



# WORLD TRADE ORGANISATION AND DISPUTES WITH RESPECT TO INTELLECTUAL PROPERTY RIGHTS

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## Abstract

In this research paper, we are trying to find out how the world trade organizations dispute settlement mechanism works and how the dispute settlement mechanism is used to solve the disputes of intellectual property rights arising between the member nations. The world trade organisation has a very important treaty called Trade Related Aspects of Intellectual Property Rights TRIPS. The interpretation of this treaty by the world trade organisations dispute settlement body is very interesting and innovating. In this paper, we can see that we are focused on the intellectual property rights related disputes arising between the countries who are the members of WTO. We have seen the dispute between United States of America and China relating to the transfer of technology, patent and trade secrets between these countries. Another case analysed is of copyright, infringement and large scale distribution of commercial content illegally, In the case of Qatar versus Saudi Arabia. Therefore, in the research paper the focus of research would be the intellectual property rights related disputes which have insane in the past in dispute settlement, body of world trade organisation.

**Keywords:** world trade organisation, dispute settlement body, intellectual property rights dispute, US China dispute, Qatar- Saudi Arabia dispute.

## Introduction

The world trade organisation is the only international organisation which deals with the rules of trade between nations. It is a multinational Forum where various countries come ahead to negotiate the trade related agreements and rules. The signatories of world trade organisations are called as the members of the WTO. All the major decisions are taken by the membership as a whole or by ministers or by ambassadors or delegates. The world trade organisation has many multilateral and plurilateral agreements between nations relating to the trade regulations

The world trade organisation came into force on 1 January 1995. Ever since 1948, there was a organisation called as General Agreement on Trade and Tariff-GATT. This organisation evolved through the years and in the last GATT round that was the Uruguay round that lasted from 1986 to 1994, led to the creation of World Trade Organisation. This round also resulted in the Marrakesh agreement which is the agreement that has formed the World Trade Organisation. The Uruguay round of trade talks had considered impact of possible disputes on maintaining and equitable global trade.

The World Trade organisation is a multinational trade organisation which helps in easy functioning of Trade and fair and equitable environment with respect to trade .The World Trade Organisation has a ministerial conference as one of the main body. Under this there is general council, trade policy review body, and dispute settlement body.<sup>3</sup>

The general council is further divided into goods Council, service Council, TRIPS Council, trade negotiation committee.<sup>4</sup>

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<sup>3</sup><https://google.com/url?sa=D&q=https%3A%2F%2Fnopr.niscpr.res.in%2Fbitstream%2F123456789%2F5351%2F1%2FJIPR%252014%25284%2529%2520346-348%2520%2528Opinion%2529.pdf>

<sup>4</sup>[https://www.wto.org/english/thewto\\_e/whatwto\\_e/tif\\_e/displ\\_e.htm](https://www.wto.org/english/thewto_e/whatwto_e/tif_e/displ_e.htm)

The dispute settlement body is one of the major bodies of the WTO. It helps in solving the dispute between the member nations of the organisation. The general Council convened as the dispute settlement body to deal with the disputes. To deal with the disputes arising between the WTO member states, under article IV:3, a Dispute Settlement Board was established under the WTO. The objective of this is to resolve issues multilaterally, rather than unilaterally by one member against another.

In the recent years, the dispute settlement body DSB has been successful in solving many disputes. The dispute settlement mechanism usually begins with the consultation phase. Before the dispute is escalated, then both the member countries are required to resolve the dispute through consultations. If no satisfactory result emerges within a period of 60 days, then the complaining party may establish panels for further dispute settlement.<sup>5</sup> Most of the cases get solved at the consultation stage. The panels are established with respect to article 6, 8 and 11 of DSU<sup>6</sup>. The established panel hears the disputes, arguments and assesses the evidence to prepare an interim report. If this report is accepted by both the parties, then this would be converted into a final report or else the parties may file for an appeal. This is the speedy resolution of trade disputes that applies to all the disputes that are covered under the WTO agreement<sup>7</sup>.

## IPR RELATED DISPUTES IN WTO

### The case of US-China

The United States alleged that China has violated the TRIPS agreement. On the other hand, China claims that the United States unilateral approach against certain Chinese quotes violates the US obligation under the GATT, 1994 understanding and also the rules and procedure governing the settlement of dispute settlement. The United States unilateral approaches based on the United States Trade Act of 1974 (section 301-310)

In 2018, the United States filed a report with the WTO calling out China for its discriminatory practice of technology transfer and on 2019 trade policy agenda, the United States referred “technology transfer from US companies by directing or facilitating systematic investment in, and acquisition of these US companies and assets for stealing sensitive commercial information and trade secrets of American companies through authorised intrusion into the computer network”.

In March 2018, the United States started a dispute settlement complaint against China’s measure with regard to licensing of intellectual property rights. The United States continued to further practice the other practices under section 301 of the bilateral agreement by levying a surcharge on the Chinese goods. China had made a trade deal with the US in 2020 to protect the foreign copyright and trade secrets and any other form of intellectual property rights<sup>8</sup>.

The complaint by the United States was started due to the China’s policies on technology transfer, which prevents the foreign patent holders from enforcing the patent rights in China or negotiating in the licensing market in China. For example, the United States claims that China’s regulations that give joint venture agreement rights to continue the technology transfer even after the expiration violates the national treatment policy of TRIPS article 3. It was found that China’s treatment of trade secrets, transfer of technology, patents and pharmaceutical industry intellectual property were among the variety of issues. In this case, a panel was established. The European Union filed a parallel request to consult with China, but the case had gone beyond the consultation phase. A complication was that China’s adoption of new foreign investment law. In March 2019, China outlawed the compulsory transfer of technology requirement that was targeted by the US WTO case. The new law entered into force in January 2020. It remains to be seen how this will affect the WTO dispute.

Eventually, on April 2018, the United States imposed surcharges of 25% on Chinese imports. As a result, China filed a WTO complaint and asked for establishment of a panel. China said that the 25% surcharge is against the most-favoured-nation policy. Further, China alleged that the United States has violated article 23 of the dispute settlement understanding by seeking to retain the obligation or impairment of benefits over under the agreement and impairment.

After the exchange of allegations, it can be seen that the United States and China are trying to establish a dominant position over the intellectual property market. The transfer of technology and the licensing of patents remains a big issue in the international domain. Even though the TRIPS agreement has made it very clear

<sup>5</sup> [https://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm)

<sup>6</sup> [https://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_settlement\\_cbt\\_e/c6s1p1\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/dispu_settlement_cbt_e/c6s1p1_e.htm)

<sup>7</sup> <https://blog.ipleaders.in/dispute-settlement-mechanism-under-wto/>

<sup>8</sup> <https://www.cigionline.org/articles/understanding-intellectual-property-disputes-between-china-and-united-states/>

regarding the rules and regulations as to the intellectual property transferred, there remains some countries who do not wish to follow the standard rules and regulations. After the above discussion, we can see that the surcharge imposed on Chinese imports would be defended by the United States under section 301 by arguing that this is a response to acts and policies and practises of China that may cause harm to the United States and falls the scope of TRIPS.

The backdrop of this case is the 2018 case where United States unilaterally imposed surcharges on aluminium and steel imports. this was justified under article 232 of Trade Expansion Act of 1962, which gives the US President power to restrict imports in the interest of national security. In this case nine of the WTO members filed a case for consultation and subsequently requested for establishment of dispute settlement panels against United States as a result United States challenged the counter measures of 6 WTO members.

Event today after the pandemic, China remains the biggest source of counterfeit and pirated goods. it is said that more than 83% of the global authorities ceased in 2020 were fake from China. It included the COVID-19 testing kits, N 95 masks, sanitisers, disinfectant, et cetera.

### **The Saudi-Qatar dispute**

The unauthorised streaming of sporting event commercially was a corporate infringement issue concerning the Saudi Arabia and Qatar. The decision in this case was implication of TRIPS agreement and beyond. in this particular dispute Qatar bought actions against Saudi Arabia claiming that Saudi Arabia through its actions and omissions has violated term IPR of Qatari nationals. It made allegations saying Saudi Arabia has prohibited the distribution of beIN media content against the threat of loss of IPR , imposing travel restrictions on Qatari nationals, requiring prior approval for copyright committee on violations of copyright law, and failing to apply criminal proceedings against the beoutQ<sup>9</sup>.

Another case relating to the dispute supplement with respect to IPR, is the complaint filed by Qatar in October 2018, requesting consultations with Saudi Arabia with article 4 of the understanding and 64.1 of the trade related aspects of intellectual property rights agreement. However, Saudi Arabia refused to engage in consultation with Qatar. The allegations of Doha were that Saudi Arabia was blocking Qatari owned broadcaster beIN from casting in the kingdom and refusing to take effective actions against the piracy. This was a high-profile sporting event which was supposed to be broadcasted. Saudi Arabia refused to broadcast the same and a company called beoutQ was established to broadcast. This was copyright infringement. They did unauthorised streaming of the content commercially. A 3 members WTO panel was established. The panel said that Saudi Arabia failed to act against the pirated beoutQ, which was breach of WTO rules and recommended react to bring measures for the same. Under the WTO agreement, countries are required to bring measures against the commercial scale copyright infringement. The panel said that the stand taken by Saudi Arabia regarding the national security was precise and the state was trying to protect itself against terrorism and extremism. In relation to non-application of criminal procedures against the beoutQ the panel market that it was unable to discern . According to the panel, the security exceptions for validly evoked by Saudi Arabia in relation to the Inconsistency with article 41.1 and 42 but not under article 61 of TRIPS.

In this case, we can see that their remains an obligation on the members to take criminal actions against the commercial piracy. The WTO in this case also interpreted the national security concern<sup>10</sup>

### **CONCLUSION AND SUGGESTIONS**

The dispute settlement mechanism of world trade organisation is one of the most powerful tool for settlement of disputes. Although this is true, we have seen that the influence of developed nations over the dispute settlement mechanism. The TRIPS is also being violated by many countries. The preferences for developing and underdeveloped countries must be set aside and separate rules and regulations for these countries must be brought up by the WTO in order to protect the IPR in these countries. We have seen many examples where there is disruption of technology, technology- transfer, patents, trade, secrets, et cetera, when technologies been transferred from developing countries. The non-compliance of rules by the developed countries results in non-effective implementation of these rules lay down by WTO. The political influence of the dominant countries is also a concern while implementing the national treatment, most favoured nation Principal. In conclusion, there has to be more reforms in the dispute settlement organisation of WTO in order to effectively implement the policies for developed and Developing nations.

<sup>9</sup> <https://spicyip.com/2020/07/a-look-at-the-wto-panel-report-in-saudi-arabia-measures-concerning-the-protection-of-intellectual-property-rights.html>

<sup>10</sup> <https://spicyip.com/2020/07/a-look-at-the-wto-panel-report-in-saudi-arabia-measures-concerning-the-protection-of-intellectual-property-rights.html>