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BILATERAL WTO-PLUS FREE TRADE AGREEMENTS IN THE
MIDDLE EAST: A CASE STUDY OF OFTA
IN THE POST-TRIPS ERA

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Introduction

Free trade agreements (FTAs) are no longer about trade; these agreements cover foreign investment, labor protection, procurement of services, government contracts, environmental regulation, international dispute resolutions, and a host of other issues.¹ In terms of intellectual property rights,² FTAs have been the most active forums for protecting such rights.³ Moreover, international protection of intellectual property (IP) is becoming the most dynamic area of international law these days.⁴ In the post-TRIPS (Agreement on Trade Related Aspects of Intellectual Property Rights) era, a multilateral

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¹ Sydney M. Cone, III, *The Promotion of Free-Trade Areas Viewed in Terms of Most-Favored-Nation Treatment and Imperial Preference*, 26 MICH. J. INT'L L. 563, 565 (2005); see, e.g., U.S.-Oman Free Trade Agreement, U.S.-Oman, Jan. 19, 2006 [hereinafter OFTA], available at http://www.ustr.gov/Trade_Agreements/Bilateral/Oman_FTA/Final_Text/Section_Index.html. The U.S.-Oman Free Trade Agreement includes chapters entitled Investment, Government Procurement, Financial Services, Labor, Environment, Intellectual Property Rights, Dispute Settlement, and others.

² Intellectual property, for the purposes of this article, includes all forms of intellectual property, such as patents, copyright, trademarks, and trade secrets, unless otherwise indicated.

³ Cortney M. Arnold, *Protecting Intellectual Property in the Developing World: Next Stop—Thailand*, 2006 DUKE L. & TECH. REV. 0010 at ¶ 1, 11.

⁴ JOHN BARTON ET AL., INT'L CTR. FOR TRADE & SUSTAINABLE DEV., BRIEF NO. 1, VIEWS ON THE FUTURE OF THE INTELLECTUAL PROPERTY SYSTEM 1 (2007).

front is not the only avenue to protect IP. Bilateral and regional fronts remain more prevalent; these fronts build on and strengthen the minimum standards established by TRIPS.⁵ After the signing of TRIPS, bilateralism dominates the international regulation of IP.⁶

In the Middle East, OFTA is the last FTA to be signed between the United States and an Arab country.⁷ OFTA is the U.S.-Oman Free Trade Agreement.⁸ The U.S.—a conceptual economy—“has been persistent in promoting the adoption and enforcement of intellectual property regimes throughout the Middle East.”⁹ Currently, the U.S. has shifted the new frontier of international IP protection from the multilateral sphere to the bilateral one.¹⁰ On the other side of the table, the prospect of privileged access to the American market convinces Oman, as a developing country, to adhere to TRIPS and agreements with the U.S. Oman is the third Middle East Free Trade Initiative (MEFTA) partner in 2006.¹¹ Oman has repeatedly hosted U.S. military facilities, and has been its partner in national security; Oman has been especially active in supporting U.S. efforts to close funding for terrorists.¹² OFTA mirrors the previous FTA between the

⁵ Daniel Gervais, *Intellectual Property, Trade & Development: The State of Play*, 74 FORDHAM L. REV. 505, 535 (2005) (arguing that two diverging directions may be taken in the post-TRIPS era; the TRIPS-related development within the WTO, which wants to be more responsive to the perceived needs of developing countries, and, on the other hand, the bilateral and regional trade agreements that mirror the maximalist approach).

⁶ Ruth L. Okediji, *Back to Bilateralism? Pendulum Swings in International Intellectual Property Protection*, 1 U. OTTAWA L. & TECH. J. 125, 141 (2003-2004).

⁷ Press Release, Office of the U.S. Trade Representative, United States and Oman Sign Free Trade Agreement (Jan. 19, 2006), available at http://www.ustr.gov/assets/Document_Library/Press_Releases/2006/January/asset_upload_file25_8774.pdf.

⁸ OFTA, *supra* note 1.

⁹ John Carroll, *Intellectual Property Rights in the Middle East: A Cultural Perspective*, 11 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 555, 566 (2000).

¹⁰ See OFFICE OF THE U.S. TRADE REPRESENTATIVE, 2004 SPECIAL 301 REPORT: EXECUTIVE SUMMARY (2004), available at http://www.ustr.gov/assets/Document_Library/Reports_Publications/2004/2004_Special_301/asset_upload_file963_5996.pdf (indicating that the foreign policy of the U.S. is committed to strengthening IP by negotiating FTAs with other countries).

¹¹ Robert Z. Lawrence, *Recent U.S. Free Trade Initiatives in the Middle East: Opportunities but no Guarantees* 2, 4 (John F. Kennedy Sch. of Gov't Faculty Research Working Paper Series, Working Paper No. RWP06-050), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=939656.

¹² *Id.* at 12-13.

U.S. and Morocco which, in turn, is the model for other FTAs in the Middle East.¹³

IP laws are private laws;¹⁴ however, there is an increasing importance of public international law in this area. Consider the Berne Convention, which is a private international agreement that entitles private parties with rights in literary and artistic works.¹⁵ TRIPS, by contrast, is a public international law instrument which governs disputes between public entities and nation states, and has procedures to adjudicate such disputes and to sanction states for violating its rules.¹⁶ Bilateral free trade agreements are not that different from TRIPS. Although Chapter 15 (IP chapter in OFTA) gives investors certain rights, the obligations laid down are for governments to implement.¹⁷ In most of the current literature, the private aspect of IP is discussed; far less attention is given to the public law aspects of international IP law, which is the focus of this article.

In this article, Part I depicts the protection of IP in Islamic law. This Part will provide the context that will be helpful in analyzing how an international agreement like a free trade agreement affects the IP domestic laws and regulations in the region, and will follow with a profile of Oman. Part II illustrates the importance of international protection of IP rights and of free trade agreements in U.S. trade policy, and their role in effecting this protection overseas through exporting U.S. norms to other countries. Part II also discusses the three phases of U.S. policy in protecting IP rights. Part III provides a brief background to OFTA, including the political and economic concerns in both the U.S. and Oman. Part IV analyzes the interaction between international law and domestic law through analyzing the IP chapter in OFTA and how it affects the IP laws and regulations in Oman, and highlights the judicial and legislative challenges in adapting to the law; this Part focuses on the specific OFTA provisions related to IP and offers recommendations on how Oman can fully benefit from its commitment to OFTA, which can then be extrapolated to other developing countries in similar circumstances.

¹³ OFTA, *supra* note 1.

¹⁴ Peter Yu, *World Trade, Intellectual Property and the Global Elites: An Introduction*, 10 CARDOZO J. INT'L & COMP. L. 1, 1 (2002).

¹⁵ See World Intellectual Property Organization, Berne Convention for the Protection of Literary and Artistic Works, May 4, 1896, *available at* http://www.wipo.int/treaties/en/ip/berne/trtdocs_wo001.html.

¹⁶ Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, 1869 U.N.T.S. 299, *available at* http://www.wto.org/english/tratop_e/trips_e/t_agm0_e.htm.

¹⁷ OFTA, *supra* note 1.

PART I

This Part proceeds in two sections. The first section analyzes the protection of IP in Islam, and the second gives a profile of Oman—the last Arab country to sign a free trade agreement with the U.S.—and its relationship with the U.S.

IP Protection in Islamic Law and the Culture of the Middle East

The protection of poetry was the Arabs' introduction into the realm of IP; poetry played an essential role in the cultural life of ancient Arabs.¹⁸ Fine poetry was highly regarded by Arabs in Jahilya (an Arabic term used to describe the pre-Islam period).¹⁹ It is considered to be the major artistic expression of the Jahilya era.²⁰ Arabs recognized copyright from the very early days, while trademark and patent evolved in later stages.²¹ Desert living required mutual reliance for the sake of survival, and poetry was easily adaptable to transient lifestyles and has been used for millennia to express shared ancient ideals. Although this article is devoted to analyzing the role of free trade agreements in strengthening IP protection in the Middle East, turning a blind eye to the relevant historical, moral, conceptual, and legal background of Islam with respect to the protection of IP will create a distorted view of the topic. This would isolate the free trade agreement from the whole framework provided by Islamic law.

IP is part of property; there is no absolute ownership in Islam, as property belongs to God and goes down to the people through inheritance in Islam.²² However, ownership is sacred and absolute in scope, and any trespass would be a sin against the Sharia.²³ This is the main overarching principle in Islam which protects private ownership. Therefore, an understanding of the enforcement and the recognition of IP rights in the Middle East is incomplete without an understanding of the cultural and religious forces that are deeply rooted in the history of

¹⁸ Amir H. Khoury, *Ancient and Islamic Sources of Intellectual Property Protection in the Middle East: A Focus on Trademarks*, 43 IDEA 151, 153 (2003).

¹⁹ *Id.*

²⁰ *Id.*

²¹ See Amir Khoury, *The Development of Modern Trademark Legislation and Protection in Arab Countries in the Middle East*, 16 TRANSNAT'L LAW. 249 (2003).

²² Heba Raslan, *Sharia and the Protection of Intellectual Property—The Example of Egypt*, 47 IDEA 497, 515-18 (2007).

²³ *Id.* at 515-16.

the Middle East.²⁴ Islam is not only an integral part of the Middle Eastern heritage; it is more than a faith, as it defines the law of many countries in the Middle East.²⁵

Sharia—the most influential law in the region—was developed and assembled during the first three centuries after Prophet Mohamed’s death, and consists of the holy Quran, the pronouncements and deeds of Mohamed and his companions (Hadith), and Ijma—the agreement of Muslims on a certain issue—and Ijtihad, which is the use of mentality to explore new rules not expressly mentioned in either the Quran or the Hadith.²⁶

Sharia—a religiously-based law—has tremendous force, both legally and economically, throughout the Middle East. Islamic law offers guidance on spiritual duties, personal status, and inheritance, and provides general principles in other areas, like contract law.²⁷ IP is an area that Islamic law has not taken a stance on from the beginning; however, it is important to depict the academic debate about whether IP is protected under the main principles in Islamic law.²⁸ There are two contemporary schools in Sharia regarding the protection of IP.²⁹ The first is against the protection of IP rights, arguing that the concept of ownership in Sharia is confined to tangible objects only; intangible objects were not subject to any protection under the Quran, the Sunnah, or the juristic views of the earlier Muslim jurists.³⁰ The second school, which represents the majority of Muslim scholars, contends that there is nothing in Sharia that enjoins or contravenes protection and enforcement of IP rights, and that Muslims should abide by their contracts and the laws applied in their countries.³¹

In the Middle East—an area where cultural issues inform policy—IP protection goes largely unenforced due to combined social and political factors.³² Yet, the legal regimes remain ineffective in many instances, or have enforcement problems.³³ In general, many Middle Eastern countries have stringent IP laws and regulations; for example, Egyptian laws and regulations are in accordance with international standards, and some governments have created IP

²⁴ Khoury, *supra* note 18, at 158.

²⁵ Carroll, *supra* note 9, at 583.

²⁶ Raslan, *supra* note 22, at 505-09.

²⁷ Steven Jamar, *The Protection of Intellectual Property Under Islamic Law*, 21 CAP. U. L. REV. 1079, 1080-1083 (1992).

²⁸ *See id.*

²⁹ Raslan, *supra* note 22, at 501.

³⁰ *Id.* at 501-02.

³¹ *Id.* at 502.

³² Carroll, *supra* note 9, at 560-61.

³³ *See id.* at 560.

enforcement divisions.³⁴ Lebanon has enacted a comprehensive IP regime, while Oman and Bahrain have copyright issues.³⁵ “Middle Easterners retain a strong sense that their culture is separate and distinct from that of the West. Middle Eastern culture is derived from particular perceptions of history and religion.”³⁶ This region has noticed two equally important events; the first is the coming of Islam, and the second is the intrusion of the West.³⁷

IP protection in the Arab world has long been considered one of the weaknesses in the region’s economic development framework.³⁸ Despite desires to meet the social and economic demands of the region’s growing population, the lack of sufficient IP protection—whether in terms of adequate legislation or enforcement of existing legislation—holds back development in that region.³⁹ However, the last decade has witnessed significant changes in Arab countries’ IP regimes, and some of the most important changes in the region’s history are on the immediate horizon. Arab countries resisted establishing minimum standards of IP protection because they felt this would benefit only the developed countries, while the rest of the world paid more for technology and advancement. This is the perspective of developing countries.⁴⁰ Recent IP laws and regulations and poor enforcement are major problems in the Arab world; there are not many legislative or judicial decisions with respect to enforcement of IP laws and regulations in this region. Minimum international standards in copyrights, patents, trademarks, designs, and geographical indications have been introduced by TRIPS to Arab countries who signed this agreement.⁴¹ However, it is questionable that the legal environment in the Middle East can sustain more enhanced IP standards, like those enshrined in the bilateral free trade agreements.

Infringements of IP rights in the Middle East include every aspect of those rights, and are not limited to copyright violations only, which are more prevalent in countries like Egypt, Iran, and Israel. Trademarks are also violated in the United Arab Emirates (UAE),

³⁴ *Id.* at 559-60.

³⁵ *Id.* at 560.

³⁶ *Id.* at 573.

³⁷ *Id.* at 576-77.

³⁸ TALAL ABU-GHAZALEH, INTELLECTUAL PROPERTY LAWS OF THE ARAB COUNTRIES xi (Kluwer Law Int’l 2000) (1938).

³⁹ *Id.*

⁴⁰ *Id.* at xiii.

⁴¹ *Id.* at xiv.

particularly with regard to automobile parts.⁴² Computer software in the Middle East is rarely genuine, and most of the time illegal copies are circulated among the people in banks and firms. In Saudi Arabia and Egypt, many companies still consider it their right to buy one legal package of each software product and copy it internally, without permission of the owner of the software package.⁴³

John Carroll highlighted two main reasons for such reluctance despite the TRIPS-compliance laws and regulations. The West is perceived by Middle Easterners as damaging the Middle East since the times of the Crusades and colonization until now. Also, the Western culture is seen as corrupt and immoral, and granting IP rights means extending this culture. Ironically, Middle Easterners decry copying as immoral and promote a fundamental respect for the works of other Middle Easterners, while at the same time indiscriminately pirating Western goods.⁴⁴

These practices contradict Sharia, which calls for strong punishment for transgressions against personal property.⁴⁵ There is neither an excuse in Sharia for denying national and foreign IP owners their rights, nor an excuse for lax enforcement of IP laws. On the contrary, the principles of Sharia enjoin any transgression against these rights and obligate Muslim governments to strongly guard and enforce them.⁴⁶ Hence, one can say that protection of IP is compatible with Islamic notions and concepts.

Profile of Oman

Relationship between Oman and United States

Located in southwest Asia, the Sultanate of Oman displays the following characteristics: it is an Islamic, Asian, and Arabic country. Over the years, Oman's legal system has been mainly influenced by Egyptian and French law; hence, it is similar to a civil law system.⁴⁷ The Omani constitution has likewise acknowledged the necessity to bring its laws into accord with international recommendations.⁴⁸ Article 11 of the Omani constitution provides that "[t]he basis of the

⁴² Carroll, *supra* note 9, at 558.

⁴³ *Id.* at 558-59.

⁴⁴ *Id.* at 589-90.

⁴⁵ Raslan, *supra* note 22, at 558.

⁴⁶ *Id.* at 559.

⁴⁷ See generally GIL FEILER, MIDDLE EAST IN THE NEW MILLENNIUM: ECONOMIC DEVELOPMENT AND BUSINESS LAW (2000), for further discussion on the influence of French law on Arab countries.

⁴⁸ SULTANI DECREE NO. (101/96) [Constitution] art. 10 (Oman), available at http://www.mola.gov.om/basic_statute.pdf.

national economy is justice and the principles of a free economy.”⁴⁹ Oman is a member country and signatory of a number of international conventions—particularly IP conventions. Oman has been a party to the Paris Convention for the Protection of Industrial Property since July 14, 1999.⁵⁰ Oman joined the World Trade Organization on November 9, 2000.⁵¹

The Omani economy has been radically transformed over a series of development plans, beginning with the First Five-Year Plan (1976-1980).⁵² Sultan Qaboos—the ruler of the country—encourages market-orientated policies and private sector development as the mechanism for prosperity and growth. Since the fall of oil prices in 1998, Oman has made active plans to diversify its economy and is placing a greater emphasis on other areas of industry, such as tourism and natural gas.⁵³

Based on a clearly-defined set of principles that encourage the building of bridges with other nations and, wherever possible, the opening up of opportunities for increased co-operation, Oman’s foreign policy is set.⁵⁴ The Sultanate believes strongly in maintaining contacts and dialogue with other nations and peoples in order to develop continued mutual understanding and co-operation.⁵⁵ It supports any genuine efforts to develop closer relations or resolve differences through dialogue and within the context of international law and legitimacy, and also believes that peace and stability can best be established through tolerance and recognition of common interests.⁵⁶ This is why Oman has been an active member in the

⁴⁹ THE WHITE BOOK—THE BASIC LAW OF THE SULTANATE OF OMAN [Constitution] art. 11, available at http://servat.unibe.ch/icl/mu00000_.html.

⁵⁰ World Intellectual Property Organization, Contracting Parties to the Paris Convention, [http://www.wipo.int/treaties/en/ShowResults.jsp?country_id=135C & start_year=ANY&end_year=ANY&search_what=C&treaty_id=2](http://www.wipo.int/treaties/en/ShowResults.jsp?country_id=135C&start_year=ANY&end_year=ANY&search_what=C&treaty_id=2) (last visited Mar. 24, 2008).

⁵¹ World Trade Organization, Members and Observers, http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm (last visited Mar. 24, 2008).

⁵² Sultanate of Oman: Ministry of National Economy, Planning & Development, http://www.moneoman.gov.om/dev_strategy1.asp (last visited Mar. 24, 2008).

⁵³ Ministry of Information: Sultanate of Oman, Overview: The Seventh Five Year Plan (2006-2010), <http://www.omanet.om/english/commerce/econ1.asp?cat=comm> (last visited Mar. 24, 2008).

⁵⁴ Ministry of Information: Sultanate of Oman, Government: Foreign Affairs, <http://www.omanet.om/english/government/foreign.asp?cat=gov> (last visited Mar. 24, 2008).

⁵⁵ *Id.*

⁵⁶ *Id.*

United Nations and international organizations such as UNESCO, the World Health Organization (WHO) and the World Trade Organization (WTO).⁵⁷

Looking back at the nation's history, the Omanis were among the first people to embrace Islam voluntarily, around 630 A.D., when Prophet Mohamed sent his envoy, Amr ibn Al As, to meet the nation's joint rulers, Jaifar and 'Abd, to invite them to accept Islam.⁵⁸ In accepting this faith, Oman became an Ibadhi state under the rule of an elected leader, the Imam.⁵⁹ During the early years of the Islamic mission, Oman played a large role in the Wars of Apostasy following Mohamed's death, and was also involved in the great Islamic conquests by land and sea in Iraq, Persia, and beyond.⁶⁰ However, its most prominent role in this respect came via its extensive trading and seafaring activities in East Africa, especially throughout the 19th century, when it propagated Islam in many of the coastal regions of East Africa, as well as in certain areas of Central Africa; Omanis also carried the message of Islam to China and the Asian ports.⁶¹ Oman defined itself clearly as a Muslim, Arab, and Asian country, which has limited resources but a wealth of hopes and potential in the Middle East.

PART II

International Protection of Intellectual Property (IP)

This Part will explore the link between international trade and IP; however, a brief orientation of the international law on IP is critical.

International Protection of IP

The Berne and Paris Conventions form the foundation of the multilateral IP regime; however, they lacked detailed provisions on effective enforcement of rights and a binding dispute resolution mechanism.⁶² The inadequacy of these two conventions motivated the U.S. and the European Union (E.U.) to push for a supranational code

⁵⁷ *Id.*

⁵⁸ Ministry of Information: Sultanate of Oman, History, <http://www.omanet.om/english/history/overview.asp> (last visited Mar. 24, 2008).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Olivier Vrins & Marius Schneider, ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS THROUGH BORDER MEASURES 38 (2006).

(the TRIPS Agreement).⁶³ This dates back to the beginning of the Uruguay Round of the GATT negotiations in the 1980s.⁶⁴ Earlier in the history of IP, international treaty regimes governed IP for many years under the auspices of the World Intellectual Property Organization (WIPO), a U.N. organization founded in 1970 to promote new treaties and cooperation, and to centralize the administration of resulting international conventions.⁶⁵ WIPO's primary goals are promoting the protection of IP across the globe through cooperation among nations and in collaboration with other international organizations, and ensuring cooperation in administrative matters among IP unions.⁶⁶ As a specialized arm of the United Nations, WIPO is empowered to promote creative intellectual activity and to facilitate the transfer of IP-related technology to developing countries.⁶⁷ WIPO's mission is to accelerate developing nations' economic, social, and cultural development, within the boundaries inherent to the U.N. and its organs.⁶⁸ However, out of dissatisfaction with the progress of WIPO in protecting IP, the U.S. rallied the developed countries in shifting the forum from WIPO to GATT, thus linking IP to trade.⁶⁹ Accordingly, TRIPS was designed so that IP protection is now related to trade concessions.

During the negotiation of TRIPS, both developing and developed countries had very divergent views on the level of protection that should be granted to IP. Developed countries argued that the exploitation of IP protection is the engine of economic growth and technical competence for developing countries.⁷⁰ Developing countries, on the other hand, perceived a sophisticated IP regime as disproportionately benefiting foreign investors while administrative

⁶³ See Peter K. Yu, *Currents and Crosscurrents in the International Intellectual Property Regime*, 38 LOY. L.A. L. REV. 323, 354-64 (2004).

⁶⁴ *Id.*

⁶⁵ Frank Garcia, *Protection of Intellectual Property Rights in the North American Free Trade Agreement: A Successful Case of Regional Trade Regulation*, 8 AM. U. J. INT'L L. & POL'Y 817, 821 (1993).

⁶⁶ Laurinda L. Hicks & James R. Holbein, *Convergence of National Intellectual Property Norms in International Trading Agreements*, 12 AM. U. J. INT'L L. & POL'Y 769, 782 (1997).

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ See Yu, *supra* note 63, at 354-64.

⁷⁰ George Y. Gonzalez, *An Analysis of the Legal Implications of the Intellectual Property Provisions of the North American Free Trade Agreement*, 34 HARV. INT'L L.J. 305, 310 (1993).

costs consumed strained domestic resources.⁷¹ The economic and social costs of TRIPS have been high in the developing countries, even though the prevailing view was that establishing IP rights would encourage technology transfers and make developing countries more attractive to foreign investment, which would lead to economic growth and development.⁷² Therefore, any future multilateral agreements on increased protection of IP are highly unlikely.

Accordingly, due to little hope in having progress in IP protection multilaterally, regional and bilateral free trade agreements turned out to be an attractive option to developed countries, which were clearly looking for more protection. Hence, current international IP systems mirror the international trading system; both of them have two tracks, the multilateral track and the regional/bilateral track.⁷³

Peter Yu has mentioned that the international IP regime is subject to currents of multilateralism which push for uniformity and the crosscurrents of resistance which call for national autonomy and international diversity. In fact, the regime is not fully harmonized; he highlighted five factors disharmonizing the international regime of IP.⁷⁴

Nonetheless, there is no single source of international standards for IP, as these standards are derived from a multitude of international sources, including multilateral and bilateral treaties, regional harmonization derivatives, and key decisions from recognized courts like the European Court of Justice.⁷⁵

Professor Helfer described the complexity of international IP regimes when he explained that what began as a regime with a single intergovernmental organization [WIPO] then became a bimodal regime with two predominant organizations [WTO and WIPO], and has now morphed into a multi-model or conglomerate regime populated by numerous intergovernmental bodies and networks of regional and bilateral agreements.⁷⁶ The international IP regime is a complex one, representing an amalgam of national laws, multilateral

⁷¹ *Id.*

⁷² *Id.* at 311; see also A. Samuel Oddi, *International Patent System and Third World Development: Reality or Myth?*, 1987 DUKE L.J. 831 (discussing seven costs borne by the state that institutes an IP protection system).

⁷³ See Larry Crump, *Global Trade Policy Development in a Two-Track System*, 9 J. INT'L ECON. L. 487, 487-90 (2006).

⁷⁴ See Peter K. Yu, *Five Disharmonizing Trends in the International Intellectual Property Regime* (Mich. State Univ. Legal Studies Research Paper No. 03-28), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=923177.

⁷⁵ GRAEME B. DINWOODIE ET AL., *INTERNATIONAL INTELLECTUAL PROPERTY LAW AND POLICY* 41, 51-52 (2001).

⁷⁶ Laurence Helfer, *Regime Shifting: The TRIPS Agreement and New Dynamics of International Intellectual Property Lawmaking*, 29 YALE J. INT'L L. 1, 82 (2004).

conventions, bilateral and regional agreements, and supranational codes.⁷⁷

Free Trade and Intellectual Property in U.S. Trade Policy

Various economic and political interests associated with free trade and with the growth of commercial enterprise have affected the regulation of IP rights between countries.⁷⁸ IP has become a major component of international trade in the U.S.; the American information-based economy, in the increasingly globalized world, has become vulnerable to piracy, expropriation, and otherwise inadequate protection of its IP in foreign countries—particularly third-world countries.⁷⁹ Simultaneously, new technological developments have burst upon the international marketplace. These developments, like the production and advancement of products such as computers, semiconductors, and software, as well as biotechnology goods and pharmaceuticals, usually fall under the legal protection of IP rights.⁸⁰ Consequently, adequate protection of IP rights has become an increasingly important issue in the world of trade. The multinational corporations in the U.S. are concerned about, and affected by, the inadequate protection of IP rights and the non-enforcement of these rights, which imposes a significant burden on worldwide trade.⁸¹

In response, the U.S.—the lead exporter of technology and copyright protection—developed a strategy to expand the scope of IP protection. This strategy revolved around three overlapping concepts: (1) the creation of an effective dispute settlement mechanism for substantive IP rights; (2) the expansion of the definition of investment to include IP rights; and (3) the non-violation complaint alleging nullification or impairment of benefits. This strategy was successfully implemented in NAFTA⁸² and in the WTO and bilateral and

⁷⁷ Yu, *supra* note 63, at 443.

⁷⁸ Okediji, *supra* note 6, at 133.

⁷⁹ Marshall A. Leaffer, *Protecting United States Intellectual Property Abroad: Toward a New Multilateralism*, 76 IOWA L. REV. 273, 274 (1991).

⁸⁰ Anwar Imam, Note, *Reconciling the FTAA and TRIPS; Can a Free Trade Area of the Americas be a Fair Trade Area of the Americas? Implications of a Hemispheric Intellectual Property Agenda*, 1 LOY. U. CHI. INT'L L. REV. 217, 219 (2003).

⁸¹ *Id.* at 222.

⁸² Ralph Fischer, *The Expansion of Intellectual Property Rights by International Agreement: A Case Study Comparing Chile and Australia's Bilateral FTA Negotiations With the U.S.*, 28 LOY. L.A. INT'L & COMP. L. REV. 129, 132 (2006).

multilateral agreements.⁸³ Tackling all these agreements goes beyond the scope of this article, hence I will limit my research to bilateral free trade agreements.

Recognizing the importance of IP and innovation for the future growth and enhanced productivity of the U.S. economy, the Office of Intellectual Property and Innovation for the United States Trade Representative (USTR) utilizes a wide variety of bilateral and multilateral trade tools for the promotion of strong IP laws and effective enforcement throughout the world.⁸⁴ Some of these tools include:

- Bilateral engagement with U.S. trading partners;
- The annual “Special 301” review (Special 301), and reviews of compliance with the intellectual property requirements of U.S. trade preference programs;
- Negotiation of intellectual property chapters of bilateral and regional trade agreements; and
- Multilateral engagement through the World Trade Organization (WTO).⁸⁵

The USTR also provides leadership for trade policies among all the interagency initiatives in order to help enforcement of IP rights.⁸⁶ In addition to focusing on IP, the USTR’s Office of Intellectual Property and Innovation creates and implements trade policy for many U.S. innovations, including those in the pharmaceutical and medical technology industries.⁸⁷

⁸³ *Id.*

⁸⁴ Office of the United States Trade Representative, Focus on Intellectual Property and Innovation, http://www.ustr.gov/Trade_Sectors/Intellectual_Property/Section_Index.html (last visited Mar. 21, 2008).

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

Phases of Protection of IP in U.S. Trade Policy

First Track/Unilateral Remedies

Looking back at history, the industries in the U.S. have requested the government to “withhold economic aid from developing countries that refused to provide strong levels of protection for foreign investors.”⁸⁸ This practice later became Special 301, which is a set of provisions under the Trade Act of 1974, requiring the USTR to identify countries that deny adequate and effective IP rights protection or deny fair and equitable market access to U.S. companies that rely on IP protection.⁸⁹ Foreign countries are either placed onto a priority foreign countries list (“watch list”), or the Section 306 monitoring list, according to how deficient existing IP protection is.⁹⁰

Priority foreign countries are those that have the most egregious acts being performed against the U.S. and its products.⁹¹ The USTR has the authority to initiate investigations into a country’s activities if it fails within thirty days to enforce agreements or to make efforts to stop the illegal activities that occur.⁹² Priority watch list countries lack adequate IP protection or market access, so there will be ongoing negotiations about IP rights problems while a country is on this list.⁹³ The U.S. expects watch list countries to pass legislation or to develop remedies that conform to an agreement or to U.S. standards.⁹⁴

The U.S. has unilaterally taken it upon itself to monitor the trade and business practices of other countries in order to discern instances in which unfair trade practices warrant U.S. warnings or threats of retaliation to the offending countries if such countries do not agree to rectify their offensive behavior.⁹⁵ Unilateral measures adopted by the U.S. have been subject to criticism worldwide. Special

⁸⁸ Okediji, *supra* note 6, at 139.

⁸⁹ Arnold, *supra* note 3, ¶ 6.

⁹⁰ *Id.*

⁹¹ Alisa Wrase, *U.S. Bilateral Agreements and the Protection of Intellectual Property Rights in Foreign Countries: Effective for U.S. Intellectual Property Interests or a Way Out of Addressing the Issue?*, 19 DICK. J. INT’L L. 245, 252 (2000).

⁹² *Id.* at 252-53.

⁹³ *Id.* at 253.

⁹⁴ *Id.*

⁹⁵ DINWOODIE ET AL., *supra* note 75, at 782.

301 not only violates the multilateralism system through introducing unilateral measures, but it also contradicts the principle of non-discrimination and brings an element of discretion to trade relations that creates potential for abuse by the developed countries.⁹⁶

Second Track/Multilateralism

The U.S. has been an ardent supporter of the multilateral trading system during the Uruguay Round, as one of the major issues that triggered a controversy was whether the covered agreements would include IP rights.⁹⁷ Developing countries strongly opposed the idea, but the U.S. and several Western countries called for integrating IP into the GATT system.⁹⁸ The U.S. was looking for adequate worldwide protection of American IP, given the fact that the U.S. was not satisfied with the enforcement provisions in the Berne and Paris agreements.⁹⁹

Yet, until the Uruguay Round, international protection standards were decided under the auspices of WIPO and its predecessor non-trade-related organizations. By contrast, TRIPS was negotiated wholly under the auspices of GATT—a trade organization.¹⁰⁰ The main achievement—as highlighted by the Reagan administration at this time—was to subject IP standards to an effective dispute settlement mechanism.¹⁰¹ Its provisions were the result of bargain-linkage diplomacy, whereby IP protection was expressly linked to trade concessions in non-IP-related areas, such as agriculture and textiles.¹⁰² GATT, unlike WIPO, is a multilateral trade negotiation forum, which offers opportunities for creative bargaining. Moreover, since the beginning of the Uruguay Round, efforts on both regional and international levels to create a harmonized international IP system have intensified. The topic of the debate has expanded from the need to combat global piracy to the role of IP protection in such diverse areas as sustainable development, treatment of medical pandemics, protection of biota, and the stewardship of the cultural heritage of indigenous peoples. There is no question that important multiregional treaties, such as the TRIPS Agreement and the Paris and

⁹⁶ *Id.* at 783.

⁹⁷ Helfer, *supra* note 76, at 20-21.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Gerald J. Mossinghoff, *National Obligations Under Intellectual Property Treaties: The Beginning of a True International Regime*, 9 FED. CIR. B.J. 591, 599 (1999-2000).

Berne Conventions, establish international minimum substantive standards of protection for traditional forms of IP.¹⁰³

IP becomes more important as developed countries progress in their economic growth and industrial development.¹⁰⁴ Indeed, the industrialized states have increased their IP protection in parallel with increases in their technological and cultural development.¹⁰⁵ However, the U.S. was slow to recognize IP rights for foreign creators, doing so only when its own IP industries were highly developed, and it, in effect, built its cultural industries partly by permitting piracy of the works of foreign writers. The U.S. became a signatory to the Berne Convention for the Protection of Literary and Artistic Works only in 1989, and the U.S. was also slow to recognize foreign activities in patent law, in an effort to encourage importation of new techniques into the country.¹⁰⁶

Third Track/Bilateralism

Since the U.S. succeeded in shifting the forum from WIPO to WTO in relation to the protection of IP, bilateral and regional agreements have been pursued by the U.S. to effectuate the benefits of forum-shifting and to overcome limitations imposed by TRIPS.¹⁰⁷ The

¹⁰³ Doris Estelle Long, Book Note, 96 AM. J. INT'L L. 755, 756 (2002) (reviewing G. GREGORY LETTERMAN, *BASICS OF INTERNATIONAL INTELLECTUAL PROPERTY LAW* (2001)).

¹⁰⁴ Anna Kingsbury, *Intellectual Property Provisions in Bilateral and Regional Free Trade Agreements: What Should New Zealand Expect from a New Zealand/United States Free Trade Agreement?*, 10 N.Z. BUS. L.Q. 222.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ "New bilateralism is clearly a tool to effectuate the benefits of forum shifting . . . and to sustain the expansion of intellectual property rights at the expense of the public interest both in developed and developing countries." Okediji, *supra* note 6, at 141.

Forum shifting is the practice of utilizing different institutional fora to accomplish desired goals. For example, the shift from WIPO to the WTO was classic forum shifting by the United States, which at the time was frustrated with WIPO's institutional weaknesses. Similarly, the shift from the WTO to bilateral and multilateral arrangements is another example of forum shifting to accomplish specific goals with respect to intellectual property.

Id. at 141, n.95.

U.S. has consistently raised IP protection standards abroad through the use of unilateral, bilateral, and multilateral action. For several reasons, including the breakdown of negotiations in Cancun and the unlikely success of any multilateral agreement seeking more protection of IP rights, the U.S. has become increasingly involved in FTA negotiations. FTAs are one of the tools used by the U.S. to globalize the norms of IP at a remarkable rate.¹⁰⁸ In order to lower the transaction costs of bilateralism, the U.S. developed a model or prototype of the kind of bilateral treaties it wishes to have with other countries. The minimum standards of TRIPS have been exceeded by IP chapters in FTAs.

Bilateralism is the main route taken to support U.S. industry in its inexorable campaign to increase the levels of IP protection worldwide. Some scholars accuse bilateralism of operating in a context of deep asymmetry, as the U.S. chooses to negotiate with developing countries that have little bargaining power.¹⁰⁹ It is clear that FTAs are an effective tool in depriving developing countries of the flexibilities allowed by the TRIPS Agreement. Multinational corporations were behind the linkage of trade and IP, first in the domestic U.S. context and then in the WTO.¹¹⁰ Again aiming at gaining more profits and shareholder value, these multinational corporations lobbied to pressure the USTR in bilateral agreements not to accompany TRIPS implementation with strong measures destined to optimize local research, development, and innovation in developing countries.¹¹¹ Rather, those companies had no choice but to pursue this course of action and to consider new export markets and lower cost production centers, while maintaining the technological superiority of the West and its economic dominance.¹¹²

The strategy to seek greater protection of IP through unilateral pressure has been supplemented by more effective approaches. "TRIPS-plus" obligations are extracted in exchange for trade concessions in the context of free trade agreements.¹¹³ FTAs remain a strategic, rather than a commercial, objective for the U.S.¹¹⁴ They are a reaction toward the growing resistance that the U.S. encounters in multilateral settings.¹¹⁵ Unlike multilateralism, which is based on non-

¹⁰⁸ Ewell E. Murphy, Jr., *Charting the Transnational Dimension of Law: U.S. Free Trade Agreements as Benchmarks of Globalization*, 27 HOUS. J. INT'L L. 47, 67 (2004).

¹⁰⁹ Carlos Correa, *Bilateralism in Intellectual Property: Defeating the WTO System for Access to Medicines*, 36 CASE W. RES. J. INT'L L. 79, 93 (2004).

¹¹⁰ See generally Yu, *supra* note 74.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ See generally Okediji, *supra* note 6.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

discrimination, bilateralism is based on a preferential or reciprocal basis.¹¹⁶ The willingness of developing countries to enter into bilateral or regional trade agreements which cost more in terms of IP is simply “a reflection of an extant and established wisdom handed down by the international agenda of the post-World War II era to assimilate developing countries into the world economic order on terms predetermined by the developed countries based on their own historical experiences and priorities.”¹¹⁷

Two benefits appear for the U.S. due to the switch to bilateralism. “First, by effectuating forum-shifting and reducing the number of negotiating parties, the U.S. can provide side payments that it would not be able to offer in a multilateral forum, given the diversity of interests the U.S. has *vis a vis* the contracting states.”¹¹⁸ Secondly, by switching to bilateralism, the U.S. can also prevent less developed countries from reopening the TRIPS negotiations with a better bargaining position, so bilateral FTAs are used to dismantle the coalition of the developing countries in negotiations.¹¹⁹

FTAs are clearly expanding IP rights worldwide through a bilateral regime. Bilateral FTAs are the new dynamic of international IP lawmaking. Simultaneously, the U.S. focused on intra-regime shifts to divide and conquer the opposing parties to stronger IP protection as WTO negotiations progressed. On the other side, the developing countries started forming a veto coalition against the ratcheting up of IP standards, and they successfully obtained the Doha Declaration in November 2001.¹²⁰ The U.S. responded by adopting bilateral free trade agreements which would help the U.S. in picking off the developing countries one by one and would maximize IP standards.¹²¹ The key here is whether bilateral free trade agreements can be used to create new norms of IP. TRIPS has many provisions that reflect the concerns of the developing countries with respect to IP, while the provisions of FTAs reflect the disparate bargaining power between developed and developing countries; moreover, FTAs take away all the gains of the developing countries found in TRIPS.¹²²

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ See Yu, *supra* note 74, at 16.

¹¹⁹ *Id.*

¹²⁰ Okediji, *supra* note 6, at 144-45.

¹²¹ *Id.*

¹²² *Id.* at 144.

Bilateralism is a strategic tool for the developed countries to ameliorate the dead-weight loss which is associated with multilateralism. This simply means that some developing countries will benefit from the concessions that developed countries give even though their markets are either insignificant or not currently attractive to the developed countries in the multilateral system.¹²³

Bilateralism is a bundle of opportunities and risks for both developing and developed countries. Developing countries have to realize that there is a certain policy which motivated the developed countries to enter into these agreements, and the more important step is to find a way to secure benefits like strengthening the friendly principles contained in TRIPS or interposing principles independently. Otherwise, FTAs will create a one-way increase in IP standards which may splinter the coalition of developing countries in negotiating IP in the WTO, and they may have a tremendous negative effect on the competition, innovation, and public welfare in access to knowledge goods given the premature economy of these developing countries.

IP Chapters in Bilateral Free Trade Agreements

Recently, free trade agreements (FTAs) have proven to be one of the best ways to open foreign markets to U.S. exporters.¹²⁴ The United States currently has FTAs with fourteen countries; in 2006, FTAs were reached with Bahrain, El Salvador, Guatemala, Honduras, Morocco, and Nicaragua.¹²⁵ Also during that year, trade with countries with whom the United States had FTAs was significantly greater than those nations' relative share of the global economy; although comprising 7.5% of global gross domestic product (not including the United States), those FTA countries accounted for over 42% of U.S. exports.¹²⁶

FTAs and BITs are two pillars in the U.S. bilateral policy to ratchet up IP protection; however FTAs, rather than BITs, contribute more to the ratcheting process that will eventually globalize IP norms.¹²⁷ BITs are agreements "between two sovereign nations to establish a stable investment climate within their borders for the

¹²³ *Id.* This is also known as "free riding" on the benefits associated with the bargain, with little immediate loss to the domestic economy, as the developing countries are not equipped to exploit technology or other knowledge goods.

¹²⁴ U.S. Department of Commerce, International Trade Administration, Free Trade Agreements, [http:// trade.gov/fta/index.asp](http://trade.gov/fta/index.asp).

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ Arnold, *supra* note 3, ¶¶ 9, 11.

investors of the parties to the agreement.”¹²⁸ IP, as a component of investment, receives protection as a by-product. FTAs are agreements “between two or more sovereign nations to remove all substantial barriers to trade . . . between the nations.”¹²⁹ FTAs devote a whole chapter to IP, while BITs do not; BITs apply national treatment principles so that foreign investors enjoy the same treatment as domestic investors, while the IP chapter in an FTA completely changes the IP regimes of the parties, thus giving more protection to IP owners or foreign investors than what existed before signing the FTA.¹³⁰

The U.S. has been involved in the process of exporting law or U.S. norms through FTAs to economically disadvantaged states, thereby forming extended trading blocs linked by shared legal norms.¹³¹ This explains, to some extent, why there is a rise in the number of bilateral/regional trade agreements within the context of a multilateral trading system.¹³² The focus on IP—and the drafting of a whole chapter for it in a trade agreement—serves as an example of how the U.S. is using bilateral agreements to fulfill law-exporting goals that it could not achieve in the multilateral setting. However, it remains doubtful whether FTAs contribute to the harmonization of the IP regime. To sum up, bilateralism in IP casts post-TRIPS agreements as illicit exercises of power by the U.S. to undermine policy options and sovereign discretions granted by TRIPS.¹³³ The new bilateral agreements roll back both substantive and strategic gains of TRIPS for developing countries.¹³⁴

¹²⁸ *Id.* ¶ 10.

¹²⁹ *Id.* ¶ 11.

¹³⁰ *Id.*

¹³¹ Mark B. Baker, *No Country Left Behind: The Exporting of US Legal Norms under the Guise of Economic Integration*, 19 EMORY INT’L L. REV. 1321, 1380 (2005).

¹³² *Id.*

¹³³ Okediji, *supra* note 6, at 129.

¹³⁴ *Id.*

PART III

Oman/US Free Trade Agreement

The U.S. and Oman signed the US-Oman Free Trade Agreement (OFTA) on January 19, 2006.¹³⁵ This agreement was the second of its kind between the U.S. and a Gulf-Arab country.¹³⁶ Originally, Oman acted as part of the Gulf Cooperation Council, which collectively aimed to negotiate trade agreements with the major economic powers in the world, including the U.S., the European Union, and Japan; however, there was an exception with respect to the U.S., allowing individual Gulf countries to enjoy leeway in negotiating FTAs with the U.S.¹³⁷

I will talk about the OFTA parties and the political and economic reasons that persuaded those parties to sign this agreement, along with an introduction to their negotiating elements.

The Negotiating Parties

Because of its overall economic power, the U.S. has been a sought-after partner for the creation of FTAs.¹³⁸ President Bush outlined the strategy of the U.S. toward the Middle East with a clear goal of enhancing the global competitiveness of the Middle Eastern countries. Bush proposed the establishment of a U.S.-Middle East free trade agreement area within a decade.¹³⁹ The Office of the United States Trade Representative (USTR) is the agency that negotiates trade agreements on behalf of the U.S.

The USTR staff is a highly committed group of professionals with decades of specialized experience in trade issues and foreign regions of the world.¹⁴⁰ One of the USTR's mandates is to negotiate

¹³⁵ OFTA, *supra* note 1.

¹³⁶ The first FTA between the U.S. and a Gulf country was in 2004; the agreement was signed between Bahrain and the U.S. Press Release, Office of the U.S. Trade Representative, United States and Bahrain Sign Free Trade Agreement (Sept. 14, 2004), available at http://www.ustr.gov/Document_Library/Press_Releases/2004/September/United_States_Bahrain_Sign_Free_Trade_Agreement.html

¹³⁷ Cooperation Council for the Arab States of the Gulf, Economic Cooperation, <http://gcc-sg.org/cooperation.html#coop5> (last visited Mar. 15, 2008).

¹³⁸ JEFFREY J. SCHOTT, INST. FOR INT'L ECON., FREE TRADE AGREEMENTS, U.S. STRATEGIES, AND PRIORITIES 12 (2004).

¹³⁹ Paul G. Johnson, Note, *Shoring U.S. National Security and Encouraging Economic Reform in the Middle East: Advocating Free Trade with Egypt*, 15 MINN. J. INT'L L. 457, 459 (2006).

¹⁴⁰ Office of the United States Trade Representative, Who We Are, http://www.ustr.gov/Who_We_Are/Section_Index.html (last visited Mar. 15, 2008).

directly with foreign governments to create trade agreements.¹⁴¹ Representatives also meet with governments, business groups, legislators, and public interest groups, to gather input on trade issues and to explain the President's trade policy position.¹⁴² The head of the USTR is the U.S. Trade Representative, a Cabinet member who serves as the President's principal trade advisor, negotiator, and spokesperson on trade issues.¹⁴³ The USTR is part of the Executive Office of the President, and consults with other government agencies on trade policy matters through the Trade Policy Review Group (TPRG) and the Trade Policy Staff Committee (TPSC).¹⁴⁴ These groups, administered and chaired by the USTR and composed of nineteen federal agencies and offices, make up the sub-Cabinet level mechanism for developing and coordinating U.S. positions on international trade and trade-related investment issues.¹⁴⁵ The U.S. Congress established a private sector advisory committee system in 1974 to ensure that U.S. trade policy and trade negotiation objectives adequately reflect U.S. commercial and economic interests.¹⁴⁶ Congress expanded and enhanced the role of this system in subsequent trade acts, most recently the Trade Act of 2002.¹⁴⁷

The USTR is encountering a spurt of negotiating activity, in parallel with the Doha Round; dozens of bilateral free trade agreement have been negotiated with many countries in different parts of the world.¹⁴⁸ The USTR uses three tests when picking an FTA partner:

1. Cooperation on foreign policy issues: Oman, after September 11, 2001, announced its commitment to support the U.S. in its war on terrorism. This is considered to be the carrot-and-stick element.¹⁴⁹ FTAs are used by the current administration to

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ Office of the United States Trade Representative, Who We Are, Mission of the USTR, http://www.ustr.gov/Who_We_Are/Mission_of_the_USTR.html (last visited Mar. 15, 2008).

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ SCHOTT, *supra* note 138, at 362.

¹⁴⁹ *Id.* at 370.

reward the allies of the U.S. in its war against terrorism.

2. Impact of the FTA on the economic development of the partner country, thus deepening democratic processes and rule of law: it is obvious that Oman will greatly benefit from OFTA.¹⁵⁰

3. The impact and the contribution of this particular negotiation on the broader initiative of each continent: concluding the agreement with Oman is a step forward for a regional MEFTA in the future.¹⁵¹ The President's Middle East Free Trade Agreement initiative seeks to promote free trade throughout the region and between the region and the United States. The United States recognizes the differing levels of development across the region and is taking a graduated step-by-step approach to creating a free trade area with interested countries who are willing to open their economies and liberalize their trade regimes.¹⁵² In May 2003, the President announced his initiative to create a Middle East Free Trade Area by 2013. This initiative is designed to deepen U.S. trade relationships with all countries of the region, through steps tailored to individual countries' level of development. Since that announcement, the United States has concluded FTA negotiations with Morocco and Bahrain and has signed Trade and Investment Framework Agreements (TIFAs) with Saudi Arabia, the United Arab Emirates, Kuwait, Qatar, Yemen, and now with Oman.¹⁵³

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ Press Release, Office of the U.S. Trade Representative, United States to Begin Free Trade Negotiations This Week with the United Arab Emirates and Oman (Mar. 8, 2005), available at http://www.ustr.gov/Document_Library/Press_Releases/2005/March/United_States_to_Begin_Free_Trade_Negotiations_This_Week_with_the_United_Arab_Emirates_Oman.html.

The other party—Oman—is a middle-income economy in the Middle East with notable oil and gas resources, a substantial trade surplus, and low inflation.¹⁵⁴ Oman became a member of the World Trade Organization in November 2000 and continues to liberalize its markets.¹⁵⁵ It ratified a free trade agreement with the United States in September 2006 and, as part of the Gulf Cooperation Council, is seeking similar agreements with the European Union, China, and Japan.¹⁵⁶ To reduce unemployment and limit dependence on foreign labor, the government is encouraging the replacement of foreign expatriate workers with local workers.¹⁵⁷ Oman is actively looking forward to having private foreign investors, especially in the industrial, information technology, tourism, and higher education fields.¹⁵⁸ Oman's industrial development plans focus primarily on the use of its gas resources, metal manufacturing, petrochemicals, and international transshipment ports.¹⁵⁹

In Oman's case, the U.S. strategy dovetails perfectly with Oman's needs. Oman is an oil-rich nation with a fairly modest population of three million.¹⁶⁰ A relatively small country in terms of population, like the majority of the Gulf countries, Oman enjoys a good standard of living.¹⁶¹ Oman is a Muslim country; this common faith does not mean it needs to be isolated from the rest of the world. Isolation is not a tenet of Islam—for the Quran itself, which is the constitution of all Muslims, teaches its followers to be helpful to one another according to goodness and piety, and not to embrace actions for evil or malicious intent.¹⁶² The extension of economic relations with other countries—especially where it contributes to the

¹⁵⁴ CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK (2008), *available at* <https://www.cia.gov/cia/publications/factbook/geos/mu.html> (last visited Mar. 21, 2008).

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ United States Department of State, Background Note: Oman, <http://www.state.gov/r/pa/ei/bgn/35834.htm>.

¹⁶² Mosad Zineldin, Globalisation and Economic Integration Among Arab Countries, Address Before the Fourth Nordic Conference on Middle Eastern Studies: The Middle East in a Globalizing World (Aug. 13-16, 1998), *available at* <http://www.hf.uib.no/smi/pao/zineldin.html>.

improvement of the standard of living of Muslims—is definitively within such Islamic principles and notions.

Oman is a member of the Gulf Cooperation Council (GCC), one of the regional blocs which includes six rich Arab countries.¹⁶³ As part of the GCC, Oman is currently undergoing a drastic change in its policy since the last decade.¹⁶⁴ The leaders of this region are willing to change their traditional economic strategy and prioritize the diversification of their economies in order not to be completely dependent upon their oil revenues.¹⁶⁵ With the U.S. as a partner, Oman has a good chance to develop this diversification agenda and promote this new policy. FTAs are considered to be one of the tools for attracting the flow of investment and technology to the other partners in the agreement.¹⁶⁶ Hence the U.S.-Oman FTA would contribute effectively in pushing ahead this matter. Accordingly, Oman enthusiastically signed the FTA with the U.S. after seven months of negotiations.¹⁶⁷ It is the fourth Arab country to conclude an FTA with the U.S. after Jordan, Morocco, and Bahrain.¹⁶⁸

By this action, both countries exhibit a desire for peace, stability, and economic opportunity in the Middle East.¹⁶⁹ Several factors played out for starting the negotiation of this agreement, namely the accession of Oman to the WTO and the U.S.-Oman bilateral trade and investment framework agreement; each paved the way for an economic dialogue, which eventually ended with the conclusion of OFTA.¹⁷⁰

The impact of an FTA varies according to whether the party is a developed or developing country. In the case of a developing country, the benefits of the provisions which heighten the standards will not be limited to the nationals of the governments that are parties to the agreement. Thus, when the enforcement obligations become effective, it is likely that all copyright and trademark owners will be able to benefit from heightened enforcement and the need to change national legislation, because the changes that will take place in IP laws and regulations will not identify the nationals of only one country as

¹⁶³ Amr Daoud Marar, *The Cooperation Council for the Arab States of the Gulf*, 10 *LAW & BUS. REV. AM.* 475, 475 (2004).

¹⁶⁴ *Id.* at 476.

¹⁶⁵ Cooperation Council for the Arab States of the Gulf, Foundations and Objectives, <http://gcc-sg.org/Foundations.html>

¹⁶⁶ See Murphy, Jr., *supra* note 108.

¹⁶⁷ Press Release, Office of the U.S. Trade Representative, United States and Oman Sign Free Trade Agreement (Jan. 19, 2006), available at http://www.ustr.gov/assets/Document_Library/Press_Releases/2006/January/asset_upload_file25_8774.pdf.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ Press Release, Office of the U.S. Trade Representative, *supra* note 153.

being eligible for an increased level of enforcement. Instead, the changes will be a general legislative amendment addressing border measures.¹⁷¹ For example, due to the FTA between the U.S. and Oman, the government of Oman will change the relevant codes or statutes to empower the authorities to take border enforcement actions against imports, exports, and goods in transit.¹⁷² In practice, the legislative language is likely to be sufficiently general as to provide for the general authority to take the enforcement action required in compliance with the free trade agreement and to not include any reference to the nationals of the countries that can benefit from the expanded legal authority for border measures. Therefore, it is likely that a Japanese, Egyptian, German, or Chinese IP rights owner that has a registered trademark in Oman—or in any other country agreeing to increase its border enforcement in compliance with free trade agreement obligations—will be able to benefit from the heightened level of enforcement.¹⁷³

If an FTA has a direct impact on the domestic laws and regulations in the developing country, this is not the same for the more advanced countries or the developed countries.¹⁷⁴ The U.S., for example, does not only export U.S. standards enshrined in U.S. statutes; these agreements also create internationally binding obligations for the U.S., which can only be found in U.S. case law, and they even obligate the U.S. to raise its own domestic standards, which would circumvent democratic governance by using backdoor negotiations to achieve what officials otherwise could not achieve in Congress.¹⁷⁵ From a domestic perspective, such expansion of domestic protection via international law is problematic since it largely excludes democratic debate in national parliaments on whether such expansion should take place.¹⁷⁶ For interested industries, FTAs are, therefore, an ideal instrument to promote IP expansion both on the international and the domestic level.¹⁷⁷ The more countries that are bound by TRIPS-plus standards of bilateral FTAs, the more likely it becomes that these often proprietary standards replace the still

¹⁷¹ TIMOTHY P. TRAINER, PROTECTING INTELLECTUAL PROPERTY RIGHTS ACROSS BORDERS 709-711 (2d ed. 2007).

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ Okediji, *supra* note 6, at 146.

¹⁷⁵ Yu, *supra* note 63, at 323-74.

¹⁷⁶ *Id.* at 392-400.

¹⁷⁷ *Id.*

recognizable pro-competitive standards of the TRIPS Agreement.¹⁷⁸ Likewise, FTAs promote proprietary expansion of domestic IP standards, even in the U.S., without sufficient democratic control.¹⁷⁹ For example, the U.S. pushed Chile and Singapore to adopt the controversial provisions of the Digital Millennium Copyright Act of 1998 (DMCA) in free trade agreements.¹⁸⁰ Yu warned that this practice of having IP advanced provisions in FTAs signed by the U.S. may backfire on domestic constituencies, either through the concept of customary international law—when these provisions are consistently applied by other states—or may at least form the context which the panels, in the case of any dispute, would use to interpret any treaty to which the U.S. is a signatory.¹⁸¹

PART IV

Oman's Relationship to Intellectual Property

The Sultanate of Oman hosted the Arab Regional Forum on the Economic Importance of Intellectual Property from February 22-24, 1999.¹⁸² Faisal Bin Ali Al-Saeed, Minister of Omani National Heritage and Culture, sponsored the forum's activities, in cooperation with the Ministry of Trade and Industry and WIPO, along with a number of other international organizations. Oman joined the WTO in 1997 under Omani Decree No. 74/96 as an instrument of accession, and became a full member as of February 1997.¹⁸³ Lately, Oman has enforced its IP laws through raids on audiovisual tapes stores, and will now commence enforcing the law regarding computer programs and compact discs.¹⁸⁴

Oman has only recently adapted to a knowledge-based economy, and does not have a large number of IP owners within its borders. Thus, Oman does not appear to have an interest in increasing IP rights. However, adopting foreign standards as a part of free trade agreements is part of Oman's strategy to benefit its overall economic position and open free trade; strong domestic IP rules are essential to economic growth and development.¹⁸⁵ Although it is true that the IP provisions will protect far more foreign investors than local interests,

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² ABU-GHAZALEH, *supra* note 38, at xvii.

¹⁸³ *Id.*

¹⁸⁴ *Id.* at xxiv.

¹⁸⁵ Helfer, *supra* note 76, at 79.

the economic gain to the local economy from these protections will be evident through increased foreign investment.¹⁸⁶

The Effect on Intellectual Property Rights of Chapter 15 of OFTA

Through this Part, I will examine the provisions of the IP chapter in the free trade agreement between the U.S. and Oman. These provisions have influenced the domestic laws and regulations in Oman. The interaction between domestic laws and international agreements will also be explored. Although international agreements are one of the sources of international law, they need to go through the domestic legal system, as most countries maintain the dualism approach in dealing with international law issues. This Part is devoted to an objective assessment of free trade agreements and their IP chapters. Will IP chapters increase trade and foreign direct investment in developing countries, or will they simply strengthen the West's hold on the international economy as they increase Western multinationals' profits and weed out competitors from developing nations?

Under NAFTA, Mexico was obligated to make major changes to its IP laws and procedures. These changes were driven by U.S. interests in technology and its protection.¹⁸⁷ Likewise, OFTA will have a major impact on Omani IP law. Chapter 15 requires Oman and the U.S. to ratify or accede to a long list of international agreements (including TRIPS-plus agreements); in addition, all reasonable efforts must be taken to ratify the Patent Law Treaty and the Hague Agreement (concerning the international registration of industrial designs).¹⁸⁸

¹⁸⁶ Gonzalez, *supra* note 70, at 310.

¹⁸⁷ *Id.* at 309.

¹⁸⁸ Article 15.1 of OFTA reads as follows:

Each Party shall ratify or accede to the following agreements by the date of entry into force of this Agreement:

(a) the *Patent Cooperation Treaty* (1970), as amended in 1979;

(b) the *Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite* (1974);

(c) the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks* (1989);

(d) the *Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure* (1977), as amended in 1980;

National treatment is required for all categories of IP protection, enjoyment, and benefits.¹⁸⁹ Transparency for IP laws, regulations, and procedures is another important principle, with online trademark registration and searchable databases.¹⁹⁰ There are extensive and detailed mandatory national rules for trademarks, geographical indications, domain names, copyrights (including online technology protection and rights management measures), related performers' rights, encrypted satellite signals, patents (including plant patents), and regulation of pharmaceutical and chemical products (including test data and trade secret protection).¹⁹¹

Furthermore, Chapter 15 broadly enumerates rules for enforcement of IP rights, including general obligations, civil and administrative penalties, temporary relief measures, border controls (especially regarding counterfeit and pirated goods), and criminal procedures and remedies.¹⁹² A lengthy list of limitations on copyright liability for Internet service providers is also included.¹⁹³

The IP chapter provides for strong protection of copyrights, patents, trademarks, and trade secrets, including enhanced enforcement and non-discrimination obligations for all types of IP. Through the copyright provisions, the parties will address the challenge of providing protection in the digital environment of the Internet and will provide important protection for performers and producers of phonograms. Under the FTA, the parties will provide strong protections for trademarks and will apply the principle of "first in time, first in right" to trademarks and geographic indicators applied

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- (e) the *International Convention for the Protection of New Varieties of Plants* (1991) (UPOV Convention);
 - (f) the *Trademark Law Treaty* (1994);
 - (g) the *WIPO Copyright Treaty* (1996); and
 - (h) the *WIPO Performances and Phonograms Treaty* (1996).

OFTA, *supra* note 1, art. 15.1 ¶ 2. Article 15.1 also provides that:

- Each Party shall make all reasonable efforts to ratify or accede to the following agreements:
- (a) the *Patent Law Treaty* (2000); and
 - (b) the *Hague Agreement Concerning the International Registration of Industrial Designs* (1999).

Id. art. 15.1 ¶ 3.

¹⁸⁹ *Id.* art. 15.1 ¶¶ 5-7.

¹⁹⁰ *Id.* art. 15.1 ¶ 11.

¹⁹¹ *Id.* arts. 15.2-15.9.

¹⁹² *Id.* art. 15.10.

¹⁹³ *Id.* art. 15.10 ¶ 29

to products.¹⁹⁴ The chapter streamlines trademark filing processes while providing greater protection of owners' rights.¹⁹⁵ What follows is a more detailed description of the provisions of OFTA and their impact on Omani laws and regulations.

1. Trademark

Pursuant to OFTA, the U.S. and Oman agreed to change Oman's definition of a trademark to match U.S. law.¹⁹⁶ The amended trademark definition went into effect, in accordance with the Agreement, on January 19, 2006.¹⁹⁷ The definition of trademark no longer contains the requirement that the trademark must be visually perceptible.¹⁹⁸ Trademark applicants may register for non-conventional marks, such as sound and scent marks.¹⁹⁹

OFTA applies the property law principle of "first in time, first in right" to trademark and geographical indicators applied to products; the first to file for a trademark is granted the first right to use that name, phrase, or geographical place name.²⁰⁰ Despite the wide acceptance of this principle in the Western legal system, it is still questionable if this concept may apply to non-Western legal systems; Oman's legal system is based heavily on the French legal system.²⁰¹ OFTA also implements various procedural changes, which may increase the efficiency of trademark and geographical indication registration.²⁰²

2. Copyright

Royal Decree No. 47/96, promulgating copyright law, represents the first copyright protection law in Oman.²⁰³ The enforcement of copyright protection lies within the Ministry of Heritage and Culture,

¹⁹⁴ *Id.* art. 15.2.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* art. 15.2 ¶ 1 ("Neither Party may require, as a condition of registration, that signs be visually perceptible, nor may a Party deny registration of a trademark solely on the grounds that the sign of which it is composed is a sound or a scent.")

²⁰⁰ *Id.* art. 15.2.

²⁰¹ See Raslan, *supra* note 22, at 558-59.

²⁰² OFTA, *supra* note 1, art. 15.2.

²⁰³ FEILER, *supra* note 47, at 252.

the Ministry of Commerce and Industry, and the Royal Oman Police, and has been effective, as scores of pirated video and audiotapes and computer software have disappeared from local vendors' shelves.²⁰⁴ In late 2003, sixteen companies in Oman signed the Business Software Alliance (BSA) Code of Ethics.²⁰⁵ The Code declares that the signatories will neither commit nor tolerate the manufacture, use, or distribution of unlicensed software, and will only supply licensed software to customers.²⁰⁶

OFTA extends protection for copyrighted works and phonograms consistent with U.S. standards and international trends.²⁰⁷ Uniformity is another achievement that will help foreign artists have the same duration of their copyright in Oman as in the U.S. On a different front, in 1998, the U.S. passed the Digital Millennium Copyright Act (DMCA) to resolve the issue of Internet service provider liability for transferring copyrighted material.²⁰⁸ The U.S.-Singapore FTA was the first international agreement to implement anti-circumvention provisions similar to DMCA; these provisions form strong protection to prevent piracy and unauthorized distributions over the Internet.²⁰⁹ OFTA has come with the same provisions; however, the challenge is how Oman will adapt its domestic laws.

Several more provisions continue to strengthen and modernize copyright protection, as OFTA ensures that only authors, composers, and other copyright owners have the right to make their works available online.²¹⁰ Copyright owners maintain rights to temporary copies of their works on computers, which is important to protecting music, videos, software, and text from widespread unauthorized sharing via the Internet.²¹¹ OFTA also provides for some long-needed changes to prevent copyright piracy in the digital age. One change adds specific protection for satellite signals carrying encrypted programming.²¹² This protection extends to the signals themselves, as

²⁰⁴ OFFICE OF THE U.S. TRADE REPRESENTATIVE, FOREIGN TRADE BARRIERS 188 (2004), available at http://www.ustr.gov/assets/Document_Library/Reports_Publications/2004/2004_National_Trade_Estimate/2004_NTE_Report/asset_upload_file231_4191.pdf.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ OFTA, *supra* note 1, art. 15.4 ¶ 4.

²⁰⁸ 17 U.S.C. §§ 1201-1205 (2006).

²⁰⁹ Kenneth Chiu, *Harmonizing Intellectual Property Law Between United States and Singapore: The United States-Singapore Free Trade Agreement's Impact on Singapore's Intellectual Property Law*, 18 TRANSNAT'L LAW. 489, 503 (2005).

²¹⁰ OFTA, *supra* note 1, arts. 15.4-15.5.

²¹¹ *Id.*

²¹² *Id.* art. 15.7.

well as to the programming.²¹³ Thus, these changes will prevent piracy of satellite television programming, which was formerly unregulated by Omani laws.

3. Patent

OFTA harmonized procedural matters concerning patent applications and patent duration with the U.S.²¹⁴ Most significant among the procedural changes, the patent term can be extended to compensate for up-front administrative or regulatory delays in granting the original patent, consistent with U.S. practice.²¹⁵

In another provision, OFTA specifies protection for patents covering biotech plants and animals.²¹⁶ This protection restates existing patent practices and also adopts the language of the TRIPS Agreement.²¹⁷ Unlike the TRIPS Agreement, however, OFTA does not provide the government with the flexibility to refuse a patent based on public health and environmental concerns.²¹⁸ In the U.S.-Singapore FTA, the U.S. Labor Advisory Committee rejected this formation of protection, and the USTR responded by noting that the FTA did not prevent either the U.S. or Singapore from keeping products produced from a patent, such as new plant or animal forms that potentially may harm the environment, from entering the market.²¹⁹

Article 31 of TRIPS provides that member countries can grant a compulsory license in limited circumstances, as an annulment of the patent right by a judicial or governmental authority, causing a temporary deprivation of a patentee's monopoly over the original subject matter; therefore, recipients of a compulsory license may make, use, and sell the otherwise patented subject matter before the expiration of the compulsory license.²²⁰ The U.S. addressed this issue in two ways: first, by applying the TRIPS standard, as in the Chile FTA; and second, by limiting the use of compulsory licenses to

²¹³ *Id.*

²¹⁴ *Id.* art. 15.8.

²¹⁵ *Id.*

²¹⁶ *Id.* art. 15.9.

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ Chiu, *supra* note 209, at 505.

²²⁰ Sahar Aziz, *Linking Intellectual Property Rights in Developing Countries with Research and Development, Technology Transfer, and Foreign Direct Investment*, 10 ILSA J. INT'L & COMP. L. 1, 14 (2003).

antitrust remedies, public non-commercial uses, or national emergencies.²²¹

Enforcement of Intellectual Property Rights

All the previous rights mentioned have no value if there is not proper enforcement. Piracy and IP theft are major concerns in the Middle East, and are, therefore, primary focuses of OFTA. Although Oman is not known for creating IP, it has now agreed to strictly protect IP rights; but realistically, a nation with little IP development has little incentive to protect or enforce IP rights.

By agreeing to adopt these IP protections, Oman has established itself as a haven in the Middle East for all IP owners to attract future business. Oman has adopted a large amount of American IP law via OFTA. Most of this has been to satisfy U.S. concerns. Although the overall effect of OFTA is to promote trade in Oman, the majority of IP changes serve the U.S. and other foreign nations, as well. Even though the IP law changes primarily serve countries other than Oman, strong IP protection will make Oman more attractive to foreign investors and foster economic growth. Furthermore, strong IP protection will encourage the kind of domestic economic policies in the Middle East that will enable the growth of high-value, high-wage industries built on the IP assets of the region's people. Thus, Oman will attract foreign companies looking to expand, including those companies already doing business in Oman. Extending U.S. trade into the Middle East is a necessary step towards maintaining future economic growth for the U.S., and security and peace in the Middle East. However, the U.S. has to tailor IP protection to each country, rather than creating a uniform level of protection among all countries, so as not to disturb the local economies of other countries in the Middle East. Otherwise, those IP changes will stifle creativity, cause confusion, and hinder local businesses' ability to compete with foreign business.

On the other side, Oman may be signing a large array of bilateral agreements, which may create conflicting obligations. Oman, as part of the GCC, could sign a bilateral agreement with the E.U., after having already signed one with the U.S. The two economic powers of the U.S. and the E.U. have huge disagreements over many IP issues. Oman may end up with conflicting obligations and bilateral agreements which not only fail to reflect or meet its local conditions, but also force the nation to juggle two conflicting agreements.

Traditionally, IP lawmaking is a domestic affair; however, the control of national governments over the adoption and implementation

²²¹ Arnold, *supra* note 3, ¶ 20.

of domestic IP laws is greatly reduced under an FTA. International lawmaking has begun to replace country-based assessments and domestic policymaking as the predominant mode of IP lawmaking. This may be offset by asserting the “laboratory effect” of bilateral agreements on the multilateral trading system.

Conclusion

OFTA signifies that the U.S. is beginning to understand the importance of the Middle East to IP protection. In particular, the U.S.-Oman trade link will benefit the U.S. greatly. Additionally, the U.S. will strengthen its political base in the Middle East. Still, the U.S. must continue to build upon OFTA and demonstrate that the Middle East is a priority by negotiating further agreements with other partners in the region, like Saudi Arabia or Egypt. However, the U.S. must tailor IP protection to each country in the Middle East, rather than creating a uniform level of protection among all countries, so as not to disturb the local economies of those countries. Otherwise, those IP changes will stifle creativity, cause confusion, and hinder local businesses’ ability to compete with foreign businesses, as OFTA could have done if not for Oman’s ability to absorb the negative impacts of these IP changes in exchange for future economic growth. Hence, one can expect different provisions in IP chapters when the U.S. negotiates FTAs with other countries in the region, like Egypt or Saudi Arabia.

It is likely that Oman will find itself obliged to introduce a number of changes in its laws because of the IP chapter in its FTA with the U.S, meaning that its IP laws will need to be rewritten or entirely new laws will need to be passed. Oman is a small economy that is a net importer of technology; it is not in the interest of Oman to increase IP protection above TRIPS Agreement levels. The negotiators on behalf of Oman view the inclusion of stronger IP protection as a costless choice in return for tangible benefits in other trade areas, or perhaps inconsequential to their national interests, and they will obtain other trade-related concessions; this how Omanis’ interests coincided with U.S. interests in having a stronger IP protection chapter in OFTA.

In the realm of IP disputes, a senior official of WIPO divided IP disputes in two: those of a private law nature, where the dispute arises between two private enterprises; and those of a public law nature, which arise between nations. However, there is another type which is a hybrid form of the two dispute types; this is a mixed

international arbitration (state-investor dispute arbitration). While BITs have only mixed and private nature disputes, and the WTO is limited to the public aspect of disputes, FTAs establish themselves as a forum for all three kinds of IP disputes. Hence, I would argue that an FTA is the most powerful means of enforcing IP protection. In the near future, there will be a surge of IP disputes, whether under BITs or FTAs. Two accelerators of globalization are clearly represented in FTAs; technology, as it is embodied in IP chapters, and transnational investment, as described in investment chapters.

Developed countries, and particularly the U.S., have realized that FTAs are an effective tool in stripping developing countries of their capacity to develop their own IP laws and regulations on their own terms, and a solid means of forcing them to adopt certain laws and regulations in this field which are predetermined by the developed countries based on their own historical experiences and priorities. The ever-increasing level of IP standards embodied in FTAs is necessary to secure the competitive advantages of developed countries and to maintain the hold of the U.S. on IP rights.

With respect to the international regime of IP, bilateral free trade agreements are not only disharmonizing the international IP regime, but are also creating a lot of doubts about whether these bilateral agreements can develop IP legal norms through the consistent practice of the countries that sign these agreements. Finally, other countries in the Middle East should undergo an economic and social analysis of the impact of adopting a Western-style protection of their IP rights.