ALEBE LINHARES MESQUITA

THE DIALOGUE BETWEEN THE INTELLECTUAL PROPERTY PROVISIONS IN PREFERENTIAL TRADE AGREEMENTS AND THE BRAZILIAN LEGAL FRAMEWORK

Master Dissertation

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Master Dissertation presented to the Examining Committee of the Law Post-Graduate Program of the University São Paulo Law School, in the International Law concentration area, under the supervision of the Associate Professor Dr. Alberto do Amaral Júnior.

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ABSTRACT

The present work promotes a dialogue between the intellectual property provisions adopted in Preferential Trade Agreements (PTAs) and the Brazilian legal framework. In recent years, PTAs have become a major source of international intellectual property regulation. This happens in parallel to the multilateral trading system and rules established under the auspices of the World Trade Organization (WTO). The new intellectual property provisions established under PTAs advance significantly the rules established under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). In this scenario, Brazil is apart from the international economic trend of adopting intellectual property provisions in PTAs. Due to its inaction, the country cannot influence the direction in which the international intellectual property regulation is heading. This issue is analyzed in the light of the balance between private and public interests that the protection of intellectual property rights imposes. The general objective of the present work is to investigate how and to what extent the intellectual property rules established under PTAs differs from the Brazilian intellectual property regime. The specific objectives are to assess which are the legal issues and the possible effects that pervade the adoption higher standards of intellectual property protection in PTAs; to map and analyze the norms on patent and test data protection adopted in PTAs and to compare them with the TRIPS Agreement and the Brazilian intellectual property regime; and to investigate how intellectual property rules are diffused across international, regional and national levels. The methodology adopted in this research is characterized as bibliographic, descriptive and exploratory. The importance of this research resides in understanding the cross cutting trends in the establishment of new intellectual property rules. This work concludes that the intellectual property rules on patent and test data protection accorded under PTAs do not radically differ from the Brazilian intellectual property regime. Brazil already has several provisions in its national legislation that even exceed the level of patent and test data protection required under these PTAs and the TRIPS Agreement. On the one hand, the Brazilian intellectual property regime differs from the following TRIPS-Plus provisions on: patentability of methods of treatment, plants and animals; limitation of the grounds for compulsory license; restriction of the grounds for patent revocation; adjustment to compensate the curtailment of the patent term due to the marketing approval procedures; patent-linkage; and test data exclusivity of pharmaceutical products for human use submitted to marketing approval. On the other hand, the Brazilian intellectual property regime aligns with the following TRIPS-Plus provision: prohibition of parallel importation of patented products; patentability of “new uses” of known compounds; adjustment in the patent term of protection to compensate unreasonable delays in the granting process; disclosure of the origin of the national genetic resource and associated traditional knowledge in patent applications; test data exclusivity of pharmaceutical products for veterinary use and plant protection products.

Key Words: Preferential Trade Agreements. TRIPS-Plus. Patent. Test Data. Brazil.

Alebe Linhares Mesquita. O Diálogo entre os Dispositivos de Propriedade Intelectual nos Acordos Preferenciais de Comércio e o Quadro Jurídico Brasileiro. 2017. 269 p. Mestrado – Faculdade de Direito, Universidade de São Paulo, São Paulo, 2017.

RESUMO

O presente trabalho promove um diálogo entre as disposições sobre propriedade intelectual adotadas nos Acordos Preferenciais de Comércio (APCs) e o regime jurídico brasileiro. Nos últimos anos, os APCs se tornaram uma fonte importante de regulação internacional da propriedade intelectual. Isso acontece paralelamente ao sistema e as regras multilaterais de comércio estabelecidas sob os auspícios da Organização Mundial do Comércio (OMC). As novas disposições em matéria de propriedade intelectual estabelecidas no âmbito dos APCs avançam significativamente as regras estabelecidas no Acordo da OMC sobre Aspectos dos Direitos de Propriedade Intelectual Relacionados ao Comércio (Acordo TRIPS). Nesse cenário, o Brasil está à parte da tendência econômica internacional de adotar disposições sobre propriedade intelectual em APCs. Devido à sua inação, o país não pode influenciar a direção que a regulação internacional da propriedade intelectual se dirige. Essa questão é analisada à luz do equilíbrio entre os interesses privados e públicos que a proteção dos direitos de propriedade intelectual impõe. O objetivo geral do presente trabalho é investigar como e em que medidas as normas sobre propriedade intelectual estabelecidas em APCs diferem do regime de propriedade intelectual brasileiro. Os objetivos específicos são avaliar as questões legais e os possíveis efeitos que permeiam a adoção de padrões mais elevados de proteção da propriedade intelectual em APCs; mapear e analisar as normas sobre proteção de patentes e dados de teste adotadas em APCs e compará-las com o Acordo TRIPS e com o regime de propriedade intelectual brasileiro; e investigar como as regras de propriedade intelectual são difundidas nos níveis internacional, regional e nacional. A metodologia adotada nesta pesquisa é caracterizada como bibliográfica, descritiva e exploratória. A importância desta pesquisa reside na compreensão das tendências transversais no estabelecimento de novas regras de propriedade intelectual. Este trabalho conclui que as normas de propriedade intelectual sobre proteção de patentes e dados de teste acordadas nos PTAs não diferem radicalmente do regime de propriedade intelectual brasileiro. O Brasil já possui várias disposições em sua legislação nacional que até mesmo excedem o nível de proteção patentes e dados de teste exigido por esses APCs e pelo Acordo TRIPS. Por um lado, o regime de propriedade intelectual brasileiro difere dos seguintes dispositivos *TRIPS-Plus* sobre: patenteabilidade dos métodos de tratamento, plantas e animais; limitação dos motivos para licença compulsória; restrição dos motivos para revogação de patentes; ajuste para compensar a redução do prazo de patente devido aos procedimentos de aprovação para comercialização; vinculação entre patente e aprovação comercial; exclusividade de dados de teste de produtos farmacêuticos para uso humano submetidos à aprovação comercial. Por outro lado, o regime de propriedade intelectual brasileiro alinha-se com os seguintes dispositivos *TRIPS-Plus* sobre: proibição de importação paralela de produtos patenteados; patenteabilidade de "novos usos" de composições já conhecidas; ajuste no prazo de proteção de patente para compensar atrasos injustificados no processo de outorga; divulgação da origem dos recursos genéticos nacionais e do conhecimento tradicional associado nos pedidos de patente; exclusividade de dados de teste de produtos farmacêuticos para uso veterinário e produtos para proteção de plantas.

Palavras-Chave: Acordos Preferenciais de Comércio. *TRIPS-Plus*. Patente. Dados de Teste. Brasil.

Alebe Linhares Mesquita. Le Dialogue entre les Dispositions sur La Propriété Intellectuelle dans les Accords Commerciaux Préférentiels et le Cadre Juridique Brésilien. 2017. 269 p. Master – Faculté de Droit, Université de São Paulo, São Paulo 2017.

RÉSUMÉ

Cette étude développe un dialogue entre les dispositions relatives à la propriété intellectuelle adoptées dans les Accords Commerciaux Préférentiels (ACPs) et le régime juridique brésilien. Ces dernières années, les ACPs sont devenus une source majeure de la réglementation internationale de la propriété intellectuelle. Ce, parallèlement au système et aux règles multilatérales du commerce établies sous les auspices de l'Organisation Mondiale du Commerce (OMC). Les nouvelles dispositions en matière de propriété intellectuelle établies dans le cadre des ACPs avancent précisent considérablement les règles énoncées dans l'Accord de l'OMC sur les Aspects de Droits de Propriété Intellectuelle qui touchent au Commerce (l'Accord ADPIC). Dans ce schéma, le Brésil s'écarte de la tendance économique internationale qui adopte des dispositions sur la propriété intellectuelle dans les ACPs. De part son retrait, le pays ne peut influer l'orientation de la réglementation internationale de la propriété intellectuelle. Cette question est analysée à la lumière de l'équilibre entre les intérêts privés et publics que la protection des droits de propriété intellectuelle impose. L'objectif général du présent travail est d'examiner comment et dans quelle mesure les règles de propriété intellectuelle établies dans le cadre des ACPs diffèrent du régime brésilien de la propriété intellectuelle. Les objectifs spécifiques sont d'évaluer les questions juridiques et les potentiels effets qu'entraine l'adoption de normes de protection de la propriété intellectuelle plus élevées dans les ACPs; de cartographier et d'analyser les normes sur la protection des brevets et des données d'essai adoptées dans les ACPs pour les comparer avec l'Accord ADPIC et le régime brésilien de propriété intellectuelle; et d'examiner comment les règles de propriété intellectuelle sont diffusées aux niveaux international, régional et national. La méthodologie adoptée pour cette recherche fut à la fois bibliographique, descriptive et exploratoire. L'importance de cette recherche réside dans la compréhension des tendances transversales dans l'établissement de nouvelles règles de propriété intellectuelle. Ce travail conclut que les règles de propriété intellectuelle sur la protection des brevets et des données d'essai convenues dans les ACPs ne diffèrent pas radicalement du régime brésilien de la propriété intellectuelle. Le Brésil a déjà plusieurs dispositions dans sa législation nationale qui dépassent même le niveau de protection des brevets et des données d'essai requises par ces ACPs et par l'Accord ADPIC. Le régime brésilien de la propriété intellectuelle diffère des dispositions ADPIC-Plus suivantes : la brevetabilité des méthodes de traitement, des plantes et des animaux ; la limitation des motifs pour la licence obligatoire ; la restriction des motifs pour la révocation de brevet ; l'ajustement pour compenser la réduction de la durée du brevet en raison des procédures d'approbation de commercialisation ; le lien entre brevet et approbation commerciale; et l'exclusivité des donnés d'essai des produits pharmaceutiques à usage humain soumis à l'approbation de commercialisation. En revanche, le régime de propriété intellectuelle du Brésil s'aligne sur les dispositions ADPIC-Plus suivantes : l'interdiction de l'importation parallèle de produits brevetés ; la brevetabilité des « nouvelles utilisations » de composés déjà connus ; l'ajustement de la durée de la protection du brevet pour compenser les retards injustifiables dans le processus de délivrance ; la divulgation de l'origine de la ressource génétique nationale et des connaissances traditionnelles associées dans les demandes de brevet ; et l'exclusivité des donnés d'essai des produits pharmaceutiques à usage vétérinaire et de produits de protection des plantes.

Mots-Clés : Accords Commerciaux Préférentiels. ADPIC-Plus. Brevet. Donnés d'Essai. Brésil.

LIST OF TABLES

LIST OF FIGURES

LIST OF ABBREVIATIONS AND ACRONYMS

AB	Appellate Body
ABIFINA	Brazilian Fine Chemicals, Biotechnology and Specialty Industries Association
ACTA	Anti-Counterfeiting Trade Agreement
ANVISA	Brazilian Health Regulatory Agency
ARIPO	African Regional Intellectual Property Organization
ARV	Antiretroviral
BIRPI	*Bureaux Internationaux Réunis pour la Protection de la Propriété Intellectuelle*
BPCI	United States Biologics Price Competition and Innovation Act
CAFTA	Central American Free Trade Agreement
CBD	Convention on Biological Diversity
CDIP	Committee on Development and Intellectual Property
CETA	Comprehensive Economic and Trade Agreement
CGRFA	Commission on Genetic Resources and Agriculture
CGen	Genetic Heritage Management Council
CIPIH	Commission on Intellectual Property Rights, Innovation and Public Health
CIPR	Commission on Intellectual Property Rights
CMC	Mercosur Common Market Council
COP	Conference of the Parties
CRTA	Committee on Regional Trade Agreements
CTCN	Climate Technology Centre and Network
DARs	Development Agenda Recommendations
DESA	UN Department of Economic and Social Affairs
DESTA	Design of Trade Agreements Database
DNA	Deoxyribonucleic Acid
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
ECA	Economic Complementation Agreement
EEA	European Economic Area
EFTA	European Free Trade Association
EPA	United States Environmental Protection Agency
EPO	European Patent Office
EST	Environmentally Sound Technology
EU	European Union
FAO	Food and Agriculture Organization
FDA	United States Food and Drug Administration
FDI	Foreign Direct Investment
FD&C	United States Federal Food, Drug and Cosmetic Act
FIFRA	United States Federal Insecticide, Fungicide and Rodenticide Act
FOAG	Swiss Federal Office for Agriculture
GATT	General Agreement on Tariffs and Trade
GATS	General Agreement on Trade in Services
IBAMA	Brazilian Institute of Environment and Renewable Natural Resources
ICT	Information and Communication Technologies
ICTSD	International Centre for Trade and Sustainable Development

IGC	Intergovernmental Committee on Intellectual Property and Genetic Resources Traditional Knowledge and Folklore
IMF	International Monetary Fund
INNs	International Nonproprietary Names
INPI	National Institute of Industrial Property
IP	Intellectual Property
IPR	Intellectual Property Right
ITA	Information Technology Agreement
ITPGRFA	International Treaty on Plant Genetic Resources and Agriculture
ITT	International Technology Transfer
JPO	Japan Patent Office
LAIA	Latin American Integration Association
LDCs	Least-Developed Countries
MAPA	Brazilian Ministry of Agriculture, Livestock and Food Supply
Mercosur	Southern Common Market
MFN	Most-Favored-Nation
MMA	Brazilian Ministry of Environment
NAFTA	North American Free Trade Agreement
NDE	National Designated Entity
NGO	Non-Governmental Organization
OECC	Organisation for European Economic Cooperation
OECD	Organization for Economic Co-operation and Development
PCT	Patent Cooperation Treaty
PIC	Prior and Informed Consent
PTA	Preferential Trade Agreement
RCEP	Regional Comprehensive Economic Partnership
RNC	National Plant Variety Registry
RTA	Regional Trade Agreement
RTA-IS	Regional Trade Agreement-Information-System
R&D	Research and Development
SACU	The Southern African Customs Union
SCP	WIPO Standing Committee on the Law of Patents
SIPO	State Intellectual Property Office of the People's Republic of China
SisGen	National System for the Management of Genetic Heritage and Associated Traditional Knowledge
SME	Small and Medium-Sized Enterprise
SUS	Brazilian Health System
Swissmedic	Swiss Agency for Therapeutic Products
SNPC	National Service for Plant Variety Protection
SPC	Supplementary Protection Certificate
TEC	Technology Executive Committee
TFA	Trade Facilitation Agreement
TFEU	Treaty on the Function of the European Union
TM	Technology Mechanism
TNA	Technology Needs Assessment
TPA	Swiss Therapeutic Products Act
TPP	Trans-Pacific Partnership
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
TTIP	Transatlantic Trade and Investment Partnership
UPOV	Union for the Protection of New Varieties of Plants

UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFCCC	United Nations Framework Convention on Climate Change
UNICITRAL	United Nations Commission on International Trade Law
UNWTO	United Nations World Tourism Organization
US	United States of America
USPTO	United States Patent and Trademark Office
VCLT	Vienna Convention on the Law of Treaties
WCO	World Customs Organization
WESP	World Economic Situations and Prospects
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

SUMMARY

1 INTRODUCTION

The world economy is increasingly based on knowledge, information and technology. The advancement in these fields has transformed the national productive capacity, enabling the spread of the production chain all over the world. In order to reduce production costs, national frontiers are overcome through the establishment of regional and global value chains. In the current commercial transactions, a good is no longer designed, manufactured and sold nor a service is provided within a single country. Each of these stages can be executed in a different country and, accordingly, subject to a different national legal regime. By enabling the well-functioning of these production chains throughout the world, the protection and enforcement of intellectual property rights are key components in this process.

In this scenario, the World Trade Organization (WTO) stands out as the main international forum for regulating trade relations, settling trade disputes and monitoring its Member States' trade policy. The WTO is the primary international organization responsible for operating a global system of trade rules based on non-discriminatory principles. Its foundation is part of the historical efforts to establish international institutions aimed at ensuring world peace through multilateral cooperation and economic integration. Since its creation in 1995, the WTO has made great progress in the international trade governance.

However, the WTO is facing one of the most challenging moments in its recent history. The Doha Round of trade negotiations launched in 2001 has not yet been successfully completed. Its stalemate casts doubt on the WTO's capacity to deliver trade rules that reflect the current commercial transactions. Updating the rules demands consensus among all the WTO Members. Under the stewardship of the WTO Director General Roberto Azevêdo, the WTO Members have been able to find consensus in specific topics in the last ministerial conferences, such as the Trade Facilitation Agreement (TFA), the expansion of the Information Technology Agreement (ITA), the elimination of agricultural export subsidies and others measures to support least developed countries. However, this progress remains far below of what was established under the Doha negotiation's mandate.

Meanwhile, there has been a significant increase in the number of Preferential Trade Agreements (PTAs) adopted in parallel to the WTO's system. Nowadays, a large part of the international world trade happens, in addition to the WTO rules, under the frameworks of PTAs. The new generation of these bilateral and plurilateral treaties not only regulates issues already established under the WTO regime (WTO-In), but also advances (WTO-Plus) and creates (WTO-Extra) new rules. They go beyond the mere reduction of tariff barriers in trade in goods and include trade in services and other elements of economic integration, such as investment, regulatory coherence and convergence, labor standards and environmental protection.

In this sense, special attention has been drawn to the acceleration in the conclusion of PTAs with intellectual property (IP) provisions. The WTO 1994 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) established minimum standards of intellectual property protection, allowing Member States to adopt higher standards of protection than that accorded in the TRIPS Agreement. Due to this possibility, PTAs have become a major source of international intellectual property regulation. They constitute the main instruments expanding intellectual property rules at the international level. This occurs in a period when intellectual property is increasingly becoming an area of global cooperation and conflict.

The proliferation of intellectual property rules through PTAs is a controversial subject that attracts both criticism and support from different countries. On the one hand, supporters allege that PTAs meet central aspects of the contemporary trade-related aspects of intellectual property rights. On the other hand, opponents argue that their expansion weakens much of the flexibilities provided by the TRIPS Agreements and prevent countries from implementing public policies aimed at their development.

In this context, Brazil is apart from the international economic trend of adopting intellectual property provisions in PTAs. Historically, the country has favored the multilateral sphere as the main forum for establishing any new international intellectual property commitment. It defends that the multilateral level offers the best conditions for developing countries to ensure more balanced results in their areas of interest. The country has refused to adopt any kind of IP provision or to increase the protection levels settled in the TRIPS Agreement in the framework of its PTAs.

During the 1990s and 2000s, Brazil has made little efforts to build a dense network of PTAs. The few PTAs adopted by Brazil regulate mainly issues already established under the WTO, not advancing nor creating new obligations. In addition, Mercosur, the main Brazilian regional integration project, endures a deep stagnation due to successive political and economic crises in its main State Parties.

For these reasons, part of the literature understands that the superficiality and the limited number of the Brazilian PTAs would be affecting the country's economic growth and its capacity to influence the creation of these new trade rules. The Brazilian refusal to adopt higher levels of commitment would be hindering the performance of its high value-added exports, frustrating greater attraction of foreign investments; and impeding its insertion in global value chains. As a result, the country would be having fewer resources to implement fundamental public policies for its development.

Therefore, the Brazilian inertia before this new dynamic of establishing new trade rules raises concerns among certain academics and policy-makers. Notwithstanding the historical position of Brazil, the expansion of the international intellectual property regime through PTAs is a fact and probably a long-lasting trend with which the country will be affected sooner or later. The intellectual property rules established under PTAs influence the direction by which the regulation in multilateral forums heads for. The consensus achieved under these frameworks is used as a base for instituting new norms in the multilateral realm.

In the light of the described scenario, the present work raises the following questions: How and to what extend the intellectual property rules that are being established under PTAs differs from the Brazilian intellectual property regime? Does Brazil provide for a higher or lower level of intellectual property protection than the required under PTAs? Which are the advantages or disadvantages related to the adoption of higher standards of intellectual property protection than the required under the TRIPS Agreement? How these intellectual property norms established in PTAs are diffused and interact with other international, regional and national legal spheres?

The interest for this problematic arose during the course "Developing Countries, Globalized Economies and the Challenges of International Regulation", thought by Professors Alberto do Amaral Júnior and Umberto Celli, in the master program at the

Faculty of Law of the University of São Paulo (USP). The curiosity for the subject was further incited by the studies undertaken by the Center for Global Trade and Investment Studies (CGTI) of the Getulio Vargas Foundation (FGV), under the coordination of Professor Vera Thorstensen. The motivation for the development of the present research resides in understanding how intellectual property provisions in PTAs could be designed to enhance the win-win relation between economic stakeholders and society.

The general objective of the present work is to investigate how and to what extent the intellectual property rules that are being established under PTAs differ from the Brazilian intellectual property regime. In order to achieve this main goal, this work has the following specific objectives: (i) to assess which are the legal issues and the possible effects that pervade the adoption of higher standards of intellectual property protection in PTAs; (ii) to map and analyze the norms on patent and test data protection adopted in PTAs and to compare them with the TRIPS Agreement and the Brazilian intellectual property regime; and (iii) to examine how intellectual property rules are diffused across international, regional and national levels.

These objectives aim not only to present a wider picture and facilitate future research on this subject, but also indicate the intricate challenges arising from the adoption of IP provisions in the PTAs' context. Although there is an extensive literature on TRIPS-Plus, relatively few comprehensive vertical analyzes have been undertaken between the PTAs' patent and test data provisions and the Brazilian intellectual property regime. The present work aims to make a contribution towards closing this gap.

The importance of this research resides in understanding the cross cutting trends in the establishment of new intellectual property rules. The analysis of the patent and test data provisions in PTAs involving parties from all regions and levels of development is key to understand adoption of intellectual property rules in the international level and how the different countries influence each other in this process. The elaboration of a study that analyzes the Brazilian patent and test data regime in the light of these major international trends is fundamental to formulate new legal strategies aimed at fostering innovation and development in the country. Moreover, the regulatory expansion of intellectual property rights through PTAs and its impacts in the multilateral trading system and in the developing countries innovative capacities is one of the greatest challenges to be faced by the WTO in the 21st Century.

Therefore, this study intends to investigate alternatives to render intellectual property right not a mere instrument of economic monopoly, but a device that promotes the generation of full employment, the increase of population's per capita income, contributing to poverty alleviation and environmental protection. It should be noted that intellectual property is one of the most important drivers of economic development. Its combination with human capital makes it a powerful vector in the current dynamics of the knowledge-based economy. Therefore, intellectual property is increasingly perceived as an important economic asset whose value can be enhanced through proactive and strategic legal design and the implementation of public policies.

When well-managed, intellectual property assets can bring several benefits, such as: generating revenue from the sale of products with IP content and royalties from their licensing, increasing high value-added exports, stimulating research and development industries, supporting teaching institutions, improving the evaluation of companies, attracting joint ventures, and encouraging and maintaining skilled workforce. Intellectual property lies at the heart of the contemporary business strategies. Their protection, however, should not be seen as an end in itself, but as a means to promote innovation and dissemination of knowledge.

As to the basic methodology, this research uses the categorical-deductive method. It departs from general premises on the proliferation of intellectual property rules through PTAs in order to arrive at pertinent and specific conclusions and arguments through logical derivations. The subjects that integrate the universe of this research are the States and customs territories inserted in the international trade dynamics, international organizations, multinational and national companies, non-governmental organizations and the human being as a rights holder.

As to the methodological objectives, the present research is characterized as exploratory, descriptive and explanatory. In the exploratory aspect, the objective is, through the collection of information, to create familiarity and, later, a deeper understanding of the international regulation of the intellectual property rights. This initial exploration will lead to a better understanding about the possibilities of intellectual property promotion, protection and enforcement. In the descriptive aspect, the present research describes the main peculiarities of the patent and test data provisions. It identifies their main characteristics in order to enable their comparison with the TRIPS Agreement

and the relevant Brazilian legislation. At last, in the explanatory aspect, this research aims to explain the possible differences and similarities between the new rules on patent and test data protection adopted under PTAs and the Brazilian intellectual property regime.

As to the methodological procedures, the research is characterized as bibliographical and documental. The proposal is to develop an extensive bibliographical research, encompassing the perspectives of several national and international authors on the subject. As to documental aspect, this research analyzes the text as primary sources of multilateral intellectual property agreements, PTAs and the several national laws and regulations on intellectual property. These documents are interpreted through data analysis, tables, reports and statistics. This provides an analytical treatment of the information contained in the documents under study.

The present research investigates the patent and test data provisions adopted in the PTAs signed from the entry into force of the TRIPS Agreement, 1st January 1995, to 1st January 2017. It examines 68 PTAs that together cover 93 countries and separate customs territories possessing full autonomy in the conduction of their external commercial relations. The reason for analyzing patent protection in conjunction with test data protection relies on the fact that TRIPS-Plus provisions are increasingly combining both categories of intellectual property. Therefore, they should be analyzed jointly, even though their object of protection is different.

This study integrates horizontal and vertical methodologies in legal comparison to investigate the complex phenomenon of the TRIPS-Plus provisions in PTAs. It maps and describes the PTAs provisions on patent and test data protection on the basis of carefully constructed classificatory schemes. It describes the similarities and differences between these provisions ant the TRIPS Agreement (horizontal comparison); and between these provisions and the Brazilian patent and test data regime (vertical comparison).

As to the methodological approach, the research is characterized as qualitative and quantitative. In the qualitative aspect, the research takes into consideration the author's subjective interpretation while observing the dynamics between the world and the subject. The quantitative technique is used in the mapping of the patent and test data provisions in PTAs. The research uses calculations and statistics to measure the participation of the patent and test data provisions in the total amount of analyzed PTAs. Hence, the

information and data collected during the development of the research will be analyzed in categorized way.

The present work proceeds in three main parts. First, it describes the main complexities and problems related to the preferential expansion of intellectual property rules through PTAs. It contextualizes this phenomenon from an historical perspective, demonstrating the international dynamics for the establishment of intellectual property rights in the international realm. It introduces the legal aspects that pervade the interaction between the WTO regime and the intellectual property rules adopted in PTAs. It also indicates the main problematic features of unbalanced IP provisions in PTAs for developing countries.

Second, it undertakes a literature review of studies that investigated the regulation of intellectual property provisions in PTAs. It analyzes the provisions on patent and test data protection accorded under PTAs, from 1st January 1995 to 1st January 2017. It maps and categorizes these provisions in order to compare them with the TRIPS Agreement and the Brazilian intellectual property regime. This chapter aims to assess how and to what extent the levels of patent and test data protection required under PTAs are higher or lower than the levels provided in Brazil.

Third, it explains how intellectual property policy and norms are diffused across different countries. It shows evidence of diffusion of intellectual property norms on patent and test data protection through PTAs. Moreover, it addresses the issue of the fragmentation of international law, which is aggravated by the proliferation of preferential trade agreements. It delineates possible mechanisms to provide greater coherence between these new intellectual property rules accorded under PTAs, the WTO regime and other international law subsystems.

This dissertation proposes the following hypothesis to be proven in the course of the research: the Brazilian intellectual property regime has a lower level of patent and test data protection than the ones required under the PTAs' TRIPS Plus provisions. Since Brazil refuses to adopt higher levels of intellectual property protection than the level required under the TRIPS Agreement in its PTAs, it is to be expected that the country also only provides for TRIPS-In rules on patent and test data protection in its national legislation.

In accordance with the above-described parameters, the present work intends to undertake the proposed research and accomplishment the stipulated objectives and the understanding of the object under study.

2 THE EXPANSION OF THE INTERNATIONAL INTELLECTUAL PROPERTY SYSTEM THROUGH PREFERENTIAL TRADE AGREEMENTS

2.1 Introductory Remarks

The world has witnessed the increasing proliferation of Preferential Trade Agreements (PTAs)[1] accorded in parallel to the WTO system in the last decades. In the beginning of the 1990s, there were only around 70 of these agreements in force. By the end of 2010, this number more than quadrupled to nearly 300 (WTO, 2013a, p. 75). By the end of 2016, 643 PTAs had already been notified to the WTO, of which 431 were in force (WTO, 2017a, p. 89). These numbers demonstrate a shift in how international trade is being negotiated and regulated internationally (ELEOTERIO; MESQUITA, 2016, p. 107).

Among the factors that explain the multiplication of such agreements, Baccini and Dür (2011, p. 57) highlight "the stagnation of the process of multilateral trade liberalization, the search for economics of scale, the desire to signal commitments to specific trade and economic policies and the protection of foreign direct investments." In a similar vein, Baldwin (2011) understands this new wave of PTAs as a response to the demands of the 21st Century Regionalism, centered in the "trade-investment-service nexus." The author (BALDWIN, 2011, p. 5) uses this term to describe the growing complexity of the international commerce, characterized by the intertwining of: (i) trade in goods; (ii) international investment in facilities, training, technology and long-term business relationships, and (iii) the use of infrastructure services to coordinate the dispersed production, mainly services such as telecoms, internet, express delivery, air cargo, trade-related finance and customs clearance services.

[1] Researchers and policy-makers have often adopted the terms Preferential Trade Agreements (PTAs) and Regional Trade Agreements (RTAs) more or less interchangeably (WTO, 2013, p. 75). According to the WTO (2017b), the term RTA is defined as reciprocal trade agreements between two or more partners, including free trade agreements and customs unions, while the term Preferential Trade Arrangements (note, not agreements) refers to unilateral trade preferences, including no-reciprocal deals (BIRKBECK; BOTWRIGHT, 2015, p. 12). This work adopts, for now on, the term Preferential Trade Agreement (PTA) to refer to these both types of agreements, since the great majority of them are no longer regional in the sense of geographic proximity. The term PTA reflects more appropriately the objective functions of such schemes and the phenomenon that this work intends to depict (MAVROIDIS, 2007, p. 148).

5 CONCLUSION

Preferential Trade Agreements have increased in number and importance and cover a significant proportion of the world trade today. They constitute the legal framework that enables the creation of the most advanced regional and global value chains. The presence of intellectual property provisions in PTAs only tends to increase as the world transits from a labor-intensive-economy to a knowledge-based economy. The recent years have been marked by the proliferation of these rules in preferential trade agreements that, through cross-pollination and much of borrowing of national intellectual property norms, influence other States' innovation system.

Historically, the currents and crosscurrents of preferentialism and multilateralism have shaped the adoption of intellectual property rules in the international level. While preferentialism establishes higher standards of protection, multilateralism harmonizes the regulation by consolidating minimum standards. This dialectical cycle of alternation can be perceived in the bilateral IP agreements adopted throughout the nineteenth century that culminated with the adoption of the 1883 Paris Convention and 1886 Bern Convention, as well as the bilateral and regional IP agreements adopted throughout the twentieth century that preceded the adoption of the 1994 TRIPS Agreement. The term "plus" used to characterize the TRIPS as a Bern and Paris-Plus agreement is now being used to refer to the PTAs provisions that exceeds the TRIPS' standards of IP protection (TRIPS-Plus).

In light thereof, the TRIPS Agreement should not be seen as the end point in the development of the international intellectual property regime, nor PTAs be perceived as drastic deviations from the traditional path of regime development. The TRIPS Agreement and these PTAs simply represent, respectively, the systole and diastole movements that characterize the building of the international intellectual property regime. In recent years, the pendulum of the development of intellectual property rules has moved back to preferentialism.

This last wave of preferentialism happens in a context of increasing normalization of the international relations. The multiplication of intellectual property norms in different forums and instruments aggravates the fragmentation of international law. The proliferation of intellectual property rules through PTAs enhances the chances of

normative conflicts between PTAs themselves, between PTAs and the WTO regime and between PTAs and other international law subsystems. The conflict of international norms, however, shall be seen as natural phenomenon due to the spontaneous, decentralized and non-hierarchical essence of its law-making process. The presumption against conflict, the Vienna Convention on the Law of Treaties and the promotion of a dialogue of sources of international law constitute useful tools to prevent or even solve possible conflicts. This would confer greater coherence, predictability and legal security to the international intellectual property system.

The advancement of intellectual property provisions within the PTAs' framework is, by itself, neither good nor bad. The impact that these norms have depends on the context in which they apply. Their possible beneficial or harmful effects rely upon how they are designed, the country's level of economic and industrial development, the size of the country's domestic market and/or its ability to export, and how and to what extend these rules proceeds in line with the WTO and other multilateral regimes. There is no conclusive evidence that the adoption of stringent intellectual property rights within PTAs leads to a direct and automatic increase in trade, foreign investment and technology transfer. There are other factors – such as macroeconomic stability, efficiency of the judicial system, scientific and technological capabilities, participation in research networks, and other business regulations – that determine the net benefit and impact of a particular intellectual property norm.

Nevertheless, when entering into such commitments, countries should be aware that the adoption of intellectual property provisions in a PTA's framework has significant legal implications regarding not only the WTO system, but also to the national implementation of these obligations. Since the TRIPS Agreement does not provide for a regional integration exception as to the most-favored-nation principle, such as provided in the GATT (Article XXIV) and in the GATS (Article V), any TRIPS-Plus advantage shall be extended to all WTO Members, not only to the PTA's parties. This also has important bargain implications in a PTA's negotiation, since the benefits of an intellectual property concession cannot be offered more than once.

Based on the TRIPS non-discrimination clauses, other WTO Members can even bring complaints before the WTO Dispute Settlement System due to the non-extension of this TRIPS-Plus advantage contained in a PTA. This applies even though this complaining

WTO Member does not belong to the PTA's contracting parties. Thereby, the TRIPS-Plus concessions made in PTAs indirectly become subject to the WTO Dispute Settlement System. In contrast, the few existing TRIPS-Extra obligations do not need to be extended to other WTO Members, since they do not fall within the TRIPS Agreement's scope. In such cases, PTAs allow for narrow reciprocity based on national treatment.

Furthermore, although TRIPS Article 1:1 allows WTO Members to recognize higher standards of intellectual property protection in international agreements and in their domestic legislation; this shall be undertaken in a manner that it does not contravene the TRIPS Agreement provisions. This non-contravention obligation functions as a coherence mechanism, affecting the States' ability to introduce additional intellectual property protection. As such, any form of more extensive protection needs to be in accordance with the TRIPS Agreement.

Countries should not underestimate the problematic consequences that the implementation of unbalanced TRIPS-Plus provisions might have in their economic, technological, health and environmental policies. By agreeing to more stringent intellectual property rules, countries run the risks of "importing" intellectual property norms that do not reflect their national efficiency trade-off between access to new technologies and incentives for innovation.

The mere strengthening of intellectual property rights does not have a direct positive impact on domestic innovation. It is too simplistic to imply that more intellectual property protection will definitively always lead to more innovation. A balanced intellectual property regime is only one factor among many others – such as institutions, human capital and research, infrastructure, business and market sophistication – that helps to improve a country's innovative environment.

In this context, absorption and imitation are also important approaches to enhance technological catch-up. Certain developed countries, such as the Netherlands, Switzerland and Japan, have already adopted, during a certain period of time, lower standards of intellectual property protection to facilitate the development of their own competitive industrial branches. More recently, this strategy has also been implemented by developing countries, such as China, India and South Korea. The adoption of overprotective IP rules in

PTAs could harm countries that have not yet achieved a high level of domestic innovation capacity.

The PTAs' pharma-related provisions with higher levels of patent and test data protection may hinder access to affordable health technologies when nationally implemented. Intellectual property rules that provide for longer than normal periods of market exclusivity delay the entry of generic products into the market, postponing competition and maintaining prices high. Besides, the mere adoption of stronger intellectual property rules based on developed countries' law and practice will not necessarily be translated into more investment in research and development of drugs to fight endemic diseases in developing countries, such as malaria, dengue or zika.

Some of these pharma-related provisions are clearly drafted to erode the TRIPS Agreement's room for maneuver that allows WTO Members to design their intellectual property policies in accordance with public health goals. They undermine the long fought and recognized flexibilities enshrined in the 2001 Doha Declaration on the TRIPS Agreement and Public Health. Developing countries should consider that, when committing to these rules within a PTA's framework, their exchange in intellectual property provisions for gains in the agricultural and textile sectors are not automatically converted into higher public or private health expenditures. Further national measures should be put in place to counterbalance the resulting pressure that these norms might have on the national health systems.

More stringent IP rules in PTAs may also restrict countries' capability to meet international and national sustainable development commitments. Higher IP standards might result in higher costs of patented climate change technologies, hinder licensing and affect the affordability of substitute technologies. The rules that form a country's patent regime should be designed to enhance the development, transfer and dissemination of environmentally sound technologies. This constitutes a key strategy to mitigate and adapt to the harmful effects of climate change.

Moreover, PTAs' provisions that require the patentability of plants and animals reproduce and even accelerate the problems already existing in the international level regarding compliance with the obligations on access and benefit sharing. The mere

availability of patent protection for plants and animals also does not contribute to fight misappropriation of genetic resources worldwide.

On the contrary, PTAs' provisions that require the disclosure of the origin of genetic resources and associated traditional knowledge in patent applications constitute an important mechanism to enhance the mutual-supportiveness between the patent system and the protection of biodiversity. Although they do not solve all the problems related to misappropriation, they do constitute a transparency tool that enables other rights related to the use of biodiversity and traditional knowledge to be enforced. The disclosure provisions demonstrate that intellectual property rules set in PTAs can also advance interests that are primarily linked to developing countries.

The analysis undertaken by this study demonstrated that 79,4% of the PTAs with patent provisions and 90% of the PTAs with test data provisions, signed from 1st January 1995 to 1st January 2017, were adopted between developed countries and developing countries/economies in transition. These numbers show that the great majority of PTAs regulating these IP categories have as their normative background a developed-developing country relationship. In this scenario, the PTAs between developed countries or between developing countries are a minority. This study also evidenced the accelerating trend in the conclusion of PTAs with patent and test data protection in the last years. The EFTA, United States and European Union are the most active players in adopting PTAs with patent and test data provisions; while South Korea, Peru and Vietnam are the most active developing countries in this this process.

On patent protection, the identified TRIPS-Plus provisions: (i) prevent parallel importation of patented-products by demanding the institution of national or regional exhaustion regimes of intellectual property rights; (ii) stipulates how the patentability criteria (novelty, inventive, step and industrial application) shall be applied; (iii) demand the grant of patents for "new uses" or methods of using a known product; (iv) restrict potential exclusions from patentability; (v) reduce the circumstances under which compulsory licenses may be issued; (vi) limit the grounds under which a patent may be revoked; (vii) require the disclosure of the origin of genetic resources and associated traditional knowledge in patent applications; (viii) request patent term extension, such as for unreasonable delays in the grating process and for the curtailment of the patent term of protection due to marketing approval.

On test data protection, the identified TRIPS-Plus provisions: (i) extend the protection to information on safety and efficacy of products other than pharmaceutical and agricultural chemical products, such as biologics; (ii) prevent second applicants from relying on test data submitted to the competent authority by the first applicant (data exclusivity); (iii) prevent the entry into the market of generic products even if the generic manufacturer submits his own test data to the competent authority (market exclusivity); (iv) provide for the protection of test data regarding "new uses" of known compounds; (v) link patent protection to the marketing authorization of pharmaceutical products; and (vi) demand the competent authority to notify the patent holder of any application for marketing a generic pharmaceutical product.

The systematic investigation carried out by this research demonstrated that there is a strong connection between the IP norms accorded under PTAs and the national legislation of the contracting parties. Usually, countries use PTAs as a means to export and import national intellectual property laws and practices. A significant part of the analyzed IP rules pushed through PTAs reflected a national rule on particular subject matter. The term "diffusion" describes this process whereby intellectual property policies and norms are disseminated across different regulatory levels. It occurs through coercion, competition, learning and emulation among countries.

The present study demonstrated that intellectual property rules diffuse in different directions. In a horizontal context, these norms are diffused from the TRIPS Agreement to PTAs as well as from one PTA to another PTA. In a vertical context, these norms are diffused from specific countries' laws and practices to PTAs (bottom-up); and from PTAs to a particular country's laws and practices (top-down).

Developed countries are the main diffusers of intellectual property norms on patent and test data protection. They use their PTAs to disseminate their favored regulatory approaches and their understandings on how the TRIPS flexibilities, exceptions and broad and ambiguous terms should be interpreted and implemented. They play an active role in creating and changing international intellectual property rules and diffusing them into others intellectual property regimes worldwide.

Frequently, a national intellectual property norm from one contracting party is transplanted into the PTA's text to then be internalized into the intellectual property regime

of the other contracting party. After this norm is widely diffused, it is easier to "multilateralize" it through amendments to the existing multilateral agreements or even through the adoption of a new multilateral agreement. The consensus on a specific intellectual property norm is influenced by its diffusion in the international and national realms.

However, this study calls attention to the fact that, frequently, the parties involved in PTAs with TRIPS-Plus provision simply acknowledge an intellectual property norm or practice already established in their national legislation. In other words, the contracting parties do not always commit to higher standards of IP protection than they already provide internally. By analyzing the implementation of the PTAs patent and test data protection obligations, a significant number of countries merely accorded to provide the same standard of intellectual property protection that they already provided nationally.

Besides, although some countries do commit to adopt higher levels of intellectual property protection than they already provide internally, this does not mean that they will implement them. Some countries never come to internalize their TRIPS-Plus obligations on patent and test data protection accorded within their PTAs. The vertical (top-down) diffusion of these norms does not always occur. This might be explained by the lack of efficient enforceable dispute settlement mechanisms in the great part of PTAs.

At the present moment, Brazil is apart from this preferentialism wave of adopting intellectual property provisions in PTAs. The country cannot influence the development of these new rules, since it rejects to adopt intellectual property commitments in the few and shallow PTAs that it negotiates as a Mercosur State Party or with other LAIA countries. Although it does have offensive interests in the intellectual property field that could be diffused through its PTAs, Brazil rejects to enter into this law-making process that is currently shaping the international intellectual property system. A possible way for Brazil to counterbalance regulatory trends that are being set against its interests and resist the pressure from developed countries in the multilateral forums is to build its own coalition through its PTAs' network.

The analysis undertaken by this study demonstrated that the Brazilian intellectual property regime does not radically differ from the TRIPS-Plus provisions on patent and test data protection that are being adopted under PTAs. Brazil already has intellectual

property laws that exceed the level of protection required under the TRIPS Agreement. The country promptly incorporated the TRIPS Agreement's obligations and even renounced the transition periods to developing countries. The differences between the Brazilian intellectual property regime and the analyzed TRIPS-Plus obligations vary in accordance to each specific category of provision.

On the one hand, it is remarkable how Brazil extensively used the policy space provided under the TRIPS Agreement to build its intellectual property regime. The country was able to benefit from various exceptions and constructive ambiguities provided by the text of the TRIPS Agreement. The country adopts a strict interpretation of the patentability criteria and excludes methods of treatment, plants and animals from patentability.

Brazil has even already used the flexibility of the TRIPS Article 31 to issue a compulsory license of the antiretroviral drug Efavirenz. The measure enabled the national health system to expand the access to treatment for the people with HIV/AIDS in the country. The Brazilian regime provides for other grounds – such as abuse of patent rights, non-working of the patent, public interest – for the granting of a compulsory license than the grounds exemplified by TRIPS Agreement. Differently from what is being negotiated under the PTAs, the Brazilian Industrial Property Law also provides for a several grounds upon which a patent may be revoked.

On test data protection, the national legislation permits the reliance on the information submitted to ANVISA for the marketing approval of pharmaceutical products for human use. The Brazilian intellectual property regime does not provide for patent-linkage nor the obligation of the competent regulatory authority to inform the patent holder of any marketing approval request for a product that still under patent protection. It also does not provide for the adjustment of the patent term of protection due to delays in a product's marketing approval. The marketing approval in Brazil is granted regardless of the product is under patent protection or not.

On the other hand, Brazil has stricter rules than the ones accorded under the TRIPS Agreement or even than the TRIPS-Plus provisions that are being adopted under PTAs. The country prohibits parallel importation of patented products, since it adopts, as a general rule, the national exhaustion regime of intellectual property rights. This doctrine blocks, for example, the parallel importation of cheaper medicines into the country. The

doctrine of international exhaustion, in contrast, is usually recommended to developing countries that want to reduce the weight of the medicines' costs in their national health budgets.

Moreover, Brazil allows for the grant of patents for "new uses" of known compounds, provided that they meet the patentability requirements. If this analysis is not diligently undertaken, the INPI runs the risk of patenting the same product for much longer than a single period. That is to say, patents for "new uses" can have an "ever greening" effect, unduly postponing competition in the national market.

The Brazilian regime ensures a minimum term of ten years of patent protection for cases in which INPI, by its own fault, delays the granting of the patent in over ten years. The problem of this kind of rule is that it imposes a burden on the society due to negligence or error of the public administration. It would be easier and more effective to improve INPI's work in a way that makes it acts expeditiously than to postpone the access to cheaper technological goods to the Brazilian society. Therefore, it is crucial to provide INPI the necessary infrastructure and staff to examine all the patent applications in a timely manner.

Given its immense biodiversity, Brazil also requires the disclosure of the origin of national genetic resources and associated traditional knowledge in patent applications. However, these disclosure requirements only apply to patent applications based on Brazilian genetic resources and associated traditional knowledge. This obligation does not bind patent applications based on third countries genetic resources and associated traditional knowledge. Hence, the Brazilian approach does little in the global efforts to implement transparency tools that help to combat the misappropriation of genetic resources. The implementation of this obligation in a way that it does not differentiate between national and foreign genetic resources could enhance the transparency of patent applications not only for Brazil, but also for other countries.

On test data protection, the Brazilian regime grants data exclusivity to information concerning the safety and efficacy of plant protection and veterinary products. This obligation prevents the competent regulatory authorities from disclosing the test data submitted to them (secrecy) and from using this information in favor of subsequent applicants (non-reliance). The period of data exclusivity lasts 5 years, for old entities, or 10

years for new entities, whether chemical or biological. However, it is worth mentioning that as long as competitors submit their own test data, even regarding veterinary and plant protection products, they can always be granted marketing approval. There is no "market exclusivity" for test data under the Brazilian regime.

The analysis undertaken by this research allows us to partially reject the initial hypothesis proposed by this dissertation. The results demonstrated that Brazilian intellectual property regime does not always have a lower level of patent and test data protection than the ones required under the TRIPS-Plus provisions in PTAs. As evidenced, in certain aspects, the Brazilian intellectual property regime on patent and test data protection has even higher standards the ones found in the analyzed PTAs.

In the future, Brazil should use intellectual property commitments in its PTAs to limit the adoption of particularly harmful unilateral strategies. This can be undertaken by safeguarding the TRIPS flexibilities and by reinforcing the letter and spirit of the 2001 Doha Declaration on the TRIPS Agreement and Public Health. The country should use to the fullest extend the room for maneuver left by the TRIPS Agreement to design a pro-competitive PTA. Brazil could design a model of IP chapter that addresses the issues that it perceives as problematic under the TRIPS Agreement. The country could, thus, advance its understandings on how the TRIPS provisions should be better interpreted and implemented.

This process demands a better organization of the Brazilian internal IP interests. This is a key component to ensure that future international IP commitments faithfully reflect the country's demands. This includes consultations not only with Brazilian IP right holders, but also with Brazilian IP users and consumers. The different stakeholders should be equally able to express their respective interests in this process. Brazil should not diffuse IP standards that only serve the interests of few economically powerful right holders. The interests of few should not harm the welfare of the country as a whole. This exercise of internal consensus building before the adoption of IP provisions facilitates the point in which the PTA is subject to democratic control and put on the table of parliamentarians to be ratified.

Brazil does not need to abandon the multilateral level of intellectual property norm setting, but it can combine it with others bilateral, plurilateral and regional spheres. The

country should promote an open regionalism, aimed at improving its innovative environment in a non-discriminatory manner. Therefore, Brazil should ensure that possible IP provisions in its future PTAs are sufficiently flexible to take into account the socio-economic situations and needs of its contracting parties. This can be built on through the permission of countries to adopt exceptions and limitations necessary for pursuit of legit public policy goals. These IP provisions should also be designed to respect other international obligations, particularly those relating to the protection of the environment, biological diversity, food security and public health.

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ANNEX 1
COUNTRY CLASSIFICAITOIN BY WESP

Developed Economies				
North America	European Union		Other Europe	Asia and Pacific
	EU-15	EU-13		
Canada	Austria	Bulgaria	Iceland	Australia
United States	Belgium	Croatia	Norway	Japan
	Denmark	Cyprus	Switzerland	New Zealand
	Finland	Czech Republic		
	France	Estonia		
	Germany	Hungary		
	Greece	Latvia		
	Ireland	Lithuania		
	Italy	Malta		
	Luxembourg	Poland		
	Netherlands	Romania		
	Portugal	Slovakia		
	Spain	Slovenia		
	Sweden			
	United Kingdom			

Source: WESP, 2017, p. 153.

Economies in Transition		
South-Eastern Europe	Commonwealth of Independent States and Georgia	
Albania	Armenia	Republic of Moldova
Bosnia and Herzegovina	Azerbaijan	Russian Federation
Montenegro	Belarus	Tajikistan
Serbia	Georgia	Turkmenistan
The Former Yugoslav Republic of Macedonia	Kyrgyzstan	Uzbekistan

Source: WESP, 2017, p. 153.

Developing Economies			
Africa		Asia	Latin America and Caribbean
North Africa	Southern Africa	East Asia	Caribbean
Algeria	Angola	Brunei Darussalam	Bahamas
Egypt	Botswana	Cambodia	Barbados
Libya	Lesotho	China	Cuba
Mauritania	Malawi	Fiji	Dominican Republic
Morocco	Mauritius	Hong Kong SAR	Guyana
Sudan	Mozambique	Indonesia	Haiti
Tunisia	Namibia	Kiribati	Jamaica
Central Africa	South Africa	Lao People's Democratic Republic	Trinidad and Tobago
Cameroon	Swaziland	Malaysia	Mexico and Central America
	Zambia	Mongolia	
Central African Republic	Zimbabwe	Myanmar	Belize
Chad	West Africa	Papua New Guinea	Costa Rica
Congo	Benin	Philippines	El Salvador
Equatorial Guinea	Burkina Faso	Republic of Korea	Guatemala
Gabon	Cabo Verde	Samoa	Honduras
São Tomé and Principe	Côte d'Ivoire	Singapore	Mexico
East Africa	Gambia	Solomon Islands	Nicaragua
Burundi	Ghana	Taiwan Province of China	Panama
Comoros	Guinea	Thailand	South America
Democratic Republic of Congo	Guinea-Bissau	Timor-Leste	Argentina
Djibouti	Liberia	Vanuatu	Bolivia
Eritrea	Mali	Viet Nam	Brazil
Ethiopia	Niger	South Asia	Chile
Kenya	Nigeria	Afghanistan	Colombia
Madagascar	Senegal	Bangladesh	Ecuador
Rwanda	Sierra Leone	Bhutan	Paraguay
Somalia	Togo	India	Peru
Uganda		Iran	Suriname
United Republic of Tanzania		Maldives	Uruguay
		Nepal	Venezuela
		Pakistan	
		Sri Lanka	
		Western Asia	
		Bahrain	
		Iraq	
		Israel	
		Jordan	
		Kuwait	
		Lebanon	
		Oman	
		Qatar	
		Saudi Arabia	
		Syrian Arabic Republic	
		Turkey	
		United Arab Emirates	
		Yemen	

Source: WESP, 2017, 154.