

# **A Hybrid Legal and Economic Development Model that Balances Intellectual Property Protection and Economic Growth: A Case Study of India, Brazil, Indonesia, and Vietnam**

*Garrett Halydier*

**Asian Law & Policy Journal**

Vol. 14:1 (2012)

## INTRODUCTION

Industrialized countries are using the Agreement on Trade Related Aspects of Intellectual Property Rights (“TRIPS”)<sup>1</sup> to harmonize international intellectual property rights (“IPR”)<sup>2</sup> regimes. Their goal is to make it easier and more affordable for their own domestic corporations to operate globally without fear of rampant piracy or the burden of meeting different requirements for IPR protection in every new market.<sup>3</sup> Often found leading the charge, the pharmaceutical industry dedicates substantial resources toward lobbying industrialized governments to enforce the terms of TRIPS in developing and least developed countries (“LDC”).<sup>4</sup> In particular, the United States pharmaceutical industry has long been among the chief proponents for using Section 301 of the Trade Act of 1974 (“Special 301”) to pressure developing countries into strengthening their IPR regimes.<sup>5</sup> Although dozens of countries have been placed on the Special 301 Watch List<sup>6</sup> over the years, countries with emerging domestic pharmaceutical industries that have the potential to challenge the U.S. pharmaceutical industry; such as India, Brazil, Indonesia, and Vietnam; have been the primary targets of sanction threats.<sup>7</sup>

Developed countries continue to push for a homogenized global IPR regime that will protect their multi-national enterprises (“MNE”). **Meanwhile, LDC and developing countries have their own political and economic realities to address as they seek to enter the world economic order.<sup>8</sup> These countries desperately need Foreign Direct Investment (“FDI”)<sup>9</sup> and international Technology Transfers<sup>10</sup> to promote their growth.<sup>11</sup> They must simultaneously provide IPR regimes that are sufficiently TRIPS compliant to encourage FDI and technology transfer, yet remain weak and locally preferential enough to encourage the growth of the domestic industries essential to the creation of a sustainable economy.<sup>12</sup>**

**The cases of India, Brazil, Indonesia, and Vietnam illustrate the potential outcomes of different responses to the tension between international obligations, IPR regime strength, and economic growth.** India successfully resisted decades of international pressure to implement a stronger IPR regime and emerged as a world-leading supplier of affordable generic drugs.<sup>13</sup> Meanwhile, both Brazil and Indonesia bowed to international pressure to implement stronger IPR protections, and both countries continue to struggle to maintain their once promising domestic pharmaceutical industries.<sup>14</sup> Vietnam currently stands on the cusp of rapid economic transition.<sup>15</sup> Prematurely implementing stronger IPR protections will significantly impact the success or failure of that transition.<sup>16</sup> **These cases highlight the importance of properly balancing economic growth and IPR regime strength for LDC and developing countries currently pursuing entry into the global economic order.**

(pp. 87-90)

... III. CORROBORATING THE MODEL: THE CASES OF INDIA, BRAZIL, INDONESIA, AND VIETNAM

(p. 117)

... **B. Brazil**

(p. 122)

... 3. Analysis

**In summary, because Brazil had incredible, built-in competitive advantages as the world's fourth-largest pharmaceutical market, with vast natural resources and an educated populace, it gained an economic head start in the 1960s.<sup>205</sup>** Yet, over the last fifty years, Brazil acted to change its economy, pharmaceutical industry, and IPR protections out of sync with each other. These actions increased the length of time the country spent in each stage of economic development. Were it not for the imbalances between IPR protections and economic development, Brazil could have developed a world-class pharmaceutical industry to rival even India's.

-----  
**<sup>205</sup> Salama & Benoliel, supra note 168, at 641-43; Mayer, supra note 24, at 397-98; Lawrence A. Kogan, Brazil's IP Opportunism Threatens U.S. Private Property Rights, 38 U.MIAMI INTER-AM. L. REV. 1, 4-5 (2006).**

(pp. 127-128)