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The Emerging BRIC Economies: Lessons from Intellectual Property Negotiation and Enforcement

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Abstract:

In 2003, two economists at Goldman Sachs produced a white paper predicting the economic growth of Brazil, Russia, India, and China, collectively termed the BRIC economies. This paper offered projections from the present date to 2050 relative to similar growth projections of the G6 countries. Applying capital accumulation and productivity growth to demographic trends, the authors discovered a surprising result. The BRIC economies may be larger in gross domestic product (GDP) terms than the entire current G6 within 40 years.

This article briefly examines the converging and diverging economic and legal trends of the BRICs from an intellectual property perspective. Part I of this article explores the BRICs macroeconomic converging and diverging forces such as growth opportunities and constraints, transformations and challenges, as well as outward and inward foreign direct investment. This section will take a particular focus on intellectual property laws and enforcement as emblematic of the challenges experienced by emerging BRICs. Part II amplifies the focus on intellectual property with an examination of one of the most controversial current intellectual property topics - that of pharmaceutical patent rights. This section will examine the compulsory licensing statutes and practices of each BRIC member and draw conclusions from these activities about the differing approaches of emerging nations to heretofore unfamiliar legal structures and obligations.

Keywords: intellectual property, compulsory licensing, foreign direct investment

... ¶39 As described above, Brazil's pattern of pharmaceutical protection is similar to India's but without the early post-colonial period of patent protection. Brazil added pharmaceutical compound protection in 1997.¹³⁹ The revised law now complies with TRIPS, at least in regard to subject-matter protection. Very soon after, in 1999, Brazil instituted a formal system for the approval of generic pharmaceuticals.¹⁴⁰ These provisions have ensured that Brazil has a strong domestic manufacturing industry, **though it has been suggested it would be stronger if the government's public stance on IP were more favorable to innovation. 141**

¹⁴¹

See, e.g., Lawrence A .Kogan, *Brazil's IP Opportunism Threatens U.S. Private Property Rights*, 38 U. MIAMI INTER-AM. L. REV. 1, 23-24 (2006) (suggesting that, due to the Brazilian government's anti-IP policies, European investment in research and development is shifting to the United States).

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