



NEAR EAST UNIVERSITY
INSTITUTE OF GRADUATE STUDIES
DEPARTMENT OF INTERNATIONAL LAW

**(REFORMATION OF THE IRAQI INTELLECTUAL PROPERTY LAW
AFTER 2003 AS AN ATTEMPT TOWARDS JOINING THE WORLD
TRADE ORGANIZATION - A COMPARATIVE STUDY)**

PhD THESIS

Ali Taha Akrem TOUGHRAMACHI

Nicosia

January, 2023

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Supervisor

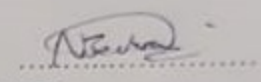
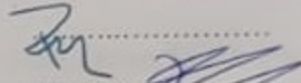
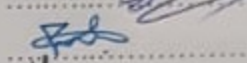
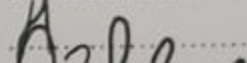
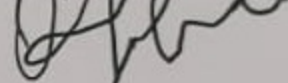
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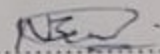
Approval

We certify that we have read the thesis submitted by Ali Taha Akrem Toughramachi titled **“Reformation of the Iraqi Intellectual Property Law after 2003 as an Attempt Towards Joining the World Trade Organization - A Comparative Study”** and that in our combined opinion it is fully adequate, in scope and in quality, as a thesis for the degree of PhD in international law.

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Declaration

I hereby declare that all information, documents, analysis and results in this thesis have been collected and presented according to the academic rules and ethical guidelines of Institute of Graduate Studies, Near East University. I also declare that as required by these rules and conduct, I have fully cited and referenced information and data that are not original to this study.

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25 /January/2023

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Ali Taha Akrem Toughramachi

Abstract

Reformation of the Iraqi Intellectual Property Law after 2003 as an Attempt Towards Joining the World Trade Organization - A Comparative Study

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The World Trade Organization (WTO) has a vital role in organizing trade relations through the conclusion of multilateral international trade agreements. These agreements are a vital source of international law and reducing impediments to trade among WTO members. Given these benefits, non-member countries regularly attempt to join the WTO. Iraq is currently one of those non-member countries.

The research is an analytical study that explains how Iraqi law was amended post-2003 in an effort to join the WTO, describes the role of the TRIPS as well as Iraqi laws after the occupation by the coalition authority in 2003 to protect intellectual property rights (IPR) and makes a comparison between them to clarify the extent to which Iraqi law is compatible with the agreement. It also refers to the TRIPS as one of the obstacles preventing Iraq's accession to the WTO and compares Iraqi intellectual property (IP) legislation with other Arab countries' legislation that has acceded to the WTO.

The study concludes that although these reforms enacted by the Coalition Provisional Authority (CPA) following 2003 and parliament there are still legal obstacles to Iraq's accession to the WTO. The research recommends that the Iraqi legislature amend IP laws or any other laws that are in violation of the TRIPS or WTO standards and submit them to the organization for review after amendment and re-entry for another round of membership consideration.

Key Words: iraqi intellectual property laws, world trade organization, arab countries law, international agreements, coalition provisional authority.

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List of Abbreviations

BC:	Berne Convention
CPA:	Coalition Provisional Authority
DR:	Doha Round
DSB:	Dispute Settlement Body
DSU:	Dispute Settlement Understanding
EC:	European Committees
EU:	European Union
GATT:	General Agreement on Tariffs and Trade
GC:	General Council
HC:	Havana Charter
ICs:	Integrated Circuits
IDs:	Industrial Designs
IMF:	International Monetary Fund
IP:	Intellectual Property
IPIC:	Treaty on Intellectual Property in Respect of Integrated Circuits (Washington Treaty)
IPR:	Intellectual Property Rights
ITO:	International Trade Organization
KSA:	Kingdom of Saudi Arabia
LDC:	Least Developed Country
MC:	Ministerial Conference
MFN:	Most Favoured Nation
NGO:	Non-Governmental Organization
NT	National Treatment
PC:	Paris Convention
PCT:	Patent Cooperation Treaty
RC:	Rome Convention
TK:	Traditional Knowledge
TNC:	Transnational Corporations
TPRB:	Trade Policy Review Body
TRIPS:	Trade-Related Aspects of Intellectual Property Rights

U.S:	United States
UAE:	United Arab Emirates
UK:	United Kingdom
UN:	United Nations
UNCTAD:	United Nations Conference on Trade and Development
UR:	Uruguay Round
WHO:	World Health Organization
WIPO:	World Intellectual Property Organization
WTO:	World Trade Organization

Introduction

WTO is the most important worldwide economic organization, which is constantly trying to regulate international trade relations.¹ Likewise, as the number of member countries increases (there are 164 member nations to date), the role WTO plays in international commerce becomes more important.² However, some countries are still waiting for WTO approval to join. Among Arab countries, some including Bahrain, Kuwait, and Morocco have been members since the WTO was established, whereas others joined the organization after it had already been established including Tunisia, Egypt, Qatar, UAE, Jordan, KSA, Oman, Mauritania, and Yemen (the last Arab country to join in 2014). Additionally, Iraq, Algeria, Libya, Syria, Lebanon, and Sudan have yet to join the WTO and currently have only observer status.³ The WTO becomes increasingly important as agreements are made to regulate multiple aspects of trade, including trade of goods, trade of services, and IPR protections.

The study focuses on the Iraqi attempt to join the WTO, at the same time, acceding to the WTO or becoming a WTO member means binding to agreements concluded within the organization including TRIPS, the study will analyze how Iraqi IP laws changed under the influence of the TRIPS and compare Iraqi IP law with other Arab WTO acceded nations.

TRIPS has an essential role in providing legal protection for regarding Intellectual Property Rights (IPR) and amending the domestic legislation regarding IP of individual countries. Countries that have not yet joined the WTO must harmonize their domestic legislation with TRIPS to facilitate the entry process to the WTO. TRIPS not only established substantive rules related to the protection of IPR, but also the procedural rules necessary to protect these rights. TRIPS concluded within the scope of the WTO which is concerned with providing strong legal protection for IP. IP is one of the human practices in life, and therefore, the owners of IPR deserve

¹ L S Terry, 'Lawyers, GATS, and the WTO Accountancy Disciplines: The History of the WTO's Consultation, the IBA GATS Forum and the September 2003 IBA Resolutions' (2004) 22 Penn St Int L Rev 695, 697-698

² 'WTO Members and Observers' (*Wto.org*, 2022) <https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm> accessed 3 May 2022

³ Sana B Bargham, 'Arab Countries within the WTO' (2020) 7 Eur J Econ L & Pol 17, 19-29

adequate legal protection to encourage creators to develop their talents.⁴ IPR must be protected as one of the inherent rights of the individual as a result of an individual or joint effort by a group of innovators or creators, and because it is related to the development of the economy, various legislations are issued internationally and locally to protect this right.⁵

Because of IP's growing significance for the worldwide economy in general, and the local economy in particular, as well as its mutual impact on different societies, people, and the rapid technical and scientific progress in recent years, the protection of this property has become a legal necessity. Failure to create the appropriate environment and practical mechanisms to implement laws to protect IPR will undoubtedly harm the local economy, especially in developing nations whose economies heavily rely on attracting foreign investments.⁶

Before the existence of the TRIPS, IPR was globally regulated by a group of international agreements.⁷ TRIPS differs from all other international agreements on the protection of IPR because it established the legal mechanisms related to IPR to prevent and settle issues that may emerge among member states and to supervise their implementation by the WTO/DSB.⁸ TRIPS sets the standard for IPR protection, and the member states of the WTO must obligatorily implement these standards as a minimum requirement in their national legislation, such standards relating to the protection of trademarks, copyright, Geographical Indications (GIs), patents, industrial designs (IDs) and models, layout designs for integrated circuits (ICs), and confidential information.⁹ Therefore, countries that wish to join the WTO must bring their laws

⁴ R Cardwell and P L Ghazalian, "The Effects of the TRIPS Agreement on International Protection of Intellectual Property Rights" (2012) 26 ITJ 19, 22-26

⁵ B M Hoekman, A Mattoo, and P English, *Development, Trade, and the WTO* (1st edn, World Bank 2002) 373-374

⁶ R Sharma, Lavanya M, P Soni & A Dubey, 'The Role of Intellectual Property in Innovation and Economic Growth of Indian MSMEs' (2021) 47 SEDME Ent Dev Man & Ext J 379, 384

⁷ PC for industrial property (1883); BC for literary and artistic works (1886); Madrid Agreement on international registration (1891); and Hague Convention concerning the international deposit of IDs (1925)

⁸ V Bossche, *The Law and Policy of the WTO: Text, Cases, and Materials* (Cambridge University Press 2008) 189-190

⁹ E Al Tamimi, 'Current UAE Copyright Law and How it Compares and Contrasts with WTO's TRIPS Agreement and the Berne Convention' (1999) 2 J World Intell Prop 371, 375-376

align with TRIPS before joining the WTO, because compatibility of national laws with the TRIPS will reduce the obstacles before countries that aspire to join the WTO.

Post-2003, Iraq applied to join the WTO, and to achieve this goal, it amended its laws, including IP laws. However, before 2003, laws related to IP existed in Iraq; for example, copyright was regulated for the first time in Iraqi law during the Ottoman Empire through the Ottoman Copyright Act in 1910¹⁰, and the law was modified by Law No. 3 that issued in 1971. Post-2003, the CPA headed by Paul Bremer carried the obligation to rebuild Iraq in all ways including the legal system. Through a sequence of Orders, it presented various new provisions and regulations to several fields of Iraqi law, including the country's IP laws.¹¹ By these legislative reforms, CPA desired to promote the situation in Iraq to the legal, political, and economic level required globally. The CPA amended Iraqi laws related to IP to reintegrate Iraq into the world economic system and prepare for Iraq's accession to the WTO; subsequently, the law No. 3 was modified by Order No. 83 in 2004.¹²

Also with regard to patents and industrial property, the Iraqi law No. 65 of 1970 on Patents and Industrial Models was in effect prior to 2003, post-2003 the law amended by order No. 81 of 2004, in light of that, the name of the law changed to the (patent, undisclosed information, IDs, ICs, and plant variety law).¹³ Also, prior to 2003 Iraqi law No. 21 of 1957 on trademarks and commercial data was in force, post-2003 the law amended by order No. 80 of 2004 and the name was changed to the (Law of Trademark and GIs).¹⁴

The changes made to the Iraqi legislation post-2003 regarding the protection of IPR under the supervision of the CPA were not sufficient to persuade the WTO to allow Iraq to enter the organization and it is therefore required to take some additional

¹⁰ B Candan, 'Intellectual Property Legislation in the Ottoman Era and its Effects on Knowledge Production' (2017) 3 AJMS 267, 275

¹¹ A Ali, 'Saving Seed under International Intellectual Property Treaties and Iraqi Patent Law' (2018) 10 Cuadernos Derecho Transnacional 19, 20

¹² T W Kassinger and Dylan J W, 'Commercial Law Reform Issues in the Reconstruction of Iraq' (2004) 33 Ga J Int & Comp L 217, 225

¹³ K T Crosby, 'The United States and Iraq: Plant Patent Protection and Saving Seed' (2010) 9 Wash U Global Stud L Rev 511, 528-529

¹⁴ See Order No 80 (2004) on Trademark and GIs

steps.¹⁵ The study found many deficiencies in the Iraqi legislation by comparing the Iraqi legislation related to IP with the TRIPS and the laws of the Arab parties to the WTO.

The study will show all these deficiencies during the research. Iraq must complete the legislative deficiencies that the study will discuss in the third chapter of this dissertation. It is also better for Iraq to join some of the international agreements related to IP that have been incorporated into the TRIPS, for example, TRIPS does not define copyright, but rather refers to the terms related to the author, work, innovation, or collective work according to the Berne Convention (BC) of 1886, which was amended in 1979.¹⁶ Iraq has not yet joined the BC, and this is not a justification or one of the obstacles to Iraq's WTO admission,¹⁷ but it is better for Iraq to join this convention in order to benefit from it and prepare itself for its implementation upon joining the WTO, because there are countries that are WTO members but are not members of the BC, like Taiwan which is a WTO member since 2002.¹⁸ Nevertheless, we believe that Iraq's accession to the BC may increase Iraq's opportunity to join the WTO because it shows the Iraq's interest and seriousness in protecting IPR.

TRIPS allows WTO's members to treat other member's nationals of the organization concerning the protection of relevant IPRs provided by Paris Convention (PC), BC, Rome Convention (RM) and Washington Treaty (IPIC), and it is therefore preferable that members of the organization be members of these agreements, for example, TRIPS provides that members are obligated by the BC and its annex.¹⁹ In another example, before it acceded to the WTO on December 11, 2005, the KSA joined both the BC and the PC on March 11, 2004,²⁰ and this is evidence that accession to those agreements increases the chances of joining the WTO.

¹⁵ Faten H Mohammed, 'World Trade Organization and its Reflections on the Iraq's Economy' (2013) 35 Tan A Raf 9, 21-25

¹⁶ Art 9 Appendix B

¹⁷ G H Fox, 'The Occupation of Iraq' (2005) 36 Geo J Int'l L 195, 283

¹⁸ 'Berne Convention for the Protection of Literary and Artistic Works' (*Wipo.int*, 2022) <<https://www.wipo.int/treaties/en/ip/berne/>> accessed 2 August 2022

¹⁹ Art 1 (3) Appendix B

²⁰ A M Muhammad Arif, 'An Analysis of Copyright Protection in Saudi Arabia' (2014) 56 Int J Log Man 38, 39

This research discusses Iraqi IP laws and examines the function of the CPA in the improvement of the Iraqi legal order after 2003 and the overthrow of the Baath regime to reduce obstacles before Iraqi WTO membership. Additionally, analyze how to obtain membership status in the WTO and explain to the reader the positive and negative aspects of joining the aforementioned organization. For example, today, Iraq faces many problems regarding economic dumping, as it is possible to find many goods from Iraq cheaper than in the origin state. Upon joining the WTO, Iraq can place more restrictions in that field as the organization allows the levying of customs fees on items that cause dumping. Further, the research focuses on the position of Iraqi laws regarding the protection of IPR and compares them with the TRIPS and the position of the other Arab countries that have acceded to the WTO such as the KSA, Kuwait, Oman, Egypt, Qatar, Bahrain, Jordan, Yemen, and UAE.²¹

After the fall of the previous regime on 9 April, 2003, the Iraqi legislature reorganized and amended Iraqi trade laws to suit the requirements of the WTO, because such laws before 2003 were not fully compatible; the Iraqi legal system was a stumbling block to Iraq joining the WTO.²² Therefore, Iraqi laws on the protection of IPR were reviewed by experts and specialists, and they were then revised, thus reducing obstacles before Iraq accedes to the WTO.²³

Iraq, post-2003 and the fall of the previous Iraqi regime, spent a lot of effort to restore Iraq's position in the global economy and build a commercial relationship between Iraq and the countries of the world. As a result, Iraq applied for full membership of the WTO, and since 2004 it has had the status of observer in the WTO and has many elements of comparative advantage in international trade. However, there are legal implications of joining the organization. The questions that arise in this context include: Can Iraq harmonizes its laws with the requirements of the WTO? Did the amendments to the legislation that occurred in Iraq post-2003 persuade the current members of the WTO? Is Iraq fully prepared to join the WTO? These questions will all be asked by the present study.

²¹ M El Said, 'The Accession of Arab Countries to the TRIPS-Agreement: The Past, the Present and the Future' (2014) 11 *Man J Int Econ L* 60, 63-66

²² Crosby (n 12) 512-517

²³ Kassinger (n 12) 224-225

Finally, we believe, the collaboration and contribution of all countries in drafting an agreement regarding the preservation of IPR will provide more security for the owners of those rights, which will ultimately allow all consumers to constantly benefit from their new creations. Moreover, the formation of a special international court to consider IP cases consisting of judges with experience in this regard may prevent this right from being misused.

Statement of the Problem

TRIPS was created by pressure from powerful countries on weaker countries rather than negotiating with them. While they are equal in sovereignty, which means that developing members do not have a weighty influence on the organization. However, the negotiation principle is one of the important principles of the WTO and is agreed upon. According to the principle, agreements must be signed through negotiation between all members of the organization. Submission of a demand by a developing country and a response by developed countries does not mean negotiation, and when it joins the organization, Iraq as a developing country may face the same problem.

Additionally, the lack of a special international court to hear IP cases consisting of judges with experience in this regard or the participation of only a few countries or developed countries in DSB within the scope of the WTO may lead to misuse of this right.

Joining the GATT was easier than joining the WTO. Countries like Iraq that have not joined the WTO from the beginning will have to pay a greater price to become members of the aforementioned organization because they have to accept all agreements concluded within the WTO to increase their chance of joining.

The political situation is unstable in Iraq, and internal national and sectarian conflicts have caused the suspension of Iraq's efforts to join WTO and continue to amend its legislation including IP laws to conform with the TRIPS. In addition, Iraq's failure to join the organization will cause the country's economy to be isolated from the universal economy integration and openness.

In addition, there is very little information from the WTO website on Iraqi accession because of the lack of meetings between the organization and Iraq. Also, there are few sources about amending the IP laws of Arab countries or Iraq in general.

Purpose of the Study

The research aims to introduce the legal protection of IPR to readers and its importance in the international and domestic arena, as well as its impact on developing the national economy and keeping pace with the development of the global economy.

The study aims to conduct a legal analysis of IPR protection within the framework of the international agreements, particularly TRIPS, and to examine the extent of their impact on reforming the national laws of countries, especially Arab countries.

The study analyzes the changes to Iraqi laws implemented by the CPA. Specifically, the study examines how the changes contribute to Iraq's development following such a long period of international isolation as well as the extent to which the changes contributed to reducing legal obstacles to Iraq's acceding to the WTO.

Other objectives of the research demonstrate the TRIPS' effects on the development of Iraqi IP laws and show the Iraqi people and the world how the country will benefit when it joins the WTO as well as what the risks are for the Iraqi economy.

Research Questions

- To what extent has the TRIPS contributed positively to the protection of IPR?
- Are the legal reforms that occurred in the Iraqi IP laws post-2003 conform with the TRIPS? Do they reduce obstacles to Iraq's accession to the WTO?
- What changes have happened in the IP laws of the Arab countries that joined the WTO? Have these legal changes contributed to improving the legal protection of IPR?

Significance of the Study

This study addresses the latest developments at global and national levels, especially in the framework of Arab countries, concerning the provision of legal protection for IP.

Due to the importance of intellectual production on the economy, countries around the world have recently sought to rapidly conclude a global agreement such as the TRIPS and enact domestic legislation to protect IPR.

The TRIPS has a great impact on countries that wish to access the WTO because they are required to guarantee that their laws comply with the guidelines of the agreement, and they must take into account such provisions as a minimum standard in their IP laws.

The study considers how legal reforms pertaining to commerce have helped Iraq integrate into the international economic system.

The study explains to the reader the benefits and setbacks of joining the WTO on Iraq and the benefits of making Iraqi IP Laws conform with TRIPS. The accession of more than 160 countries to the WTO has certainly affected Iraq. If it does not take steps towards joining the organization, it could ultimately become isolated as a non-member.

Additionally, numerous people do not have knowledge of the existence of legal protection for IPR, so conducting research on the legal protection of those rights will raise people's awareness.

Literature Review

Various studies have discussed the importance of regulating IPR within the scope of the WTO, as well as the obstacles faced by countries that have not acceded to the WTO so far. However, there are few studies on Iraq, but we try to present studies as close to ours as possible.

Van Den Bossche stated that: TRIPS is not just related to trade, but the price of several properties and services, which by industrialized nations are traded, it is incorporated mainly by the invention or idea. If this price is not preserved by the protection of IPR in terms of the invention or idea, then the market for these goods won't be successful. For this purpose, industrialized member countries have required and attained an agreement within the scope of the WTO to set standards and to demand effective enforcement for IPR protection.²⁴

Following 2003 Iraq applied for full membership of the WTO. The membership process usually takes two years, though, depending on how difficult the negotiations are, becoming a member may take longer. After several rounds of discussion, Iraq has not yet progressed for admission, it currently has observer status. Therefore, to speed up of Iraq's acceding to the WTO, the WTO's guidelines must be considered by Iraq including the TRIPS.²⁵

Anderson referred to the current international multi-layered (Multiple) IPR protection system that will likely remain in the near future, and stated that TRIPS is not sufficient and efforts to find a new system for IPR protection will continue. At the same time, regardless of the consistent application of that framework, the search for consistent and objective international protection of IPR will continue.²⁶

Over the past three decades, and specifically since the Iran-Iraq war in 1980, the Iraqi industry has been subjected to severe blows that led to its decline, curtailment, and suspension of many of its activities. The successive wars under the previous regime drained the economic resources and led to the freezing of investment, and stopped the modernization, development, and maintenance of facilities. The comprehensive economic blockade has also led to the continued neglect of factories and infrastructure. In addition, after the fall of the previous regime, violence, sectarian conflicts, and security instability led to complete paralysis of economic activity and aspects of life in general. The country's accessibility to worldwide markets and

²⁴ Bossche (n 8)

²⁵ E M Al-Dajani, 'Post Saddam Restructuring of IP Rights in Iraq Through a Case Study of Current IP Practices in Lebanon, Egypt, and Jordan' (2007) 6 *Joh Mar Rev IP L* 250

²⁶ A M Anderson and Bobak Razavi, 'The Globalization of Intellectual Property Rights: TRIPS, BITs, and the Search for Uniform Protection' (2010) 38 *Ga J Int & Comp L* 265

competitiveness promotes the flow of foreign investment and modern technologies. Iraq's failure to join the WTO will lead to the country's isolation from global markets and it won't be capable of expanding and progress under protection and isolation. National exports need open markets and free trade in order to grow and develop. Without competition, the industry will not be forced to adapt and raise its production capabilities and efficiency.²⁷

In its current situation, Iraq is not ready to join the WTO, and Iraq needs more economic and legislative reforms to overcome obstacles before its accession to the WTO. Despite the efforts made and the submission of various files by Iraq to the WTO, there are files that Iraq requests to complete and submit to the organization to speed up the accession process, such as the legislative plan that Iraq must work constantly to harmonize its legislation with the agreements are concluded within the scope of the WTO, including TRIPS.²⁸

Prior to 2003, the Iraqi economy was paralyzed due to the policies of the Baath Party, wars, and economic sanctions imposed on Iraq. However, post-2003, Iraq needed to plan sophisticated economic policies in line with international standards, and Iraq amended commercial laws because trade is an important means of reducing poverty and promoting the growth of the national economy. However, to regulate trade better, the passing of advanced legislations that are conforms with norms is required, especially international norms for trade within the scope of the WTO. The coalition authority that temporarily ruled Iraq following 2003 made a move with the aim of developing the Iraqi economy. Resultantly, it liberalized the Iraqi trade policy as a first step, established a commercial bank for Iraq, provided full facilities for rebuilding Iraq, and reduced legal obstacles to Iraq's accession to the WTO.²⁹

²⁷ Midhat K Alkuraishi, 'The Economic Impact of Iraq's Membership in the WTO on Industry and the Economy' (2010) 14 Mansour J 4 (In Arabic) مدحت كاظم القرشي، تأثيرات انضمام العراق لمنظمة التجارة العالمية على الصناعة العراقية وعلى الاقتصاد الوطني، (2010) 14 مجلة منصور 4

²⁸ Saif S Abboud and Ziyad T Abdul Razzaq, 'Opportunities for Iraq's Accession to the WTO' (2021) 10 Asian I J 97 (In Arabic) سيف صباح عبود و زياد طارق عبد الرزاق، فرص انضمام العراق إلى منظمة التجارة العالمية، (2021) 10 مجلة قضايا آسيوية 97

²⁹ J R Hope and E N Griffin, 'The New Iraq: Revising Iraq's Commercial Law is a Necessity for Foreign Direct Investment and the Reconstruction of Iraq's Decimated Economy' (2004) 11 Cardozo J of Int & Comp L 875

Reviewing IP laws to comply with universal standards, contributes to promoting economic progress and encouraging innovative ideas in the country. Developed countries are making all efforts to raise international standards for IP protection by concluding bilateral or multilateral agreements. Arab countries who want to become WTO's member must accept those criteria; however, at the same time, it has detrimental effects on measures for development, like granting developing nations access to resources for education and healthcare.³⁰

After WTO established, the date of issuing IP legislations in Arab countries discloses that these regulations were introduced from agreements, especially TRIPS and the regulations of industrialized nations, and were implanted in national legal systems without studying their impact. The Arab countries did not contribute to the formation of standards for the preservation of IP. They were absent in the BC and PC. However, the bulk of Arab nations ratified those treaties and conventions. Virtually all Arab nations tried to enter the WTO for economic and political reasons, and while a number of them succeeded and obtained full membership status, in addition, some of them have obtained observer status. The Arab countries, especially the countries that have obtained the status of membership in the organization, have carried out economic and legislative reforms to fulfill the requirements of the WTO.³¹

It is not permissible to evaluate the country's IP system purely from a legal standpoint. Rather, an overall evaluation is necessary covering economic factors, local culture, internal and regional politics. The existence of good mechanisms for enforcing IP, both criminally and civilly, and independent judicial system is necessary to apply IP laws. IP systems also heavily rely on political economy. For instance, the products and services that the state or any Arab country imports in return for what it exports, or the local industry, all affect the political interests of the state. For example, while one country may care more about protecting the exports of goods and services than those that are imported, another country may not have enough medicines to cover its

³⁰ E Garduno and F J Pietrucha, 'Intellectual Property Rights in the Arab World' (2003) 4 *Geo J Int'l Aff* 57, 61

³¹ E Elmahjub, 'Intellectual Property and Development in the Arab World: A Development Agenda for Libyan Intellectual Property System' (2016) 30 *Arab L Q* 1

population's necessities and wants to develop the pharmaceutical industry, so less stringent patent laws are put in place.³²

Despite the arrival of several Arab nations to the WTO, they do not have an influential presence within the organization. Consequently, Arab countries consider that membership is of great importance for their sustainable development and their incorporation into the worldwide economy. The reason for the Arab countries' interest in joining the WTO is built on their belief that free trade is a factor of interdependence between countries and peace. They think that the contribution to the organization is the reason for maintaining peace because it gives them the chance to solve their trade problems through a fair mechanism and this mechanism exists from the WTO. Therefore, Arab countries feel that joining the organization and compliance with the guidelines of the WTO will warrant the liberalization and enlargement of trade, which will enhance the well-being of their society.³³

One of the serious concerns of entering the WTO is the lack of real equality in competitiveness between countries, especially with regard to pharmaceutical goods. Therefore, if countries do not have competitive strength, they depend only on importing pharmaceutical goods as in the case of Iraq. This means that joining the WTO, liberalizing trade, and providing strong protection for IP owners or making national laws compliant with the TRIPS will lead to the Rising prices and monopoly of pharmaceutical goods. This will lead to the industrial, pharmaceutical and commercial encirclement in the Iraqi market by the developed countries to control the pharmaceutical technology of Iraq.³⁴

Research Methodology

The study adopts an analytical, descriptive, and critical approach to talking about the WTO and how to join it, especially in describing and analyzing Iraq's position towards the organization and Iraq's survival outside the organization's scope.

³² M Birnhack and Amir K, *The Emergence and Development of Intellectual Property Law in the Middle East* (Oxford University Press 2018)

³³ Bargham (n 3)

³⁴ S N Ali, Dalia O Nazmi and Yousif A, 'Intellectual Property Rights and its Implications for the Pharmaceutical Industry in Iraq under Accession to the WTO' (2022) 12 IJRSS 58

The study discusses Iraq's pathway toward WTO membership after the Baath regime was overthrown in 2003.

The study is concerned with providing international protection for IPR through the TRIPS, based on descriptive and critical approaches for determining the protection agreed upon in international agreements, as well as an analytical method for the legal implication of TRIPS and Iraqi laws on the protection of IPR by presenting laws, references and previous studies related to the subject of the research, as well as gathering notes and data correctly and analyzing them to provide recommendations or suggestions.

This research is based on the comparative method, in which the requirements regarding the protection of IPR in both the TRIPS and Iraqi laws post-2003 are compared and the Iraqi situation is also compared with other Arab countries that have acceded to the WTO to identify legal obstacles to Iraq's accession to the organization.

The study employed a qualitative method to analyze the position of the TRIPS and national laws concerning IPR.

CHAPTER I

WTO and Arab Nations Entry to It

WTO ensures freedom, ease, and smoothness in international trade. The WTO defines the rules by which trade between nations is organized and it is possible to view WTO from different perspectives; for example, it is perceived as an organization that tries to liberalize commerce, an organization that attempts to facilitate international trade agreements between countries around the world.³⁵ The organization gives more guarantees to its members and protects their rights in international trade through the DSB. It is the organization that sets the legal system and policy of international trade.³⁶

This chapter presents a background on the establishment of the WTO, along with the functions, principles, objectives, and structure of the organization. It will also explain the WTO's legal framework, Arab nations' entry to it, and the positive and negative aspects of joining the WTO. The study outlines some of the most prominent criticisms directed toward the WTO while explaining each of these topics.

1.1 From GATT to WTO

The WTO was created to replace GATT in 1995.³⁷ GATT was founded in 1948 and its successor is WTO, and whose provisions shaped the contemporary international multilateral trading system.³⁸ Therefore, it can be said that the WTO's legal foundation is GATT, and it is, therefore, difficult to realize how the WTO was established and functions without knowing how the GATT was established and worked. Therefore, the study will discuss how the GATT was created and how the GATT transformed to the WTO, as well as the reasons why the WTO was formed. It will also be questioned whether there is a difference between the WTO and the GATT.

³⁵ Star S Al-Zuhairi, 'Advantages of Iraq Joining the World Trade Organization' (2014) 26 Wasit J for H 285, 287 (In Arabic) ستار شدهان الزهيري، مزايا انضمام العراق الى المنظمة التجارية العالمية، (2014) 26 مجلة واسط للعلوم الانسانية 285، 287

³⁶ I Manak, 'Enforcement International Trade Law in the WTO's Committees: Courting Third Party Opinion' (PhD, Georgetown University 2019) 1-2

³⁷ R Santana, '70th Anniversary of the GATT: Stalin, the Marshall Plan, and the Provisional Application of the GATT 1947' (2017) 9 Trade L & Dev 1, 19-20

³⁸ K Stiles, 'Negotiating Institutional Reform: The UR, the GATT, and the WTO' (1996) 2 Global Governance 119, 119-120

1.1.1 Establishment of the GATT

After the global wars that caused serious and long-term economic damage to the world, there was an urgent need for an international trading system based on cooperation between all countries around the world, including rich and poor countries, to raise the economic level under strong legal protection.³⁹ With this momentum, the negotiating countries finally agreed to the GATT Agreement, which included a trade liberalization regime designed to ensure open access to the world market and free transfer of goods, based on these basic rules. Countries agree to refrain from some negative actions such as unjustified tariffs and non-tariff barriers, or mandatory regulations,⁴⁰ not to distinguish between imported products based on their national origin, under the principle of Most-Favoured-Nation (MFN) treatment,⁴¹ and not to distinguish between locally manufactured goods and imported goods under the principle of National Treatment (NT).⁴²

GATT emerged from negotiations starting early in the 1940s among state experts from the UK and the U.S; the consensus was that a set of provisions was needed to reduce the obstacles to international trade, and to implement those provisions, an international body was required, both states submitted proposals to UN to create an International Trade Organization (ITO) for the purpose of liberalizing trade.⁴³ Discussions were held regularly among countries regarding tariff drops and the exclusion of obstacles that impeded free trade. The proposals were first considered during the UN Conference on Commerce and Employment, where the preparation committee created a draught charter of the ITO, and the charter was submitted by the U.S in 1948.⁴⁴ The charter was approved formally when the preparatory committee reviewed the Charter of the ITO; members of the committee conducted several rounds of trade discussions, and in 1947, the discussions of the GATT were formally

³⁹ A Narlikar, *International Trade and Developing Countries Bargaining Coalitions in the GATT & WTO* (1st edn, London, Routledge 2003) 25-36

⁴⁰ S Esteve-Pérez, S Gil-Parejal & R Llorca-Vivero, 'Does the GATT/WTO Promote Trade? After all, Rose was Right' (2020) 156 *Rev of W Eco* 377, 394-396

⁴¹ C V Bergh, 'Reciprocity Clause and International Trade Law' (2009) 27 *J Energy & Nat Resources L* 228, 241-242

⁴² Sylvia M Kierkegaard (ed), *International Law and Trade* (1st edn, Ankara Bar Association Press 2007) 31

⁴³ Melaine Mikolas, 'An Introduction to GATT' (1991) 1 *U Det Mercy Int'l L Newsl* 3, 3-4

⁴⁴ T Richard, 'Developing Multilateralism: The Havana Charter and the Fight for the ITO 1947-1948' (2003) 25 *Int History Rev* 282, 285-295

concluded in Geneva; the results were incorporated into the GATT agreement and signed by delegates of the countries.⁴⁵

The original members of the agreement suspected that the GATT would become a section of the ITO's charter. Nevertheless, the Charter needed to be approved by the signatory members to come into effect, and the U.S Congress did not ratify the Charter of the ITO. As other signatory members saw no point in having an organization that did not involve the U.S, the ITO within the UN was never established.⁴⁶ At the same time, the GATT and the ITO Charter were closely intertwined but with distinct negotiating methods.

We believe that the establishment of the ITO within the framework of the UN would have provided more opportunities for each country to contribute, and reduce the supremacy of industrialized nations over developing or LDCs, which impose conditions and restrictions within the scope of the WTO. The establishment of any organization under the umbrella of the UN, including the ITO, should be for the benefit of all countries, but it is clear that GATT was established mostly for the benefit of industrialized countries. The industrial countries that were victorious in the Second World War, led by the U.S, began to lay out a new economic map for the world according to their political and economic interests.

Additionally, within the UN, all countries can become members of the ITO, but in the GATT and the WTO, there are conditions surrounding membership admission. Therefore, we believe that the failure to establish a universal organization for regulating trade within the framework of the UN was not in the welfare of the undeveloped nations, including the Arab nations, but was rather in the interest of the industrialized countries.

1.1.2 WTO's Creation

GATT (1947-1994) witnessed eight negotiation rounds, and these negotiations began with the Geneva round in 1947, in which 23 countries participated. The last

⁴⁵ Loretta F S, 'The GATT and International Trade' (1991) 39 Buff L Rev 919, 923-934

⁴⁶ W Diebold, 'Reflections on the International Trade Organization' (1994) 14 N Ill UL Rev 335, 336-345

round was the UR from 1986 to 1994, in which 117 countries participated, including 87 developing countries.⁴⁷

After holding eight rounds of negotiations, the last of which was the UR, the GATT held its final discussion in 1994 in Marrakesh, at which the final document was issued, which included investment, trade in products, services, and IPR.⁴⁸ Additionally, it was announced at the conclusion of the round that the WTO would replace the GATT from January 1, 1995.⁴⁹ Resultantly, the WTO came into existence at that time.

The WTO started its activities as an institutional entity, and thus, the GATT disappeared and was replaced by this new organization, which has remained in place ever since.⁵⁰

The majority of WTO's existing performance derives from the UR dialogs and earlier discussions under the GATT agreement.⁵¹ The UR negotiations were considered the general and most ambitious round that was conducted under the GATT compared to the previous rounds and covered more than 15 substantial issues. Despite revisiting traditional issues such as tariff liberalization, UR generated several new subjects demanding constitutional reformation such as the protection of IPR.⁵²

1.1.3 From the Creation of WTO to the Present

The UR discussion was the most comprehensive international trade negotiation ever attempted. Where nations have confronted trade hindrances and desired to lower

⁴⁷ Hussein A Hussein and Karim A Hassan, *Liberalization of Foreign Commerce and its Impact on the Economies of Developing Nations Generally and Iraq Particularly* (2019) 11 Mag Co of Ad Eco & Fin Stud 210 (In Arabic) حسين عباس حسين و كريم عبيس حسان، تحرير التجارة الخارجية و آثارها على اقتصادات الدول النامية بشكل عام و العراق خاصة، (2019) 11 مجلة كلية الإدارة و الاقتصاد للدراسات الاقتصادية و الإدارية و المالية 210

⁴⁸ Bossche (n 8) 45

⁴⁹ D P Steger, *Redesigning the World Trade Organization for the Twenty-first Century* (1st edn, Wilfrid Laurier University Press 2009) 5-7

⁵⁰ Harald Hohmann, *Agreeing and Implementing the Doha Round of the WTO* (1st edn, Cambridge University Press 2008) 438

⁵¹ Rudra Sharma, 'World Trade Organization with Perspective of Judicial Performance' (2016) 10 NJA LJ 175, 176-178

⁵² D Greenaway & C Milner, 'The world trade system and the Uruguay Round: Global employment implications' (1995) 134 Int Labour Rev 497, 501-505

them, the dialogs have facilitated to open the trade.⁵³ Today, the WTO has 164 member states with more than 23 territories or countries on the path to accession, and virtually all international trade in services and goods is controlled by WTO and those attempting accession. WTO is the main place for defining the rules for organizing international trade, and in its 28 years of establishment, it has assisted with reducing the difficulties to international trade and designed a settlement structure for resolving disputes that reduces the threat of international economic wars.⁵⁴

The DR (Doha Round), which was held in Qatar at the Fourth MC (November 2001), is the current and most advanced round of international commerce dialogs of the WTO.⁵⁵ Its aim was to fulfill the principal form of the international trading order to reduce international trade difficulties and review international trade provisions, the main goal of the DR, was to develop the international trading possibilities of developing countries.⁵⁶

However, the freedom of global trade in terms of goods, capital, services and technologies led to many criticisms from countries.⁵⁷ One of the criticisms are related to the few contributions of developing nations in the management of WTO.⁵⁸ Developing nations have no significant influence on the organization. However, the negotiation principle is one of the important principles of the organization.⁵⁹ Although developing countries comprise the plurality of members of the organization, they do not have hegemony over the organization as industrial countries dominate the decisions and their voices are more influential.

⁵³ James McBride, Andrew Chatzky, Anshu Siripurapu, 'What' next for the WTO?' (Council on Foreign Relations, 2021) <<https://www.cfr.org/backgrounder/whats-next-wto>> accessed 18 March 2021

⁵⁴ Alan Wolff, 'The Future of the WTO | Hinrich Foundation' (*Hinrich Foundation*, 2017) <<https://www.hinrichfoundation.com/research/tradevistas/wto/future-of-the-wto/>> accessed 20 March 2021

⁵⁵ Hohmann (n 50) ix

⁵⁶ Eustace C Azubuikwe, 'The Participation of Developing Countries in the World Trade Organization (WTO)' (2018) 4 *Baku St UL Rev* 121, 138-140

⁵⁷ George A Bermann, *WTO Law and Developing Countries* (1st edn, Cambridge University Press 2007) 4-8

⁵⁸ G Búrca and Joanne S, *The EU and the WTO* (1st edn, Hart 2001) 211-263

⁵⁹ B H Malkawi, 'Framing Access and Exclusion for Arab Countries in WTO Affairs' [2019] *SSRN Electronic Journal*

With existing many multilateral agreements while WTO member countries often resort to bilateral and sometimes to regional agreements to boost their trade.⁶⁰ Recently, the spread-out of COVID-19 over the world has resulted in an apparent decline in international trade and has created doubts about the future of international supply chains.⁶¹

1.1.4 The Distinguishes among GATT and WTO

The GATT emerged with the announcement of the establishment of two organizations, namely the International Monetary Fund (IMF) and the World Bank (WB) for Developing and Rebuilding.⁶² A final official negotiation was held in Marrakesh, Morocco, and it was announced that a new era in governing economic ties had begun through the transfer of the agreement to the WTO in January 1994.⁶³ Whereas the GATT essentially dealt with the commerce in products, the WTO conclude several agreements that cover international commerce in both services and goods, and protection IPR, among others. Whereas the GATT agreement was limited to the development of a set of principles and measures related to trade in certain commodities, it only focused on industrial goods and left agricultural commodities and textiles outside the framework, and there was no clear and binding commercial dispute resolution mechanism, unlike the WTO.⁶⁴ It can be said that GATT took the optional nature, and preferred to follow the diplomatic approach in settling disputes, as well as review trade policies. While the WTO's trade provisions are based on many founding principles, the common factor is a responsibility to openness, such as reducing tariffs, restricting quotas, subsidies, as well as other obstacles to international trade.⁶⁵

Another WTO trade policy is non-discrimination, whereby WTO member states need to treat international trade with all other member states to the organization equally. The organization further attempts to establish predictability and transparency

⁶⁰ S M Thangavelu & Mun-Heng T, 'Bilateral 'WTO-Plus' Free Trade Agreements: The WTO Trade Policy Review of Singapore 2004' (2005) 28 *World Eco* 1211, 1213-1221

⁶¹ T Dung V & Manh D T' 'The Impact of Covid-19 Pandemic on the Global Trade' (2021) 7 *Int J Soc Sci Econ Invent* 1, 3

⁶² Kierkegaard (n 42) 71-89

⁶³ Ugochukwu C Ukpabi, 'At the Boundaries of International Trade and Finance: Developing Countries and the Regulatory Convergence between the IMF and the WTO' (PhD, York University 2006) 53-57

⁶⁴ P D Kantchevski, 'The Differences between the Panel Procedures of the GATT and the WTO: The Role of GATT and WTO Panels in Trade Dispute Settlement' (2007) 3 *Int'l L & Mgmt Rev* 79, 91-95

⁶⁵ C M Correa and N Kumar, *Protecting Foreign Investment* (Zed Books 2003) 117

in trade-related regulations and advances global standards to provide citizens, investors, and companies stability. Additionally, the WTO is bound to provide least-developed countries' (LDCs) flexibility to assist them to conform to current rules.⁶⁶

The Havana Charter (HC) which was assumed to determine the volume of the ITO, suggested that improvements should be made to international trade arrangements to eliminate all kinds of distortions to international trade like the price of commodities, wage costs, etc. On the other hand, the WTO has no authority to control the value of commodities, which is essentially due to ideological reasons because the WTO is supposed to liberalize international trade and not regulate prices.⁶⁷ However, one has to understand that all the efforts to regulate the value of commodities for the last half-century have disappointed except for oil, because of the technical challenges and the actions of the U.S, this absence of regulation raises the volatility of commodity values and is damaging to producers, especially in developing nations, and consumers in general.⁶⁸

1.2 WTO's Goals, Principles, and Tasks

WTO Agreement's preamble outlines the organization's fundamental principles and policy objectives.⁶⁹ The WTO's key goal is to liberalize international trade and decrease the barriers in front of it; in this context, the WTO seeks to achieve several objectives like the improvement of living standards, achievement of job growth; economic output, and real interest rising, and expansion of global production and commerce of services and goods.⁷⁰

In addition, according to the WTO agreement, the organization has several functions:⁷¹ Facilitating the execution, operation, and administration of WTO agreements is the WTO's main purpose. Promoting the goals of WTO agreements is a core

⁶⁶ A Ghosh, 'Developing Countries in the WTO Trade Policy Review Mechanism' (2010) 9 World T Rev 419, 433-439

⁶⁷ Jean-Pierre Cling, 'The Future of Global Trade and the WTO' (2014) 16 Foresight 109, 118

⁶⁸ *ibid*; T Carey, 'Cartel Price Controls vs. Free Trade: A Study of Proposals to Challenge OPEC's Influence in the Oil Market Through WTO Dispute Settlement' (2009) 24 American University Int L Rev 785, 787-799

⁶⁹ See Agreement Establishing the WTO 1994 (Appendix A)

⁷⁰ Bossche (n 8) 87-88

⁷¹ See Art III (Appendix A)

task of the organization, which takes up a significant amount of its time,⁷² provide a forum for negotiation between member states of the WTO for current and future issues is another function.⁷³ Additionally, resolving international trade disputes,⁷⁴ reviewing national trade policies, and set mechanisms in this regard,⁷⁵ through technical support and training courses assist developing nations with trade policy difficulties; collaborate with other international organizations to coordinate and harmonize global economic policies such as the IMF and WB are functions of the WTO.⁷⁶

Additionally, there are several principles of the WTO. One of its principles is trade without discrimination. International trade discrimination is prohibited by the WTO; in this regard, the organization provides some principles like the MFN principle and NT Principle. MFN confirm that member states of the WTO do not discriminate among their trading partners, and the NT principle means treating foreign traders and citizens equally.⁷⁷ Another principle is freedom in international trade. This principle calls for increasing trade freedom in international markets based on the principle of mutual reductions of customs fees among WTO member countries.⁷⁸

Predictability through binding and transparency also is another principle of the WTO; the two-part transparency requirement is also a base of the WTO. The first section is the burden placed on member states to release information or make it accessible to the public all relevant regulations before implementation. The second section is the requirement for members to provide notice of government action to the WTO's members and to the organization itself.⁷⁹ The WTO requires its members to disclose their trade laws, to uphold and locate mechanisms that permit the scrutiny of

⁷² Gary P Sampson, *The WTO and Sustainable Development* (1st edn, United Nations University 2005) 269

⁷³ Cholahosseini Farzandi, 'Evaluation of the Post-WTO Sustainability of the Pharmaceutical Industry in Iran' (PhD, Cardiff University 2011) 11

⁷⁴ M Matsushita and Others, *The World Trade Organization: Law, Practice, and Policy* (3rd edn, Oxford University Press 2015) 127-128

⁷⁵ Don Moon, 'Governing the Court: Political Economy of the WTO Dispute Settlement System' (PhD, University of Chicago 2002) 24-25

⁷⁶ Article III (5) (Appendix A)

⁷⁷ 'Most-Favored-Nation Treatment' (UNCTAD Series on Issues in International Investment Agreements II 2010) 1; A D Mitchell, *Legal Principles in WTO Disputes* (1st edn, Cambridge University Press 2011) 39-43

⁷⁸ H Horn and P C Mavroidis, *The WTO-Case Law of 2009* (Cambridge University Press 2011) 224-234

⁷⁹ M Matsushita, 'Basic Principles of the WTO and the Role of Competition Policy' (2004) 3 J Wor Inv Tr 363, 368

administrative measures that affects trade, and to reply to demands for knowledge by other WTO members, and inform the WTO of adjustments in trade strategies.⁸⁰

1.3 WTO Structure

Ministerial Conference (MC) is the main body of the WTO.⁸¹ The body brings all parties of the WTO and consists of representatives of all these parties. Meetings are held periodically once every two years and all matters covered by any multilateral trade agreements may be decided by the MC, which all other bodies of the organization must follow.⁸² Additionally, the Director-General, who oversees the organization's secretariat, is chosen by the MC and defines his/her authorities, responsibilities, terms of service, and the period of his/her tenure.⁸³

After the MC, General Council (GC) is the WTO's second legal body. The Council usually takes the place of the MC formally when the MC is not in session. According to the WTO Agreement, the GC usually convenes once every two years, and all WTO Member states are represented on the GC.⁸⁴ The GC is accountable for the daily administration and activities of the WTO.⁸⁵ Generally, the GC is accountable for approving the budgetary plan and the monetary arrangements, and regulate suitable arrangements for effective collaboration with other organizations.⁸⁶

WTO also has a body called DSB, which is very effective at resolving trade conflicts amongst WTO members.⁸⁷ The body aims to ensure that a positive solution is found among the members of the organization.⁸⁸ In addition, there is a DSU agreement on how to establish a DSB within the WTO.⁸⁹ The DSB shall permanently establish an appeals body, the Appellate Body, which is made up of seven permanent

⁸⁰ G Marceau and M H, 'Transparency and Public Participation in the WTO: A Report Card on WTO Transparency Mechanisms' (2012) 4 Trade L & Dev 19, 24-30

⁸¹ T Cottier, 'Preparing for Structural Reform in the WTO' (2007) 10 J of Int Eco L 497, 498 - 506

⁸² H Hawthorne, *Least Developed Countries and the WTO* (Palgrave Macmillan 2013) 1-4

⁸³ Y Bonzon, *Public Participation and Legitimacy in the WTO* (1st edn, Cambridge University Press 2014) 121-128

⁸⁴ See Art IV (2) (Appendix A)

⁸⁵ Matsushita, *The World Trade* (n 74) 8-19

⁸⁶ Article VII (1) (Appendix A)

⁸⁷ Alberto A Júnior, Cristiane L Carneiro and Luciana M O Sá Pires, *The WTO Dispute Settlement Mechanism: A Developing Country Perspective* (Springer 2019) 25-26

⁸⁸ G C Shaffer and Ricardo M, *Dispute Settlement at the WTO* (1st edn, Cambridge University Press 2010) 1-5

⁸⁹ See DSU Annex 2 of the WTO Agreement

members, but only three of them serve in each case.⁹⁰ Thus far, no Arab country has become a member of the Appellate body, and this can be considered as a criticism directed towards the organization and show the weakness of the Arab countries within the WTO.⁹¹

The TPRB as a WTO body has equivalent status to the GC, second only to the MC, and can be deemed as a disguised GC.⁹² TPRB unlike dispute resolution tools, the consequences of trade policy revision have no compulsory effect.⁹³ The TPRB aims to contribute to increasing the assurance of all WTO participants through the guidelines and clauses of the international trade agreements.⁹⁴

The WTO agreement also stipulates the existence of a commission for Goods, a commission for Services, and a commission for TRIPS, all of which will function under the general supervision of the GC.⁹⁵

1.4 The WTO's Legal Basis

International organizations' existence is built on the agreement between a group of nations, and this international agreement represents the elementary document of the organization, not regard of its establishment, but also with respect to its organization and specification of its competencies.⁹⁶ In other words, this agreement is the primary and basic source of the international organization. The legal framework of the organizations refers to several legal texts and rules that govern the activity of the organization within its institutional framework and externally in its relations with the rest of the international community, that is, all matters related to the organization such

⁹⁰ Debashis Chakraborty and Amir U Khan, *The WTO Deadlocked* (1st edn, SAGE Publications 2008) 75-76

⁹¹ B H Malkawi, 'Arab Countries (under) Participation in the WTO Dispute Settlement Mechanism' (2012) 14 *Finder L J* 1, 3

⁹² X Lu, 'Reflections and Recommendations on the WTO's Trade Policy Review Mechanism' (2015) 5 *J WTO & China* 81, 82

⁹³ Ghosh (n 66) 442-443

⁹⁴ A Taubman, H Wager & Jayashree W, *A Handbook on the WTO TRIPS Agreement* (2nd edn, Cambridge University Press 2020) 10

⁹⁵ Article IV (5) (Appendix A)

⁹⁶ S Bouwhuis, 'The International Law Commission's Definition of International Organizations' (2012) 9 *Int'l Org L Rev* 451, 451-463

as its competencies, powers, sources of funding, and the provisions to which its employees are subject.⁹⁷

The WTO is the only common regulatory structure for conducting commerce relations within the framework of the Marrakesh Agreement. The agreement creating the organization includes its organizational rules, defines its legal system, and defines its terms of reference, objectives and the roles of its bodies.⁹⁸ The WTO is a regular forum for negotiating among sovereign states established according to traditional international law.⁹⁹ However, it also includes an advanced conflict resolution approach that enables it a complementary organization, entrenched in modern international law. By combining contemporary and traditional international law, the organization has converted to a unique legal structure.¹⁰⁰

The study will address two axes in this regard, the first is the sources and legal character of the WTO, and the second part is the WTO's role and the agreements concluded within the WTO in international law.

1.4.1 WTO Sources and Legal Personality

WTO is a complex body and not all sources of the organization are equivalent or are on the same legal basis, for example, all international law that is related to the subject of a dispute can be applied by the WTO panel.¹⁰¹ In this regard, can divide the sources of the WTO into basic and not basic sources, Marrakesh Agreement is the basic source of the organization included all the UR outcomes and any agreements concluded post- Marrakesh that might emerge in the context of the WTO, and not basic sources of WTO are acts of WTO bodies, the report of WTO's DSB, principles of law,

⁹⁷ Niels B, 'International Organizations and Customary International Law' (2017) 14 Int'l Org L Rev 1, 1-11

⁹⁸ Biskri Rafeeqa, 'The Legal order of the WTO and its Accession Problem' (PhD Haji Lakhdar University - Batna 2015-2014) 61 (In Arabic) بسكري رفيقة، النظام القانوني لمنظمة التجارة العالمية وإشكالية الانضمام لها، (اطروحة دكتورا، جامعة الحاج لخضر باتنة 2014-2015) 61

⁹⁹ J H Jackson, *Sovereignty, The WTO and Changing Fundamentals of International Law* (1st edn, Cambridge University Press 2006) 264-265

¹⁰⁰ P Lamy, 'The Place of the WTO and its Law in the International Legal Order' (2007) 17 Eu J of Int L 969, 977-978

¹⁰¹ J Pauwelyn, *Conflict of Norms in Public International Law* (1st edn, Cambridge University Press 2008) 40

customary international law, the subsequent practice of the WTO, legal scholars, and, ultimately, the negotiating archives.¹⁰²

International agreements, Legal Scholars, etc., as mentioned are also sources of international law. The WTO/DSB can refer to any source of international law and apply them to a dispute.¹⁰³ Therefore, the WTO has an international personality, and it can apply the rules of international law like any other organization.

WTO' legal Personality began at the moment that its establishment agreement came into effect. The organization's founding agreement became effective in 1995, and from this date, as an international institution, the WTO acquired legal identity.¹⁰⁴ As with any international legal entity, the organization oversees how to the process of implementing its agreements as well as how the tasks and principles that were established to achieve them are conducted.

The WTO has legal personality under its agreements, where each of its members is granted immunities and privileges to exercise its functions. As such, as an international legal person, the WTO can make a headquarters agreement.¹⁰⁵

WTO is a body with worldwide legal personality. This means that it accepts rights and assumes responsibilities and duties like any other international organization. The WTO fully exercises its international legal personality; also, it has cooperated and has relationships with other international organizations through its distinguished activities; for example, the WTO will collaborate with WB and IMF to increase uniformity in the formulation of comprehensive economic approach.¹⁰⁶

WTO Agreement, which specifies how relations should be established between the WTO and other organizations, provided that in order to effectively collaborate with other organizations that have obligations connected to the duties of the WTO, the GC

¹⁰² Bossche (n 8) 44

¹⁰³ M N Shaw, *International Law* (6th edn, Cambridge University Press 2008) 69-109

¹⁰⁴ Rafeeqa (n 98) 82-87

¹⁰⁵ Art VIII (1) (Appendix A)

¹⁰⁶ Sampson (n 72) 289-290

shall make the necessary preparations; also, the GC can make necessary preparations for assistance and consultation with NGOs related to the affairs of the WTO.¹⁰⁷

1.4.2 WTO Agreements and their Position in International Law

International law is relied on the basic structure of the independent nations whose relations with each other constitute the heart of discipline.¹⁰⁸ International law and international organizations do not regulate only international transactions and relations between states of a political nature, but rather promote and protect various transnational societal interests, like making legal regulations to preserve the environment, and human rights or protect prisoners and civilians during wars, etc.¹⁰⁹

Additionally, there is also an aspect of international law that is interested in strengthening the economic growth and removing obstructions to commerce. For example, there is a series of agreements between countries to organize this aspect, such as the GATT, Marrakech, PC, among others. Also, there are international organizations focused on international trade that are trying to remove the obstacles before it, such as the WTO, Asian Trade Promotion Forum (ATPF), among others.

There are similarities among international law and the WTO. Subject to a few carefully crafted criteria, WTO regulations permit its members to implement environmental protection measures relating to commerce, and in the same manner, international law has been seeking to protect the environment since a long period.¹¹⁰

The WTO regulates trade between member countries through agreements concluded within the scope of the organization.¹¹¹ The agreements (as a base of international trade law) concluded are part of the international law that relates to the aspect of the economic growth. International trade law refers to the series of laws that

¹⁰⁷ Art V (1) (2) (Appendix A)

¹⁰⁸ J Pauwelyn, *The Role of Public International Law in the WTO: How far can We go?* (2001) 95 *American J of Int L* 535, 536-558.

¹⁰⁹ A Orford, *International Law and the Populist Moment: A Comment on Martti Koskenniemi's Enchanted by the Tools? International Law and Enlightenment* (2019) 35 *Am U Int'l L Rev* 427, 430-443

¹¹⁰ L Tamiotti, *Trade and the Environment: Fundamental Issues in International Law, WTO Law and Legal Theory* (2010) 9 *Wor Tr Rev* 285, 286-292

¹¹¹ C Englund, *The Effect of WTO Membership on Service Sector Trade Liberalization* (2022) 20 *J of Int L and Tr* 19, 21-23

facilitate cross border or international transactions that impact the provision of goods, services, and cross-border investment between persons or companies located in different countries.¹¹²

Along with governing interstate political relations, human rights safeguarding and environment, international law also aims today to reconcile universal international economic concerns and the exchange of benefits between states.¹¹³ While agreements concluded within the WTO require nations to do exactly the opposite of what is required by the sovereignty-based system stipulated in international law. Under a system based on sovereignty, states aim to discriminate between the rights of citizens and the rights of foreigners. By exhibiting a preference for citizens over foreigners, states strive to pursue national interests, but within the scope of the WTO, giving preference to national products over foreigner's product is inconsistent with concept of the free trade system on which WTO was established.¹¹⁴ WTO agreements are often described as contracts between members to exchange mutual benefits.¹¹⁵

1.5 Accession to the WTO and Withdraw from it

There are three types of membership within the WTO, namely original members, acceded members, and observer members. Any country that was a party to the GATT enjoys original membership; its membership is considered original if it was one of the countries that discussed the agreement and joined or one of the countries that joined after that.¹¹⁶ Accession must have been taken prior to the WTO's founding.

About acceded members (membership through acceding), these are the countries that applied to join the WTO after its establishment and that the organization accepted their membership.¹¹⁷

¹¹² Simon Fisher and Dianne Kemp, 'Understanding and Researching International Trade Law' (1998) 6 *Austl L Libr* 175, 178-179

¹¹³ R F Yearwood, *The Interaction Between World Trade Organization (WTO) Law and External International Law* (Routledge 2012) 8-25

¹¹⁴ D M McRae, 'The WTO in International Law: Tradition Continued or New Frontier' (2000) 3 *J Int'l Econ L* 27, 29-30

¹¹⁵ Isabel Feichtner, *The Law and Politics of WTO Waivers* (Cambridge University Press 2012) 15-31

¹¹⁶ Art XI (1) (Appendix A)

¹¹⁷ B S Javorcika & G Narciso, 'WTO Accession and Tariff Evasion' (2017) *J of Dev Eco* 59, 59-69

Concerning the observer members, the WTO agreement did not include any clause or article related to the observer members; however, in practice, there are currently 25 observer countries within the organization, including Iraq, Iran, Libya, Syria, Algeria, among others.¹¹⁸ Observer members have right to attend conferences and seminars held by the organization and trade negotiations without having the right to vote. Observer participants are not mandatory to carry out the obligations that the organization imposes on full members of the organization.¹¹⁹

Arab countries joined the WTO gradually, some of them joined since its establishment, some after its establishment, and there are Arab countries constantly seeking to join the organization, to benefit from it and the agreements concluded within its scope, like Iraq, Algeria, Sudan, among others. One of the obstacles facing the countries that wish to join the organization is that they must convince the WTO's member nations that it is an important open market for their products because all members have the right to object to the accession process, especially if it does not serve their commercial interests.¹²⁰

Countries that want to become a party to the WTO must submit a request to join the organization, then a working team is created by the WTO to review the application, and the negotiation process begins. All WTO member states can be members of the working group. The GC creates a team to verify the request, ultimately the team submit the result to the GC for Admission.¹²¹ Accession negotiations take place on two tracks; the first is bilateral meetings and the second is multilateral with all WTO members.¹²²

The question that arises here is what are the legal requirements for accession to the WTO? All countries and customs areas that enjoy complete independence in

¹¹⁸ See the Agreement Establishing the WTO (Appendix A)

¹¹⁹ Bossche (n 8) 108

¹²⁰ Keith W Watson, 'Interpreting WTO Accession Commitments According to their Functional Relationship with Provisions of the WTO Agreements' (Master of Law, the George Washington University Law School 2012) 7-18

¹²¹ Note by the Secretariat of the WTO, 'Accession to the World Trade Organization Procedures for Negotiations under Article XII' (WTO 1995) 1-2

¹²² Garth Ehrhardt, 'Accession to the World Trade Organization does Size Matter?' (Master of Arts, Carleton University 2012) 16-17

managing their trade policies are eligible to join the WTO pursuant to the terms outlined in the contract between it and WTO participants.¹²³ For example, Iraq, as a country or an independent entity, submitted a request to join the WTO, and the organization approved the request and started its procedures.

Moreover, a country that seeks to join must submit a schedule of tariff concessions, provide a schedule of obligations to be followed in the services sector and remove barriers to it, adhere to all agreements reached under the WTO framework, and commit to implementing the transparency principle by informing the parties to the WTO of the laws and orders issue concerning goods, services, tariffs, customs, IPRs, among others.¹²⁴

The third step is the submission of a memorandum to the WTO that describes all fields of the country's economic strategies.¹²⁵ This memorandum constitutes the groundwork for discussions among the team and the applicant. When the team members are satisfied with the draught reports (the protocol of entrance, and the obligation to access the market) the reports are then submitted to the MC or GC for approval.¹²⁶

The final terms of accession are then presented to the WTO body for a vote; if two-thirds of the organization's present members approve its entry, then the applicant country can join the WTO and sign the protocol.¹²⁷

After being adopted by the GC, the candidate to accession is then able to sign the package of entrance indicating that it admits the approved protocol of entrance. The accepted bundle must be ratified by the applicant's parliament to accession, and it is usually given three months to sign the accession protocol.¹²⁸ For example, in Iraq, the parliament must ratify, by a two-thirds, any agreement entered into by the country in the framework of negotiations as an attempt towards joining WTO. The Law on

¹²³ Article XII (1) (Appendix A)

¹²⁴ Bashar H Malkawi, *Iraq's Accession to the WTO: Commitments and Implications* (1st edn, Ankara Bar Association Press 2007) 45-49

¹²⁵ Watson, 'Interpreting WTO Accession' (n 120) 8-11

¹²⁶ L Toohey, 'Barriers to Universal Membership of the World Trade Organization' (2012) 19 *Austl Int'l LJ* 97, 101-102

¹²⁷ Malkawi, *Iraq's Access* (n 124) 44

¹²⁸ Note by the Secretariat of the WTO (n 121) 3

Treaty Conclusion of 2015 defines the legal status of treaties ratified by Iraq and obliges it to comply with all international conventions, agreements, and protocols that have been properly ratified.¹²⁹ When Iraq ratifies the WTO agreements, it will have the status of applicable law.

Additionally, parties of the WTO have the option to withdraw from the organization.¹³⁰ According to the WTO Agreement, a member has the option to withdraw from the organization and all other agreements affiliated with it, and six months after the Director General receives written notice of the withdrawal, it will become effective.¹³¹

Withdrawal from the WTO and its agreements will lead to the removal of the right of the withdrawing party to all the privileges and preferential transactions that it previously enjoyed, and on the other hand, the withdrawing member is exempt from all its obligations, whether imposed on it by the provisions of the agreements concluded within the organization's scope or to which it is bound by in various fields such as services, goods, IP, etc. However, there is a difference between withdrawal from membership and termination of membership. We mentioned that withdrawal is a matter in the hands of the state that submits the withdrawal request to the organization, but membership ends with the loss of sovereignty and independence of a state, as in the event of a state occupation by another state, or a state losing its legal personality or sovereignty for any reason.¹³²

We believe that withdrawing from the WTO is very difficult for the joining countries because when countries join the organization, many concessions are made, such as amending their laws to conform to the rules of the organization and reducing

¹²⁹ Article 17 of the Iraqi Treaty Conclusion Law No 35 (2015) states: 'The commitment of the Republic of Iraq to treaties concluded pursuant to the provisions of this law shall be subject to the approval of the Parliament on the law of ratification of the treaty or the law of accession to it by a two-thirds of the members of the Parliament if the subject of the agreement is Treaties establishing or joining regional organizations'.

¹³⁰ I Borzyskowski & F Vabulas, 'Hello, Goodbye: When do States Withdraw from International Organizations?' (2019) 14 Rev of Int Org 335, 335-337

¹³¹ Art XV (1) (Appendix A)

¹³² Roland P, *Legal Personality in International Law* (1st edn, Cambridge University Press 2010) 245-268

customs, withdrawing from the organization also isolates countries from international legal and economic development, ultimately causing them harm.

1.6 Arab Countries' Accession to the WTO

The reason for focusing on Arab countries to analyze their situation inside and outside the WTO regarding international trade is that Iraq is like any other country in the region. Its economic nature and situation is close to these Arab countries, especially in terms of issuing raw materials and oil, so Iraq can benefit from their practical experience, whether within the organization from the Arab nations that have joined the organization or from the perspective of Arab observer countries. Also, these countries in terms of language, religion, and culture are close to each other. Therefore, the study will explain the position of the Arab WTO participant nations, and the status of the Arab observer nations within the organization, and demonstrate coordination between the Arab nations inside and outside the WTO.

Most of the Arab countries belong to the category of developing countries and some of them belong to the LDCs such as Mauritania, Comoros, Djibouti, Yemen, Somalia, and Sudan.¹³³ Several Arab countries have joined the organization such as KSA, Kuwait, Qatar, UAE, Egypt, among others and thus far, thirteen Arab countries have joined the WTO, and eight others have observer status in the organization and are in the process of joining including Iraq, Algeria, Syria, Sudan among others.¹³⁴

Initially, before the establishment of the WTO, there were 23 original contracting parties in GATT, Syria, and Lebanon were the only Arab members of the agreement. Nevertheless, they left the GATT.¹³⁵ From the Arab nations, some of them have been members of the WTO since its establishments, such as Bahrain, Morocco, and Kuwait.¹³⁶ They are considered the original members while there are other Arab nations that acceded to the WTO following its establishment by applying for

¹³³ 'UN List of LDCs' (*UNCTAD*) <<https://unctad.org/topic/least-developed-countries/list>> accessed December 15, 2022

¹³⁴ Bargham (n 3) 30

¹³⁵ Malkawi, 'Framing Access' (n 59)

¹³⁶ The Kingdom of Bahrain is one of the WTO's original members that joined the organization when it was first established and became a member of the GATT in 1993. The Kingdom of Morocco is also an original party to the WTO that joined the organization at the time of its establishment, and it was also a member of the GATT. The State of Kuwait acceded to the organization since the inception of the WTO and it was a member of GATT since 3 May 1963.

membership to the WTO and going through the process of accession such as Tunisia, Mauritania, Djibouti, Egypt, Qatar, UAE, Jordan, Oman, KSA, and Yemen.¹³⁷ With the accession of KSA to the organization,¹³⁸ all of the Gulf Cooperation Council nations completed WTO membership procedure, and number of members of the organization reached 153.¹³⁹ Thus, Iraq and Yemen became the only two countries in the Arab Gulf that had not joined the WTO. With Yemen's accession, Iraq remained the only Gulf country outside the WTO, then with Iraq's accession, the entire Gulf country will join the WTO. This gives the Gulf countries a stronger position and a Gulf bloc whose influence on the organization is increasing and its voice reaches the world more.

All Arab countries developed their laws upon joining the organization; for example, the KSA made many reforms to its legal system as a result of joining the organization.¹⁴⁰ Also, Jordan which joined the WTO in 2000, however, changed most of its IP laws in 1999, the study will explain the changing Arab IP laws under the effect of TRIPS in chapter II. Therefore, the Arab countries that have observer status have to develop and harmonize their laws with the laws of the organization like any other acceded Arab country to the WTO.

Among the factors that push Arab nations to enter the WTO and the new global economic order are the new international variables in the areas of trade, which will not allow Arab countries to remain in isolation. In addition to the country's need for food and non-food products, it also has services and development requirements.¹⁴¹ Owing to the instability of the standard pricing ranges in the face of these rapid global

¹³⁷ Tunisia, which became a participant of the WTO in 1995; Mauritania joined the WTO on 31 May 1995; Egypt acceded to the WTO on 30 June 1995; Qatar joined WTO in 1996; The UAE became party of the WTO in 1996; Jordan also became WTO's participant in 2000 at the Geneva Conference; Oman joined the WTO and became a member of the organization after its establishment on 9 November 2000; and KSA joined the WTO in 2005; and Yemen acceded to the WTO in 2014, it became the 160th member.

¹³⁸ S Hertog, 'Two-Level Negotiations in a Fragmented System: Saudi Arabia's WTO Accession' (2008) 15 Rev of Int Pol Eco 650, 651-659

¹³⁹ Haytham A Salman, 'The WTO, Iraq, the Justifications for Joining and the Expected Economic Implications' (2009) 17 J of Strategy St 180, 193 (In Arabic): هيثم عبدالله سلمان، المنظمة التجارية العالمية والعراق: مبررات الانضمام والاثار الاقتصادية المتوقعة (2009) 17، مجلة الدراسات الاستراتيجية 180، 193

¹⁴⁰ The KSA issued the Competition Law No M / 25 (2004); Also, a new patent law was issued No M / 27 (2004), the new law stipulated specific provisions regarding patents, IDs, types of plants, and designs of ICs.

¹⁴¹ Bashar Malkawi, 'Anatomy of the Case of Arab Countries and the WTO' (2006) 20 Arab L Qua 110, 133-137

changes, the Arab countries found themselves opposed to these changes and joined the WTO, but in a fragile way, because joining it was less dangerous than isolation.¹⁴² The Arab countries do not have the option to join or not join the WTO, which now includes more than 160 countries and controls more than 98% of global trade.¹⁴³ Also, the survival of Arab countries or any other countries outside the organization or the framework of agreements concluded within the organization has become almost impossible because they will find ultimately themselves unable to secure trade agreements and deal with other countries without being exposed to many obstacles.

In addition, there are Arab nations that are still not full WTO members and have observer status such as Algeria, Iraq, Libya, Syria, Lebanon, and Sudan as mentioned. Algeria applied to join the organization before Iraq and has thus far not obtained membership in the organization. Algeria applied to join the organization a year after its founding in March 1996 and carried out eleven meetings and tours with the organization to discuss the accession process.¹⁴⁴ Algeria is still waiting to join the organization.

Regarding the Iraqi accession procedure, the country has already gone through a challenging situation of turmoil within the last four decades and has been devastated by four successive long conflicts: the Iran-Iraq War (1980); Kuwait invasion (1990), the occupation of Iraq in 2003 and post-2003 war against terrorism, as well as several years of economic blockade and international economic sanctions.¹⁴⁵ Following 2003, the process of Iraq joining the WTO started in order to reintegrate Iraq into the international economic system.¹⁴⁶ On February 11, 2004, Iraq attained observer status for the first time within the WTO. Iraq used its time as an observer to learn more about

¹⁴² Doreen B Hormuz, 'The Effect of the Accession of Arab Countries to the WTO (Reference to the Case of Iraq)' (2010) 32 *Mus J of Ar Int St* 50, 57 (In Arabic) دورين بنيامين هرمز، اثر انضمام الدول العربية الى منظمة التجارة العالمية (اشارة الى حالة العراق) ، 32 مجلة المستتصيرية للدراسات العربية والدولية 50، 57

¹⁴³ C Forum, 'Recent Challenges for Global Cooperation and the Future of WTO' (2021) 22 *In CESifo Forum* 8, 8-9

¹⁴⁴ Abboud Zarkin; and Twaitia Al-Taher, 'The Expected Impact of Algeria's Accession to the WTO on the Competitiveness of Small and Medium-Sized Enterprises' (2015) 43 *J of Co Bgh Eco Sci Un* 193, 210-212 (In Arabic) عبود زركين و الطاهر توابتية، آثار وانعكاسات انضمام الجزائر الى المنظمة العالمية للتجارة على تنافسية المؤسسات الصغيرة والمتوسطة (2015) 43 مجلة كلية بغداد للعلوم الاقتصادية الجامعة 193، 212-210

¹⁴⁵ B Kondoch, 'The Limits of Economic Sanctions under International Law: The Case of Iraq' (2001) 7 *J of Int Peacekeeping* 267, 274-280

¹⁴⁶ E A Hassan, M Rankin and Wei L, 'The Development of Accounting Regulation in Iraq and the IFRS Adoption Decision: An Institutional Perspective' (2014) 49 *Int J Account* 371, 382-386

the WTO and in September 2004 Iraq applied for membership in the WTO.¹⁴⁷ The member states of the organization agreed to start negotiations with Iraq for final membership on December 13, 2004, and the GC approved Iraq's application in the same year. After the formation of the working team, it met for the first time to discuss and examine Iraqi trade legislation and its compatibility with the principles of the WTO in 2004. In September 2005, a document of accession was prepared by Iraq that included the Iraqi trade policy.¹⁴⁸ Then the organization appointed Colombia's ambassador to the WTO (Claudia Uribe) to lead the team in charge of the Iraqi accession process on December 15, 2006. After that, the memorandum was studied and distributed to the members by the organization's secretariat. Questions and inquiries were asked to Iraq, and it responded in 2006. The first round of negotiating between the team and Iraq was held in Geneva in 2007 to discuss Iraq's application to accession.¹⁴⁹ During this meeting, Iraq answered the inquiries of the WTO member nations' questions about foreign trade policy, and they asked Iraq to submit initial data on agriculture, health and phytosanitary data, the barriers to trade, the legislative plan and the information about IP within Iraqi laws. The answers were provided by the Iraqi government in January 2008 and the legislative plan of Iraq was distributed by the secretariat of the WTO to the member states. They determined April 2008 as the date for the team's second meeting. On 2 April 2008, the team examined the commercial laws of Iraq,¹⁵⁰ and they encouraged Iraq's speedy entry to the organization and stated that it would aid in the nation's economic absorption into the world market.¹⁵¹ After halting negotiations for a long time, on 17 November 2017, Iraq held an informal meeting with the working team about the procedures of Iraqi entry to the WTO. After a long period of dormancy, the meeting allowed the Iraqi government and member states to exchange their views on the steps that would be taken in the near term for formal resumption.¹⁵² Since that time, Iraq has not met with the organization and has

¹⁴⁷ WTO General Council, 'Minutes of Meeting held in the Centre William Rappard on 13 December 2004' (WTO 2005) (WT/GC/M/90) 8-10

¹⁴⁸ Malkawi, *Iraq's Access* (n 124) 15-17

¹⁴⁹ WTO General Council (n 147) 8-9

¹⁵⁰ C Benson, Bashar M, 'Iraq Back on Track: The Case for Expediting WTO Accession of "Fragile and Conflict Affected ("FCA") Countries' (2022) 138 *NCJ Int'l L* 137, 154-174

¹⁵¹ 'Accession to the WTO: Challenges for Post-Conflict Nations Illustrated by the Case of Iraq', *United Nations Conference on Trade and Development* (UNCTAD 2019) 8

¹⁵² 'WTO | 2017 News Items - Members Welcome Iraq's Firm Intention to Resume Formal WTO Accession Negotiations' (Wto.org, 2022) <https://www.wto.org/english/news_e/news17_e/acc_irq_17nov17_e.htm> accessed December 15, 2022

not taken any steps to complete the accession process, nor has it submitted any new documents to persuade the organization to accept its application. We believe that there are two reasons for this: the first is the unstable security situation in Iraq, and the second is the clear difference in the views of Iraqi academics regarding Iraq's joining the WTO, as some supporters of the accession see it as the reason for Iraq's reintegration into the global economic arena. However, others oppose Iraqi accession to the organization and say that the economic situation in Iraq is not suitable for joining the organization, because Iraq today is not an industrial country and has nothing to export to the world except for oil, the value of which is not determined by the Iraq government.¹⁵³

Joining the WTO is not a panacea to Iraq's intellectual and economic property problems. Indeed, similar Middle Eastern economies still face major problems even after joining the WTO. This may be due to the low degree of economic development and a low level of poverty, also, one of the challenges that raise the concerns of any country that intends to join the organization is the issue of national sovereignty. Joining the WTO will violate the state sovereignty due to the implementation of the organization's trade policies, given that the organization will impose the abolition of some national laws that are inconsistent with its policies, as well as impose penalties on countries that deviate from these policies and goals by establishing a supranational judicial system.¹⁵⁴

Regarding the legislative plan in Iraq, it has amended and issued multiple laws to harmonize with the WTO's agreements and works on updating a legislative plan for Iraqi laws includes the laws required by the organization. The draft laws of the Ministry of Agriculture have been completed (laws for animal health and agricultural quarantine) as well as (Public Health Law, Public Safety System, Food Security System, and Plant Health Agreement) and the Ministry of Finance amended Customs

¹⁵³ Al-Dajani (n 25) 270

¹⁵⁴ Nidham J Talb and Sinan A Hamza, 'Challenges to Iraq's Accession to WTO: an Analytical Legal Study', *the Fourth Evaluation Conference of the College of Law (Albasrah University 2018)* <<http://law.uobasrah.edu.iq/index.php/2016-06-29-21-44-55/2016-06-29-21-44-64/9218-2019-03-25-07-56-11.html>> accessed April 14, 2021 (In Arabic) نظام جبار طالب و سنان عبد الحمزة تاي، التحديات امام انضمام العراق الى منظمة التجارة العالمية، المؤتمر العلمي الرابع لكلية القانون جامعة البصرة بالاشتراك مع كلية شطالعرب الجامعة في 2018/3/29

Law No. 3 of 1984.¹⁵⁵ Iraq has started to adopt various strategies to liberalize its trade policy; in this regard, in 2003, Iraq issued a legislation on foreign investment that lets 100% ownership by foreigners in every areas of the economy, aside from the extraction of oil and other minerals. Iraq also amended its IP laws, utilizing the laws of the UAE and Jordan as examples, to make them compatible with international standards and the standards of the WTO.¹⁵⁶

Among the difficulties that faced by the Arab nations is the marginalization of their attitude inside the WTO, which can be described, on the one hand, by the inadequate coordination among these countries within the organization. The member states of the WTO have heavily relied on alliances to communicate, negotiate and mobilize, and as a consequence, all LDCs and developing nations are now members of multiple alliances that were formed according to sectoral, terrestrial, or other criteria. On the other hand, Arab nations' inexperience in the field of trade has negative consequences on their presence within the WTO and the multilateral negotiation process. Also, Arab nations are not well-versed in the procedure of resolving trade disputes due to the very low participation of Arab countries in the problem-resolution procedures within the WTO.¹⁵⁷

With the entry of Iraq, all the Gulf countries will become WTO's participant, the number of Arab countries who are members will increase. Thus, coordination between them will become necessary to strengthen their position within the organization. The Arab countries should unify their position regarding the upcoming meetings that will be held within the scope of the WTO, so that their voices and demands are conveyed more to the organization, and in return, the organization will treat them as one strong block.

1.7 Positive and Negative Consequences of WTO Membership

Joining WTO has positive and negative aspects in general. Among the anticipated benefits of entering the WTO is that membership will enable the country to be treated fairly without discrimination following its responsibilities and privileges

¹⁵⁵ Al-Zuhairi (n 35) 297-298

¹⁵⁶ Malkawi, 'Anatomy (n 141) 112-117

¹⁵⁷ Bargham (n 3) 26-27

as a participant of the organization. Hence, the acceded member is also allowed to benefit from the multilateral trade rules.¹⁵⁸

The WTO agreements will allow its members that are exposed to cases of dumping to take proper measures to confront this obstacle by imposing restrictions to protect national products in the WTO member states, and these restrictions often include imposing customs duties on goods associated with dumping, thus maintaining the economy of the accession country and local producers.¹⁵⁹

Within the WTO, developed countries should give preferential treatment to developing nations generally and LDCs specifically.¹⁶⁰ To achieve this goal, countries around the world are constantly striving to join the system of multilateral trading, believing that compliance with the rules of the organization will cause the development and deregulation of trade for the well-being of all.

All countries are equal, the rule of law replaces powers, all parties of the organization must abide by the rules and agreements of the organization, the agreements of WTO are negotiated by all participants, and all participants of the organization, including the major power countries, are obligated to comply and abide by them.¹⁶¹

Despite all these positive aspects mentioned above, there are also some negative aspects for the countries that join the WTO; for example, accession to the organization puts the country's economy, and the commercial activity in particular, in confrontation with global competitors that have more extensive experience (technical and administrative), advanced technology, and the ability to access sources of financing, all things that of the industries of developing countries are lacking.¹⁶²

¹⁵⁸ UN Conference (n 151) 1

¹⁵⁹ M Yilmaz, *Domestic Judicial Review of Trade Remedies* (Cambridge University Press 2013) 2-10

¹⁶⁰ Hawthorne (n 82) 30-37

¹⁶¹ Federico O, *Basic Legal Instruments for the Liberalization of Trade* (1st edn, Hart Pub 2004) 2-30

¹⁶² Alkuraishi (n 27) 5

The WTO also requests that the acceded country reduce the rate of customs tariffs on industrial products and imported materials during a certain period, and this period may not be sufficient in many cases, especially for developing countries.¹⁶³

With all these negatives, there are still some positives to the WTO that we cannot ignore. It is known that the reason for many wars that have taken place around the world is trade or economic. The existence of a peaceful legal solution within an organization is one of the most prominent advantages that has prevented wars and resorting to military means to solve commercial or economic problems.

¹⁶³ S P Subedi, 'The Road from Doha: The Issues for the Development Round of the WTO and the Future of International Trade' (2003) 52 *Int'l & Comp LQ* 425, 426- 441

CHAPTER II

TRIPS and Arab Countries' IP Laws

IP is a field of law or legal rights that protect or deal with property rights in intangible things; the most common IPR protections are copyright for writings, patents for inventions, and other industrial properties.¹⁶⁴ The financial value of the IP is the economic rationale for protecting that property. Generating innovations to improve the standards of life by protecting rights holders is another reason. IP can be defined as inventions of the mind, and IPRs as legal rights that regulate the use of such inventions.¹⁶⁵ IP law governs the use, exploitation, and creation of creative work, where the term IP includes a set of proprietary rights like patents, IDs, confidential information, GIs, etc. There are various distinctions among these modes of IP, but they all share one basic point: they all create the protection of property on intangible things to the human mind like inventions, information, and ideas.¹⁶⁶

Therefore, national IP laws and international legislation (agreements) pertaining to the regulation of IP supporting the advancement of mental and technological innovations by protecting the rights of creators so that they can continue their creativity without fears and ultimately benefit all humanity through the use and consumption of their products. IP laws also have a contribute to the growth of the national economy, which helps to bring income to a country of origin. IPR systems turn public or unrestricted goods into private or restricted goods, and thus it is rare that rights holders will exclude third parties from enjoying the protected goods.¹⁶⁷ With the growing global interest in IPR matters, scholars have commenced paying great attention to the legal support of IPRs and their impact on the economy.¹⁶⁸

¹⁶⁴ P S Menell and Others, *Intellectual Property in the New Technological Age*, 2021 (Clause 8 Publishing 2021) 2-6

¹⁶⁵ Hoekman (n 5) 359

¹⁶⁶ L Bently and Others, *Intellectual Property Law* (5th edn, Oxford University Press 2018) 1-2

¹⁶⁷ E B Rodrigues, *The General Exception Clauses of the TRIPS Agreement* (Cambridge University Press 2012) 12

¹⁶⁸ R L Ostergard, 'The Measurement of Intellectual Property Rights Protection' (2000) 31 J of Int Bus St 349, 349-350

The study analyses the position of the national IP laws of the WTO-acceded Arab nations to determine the degree to which these local legislations adhere with the TRIPS and to clarify the amount to which those countries are involved with the subject of IP. It should be remembered accession to the TRIPS means accession to several international agreements that provide legal protection for IP, which is provided for by the TRIPS. Member states must abide by the BC on copyright, the PC on Industrial Goods, and IPIC on ICs. Therefore, Arab countries must take into consideration all Provisions contained in the TRIPS and all international agreements stipulated therein.

2.1 IPR Safeguards in Arab Laws and TRIPS

Before the existence of the TRIPS, there were many international agreements that provided international legal protection for IPRs, and the WIPO as an agency of the UN administrated some of these conventions,¹⁶⁹ which was formally established in 1970 and was admitted as an organization to the UN on December 17, 1974.¹⁷⁰ The most prominent of which is the PC, which is dedicated to preserving industrial goods, like IDs and models, trade names, patents, service marks, and trademarks, and among the most important fundamental tenets of the convention is the NT principle.¹⁷¹ Under this principle concerning IP, in their national laws, members must ensure that they do not give favorable treatment to citizens compared to its foreigners.¹⁷²

The BC, which was concluded three years after the PC, protects all types of production pertaining to art and literature. WIPO administers both of the above-mentioned conventions.¹⁷³ It currently has the right to administer twenty-four multi-lateral IP agreements; however, it does not have a mechanism to enforce IPRs.¹⁷⁴

¹⁶⁹ PC on Industrial Property (1883); BC pertaining to Literary and Artistic Works (1886); Madrid Agreement pertaining to the International Registration (1891); Rome Convention (1961); PCT (1970); Strasbourg Agreement pertaining to the International Patent Classification (1971); Geneva Copyright Convention (1971); and IPIC (1989)

¹⁷⁰ D J Halbert, 'The World Intellectual Property Organization: Past, Present and Future' (2007) 54 J Copyright Soc'y USA 253, 261

¹⁷¹ See Art 2 (1) of PC

¹⁷² R J Gutowski, 'The Marriage of Intellectual Property and International Trade in the TRIPS Agreement: Strange Bedfellows or a Match Made in Heaven' (1999) 47 Buff L Rev 713, 718

¹⁷³ J H Reichman, 'The TRIPS Agreement Comes of Age: Conflict or Cooperation with the Developing Countries' (2000) 32 Case W Res J Int'l L 441, 442-452

¹⁷⁴ Peter K Yu, 'The Middle Kingdom and the Intellectual Property World' (2011) 13 Or Rev Int'l L 209, 210

Unlike the WTO, a weakness of the WIPO is the lack of dispute settlement mechanisms to provide the best protection for IPRs on a global scale.¹⁷⁵

Furthermore, a more advanced stage that took place on the international scene and gave birth to a more comprehensive agreement for the care of IPR, namely the TRIPS. The agreement affected the alter of local IP laws, including Arab countries that have acceded to WTO or Arab countries that have not joined it but are in the progression of joining it. Under the agreement's effect they amend their IP laws or pass new laws to make them conform with international norms, in particular the standards contained in the TRIPS.

The study analyzes TRIPS and compares it with other international agreements concluded to protect IPR on the one hand, and on the other hand, the study analyzes the Arab countries' IP legislation and the impact of global treaties on them, especially TRIPS.

2.1.1 TRIPS' IPR Protective

With the emergence of globalization and the concept of liberalism, the prominence of IP increased, like other commercial rights. At the same time, the rights of creators were subjected to many violations, such as imitation or counterfeiting of their creations without their permission, and this led the benefits of the original owners of those rights being harmed as well as the reputation of goods being damaged. Finding legal protection for those rights from potential violations has become inevitable.¹⁷⁶ Within the framework of the GATT, several rounds took place, and the UR was the last round that occur within the framework of the GATT. The UR led to the generation of a series of agreements, including the TRIPS that was signed in Marrakesh.¹⁷⁷ The study will explain how the TRIPS was created, examine its influence and compare it with other international agreements concluded to protect IPR.

¹⁷⁵ Olivier Cattaneo, 'The Interpretation of the TRIPS Agreement: Considerations for the WTO Panels and Appellate Body' (2000) 3 J World Intell Prop 627, 664-665

¹⁷⁶ G B Dinwoodie and Rochelle C D, 'TRIPS and the Dynamics of Intellectual Property Lawmaking' (2004) 36 Case W Res J Int'l L 95, 104

¹⁷⁷ T Nguyen, *Competition Law in Technology Transfer under the TRIPS Agreement: Implications for Developing Countries* (Edward Elgar 2010) 1-4

2.1.1.1 The Birth of TRIPS

IPRs are among the most crucial trade issues, which is why many worldwide conventions and organizations are interested in them. The absence of strong protection of IPRs becomes an obstacle to technology development and technology transfer, while also luring in foreign capital, and thus, the appropriate fortification of IP affects the promotion of trade.¹⁷⁸ There is a strong connection between IP and trade or international trade especially because IP violations, such as counterfeiting goods or piracy, pose a trade barrier and reduce the legitimate access of goods to the market.¹⁷⁹ There are several justifications to support the link between trade and IP; for example, IP protection promotes technology transfer that may lead to growth in developing countries, and IP protection will increase foreign investment and provide a suitable environment for foreign investors.¹⁸⁰

In January 1987, the UR Negotiations Plan was approved. TRIPS was included in the work program under the title ‘TRIPS, Including Counterfeit Goods’. The negotiation plan paved the way for deliberations on IPR inside one of the 14 negotiating teams, the ‘Negotiating Group on TRIPS’ chaired by the Swedish Ambassador Lars Anell’.¹⁸¹ Initially, developing countries in the UR blocked progress on the TRIPS and insisted that the WIPO provide a proper forum for IP protection.¹⁸² For this reason, one of the criticisms directed towards the TRIPS was the generation of the agreement resulting from pressure from the strong economic countries on the weak ones, even though these countries had equal sovereignty.¹⁸³

Developing countries had long since given up opposing the TRIPS by the time of the UR discussions. Backed by industry experts, the U.S, Japan, and EU, called the ‘Triple Alliance’, played a crucial negotiating role.¹⁸⁴ In Marrakesh, Ministers of

¹⁷⁸ Cattaneo (n 175) 631

¹⁷⁹ Carolyn Deere, *The Implementation Game* (1st edn, New York; Oxford University Press 2009) 67-113

¹⁸⁰ Congressional Research Service, ‘Intellectual Property Rights and International Trade’ (Library of Congress 2020) 15-48

¹⁸¹ D Matthews, *Globalizing Intellectual Property Rights: The TRIPS Agreement* (Taylor & Francis 2013) 29

¹⁸² Anderson (n 26) 272-287

¹⁸³ P Drahos and John B, ‘Intellectual Property, Corporate Strategy, Globalization: TRIPS in Context’ (2001) 20 *Wis Int’l LJ* 451, 451-452

¹⁸⁴ Carlos M Correa, ‘Bilateralism in I Intellectual Property: Defeating the WTO System for Access to Medicines’ (2004) 36 *Case W Res J Int’l L* 79, 84-85

GATT with the participation of 114 countries met to complete the UR of Trade Negotiations. They became signatories to the final document. The WTO members also became parties to the TRIPS, in addition to 13 accords governing the exchange of commodities and services, understanding on dispute settlement ...etc. Annex I C of these agreements was the TRIPS, which was considered the first international effort to address IPR issues within the WTO.¹⁸⁵ The Agreement includes 73 articles and is split into seven sections. The area of patents has the TRIPS' most comprehensive IPR coverage.¹⁸⁶

2.1.1.2 Evaluating TRIPS

TRIPS is a broad global agreement on IP. It sets standards for protection and rules for the management and implementation of IPRs, also grants DSM.¹⁸⁷ TRIPS is one of the WTO system's key underpinnings. The protections of IPR at the international level entered a new age through the TRIPS' conclusion. The agreement places a responsibility on all WTO participants to ensure high levels of IPR preservation and the agreement is enforceable by the WTO members through the imposition of trade penalties.¹⁸⁸ To monitor how the agreement is implemented by WTO members, there is a council called the TRIPS Council, which is the permanent body accountable for monitoring the agreement's implementation by its members.¹⁸⁹

TRIPS was planned to end the era of universal IP management under the umbrella of the WIPO because it is not sufficiently capable of protecting the interests of industrialized nations. Therefore, a new era began in which competencies were shared and protected. In the new age, the WTO would issue the basic rules governing IP protection, the WIPO would play a secondary role in this area, and the task of preserving IPRs would move to Geneva, which is where the WTO is headquartered.¹⁹⁰ TRIPS was constructed on the legal foundation given by earlier WIPO accords,

¹⁸⁵ Matthews (n 181) 7

¹⁸⁶ A Evans, 'Taming the Counterfeit Dragon: The WTO, TRIPS, and Chinese Amendments to Intellectual Property Laws' (2003) 31 Ga J Int'l & Comp L 587, 601

¹⁸⁷ J H Reichman, 'Compliance with the TRIPS: Introduction to a Scholarly Debate' (1996) 29 Vand J Transnat'l L 363, 366-367

¹⁸⁸ F M Abbott, 'The WTO TRIPS and Global Economic Development' (1996) 72 Chi-Kent L Rev 385, 388-399

¹⁸⁹ P Jiang, 'Fighting the AIDS Epidemic: China's Options under the WTO TRIPS' (2002) 13 Alb LJ Sci & Tech 223, 227

¹⁹⁰ Abbott, 'WTO (n 188) 386

including the PC and BC; however, TRIPS modernized and revised the WIPO-administered agreements. Before the existence of the TRIPS, the global IP system was incomplete because before the TRIPS, there was no mechanism in the international IP system for settling disputes and rules to enforce those rights.¹⁹¹

Despite all these positives of the TRIPS, it has still faced several criticisms. One of the criticisms facing the agreement is the neglect of the social and environmental objectives of the WTO.¹⁹² The UN Development Program's report for the years 1999 and 2000 described the TRIPS as being unfair as places obstacles in the way of eradicating poverty and receiving technology.¹⁹³

The other criticism facing TRIPS is that it cares more about the economic interests of countries and the owners of IPRs than health, education, and food.¹⁹⁴ In this regard, the Sub-Committee on Human Rights in its resolution (No. 2000/7 and 2001/21) emphasized that TRIPS promotes the economic interests of IPR holders, rather than realizing rights to health, education, and food. The committee saw human rights as a secondary interest of the TRIPS.¹⁹⁵

Additionally, TRIPS does not include adequate protection of Traditional Knowledge (TK), TK is a product comprising elements characteristic of the traditional artistic heritage maintained and developed by society, however, there is a reason why TK is not protected by TRIPS. TRIPS protects IPR for a certain period, such as protecting patents for twenty years, TK is usually older than that, so TRIPS treats this knowledge as public domain.¹⁹⁶ According to the Doha Declaration, some IP rules can use for specific kinds of TK such as crafts, expressions of folklore, and arts that are

¹⁹¹ B Binkert, 'Why the Current Global Intellectual Property Framework under TRIPS is not Working' (2006) 10 *Intell Prop L Bull* 143, 145

¹⁹² D B Shabalala, 'Access to Trade Secret Environmental Information: Are TRIPS and TRIPS-Plus Obligations a Hidden Timeline' (2017) 55 *Colum J Transnat'l L* 648, 649-658

¹⁹³ Rodrigues (n 167) 14

¹⁹⁴ P Cullet, 'Human Rights and Intellectual Property Protection in the TRIPS Era' (2007) 29 *Hum Rts Q* 403, 405-425

¹⁹⁵ Rodrigues (n 167) 14

¹⁹⁶ Binkert (n 191) 150

commercially exploited. Furthermore, common law may be utilized to stop some TK usage.; in addition to GIs, they can be used to establish the origin of varieties.¹⁹⁷

IPRs can greatly encourage the distribution and acquisition of technical knowledge, and cross-border technology transfer is carried out through three channels: firstly, through international trade in goods, secondly through foreign investment, and finally by licensing technologies and brands to unaffiliated companies, joint ventures, and subsidiaries. The transmission of innovation through each channel count on the national legal protection of IPRs in the first place.¹⁹⁸ Technology transfer and diffusion is one of the TRIPS's main goals, which seeks to attain, and requires industrialized countries to transfer technology to less developed nations by providing incentives for their companies to do so.¹⁹⁹ Providing stronger protection by less developed countries for IPRs will lead to more technology transfer to their countries, more national innovation and cultural growth, and a faster way of bridging the technology gap between them and industrialized countries.²⁰⁰

2.1.1.3 TRIPS and Others

The basic and principal international treaty for IPR protection now in the international arena is TRIPS. For instance, the RC, the PC, the BC, and the IPIC treaty. TRIPS extended beyond the limits of all these treaties, where IP protection is regulated from different angles within a single agreement, and because it has a mechanism to resolve disputes in the framework of the WTO, namely the DSM. In this sense, it guarantees the IPR holders better than other global agreements.²⁰¹

With the purpose of resolving or preventing disputes, TRIPS sets out the rule of transparency as a first step and makes all members aware of the risks of not making their national laws adhere to the terms of the agreement.²⁰² Since the TRIPS Council has the authority to invite members to present and discuss their laws about IPRs during

¹⁹⁷ D Gervais, 'Traditional Knowledge & (and) Intellectual Property: A TRIPS-Compatible Approach' (2005) 2005 Mich St L Rev 137, 160

¹⁹⁸ Hoekman (n 5) 369

¹⁹⁹ 'WTO | IP (TRIPS) - Technology Transfer' (*Wto.org*, 2021) <https://www.wto.org/english/tratop_e/trips_e/techtransfer_e.htm> accessed 10 July 2021

²⁰⁰ N Barizah, 'The Development of ASEAN's Intellectual Property Rights Law; from TRIPS Compliance to Harmonization' (2017) 7 Indon L Rev 95, 97-98

²⁰¹ Rodrigues (n 167) 13

²⁰² Art 63 (Appendix B)

periodic review devices and other advisory procedures, member states must thus publish their IP laws and notify the TRIPS Council accordingly.

The creation and enforcement of IPR were governed by numerous international treaties before TRIPS, and the WIPO administered many of these treaties, including the PC, the Madrid Convention and Protocol, the PCT, and the BC. However, they did not have the power to impose an obligatory settlement on the parties to the conflict.²⁰³ This means that the aggrieved member of the WTO may call the formation of a panel if another member of the organization has violated any of the provisions of the TRIPS.

TRIPS differs from its predecessors related to the protection of IPRs, in that it sets the procedural rules necessary for the enforcement of IPRs besides substantive rules; there is a set of administrative procedures, criminal and civil penalties in the agreement that parties of the WTO must include in their national laws.²⁰⁴

Additionally, to enhance the capacity and legitimacy of the WTO, the WTO may build strong and strategic relations with other international organizations, such as coordination and cooperation with the WHO or WIPO. For example, it can consult with the WIPO on the dispute settlement mechanism in an IP issue, or with the WHO when a matter related to public health or exceptions to pharmaceutical patents arises.²⁰⁵ For example, within TRIPS, regarding methods of dispute resolution, TRIPS Council, must provide the assistance requested by the members, and the agreement also stipulates that the Council is free to consult with and glean knowledge from any resource, involving the WIPO.²⁰⁶ In addition, according to the WTO/DSU, the Panel is allowed to request advice or details from anybody or any organization it deems appropriate.²⁰⁷ For instance, in the case among the U.S against Thailand that occurred in 1989, the U.S requested a consultation with Thailand on internal taxes on cigarettes and restrictions on the import of cigarettes. After the consultation between them was

²⁰³ Ian J Kaufman, 'Impact of GATT-TRIPS on Trademark Rights' (2003) 5 Int'l Intell Prop L & Pol'y 5-13, 5-3

²⁰⁴ P Stoll, J Busche and Katrin A, *WTO--Trade-Related Aspects of Intellectual Property Rights* (Martinus Nijhoff Publishers 2009) 6-17

²⁰⁵ Cattaneo (n 175) 665

²⁰⁶ Art 68 (Appendix B)

²⁰⁷ Art 13 (1) of the WTO DSU states: 'Each panel is free to consult with any person or organization it considers acceptable for information and technical guidance'.

unsuccessful in 1990, the UN requested that a panel be established. Thailand announced that the measures had been taken to safeguard the public's health, and the panel consulted with experts from the WHO to determine whether the actions taken by Thailand were in fact needful in this regard.²⁰⁸

2.1.2 The IPR Protection in the Laws of Arab Countries

The Arab countries made great efforts in the late twentieth century for providing greater IPR protection in order to conform their national legislation with the international standards, especially the standards contained in the TRIPS. In this section, the study will discuss the Arab IP legislations and the impression of the TRIPS on them.

2.1.2.1 Arab IP laws

Over the course of four centuries, the Ottoman Empire ruled many Arab countries, and thus Ottoman laws ruled the region for a long time, which took the form of Islamic Sharia laws, and the Ottomans issued the Copyright Law in 1910, and this law ruled all the Arab countries that were living under the control of the Ottomans. But in the early 20th century, and especially after the First World War, the Ottoman Empire gradually fell and at the beginning of the twentieth century, Egypt, Kuwait, Iraq, among others turned into a British protectorate.²⁰⁹

Some Arab countries remained committed to implementing the Ottoman IP law, for instance, in Iraq; the Ottoman copyright law was in force until 1971.²¹⁰ And in Jordan, the law was in force until 1992, unlike Türkiye which replaced the Ottoman copyright law by a new law in 1951.²¹¹ This means that after the end of Ottoman rule in the region, the influence of their laws remained. After the independence, Iraq passed several laws from the 1950s to the 1970s to protect IPR. But because of Iraq's wars with neighboring countries, and economic sanctions imposed on it, Iraq stopped its international activities, so Iraq will not issue any IP law from the 1980 until 2003 and

²⁰⁸ *The United States V Thailand: Thailand-Restrictions on Importation of and Internal Taxes on Cigarettes* [1990] GATT Dispute Settlement Body, (DS10/R - 37S/200) (GATT Dispute Settlement Body)

²⁰⁹ Birnhack (n 32) 7

²¹⁰ Ismat Bakr, *Legal Protection of a Right Neighboring to Copyright* (Zain Publications 2018) 22 (In Arabic) 22 (2018) الحماية القانونية للحقوق المجاورة لحقوق المؤلف (متمشورات زين الحقوقية 2018)

²¹¹ Birnhack (n 32) 8

downfall the previous regime, unlike acceded Arab countries to WTO. For example, Egypt, which continued its international activities and kept pace with international developments and became a member from the WTO in 1995, and IP law was passed in line with the TRIPS in 2002, which regulates all types of IP.²¹² In addition, among Arab countries, the UAE also joined the WTO in 1996, and the UAE benefited from the transitional period like Egypt. Therefore, a copyright, trademark, and a patent law were issued in 2002 after its accession to the trade organization²¹³ and joined the BC in 2004.²¹⁴

Additionally, along with Egypt and the UAE, Kuwait, Bahrain, Qatar, Morocco, and Tunisia, they joined the organization early and benefited from the technical assistance and transitional periods that the agreement gives to developing countries.²¹⁵ Furthermore for Jordan, in order to join the WTO, it has gradually modified IP laws, and IP laws in Jordan, unlike Egypt, are not regulated in one law, but Jordan has organized IP in multiple laws. In this regard, Jordan issued the Trademarks Law in 1999,²¹⁶ and joined the BC and PC in 1999.²¹⁷ Jordan continued to amend and issue IP laws even after its accession to the WTO in 2000. In this regard, Jordan amended the patent law with a new law in 2007.²¹⁸ At the international level, Jordan ratified the WIPO Internet agreement in 2004.²¹⁹

Another example besides Jordan is KSA, which joined the WTO in 2005; KSA joined the PC in 2004, the year prior to its accession to the organization. KSA passed the Trademark Law in 2002, the Copyright in 2003, and the Patent in 2004.²²⁰ KSA and Jordan, unlike Egypt, Bahrain, Qatar, Kuwait, and the UAE, do not benefit from

²¹² Egyptian IP Law No 82 (2002)

²¹³ See UAE Law for the Regulation of Industrial Property of Patents, Designs and Industrial Models No 17 (2002); Federal Law Concerning Commercial Trademarks No 8 (2002) Amending Federal Law No 37 (1992); UAE Federal Law on Protection of Copyright and Neighboring Rights No 7 (2002)

²¹⁴ 'Berne Con (n 18)

²¹⁵ E Kontorovich, 'The Arab League Boycott and WTO Accession: Can foreign Policy Excuse Discriminatory Sanctions' (2003) 4 Chi J Int'l L 283, 284-304

²¹⁶ See Jordanian Trademark Law No 34 (1999)

²¹⁷ Abdullah Nawafleh, 'Development of Intellectual Property Laws and Foreign Direct Investment in Jordan' (2010) 5 J Int'l Com L 142, 144-147

²¹⁸ See Jordanian patent law No 28 (2007)

²¹⁹ 'WIPO Internet Treaties' <https://www.wipo.int/copyright/en/activities/internet_treaties.html> accessed December 16, 2022

²²⁰ Nadia Shehzad, 'Developing Intellectual Property Regimes in the Gulf: Utilizing Intellectual Property for Positive Economic Growth' (2012) 2 World J Soc Sci 231, 234-239

the transition period granted by TRIPS to the developing nations. As well, the Oman, which joined the WTO in 2000, did not benefit from the transitional period like KSA and Jordan.²²¹ This means that the Arab countries that were late in joining the WTO must comply their national laws with the rules stipulated in the agreements concluded within the organization prior to their WTO membership. This statement also applies to the other Arab countries that they have observer status within the WTO and waiting to join it.

International agreements also affected Arab countries with regard to IP because they believed it would help boost their economy, for example, before signing TRIPS, most Arab countries joined the PC, Egypt joined in 1951, Mauritania in 1965, and Algeria in 1966, Jordan in 1972, then Iraq in 1976.²²² This leads to the issuance of multiple legislations related to IP throughout the Arab countries. Some Arab countries have quickly participated in and signed many international agreements and organizations on IP, especially after the establishment of WIPO. For example, Egypt became members of WIPO in 1975 and Iraq in 1976.²²³

2.1.2.2 Impact of the TRIPS on Arab IP laws

TRIPS was drafted by the industrially advanced countries, which consider themselves a source of technology and knowledge and impose it on the countries of the world including Arab countries, their argument is that the agreement will help raise their economy and transfer knowledge to their countries. The agreement set a minimum standard for all countries around the world, including Arab countries that have acceded or want to join the WTO. Therefore, all Arab countries that parties of the WTO or wishing to join it must adhere to these standards as a minimum when amending or issuing national legislation pertaining to IPR protection.²²⁴

²²¹ Sohaila Jmuh, 'IPRs Agreement's Impact on Arab Economy and Trade Relationships Trends (Jordanian-American)' (2017) 17 Ac for Soc and Hu St 102, 105 (In Arabic) جموح سهيلة، اتفاقية حقوق الملكية الفكرية (TRIPS) الفكرية وتأثيرها على الاقتصاد العربي و اتجاه العلاقات التجارية (الأردنية-الأمريكية) (2017) 17 الأكاديمية للدراسات الاجتماعية و الإنسانية 102، 105

²²² United Nations, 'Booklet on Intellectual Property for Fostering Innovation in the Arab Region' (UN 2020) 5-7

²²³ 'Member states' <<https://www.wipo.int/members/en/#5>> accessed December 16, 2022

²²⁴ A Slade, 'The Objectives and Principles of the WTO TRIPS Agreement: A Detailed Anatomy' (2016) 53 Osgoode Hall L J 948, 956-957

To improve the economic and living of its citizens and for the purpose of facilitating their accession to the WTO, Arab legal systems have undergone an unparalleled wave of legislative revisions. IP legislation has been at the heart of these revisions. So far 13 Arab countries have joined the WTO, and 8 Arab nations have observer status, all of these countries have amended and issued IP legislation in line with TRIPS's standards, this illustrates the effects of the TRIPS on the internal legislation of Arab countries.

In addition, as mentioned the agreement gives transitional period to countries according to their development, and all of the Arab nations are assorted as developing or LDCs. However, some Arab acceded countries have not taken the transition period to comply their IP laws with TRIPS such as Jordan, Oman, KSA, and Yemen.²²⁵ By comparison with this, the Arab countries that have not yet joined the organization so far or have observer status, very likely will not benefit from this transitional period granted by the TRIPS upon joining because of their delay in joining the WTO.

Arab countries raised the level of IP protection, accepted international standards for IPR protection, and concluded bilateral and multilateral agreements without in-depth study. The developed countries used those agreements similar to their internal legislation to oblige the countries of the world including Arab countries to adopt them in their internal legislation.²²⁶ Binding Arab countries to these standards without adequate consideration of the phase of IPR preserving proportional to their stage of growth in regard to their local innovative capabilities and their industrial and technical foundation and the Arab countries have no role in setting these standards.

In addition, as mentioned above, within the WTO, a TRIPS Council has been established whose task is to observe the operation of the agreement. Where each member must make available to the TRIPS Council, upon request by the Council, copies of IP laws, administrative rulings, judicial decisions, and regulations. The council reviews all these laws and judicial rulings and can ask questions about them to

²²⁵ Kennedy Matthew, 'When Will the Protocol Amending the TRIPS Agreement Enter into Force?' (2010) 13 J Int Eco L 459, 460-465

²²⁶ Elmahjub (n 31) 2-24

its members.²²⁷ Through this review, the council can identify any deficiencies and ask the member to resolve these deficiencies within a specified period.²²⁸ Therefore, the council can ask any Arab country to change its legislation to meet WTO requirements, and this affects the independence of the legislature in enacting laws, it could be considered an interference with state sovereignty and the law of those states.

Additionally, the one which went further than the TRIPS was TRIPS Plus which resulted in developing countries facing increasing pressure to meet higher standards of IP protection in their national laws.²²⁹ For example, Jordan quickly joined the WTO by comparing it with other members, and one of the reasons for Jordan's rapid acceptance by the WTO was the compliance of Jordanian IP laws with TRIPS Plus. For instance, Jordan promised the Working Group that it would implement the TRIPS upon its accession without using the transitional period afforded by the WTO to the developing countries, and Oman also declined the transitional period when it joined.²³⁰ At the same time, Jordan was asked, within a period ranging from 5 to 7 years, to join several international agreements on IP except for the TRIPS, such as the Madrid, Rome, and PCT Treaties, and Jordan accepted this request.²³¹ In the Doha Declaration's last years, developing nations were pressured to put in place stricter laws and put more requirements for patents, and more restrictions to become aligned with the TRIPS, which was called TRIPS Plus.²³²

2.2 Regulation of IP under the TRIPS and Arab Laws

TRIPS regulates all types of IP (Which are eight types).²³³ However all of them belong to one family, which is the family of IP, and their common point is that they all are the result of rational thinking and creativity, but there is also a difference in their nature and function. Arab countries also organized all these types of IP found in the TRIPS, but the majority of Arab countries organized each type of IP unlike TRIPS

²²⁷ Matsushita, *The World Trade* (n 74) 633- 641

²²⁸ 'WTO | TRIPS Council Regular Meetings' (*Wto.org*, 2021) <https://www.wto.org/english/tratop_e/trips_e/intel6_e.htm> accessed 12 August 2021

²²⁹ J Malbon and Charles L, *Interpreting and Implementing the TRIPS Agreement* (Edward Elgar 2008) 71

²³⁰ El Said, 'The Accession of Arab (n 21) 66-67

²³¹ *ibid*

²³² Deere (n 179) 68-122

²³³ TRIPS Agreement regulates eight types of IPRs which are: Trademark, Copyright, Related Rights GIs, Patents, IDs, Undisclosed Information, and ICs, there are also overlaps between them, for instance, a computer program can be patentable, however, protected within copyright.

in an independent law, such as KSA, UAE, Iraq, Kuwait, Jordan, among others, and there is an Arab country that organized all types of IP like TRIPS in one law such as Egypt. The study will explain the legal position of TRIPS and Arab IP laws on each of these types as follows:

2.2.1 Copyright and Related Rights

The term "copyright" back to privileges accorded to makers of creative and literary works, and these rights constitute a major of IPRs including the preservation of innovative works in literature such as books, poems, or computer programs, databases, and musical works like musical notes, as well as painting, sculpture, maps, photographs, and audiovisual works such as movies and videos.²³⁴

Copyright, as one of the types of IP, protects literary, graphic, musical, or other artistic aspects in which the author shows intellectual concepts. Originality is the main concept of Copyright, and it can be extended to tangible forms such as literary works, mimes, dramas, choreography, cinematograph films, graphics, graphic works, sculpture, audiovisual works, motion pictures, architectural works, musical works, and computer programs as well.²³⁵

TRIPS does not define copyrights, but rather refers to terms related to the author, work, innovation, or collective work to the provisions of the BC of 1886 for the protection of IP, which was amended in 1979.²³⁶ BC became part of the TRIPS, so when any Arab country joins the WTO, it will automatically adhere to the articles of the BC under the TRIPS.²³⁷ This means that all Arab nations that have a WTO membership are bound by the articles of the BC enshrined in the TRIPS, even if they are not members of the BC.

By referring to the Arab IP laws and BC as international law, it can be observed that copyright is split into two sections: financial and ethical rights, the first one

²³⁴ Bashar H Malkawi, 'Jordan and the World Trading System a Case Study for Arab Countries' (PhD, Faculty of the Washington College of Law of American University 2005) 195-198

²³⁵ Matsushita, *The World Trade* (n 74) 635-640

²³⁶ Xiaorong Wang, 'International Copyright and Developing Countries the Impact of the TRIPS' (Master of Laws, McGill University 2004) 52-53

²³⁷ Arti 9 (1) (Appendix B)

includes the reproduction, translation, broadcasting, right of public recitation, modification, cinematic rights, and tracing. With respect to moral or ethical rights, it consists of the inventor's right in attributing his work to him, disclose the effort, respect and preserve the work from any distortion, enabling to make subsequent alterations, and to removing it from circulation.²³⁸

Pertaining to ethical rights in contrast to the BC, these rights are excluded from TRIPS.²³⁹ TRIPS' participants bear no responsibility concerning the ethical rights provided for in the BC.²⁴⁰ TRIPS is more concerned with the commercial aspects than the ethical aspects of copyright, as evidenced by the fact that there is no provision in the agreement concerning ethical rights. We can consider that as a serious criticism of the TRIPS.

Before the TRIPS, several international agreements protected and regulated literary and artistic property in the field of copyright.²⁴¹ However, what differentiates the TRIPS from other international agreements is that it obligates parties to set a standard for IP preserving, and there is a dispute resolution body whose decisions are binding. In addition, according to the TRIPS, computer programs must also protect under the BC as literary works, the provisions of the BC regarding literary works would similarly apply to them.²⁴²

The duration of protection under the BC, which was integrated into the TRIPS, is the remainder of the author's lifetime and 50 years.²⁴³ Additionally, the protection term in the majority of Arab nations extended for 50 years and the writer's lifetime; for example, according to the UAE law the rights of the author protect the duration of

²³⁸ Hamid M Ali, *Legal Protection of IPR within the Framework of the WTO* (1st edn, National Center for Legal Publications 2011) 59 (In Arabic) الحماية القانونية لحقوق الملكية الفكرية في إطار منظمة حميد محمد علي، التجارة العالمية، (طبعة الاولى، المركز القومي للإصدارات القانونية 2011) 59

²³⁹ Art 6bis (1) of the BC states: 'The writer is entitled to claim ownership of the work and to protest any alterations'.

²⁴⁰ Art 9 (1) (Appendix B)

²⁴¹ BC (1971); Universal Copyright Treaty (1971); Treaty on the International Registration of Audiovisual Works concluded at Geneva in 1989; and Madrid Convention (1979)

²⁴² Art 10 (1) (Appendix B)

²⁴³ Art 7 (1) of the BC states: 'The duration of the protection shall be throughout the author's lifetime and for fifty years following his passing'.

his or her life and fifty years.²⁴⁴ Other Arab nations' legislation also contained the same passage such as Bahrain, Qatar, the Syrian Arab Republic, and Egypt.²⁴⁵

Pursuant to the TRIPS concerning cinematographic works, films, or computer programs, authors must at least allow or disallow the commercial rental of new pieces and reproductions of their materials to the public; The BC's provisions do not grant these renting rights.²⁴⁶

Copyright infringement happens when a person unintentionally or intentionally copies the work of another or uses it without payment or permission, such as selling or importing pirated books.²⁴⁷ In 1999, the EC filed the first case before the panel against the U.S, claiming that U.S Copyright legislation broke the TRIPS and some provisions included in the BC.²⁴⁸ The case is important, not only because it was the first decision of the WTO panel including copyright problems, but also because it relates to the essential provision of the TRIPS, and will therefore have wide implications for rights owners.²⁴⁹

The provisions of the BC also allow parties to use exceptions on the author's exclusive rights for certain acts of exploitation, the convention allows unrestricted use of copyrighted works for a number of specific reasons such as education and quotations.²⁵⁰

In addition, the BC permits the use of involuntary licenses in certain instances as stated in Article 11bis, which allows the authorities in the member country to use

²⁴⁴ Art 20 (1) of the UAE Law on Copyright and Related Rights No 7 (2002) states: 'In accordance with this rule, the author's economic rights must be upheld for 50 years starting on the first day of the year after his or her passing'.

²⁴⁵ See Art 160 of the Egyptian IPRs Law No 82 (2002); Art 37 of the Bahrain Copyright and Relating Rights Law No 22 (2006); Art 15 of the Qatar Copyright and Relating Rights Protection Law No 7 (2002); and Article 22 of the Syria Copyright and Relating Rights Protection Law No 62 (2013).

²⁴⁶ Art 11 (Appendix B)

²⁴⁷ Niharika Behl, 'Social Media and IPR Issues' (2019) 9 GNLU JL Dev & Pol 119, 120

²⁴⁸ *EC v United States - Section 110 (5) of the US Copyright Act*, [2001] award of the arbitrator, WT/DS 160/12 (award of the arbitrator)

²⁴⁹ H Christakos, 'WTO Panel Report on Section 110 (5) of the US Copyright Act' (2002) 17 Berkeley Tech LJ 595, 595-596

²⁵⁰ Art 10 (1) of the Berne Convention states: 'It shall be permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries'.

these involuntary licenses with regard to the transmission of broadcasting works for public consumption or with regard to the broadcast of works.²⁵¹ Article 11bis apply to the recording of musical works as stipulated in Article 13 of the BC, and require a fair reward for the right owner.²⁵² For example, in the EU cases and the third parties was Brazil; Canada; Switzerland, Japan; Australia; against the U.S copyright law, which permits radio and television music to be played in public spaces under certain conditions as a business exemption with no the right owner's permission and payment of a royalty. The European Communities (EC) declared that U.S law is inconsistent with the TRIPS (article 9), which requires member states of the WTO to make their laws compliant with the BC (Articles 1 to 21). EC demanded the formation of a Panel, which found that the trade exemption that came from U.S law did not align with TRIPS standards and was incompatible with the BC.²⁵³

Concerning folkloric works, which are those that are unpublished and in which the author's identity is unknown and transmitted from one generation to another, such as tales, legends, and religious rituals,²⁵⁴ We believe that the TRIPS should provide legal protection to folklore; however, a step of BC that is considered good is Article 15, which states that the legislature of countries have the power to determine the competent authority on behalf of the author to defend those works in which the author's identity is unknown.²⁵⁵ The convention left to the freedom of the member countries to determine competent authority to defend folklore. For example, according to Jordanian copyright law, the Minister of Culture is responsible for defending folklore.²⁵⁶

²⁵¹ Art 11bis (1) of the Berne Convention states: 'Authors of literary and artistic works shall enjoy the exclusive right of authorizing'.

²⁵² Art 13 (1) of the Berne Convention States: 'Each country of the Union may impose for itself reservations and conditions on the exclusive right granted to the author of the musical work and to the author of any words, which the latter has previously authorized to be recorded together with the musical work, authorizing the phonogram of that musical work, with such words, if any; But all these reservations and conditions apply only in the countries that have imposed them and may not in any circumstances prejudice the rights of these authors to a fair remuneration'.

²⁵³ *European Communities v United States' Section 110(5) of US Copyright Act* [2000] WTO Dispute Settlement Body, WT/DS160/24/Add192 (WTO Dispute Settlement Body)

²⁵⁴ Wager Hannu, "Biodiversity, Traditional Knowledge and Folklore: Work on Related IP Matters in the WTO" (2008) 3 *Intercultural Hum Rts L Rev* 215, 224-227

²⁵⁵ Art 15 (4) (a) of the Berne Convention states: 'In the case of unpublished works where the identity of the author is unknown, but where there is every ground to presume that he is a national of a country of the Union, it shall be a matter for legislation in that country to designate the competent authority'.

²⁵⁶ Art 7 © of the Jordanian Copyright Law No 8 (2005) states: 'Works that have devolved into the public domain, and national folklore is considered public domain for the purposes of this article, provided that the Minister exercises the author's rights in relation to these works in the face of distortion, modification, or damage to cultural interests'.

Regarding related rights to copyright, before the TRIPS, several international agreements protected the related rights to copyright,²⁵⁷ There are rights that are referred to as related rights to copyright through which protection is granted to performers, sound recording producers and broadcasting organizations that help innovators deliver their message to the public and publish their work.²⁵⁸ Concerning the duration of protection, according to the TRIPS, the duration of producers of phonograms' protection and performers is fifty years, this is computed from the end of the year in which the performance fixation was established, and for broadcasting, the protection period is 20 years, also calculated from the end of the year in which the broadcast was produced.²⁵⁹ However, there are Arab countries that have exceeded the limits of the TRIPS, for example, Oman promised upon joining the WTO will be made TRIPS Plus and will provide protection for producers for more than fifty years.²⁶⁰ This means that some Arab nations, to simplify their accession to the WTO, have committed to more than what is required by the rules contained in the TRIPS. In this regard, Oman provides ninety-five years as the protection period for sound producers.²⁶¹ Additionally, there are Arab countries that have adhered to this legal period stipulated in the TRIPS; for example, the rights of sound recording producers are protected under Egyptian IP Law for fifty years from the date of recording or publication.²⁶² Also grants twenty years of protection to broadcasting organizations, which begins on the date of the first broadcast.²⁶³ We think providing ninety five years for protecting sound producers from Omani law is a very long period, and the Omani legislature can amend it and reduce it to at least sixty years in order to be in harmony with reality,

²⁵⁷ Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, concluded in Rome (1961); The Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms, concluded at Geneva in 1970; Convention relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite concluded at Brussels (1974); WIPO Performances and Phonograms Treaty (1996).

²⁵⁸ Meir P Pugatch, 'The International Regulation of IPRSs in a TRIPS and TRIPS-Plus World' (2005) 6 J World Investment & Trade 431, 459-460

²⁵⁹ Art 14 (5) (Appendix B)

²⁶⁰ El Said, 'The Accession (n 21) 68

²⁶¹ Art 32 of the Oman Law No 65 (2008) on copyright and neighboring rights states: 'For 95 years, the producers of sound recordings will have their financial rights guaranteed'.

²⁶² Art 67 of the Egyptian Intellectual Property Law No 82 (2002) states: 'Producers of sound recordings shall enjoy an exclusive economic right to exploit their recordings, as stipulated in Article 157, for a period of 50 years calculated from the date on which the recording was made or made public, whichever comes first, within the limits provided for in this Law'.

²⁶³ Art 68 of the Egyptian IP Law states: 'Broadcasting organizations shall enjoy an exclusive economic right to exploit their programs, for a period of 20 years calculated from the date on which the program was broadcast for the first time'.

international norms, and with other laws in Arab countries, such as Egyptian law as mentioned.

The RC, which is dedicated to the protection of the phonogram producers' and performers' legal rights to fair compensation for the commercial broadcasting of the recording, was optional in the RC. However, it became mandatory in the TRIPS according to Article 14.²⁶⁴ TRIPS exceeded the limits of the RC by granting the right to rent to phonograms producers and performers or any other rights in recording, in addition to making the protection term for performers and phonograms producers fifty years calculated at the end of the calendar year in which the fixation of the performance or broadcast took place as mentioned above, instead of the minimum period of twenty years stipulated as the general rule of the RC.²⁶⁵

There is also a difference between the TRIPS and the RC on the naming of neighboring or relating rights, such that the RC does not include the (neighboring or relating rights) title, the RC does not use the title of related rights but the TRIPS in section one of part two mentions the title of copyright and neighboring rights. Also, before joining the WTO, the laws of many Arab countries were devoid of the protection of neighboring rights, but as a condition of accession or adherence to the provisions and laws of the organization, the Arab countries amended their copyright and the name of the laws became the copyright and neighboring rights, such as the UAE, Oman, Bahrain, Tunisia, Qatar, and Egypt.²⁶⁶

²⁶⁴ Art 14 (3) of the TRIPS Agreement states: 'Broadcasting organizations shall have the right to prohibit the following acts when undertaken without their authorization: the fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of television broadcasts of the same'.

²⁶⁵ Art 14 of the Rome Convention (1961) states: 'The term of protection to be granted under this Convention shall last at least until the end of a period of twenty years computed from the end of the year in which: (a) the fixation was made—for phonograms and for performances incorporated therein'.

²⁶⁶ Bahrain amended Copyright Law No 10 of 1993 and became the law of the protection of copyright and related rights No 22 (2006); UAE amended law on the protection of copyright and intellectual works No 40 of 1992 with federal law No 7 (2002) under the name law on the protection of copyright and neighboring rights; and Egyptian intellectual property protection law No 82 (2002) includes a separate section related to the protection of copyright and related rights; Oman Law No 65 (2008) on copyright and neighboring rights.

2.2.2 Trademarks and GIs

Trademark law protects marketing knowledge like names, logos, symbols, colors, letters, and every combination of these items, where branding helps the public distinguish a company's products from others.²⁶⁷ When a customer sees the associated colors, image, and words, such as KFC, they expect to eat a distinct product from a distinct company with a distinct flavor. KFC symbols were created in the thoughts of customers in the expectation of quality for a particular product, and for this purpose, no other corporation is authorized to use KFC's words, logos, devices, and symbols. Therefore, the law must protect the consumer and the brand owner together. The consumer has the right to make sure that they get what they imagine they are buying and it is not an imitation, while the brand owner also has the right to protection from imitations that may not be as good as their products and which may push the public to buy less of their products and ultimately think less about the brand.²⁶⁸

Arab nations who have joined the WTO since its founding have revised their IP laws, notably their trademark laws, to align with the TRIPS. The Arab countries that joined the WTO late or after a long time of its establishment have also amended their laws related to trademarks or GIs before joining the organization to speed up the process of their WTO admission. Additionally, Arab countries wishing to join the WTO must align their trademark laws with TRIPS before joining the organization. The developed countries during the Uruguay negotiations tried to persuade the world's nations, including the Arab countries, that the issuance of trademark law that provides strong protection for the trademark stimulates their economic growth,²⁶⁹ but in practice, we see that the trademark law in the Arab countries serves the trademark owners, and most of whom are foreigners or affiliated with developed countries.

Along with the PC's rules, TRIPS regulates trademarks through seven articles from Articles 15 to 21. Through its provisions, the agreement sets a minimum level for the protection of trademarks and obliges its members to set this level at least in

²⁶⁷ Meir P Pugatch, 'The International Political Economy of Intellectual Property Rights: The TRIPS Agreement and the Advanced Pharmaceutical Industry in Europe' (PhD, University of London - London School of Economics and Political Science 2002) 55-56

²⁶⁸ Zenobia Ismail and Tashil Fakir, 'Trademarks or Trade Barriers' (2004) 31 Int J of Soc Eco 173, 176

²⁶⁹ F Addor and A Grazioli, 'Geographical Indications beyond Wines and Spirits: A Roadmap for a better Protection for Geographical Indications in the WTO/TRIPS Agreement' (2002) 5 J World Intell Prop 865, 883-887

their domestic legislation for the protection of trademarks, Arab acceded countries to WTO also must abide by these standards. Before the TRIPS came into force, several agreements were in place to protect trademarks.²⁷⁰ Unlike the PC, which did not contain any definition for a trademark, TRIPS provided a definition and a unified collection of standards.²⁷¹ According to the TRIPS, a trademark is a mark that is able to identify goods or services, and the member nations are entitled to reject register marks that lack inherent discrimination. Additionally, the agreement allows member states to demand as a requirement for registration that signs be visually tangible.²⁷²

There are Arab countries that benefited from this text of the TRIPS for example, the Jordanian Trademark Law provided that any visually perceptible sign can be used as a trademark for distinguishing goods or services.²⁷³ The Egyptian IP Law states that in all cases, the trademark must be visually perceptible.²⁷⁴ Qatar Trademarks Law also, stipulates that a trademark is any sign that is visually perceptible.²⁷⁵ In addition, according to the KSA Trademark Law, signs must be recognized by sight.²⁷⁶ The Yemeni trademark law also has the same position as the KSA law, according to the Yemeni law; the trademark must be visible to the eye.²⁷⁷ However, some Arab nations permit the registration of some kinds of audible and visual signals, including sound, fragrance, and music for example, according to the Bahraini trademark law, a sound or smell sign can be deemed as a trademark.²⁷⁸ Morocco's trademark law also

²⁷⁰ Protocol Relating to the Madrid Agreement concerning the International Registration of Marks concluded in 1891 and the Protocol relating to that Agreement, concluded in 1989 (as amended on November 12, 2007); Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (1957) revised at Stockholm in 1967 and at Geneva in 1977, and amended in 1979; Vienna International Classification of the Figurative Elements of Marks concluded in 1973 amended in 1985; and Trademark Law Treaty (TLT) Geneva (1994).

²⁷¹ Kaufman (n 203) 5-3 - 5-4

²⁷² Art 15 (1) (Appendix B)

²⁷³ Art 2 of the Jordanian Trademark Law No 34 (1999) states: 'Trademark is any visually perceptible sign used or to be used by any person for distinguishing his goods or services'.

²⁷⁴ Art 63 of the Egyptian Intellectual Property Law No 82 of 2002 states: 'In all cases, the trademark must be visually perceptible'.

²⁷⁵ Art 1 of the Qatar Law of Trademarks, Trade Data, Trade Names, GIs, and IDs No 9 (2002) states: 'Trademark' is any distinctive visible mark that allows consumers to identify the products as coming from a certain merchant, producer, or service provider'.

²⁷⁶ Art 1 of the KSA Trademarks, Law and Regulations Royal Decree No M/21 (1423H) states: 'Trademarks shall be any sign or combination thereof which can be recognized by sight'.

²⁷⁷ Art 3 of the Yemen Trademarks and GIs law No 23 (2010) states: 'Anything with a distinctive appearance that is perceptible to the eye is a trademark'.

²⁷⁸ Art 2 of the Bahrain Law on Trademarks No 11 (2006) states: 'The sign of sound or smell could be considered as a Trademark'.

allows registration musical pieces, olfactory marks and sounds.²⁷⁹ Additionally, UAE law stipulated, a distinctive smell or distinctive sound can be deemed as a trademark.²⁸⁰

Concerning the safeguarding of well-known brands that are used for similar or identical goods, under the PC, article 6bis protects well-known trademarks, but this provision does not extend to the safeguarding of well-known service marks.²⁸¹ Contrary to the PC, the TRIPS fills this gap, PC's Article 6bis shall also apply to well-known service marks, according to TRIPS.²⁸² TRIPS extends protection for well-known brands that include different goods and services against similar or identical goods and services.²⁸³ Prior to the TRIPS, international agreements did not regulate service marks, but TRIPS provides the same protection for service marks as it provides for other marks. For example, according to the TRIPS any mark or combination of marks that allows distinguishing goods and services is valid to be a trademark as mentioned above.

Additionally, under the TRIPS, a trademark proprietor has private right, meaning that owners have the authority to forbid others from utilizing their mark or one that is similar without their consent in their business or similar works to those for which the trademarks are registered.²⁸⁴ With regard to the subject of licensing the use of the mark or assigning it to others, TRIPS gives its members the freedom to set any conditions they deem appropriate.²⁸⁵

In accordance with TRIPS, the duration of trademark preserving ought to from the first registration or renewal for a duration of at least seven years and is renewable.²⁸⁶ With respect to revocation of a trademark due to non-use by the

²⁷⁹ Art 133 of Morocco Law on Industrial Property No 17.97, as amended by Law No 31.05 (2006) states: 'Such a sign may, in particular, include the following: c) audible cues like music or sounds; d) olfactory cues'.

²⁸⁰ Art 2 of the UAE Federal Law No 36 (2021) Concerning Trademarks states: 'A distinctive sound or smell may be considered as a Trademark'.

²⁸¹ Horacio Rangel-Ortiz, 'Intellectual Property, NAFTA, TRIPS and Mexican Law' (1998) 2 Int'l Intell Prop L & Pol'y 30-1, 30-10

²⁸² Art 16 (2) (Appendix B)

²⁸³ Ortiz (n 281) 30-11

²⁸⁴ Art 16 (1) (Appendix B)

²⁸⁵ Art 21 (Appendix B)

²⁸⁶ Art 18 (Appendix B)

trademark owner, according to the TRIPS, if the brand hasn't been utilized for at least three years without interruption by the owner, the brand may be revoked.²⁸⁷

Regarding using a trademark before requesting registration, TRIPS does not require the owner to utilize the trademark before such an application. According to the agreement member states cannot refuse a mark registration application because the mark has not been used previously.²⁸⁸ Arab participants of the WTO like Egypt, KSA, Jordan, and the UAE have agreed to this condition, and brand use was not previously compulsory as a prerequisite for its registration.²⁸⁹ Additionally, Jordan's WTO membership has had certain repercussions, for instance Jordanian law on Trademark (1952) and the law on Goods Mark (1953) were changed via the issuance of Law No 34 of 1999 to adhere to the TRIPS. Service marks, group marks, and well-known marks are all regulated by the new legislation, and also grants a license to use a trademark by someone other than the owner.²⁹⁰ The changes that have occurred in the laws of Arab countries prove that such countries, like all countries of the world, have tried to align their laws with the requirements of the WTO.

Regarding GIs which determine the origin of products,²⁹¹ among international agreements, TRIPS is the most significant one protecting GIs.²⁹² TRIPS regulates GIs with three articles and a separate chapter from Articles 22 to 24. Several terms for GIs are used in national laws and international agreements, such as designations of origin, and appellation of origin. TRIPS uses GIs.²⁹³

²⁸⁷ A Perez, 'The Implementation of the GATT, WTO-TRIPS in Venezuela: An Overview in 1998' (1998) 1 J World Intell Prop 747, 753

²⁸⁸ Art 15 (3) (Appendix B)

²⁸⁹ See Art 11 of the Jordanian Law on Trade Mark No 34 (1999); Art 7 of the Federal Law No 37 of 1992 regarding trademarks, as modified by Law No 19 (2000) and Law No 8 (2002); Art 2 and 3 of the KSA Trademarks System Royal Decree No M/21 (2002); Art 65 and 66 of Egyptian IPR Law No 82 (2002).

²⁹⁰ Abdullah H Khashroum, *Brief in Intellectual Property Rights* (1st edn Dar Al-Wael for Publishing and Distribution 2005) 133 (In Arabic) دار وائل (طبعة الاولى)، الحقوق الملكية الفكرية، للنشر والتوزيع (2005) 133

²⁹¹ Joseph M, 'Biodiversity and Food - the WTO-TRIPS Negotiations' (2011) 2 J Hum Rts & Env't 217, 227

²⁹² Martin Blackwell, 'The Relationship of Geographical Indications with Real Property Valuation and Management' (2007) 25 Property Man 193, 193-202

²⁹³ I Kireeva and Bernard O, 'Geographical Indications and the TRIPS Agreement: What Protection is provided to Geographical Indications in WTO Members' (2010) 13 J World Intell Prop 275, 276

Unlike the PC, which did not include the definition of GIs, TRIPS defines GIs as those indications that categorize the origin of a good in a member state's territory, or an area or a local area in that region.²⁹⁴ From the definition, it is clear that there are three conditions for the identification name of a product as a GIs. First, it must be linked to a specific kind of commodity; second, it must originate from a particular region; third, the item must have a fame, character, or other components.²⁹⁵

According to the TRIPS, for a GIs to be protected, it must be an indicator. Nonetheless, it is not necessary to have the name of a geographical place for it to be protected. It means that non-geographical or historical signs can be protected as GIs if they are linked with a private location. The most noticeable example in this regard is the Greek name (FETA), which is dedicated to the production of white cheese in brine. It is not a place in Greece but is related to Greek tradition and culture that determines a characteristic Greek product.²⁹⁶ Additionally according to the WIPO GIs is a mark applied to products with a certain geographic origin and traits or a reputation that are specific to that origin.²⁹⁷

Concerning protecting GIs, several WTO members have protected GIs as trademarks because TRIPS deals with both kinds of IPR in an equal instrument. During the UR, the preservation of GIs and trademarks were negotiated together.²⁹⁸ There are Arab countries that organized GIs with a trademark together such as the KSA. In the Kingdom, the law concerning GIs is the law of Trademarks (2002). The article most relevant to GIs in the Trademarks and Registration Law is Article 2.²⁹⁹ Article 2 states that trademarks shall not be registered without any particular difference and geographical titles if their use would create uncertainty about the source of the items, or monopolize the notification of origin or name of the origin without legitimate

²⁹⁴ Art 22 (1) (Appendix B)

²⁹⁵ B Dogan & U Gokovali, 'Geographical Indications: The Aspects of Rural Development and Marketing Through the Traditional Products' (2012) 62 *Procedia-Social and Behavioral Sciences* 761, 762-764

²⁹⁶ Kireeva (n 293) 275-276

²⁹⁷ 'GIs' (*Wipo.int*, 2021) <https://www.wipo.int/geo_indications/en/> accessed 19 July 2021

²⁹⁸ Kranti Mulik, 'Geographical Indications and the Trade Related Property Rights Agreement (TRIPS): a Case Study of Basmati Rice Exports' (PhD, Kansas State University 2004) 12-14

²⁹⁹ M B Williamson, 'Geographical Indications Biodiversity and Traditional Knowledge: Obligations and Opportunities for the KSA' (2012) 26 *Arab LQ* 99, 104

justification.³⁰⁰ This means that under the KSA Trademark Law, a GIs can be registered firstly if the practice of this GI does not lead to confusion about the origin of the item, and secondly if it does not lead to a monopoly.

Additionally, among Arab countries, UAE organized GIs with a trademark law like KSA.³⁰¹ There are Arab countries, other than the KSA and the UAE, that regulated GIs by an independent law, such as Bahrain, and it also organized a trademark under an independent law.³⁰² This means that the TRIPS granted member governments the right to regulate GIs through an independent law or a trademark.

There are also Arab countries that, before joining the WTO, lacked a law regulating GIs, such as Jordan, which issued a GIs Law as an independent law regulating GIs. Unlike KSA, which organized GIs with the Trademark Law, Jordan issued this law to conform with the TRIPS as one of the requirements to join the WTO.³⁰³

Protecting GIs is important for Arab countries, because Arab countries, in general, are among the regions that are famous for the quality of production of many goods and products such as Jordanian olive oil, which represents more than a third of a cultivated area in Jordan, or skimmed yogurt.³⁰⁴ In addition, among the most prominent agricultural products grown by Arab nations such as the UAE, KSA, and Iraq are dates of all kinds.

Trademarks must not be of a nature to trick the consumers as to, for example, the kind, fineness or geographical area of the products.³⁰⁵ Concerning the relation between a GIs and a trademark, according to the TRIPS, WTO participants should decline or revoke a trademark registration that comprises a GIs regarding products that

³⁰⁰ KSA Trademarks System Royal Decree No M/21 (2002)

³⁰¹ UAE Federal Law concerning Trademarks No 36 (2021)

³⁰² See Bahrain Law Concerning the Protection of GIs No 16 (2004); Bahrain Law regarding Trademarks No 11 (2006)

³⁰³ See Jordanian GIs Law No 8 (2000)

³⁰⁴ Alaelidin A Alkhasawneh, 'The Legal System for the Protection of Geographical Indications: A Study in Jordanian and Comparative Law' (2016) 21 J of Intell Prop R 304, 304-306

³⁰⁵ C M Correa, *Research Handbook on the Protection of Intellectual Property under WTO Rules Intellectual Property in the WTO* (Edward Elgar 2010) 520

don't come from the specified territory or that could mislead citizens as to the correct location of the source.³⁰⁶

TRIPS provides for GIs pertaining to wines and spirits additional protection, and this occurred as a result of pressures exerted by EU during the UR because of the economic significance of the wine and beverage sector in Europe.³⁰⁷ As a result of these pressures, art 23 and 24 were added to TRIPS, to supply double protection for GIs related to wines along with the overall protection established for GIs. According to the TRIPS, both GIs and trademarks have similar protection; this means that GIs and trademarks do not outperform each other. Thus, when customers purchase an item with a known brand, they can be guaranteed of the correct source of the goods. However, brands can not only be utilized to classify a corporation of origin but also a geographic area of origin; for instance, if a customer buys (Bordeaux wine) or (Demerara sugar), they believe that the item comes from a defined source associated with a name when the name of the product has a GIs.³⁰⁸

Unlike the PC which only forbids the incorrect sign of geographical source.³⁰⁹ TRIPS forbids the use of any sign that may mislead; for example, regarding wines, it requires members to have the legal tools to preclude the practice of improper GIs for wines that do not create from the source denoted by the GIs.³¹⁰ Additionally, member states of TRIPS are required to include in their national laws practical legal instruments to preserve GIs by preventing the practice of any means that could deceive the public, such as the display of good by implying that the good was produced in a specific territory that is not its real place of origin.³¹¹ However, the agreement did not specify any measures that member states should take in the event of such actions or attacks on GIs.

³⁰⁶ Art 22 (3) (Appendix B)

³⁰⁷ Addor (n 269) 865-872

³⁰⁸ Williamson (n 299) 100

³⁰⁹ John R, *Trade-Related Aspects of Intellectual Property Rights* (Productivity Commission Staff Research Paper, AGPS, Canberra 1999) 103

³¹⁰ Art 23 (1) (Appendix B)

³¹¹ Art 22 (2) (a) (Appendix B)

2.2.3 IDs and Layout-Designs of ICs

Numerous products stand out from rivals not just by their price or value but also by their design.³¹² Besides the TRIPS, several international agreements protect the IDs. Locarno Convention contains a worldwide categorization for IDs, aids in searches for modernity by creating an agreed-upon system for classifying designs, and protects the IDs of applied arts pieces, such as designing a pair of running shoes or a chair, which have industrial applications.³¹³ In addition, the Hague Convention allows nationals of member states to submit a single design application to the WIPO International Bureau in Geneva instead of an individual application for each country.³¹⁴

TRIPS regulates the IDs and ICs in different sections, for example, TRIPS dedicates two articles to regulating IDs, namely articles 25 and 26 in Section 4. However, it regulated ICs in Section 6 and dedicates 4 articles for it (articles 35 to 38).³¹⁵ Nevertheless, parties or countries that wish to join the WTO are free to regulate both IDs and ICs together or independently under different laws, for example, some of the Arab countries organized both of them into one law, such as, UAE, and Iraq.³¹⁶ In addition, Egypt IP law regulated ICs and IDs in different sections like the TRIPS.³¹⁷ However, Bahrain, Yemen, and Jordan are organized IDs and ICs by an independent law and not by one law unlike Iraq and the UAE.³¹⁸

Protecting the design means protecting it against imitations, as stated in the TRIPS. This gives the design's owner the power to forbid others from selling, importing, or producing things that embody the design or counterfeit model without their consent.³¹⁹ TRIPS determines the period for IDs and models protection, which is

³¹² Stoll (n 204) 23

³¹³ See Locarno Agreement (1979)

³¹⁴ Hague Convention on International Registration of IDs (1925); Matsushita, *The World Trade* (n 74) 639-650

³¹⁵ See Sections 4 and 6 (Appendix B)

³¹⁶ See UAE Law on Regulation of Industrial Property of Patents, Industrial Drawings and Designs No 11 (2021); Iraqi Patent, IDs, Undisclosed Information, ICs and Plant Variety, Order No 81 (2004)

³¹⁷ See Egyptian IP Law No 82 (2002) which regulates ICs in Chapter 2 in the first book, however, regulated IDs in the second book

³¹⁸ See Bahrain Law on IDs and Models No 6 (2006); Bahrain Designs of ICs Law No 5 (2006); Jordanian IDs and Models Law No 14 (2000); Jordanian Law on the Protection of Designs for ICs No 10 (2000); Yemen Law regarding Patents and Utility Models, ICs Designs, Undisclosed Information No 2 (2011); Yemen Law on IDs No 28 (2010)

³¹⁹ Art 26 (1) (Appendix B)

at least ten years.³²⁰ This period that came in the TRIPS is the lowest standard that member states must abide by, some Arab countries provide a longer period than this; for example, the Jordanian IDs Law states that if the IDs or models are registered, the protection period is fifteen years, and this period starts from the application's submission date.³²¹ This is considered a good step to persuade WTO members to join by adhering to the agreements concluded within the organization. Additionally, there are Arab countries that have committed to the same protection period. For instance, under UAE legislation preserving period of the IDs and models is ten years, and this period starts from the application's submission date.³²²

TRIPS did not obligate its members to create a special law for the IDs similar to the PC, but it gave them the freedom to choose the legal regime they saw fit to protect IDs such as copyright law, patent laws or special law to protect IDs.³²³ For example, concerning the protection of textile designs leaves its members free to fulfill this obligation through the law regulating IDs or the law regulating copyright.³²⁴ Although the TRIPS considered IDs an element of industrial property, similar to the PC;³²⁵ Unlike the PC, which did not specify any conditions for the design protection., TRIPS set the conditions for the protection of IDs.³²⁶ The design must be innovative or original in accordance with TRIPS.³²⁷ Also, Jordanian law adopted the same legal position, according to the Jordanian law it is necessary to register IDs or models if they are new and were invented independently of the work of another.³²⁸

³²⁰ Art 26 (3) (Appendix B)

³²¹ Art 11 of the Jordanian Law on IDs and Models No 14 (2000) states: 'IDs or models are protected for 15 years, starting on the date the Registrar receives the application for registration'.

³²² Art 49 of the UAE Law on Regulation of Industrial Property, Patents, Designs and Industrial Models No 17 (2002) states: 'An IDs or model is protected for 10 years from the day the preservation request was submitted'.

³²³ Correa, *Handbook* (n 305) 57

³²⁴ Art 25 (2) (Appendix B)

³²⁵ J H Reichman, 'Universal Minimum Standards of Intellectual Property Protection under the TRIPS Component of the WTO Agreement' (1995) 29 Int'l L 345, 375-377

³²⁶ L Schick, 'Protection of Industrial Design in the US and in the EU: Different Concepts or Different Labels?' (2013) 16 J of Intell Prop R 15, 16-35

³²⁷ Art 25 (1) (Appendix B)

³²⁸ Art 4 of Jordanian Law on IDs and Models No 14 (2000) states: 'The following prerequisites must be satisfied in order to register an IDs or model: 1) If it is innovative and has not been disclosed to the public in any country or region of the world by any methods, through use or media outlet in a tangible form. 2) If it was produced independently'.

ICs as mental products created by human beings, to ensure its development must be legally protected as IPR. The U.S was the first country enacted a law related to the ICs, and that was in 1984, due to it being the greatest producer ICs in the world. In 1989, the agreement on IP in the Field of ICs was concluded in Washington, but it did not go into effect because it was not accepted by the enough number of nations.³²⁹ The incorporation of the Washington treaty (IPIC) into the TRIPS obligated all WTO member states to abide by it, so although many countries in the world did not sign the IPIC, this did not affect the treaty because it eventually entered into force in another way and within the framework of the most powerful organization that governs the world economy, the U.S was able to do whatever it wanted. Countries in the world, including Arab countries that are not members of the IPIC, will automatically abide by it upon joining the WTO. Additionally, all Arab nations with WTO observer status upon their accessions to the WTO will be bound by the IPIC under the TRIPS.

Before TRIPS became effective, IPIC existed that protected ICs, however, TRIPS differed from the IPIC in two main areas, first, according to the TRIPS, compulsory licenses are issued for non-commercial use or to counter a practice harmful to competition, which is available from the IPIC.³³⁰ The IPIC either allows for the granting of mandatory licenses when necessary or the freedom of competition and the prevention of abuse by owner.³³¹ The duration of preservation is the second difference. The duration of protection according to the TRIPS is ten years, and the maximum is 15 years from the topographic design's filing day, according to the TRPS the protection period may not expire before 10 years from the day of the exploitation anywhere in the globe or following the date of the registration claim, for the member states that consider exploitation as a basis for protection, the preserving duration from the day of the initial commercial utilization must be at least 10 years. Nevertheless, member countries in the first and second cases may decide to end the protection after 15 years have elapsed from the day of the first step established for the design regardless

³²⁹ Abdullah Y J E Meknes, 'Legal Protection of ICs' (2021) 2 Damascus Un J of Legal Sci 34, 42-43 (In Arabic) عبدالله يحيى جمال الدين مكناس، الحماية القانونية للدوائر المتكاملة، (2021) 2 مجلة العلوم القانونية-جامعة دمشق 43-42، 34

³³⁰ Art 31 (Appendix B)

³³¹ Art 6 (3) of the IPIC states: 'The terms of this Treaty do not restrict any Participating Party's ability to take action. involving the issuance of a non-voluntary license via a formal procedure by its executive or judicial authority, in the implementation of its laws, to ensure free and fair competition and to guard against abuses by the rightsholder'.

of the day of application or utilize of the design.³³² However, the term protection for ICs is only eight years according to the IPIC.³³³

TRIPS regulates the layout designs of ICs through four articles from articles (35 to 38) in addition to the adoption of the IPIC.³³⁴ The TRIPS did not provide a definition for the layout designs of ICs but rather referring to the IPIC, which distinguished between layout design and ICs.

IPIC defines the ICs as every product in which the components, provided that one of them at least is an active components and all some of the connections are an integral part of a piece of material and/or on whether it is in its final form or a preliminary one, the purpose is to perform an electronic function.³³⁵ As for the layout designs (topography), the IPIC defines it as every three-dimensional arrangement of the components, provided that one of them at least of the components is an active components and for all or some of the connections for an ICs, or that three-dimensional arrangement ready for manufacturing an ICs.³³⁶

Jordanian law also specifies the same period for the protection, according to the Jordanian law the preserving duration for designs considered from the day of the first commercial exploitation is ten years, and in all cases, this period does not longer than fifteen years from the day of design formation.³³⁷ While, Jordanian law requires registration of designs in the Kingdom to protect them in all cases, which stipulates that legal protection for a design begins from the day of applying for its registration in the Kingdom.³³⁸

Additionally, the IPIC did not obligate member counties to provide protection within a specific legal framework, but afforded them the freedom to choose the

³³² Art 38 (Appendix B)

³³³ Art 8 of the IPIC states: 'For at least eight years, protection is required'.

³³⁴ Art 35 (Appendix B)

³³⁵ See Art 2 (i) of the IPIC

³³⁶ See Art 2 (ii) of the IPIC

³³⁷ Art 12 (B) of the Jordanian layout design law for ICs No 10 (2000) states: 'B. The preservation of designs lasts 10 years from the time of first commercialization anywhere in the globe, but it cannot last longer than 15 years from the time of invention'.

³³⁸ Art 12 (A) of the Jordanian layout design law for ICs No 10 states When a layout design application is submitted for registration in the Kingdom, it becomes protected.

appropriate legal framework to implement this obligation.³³⁹ Arab countries organized ICs in different legislations; some of them organized this topic with patent law, Such as KSA and Iraq, which organized integrated designs with the Patent Law.³⁴⁰ However, some of them are organized by independent law such as the Jordanian legislature, which organized designs for ICs by an independent law.³⁴¹ Jordan issued this law to align with the TRIPS, as before this date, there was no law in Jordan regulating designs for ICs.

Concerning the substantive conditions for ICs protection, the IPIC sets out the objective conditions that must be met for the design's protection, namely that it must be original, and the layout design among creators should not be commonplace, and layout design must be industrially applicable.³⁴²

2.2.4 Patents

A patent is a legal means that restricts others from unauthorized use, manufacture, or use of an invention or process required by the patentee, to the aim of which is to protect innovative activity.³⁴³ Patents' mission is to enhancing livelihoods by generating useful and effective innovations to serve society and the state. Innovators develop human knowledge and build new markets; in return, the state provides them with IPR protection.³⁴⁴

Before TRIPS, there were several international agreements regarding patent protection.³⁴⁵ For example, the PC was the first multilateral international agreement including patent protection, and required signatories to grant equal preservation to both international and internal patents, but it did not require a minimum norm of cross-country protection.³⁴⁶ In 1967, the Stockholm convention modified the PC and

³³⁹Art 4 of the IPIC states: 'Each Partner Shall be able to carry out its duties within this Treaty in accordance with its own laws'.

³⁴⁰ Iraqi Order No 81 (2004); KSA Decree No M/27 (1425H), Cabinet Resolution No 159 (1425)

³⁴¹ Jordanian Layout Design for ICs No 10 (2000)

³⁴² Art 3 (2) (a) of IPIC states: 'topographies must be unique in the sense that they represent the intellectual struggle of their authors and were not previously used by ICs makers or other topography developers when they were created'.

³⁴³ Basma I A, 'Implications of the WTO-TRIPS from a National Innovation Systems Perspective' (PhD, Carleton University Ottawa, Ontario 2003) 58

³⁴⁴ Sigrid S, 'Can Drug Patents be Morally Justified?' (2005) 11 Sci Eng Eth 81, 82-89

³⁴⁵ PC (1979); Strasbourg Agreement (1979); Budapest Treaty (1977); PCT (1979) modified (2001)

³⁴⁶ Stuart O Schweitzer, *Pharmaceutical Economics and Policy* (Oxford University Press 2007) 259

constituted the initial effort to seek standards for patent preservation globally. At that time, the U.S threatened to apply trade penalties on nations, saw it as losing important investment returns because of pirated commodities.³⁴⁷

However, what distinguishes the TRIPS from other international agreements is that, it provides a powerful patent system as the ultimate international norm.³⁴⁸ The signatories to the TRIPS must agree to all criteria to join WTO. This is considered the first time that trade and IP are linked to each other in an integrated manner at the international level.³⁴⁹

TRIPS wants from participants to adhere to certain standards of IP, such as providing twenty-year patent protection in all technological areas.³⁵⁰ For example, before joining the WTO, the period of patent protection in the old Egypt Law was fifteen years and ten years for processing patents for agricultural and chemical materials, which could be extended for another five years.³⁵¹ However, after Egypt joined the organization, an Egyptian legislature changed the patent law and issued a new Law to align with the TRIPS,³⁵² and the duration of protection increased to twenty years.³⁵³ Egypt as an Arab country that entered the WTO at the beginning, benefited from the provisional period that gave TRIPS to countries according to their development, for example, Egypt as a developing country has ten years during this period Egypt issued a new IP law, and this means that after obtaining WTO membership, Egypt has amended its IP laws.

³⁴⁷ Ferrone J D, 'Compulsory Licensing during Public Health Crises: Bioterrorism's Mark on Global Pharmaceutical Patent Protection' (2003) 26 Suffolk Transnational L Rev 385, 386-407

³⁴⁸ 'WTO | IP (TRIPS) and Pharmaceuticals - Technical Note' (*Wto.org*, 2021) <https://www.wto.org/english/tratop_e/trips_e/pharma_ato186_e.htm> accessed 25 July 2021

³⁴⁹ Brent S, 'Thailand's Test: Compulsory Licensing in an Era of Epidemiologic Transition' (2007) 48 *Va J Int'l L* 211, 213-228

³⁵⁰ Anderson (n 26) 275-276

³⁵¹ Art 12 of the Egyptian Law on Patents, IDs, and Models No 132 (1949) states: 'A patent has a 15-year duration beginning on the application date, and its owner has the right to ask for a single, maximum five-year renewal'.

³⁵² Mohamed A B and Mohamed H L, 'The TRIPS Agreement and Developing Countries: A Legal Analysis of the Impact of the New Intellectual Property Rights Law on the Pharmaceutical Industry in Egypt' (2004) 2 *Web J of Current Leg Iss* 30, 31-36

³⁵³ Art 9 of the Egyptian IP Law No 82 (2002) states: 'A patent has a 20-year period of validity beginning on the day the application was submitted'.

Additionally, the length of preservation is twenty years, according to the Jordanian legislation.³⁵⁴ However, the length of patent preservation was sixteen years under the previous Jordanian patent legislation and could only be extended for three months.³⁵⁵ We note that due to the Jordan's entry into the WTO is being delayed, it did not gain from the transitional time. Therefore, a year before Jordan joined the WTO; Jordan brought its legislations align to TRIPS. This applies to other countries that are not joined or they have observer status within the organization.

In addition, TRIPS specified the requirements for patent issuance to protect creations that ought to be novel, contain a creative move, and are suitable for manufacturing use.³⁵⁶ Additionally, Arab nations adopt the same conditions into their laws, to reconcile their legislation with the criteria identified within the framework of the agreement, for example, Jordanian Patent Law requires novelty and creative move as a condition for registering a patent.³⁵⁷ The Egyptian IP Law reiterated the same position as the Jordanian law and emphasized these conditions for granting a patent.³⁵⁸ Thus, the Jordanian and Egyptian laws repeated the same provision of the TRIPS.

However, did not enter the TRIPS for more details to explain these conditions and left the freedom of their interpretation to the national legislation of member countries. For example, under Jordanian law, a patent is considered new in relation to previous industrial art and is unprecedented in relation to public disclosure worldwide by disclosure means or by practice, or in another method that allows awareness of the content of the creation.³⁵⁹

³⁵⁴ Art 17 of the Jordanian law on Patent No 32 (1999) states: 'The term of the invention patent is 20 years beginning on the day of the registration application'.

³⁵⁵ Art 15 of the Jordanian law on Patent No 22 (1953) states: 'The patent must operate for a period of sixteen years'.

³⁵⁶ Art 27 (1) (Appendix B)

³⁵⁷ Art 3 of the Jordanian Law No 32 (1999) states: 'If the following requirements are met, the innovation will be eligible for a patent: if it's brand-new. If an original step is involved'.

³⁵⁸ Art 1 of the Egyptian IP No 82 (2002) states: 'Any novel, inventive innovation that involves an original creation and is industrially useful shall be given a patent'.

³⁵⁹ Art 3 of the Jordanian law (n 354) states: 'A patent is novel in comparison to previous industrial knowledge and unheard of in terms of public disclosure in any location in the world via written or verbal disclosure, use, or any other method that enables knowledge of the invention's substance prior to the relevant issue date of the patent filing or the priority of the application claimed under the terms of this law'.

There is also another topic related to patents, which is a pharmaceutical patent. Here, we must refer to the TRIPS and its impact on the pharmaceutical patent. Because of the propagation of the ongoing COVID-19, all countries of the world are attempting to acquire vaccines or treatment for this dangerous disease that has caused the death of many people in different countries. The world is going through one of its most difficult periods due to the propagation of the ongoing COVID-19, which is one of the most dangerous viruses in the history of mankind, and this may affect the laws and international relations in the future in economic, legal, and political terms. It can affect international trade and economic relations between countries as well.³⁶⁰

International companies, especially pharmaceutical companies, are working day and night to find a quick treatment (vaccine) for this virus, and this has resulted in huge financial expenses. Therefore, it is their right in return for these efforts to be given legal protection for their innovations at the international and national levels. Therefore, we can say that IPR protection affects the development of the economy. The question that arises here is, is it permissible for countries to bypass a vaccine that was found or established by other countries or companies belonging to other countries to treat that virus?

Pharmaceutical firms are investing huge sums in explore and improvement of creative drugs, and the individual method to recoup these expenses and stimulate further study is to give them tentative prerogative over their innovation.³⁶¹ We note that according to the TRIPS, which protects all inventions, including pharmaceutical inventions, for at least twenty years, all Arab countries as developing countries have two options: they import pharmaceutical products from developed countries or a country of origin, including the treatment of the Covid-19 or any other treatment or they produce the same treatment but after obtaining the license and compensating the producing company. We saw during the propagation of the ongoing COVID-19 in the Arab countries that they imported vaccines to treat Covid-19 in exchange for a sum of money, and this means that the TRIPS led to the monopoly of these drugs by developed

³⁶⁰ Eleanor J M, 'Epidemiology's Time of Need: COVID-19 Calls for Epidemic-Related Economics' (2020) 34 J of Eco Pers 105, 106-117

³⁶¹ A G Watson, 'International Intellectual Property Rights: Do TRIPS' Flexibilities Permit Sufficient Access to Affordable HIV/AIDS Medicines in Developing Countries, (2009) 32 Boston College Int and Comparative L Rev 143, 143-144

nations, for example, Iraq imported a large number of Pfizer and AstraZeneca vaccines to vaccinate Iraqis.³⁶²

The impact of the protection of medical patents becomes clear, in the framework of HIV/AIDS, because several drugs used to reduce HIV / AIDS are protected by patents. Hence, can note clear connection amidst patents, the value and the reach of drugs.³⁶³ For example, when the AIDS virus spread across southern Africa and infected more than 4.5 million people, the South African government tried to produce a drug to treat the virus at a discount from what was available by using its right to compulsory licensing. This led to anger among giant pharmaceutical companies, and a lawsuit was launched contra to the government of South Africa by 39 large corporations that monopolize the treatment of HIV, who accused the government of South Africa of breaking TRIPS. This caused the countries of the world to be in solidarity with the people of Africa, and ultimately the lawsuit contra to their government was withdrawn by those companies as a result of pressure from the U.S and EU.³⁶⁴

Nonetheless, some flexibility was included in the TRIPS: First, WTO participants are entitled to issue so-called compulsory licenses by the government for the practice of a protected patent without the owner's permission under national law following the TRIPS.³⁶⁵ However, this right is regulated in several ways; for example, it cannot override exclusive patent rights by governments, and rights holders must be compensated by paying an appropriate reward and taking into consideration the economic value.³⁶⁶ Additionally, a reasonable effort must first be made to get a voluntary authorization from the right owner, and these efforts must not succeed within an acceptable amount of time, this condition may be disregarded in the event of a

³⁶² 'Iraq – COVID19 Vaccine Tracker' (*Covid19.trackvaccines.org*, 2022) <<https://covid19.trackvaccines.org/country/Iraq/>> accessed 12 June 2022

³⁶³ Faisal I C, 'Intellectual Property and the Global Crisis of Non-Communicable Disease' (2017) 19 NC JL & Tech 175, 204

³⁶⁴ William W F and Cyril P R, 'The South Africa AIDS Controversy a Case Study in Patent Law and Policy' (Harvard Law School 2005) 17

³⁶⁵ C Fink, 'Intellectual Property and Public Health: An Overview of the Debate with a Focus on U.S Policy' [2008] SSRN Electronic Journal

³⁶⁶ Art 31 (h) (Appendix B)

public crisis or other extremely urgent situations or cases of general non-commercial exploitation.³⁶⁷

The utilization of mandatory permits is not just for emergencies under TRIPS, but rather uses emergency licenses only to obtain additional flexibility or to obtain voluntary licensing.³⁶⁸ However, TRIPS fails to define what constitutes a state of emergency, and another criticism of TRIPS in this regard is that a party that has used a compulsory license must pay the patent holders adequate compensation. However, it does not specify the appropriate criterion for measuring such compensation or the economic value for licensing.

TRIPS gives freedom to member states in deciding what makes an emergency situation and how to estimate the appropriate amount of compensation. For instance, under the Egyptian Law, the amount of compensation for mandatory licenses is decided by the relevant committee. The committee consists of a president who is an advisor to the courts of appeal or a similar degree, a member who serves as an aide to the State Council, and 3 professionals.³⁶⁹

Members of the WTO are obligated by the TRIPS to grant patent protection to all creations, whether they are processes or products, in all technologic area including pharmaceuticals.³⁷⁰ However, under the TRIPS, the protection of certain patented pharmaceuticals can be denied. The first exclusion is, TRIPS authorize WTO participants to implement actions to preserve nutrition and health of the public and to improve the interest of the public in areas of utmost concern to them.³⁷¹ This will be invoked when a member wants to overcome a pharmaceutical patent is in dire need of such medicines to stop a public health disaster; for instance, the Canadian government decided to revoke the invention for Cipro, owned by drugmaker Bayer.³⁷² In this sense

³⁶⁷ Art 31 (b) (Appendix B)

³⁶⁸ F M Abbott, 'The TRIPS, Access to Medicines, and the WTO Doha Ministerial Conference' (2002) 5 J World Intell Prop 15, 23-24

³⁶⁹ Art 25 of the Egyptian IP No 82 (2002) states: 'The panel shall be made up of a chairperson who shall be a consulting at the courts of appeal or of an equivalent level from the judiciary, an assistance advisor of the Central Committee, and three specialists as members. In all situations, the expropriation shall be against a reasonable compensation'.

³⁷⁰ Art 27 (1) (n 354)

³⁷¹ Art 8 (1) (Appendix B)

³⁷² Jiang (n 189) 229-230

when the state of emergency in that country recedes, it must restore the protection of the patent. TRIPS refers to the second exception, which enables WTO members to exclude creativity from patents if it harms the public interest or morals, or harms the environment, or creates a danger to the lives and health of people, plants or animals.³⁷³

TRIPS permits WTO members to forbid biological processes, animals, and plants other than microorganisms from being eligible for patent protection, the agreement mandates that members either use patents or a *sui generis* system for plant varieties protection, or by a mixture of these measures.³⁷⁴ For example, Jordan, Iraq, and Egypt regulated plant varieties through a separate law.³⁷⁵

According to the TRIPS owner of the patent has exclusive authority to prohibit others from using, production, importing, or putting the patented product up for sale without their consent when a product constitutes the patent subject matter.³⁷⁶ Additionally, according to the agreement owner has exclusive authority to prohibit others from exploitation, importing, or putting his or her patents for sale lacking of his/her permission when an industrial process constitutes the patent subject matter.³⁷⁷

However, the agreement imposes many obligations on its member states. The agreement grants some patent rights to the pharmaceutical industries in those countries and limits the monopoly rights of the patent owner. However, TRIPS gives mandatory authorization which is a system where the government permits another person or organization to produce the patented drug with no authorization from the patent's owner to counter the patent owner's monopoly or to protect public health, such as a non-cooperative patent holder of a life-saving vaccine during the COVID-19 pandemic. In this case, to make medication more accessible and save lives, the state should have the power to ignore its previous obligations.³⁷⁸ Compulsory licenses are usually used by the government to produce generic drugs locally or to import them

³⁷³ Art 27 (2) (Appendix B)

³⁷⁴ Art 27 (3) (b) (Appendix B)

³⁷⁵ Jordanian Law on Plant Variety No 24 (2000); Iraqi Law on Registration, Approval, and Protection of Agricultural Varieties No 15 (2013); and Egyptian IP No 82 (2002) organized the protection of plant varieties in a separate chapter.

³⁷⁶ Art 28 (1) (a) (Appendix B)

³⁷⁷ Art 28 (1) (b) (Appendix B)

³⁷⁸ R F Beall, 'Trends in International Compulsory Licensing of Pharmaceuticals since the Institution of TRIPS' (Master of the Arts, University of Denver- Faculty of Social Sciences 2010) 9-10

cheaper.³⁷⁹ TRIPS provides a compulsory license (mandatory authorization) that authorizes the utilizing of a patent by others. in specific cases without obtaining the patent holder's permission, and only the relevant government authorities can give compulsory licenses. Furthermore, the person obtaining the license must pay rightsholder for the utilization without his or her permission, and everything related to determining compensation is subject to judicial review.³⁸⁰

Jordanian legislature repeated the TRIPS, the Jordanian Patent Law sets a condition for awarding a mandatory license, and the most prominent of these conditions involves efforts to get a license from a patent holder, where the period of license must be constrained, and the patent owner must be paid fair compensation.³⁸¹ This means that all member nations must make sure their legislations are identical to TRIPS. Therefore, we can say that it is difficult for Arab countries to enact some laws except by forcing them through international means such as the WTO, especially the TRIPS Agreement.

TRIPS established international standards governing IP. All members of the WTO must agree to these standards.³⁸² However, putting into practice the TRIPS's requirements, especially relating to patent protection will cause a crisis in terms of availability to medications and a rise in prices of medicines, and this is far from the goal of the TRIPS, which is to establish equilibrium among the interests of society and patent owners.³⁸³ This situation did not remain for a long time, at Doha meeting (2001), the member states agreed to give priority to public health and to remove this imbalance. The meeting affirmed that WTO participants have the right to resort to the guarantees stipulated in TRIPS to overcome obstacles to patents such as parallel

³⁷⁹ E C Lim, 'Transnational Legal Process and the TRIPS: Intellectual Property Rights, International Law and the Compliance Conundrum' (PhD, University of Toronto-Graduate Department of Law 2008) 294

³⁸⁰ Art 31 (Appendix B)

³⁸¹ Art 23 (b) of Jordanian Law No 32 (1999) states: 'The candidate must have attempted to negotiate a license with the patentee on acceptable terms, but they were unable to come to an agreement within an acceptable amount of time.'

³⁸² Carlos M Correa, 'Is the right to Use Trademarks Mandated by the TRIPS Agreement?' (2016) 72 J of Int Tr 91, 93

³⁸³ Fink (n 365)

importation or compulsory licenses to lower the cost of pharmaceuticals and to gain access to them.³⁸⁴

In Qatar (Doha), the fourth Ministerial Conference of the WTO was held, on the last day of the conference, which fell on 14 November, 2001, concerning health of audience, WTO parties set out the conditions in which mandatory licensing may be issued and indicated that HIV, and malaria could create a state of contingency.³⁸⁵ Consequently, we can consider the Covid-19 as a national and global emergency as well.

The relationship amidst the preservation of IP and healthiness of audience was emphasis of the Doha Declaration. According to the Declaration, members are not prohibited under TRIPS from adopting actions to preserve the healthiness of the audience. In addition, TRIPS should be implemented and interpreted in a manner that supports the WTO party's rights to safeguard the healthiness of the audience.³⁸⁶ Therefore, a WTO parties can utilize a patent and resort to compulsory licensing in limited cases and periods without the permission of the owner.

Over the past decade, many developing countries have issued compulsory licenses to secure their people's access to medicines, especially, after the Doha Declaration; several antiretroviral medication licenses were given to poor nations as a need for treating HIV/AIDS, including Malaysia in 2003. The government of Indonesia granted a mandated license to override patents for drugs to treat hepatitis and HIV and opened the door for low-cost generic versions.³⁸⁷

In early 2012, according to an application according to Indian Patent Act Section 84, a public Indian corporation acquired a mandatory authorization for kidney remedy (Sorafenib) and liver carcinoma; because it was not available at a reasonable price. Additionally, the Thai government has announced the use of several

³⁸⁴ Lekha Laxman and Abdul H Ansari, 'The Interface between TRIPS and CBD: Efforts Towards Harmonization' (2012) 11 J of Int Tr L Policy 108, 120

³⁸⁵ 'The Fourth WTO Ministerial Conference', Declaration on the TRIPS and Public Health (*WTO 2001*) <https://www.wto.org/english/thewto_e/minist_e/min01_e/min01_e.htm> accessed 24 July 2021

³⁸⁶ P K Yu, 'The Objectives and Principles of the TRIPS Agreement' (2009) 46 *Houst L Rev* 1, 6

³⁸⁷ *The Case of Use Compulsory License by Developing Countries after Doha Round*, available at <https://www.wto.org/english/res_e/booksp_e/casestudies_e/case19_e.htm> accessed 30 July 2021

pharmaceutical products, such as Letrozole (a drug for breast cancer), and Docetaxel (a drug for breast and lung carcinoma).³⁸⁸

There is a difference of opinion among countries around the world about compulsory licensing; developed countries care about IP protection on drugs more, and patent protection is their priority, but the priority for developing countries is to obtain medicines and provide those medicines to their people. Developed countries are seeking the development of new and innovative medicines. While developing countries look to strong IP protection, especially pharmaceutical patents, as a hitch to people's arrival to medicines.³⁸⁹

Additionally, parallel imports is a significant policy tool used to mitigate the effects of patent prices and enhance competitive global markets in pharmaceutical products, and developing nations that are WTO members are strongly urged to permit the parallel importation of patented pharmaceuticals.³⁹⁰ Parallel imports give the right for resale of a preserved or imported items, without the approval of the rightsholder who has been lawfully allowed to sell their product in the exporting nation. Although the rightsholder has the power to produce and bring the item to the market, once the item has been released into the market, the owner cannot preclude subsequent resale of that commodity since her/his right to the product has been exhausted through selling it.³⁹¹ There is a principle in IP called the exhaustion principle, which means that once the rights holder introduces patented products into the trade stream, this exhausts his or her rights.³⁹² The principle ensures that the owner's right are exhausted once the patented goods are sold in any place.³⁹³

³⁸⁸ *The Case of Use of Compulsory License by India and Thai government, Promoting Access to Medical Technologies and Innovation Intersections between Public Health, IP and Trade*, [2012] available at

<https://www.wto.org/english/tratop_e/trips_e/trilatweb_e/ch4c_trilat_web_13_e.htm> accessed 26 July 2021

³⁸⁹ Cattaneo (n 175) 331-347

³⁹⁰ Abbott, 'TRIPS (n 368) 30

³⁹¹ Jimcall Pfumorodze, 'The WTO TRIPs Agreement and Access to Medicine in Southern Africa' (2011) 13 U Botswana LJ 87, 93

³⁹² J He, 'Developing Countries' Pursuit of an Intellectual Property Law Balance under the WTO TRIPs' (2011) 10 Chinese J Int'l L 827, 834

³⁹³ Vincent C, 'The Desirability of Agreeing to Disagree: The WTO, TRIPS, International IPR Exhaustion and a few other things' (2000) 21 Mich J Int'l L 333, 341

Experimental use, as a third exception, allows the utilize of a preserved product for experimental purposes and research for scientific and not commercial purposes without compensation to the patent owner.³⁹⁴ Price control, as the last exception to a patent, is an effective mechanism for controlling drug prices; furthermore, TRIPS not referring to price control and not forbid it.³⁹⁵

2.2.5 Undisclosed Information

Trade secrets belong to the protection of distinct knowledge related to an action performed on an item or several items for a specific purpose.³⁹⁶ Every person in the world has secrets and their secrets are shared with people close to them, and these people are not allowed to reveal these secrets that have no financial value. An example of this is where businesses have a secret and once competitors know this secret, the businessperson will lose money and the competing power that they had before the secret was disclosed. For example, a carpentry factory creates decorations from wood of a certain type and starts to gain popularity among the public; nobody knows the secret of this wood, except for one employee from the factory. If the employee leaves her/his position and decides to work for another carpentry factory, and the secret of the first factory is revealed, the first businessman will surely lose money and weaken his competition power.

The term undisclosed information comes from the TRIPS. However, there are the different terms that are used in place of undisclosed information, for example, the PC uses unfair competition, under the PC, doing acts that are incompatible with legitimate commercial matters or any industrial matters is considered unfair competition, without specifying those works, but explain them as an example.³⁹⁷ It is also considered by U.S law as a trade secret and a form of IP.³⁹⁸ But in the end they all achieve the same goal.

³⁹⁴ Viola P, *The Breeder's Exception to Patent Rights* (Springer 2015) 61-85

³⁹⁵ J Watal and Antony T, *The Making of the TRIPS Agreement* (WTO 2015) 168

³⁹⁶ Mindahi C B and Geraldine A P, 'Traditional Knowledge and Intellectual Property Rights: Beyond TRIPS Agreements and Intellectual Property Chapters of FTAs' (2006) 14 Mich St J Int'l L 259, 267

³⁹⁷ Art 10 (2) of the PC states: 'Unfair competition is defined as "any activity of rivalry in commercial or industrial affairs opposite to genuine practices'.

³⁹⁸ U.S Defend Trade Secrets Act (2016)

Among the Arab nations, there are countries that adopted the TRIPS such as Egypt and Iraq and called their laws the law of undisclosed information,³⁹⁹ there are countries that adopted what was stated in the law of the U.S such as Qatar, KSA, and Bahrain,⁴⁰⁰ there are countries that adopted unfair competition as stated in the PC such as Oman and Jordanian laws, However Jordanian and Oman laws, adopted more than the term they used trade secrets and unfair competition together.⁴⁰¹

TRIPS dedicates one article to the regulation of undisclosed information, and that is Article 39 and in a separate section, which is section 7. Two categories of undisclosed information are protected by TRIPS, which are: undisclosed information that pertains to legal or natural individuals in their legal possession or control, and data and information submitted to the competent governmental authorities for approve.⁴⁰² The agreement did not specifically define either type of undisclosed information, leaving the member states national legislation free to set the definition.

TRIPS does not define undisclosed information, but rather directly enters into the conditions that must be met in undisclosed information. The agreement sets out the conditions for undisclosed information, whereby such information must be confidential and not easy to obtain, have commercial value, and the holder of undisclosed information must take reasonable measures to maintain its confidentiality.⁴⁰³ Without specifying these measures, this is considered a deficiency in the TRIPS. On the other hand, the information's owner has the right to forbid others from disclosing the information in his/her possession, to forbid third person from obtaining undisclosed knowledge, and to use it without prior approval in an unfair commercial use.⁴⁰⁴

³⁹⁹ See Chapter Three of the Egyptian IP No 82 (2002); Iraqi Patent, ICs, IDs, Plant Variety and Undisclosed Information Law No 81 (2004)

⁴⁰⁰ See Qatar Law concerning the Trade Secrets No 5 (2005); KSA Regulations for Confidential Commercial Information No 3218 (1426H); Bahrain Law on the Trade Secrets No 7 (2003)

⁴⁰¹ Jordanian Unfair Competition and Trade Secrets Law No 15 (2000); Oman Royal Decree on the Law of Trademarks, Data, Trade Secrets and Protection from Unfair Competition No 38 (2000)

⁴⁰² Art 39 (2) (3) (Appendix B)

⁴⁰³ Peter K Yu, 'Trade Secret Hacking, Online Data Breaches, and China's Cyber threats' (2015) *Cardozo L Rev De-Novo* 130, 142

⁴⁰⁴ Art 39 (3) (Appendix B)

Besides the lack of a definition of undisclosed information, TRIPS also did not impose any penalty on abusers of that information. In our opinion, this is considered a legislative deficiency in the TRIPS, because specifying the penalty in the agreement for aggressors on confidential information or trade secrets will oblige member states to abide by it in their national legislation as a minimum standard and force member states, including Arab countries, to impose punishment on violators.

TRIPS has given the freedom to member states to supplement this deficiency. Arab countries have tried to address this deficiency found in the TRIPS in their domestic legislation. For example, Jordanian law states that if any of the stakeholders is harmed as a result of the unfair competition, she/he may file a civil action before the competent court, demand compensation, and the confiscation of the related goods. The court can issue a decision to confiscate or destroy these products.⁴⁰⁵ In addition, according to KSA law, the person harmed due to the trade secrets disclosure, can initiate a lawsuit to the court, demand compensation.⁴⁰⁶ But the KSA law did not go into details like Jordanian law. The Egyptian IP law, in addition to what was mentioned in the Jordanian and KSA laws determines, in addition to compensation, criminal penalties for the aggressor of this information, such as a fine and imprisonment.⁴⁰⁷ Also, like Jordanian law according to Qatari law, the owner of trade secrets entitled to claim compensation to the court and request the cessation of unfair competition. However, unlike the Jordanian law, a Qatari law defines a criminal penalty, such as imprisonment and a fine, for the information aggressor.⁴⁰⁸ In addition, Bahrain law has the same position as Qatari law.⁴⁰⁹

⁴⁰⁵ Art 3 of Jordanian law No 15 (2000) states: ‘Any interested party may file a claim for reimbursement for losses he sustained as a result of unfair competition’.

⁴⁰⁶ Art 8 of the KSA Confidential Commercial Information No 3218 (1426H) states: ‘Every person hurt as a result of breaking these Regulations' rules may bring a lawsuit before the appropriate judicial body to seek compensation for their losses’.

⁴⁰⁷ Art 61 of the Egypt IP Law (2002) states: ‘Anyone who discloses information, obtains information, or uses information obtained through illicit means will be fined’.

⁴⁰⁸ Art 8 of the Qatar Law concerning the Protection of Trade Secrets No 5 (2005) states: ‘The owner of the right or his successor shall be entitled to compensation for losses sustained as a result of third parties' infringement or misappropriation of the secret; and Art 11 of the same law states: Anyone discovered in violation of any provision of Art (6) and (7) hereof will be subject to a punishment not over 1 year's imprisonment and a fine, or by one of them’.

⁴⁰⁹ See Art 6 of Bahrain Trade Secret Law No 7 (2003)

Additionally, TRIPS did not specify standards for the duration of protection of undisclosed information, leaving freedom to member states, and this is considered a legislative flaw in the agreement and led to the creation of contradictions and differences among the legislation of the member nations in this regard. Can be noted this difference between the legislation of Arab countries, for example, a Jordanian law that prohibits the use of such information until 5 years after the applicant obtains approval to market her/his products.⁴¹⁰ The KSA, Bahrain, and Egypt laws also specified the same period as the Jordanian law.⁴¹¹ While, there are Arab countries that did not specify a period for protecting confidential information, for example, the Qatari, Oman, and Iraqi laws did not specify any period for protecting trade secrets,⁴¹² and this is considered a legislative defect in Qatari, Oman, and Iraqi law. This legislative deficiency goes back to the TRIPS, because if the agreement specifies the legal period for preserving this right, it will bind all countries of the world with it as a minimum standard, including the Arab countries.

Sometimes besides the law religion will help keep the secret; for example, the religion of Islam always requires Muslims not to disclose secrets of others, and this is useful in countries that implement Islamic law, such as KSA.⁴¹³ Despite this, the KSA has issued regulations to protect confidential business information to conform with the TRIPS. What is very noticeable among Arab countries, there is a provision in KSA law that states that KSA law will not protect trade secrets that conflict with Islamic law.⁴¹⁴ Although the text is contrary to the TRIPS, in our opinion, the WTO

⁴¹⁰ Art 8 (A) of the Jordanian Law No 15 (2000) states: 'By prohibiting anyone who did not receive the applicant's approval from using the data for marketing his drugs and goods before five years have passed from the day the applicant received any permission for commercializing his items'.

⁴¹¹ Art 5 of the KSA Regulations for Confidential Information No 3218 (1426H) states: 'For at least a five-year period following the date the approval was granted, the competent authority agrees to secure such information'; Art 56 of the Egypt IP Law states: 'From the day that such information is submitted to the competent authorities until it is no longer confidential, or for a period not exceeding five years'; Art 2 of the Bahrain Trade Secret Law No 7 (2003) states: 'prevent unauthorized commercial use of the aforementioned data or tests by prohibiting anybody from relying on them to advertise their own products or pharmaceuticals until five years have passed since the date of marketing clearance'.

⁴¹² See Qatar Law concerning the Protection of Trade Secrets No 5 (2005); Oman Royal Decree on the Law of Trademarks, Data, Trade Secrets and Protection from Unfair Competition No 38 (2000); Iraqi Patent, ICs, IDs, Plant Variety and Undisclosed Information Law No 81 (2004)

⁴¹³ Wahj W, 'Updating the Law of Trade Secrets in Saudi Arabia' (2018) 5 *Indon J Int'l & Comp L* 43, 44

⁴¹⁴ Art 7 of the KSA Regulations No 3218 (1426H) states: 'secrets protected by these regulations may not violate public societal values or Islamic law'.

participants take into consideration the position of the Kingdom among the Arab countries as a source of practicing the religion of Islam.

2.3 Transitional Period and TRIPS Compliance

TRIPS provisions become effective according to a rolling schedule, where for developed countries, the obligations of the agreement became effective in 1996, and for LDCs the agreement's obligations became applicable in 2016 when the transition period ended. Developing nations were also permitted to postpone the introduction of the protection of medical products until 2005.⁴¹⁵

LDCs are those countries that lack modern and advanced inventions or technological development, and such countries always depend on the industrial products of developed countries and import modern technology from those countries.⁴¹⁶ TRIPS includes several special provisions for LDCs, as stated in the preamble, which recognizes their special needs regarding maximal flexibility in how local rules and regulations are implemented for being able to have a solid technology basis.⁴¹⁷

The WTO uses the UN list that determines the number and names of the LDCs in the world. TRIPS gave ten years to LDCs as a transition period from the beginning of the work of the WTO to the beginning of 2006.⁴¹⁸ During the DR in 2002, the transitory time was extended by TRIPS Council for the LDCs concerning certain obligations related to medicinal products to the beginning of 2016, and in 2015, this period was extended to the beginning of 2033. Also, the GC further waived the obligation of LDCs Members according to Article 70.8 of the TRIPS for the possibility of submitting 'mailBox' requests until the beginning of 2033. The TRIPS Council prolonged the time for the LDCs until the beginning of 2021 or until they are removed from the list of LDCs. To assist them implement the TRIPS Agreement within the national law relating to IP, the Council called on the industrialized nations to support

⁴¹⁵ Fink (n 365)

⁴¹⁶ Watal (n 395) 20-49

⁴¹⁷ See the Preamble (Appendix B)

⁴¹⁸ Art 66 (1) (Appendix B)

the LDCs.⁴¹⁹ From the Arab countries, some of them are classified as least developed countries such as Comoros, Mauritania, Yemen, Djibouti, Sudan and Somalia.⁴²⁰

Additionally, TRIPS gave developing countries five years as a transitional period until the beginning of 2000. However, a developing country can postpone the implementation of TRIPS commitments related to technological patents products until the beginning of 2005.⁴²¹ Historically, developing nations did not provide high levels of protection for IPRs within their national legal systems; they initially resisted negotiating the TRIPS because they expected this economically unwanted result.⁴²² In exchange for acceptance of the TRIPS by developing countries, industrialized countries also made significant concessions regarding imports of tropical products, and decided to eliminate quotas on textile items. Also, developing nations realized that if they did not adopt high levels of IPR protection, IPR holders in industrialized countries would not transfer their modern technology and expertise to them.⁴²³

TRIPS implementation requires significant costs and major adjustments for developing nations. Two types of costs for developing countries are existing: first, the economic costs to developing countries involve shifting real resources from national consumers to rights holders from foreign countries and reducing countries' ability to pursue policies that encourage the purchase of foreign technologies or reverse engineering, second, the costs of harmonizing legislation with the TRIPS and strengthening the local institutions that will be tasked with enforcing the new laws, nor would the industrialized countries incur such costs, which were already broadly similar to the TRIPS' standards.⁴²⁴

The industrial country possesses advanced and modern inventions in many scientific, administrative, and technological fields. The generation of the Agreement was their wish. They have consumed a lot of energy, and time on placing the norms of the TRIPS on an international platform, and making standards as a de facto at the

⁴¹⁹ Taubman (n 94) 24

⁴²⁰ 'UN List of Least Developed Countries' (n 133)

⁴²¹ Art 65 (2) (4) (Appendix B)

⁴²² Abbott, 'WTO/TRIPS' (n 188) 387

⁴²³ Matthews (n 181) 49

⁴²⁴ Hoekman (n 5) 359

international IP system.⁴²⁵ Developed countries desired to resolve the impasse that had arisen within the framework of the WIPO, and to enhance the scale of international protection of IPRs.⁴²⁶ According to their level of development, TRIPS provided transitional periods to each WTO's founding members, so that they could fulfill their obligations in that period. According to the agreement gave developed countries one year as a transitional period until the beginning of 1996.⁴²⁷

2.4 Enforcement of IPRs in TRIPS and Arab Countries Laws

We indicated from the beginning of the study, there are numerous international agreements about IP, but they do not indicate how to enforce those rights or specify a mechanism for settling IP disputes. TRIPS complements the deficiencies of previous agreements. TRIPS although substantive rules for the protection of IP have been established, procedural rules have also been established, such as civil, penal, and administrative procedures for the preserving of IPR. These procedures are considered the lowest standards that all WTO participants must adhere to, including the Arab countries.

The low legal preservation of IP, especially by developing and LDCs including Arab countries, caused TRIPS to be created for the systematic protection of IPRs. By providing some international legal procedures stipulated in the agreement that member states had to abide by, legal penalties would be imposed on them if they violated these procedures and the rules of law contained in the TRIPS. Thus, TRIPS requires member states to issue or amend IP laws. To implement strong protection for IPRs, TRIPS obligates its members to provide procedural rules for taking necessary and effective actions in national laws.

According to the TRIPS to prevent the infringement of IPRs, the procedural rules must include quick penalties so that those penalties constitute a deterrent to any other infringement of IPRs. These measures should be used in an appropriate way that does not lead to the impediment of legitimate trade, and member states must provide

⁴²⁵ Yu, 'The Middle Kingdom (n 174) 232

⁴²⁶ Cattaneo (n 175) 664-666

⁴²⁷ Art 65 (1) (Appendix B)

safeguards to prevent abuse of these measures.⁴²⁸ In addition, under the agreement these procedures must be equitable and fair, may not be needlessly complex or costly, and also require that the judgments issued preferably be reasoned and written, so that the parties to the dispute can read them and defend themselves.⁴²⁹

TRIPS contains special provisions regarding administrative and civil remedies and procedures, interim actions, and particular conditions relating to criminal procedures and border measures. These provisions define the procedures and treatments that must be available for rights holders to be able to adequately enforce their rights. International IP agreements usually require the founding of administrative procedures that will permit IP holders to exploit their products. A prerequisite in this context is the registration (creation of an entry point) of IPRs like trademarks, plant varieties, and patents.⁴³⁰

Additionally, in instances of IPR violations, judiciary institutions need to have the ability to issue prohibitions.⁴³¹ TRIPS made detailed provisions on administrative and civil procedures, remedies, interim measures, criminal procedures, and specific provisions linked to border measures. These provisions established the minimum procedures and treatments that must be applied so that rights owners can adequately implement their rights in local judicial, administrative institutions, or quasi-judicial pursuant with proper general principles.⁴³²

Additionally, pertaining to border measures, TRIPS obligates the members of the WTO to establish procedures for intercepting counterfeit brands by customs administrations at national borders.⁴³³ IPR holders will have to explain to the customs authorities that there are *prima facie rights* (a legal request with sufficient evidence to proceed to a judgment or trial) and provide a adequately full explanation of the goods to allow the relevant authorities to determine them, and the right holder can demand to provide suitable safety to protect the importer and the officials in cases where

⁴²⁸ Art (41) (1) (Appendix B)

⁴²⁹ Art 41 (2) (3) (Appendix B)

⁴³⁰ Pugatch (n 258) 438

⁴³¹ Cardwell (n 4) 23

⁴³² Hoekman (n 5) 361

⁴³³ Art 51 (Appendix B)

legitimate imports are impeded, as stated in article 53, as well as to hinder abuse of the customs attachment system. After confiscating the counterfeit goods, the goods will be released after ten days after their confiscation if procedures have not been initiated during that period to take action to confirm whether the confiscated goods constitute a violation or not.⁴³⁴ In addition, according to the TRIPS, member nations are mandatory to issue criminal sanctions in instances of willful infringement on copyright or trademark on a commercial frame.⁴³⁵

By looking at the laws of the Arab nations that have a WTO membership or that they wish to join it, can find the repetition of those procedures found in the TRIPS, for instance, despite the authorized of the IP owner to file a civil action and claim compensation, the Egyptian law imposes a fine on anyone who imitates a patent or imports or sells a forged patent, and the court has the right to issue a decision confiscating the counterfeit goods. Additionally, Egyptian law, in addition to a fine, imposes a penalty of imprisonment on anyone who forges a trademark or uses the mark in bad faith, in all cases; the court may seize the counterfeit items and sell them or destroy them.⁴³⁶ The Jordanian Patent Law also grants the patentee filing a civil lawsuit and claiming compensation or filing a criminal lawsuit and imposing a punishment on the perpetrator of the offense of forgery of the patent or against any person who imitates his/her patent.⁴³⁷ In addition, the Jordanian Trademark Law imposes a criminal penalty on the person who forges a trademark and grants the right to claim compensation before the civil court for the trademark owner.⁴³⁸ Moreover, other Arab countries have stipulated in their laws the same positions that exist in Egyptian and Jordanian law, such as Bahrain and Oman,⁴³⁹ in addition, with regard to customs procedures, the Bahraini law on Trademark gives the authority to the trademark owner to ask the customs official not to allow the entering forgery products.⁴⁴⁰

⁴³⁴ Kaufman (n 203) 5-6

⁴³⁵ Art 61 (Appendix B)

⁴³⁶ See Art 32, 33, and 113 of the Egypt IP No 82 (2002)

⁴³⁷ See Art 32 of the Jordanian Law on Patent No 32 (1999)

⁴³⁸ See Art 38 and 39 of Jordanian Law on Trademark No 34 (1999)

⁴³⁹ See Art 40 and 41 of the Bahrain Law on Patents and Utility Models No 1 (2006); Art 46 and 47 of the Bahrain Law on Trademark No 11 (2006); Art 35 and 36 of the Oman Royal Decree on Trademarks, Data, Trade Secrets and Protection from Unfair Competition No 38 (2000); Art 24 of the Oman Law on Patent No 82 (2000)

⁴⁴⁰ See Art 43 of the Bahrain Law on Trademark No 11 (2006)

The BC was referred to in the TRIPS, and members must abide by the procedures set forth therein. It also sets out a set of legal procedures for copyright protection outlined in article 16 that protects the author from counterfeit works and confiscates counterfeit or illegal copies but stipulates that the original work must be protected as defined by the legislations of the union's states parties. The second paragraph of the same article states that the original work enjoys legal protection even if it is not protected by the legislations of the union's states parties, while the third paragraph of article 16 states that the confiscation of a forged or illegal copy should be carried out under the national or internal legislation of the country.⁴⁴¹

Additionally, TRIPS requires that when a dispute arises in connection with the carrying out of the agreement between member nations, to settle disputes, nations must use the WTO dispute resolution process and not unilateral action.⁴⁴² The first dispute relating to the TRIPS was amidst the U.S and India, also the EC against India on the same subject (mailbox system) based on article 70 (8) (9) of the TRIPS. In November 1996, a WTO/Panel was created to inspect the U.S claims, and in September 1997, the panel reported that India hadn't followed through on its responsibilities to set up a mailbox system, India was unable to generate a system that preserved uniqueness and priority in relation to product patent applications for medical drugs and agrochemical during the provisional time under TRIPS (art 65). WTO parties accepted the statement by the Panel at the DSB meeting in January 1998. After the WTO/Panel report launched by the U.S was released, the EC also demanded the founding of a WTO/panel relating to the same subject. The DSB confirmed the decision in the previous case.⁴⁴³

Under the DSU, if governments wish to seek compensation for a breach of the TRIPS obligation, they are obligated to resort to and are bound by the WTO's multilateral dispute resolution procedures, take no action for the breach, and not

⁴⁴¹ Art 16 (1) (2) (3) of BC states: '(1) A work's unauthorized copies are subject to seizure in any Union nation where the work is protected by the law. (2) Reproductions made in nations where the work is not protected or is no longer protected are likewise subject to the terms of the preceding sentence. (3) According to each nation's law, the seizure must be carried out'.

⁴⁴² Art 64 (1) (Appendix B)

⁴⁴³ United States and Communities v. India [1999] WTO Dispute Settlement Body, WT/DS50/10/Add4 WT/DS79/6 (WTO Dispute Settlement Body)

retaliate.⁴⁴⁴ The dispute resolution process aims to maintain the supremacy of law in commerce interactions between WTO member states through the effective and impartial resolution of intergovernmental disputes.⁴⁴⁵

The participation of IPR protection in Arab countries has been weak in economic development. Despite the intention to fulfil people's financial needs, progress has long been hampered by the lack of legislation to adequately protect IPR and enforce IPR in those countries. But after the Arab countries fell under the influence of international agreements, especially the TRIPS, and their accession to several global organizations, including the WIPO and recently the WTO, the Arab countries, especially those countries that wish to participate into the international economic order, they modified their laws extensively especially those that deal with IPR protection. However, it is not enough to issue and amend laws to protect IP and make it compatible with international agreements without having sound and effective procedures or mechanisms to implement these rights to prevent infringement of IP owners. The main issue in Arab and developing nations, generally, does not lie in the absence of substantive legal texts recognizing IP rights but rather lies in putting these rules into practice and enforcing them.

In general, because of their low contribution in international discussions on IP, the IP laws in Arab countries lacked deep knowledge of technical and legal issues connected to the implementation or modern regulation of IP. As an example of this, which indicates the role of the Arab nations at the international stage, as developing countries, the Arab countries do not have a role in the DSB in the WTO.⁴⁴⁶ For example, most of Arab nations are developing countries, but they did not have an active role in the UR.⁴⁴⁷ Until 2010, no Arab country could become a complainant by submitting a case or a complaint against any other country in the organization. The only Arab country that became a defendant was Egypt in 2003 when the U.S complained about the tariffs that Egypt applied to American textiles and clothing

⁴⁴⁴ M Geuze and Hannu W, 'WTO Dispute Settlement Practice Relating to the TRIPS Agreement' (1999) 2 J Int'l Econ L 347, 366-368

⁴⁴⁵ *ibid*, 350-361

⁴⁴⁶ M El Said, 'The Implementation Paradox: Intellectual Property Regulation in the Arab World' (2010) 9 J of In Tr L Policy 221m 224-231

⁴⁴⁷ El Said, 'The Accession of Arab (n 21) 61

products. In 2003, America requested a consultation from Egypt, and in 2004, the EC asked to join the consultations. Egypt accepted the EC's request, and after consultation between the countries in May 2005, the U.S and Egypt reached an agreement. They informed the DSB that the problem had been resolved through their consultations under a Memorandum of Understanding.⁴⁴⁸

⁴⁴⁸ Egypt v U.S: Egypt Measures Affecting Imports of Textile and Apparel Products [2005] WTO Dispute Settlement Body, 05-2127 WT/DS305/4 G/L/667/Add1 (WTO Dispute Settlement Body)

CHAPTER III

Reformation of the Iraqi IP Law as an Attempt towards WTO Affiliation

Chapter II of the dissertation along with analyzing the position of IP laws in Arab countries discusses the TRIPS and explains how the WTO members are affected by this agreement. This is for the members of the organization, although several nations have yet to join it, such as Iraq. Before they can join the organization, countries that aspire to become a member of the WTO must warrant that their legislations conform to TRIPS. Countries who seek to join the organization must make their legislations compliant with this agreement, especially developing countries that do not have an advanced legal system to protect IPR, Iraq is also considered one of these countries, which began to liberalize its trade system and implement efforts to establish a system of law to protect IP post-2003.⁴⁴⁹

After the occupation of Iraq by the coalition forces headed by the U.S, Iraq, after its isolation for a long time, tried to integrate with the international community economically and build trade relations with them, the CPA introduces drastic changes to Iraqi laws by issuing various Orders to regulate some new legal aspects that were not previously regulated and amending some Iraqi laws that were incompatible with international standards,⁴⁵⁰ including Orders related to trade liberalizing policy,⁴⁵¹ steps to guarantee the independence of the Iraqi central bank,⁴⁵² Iraqi Trade Bank,⁴⁵³ IP laws,⁴⁵⁴ foreign investment,⁴⁵⁵ company law,⁴⁵⁶ consolidations of state-owned enterprises,⁴⁵⁷ banking law,⁴⁵⁸ and financial management law and public debt law.⁴⁵⁹

⁴⁴⁹ B H Malkawi, 'Iraqi Patent Law—in Search of Compliance with TRIPS' (2007) 38 IIC Int Rev Intellect Prop Compet L 591, 596-602

⁴⁵⁰ Cyndi B, 'Reconstructing Justice in Iraq: Promoting the Rule of Law in a Post-Conflict State' (2010) 2 Hug J of Rule of L 155, 156-164

⁴⁵¹ See Iraqi Trade Liberalizing Policy Order No 12 (2003) suspended by Order No 54

⁴⁵² See Order No 18 Measures to Ensure the Independence of the Central Bank of Iraq (2003); Order No 56 (2004) Central Bank Law

⁴⁵³ See Order No 20 (2003) Trade Bank of Iraq

⁴⁵⁴ See Iraqi Copyright Order No 83 (2004); Iraqi Patent, IDs, Undisclosed Information, ICs, and Plant Variety Law Order No 81 (2004); Iraqi Trademark and GIs Law Order No 80 (2004)

⁴⁵⁵ See Iraqi Investment Law Order No 39 (2003) amended by Order No 46 (2003)

⁴⁵⁶ See Iraqi Companies Law No 21 (1997) amended by Order No 64 (2004)

⁴⁵⁷ See Order No 76 (2004) Iraqi Consolidations of State-Owned Enterprises Law

⁴⁵⁸ See Iraqi Banking Law Order No 40 (2003) which is rescinded by the Order No 94 (2004)

⁴⁵⁹ See Iraqi Financial Management Law and Public Debt Law Order No 95 (2004)

During its interim rule in Iraq, the CPA issued 100 Orders, especially Orders that have a commercial nature.⁴⁶⁰

However, these reformations to Iraqi laws by the CPA laid the legal foundations for the opening of the Iraqi market with the world, and despite the continuation of this approach and the amendment of laws by the Iraqi parliament, there are still legal obstacles to Iraq's accession to the WTO, and there are laws that must be passed or amended. Related to IP laws the question that arises is, after the reformations for the purpose of accession to the WTO, are Iraqi IP laws in compliance with the TRIPS or not? Do they reduce obstacles to Iraq's accession to the WTO? This chapter will be dedicated to answering those questions.

3.1 Mandatory Adherence to the TRIPS

Is adherence with the requirements of TRIPS imperative only for WTO member states or does it apply for nations that wish to obtain WTO membership as well? According to the TRIPS, member of the WTO needs to issue national laws to provide the norms of IPR protection outlined in TRIPS. Under the agreement, the provisional time period for developing nations was 5 years and the transition phase for LDCs was ten years.⁴⁶¹ Then, the period was extended in several stages as mentioned in chapter II. The section will explain the reformation made to the Iraqi IP laws with the intention of the country joining the WTO.

The question may arise is that, does Iraq benefit from this transitional period granted by the TRIPS to the countries of the world according to their level of development? The experience of KSA, Jordan, Oman, and Yemen tells us that Iraq very likely will not benefit from this period because it will join the WTO late, 28 years after its founding, which it has not yet joined.⁴⁶² Countries that seek to join WTO have an accountability to enact or amend their legislations as demanded by TRIPS.⁴⁶³ For instance, in 1999, Jordan brought its copyright, trademark, and patent laws into line

⁴⁶⁰ 'CPA Iraq' (*Govinfo.library.unt.edu*, 2022) <<https://govinfo.library.unt.edu/cpa-iraq/regulations/>> accessed 26 August 2022

⁴⁶¹ See Art 65 & 66 (Appendix B)

⁴⁶² Adil I K Wazni and Ammar M Hameed, 'The Role of Social Market Economy Mechanisms in Promoting Iraq's Accession to the WTO' (2020) 24 *Int J of Psc R* 10719, 10723-10731

⁴⁶³ Constantine Michalopoulos, *WTO Accession for Countries in Transition* ((World Bank 1998) 6-18

with the standard of the TRIPS, which facilitated its road for reaching to the WTO.⁴⁶⁴ Additionally, Yemen's journey towards membership of the WTO went through 14 years of difficult negotiations until its acceptance in 2014, and some of the reasons for this delay in accession were due to the IP legal system in Yemen. Accordingly, Yemen's IP system has undergone significant changes to fit the criteria of TRIPS such as accession to the PC in 2000, and the issuance of a comprehensive new law on patents, integrated circuit designs, IDs, and confidential information in 2011.⁴⁶⁵

On the one hand, accession to the WTO is more difficult than joining the GATT, while on the other hand, joining the WTO is not a simple task. In order to become a WTO member, countries, like Iraq, must pay a 'great price' as they must acknowledge all agreements concluded within the WTO.⁴⁶⁶ This 'price' is called the "principle of obligation". According to it, member states must accept all agreements concluded within the scope of the WTO as one package; it is not permissible to accept only some agreements, while rejecting others.⁴⁶⁷ TRIPS gives developing countries transition period to abide by the agreement; however, Iraq very likely cannot benefit from this transitional period upon joining the WTO, and it will be directly bound by all agreements and provisions that are binding on all members of the organization.⁴⁶⁸ Therefore, Iraq must bring its IP legislations into adherence with the TRIPS's rules before joining the WTO. For example, some Arab countries became members of WTO/multilateral agreements before joining the organization, such as the UAE.⁴⁶⁹

The CPA issued and amended Iraqi laws to rebuild Iraq, because Iraq lacked modern laws necessary for economic growth and development.⁴⁷⁰ This does not mean that Iraq did not have laws before its request to join the WTO. In fact, Iraq's legal system had been in existence since the region was ruled by the Ottomans and was subsequently revised after the founding of the State of Iraq in 1921. Those laws,

⁴⁶⁴ Garduno (n 30) 61

⁴⁶⁵ Economic and Social Commission for Western Asia, Intellectual Property for Fostering Innovation in the Arab Region' (UN 2019) 12

⁴⁶⁶ J Tao, 'US Trade Deal Opens China to WTO Accession' (1999) 18 Int'l Fin L Rev 9, 10-11

⁴⁶⁷ A M Hameed and M K Obaid, 'The Reality of Foreign Trade in Iraq and the Prospects for Joining to the World Trade Organization' (2021) 3 The Middle East Int'l J for Soc Sci 260, 265

⁴⁶⁸ Marceau G Zoe, 'Transition from GATT to WTO' (1995) 29 J World Trade 147, 151-156

⁴⁶⁹ Al Tamimi (n 9) 380

⁴⁷⁰ Kassinger (n 12) 217-218

however, were not compatible with international standards.⁴⁷¹

After 2003 the CPA aimed to connect Iraq with the international economic system a great feat given its isolation forged by the destructive policies of the previous administration. Before the Coalition forces occupied Iraq, Iraqi government made no effort to join the WTO as Iraq was banned from the WTO as a result of economic sanctions, including Resolutions No. 661 in 1990 and No. 667 in 1991, imposed on the country by UN Security Council after Kuwait was invaded by Iraq.⁴⁷² Therefore Iraq made no efforts to comply with WTO rules, which, in turn, hampered the ability of Iraq's economic sector to participate in international commerce. However, Iraq did take steps prior to the outbreak of war with Iran and Kuwait to achieve modern commercial capability. For example, in 1975 Iraq joined the PC regarding industrial property, and, in 1976, Iraq became a member of WIPO.⁴⁷³ The timeline of such activity demonstrates how war halted the development of Iraqi laws as well as local and international economic activities. The PC is considered the constitution for the international protection of industrial property. It is the first international convention concluded to regulate and protect industrial property. Articles 1 to 12 and Article 19 of the PC have also become applicable under the TRIPS.⁴⁷⁴

Sometimes, nations seeking WTO membership such as Iraq are required to reach bilateral agreements, especially with advanced industrial countries, to increase the opportunity to join the WTO. For example, Jordan, before joining the WTO, signed the (the Euro-Mediterranean Agreement on the Establishment of Collaboration in 2002) with the EU and with the U.S in 2001.⁴⁷⁵ Bilateral and regional agreements since 2000 have increased, especially among industrialized and developing nations, to implement IP provisions (called as TRIPS Plus) and based on the standards of protecting IPRs in initialized nations like the EU and the U.S.⁴⁷⁶

⁴⁷¹ K Stilt, 'Islamic Law and the making and Remaking of the Iraqi Legal System' (2004) 36 *George Washington Int'l L Review* 695, 709-732

⁴⁷² A Alnasrawi, 'Iraq: Economic Sanctions and Consequences, 1990–2000' (2001) 22 *Third Wor Q* 205, 206-217

⁴⁷³ See Law ratifying Iraq's Accession to the PC for the Protection of Industrial Property and its amendments and to the Convention of the WIPO No 212 (1975)

⁴⁷⁴ Arab Industrial Development and Mining Organization, 'A Study on Industrial Property in the Arab Countries (2016)

⁴⁷⁵ *Economic (UN)* (n 465) 15

⁴⁷⁶ Pugatch (n 258) 433-451

3.2 Benefits of Iraq's accession to the TRIPS Agreement

What is the benefit of Iraq's accession to the TRIPS? We have said from the beginning that Iraq will pay a greater price upon joining the WTO because it has to accept all the agreements agreed upon since the UR in Marrakesh. At the same time, Iraq very likely will not benefit from the transitory time was offered by the TRIPS, which the agreement gave to the countries acceding to it from the beginning. Upon accession, Iraq will abide by all the agreements directly concluded within the WTO without enjoying the transitional period because this period has ended. For example, Arab countries such as Kuwait, Bahrain, and Morocco have enjoyed the transitional period which exists in the TRIPS, but Jordan, which joined the organization in 2000, has not enjoyed this period, which the TRIPS gives to developing countries in order to make their national legislations compliant with the rules of the agreement.⁴⁷⁷

The most important benefit of Iraq's entry into TRIPS lies in reducing the impediments of Iraq's admission to the WTO, and thus facilitating its accession to the aforementioned organization. Thus, Iraq's isolation from international trade relations will end, and it will lead to Iraq's economic openness and its integration with the international community economically, after it lived in international isolation as a result of the destructive policies of the previous regime. The Iraqi markets witnessed the dumping of the economy after 2003 due to the openness to importing goods from other countries at very cheap prices, which led to the collapse of the Iraqi industry and an increase in the unemployment rate. Upon joining the WTO, Iraq can benefit from the WTO anti-dumping agreement and put an end to economic dumping, which will lead to the development of the Iraqi economic sector so that it can rival the member states' economies.⁴⁷⁸ The Safeguards agreement permits WTO members to temporarily impose tariff quotas or safeguards in exceptional circumstances. However, before resorting to guarantees, the member must show serious harm to the country's industries as a result of increased imports and the guarantee must be utilized without discrimination.⁴⁷⁹ There are many other benefits of joining the WTO, the research will

⁴⁷⁷ Carlos M Correa, *Trade Related Aspects of Intellectual Property Rights* (2nd edn, Oxford University Press 2020) 464-473

⁴⁷⁸ Kierkegaard (n 42) 61

⁴⁷⁹ Art 2 (1) of the WTO Agreement on Safeguards states: 'Parties to the agreement may implement a safeguard measure'; Art 7 (1) of the same agreement states: 'Parties to the agreement shall only implement safeguard measures for the time length required to prevent or treat serious injury'.

discuss them in separate section. Therefore, the development of IP laws facilitates accession to the WTO. Joining the WTO means being able to take advantage of all the agreements in it.

A sound system of IPRs protection will be crucial to support the growth of the industry, provide advanced technology, and attract more high-end products to Iraq. In addition to reforming national laws, Iraq should strive to be an active part of a community of nations that respects IPRs by adhering to international standards. Commitment to the international agreements will help investors enter Iraq; this indicates that Iraq is ready for investment and reduces the risk premium required by entrepreneurs.⁴⁸⁰

In addition, acceding to the TRIPS will certainly increase the volume of foreign investment in Iraq, because this agreement will encourage Iraq to offer investors a secure climate, and the foreign corporations will also be more interested in the Iraqi market because their products will enjoy legal protection in accordance with the Iraqi laws and it will be easier to transfer advanced technology to Iraq from developed countries when they feel their rights are protected from abuse.⁴⁸¹ This is because at that time, Iraq will be committed to harmonizing its legislation with the rules of the agreement. WTO membership for Iraq will result in a new road plan of a trade policy.⁴⁸² With regard to restoring investor confidence, providing serious legal protection for IPRs was one of the most important steps that Iraq took to attract external capital to Iraq and rebuild the country after the war. In summary, these are considered the reasons for attracting foreign investors and increasing the level of living for citizens and the economic level of the country, which Iraq needed after 2003.

3.3 Iraq's Interaction with the International Economic System

The Allies, headed by the U.S, sought once World War II was over to establish system of international commerce, with the participation of 44 countries in the Bretton Woods conference that led to the establishment of two international institutions, the

⁴⁸⁰ Hope (n 29) 896

⁴⁸¹ Robert M S, 'The TRIPS Agreement: Implications for Developing Countries' (1997) 37 IDEA 491, 502-504

⁴⁸² Mudhafar H Ali, 'Trade Policy in Iraq after 2003 and Its Impact on Foreign Direct Investment' (2013) 38 Iraqi J for Eco Sci 152, 162-163

IMF, which was established to stabilizing exchange rates and supervising the monetary system, and the WB established to helping European countries devastated by war and assisting other countries in their economic development.⁴⁸³ The idea of establishing an organization to regulate world trade also emerged from the conference, but it was not implemented directly, but rather began with the conclusion of the GATT.⁴⁸⁴ GATT goals is to establish the new international trading system, which approved many principles, foremost of which is nondiscrimination between trading partners, for example, the MFN principle requires a member state to offer a business concession to one trade partner to offer the same treatment to all.⁴⁸⁵ The agreement also approved working to reduce customs tariffs, for example, seeking to put an end to trade quotas, and resolve the issue of subsidies to facilitate international trade movement, along with all existing principles in the agreement the WTO established a powerful mechanism for settling disputes between member states.⁴⁸⁶

Three international organizations (WB, IMF, and WTO) nowadays are responsible for preserving the international economic system. The current economic system supports free markets, free trade, strict market discipline, and free investment.⁴⁸⁷ That's why the industrialized countries largely strive to maintain the current international economic system. The question that arises here is, can Iraq reintegrate into the international economic system?

From the time Iraq invaded Kuwait in 1990 until the fall of the Baath regime, the UN imposed a complete economic embargo on Iraq. Specifically, under Resolution No. 661 of 1990, with the exception of medical supplies and other materials required for humanitarian needs.⁴⁸⁸ In response to the outright ban, Iraq rigidly forbade investment by foreigners.⁴⁸⁹ Since then, the Iraqi economy has suffered a period of

⁴⁸³ Busola O A, 'The Role of the United States International Trade Commission in the United States International Trade System' [2020] SSRN Electronic Journal

⁴⁸⁴ Orfeo F and Eugénia C H, 'Legacies and Innovations in Global Economic Governance since Bretton Woods' (2019) 26 *Rev of Int Pol Eco* 1089, 1095-1099

⁴⁸⁵ Bernard Hoekman and Petros C M, 'MFN Clubs and Scheduling Additional Commitments in the GATT: Learning from the GATS' (2017) 28 *Eu J In L* 387, 389-390

⁴⁸⁶ Amrita N, 'Fairness in International Trade Negotiations: Developing Countries in the GATT and WTO' (2006) 29 *World Economy* 1005, 1016-1025

⁴⁸⁷ Yiping Huang, Weihua Dang and Jiao Wang, *Reform of the International Economic System: What does China Want?', Rising China: Global Challenges and Opportunities* (ANU Press 2011) 29

⁴⁸⁸ J Gordon, 'Due Process and the Iraq Sanctions: A Response to Devika Hovell' (2016) 110 *American J of Int L* 13, 14-17

⁴⁸⁹ Al-Dajani (n 25) 254

deterioration and repeated crises, casting a long shadow over economic life and isolating Iraq and its people from its regional and international surroundings.⁴⁹⁰ Those sanctions contributed to increasing the imbalance in Iraq's economy and deepening its crisis. Thus, during U.S Governor Paul Bremer's tenure in Iraq (from 12 May 2003 to 28 June 2004),⁴⁹¹ as a first step toward economic integration, the UN Security Council under Resolution No. 1483 on 22 May 2003, lifted the bulk of the economic sanctions (except for prohibitions relating to the supply or sale of arms to Iraq) and ended the oil-for-food program.⁴⁹²

Any nation that desires to obtain membership from the WTO must change its internal legislation and harmonize it with the agreements concluded within the framework of the aforementioned organization. So post-2003 reform in the Iraqi legal system became inevitable and necessary for Iraq's integration with the international economic system. To achieve these goals, it was necessary to amend the laws in Iraq. For example, prior to 2003, foreign companies were cautious about investing their money in Iraq for a number of reasons. Most notably, foreign companies were banned from operating in Iraq, and the Iraqi laws did not align with international standards. Aside from the legal implications, foreigners also refused to invest in Iraq because of the security risks.⁴⁹³

Prior to 2003, overseas companies were not allowed to apply for registration in Iraq, but after 2003, the CPA changed the Iraqi Companies Law according to Order No. 64 of 2004, where Article 12 allowed foreign companies to apply for registration in Iraq,⁴⁹⁴ and therefore, the Companies Registration Guide accepts applications for registration of foreign companies.

After the fall of the former regime Iraq adopted a new constitution to build a democratic state. The new constitution provided the authority to the Iraqi government

⁴⁹⁰ Hamsa Qusai, 'Iraq and World Trade Organization after 2003' (2018) 1 J of the Col for Eco, Adm & Fin St 408, 409 (In Arabic) مجلة كلية الإدارة 1 (2018)، 2003، همسة قصي، العراق و منظمة التجارة العالمية بعد عام 2003، و الاقتصاد للدراسات الاقتصادية و الإدارية و المالية 408، 409

⁴⁹¹ James P, 'US Blunders in Iraq: De-Baathification and Disbanding the Army' (2010) 25 Intelligence and Na Sec 76, 76-82

⁴⁹² Khalid M Butt, and Anam A Butt, 'UN Sanctions Against Iraq: From Ailment to Chronic' (2014) 21 J of Pol St 271, 278

⁴⁹³ Nidham Al-Abasey, 'Reformist Framework of the Foreign Investment Environment in the Post-Conflict: Critical Appraisal of Iraq Case' (PhD, Bangor University School of Law 2014) 103-112

⁴⁹⁴ See Iraqi Companies Law No 21 (1997) which amended by Order No 64 (2004)

to enter negotiations and set trade foreign policies, among other things.⁴⁹⁵ New Iraqi constitution supports and encourages foreign investment and provides legal protection for IPR, new Iraqi constitution encourages and guarantees investment in various sectors.⁴⁹⁶ Therefore after accepting Iraq's application to join the WTO, the Iraqi Supreme National Committee (the committee concerned admission of Iraq) prepared the requirements for accession. In September 2005 the Iraqi government prepared a document of accession that included the Iraqi trade policy.⁴⁹⁷ Subsequently on 15 December 2006, the WTO appointed Colombia's ambassador to the WTO (Claudia Uribe) to lead the working group in charge of the Iraqi accession process.

The working group drafted a memorandum, which the secretariat circulated to the WTO members to develop questions and inquiries for Iraq. On 25 May 2007 the first round of negotiations between the working group and Iraq was held in Geneva to discuss Iraq's application to accession.⁴⁹⁸ During this meeting they asked Iraq to submit data on agriculture, health, and phytosanitation; to discuss the technical difficulties to trade data; and describe the legislative plan for and information about IP within Iraqi laws.⁴⁹⁹ The Iraqi government provided responses to these additional inquiries in January 2008, and the WTO secretariat distributed Iraq's legislative plan to the member states. During the second negotiation meeting on 2 April 2008, the Working team examined Iraq's commercial laws.⁵⁰⁰ After a long pause in negotiations, Iraq held the last informal meeting with the Working Team to discuss WTO membership on 17 November 2017.⁵⁰¹ The meeting allowed the Iraqi government and member states to exchange their views on the steps that would be taken in the near term for formal resumption. Since that time Iraq has not met again with the WTO nor has Iraq taken any steps to complete the accession process, or submitting any additional documents to persuade the WTO to accept its application.

⁴⁹⁵ Art 110 (1) of the Constitution (2005) states: 'The government shall have sole authority to negotiate and implement foreign policy'.

⁴⁹⁶ Art 26 of the Constitution states: 'The State will ensure that investment is encouraged in a variety of areas'.

⁴⁹⁷ Malkawi, *Iraq's Access* (n 124) 19-24

⁴⁹⁸ WTO General Council (n 147) 8-9

⁴⁹⁹ WTO (WTO) <https://www.wto.org/english/thewto_e/acc_e/a1_iraq_e.htm> accessed 28 October 2022

⁵⁰⁰ *ibid*

⁵⁰¹ 'WTO | 2017 News Items - Members Welcome Iraq's Firm Intention (n 152)

Under the temporary rule of the Coalition Authority, Iraq became an observer member of the WTO in 2004. Though the country initially took some steps towards WTO membership in an effort to benefit from the organization's advantages, with the help of the CPA, Iraq amended the majority of its commercial laws, seeking to put into place a new system to manage the economy and put an end to the economic and financial corruption that existed under the previous government. The new economic system in Iraq gave the private sector a leading role, rather than allowing the government to retain full control as it had during the Baathist's reign from 1968 to 2003.⁵⁰²

Post-2003 changes have also modified the socialist ideals of the Baathist regime, which controlled all aspects of individual life. Such modifications introduced a new legal philosophy for managing many aspects of the state, including the economy and commerce.⁵⁰³ Additionally, the CPA sought to secure a judiciary independent from the executive authority to put an end to the executive interference in the affairs of the judiciary, because a safe trade environment needs independence free from interference.⁵⁰⁴

Due to the state's inefficiency and lack of successful project management prior to 2003, Iraq sought to adopt a new approach and mechanism for managing the economy through the issuance of new legislation with the intention of liberalizing trade and encouraging the private sector. For example, according to the new Iraqi constitution, the state guarantees economic reforms in accordance with a modern economic vision.⁵⁰⁵ As for the Iraqi Central Bank (created in 1947),⁵⁰⁶ the CPA tried to restore the prestige and independence of the Iraqi Central Bank by granting it independence in managing its financial and monetary affairs via Order No. 56. Article 1 of the Order established a strong, secure, and independent Iraqi central bank.⁵⁰⁷ It is critical that the central bank which is the backbone of the state's economy has financial

⁵⁰² Hameed (n 467) 260-261

⁵⁰³ Nabeel M Althabhwai and Zinatul A Z, 'The Patent Legal System in Iraq: The Path to Efficiency of its Statutes' (2014) 36 *World Pat Inf* 32, 33-35

⁵⁰⁴ Art 1 of the Iraqi Law regarding Council of Judges Order No 35 (2003) states: 'The Council of Judiciary will carry out its duties without interference from the Justice Ministries'.

⁵⁰⁵ Wazni (n 462) 10724

⁵⁰⁶ Taha A H Ardiny and Ali H Alyamoor, 'The Extent of Commitment of Iraqi Commercial Banks to the Disclosure and Transparency Requirements of Corporate Governance Principles Issued by the Central Bank of Iraq' (2021) 11 *Rev of Int Geo Edu Online* 92, 96

⁵⁰⁷ See Art 1 of the No 56 (2004) on Central Bank

and administrative independence, as it organizes the state's monetary and economic policy in conjunction with other institutions when the country faces crises.⁵⁰⁸ Prior to 2003, the Central Bank of Iraq failed to provide those benefits to the country as it was managed and controlled by the Baathist regime.⁵⁰⁹

Iraq to be able to obtain WTO membership requires a review of many of its current laws. After Saddam Hussein's regime fell to the Coalition Forces, the U.S appointed a civilian governor of the Republic of Iraq until a national government could be formed. Until that time, the CPA headed up the effort to rebuild the Iraqi legal system. Through a set of Orders, the authority inserts various new provisions into Iraqi law.⁵¹⁰ These post-2003 developments of Iraq's national legislation will aid in the nation's efforts towards joining the WTO; however, further developments are necessary to ensure that the laws comport with the agreements formulated according to internationally agreed on principles and rules.

Since obtaining observer status from the WTO in 2004, Iraq has been working to amend its laws such that they comply with the rules of the organization. For instance, Iraq has passed several laws since obtaining observer status, to include the Law on Protection of National Products No. 11 of 2010 and the Customs Tariff Law No. 22 of 2010.⁵¹¹ In addition, Iraq joined the Convention on the Implementation of Arbitration Awards via Law No. 14 in 2021, with Iraq becoming Member No. 167 of the Convention,⁵¹² Additionally, Iraq joined PCT in 2021,⁵¹³ and Iraq issued Investment legislation, which applies to both domestic and overseas investment. In order to attract foreign investment, the Iraqi law grants foreign investors guarantees, privileges, and the same rights enjoyed by national investors.⁵¹⁴ This text is a repetition of the repealed Investment Law No. 39 that was issued by CPA.⁵¹⁵ And Iraq amended IP laws, among

⁵⁰⁸ Alan S B, 'How Central Should the Central Bank Be?' (2010) 48 J of Eco Literature 123, 123-126

⁵⁰⁹ The preamble of Order No 56 (2004) on Central Bank states: 'Recognizing the issues resulting from the previous regime's policies surrounding control of the Central Bank of Iraq, the bank resolves to stabilize domestic prices and to develop an economic environment favorable to the establishment of a stable and competitive market economy'.

⁵¹⁰ Ali (n 11) 19-22

⁵¹¹ See Iraqi Law on Protection of National Products No 11 (2010); Iraqi Customs Tariff Law No 22 (2010)

⁵¹² See Law of Accession to the Convention on the Recognition and Implementation of Foreign Arbitral Awards 1958 No 14 (2021)

⁵¹³ Iraqi Law No. 15 (2021) on Accession of the Republic of Iraq to the PCT of 1970

⁵¹⁴ Al-Abasey (n 493) 144

⁵¹⁵ See Iraqi Investment Law Order No 13 (2006)

others. This was an important step to upgrade the Iraqi economy and transfer the new experience to Iraq.

Though post 2003 many Iraqi laws were amended whether by the CPA or the Iraqi parliament, However, many laws remained unaligned with the work of the WTO, as indicated by the Iraqi Prime Minister's advisor, Mzhar Muhammad Salih. Salih stated that 'the Iraqi economy has been more liberal since 2003, but it lacks regulatory and supervisory regulations in the scope of commercial relations and international requirements in this regard, according to internationally approved standards.'⁵¹⁶ The consultant revealed that important legislation is lacking, especially laws that relate to the rights of workers in the private sector, social security, and trade union organization. He further stressed the need to establish a department supported by economic and legal expertise in the Ministry of Commerce to coordinate relations with the WTO.⁵¹⁷ In this regard, the Iraqi Ministry of Commerce announced that it will prepare a new plan for Iraq's accession to the WTO, which will include forming a national committee to continue Iraq's accession work and working with the Iraqi Parliament to amend and issue the necessary laws for Iraq's accession.⁵¹⁸

When comparing the legislative developments and the efforts exerted to develop Iraq's infrastructure by the CPA against the developments and efforts put forth by successive Iraqi governments, it is clear that the coalition authority was more insistent on Iraq's accession to the WTO than all the successive Iraqi governments. Rapid legislative and economic developments occurred during the Coalition

⁵¹⁶ A Izhub, 'Merchandise Dumping and other Factors that Undermine Iraq's Accession to the WTO' (*Aljazeera.net*, 2022) <<https://www.aljazeera.net/ebusiness/2021/6/20/%D8%B1%D8%BA%D9%85-%D8%A7%D9%86%D9%81%D8%AA%D8%A7%D8%AD%D9%87-%D8%A7%D9%84%D8%A7%D9%82%D8%AA%D8%B5%D8%A7%D8%AF%D9%8A-%D8%A7%D9%84%D8%B9%D8%B1%D8%A7%D9%82-%D9%84%D8%A7-%D9%8A%D8%B2%D8%A7%D9%84>> accessed 26 August 2022

⁵¹⁷ M Mohamad salh, 'Iraq and the WTO: Assessing the Opportunity Cost of Accession.' (*Civilized dialogue*, 2022) <<https://www.ahewar.org/debat/show.art.asp?aid=615413>> accessed 26 August 2022

⁵¹⁸ 'Iraq is Preparing a Plan to Join the World Trade Organization' (*The Independent Arabic*, 2022) <<https://www.independentarabia.com/node/173721/%D8%A7%D9%82%D8%AA%D8%B5%D8%A7%D8%AF/%D8%A7%D9%84%D8%B9%D8%B1%D8%A7%D9%82-%D9%8A%D8%B9%D8%AF-%D8%AE%D8%B7%D8%A9-%D9%84%D9%84%D8%A7%D9%86%D8%B6%D9%85%D8%A7%D9%85-%D8%A5%D9%84%D9%89-%D9%85%D9%86%D8%B8%D9%85%D8%A9-%D8%A7%D9%84%D8%AA%D8%AC%D8%A7%D8%B1%D8%A9-%D8%A7%D9%84%D8%B9%D8%A7%D9%84%D9%85%D9%8A%D8%A9>> accessed 26 August 2022

Authority's short rule, and those legislative developments slowed dramatically after state sovereignty was transferred to the Iraqis.

The Coalition Authority's occupation of Iraq was not only a political matter but also a legislative shift in the country as it led to the amendment of many Iraqi laws. Beginning in 2003 Iraq implemented new economic and trade policies, opening up the market to remainder of the globe and allowing foreign investors and companies to work in country, to raise the country's economic level and integrate into the global economic system. In 2004, Iraq applied to join the WTO.⁵¹⁹ Four months before the CPA's rule ended, Iraq attained observer status within the WTO on 11 February 2004.⁵²⁰ Since 2004, despite holding several meetings with the organization, Iraq has yet to join the WTO, which means that more than nineteen years have passed since Iraq submitted a request to join the organization without result. Iraq now enjoys observer status in the WTO, as mentioned earlier. However, while obtaining observer status is an easy matter, joining the organization requires a great deal of effort.⁵²¹ The accession process involves long and arduous negotiation between the government of the country that wishes to join the WTO and organization's the members.⁵²²

After negotiations, the member states usually grant observer status to a state that wishes to join the organization. The organization grants to the nation seeking WTO membership an opportunity to investigate the facts and find out the policy of the organization.⁵²³ Despite the legislative amendments made to Iraqi laws and economic developments Post-2003, Iraq remains outside the WTO and it is not able to obtain a membership seat within the organization, only holding observer status within the organization since 2004.⁵²⁴ This indicates that Iraqi attempts to enter the organization were not successful and this has certainly affected Iraqi foreign trade or international trade relations between Iraq and other countries or member countries of the WTO.

⁵¹⁹ Bathsheba C, 'Reconstructing Iraq's Economy' (2004) 27 WQ 73, 81-88

⁵²⁰ Al-Dajani (n 25) 253

⁵²¹ A Lang and J S, 'The Hidden World of WTO Governance' (2009) 20 EU J of Int L 575, 578-591

⁵²² Jaafar B Jaber, 'Iraq's WTO membership is the way to Building a Reviving Iraqi Economy' (2017) 12 Iraqi Elec Commerce M 1, 5 (In Arabic) جعفر بهلول جابر، انضمام العراق الى منظمة التجارة العالمية الطريق الى بناء اقتصاد عراقي ناهض (2017) 12 مجلة التجارة العراقية الالكترونية 1، 5

⁵²³ Kassinger (n 12) 226

⁵²⁴ Benson (n 150) 153

The political situation which is unstable in Iraq and internal sectarian conflicts caused the suspension of Iraq's efforts towards WTO affiliation for a long time and reform its legislations.⁵²⁵ Unfortunately in Iraq, stability continues to evade the political arena; differences between political parties in Iraq become increasing complex by the day, deepening into sectarian and national conflicts. For example as a result of the 2019 demonstrations, the Iraqi elections, which were originally scheduled for 2022,⁵²⁶ commenced on 10 October 2021. Due to political disputes, the elected government was not formed until 13 October 2022.⁵²⁷ Legislative and economic developments like accession to the WTO require a stable and secure environment.

In addition, according to the WTO Agreement, two-thirds of the parties must decide on and approve the terms of membership in the MC.⁵²⁸ It is clear from this text that Iraq, which aspires to join the organization, must sit with all members of the WTO bilaterally and enters negotiations with them because Iraq needs their approval.⁵²⁹ Therefore, Iraq's status in the international arena, economically and politically, will also affect its accession process to the WTO.⁵³⁰

3.4 Effects of Accession to the WTO on Iraq

For Iraq to join the organization, there are a number of pros and cons. The study will focus on the most important of these positives that Iraq will benefit from after joining the WTO and the most prominent negatives that will hurt Iraq because of its accession. There are various positive aspects of the Iraqi entrance to WTO: It is expected that country's entrance to the organization will affect the Iraqi economy, which has been suffering from significant weakness for a long time. Iraqi accession will encourage the industrial sector to increase production and support export

⁵²⁵ Adnan F Aljawareen, 'Iraqi Economy Post ISIS: Challenges and Opportunities' (2019) 5 *Man and Eco Res J* 1, 2-4

⁵²⁶ M J Al-Hilu, 'A Multimodal Discourse Analysis of the Iraqi 2021 Parliamentary Election on the BBC Internet Platform' (2022) 48 *J of Col of Ed* 497, 498-505

⁵²⁷ Person, 'Iraqi Parliament Approves New Government Headed by Mohammed Shia Al-Sudani' (*Reuters*, 27 October 2022) <<https://www.reuters.com/world/middle-east/iraq-lawmakers-approve-government-prime-minister-designate-sudani-2022-10-27/>> accessed 28 October 2022

⁵²⁸ See Art XII (2) (Appendix A)

⁵²⁹ See Art XII (2) (Appendix A)

⁵³⁰ Benson (n 150) 157-190

opportunities through the decrease in customs duties imposed on their exports.⁵³¹ This could potentially build up the industrial sector such that Iraq could be competitive with other WTO member states.

Following 2003, Iraq faced a problem related to economic dumping, and it was possible to find various goods from Iraq cheaper than in the country of origin, and upon accession to the WTO, it could impose more restrictions in this area. The organization allows customs duties to be imposed on dumping goods, as the Safeguards Agreement lets WTO members to impose inconsistent WTO guarantees or tariff quotas provisionally in exceptional situations if certain criteria are met. Before resorting to guarantees, the country must demonstrate serious harm to the national industry as a consequence of increased imports, and it must apply the guarantee in a non-discriminatory way.⁵³² In the sense where an exported product is sold at less than the domestic market price or production value, a WTO member state can command anti-dumping duties on that dumped good. In this regard, to address dumping, Iraq issued the Law on the Protection of Iraqi Products No. 11 of 2010, which allows the government to determine the quantitative quotas of the product that may be imported, impose or increase a customs tariff on the imported product or cancel or reduce the tariff applied to an imported material. Additionally, it can take any measures that help local producers adapt to imported products, provided that they do not go against what the public wants and the obligations of the Republic of Iraq under the relevant international agreements.⁵³³

WTO accession would also be beneficial as Iraqi imports might be eligible for reduced tariffs; therefore, the Iraqi consumer would have access to multiple types of products at lower prices.⁵³⁴

In addition, Iraq's WTO affiliation would encourage overseas investment and generate an influx of modern technology into the country, further stimulating national

⁵³¹ Adeb Q Shendi, 'Iraq's Accession to WTO and its Repercussions on the Iraqi Economy' (2009) 2 *Al Gharee for Eco & Adm Sci* 7, 12-13 (In Arabic) منظمة التجارة العالمية أديب قاسم شندي، انضمام العراق الى منظمة التجارة العالمية وتداعياته على الاقتصاد العراقي، (2009) 2 *الغري للعلوم الاقتصادية والإدارية* 7، 13-12

⁵³² Art 2 (1) the Agreement on Safeguards (n 478)

⁵³³ See Art 14 of the Iraqi Law on National Products No 11 (2010)

⁵³⁴ Al-Zuhairi (n 35) 303

investment and enhancing Iraqi technological capabilities.⁵³⁵ In this regard, the CPA took an important step in issuing Order No. 39, which regulates foreign investment in Iraq. The order provides that foreign investor in Iraq may make investments on conditions that are not less advantageous than those applied to Iraqi investors.⁵³⁶

Joining the WTO would support increased diversification in the country's economy and, in turn, decrease its reliance on oil exports.⁵³⁷ Relying on oil exports as a sole source of income is dangerous because at any time the price of oil could drop globally and trigger economic trouble. Therefore, diversification of income sources would increase stability in the country's economic policy, which could, in turn, reduce the unemployment problem.

In addition, Iraq can benefit from the non-discrimination principle upon joining the WTO, which is one of the WTO's fundamental tenets.⁵³⁸ According to this principle, if a WTO member awards one of its partners a distinct privilege such as a decrease in tariffs imposed on one of its commodities, it should provide all other WTO member states the same benefit.⁵³⁹

The development of national legislation in a way that is compatible with the WTO's rules represents a positive sign that is reflected in the development of the legislative system of the countries under the banner of the world organization, given that these agreements were formulated according to internationally agreed on principles and rules, and they are the result of long negotiations, especially since developing nations necessity to develop their legislative system to provide the appropriate environment to liberalize trade, open markets in the field of goods and services, and protect these sectors from competition harmful to the economy.⁵⁴⁰

⁵³⁵ Hope (n 29) 876-882

⁵³⁶ See Section (4) of the Order No 39 on Foreign Investment (2003)

⁵³⁷ Malkawi, *Iraq's Access* (n 124) 50

⁵³⁸ Nicolas F D, *Non-Discrimination in International Trade in Services* (1st edn, Cambridge University Press 2010) 79-80

⁵³⁹ Ali Ariaeipour, 'Products Liability in International Trade Law' (2015) 12 Int'l Stud J 43, 44-47

⁵⁴⁰ Youssef O Ghanem, 'Obstacles to Iraq's joining WTO', (2018) 34 J of Kufa Leg and Pol Sci 195, 203 (In Arabic) مجلة الكوفة للعلوم القانونية، 34 (2018)، عقبات انضمام العراق إلى منظمة التجارة العالمية، يوسف عودة غانم، السياسية 43

We also expect that Iraq joining the organization will provide the country the opportunity to benefit from the commercial and legal expertise of the various nations, especially the developed nations, through discussions and the development of trade ties with them, which will lead to an improvement in the economic situation in Iraq and provide more legal protection for domestic and foreign products.

Though becoming a WTO member offers several benefits, it also raises some concerns for Iraq. Iraq's accession to the organization has a series of negative aspects. The WTO agreement works on the principle of accepting or rejecting all results, and therefore, upon Iraq joins the WTO; it must accept all WTO agreements, without benefiting from the transitional period granted by the organization to countries at the beginning of its establishment.⁵⁴¹

Additionally, Iraq is politically unstable, a circumstance that affects its national economy and production capacity as well as the ability of Iraqi industry to compete with WTO member countries.⁵⁴² This slow economic and industrial development in Iraq, slows the progress on Iraqi legislative development, especially economic legislation as such development can only move as swiftly as the nation's industrial and economic position.

In addition, certain elements of the trade-related IPR that deal with issues such as licensing, copyrights, and reproduction increase the difficulty for developing nations to imitate the new technology, which leads high costs for obtaining new products in these countries.⁵⁴³

Iraq today cannot export any goods or services to other countries or members of the WTO, except for crude oil, which does not face any obstacles.⁵⁴⁴ Thus, Iraqi industry lacks sufficient competitiveness.

⁵⁴¹ Salman (n 139) 201

⁵⁴² J K Choksy & C B. Choksy, 'Unstable, unruly, and reprobate: the Middle East today' (2016) 179 W Affairs 58, 59- 63

⁵⁴³ Alkuraishi (n 27) 7

⁵⁴⁴ Salman (n 139) 200-203

Despite strong arguments in favor of Iraq's accession to the WTO, there are opposing views. Some believe that WTO accession cause to rise of competition in the Iraqi marketplace because of adherence to the rules of opening the marketplace, which will negatively affect some national industries due to their inability to compete with foreign industries in respect of quality and price of products, which will lead to a higher unemployment rate.⁵⁴⁵ The Iraqi industrial sector is not currently ready to compete internationally as Iraq depends mainly on import goods. In fact, there are a huge number of trucks on the Iraqi border importing various materials to Iraq and returning empty to their homeland.

In spite of these concerns surrounding Iraqi accession to the WTO, we believe that remaining outside the WTO will do more harm to Iraq. The WTO currently has 164 members globally, and more than 24 countries are trying to join and retain observer status.⁵⁴⁶ Additionally, Iraq joining the organization will encourage its commercial and economic activities, increase its internal production, keep pace with global technological development, because opening up to the countries of the world and interacting with them is a necessity to enable the economies of countries to develop through international trade and the exchange of experiences.⁵⁴⁷ Therefore, Iraq's adherence to the organization's laws and consideration of the organization's decisions will lead to an improvement in the economic situation in Iraq.

3.5 Reformation of the Iraqi IP Laws

Rather than a single law like Egypt, where all types of IP are regulated by one law, which is the Egyptian IP law No 82 of 2002, in Iraq, there is no single law for IP, as it is regulated by different laws including the Iraq copyright law, Iraqi trademark and GIs law and Iraqi law regarding plant variety protection, patent, IDs and undisclosed information.

The regulation of IP under one law helps creators and consumers to know their rights easily, helps to avoid legislative contradiction and ambiguity, amending it

⁵⁴⁵ Zarkin (n 144) 214

⁵⁴⁶ 'WTO Members and Observers' (n 2)

⁵⁴⁷ Miada H Rahim, 'The Possibility of Iraq Joining the WTO the Problem and the Results' (2018) 4 Grey's Mag for Eco & Adm Sci 394, 405-406 (In Arabic) *ميادة حسن رحيم، امكانية انضمام العراق الى منظمة التجارة العالمية الاشكالية والنتائج، (2018) 42 الغري للعلوم الاقتصادية والادارية 394، 406-405*

becomes easier, and helps the legislature to find legal defects or legal articles that are not in line with international standards and TRIPS.⁵⁴⁸ Iraq applied to join the WTO in 2004, and this required the Iraqi government to provide documents related to the agriculture and services sector, in addition to technical obstacles facing the foreign trade sector, matters related to health, and IP, among other things. Additionally, all of this required the government to submit a legislative action plan for the change that it intended to make in the organizational aspects and legislation in line with the conditions for joining the WTO.⁵⁴⁹

TRIPS not only had an impact on Iraqi IP laws, but also affected the IP laws of the majority of Arab countries, especially countries that joined the WTO or countries that wish to join the organization. For example, the Jordanian legislature issued and amended IP laws to maintain compliance with world standards and standards found in the TRIPS through the issuance of Trademark Law No. 37 of 2000 to replace the old Trademark legislation, commercial Secrets Law was published (2000), among others.⁵⁵⁰

Additionally, the Egyptian legislature issued the new IP Law No. 82 of 2002 to replace the old IP laws,⁵⁵¹ Further, the Qatari legislature issued Copyright and trademarks, GIs, and IDs and models (2002), among others, to keep pace with international requirements.⁵⁵² In Iraq, post-2003, the Iraqi legislature also amended the Iraqi IP laws for the same purpose. There are several laws that regulate IP in Iraq, which will be discussed in this study below:

3.5.1 Iraqi Copyright and related rights Law

The author is the rightsholder and is entitled to be protected by law from any attack. Due to this, global accords like the TRIPS and the BC provide international

⁵⁴⁸ Abdul-Baqi Al-Bakri, Ali Muhammad Badir and Zuhair Al-Bashir, *Introduction to the Law* (Ministry of Higher Education and Scientific Research 1982) 119-125 (In Arabic) (عبد الباقي البكري وعلي محمد بدير) (وزارة التعليم العالي والبحث العلمي 1982) 125-119 (وزهير البشير ، مدخل لدراسة القانون)

⁵⁴⁹ Qusai (n 490) 420

⁵⁵⁰ Nawafleh (n 217) 149-153

⁵⁵¹ Sherif Ibrahim, 'Evaluation of Egypt's Conformity with Intellectual Property Standards in the US free Trade Agreements' (LLM Degree in International and Comparative Law, American University in Cairo 2021) 45

⁵⁵² Naim Nadia, 'An Examination of The IP Regimes in the Gulf Co-Operation Council (GCC) States and a Series of Recommendations to Develop an Integrated Approach to Intellectual Property Rights' (PhD, University of Bradford School of Law 2015) 97-180

legal protection for those rights, while domestic legislations also for copyright and related rights provide legal protection at the domestic level, to encourage the continuation of innovations so that humanity benefits from the author's ideas. Therefore, the legislations try to make an equilibrium among the interests of the author and the interests of society. The rights which preserved includes right to publish, print, record, photograph, and copy, translation, editing, modification, summarizing, distributing, quoting, public display, television and radio broadcasting, and rebroadcasting.⁵⁵³

The Ottoman Copyright Law (1912) was in force in many Arab countries, including Iraq, until the issuance of legislation to protect copyright, and this law was repealed by Iraqi law No. 3 of 1971 on Copyright.⁵⁵⁴ Post-2003, the CPA began to amend Iraqi laws, including the copyright law by Order No. 83 of 2004, to keep pace with global developments and TRIPS for the purpose of facilitating WTO accession, as it came from the preamble of the Order. The purpose of issuing this Order was to recognize global norms and to incorporate contemporary WTO standards into Iraqi law, where a new Order organized the rights related to copyright that were not regulated by the previous Iraqi copyright law, but the law retained the same title.⁵⁵⁵ The Iraqi legislature had to add related rights to the law as came from the TRIPS,⁵⁵⁶ and as explained in chapter II of our dissertation, the majority of Arab laws added the word related rights to their copyright law upon amending their legislation, such as Egypt, UAE, Oman, Qatar, Bahrain, and Tunisia. Therefore, this is considered a deficiency in Iraqi law.

Also, a new law has protected computer programs along with other literary works. As stated in Article 2, computer programs, with source code or machine, must be safeguarded as literary works, prior to the amendment; the Iraqi Copyright Law did

⁵⁵³ Haider Hassan, 'Legal Protection of the Author's Financial Right According to the Amendment of the Iraqi Copyright Law and the new Egyptian IP No 82 of 2002' (2011) 13 J of L Col of L Mus Un 1, 2-15 (In Arabic) حيدر حسن، الحماية القانونية للحق المالي للمؤلف وفقاً لتعديل قانون حق المؤلف العراقي وقانون الملكية الفكرية المصرية رقم 82 لسنة 2002، 13 مجلة القانون كلية الحقوق الجامعة المستنصرية 1، 2-15

⁵⁵⁴ Bakr (n 211) 22

⁵⁵⁵ See the Iraqi Copyright Law No 83 (2004)

⁵⁵⁶ See part (II) section (I) of the TRIPS (Appendix B)

not protect or deem computer programs as literary works.⁵⁵⁷ This is confirmed by the TRIPS, according to the agreement computer programs should enjoy legal protection under the BC as a literary work,⁵⁵⁸ Iraq has not yet joined the BC, and the question arises here: Is Iraq's non-accession to the BC considered a legislative deficiency or not in Iraqi law?

In our opinion, Iraq's non-accession to the BC is not a legislative deficiency because accession to the BC is not a requirement for joining the WTO. On the other hand, there are countries that have joined the WTO but are not members of the BC, such as Taiwan, which joined the organization in 2002 and is not a member of the BC yet.⁵⁵⁹ At the same time, we believe that Iraq's accession to the BC would be a good step and demonstrate Iraq's commitment to more international standards for the protection of IPR and lead to Iraq's readiness to implement the provisions of the BC upon WTO affiliation, the accession of a large number of Arab nations to the BC before their accession to the WTO such as Tunisia, Egypt, Jordan, Qatar, KSA, UAE, Yemen, and Kuwait,⁵⁶⁰ indicates the importance of joining the BC, so we believe that Iraq's accession to the BC is in the interest of Iraq. However, if Iraq accedes to the TRIPS, it will automatically adhere to most articles of the BC, specifically articles 1 through 21 of the BC, because according to the TRIPS, all members are obligated by the BC from articles 1 to 21 and its Annexes.⁵⁶¹

As was observed when the dangerous Covid-19 virus pandemic spread around the world, the importance of copyright protection increased, especially when face-to-face education stopped, and schools and universities in many countries of the world adopted e-learning and used the internet for their communication.⁵⁶² Furthermore, electronically published works are more vulnerable to attack than traditional paperwork, so attacks on electronically published works will increase in e-learning,

⁵⁵⁷ Ali E, 'Legal Framework for Protecting Computer Programs in the Ambit of Intellectual Property: A Comparative Study between Iraqi Law (Civil Law) and English Law (Common Law)' (PhD of Philosophy in Law, Newcastle Law School 2012) 24

⁵⁵⁸ Art 10 (1) (Appendix B)

⁵⁵⁹ 'BC (n 18)

⁵⁶⁰ Legal India, 'BC Member Country List - Copyright Registration in India -International Copyright' (*Legalserviceindia.com*, 2022) <<https://www.legalserviceindia.com/copyright/bern.htm>> accessed 24 March 2022

⁵⁶¹ Art 9 (1) (Appendix B)

⁵⁶² Narmin M N Al-Rawe, 'Evaluating E-Learning System Success in Higher Education during the Covid-19 Outbreak' (Master of Science, Near East University 2021) 6-14

which is defined as electronic IP; therefore, these electronic works need strong legal protection.⁵⁶³ At the national level, the Iraqi legislature has provided legal protection for electronically published works; according to the Iraqi Copyright Law, authors of innovative in literature, arts and sciences enjoy legal preservation irrespective of their manner of publishing.⁵⁶⁴ In addition, according to the Iraqi legislation the rightsholder alone entitled to choose how and when to publish his or her work.⁵⁶⁵

It is clear from the Iraqi law that authors are free to make their own decisions about how their work is to be published, and even if their work is published electronically, they are legally protected. This legal protection is also provided in the TRIPS; for example, TRIPS provided that members of the agreement must abide by articles 1 to 21 of the BC and its annexes.⁵⁶⁶ According to the BC the rightsholder enjoy legal protection, irrespective of its method or method of expression, such as lectures, books and sermons, among others.⁵⁶⁷ It is evident from this that after the amendment that was made to the Iraqi copyright law, the Iraqi legislature enabled the Iraqi law to conform with standards that exist in the TRIPS and BC in this regard.

Additionally, before the amendment of the Iraqi Law, the length of copyright preservation was twenty-five years, which was calculated from the day the author passed away.⁵⁶⁸ However, post-2003, the CPA amended this article, whereby the term becomes fifty years.⁵⁶⁹ The same period provided by the BC,⁵⁷⁰ and all Arab acceded countries identified the same period for the protection of copyright as mentioned before, such as the UAE, Qatar, Bahrain, and Jordan among others.

⁵⁶³ Tariq K Ajeel, 'Protection of IPR in the Scope of E-Learning' (2013) 22 Islam Col Un J 343, 364-371 (In Arabic) طارق كاظم عجيل، حماية حقوق الملكية الفكرية في نطاق التعليم الإلكتروني، 22 مجلة الكلية الإسلامية الجامعة 343، 371-364، 343

⁵⁶⁴ Sect 2 Art 1 (1) of the Iraqi Copyright No 83 (2004) states: 'This law safeguards authors' creations regardless of the method of expression'.

⁵⁶⁵ Art 7 of Law No 83 (2004) states: 'The decision to publish a work and the manner of publication are both up to the author alone'.

⁵⁶⁶ Art 9 (1) (Appendix B)

⁵⁶⁷ Art 2 (1) of BC states: 'Artistic works should cover all productions, regardless of their mode or form of expression'.

⁵⁶⁸ Art 20 of the Iraqi Copyright No 3 (1971) states: 'After 25 years have passed since the author's passing, pecuniary rights are forfeited'.

⁵⁶⁹ Art 20 (1) (2) of the Iraqi Order No 83 (2004) states: 'The author's economic rights will be safeguarded for 50 years after the day of his passing'.

⁵⁷⁰ Art 7 (1) of the BC states: 'After the author's death, the preservation period will last for 50 years'.

Additionally, the Iraqi legislature provided legal preservation of sound recordings,⁵⁷¹ as it came from the TRIPS.⁵⁷² In addition, the establishment of the Court of Publishing in Iraq by a decision of the Judicial Council in 2010 was a positive step, the Court of Publishing is competent to civilian and crime claims related to the publication. The establishment of this court had an important role in protecting all kinds of copyright in Iraq and encouraged the owner of these rights to defend and claim their rights when they were attacked.⁵⁷³ In addition, the Iraqi Center for the National copyright preservation was established under the supervision of the Ministry of Culture.⁵⁷⁴

Also, the Arab Convention for Copyrights protection was concluded between the Arab countries (1981) and establishing a unified Arab system for copyright protection. Eleven Arab countries have signed this agreement out of a total of 22 Arab countries, and it was ratified by eight Arab countries, including Iraq, Iraq becomes a party to this agreement since its establishment.⁵⁷⁵

With all these good steps, there is also a legislative deficiency in Iraqi law concerning the folklore protection. The Iraqi Copyright law does not contain any text regulating issues related to folklore,⁵⁷⁶ and this is considered a legislative deficiency, although the TRIPS also did not regulate this important issue, but referred it to the BC. The BC gave the member states flexibility and stipulated that the legislature of the countries has the power to determine the authority competent on behalf of the author to defend those works in which the author's identity is unknown.⁵⁷⁷ For example, an Egyptian legislator considers national folklore as a public property. It stipulates that

⁵⁷¹ Art 2 (12) of the Iraqi Copyright Law No 83 of 2004 states: 'Sound recordings shall enjoys legal protection'.

⁵⁷² See Art 14 (Appendix B)

⁵⁷³ Abdulsattar M R Rozbiani 'A legal Vision in the Competent Court in Publishing and Media Issues in Iraq (*Hjc.iq*, 2022) < <https://hjc.iq/view.591/>> accessed 28 March 2022 (In Arabic) محمد عبدالستار (مجلس القضاء الاعلى) رؤية قانونية في المحكمة المختصة في قضايا النشر والاعلام في العراق رمضان روزبباني <<https://www.sjc.iq/view.591/>> accessed December 19, 2022

⁵⁷⁴ Assemblies of the Member States of WIPO, 'General Report Adopted by the Assemblies' (WIPO 2010, A/48/26) 62

⁵⁷⁵ Ismat M Bakr, *Copyright law in Arabic Countries* (Zain Publications 2018) 12-18 (In Arabic) عصمت عبد المحيد بكر، حقوق المؤلف في القوانين العربية - دراسة مقارنة مع الإشارة إلى الإتفاقيات العربية والدولية، (منشورات زين الحقوقية 18-12 (2018

⁵⁷⁶ See Iraqi Copyright Law No 83 (2004)

⁵⁷⁷ Art 15 (4) (a) of BC (n 256)

the eligible authority can practice the authorship rights over folklore.⁵⁷⁸ Iraqi can adopt the position of Egyptian law regarding the protection of folklore.

Additionally, regarding broadcasting organizations as a related rights to the copyright, Iraqi law provides fifty years to protect broadcasting organizations rights,⁵⁷⁹ but the period available in the TRIPS is twenty years as mentioned in chapter II. We think that this period is very long compared to the laws of Arab countries such as the Egyptian law that we explained earlier, and the Omani law.⁵⁸⁰

3.5.2 Iraqi Patent, ICs, IDs, Plant Variety, and Undisclosed Information Law

The Ottoman Patent Law of 1879 was in effect in Iraq, considering that the lands of Iraq were part of the Ottoman Empire, and this law was translated from the French Patent Law of 1844.⁵⁸¹ After Iraq gained independence as an independent country, the Ottoman Patent Law remained in force until the issuance of Iraqi Patent Law No. 30 of 1930, which was the first Iraqi patent law, subsequently altered by legislation No. 65 (1970).⁵⁸²

CPA amended the Iraqi Law No. 65 of 1970 by Order No. 81 of 2004 and the name of the law became the Law of Patent, ICs, IDs, Plant Variety and Undisclosed Information.⁵⁸³ In this case, the CPA changed the law's title as well, in contrast to the copyright law as mentioned above, which after changing and adding related rights to the law, but the name of the law remained the same as copyright law (which was supposed to add related rights to the title of the law).

The preamble of Order No. 81 states that, in accordance with my capacity as CPA Administrator for benefit of the public, Governing Board desires to alter the Iraqi IP system to enhance its economic status, combat unemployment and provide a safe

⁵⁷⁸ Art 142 of the Egyptian IP No 82 (2002) states: 'Public domain status is accorded to national folklore. The appropriate ministry will handle the folklore copyrights'.

⁵⁷⁹ Art 34 of the Iraqi copyright Law Order No 83 states: 'Broadcasting organizations shall exclusively enjoy the right to monetize their programs for a period of 50 years'.

⁵⁸⁰ Article 33 of the Omani Copyright and Neighboring Rights No 65 (2008) states: 'For 20 years, broadcasters will have the sole authority to monetize their content'.

⁵⁸¹ Ilayda N, 'A Comparative Analysis of Intellectual Property Rights: A Case of Developed Versus Developing Countries' (2019) 158 *Procedia Computer Science* 988, 993

⁵⁸² Althabhwani (n 503) 32-35

⁵⁸³ See the Iraqi Patent, ICs, IDs, Plant Variety and Undisclosed Information Law No 81 (2004)

environment for businessmen by protecting their IP. Furthermore, because the Patents and IDs Law's provisions did not adhere to worldwide standards for IP protection, and Iraq's desire to join into the global trade system, join the WTO and adopt modern standards for IP, the temporary authority issued Order No. 81.⁵⁸⁴

For example, Order No 81 lays down conditions for granting patents of inventions. According to the Order, the patent ought to be viable, and secondly, it ought to be novel and involve an innovative step, whether in relation to new industrial methods or innovative industrial products, or novel use of conventional industrial techniques,⁵⁸⁵ as stipulated in the TRIPS,⁵⁸⁶ while the old Iraqi patent law did not require these conditions for patent registration.⁵⁸⁷ However, TRIPS did not go into detail to clarify these terms, the agreement gives the freedom to its member states to go into more detail and clarify these terms or conditions. The Iraqi law explains these conditions such as the Jordanian law as discussed in Chapter II and specifies when a patent is not considered a new invention, for example, according to Iraqi law, a patent is not considered new if the invention has already been done publicly, or if part of it has been granted to someone other than the inventor.⁵⁸⁸

Additionally, according to the Order, the duration of a patent's protection increased to two decades.⁵⁸⁹ This is the same period granted for patent protection by the TRIPS.⁵⁹⁰ Before the duration of a patent's protection in Iraqi law was amended, it was 15 years, and it started from the day of the application of the patent or from the day of completing the documents.⁵⁹¹

⁵⁸⁴ See Preamble of Order No 81 (2004)

⁵⁸⁵ Art 2 of the Order No 81 of 2004 states: 'Every new, useful, and imaginative innovation that involves an inventive step is eligible for a patent'.

⁵⁸⁶ Art 27 (1) (Appendix B)

⁵⁸⁷ Iraqi Law No 65 on Patents and Industrial Models (1970) did not specify the conditions for granting a patent

⁵⁸⁸ See Art 4 of Order No 81 (2004)

⁵⁸⁹ Art 13 of the Order No 81 (2004) states: 'The patent's term of validity cannot end before the twenty-year period for registration under the terms of this Law, starting on the day the application for registration under these terms was filed'.

⁵⁹⁰ Art 33 (Appendix B)

⁵⁹¹ Art 13 of Law No. 65 of 1970 states: 'The term of the patent is fifteen years began from the day of the patent application'.

Order No. 81 provides legal protection for pharmaceutical products in Iraq as well.⁵⁹² However, before 2003 it was not allowed under Iraqi laws to register pharmaceutical products as patents.⁵⁹³ Post-2003 Iraqi legislature recognized pharmaceutical patents, which led to the expansion of patents to include inventions related to pharmaceutical preparations.⁵⁹⁴

When the world faced the Covid-19 pandemic in 2020, the dangerous virus that caused the death of a vast number of individuals around the world, the LDCs and developing nations were facing pressing obstacles such as providing medicines and other medical supplies to confront this pandemic. Pharmaceutical companies in the world were in a quest to develop a vaccine to at least reduce the number of deaths due to the virus. These companies have developed various vaccines to confront this pandemic.⁵⁹⁵ Although their main goal was to gain maximum profit, TRIPS, at the same time, protects their rights and creativity from infringement and obliges WTO member states to protect their rights as patent holders for at least 20 years, according to the agreement.⁵⁹⁶

Therefore countries of the world have two options, particularly the developing nations and the LDCs, either they import these vaccines to their country and pay these companies, which leads to the monopoly of those vaccines by those companies, or produce those same vaccines after obtaining a license from these giant companies, which leads to a rise in prices of those drugs.⁵⁹⁷ TRIPS led to the monopoly of these medicines by the economically developed countries and helped them gain substantial profit for their creations. The countries that produced these medicines sell their medicines to many countries around the world at different prices.⁵⁹⁸

⁵⁹² Order No. 81, abolished Art 3 (2) of Law No. 65 of 1970, which prohibited medical and pharmaceutical formulations from being patented

⁵⁹³ Art 3 (2) of the Iraqi Law No. 65 of 1970 states: 'A patent is not granted if it relates to medical and pharmaceutical formulations'.

⁵⁹⁴ Ali, 'Intellectual Property Rights and Its Implications (n 34) 67-72

⁵⁹⁵ Siva T and Others, 'The TRIPS Intellectual Property Waiver Proposal: Creating the Right Incentives in Patent Law and Politics to end the COVID-19 Pandemic' [2021] SSRN Electronic Journal

⁵⁹⁶ Art 33 (Appendix B)

⁵⁹⁷ Nancy S J and Caesar A, 'What's Yours is Ours: Waiving Intellectual Property Protections for COVID-19 Vaccines' (2021) 47J of Med Ethics 595, 595-597

⁵⁹⁸ Jorge L C, 'US Support for a WTO Waiver of COVID-19 Intellectual Property' (2021) 56 Intereconomics 179, 179-180

There is also an important issue that relates to the exhaustion of IPR, among the Arab countries, the Egyptian legislature resolved the problem of exhaustion of IP rights, the Egyptian IP law stipulates that the protection of the right of the owner are exhausted when they put these products for trade in the market of any country, whether by them or through one of their affiliates or with their consent.⁵⁹⁹ TRIPS did not regulate this important issue. Also, the Iraqi legislature has not defined the time when IPRs are exhausted, and this is considered a legislative deficiency in Iraqi law.⁶⁰⁰ The Iraqi legislature could adopt Article 10 of the Egyptian IP law to cover this legislative deficiency.

Additionally, under the TRIPS, the patent owners are entitled to enjoy certain exclusive rights: able to eliminate others for using, and putting up for sale, importing or selling to achieve this goal, the product without their consent.⁶⁰¹ Iraqi patent law expressly grants the same exclusive rights to patent owners as required by the TRIPS.⁶⁰²

In return for the private authority that give to the rightsholder, Iraqi law gives the right of compulsory license to a third party in some cases such as an emergency, public interest or national defense.⁶⁰³ The Iraqi legislature amended Article 27 regarding grants compulsory license to harmonize Iraqi legislation with TRIPS.⁶⁰⁴ This means that WTO member states can resort to the TRIPS, which gives them the authority to practice appropriate actions to face rightsholders from abusing their rights.⁶⁰⁵ While TRIPS does not specify what constitute a state of emergency. Although Iraqi law allows a competent authority in Iraq to give an authorization to others to utilize the innovation without obtaining rightsholder permission in an emergency, but without defining or defining what is meant by an emergency or what constitutes an emergency according to Iraqi law. This is considered as a legislative deficiency in Iraqi law.

⁵⁹⁹ See Art (10) of the Egyptian IP No. 82 (2002)

⁶⁰⁰ See Order No 81 of 2004

⁶⁰¹ Art 28 (a) (b) (Appendix B)

⁶⁰² Art 12 of Order No 81 (2004) states: 'The owners have the right to forbid anyone from producing, utilizing, or otherwise processing without their consent'.

⁶⁰³ Art 27 (a) of Order No 81 (2004) states: 'A license could be given by the Registrar if an emergency or a need for national defense necessitates'.

⁶⁰⁴ Art (31) (Appendix B)

⁶⁰⁵ Art (8) (2) (Appendix B)

However, there are legislative deficiencies in Order 81; for example, Iraqi law gives the authority to the registrar or any person concerned to request the registrar to invalidate a patent, if it is in violation of the requirements of the law or to exclude it from being amended if the registered data is not compatible with reality.⁶⁰⁶ However, TRIPS does not allow the exclusion of an invention except for certain reasons, some of which are completely different from the reasons mentioned in the Iraqi legislation, TRIPS allowed parties of the organization to exclude the invention related to the methods of diagnosis, necessary surgery and therapy for the patients, biological techniques for flora production or animals.⁶⁰⁷ The Iraqi legislature should reiterate what was stated in the TRIPS and clearly specify the reasons for the invalidity of registered patents as contained in the agreement.

Another legislative deficiency in the new Iraqi IP law is that Order No. 81 issued by the coalition authority in 2004 did not change Article 33 of the Iraqi Law No. 65 of 1970, which enable anyone to object registrar's decision with the Minister within a specified period. The Minister's decision in this regard is definitive,⁶⁰⁸ and this contradicts to the TRIPS, which offers the chance for the rightsholder to request consideration before the court when a decision is issued to cancel the patent's registration or forfeit the right to the patent.⁶⁰⁹ This means that according to the agreement, the judicial authority has the right to consider cases related to patent registration, not the executive authority as stated in Iraqi law.

Arab WTO members grant the court the control to conduct judicial reviews of patent cases, but there is a difference in determining which type of court is competent to hear a patent case, for example, under Egyptian IP legislation the Administrative tribunal is respective to hear cases related to decisions issued regarding patents.⁶¹⁰ Jordanian law also grants the tribunal the capability to judicial reviews related to

⁶⁰⁶ Art 33 of the Order No 81 (2004) states: 'Any interested party may request from the registrar, and the registrar has the power to invalidate the patent in violation of this legislation or to change any entry in the registry that is false or contradicts an entry that was recorded illegally'.

⁶⁰⁷ Art 27 (2) (3) (a) (b) (Appendix B)

⁶⁰⁸ Art 33 of the Order No 81 (2004) states: 'The resolution of the registrar is subject to objection to the Minister. The Minister's resolution in this regard is final'.

⁶⁰⁹ Art 32 (Appendix B)

⁶¹⁰ Art 27 of the Egyptian IP No 82 (2002) states: 'The Administrative Court has jurisdiction to hear cases related to decisions issued regarding patents'.

patents; for example, according to the Jordanian Patent Law, if the registrar issues a resolution refusing the application to register the patent, an appeal may be made by the patent holder against the registrar's resolution with the Supreme Tribunal of Justice.⁶¹¹ Additionally, according to the same law rightsholder is able to object to a ministerial resolution related to a license to exploit inventions.⁶¹²

Both Egyptian and Jordanian law give the courts the authority to judicial review related to patents, but there is a difference between them. The Egyptian law gives the administrative court authority to judicial review related to patents, while the Jordanian law gives the authority to the Tribunal of Justice; however, we encourage building a specific tribunal for judicial review related to the IP in Iraq. In addition, UAE legislation gives the authority to the competent court for judicial review regarding patent problems.⁶¹³ Also, the Kuwaiti law gives the court the authority to judicial review to problems related to patents, according to the Kuwaiti law every decision related to a patent may be appealed with the court.⁶¹⁴ These amendments that were made in the Arab world were highly beneficial in facilitating their accession to that organization. Therefore, Iraq must also take these steps and amend its laws to become in line with agreements concluded within the scope of the WTO to facilitate its accession process.

Concerning IDs, in its amendments, according to the Order No 81, the protection of IDs can only be guaranteed when a set of conditions is provided. The objective conditions consist of two basic conditions, innovation and novelty,⁶¹⁵ and these conditions are stipulated by the TRIPS.⁶¹⁶ The old Iraqi patent and industrial law did not contain these conditions.⁶¹⁷ In addition, the new law amended the protection

⁶¹¹ Art 8 (C) of Jordanian Law on Patent No 32 (1999) states: 'The applicant may challenge the decision of the registrar at the High Court of Justice'.

⁶¹² Art 26 of the Jordanian Law on Patent No 32 (1999) states: 'The High Court shall hear appeals of the Minister's decision'.

⁶¹³ Art 9 (2) of the UAE Law No 17 (2002) states: 'Unless the parties have agreed otherwise, the inventor is entitled to additional remuneration as assessed by the court'.

⁶¹⁴ Art 22 of the Kuwaiti Patents, Utility Models, IDs and ICs Law No (1999) states: 'Any decision made by the appropriate authorities about an opposition may be challenged in court'.

⁶¹⁵ Art 36 of Order No 81 (2004) states: 'The request for the registration of IDs or Models will be authorized if the IDs or Models are novel or distinctive'.

⁶¹⁶ Art 25 (1) (Appendix B)

⁶¹⁷ Iraqi Law No 65 (1970) did not specify the conditions for IDs

period for industrial models; it has changed from seven years to ten years, calculated from the day of the certificate's issuance,⁶¹⁸ as stipulated by the TRIPS.⁶¹⁹

Post-2003, the Iraqi legislature organized some types of IP that were not regulated by Iraqi laws before; for example, Order No. 81 added two chapters, a chapter under the title of Protection of Undisclosed Information and another chapter under the title of Protection of ICs,⁶²⁰ as existed in the TRIPS.⁶²¹ According to the Order No. 81, normal and legal persons have the ability to legally retain information that is within their control against its use by others or disclosure sans their authorization.⁶²² This provision, which is provided by the Iraqi law, is an exact repetition of the TRIPS.⁶²³

In addition, according to Order, there must be two conditions for protecting this information; first, it must have commercial value, and second, the owner of this information must take serious steps to preserve it.⁶²⁴ These conditions are consistent with the TRIPS.⁶²⁵ But neither the Iraqi law nor the TRIPS specify the measures that must be taken by a person to keep his/her confidential information or trade secrets. Additionally, the Order did not define the protection period for this information. The Iraqi law did not specify the legal period for confidential information and this is considered a deficiency in Iraqi legislation, but the reason for these legislative deficiencies that exist in Iraqi law is back to the TRIPS because the agreement did not specify any period or measures for protecting confidential information or trade secrets. Iraqi law repeats what is contained in the TRIPS, but is supposed to go into more detail to complement the deficiencies of the TRIPS. The regulation of an important topic, such as the protection of confidential information, with only two articles, is indicative

⁶¹⁸ Art 41 of the Order No 81 of 2004 states: 'IDs protection is granted for ten years'.

⁶¹⁹ Art 26 (3) (Appendix B)

⁶²⁰ See Chapter Threebis and Chapter Threeter of the Iraqi Patent, ICs, IDs, Plant Variety and Undisclosed Information Law No 81 (2004)

⁶²¹ The TRIPS Agreement regulates ICs through a separate section, namely Section 6 of the agreement, and undisclosed information is also regulated in a separate section, namely Section 7 of the Agreement

⁶²² Art 1 of Chapter Three of the Order No 81 (2004) states: 'The ability to prevent the disclosure of knowledge legally in their control to the acquisition of, or use by third person sans their agreement in a way inconsistent with ethical business practices shall be available to both natural and legal people'.

⁶²³ Art 39 (2) (Appendix B)

⁶²⁴ Art 1 (b) (c) of Order No 81 (2004) states: 'such information: b) because it's a secret, it has commercial worth; and c) has been kept hidden'.

⁶²⁵ Art 39 (2) (a) (b) (c) (Appendix B)

of the lack of success of the Iraqi Legislature. Additionally, Order No. 81 stipulates that the time of design preservation is ten years,⁶²⁶ as found in the TRIPS.⁶²⁷

The CPA also adds the Iraqi plant varieties law, in which the private ownership of biological resources was previously prohibited. The changes imposed by the above-mentioned order make it illegal to keep and exchange seeds between and by farmers when the seeds in question are of a protected variety; thus, the protected crop varieties that Transnational Corporations (TNC) brought to Iraq for agricultural reconstruction would be owned by the companies.⁶²⁸ Order No. 81 ensures the entrance of good quality seeds into Iraq, while also reducing barriers before Iraq's accession to the WTO.

Finally, the issuance of new plant varieties law in Iraq considers good steps.⁶²⁹ As stipulated by TRIPS, participants shall grant preservation to plant varieties by a special law or through the patent law.⁶³⁰ This means that Iraq is trying to meet the TRIPS' standards by providing adequate preservation for plant varieties in an independent regime.

3.5.3 Iraqi Trademarks and GIs Law

According to the definitions that came from the Arab Industrial Development and Mining Organization report, a trademark is a mark used by merchants to make their items stand out from the products of others. In order for the law to protect the trademark, it must be distinctive, not misleading, and not violate public order and public morals.⁶³¹ Also, GIs are marks placed on a particular product indicating that it comes from a specific geographical area.⁶³² Following 2003, the CPA amended law No. 21 of 1957 on Trademarks and Commercial Data, in accordance with Order No. 80 of 2004, and the name of the law became the Trademarks and GIs.⁶³³ The Iraqi law regulated GIs for the first time through Order No. 80.

⁶²⁶ Art 11 (B) of the Order No 81 (2004) states: 'The design protection lasts for ten years'.

⁶²⁷ Art 38 (Appendix B)

⁶²⁸ John F, 'Intellectual Property Rights and the Public Domain in the New World Order' (2006) 2 Indian JL & Tech 106, 109

⁶²⁹ See Iraqi law of registration, approval, and protection of agricultural varieties No 15 (2013)

⁶³⁰ Art 27 (3) (b) (Appendix B)

⁶³¹ Arab Industrial Development and Mining Organization (n 474) 1

⁶³² *ibid*

⁶³³ Iraqi Trademarks and GIs Law No 80 (2004)

As stated in the preamble of the Order, the objective of these amendments is for Iraqi law to adhere to global norms and WTO rules. For example, Order No. 80 has added legal preservation for known signs, according to the Order the holder of a well-known brand enjoys the protection granted even if a brand is not registered in Iraq, it is nonetheless protected by this statute,⁶³⁴ to become in line with the TRIPS.⁶³⁵

Additionally, Order No. 80 defines GIs as indicators that determine the source of a good, when the reputation and value of the item mainly attributed to its environmental source,⁶³⁶ as found in the TRIPS.⁶³⁷

However, in respect of the interval of preserving trademark, TRIPS stipulates that the term for trademark protection should be at least 7 years and it might be extended.⁶³⁸ In contrast to the Iraqi law that gives a longer period for trademark protection, which is a period of 10 years, and it is renewable for the same period according to an application submitted during the last year after paying the imposed fees.⁶³⁹ This is normal and is acceptable by the TRIPS, since the agreement defines 7 years, so the Iraqi legislature set a period of 10 years in order to be consistent with the TRIPS.

Despite the amendments, Iraqi law could have benefited more from the TRIPS's guidelines, for example, TRIPS grants the right to its parties to allow the registration of visually perceptible signs only,⁶⁴⁰ but the Iraqi legislature did not take advantage of this provision and allowed completely without exception the registration of invisible signs. According to Iraqi law, signs to be protected as a trademark do not need to be visible or visually perceptible.⁶⁴¹ Iraqi law has been amended under the U.S's supervision, U.S law allows the registration of invisible signs, for example, U.S

⁶³⁴ Art 4 (2) of Trademarks and GIs Law No. 80 of 2004 states: 'if a known sign is not enrolled in Iraq, its holder is nonetheless entitled to the protection provided by this Law'.

⁶³⁵ Art 16 (Appendix B)

⁶³⁶ Art 1 (6) of the Iraqi Trademarks and GIs Law Order No 80 (2004) states: 'GIs are signals that place an item's reputation, due to its geographic origin on the territory of a country, or an area or locality within that territory'.

⁶³⁷ Art 22 (1) (Appendix B)

⁶³⁸ Art 18 (Appendix B)

⁶³⁹ Art 20 (1) of the Order No 80 (2004) states: 'A mark's protection period is ten years, renewable for an additional ten-year.'

⁶⁴⁰ Art 15 (1) (Appendix B)

⁶⁴¹ Art 1 (3) of the Order No 80 (2004) states: 'It is not necessary for signs to be physically discernible'.

trademark law provides protection for a (fragrance, Scent or flavor) that is not perceptible visually.⁶⁴²

Transfer of those rules to Iraqi law without creating an appropriate environment for that is unreasonable and the presence of advanced technology in the U.S capable of registering every kind of sign that is not present in Iraq. As mentioned in Chapter II, unlike Iraq, the majority of Arab nations do not permit the registration of not visually perceptible signs such as Egyptian, Qatar, KSA, Jordan, and Yemen. And there are Arab countries that allow the registration of some types of visually perceptible signs like sound, smile, and music, such as UAE, Morocco, and Bahrain.

By comparing Iraqi law with the laws of other Arab countries, it becomes clear that there is a legislative deficiency in Iraqi law. To fill this deficiency, the Iraqi law can either adopt the position of the Egyptian or Jordanian law or other Arab countries that will not allow the registration of non-visually perceptible signs, or it can adopt the position of the Arab countries such as UAE, Bahrain, and Morocco that allow the registration of non-visually perceptible signs, but not absolutely, but rather specify types of the invisible signs that can be registered as a trademark.

3.6 IPR Enforcement in Iraq

What is the importance of the enforcement of IPR protection? Is enforcement of IP laws in Iraq at the required level? This section will address those topics and answer these questions. The legal reforms that took place in Iraqi law after 2003 by the CPA and the legislature continued to amend Iraqi laws to keep pace with global developments, but legal reforms are insufficient because the amended laws need to provide a proper mechanism for their implementation as well.

Usually, 4 steps involved of integration into global economy. Step one is to amend laws including IP legislations to adhere to global norms. Second step is to obtain membership in the WTO. The third stage after obtaining membership is the enforcement of those laws. The fourth stage is the result of the implementation of these laws including IP laws, because implementation leads to the detection of legal

⁶⁴² "TMEP" (*Tmep.uspto.gov*, 2022) <<https://tmep.uspto.gov/RDMS/TMEP/current#/current/TMEP-1200d1e2882.html>> accessed 1 August 2022

deficiencies and causes a reduction in barriers and legal deficiencies.⁶⁴³ Iraq's position is currently between the first and second stages, because post-2003, it reformed its legislations but it still outside the WTO.

There is a special part of the TRIPS, which is the third part that relates to the enforcement of IPR. It is also concerned with setting detailed procedural rules. This part obligates members to provide certain basic procedures for IPR holders, including civil procedures to protect rights and compensate their owners in case of infringement, and criminal procedures to be taken in the event of intentional counterfeiting of trademarks or infringement of copyright, in addition to temporary and precautionary measures taken in order to retain evidence relevant to an incident involving the infringement of the IP or the prevention of an imminent attack on it, and border measures.⁶⁴⁴

Pursuant to the TRIPS all procedures mentioned above, and all measures for the enforcement of IPR shall be impartial, may not be sophisticated or expensive, and do not involve illogical lead times or unnecessary delays.⁶⁴⁵ TRIPS follows the system of resolving conflict administered by the WTO. This system provides members with a mechanism to resolve their disputes resulting from the application of the TRIPS, and it is noted that all WTO members are equal before this system, regardless of the size of their economy or their policies.⁶⁴⁶

When Iraq joins that organization, it will benefit from that system and will be able to refer economic and IP problems through the mechanism for settling disputes in the context of the WTO. In Iraq, there are legislative provisions that must be implemented to protect IPR of all kinds. Of course, these objective rules need a body to implement them, and this body is the court. The Iraqi legislature tried to provide effective protection for creators or owners of IP, as Iraqi IP laws provide IP owners to claim compensation based on civil liability when their property is infringed and impose a criminal penalty on the infringer of their rights.

⁶⁴³ Al-Dajani (n 25) 260

⁶⁴⁴ Arab Industrial Development and Mining Organization (n 474) 24

⁶⁴⁵ Art 41 (2) of the TRIPS (n 427)

⁶⁴⁶ Arab Industrial Development and Mining Organization (n 474) 24

3.6.1 Civil Penalties

The Iraqi legislation grants the right for IPR holders to claim compensation when their rights are infringed. For example, Order No. 80 provides for the competent court to order appropriate compensation to compensate the right holder's loss due to infringement.⁶⁴⁷ This is also stated in the TRIPS according to the agreement; the judiciary has the authority to require a violator to pay appropriate compensation for the damage caused to right holders due to the infringement of their IPR.⁶⁴⁸

Additionally, according to the Order No. 83 authors may request recompense if their rights are violated, and the work's literary, scientific, and creative merits and the cultural status of the author will be considered when estimating compensation.⁶⁴⁹

In addition, Order No. 81 allows the court to confiscate the seized things to subtract from fines their cost or compensation. This is intended for the court to issue a decision to confiscate the counterfeit items, and materials used to imitate those goods and to compensate the patent or industrial models' owners in this case.⁶⁵⁰ From this, it is clear that owners of patents or industrial models can claim compensation from the court in the event of their invention being counterfeited and both Iraqi law and TRIPS give this right to the owner of the IP. Therefore, protecting rights holders from infringement is very important to create reassurance and a safe environment and encourage them to continue on their path and creativity.

3.6.2 Criminal penalties

TRIPS obligates member states to impose penalties on those who infringe IPRs; according to the agreement member states shall impose a criminal penalty in the event of copyright infringement or deliberate trademark infringement commercially. In addition, the agreement allows member states to impose penalties in other cases of IPR infringement when it is dedicated intentionally and on a commercial scale.⁶⁵¹

⁶⁴⁷ Art 38 (A) of Order No 80 (2004) states: 'The following may be ordered by the court hearing any civil case: i) damages sufficient to cover the harm rightsholder has experienced'.

⁶⁴⁸ Art 45 (1) (Appendix B)

⁶⁴⁹ Art 44 of the Iraqi Copyright Law No 83 (2004) states: 'Each author who has had the rights to his work granted under the terms of this law violated is entitled to the proper compensation'.

⁶⁵⁰ Art 46 of the Order No 81 2004 states: 'In any action, the tribunal may decide to confiscate items that have been taken or will be seized in the future and subtract their price from fines or recompense'.

⁶⁵¹ Art 61 (Appendix B)

It should be noted that criminal protection of IPR is also available in the Iraqi IP law system; according to the Order No 80 whoever forges or imitates a trademark or utilizes it in bad faith, and who trades or possess with the intent to sell products bearing a forged trademark, shall be penalized by either incarceration or a fine.⁶⁵²

In addition, Order No. 83 stipulates those who advertise for distribution or rent an imitative work and transmits it to the public by any means and uses it for material interest and brings it to Iraq or takes it out of it shall be punished with imprisonment or fine; the court could also make an order the confiscation and the erasure of all copies or audio recordings that are subject of the attack.⁶⁵³

Additionally, according to Order No. 81, owners of patents and industrial models may file a criminal lawsuit in the event of their invention or goods being confiscated.⁶⁵⁴

The Iraqi legislature has provided strong protection for IP owners, and this is a step to encourage innovation and support investment. Finally, we can say that there are sufficient texts in Iraqi laws to protect IPR, but the application of those texts by the courts and their implementation by the executive authority gives more spirit and activity to these texts and laws.

⁶⁵² Art 35 of Order No 80 (2004) states: “Anyone found guilty faces a sentence in jail, a fine or a combination of the sanctions if uses a falsely imitated trademark, anyone in bad faith uses another party's registered trademark and who utilizes another party's registered trademark’.

⁶⁵³ Art 45 of the Order No 83 (2004) states: ‘shall be subject to a fine who, knowing work is unlawful, offers an unauthorized work for sale, distribution, or rental; makes use of an unauthorized work for financial gain; or imports or exports an unauthorized work from Iraq, The guilty will receive a fine, a period of jail, or a mix of these penalties, the tribunal can also order the expropriation and destruction of any copies used in their creation that were made in violation of the law’.

⁶⁵⁴ Art 45 (1) of the Order No 81 (2004) states: ‘The owner of the right to an invention or industrial model may request a decision from the tribunal to place the seizure while the criminal case is being considered, and the tribunal may decide to place a precautionary seizure, particularly the seizure of counterfeit goods or products’.

Conclusion and Recommendations

WTO's mission is to regulate commerce between its participants through agreements concluded within the scope of the organization to advance global trade and reduce barriers to it. The legal personality of the organization began when the Marrakesh accord became effective. The WTO and the agreements concluded within the scope of the organization as international laws have tremendous effects on organizing trade relations between its members and solving international trade problems between them in a mandatory manner through the dispute resolution body. Its members are required to issue laws consistent with the organization's requirements or agreements concluded within its scope. Each member state must ensure that its internal laws comply with the agreements concluded within the WTO, and this means that the laws of the organization shall have priority over the national laws.

Agreements concluded in the WTO have an impact on the commercial law systems in those countries; it aims to reduce hindrances to trade between them and at the same time reconcile common interests and competing values. The WTO seeks to develop commercial legislation in all countries and raise the level of the worldwide economy through (Multilateral Agreements). Therefore, the countries that have not joined, especially the Arab countries such as Algeria, Sudan, Iraq, among others, are constantly seeking to join that organization.

Developing nations and the LDCs form a majority in WTO, and therefore, union, coordination, and negotiation between these countries will affect the organization. The reduced influence of the Arab countries on the multilateral negotiations is also a consequence of the lack of coordination between them and their division into alliances within the organization. Establishing an alliance by the Arab countries within the WTO will allow them to participate in the negotiation process in a more enlightened manner and make their voices heard. Also, these alliances allow small states to establish a balance of power with the powerful states in the discussions.

TRIPS is more inclusive than all other international agreements so far concluded within the scope of the WTO related to the protection of IPR, which

regulates all types of IPRs separately. Therefore, the agreement is among the most crucial sources caring to protect the commercial interests of IP. The TRIPS aims to create a basic legal structure that regulates the protection of IPR between member nations in a method that contributes to encouraging the spirit of innovation to achieve the mutual benefit of innovation manufacturers and consumers.

TRIPS established an effective mechanism concerning IPR to settle its participants' problems and oversee their implementation by the DSB. The agreement was born as a result of the expansion of the use of the IP and the progress in technology. It is known that technological development will continue. Therefore, the international community, especially the WTO, must monitor these developments on an ongoing basis and issue appropriate legislation to regulate them.

TRIPS focused on patenting more broadly, particularly in terms of pharmaceutical patent protection.

It is clear from our research that the Arab countries that joined the WTO were affected by the agreements concluded within the organization, especially TRIPS, which led to the issuance of new IP laws by those Arab countries or the names of their laws being changed, as is the case in Egypt, Jordan, UAE, among others, which changed Copyright to the copyright and related rights legislation.

Any independent entity that can join the WTO and become a member must be preceded by negotiations. During these negotiations, the state must take practical steps to amend its national legislation to conform to the rules of international agreements concluded within the organization and undertake to amend the customs tariff and remove obstacles to trade. With regard to Iraq obtaining membership status within the WTO, Iraq has no influence on the WTO, and it is unrestricted by the agreements of the organization because it only has observer status as it has not joined the organization yet.

Iraq is going through an unstable political and economic situation, and internal and sectarian conflicts, especially the war on terrorism, have changed Iraq's focus to

providing security rather than developing the economy, issuing new laws, and taking new steps towards membership of the WTO.

By requiring advanced legislation that is compatible with international standards, WTO membership will link Iraq's economy with the world through international trade. Iraq will also benefit from the capabilities of foreigners and foreign investment, as well as the introduction of advanced technology into the country.

Accession will encourage Iraq to focus on internal industry and competitiveness with WTO member states and increase production. Iraq's economy is still dependent on crude oil. This is problematic because the price of crude oil is not determined by the government; therefore, any increases or decreases in oil prices directly affect Iraqi society. Upon joining the WTO, Iraq must consider diversifying its sources of income, such as providing support to the economic, industrial, and agricultural sectors.

Following 2003 Iraq went through a trial period, as it rebuilt the country economically, politically, and legally, joining the WTO as an observer as part of this plan. However, rebuilding the economic and social infrastructure in a post-conflict environment can be complex. Civil society and a country's citizens must be involved in post-conflict reconstruction. This means that the government and the local population must support the reconstruction process to build a strong economy. Infrastructure reform to develop the economy is a challenge for all countries emerging from conflict.

Iraq should issue appropriate legislation to encourage and develop economic reform programs that will help rehabilitate the state and the national economy, giving it the ability to compete in global markets. Iraq should also remove legal restrictions related to domestic and international trade hindering its access to the WTO by modifying or developing its laws so that they are compatible with the principles and agreements of the WTO.

The study suggests that Iraq develop its industrial sector so that it can compete with developed countries upon joining the WTO and increase its production. It must

also adopt advanced methods and new mechanisms of agriculture so that farmers can obtain crops and the fruits of their lands at the lowest cost and in the easiest way.

The study suggests that Iraq return to the discussion table with the WTO to facilitate its accession after stopping official discussions with the organization for more than 14 years. This is because Iraq's accession to the organization will raise its economic status; however, Iraq remains outside the organization, which will isolate it from global developments and economic matters.

The study also suggests that Iraq issue legislation compatible with the requirements of the WTO and Iraq can benefit from the legislation of developed nations or other members of the organization and their practical experience in this respect.

The study suggests that international cooperation be increased between nations of the globe and the WTO to protect IPR. It also suggests the establishment of an international court related to IP issues, consisting of judges who specialize in this field, to look into the issue of IP to confront abuse and adequately protect those rights.

The research suggests the establishment of special courts in Iraq to resolve IP disputes, instead of leaving the consideration of IP disputes to ordinary courts.

The research also suggests that a coordination mechanism or increasing coordination be established in the Arab world through the establishment of an IP organization or any other mechanism in the field of IP, so that the Arab nations parties to the WTO can help Arab countries that wish to access the organization and share their experiences with them.

The research also suggests that conferences be held between Arab countries and between countries in the region to present new and advanced research as well as seminars in the field of IP and to explain the innovations and advancements in the realm of IP.

The research suggests that Arab countries, that have not joined the WTO yet and desire to join it, they have to commit to TRIPS-plus to increase their chances of joining the WTO.

The study also suggests that TRIPS and the Council of TRIPS, should focus more on assisting developing countries technically, technologically, legally, and financially than the implementation and protection of IPRs because if these countries have developed technology, industry, and laws related to the protection of IP, they will automatically care more about IPRs.

The study suggests that TRIPS should not leave the IP exhaustion issue to the freedom of member states and should set minimum standards for IP right exhaustion.

The study suggests the Iraqi Legislature adopt the position of the Egyptian IP law (article 10) regarding the exhaustion of IPR to cover its deficiency in this regard.

The study suggests members of the Iraqi delegation meeting with the WTO should consist of persons with technical and legal expertise and negotiating ability in order to understand the WTO's criteria and ensure Iraq's accession to the WTO as soon as possible.

The study suggests that the Iraqi legislature continues with their amendments to commercial laws to adhere to the WTO's standards because the changes that took place following 2003 are not sufficient to persuade the WTO about Iraq's accession to the organization.

The study suggests that Iraq accede to the BC, because its accession to the BC demonstrates the extent of Iraq's interest in protecting IPR, especially copyright.

The study suggests amending Article 34 of Order No. 83 and reducing the period of protection for broadcasting organizations from 50 to 20 years, as found in the TRIPS Agreement and the laws of Arab countries or reducing it to a reasonable extent that is consistent with reality or international standards.

A study suggests amending the term of protection for sound producers in Art 33 of the Omani Copyright and Neighboring Rights Law and reducing it from ninety-five years to fifty years, or to a reasonable extent.

The study also suggests that the Iraqi legislature amend the title of the copyright law (Order No 83) and add related rights to its title.

Additionally, the study suggests the Iraqi legislature to cover the legal deficiency of trademark registration, which either will not allow the registration of visually perceptible signs as a trademark such as KSA, Jordan, Egypt, among others, and this is allowed under the TRIPS, or allow visually perceptible signs to be registered as a trademark, but not absolutely as currently exists in Order No. 80. The Iraqi legislature must specify kinds of visually perceptible marks that can be registered as a trademark, such as Bahrain, Morocco, and the UAE.

The study suggests that the Iraqi legislature amend Article 33 of Order No. 81 and give the authority to the courts instead of the Minister of Industry for judicial review to object to non-registration or invalidation of a patent.

The study suggests that the Iraqi legislature amend Article 33 and specify circumstances in which it allows the exclusion of the invention in a manner consistent with what was stated in the TRIPS, for example, Article 27, paragraphs (2) and (3) of the agreement allowed the members of the organization to exclude inventions related to surgery, diagnostic methods and therapy are needed to treat humans and animals, and biological methods to produce plants or animals, among others. The Iraqi legislature must repeat what was stated in the TRIPS and clearly define the reasons for the invalidity of registered patents as stated in the agreement.

The study suggests to the Iraqi legislature to fill the legislative deficiency by defining the meaning of an emergency in Article 27 in Order No. 81 and specifying what constitutes a state of emergency in which without the patent owner's approval, a third person may be given a mandatory license.

The study suggests to the Iraqi legislature to fill the legislative deficiency pertaining to the preservation of national folklore and to define folklore and specify competent authority for exercising the protection of folklore, as stipulated in the BC, or to adopt article 142 of the Egyptian IP Law, or article 7 © of the Jordanian Copyright Law, which considers folklore as a public property and gives authority to the Minister of Culture to defend it as the competent authority.

A study suggests the establishment of a special court in Iraq to consider cases related to IP.

Iraq must train cadres from the relevant ministries, customs and courts such that they have knowledge of the TRIPS and obtain full information about it, so that the Iraqi state institutions can implement the agreement well and without hindrances upon joining to the WTO.

The research indicates that the TRIPS specifies a legal period for protecting confidential information, or as it is called trade secrets because defining the legal period by it will be the minimum standard and will be adhered to by all member states and countries that wish to join the WTO.

The study suggests that the Iraqi legislature goes into more details to protect confidential information, specify a legal period for its protection, define it, and specify the procedures that the rightsholder must take to preserve the confidentiality of knowledges.

Therefore, the Iraqi legislature must continue to amend and issue new laws and submit them to the WTO for review and re-apply for WTO membership.

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Appendices

Appendix A

Agreement establishing the World Trade Organization, Done at Marrakesh, April 15, 1994. Entered into force Jan. 1, 1995

Agreement Establishing the World Trade Organization

The *Parties* to this Agreement,

Recognizing that their relations in the field of trade and economic endeavor should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development,

Recognizing further that there is need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development,

Being desirous of contributing to these objectives by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international trade relations, *Resolved*, therefore, to develop an integrated, more viable and durable multilateral trading system encompassing the General Agreement on Tariffs and Trade, the results of past trade liberalization efforts, and all of the results of the Uruguay Round of Multilateral Trade Negotiations, *Determined* to preserve the basic principles and to further the objectives underlying this multilateral trading system, *Agree* as follows:

Article I

Establishment of the Organization

The World Trade Organization (hereinafter referred to as "the WTO") is hereby established.

Article II

Scope of the WTO

1. The WTO shall provide the common institutional framework for the conduct of trade relations among its Members in matters related to the agreements and associated legal instruments included in the Annexes to this Agreement.
2. The agreements and associated legal instruments included in Annexes 1, 2 and 3 (hereinafter referred to as "Multilateral Trade Agreements") are integral parts of this Agreement, binding on all Members.
3. The agreements and associated legal instruments included in Annex 4 (hereinafter referred to as "Plurilateral Trade Agreements") are also part of this Agreement for those Members that have accepted them, and are binding on those Members. The Plurilateral Trade Agreements do not create either obligations or rights for Members that have not accepted them.
4. The General Agreement on Tariffs and Trade 1994 as specified in Annex 1A (hereinafter referred to as "GATT 1994") is legally distinct from the General Agreement on Tariffs and Trade, dated 30 October 1947, annexed to the Final Act Adopted at the Conclusion of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, as subsequently rectified, amended or modified (hereinafter referred to as "GATT 1947").

Article III

Functions of the WTO

1. The WTO shall facilitate the implementation, administration and operation, and further the objectives, of this Agreement and of the Multilateral Trade Agreements, and shall also provide the framework for the implementation, administration and operation of the Plurilateral Trade Agreements.
2. The WTO shall provide the forum for negotiations among its Members concerning their multilateral trade relations in matters dealt with under the agreements in the Annexes to this Agreement. The WTO may also provide a forum for further negotiations among its Members concerning their multilateral trade relations, and a

framework for the implementation of the results of such negotiations, as may be decided by the Ministerial Conference.

3. The WTO shall administer the Understanding on Rules and Procedures Governing the Settlement of Disputes (hereinafter referred to as the "Dispute Settlement Understanding" or "DSU") in Annex 2 to this Agreement.

4. The WTO shall administer the Trade Policy Review Mechanism (hereinafter referred to as the "TPRM") provided for in Annex 3 to this Agreement.

5. With a view to achieving greater coherence in global economic policy-making, the WTO shall cooperate, as appropriate, with the International Monetary Fund and with the International Bank for Reconstruction and Development and its affiliated agencies.

Article IV

Structure of the WTO

1. There shall be a Ministerial Conference composed of representatives of all the Members, which shall meet at least once every two years. The Ministerial Conference shall carry out the functions of the WTO and take actions necessary to this effect. The Ministerial Conference shall have the authority to take decisions on all matters under any of the Multilateral Trade Agreements, if so requested by a Member, in accordance with the specific requirements for decision-making in this Agreement and in the relevant Multilateral Trade Agreement.

2. There shall be a General Council composed of representatives of all the Members, which shall meet as appropriate. In the intervals between meetings of the Ministerial Conference, its functions shall be conducted by the General Council. The General Council shall also carry out the functions assigned to it by this Agreement. The General Council shall establish its rules of procedure and approve the rules of procedure for the Committees provided for in paragraph 7.

3. The General Council shall convene as appropriate to discharge the responsibilities of the Dispute Settlement Body provided for in the Dispute Settlement Understanding. The Dispute Settlement Body may have its own chairman and shall establish such rules of procedure as it deems necessary for the fulfilment of those responsibilities.

4. The General Council shall convene as appropriate to discharge the responsibilities of the Trade Policy Review Body provided for in the TPRM. The Trade Policy Review

Body may have its own chairman and shall establish such rules of procedure as it deems necessary for the fulfilment of those responsibilities.

5. There shall be a Council for Trade in Goods, a Council for Trade in Services and a Council for Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as the "Council for TRIPS"), which shall operate under the general guidance of the General Council. The Council for Trade in Goods shall oversee the functioning of the Multilateral Trade Agreements in Annex 1A. The Council for Trade in Services shall oversee the functioning of the General Agreement on Trade in Services (hereinafter referred to as "GATS"). The Council for TRIPS shall oversee the functioning of the Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as the "Agreement on TRIPS"). These Councils shall carry out the functions assigned to them by their respective agreements and by the General Council. They shall establish their respective rules of procedure subject to the approval of the General Council. Membership in these Councils shall be open to representatives of all Members. These Councils shall meet as necessary to carry out their functions.

6. The Council for Trade in Goods, the Council for Trade in Services and the Council for TRIPS shall establish subsidiary bodies as required. These subsidiary bodies shall establish their respective rules of procedure subject to the approval of their respective Councils.

7. The Ministerial Conference shall establish a Committee on Trade and Development, a Committee on Balance-of-Payments Restrictions and a Committee on Budget, Finance and Administration, which shall carry out the functions assigned to them by this Agreement and by the Multilateral Trade Agreements, and any additional functions assigned to them by the General Council, and may establish such additional Committees with such functions as it may deem appropriate. As part of its functions, the Committee on Trade and Development shall periodically review the special provisions in the Multilateral Trade Agreements in favour of the least-developed country Members and report to the General Council for appropriate action. Membership in these Committees shall be open to representatives of all Members.

8. The bodies provided for under the Plurilateral Trade Agreements shall carry out the functions assigned to them under those Agreements and shall operate within the institutional framework of the WTO. These bodies shall keep the General Council informed of their activities on a regular basis.

Article V

Relations with Other Organizations

1. The General Council shall make appropriate arrangements for effective cooperation with other intergovernmental organizations that have responsibilities related to those of the WTO.
2. The General Council may make appropriate arrangements for consultation and cooperation with non-governmental organizations concerned with matters related to those of the WTO.

Article VI

The Secretariat

1. There shall be a Secretariat of the WTO (hereinafter referred to as “the Secretariat”) headed by a Director-General.
2. The Ministerial Conference shall appoint the Director-General and adopt regulations setting out the powers, duties, and conditions of service and term of office of the Director-General.
3. The Director-General shall appoint the members of the staff of the Secretariat and determine their duties and conditions of service in accordance with regulations adopted by the Ministerial Conference.
4. The responsibilities of the Director-General and of the staff of the Secretariat shall be exclusively international in character. In the discharge of their duties, the Director-General and the staff of the Secretariat shall not seek or accept instructions from any government or any other authority external to the WTO. They shall refrain from any action which might adversely reflect on their position as international officials. The Members of the WTO shall respect the international character of the responsibilities of the Director-General and of the staff of the Secretariat and shall not seek to influence them in the discharge of their duties.

Article VII

Budget and Contributions

1. The Director-General shall present to the Committee on Budget, Finance and Administration the annual budget estimate and financial statement of the WTO. The Committee on Budget, Finance and Administration shall review the annual budget estimate and the financial statement presented by the Director-General and make

recommendations thereon to the General Council. The annual budget estimate shall be subject to approval by the General Council.

2. The Committee on Budget, Finance and Administration shall propose to the General Council financial regulations which shall include provisions setting out:

(a) The scale of contributions apportioning the expenses of the WTO among its Members; and

(b) The measures to be taken in respect of Members in arrears. The financial regulations shall be based, as far as practicable, on the regulations and practices of GATT 1947.

3. The General Council shall adopt the financial regulations and the annual budget estimate by a two-thirds majority comprising more than half of the Members of the WTO.

4. Each Member shall promptly contribute to the WTO its share in the expenses of the WTO in accordance with the financial regulations adopted by the General Council.

Article VIII

Status of the WTO

1. The WTO shall have legal personality, and shall be accorded by each of its Members such legal capacity as may be necessary for the exercise of its functions.

2. The WTO shall be accorded by each of its Members such privileges and immunities as are necessary for the exercise of its functions.

3. The officials of the WTO and the representatives of the Members shall similarly be accorded by each of its Members such privileges and immunities as are necessary for the independent exercise of their functions in connection with the WTO.

4. The privileges and immunities to be accorded by a Member to the WTO, its officials, and the representatives of its Members shall be similar to the privileges and immunities stipulated in the Convention on the Privileges and Immunities of the Specialized Agencies, approved by the General Assembly of the United Nations on 21 November 1947.

5. The WTO may conclude a headquarters agreement.

Article IX

Decision-Making

1. The WTO shall continue the practice of decision-making by consensus followed under GATT 1947.¹ Except as otherwise provided, where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting. At meetings of the Ministerial Conference and the General Council, each Member of the WTO shall have one vote. Where the European Communities exercise their right to vote, they shall have a number of votes equal to the number of their member States² which are Members of the WTO. Decisions of the Ministerial Conference and the General Council shall be taken by a majority of the votes cast, unless otherwise provided in this Agreement or in the relevant Multilateral Trade Agreement.³

2. The Ministerial Conference and the General Council shall have the exclusive authority to adopt interpretations of this Agreement and of the Multilateral Trade Agreements. In the case of an interpretation of a Multilateral Trade Agreement in Annex 1, they shall exercise their authority on the basis of a recommendation by the Council overseeing the functioning of that Agreement. The decision to adopt an interpretation shall be taken by a three-fourths majority of the Members. This paragraph shall not be used in a manner that would undermine the amendment provisions in Article X.

3. In exceptional circumstances, the Ministerial Conference may decide to waive an obligation imposed on a Member by this Agreement or any of the Multilateral Trade Agreements, provided that any such decision shall be taken by three fourths⁴ of the Members unless otherwise provided for in this paragraph.

(a) A request for a waiver concerning this Agreement shall be submitted to the Ministerial Conference for consideration pursuant to the practice of decision-making by consensus. The Ministerial Conference shall establish a time-period, which shall not exceed 90 days, to consider the request. If consensus is not reached during the time-period, any decision to grant a waiver shall be taken by three fourths⁴ of the Members.

(b) A request for a waiver concerning the Multilateral Trade Agreements in Annexes 1A or 1B or 1C and their annexes shall be submitted initially to the Council for Trade in Goods, the Council for Trade in Services or the Council for TRIPS, respectively, for consideration during a time-period which shall not exceed 90 days. At the end of

the time-period, the relevant Council shall submit a report to the Ministerial Conference.

4. A decision by the Ministerial Conference granting a waiver shall state the exceptional circumstances justifying the decision, the terms and conditions governing the application of the waiver, and the date on which the waiver shall terminate. Any waiver granted for a period of more than one year shall be reviewed by the Ministerial Conference not later than one year after it is granted, and thereafter annually until the waiver terminates. In each review, the Ministerial Conference shall examine whether the exceptional circumstances justifying the waiver still exist and whether the terms and conditions attached to the waiver have been met. The Ministerial Conference, on the basis of the annual review, may extend, modify or terminate the waiver.

5. Decisions under a Plurilateral Trade Agreement, including any decisions on interpretations and waivers, shall be governed by the provisions of that Agreement.

Article X

Amendments

1. Any Member of the WTO may initiate a proposal to amend the provisions of this Agreement or the Multilateral Trade Agreements in Annex 1 by submitting such proposal to the Ministerial Conference. The Councils listed in paragraph 5 of Article IV may also submit to the Ministerial Conference proposals to amend the provisions of the corresponding Multilateral Trade Agreements in Annex 1 the functioning of which they oversee. Unless the Ministerial Conference decides on a longer period, for a period of 90 days after the proposal has been tabled formally at the Ministerial Conference any decision by the Ministerial Conference to submit the proposed amendment to the Members for acceptance shall be taken by consensus. Unless the provisions of paragraphs 2, 5 or 6 apply, that decision shall specify whether the provisions of paragraphs 3 or 4 shall apply. If consensus is reached, the Ministerial Conference shall forthwith submit the proposed amendment to the Members for acceptance. If consensus is not reached at a meeting of the Ministerial Conference within the established period, the Ministerial Conference shall decide by a two-thirds majority of the Members whether to submit the proposed amendment to the Members for acceptance. Except as provided in paragraphs 2, 5 and

6, the provisions of paragraph 3 shall apply to the proposed amendment, unless the Ministerial Conference decides by a three-fourths majority of the Members that the provisions of paragraph 4 shall apply.

2. Amendments to the provisions of this Article and to the provisions of the following Articles shall take effect only upon acceptance by all Members:

Article IX of this Agreement;

Articles I and II of GATT 1994;

Article II: 1 of GATS;

Article 4 of the Agreement on TRIPS.

3. Amendments to provisions of this Agreement, or of the Multilateral Trade Agreements in Annexes 1A and 1C, other than those listed in paragraphs 2 and 6, of a nature that would alter the rights and obligations of the Members, shall take effect for the Members that have accepted them upon acceptance by two thirds of the Members and thereafter for each other Member upon acceptance by it. The Ministerial Conference may decide by a three-fourths majority of the Members that any amendment made effective under this paragraph is of such a nature that any Member which has not accepted it within a period specified by the Ministerial Conference in each case shall be free to withdraw from the WTO or to remain a Member with the consent of the Ministerial Conference.

4. Amendments to provisions of this Agreement or of the Multilateral Trade Agreements in Annexes 1A and 1C, other than those listed in paragraphs 2 and 6, of a nature that would not alter the rights and obligations of the Members, shall take effect for all Members upon acceptance by two thirds of the Members.

5. Except as provided in paragraph 2 above, amendments to Parts I, II and III of GATS and the respective annexes shall take effect for the Members that have accepted them upon acceptance by two thirds of the Members and thereafter for each Member upon acceptance by it. The Ministerial Conference may decide by a three-fourths majority of the Members that any amendment made effective under the preceding provision is of such a nature that any Member which has not accepted it within a period specified by the Ministerial Conference in each case shall be free to withdraw from the WTO or to remain a Member with the consent of the Ministerial Conference. Amendments to Parts IV, V and VI of GATS and the respective annexes shall take effect for all Members upon acceptance by two thirds of the Members.

6. Notwithstanding the other provisions of this Article, amendments to the Agreement on TRIPS meeting the requirements of paragraph 2 of Article 71 thereof may be adopted by the Ministerial Conference without further formal acceptance process.

7. Any Member accepting an amendment to this Agreement or to a Multilateral Trade Agreement in Annex 1 shall deposit an instrument of acceptance with the Director-General of the WTO within the period of acceptance specified by the Ministerial Conference.

8. Any Member of the WTO may initiate a proposal to amend the provisions of the Multilateral Trade Agreements in Annexes 2 and 3 by submitting such proposal to the Ministerial Conference. The decision to approve amendments to the Multilateral Trade Agreement in Annex 2 shall be made by consensus and these amendments shall take effect for all Members upon approval by the Ministerial Conference. Decisions to approve amendments to the Multilateral Trade Agreement in Annex 3 shall take effect for all Members upon approval by the Ministerial Conference.

9. The Ministerial Conference, upon the request of the Members parties to a trade agreement, may decide exclusively by consensus to add that agreement to Annex 4. The Ministerial Conference, upon the request of the Members parties to a Plurilateral Trade Agreement, may decide to delete that Agreement from Annex 4.

10. Amendments to a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

Article XI

Original Membership

1. The contracting parties to GATT 1947 as of the date of entry into force of this Agreement, and the European Communities, which accept this Agreement and the Multilateral Trade Agreements and for which Schedules of Concessions and Commitments are annexed to GATT 1994 and for which Schedules of Specific Commitments are annexed to GATS shall become original Members of the WTO.

2. The least-developed countries recognized as such by the United Nations will only be required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities.

Article XII

Accession

1. Any State or separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement and the Multilateral Trade Agreements may accede to this Agreement, on terms to be agreed between it and the WTO. Such accession shall apply to this Agreement and the Multilateral Trade Agreements annexed thereto.
2. Decisions on accession shall be taken by the Ministerial Conference. The Ministerial Conference shall approve the agreement on the terms of accession by a two-thirds majority of the Members of the WTO.
3. Accession to a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

Article XIII

Non-Application of Multilateral Trade Agreements between Particular Members

1. This Agreement and the Multilateral Trade Agreements in Annexes 1 and 2 shall not apply as between any Member and any other Member if either of the Members, at the time either becomes a Member, does not consent to such application.
2. Paragraph 1 may be invoked between original Members of the WTO which were contracting parties to GATT 1947 only where Article XXXV of that Agreement had been invoked earlier and was effective as between those contracting parties at the time of entry into force for them of this Agreement.
3. Paragraph 1 shall apply between a Member and another Member which has acceded under Article XII only if the Member not consenting to the application has so notified the Ministerial Conference before the approval of the agreement on the terms of accession by the Ministerial Conference.
4. The Ministerial Conference may review the operation of this Article in particular cases at the request of any Member and make appropriate recommendations.
5. Non-application of a Plurilateral Trade Agreement between parties to that Agreement shall be governed by the provisions of that Agreement.

Article XIV

Acceptance, Entry into Force and Deposit

1. This Agreement shall be open for acceptance, by signature or otherwise, by contracting parties to GATT 1947, and the European Communities, which are eligible to become original Members of the WTO in accordance with Article XI of this Agreement. Such acceptance shall apply to this Agreement and the Multilateral Trade Agreements annexed hereto. This Agreement and the Multilateral Trade Agreements annexed hereto shall enter into force on the date determined by Ministers in accordance with paragraph 3 of the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations and shall remain open for acceptance for a period of two years following that date unless the Ministers decide otherwise. An acceptance following the entry into force of this Agreement shall enter into force on the 30th day following the date of such acceptance.
2. A Member which accepts this Agreement after its entry into force shall implement those concessions and obligations in the Multilateral Trade Agreements that are to be implemented over a period of time starting with the entry into force of this Agreement as if it had accepted this Agreement on the date of its entry into force.
3. Until the entry into force of this Agreement, the text of this Agreement and the Multilateral Trade Agreements shall be deposited with the Director-General to the CONTRACTING PARTIES to GATT 1947. The Director-General shall promptly furnish a certified true copy of this Agreement and the Multilateral Trade Agreements, and a notification of each acceptance thereof, to each government and the European Communities having accepted this Agreement. This Agreement and the Multilateral Trade Agreements, and any amendments thereto, shall, upon the entry into force of this Agreement, be deposited with the Director-General of the WTO.
4. The acceptance and entry into force of a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement. Such Agreements shall be deposited with the Director-General to the CONTRACTING PARTIES to GATT 1947. Upon the entry into force of this Agreement, such Agreements shall be deposited with the Director-General of the WTO.

Article XV

Withdrawal

1. Any Member may withdraw from this Agreement. Such withdrawal shall apply both to this Agreement and the Multilateral Trade Agreements and shall take effect upon

the expiration of six months from the date on which written notice of withdrawal is received by the Director-General of the WTO.

2. Withdrawal from a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

Article XVI

Miscellaneous Provisions

1. Except as otherwise provided under this Agreement or the Multilateral Trade Agreements, the WTO shall be guided by the decisions, procedures and customary practices followed by the CONTRACTING PARTIES to GATT 1947 and the bodies established in the framework of GATT 1947.

2. To the extent practicable, the Secretariat of GATT 1947 shall become the Secretariat of the WTO, and the Director-General to the CONTRACTING PARTIES to GATT 1947, until such time as the Ministerial Conference has appointed a Director-General in accordance with paragraph 2 of Article VI of this Agreement, shall serve as Director-General of the WTO.

3. In the event of a conflict between a provision of this Agreement and a provision of any of the Multilateral Trade Agreements, the provision of this Agreement shall prevail to the extent of the conflict.

4. Each Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements.

5. No reservations may be made in respect of any provision of this Agreement. Reservations in respect of any of the provisions of the Multilateral Trade Agreements may only be made to the extent provided for in those Agreements. Reservations in respect of a provision of a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

6. This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

DONE at Marrakesh this fifteenth day of April one thousand nine hundred and ninety-four, in a single copy, in the English, French and Spanish languages, each text being authentic.

Explanatory Notes:

The terms "country" or "countries" as used in this Agreement and the Multilateral Trade Agreements are to be understood to include any separate customs territory Member of the WTO.

In the case of a separate customs territory Member of the WTO, where an expression in this Agreement and the Multilateral Trade Agreements is qualified by the term "national", such expression shall be read as pertaining to that customs territory, unless otherwise specified.

LIST OF ANNEXES**ANNEX 1****ANNEX 1A: Multilateral Agreements on Trade in Goods**

General Agreement on Tariffs and Trade 1994

Agreement on Agriculture

Agreement on the Application of Sanitary and Phytosanitary Measures

Agreement on Textiles and Clothing

Agreement on Technical Barriers to Trade

Agreement on Trade-Related Investment Measures

Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994

Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994

Agreement on Preshipment Inspection

Agreement on Rules of Origin

Agreement on Import Licensing Procedures

Agreement on Subsidies and Countervailing Measures

Agreement on Safeguards

ANNEX 1B: General Agreement on Trade in Services and Annexes**ANNEX 1C: Agreement on Trade-Related Aspects of Intellectual Property Rights**

ANNEX 2

Understanding on Rules and Procedures Governing the Settlement of Disputes

ANNEX 3

Trade Policy Review Mechanism

ANNEX 4

Plurilateral Trade Agreements

Agreement on Trade in Civil Aircraft

Agreement on Government Procurement

International Dairy Agreement

International Bovine Meat Agreement

Appendix B
Agreement on Trade-Related Aspects of Intellectual Property Rights

PART I
GENERAL PROVISIONS AND BASIC PRINCIPLES

Article 1

Nature and Scope of Obligations

1. Members shall give effect to the provisions of this Agreement. Members may, but shall not be obliged to, implement in their law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement. Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice.
2. For the purposes of this Agreement, the term "intellectual property" refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II.
3. Members shall accord the treatment provided for in this Agreement to the nationals of other Members. In respect of the relevant intellectual property right, the nationals of other Members shall be understood as those natural or legal persons that would meet the criteria for eligibility for protection provided for in the Paris Convention (1967), the Berne Convention (1971), the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits, were all Members of the WTO members of those conventions.² Any Member availing itself of the possibilities provided in paragraph 3 of Article 5 or paragraph 2 of Article 6 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for Trade-Related Aspects of Intellectual Property Rights (the "Council for TRIPS").

Article 2

Intellectual Property Conventions

1. In respect of Parts II, III and IV of this Agreement, Members shall comply with Articles 1 through 12, and Article 19, of the Paris Convention (1967).
2. Nothing in Parts I to IV of this Agreement shall derogate from existing obligations that Members may have to each other under the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits.

Article 3

National Treatment

1. Each Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection³ of intellectual property, subject to the exceptions already provided in, respectively, the Paris Convention (1967), the Berne Convention (1971), the Rome Convention or the Treaty on Intellectual Property in Respect of Integrated Circuits. In respect of performers, producers of phonograms and broadcasting organizations, this obligation only applies in respect of the rights provided under this Agreement. Any Member availing itself of the possibilities provided in Article 6 of the Berne Convention (1971) or paragraph 1(b) of Article 16 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for TRIPS.
2. Members may avail themselves of the exceptions permitted under paragraph 1 in relation to judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of a Member, only where such exceptions are necessary to secure compliance with laws and regulations which are not inconsistent with the provisions of this Agreement and where such practices are not applied in a manner which would constitute a disguised restriction on trade.

Article 4

Most-Favoured-Nation Treatment

With regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members. Exempted from this obligation are any advantage, favour, privilege or immunity accorded by a Member:

- (a) Deriving from international agreements on judicial assistance or law enforcement of a general nature and not particularly confined to the protection of intellectual property;
- (b) Granted in accordance with the provisions of the Berne Convention (1971) or the Rome Convention authorizing that the treatment accorded be a function not of national treatment but of the treatment accorded in another country;
- (c) In respect of the rights of performers, producers of phonograms and broadcasting organizations not provided under this Agreement;
- (d) Deriving from international agreements related to the protection of intellectual property which entered into force prior to the entry into force of the WTO Agreement, provided that such agreements are notified to the Council for TRIPS and do not constitute an arbitrary or unjustifiable discrimination against nationals of other Members.

Article 5

Multilateral Agreements on Acquisition or

Maintenance of Protection

The obligations under Articles 3 and 4 do not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

Article 6

Exhaustion

For the purposes of dispute settlement under this Agreement, subject to the provisions of Articles 3 and 4 nothing in this Agreement shall be used to address the issue of the exhaustion of intellectual property rights.

Article 7

Objecives

The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

Article 8

Principles

1. Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement.
2. Appropriate measures, provided that they are consistent with the provisions of this Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

PART II

STANDARDS CONCERNING THE AVAILABILITY, SCOPE

AND USE OF INTELLECTUAL PROPERTY RIGHTS

SECTION 1: COPYRIGHT AND RELATED RIGHTS

Article 9

Relation to the Berne Convention

1. Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto. However, Members shall not have rights or obligations

under this Agreement in respect of the rights conferred under Article 6bis of that Convention or of the rights derived therefrom.

2. Copyright protection shall extend to expressions and not to ideas, procedures, and methods of operation or mathematical concepts as such.

Article 10

Computer Programs and Compilations of Data

1. Computer programs, whether in source or object code, shall be protected as literary works under the Berne Convention (1971).

2. Compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations shall be protected as such. Such protection, which shall not extend to the data or material itself, shall be without prejudice to any copyright subsisting in the data or material itself.

Article 11

Rental Rights

In respect of at least computer programs and cinematographic works, a Member shall provide authors and their successors in title the right to authorize or to prohibit the commercial rental to the public of originals or copies of their copyright works. A Member shall be excepted from this obligation in respect of cinematographic works unless such rental has led to widespread copying of such works which is materially impairing the exclusive right of reproduction conferred in that Member on authors and their successors in title. In respect of computer programs, this obligation does not apply to rentals where the program itself is not the essential object of the rental.

Article 12

Term of Protection

Whenever the term of protection of a work, other than a photographic work or a work of applied art, is calculated on a basis other than the life of a natural person, such term shall be no less than 50 years from the end of the calendar year of authorized

publication, or, failing such authorized publication within 50 years from the making of the work, 50 years from the end of the calendar year of making.

Article 13

Limitations and Exceptions

Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

Article 14

Protection of Performers, Producers of Phonograms

(Sound Recordings) and Broadcasting Organizations

1. In respect of a fixation of their performance on a phonogram, performers shall have the possibility of preventing the following acts when undertaken without their authorization: the fixation of their unfixed performance and the reproduction of such fixation. Performers shall also have the possibility of preventing the following acts when undertaken without their authorization: the broadcasting by wireless means and the communication to the public of their live performance.
2. Producers of phonograms shall enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms.
3. Broadcasting organizations shall have the right to prohibit the following acts when undertaken without their authorization: the fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of television broadcasts of the same. Where Members do not grant such rights to broadcasting organizations, they shall provide owners of copyright in the subject matter of broadcasts with the possibility of preventing the above acts, subject to the provisions of the Berne Convention (1971).
4. The provisions of Article 11 in respect of computer programs shall apply mutatis mutandis to producers of phonograms and any other right holders in phonograms as

determined in a Member's law. If on 15 April 1994 a Member has in force a system of equitable remuneration of right holders in respect of the rental of phonograms, it may maintain such system provided that the commercial rental of phonograms is not giving rise to the material impairment of the exclusive rights of reproduction of right holders.

5. The term of the protection available under this Agreement to performers and producers of phonograms shall last at least until the end of a period of 50 years computed from the end of the calendar year in which the fixation was made or the performance took place. The term of protection granted pursuant to paragraph 3 shall last for at least 20 years from the end of the calendar year in which the broadcast took place.

6. Any Member may, in relation to the rights conferred under paragraphs 1, 2 and 3, provide for conditions, limitations, exceptions and reservations to the extent permitted by the Rome Convention. However, the provisions of Article 18 of the Berne Convention (1971) shall also apply, *mutatis mutandis*, to the rights of performers and producers of phonograms in phonograms.

SECTION 2: TRADEMARKS

Article 15

Protectable Subject Matter

1. Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, Members may make registrability depend on distinctiveness acquired through use. Members may require, as a condition of registration, that signs be visually perceptible.

2. Paragraph 1 shall not be understood to prevent a Member from denying registration of a trademark on other grounds, provided that they do not derogate from the provisions of the Paris Convention (1967).

3. Members may make registrability depend on use. However, actual use of a trademark shall not be a condition for filing an application for registration. An application shall not be refused solely on the ground that intended use has not taken place before the expiry of a period of three years from the date of application.

4. The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of the trademark.

5. Members shall publish each trademark either before it is registered or promptly after it is registered and shall afford a reasonable opportunity for petitions to cancel the registration. In addition, Members may afford an opportunity for the registration of a trademark to be opposed.

Article 16

Rights Conferred

1. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use.

2. Article 6bis of the Paris Convention (1967) shall apply, *mutatis mutandis*, to services. In determining whether a trademark is well-known, Members shall take account of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Member concerned which has been obtained as a result of the promotion of the trademark.

3. Article 6bis of the Paris Convention (1967) shall apply, *mutatis mutandis*, to goods or services which are not similar to those in respect of which a trademark is registered, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the registered

trademark and provided that the interests of the owner of the registered trademark are likely to be damaged by such use.

Article 17

Exceptions

Members may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

Article 18

Term of Protection

Initial registration, and each renewal of registration, of a trademark shall be for a term of no less than seven years. The registration of a trademark shall be renewable indefinitely.

Article 19

Requirement of Use

1. If use is required to maintain a registration, the registration may be cancelled only after an uninterrupted period of at least three years of non-use, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Circumstances arising independently of the will of the owner of the trademark which constitute an obstacle to the use of the trademark, such as import restrictions on or other government requirements for goods or services protected by the trademark, shall be recognized as valid reasons for non-use.
2. When subject to the control of its owner, use of a trademark by another person shall be recognized as use of the trademark for the purpose of maintaining the registration.

Article 20

Other Requirements

The use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements, such as use with another trademark, use in a special form or use

in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings. This will not preclude a requirement prescribing the use of the trademark identifying the undertaking producing the goods or services along with, but without linking it to, the trademark distinguishing the specific goods or services in question of that undertaking.

Article 21

Licensing and Assignment

Members may determine conditions on the licensing and assignment of trademarks, it being understood that the compulsory licensing of trademarks shall not be permitted and that the owner of a registered trademark shall have the right to assign the trademark with or without the transfer of the business to which the trademark belongs.

SECTION 3: GEOGRAPHICAL INDICATIONS

Article 22

Protection of Geographical Indications

1. Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.
2. In respect of geographical indications, Members shall provide the legal means for interested parties to prevent:
 - (a) The use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;
 - (b) Any use which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention (1967).
3. A Member shall, ex officio if its legislation so permits or at the request of an interested party, refuse or invalidate the registration of a trademark which contains or

consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the trademark for such goods in that Member is of such a nature as to mislead the public as to the true place of origin.

4. The protection under paragraphs 1, 2 and 3 shall be applicable against a geographical indication which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory.

Article 23

Additional Protection for Geographical Indications

for Wines and Spirits

1. Each Member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.

2. The registration of a trademark for wines which contains or consists of a geographical indication identifying wines or for spirits which contains or consists of a geographical indication identifying spirits shall be refused or invalidated, ex officio if a Member's legislation so permits or at the request of an interested party, with respect to such wines or spirits not having this origin.

3. In the case of homonymous geographical indications for wines, protection shall be accorded to each indication, subject to the provisions of paragraph 4 of Article 22. Each Member shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

4. In order to facilitate the protection of geographical indications for wines, negotiations shall be undertaken in the Council for TRIPS concerning the

establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in those Members participating in the system.

Article 24

International Negotiations; Exceptions

1. Members agree to enter into negotiations aimed at increasing the protection of individual geographical indications under Article 23. The provisions of paragraphs 4 through 8 below shall not be used by a Member to refuse to conduct negotiations or to conclude bilateral or multilateral agreements. In the context of such negotiations, Members shall be willing to consider the continued applicability of these provisions to individual geographical indications whose use was the subject of such negotiations.

2. The Council for TRIPS shall keep under review the application of the provisions of this Section; the first such review shall take place within two years of the entry into force of the WTO Agreement. Any matter affecting the compliance with the obligations under these provisions may be drawn to the attention of the Council, which, at the request of a Member, shall consult with any Member or Members in respect of such matter in respect of which it has not been possible to find a satisfactory solution through bilateral or plurilateral consultations between the Members concerned. The Council shall take such action as may be agreed to facilitate the operation and further the objectives of this Section.

3. In implementing this Section, a Member shall not diminish the protection of geographical indications that existed in that Member immediately prior to the date of entry into force of the WTO Agreement.

4. Nothing in this Section shall require a Member to prevent continued and similar use of a particular geographical indication of another Member identifying wines or spirits in connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication in a continuous manner with regard to the same or related goods or services in the territory of that Member either (a) for at least 10 years preceding 15 April 1994 or (b) in good faith preceding that date.

5. Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith either:

(a) Before the date of application of these provisions in that Member as defined in Part VI; or

(b) Before the geographical indication is protected in its country of origin; measures adopted to implement this Section shall not prejudice eligibility for or the validity of the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication.

6. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the territory of that Member. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Member as of the date of entry into force of the WTO Agreement.

7. A Member may provide that any request made under this Section in connection with the use or registration of a trademark must be presented within five years after the adverse use of the protected indication has become generally known in that Member or after the date of registration of the trademark in that Member provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in that Member, provided that the geographical indication is not used or registered in bad faith.

8. The provisions of this Section shall in no way prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.

9. There shall be no obligation under this Agreement to protect geographical indications which are not or cease to be protected in their country of origin, or which have fallen into disuse in that country.

SECTION 4: INDUSTRIAL DESIGNS

Article 25

Requirements for Protection

1. Members shall provide for the protection of independently created industrial designs that are new or original. Members may provide that designs are not new or original if they do not significantly differ from known designs or combinations of known design features. Members may provide that such protection shall not extend to designs dictated essentially by technical or functional considerations.
2. Each Member shall ensure that requirements for securing protection for textile designs, in particular in regard to any cost, examination or publication, do not unreasonably impair the opportunity to seek and obtain such protection. Members shall be free to meet this obligation through industrial design law or through copyright law.

Article 26

Protection

1. The owner of a protected industrial design shall have the right to prevent third parties not having the owner's consent from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.
2. Members may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.
3. The duration of protection available shall amount to at least 10 years.

SECTION 5: PATENTS

Article 27

Patentable Subject Matter

1. Subject to the provisions of paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application.⁵ Subject to paragraph 4 of Article 65, paragraph 8 of Article 70 and paragraph 3 of this Article, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.

2. Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect ordre public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law.

3. Members may also exclude from patentability:

(a) Diagnostic, therapeutic and surgical methods for the treatment of humans or animals;

(b) Plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof. The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement.

Article 28

Rights Conferred

1. A patent shall confer on its owner the following exclusive rights:

(a) Where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from the acts of: making, using, offering for sale, selling, or importing⁶ for these purposes that product;

(b) Where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the act of using the process, and from the acts of: using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process.

2. Patent owners shall also have the right to assign, or transfer by succession, the patent and to conclude licensing contracts.

Article 29

Conditions on Patent Applicants

1. Members shall require that an applicant for a patent shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art and may require the applicant to indicate the best mode for carrying out the invention known to the inventor at the filing date or, where priority is claimed, at the priority date of the application.

2. Members may require an applicant for a patent to provide information concerning the applicant's corresponding foreign applications and grants.

Article 30

Exceptions to Rights Conferred

Members may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate

Article 31

Other Use without Authorization of the Right Holder

Where the law of a Member allows for other use⁷ of the subject matter of a patent without the authorization of the right holder, including use by the government or third parties authorized by the government, the following provisions shall be respected:

- (a) Authorization of such use shall be considered on its individual merits;
- (b) Such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time. This requirement may be waived by a Member in the case of national emergency or other circumstances of extreme urgency or in cases of public noncommercial use. In situations of national emergency or other circumstances of extreme urgency, the right holder shall, nevertheless, be notified as soon as reasonably practicable. In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly;
- (c) the scope and duration of such use shall be limited to the purpose for which it was authorized, and in the case of semi-conductor technology shall only be for public noncommercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive;
- (d) Such use shall be non-exclusive;
- (e) Such use shall be non-assignable, except with that part of the enterprise or goodwill which enjoys such use;
- (f) Any such use shall be authorized predominantly for the supply of the domestic market of the Member authorizing such use;
- (g) Authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances which led to it cease to exist and are unlikely to recur. The competent authority shall have the authority to review, upon motivated request, the continued existence of these circumstances;
- (h) The right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization;

(i) The legal validity of any decision relating to the authorization of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member;

(j) any decision relating to the remuneration provided in respect of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member; interests of third parties

(k) Members are not obliged to apply the conditions set forth in subparagraphs (b) and (f) where such use is permitted to remedy a practice determined after judicial or administrative process to be anti-competitive. The need to correct anti-competitive practices may be taken into account in determining the amount of remuneration in such cases. Competent authorities shall have the authority to refuse termination of authorization if and when the conditions which led to such authorization are likely to recur;

(l) Where such use is authorized to permit the exploitation of a patent ("the second patent") which cannot be exploited without infringing another patent ("the first patent"), the following additional conditions shall apply:

(i) The invention claimed in the second patent shall involve an important technical advance of considerable economic significance in relation to the invention claimed in the first patent;

(ii) The owner of the first patent shall be entitled to a cross-licence on reasonable terms to use the invention claimed in the second patent; and

(iii) the use authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent.

Article 32

Revocation/Forfeiture

An opportunity for judicial review of any decision to revoke or forfeit a patent shall be available.

Article 33

Term of Protection

The term of protection available shall not end before the expiration of a period of twenty years counted from the filing date.

Article 34

Process Patents: Burden of Proof

1. For the purposes of civil proceedings in respect of the infringement of the rights of the owner referred to in paragraph 1(b) of Article 28, if the subject matter of a patent is a process for obtaining a product, the judicial authorities shall have the authority to order the defendant to prove that the process to obtain an identical product is different from the patented process. Therefore, Members shall provide, in at least one of the following circumstances, that any identical product when produced without the consent of the patent owner shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process:

(a) if the product obtained by the patented process is new;

(b) if there is a substantial likelihood that the identical product was made by the process and the owner of the patent has been unable through reasonable efforts to determine the process actually used.

2. Any Member shall be free to provide that the burden of proof indicated in paragraph 1 shall be on the alleged infringer only if the condition referred to in subparagraph (a) is fulfilled or only if the condition referred to in subparagraph (b) is fulfilled.

3. In the adduction of proof to the contrary, the legitimate interests of defendants in protecting their manufacturing and business secrets shall be taken into account.

SECTION 6: LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS

Article 35

Relation to the IPIC Treaty

Members agree to provide protection to the layout-designs (topographies) of integrated circuits (referred to in this Agreement as "layout-designs") in accordance with Articles 2 through 7 (other than paragraph 3 of Article 6), Article 12 and paragraph 3 of Article 16 of the Treaty on Intellectual Property in Respect of Integrated Circuits and, in addition, to comply with the following provisions.

Article 36

Scope of the Protection

Subject to the provisions of paragraph 1 of Article 37, Members shall consider unlawful the following acts if performed without the authorization of the right holder:9 importing, selling, or otherwise distributing for commercial purposes a protected layout-design, an integrated circuit in which a protected layout-design is incorporated, or an article incorporating such an integrated circuit only in so far as it continues to contain an unlawfully reproduced layout-design.

Article 37

Acts Not Requiring the Authorization of the Right Holder

1. Notwithstanding Article 36, no Member shall consider unlawful the performance of any of the acts referred to in that Article in respect of an integrated circuit incorporating an unlawfully reproduced layout-design or any article incorporating such an integrated circuit where the person performing or ordering such acts did not know and had no reasonable ground to know, when acquiring the integrated circuit or article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout-design. Members shall provide that, after the time that such person has received sufficient notice that the layout-design was unlawfully reproduced, that person may perform any of the acts with respect to the stock on hand or ordered before such time, but shall be liable to pay to the right holder a sum equivalent to a reasonable royalty

such as would be payable under a freely negotiated licence in respect of such a layout-design.

2. The conditions set out in subparagraphs (a) through (k) of Article 31 shall apply *mutatis mutandis* in the event of any non-voluntary licensing of a layout-design or of its use by or for the government without the authorization of the right holder.

Article 38

Term of Protection

1. In Members requiring registration as a condition of protection, the term of protection of layout designs shall not end before the expiration of a period of 10 years counted from the date of filing an application for registration or from the first commercial exploitation wherever in the world it occurs.

2. In Members not requiring registration as a condition for protection, layout-designs shall be protected for a term of no less than 10 years from the date of the first commercial exploitation wherever in the world it occurs.

3. Notwithstanding paragraphs 1 and 2, a Member may provide that protection shall lapse 15 years after the creation of the layout-design.

SECTION 7: PROTECTION OF UNDISCLOSED INFORMATION

Article 39

1. In the course of ensuring effective protection against unfair competition as provided in Article 10bis of the Paris Convention (1967), Members shall protect undisclosed information in accordance with paragraph 2 and data submitted to governments or governmental agencies in accordance with paragraph 3.

2. Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices¹⁰ so long as such information:

(a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

(b) Has commercial value because it is secret; and

(c) Has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

3. Members, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use. In addition, Members shall protect such data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.

SECTION 8: CONTROL OF ANTI-COMPETITIVE PRACTICES IN CONTRACTUAL LICENCES

Article 40

1. Members agree that some licensing practices or conditions pertaining to intellectual property rights which restrain competition may have adverse effects on trade and may impede the transfer and dissemination of technology.

2. Nothing in this Agreement shall prevent Members from specifying in their legislation licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market. As provided above, a Member may adopt, consistently with the other provisions of this Agreement, appropriate measures to prevent or control such practices, which may include for example exclusive grantback conditions, conditions preventing challenges to validity and coercive package licensing, in the light of the relevant laws and regulations of that Member.

3. Each Member shall enter, upon request, into consultations with any other Member which has cause to believe that an intellectual property right owner that is a national or domiciliary of the Member to which the request for consultations has been addressed is undertaking practices in violation of the requesting Member's laws and regulations on the subject matter of this Section, and which wishes to secure compliance with such legislation, without prejudice to any action under the law and to the full freedom of an ultimate decision of either Member. The Member addressed shall accord full and sympathetic consideration to, and shall afford adequate opportunity for, consultations with the requesting Member, and shall cooperate through supply of publicly available non-confidential information of relevance to the matter in question and of other information available to the Member, subject to domestic law and to the conclusion of mutually satisfactory agreements concerning the safeguarding of its confidentiality by the requesting Member.

4. A Member whose nationals or domiciliaries are subject to proceedings in another Member concerning alleged violation of that other Member's laws and regulations on the subject matter of this Section shall, upon request, be granted an opportunity for consultations by the other Member under the same conditions as those foreseen in paragraph 3.

PART III

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

SECTION 1: GENERAL OBLIGATIONS

Article 41

1. Members shall ensure that enforcement procedures as specified in this Part are available under their law so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

2. Procedures concerning the enforcement of intellectual property rights shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.

3. Decisions on the merits of a case shall preferably be in writing and reasoned. They shall be made available at least to the parties to the proceeding without undue delay. Decisions on the merits of a case shall be based only on evidence in respect of which parties were offered the opportunity to be heard.

4. Parties to a proceeding shall have an opportunity for review by a judicial authority of final administrative decisions and, subject to jurisdictional provisions in a Member's law concerning the importance of a case, of at least the legal aspects of initial judicial decisions on the merits of a case. However, there shall be no obligation to provide an opportunity for review of acquittals in criminal cases.

5. It is understood that this Part does not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of Members to enforce their law in general. Nothing in this Part creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general.

SECTION 2: CIVIL AND ADMINISTRATIVE PROCEDURES AND REMEDIES

Article 42

Fair and Equitable Procedures

Members shall make available to right holders¹¹ civil judicial procedures concerning the enforcement of any intellectual property right covered by this Agreement. Defendants shall have the right to written notice which is timely and contains sufficient detail, including the basis of the claims. Parties shall be allowed to be represented by independent legal counsel, and procedures shall not impose overly burdensome requirements concerning mandatory personal appearances. All parties to such procedures shall be duly entitled to substantiate their claims and to present all relevant

evidence. The procedure shall provide a means to identify and protect confidential information, unless this would be contrary to existing constitutional requirements.

Article 43

Evidence

1. The judicial authorities shall have the authority, where a party has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to substantiation of its claims which lies in the control of the opposing party, to order that this evidence be produced by the opposing party, subject in appropriate cases to conditions which ensure the protection of confidential information.

2. In cases in which a party to a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes a procedure relating to an enforcement action, a Member may accord judicial authorities the authority to make preliminary and final determinations, affirmative or negative, on the basis of the information presented to them, including the complaint or the allegation presented by the party adversely affected by the denial of access to information, subject to providing the parties an opportunity to be heard on the allegations or evidence.

Article 44

Injunctions

1. The judicial authorities shall have the authority to order a party to desist from an infringement, inter alia to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, immediately after customs clearance of such goods. Members are not obliged to accord such authority in respect of protected subject matter acquired or ordered by a person prior to knowing or having reasonable grounds to know that dealing in such subject matter would entail the infringement of an intellectual property right.

2. Notwithstanding the other provisions of this Part and provided that the provisions of Part II specifically addressing use by governments, or by third parties authorized by a government, without the authorization of the right holder are complied with,

Members may limit the remedies available against such use to payment of remuneration in accordance with subparagraph (h) of Article 31. In other cases, the remedies under this Part shall apply or, where these remedies are inconsistent with a Member's law, declaratory judgments and adequate compensation shall be available.

Article 45

Damages

1. The judicial authorities shall have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.

2. The judicial authorities shall also have the authority to order the infringer to pay the right holder expenses, which may include appropriate attorney's fees. In appropriate cases, Members may authorize the judicial authorities to order recovery of profits and/or payment of pre-established damages even where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity.

Article 46

Other Remedies

In order to create an effective deterrent to infringement, the judicial authorities shall have the authority to order that goods that they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or, unless this would be contrary to existing constitutional requirements, destroyed. The judicial authorities shall also have the authority to order that materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements. In considering such requests, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed

shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.

Article 47

Right of Information

Members may provide that the judicial authorities shall have the authority, unless this would be out of proportion to the seriousness of the infringement, to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and of their channels of distribution.

Article 48

Indemnification of the Defendant

1. The judicial authorities shall have the authority to order a party at whose request measures were taken and who has abused enforcement procedures to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered because of such abuse. The judicial authorities shall also have the authority to order the applicant to pay the defendant expenses, which may include appropriate attorney's fees.

2. In respect of the administration of any law pertaining to the protection or enforcement of intellectual property rights, Members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith in the course of the administration of that law.

Article 49

Administrative Procedures

To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

SECTION 3: PROVISIONAL MEASURES

Article 50

1. The judicial authorities shall have the authority to order prompt and effective provisional measures:

(a) To prevent an infringement of any intellectual property right from occurring, and in particular to prevent the entry into the channels of commerce in their jurisdiction of goods, including imported goods immediately after customs clearance;

(b) To preserve relevant evidence in regard to the alleged infringement.

2. The judicial authorities shall have the authority to adopt provisional measures *inaudita altera parte* where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.

3. The judicial authorities shall have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder and that the applicant's right is being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.

4. Where provisional measures have been adopted *inaudita altera parte*, the parties affected shall be given notice, without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period after the notification of the measures, whether these measures shall be modified, revoked or confirmed.

5. The applicant may be required to supply other information necessary for the identification of the goods concerned by the authority that will execute the provisional measures.

6. Without prejudice to paragraph 4, provisional measures taken on the basis of paragraphs 1 and 2 shall, upon request by the defendant, be revoked or otherwise cease to have effect, if proceedings leading to a decision on the merits of the case are not

initiated within a reasonable period, to be determined by the judicial authority ordering the measures where a Member's law so permits or, in the absence of such a determination, not to exceed 20 working days or 31 calendar days, whichever is the longer.

7. Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.

8. To the extent that any provisional measure can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

SECTION 4: SPECIAL REQUIREMENTS RELATED TO BORDER MEASURES¹²

Article 51

Suspension of Release by Customs Authorities

Members shall, in conformity with the provisions set out below, adopt procedures¹³ to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark or pirated copyright goods¹⁴ may take place, to lodge an application in writing with competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into free circulation of such goods. Members may enable such an application to be made in respect of goods which involve other infringements of intellectual property rights, provided that the requirements of this Section are met. Members may also provide for corresponding procedures concerning the suspension by the customs authorities of the release of infringing goods destined for exportation from their territories.

Article 52

Application

Any right holder initiating the procedures under Article 51 shall be required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is prima facie an infringement of the right holder's intellectual property right and to supply a sufficiently detailed description of the goods to make them readily recognizable by the customs authorities. The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and, where determined by the competent authorities, the period for which the customs authorities will take action.

Article 53

Security or Equivalent Assurance

1. The competent authorities shall have the authority to require an applicant to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.
2. Where pursuant to an application under this Section the release of goods involving industrial designs, patents, layout-designs or undisclosed information into free circulation has been suspended by customs authorities on the basis of a decision other than by a judicial or other independent authority, and the period provided for in Article 55 has expired without the granting of provisional relief by the duly empowered authority, and provided that all other conditions for importation have been complied with, the owner, importer, or consignee of such goods shall be entitled to their release on the posting of a security in an amount sufficient to protect the right holder for any infringement. Payment of such security shall not prejudice any other remedy available to the right holder, it being understood that the security shall be released if the right holder fails to pursue the right of action within a reasonable period of time.

Article 54

Notice of Suspension

The importer and the applicant shall be promptly notified of the suspension of the release of goods according to Article 51.

Article 55

Duration of Suspension

If, within a period not exceeding 10 working days after the applicant has been served notice of the suspension, the customs authorities have not been informed that proceedings leading to a decision on the merits of the case have been initiated by a party other than the defendant, or that the duly empowered authority has taken provisional measures prolonging the suspension of the release of the goods, the goods shall be released, provided that all other conditions for importation or exportation have been complied with; in appropriate cases, this time-limit may be extended by another 10 working days. If proceedings leading to a decision on the merits of the case have been initiated, a review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period, whether these measures shall be modified, revoked or confirmed. Notwithstanding the above, where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, the provisions of paragraph 6 of Article 50 shall apply.

Article 56

Indemnification of the Importer

and of the Owner of the Goods

Relevant authorities shall have the authority to order the applicant to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to Article 55.

Article 57

Right of Inspection and Information

Without prejudice to the protection of confidential information, Members shall provide the competent authorities the authority to give the right holder sufficient opportunity to have any goods detained by the customs authorities inspected in order to substantiate the right holder's claims. The competent authorities shall also have authority to give the importer an equivalent opportunity to have any such goods inspected. Where a positive determination has been made on the merits of a case, Members may provide the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer and the consignee and of the quantity of the goods in question.

Article 58

Ex Officio Action

Where Members require competent authorities to act upon their own initiative and to suspend the release of goods in respect of which they have acquired prima facie evidence that an intellectual property right is being infringed:

- (a) the competent authorities may at any time seek from the right holder any information that may assist them to exercise these powers;
- (b) the importer and the right holder shall be promptly notified of the suspension. Where the importer has lodged an appeal against the suspension with the competent authorities, the suspension shall be subject to the conditions, mutatis mutandis, set out at Article 55;
- (c) Members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith.

Article 59

Remedies

Without prejudice to other rights of action open to the right holder and subject to the right of the defendant to seek review by a judicial authority, competent authorities shall

have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in Article 46. In regard to counterfeit trademark goods, the authorities shall not allow the re-exportation of the infringing goods in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances.

Article 60

De Minimis Imports

Members may exclude from the application of the above provisions small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments.

SECTION 5: CRIMINAL PROCEDURES

Article 61

Members shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity. In appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence. Members may provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights, in particular where they are committed wilfully and on a commercial scale.

PART IV

ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY

RIGHTS AND RELATED INTER-PARTES PROCEDURES

Article 62

1. Members may require, as a condition of the acquisition or maintenance of the intellectual property rights provided for under Sections 2 through 6 of Part II,

compliance with reasonable procedures and formalities. Such procedures and formalities shall be consistent with the provisions of this Agreement.

2. Where the acquisition of an intellectual property right is subject to the right being granted or registered, Members shall ensure that the procedures for grant or registration, subject to compliance with the substantive conditions for acquisition of the right, permit the granting or registration of the right within a reasonable period of time so as to avoid unwarranted curtailment of the period of protection.

3. Article 4 of the Paris Convention (1967) shall apply *mutatis mutandis* to service marks.

4. Procedures concerning the acquisition or maintenance of intellectual property rights and, where a Member's law provides for such procedures, administrative revocation and inter partes procedures such as opposition, revocation and cancellation, shall be governed by the general principles set out in paragraphs 2 and 3 of Article 41.

5. Final administrative decisions in any of the procedures referred to under paragraph 4 shall be subject to review by a judicial or quasi-judicial authority. However, there shall be no obligation to provide an opportunity for such review of decisions in cases of unsuccessful opposition or administrative revocation, provided that the grounds for such procedures can be the subject of invalidation procedures.

PART V

DISPUTE PREVENTION AND SETTLEMENT

Article 63

Transparency

1. Laws and regulations, and final judicial decisions and administrative rulings of general application, made effective by a Member pertaining to the subject matter of this Agreement (the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights) shall be published, or where such publication is not practicable made publicly available, in a national language, in such a manner as to enable governments and right holders to become acquainted with them. Agreements concerning the subject matter of this Agreement which are in force between the

government or a governmental agency of a Member and the government or a governmental agency of another Member shall also be published.

2. Members shall notify the laws and regulations referred to in paragraph 1 to the Council for TRIPS in order to assist that Council in its review of the operation of this Agreement. The Council shall attempt to minimize the burden on Members in carrying out this obligation and may decide to waive the obligation to notify such laws and regulations directly to the Council if consultations with WIPO on the establishment of a common register containing these laws and regulations are successful. The Council shall also consider in this connection any action required regarding notifications pursuant to the obligations under this Agreement stemming from the provisions of Article 6ter of the Paris Convention (1967).

3. Each Member shall be prepared to supply, in response to a written request from another Member, information of the sort referred to in paragraph 1. A Member, having reason to believe that a specific judicial decision or administrative ruling or bilateral agreement in the area of intellectual property rights affects its rights under this Agreement, may also request in writing to be given access to or be informed in sufficient detail of such specific judicial decisions or administrative rulings or bilateral agreements.

4. Nothing in paragraphs 1, 2 and 3 shall require Members to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 64

Dispute Settlement

1. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement except as otherwise specifically provided herein.

2. Subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 shall not apply to the settlement of disputes under this Agreement for a period of five years from the date of entry into force of the WTO Agreement.

3. During the time period referred to in paragraph 2, the Council for TRIPS shall examine the scope and modalities for complaints of the type provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 made pursuant to this Agreement, and submit its recommendations to the Ministerial Conference for approval. Any decision of the Ministerial Conference to approve such recommendations or to extend the period in paragraph 2 shall be made only by consensus, and approved recommendations shall be effective for all Members without further formal acceptance process.

PART VI

TRANSITIONAL ARRANGEMENTS

Article 65

Transitional Arrangements

1. Subject to the provisions of paragraphs 2, 3 and 4, no Member shall be obliged to apply the provisions of this Agreement before the expiry of a general period of one year following the date of entry into force of the WTO Agreement.

2. A developing country Member is entitled to delay for a further period of four years the date of application, as defined in paragraph 1, of the provisions of this Agreement other than Articles 3, 4 and 5.

3. Any other Member which is in the process of transformation from a centrally-planned into a market, free-enterprise economy and which is undertaking structural reform of its intellectual property system and facing special problems in the preparation and implementation of intellectual property laws and regulations, may also benefit from a period of delay as foreseen in paragraph 2.

4. To the extent that a developing country Member is obliged by this Agreement to extend product patent protection to areas of technology not so protectable in its territory on the general date of application of this Agreement for that Member, as

defined in paragraph 2, it may delay the application of the provisions on product patents of Section 5 of Part II to such areas of technology for an additional period of five years.

5. A Member availing itself of a transitional period under paragraphs 1, 2, 3 or 4 shall ensure that any changes in its laws, regulations and practice made during that period do not result in a lesser degree of consistency with the provisions of this Agreement.

Article 66

Least-Developed Country Members

1. In view of the special needs and requirements of least-developed country Members, their economic, financial and administrative constraints, and their need for flexibility to create a viable technological base, such Members shall not be required to apply the provisions of this Agreement, other than Articles 3, 4 and 5, for a period of 10 years from the date of application as defined under paragraph 1 of Article 65. The Council for TRIPS shall, upon duly motivated request by a least-developed country Member, accord extensions of this period.

2. Developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base.

Article 67

Technical Cooperation

In order to facilitate the implementation of this Agreement, developed country Members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least-developed country Members. Such cooperation shall include assistance in the preparation of laws and regulations on the protection and enforcement of intellectual property rights as well as on the prevention of their abuse, and shall include support regarding the establishment or reinforcement of domestic offices and agencies relevant to these matters, including the training of personnel.

PART VII**INSTITUTIONAL ARRANGEMENTS; FINAL PROVISIONS*****Article 68******Council for Trade-Related Aspects of******Intellectual Property Rights***

The Council for TRIPS shall monitor the operation of this Agreement and, in particular, Members' compliance with their obligations hereunder, and shall afford Members the opportunity of consulting on matters relating to the trade-related aspects of intellectual property rights. It shall carry out such other responsibilities as assigned to it by the Members, and it shall, in particular, provide any assistance requested by them in the context of dispute settlement procedures. In carrying out its functions, the Council for TRIPS may consult with and seek information from any source it deems appropriate. In consultation with WIPO, the Council shall seek to establish, within one year of its first meeting, appropriate arrangements for cooperation with bodies of that Organization.

Article 69***International Cooperation***

Members agree to cooperate with each other with a view to eliminating international trade in goods infringing intellectual property rights. For this purpose, they shall establish and notify contact points in their administrations and be ready to exchange information on trade in infringing goods. They shall, in particular, promote the exchange of information and cooperation between customs authorities with regard to trade in counterfeit trademark goods and pirated copyright goods.

Article 70***Protection of Existing Subject Matter***

1. This Agreement does not give rise to obligations in respect of acts which occurred before the date of application of the Agreement for the Member in question.

2. Except as otherwise provided for in this Agreement, this Agreement gives rise to obligations in respect of all subject matter existing at the date of application of this Agreement for the Member in question, and which is protected in that Member on the said date, or which meets or comes subsequently to meet the criteria for protection under the terms of this Agreement. In respect of this paragraph and paragraphs 3 and 4, copyright obligations with respect to existing works shall be solely determined under Article 18 of the Berne Convention (1971), and obligations with respect to the rights of producers of phonograms and performers in existing phonograms shall be determined solely under Article 18 of the Berne Convention (1971) as made applicable under paragraph 6 of Article 14 of this Agreement.

3. There shall be no obligation to restore protection to subject matter which on the date of application of this Agreement for the Member in question has fallen into the public domain.

4. In respect of any acts in respect of specific objects embodying protected subject matter which become infringing under the terms of legislation in conformity with this Agreement, and which were commenced, or in respect of which a significant investment was made, before the date of acceptance of the WTO Agreement by that Member, any Member may provide for a limitation of the remedies available to the right holder as to the continued performance of such acts after the date of application of this Agreement for that Member. In such cases the Member shall, however, at least provide for the payment of equitable remuneration.

5. A Member is not obliged to apply the provisions of Article 11 and of paragraph 4 of Article 14 with respect to originals or copies purchased prior to the date of application of this Agreement for that Member.

6. Members shall not be required to apply Article 31, or the requirement in paragraph 1 of Article 27 that patent rights shall be enjoyable without discrimination as to the field of technology, to use without the authorization of the right holder where authorization for such use was granted by the government before the date this Agreement became known.

7. In the case of intellectual property rights for which protection is conditional upon registration, applications for protection which are pending on the date of application

of this Agreement for the Member in question shall be permitted to be amended to claim any enhanced protection provided under the provisions of this Agreement. Such amendments shall not include new matter.

8. Where a Member does not make available as of the date of entry into force of the WTO Agreement patent protection for pharmaceutical and agricultural chemical products commensurate with its obligations under Article 27, that Member shall:

(a) notwithstanding the provisions of Part VI, provide as from the date of entry into force of the WTO Agreement a means by which applications for patents for such inventions can be filed;

(b) apply to these applications, as of the date of application of this Agreement, the criteria for patentability as laid down in this Agreement as if those criteria were being applied on the date of filing in that Member or, where priority is available and claimed, the priority date of the application; and

(c) provide patent protection in accordance with this Agreement as from the grant of the patent and for the remainder of the patent term, counted from the filing date in accordance with Article 33 of this Agreement, for those of these applications that meet the criteria for protection referred to in subparagraph (b).

9. Where a product is the subject of a patent application in a Member in accordance with paragraph 8(a), exclusive marketing rights shall be granted, notwithstanding the provisions of Part VI, for a period of five years after obtaining marketing approval in that Member or until a product patent is granted or rejected in that Member, whichever period is shorter, provided that, subsequent to the entry into force of the WTO Agreement, a patent application has been filed and a patent granted for that product in another Member and marketing approval obtained in such other Member.

Article 71

Review and Amendment

1. The Council for TRIPS shall review the implementation of this Agreement after the expiration of the transitional period referred to in paragraph 2 of Article 65. The

Council shall, having regard to the experience gained in its implementation, review it two years after that date, and at identical intervals which might warrant modification or amendment of this Agreement.

2. Amendments merely serving the purpose of adjusting to higher levels of protection of intellectual property rights achieved, and in force, in other multilateral agreements and accepted under those agreements by all Members of the WTO may be referred to the Ministerial Conference for action in accordance with paragraph 6 of Article X of the WTO Agreement on the basis of a consensus proposal from the Council for TRIPS.

Article 72

Reservations

Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

Article 73

Security Exceptions

Nothing in this Agreement shall be construed:

- (a) to require a Member to furnish any information the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent a Member 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 a Member from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

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Curriculum Vitae (CV)

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- Permanent address: District Mufty, Erbil, Iraq. Nationality: Iraq
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Education

- PhD Student at Near East University
- Academic Title (Lecturer)
- 2013 Master in International Business Law, Girne American University / North Cyprus
- 2006-2007 Bachelor of Law / College of Law & Political Science- Salahaddin University, Erbil.

Work Experience

- 10/2019- present University Lecturer at the Cihan University/ College of Law & Political Science, Law Department, Erbil, Iraq
- 9/2017- present University Lecturer at the Salahaddin University/ College of Law & Political Science, Law Department, Erbil, Iraq
- 1/2015 – 2018, University Lecturer at the Lebanese-French University, Erbil, Iraq
- 12/2013- 1/2015 University Lecturer at the Salahaddin University/ College of Law & Political Science, Law Department, Erbil, Iraq
- 2009- 2011 Manager of the Planning and Monitoring Unit at the Salahaddin University/ College of Law & Political Science, Law Department, Erbil, Iraq.
- 2008-2009 Legal Jurist at Salahaddin University, Jurist Unit, Erbil
- 5/2005 – 9/2008 employee at Public Notary, Erbil.

Qualifications

• Languages

- Kurdish (Mother tongue), Arabic, Turkish, and English.

• Trainings

- 2022 Presented a seminar on the decisions of the Iraqi Federal Court in the workshop at Cihan University
- 2016, Workshop on the amending the regulations on the law of the Private Institutes & Universities.
- 2015, workshop on quality assurance regarding teaching methodologies, Lebanese-French University, Erbil, Iraq.
- 2014 Participated at the international conference on “The Future of Higher Legal Education in Iraq”, held by Tsamota, European Union funded project for supporting the higher legal education in Iraq, Iraq.
- 2014 presented a joint an online seminar with University of Baghdad on (International Commercial Arbitration), under the supervision of the Tsamota Organization.
- 2013 training course on teaching methodologies, Salahaddin University, Erbil.
- 2013, training course on English Language, at Girne American University, North Cyprus.
- 2010, training course on English Language, British Institute, Erbil.
- 2009 training course on IT, Salahaddin University, Erbil.
- 2007-2010, training course on monitoring national elections, the Independent High Electoral Commission, Erbil

• Writings

- Consumer Protection in E- Commerce – A Comparative Study)
- The Civil Responsibility of the Media for their Commercial Declarations

- Legal Security of Laws in Iraq (Commercial and Administrative law as a model)
- Documentary Credit as a Guarantee in International Business and the position of the Iraqi Law
- International environmental law and COVID-19 as a global pandemic
- The role of the UNHCR to resettling the refugees in post-conflict countries - Iraqi and Syrian cases as a model
- Master of Laws (LL.M.) thesis titled “International Commercial Arbitration – A Comparative Study”

Career History

- University Lecturer, teaching Commercial Law, Civil Law, Administrative Law, Academic Debate, History of Law, Introduction to the Law, International Private Law, Nationality Law, Conducting Legal Researches, Code of Civil Procedure, Company Law, Executive Law, Kurd in International Relation (Kurdology), Legal Terminologies (In English), Administrative Law (In English).
- Examination Committee Member, Salahaddin University, Lebanese French University.
- Objections Committee, Lebanese French University.
- Deputy Law Department Director, Lebanese French University.
- Website Coordinator, Lebanese French University.
- Summer Training Supervisor (Court Training), Lebanese French University.
- Manager at Planning and Monitoring Unit, International Coordinator, Internal Statistics.