

Max Planck Institute
for Intellectual Property and Competition Law

Emerging Market Economies

A *TRIPe* Balance between Access to Health, Intellectual Property Protection,
and Economic Growth

Tilman Quarch

23 May 2011

WIPO Advanced IP Seminary



MAX PLANCK GESELLSCHAFT



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Max Planck Institute for Intellectual Property and Competition Law
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Introduction

- “The path of development a country follows depends on the circumstances of that country and should be decided by its people.”

(戴庆利 [Dai Qingli], Political Counsellor at the Chinese Embassy in London, in: *The Economist*, May 5th)

- “Some of the indicators Brazil boasts today are the result of public policies prioritizing strategic investments, the adjustment of the legal and regulatory frameworks that minimized risks like the breach of [...] property rights.”

(D. Rousseff, *Mensagem ao Congresso Nacional*, p. 27; translation by the author)

- Action Plan: [...] III. New proposals to explore
[...] 4. Hold a meeting of Senior Officials for discussing ways of promoting scientific, technological and innovation cooperation in BRICS format including by establishing a working group on co-operation in the pharmaceutical industry.

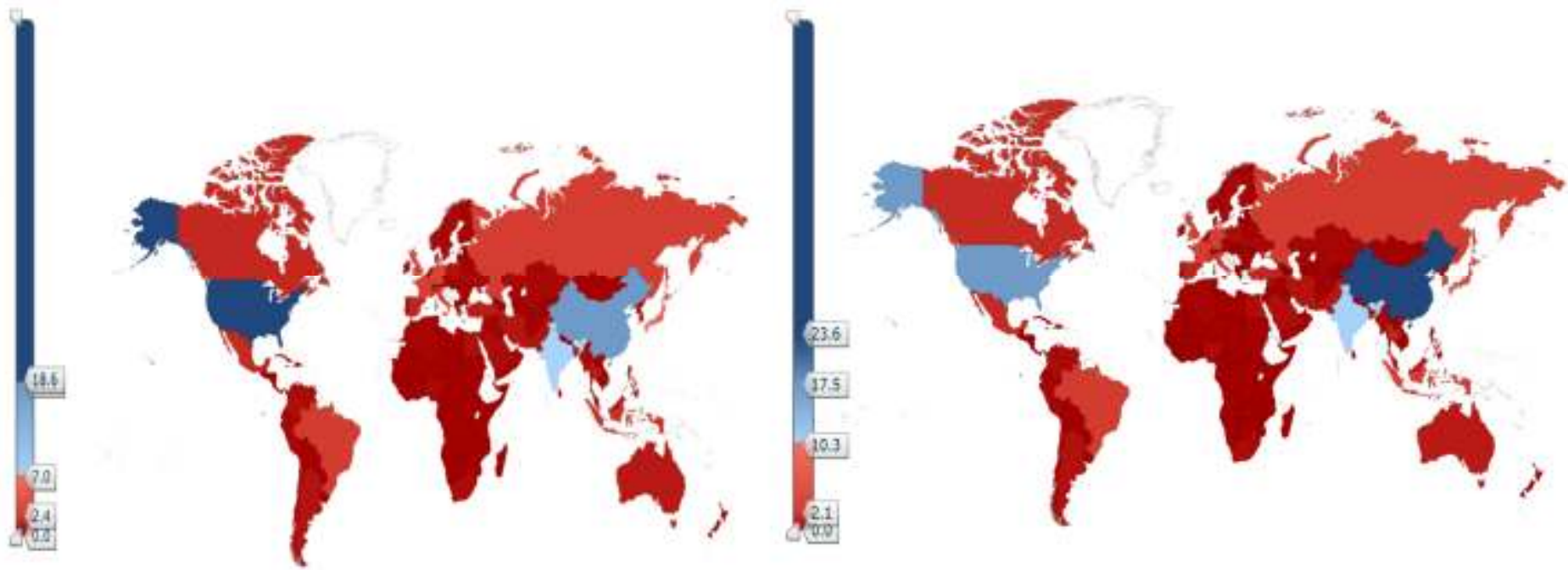
(Sanya Declaration by the Heads of State of the BRICS Countries, April 14th 2011)



Geopolitical Background: Share of Global GDP

2011

2030



© OECD 2010

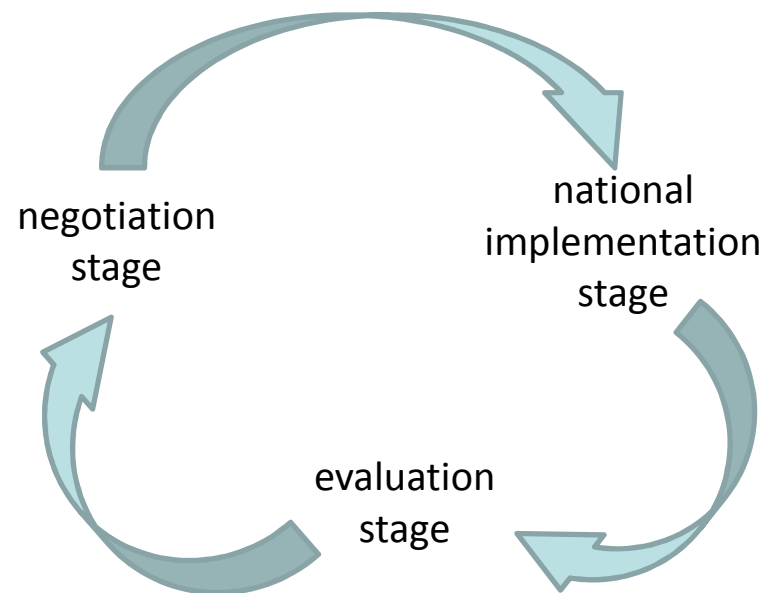


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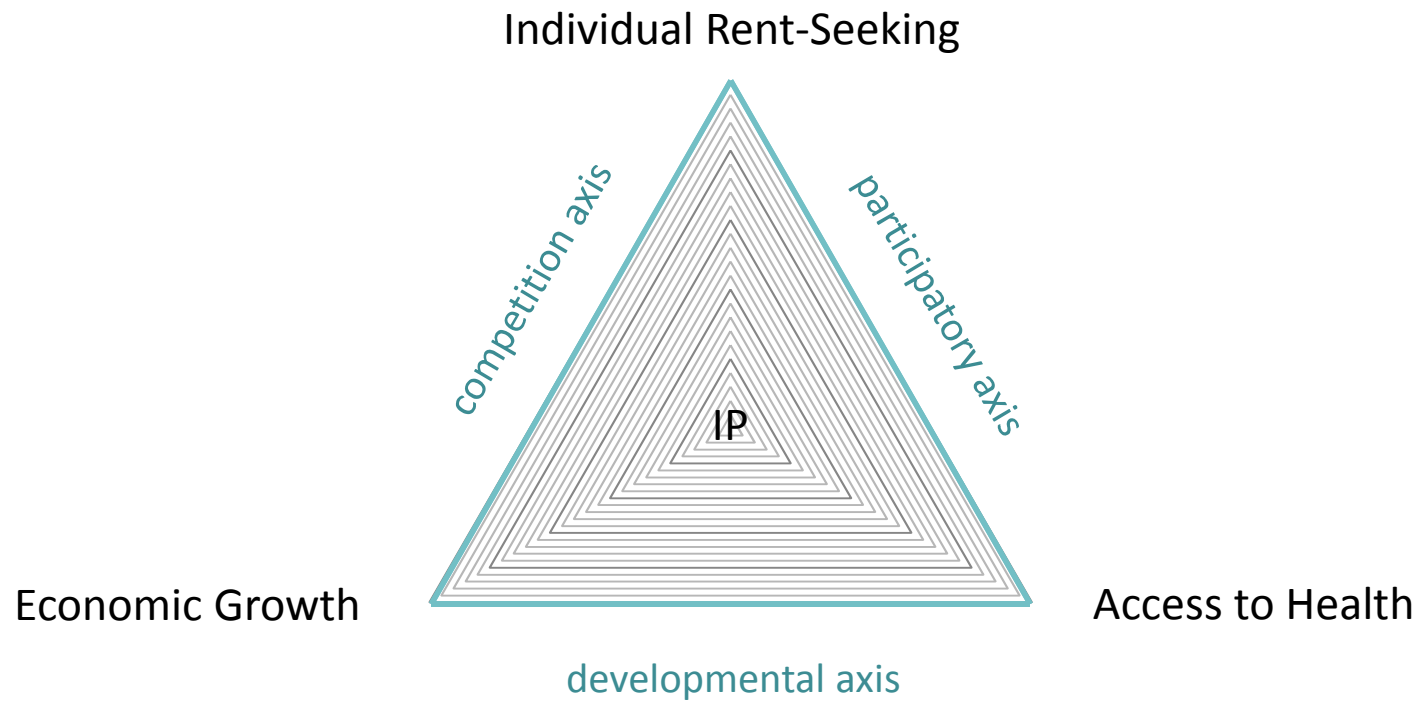
Research Questions



Step I: international treaties



Step II: factors determining perception



TRIPS Mirror: Wordings (*Sein und Sollen*)

Current Art. 7 TRIPS

‘The protection and enforcement of IPRs should [...] conducive to social and economic welfare, and to **balance of rights and obligations.**’

Current Art. 8 TRIPS

‘Members may adopt measures necessary to *protect public health* [...] and to *promote the public interest* in sectors of *vital importance* to their *socio-economic and technological development.*’

Proposed Amendment: Art. 8a TRIPS

‘Balance of Interests’

1. Members shall take due account of the objectives and principles set out in Articles 7 and 8 when formulating or amending their laws and regulations. In doing so, they shall ensure that the protection granted reflects a ***fair balance between private economic interests and the larger public interest as well as the interests of third parties.***

MPI for Intellectual Property and Competition Law *and* Institute for Intellectual Property and Market Law, University of Stockholm



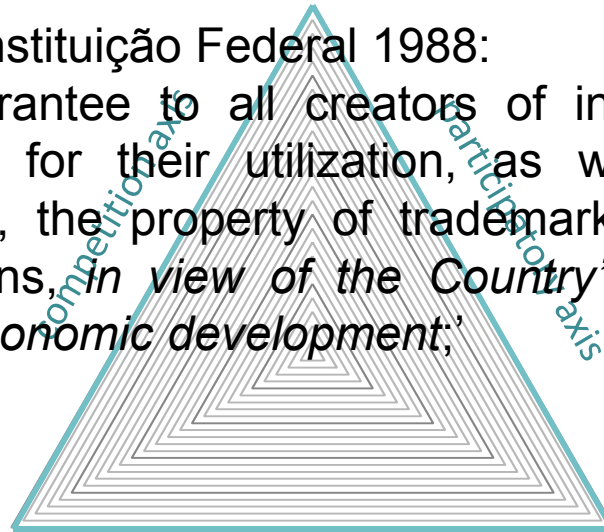
Constitutional Mirror (e.g. Brazil)

Art. 5° inc. XXIX CF

Art. 5° inc. XXIX Constituição Federal 1988:

“the Law shall guarantee to all creators of industrial inventions a temporary privilege for their utilization, as well as protection of industrial inventions, the property of trademarks, trade names and other distinctive signs, *in view of the Country’s social interest and technological and economic development;*”

Art. 170 et seq.
CF

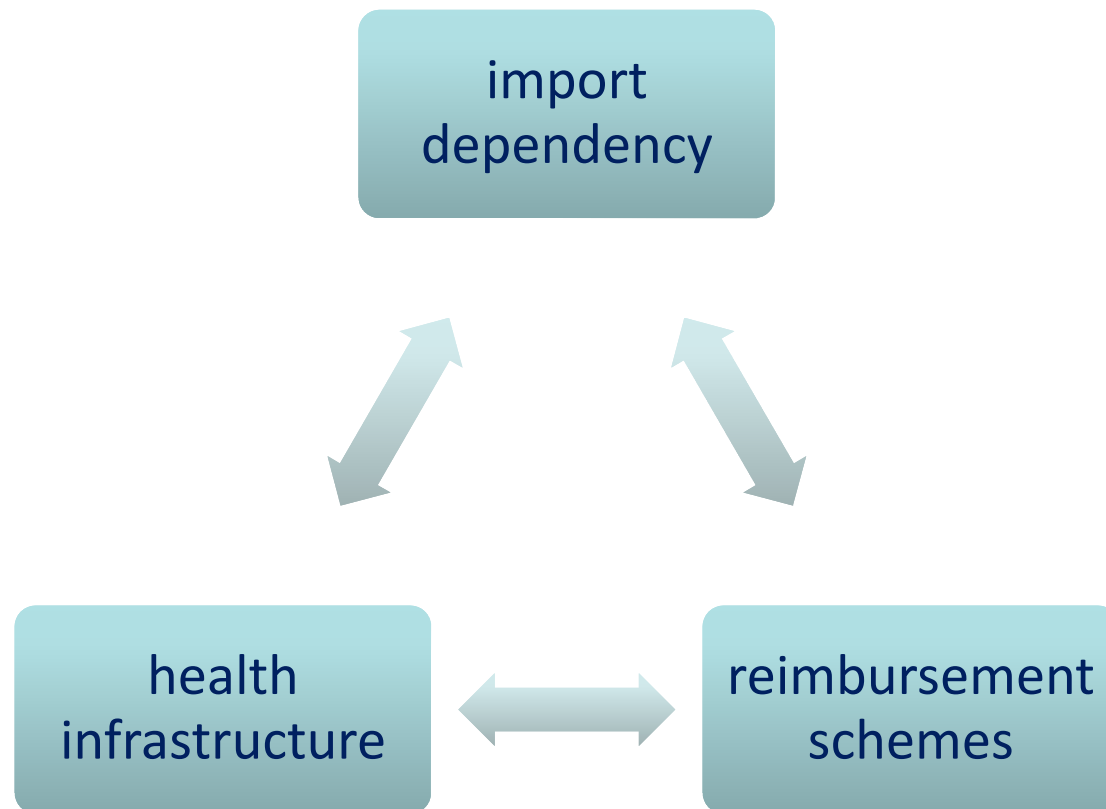


developmental axis

Art. 6° and 196
et seq. CF

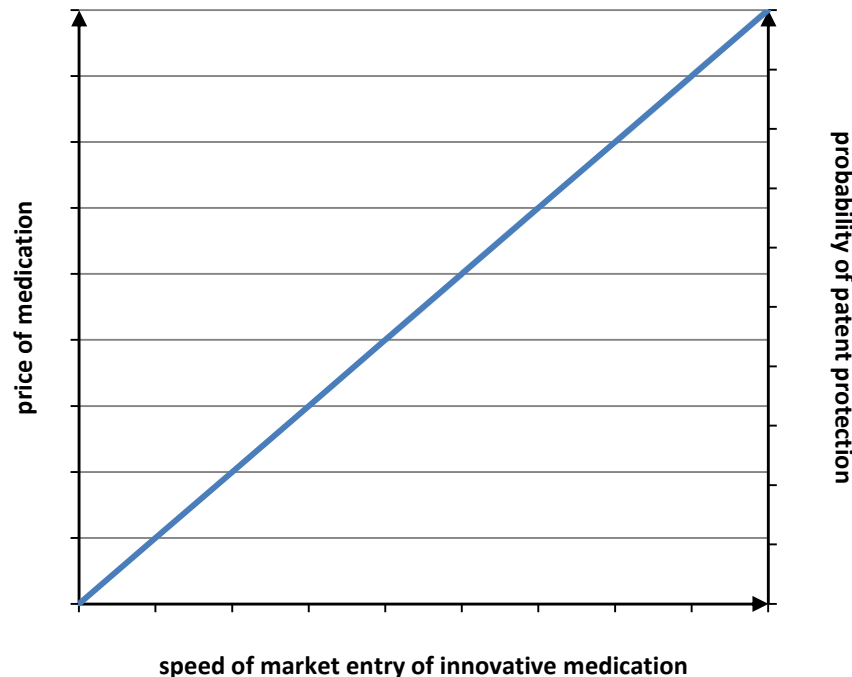


Participatory Axis: determinants



Achieving Balance on the Participatory Axis (IP – A2H): availability of innovative medication (*simplified*)

Yes

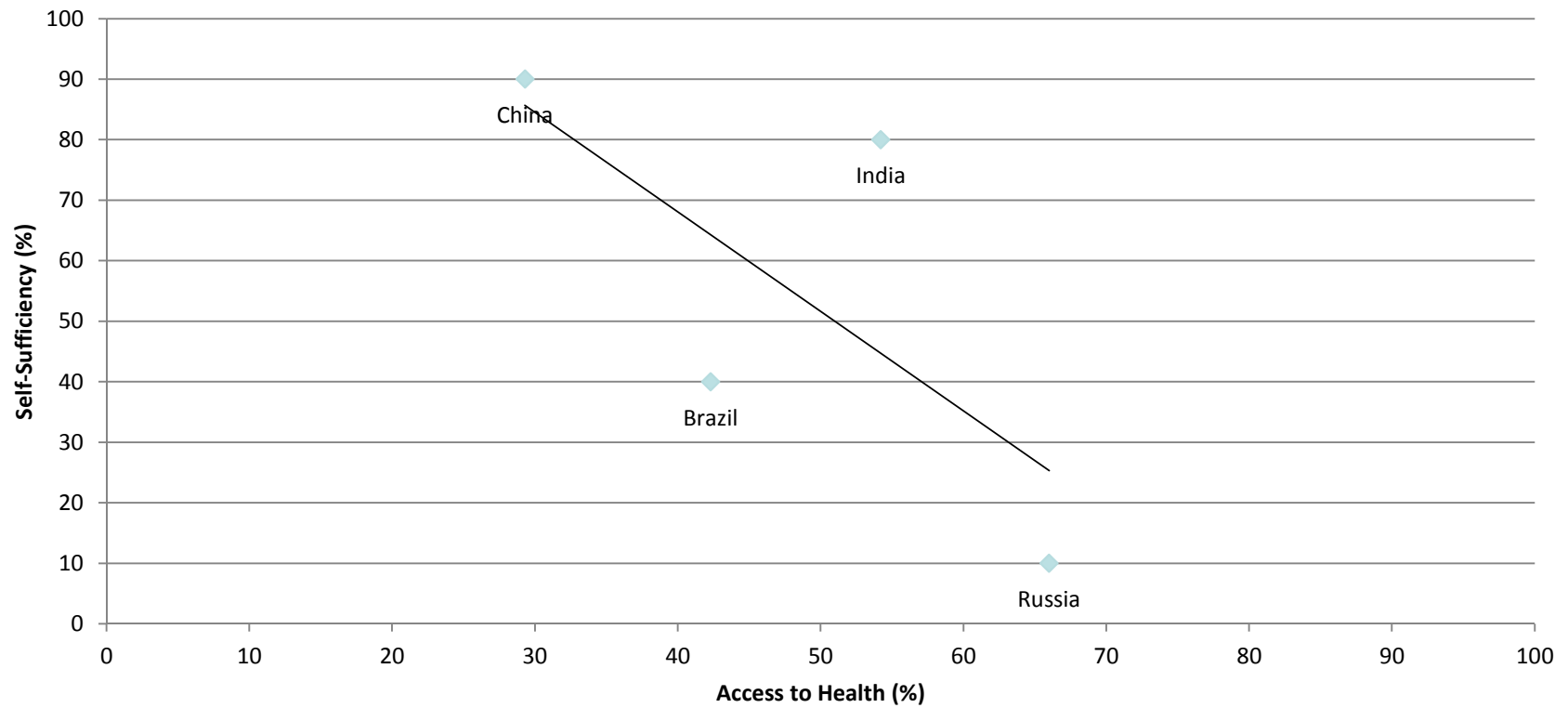


but...

- post-patent expiry price inelasticity due to consumer preference
- slow response of demand to increases in income due to long-term effect of income-elasticity of demand



Actualities on the Ground: relating access to health to self-sufficiency

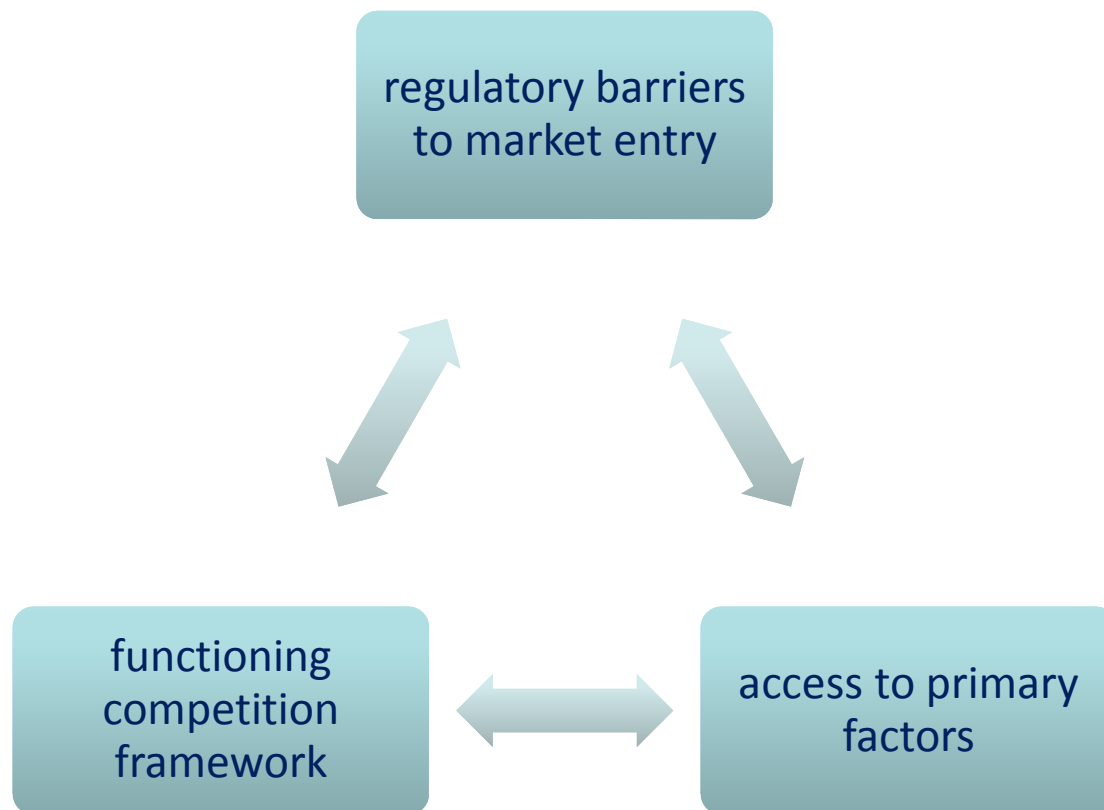


Source: HAI/WHO

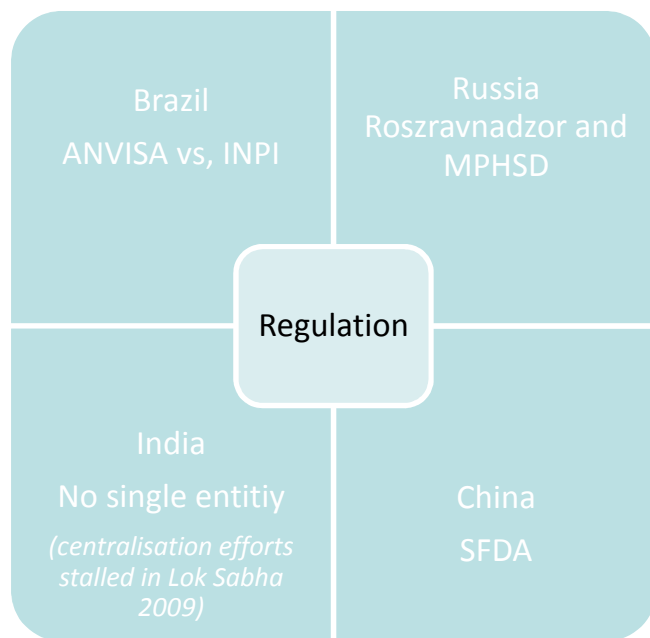


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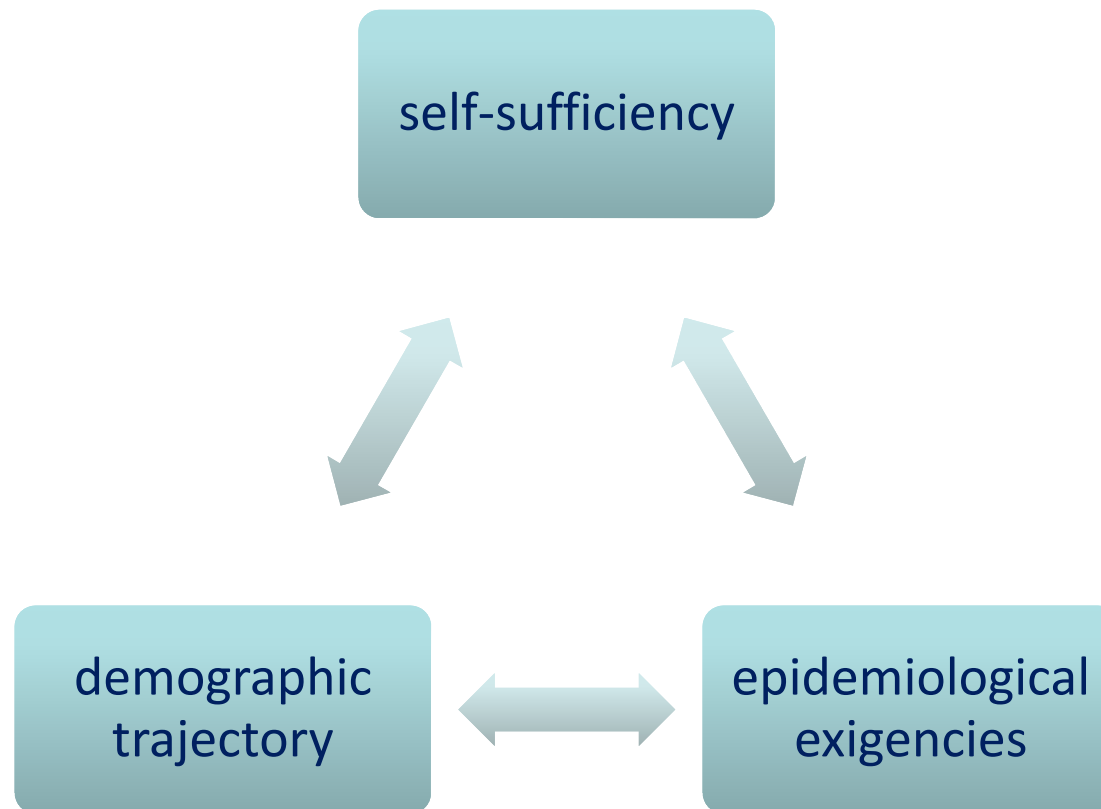
Competition Axis: determinants



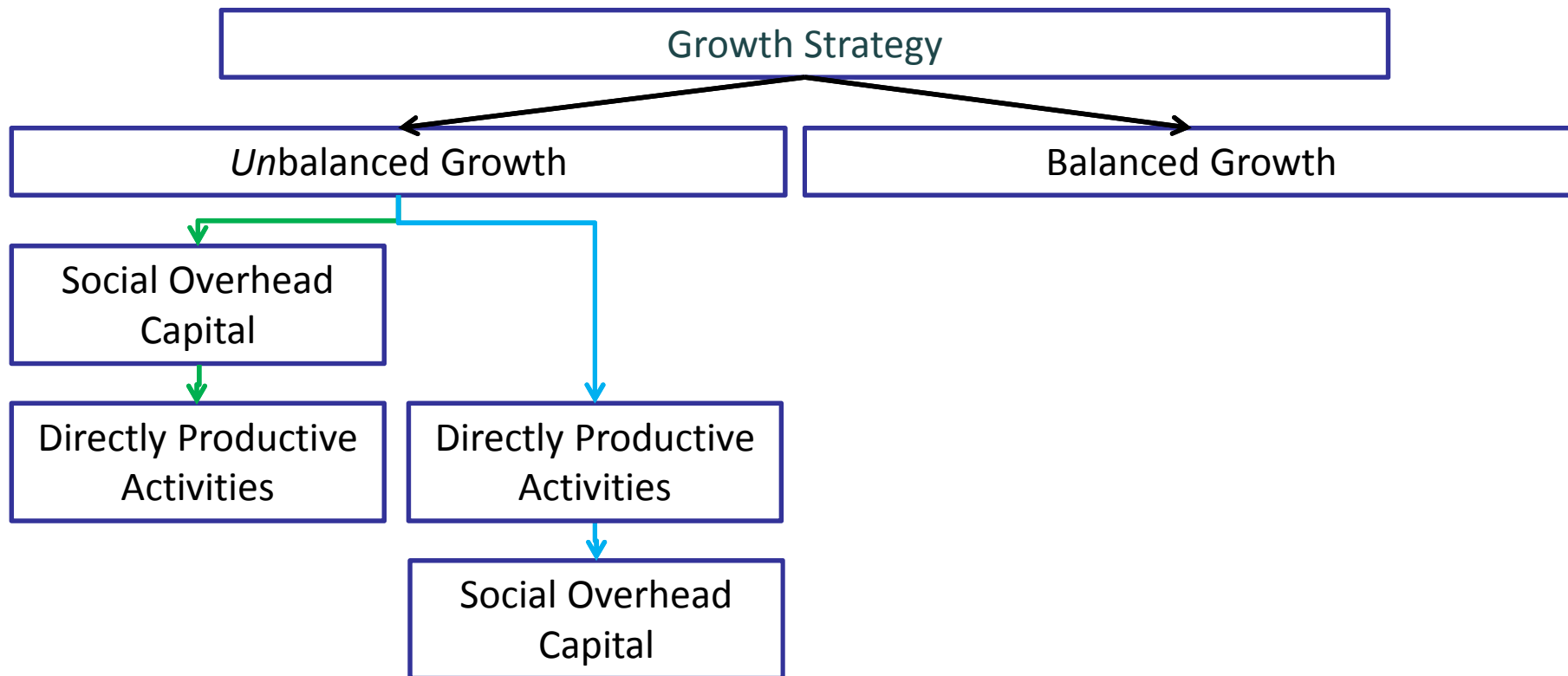
Actualities on the Ground: problems



Developmental Axis: determinants



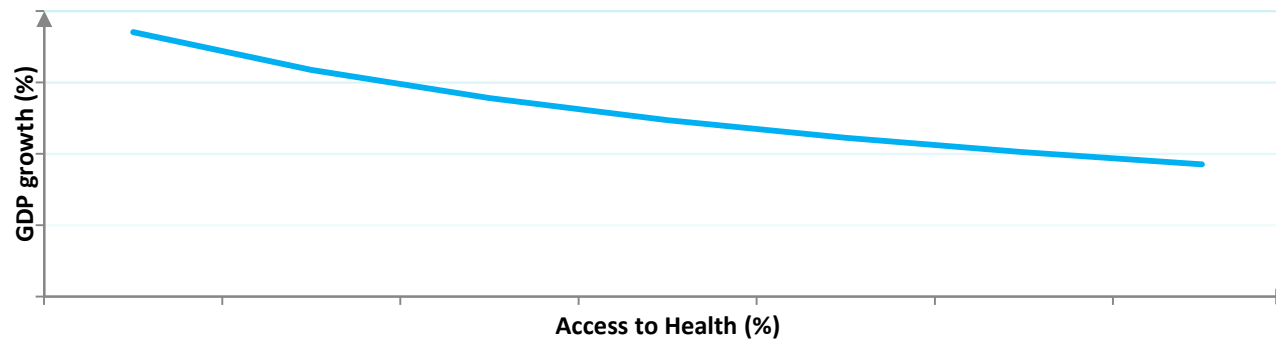
Strategic Options: *balanced vs. unbalanced* growth



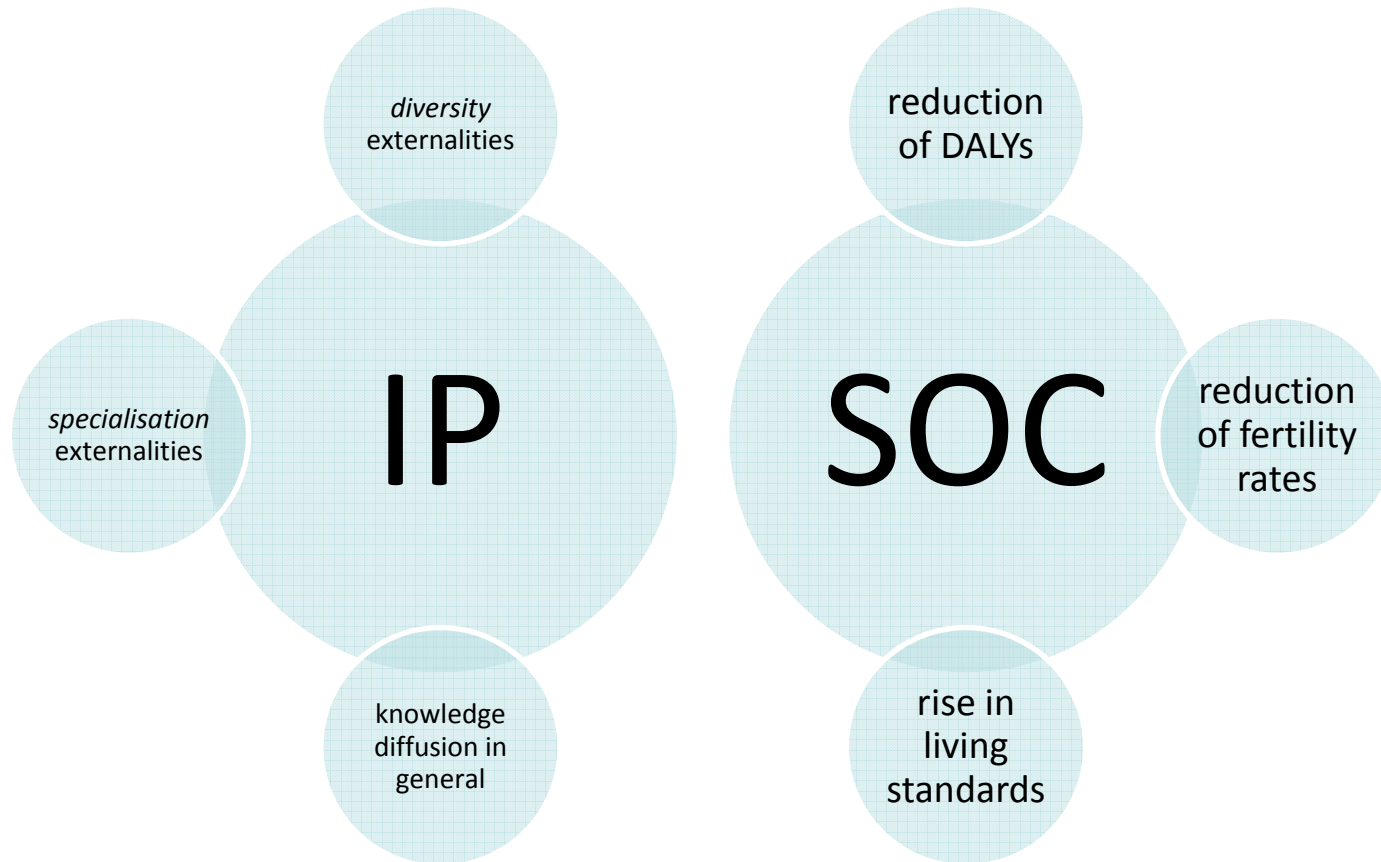
Equation of A2H Strategy (assumption against external economies)

$$IPS(G, A2H, IP) = \frac{1}{A2H * IP} G$$

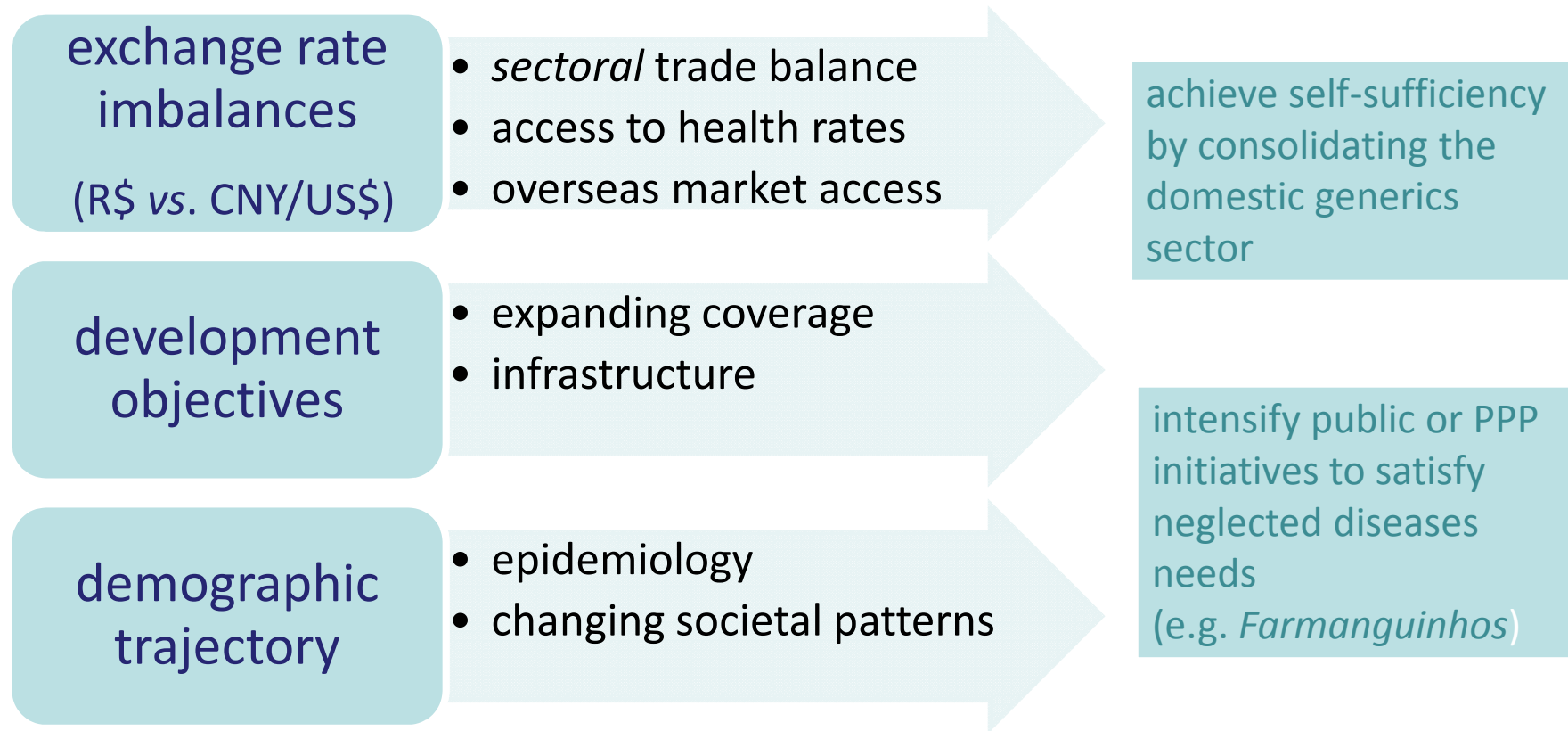
- (largely) given: IP protection standard
- variable: A2H



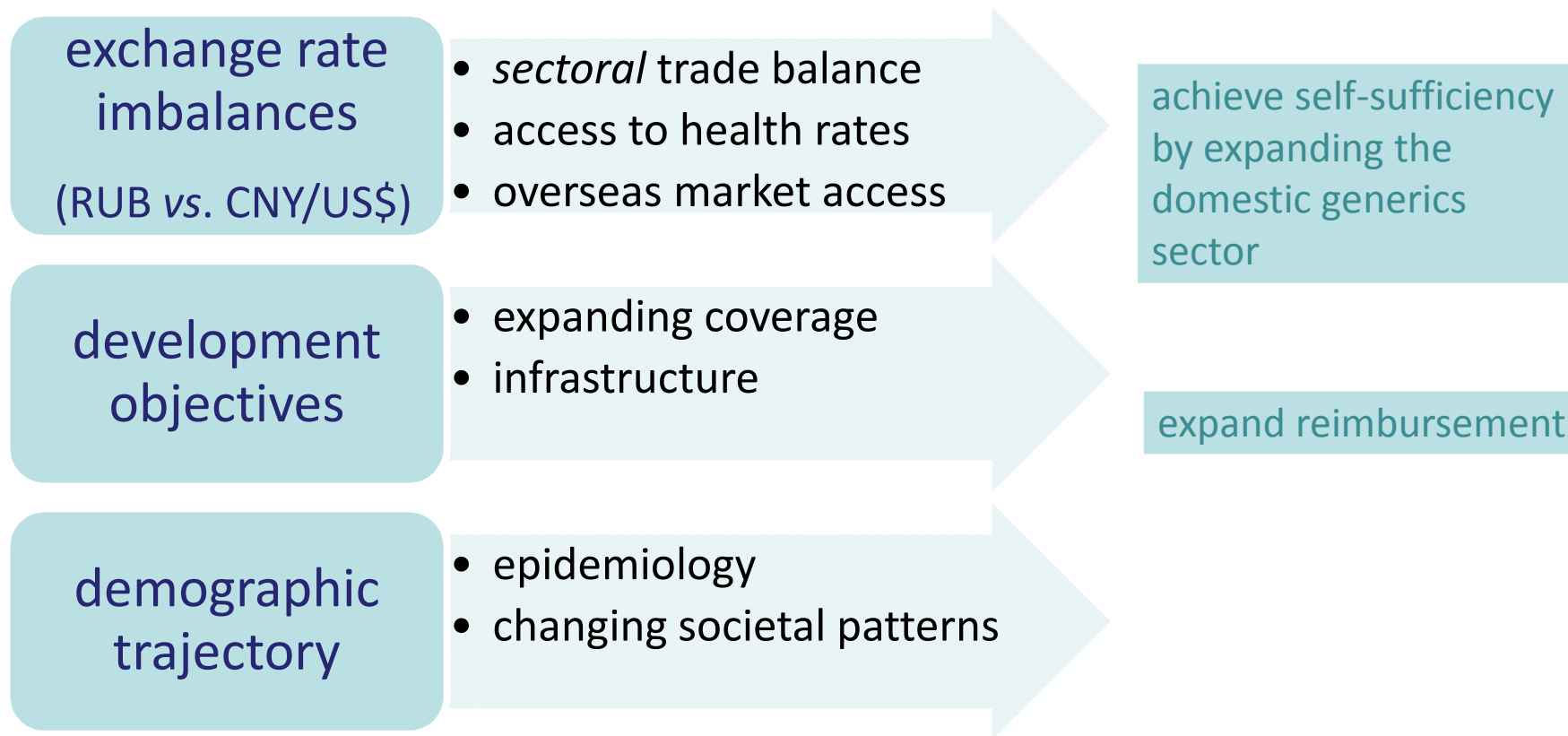
Unbalanced Growth Option: social overhead capital & IP – doubling external economies



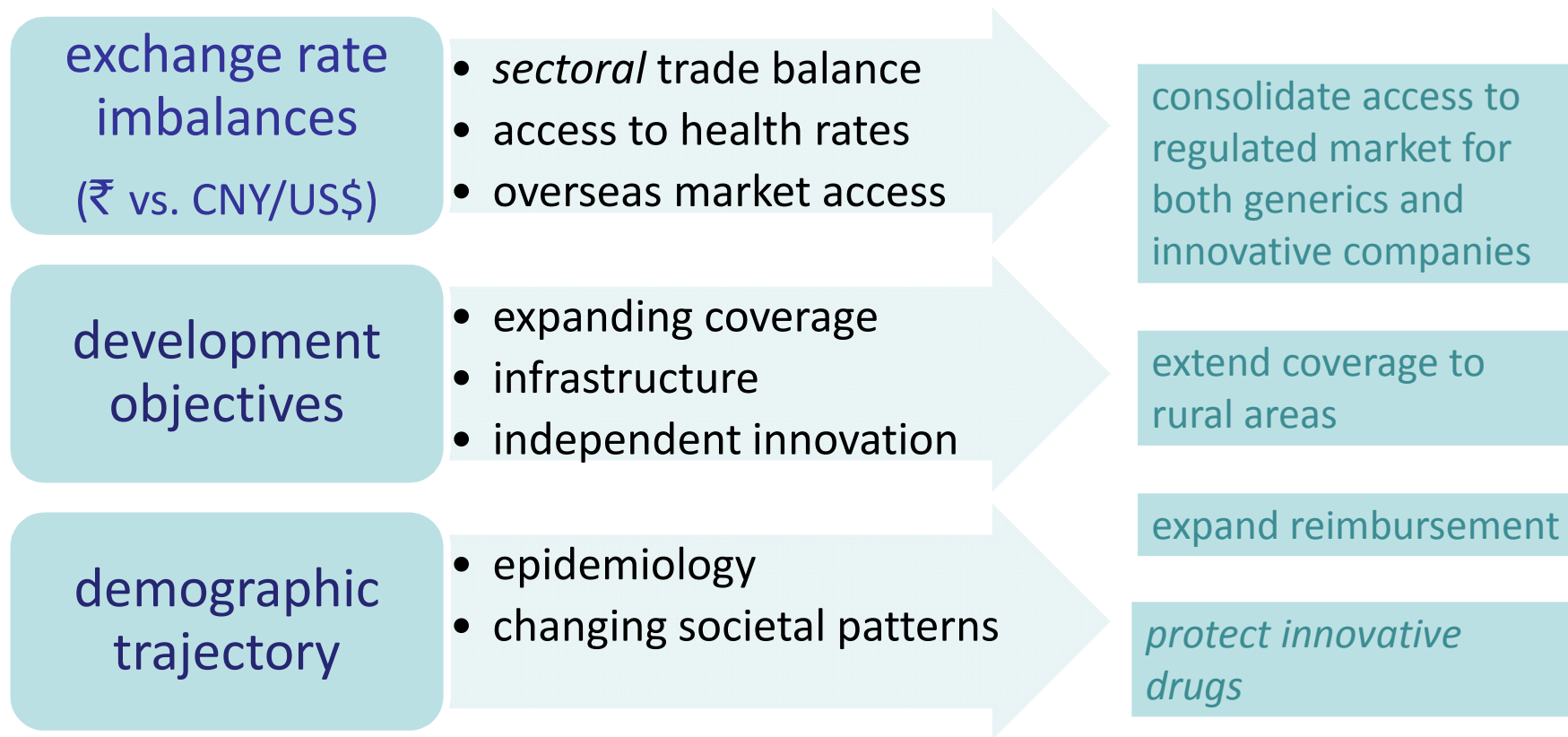
Policy Directory: Brazil



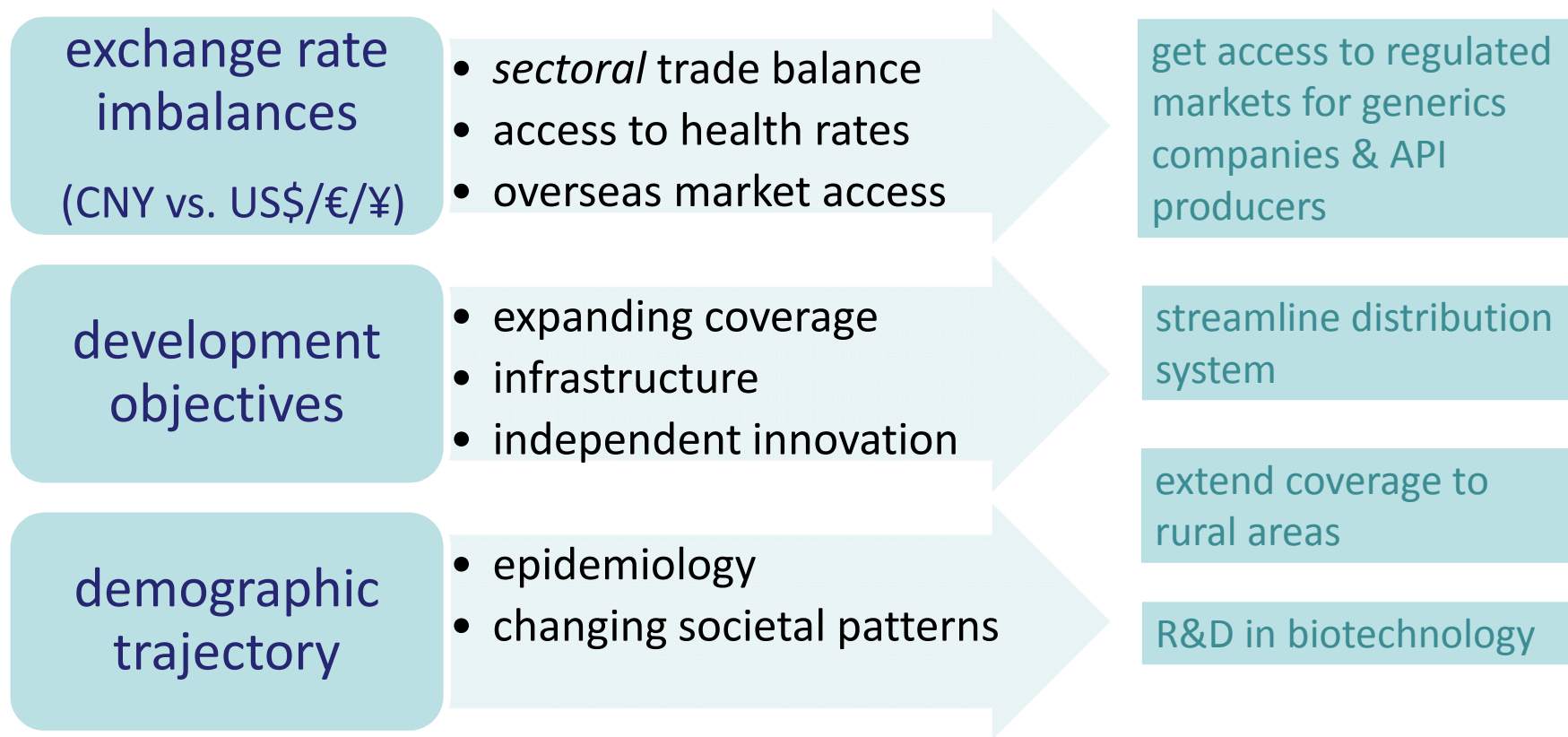
Policy Directory: Russia



Policy Directory: India

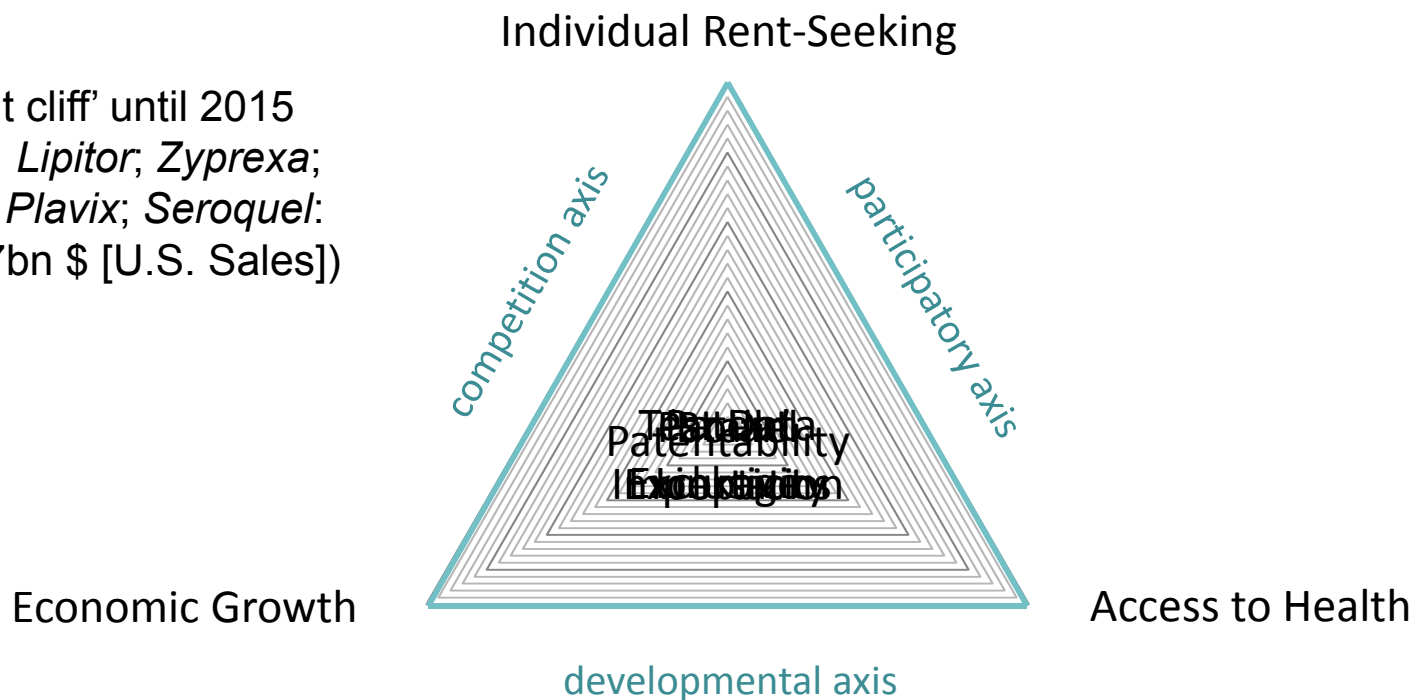


Policy Directory: China



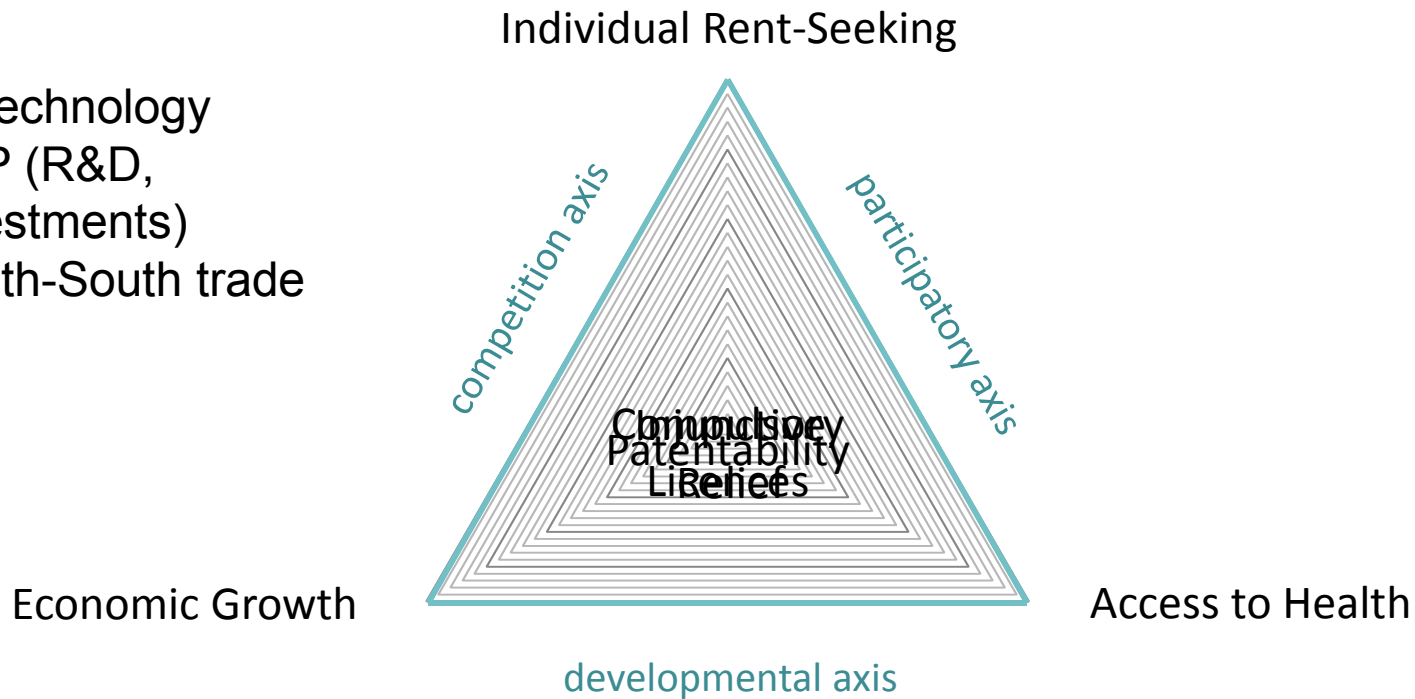
Summary: 'Action Plan' revisited – type-I diseases

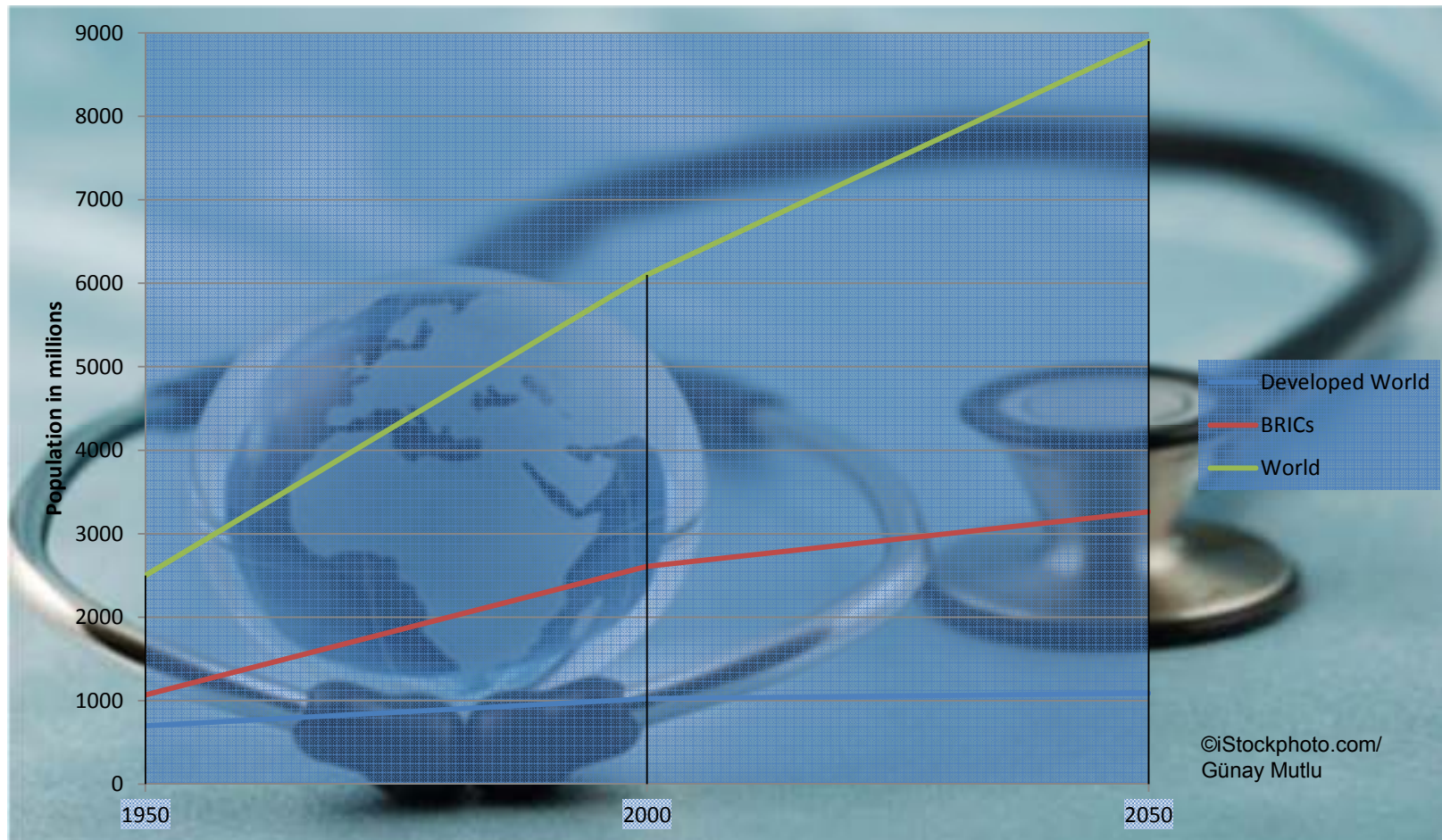
'patent cliff' until 2015
(2011: *Lipitor*, *Zyprexa*;
2012: *Plavix*, *Seroquel*;
~ 17.7bn \$ [U.S. Sales])



Summary: 'Action Plan' revisited – type-II&III diseases

- biotechnology
- PPP (R&D, investments)
- South-South trade





Source: UN

Thank you for your attention!



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