

## Chapter 48

# A Structurationist Analysis of Differing Policies Oriented to the Pharmaceutical Industry: Turkey and Brazil

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### ABSTRACT

*This chapter has two purposes closely related to each other. The first one is to analyze why countries that have similar characteristics and benefits to each other develop different strategies in terms of rules that regulate the intellectual property rights in the pharmaceutical industry. The second one is to analyze the factors that determine active participation in global governance processes with regards to the intellectual property rights of countries that are developing, specifically in the pharmaceutical industry. The study used the structurationist approach developed by John M. Hobson, and findings were tested by comparing the examples of two countries: Turkey and Brazil.*

### INTRODUCTION

Intellectual property rights have historically developed by following a way which reflects social relations, regardless of how they are examined. In this context, intellectual property rights are a tool used to analyze the ones who own these rights and the social reaction against them (Evanson & Putham, 1987: 403). The ones who own intellectual property rights gain special rights during that time in return for making the invention, which they developed, socially prominent. However, the

right owners and the relationships among society determine the answers to questions such as what will be the scope of this period and what are the special rights to be gained? Another actor in the determination of the scope of the intellectual property rights is the state. The state regulates the rules of intellectual property rights in such a manner that they reflect social relations and it plays an important role in the social acceptance of these rules (May, 2000: 16-17). Furthermore, the state is expected to execute these rules without disrupting fundamental duties such as national

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security, social equity, and development. Intellectual property rights which occur within the framework of owners/state/society interaction represent a historical dynamic process in both time and space.

The great transformation that intellectual property rights have undergone in a quarter of a century is actually the result of the dynamic process mentioned above. On one hand, the “weightless economies” (Quah, 1997) which feature the knowledge and information technologies and service industries of developed countries, and on the other hand, the increasing technological capacities of some developing countries have made intellectual property rights which have been subject to national and international regulations an important factor of multilateral trade negotiations. It is possible to evaluate the problems intended to be solved by the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) with reference to Dutfield and Suthersanen’s study as three topics: prevention of copyright piracy, prevention of unauthorized usage of trademarks, and prevention of generic pharmaceutical manufacturers in the pharmaceutical industry (Dutfield & Suthersanen, 2005: 132). Besides, tightening of the rules which regulate intellectual property rights has not been limited only to the TRIPS Agreement under the World Trade Organization (WTO). The function of the World Intellectual Property Organization (WIPO) which has been in service as an agency of the United Nations since 1974 changed after the TRIPS agreement and turned into intellectual and pecuniary capacity construction devoted to regulations beyond the TRIPS Agreement (TRIPS-plus)<sup>1</sup> (May, 2007: ch.4).

The pharmaceutical industry is the leading industry to be affected by the process of the global tightening of the rules which regulate intellectual property rights. During the historical process, states limited the protection of intellectual property rights oriented to pharmaceutical industry, both in terms of time and rights. Not only the vital importance of the pharmaceutical industry

for societies, but also the pharmaceutical industry’s close relations with development, security, and social justice have caused the limitation of intellectual property regulations oriented to this industry. However, the decreasing efficiency of the industry due to its internal dynamics (Yaşgül, 2009: 120-125) and increasing pharmaceutical production capacities of developing countries, as well as regulations and inspections (PhRMA, 2008) oriented to the industry in developed nations, have made the pharmaceutical industry an important factor of the TRIPS Agreement. When both the dominant positions in world markets and the risks created by the increase in generic pharmaceutical production originating from developing countries are evaluated together, it is possible to figure out why US companies form the group that most strongly supports the occurrence and application of the TRIPS Agreement under the auspices of the WTO (Drahos & Braithwaite, 2002; Sell, 2003).

With the acceptance of the TRIPS Agreement, it is seen that in general and also specifically for the pharmaceutical industry, tension based on social property relations between developed and developing countries has shown itself again. The tightening of the rules that regulate intellectual property rights reveals an important structural limitation which straitens the movement area of developing countries. The revealed structural limitation is a result of the effort to solve the tension mentioned above, in favor of the ones who own intellectual property. However, this effort has brought about social opposition. Therefore, Meir Perez Pugatch has analyzed developments after the TRIPS Agreement by separating them into three periods (Pugatch, 2005: 34-35). The first of these is “the determination period” between 1995 and 1999 when resistance was relatively slight and developed countries trusted the power of TRIPS applications. The second one is “the resentment period” between 1999 and 2001 when developing countries increased their opposition. The third one is “the flexibility period” from 2001 until today.

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