

HOW FAR CAN ARBITRATION PRACTICE AS AN ALTERNATIVE DISPUTE RESOLUTION WITHIN THE WTO GO? A PERSPECTIVE ON INTELLECTUAL PROPERTY DISPUTES

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ABSTRACT

Arbitration has been recognized as an expedient procedure to facilitate the settlement of disputes within the WTO. Unlike to the prevalent use of arbitration as an effective alternative means to litigation in the private filed, the author argues that arbitration under Article 25 of the Understanding on Rules and Procedures Governing the Dispute Settlement [DSU], as practiced in the Copyright case, might in effect come closer to the normal dispute settlement procedure, rather than a substitution for it. In terms of analysis of procedural flexibility, remedy, protection for business confidential information and Secretariat supports, this paper is to explore how far DSU Article 25 arbitration can deviate from normal dispute settlement procedures. Drawing some concerns from the private intellectual property field, the author attempts to argue that DSU Article 25 arbitration might come closer to normal dispute settlement procedure as practiced in Copyright cases, rather than a substitution for litigation. In addition, in certain circumstances involving enforcement of the Agreement on

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Trade-Related Aspects of Intellectual Property Rights [TRIPS Agreement], such as piracy and counterfeiting problems, neither the normal panel procedure, nor DSU Article 25 arbitration, can offer a full solution. Instead, the non-adversarial route such as mediation might serve as a practical approach in resolving infringements. This paper concludes that it does not seem that Article 25 arbitration has a bright future for the resolution of intellectual property disputes provided it exhibits no great differences with the normal dispute settlement procedure.

KEYWORDS: *WTO, arbitration, dispute settlement, intellectual property*