Progress of Intellectual Property Rights Legislation and Enforcement in Jordan vis-à-vis the Special 301 Report for 2009

Final Report

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FINAL REPORT

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AUTHOR: THE AMERICAN CHAMBER OF COMMERCE IN JORDAN, AND THE JORDAN INTELLECTUAL PROPERTY ASSOCIATION

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I. Executive Summary:

Recommendation: The American Chamber of Commerce in Jordan (AmCham) and the Jordan Intellectual Property Association (JIPA) recommend that the U.S.Trade Representative (USTR) not list Jordan on the Special 301 Watch List in 2009.

Jordan's legislative effort over the past several years has led to the adoption of numerous intellectual property laws dealing with standards of protection outlined in the World Trade Organization (WTO) Agreement on Trade Related Intellectual Property Rights (TRIPS.) The signing of the Jordan-U.S. Free Trade Agreement (JUSFTA) in 2001 signaled the beginning of a new round of legislative reform to comply with JUSFTA intellectual property obligations in the fields of patents, copyright, trademarks, data protection and IPR enforcement.

The aim of this report is to highlight key developments in IPR legislation and enforcement in Jordan during 2008, and to identify any remaining weaknesses. This effort comes in response to USTR's call for public comment to support the inclusion or exclusion of U.S. trading partners such as Jordan from the IPR Special 301 Watch List.

This position paper outlines areas of positive developments, and concerns, in the areas of legislative compliance in copyright, trademarks, patents, and data protection.

Jordan has not been listed on the USTR Watch Lists since 2000 and we believe Jordan has continued to show steady progress in adopting progressive laws and policies over the past several years.

Highlights of Jordan's latest achievements in the field of IPR:

- A new draft amendment to the Copyright Law has been introduced by the Government and is currently progressing through the constitutional stages. The main aim of these amendments is to ensure full compliance with JUSFTA.
- Customs Department plans to introduce a draft amendment to Article 41 of the Customs Law to enhance for *ex officio* border measures and prosecution.
- Introduction of new amendments to Jordan Institute of Standards and Metrology (JISM) Law regarding administrative ex officio trademark enforcement.
- Ex officio enforcement actions by National Library continued to be show serious efforts by the Government of Jordan to combat piracy.
- Introduction of new amendments to the Public Health Law that incriminates and imposes high fines on traders and manufacturers of counterfeit medicines.

- A new amendment to the Trademark Law was developed in 2008 to ensure further compliance with JUSFTA, including raising fines from JOD 3,000 to JOD 6,000.

Finally, AmCham and JIPA recommend that the Government of Jordan take the following steps to ensure more effective IPR enforcement:

- Take more stringent actions against piracy (particularly audiovisual and optical piracy) against known locations and traders in downtown Amman, Zarqa and Irbid that has negatively affected legitimate business.
- Expedite the adoption the proposed amendments to Article 41 of the Customs Law
- Assign specialized judges trained on IPR issues to deal with IPR cases to ensure better implementation of the IPR Laws.

II. TRIPS Compliance and FTA Implementation

Background

Jordan has seen significant legislative progress over the past several years in the area of intellectual property rights (IPR). More than fifteen intellectual property-related laws and amendments (copyright, patents, trademarks, industrial designs, unfair competition, trade secrets, public health, integrated circuits, geographical indications, and new plant varieties) were passed from 1999 to 2008, five of which were introduced for the first time. Moreover, recent intellectual property legislative amendments in Jordan have increased the level of protection to comply with the JUSFTA. The outline below provides an overview of recent legislative efforts of Government of Jordan (GOJ) to comply with JUSFTA.

(A) Patents

A new Patent Law was enacted in 1999 to comply with TRIPS Agreement obligations. In addition, new Patent regulations were introduced in 2001. The Patent legislation of 1999 is considered to be compatible with TRIPS Agreement.

JUSFTA introduced several new obligations in the field of patents and regulated products. A summary of the main new obligations and efforts to comply with said obligations are outlined below:

(1) Commitment to join the Patent Cooperation Treaty (PCT).

GOJ presented a draft amendment to the Patent Law in June 2004 to the Jordanian Parliament and was approved in 2007. The Regulations implementing the new amendments are expected to be issued shortly together with formal accession to PCT. The USAID Jordan Economic Development Program (SABEQ) is currently providing technical assistance to the GOJ in this regard.

(2) *Commitment to make available an extension of the patent term to compensate the patent owner for unreasonable curtailment of the patent term as a result of the marketing approval process. (Article 4(23))*

The GOJ plans to introduce a draft amendment to the patent law order to comply with the obligation listed above.

(3) *Commitment that the exclusion from patent protection of "mathematical methods" in Article 4(B) of Jordan's Patent Law does not include such "methods" as business methods or computer-related inventions. (Paragraph 5 MOU)*

The Jordan Patent Office has been accepting business methods patents applications in light of the above commitment.

(B) Trademarks

Legislation:

A new Trademark Law was introduced in 2000 to comply with TRIPS Agreement obligations. In addition, new Trademark regulations were introduced in 2001. The Trademark legislation is considered to be compatible with the TRIPS Agreement.

JUSFTA introduced several new obligations in the field of trademarks. A summary of the main new obligations and efforts to comply with the obligations are outlined below:

(1) Commitment to join the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Article 4(2))

GOJ presented a draft amendment to the Trademark Law in June 2004 to the Jordanian Parliament and was approved in 2007 to allow for accession to the Madrid Protocol. The Regulations implementing the new amendments are expected be issued shortly together with formal accession to the Madrid Protocol. The USAID Jordan Economic Development Program (SABEQ) and United States Patent and Trademark Office (USPTO) are currently providing technical assistance to the GOJ in this regard.

(2) Give effect to Articles 1 through 6 of the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks (1999), adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of WIPO. (Article 4(1)(a))

(3) Commitment not to require recordal of trademark licenses to establish the validity of the license or to assert any rights in a trademark (Article 4(9))

(4) Raise criminal fines to a maximum of JOD 6000. (Paragraph 3 of MOU)

GOJ presented further amendments to the Trademark Law which were approved by Parliament in 2008 to comply with sections (2) to (4) above.

Border Measures:

Importation of counterfeited goods is prohibited under the Jordanian Trademark Law. Moreover, Article 41 of the Customs Law provides the Jordan Customs Department (JCD) with ex officio authority to temporarily suspend the clearance of suspected shipments of counterfeited and pirated goods. Moreover, Article 4(26) of the JUSFTA, Jordan committed to provide its authorities, at least in cases of copyright piracy or trademark counterfeiting, with ex officio powers to initiate criminal actions and border measure, without the need of a formal complaint by a private party or right holder.

In light of the above commitment, JCD is introducing an amendment to Article 41 that enhances its ex officio authority.

Administrative Enforcement of Trademarks:

GOJ has introduced new amendments to the JISM Law that provides it with explicit authority to combat counterfeiting in the market and at the borders. The draft amendments are currently progressing through the constitutional stages mandated by the Jordanian legal system.

Counterfeiting of Pharmaceuticals

Although neither the TRIPS Agreement or JUSFTA provide additional obligations to combat counterfeited medicines, the Government of Jordan, through the Jordan Food and Drug Administration (JFDA), has advocated issuing and enforcing a more stringent legislation through the new Public Health Law which included a definition of counterfeit drugs in addition to a deterrent penalty to the counterfeiter or counterfeit dealer where the perpetrator will be susceptible to either 3-5 years imprisonment or penalized JOD 1,000 to 5,000 in addition of paying twice the value of the genuine drugs that were counterfeited. In addition, GOJ has been raising the awareness of the judicial sector to ensure proper regulation, control, investigation and prosecution, also intensifying inspection campaigns.

(C) Copyright

Legislation:

The Copyright Law was amended in 1999 to comply with the TRIPS Agreement. In addition, JUSFTA introduced numerous new obligations in the field of copyright and related rights. The Copyright Law was amended in 2001, 2003, and 2005 to bring the Copyright legislation closer to JUSFTA compliance. This legislative effort is commendable but in some aspects falls short of some JUSFTA commitments. To achieve full compliance with JUSFTA the Minister of Culture formed a committee to prepare regulations that would enhance Jordan's compatibility with JUSFTA. The committee completed its work recently and has produced draft amendments to the Copyright Law to ensure full compliance with JUSFTA. The draft amendments are currently progressing through the constitutional stages mandated by the Jordanian legal system.

Copyright Enforcement:

I. Number of Raids

The number of ex officio raids conducted in 2008 by National Library in the field of copyright was 354 raids.

II. Number of Cases Presented to Court

All of the 354 raids conducted resulted in criminal prosecutions by the Public Attorney before the competent Courts of First Instance.

III. Number of Prosecutions and Type of Sentences

There are no detailed public official statistics on number and type of sentences for copyright cases in Jordan. Although the number of prosecutions is high, some rights holders perceive that judicial decisions have not provided adequate remedies or deterrent sentences. GOJ may consider enhancing its efforts by assigning specialized judges trained on IPR issues to deal with IPR cases. The USAID Jordan Economic Development Program (SABEQ) is planning to start a one year intensive training program for judges, in addition to on-going USPTO training seminars for Jordanian judges in the region.

(D) Data Protection

I. Five Year Data Protection for New Chemical Entities

The Unfair Competition and Trade Secrets Law provides for a five year protection of undisclosed tests or other data for new chemical entities against unfair commercial use. The Jordan Food & Drug Administration (JFDA) is responsible for granting this five year data protection. JFDA maintains that since the adoption of the law in 2000, the JFDA has provided 5-year data protection for hundreds of pharmaceutical products.

II. Protection of New Uses of Old Chemical Entities

Jordan is obliged to provide three year data protection for new uses of old chemical entities. JFDA maintains that it has been implementing this obligation since December 2004 and has approved many products in this process.

For the purpose of this report AmCham and JIPA interviewed numerous private and public sector entities, including:

Government of Jordan

- National Library
- Jordan Food and Drug Administration
- Jordan Institute of Standards and Metrology
- Ministry of Industry and Trade
- Jordan Customs Department
- The Higher Council for Science and Technology

Private Sector:

- Jordan Association of Pharmaceuticals Manufacturers
- Jordan's Young Entrepreneurs Association
- Information Technology Association of Jordan

The United States Embassy in Jordan and the USAID Jordan Economic Development Program (SABEQ) were interviewed but were not involved in the preparation of the technical content or recommendations of this position paper, and do not necessarily endorse the views expressed in this publication.

Jordan Economic Development Program
BearingPoint, Inc.
Salem Center, Sequleyah Street, Al-Rabiyeh
Amman, 11194 Jordan
Phone: + 962-6 550-3050
Web address: http://www.SABEQ-Jordan.org