and its global aims.

2. The choice of forum and its effect on the agreement

Concern has been voiced about the fact that because after the European Union, Japan and the United States failed to bring up IPR enforcement on the TRIPS council agenda (Yu, 2010) ACTA was not negotiated under the auspices of a multilateral forum such as WTO, the agreement is heavily biased towards the needs of the signatory countries. However, this should not be viewed as something uncommon or surprising. It is only natural that ACTA will be a strong manifestation of the policies of the signing countries; it should not be expected to take into account the differing circumstances or needs of non-party countries due to the fact that ACTA, after all, is a plurilateral agreement between a limited number of countries., ACTA will inevitably lack the checks and balances inherent in agreements drafted within WTO (Katz and Hinze, 2009). As such, ACTA is essentially different from, for example, the Information Technology Agreement (ITA) negotiated within WTO among 70 countries that are responsible for more than 97% of the trade in information technology products. Even though the ITA was negotiated among the sub-set of WTO membership, the commitments undertaken within the ITA are on an MFN basis, and the benefits therefore accrue to all other WTO Members.

The aforementioned issue regarding the choice of forum must be treated separately from the issues concerning the lack of involvement of the public and those potentially affected by the agreement within signatory countries. As argued, the affected groups have not been able to influence the negotiations of ACTA to a sufficient extent. Consequently, ACTA will inevitably be more in line with the specific needs of organizations and advisory groups such as the Recording Industry Association of America, Motion Picture Association of America, and Pharmaceutical Research and Manufacturers of America, and less inclined towards the legitimate concerns and needs of, for example, Médecins Sans Frontières (MSF) and the Electronic Frontier Foundation. It can be argued that if sufficient attention had been given to latter during the negotiations some of the protest and public outrage could have been avoided and that the agreement would mirror also the concerns of the public. However, as the agreement concerns much debated intellectual property rights (IPR) issues it is uncertain whether any amount of public participation could have helped to avoid the reactions witnessed now. This is mostly due to the fact that the

underlying reason for the strong reaction against ACTA does not originate solely from the negotiation process or lack of transparency. This reaction is caused rather by the fact that in the end ACTA touches upon flammable IPR issues that are in the epicenter of the public's attention, i.e., the nature of copyrights and their links to personal freedoms, even though the agreement is concerned solely with what enforcement measures need to be available in national legislation. Furthermore, I argue that solely moving the forum of negotiations from plurilateral to for example the WTO would have not been a silver bullet solving all the issues concerning the bias of the agreement.

3. Should ACTA be considered as a genuine trade agreement or as an agreement on enforcement of intellectual property rights?

Whereas the above-mentioned concerns about ACTA's transparency have received almost undivided attention from the media and the public, the negotiations have given rise to other issues that have been left without equal coverage. Firstly, it has been validly argued that based on its contents ACTA should be designated as an IPR enforcement agreement rather than a trade agreement. ACTA does not include provisions typically found in trade agreements, such as those concerning removal of trade barriers, regardless of the fact that the agreement has strong linkages to trade as it does include issues central to trade, such as border measures. In addition, as the EU has stated, the aim of ACTA is to "provide a high-level international framework that strengthens the global enforcement of intellectual property rights, and helps in the fight to protect consumers from the health and safety risks associated with many counterfeit products" (European Commission, 2008). Thus, ACTA is clearly distinct from generic trade agreements, which aim to enable and promote trade between signatories. It is evident that the tangible impetus behind ACTA originated within IPR exporting countries such as the United States, Japan and the countries of the EU was triggered, inter alia, by the perceived increase of piracy (see box 2). However, the negotiations behind ACTA were also explicitly motivated by the desire to defend "comparative advantages in research-intensive higher value-added production" as the EU has stated (European Parliament, 2011). Therefore, ACTA should not be regarded merely as a trade-neutral IPR enforcement agreement. However, neither should it be designated as a trade agreement in the general sense of the term.

Box 2. Aims stated in ACTA

- ACTA will help countries to work together in dealing with more effectively Intellectual Property Rights (IPRs) infringements.
- ACTA is essential for businesses operating globally. Many suffer widespread infringements and theft of their copyrights, trademarks, patents, designs and geographical indications, by organized criminal organisations.
- Right-holders will be able to count on efficient and broadly common rules concerning the way their complaints are dealt with. This includes a series of practical questions: What urgent protection may a rights-holder obtain? What kind of evidence will be collected and preserved? What will happen to the fake goods once seized?

Source: European Commission, 2012a.

4. Ratcheting up a global 'new normal'

As the United States Trade Representative (2009) has stated, ACTA is intended to set new global IP enforcement norms above the current international standards in the Agreement on Trade Related Aspects of Intellectual Property (TRIPS). Thus, it is obvious that ACTA is intended to go beyond the current international benchmark for IPR enforcement within the context of the signatory parties of the agreement. However, whether ACTA will, in fact, ratchet the global IPR standards upwards is a more complex and contestable issue. Should ACTA be implemented between the above-mentioned countries it can be argued that the standards incorporated within ACTA might become the entry-level requirements for future bilateral agreements (Katz and Hinze, 2009). This is because ACTA members would definitely have an incentive to attempt to expand their national level of enforcement to other countries that do not uphold similarly high levels of enforcement. Should this happen, ACTA provisions could also have effect on non-signatory parties.

From a historical point of view, preferential trade agreements (PTAs) containing IPR provisions signed by countries such the EU Member States and the United States have typically led to major and costly legislative changes in the other signatory countries (Baccini and Urpelainen, 2012). The legal reforms in question have almost exclusively meant approximation to the standards held by the EU and the United States. Thus, it is likely that should ACTA be implemented, its standards would also seep into non-party countries legislation.

In addition to the above-mentioned, there has been discussion on whether ACTA is intended to ratchet up the national level of IPR enforcement via means of policy laundering in the United States and the EU. Policy laundering essentially means that once new provisions have been adopted as part of an international agreement, a government can then implement them at home using the agreement as the ostensible reason for the legislative changes (Yu, 2010). However, as both of the abovementioned have stated that they do not expect legislative changes due to ACTA the arguments for national ratcheting appear to be unfounded to some extent. Whether this is truly the case is under heavy discussion (Flynn, 2011). Furthermore, as Weatherall (2011) validly noted, ACTA could also be a stepping stone to a broader agreement. This notion is reflected in an assessment of the Directorate-General for External Policies of the European Union which envisions that "ACTA may be intended to work most similarly to WIPO agreements such as the WIPO Copyright Treaty and the WIPO Performers and Phonograms Treaty" (European Parliament 2011).

The United States has been quite open with its ambitions to have the agreement implemented globally, as is evident from the statement according to which the United States would "welcome all Members who are interested in enhancing IPR enforcement to consider joining the agreement" (United States Talking Points for TRIPS Council Meeting, 2010). However, as major emerging economies such as China, the Russian Federation and India have so far not joined the process behind ACTA, it can be argued that achieving global consensus behind the ACTA standards might be an insurmountable task. Also, when considering the likelihood of third party countries acceding to ACTA it must be held in mind that any such country has been effectively excluded from the drafting of the agreement. Regardless, it would be naive not to assume ACTA's influence on future bilateral agreements or global IPR agreements, as any treaty covering numerous important IPR exporters – as ACTA does – will inevitably affect the de facto baseline for future negotiations.

In the light of recent policy developments it is quite obvious that IPR exporting countries are decidedly pushing for strengthened enforcement standards. From a balance-seeking viewpoint, the development of TRIPS plus standards concerning IPR enforcement within an exclusive group instead of multilateral does pose several issues, not least because these new standards do not ensure that a balance of interests exists in the global trade community (*European Academic Opinion*, 2010).

5. ACTA and its relationship to TRIPS

As mentioned above, it is clear that ACTA is intended to create a new standard for international IPR enforcement. However, the discussion concerning whether ACTA is a so-called TRIPS-plus agreement is not always coherent and the rhetoric used by the parties to the discussion varies. Within this context it is important however to first separate the assessment of ACTA's TRIPS –plus nature from the question of whether ACTA will effectively supersede TRIPS and its obligations, which are often mixed up two concepts. To answer the latter, ACTA essentially is an enforcement related augmentation of TRIPS and other pre-existing international IPR agreements in lieu of a replacement or substitute of TRIPS as also the parties to ACTA have consistently stated. The obligations and mandatory safeguards incorporated within TRIPS continue to apply between WTO Members and the members to ACTA regardless of ACTA's potential entry into force. The intended complementary nature of ACTA is also made evident in its Article 1, in which it is stated that: "Nothing in this Agreement shall derogate from any obligation of a Party with respect to any other Party under existing agreements, including the TRIPS Agreement." It is also worth noting that the EU has specifically stated that the mandatory safeguards provided by TRIPS are not modified by ACTA (European Parliament, 2011). However, whether the obligations incorporated within ACTA will in fact limit the use of or even replace the optional flexibilities, such as compulsory licensing of patents, provided by TRIPS is more difficult issue which depends not only on the agreement text but also on ultimate form of implementation.

Whereas answering whether ACTA will supersede or limit the use of TRIPS's obligations requires more attention to the actual provisions and their implementation, assessing whether ACTA is a TRIPS-plus agreement is relatively straightforward. As ACTA aims to introduce novel enforcement related obligations which are not contained in TRIPS it is self-evident that ACTA is in essence a TRIPS-plus agreement in the common sense of the term. In addition to introducing novel obligations ACTA also contains provisions that are TRIPS-plus also in the sense that they in fact limit the usage of safeguards and options provided by TRIPS (see box 3).

Box 3. Some TRIPS-plus provisions included in ACTA

Right of information
ACTA reinforces the right of information from what is provided in TRIPS, as ACTA removes the voluntariness of the right to information. Also, the scope of the right is expanded.

Border measures
ACTA requires that parties provide border enforcement measures against imports and exports of goods infringing any IP right covered in TRIPS (excluding patents and test data) whereas TRIPS obligates border measures against the importation of counterfeit trademark goods or pirated copyright goods.

Safeguards
ACTA has no provisions for compensation with regard to wrongful detentions. ACTA also extends the scope of options for rights holders to provide securities.

Technological measures
ACTA obligates stronger protection of technological measures than do the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. TRIPS does not mention this matter.

Disclosure of subscribers' identification data
ACTA imposes a duty to disclose subscribers' data, both on infringing and non-infringing intermediaries. TRIPS refers to an infringer only.

Source: European Academic Opinion, 2010.

Because ACTA not only introduces novel and higher enforcement standards than those contained in TRIPS but it also in part modifies the already existing obligations and safeguards of TRIPS it should be regarded and defined as a TRIPS-plus agreement. It is also due clarifying that the fact that the EU and the United States have made comments that they do not expect legislative changes due to ACTA does not mean that ACTA is not TRIPS-plus (European Commission 2012b). On the contrary, this only means that said parties go beyond TRIPS standards within their pre-existing IPR legal framework. Additionally, there is a lack of broad consensus behind the notion that no legislative changes would be needed within the before mentioned legislations. All in all, it would be beneficial not only for the parties involved directly in ACTA but also for the global community for ACTA to be clearly and distinctively designated as a TRIPS-plus agreement, instead of using roundabout terms that are prone to mislead the public and those immersed in the discussions on ACTA. The use of more accurate rhetoric would also in part facilitate awareness of the various normative tensions between TRIPS and ACTA. Understanding these tensions and normative variances is quintessential for a correct assessment of how ACTA relates to TRIPS and how ACTA aims to change the status quo of current international IPR enforcement. The fault lines on which the tension is most intense include difficult issues such as the scope of border measures, choice of applicable law with regard to goods in transit, safeguards protecting traders and goods owners and the implementation of the waiver concerning compulsory licensing (Grosse Ruse-Khan, 2011).

In addition to the discussion concerning the TRIPS-plus nature of ACTA there has been talks over a more complicated issue concerning the justification of the TRIPS-plus provisions of ACTA. Non-member countries like India have questioned the grounds of justification for the TRIPS-plus nature by arguing that TRIPS-plus measures cannot be justified on the basis of Article 1 of TRIPS because the provision states that more extensive protection that that given in TRIPS may only be granted "provided that such protection does not contravene the provisions of this Agreement" (TWN, 2010). Assessing whether ACTA and its TRIPS-plus provisions are justified by TRIPS also requires paying attention to the objectives of TRIPS defined in its Article 7, which obligates inter alia that the protection and enforcement of intellectual property rights should contribute to the mutual advantage of producers and users of technological knowledge in a manner conducive to social and economic welfare and to a balance of rights and obligations. The necessary weighing of interests and interpretation of objectives when answering the question of ACTA's justification to go beyond TRIPS makes the task of finding a universally fitting solution all but unfeasible.

6. A brief assessment of ACTA's potential impact on access to medicines[1]

One of the main arguments against ACTA in the Asia-Pacific region is that the agreement will limit access to generic medicines by affecting both production and transit of such pharmaceuticals. Generic medicines are crucial to many developing nations struggling with scourges such as HIV/AIDS, and the national and international IPR enforcement standards are, in turn, of quintessential importance for trade in such medicines. Therefore, it is understandable that as a novel international instrument that is meant to heighten the previously existing level of enforcement, such as ACTA, will give impetus to impassioned argumentation and discussion. However, after a thorough assessment of ACTA's provisions it would seem that the fears that ACTA will inevitably affect the generic medicine flows in a substantive manner are inflated but not unfounded. Firstly, it is necessary to take into account that in the preamble of ACTA the signatory parties explicitly recognize the principles set forth in the Doha Declaration on the TRIPS Agreement and Public Health adopted in 2001. Whereas the preamble is not of similar importance as the actual articles it does align the remainder of the agreement and sets the foundations of the agreements interpretation. Thus, it can be argued that the negotiating parties have intended to give the Doha Declaration importance as a guiding document. In addition, it must be noted that patents, which are at the heart of the generic pharmaceuticals issue, are explicitly excluded from the border measures provisions in Article 13. Also, patents may be excluded by signatory parties within the civil enforcement section of ACTA 2 and the inclusion of patents within the scope of criminal measures is optional (European Parliament, 2011). Thus, it can be validly argued that ACTA does not present an imminent threat to access to medicines via strengthened patent enforcement.

However, as non-party countries such as India and various NGOs such as MSF (2012) have noted, the legal trade in generic pharmaceuticals can also be hindered by ACTA's provisions concerning trademarks. As recent legal practice from the EU, such as the case Nokia v. Philips, has proven trademark infringements is a very gray and murky area particularly when the relevant provisions are applied to goods in transit even when dealing within more established legal frameworks (ECJ, 2011). The situation is in part worsened as ACTA does not make a clear distinction between trademark counterfeiting and trademark infringements. Rather, ACTA mandates border measures against trademark infringements in general. This definition goes further from the one present in TRIPS and it effectively extends the scope of potentially targeted products for border measures. The definition poses problems in particular for generic medicines or products making use of international nonproprietary names for pharmaceutical substances which may be subject to allegations of trademark infringement e.g. on the basis of similarity to brand names or dilution. Thus, in certain situations, otherwise legitimate goods could in fact be detained or seized on the basis of more abstract claims of "ordinary" trademark infringements in the transit country (Grosse Ruse-Khan, 2011). Hence, the arguments presented by MSF are well based, and they should not be dismissed too hastily.

Also, as has been pointed out by MSF (2012), ACTA does not contain any direct safeguards protecting public health and access to medicines and the aforementioned recognition of the Doha Declaration and the limitations of the scope of patent provisions do not safeguard access to medicines directly. Thus, situations where the implementation of ACTA would cause barriers to flows of generic medicines cannot be ruled out completely on the basis of the agreement text alone. On the contrary, cases where an ACTA party chooses to go beyond the minimum requirements of ACTA and to extend its border measures to include patents and goods in-transit are conceivable and such situations could cause interference with trade of medicines in contradiction with the Doha Declaration and Article 6 of TRIPS (European Parliament, 2011). However, it must be noted within this context that ACTA's Article 6 does contain the obligation to apply the procedures in a manner which avoids the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

In conclusion, it is still disputable whether ACTA, as it is now, would inevitably drastically affect flows of generic pharmaceuticals. However, ACTA does leave the door open for such scenarios, and the argument that ACTA will not affect legitimate trade in generic medicines stands only as long as the implementation of ACTA is conducted in a manner which takes access to medicines into account satisfactorily.

[1] The author would like to note that the full assessment of the many dimensions of how IPR enforcement may potentially affect access to medicines is beyond the scope of this note. Thus this section only highlights some selected and urgent issues. More detailed and systematic analysis is necessary to fully address the intricacies of the topic.

7. Potential trade-related effects of ACTA in the region

Because ACTA contains no direct trade-related provisions it is difficult to predict the key trade effects of ACTA in the Asia-Pacific region. Also, as has been noted by non-party countries, the mere uncertainty of ACTA's concrete effects might cause hesitance in conducting legitimate business because of the risk of infringing the high legal standards of ACTA (ICTSD, 2012). However, it can be argued that ACTA will not have significant effect on areas typically stipulated by trade agreements such as trade in services because, as mentioned earlier, ACTA is not intrinsically a trade agreement. Thus, the majority of ACTA's trade-related effects will come indirectly from investments and innovation, which are expected to grow due to heightened levels of IPR enforcement (EU, 2012). However, two distinct scenarios that might affect non-signatory countries in the region are worth mentioning. First, as discussed above, ACTA will most likely affect the baseline requirements for future trade negotiations in the region. This is due to the fact that some important trading nations, e.g., Australia, Japan and Republic of Korea, are parties to ACTA and they will most likely not accept less stringent IPR provisions in future trade agreements than what they already have in place nationally. The trade-related effects of such developments are rather unclear, however, as providing heightened IPR enforcement levels does affect trade indirectly. Second, as mentioned above, there is a possibility that the implementation of ACTA by the signatory countries in the region will affect the in-transit rules currently in force (European Parliament, 2011). Whereas ACTA does not require signatory parties to apply border measures to in-transit goods, such measures are nevertheless allowed by it in Article 16. Implementation of in-transit border measures would undeniably affect non-signatory parties as well, and most likely the effect would be trade inhibiting as in-transit measures are trade restrictive rather than trade facilitating (European Parliament, 2011). Tightened border measures could affect key variables such as export/import time, and they could lead to losses due to seizures or forfeitures of legitimate goods suspected of IPR infringements. Potential detentions and seizures of goods based on border measures mandated by ACTA can arguably create barriers to international trade by negatively affecting the free movement of goods in the transit country afforded by GATT (Grosse Ruse-Khan, 2011).

In addition, the implementation of ACTA by the signatory parties will also have an indirect effect on countries that have standing trade agreements including provisions on national treatment of IPR with the signatory parties. Thus, non-member countries such as India and China have voiced concerns that the TRIPS-plus enforcement measures incorporated in ACTA can in fact have a trade-distorting effect by creating barriers to legitimate trade (TWN, 2010). Furthermore, it is necessary to keep in mind that that the agreement's trade related effects are not limited to the signatory parties, as the potential enforcement of the rules in the ACTA member countries will affect the majority of all internationally traded goods (Grosse Ruse-Khan, 2011). Thus, ACTA and its potential trade related effects should be given due consideration in the whole of the Asia-Pacific region regardless of the involvement or non-involvement in the agreement itself.

8. Assessment of the most recent developments: Will ACTA eventually be put in force?

The first quarter of 2012 has witnessed not only public protests but also expressions of displeasure at the governmental level. Most recently, non-party-countries such as China, Brazil and India have voiced their concerns over ACTA in the TRIPS Council. Those countries expressed concern over ACTA's potential effects on access to affordable medicine, the TRIPS-plus nature of the agreement and the fact that a "one size fits all" approach to IPRs is not advisable (WTO, 2012). Concern over ACTA's effects has also spread across several countries within the EU, and countries such as Germany and Poland have now postponed ratification of ACTA due to fear that ACTA might infringe upon human rights such as freedom of speech and access to the Internet. In an effort to provide clarity to the situation, the European Commission has now referred ACTA to the European Court of Justice (ECJ). The court has been asked to assess whether ACTA is incompatible in any way with the EU's fundamental rights and freedoms, which essentially means that the court will assess whether the agreement is in legal accord with the EU *acquis* and whether it can be implemented as it is (De Gucht, 2012). The referral by the commission also gave rise to internal and perhaps more political EU issues to the table as well, as the European Parliament voted against referring the agreement for a preliminary ruling by the ECJ. Thus, the Parliament

will go on with the original timeframe of ACTA's ratification process and a full vote on ACTA is expected on July 2012. These recent developments have left ACTA hanging; as a result, it is uncertain whether the agreement will enter into force – and with regard which parties – as it exists now. However, as 22 of the 27 EU countries as well as Japan and the United States have, inter alia, already signed the agreement, it is evident that ACTA and the standards incorporated within it are not without support. Thus, it seems likely that whether or not ACTA will be implemented, the future of IPR enforcement will be well along the lines of what is manifest in the agreement today.

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