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# **REPORT ON AN ANALYSIS OF THE ECONOMIC/LEGAL LITERATURE ON INTELLECTUAL PROPERTY (IP) RIGHTS: A BARRIER TO ENTRY?**

*prepared by the Secretariat*

1. The Annex to this document contains a Report on An Analysis of the Economic/Legal Literature on the Effects of IP Rights as a Barrier to Entry prepared under the project on Intellectual Property and Competition Policy (CDIP/4/4/REV). This report has been prepared by the Center on Law and Information Policy (CLIP) at the Fordham University School of Law, New York, NY, United States of America, by a team of researchers led by Professor Joel R. Reidenberg, the Stanley D. & Nikki Waxberg Chair and Founding Director of CLIP, and by Jamela Debelak, Executive Director of CLIP.
2. The CDIP is invited to take note of the information contained in the Annex to this document.  
[Annex follows]

### **... I. RESEARCH MISSION**

...3. In connection with the World Intellectual Property Organization (WIPO) project on Intellectual Property and Competition Policy, WIPO commissioned the Center on Law and Information Policy at Fordham University School of Law (CLIP) **to undertake a review of relevant literature in order to analyze the role of intellectual property (IP) rights as a barrier to entry. In particular, WIPO sought information on literature that addressed developing countries and that was empirical in nature. WIPO further hoped that the study would reveal literature that identified factors in the use of IP rights as exclusionary measures.** And, lastly, WIPO sought information on whether additional empirical studies will be feasible and/or necessary to better understand how and how much IP rights can be used to bar or delay the entry of competitors.  
(Annex p. 3)

## ... 6. Geographic Case Studies

42. **Other articles use a geographic focus to explore the impact of TRIPS on foreign direct investment (FDI).**<sup>41</sup> Some of these articles study the interplay between TRIPS and FDI in the pharmaceutical industry within a specific geographic area.<sup>42</sup> **These articles explore how strong IP rights create a market-friendly enabling environment that will encourage FDI.**<sup>43</sup> For example, one article finds that strengthening IP rights has a positive effect on FDI and that TRIPS increases the correlation between IP rights and FDI.<sup>44</sup> The article also points out, however, that while IP rights are a critical component of maximizing the appeal of FDI in developing countries, it is only one of many drivers. <sup>45</sup> It is notable that all of these articles focus their analysis on a specific country or geographic region in order to draw conclusions about the overall correlation between IP protection and FDI...

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41 Czub, Kimberly A., "Argentina's Emerging Standard of Intellectual Property Protection: A Case Study of the Underlying Conflicts between Developing Countries, TRIPS Standards, and the United States," *Case Western Reserve Journal of International Law* 33 (2001): 191; **Kogan, Lawrence A. "Rediscovering the Value of Intellectual Property Rights: How Brazil's Recognition and Protection of Foreign IPRs Can Stimulate Domestic Innovation and Generate Economic Growth," *International Journal of Economic Development* 8(1-2) (2006): 15;** Adams, S., "Intellectual Property Rights, Investment Climate and FDI in Developing Countries," *International Business Research* 3(3) (2010): 201-209.

42 Czub, Kimberly A. "Argentina's Emerging Standard of Intellectual Property Protection: A Case Study of the Underlying Conflicts between Developing Countries, TRIPS Standards, and the United States." *Case Western Reserve Journal of International Law* 33 (2001): 191.

**43 Kogan, Lawrence A., "Rediscovering the Value of Intellectual Property Rights: How Brazil's Recognition and Protection of Foreign IPRs Can Stimulate Domestic Innovation and Generate Economic Growth," *International Journal of Economic Development* 8(1-2) (2006): 15.**

44 Adams, S., "Intellectual Property Rights, Investment Climate and FDI in Developing Countries," *International Business Research* 3(3) (2010): 201-209.

45 *Id.*