

The WTO Panel Decision in the EU-China Standard Essential Patents Dispute over Anti-Suit Injunctions

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In February 2022 the EU requested consultations with China at the World Trade Organization (WTO) over anti-suit injunctions (ASIs) granted by Chinese courts in litigations regarding standard essential patents (SEPs). SEPs are patents that are necessary to use a technical standard, like 5G or Wi-Fi, and must be licensed on fair, reasonable, and non-discriminatory (FRAND) terms. Specifically, the EU challenged what it called an ‘unwritten policy’ that ‘encouraged’ the issuance of ASIs in SEP-related disputes, with five specific judicial decisions by Chinese courts being under scrutiny. This complaint has attracted a fair amount of academic attention.¹

It should be preliminarily noted that an ASI in the SEPs context is a court order that stops one party from starting or continuing related legal proceedings about a similar SEP dispute in another country. These injunctions are sometimes used when companies disagree over licensing terms for SEPs. Thus, anti-suit injunctions are here typically sought to prevent the other side from bringing parallel lawsuits in foreign courts, which could result in conflicting decisions or put pressure on FRAND negotiations. For example, a court might issue an anti-suit injunction to ensure that questions about whether licensing offers are FRAND are decided in one place, rather than in multiple countries at the same time. This helps avoid a situation where various courts make different rulings about the same patents or licensing terms.

¹ Enrico Bonadio & Nicola Lucchi, *Antisuit Injunctions in SEP Disputes and the Recent EU’s WTO/TRIPS Case against China*, J. WORLD INTELL. PROP., pp. 1-13 (May 5, 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4427453. Also see, Toshifumi Futamata & Kaname Matsumoto, *International Dispute Over ASI of Standard Essential Patents* (‘Jin-Su-Ling’ 禁令) — *Background and Implications for the Future of Multiple ASIs in China*, 58 LES NOUVELLES 1 (Mar. 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4337698; Yong Gan, *Antisuit Injunctions in Chinese Courts*, CHINESE JOURNAL OF INTERNATIONAL LAW, pp. 557-601, Vol. 2 Issue 3 (September 2023), <https://doi.org/10.1093/chinesejil/jmad031>; and Cohen, M.A., ‘China’s Practice of Anti-suit Injunctions in Standard-Essential Patent Litigation: Transplant or False Friend?’, in J.M. Barnett and S.M. O’Connor (eds.) 5G and Beyond: Intellectual Property and Competition Policy in the Internet of Things. CAMBRIDGE: CAMBRIDGE UNIVERSITY PRESS, pp. 215-241 (December 14, 2023), <https://doi.org/10.1017/9781009274289.017>.

Said that, the WTO Panel issued its Interim Report in December 2024, with reviews and comments sought by both China and the EU. Thereafter, on 21 February 2025, additional procedures under the WTO Dispute Settlement Understanding (DSU) Article 25 were adopted, and the final report was issued to the Parties. It was circulated to WTO Members on 24 April 2025.²

The Panel was largely tasked to identify if China's ASIs policy violated multiple provisions of the TRIPS Agreement. The EU invoked that China had violated its TRIPS obligations under Articles 1.1, 28.1, 28.2, 41.1, and 44.1 of such treaty. Additionally, the EU raised concerns under Article 63 TRIPS, which requires transparency through the publication of 'final judicial decisions' of general application. Finally, the EU argued a violation of Section 2(A)(2) of China's Accession Protocol and requested corrective actions under Article 19.1 DSU.

Validity of China's ASIs Policy

The EU claimed that an unwritten, coordinated ASIs policy exists based on five Chinese court decisions issued between the years 2020 and 2022 - a policy which was first implemented on 28 August 2020 in *Huawei v. Conversant*³ and further applied in *Xiaomi v. InterDigital*,⁴ *OPPO v. Sharp*,⁵ *ZTE v. Conversant*,⁶ and *Samsung v. Ericsson*.⁷ The ASIs granted by Chinese courts in these cases, and disputed by the EU, had prohibited foreign companies from pursuing

² Panel Report, *China – Enforcement of Intellectual Property Rights*, WTO Document, WT/DS611/R (Apr. 2025), https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds611_e.htm.

³ Supreme People's Court of the People's Republic of China, Case Zui Gao Fa Zhi Min Zhong No 732, 733, 734 (2020), *Huawei Technologies Co Ltd and another v Conversant Wireless Licensing*.

⁴ Hubei Province – Wuhan Intermediate People's Court, Case E 01 Zhi Min Chu No 169 (2020), *Xiaomi Communication Technology Co Ltd v Inter Digital Inc*. On this case, see also Binxin Li, Chuanshu Xu & Leon Li, *Recent Development on SEP Disputes in China – Anti-Suit Injunction*, KLUWER PATENT BLOG (Nov. 20, 2020), <https://patentblog.kluweriplaw.com/2020/11/20/recent-development-on-sep-disputes-in-china-anti-suit-injunction/>.

⁵ Xiapu Zhushi Huishe Yu OPPO Guangdong Yidong Tongxin Youxian Gongsi Biaozhun Biyao Zhuanli Xuke Jiufen An (夏普株式会社与OPPO广东移动通信有限公司标准必要专利许可纠纷案) [*Sharp Corp. v. OPPO Guangdong Mobile Telecomms*]. On this case, see also Yan Jin & Chao Wang, *Chinese court rules for the first time that it has jurisdiction over SEP global licensing disputes*, JOURNAL OF INTELLECTUAL PROPERTY LAW & PRACTICE, pp. 81–82, Vol.17 Issue 2, (February 2022), <https://doi.org/10.1093/jiplp/jpab180>.

⁶ *ZTE v. Conversant* - Shenzhen Intermediate People's Court Case No. (2018) Yue 03 Min Chu No. 335-1 (2018)粤03民初335号之一. On this case, see also Guodong Du & Qiang Liu, *Shenzhen Court Issues 'Anti-suit' Injunction in ZTE and Conversant SEP Licensing Dispute*, CHINA JUSTICE OBSERVER (June 20, 2021), <https://www.chinajusticeobserver.com/a/shenzhen-court-issues-anti-suit-injunction-in-zte-and-conversant-sep-licensing-dispute>.

⁷ Sanxing Dianzi Zhushi Huishe [*Samsung Elecs. Co., v. Telefonaktiebolaget LM Ericsson*], E 01 Zhi Min Chu No. 743 (Wuhan Interm. People's Ct. Dec. 25, 2020). On this case, see also *Anti-suit Injunctions and Anti-enforcement Injunctions in the UK and EU*, PRACTICAL LAW (THOMSON REUTERS), w-029-2016, <https://uk.practicallaw.thomsonreuters.com/w-029-2016?transitionType=Default&contextData=%28sc.Default%29&firstPage=true>.

parallel litigation outside China against tech giants (especially from China, i.e. Xiaomi, Oppo and ZTE), while Chinese proceedings were ongoing. The injunctions included substantial daily financial penalties for non-compliance.

The EU specifically pointed to official endorsements by the Supreme People Court (SPC) President supporting the establishment of an ‘ASI system with Chinese characteristics’, linking the policy to the pursuit of national interests. Additionally, the designation of these cases on official Chinese websites as ‘typical cases’ signalled guidance intended for future judicial rulings. China, on the other hand, disputed the existence of an unwritten general policy, describing the ASIs granted by its courts as merely isolated judicial acts. It pointed to cases like *Lenovo v. Nokia*,⁸ where an ASI request was rejected, to argue that courts decide independently based on case facts rather than policy.

Ultimately, the Panel found that the EU met a high evidentiary standard to establish this unwritten ASI policy’s existence.⁹ It highlighted the uniformity in timing, legal basis, and reasoning of the ASIs rulings and the introduction of cumulative daily fines as a significant departure from past practices designed to guide courts. The WTO Panel also noted that the SPC and NPC public reports and endorsements provided institutional support that legitimised the policy framework. Additionally, even though no new ASIs have been issued recently, it was found, the lack of repudiation suggests that the policy remains operative. And the denial of an ASI request in *Lenovo v Nokia* was interpreted by the Panel as demonstrating flexibility rather than negating the policy.¹⁰

No violation of TRIPS by China

While the EU was able to show the existence of this unwritten ASIs policy, it nevertheless failed to show that such a policy violated the TRIPS provisions on exclusive rights, licensing, and enforcement procedures.¹¹

⁸ This case is cited in Mark A. Cohen, *China’s Practice of Anti-Suit Injunctions in Standard-Essential Patent Litigation: Transplant or False Friend?*, LEADERSHIP (Nov. 5, 2022), <https://iPLEADERSHIP.org/chinas-practice-of-anti-suit-injunctions-in-sep-litigation-transplant-or-false-friend/>.

⁹ Paras 7.101 and 7.2.3.3 of the report.

¹⁰ Paras 7.158 and 7.203 of the report.

¹¹ Paras 7.242, 7.252. and 7.309 of the report.

The EU had argued that Article 1.1 TRIPS imposes a ‘rule of restraint’ requiring WTO Members not only to implement IP rules domestically but also to avoid actions that undermine IP enforcement in other jurisdictions. China countered that TRIPS requires only domestic enforcement of patent rights and that ASIs granted by its courts are lawful procedural tools under its civil law to manage IP litigation. The Panel finally sided with China, interpreting Article 1.1 as requiring countries to give effect to TRIPS provisions within their own legal systems but not extending obligations to actions affecting other states’ enforcement efforts. It rejected the EU’s broader ‘rule of restraint’ interpretation due to lack of textual support, confirming TRIPS obligations are primarily domestic.¹²

The EU had also argued that Articles 28.1 and 28.2 TRIPS protect patent rights and licensing freedoms, and that Chinese ASIs had violated such provisions. On the other hand, China asserted that ASIs do not affect patent rights outside China or the terms of licensing. The Panel held that Article 28.1 grants patent rights solely within the granting country’s territory, so the EU’s claims about enforcement abroad were outside its scope.¹³ Article 28.2’s protections on licensing were found to be respected domestically by China, as the ASIs in question did not prevent licensing of Chinese patents or regulate negotiation terms outside China.

The EU had further claimed that China’s ASI policy breached Article 41.1 TRIPS by constituting abusive enforcement procedures that create barriers to legitimate trade and lack safeguards against abuse. The WTO Panel here determined that ASIs do not qualify as ‘enforcement procedures’ initiated by right holders against infringers - they are instead procedural measures by implementers restricting enforcement abroad, consistent with Part III of TRIPS (enforcement of IP rights). That is why it was found that the ASIs policy of China does not breach Article 41.1.¹⁴

On Article 44.1 TRIPS, the EU had claimed that China should avoid measures interfering with injunctions issued by foreign courts. China replied by contending that ASIs do not interfere with foreign courts, and that the EU was improperly seeking to extend TRIPS obligations beyond their intended scope. The Panel rejected EU’s interpretation, determining that Article

¹² Paras 7.238, 7.260, and 7.261 of the report.

¹³ Paras 7.240, 7.241, and 7.242 of the report.

¹⁴ Paras 7.308 and 7.309 of the report.

44.1 only requires domestic enforcement capabilities, and that China's ASIs apply exclusively to parties within China and do not bind foreign courts, thus not violating Article 44.1.¹⁵

Transparency, publication requirements and supplying information

The Panel then assessed whether three specific ASIs decisions – those granted in *ZTE v. Conversant*, *OPPO v. Sharp* and *Xiaomi v. InterDigital* - qualified as final judicial decisions of 'general application' which must be published or made anyway available under Article 63.1 TRIPS. It applied two criteria: whether a decision establishes or revises legal principles and whether those principles guide future cases. Such decisions – the Panel stressed - must be publicly available, even if not formally binding.¹⁶

The Panel found that Chinese courts in *ZTE v. Conversant* and *OPPO v. Sharp* applied existing principles without establishing new ones and therefore did not require publication. In contrast, *Xiaomi v. InterDigital* introduced new legal principles on the global scope of ASIs, was acknowledged by higher courts, and influenced future IP litigation in China. As a result, it was deemed a decision of general application that had been 'made effective' by China and should have been published on China Judgments Online.¹⁷ The Panel thus held that China's failure to do so breached Article 63.1's transparency obligation¹⁸.

The Panel further found that under Article 63.3 TRIPS (which requires states to be prepared to supply, in response to a written request from another WTO country, information about the judicial decisions in question), only the EU demand regarding Supreme People's Court provisions on Act Preservation Measures in IP disputes qualified as such formal request.¹⁹ And China's failure to provide information in response was inconsistent with Article 63.3. Other EU statements were treated as background, not formal requests.²⁰

Violation of China's Accession Protocol

¹⁵ Paras 7.260, 7.261, and 7.262 of the report.

¹⁶ Para 7.383 of the report.

¹⁷ Paras 7.408 and 7.412 of the report.

¹⁸ Para 7.413 of the report.

¹⁹ Paras 7.454 and 7.455 of the report.

²⁰ Paras 7.439, 7.440, 7.441, and 7.455 of the report.

The EU alleged that China's issuance of five, now-expired, ASIs also violated Section 2(A)(2) of China's WTO Accession Protocol, which mandates the uniform, impartial, and reasonable administration of laws relating to intellectual property rights. The EU had indeed argued that these ASIs were applied inconsistently, favored implementers over patent holders, and imposed disproportionately high fines for non-compliance,²¹ thus posing risks to SEPs holders involved in parallel proceedings outside China. The EU had also noted that these fines were excessive. In response, China maintained that the imposition of cumulative daily fines was consistent with its legal framework and reflected the complexity of SEP disputes.

The Panel ruled that the concept of uniformity under the above Section implies consistency and predictability, not identical outcomes. Since ASIs were primarily requested by implementers and courts had denied some requests, the Panel found no evidence of bias or partiality. It concluded that China's administration of ASIs did not breach the requirements for uniformity, impartiality, or reasonableness under its Accession Protocol. Additionally, the Panel declined to rule on the expired ASIs, finding no ongoing impact on trade or enforcement.²²

Conclusion

In summary, the Panel largely rejected the EU's substantive claims that China's unwritten ASI policy violates TRIPS provisions concerning patent enforcement and licensing rights, affirming the territorial and domestic nature of TRIPS obligations and the right-holder-centred scope of enforcement procedures. With regards to China's failure to comply with transparency obligations by not publishing key judicial decisions related to ASIs, the Panel recommended China bring its measures into compliance with TRIPS.

We do believe that the Panel's interpretation of TRIPS provisions reflects a sophisticated understanding of jurisdictional sovereignty in intellectual property matters. By rejecting the EU's broad 'rule of restraint' theory, the Panel – we reckon - correctly affirmed that countries retain the right to use legitimate procedural tools like anti-suit injunctions within their own legal systems without undermining international IP frameworks. This ruling thus provides

²¹ Erciyas, Selin Sinem & Kurtoğlu, Beste Turan, *Jurisdictional Conflicts in Global FRAND Cases and the EU's TRIPS Complaint Against China*, MANAGING INTELL. PROP. (Apr. 15, 2024), <https://www.managingip.com/article/2d3xwd9s5tzkdbo0fvchs/sponsored-content/jurisdictional-conflicts-in-global-frand-cases-and-the-eus-trips-complaint-against-china>.

²² Paras 7.502, 7.521, 7.531, 7.558, and 7.562 of the report.

much-needed clarity on the scope of TRIPS obligations, confirming they are primarily domestic in nature rather than extending to extraterritorial enforcement activities.

The EU has since appealed the panel's findings to the Multi-Party Appeal Arbitration Arrangement (MPIA).²³ And China has acknowledged the EU appeal and stated it will handle the matter according to the relevant rules.²⁴ We will watch closely the developments of this appeal.

²³ The MPIA is a special appeals system created by a group of WTO members as a temporary replacement for the WTO Appellate Body, which has been non-functional since late 2019 due to the United States blocking new appointments.

²⁴ Reuters, *China Says It Will Handle EU's WTO Appeal According to Rules*, REUTERS (Apr. 23, 2025), <https://www.reuters.com/world/china/china-says-it-will-handle-eus-wto-appeal-according-rules-2025-04-23/>.