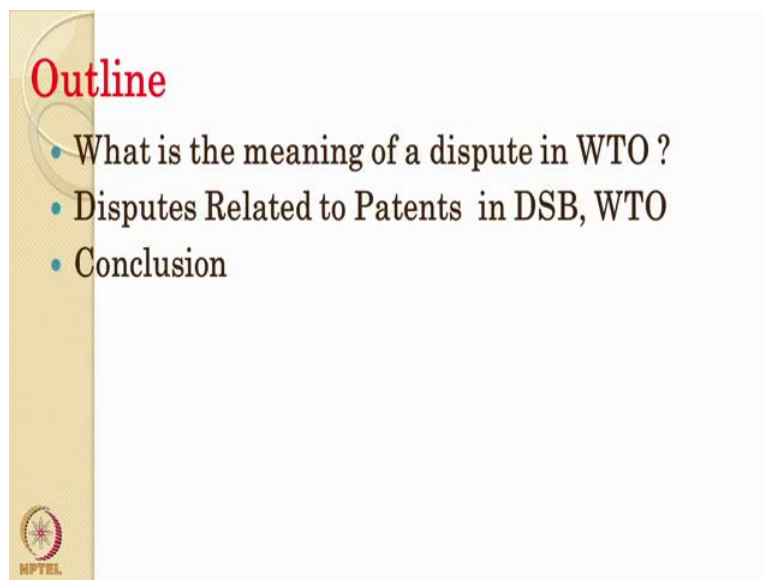


Economics of IPR
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Module - 04
Lecture - 02
Disputes Related to Patents in WTO


Disputes related to Patents and WTO. As a part of week 4 discussion, we are going to really understand that what type of disputes countries are having today in the World Trade Organization and the as we know that this disputes have a different meaning in WTO.

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So, this particular presentation is divided in 3 parts. In first part we are going to have the idea about the meanings of disputes and WTO then particularly on the patents related disputes, in this lecture we are going to really see that what type of disputes among the countries are going on, which is related to the patents and how disputes settlement body is trying to resolve certain disputes today and what type of countries reaction are also available and there are different articles in the trade related intellectual property rights and countries are really complaining against other country, for the violation of those intellectual property rights and then will try to have conclusion on the cases related to patents in the dispute settlement body.

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What is a Dispute in WTO ?

- ❖ WTO defines **dispute** as a case when any WTO member country violates any agreement or commitment that it had made in the WTO.
- ❖ For the settlement of disputes a **Dispute Settlement Body (DSB)** has been made.
- ❖ Disputes may be of patent infringement, copyright, trademark, licenses or domain name issues etc.
- ❖ There are **31 cases** related to Intellectual Property (TRIPs) at the DSB WTO.


So, the general meaning of dispute in WTO is a condition or a dispute, is a case when any WTO member violates any agreement or commitment that it had made in the WTO. So, the disputes are not among the forms at WTO level, but disputes are at the level of 2 country or 2 party and some time if certain disputes are highlighted by a party, against some other party, then when a party is finally complaining against a another country, then there are third party involvement also, in some other countries are also supporting the complaint to finally, put certain violation of articles of trade related intellectual property rights.

So, for the settlement of disputes a dispute settlement body has been also made and dispute may be of patent impingement may be of copyright, maybe of trade mark, maybe of license, maybe of domain name and verities of disputes we are finding today in the dispute settlement body and there are 31 cases and I am also providing a link to understand the entire disputes available in WTO, especially related to intellectual property right and that link is giving you the broad range cases and ideas about what type of disputes are available today. Some of the disputes we are going to highlight today, we are going to discuss today, maybe in the field of patent or maybe in the field of other intellectual property rights and but you can you can must have the reading of these disputes available on the WTO website and for that the link is also being provided to you.

So, you will find out and apart from that it is also important to read, the different articles of trade related intellectual property rights the TRIPS. So all these discussions and dispute

disputes all these cases are going to give you a wide range of ideas that how intellectual property rights today is one of a very sensitive and controversial issue and country do not want to really compromise on this intellectual property right issue.

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Disputes Related to IPR in the WTO

Sr. No.	Intellectual Property	No. of Cases	Dispute No.
1	Patents	11	DS36,37,50, 79,114, 153, 170, 171, 196, 199, 224
2	Copyrights and Related Rights	10	DS28, 42, 82, 83, 86, 115, 124, 125, 160, 362
3	Trademarks	9	DS59, 174, 176, 362, 434, 435, 441, 458, 467
4	Geographical Indications	4	DS290, 441, 458, 467
5	Undisclosed Information	1	DS372
6	Industrial Design	0	-
7	Layout Design	0	-

So, from this particular table you can just have a look that a number of cases related to patents are 11 and there are different cases as different numbers and DS is basically for the disputes and different numbers are assigned 2 different cases and we are find it that 11 cases are related to disputes in WTO, which is mainly related to the patents. Like patents we have large number of again disputes related to copyright and related rights and almost 10 cases we are finding in this part also and then the third position related to disputes are on trademarks and we are finding 9 cases related to trade marks. We have 4 cases related to geographical indications and 1 case related to undisclosed information and there are overlapping of the cases also, some of the cases are also the cases related to trademark also case related to geographical indication.

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Disputes Related to Patents

Dispute No.	Dispute
DS36	Pakistan -Patent Protection for Pharmaceutical and Agricultural Chemical Products (Complainant: United States)
DS37	Portugal -Patent Protection under the Industrial Property Act (Complainant: United States)
DS50	India -Patent Protection for Pharmaceutical and Agricultural Chemical Products (Complainant: United States)
DS79	India -Patent Protection for Pharmaceutical and Agricultural Chemical Products (Complainant: European Communities)
DS114	Canada -Patent Protection of Pharmaceutical Products (Complainant: European Communities)

So, from this table we can see that large numbers of cases are continuously available today and some of the cases which we are going to discuss today is the disputes related to disputes between Pakistan and United States, for the patent protection of pharmaceutical and agriculture chemical products. Disputes related to Portugal and United States patent protection under the Industrial Property Act. DS50 which is the dispute related to India and United States.

Again which is related to the patent protection for pharmaceutical and agricultural chemical products? Again European communities and India disputes related to patent protection for pharmaceutical and agriculture chemical products. The disputes related to between the Canada and European communities, which are again related to patent protection for pharmaceutical products.

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Disputes Related to Patents...

Dispute No.	Dispute
DS153	European Communities ·Patent Protection for Pharmaceutical and Agricultural Chemical Products (Complainant: Canada)
DS170	Canada ·Term of Patent Protection (Complainant: United States)
DS171	Argentina ·Patent Protection for Pharmaceuticals and Test Data Protection for Agricultural Chemicals (Complainant: United States)
DS196	Argentina ·Certain Measures on the Protection of Patents and Test Data (Complainant: United States)
DS199	Brazil ·Measures Affecting Patent Protection (Complainant: United States)
DS224	United States· US Patents Code (Complainant: Brazil)

Apart from this discussion we have the disputes between the European communities and Canada for the pharmaceutical and agricultural chemical products; Canada and United States terms of patent protection. Argentina and United States pharmaceutical and test data protection of agricultural chemicals. Again Argentina and United States certain measures on the protection of patent and test data. Again Brazil and United States majors effecting patent protection and United States and Brazil US patents codes.

So let me briefly discuss some of the cases here, the case between the Pakistan and United States, as we said that this is the violation of Article 27, Article 65 and 70. The issue is basically related to a system for patent protection for pharmaceutical and agricultural chemical products and executive market rights and the Pakistan and United States as mutually agreed or for protecting the Articles of 27, 65 and 70 long time back in 1997.

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Cases Related to Patents in DSB

Complainant	Respondent	Date of Consultations	Case
(DS36) United States	Pakistan	30 May 1996	The US complained against Pakistan for absence of a system for patent protection for pharmaceutical and agricultural chemical products and exclusive marketing rights. This is violation of TRIPS Agreement Articles 27, 65 and 70. The issue was mutually agreed on 25 February 1997.
(DS37) United States	Portugal	30 April 1996	Portugal complained the US for violating TRIPS Agreement Articles 33, 65 and 70 the patent protection under its Industrial Property Act. The matter was mutually agreed on 3 October 1996.
(DS50) United States	India	2 July 1996	The US complained against India for alleged absence of patent protection for pharmaceutical and agricultural chemical products in India and violating TRIPS Agreement Articles 27, 65 and 70.

The case of United States and Portugal; Portugal complaint the United States for providing TRIPS agreement for violating TRIPS agreement Article 33, 65 and 70 and it is industrial property act matter was again mutually agreed on 3rd October 1996. Again in case of India the US complaint against India for alleged absence of patent protection for pharmaceutical and agricultural chemicals in and which are again violated Article 27, 60 and 70.

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Complainant	Respondent	Date of Consultations	Case
(DS79) European Communities	India	28 April 1997	The EC complained against India for violating TRIPS Art. 27, 65, 70, 70.8, 70.9 which shows absence of patent protection for pharmaceutical and agricultural chemical products, and absence of formal systems that permit the filing of patent applications of and provide exclusive marketing rights for such products. The US was the third-party. On 25 November 1998 India agreed the required agreement.
(DS114) European Communities	Canada	19 December 1997	The European Communities complained against Canada for violation of the Patent Protection of Pharmaceutical Products. Canada had violated Articles 27, 27.1, 28 and 33 of the TRIPS Agreement. Canada informed that with effect from 7 October 2000, it had implemented the DSB's recommendations.
(DS153) Canada	European Communities	2 December 1998	Canada complained against the EC for violation of TRIPS Art. 27.1 in respect of the protection of inventions in the area of pharmaceutical and agricultural chemical products.

In case of disputes related to European commission in India this particular European union complaints was against India for violating Article 27, 65, 70, 70.8, 70.9, which shows they absent of absence of patent protection for pharmaceutical and agricultural chemical products and the absence of formal system that permits the feeling of patent applications of an provide

executive marketing rights for such products.

So, US were also the third party in this case on 25th November 1998 India agreed the required agreement. The disputes related to Canada and European community or the European communities complained against Canada for violation of the patent protection of pharmaceutical products and Canada had violated Article 27, 27.8, 28 and 33 of TRIPS agreement. It is better to read all these Articles in detail we are going to provide you the link of these articles and these Articles are the Articles which is the binding Articles of different countries to follow the trade related intellectual property rights, not only a in a very selected countries, but in the large number of countries which are the member of the WTO.

So all these Articles are, the Articles which have to be followed by most of the countries and where wherever there are certain flexibilities and viewers are provided, that has been provided on a certain ground and that ground should not be really violated in any case. So, the case of DS153 which is the case between the Canada and European Union, Canada complaint against European commission for violating of the TRIPS Act 27.1 in respect of the protection of invention in the areas of pharmaceutical and agriculture chemical products.

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Complainant	Respondent	Date of Consultations	Case
(DS170) United States	Canada	6 May 1999	The US alleged that under Canadian Patent Act, the term granted to patents issued on the basis of applications filed before 1 October 1989 is 17 years from the date on which the patent is issued which should be 20 years and is inconsistent with the TRIPS Art. 33, 65, 70. On 24 July 2001, Canada informed the DSB that it had fully complied with regulations.
(DS171) United States	Argentina	6 May 1999	The US complained against Argentina for absence of patent protection for pharmaceutical products. US contended that TRIPS Agreement does not permit WTO Members to allow third parties to market products subject to exclusive marketing rights without consent of the right holder. According to US, Argentina's law does not provide product patent protection for pharmaceutical inventions, or a system that conforms to Article 70.9 of TRIPS Agreement with regard to the grant of exclusive marketing rights. The dispute was mutually agreed on 31 May 2002.

In the case of DS170 between United States and Canada, US alleged that under Canadian patent act, the term granted to patent issued on the basis of application filed before first October 1999 is 17 years from the date on which the patent is issued, which should be 20 years and is consistent with the TRIPS Article 33, 65, 70. On July 2001 Canada informed the

dispute settlement body that it had fully complied with the regulation.

The case which is DS171 between the United States and Argentina, the US complaint against Argentina for the absence of patent protection pharmaceutical products, US contended that TRIPS agreement does not permit WTO members to allow third parties to market products subject to exclusive market rights without concern of the right holder. According to United States, Argentina's law does not provide product quotient protection for pharmaceutical inventions or a system that confirms to Article 70.9 of TRIPS agreement, which regard to the grant of exclusive marketing rights, but dispute was again mutually agreed on May 2002. So, this particular case DS196 which is between the United States and Argentina; in this case the US again complaint against Argentina, that Argentina fail to protect against unfiled commercial use of undisclosed text for market approval pharmaceutical or agricultural which prevents chemical products preventing the infringement of patent rights for occurring.

The measures were inconsistent with Argentina's obligation under TRIPS agreement including Article 27, 28, Article 31, Article 34, Article 39, Article 50, Article 62, two Article 65 and Article 70 of the agreement.

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Complainant	Respondent	Date of Consultations	Case
(DS196) United States	Argentina	30 May 2000	The US complained against Argentina that Argentina failed to protect against unfair commercial use of undisclosed tests for market approval of pharmaceutical or agricultural chemical products; prevent infringements of patent rights from occurring. The measures were inconsistent with Argentina's obligations under TRIPS Agreement, including Articles 27, 28, 31, 34, 39, 50, 62, 65 and 70 of the Agreement. The dispute was mutually agreed on 31 May 2002.
(DS199) United States	Brazil	30 May 2000	The United States complained against Brazil for Measures Affecting Patent Protection. The US claimed that the measures were inconsistent with Brazil's obligations under Articles 27 and 28 of the TRIPS Agreement, and Article III of the GATT 1994. Cuba, the Dominican Republic, Honduras, India and Japan reserved their third party rights. The dispute was mutually agreed solution on 5 July 2001.

So, I have the copy of this entire document of the different entire document of the different Articles of TRIPS agreement. So one must you can either download or you can read it online and these Articles are interconnected and it has more interdependency when a case is filed the countries are basically trying to expose the other party that what type of violations are being

made and what are the Articles were violated. Sometime Article 27, some paragraph Article 27.1 means first paragraph, Article 27.2 means second paragraph. So it means that certain Articles, certain paragraph of certain Articles which has to be cited as the violation of the Articles must be in consideration for the countries to acknowledge and we find here that countries are really smart enough to expose other country that on which ground your case is the cases in the dispute settlement body.

In this particular case the DS196 between United States and Argentina. When Argentina has responded; this is the one case where we are finding a large number of violations of Articles, which is 27, 28, 31, 34, 39, 56, 62, 65 and 70. So for example, Article 27 if one has to see the Article 27, which includes what type of members may be excluded for the, members may also be excluded from the patentability inventions, the preventions within the territory of the commercial exploitation of which is necessary to protect, different type of protections including the protecting human animal plant life and health or to avoid serious prejudice to the environment. So, different items are already cited here and countries are trying to highlight these Articles to make their case more strong so that responded has to react and respond accordingly,

So the case related to DS199 between United States and Brazil. In this particular case United States complaint against Brazil for majors affecting patent protection; the US claim that the majors were inconsistent with the Brazils obligation under Article 27 and 28 of TRIPS agreement and Article third of GATT 1994. The Cuba the Dominican republic and India, Japan, Honduras also they were the third party in this particular case the dispute was mutually agreed and it went to the final solution on 5th July 2001.

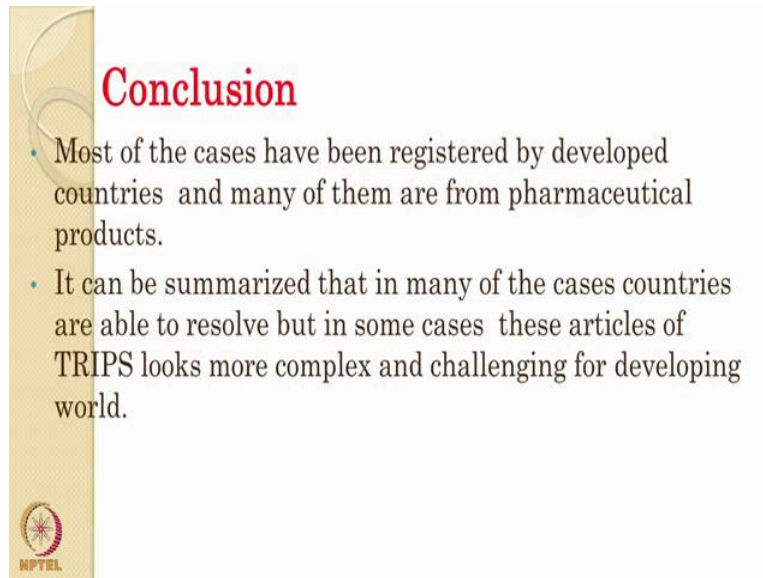
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Complainant	Respondent	Date of Consultations	Case
(DS224) Brazil	United States	31 January 2001	Brazil complained against US for provisions of the US Patents Code. Brazil detected several discriminatory elements in the US Patents Code. The measures which were violated are Articles 27 and 28, the TRIMs Agreement, Article 2 in particular, and Articles III and XI of GATT 1994"
Source: WTO			

So one more case which we must discuss is the case related to Brazil and United States where the United States was the respondent and Brazil was the complainant. So, Brazil complaint against United States for provisions of the US patent code, Brazil detected several discriminatory elements in the US patent code. The measures which were violated are Article 27 and 28 the TRIPS agreement and the Article 2 in particular and Article 3 and 6 of the GATT 1994.

So if you want to see the different Articles of GATT 1994, general agreement on tariff and trade which was the last round of the general agreement on tariff and trade. I can also provide you the link to read some of the Articles of the general agreement on tariff and trade also the TRIMs agreement trade related investment measures agreement which were also the part of certain violations you can also have a look, but the fact is when we are having the discussion on intellectual property rights and the violation of patent rights. You can really find out Articles which is linked with different Articles related to TRIPS and this is small document which includes different Articles of TRIPS agreement that is around 33 pages you can find out that this is really important to understand these cases because certain Articles are cited. So, if you will have the idea about these Articles you will be able to really link that what type of violation countries are having against products from other country. And so, this exercise gives you the idea that how dynamic these cases these countries are, to fight against their rights their obligations in WTO.

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Conclusion

- Most of the cases have been registered by developed countries and many of them are from pharmaceutical products.
- It can be summarized that in many of the cases countries are able to resolve but in some cases these articles of TRIPS looks more complex and challenging for developing world.

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So, to conclude most of these cases have been registered by developed countries and many of them are from pharmaceutical product side and the majority of the cases as, which we have seen here, is basically the violation of Article 27, Article 26, Article 28, Article 29, Article 65, Article 70 and Article 33. So all these Articles are basically the guiding principles that what should be patented, what should not be patented and what type of relaxation and flexibilities are available for the countries and it can be summarized that in many of these cases, countries are able to resolve, but in some cases these Articles of TRIPS looks more complex and challenging for developing world.

So, the entire discussion on intellectual property right and the economics of intellectual property right is beyond the boundary of the nation today and the violation of these Articles are not in the control of one country, but the other countries are equally prompt active and dynamic to tell the violators to the country who are not really able to comply the Articles of this these agreements which is already signed by the country. Other third parties are also involved in taking proper steps and precautions and they are really providing license to any country who violates these agreements.

So, we find that it is not the old world where we live today, it is the new world where all these countries smaller countries bigger countries developed countries, developing countries, all these countries are really active to control the infringement or to control the violation of these Articles and dispute settlement bodies are very much active to take proper action, to find out

the solution, to give a platform to resolve the disputes and due to the dispute settlement property some of the countries are in the position to resolve these disputes and for resolving these disputes, after resolving these disputes it is not only the 2 party who were involved in this disputes, they are only getting benefits, but other third party who were not involved in the disputes they are also getting the equal benefits.

Because the entire TRIPS agreement or the entire intellectual property rights at the global level works on two basic principles and that is MFN and the most favored nation principles and we find that all these Articles where there is a violation, where there is a favoritism, where there is a incompatibility in, where there is a problem of compatibility. We are finding that all these different countries are very much active to control such activities and this shows that we are having a global system of intellectual property rights and global system of regulation of intellectual property rights and a system of globally recognized system of settling the disputes that is dispute settlement body.

Thank you.