



Bahrain-United States Free Trade Agreement

Intellectual Property Rights

The Intellectual Property Rights Chapter of the Bahrain-United States Free Trade Agreement complements and enhances existing international standards for the protection and enforcement of intellectual property rights protection.

General Provisions.

The Intellectual Property Rights provisions calls for the Parties to ratify or accede to certain agreements on intellectual property rights, including:

- The International Convention for the Protection of New Varieties of Plants
- The Trademark Law Treaty
- The Brussels Convention Relating to the Distribution of Programme-Carrying Satellite Signals (the “Brussels Convention”)
- The Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks
- The Budapest Treaty on the International Recognition of the Deposit of Microorganisms (the “Budapest Treaty”)
- The Patent Cooperation Treaty, the WIPO Copyright Treaty
- The WIPO Performances and Phonograms Treaty.

The United States is already a party to these agreements.

The Agreement also requires broad application of the principle of national treatment, with only limited exceptions. The general provisions further clarify the coverage of existing subject matter and requirements for publication of all laws, regulations, and procedures relating to the protection and enforcement of intellectual property rights.

Trademarks and Geographical Indications.

The IPR Chapter of the Agreement establishes rules concerning the protection of trademarks and geographical indications. For example, Parties must provide the

owner of a registered trademark the exclusive right to prevent its use in the course of trade for related goods and services by any party not having the owner's consent. The Chapter also sets out rules with respect to the registration of trademarks, including a provision that signs need not be visibly perceptible in order to be registered.

Each Party must provide protection for trademarks, including protecting preexisting trademarks against infringement by later geographical indications. Furthermore, Parties are required to provide efficient and transparent procedures governing the application for protection of trademarks and geographical indications. The Chapter also provides for rules on domain name management that require a dispute resolution procedure to prevent trademark cyber-piracy.

Copyright and Related Rights

The Agreement provides for broad protection of copyright and related rights, affirming and building on rights set out in several international agreements. For instance, each Party must provide copyright protection for the life of the author plus 70 years (for works measured by a person's life), or 70 years (for corporate works).

The IPR Chapter clarifies that the right to reproduce literary and artistic works, recordings, and performances encompasses temporary copies, an important principle in the digital realm. It also calls for each Party to provide a right of communication to the public, which will further ensure that right holders have the exclusive right to make their works available online. The Chapter specifically requires protection for the rights of performers and producers of phonograms.

To curb copyright piracy, the IPR Chapter requires the governments to use only legitimate computer software, setting an example for the private sector. The Chapter also includes provisions on anti-circumvention, under which the Parties commit to prohibit tampering with technology used to protect copyrighted works. In addition, it sets out obligations with respect to the liability of Internet service providers in connection with copyright infringements that take place over their networks.

Finally, recognizing the importance of satellite broadcasts, The IPR Chapter ensures that each Party will protect encrypted program-carrying satellite signals. It obligates the Parties to extend protection to the signals themselves, as well as to the content contained in the signals.

Patents

The Agreement also includes provisions for the protection of patents. The Parties may only exclude inventions from patentability to protect public order or morality, including to protect human, animal, or plant life or health or to avoid serious prejudice to the environment. The Parties also may exclude from patentability animals and diagnostic, therapeutic, and surgical procedures for the treatment of humans or animals.

The Parties also confirm the availability of patents for new uses or methods of using a known product. To guard against arbitrary revocation of patents, each Party must limit the grounds for revoking a patent to the grounds that would have justified a

refusal to grant the patent. The IPR Chapter requires the Parties to provide for patent term adjustments to compensate for unreasonable delays that occur while granting the patent, as well as for unreasonable curtailment of the effective patent term as a result of the marketing approval process for pharmaceutical products.

Certain Regulated Products

The Agreement includes specific measures relating to certain regulated products, specifically pharmaceuticals and agricultural chemicals. The Parties must protect test information regarding safety and efficacy submitted in seeking marketing approval for such products by precluding other firms from relying on the information. It provides specific periods for such protection – for example, five years for new pharmaceuticals and 10 years for new agricultural chemicals. It also requires the Parties to adopt measures to prevent the marketing of a pharmaceutical product during the term of a patent covering that product.

Enforcement Provisions

The IPR Chapter of the Agreement also creates obligations with respect to the enforcement of intellectual property rights. Among these, it requires the Parties, in determining damages, to take into account the value of the legitimate goods as well as the infringer's profits. The Chapter also provides for award of damages based on a fixed range (*i.e.*, “statutory damages”), on the election of the right holder in cases involving infringement of copyright and related rights and trademark counterfeiting.

The IPR Chapter provides that the Parties’ law enforcement agencies must have authority to seize suspected pirated and counterfeit goods, the equipment used to make or transmit them, and documentary evidence. Each Party must give its courts authority to order the forfeiture and/or destruction of such items. The Chapter also requires each Party to empower its law enforcement agencies to take enforcement action at the border against pirated or counterfeit goods without waiting for a formal complaint. It provides that each Party must apply criminal penalties against counterfeiting and piracy, including end-user piracy.

Transition Periods

All intellectual property-related obligations take effect when the Agreement enters into force. However, the Kingdom of Bahrain is permitted up to one year after the Agreement enters into force to ratify or accede to:

- (1) the Brussels Convention; and
- (2) the Budapest Treaty.

Side Letters

Two side letters to the IPR Chapter provide additional clarifications with regard to certain of the obligations with respect to intellectual property rights:

- (1) regarding effective written notice to Internet service providers with respect to materials that are claimed to be infringing a copyright; and
- (2) regarding the manufacture of optical discs, including provisions concerning licensure, registration, record keeping, and inspections.

Public Health

The IPR Chapter shall not affect the Parties' ability to take any measures necessary to protect public health. In a separate side letter, the Kingdom of Bahrain and the United States confirmed their understanding that this Chapter does not "affect the ability of either Party to take necessary measures to protect public health by promoting access to medicines for all, in particular concerning cases such as HIV/AIDS, tuberculosis, malaria, and other epidemics as well as circumstances of extreme urgency or national emergency