



WTO 2012

BACKGROUND GUIDE



2012

Intellectual Property



LETTER FROM THE DAIS

Hello Delegates,

My name is Jenny Sangliana, and I will be one of your Co-Chairs for this conference.

I am from Michigan and this is my first year here at MIT. My intended courses of studies are Material Science Engineering and Management. I was actively involved in Model UN all through high school and attended several conferences. As a college student, I have been to two MUNs; one here in Boston and an international MUN conference that took place in Hamburg. However, this will be my first time chairing a conference. I am very excited to chair my very first MUN conference and I hope you are equally as excited to be a part of MITMUNC! I wish you all good luck and fruitful debates with many outstanding resolutions.

My name is Isabella and I will be your other co-chair for the WTO committee of MITMUNC 2012. I am a sophomore at MIT majoring in math and minoring in architecture. I went to school in Taipei, Taiwan, and during my time there I participated in three MUN conferences, one in Taiwan and two others in Jakarta, Indonesia and Bangkok, Thailand. This is my second year of involvement with MITMUNC, so I've seen firsthand just how great a group of students we get at MITMUNC. I am so impressed by the diversity of backgrounds and ideas that MITMUNC brings together. With that said, good luck preparing for the conference! I really look forward to working with you.

The topics we've chosen for you guys to debate over this year are intellectual

property rights and anti-dumping. These can both easily be related back to technology, and we think you'll enjoy debating them. We hope that you find this background guide useful, and that you do a good amount of research to make this a very interesting conference for all of us! Please don't hesitate to contact us if you have any questions, as we're here to help you and to make sure that you all have an enriching experience.

See you soon!

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Topic 1:**INTELLECTUAL
PROPERTY RIGHTS****Introduction**

Intellectual property rights, though based on national laws, have been governed by international treaties since 1883. These three treaties, the Paris Convention of 1883, the Berne Convention of 1886, and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), form the basis of intellectual property rights law today.

Intellectual property rights can be defined as “the legal rights which result from intellectual activity in the industrial, scientific, literary and artistic fields.” The role of intellectual property rights (IPRs) is to give the creator a moral and economic right to their creation and to promote creativity and dissemination of the resulting products. The creator does not have a legal interest in the physical item created, only the rights to control the use made of those productions.

Intellectual property (IP) can be separated into two categories: industrial property, including patents, trademarks, industrial designs, and geographic indicators, and copyrights and related rights, including literary and artistic expression, phonograms, and broadcasts. IPRs and IP systems allow ownership, dissemination, and trade of these intangible assets. IPRs induce a trade of limited market exclusivity for the increased production and disclosure of useful goods, research or

services. Strong IPRs increase the potential market for exporters by providing protection against copying of their products. However, some markets are based off the ability to copy products, therefore, weak IPRs allow these countries to create more of their product. This limits the foreign companies’ incentives to sell their products locally and compete with the counterfeit goods.

Intellectual Property Components*Patents*

A patent is a document issued to the creator of an invention. The patent contains language that specifically describes the invention and allows the patent owner to exploit the invention for a limited period (typically 20 years). A common misconception is that a patent confers a monopoly upon the patent owner to make, use, or sell the invention; however, in reality, a patent gives the owner the ability to prevent anyone else from commercially exploiting the invention without the patent owner’s permission and the right to take action against anyone who does so. In order to be granted patent rights, the inventor must fully disclose the invention in the patent application.

Copyrights

Copyright affords protection to literary and artistic expressions fixed in a tangible medium. It is not the idea that is protected, but the tangible form in which that idea is expressed. In addition to providing protection to the work itself,

copyright protection extends to the rights of reproduction, translation, adaptation, and derivative uses. Copyright protection exists for a limited period. How much time is afforded also depends on when the work was created, and therefore, which copyright convention is controlling.

Copyright protection is only valuable if the creator is able to derive a benefit from their creation. In some countries, this is not possible.

Trademarks

Trademarks have been used throughout history to identify sources of goods. A trademark is any word, name, symbol, or device used by a manufacturer or merchant to identify his or her goods and to distinguish them from the goods manufactured or sold by others. The requirements a trademark must fulfill are almost universal. The first requirement is that the trademark distinguishes the products or services that it is placed upon and the second is that the mark not be misleading or immoral. Like patents, trademarks also contain a usage requirement. If a mark is not used in a country in which it is registered, the trademark registration may be canceled.

Laws and Agreements Regarding Intellectual Property

World Intellectual Property Organization

The Convention establishing the World Intellectual Property Organization was signed in 1967 and ratified in 1970.

However, it was not until 1974 that the World Intellectual Property Organization

(WIPO) became a specialized agency of the UN. WIPO's main responsibility is to work towards developing a balanced and accessible international intellectual property system.

World Trade Organization

The World Trade Organization (WTO) was created following the Uruguay Round of GATT negotiations. Replacing the GATT, the WTO is the only international body dealing with the global rules of trade between nations. It is not a specialized agency but works through special arrangements with the UN. The WTO is run by its Member States, and all major decisions are brought before the body as a whole and normally taken by consensus. The members are responsible for creating rules and the procedures to enforce those rules.

Agreement on Trade-Related Aspects of Intellectual Property Rights

Because IPR laws are national laws, a system was needed to create order and predictability and also allowed for the systematic resolution of disputes between Member States. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) established minimum levels of protection that each WTO member must implement. The five issues covered by TRIPS include how basic principles of the trading system and other international intellectual property agreements should be applied, how to give adequate protection to intellectual property rights, how countries should enforce those rights adequately in their

own territories, how to settle disputes on intellectual property between members of the WTO, and special transitional arrangements during the period when the new system is being introduced. WTO's TRIPS Council is responsible for the administration of the TRIPS Agreement.

References

WIPO Intellectual Property Handbook

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(Google search the citation and can be viewed as a PDF)

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<http://www.iprsonline.org/unctadictsd/ResourceBookIndex.htm>

TOPIC 2:

ANTI-DUMPING**Introduction**

"Dumping" is, in essence, the practice of a company going into a new market (usually internationally) and selling its product below what would properly be considered the "fair" or market value of the product. This action can be damaging to the domestic and local markets as they are usually forced to either switch the products they produce and sell or go out of business, or try to compete, which is nearly impossible for a lot of local, non-international firms that cannot sustain themselves while selling below the more "fair" or market value of the product they were originally selling. Many countries have anti-dumping laws that are stronger than any sort of agreements made under the GATT or by the WTO, but there are still many who have only made recommendations, as it is difficult to enforce any sort of legal action against companies (especially large and powerful international firms) who are underselling their competition. It will be your job to take another look at the current agreements, and, keeping your country's domestic economy and local firms in mind, come up with some new (perhaps stronger) agreements and resolutions on how to curtail the economically damaging act of dumping.

Whether or not a person or country agrees with anti-dumping policies depends entirely upon their economic ideology. That is, it depends on how they think that the economy should function. Should the

economy be completely free from government regulation? Well, we've seen that it cannot be that easy, as that leads to dangers like contaminated products, collusion, and monopolies. Should the economy be a product of the government, run entirely by it? Well, we've seen that it cannot be that easy either, as that heavy amount of regulation leads to immense bureaucracy, a stifling of curiosity and innovation, and disinterest from new firms and people in entering the market. In essence, it is pretty obvious that there is some sort of middle ground that needs to be found—but where? Well, this is a balancing act that governments have been struggling with for centuries, and the WTO has been struggling with. It has made progress, but there is still room for improvement, as this guide points out.

Is Dumping Bad?

This is definitely a loaded question, but one that should be addressed. Still, it should be noted that the answer depends on which side of the action you are on. If you are the firm that is selling your product below your "normal price" (that is, below the price that you normally sell it at your domestic market) then this act of dumping allows you to easily enter the new market in a foreign territory—this could be international or just a different part of your country. This act also allows you to potentially out-sell the competition and perhaps kick them out of the market.

On the other hand, if you are the domestic firm that is having its market invaded by an outside firm, you would most likely not be able to compete with this larger, much

more powerful firm, and would probably be forced to cease production and selling of your product. Although this is most often the case, there are rare occurrences where local companies, when faced with this act of dumping, either compete successfully with the new competition (by innovating their product or something) or divert their resources to a new product, and thusly enter a new market entirely.

Clearly, then, from the governmental viewpoint, your answer to the loaded question differs as well. If Country A has the firm that is committing the act of dumping, it sees the benefits of higher GDP (Gross Domestic Product), expanding its international image of having successful, innovative products, and establishing its economy in a new market where it could potentially bring other products (that is, this act of dumping could open up a new economy so that other firms can come in and establish their own new markets). However, if Country B has the firms in the market that are being forced to compete with this new firm from Country A, then when those firms have to shut down, Country B will experience a great decrease in GDP, and only maybe a slight increase in GNP (Gross National Product). In addition, unemployment will rise as businesses close down. In the long run, Country B will also face greater barriers of entry if they ever have firms that wish to re-enter the market that Country A's firm forced them out of.

Theoretically and practically, then, you can see that dumping can directly and indirectly have negative consequences on

the country getting the “dumping” (Country B), though it has positive consequences for the country doing the “dumping” (Country A).

A Balancing Act

With these things in mind, it is really just a balancing act of which country to allow to do what it wants. Should Country A be allowed to operate under laissez-faire economics (free markets) and trade wherever it wants, or should Country B be able to protect its domestic firms and participate in anti-dumping regulations and rituals? This is the ultimate question for the committee to consider.

GATT

Article 6 of the General Agreement on Tariffs and Trade (GATT) permits countries to participate in anti-dumping actions. Essentially, this allows countries to participate in protectionist policies. That is, countries are allowed to do things like levying more of an import tariff on a product that they believe is being dumped on them—that is, that they believe is being sold to them at a price below market value. This higher tariff is believed to then bring the product to the higher, “fairer” “normal” value.

Anti-Dumping Agreement

The Anti-Dumping Agreement expands the scope of Article 6 by saying exactly which types of anti-dumping actions are permitted, and which are not. It is vital to note that in this agreement the WTO does not pass any sort of judgment on the act

of dumping, but rather on how a government can react to dumping (that is, how a government partakes in anti-dumping). This is interesting to note since dumping seems fairly harmful to countries, but it is not that surprising when you think about the overall mission of the WTO: to make countries self-sustaining economically by opening up markets and lifting regulations and restrictions. In this, the WTO would like to see, as exemplified by discussion rounds like the current Doha Rounds, a lifting of all tariffs. And since the tariff is the most commonly used measure of anti-dumping, it is clear to see that the WTO would not like to see anti-dumping take place.

However, in this agreement, the WTO also acknowledges that a country may need to partake in anti-dumping efforts in order to protect its sovereignty and its own domestic markets and firms. Thus, the agreement simply gives certain restrictions and guidelines for countries to keep in mind while creating anti-dumping measures.

Calculating the Impact

In order to best combat dumping and/or anti-dumping, it is important to know what the exact numerical impact of the dumping is on the countries involved—most especially the country that is receiving the “dumping”.

According to the Agreement aforementioned, there are three different ways to calculate the impact a dumped product has on market. “The main one is based on the price in the exporter’s

domestic market. When this cannot be used, two alternatives are available — the price charged by the exporter in another country, or a calculation based on the combination of the exporter’s production costs, other expenses and normal profit margins.”¹

Protectionism

While Article 19 of GATT provides some acceptable safeguard measures for countries to use when experiencing a sudden influx of imports (i.e., a sudden onslaught of dumping), there are still other—usually more effective and more immediate—measures that countries decide to make, though they are not generally acceptable in the international eye (that is, in the WTO’s judgment).

Subsidies²

Many countries use subsidies to counteract the effects of dumping. Since cheaper products come in and force the existing firms to compete and stay afloat in the market, the government can choose to make the existing firms have cheaper products by cutting down on their costs of resources. As stated earlier, this is an action that works against the ultimate goal of the WTO, though it is clearly in the

¹Source:

http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm8_e.htm

²If you are not that well-versed in the fundamentals of economics—specifically supply, demand, price and costs, subsidies, tariffs, taxes, etc.—I would suggest looking these up, or checking out the background guide for the WTO last year, as it gives a good breakdown of some microeconomic and macroeconomic fundamentals you need to know.

interest of the sovereign State. Here is again where the balancing act is visible. You must weigh these things for your own country.

One of the biggest areas for subsidies is when countries (typically developing countries) choose to subsidize fisheries. This may or may not lead to overfishing, but since fish is a major part of the world's diet—and particularly the developing world's diet—this is verily not that surprising and seemingly more beneficial for that State that is attempting to feed its people. Typically, the WTO has been more harmful in this area by remaining vague and allowing countries to blatantly go against the mission of the WTO by openly and dangerously subsidizing their domestic fisheries. In particular, subsidies definitely hurt the free and open market by creating higher barriers of entry for others who might try to enter the market.

Tariffs

The issue of tariffs has already been addressed. Keep in mind that tariffs are the most-used measure for combating dumping, and that a lot of countries take part in tariffs in one way or another.

Is the idea of tariffs bad? Should all tariffs be eliminated? Is it only tariffs used against dumping that should be eliminated? What about export tariffs? What if a country claims dumping, but their claim doesn't quite fit into the calculations discussed earlier? These are all questions that you have to consider when weighing the pro's and con's of tariffs for both your country and the international

community and its market, as well as the broader goals and image of the WTO.

Safeguards

While tariffs and subsidies are immensely effective and can usually be implemented in a short period of time, safeguards permitted under the Agreement are usually slow and ineffective in the short run. Thus, a lot of countries choose to pursue the other means of anti-dumping. However, these other means, as has been discussed, are harmful to other markets, other countries, and ultimately the international community as a whole—not to mention the entire reason and motivation for the WTO. Perhaps the safeguards should be re-evaluated and adapted to take into account the reservations certain countries may have about them. This should be taken into account when debating this topic.

Blocs

To best prepare for how to interact with other countries, you simply need to look at your country's views and actions in a few different ways. First, look up if your country has agreed to certain provisions, or dissented from other parts of the Agreement and other measures that have been taken by the WTO to combat dumping and anti-dumping. Second, see if your country has made public statements either against or in favor of dumping and anti-dumping. Third, see if your country has partaken in any of the protectionist, anti-dumping measures outlined above, or if your country has been the predatory country dumping its products in other

countries. This step should also make you see how your country deals with dumping and anti-dumping within its own borders, for dumping can take the form of one firm against another within the same borders of the same State.

Developing versus Developed

Developing countries are the most typical victims or receiving parties in the process of dumping. Developed countries, on the other hand, are the most typical pursuers who dump in other markets. This is because the very act of dumping requires a firm to be economically large and powerful enough to be able to easily slip into another market, despite obvious barriers of entry—such as distance, a new culture (a new set of consumers), a new currency, and perhaps even new factories for products and new buildings for management. Developing countries generally do not have firms that are able to compete on this level. Thus, when this powerful company steps in and sells its products below the market price that the domestic firms are selling at, the domestic firms cannot deal with it.

While this dilemma has been set up before, there is the added factor of the country's government getting involved. In a lot of developing countries, particularly in the Americas and Asia, the governments have the capacity and competence to implement some of the anti-dumping safeguards and measures for combating this harmful dumping. However, there are a great deal of countries, particularly in Africa, that have corrupt and incompetent (for whatever

reason) governments that either choose to, or are simply not able to, deal with dumping from bigger, more powerful countries and firms. It is especially noteworthy that a lot of developing countries do not have the ability to provide subsidies due to their lower GDP and low GDP per capita; and that a lot of them do not have feasible option of enacting tariffs when they rely upon outside markets for other products and may not wish to upset those countries that they get other products from.

Therefore, it may be worth asking, should the WTO take into account the predicament of developing countries, or should it blindly stick to its principles of no anti-dumping? If taking into account the developing countries' position, should there be better safeguards in place for them to realistically combat dumping? If so, what? Should the international community step in?

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Anti-dumping is unfair

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