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Brazil, India, and the International Agenda for Patents

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In our Policy Brief¹ examining the evolution of investments in R&D and intellectual property registrations for products and processes of industrial innovation among BRICS countries, we conclude that, despite increased investments in R&D and in BRICS countries patenting in the United States, the last indicator still reveals a noticeable difference between emerging and traditional powers with regard to innovation in these countries not keeping pace with the rapid economic growth in recent years.

Historically, Brazil and India have taken an active part in the discussions in international forums on intellectual property. This Monitor provides input on comparisons between the Brazilian and Indian positions, focusing on the main issue of generic drugs². Among our findings, we perceive shortcomings in the articulation of the shared interests between the two countries; which would otherwise be capable of strengthening a common position in the international arena. The adoption of different perspectives and the lack of a more profound dialogue on the subject of patents are the two most noteworthy aspects contributing to the difficulty of overcoming this framework.

¹ “O Desenvolvimento Desigual na Era do Conhecimento: A Evolução da Participação dos BRICS no Registro de Propriedade Intelectual e Investimentos em P&D” (*The Uneven Development in the Knowledge Era: The Evolution of Participation in the registry of the BRICS Intellectual Property and Investments in R & D*). Available at: <http://bricspolicycenter.org/homolog/uploads/trabalhos/4034/doc/1951390816.pdf> (only in Portuguese).

² In last November, the BRICS Policy Center received the Indian fellow Niranjana Rao Calindi (Centre for Economic and Social Studies, India), who is an expert in the Economics of the Patent System. This Monitor results of our reflections and exchanges with the fellow, with whom our group had the opportunity to conduct an extensive interview. Part of this interview is available at: <http://bricspolicycenter.org/homolog/Multimedia/IndexFront5/36>.

The Brazilian and Indian positions in the intellectual property agenda from a historically comparative perspective

In the 1970s, both countries led a movement of developing countries that argued in favor of a revision of the Paris Convention for the Protection of Industrial Property (CUP) that would make it more suitable for the needs and demands of developing countries. The debate was based on the document "The Role of the Patent System in the Transfer of Technology to Developing Countries ", published by UNCTAD in 1974³.

Accordingly, until the mid-1980s, in the Diplomatic Conference for the Revision of the Paris Convention Brazil and India led the debate on the regulation of the international patent systems, focusing on more flexible guidelines for developing countries, but this Diplomatic Conference ended in failure, when it could not reach any agreement. Nevertheless, the realization of this block was not reassessed in the TRIPS Agreement negotiations during the Uruguay Round of GATT. Considering the dynamics of the GATT (where negotiations are not organized in blocks, but by individual countries), the Brazilian and Indian positions have drifted from one another. Initially, both countries led a coalition of ten countries (G10) which opposed to the inclusion of the issue of intellectual property in the Round. Yet, this failed to reflect the existence of a more cohesive vision within the group, whose performance was also hampered by threats of trade retaliation to many of these countries, by the United States, further limiting their scope for maneuvering dialogs.

Currently –contrary to the widely accepted belief– the distance between Brazil and India's positions on the international patent system have increased. Nevertheless, a recent event involving the two countries – and South Africa– reintroduced the debate for pharmaceutical patents and public health, particularly in cases of public health emergencies. We refer to the case of antiretroviral drugs, in which Brazil and South Africa threatened to 'violate' the patent rights (compulsory licenses, in technical terms) of U.S. companies, to lower the costs of HIV / AIDS prescription drugs. During the event –which also mobilized international public opinion and resulted in the "Doha Ministerial Declaration on the TRIPS Agreement and Public Health"– Brazil resolved to importing the necessary drugs from the Indian pharmaceutical industry, as well as to

³ This document was based on the Brazilian resolution "The Role of Patents in the Transfer of Technology for Underdeveloped Countries", presented to the UN in 1961.

include a contract to transfer technology to Brazil from India. The relations between the three countries throughout these events were the starting point for the creation of the IBSA Forum. However, IBSA's cooperative agenda has moved away from the topic of generics and revealed a lack of effective coordination, particularly between Brazil and India, with regard to the international agenda for intellectual property.

This disparity reveals, in large measure, the different perspectives adopted by these countries in regards to the way the patent system should operate. On the one hand, Brazil returns to the discourse that facilitated their conduct during the 1960s, 1970s and much of the 1980s, arguing in favor of more flexible international regulations that could encourage the development of Southern countries.

On the other hand, the Indian government follows the premise that the protection of property rights should be more rigorous in order to benefit the development of their country. According to Niranjan Rao Calindi, India lost interest in its leadership role with the developing countries since its neo-liberal reforms since the mid-1990s. Its development agenda and foreign policy agenda are more aligned with the interests of the United States than with the Global South. In the case of the "Doha Development Agenda at WIPO", for instance, although India expressed support for the creation of the Agenda in 2004, the country chose to remain outside the coalition "Friends of Development", a group of eleven countries⁴ that co-sponsored the proposal made by Brazil and Argentina to include the development dimension in WIPO.

Final Considerations

Based on historical analysis of India and Brazil's behavior, in reference to the intellectual property agenda, there is an apparent gap between the recently held positions by the two countries, which, in more effective terms, has been translated as an absence of joint interests.

⁴ Argentina, Bolivia, Brazil, Cuba, Dominican Republic, Ecuador, Egypt, Iran, Kenya, Peru, Sierra Leone, South Africa, Tanzania and Venezuela.

Brazil and India –in addition to the BRICS countries in general– should consider the current scenario as extremely favorable for the establishment of a larger field of dialogue that would focus on the topic of industrial property, keeping in mind the disturbance that traditional powers have been confronting since the financial crisis of 2008, which has reached as far as reduced spending on innovation. The next BRICS summit in March 2013 in Durban (South Africa) could possibly provide a favorable environment for intensifying this dialogue. Bilateral or trilateral approaches such as the IBSA Forum reinforce areas of South-South cooperation in addition to multilateral institutions. However, to take full advantage of the current scenario, the dialogue agenda between these countries should establish a cooperative agenda for intellectual property as well as coordinates actions in multilateral fora, in order to strengthen mutual interests and effectively promote development, especially in regard to public health.