

**GENERAL EVALUATION OF THE URUGUAY ROUND  
AGREEMENTS WITH SPECIAL REFERENCE TO THE IMPACT  
OF TRADE RELATED INVESTMENT MEASURES (TRIMs) AND  
TRADE RELATED INTELLECTUAL PROPERTY RIGHTS (TRIPs)  
ON ISLAMIC COUNTRIES**

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This paper summarises the Agreement on trade-related investment measures and that on trade-related intellectual property rights and then gives its analysis on the possible implications of the two Agreements on the Islamic Countries.

**1. INTRODUCTION**

**1.1.** The General Agreement on Tariffs and Trade (GATT) which the Uruguay Agreement replaces by a World Trade Organization (WTO) has sought from its inception to advance trade liberalisation and provide a secure world trading system to prevent countries from returning to the protectionist policies adopted in the inter-war period. It seeks to extend the trade liberalisation process to areas not covered by the GATT. Free trade in goods and services is expected to contribute to a competitive global economy, greater efficiency and an improved use of scarce resources. A fundamental objective of trade policy should therefore be to support efficient economic growth through the reduction of trade barriers. It is thus to attain this objective that the Final Act of the Uruguay Round Agreement, signed in Marrakesh in April 1994, seeks to strengthen the necessary institutional framework.

**1.2.** The Uruguay Round Agreements of the GATT negotiations started in 1986 between 118 states, were finalised in December 1993 and signed in Marrakesh in April 1994. These negotiations have been by far the most comprehensive and complex economic negotiations ever undertaken to set the world trading system on course to a truly multilateral system of trade. Before the new Agreement the GATT focused mainly on regulating and promoting international trade in manufactured goods. But the exclusive

concern with manufactured goods resulted in a failure to devise appropriate rules for dealing with trade in other important areas such as agriculture, services, trade related aspects of Intellectual Property Rights (TRIPs) and Trade Related Investment Measures (TRIMs).

**1.3.** The Uruguay Round focused on improving the traditional functions of the GATT in terms of reducing tariffs and on improving non-discriminatory access to world markets. The member countries agreed to cut their tariffs over the next five to ten years by one third, on the average, in equal annual instalments. This would then mean more international trade, more investment, more jobs and additional income to the tune of US\$200 to 300 billion a year, of which US\$30-70 billion will accrue to the least developing countries (LDCs). The Agreement would discipline the use of subsidies and countervailing measures and technical barriers, tighten anti-dumping rules, eliminate certain restrictive trade related investment measures, regulate the use of restrictive safeguard actions, strengthen and clarify procedures for the settlement of trade disputes among members and increase the transparency of national policies.

**1.4.** The core of the Final Act of the Uruguay Round consisted in the Agreement to establish a new World Trade Organization (WTO) to replace the GATT. Though the formal ratification of the Agreement and the working out of its details will take another 2 years. The WTO is conceived more or less as a World government overseeing “orderly” international trade. There are separate councils for monitoring goods, services and intellectual property rights and then there are quasi-judicial bodies to adjudicate disputes or to initiate action against the defaulting members.

## **2. AGREEMENT ON TRADE RELATED INVESTMENT MEASURES (TRIMs)**

**2.1.** The GATT system has traditionally focused concern on what are termed border measures, namely those that affect trade at the point at which it enters a country. Thus TRIMs is an attempt by a national government to place conditions on a company that wishes to operate within its borders. These include the use of local materials, the obligation to export a certain proportion of output, the obligation of the investor to export to certain countries or regions, trade balancing or the use of export earnings to pay for imports, the commitment to supply a certain proportion of output to the local

market. The developing countries regard the TRIMs as a form of protection because these measures suppress market forces, divert trade and encourage inefficient production. On the other hand many developing countries are of the view that TRIMs is necessary for economic development. According to Article XIX of the GATT, members are allowed to take safeguard actions--import restrictions to protect a domestic industry from the negative effects of an unforeseen increase in imports, if a domestic industry is threatened by various injury. The new Agreement, however, prohibits the use of such actions where they constitute 'grey area' measures, applied on either exports and imports, so as to ensure fair trade.

### **3. IMPLICATIONS OF TRIMs ON ISLAMIC COUNTRIES**

**3.1.** Numerous studies have been carried out on the effects of TRIMs on investment and trading behaviour and the three general findings are:

1. TRIMs affect only a small number of enterprises;
2. The impact varies greatly across industrial categories; and
3. The amount of legislation relating to TRIMs has not increased much.

**3.2.** There exists a great disparity between the amount of investment theoretically affected by TRIMs (45-60 per cent) and the amount of investment reported by companies as covered by TRIMs (2-6 per cent)<sup>1</sup>.

**3.3.** According to a survey conducted, it has been seen that developing countries tended to use TRIMs to apply domestic-content, import and export limits, whereas developed countries tended to apply them in the form of encouraging subsidies and grants. The vast majority of investment is carried out between developed countries rather than between developed and developing countries. Thus, although more developing countries applied TRIMs than developed countries, the developed countries had more effect and covered more than the developing countries.

**3.4.** In 1982 a US International Trade Commission report found that there were wide differentials between industries in the applications of a TRIM. Auto parts and chemical manufacturers were most likely to be affected by

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<sup>1</sup>Source: The research report of the EIU guide to the new GATT.

TRIMs, particularly by domestic content and trade restrictions. Computer and information industries were less likely to be affected.

**3.5.** With the Agreement on TRIMs, the LDCs will have less power to regulate foreign investment. In fact, many LDCs have long viewed foreign direct investment as falling under their national sovereignty. The TRIMs negotiations were controversial, as they sought to bring aspects of foreign investment under a multilateral framework of rules.

**3.6.** The semi-industrialised Islamic countries such as Turkey, Egypt, Morocco, Pakistan, Indonesia, etc., are of the view that the Transnational Corporations (TNCs) and the countries where they are based (90 per cent in US, EU and Japan) will benefit greatly from the agreement and their share is to grow even further. The TNCs will be able to export more to the LDCs and expand their operations in these countries as they will be treated like locally owned companies. The TNCs will also benefit from the inclusion of services such as banking and insurance. This is the fastest growing global sector as it already accounts for 20 per cent of world trade, while it is estimated that a quarter of all trading benefits from the GATT will come from services. The LDCs fear that competition from the TNCs in the financial sector will wipe out their small financial service industries.

**3.7.** As it can be seen the provisions of TRIMs aim to prevent those regulations of foreign investment which have a distortive effect on trade. Agreement on TRIMs does not introduce any obligation but merely prohibits those TRIMs which are inconsistent with GATT obligations regarding national treatment. These include (a) local content requirements (inconsistent with the national treatment obligation) such as those which require the purchase or use by an enterprise of products of domestic origin in terms of the volume or value of products or in terms of a proportion of their domestic production, or that require an enterprise's purchase or use of important products to be limited to an amount related to the volume or value of the local products that it exports and (b) trade balancing requirements (inconsistent with the obligation to eliminate quantitative restrictions) such as those which restrict the importation by an enterprise of products used in or related to its local production, generally or to an amount linked to its exports or to the foreign exchange inflows attributable to the enterprise, or that restrict exports in terms of value of products or as a proportion of local production.

**3.8.** The agreement on TRIMs will have a double impact on the Islamic Countries. On the one hand it will facilitate foreign investment in developing Islamic Countries from which they can gain and on the other hand developing Islamic Countries will lose the freedom to impose conditions of local content or minimise export for foreign investors.

**3.9.** The issue of TRIMs presents concerns with respect to the development imperative for developing countries. The autonomous use of investment measures to maximise the contribution of direct foreign investment to achieving socio-economic objectives and to meet developed needs in general has been central to their concerns. Developing countries were afraid of new multilateral disciplines in this area as they would circumscribe this freedom and thus weaken investment measures as a development policy instrument.

#### **4. AGREEMENT ON TRADE RELATED INTELLECTUAL PROPERTY RIGHTS (TRIPS)**

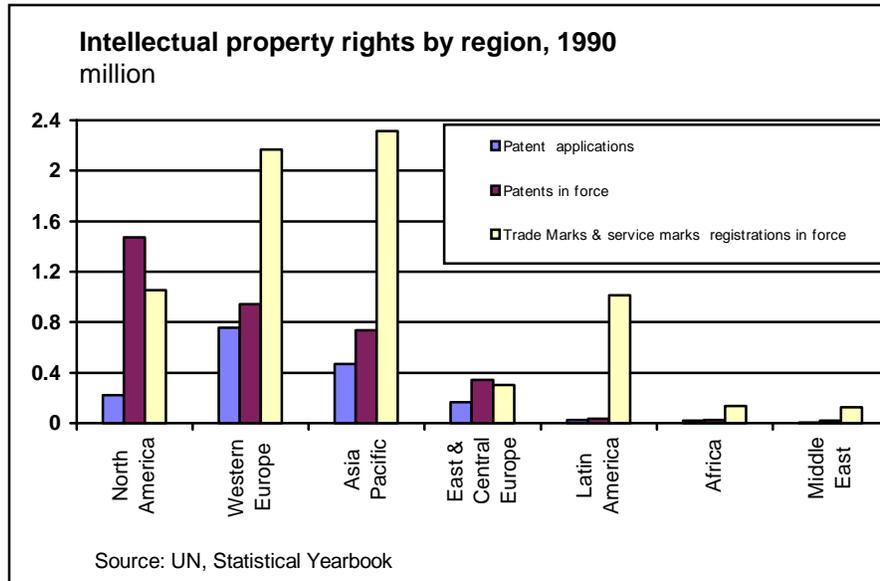
**4.1.** The agreement on Trade Related Intellectual Property Rights (TRIPS) actually involves both intellectual property rights and trade in counterfeit goods. The issues to do with intellectual property rights (IPRs) are extremely complex. IPRs essentially refer to three legal entities, patents, copyright and trademarks. It might be easier to categorise intellectual property rights more as privileges than as rights, as the modern IPRs vary greatly from culture to culture. The agreement on trade related aspects of intellectual property covers copyright and related rights, trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits, protection of undisclosed information (trade secrets) and the control of anti-competitive practices in contractual licenses.

##### *4.1.1. Copyrights*

Under this provision TRIPs incorporates all substantive trade-related protection afforded under the Bern Convention for the Protection of Literary and Artistic Works, specifying that computer programmes are protected as literary works and compilations of data in databases as intellectual creations.

##### *4.1.2. Patents*

Any invention, whether it is a product or a process, in whatever field of technology, can be patented if it is new, involves an inventive step and can be applied industrially.



#### 4.1.3. Trade Marks

The accord defines a trademark as a sign, or any combination of signs, capable of distinguishing the goods or services of one entity from those of another.

#### 4.1.4. Layout Designs of Integrated Circuits

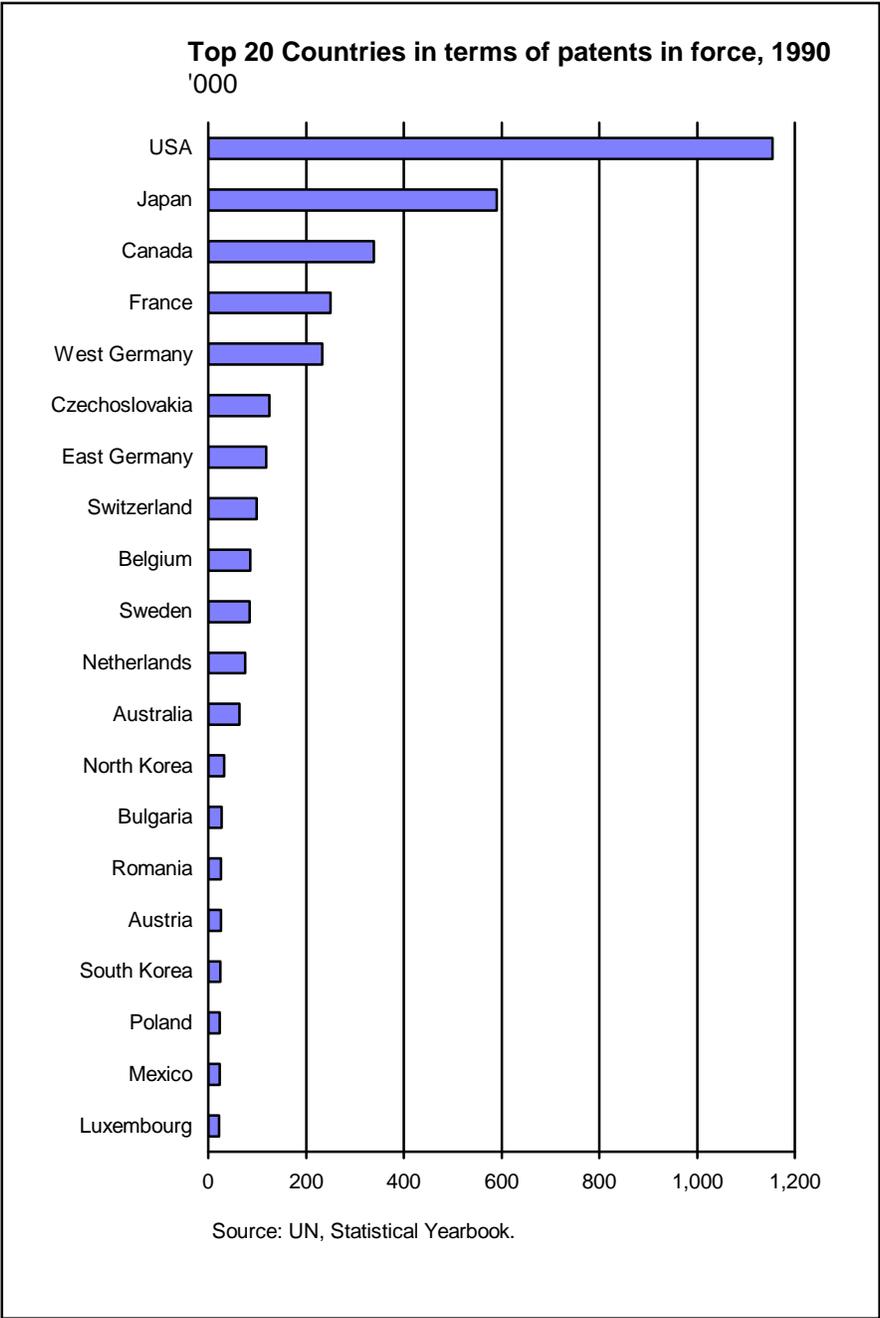
The protection extends to the layout designs as well as to integrated circuits incorporating the protected layout design and to articles containing such integrated circuits.

#### 4.1.5. Trade Secrets

The Agreement recognises that information which is not generally known or readily accessible and has commercial value must be protected against disclosure or acquisition in ways contrary to honest commercial practices.

#### 4.1.6. Geographical Indications

The quality or reputation of a product is often associated with the place or country where it is made and the indication of its geographical origin may thus



influence the purchasers' or consumers' choice. The TRIPs agreement aims to protect the public from being misled and producers and traders from being exposed to unfair competition, by false claims of geographical origin.

#### *4.1.7. Enforcement*

The accord requires countries to have available enforcement procedures so as to permit effective action against any infringement of intellectual property rights covered by the agreement.

### **5. IMPLICATIONS OF TRIPs ON ISLAMIC COUNTRIES**

**5.1.** At the time that the Uruguay Round of Trade Negotiations started in 1986, developing countries showed considerable resistance to tougher intellectual property protection, particularly in the area of patents. They were of the view that the monopoly rights provided the patent and copyright holders [the power] to raise the prices for consumers. Some of the developing Islamic Countries such as Pakistan, Egypt and Bangladesh, agree that they cannot afford to pay for pharmaceuticals they need and thus feel the necessity to copy the drugs and sell them at cheaper prices in their local markets. They further are of the view that a stronger international code would slow the process of technology transfer to their economies. The agreement to regulate Intellectual Property Rights will affect all the newly established industries in the developing Islamic countries and the agricultural sector. New developments in bio-technology mean that seed types are patented by agri-business so that in future small farmers may have to buy new seeds every year instead of reusing their own seeds. TRIPs is thus forcing agricultural development to proceed in a particular direction which will be in the interest of the Transnational Corporations (TNCs).

**5.2.** Contrary to the view expounded above, the industrial countries claim that it is counter-productive for them to spend large funds on research and development to create new products and processes if illegal copying and sales of their products prevent them from recovering their expenditures.

**5.3.** Under the TRIPs accord, nations are now obliged to rewrite national laws to make them conform to internationally agreed norms for the protection of patents, trademarks, copyrights, industrial designs, trade secrets, integrated circuits and geographical indications. The accord also

covers technologies areas in which protection in many countries is currently not available, such as pharmaceutical products, computer software and inventions and works arising from new technologies.

**5.4.** All countries are given one year to implement the agreement once enacted on 1 July 1995. Developing countries are given an additional 4 years, except in the pharmaceutical and agricultural sectors which are given an additional nine years and the least developing countries will have an extra eleven years to implement.

**5.5.** The concern for the draft of TRIPs of some developing countries and particularly those of Africa have been

*5.5.1.* How to cope with the adoption of raised, uniform standards of protection of Intellectual Property Rights (IPR), in addressing developmental needs, particularly in their efforts towards technological capacity building.

*5.5.2.* How to meet the demand being placed on them for strict domestic enforcement both internally and at the border given their weak administrative infrastructures and limited human and financial resources.

*5.5.3.* How to ensure that IPR protection would not be a means for the harassment of legitimate trade including through cross retaliation with respect to concessions in the area of trade in goods in the event of nullification and impairment of rights arising from infringement of violation of TRIPs agreement.

*5.5.4.* The draft TRIPs agreement as contained in the Draft Final Act leaves most of the above mentioned concerns unanswered. The draft agreement treats the development dimension very inadequately, thereby reducing the notion to a mere transitional period which is too short to be meaningful for addressing technological development needs for these countries.

**5.7.** Since the task of adapting their IPR legislation and creating the domestic capacities to comply with the TRIPs obligations would already be onerous for these countries, the transitional period is barely adequate even for that purpose. The text of the agreement would provide detailed universal standards to be complied with by all countries, irrespective of their level of development. The asymmetry between the rights and obligations for right

holders is such that it leaves little room for government to pursue development and public policy objectives, particularly with regard to conditions for compulsory license and exhaustion of rights. The detailed enforcement procedures fall short of recognising the limited administrative and financial capacity available to African countries, as well as other developing countries to cope with the burden of enforcement.

**5.8.** The impact on African countries, like other developing Islamic countries, may be in terms of restricted access to foreign technology through restrictive business practices in licensing agreement and increased payments abroad for proprietary knowledge as a result of longer durations of protection and higher prices. For these countries, where skills are low, the industrial base weak, and market sizes limited, foreign investment--which is an important channel of technology transfer--is likely to be low. Thus there should be no illusions that higher levels of protection and strict enforcement of IPR would attract higher levels of foreign direct investment. Had there been a positive correlation between the level of protection of IPRs and the flow of Foreign Direct Investment (FDI), African countries would have relatively enjoyed higher levels of technological progress given their relatively current high levels of protection. In fact, fears have been expressed that the trend toward higher levels of IPR protection may inhibit imitation through reverse engineering and hence slow the process of technological innovation in these countries. However, given their low level of technological development and scientific skills, adequate technical assistance through training and the strengthening of their information infrastructure could enable these countries to access the abundant technology and know-how already in the public domain. But to be able to cope with the increasing demand for product quality and the rate of innovation that characterises competition in the world market place, additional measures would need to be taken to facilitate access to existing and new proprietary knowledge.

### **5.9. The Impact on the Middle East Countries**

*5.9.1.* The impact of the GATT 1994 on the Middle East is restricted because hydrocarbons, which are of vital importance to the region, were excluded from the Uruguay Round. Membership of the WTO has two key attractions to Middle Eastern countries: first, greater access to OECD markets should provide increased opportunities for exporters; second a commitment to conducting policy within the auspices of the GATT, as well as protection

within it, will increase the security of foreign investment in the region, thus encouraging foreign direct investment.

5.9.2. The liberalisation of services implicit within the GATT 1994 is likely to have a significant impact on the region, although it may put some pressure on the regions' governments to allow greater access to overseas providers of services. Both TRIMs and TRIPs agreements will have implications for the region. With respect to TRIMs, it will be necessary for those governments which have domestic-content requirements to dismantle them. TRIPs agreements will mean greater adherence to the level of copyright, trademark and patent regulation.

#### **5.10. Impact on Asia Pacific Countries**

5.10.1. Considerable leeway was allowed to the enforcement of intellectual property rights, the violation of which has been an important factor promoting industrial development in several of the developing East Asian economies. The emphasis in the future will be on transferring technology to less-developed economies in the region by legitimate means such as foreign direct investment rather than allow them indefinite reliance on copyright piracy.

### **6. CONCLUSION**

**6.1.** The subject matter of the Uruguay Round is broad. The above analysis has tried to sketch the possible impact of the Uruguay Round in the areas of TRIMs & TRIPs of interest to developing Islamic countries as a whole. In the negotiations on these issues and trade in services, developing countries are confronted with a series of initiatives taken by developed countries which would introduce into the multilateral trading system obligations related to an improvement of international protection of property (including intellectual property rights) and the consolidation of the position of a developed country transnational services suppliers, whose competitiveness is based on financial strength and mastery of technology. Such proposals pose a serious risk for developing countries, as they threaten to limit their access to technology and flows of international investment and could prevent the development of their services industries, crucial to their accelerated development.

**6.2.** It is clear that when the Uruguay Round is successfully completed, the trade landscape would have expanded to include services, TRIMs and TRIPs

including trade in counterfeit goods which will affect in a significant way the trade and economic policy making autonomy of big and small trading nations alike. This will no doubt affect the pace of integrating largely marginalised African countries into the international trading system. How slow or fast this process will be, will depend on the extent to which the various agreements in the Uruguay will facilitate structural adjustment programmes underway in these countries in a way that their trade policy reforms would succeed. For this to happen, trade and economic policies directed at supply capacity creation would need to be accommodated and underpinned by an open and equitable multilateral trading system.

**6.3.** The developing Islamic countries thus pin their hopes on successful economic reforms and on their ability to flexibly and selectively use policy instruments in all the areas covered by the Uruguay Round, especially in the new issues. At the same time a more open, stable and equitable non-discriminatory trading system with strengthened rules, capable of resisting temptations to revert to bilateralism and unilateralism in trade relations would provide a conducive environment for investment flows essential for export capacity creation in these Islamic countries.