

## The evaluation of the bilateral investment treaty (BIT) between Jordan and China (reality and ambition)

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**Abstract:** Jordan has signed more than 54 bilateral agreements to encourage investment and due to the economic and legal importance of increasing the volume of investment between China and Jordan, we found that study because of one of these agreements most important of them the huge investment volume that Jordan witnessed, as the size of Chinese investment in the last three years reached over four billion USD s. China was became one of the largest foreign countries investing in Jordan also rapid development in trade relations on the other hand seemed important for research to contribute to enriching knowledge for those and planners in the policy- making for trade Foreign and promote trade with China as the second most powerful economy in the world also a lack of studies and research related to the theme of Jordan China trade agreement and work to enrich the research subject and study the economic and legal significance.

As the bilateral relationship started with the bilateral investment treaty that took place between Jordan and China in 2001, it was extended for ten years, and work will end in year 2021.

Because of the limited space that we must write cover the main points, which are highlights of the articles of the agreement and explain the essential matters related to legal and economic regulation. The parties to the dispute, the arbitration agreement, the challenges of the arbitrators, and their isolation, the representation of the parties, the "provisional attachment, " the language and procedures of the arbitration, "the issuance of the arbitration decision and its implementation.

**Keywords:** Jordan, China, investment promotion, international arbitration, investment treaty.

## تقييم المعاهدة الاستثمارية بين الأردن والصين (الواقع و الطموح)

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**المخلص:** يرتبط الأردن بأكثر من 54 اتفاقية ثنائية لتشجيع الاستثمار وبسبب الأهمية الاقتصادية والقانونية لزيادة حجم الاستثمار بين الصين والأردن وجدنا أن إلقاء الضوء على أحد هذه الاتفاقيات وأكثرها أهمية لحجم الاستثمار الهائل الذي شهدته الأردن؛ حيث بلغ حجم الاستثمار الصيني في الثلاث سنوات الأخيرة ما يزيد على أربعة مليارات دولار أمريكي، وأصبحت الصين عام 2018- 2019 من أكبر البلدان الأجنبية استثمارة في الأردن، وبسبب التطور السريع في العلاقات التجارية أيضا بدت أهمية البحث في المساهمة في إثراء المعرفة للمعنيين والمخططين في رسم السياسة لتجارة الأردن الخارجية وتعزيز التبادل التجاري مع الصين كثنائي أقوى اقتصاد في العالم- أيضا- نقص الدراسات والبحوث ذات الصلة بموضوع اتفاقية التجارة الأردنية الصينية والعمل على إثراء الموضوع بالبحث والدراسة لأهميته الاقتصادية والقانونية.

حيث بدأت العلاقة الثنائية بالمعاهدة الاستثمارية الثنائية التي وقعت بين الأردن و الصين عام 2001 وتم تمديدها لعشر سنوات وسينتهي العمل بها عام 2021.

بسبب المساحة المحدودة التي يجب علينا أن نكتفيها، سنقوم بتغطية النقاط الرئيسية وهي إضاءات على مواد الاتفاقية وشرح الأمور الجوهرية والمتعلقة بالتنظيم القانوني والاقتصادي، وسنقوم بالمرور على مواد الاتفاقية وشرحها بما يتوافق والمعاهدات والتعريفات المضافة و التفسيرات، واجراءات تشكيل هيئة التحكيم، تبليغ أطراف النزاع- اتفاق التحكيم- تحديات المحكمين و عزلهم، تمثيل الأطراف، الحجز التحفظي، لغة واجراءات التحكيم، إصدار قرار التحكيم وتنفيذه وهل حققت الطموح على أرض الواقع والخلاصة مع النتائج و التوصيات.

الكلمات المفتاحية: المعاهدة الاستثمارية 'الأردن 'الصين 'تشجيع الاستثمار' التحكيم الدولي.

## Introduction:

Ever since Adam Smith extolled the virtues of the division of labor and David Ricardo explained the comparative advantage of trading with other nations, the modern world has become increasingly more economically integrated. International trade has expanded, and trade agreements have increased in complexity. While the trend over the last few hundred years has been toward greater openness and liberalized trade, the path has not always been straight. Since the inauguration of the General Agreement on Tariffs and Trade (GATT), there has been a dual trend of increasing multilateral trade agreements, those between three or more nations, as well as more local, regional trade arrangements.

In 1995, the World Trade Organization (WTO) succeeded the GATT as the global supervisor of world trade liberalization, following the Uruguay Round of trade negotiations. Whereas the focus of GATT had been primarily reserved for goods, the WTO went much further by including policies on services, intellectual property and investment. The WTO had over 145 members by the early 21st century, with China joining in 2001.

Jordan has signed 53 (BIT) s of which 45 have been ratified, since the previous review in 2008 Jordan has signed (BIT) s with Azerbaijan, Armenia, Canada, Cyprus, and Iraq. Libya, Portugal, Qatar, Slovakia, USA and china .....also Jordan is a party to the New York convention recognition and enforcement of arbitral award<sup>(1)</sup>.

While the WTO seeks to extend the multilateral trade initiatives of the GATT, recent trade negotiations appear to be ushering in a stage of "multilateral zing regionalism." The Transatlantic Trade and Investment Partnership (TTIP), the Transpacific Partnership (TPP), and the Regional Cooperation in Asia and the Pacific (RCEP) comprise a significant portion of global GDP and world trade, suggesting that regionalism may be evolving into a broader, more multilateral framework<sup>(2)</sup>.

(1)[www.IBPUS.com](http://www.IBPUS.com). (Jordan: doing business, investment in Jordan GUIDE volume 1 strategic practical information2015).

(2)<https://www.investopedia.com/articles/investing/011916/brief-history- international- trade- agreements.aspweb2020>.

The global governance system for FDI is made up of a dense and complex network of international investment agreements that are usually concluded on a bilateral basis. Bilateral investment treaties (BIT) hence form the most important legal institution for the governance of FDI<sup>(3)</sup>.

They are defined as agreements that “protect investments by investors of one state in the territory of another state by articulating substantive rules governing the host state’s treatment of the investment and by establishing dispute resolution mechanisms applicable to alleged violations of those rules.”<sup>(4)</sup> The aim of BIT contracting parties is to promote economic cooperation, believing that enhanced legal protection will ultimately result in increasing FDI flows fostering economic development processes in host as well as home countries. BITs, however, do not allow for direct regulatory measures by host states potentially increasing the developmental impact of FDI. Furthermore, the results of quantitative econometric studies on the effectiveness of BIT in increasing FDI flows are mixed and lead to an inconclusive picture<sup>(5)</sup>.

The economic and trade agreements is an important tool in the development and increase the exchange of trade volume and increase national exports, in particular, require a revision of that Convention and evaluate the efficiency of the Jordanian and Chinese economy, and assess the Jordanian economic ability to accept and keep pace and the extent of achieving the goal that Jordan and China seeks for him in export development and work To promote and encourage investment between them.

### Research problem

The research seeks to cover aspects of the topic by answering the following questions:

- 1- What is new in the Jordanian- Chinese investment law and policy during the bilateral agreement signed between the two countries to protect and encourage investment and settle disputes between the two parties?"
- 2- What are the most prominent topics covered by the agreement signed between Jordan and China in a legal sense?
- 3- Does the agreement actually enhances opportunities to develop foreign trade and encourage investment for the two countries?
- 4- Did the agreement lead to an increase in the actual level of investment between the two countries?

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(3) See e.g. (Dolzer&Stevens1998, p.58) See also (Dolzer and Stevens 1997, p.74).

(4)(Vandavelde, K. J. 2000, p. 469- 502).

(5)(Hallward- Driemeier, M. 2003, p.3121).

### The importance and justification of research

1. Contributing to enriching the knowledge of the concerned and planners in setting the policy for Jordan's foreign trade and enhancing trade exchange with China as the second strongest economy in the world.
2. Lack of studies and research related to the subject of the Jordanian- Chinese trade agreement and working to enrich the subject by research and study for its economic and legal importance.

### Research methodology:

The descriptive method was adopted.

- 1- The economics relationship, role and impact between China and Jordan trade.

Foreign and domestic FDI laws have been developed rapidly following the growth of the global economy over the past two decades, in order to strengthen protection criterion for foreign investors on both sides. With regard to the Jordanian investment law, the International Investment Agreement has emanated as a way to address the growth of a foreign direct investment. The FDI response also appeared which reflects the most restrictive controls. The advanced investment system in Jordan analyzes the current challenges of the investment system in the country and addresses these challenges in the future. In addition to a wider view of changing economic realities in Jordan and China.

China is Jordan's second- largest trading partner; with a volume of trade exchange between the two countries amounted to about \$ 3 billion in 2017. Chinese investments in Jordan increased, particularly in the energy and mining sectors. In addition to Jordan's support the Chinese "Belt and Road" initiative and welcoming a greater economic, political and cultural Chinese initiative in the region and express the Kingdom's support for the one- China policy, the Jordanian- Chinese's relations depend on a strong base and respect between leaders of both countries, which means transforming these relations into practical steps that are in the benefit of both. "as well as the China- Arab States Cooperation Forum (CASCF), and discussions during the CASCF focus on the land and marine project in millions of dollars, including the One Belt One project Road, which aims to link China with the rest of the world, including Jordan, The Silk Road Economic Belt, the ground component of the initiative, focuses on bringing China, Central Asia, Russia and Europe (the Baltic Sea) together; connecting China with the Arabian Gulf and the Mediterranean through Central Asia And Indian Ocean<sup>(6)</sup>The Recent Situation of a Chinese Companies in Jordan (Measurement, Method and Structure)

In general, China's direct investment in the Middle East and NorthAfrica(MENA) starts late and the scale is small by 2010, West Asia accounts for only 5.06% of China's total direct investment to foreign countries. The investment is about \$ 3.48 billion, and the ratio appears below. The United Arab Emirates is

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(6)<http://www.jordantimes.com/news/local> (china- eyeing- more- investments- jordan- 2019).

the country that has the most investment projects and the value of the investment, in addition to Jordan. Saudi Arabia. Kuwait, Qatar, Iran and Turkey, etc ...<sup>(7)</sup>

The structure and method of investment in Jordan are about \$ 96.03 million, more than 150 Chinese projects between small, medium and large projects. The first one is (APCO), Attarat Energy Company, a project to construct the first oil- fired power plant and open a moulded mine in Jordan will soon start construction of the power plant. Working with coal, which has a capacity of 554 MW gross / 470 MW net, and the power plant is scheduled to start operation in mid- 2020, and this project is the first to use Jordan's commercial dependence on imported oil and gas. The value of its investments is 2.1 billion dollars, and the project is the largest private sector in Jordan so far, and the shareholder will invest 528 million dollars and the rest will be funded with 105 billion dollars loan provided by the Bank of China and the Industrial and Commercial Bank of China, and guaranteed by the Chinese Export and Credit Insurance Company.

The second mega project is the Chinese Dragon Mall; it provides household necessities and other products, which cover about 20, 000 square meters, and cost about 20 million US dollars for construction.<sup>(8)</sup>

- 2- The bilateral investment agreement signed in 2001 between Jordan and China aims to enhance, Desiring to promote greater economic cooperation between them, with respect to investments made by investors of one Contracting Party in the territory of the other Contracting Party; Recognizing that agreement upon the treatment to be accorded to such investments will stimulate the flow of capital and the economic development of the Contracting Parties;

Agreeing that a stable framework for investment will maximize effective utilization of economic resources and improve living standards;

## 2- Overview the articles of treaty: -

What is the meaning of investment?

Most international investment instruments adopted a broad definition of investment and (if needed) in second step limit this broad definition the origin of this approach can primarily be seen in the many investment protection treaties which wanted to cover as many forms of investment as possible<sup>(9)</sup>

The first article of the agreement started with the definition of investment and the definition of the investor and enumerated the activities, for example to name a few, in order to face any developments that may arise.

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(7)(Xinpingzhang, brucep. corrie, 2018, p.173- 175).

(8)[www.jic.gov.jo](http://www.jic.gov.jo) (Fact sheet – China –Department of studies and policies.2020).

(9)(Polian, 2006, p. 31).

The term "investment" means all assets invested by one of the contracting parties in the territory of the other contracting party in accordance with its laws and regulations and includes, for example but not limited to: movable and immovable property, stocks, shares, debentures and other forms of participation in companies, claims to money or to any performance having a financial value, intellectual property rights, business concessions conferred by law or under contract permitted by law. On the other hand the term "investor" means in respect of either Contracting Party: natural persons, economic entities, including companies, corporations, associations, partnerships and other organizations, incorporated and constituted under the laws and regulations of either Contracting Party and have their seats in that Contracting Party.

However in any situation, they in which investors have reasonable doubts whether a tribunal will find that either they or their investment is not covered by the basic treaty, that investor or investment will benefit from an expanded definition investor or investment That removes risk of a finding of no jurisdiction the primary effect of this expanded definition<sup>(10)</sup>.

The second Article obligated the two countries (Jordan and China) to encourage investment and create favorable conditions and overcome difficulties and obstacles that exist in front of investors from both parties, as each party announces good investment opportunities available to investors of the other country.

Article three relates to the protection of investment, whereby each of the contracting parties in its region grants investments and returns to investors of the other contracting party, full protection and safety, and deals with the investments and returns of investors of any of the contracting parties in the territory of the other contracting party, the contract of the other contracting party, the contract of the other contracting party.

Article four talks about National treatment and most favored nation treatment, Each Contracting Party shall, without prejudice to its laws and regulations, grant the investments and returns of the investors of the other Contracting Party and related activities a transaction not less favorable than that granted to the investments of its investor or the activity with which the activity or activity is associated.

Expropriation (nationalization) Article Five recommended

It is not permissible for one of the contracting parties to expropriate or nationalize an investment in its territory that belongs to the investors of the other contracting party, whether directly or indirectly, or to take any actions that have the same effect except for the purposes of the public interest, and on the basis of non- discrimination Equal to the market value of the defunct investment (nationalized).

Article Six deals with Compensation for damage or loss

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(10)(Gole, 2013. 180).

Investors of any of the contracting parties whose investments in the territory of the other contracting party are subject to losses arising from war, armed conflict, civil disturbance, national emergency, revolution, riot or similar counterparts from similar counterparts, To its investors or the investors of any third country, whichever is more preferable to bear the meaning, in terms of restoring the state to what it was and compensating the damages or any other settlement.

Financial transfers between the investors of the two countries: -

Each contracting party shall guarantees to the investors of the other party to transfer their investments and the returns resulting therefrom and set up. Each of the contracting parties guarantees that the transfers are made in freely convertible currency without delay at the exchange rate prevailing on the date of transfer that stipulates in article seven.

Subrogation If one Contracting Party or its designated Agency makes a payment to its investor under an indemnity given in respect of an investment made in the territory of the other Contracting Party, the latter Contracting Party shall recognize the assignment of all the rights and claims of the indemnified investor to the former Contracting Party or its designated agency, by law or by legal transactions, and the right of the former Contracting Party to exercise by virtue of subrogation any such right to the same extent as the investor.

Settlement of disputes between a Contracting Party and an investor of the other Contracting Party

### **3- Settlement of disputes between a Contracting Party and an investor of the other Contracting Party: -**

Article ten from agreement clarifies the procedures and methods to be followed in the event of a dispute between a contracting party and investor, where the following must be followed

1. Any legal dispute between an investor of one Contracting Party and the other Contracting Party shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.
2. If the dispute cannot be settled through negotiations within six months, the investor concerned shall be entitled to submit the dispute to the competent court of the Contracting Party in whose territory the investment is made.
3. If the dispute cannot be settled after resort to negotiations as specified in Paragraph (1) of this Article, the dispute may be submitted at the request of the investor concerned to:

The International Centre for Settlement of Investment Disputes (ICSID), or an ad hoc arbitral tribunal provided that the Contracting Party is to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

#### **4- Settlement of disputes between the Contracting Parties: -**

Article eleven from agreement clarifies the procedures and methods to be followed in the event of a dispute between a contracting party and investor, where the following must be followed

Firstly: Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled as far as possible by negotiations.

Secondly: If a dispute cannot be settled within six (6) months it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

Thirdly: Such arbitral tribunal shall be constituted ad hoc as follows: each Contracting Party shall appoint one arbitrator and these two arbitrators shall agree upon a national of a third State as their chairman. Such arbitrators shall be appointed within two (2) months from the date one Contracting Party has informed the other Contracting Party, of its intention to submit the dispute to an arbitral tribunal, the chairman of which shall be appointed within two (2) further months.

Fourthly: either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of either of the Contracting Parties or if he is otherwise prevented from discharging the said function, the Vice- president or in case of his inability the member of the International Court of Justice next in seniority should be invited under the same conditions to make the necessary appointments.

Fifthly: The arbitral tribunal shall reach its decision by virtue of the present Agreement and pursuant to the rules of international law recognized by both parties. It shall reach its decision by a majority of votes; the decision shall be final and binding.

Sixthly: Each Contracting Party shall bear the costs of its own member and of its legal representation in the arbitration proceedings. The costs of the chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The tribunal may, however, in its award determine another distribution of costs.

#### **5- Duration and denunciation the treaty**

The period of validity of the agreement is ten years and renewed for a similar ten years unless one of the parties wishes to terminate the agreement before one year from the date of its expiry, The agreement was signed on November 5, 2001 and it was extended until November 5, 2021 after it was automatically extended in 2011.

#### **6- Evaluating the impact of the (BTI) between Jordan and China.**

The results of the analysis of export data for Jordanian imports from China indicated that the trade agreement has a significant positive impact on the volume of trade exchange between the two countries on the one hand and on trade on the other hand, it is expected that the balance will continue for Jordan as



a whole the impact of the agreement and the chances of success For the Jordanian and Chinese sides, the most important of which are:

1. The agreement contributed to encouraging investment in a various aspects of customs, agriculture, industry, specifications, etc., which will contribute to improving the quality of Jordanian products manufactured for export, especially to China and uranium and energy investment.
2. The agreement contributed to creating an environment conducive to increasing the volume of investments between two countries, especially in the industrial areas of the qualified industrial zones, which increases export opportunities, which in turn encourages investment in the investment sectors. The World Bank report also stated that Jordan is one of the countries that imposes few customs duties, and has undertaken many regulatory reforms, most notably the abolition of restrictions imposed on private and foreign investment, the treatment of foreign domestic investment such as investment, and allowing foreigners full ownership of the project,
3. The agreement contributed to increasing the number of exports from Jordan to china through diversifying the base of locally produced goods for export purposes and achieving a great diversification in the components of foreign trade. The World Bank Report (2004) confirms that the competitiveness of Jordan's foreign trade has clearly improved and has a comparative advantage in some resources of abundance, adopting policies to build institutional work seriously, and pursuing economies of scale, increasing its competitiveness. (The World Bank, May 2004, pp. 147 and 153 55)
4. The agreement contributed to the growth of Jordanian exports, in non- traditional sectors, especially related to information and communications technology, and the opportunity in which Jordan becomes the center of this particular industry after the measures taken by the government to liberalize telecommunications services and ease restrictions on imports of communications equipment, which will encourage Chinese companies to Opening of regional centers in Jordan.
5. The agreement contributed to increasing the demand for the national workforce as a result of the increase investment in China and the increase in the volume of Jordanian exports to diversify the components of trade between two countries of Jordanian industry products, which included the clothing and software sectors. Information and communication technology and services, renewable energy, uranium, phosphate and potash mining and innovation in all available fields.
6. The agreement contributed to the establishment of Jordanian- Chinese export industries to take advantage of the benefits of customs reductions and special exemptions.
7. The agreement contributed to the establishment and establishment of joint Jordanian- Chinese companies in various fields to help in entering and promoting commodities in two countries.

## 7- Advantage and disadvantage of (BIT) between Jordan and china

As we know (BIT) play importance roles the legal protection of foreign investment remains to a large On the one hand, this treaty cover roughly more than 50% of the bilateral relationship between states, On the other hand we can know disadvantage of this treaty: -

### Advantages:

(BIT) between Jordan and china treaty has many advantages.

First and foremost, it establishes a single legal framework and ensures the greatest simplicity, coherence and uniformity with regard to the rules applicable to the parties. A multilateral treaty, however, does not need to be unduly rigid and contracting parties may accommodate their specific needs through variable geometry, protocols, reservations, opting out mechanisms, optional declarations or in any other manner permitted under the law of treaties. While introducing in the system the necessary degree of flexibility, these devises should not be used excessively – or abused – lest of undermining the integrity of the treaty.

From the standpoint of the settlement of disputes, furthermore, the interpretation and application by national courts and investment arbitral tribunals of the same treaty will in all probability reduce the legal uncertainty surrounding investment- related disputes and progressively develop a consistent body of jurisprudence tribunals could comfortably rely upon. The risk of conflicting decisions, being inherent in the sovereign character of international investment tribunal

Second, have the link between the conclusion of BITs and the increase in foreign investment, however, it must not be neglected that countries bound by a handle of BITs or no BITs at all- such as Jordan and china- have managed to attract remarkable flows of foreign investment.

Third, the current legal framework, however fragmented, works quite well. It is in continuous expansion, even though the conclusion of new BITs has slowed down in the last few years. Additionally, the accuracy, level of sophistication and coherence of the current legal framework progressively improves due the renegotiation of BITs, the elaboration of new model BITs, and the development of a largely consistent body of arbitral decisions.

Fourth, the framework has a significant potential for improvement with regard to both substantive and procedural rules (for instance, through the inclusion, respectively, of provisions on the protection of human rights and the environment, and of clauses on consolidation.

### Disadvantage:

Resorting to bilateral agreements sometimes, the developing countries are sure to be the biggest losers' bilateral negotiations with developed economies. The reason is that the bilateral free trade agreements, It serves the interests of major economies (china), which in turn can impose their conditions.

Also, this necessarily leads to a deficit in the trade balance of developing countries it means increasing imports against exports for Jordan.

#### **Future Ambition**

- 1- Follow up on joint economic and investment initiatives, and take place at regular times and where necessary, especially:
  - a. At the ministerial level, mainly within the framework of the Jordanian- Chinese partnership
  - b. At the level of senior Jordanian officials from one side, and senior Chinese officials from the other side.
  - c. By making full use of the advantages of diplomatic channels including regular brief statements from officials, consultations on the occasion of international meetings, and contacts between diplomatic representatives to third countries.
  - d. by any other means that would make a beneficial contribution to consolidating, developing and raising the level of this economic dialogue
- 2- China and Jordan agree upon renewing the current agreement, which will end next year, to start gradually establishing a free trade zone during a transitional period with a maximum (12) years starting from the date of renewing the agreement similar to the current agreement with the United States of America and the European Union.
- 3- Updating the terms of the agreement to suit the current circumstances, as the agreement was concluded twenty years ago, during which great developments took place in various fields and items, especially the prevention of double taxation and work to establish a qualified special area.

#### **8- Recommendations:**

- 1- Adopting promotional programs for the Jordanian product and joining efforts to make Jordan an attractive center for foreign investment and enhancing productivity in the market and in direct coordination with specialized commercial and marketing institutions and between the public and private sector institutions. And facilitate the procedures for attracting Arab and foreign investments to enter into partnerships with private national institutions and public.
- 2- Directing technical and financial support programs towards projects that increase export opportunities to the Chinese market, especially in non- traditional economic sectors such as manufacturing industries, which are encouraged by the agreement.
- 3- Provide incentives to establish and establish Jordanian- Chinese companies in the areas of promotion and trade and the entry of Jordanian goods into the Chinese market and work to adopt the establishment of qualified industrial zones (QIZ).
- 4- carrying out specialized studies in specific fields with available inputs and alternatives and production for the purpose of enhancing Jordanian exports to the Chinese market, to a high- quality degree.

- 5- providing the necessary assistance to Jordanian exporters to improve their conditions in accordance with the terms of export to the People's Republic of China.
- 6- Increased knowledge of commercial producers and exporters of Jordanian texts of the Convention and the terms of export and standards of specifications and standards, but to make the most of them benefit, and we recommend conducting specialized studies to measure the impact of development to increase the volume of trade exchange between the two countries, and add variables economic relevant in measuring the impact of the Convention.

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