



Report

The Blockade Imposed Against Qatar: An Analytical Study of WTO Principles

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Abstract

This analytical study sheds light on the consequences of the blockade imposed against Qatar and the violation of the blockading countries - the Kingdom of Saudi Arabia (KSA), the United Arab Emirates (UAE), Bahrain, and Egypt - of trade and economic agreements under the World Trade Organization (WTO). It also focuses on the legal basis of Qatar's filed complaints against KSA, UAE, and Bahrain, WTO's Dispute Settlement Procedures and jurisdiction, and the national security exceptions, as well as the main principles of the WTO treaties including General Agreement on Tariffs and Trade (GATT), General Agreement on Trade in Services (GATS), and Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Keywords: Qatar; blockade; blockading countries; WTO; GATT; GATS; TRIPS; Dispute Settlement Procedures; jurisdiction; national security

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تقرير

الحصار المفروض على دولة قطر: دراسة تحليلية وفقاً لمبادئ منظمة التجارة الدولية (WTO)

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في القانون، كلية القانون، جامعة قطر
الدكتور رافاييل دين براون، أستاذ مساعد في عيادات القانون - قسم المهارات القانونية ومنتسب إلى مركز القانون
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ملخص:

تسلط هذه الدراسة التحليلية الضوء على النتائج الناجمة عن الحصار المفروض على دولة قطر وانتهاك دول
الحصار - المملكة العربية السعودية، دول الإمارات العربية المتحدة، البحرين ومصر - للاتفاقيات التجارية
والاقتصادية تحت مظلة منظمة التجارة العالمية (WTO). كما أنها تركّز على الأسس القانونية للشكاوى التي رفعتها دولة
قطر ضد المملكة العربية السعودية، دول الإمارات العربية المتحدة والبحرين، وإجراءات تسوية المنازعات والسلطة
القانونية لمنظمة التجارة العالمية (WTO)، والاستثناءات الخاصة بالأمن الوطني، فضلاً عن المبادئ الأساسية
لمعاهدات منظمة التجارة العالمية (WTO) بما فيها الاتفاقية العامة للتعرفة والتجارة الدولية (GATT)، الاتفاقية
العامة للتجارة في الخدمات (GATS) واتفاقية حقوق الملكية الفكرية المتعلقة بالتجارة (TRIPS).

الكلمات المفتاحية: قطر، الحصار، دول الحصار، منظمة التجارة العالمية، الاتفاقية العامة للتعرفة والتجارة الدولية، الاتفاقية العامة
للتجارة في الخدمات، اتفاقية حقوق الملكية الفكرية المتعلقة بالتجارة، إجراءات تسوية المنازعات، السلطة القانونية، الأمن الوطني

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Executive Summary

On 5 June 2017, the Kingdom of Saudi Arabia (KSA), the United Arab Emirates (UAE), Bahrain, and Egypt (“blockading countries”) imposed a land, air, and sea blockade against the State of Qatar (Qatar). Two weeks into the blockade, the blockading countries issued a list of demands that would impair the sovereignty and independence of Qatar. These four countries took measures that constitute grave violations of World Trade Organization (WTO) trade and economic agreements. Qatar aims to resolve the dispute through legal means in accordance with WTO regulations to promote mutual consultation before litigation. However, absent any willingness from the blockading countries to engage in negotiations, Qatar filed a WTO complaint in August 2017 against three of the blockading countries: KSA, UAE, and Bahrain.

The first step in the dispute settlement process is significant. When a dispute arises, parties must submit a request for consultation to the Dispute Settlement Body (DSB). After 60 days, if the responding party rejects consultation, the complaining party can request in writing for a DSB panel within 30 days from rejection. The panel’s request must indicate the status of the consultation: rejected, failed, or on hold.

The panel consists of three to five experts from different countries, serving in individual capacities and unaffiliated to any government or country. The panel holds two meetings and drafts two briefs or reports before making its decision. It further gives the parties three weeks to review the final report, prior to sending the decision to all WTO members. The parties also have the chance to appeal the panel’s ruling within 15 days from its issuance.

In accordance with the WTO covered agreements, Qatar requested consultations with the three blockading countries. However, consultations failed since the three responding countries rejected consultations with Qatar claiming the national security exception as a basis for their actions. Qatar had no choice but to take a further step, by taking the dispute to the DSB panel. On 22 November 2017, the WTO agreed to hear Qatar’s complaint against the UAE. The panel will likely rebuke the responding countries for failing in their duty to consult as WTO members. Based on the analysis below, we find that the actions committed by the blockading countries are in violation of the WTO agreements.

1. Introduction

On 5 June 2017, the UAE, KSA, Bahrain, and Egypt imposed a set of measures (measures) on Qatar that began with a land, air, and sea blockade of Qatar. For example, Qatar Airways flights are prohibited from flying over the blockading countries’ airspace, which has forced Qatar Airways to change routes, thereby causing an increase in the cost of fuel and ticket prices. The new routes have significantly increased the cost of operations for Qatar Airways, causing instability for the Qatari company. In another example, Qatar faced serious economic instability because of the imposed land blockade. Closing the borders caused instability in the cross-border trade and exchange of goods and services. Likewise, the sea-imposed blockade affected the ports because shipments have been disrupted or cancelled because of the blockade. For example, Jebel Ali’s port is the main destination for cargo passage, and a very active point for trade exchange between the UAE and Qatar. After the UAE’s measures in blocking all passages to and from Qatar, contractors were in a very critical financial situation.

The blockading countries accused Qatar, among other things, of allegedly destabilizing the region by supporting terrorism and sectarian groups, such as the Muslim Brotherhood, al-Qaida, Daesh, and other groups supported by Iran. Qatar has denied these allegations.

Meanwhile, the blockading countries have refused entry into their country to Qatari citizens, and deported Qatari citizens out of their countries, although the deported Qataris were bound to these countries by businesses and family bonds. While the allegations of the blockading countries relate to a political aspect, the blockading measures imposed against Qatar violate economic aspects. The blockading countries violated WTO principles under General Agreement on Tariffs and Trade (GATT), General Agreement on Trade in Services (GATS), and Trade-Related Aspects of Intellectual Property Rights (TRIPS), as concluded in this paper.

On 31 July 2017, Qatar filed three complaints to the WTO against three of the blockading countries: KSA, UAE, and Bahrain. Qatar filed the complaints because of the unjustified restrictions that were imposed to damage Qatar's economic and financial position. The WTO complaints include provisions from GATT, GATS, and TRIPS that are binding on the blockading countries as signatory parties to the WTO.

It is worth mentioning that Qatar opted not to file a complaint against Egypt, which is the fourth country of the blockade. While no formal justification has been provided for excluding Egypt, Qatar did not include Egypt likely because the Egyptian blockade did not affect Qatar as much as the other countries' blockade did.

This paper consists of six sections. The first section focuses on the legal basis of Qatar's filed complaints against the three blockading countries. The second section discusses the WTO's Dispute Settlement Procedures. The third section discusses the main principles of the WTO treaties, including GATT, GATS, and TRIPS. The fourth section discusses the national security exceptions, and the fifth section discusses the WTO's jurisdiction. Finally, the sixth section of this paper discusses the remedies before concluding with the seventh section.

2. The main principles of the WTO treaties concerning the filed complaints

2.1. General Agreement on Tariffs and Trade (GATT)

GATT, which stands for the "General Agreement on Tariffs and Trade", aims to eliminate harmful trade protectionism that had sent global trade down by 65 percent during the Great Depression.¹ By reducing tariffs and other trade barriers, GATT boosted international trade and restored economic health to the world after the devastation caused by World War II.² The GATT articles guarantee equal commercial treatment and prohibit discrimination between WTO members.

Qatar faces an economic blockade that is an inversion of the GATT principles. The imposed blockade restricts many aspects of trade exchange, such as trade bans through blockading countries' ports, closure of sea borders, and closure of airspace to Qatari aircraft.³ Pursuant to the blockade, Qatar has followed the procedures stipulated in the WTO and filed complaints against the blockading countries relying on several articles under GATT, including Articles I-1, V-2, X-1 and 2, XI-1, and XIII-1. The discussion in this section analyzes how the blockading countries violate these GATT provisions.

2.1.1. Article I(1): Most-Favoured-Nation (MFN) Treatment

Under Article I(1) of GATT, all members who ratified the agreement should give immediate and unconditional accord to like products imported or exported to or from any member state without any favor it accorded to like product of any other country. Accordingly, all State Parties to the GATT Agreement shall provide similar treatment without favoring one Party over another. The blockade of Qatari products essentially eliminates any immediate or unconditional accord to Qatar products being imported and exported to or from the blockading countries.

2.1.2. Article V(2): Freedom of Transit

Article V(2) of GATT states the following:

"There shall be freedom of transit through the territory of each contracting party, via the routes most convenient for international transit, for traffic in transit to or from the territory of other contracting parties. No distinction shall be made which is based on the flag of vessels, the place of

1 Kimberly Amadeo, *GATT, Its Purpose, History, with Pros and Cons*, The Balance, Dotdash, available at www.thebalance.com/gatt-purpose-history-pros-cons-3305578 (last visited 15 November 2017).

2 *Introduction to WTO Basic Principles and Rules*, WTO E-Learning, World Trade Organization, available at ecampus.wto.org/admin/files/Course_385/Module_1562/ModuleDocuments/BP-L1-R1-E.pdf (last visited 15 November 2017).

3 *What are the details of Qatar's WTO Complaint against Saudi Arabia, UAE and Bahrain?*, CNN, Cable News Network, n.d. Web. 5 August 2015, available at arabic.cnn.com/business/2017/08/05/qatar-wto-complaint-ksa-uae-bahrain-details (last visited 15 November 2017).

origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods, of vessels or of other means of transport.”⁴

For members to fulfill their obligations under Article V(2), the member has to grant the freedom of transit to all other WTO members by suitable routes that would allow them to exercise international trade. The blockade imposed by air, sea, and land is a direct and flagrant violation of Article V(2)’s freedom of transit.

2.1.3. Article X(1) and (2): Publication and Administration of Trade Regulations

Article X(1) of GATT requires members to promptly publish “laws, regulations, judicial decisions and administrative rulings of general application” and agreements affecting international trade policy, including “restrictions or prohibitions on imports or exports or on the transfer of payments therefore, or affecting their sale, distribution, transportation, insurance, warehousing inspection, exhibition, processing, mixing or other use.” The purpose of Article X(1) is to enable governments and traders to become acquainted with the restrictions or prohibitions. As an exception, Article X(1) states that it “shall not require any contracting party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest...” Additionally, Article X(2) of GATT states:

No measure of general application taken by any contracting party effecting an advance in a rate of duty or other charge on imports under an established and uniform practice, or imposing a new or more burdensome requirement, restriction or prohibition on imports, or on the transfer of payments therefore shall be enforced before such measure has been officially published.⁵

Article X(1) and (2) of GATT essentially requires that all trade measures of members should be published and transparent. GATT mandates measures to be published in a manner readily accessible to governments. In the case of Qatar, the blockading countries not only failed to publish and provide a transparent mechanism concerning the trade measures but even failed to provide any reason for the first two weeks of the blockade, after which the blockading countries provided a list of demands that do not address the trade measures. Article X(1) requires a prompt publication of general trade restrictions. In the *EEC - Apples (US)* case, for example, the panel held that the European Communities acted inconsistently with Article X(2) when it published notice of quotas two months after the quota period began. In the case of Qatar, Qatar could argue that even though a list of demands had been published after two weeks, the blockading countries have not published any notice as to the trade effect of the blockade and continue to violate Article X(1) and (2).

The blockading countries will certainly argue that they are not bound by Article X(1) and (2) citing essential security interests and the reasons provided in the list of demands. The issue then is what constitutes a valid law enforcement and public interest exception under Article X(1) and (2), an issue that will likely be subsumed under the national security exception arguments discussed in the fourth section below. However, unlike the national security exception argument, the law enforcement and public interest argument under Article X(1) and (2) is limited to the extent that the publication of the notice itself, rather than the alleged rationale behind the blockade, would impede law enforcement or public interest.

2.1.4. Article XI(1): General Elimination of Quantitative Restrictions

Under Article XI(1) of GATT, a contracting party shall not institute or maintain “prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures” on imported products from any contracting party or on the

4 GATT Analytical Index, Article V, available at www.wto.org/english/res_e/booksp_e/gatt_ai_e/art5_e.pdf.

5 WTO Analytical Index, available at www.wto.org/english/res_e/booksp_e/analytic_index_e/gatt1994_04_e.htm#article10.

export or sale for export of any product destined for any contracting party.⁶ The general elimination of quantitative restrictions means that no party or member has the right to restrict or prohibit the importation or exportation of any product to the territory of other member. The blockading countries violate Article XI(1) by placing restrictions or prohibitions on the import and export of products to or from Qatar. In other words, the blockading countries have imposed exactly the type of quantitative restrictions prohibited under Article XI(1) of GATT.

2.1.5. Article XIII(1): Non-discriminatory Administration of Quantitative Restrictions

Article XIII(1) of GATT does not allow the imposition of a prohibition or restriction by a contracting party on imported products from any contracting party or exported products destined to any contracting party unless the importation or exportation of a like product is similarly prohibited or restricted.⁷ In other words, Article XIII(1) prohibits contracting parties from discriminating against another contracting country's exported or imported like product. The purpose of the GATT Article XII(1) is to prohibit trade discrimination of any WTO member. In short, trade partners must be treated equally.

The blockade is contrary to this non-discriminatory principle since the three countries defied the WTO rules by committing actions that destabilized trade in the Gulf Region, and elsewhere. The blockade not only affects and discriminates against Qatari products, but also the products of other WTO members. For example, if a US company has a regional branch in Dubai, and that branch has an exclusive distributorship in the Gulf, then the US company can no longer trade with Qatar.

To stop importing or exporting goods, the measures imposed on Qatar via the air, sea, and land blockade must comply with five conditions:⁸ (1) transparency, (2) notice and consultation, (3) temporariness, (4) prevention or relief of critical shortage of essential food or product, and (5) consideration.

First, the measure must meet the condition of "transparency", where the blockading countries must disclose everything about the measure in good faith. In the case of Qatar, the blockading countries did not initially disclose the basis of their accusations against Qatar.⁹ The blockading countries did not issue their list of 13 demands until three weeks after the blockade commenced, and Qatar categorically rejected the demands.¹⁰ In other words, the blockading countries' method of disclosure and the claimed reasons for the blockade were made in bad faith and lack of transparency.

Second, the measure must meet the condition of "notice and consultation", which is fulfilled only when notice is given to the trade partner after consultation. In the case of Qatar, there was no notice or consultation prior to the imposition of the blockade, and the blockading countries continue to refuse consultation despite Qatar's request under WTO procedures.

Third, the measure must meet the condition of "temporariness", which requires that any prohibition of import and export must be for a specific and a temporary period. In the case of Qatar, the blockade has lasted more than a year and without a specific period stated for the blockade. The blockading countries have also refused to recognize it as a temporary blockade, but have rather stated their intention of it being an indefinite measure.¹¹

6 WTO Analytical Index, *supra* note 5.

7 GATT Analytical Index, Article XIII, available at www.wto.org/english/res_e/booksp_e/gatt_ai_e/art13_e.pdf.

8 WTO Analytical Index, *supra* note 5.

9 Juan Cole, *David and Goliath: How Qatar Defeated the Saudi and UAE Annexation Plot*, The Nation, The Nation Company, 16 February 2018, available at www.thenation.com/article/david-and-goliath-how-qatar-defeated-the-saudi-and-uae-annexation-plot/ (last visited 5 June 2018).

10 Naser Al-Wasmi, *Qatar says it will reject 13 demands from Arab states*, The National, 1 July 2017.

11 The UAE Minister of State for Foreign Affairs, Dr. Anwar Gargash, stated that the blockade was no longer temporary, saying that "we [the UAE] have to go on without Qatar". See Taimur Khan, *UAE will 'have to go on without Qatar', says Gargash*, The National, 26 July 2017, available at www.thenational.ae/world/gcc/uae-will-have-to-go-on-without-qatar-says-gargash-1.614457.

Fourth, prohibitive measures may be imposed to prevent or provide relief of critical shortage of essential food or product, which requires WTO members to inform as soon as critical shortage occurs. In the case of Qatar, the blockading countries have not raised critical shortage of essential food or product as a reason for the blockade, but rather emphasized their desire to create a shortage of essential food and products for Qatar.¹²

Fifth, the measure must meet the condition of “consideration”, which requires a trade partner to consider the effect of the measures on the other partner before imposition. In the case of Qatar, the blockading countries have not considered the effect of the measure on Qatar, other than their intention to create economic and financial pressure for Qatar.

It is noteworthy that GATT’s articles encourage members to seek consultations and negotiations to settle any dispute.¹³ Without meeting any of the conditions described above, the three blockading countries have taken illegal measures that constitute a violation of Article XIII(1). Despite all challenges and allegations, Qatar has nevertheless shown its willingness to negotiate and abide by its commitment to the provisions of GATT, which urges the settlement of disputes by mutual consent before litigation.

2.2. General Agreement on Trade in Services (GATS)

The General Agreement on Trade in Services (GATS) is a WTO treaty that entered into force in January 1995 after the Uruguay Round negotiations. The scope of the GATS agreement is services. GATS contain a positive schedule that states the members’ commitment. The basic objectives under this agreement are (a) general obligations of MFN Treatment and Transparency, and (b) specific commitments on Market Access and National Treatment.

The GATS agreement covers four modes of supply for the delivery of services in cross-border trade as shown in Table 1 below:¹⁴

	<u>Criteria</u>	<u>Supplier Presence</u>
<u>Mode 1: Cross-border supply</u>	<u>Service delivered within the territory of the member, from the territory of another member</u>	<u>Service supplier not present within the territory of the member</u>
<u>Mode 2: Consumption abroad</u>	<u>Service delivered outside the territory of the member, in the territory of another member, to a service consumer of the member</u>	
<u>Mode 3: Commercial presence</u>	<u>Service delivered within the territory of the member, through the commercial presence of the supplier</u>	<u>Service supplier present within the territory of the member</u>
<u>Mode 4: Presence of a natural person</u>	<u>Service delivered within the territory of the member, with supplier present as a natural person</u>	

For the purpose of this paper, the report will discuss five articles from GATS: Articles II, III, XVI, XVII, and XVIII. These articles have been relied upon by Qatar in its complaint against the blockading countries.

2.2.1. Article II: Most-Favoured-Nation Treatment

Under Article II of GATS, all members that ratified this agreement should accord immediately and unconditionally to services and service suppliers of any member state without favoring any other like

12 Malik Helali, *Turkey supported Qatar from the very beginning of the blockade: Ambassador*, Qatar Tribune, QIM Group, 30 May 2018, available at www.qatar-tribune.com/news-details/id/126933. See also: *Qatar food shortages stirring social unrest, paper argues*, Gulf News, Al Nisr Publishing, 6 September 2017, available at gulfnews.com/news/gulf/qatar/qatar-crisis/qatar-food-shortages-stirring-social-unrest-paper-argues-1.2085874.

13 World Intellectual Property Organization, Meetings, available at www.wipo.int/edocs/mdocs/arab/ar/wipo_ip_ju_saa_04/wipo_ip_ju_saa_04_5.pdf (last visited 15 November 2017).

14 GATS: General Agreement on Trade in Services, 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, 1869 U.N.T.S. 183, 33 I.L.M. 1167 (1994) [hereinafter GATS].

services and service suppliers of other countries. Accordingly, all States Parties to the GATS Agreement shall provide similar treatment not favoring a party over another. In the case of Qatar, the blockading countries violate Article II of GATS because they disfavor service and service suppliers from Qatar, and essentially favor their own services and services suppliers. An example of this violation is the prohibition of Qatari media and entertainment services and suppliers in the blockading countries, while favouring media and entertainment services and suppliers from the blockading countries.

2.2.2. Article III: Transparency

Article III of GATS states that in case of any changes that occur which may affect the operation of this agreement, the member is obligated to publish this information or make it publicly available except in cases of emergencies. Additionally, members who act in a manner that affects trade in services shall immediately inform the Council for Trade in Services. In the case of Qatar, the blockading countries have not published any of the measures resulting from the blockade, including how the measures affect the operation of GATS. Further, the blockading countries have not informed the Council for Trade in Services concerning the effect of the blockade on GATS.

2.2.3. Article XVI: Market Access¹⁵

Article XVI of GATS states that, “all members should give services and service suppliers of any of the member states favorable treatment that is provided under the conditions, terms and nothing less than that what was mentioned in the schedule.”¹⁶ In other words, there are two types of measures a member state is not permitted to enact: a measure that discriminates either on the basis of regional subdivision or on the basis of its entire territory, unless specified by its schedule. These measures are defined as

- A. A set of limitations on the number of service suppliers either in the form of “numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test”;
- B. Limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- C. Limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;
- D. Limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;
- E. Measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and
- F. Limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.¹⁷

2.2.4. Article XVII: National Treatment¹⁸

Article XVII of the GATS prevents discrimination between citizens and foreigners. According to Article XVII, each member shall not give a less favorable treatment to services and service suppliers of any other member than that it accords to its own like services and service suppliers.

A member fulfills all the mentioned requirements when a member treats the others equally or similarly, and gives treatment that is not less favorable than the service given to the other members. National

¹⁵ GATS, *supra* note 14, Art. XVI.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

treatment is breached if a member modifies the conditions in the services and service suppliers of any other member state. Thus, a member state cannot make a commitment and then not comply to or follow it. Countries must provide the same treatment regarding trade in services to members as the one provided to their citizens.

In the case of Qatar, the blockading countries breached article XVII by imposing rules that prevent Qatari service providers from engaging in trade in services equally or similarly as service providers from blockading countries. For example, the blockading countries blocked access to media and entertainment services provided by Qatar service providers. This type of discrimination is exactly the type of treatment prohibited under Article XVIII.

2.2.5. Article XVIII: Additional Commitments¹⁹

Article XVIII of GATS states that all members must negotiate their commitments, which affect trade in service but not subject to scheduling. If a member wants to add a measure, that member should negotiate first with all of the member states before adding the measure to the schedule. Additionally, all member states can negotiate with regard to qualifications, standards, or licensing matters. Such commitments should be recorded in the member's plan.

In the case of Qatar, the blockading countries did not negotiate their commitments prior to the imposition of the measure in violation of Article XVIII of GATS. Additionally, the blockading countries continue to refuse negotiation concerning their commitments under GATS.

2.3. Trade-Related Aspects of Intellectual Property Rights (TRIPS)

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is a WTO agreement that is binding on all signatory nations. TRIPS came into force at the beginning of 1995. TRIPS protects intellectual property (IP) rights, including copyrights and related rights like sound recordings and broadcasting organizations, trademarks, geographical indications, undisclosed information, etc. These protections are implemented equally on all members of the treaty. However, developing countries have some exceptions, such as giving them longer periods of protection.²⁰

Articles 3 and 4 of the TRIPS agreement deal with non-discrimination.²¹ These articles deal with the same two basic principles of the WTO agreements under GATT and GATS: treating foreigners and nationals the same, and treating other members of the agreement equally without favoring one member over others. In the case of Qatar, the blockading countries violate TRIPS whenever they provide favorable treatment over intellectual property (IP) rights of their nationals over the intellectual property rights of any member of TRIPS, for example, Qatar.

2.3.1 Article 3: National Treatment

Article 3 of TRIPS states that any member of the TRIPS agreement should treat other members (foreigners) the same as they treat their own nationals with regard to the protection of IP rights. Taking into consideration the Paris Convention, Berne Convention, Rome Convention, and the Treaty on Intellectual Property in Respect of Integrated Circuits, states can stick to their right of reservations as evidenced by article 6 of the Berne Convention or article 16 paragraph 1(b) of the Rome Convention, but should inform the other members to reflect transparency.

Moreover, WTO members are allowed to use the exceptions that are mentioned above with regard to the administrative and judicial procedures, but only if these exceptions are important to avoid any conflicts between the country's laws and regulations, and the provisions of this agreement.

¹⁹ GATS, *supra* note 14, Art. XVIII.

²⁰ TRIPS: Agreement on Trade-Related Aspects of Intellectual Property Rights, 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994) [hereinafter *TRIPS Agreement*].

²¹ *Id.* at Art. 1-8.

2.3.2 Article 4: Most-Favoured-Nation (MFN) Treatment

The MFN principle states that all members should treat other members equally without favoring a member by granting special privileges or immunity over another. However, there are four exceptions to the MFN rule:

- 1- If the international agreement approved on judicial assistance or law enforcement provided a special treatment and not only regarding IP rights.
- 2- If the provisions of Berne Convention or Rome Convention allow the treatment from another country and not the national treatment.
- 3- Excluding the rights of performers, producers of phonograms, and broadcasting organizations because this agreement did not include their rights.
- 4- Other provisions that are obtained from international treaties regarding the protection of IP rights that came into force before the WTO agreement and that are also reported to the TRIPS' council, and are not causing unreasonable discrimination within the country's nationals or the nationals of other countries.

To summarize, Article 3 provides that treatment shall not be different or less than the treatment of third parties in other States. While Article 4 provides that any member who offers the advantage or interests to a country must also provide to the other party without any restrictions and conditions.

3. The breaches by the blockading countries

Regardless of the diversity in the scope of protections under WTO, GATT, GATS and TRIPS, they share the same concept against discrimination, which is the MFN Treatment. As discussed earlier, the articles concerning MFN treatment state that there shall be no discrimination against a country's services, service providers or products. However, in Qatar's case, this principle has been violated by KSA, UAE, and Bahrain, when they prohibited Qatari citizens, vehicles, ships, and boats from crossing the land, maritime and airspace borders. Due to the border closure, trading entities to Qatar are no longer able to supply or consume goods and services to or from any of the blockading countries. The situation also applies to the people of the blockading countries, as they are no longer able to consume services in Qatar, or from a Qatari service provider.

There are many examples of such violations: The blockading countries closed the sea borders, prohibited any ship bearing a Qatari flag owned by a Qatari citizen or owned by the State of Qatar from entering any of those three countries' ports. Further, those countries have prohibited Qatari aircrafts to land in their airports. There is also the prohibition of audio-visual service suppliers, such as tourist facilities, and the Qatar Postal Services Company from providing services in relation to mail items that are originating from or designated to and from Qatar. In June 2017, the UAE and Saudi Arabia blocked beIN Sports,²² though beIN was allowed back on air by 22 July 2017.²³ The UAE has also violated the said principle by forbidding the Qatari company, beIN Sports, to cover an official conference.²⁴ Saudi Arabia also expelled a beIN reporter from a stadium when reporting on a football match.²⁵

Qatar is being accorded less favorable treatment than what is provided to other countries by the blockading countries. Restricted market access is imposed on Qatar, affecting trade relations since Qatar used to

22 *Qatari Broadcasters beIN Sports, Al Jazeera Blocked In Middle East*, Sports Business Daily, American City Business Journals, 7 June 2017, available at www.sportsbusinessdaily.com/Global/Issues/2017/06/07/Media/beIN-Sports.aspx. See also: *Saudi authorities boot Qatar's beIN sports reporter from World Cup qualifier in Jeddah*, The New Arab, 6 September 2017, available at www.alaraby.co.uk/english/news/2017/9/6/saudi-authorities-boot-qatars-bein-reporter-from-wc-qualifier.

23 *Qatar's beIN off-air in UAE amid bootlegging allegations*, Al Jazeera, Al Jazeera Media Network, 3 June 2018, available at www.aljazeera.com/news/2018/06/qatar-bein-air-uae-bootlegging-allegations-180603120500264.html.

24 *UAE, Saudi harass Qatari sports channel*, Middle East Monitor, 6 September 2017, available at www.middleeastmonitor.com/20170906-uae-saudi-harass-qatari-sports-channel/.

25 The New Arab, *supra* note 22.

rely on imports to provide “more than 90% of its food.”²⁶ Closure of these borders closed more than trade routes; students, patients, and people were sent back to Qatar, affecting services and service providers. Having these measures applied only to Qatar is pure discrimination against such service, constituting a flagrant violation of the MFN principle.

The blockading countries violated Article 3 of TRIPS when Saudi Arabia prohibited and placed restrictions on “(a) the broadcasting and operation of certain Qatari service suppliers’ media content in Saudi Arabia, and (b) accepting new and renewing existing subscriptions to Qatari audio-visual service providers’ channels.”²⁷ KSA closed Al Jazeera Channel in Saudi Arabia, and “has banned hotels and tourist facilities from airing Al Jazeera news channels and threatened to punish violators with the closure of their facility and a fine of up to \$26,000.”²⁸

Moreover, the UAE violated Article 3 of TRIPS by the “removal of Qatari audio-visual service suppliers’ channels from tourist facilities in the Emirate of Abu Dhabi and in the Emirate of Sharjah.”²⁹ The UAE further refused to allow beIN Sports from covering an official conference; and did not allow beIN microphones on the table.³⁰ Another example of an Article 3 violation is the UAE’s use of the media against Qatar instead of resorting to diplomatic solutions.³¹

Further, Bahrain violated Article 3 of TRIPS by imposing “prohibitions and restrictions on (a) the import of Qatari audio-visual equipment that is necessary to access Qatari audio-visual content in Bahrain, and (b) accepting new and renewing existing subscriptions to Qatari audio-visual service providers’ channels.”³² Bahrain violated these articles of the TRIPS by the ban it imposed on several television channels/contents where the copyrights were owned by Qatari nationals/government.³³

More principles are being violated, specifically under GATT. The blockading countries violated the general elimination of quantitative restrictions and the non-discriminatory administration of quantitative restriction by the ban on products imported to Qatar and the prohibition of exporting products to Qatar.

Both GATT and GATS enforce a transparency obligation on state members. They require states to publish promptly any measures taken against another state. In Qatar’s case, this requirement was violated by the countries of the blockade since they did not publish the measures taken, and did not give any justifiable reason, except claiming the right to abstain based on national security.

Furthermore, they failed to comply with the GATS agreement because of the default of informing the Council for Trade in Services of the changes that affected the operation of GATS. The blockading countries did not make that information available or even inform the Council for Trade in Services of the changes, which affected the trade operation in the region. This is considered as a violation of the obligation of transparency.

Ultimately, the blockading countries breached additional GATS commitments, since they are not willing to negotiate. They “failed to carry out its obligations and specific commitments under the GATS within the meaning of Article XXIII:1 of the GATS.”³⁴

26 Charlie Rose, *Qatar’s Emir Stands Defiant in Face of Blockade*, CBS News, CBS Interactive Inc., 29 October 2017, available at www.cbsnews.com/news/qatars-emir-stands-defiant-in-face-of-blockade/.

27 DS528: Saudi Arabia - Measures Relating to Trade in Goods and Services, and Trade-Related Aspects of Intellectual Property Rights, World Trade Organization, available at www.wto.org/english/tratop_e/dispu_e/cases_e/ds528_e.htm.

28 *Saudi Arabia bans Al Jazeera channels in hotels*, Al Jazeera, Al Jazeera Media Network, 9 June 2017, available at www.aljazeera.com/news/2017/06/saudi-arabia-bans-al-jazeera-channels-hotels-170609141041079.html.

29 DS526: United Arab Emirates - Measures Relating to Trade in Goods and Services, and Trade-Related Aspects of Intellectual Property Rights, World Trade Organization, available at www.wto.org/english/tratop_e/dispu_e/cases_e/ds526_e.htm.

30 Sports Business Daily, *supra* note 22.

31 Eric Levitz, *Report: UAE Orchestrated Qatar Feud by Spreading Fake News*, Daily Intelligencer, New York News, 17 July 2017, available at nymag.com/daily/intelligencer/2017/07/report-uae-orchestrated-qatar-feud-by-spreading-fake-news.html.

32 DS527: Bahrain - Measures Relating to Trade in Goods and Services and Trade-Related Aspects of Intellectual Property Rights, World Trade Organization, available at www.wto.org/english/tratop_e/dispu_e/cases_e/ds527_e.htm.

33 *Id.*

34 TRIPS Agreement, *supra* note 20.

The blockade did not only affect Qatar but parties within the blockading countries had been affected. For example, the UAE is considered as one of the affected parties too.³⁵ There are many UAE companies that depend on the supply of food to Qatar. The Gulf Sugar Company is a great example of one of the UAE's affected companies. The company has supplied Qatar with 60 thousand tons of sugar per year. After the blockade, the company has lost much by losing its trade with Qatar.

4. WTO's Dispute Settlement Procedures

When a dispute occurs in the WTO, this means that a promise has been broken. Prior to breaking a promise, WTO members must agree that, if one of the members violates one or more of the trade rules, they will resort to a multilateral system in settling the disputes instead of taking action unilaterally. In this regard, they have to respect the procedures and rules that the WTO lays out for them. A dispute arises in the WTO when one of the signatory countries adopts a different trade policy measure or takes actions against a WTO member in violation of any of the WTO agreements.³⁶

The old GATT had some procedures for the dispute settlement system but it did not have a fixed timetable. Moreover, the WTO agreements highlighted that a dispute shall be settled as soon as possible. In this regard, a full case should not take more than two years and three months with the parties' appeal.

4.1. Overview of the WTO Dispute Settlement Body (DSB) and its application to Qatar's complaint

The Dispute Settlement Body (DSB), which consists of all WTO members, has the full responsibility to settle disputes.³⁷ The DSB has an exclusive authority to establish a panel consisting of experts to consider the case, and the rejection or acceptance of the panel's or appellate body's findings or decisions.³⁸ The DSB also monitors the implementation of rulings and recommendations from the panel or appellate body.³⁹ Most importantly, the DSB "has the power to authorize retaliation when a country does not comply with a ruling."⁴⁰

4.1.1. Consultation

The first stage of a WTO dispute settlement is consultation, which is to agree to do something through peaceful dialogue, giving the parties an opportunity to solve the problem amicably. In case consultation fails, there are procedures that the parties must follow. Before taking any other actions, the parties in a dispute are encouraged to talk, and see if they can settle their differences amicably. The responsibility to participate in consultations has been recognized by WTO Panels and Appellate Bodies as a duty.⁴¹ If consultation fails, parties can also request the WTO Director-General to mediate or try to help in any other way.⁴²

In this matter, Qatar has filed complaints with the WTO requesting consultations with KSA, UAE, and Bahrain. It is noteworthy that the complaints gave the three blockading countries a 60-day deadline to participate in consultation over these complaints. Otherwise, the three blockading countries will face litigation in the WTO under the DSB.

The three countries refused to consult, and they have provided different arguments justifying their rejection. For example, the UAE argued that the national security exception supports their actions.

35 Salah Badawi, *UAE loses 15 million dirhams in 15 days*, Lusail News, 21 June 2017, available at lusailnews.qa/article/21/06/2017/500-مليون-ريال-خسائر-الإمارات-خلال-١٥-يوما.

36 Understanding on Rules and Procedures Governing the Settlement of Disputes, World Trade Organization, available at www.wto.org/english/thewto_e/whatis_e/tif_e/dis1_e.htm#top.

37 *Id.*

38 *Id.*

39 *Id.*

40 *Id.*

41 *Id.*

42 *Id.*

4.1.2. Panel

The second stage of the WTO dispute settlement process is the formation of a panel. The complaining country can request the DSB to appoint a panel, only if the consultations fail. It could take up to 45 days for a panel to be appointed, and an additional six months for the panel to issue a conclusion.⁴³ The country “in the dock” can block the creation of a panel once but when the DSB meets for a second time, the panel’s appointment can no longer be blocked unless there is a consensus against appointing the panel.⁴⁴

The panel’s rulings or recommendations are difficult to overturn since it would require a negative consensus by all members to block a decision. The panel’s findings, however, has to be based on the agreements cited.⁴⁵ The panel’s final report should normally be given to the parties of the dispute within six months. In cases of urgency, including those concerning perishable goods, the deadline is shortened to three months.

Before the first hearing, each side in the dispute presents its case in writing to the panel. After the written submissions, the panel holds the first hearing, which consists of the case for the complaining country/countries, and the defense of the responding country/countries. The complaining party, the responding party, and third parties shall make their case at the panel’s first hearing. In this case, Qatar has to ensure they raise WTO principles that allow third parties to join the dispute, such as Article 23 of GATT. Article 22, on the other hand, does not allow third parties to join the dispute.

Additionally, the countries involved will submit written rebuttals and present oral arguments at the panel’s second meeting. If one side raises scientific or other technical matters, the panel may consult experts or appoint an expert review group to prepare an advisory report.

After the hearings, the panel will draft a panel report. The panel will submit the descriptive (factual and argument) sections of its first report to both sides, giving them two weeks to comment. This first draft of the report does not include findings and conclusions. After the first draft, the panel will submit an interim report, including its findings and conclusions, to both sides, giving them one week to ask for a review. The period of review must not exceed two weeks. During that time, the panel may hold additional meetings with the two sides. If the panel decides that the disputed trade measures violate a WTO agreement or obligation, it will recommend that the measures be made to conform with WTO rules. The panel may suggest how this can be implemented by the affected parties. At the end, a final report is submitted to both sides, and circulated to all WTO members three weeks later. The report becomes the Dispute Settlement Body’s ruling or recommendation within 60 days unless a negative consensus rejects it.⁴⁶

4.1.3. Appeal

Both sides can appeal the panel’s ruling.⁴⁷ The appeal should be based on legal allegations. And each appeal will be heard by three members of a permanent seven-member Appellate Body set up by the DSB, and broadly representing the range of WTO memberships. Members of the Appellate Body serve four-year terms and are individuals with recognized standing in the field of law and international trade, and not affiliated with any government.

The appeal can uphold, modify, or reverse the panel’s legal findings and conclusions. Normally, appeals should not last more than 60 days, with an absolute maximum of 90 days. The DSB may accept or reject the Appellate Body’s report within 30 days, and rejection is only possible by negative consensus.⁴⁸

43 Understanding on Rules and Procedures Governing the Settlement of Disputes, *supra* note 36.

44 *Id.*

45 *Id.*

46 *Id.*

47 *Id.*

48 *Id.*

4.1.4. Dispute Timeline

To predict how long the Qatari WTO dispute will take, the below timeline in Table 2 follows the DSB procedures and deadlines.

On 31 July 2017, Qatar filed a complaint with the WTO claiming that KSA, UAE, and Bahrain are applying rules that discriminate against imported and exported goods, services, and intellectual property, and formally requested consultations with the three countries. If the dispute strictly adheres with the DSB procedural timeline, then in less than two years after the filing of the complaint, the dispute panel would have completed the final report. On 22 November 2017, the WTO agreed to establish a dispute settlement body.⁴⁹ A panel can be requested 60 days after a consultation request.⁵⁰ Qatar filed the first request, which the UAE could and did block one time.⁵¹ The second request for a panel then becomes automatic.⁵² However, as of the writing of this report, the WTO had not yet announced the composition of the panel.⁵³ Further, the three countries might submit an appeal after the final report. Without delay, the Appellate Body's report could have been submitted on 24 May 2018, and the DSB could have adopted the appellate report by 23 June 2018, one year and eight months after the complaint was first lodged. However, because of the delay in the composition of the panel, the DSB report will not likely be submitted and adopted until early 2019.

Table 2: Expected Timeline of the Qatar WTO Dispute Without Delay

Qatar's Case Timeline (0 = the start of the case)	Target/Actual Period	Date	Action/Procedure
0		05/06/2017	Closure of borders by the blockading countries
0	60 Days	31/07/2017	Qatar's complaint to the DSB
+1 Month		31/08/2017	Consultation phase (Failure)
+2 Months		31/10/2017	Qatar asks the DSB to establish a panel
	45 Days	12/12/2017	Setting up a panel and appointing panelists
6 Months / 3 Weeks / +11 Months / +1 Year	9 Months (Target is 6-9 Months)	05/01/2018 26/02/2018 25/02/2018	*Final panel report to the parties *Final panel report to WTO members *Panel gives interim report to the parties (Then hands it to the DSB)
+1 Year, 1 Month	60 Days	25/03/2018	APPEAL
+1 Year, 3 Months	60 Days	24/05/2018	Submission of the appellate body report
+1 Year, 4 Months	30 Days	23/06/2018	DSB adopts the reports
+1 Year, 6 Months		22/08/2018	Start of implementation
+1 Year, 11 Months		21/12/2018	First monthly report by the blockading countries to the DSB of the statutes of implementation
+2 Years, 4 Months		19-20/05/2019	The blockading countries sign the new regulations

49 DS526: United Arab Emirates - Measures Relating to Trade in Goods and Services, and Trade-Related Aspects of Intellectual Property Rights, *supra* note 29. See: *WTO sets up panel to review UAE measures on goods, services, IP rights*, World Trade Organization News, 22 November 2017, available at www.wto.org/english/news_e/news17_e/dsb_22nov17_e.htm. See also: William New, *WTO Dispute Panel Set For Qatar IP Case; Appellate Body Appointments Still Stuck*, Intellectual Property Watch, 22 November 2017, available at www.ip-watch.org/2017/11/22/wto-dispute-panel-set-qatar-ip-case-appellate-body-appointments-still-stuck/.

50 *Brief: Qatar WTO Dispute Case: An Issue Of IP Or National Security?*, Intellectual Property Watch, 24 October 2017, available at www.ip-watch.org/2017/10/24/qatar-wto-dispute-case-ip-issue-national-security/.

51 Intellectual Property Watch, *supra* note 49.

52 World Trade Organization News, *supra* note 49.

53 DS526: United Arab Emirates - Measures Relating to Trade in Goods and Services, and Trade-Related Aspects of Intellectual Property Rights, *supra* note 29.

4.2. The role of consultation

Consultation is the key not to take the dispute to a panel. “Under Article 3.7 and 4 of the Dispute Settlement Understanding (DSU), WTO members who wish to settle a dispute should do so between or amongst themselves, making consultations the first and preferred aim and means of disputes settlement under the WTO.”⁵⁴

4.2.1. The importance of consultation

“According to Article 4.5 of the DSU, consultation gives the parties a chance to discuss the issues, bring their views and misunderstandings closer, and find a satisfactory solution without resorting to litigation.”⁵⁵ “Only under the assumption that consultations have failed to produce a satisfactory solution within 60 days, can the complainant request adjudication through a DSB panel as consistent with Article 4.7 of the DSU.”⁵⁶ Even if consultations have failed within the 60-day period, a possibility always remains for parties to resolve the dispute amicably at any stage of the proceeding without resorting to the panel. Consultation, therefore, is an important part of the dispute settlement process, and WTO members have a duty to participate in consultations.

Many disputes do not go further than beyond consultation phase with parties either reaching a satisfactory settlement or the complainant deciding to discontinue the dispute for other reasons. The proven effectiveness of consultation implies that the panel is the second solution, only after consultation fails, and in necessary cases only.

It is noteworthy that only the complaining party has the right to speed up the case and raise it to the panel, if the other party refuses to participate. Additionally, although consultation is the first step in the agreement, it should be noted that consultation does not always resolve the dispute even if the parties agree to consult about one issue and refuse to consult about another. There are numerous examples of cases where consultations continued to play a pivotal role throughout the dispute, cases that were resolved after consultation, and cases where consultations fail.

In DS207, *Chile - Price Band System and Safeguard Measures Relating to Certain Agricultural Products* case,⁵⁷ after a tariff reclassification in 1999, the Chilean price band system resulted in higher customs duties for wheat, wheat flour, sugar, and edible vegetable oils from Argentina. The Chilean price band system could be adjusted to international price developments if the price fell below a lower price band or rose beyond a higher price band.⁵⁸ At the time, Argentina felt threatened in this sector. The case became the first legally handled dispute with a regional partner to be submitted to the WTO. The DSB Appellate Body concluded that Chile’s price band system violated Art. 4.2.⁵⁹ Chile tried to comply with the DSB’s recommendations by amending the price band. However, the DSB panel concluded that Chile had failed to implement the recommendations and rulings of the DSB in the original dispute.⁶⁰ What is noteworthy about the case is that consultations continued throughout the proceedings due to the willingness of the parties.⁶¹

In DS507, *Thailand - Subsidies concerning Sugar*⁶² case, on 4 April 2016, Brazil requested consultations

54 Dispute Settlement System Training Module, Chapter 6, World Trade Organization, available at www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c6s2p1_e.htm.

55 *Id.*

56 *Id.*

57 DS207: *Chile - Price Band System and Safeguard Measures Relating to Certain Agricultural Products*, World Trade Organization, available at www.wto.org/english/tratop_e/dispu_e/cases_e/ds207_e.htm.

58 *Id.*

59 *Id.*

60 *Id.*

61 *Id.*

62 DS507: *Thailand - Subsidies Concerning Sugar*, World Trade Organization, available at www.wto.org/english/tratop_e/dispu_e/cases_e/ds507_e.htm.

with Thailand regarding the alleged subsidies provided by Thailand to the sugar sector, which were inconsistent with Thailand's obligations under Articles 3.2, 3.3, 6.3, 8, 9.1 and 10.1 of the Agreement on Agriculture, and under Articles 3.1(a), 3.2, 5(c) and 6.3 of the SCM Agreement. On 15 April 2016, the European Union joined the consultations, and nearly at the same time on 18 April 2016, Guatemala joined the consultations. To avoid a WTO challenge, Thailand finalized a plan to overhaul its sugar policy. By 3 November 2016, government officials and sugar industry representatives from Brazil and Thailand reportedly met in Brasilia to resolve the dispute.

In DS534, *United States - Anti-Dumping Measures Applying Differential Pricing Methodology to Softwood Lumber from Canada*⁶³ case, Canada requested consultations with the United States on 28 November 2017 with respect to the United States' anti-dumping measures applying the Differential Pricing Methodology to softwood lumber products from Canada under article 1, 2.1, 2.4 and 2.4.2 of the Anti-Dumping Agreement and VI:1 and VI:2 of the GATT 1994. In this case, the request for consultation with the United States failed, and Canada requested for the establishment of a DSB panel. After objections from the United States, the DSB ultimately agreed to the establishment of a panel. Afterwards, a number of member states reserved their third party rights to participate in the case.

Similarly, in the case of Qatar, after the consultations with the UAE failed, the WTO agreed to form a panel.⁶⁴ Notably, twenty countries reserved their third-party rights to participate in the panel proceedings, including Afghanistan, Australia, Bahrain, Canada, China, Egypt, the European Union, Guatemala, Honduras, Japan, Kazakhstan, Korea, Norway, the Philippines, the Russian Federation, Saudi Arabia, Singapore, Chinese Taipei, Ukraine, the United States, and Yemen.⁶⁵

4.2.2. The states refuse the consultation request

Refusing consultation is a scenario that can happen when one or more of the blockading countries refuse to engage in consultations with Qatar. So far, the blockading countries have refused Qatar's consultation request.

As mentioned earlier, consultation is the first stage in settling disputes, by submitting a written request within 60 days according to DSU Article 4.4. Further, the consultation does not take more than 30 days after the request. A contracting state may request for consultation under Article XXII and Article XXIII of GATT. However, there is a different consultation procedure in the GATT than the procedures in the DSB. This difference is determined in the participation of a third state (a state that is an outsider to the dispute) in the consultations. Article XXII of GATT allows such participation without conditions, while the DSB allows a third-party country to participate upon a request only when it has a substantial trade interest in the ongoing consultations.⁶⁶

If the parties fail to consult, a submission of a formal request to investigate the problem is issued. In case of refusal, as in the case of the UAE, a request for a panel must be submitted within 20 days. The director general of the WTO will decide on their submission, and if they find that the consultations failed, the complaining country can apply for the establishment of a panel. The UAE blocked the first request for a panel, but could not block the second request for a panel.⁶⁷ Once the composition of the panel is completed, the procedures are supposed to move fast, where most panels have two hearings and at least two major briefs submission in the first few months. Here, the composition

63 DS534: *United States - Anti-Dumping Measures Applying Differential Pricing Methodology to Softwood Lumber from Canada*, World Trade Organization, available at www.wto.org/english/tratop_e/dispu_e/cases_e/ds534_e.htm.

64 Eleonora Rosati, *WTO establishes panel to examine Qatar's complaint against UAE*, The IPKAT, 27 November 2017, available at ipkitten.blogspot.qa/2017/11/wto-establishes-panel-to-examine-qatars.html.

65 World Trade Organization News, *supra* note 49.

66 *Dispute Settlement Procedures under WTO*, Chapter 16, Ministry of Economy, Trade and Industry, Japan, available at www.meti.go.jp/english/report/downloadfiles/2012WTO/02_16.pdf.

67 Intellectual Property Watch, *supra* note 49.

of the panel has been delayed, and the WTO has not announced the composition of the panel more than six months after the WTO's decision to establish the panel on 22 November 2017.

Upon composition, the panel members serve in their individual capacities and do not receive instructions from any government or country.⁶⁸ The panel takes between 45 days to 6 months to conclude its work. This way, the two parties cannot influence the panel's members in their decision-making process, and cannot contact or give them direct information for their benefit. Although there is no punishment for refusing consultations, the members of WTO might take the refusal in consideration going through the case procedures and the rulings.

In Qatar's case, we find that after 60 days of the blockade, Qatar requested for consultation under the WTO. The KSA, the UAE, and Bahrain, however, refused consultation with Qatar giving different arguments, including the national security exception. Therefore, Qatar requested speeding up the procedure in forming the panel.

In the first meeting by WTO members, the blockading countries could request to "block" the demand to establish a panel. Therefore, if a member votes against establishing a panel in the first meeting held by the WTO members, a panel would not be established. In this case, the UAE, joined by Saudi Arabia and Bahrain, blocked the establishment of the panel at the first meeting.⁶⁹ Later, in the second meeting of WTO members, Qatar restated a second request for the establishment of a panel (in one or two months). This request could not be "blocked". After the WTO members met for a second time, members cannot vote or decide against establishing a panel. On 22 November 2017, the WTO established the DSB panel.

The final report of the panel should be given to the parties within six (6) months, but in case of urgency the deadline could be shortened to three (3) months.⁷⁰ This report describes the conclusions and the panel's findings.⁷¹ "The panel is required to issue a report within 90 days after the date when disagreement is referred to the panel."⁷²

4.3 Cases Similar to Qatar's Case

4.3.1 Consultation: these cases stopped in the consultation phase

Some cases raised with the WTO were resolved at the consultation phase. In DS6, *United States - Imposition of Import Duties on Automobiles from Japan under Sections 301 and 304 of the Trade Act of 1974*, Japan requested consultations with the United States on 17 May 1995 "alleging that certain import surcharges on automobiles from Japan violated Articles I and II of the GATT 1994."⁷³ However, the case ended at the consultation stage after Japan withdrew from the case. The Japanese government stated on 19 July 1995 that it would no longer pursue the dispute settlement procedures initiated in its request for consultations with the United States.⁷⁴

In another case, the dispute also stopped at the consultation phase after the complainant, Singapore, withdrew the complaint. In DS2, *Malaysia - Prohibition of Imports of Polyethylene and Polypropylene* case, Singapore requested consultations with Malaysia on 10 January 1995 regarding the prohibition of imports of polyethylene and polypropylene instituted and maintained by the Malaysian Government. "On 16 March 1995, Singapore requested the establishment of a panel. At its meeting on 29 March

68 Understanding on Rules and Procedures Governing the Settlement of Disputes, *supra* note 36, Chapter 3.

69 World Trade Organization News, *supra* note 49.

70 Understanding on Rules and Procedures Governing the Settlement of Disputes, *supra* note 36, Chapter 3.

71 Dispute Settlement Procedures under WTO, *supra* note 66.

72 *Id.*

73 DS6: United States - Imposition of Import Duties on Automobiles from Japan under Sections 301 and 304 of the Trade act of 1974, World Trade Organization, available at www.wto.org/english/tratop_e/dispu_e/cases_e/ds6_e.htm.

74 *Id.*

1995, the DSB deferred the establishment of a panel. At its meeting on 10 April 1995, Singapore decided not to request the establishment of a panel at that meeting but was not in a position to withdraw its complaint.”⁷⁵ “At the DSB meeting on 19 July 1995, Singapore announced that it had decided to withdraw its complaint completely.”⁷⁶

4.3.2 The Panel: these cases failed in consultations and applied for the establishment of a panel

One case illustrates the scenario where a consultation request is filed, and a subsequent request for the establishment of a panel filed as well. In DS39, *United States - Tariff Increases on Products from the European Communities* case, the European Communities (EC) requested for consultations on 17 April 1996, claiming that the measures taken under the Presidential Proclamation No. 5759 of 24 December 1987 (retaliation against the “hormones” directive), which resulted in tariff increases on products from the European Communities, are inconsistent with GATT Articles I, II and XXIII, as well as DSU Articles 3, 22 and 23. The EC subsequently requested the establishment of a panel on 19 June 1996. In its request, the EC further claimed that the United States apparently failed to “ensure the conformity of its laws, regulations and administrative procedures with its obligations” under the WTO, with respect to the application of Section 301 of the 1974 Trade Act in this case (WTO Agreement Article XVI:4).⁷⁷ “The United States withdrew the measure on 15 July 1996, and the EC decided not to pursue its panel request, reserving its rights to reconvene, if necessary, a further meeting of the DSB at an early date.”⁷⁸

4.3.3 Cases that completed all the DSB procedures

A limited number of cases complete the DSB process. In DS165, *United States - Import Measures on Certain Products from the European Communities* case, the EC requested consultations with the US on 4 March 1999. EC later requested the establishment of a panel on 11 May 1999, and the DSB deferred the establishment of a panel. Later, the Appellate Body upheld the panel’s finding that the measure at issue in the dispute was no longer in existence, and did not make any recommendation to the DSB. At its meeting of 10 January 2001, the DSB adopted the Appellate Body’s report and the Panel report, as modified by the Appellate Body report.⁷⁹

In DS2, *United States - Standards for Reformulated and Conventional Gasoline* case, Venezuela and Brazil requested separate consultations in 1995. The complainants alleged that a US gasoline regulation discriminated against complainants’ gasoline in violation of GATT Articles I and III and Article 2 of the Agreement on Technical Barriers to Trade (TBT).⁸⁰ On Venezuela’s request, the DSB established a panel at its meeting, and the panel was composed on 26 April 1995. The DSB also established a panel at Brazil’s request on 19 June 1995. Despite the US’s appeal, the Appellate Body issued its report, modifying the panel report on the interpretation of GATT Article XX(g). “The Appellate Report, together with the panel report as modified by the Appellate Report, was adopted by the DSB on 20 May 1996. The US announced implementation of the recommendations of the DSB as of 19 August 1997, at the end of the 15 month reasonable period of time.”⁸¹

75 DS1: *Malaysia - Prohibition of Imports of Polyethylene and Polypropylene*, World Trade Organization, available at www.wto.org/english/tratop_e/dispu_e/cases_e/ds1_e.htm.

76 *Id.*

77 DS39: *United States - Tariff Increases on Products from the European Communities*, World Trade Organization, available at www.wto.org/english/tratop_e/dispu_e/cases_e/ds39_e.htm.

78 *Id.*

79 DS165: *United States - Import Measures on Certain Products from the European Communities*, World Trade Organization, available at www.wto.org/english/tratop_e/dispu_e/cases_e/ds165_e.htm.

80 DS2: *United States - Standards for Reformulated and Conventional Gasoline*, World Trade Organization, available at www.wto.org/english/tratop_e/dispu_e/cases_e/ds2_e.htm.

81 *Id.*

5. National Security Exceptions (NSE)

5.1. Introduction

The National Security Exception (NSE) was derived from the “general exceptions” clause. This clause was included in the Commercial Policy section, which is in the US proposed draft that was issued in November 1945. This clause was then established by the United States in 1946 and it was included in the “Suggested Charter” for International Trade Organization Agreement of the United Nations.⁸² The General Exception clause was contained in article (32) of the London draft⁸³ and article (37) of the New York draft.⁸⁴

Subsequently, the GATT also developed the General Exceptions clause. The Geneva Draft in October 1947 separated the clause into two different articles. The first is Article (20), which was put under the General Exception, and the second is Article (21), which is called the Security Exceptions.

The WTO principles mainly aim to avoid any discriminatory act and to liberalize trade by lowering the cost of tariffs or generally by taking down trade barriers.⁸⁵ On the other hand, there are provisions that relieve a WTO member from its trade related obligations towards another member. One of these provisions is the NSE, which is included in GATT. The NSE states that

“Nothing in this Agreement shall be construed (a) to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests; or (b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests (i) relating to fissionable materials or the materials from which they are derived; (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment; (iii) taken in time of war or other emergency in international relations; or (c) to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.”⁸⁶

The TRIPS agreement includes the same text in article (73)⁸⁷ and it is in article (14) of GATS.⁸⁸

5.2. Interpretation of the NSE

Several issues have been raised regarding the NSE under the GATT. The use of the phrase “essential security interests” under subparagraph (b) of Article 21 of GATT shows how broadly the article may be interpreted and used in cases that might be raised in the DSB. As such, Article 21 has critical and important effects among the WTO members.

The NSE is known to be self-judging because of the phrase “it considers” in subparagraph (b). The fact that the Security Exceptions is self-judged by states invoking the exception allows a state to be released from any provisions under the WTO agreements without providing documents or information to support their claims. It could encourage a member to not reveal its political motives when it violates WTO

82 Ji Yeong Yoo & Dukgeun Ahn, *Security Exceptions in the WTO System: Bridge or Bottle-neck for Trade and Security?*, *Journal of International Economic Law* 19.2 (2016): 417-444, SSRN, Web. 5 June 2018.

83 United Nations Economic and Social Council, Report of the First Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, E/PC/T/33, 31 October 1946.

84 GATT Analytical Index, Article XXI, available at www.wto.org/english/res_e/booksp_e/gatt_ai_e/art21_e.pdf.

85 Understanding the WTO, World Trade Organization, available at www.wto.org/english/thewto_e/whatis_e/what_stand_for_e.htm.

86 GATT 1947: General Agreement on Tariffs and Trade 1947, 1 January 1948, 55 U.N.T.S. 194 [hereinafter *GATT 1947*], available at https://www.wto.org/english/docs_e/legal_e/gatt47_e.pdf.

87 TRIPS Agreement, *supra* note 20.

88 GATS, *supra* note 14, Art. XVIII.

principles. For example, if a member wants to be released from its obligation by discriminating against another member in trade aspects, it could justify its measures by claiming “essential security interests”. This leads to another issue, which is the abuse of the NSE as an excuse to violate WTO principles.

5.3. Cases Invoking the NSE

Table 3 below indicates cases where WTO members have raised the NSE provision. The table shows that all of the cases used subparagraph (b) (ii) or (iii).⁸⁹

Table 3: GATT Disputes Invoking the NSE

GATT disputes invoking *Security Exceptions*

Request for consultation	Case name	Doc./Case number	Complainant	Invoked provision
1949	^a US – Issue of export licenses	CP.3/SR22-11/28	Czechoslovakia	Art.XXI (b) (ii)
1951	US – Suspension of obligations between the US and Czechoslovakia	CP.5/5-II/36	Czechoslovakia	Art.XXI (b) (iii)
1954	Peru – Prohibition of Czechoslovakian imports	L/2844	Czechoslovakia	Art.XXI (b) (iii)
30 April 1982	EC, Australia, Canada – Trade restrictions affecting Argentina applied for non-economic reasons	C/W/402	Argentina	Art.XXI (b) (iii)
11 May 1983	^a US – Imports of sugar from Nicaragua	BISD/31S/67	Nicaragua	Art.XXI (b) (iii)
6 May 1985	^a US – Trade measures affecting Nicaragua	L/6053	Nicaragua	Art.XXI (b) (iii)
13 January 1992	EEC – Trade measures taken by the EC against the Socialist Federal Republic of Yugoslavia	L/6948	Yugoslavia	Art.XXI (b) (ii), (iii)

^a indicates the existence of a panel report.

In 1961, Ghana boycotted Portuguese goods, and it justified its action under Article 21 of the GATT because the Portuguese colonial government was at war in the African continent, and Ghana was concerned with its “essential security interests”. The DSB panel did not accept this justification because the NSE should be narrowly interpreted.⁹⁰

Moreover, Sweden in 1975 imposed restrictions for importing certain types of footwear justifying it by saying that it “had become a critical threat to the emergency planning of Sweden’s economic defense as an integral part of its security policy.”⁹¹ Sweden at that time was facing a decline of domestic production of footwear. The restriction was implemented by Sweden to respond to the threat of the state’s security policy regarding domestic defense. Eventually, the DSB did not rule for Sweden since the application of article 21(b) was broadly made.⁹²

5.4. The justification of the blockading countries

According to IP Watch, Bahrain, Saudi Arabia, and the UAE justified their actions by invoking WTO principles under Article (73) of TRIPS, Article (14) of GATS, and Article (21) of GATT.⁹³ In other words, the blockading countries are asserting the NSE. The blockading countries, however, must have strong

89 *Security Exceptions in the WTO System: Bridge or Bottle-neck for Trade and Security?*, *supra* note 82.

90 Raj Bhala, *National Security and International Trade Law: What the GATT Says and What the United States Does*, University of Pennsylvania Journal of International Economic Law 19.2 (1998): 263-317, PennLawJournals, Web. 5 June 2018.

91 Roger P. Alford, *The Self-Judging WTO Security Exception*, Utah Law Review 3 (2011): 697-759, Notre Dame Law School, Web. 5 June 2018.

92 Michael Woods, *GATT Article XXI’s National Security Exception - The Ultimate Trade Policy Conundrum*, Woods Fortune LLP, 9 March 2018, available at www.wl-tradelaw.com/gatt-article-xxis-national-security-exception-the-ultimate-trade-policy-conundrum/.

93 Intellectual Property Watch, *supra* note 50.

justifications to use the NSE provisions. Furthermore, the panel has to implement the provisions narrowly as it did with the *Ghana* and *Sweden* cases.

Moreover, as mentioned previously in this paper, the blockading countries are claiming that Qatar is financially supporting terrorist organizations. However, the lack of evidence to support their arguments may lead the DSB to reject their claim. In addition, these countries might use the NSE as a pretext because relying on the NSE alone may cause the action of the blockade to be illegal and the blockading countries will have to discard their actions and compensate Qatar.

There has also been an issue raised concerning the lack of good faith by the blockading countries. The UAE has refused to participate in the consultations, demonstrating a lack of good faith. This means that the UAE must have an “essential security interest” that must be protected without relying on this provision and abusing it. In addition, the “essential security interest” should be reasonable and actually related to the security interest of the UAE.

In addition, the list of the demands made by the three blockading countries could be interpreted as bad faith. The list of the 13 demands has been made to damage the economy and the reputation of Qatar. Moreover, the claim of Qatar supporting terrorism and the blockading countries’ national security, tying it with Iran and Qatar’s military cooperation with Turkey, raises a question of why the actions were limited to Qatar only. Members of the WTO are bound by the principle of non-discrimination, meaning that the measures should have also been taken against Iran and Turkey in order not to “violate the principle of good faith”.⁹⁴

6. The WTO retains jurisdiction over Article XXI of GATT

Article II(1) of the Marrakesh Agreement states that the jurisdiction or scope of the WTO is “the conduct of trade relations among (WTO) Members”.⁹⁵ In other words, the coverage of existing as well as potentially new WTO treaties is, at least under the current rules, limited to trade relations. This means that whenever a dispute concerns trade and other trade related issues, the WTO retains jurisdiction. Since Qatar and all the blockading countries are WTO members and the actions taken against Qatar are all matters that affect trade, the WTO has jurisdiction over the dispute.

The blockading countries may argue, however, that the WTO lacks jurisdiction overall whenever Article XXI of GATT is raised. Article XXI allows its members to breach GATT obligations for national security reasons.⁹⁶ Article XXI states that the GATT will not prevent a WTO member “from taking any action which it considers necessary for the protection of its essential security interests . . . taken in time of war or other emergency in international relations.”⁹⁷ Article XXI allows countries to solve issues concerning their national security without revealing sensitive issues to third parties or a panel.⁹⁸

However, the fact that a WTO member may take any action to protect “essential security interests” that “it considers necessary” leaves open the question of whether the use of Article XXI is subject to review by a WTO panel. There is an agreement that Article XXI is self-judging. This means that WTO members have the ability to determine by their own what constitutes “essential security interests” and take actions accordingly.⁹⁹

The blockading countries could argue that the WTO lacks jurisdiction over the entire dispute because of

94 Johannes Fahner, *Qatar under Siege: Chances for an Article XXI Case?*, Blog of the European Journal of International Law, 9 January 2018, available at www.ejiltalk.org/qatar-under-siege-chances-for-an-article-xxi-case/.

95 WTO Agreement: Marrakesh Agreement Establishing the World Trade Organization, 15 April 1994, 1867 U.N.T.S. 154, 33 I.L.M. 1144 (1994) [hereinafter *Marrakesh Agreement or WTO Agreement*].

96 Peter Lindsay, *The Ambiguity of GATT Article XXI: Subtle Success or Rampant Failure*, Duke Law Journal 52 (2003): 1277-1313, Duke Law Journal, Web. 11 January 2018.

97 GATT 1994: General Agreement on Tariffs and Trade 1994, 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187, 33 I.L.M. 1153 (1994) [hereinafter *GATT 1994*].

98 Duke Law Journal, *supra* note 96.

99 Woods Fortune LLP, *supra* note 92.

Article XXI of GATT. While the WTO's jurisdiction over Article XXI remains unsettled, scholars agree that the WTO has jurisdiction concerning the invocation of Article XXI under the dispute settlement provision of Article XXIII of GATT.¹⁰⁰

There is also an argument that the WTO lacks jurisdiction over national security related issues because it only involves minor trade concerns.¹⁰¹ The blockade imposed on Qatar, however, does not involve a minor but rather a major trade dispute because it isolates Qatar, and applies an economic burden on it by preventing it from engaging in trade by sea, air, and land. Additionally, the WTO does have jurisdiction over disputes containing both trade and non-trade related issues. Under Article 23 of the DSU, "[w]hen Members seek the redress of a violation of obligations or other nullification or impairment of benefits under the covered agreements . . . they shall have recourse to, and abide by, the rules and procedures of this Understanding."¹⁰² WTO jurisprudence supports the view that the mandatory language of Article 23 suggests that parties claiming an impairment of GATT benefits must bring these claims before the WTO dispute settlement bodies.¹⁰³

According to a decision by the GATT Council in *Sweden - Import Restrictions on Certain Footwear*, Article XXI does not allow states to rely arbitrarily on Article XXI claiming a need to protect security interests.¹⁰⁴ The Council clearly noted that some cases are ineligible for the application of the security exceptions, despite its all-embracing and overarching power over the other provisions of the Agreement.¹⁰⁵ Additionally, the national security exception should be invoked only in rare and exceptional circumstances and should be used as a last resort.

According to scholars, security exception cases under the WTO system are designed procedurally so that they are subject to judicial review.¹⁰⁶ As such, a DSB panel and Appellate Body should examine whether responding party's use of Article XXI is reasonable or constitutes an apparent abuse. The WTO should have the right to review the use of the security exceptions based on the standard of good faith. Doing so will allow the WTO to determine if the responding country has implemented measures because of national security or other objectives. Otherwise, countries may abuse this exception and this could easily threaten the credibility of the entire WTO system.¹⁰⁷

7. Remedies

The development of the international community has made nations prefer resolving international conflicts through peaceful means of dispute resolution rather than through trade or physical wars. These means are the first recourse to resolve disputes before any use or show of force. A range of peaceful means has emerged that can be divided into diplomatic means, including negotiations, good offices, mediation, commissions of inquiry, conciliation; and political means, which has materialized in the role of international organizations in conflict resolution. The last type of peaceful settlement of international disputes is arbitration. Arbitration is considered as one of the oldest means of settling disputes for which communities resorted. Loukas Mistelis defines these principles as a set of procedures that substitutes for courts in the settlement of conflicts, and often requires the intervention of a third and impartial person.¹⁰⁸

100 Duke Law Journal, *supra* note 96.

101 *Id.*

102 DSU, Dispute Settlement Rules: Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 U.N.T.S. 401, 33 I.L.M. 1226 (1994) [hereinafter *DSU*].

103 Duke Law Journal, *supra* note 96.

104 C/M/109: Sweden - Import Restrictions on Certain Footwear, General Agreement on Tariffs and Trade, available at www.wto.org/gatt_docs/English/SULPDF/92170660.pdf.

105 *Id.*

106 Peter Van den Bossche & Werner Zdouc (eds.), *The Law and Policy of the World Trade Organization: Text, Cases, and Materials*, (Cambridge University Press, 2013).

107 Blog of the European Journal of International Law, *supra* note 94.

108 Loukas Mistelis, *A.D.R in England and Wales*, ADR Bulletin: Vol. 6: No. 3, Article 6.

The GATT system of dispute settlement was founded upon two principal articles: Consultation (Article XXII) and Nullification or Impairment, i.e. compensation (Article XXIII). The purpose of these principles is to find a solution before resorting to arbitration, either by consultations and negotiations that may reach a final solution that satisfies all parties, while ensuring that common interests among them are preserved.

First, there are several obvious reasons for preferring the compliance remedy. It restores the equilibrium of the international economic order under the terms of the prior agreements of the parties concerned. Once the offending measure has been terminated or corrected, a good relationship among the disputants will also be restored. Other remedies may have secondary consequences that cannot be offset easily and that may linger well beyond the appropriate time. One weakness in a pure compliance remedy, however, is that the aggrieved party may have suffered injury during the period of violation for which no restitution for damages are imposed on the offending party. Unfortunately, a compliance-centered remedial system does not deal effectively with such matters.¹⁰⁹

With compliance, controversy may also arise over whether the offending party has done enough to meet its obligations under GATT. If such controversy continues, the DSB will refer the matter to the original panel, which is expected to report its decision on the question to the DSB within 90 days.¹¹⁰

Second, the nature of compensation, the suspension of concessions, and retaliation are intended to be temporary measures. They are only implemented if the recommendations and rulings of the DSB are not acted upon within a reasonable time. Where compensation and the suspension of concessions are sanctioned by the DSB, a respondent has the alternative option of withdrawing from the WTO and its associated treaty obligations within 60 days.

Neither compensation nor the suspension of concessions, however, can be applied retrospectively. This means that there is no recompense for any harm caused by an illegal trade measure prior to and during the implementation of dispute procedures. Where nullification or impairment is ruled to have occurred, a respondent may choose either compensation or the suspension of concessions as the form of restitution.

Compensation normally takes the form of tariff reductions and is purely voluntary since the suspension of concessions is the default means of restitution. Any compensation must satisfy the requirement that it is compatible with the provisions of the WTO. Compensation is rarely used, however, because most tariff reductions are not consistent with the requirement of MFN treatment (WTO, 2004).

Third, regarding consultation under Article XXII and Article XXIII, Article XXII covers any matter affecting the operation of GATT, while the coverage of consultation under Article XXIII is limited to certain matters. Specifically, Article XXIII provides that a contracting party may make representations or proposals to another contracting party if the former party considers that any benefit accruing to it directly or indirectly under GATT is being nullified or impaired or that the attainment of any objective of GATT is being impeded as the result of: (a) the failure of another contracting party to carry out its obligations under GATT, or (b) the application by another contracting party of any measure, whether or not it conflicts with the provisions of GATT, or (c) the existence of any other situation.¹¹¹

Thus, disputes over “nullification or impairment of any benefit otherwise to accrue under GATT” may be brought to consultation under Article XXIII. Another point of difference between the two concepts of consultation is the participation of a third country; it is permitted only with respect to consultations under Article XXII. Similar differences can be seen in the relation between Article XXII and Article XXIII of GATS.¹¹²

After Qatar filed requests for consultations with Bahrain, Saudi Arabia, and the UAE, the blockading countries under article XXII refused the consultations, claiming that Qatar sponsored terrorism and invoked the NSE. The WTO stated that the UAE had refused consultations with Qatar.¹¹³ Later on, Saudi Arabia and

¹⁰⁹ Curtis Reitz, *Enforcement of the General Agreement on Tariffs and Trade*, *University of Pennsylvania Journal of International Economic Law* 17.2 (1996): 555-603, PennLawJournals, Web. 14 December 2017.

¹¹⁰ *Id.*

¹¹¹ Dispute Settlement Procedures under WTO, *supra* note 66.

¹¹² *Id.*

¹¹³ *Qatar asks WTO to adjudicate on UAE trade dispute*, Gulf Times, Gulf Times Commercial Press, 12 October 2017, available at www.gulf-times.com/story/567211/Qatar-asks-WTO-to-adjudicate-on-UAE-trade-dispute.

Bahrain rejected negotiations with Qatar at the WTO.¹¹⁴ Qatar requested consultations with the blockading countries as a procedural requirement under the WTO's dispute settlement process before going to litigation. Whatever the reasons and grounds of the blockading countries, the blockade of land, sea, and air imposed without the consent of the United Nations is an arbitrary act, unjustified and with serious consequences, all of which constitute a violation of the freedom of trade guaranteed by international trade agreements.

Arbitration is the last step in the dispute resolution process. Moreover, the panel can order the parties to go through the process of arbitration under article 21.3 of DSU¹¹⁵. It is important to mention that arbitration will identify the violations and allow the complaining party to engage in WTO sanctioned countermeasures. Arbitration will eventually benefit Qatar by forcing the blockading countries to talk because Qatar will most likely have a higher success in arbitration. Furthermore, the countries of the blockade have taken unilateral measures against Qatar, which is a sovereign state, without reference to the dispute resolution mechanisms agreed upon in the Riyadh Agreement of 2014, as well as the values of neighborhood and historical relations common among the countries of the region.¹¹⁶

8. Conclusion

Through this study, we find that there is a relation between the violations by the three blockading countries and the WTO agreements. The WTO works to preserve the rights of signatory countries by imposing procedures that should be followed in case of a dispute.

The first step in the dispute settlement process is the most important because parties must write a request for consultation to the DSB regarding the dispute. After 60 days, if the responding parties reject consultation, the complaining parties can request for a DSB panel within 30 days after the rejection. The request for a panel must be written and include whether the consultation was rejected, failed, or on hold.

The panel decides the dispute and consists of three to five experts from different countries, serving in individual capacities and unaffiliated with any government or country. Before making a decision, the panel holds two meetings and writes two briefs or reports. In the final report, the panel gives the parties three weeks to review the report and then sends the decision to all WTO members. Any of the parties can appeal the panel's ruling.

In Qatar's WTO complaint against the three blockading countries, Qatar followed regular WTO procedures. However, the consultations failed because the three responding countries do not want to have a consultation with Qatar, and cited the NSE. The next step is take the dispute to the panel, where the panel will likely rebuke the responding countries for failing in their duty to consult as WTO members. The panel will also have to decide the issue of the NSE. This paper argues that, while the defense remains controversial, it is not absolute, and cannot be claimed as a pretext.

The blockading countries submitted a list of demands that would destroy the sovereignty and independence of Qatar and turn it into an entity without sovereign will and independence. These blockading countries have taken illegal measures that constitute grave violations of trade and economic agreements under the WTO. Despite the allegations of the blockading countries, Qatar has been willing to talk and follow international norms. Qatar aims to resolve the trade disputes by using legal means, and above all, by way of consultations since it is a part of WTO regulations, which promotes solving disputes by mutual consent before turning to litigation.

114 *Qatar advances Gulf neighbours boycott case at WTO*, Dunya News, 13 October 2017, available at dunyanews.tv/en/World/409585-Qatar-advances-Gulf-neighbours-boycott-case-at-WTO.

115 *Dispute Settlement: World Trade Organization*, available at www.wto.org/english/tratop_e/dispu_e/arbitrations_e.htm.

116 *Closing Qatar's Airspace is a Violation of International Laws*, Al Sharq News, 5 July 2017, available at www.al-sharq.com/news/details/498628.

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- Dispute Settlement: World Trade Organization, www.wto.org/english/tratop_e/dispu_e/arbitrations_e.htm.
- DS1: Malaysia - Prohibition of Imports of Polyethylene and Polypropylene, World Trade Organization, www.wto.org/english/tratop_e/dispu_e/cases_e/ds1_e.htm.
- DS165: United States - Import Measures on Certain Products from the European Communities, World Trade Organization, www.wto.org/english/tratop_e/dispu_e/cases_e/ds165_e.htm.
- DS2: United States - Standards for Reformulated and Conventional Gasoline, World Trade Organization, www.wto.org/english/tratop_e/dispu_e/cases_e/ds2_e.htm.
- DS207: Chile - Price Band System and Safeguard Measures Relating to Certain Agricultural Products, World Trade Organization, www.wto.org/english/tratop_e/dispu_e/cases_e/ds207_e.htm.
- DS39: United States - Tariff Increases on Products from the European Communities, World Trade Organization, www.wto.org/english/tratop_e/dispu_e/cases_e/ds39_e.htm.
- DS507: Thailand - Subsidies Concerning Sugar, World Trade Organization, www.wto.org/english/tratop_e/dispu_e/cases_e/ds507_e.htm.
- DS526: United Arab Emirates - Measures Relating to Trade in Goods and Services, and Trade-Related Aspects of Intellectual Property Rights, World Trade Organization, www.wto.org/english/tratop_e/dispu_e/cases_e/ds526_e.htm.
- DS527: Bahrain - Measures Relating to Trade in Goods and Services and Trade-Related Aspects of Intellectual Property Rights, World Trade Organization, www.wto.org/english/tratop_e/dispu_e/cases_e/ds527_e.htm.
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- DS6: United States - Imposition of Import Duties on Automobiles from Japan under Sections 301 and 304 of the Trade Act of 1974, World Trade Organization, www.wto.org/english/tratop_e/dispu_e/cases_e/ds6_e.htm.
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