



ASR Submission to DFAT on whether Australia should participate as a third party in the World Trade Organization (WTO) dispute settlement panel requested by the United States concerning the protection and enforcement of intellectual property (IP) rights by China.

ASR Position

The ASR Board submits that in the substantial commercial and policy interests of the ASR membership, Australia should NOT participate as a third party in the WTO dispute settlement panel brought by the United States vis-a-vis China.

Background

ASR has not identified, from within its membership, any substantial commercial or policy interests that might argue in favour of Australia's participation as a third party in the WTO dispute settlement panel established at the request of the United States with respect to IP rights (copyright) protection in China.

ASR members do have a variety of actual and potential direct and substantial commercial interests in the negotiations underway for a Chapter on Intellectual Property in the Australia-China Free Trade Agreement. Difficult though these bilateral negotiations might be, it is evident to ASR members that Australian negotiators have established a good rapport with their official Chinese IP counterparts and ASR looks forward as a result to the forthcoming visit to Australia of Mr Tian Lipu, Commissioner of the State Intellectual Property Office in China.

Given that Australia is already currently pursuing its own direct commercial and policy interests in the IP arena with China via the mechanism of the FTA, ASR would not support a step on the part of the Government which could risk unduly or unnecessarily disturbing the atmosphere of the bilateral IP negotiations, to the potential disadvantage of Australian commercial interests, on account of any IP issues other than those in which Australia has a similarly substantial and direct commercial or policy interest. As stated above, ASR has identified no such direct commercial or policy interest from within its membership.

ASR has considered, given that this is an important case from a WTO trade law perspective, that there may be general WTO systemic factors which might tempt Australia to participate as a third party. On balance, however, ASR considers that any such factors must come second to Australia's own IP policy and commercial interests in the Chinese market. A number of ASR members have expressed IP policy interests which depart significantly from some of those being pursued by the United States in the context of the WTO dispute settlement panel vis-à-vis China. It is not clear, against that background, that Australia would have an interest in deliberately bringing any views before the panel or in influencing the panel's findings.

ASR members are interested to be kept informed of developments.

Jane Drake-Brockman
Executive Director
Australian Services Roundtable

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