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## **FRANCHISING: R&D ANALYSIS IN BRAZIL AND POLAND**

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## **FRANCZYZA: ANALIZA BADAŃ I ROZWOJU W BRAZYLII I W POLSCE**

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**Summary:** The economic development is a consequence of the innovation procedure. This paper is about the innovation procedure in Brazil and in Poland. Both nations were re-democratized in the end of the 20<sup>th</sup> century. The similarities of both countries do not reflect the development of IP since Brazil has got difficulties as a consequence of its economic crisis. This crisis did not allow the establishment of R&D centres. The paper also analyses the Polish integration in the European Union and how it has enabled the establishment of R&D centres through the franchising.

**Keywords:** economic development, franchising, innovation, research, trademark.

**Streszczenie:** Rozwój gospodarczy jest efektem działań innowacyjnych. Niniejszy artykuł dotyczy tego typu działań prowadzonych w Brazylii i w Polsce. Oba kraje wkroczyły na ścieżkę demokratyczną w drugiej połowie XX w. Jednak podobieństwo obu krajów w tym zakresie nie przekłada się na porównywalny rozwój własności intelektualnej ze względu na trudności, z jakimi boryka się Brazylia w wyniku recesji gospodarczej, kryzys ekonomiczny bowiem utrudnił budowanie tam ośrodków badawczo-rozwojowych. W artykule poruszono również kwestię integracji Polski w Unii Europejskiej oraz jej wpływ na tworzenie centrów badawczo-rozwojowych poprzez franczyzę.

**Słowa kluczowe:** rozwój ekonomiczny, franczyza, innowacje, badania, znak towarowy.

## 1. Introduction

Innovation is a part of the capitalistic development. It leads to economic growth. It is necessary to ensure the stability and fairness of the regulatory framework, in order to enable the economic prosperity. It is also important to consider that the state action is not the only policy that should be implemented, but it also depends on the private sector [Fontes 2011, p. 200]. Therefore, the public authorities have to ensure that the entrepreneurs obtain reasonable administrative measure to protect the result of their activities and so promote the economic development.

This paper is about the importance of establishing a correspondent policy in order to promote innovation, as a consequence of Research and Development (R&D). It analyses the case of Brazil and Poland. The reason is that both nations have passed through democratization processes and also liberalization of the economy at the same period of time. Apart from those similarities, there is a great difference to be mentioned, which causes a variance of the economic level of development. Brazil is strangled by an economic crisis which hinders its economic development and on the other hand Poland, as member of the European Union, has got the possibility to host important R&D centres.

As a consequence, this paper starts analysing the Brazilian model and afterwards the Polish one. Both countries were ruled, until 1989, by dictatorships and the political transformation was also influenced by the trade unions [Senser 1989, p. 35]. Therefore, this research analyses the evolution which occurred after the political and economic liberalization, pointing out the importance of the fashion sector as an innovative sector and the use of franchising to promote fashion trademarks.

The connection between Brazil and Poland in the field of intellectual property is based on the fact that both countries were under authoritarian regimes until 1989, where there was no freedom in economy matters. There was a central planning and although Brazil was supposed to be categorized as a capitalistic economy, the interference of the Government was important. After 1989, with the restoration of democracy, there was a relevant change in the economy, with the establishment of the free market rules. The consequence was the approval by the local Parliaments of new legislation, including Intellectual Property. Both countries had, according to TRIPS Agreement, a period of 5 years to implement the necessary changes in the legal regulation in order to adapt to the WTO Standards. All those aspects have led to a certain similarity in the development of IP rights in both countries. It is also important to recognize that the different level of development and also the accession of Poland in the European Union will certainly determine a different form of development of these legal regulations, taking the regional standard into account.

## 2. Brazil

The development of intellectual property (IP) in Brazil began in the last period of the Portuguese colonization and also by the fact that, in 1883, Brazil was one of the first

countries which signed the Paris Convention for Protection of Industrial Property. Despite this fact, the economic development, based on the innovation procedure has not been constant. There are many people who believe that R&D will not promote the economic development and therefore are not credulous of the capacity related to entrepreneurship. It is also important to point out that the economic development was a part of a nationalistic propaganda and started in 40s by the installation of the steel industry in the city of Volta Redonda (RJ) [Oliveira 2015, p. 5].

After the Second World War (1939–1945) a pattern of social economic development started and continued until 2001. According to Winston Churchill the phenomenon was called “cold war” and has promoted a new form of technological development [Reynolds 2006, p. 67].

It is vital to point out that the economic development was not similar all over the world. To be able to understand the Brazilian development, after the Second World War, it is necessary to comprehend the historic facts that have affected the technological development. This was a period of no political liberty when the institution of economic policy was not based on free competition but on a central plan organized by public authorities. After the Second World War the idea that development was a consequence of the State action increased, leading to the fact that the oil industry exploration was a monopoly of the state with the creation of a state owned company – Petrobras – in 1950.

As a result of the cold war, in 1964 a military dictatorship was settled. During this period the economy was mostly planned and the import of products strictly limited. In the regulation of IP several laws were approved by the Government, such as the Decree-law 254/67, the Decree-Law 1005/69 and in 1970 the creation of Brazilian Institute of Industrial Property, which enabled the approval of a new law (5772) in 1971 [Soares 2011, p. 173].

One of the consequences of this legislation was the necessity to register the contracts related to technological transfer, franchising, knowhow, at the Brazilian Institute of Industrial Property Those contracts were analysed by the new Institute and it had the competence of imposing alteration of contract conditions in order to protect the public interest. Without this previous registration, it was not possible to legally transfer the profits obtained by the exploration of the contract conditions. The military dictatorship ended in 1985 and in 1996 a new legislation of IP rights (9279) was approved by the Congress. This new legislation has the objective of promoting the liberalization of IP rights, without the ideological basis of the previous rules which did not create proper conditions for its development according international patterns [Araújo 2018]. Afterwards the exploitation of technological transfer contracts have increased, as well as the amount of money involved as Table 1 demonstrates.

A new Regulation related to franchising was approved by the Brazilian National Institute of Industrial Property (IN 70) with the objective of simplifying all the procedures and also granting the legal autonomy of the contractual parts to fix the agreement conditions [INPI 2018]. Although this objective was achieved, the Superior Court of Justice [STJ, REsp 1.202.572 – Dje: 13/12/2017] has decided that the Brazilian

**Table 1.** Transfer contract statistics

Year	Total (US\$' 000)	Technical assistance	Technological Supply	Trademark license	Patent license	Franchising
1992	160.484	126.352	31.250	2	2.880	0
1993	227.419	146.018	41.660	44	39.697	0
1994	373.222	244.096	48.266	1.756	79.104	0
1995	652.014	368.749	222.164	5.013	138.620	0
1996	960.564	368.749	378.154	13.237	200.424	0
1997	1.454.260	760.971	512.545	14.060	166.684	0
1998	1.756.327	1.017.959	540.113	12.529	182.747	2.979
1999	1.553.354	931.790	482.266	37.939	97.083	4.276
2000	1.802.301	1.045.747	619.476	31.160	94.436	11.412
2001	1.704.521	1.085.642	505.126	28.134	75.069	10.550
2002	1.581.915	1.005.203	485.439	22.163	59.102	10.008

Source: Brazilian Central Bank.

Institute of Industrial Property has got the possibility to promote contractual conditions in order to promote public interest according the article 2 of the Law 9279 from 1996:

“Article 2 – The protection of rights relating to industrial property, taking into account the interests of society and the technological and economic development of the country, is effected by means of:

- I – the grant of patents of invention and utility model patents;
- II – the grant of industrial design registrations;
- III – the grant of trademark registrations;
- IV – the repression of false geographical indications; and
- V – the repression of unfair competition.”

The most important point is to analyse if the use of IP goods has the intention to abuse its economic power by eliminating the free competition. The technological transfer contract may enable the involved parties to create monopolistic conditions and therefore restrain the fundament of the free market by abusive domination of a certain relevant market. The State action cannot be unlimited by the fundament of protecting the public interest. It must act in the strict limit of avoiding the abuse of economic power. The fact that the free enterprise has not achieved a proper level of development in order to promote the expansion of R&D as the basis of innovation procedure must also be considered. The GDP changes during the period 2008–2016 are shown in Table 2.

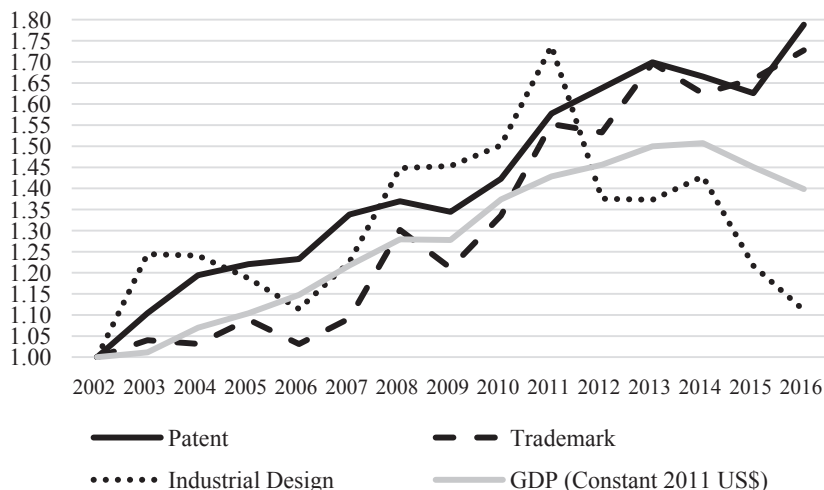
Since 2013 the GDP has decreased, and the recession has also had consequences in the data of the Brazilian Institute of Industrial Property (Figure 1).

The technological innovation in Brazil has transformed certain economic chains and promoted economic development of specific areas, such as the agricultural business

**Table 2.** GDP Evolution

2008	2009	2010	2011	2012	2013	2014	2015	2016
5.0	-0.2	7.6	3.9	1.8	2.7	0.1	-1.0	1.0

Source: Brazilian Central Bank.

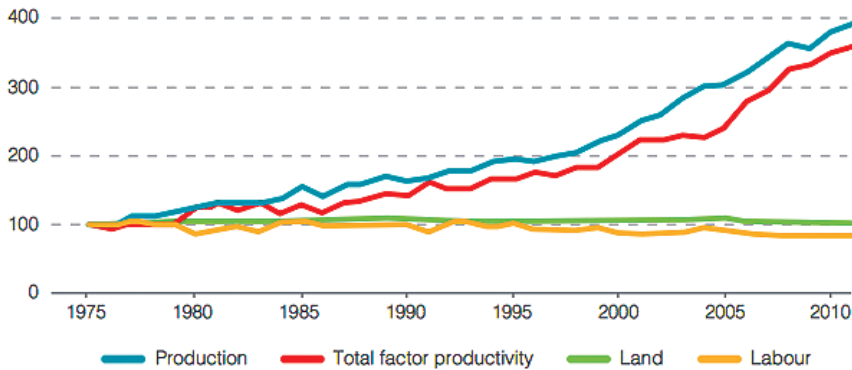
**Figure 1.** IP filings and economic growth in Brazil (set first available year as 1)

Source: own presentation based on [WIPO 2017a].

and the airplane industry. In the first case, the public research institution Embrapa has been promoting the development of the basis of the agricultural industry in order to foment a higher capacity of production. This impact should be considered in the following terms [Martha et al. 2012, p. 204]: “Brazil is now recognized as the sole agricultural power in the tropics. According to recent estimates, on a country basis, Brazil’s share in world agricultural markets (8 percent) is only second to that of the United States (17 percent). Liapis and some analysts already suggest that Brazil’s share will be similar to that of the US in the next 10 to 15 years. The Organisation for Economic Co-operation and Development (OECD) and the Food and Agriculture Organization (FAO), from the United Nations, in their 2010 joint agricultural outlook projected that Brazilian agricultural production will increase 38 percent from 2010 to 2019. This huge increase in agricultural production is nearly twice the global average and several times higher than the figures prospected for giants in world agriculture such as the United States, Canada and the European Union.”

The agricultural industry has been a major player in the Brazilian export. It has grown in productivity, by using the technological progress in order to obtain a better level of production. The increase of this level of production is a consequence of

R&D undertaken by Embrapa [Martha et al. 2012, p. 213]: “Embrapa’s inception was founded on two pillars: a focused research model, concentrated on products and areas of fundamental important for the development of the country, and which constitutes an objective way of identifying research priorities; and human resource capacity building, based on strong training programs in centres of excellence around the world.”



**Figure 3.** Rising agricultural productivity in Brazil

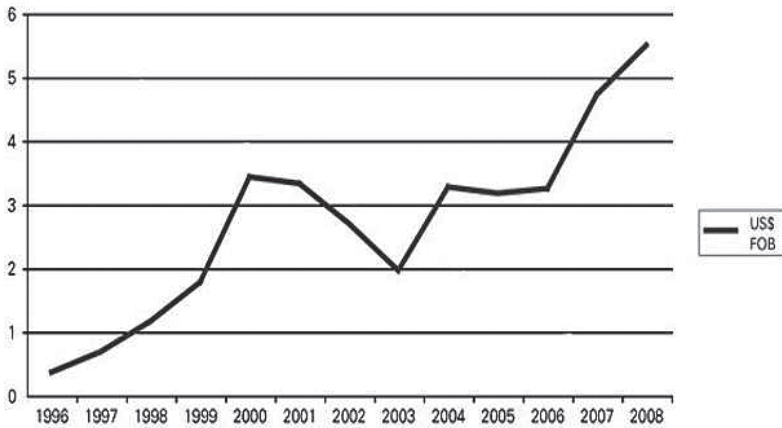
Source: [IRIBA 2015].

Agriculture is not a part of the primary sector, but the way it is produced, is a result of investments in technological solutions. The productivity of agricultural industry in Brazil rose in the period of 1975 to 2012 [Amann, Barrientos 2016, p. 8] (see Figure 2).

Therefore, it is obvious to conclude that the evolution occurred and how the interaction of technology has innovated this economic sector. On the other hand, we should also consider the airplane industry, especially after the privatisation of the company *Embraer*. It is one of the largest aircraft industries in the world [Lagace 2000]. It is also to consider that *Embraer* earns 20% of its revenue from Brazil [Boyer 2017, p. 58]. The complexity of the aircraft industry and the way it is commercialized has the consequence that the players have always to introduce new ways of production. It is not a company by itself, rather a joint venture, as evidenced below [Chagas 2017, p. 252]:

“Embraer had to acquire the technology from subcontractors. At the same time, because of its awareness about FBW’s importance, the firm hired senior experts to enable its internal teams to master FBW, thereby generating important cost overruns for the project. Moreover, the firm invested in people, tools, and process developments. As a result, Embraer gained full control of FBW, including all the embedded software. In an aircraft project, some technologies definitely cannot be outsourced. Because of complexity, mastering the whole development effort is an important way to cope with systemic uncertainty. Thus, Embraer realized that FBW had to be fully developed with its own resources. From the perspective of the Embraer technology development

manager, ‘If we didn’t develop FBW internally at Embraer, we would hardly be capable of integrating the aircraft and we would lose competitiveness in the short and long terms’. The other technology development manager said, ‘We cannot depend on partners or suppliers to develop some technologies essential for the survival and competitiveness of this company.’”



**Figure 3.** Brazilian exports of aircraft, 1996–2008 (US\$ billions, in current prices)

Source: [Suzigan, Da Motta e Albuquerque 2011, p. 26].

The technology involved in this kind of production is quite sensitive, because it is also used by the defence industry and the national air force. Moreover there are several international and national regulations related to aircraft trade as well as trade restrictions imposed by the United Nations (UN). However, the standard of excellence achieved by Brazil enabled it to participate in the international trade (see Figure 3).

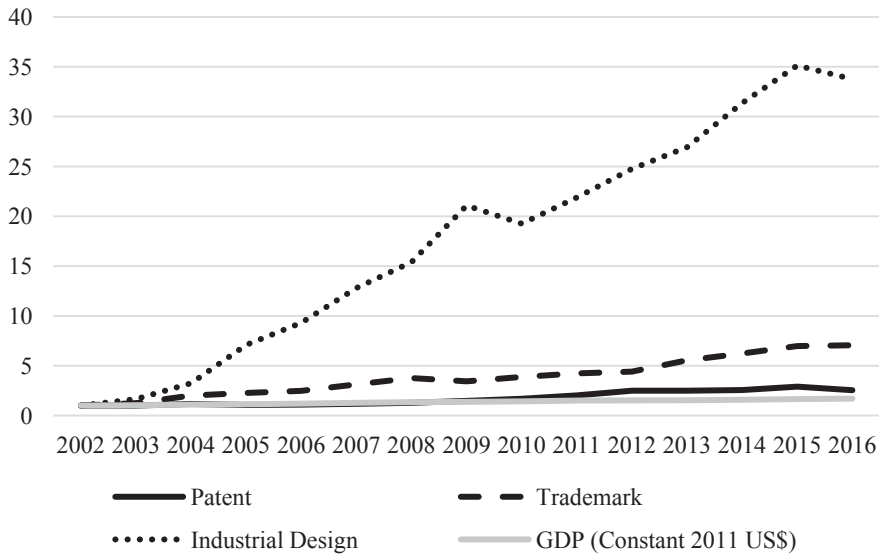
### 3. Poland

After the Second World War (1939–1945) communism in Poland was established. Despite that, a certain level of economic freedom was tolerated, especially in the agriculture 75% of the land was privately owned [Wilkin 1999, p. 20]. The Polish State and society were transformed by the end of the 80s. As a result a democratic political system was established, based on free economy. This transformation also had consequences on the IP system. This transformation process was the outcome of elections held in 1989 [Pakulski 2010, p. 104]: “There were to be free and competitive parliamentary elections in June, but only to the upper house (Senate) and about one-third of the lower house (Sejm), with 65 per cent of seats in the Sejm to be initially (for the duration of the first Parliament) reserved for the party-government candidates. Moreover, the powers of the presidency, assumed to be in communist

hands, were significantly strengthened – another safeguard for the nomenklatura. While the communist parliamentary majority was thus assured during the transition phase, the agreement included significant bonuses for the opposition: elections to the upper house were completely free, thus allowing for the free articulation of democratic public opinion, and the introductory paragraph of the agreement stated that this was ‘the beginning of the path to parliamentary democracy’ – a politically pregnant phrase that proved prophetic.”

One of the consequences of the economic transformation was the evolution of the Polish GDP per capita. In 1988 GDP per capita in Poland reached US\$ 1.816 whereas 5 years later it was equal to US\$ 2.347 and a decade later it achieved the level of US\$ 4.450.

The importance of the economic development has direct implication in the form the free market economy was established. As a result of Brexit, it is estimated that 30,000 jobs will be transferred from the UK to Poland [Bartyzel, Krasuski 2017]. The diversification of the economy points out to the increasing demand of IP protection (Figure 4).



**Figure 4.** IP filings and economic growth in Poland (set first available year as 1)

Source: own presentation based on [WIPO 2017b].

The number of patent applications has grown from 2,421 in 2002 to 6,141 in 2016, the trademark applications from 17,068 to 120,413 in the same period, and design applications from 1,312 to 44,303. It is a consequence of the establishment of R&D centres (approx. 200) in many parts of Poland. Those centres are constituted of 2,733 units, with 1,101 private companies and revenues, in 2011, of 14,4 billion PLN [PAIH 2017]. They were distributed in 2012 as indicated in Figure 5.



Figures 5–8 show the objective of establishing R&D centres all over Poland. The development of the national economy, with transparent regulation has created the proper condition for its development. It strengthens that the private projects are also supported by local authorities in order to promote technological and economic development.



Figure 5. R&D centres in aviation sector

Source: [PAIH 2017].

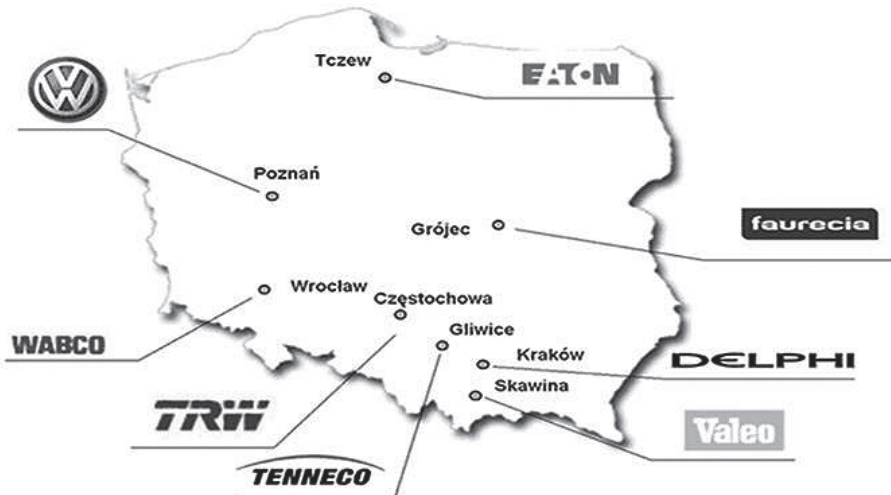


Figure 6. R&D centres in automotive sector

Source: [PAIH 2017].



Figure 7. R&D centres in service sectors

Source: [PAIH 2017].



Figure 8. R&D centres in such sectors as: electronic, metal, machinery, nanotechnology, pharmacy, biotechnology, IT

Source: [PAIH 2017].

These maps also show the geographical position of Poland in Europe. The establishment of all those R&D Centres reveals a certain strategy in order to promote the development of IP, based not only in business, but also on the research level. This

was also considered at the Deloitte Report – Poland Corporate R&D Report 2016 [Deloitte 2016]: “The percentage of firms stating that their R&D spend exceeds 3% of their revenue has fallen sharply over the last year (from 48% to 33%), despite growth (from 13% to 17%) in the percentage of those whose R&D expenditure exceeds 10% of revenue. The proportion of Polish respondents spending more than 3% of revenue is significantly below the Central European average of 46%. Spending on R&D accounts for less than 5% of total capital expenditure in more than half the surveyed companies. The data indicates that companies do not yet recognise R&D as an important area for driving growth. It is possible that their actual R&D spending is higher than reported, but is not reflected in their financial reports or statistics. This is simply because, in the absence of any incentives, many of them see their R&D and innovation costs as part of their wider capital expenditure. The availability of a qualified and experienced workforce was named as the second most important factor impacting the level of R&D spending. This may result in a higher level of collaboration between the scientific and the business worlds. However, Poland still lacks incentives for companies to employ more R&D specialists.”

The obvious conclusion of this report is the formation of a basis for the economic development of Poland. All those centres are strategically located and will therefore establish the proper condition for a high quality research, which results in promoting the expansion of IP rights to be protected.

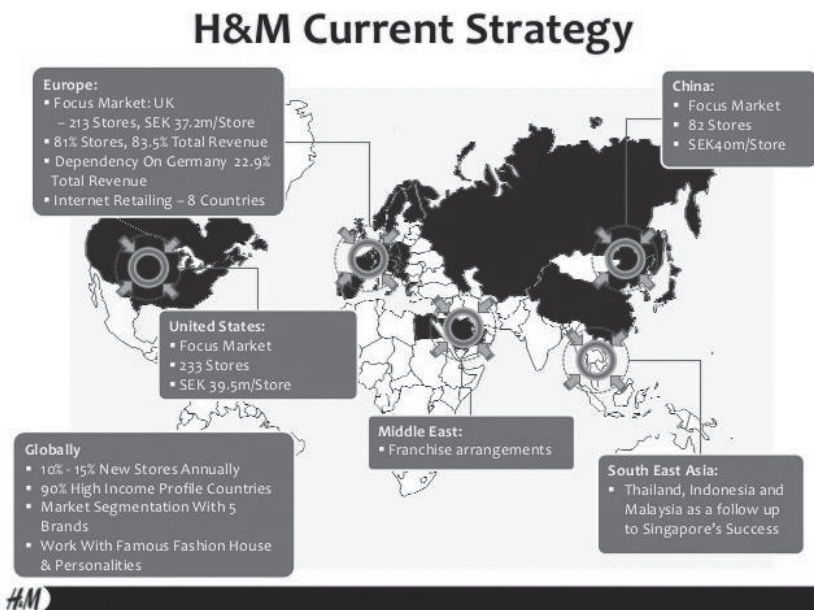
#### **4. The franchising strategy**

The franchising strategy, in the fashion industry, has got a global importance. First of all, what the purpose of a franchising agreement is, must be considered. The franchisor has got two possibilities. The first one is to open branches in diverse countries, which is inconvenient at a bureaucratic level due to different legal standards that have to be fulfilled. It is also important to state that the opening of local branches also includes the observance of different legislation which may be totally different from the one applied to the franchisor headquarters. The second possibility is to look for franchisee, which are local partners and also aware of the implementation of the local legislation. As a matter of fact, it will not be a granted form of achieving the desired profit, but it may inhibit legal suits, especially related to the application of labour legislation. The franchisee will stand for all the risk of the business strategy, but will obtain the necessary support from the franchisor, by the agreement made, which also includes a trademark license and the transfer of the necessary know-how.

This kind of contract has developed in the fashion industry as a consequence of establishing the international trademarks. The franchisees may act in many different countries with the purpose to stimulate a certain level of uniformity in the consumption. The consumers should not feel the difference in purchasing goods from a particular fashion chain that offers its commodities in a certain country because for them the information related to the franchising agreement is not important. It is a successful

form of business, according to P. Vu [2015, p. 15]: “Franchising famous and renowned brands has become a very successful business for both franchisors and franchisees thanks to the franchisor’s business system and the franchisees expertise in local issues. Many well-known and senior brands have accessed new markets through franchising such as Tommy Hilfiger, Benetton and Calliope, Zara and Gap Inc. Franchising was said to balance between maintaining control of the brand and managing the capital at risk [...]. Like other business methods, maintaining control of brand and managing capital is the core to keep the brand well-known, and the financial source in the safe zone. A stark example for the success of franchisors in fashion industry is Gap Inc. Gap is ‘one of the world’s leading global specialty apparel, offering clothing, accessories and personal care products for men, women, children and babies under its five brands- Gap, Banana Republic, Old Navy, Piperlime and Athleta’ [...]. In order to expand its brands internationally, Gap developed an international growth strategy utilizing online channels, company-operated channels and especially franchise. Thanks to development and promotion, Gap Inc has grown its share of \$1.4trillion global apparel market.”

The way it gets into the local market is determinant for the development of the fashion industry. This is a task which is better solved by a local partner, who is able to identify the consumer’s behaviour and which is the moral standard to be observed: what is acceptable and how to deal with certain unwritten information. There are strategies which are easier known by a local partner than fulfilled by a foreign partner. All this

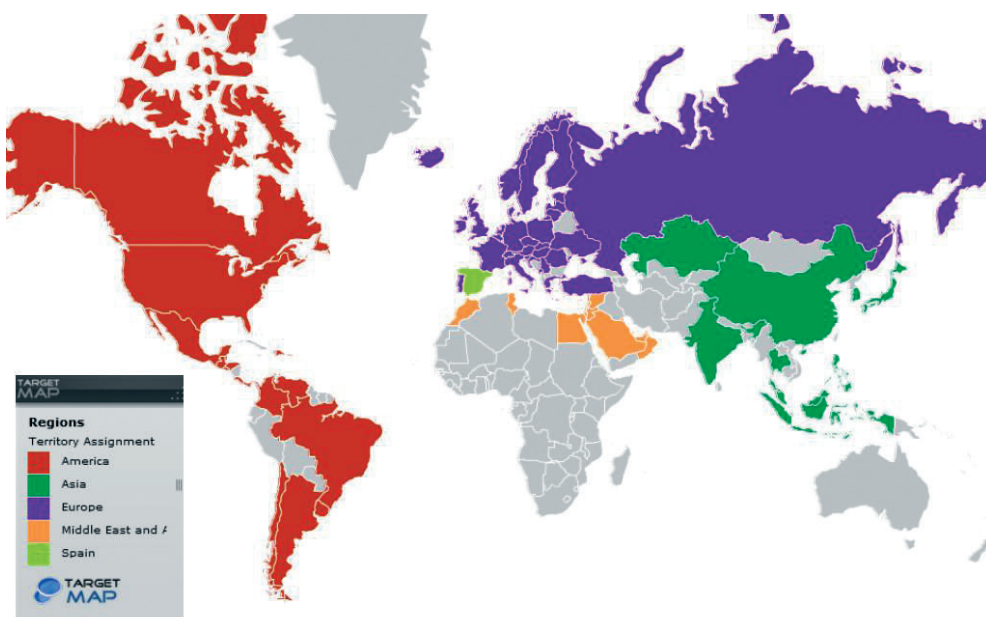


**Figure 9.** H&M current strategy

Source: [<https://www.slideshare.net/banganh1995/hm-55723546>].

kind of information is taken into account in order to establish a business method and in that “transform” an international trademark in a local one. Taking H&M for an example, it has a considerable market value, which is part of its business model. The current strategy of H&M is demonstrated in Figure 9.

Its strategy is focused on various segments and reflects the brand’s value – 21.08 billion US\$ in 2015. We should also consider the brand’s value of the 10 most expensive fashion trademarks – 121.74 billion US\$ [Gould, DeBord 2015]. H&M has got since 2003 an expressive number of stores in Poland (approx. 169 in 2017). In Brazil the same happens, not with H&M, but with the brand Zara. Zara has approximately 1,770 stores in 86 countries, as shown in Figure 10.



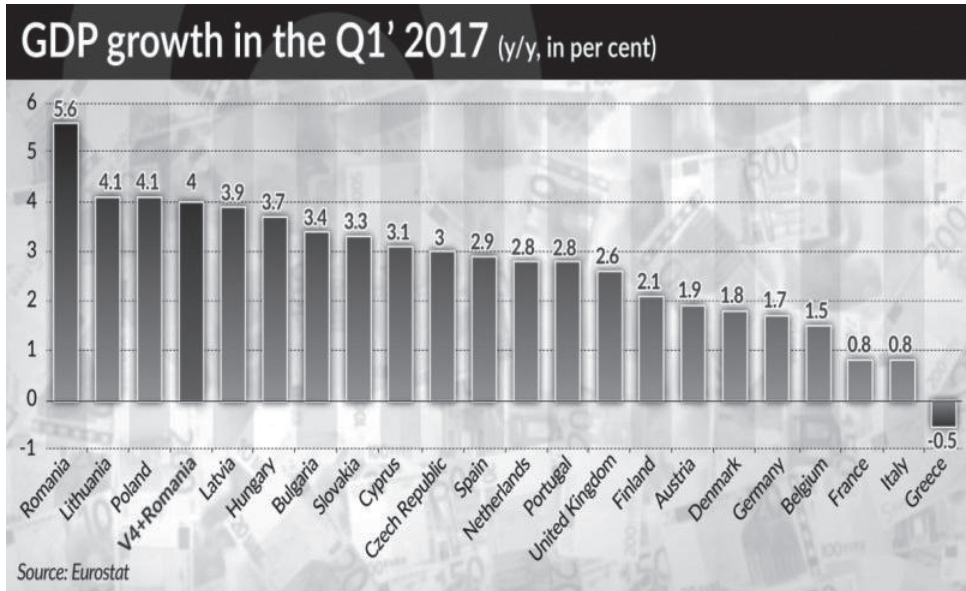
**Figure 10.** Global localizations of Zara stores

Source: [<https://sites.google.com/site/zararetailer/international-expansion/countries-expanded-to>].

Zara is the fourth most valuable trademark, with a value of approximately 121.13 billion US\$ [Morawski 2017]. In Brazil, the franchising sector, which also includes the shoe industry has the participation of 13.5% of the country’s export [Brazil – Franchising 2017]. As a consequence of the economic integration of the EU the Polish GDP has got a relevant position as shown in Figure 11.

An impressive economic growth of Central Europe is observed [Morawski 2017]. One reason for this is the economic progress in the EU. The fashion market plays an important role in this development. At this point we have to take into account that the international fashion industry has made a certain division of the consumers market.





**Figure 11.** GDP growth in the Q1 of 2017

Source: [Morawski 2017].

It takes local habits into consideration, but also the type of the consumer which will be considered its target. Zara and H&M have relied on different assumptions in order to launch their international franchising network. The different geographical localization of Brazil and Poland are analysed, as well as the level of development of the regional market, such as the European Union and the Mercosur. The franchising agreement enables the franchisee to get help from experts in the business [Ranta 2016, p. 16.] It also includes that those experts analyse a local market and how the consumer reacts to a certain picture, advertisement, etc. The cultural and economic differences between Brazil and Poland are evaluated, but their economic and political development, in the last 30 years, enables a certain sort of comparison for the purpose of understanding the development of IP protection and how it has developed since the end of the cold war.

## 5. Conclusions

The collected data evidence a certain similarity of the historic evolution in Brazil and in Poland, but the major difference is in the implementation of economy policies in order to stimulate economic development. Brazil is still linked to a practice which is not compatible with promoting the necessary stability to foment the growth of the market economy. The lack of perspectives and a failure of proper regulation does not stimulate the creation of different R&D Centres.

The same situation is not observed in Poland. The entrance in the EU, the consequences of Brexit and also its geographical localization has contributed for the growing number of R&D Centres, which enables the settlement of a diverse technological innovative basis. The similarity of ancient historical events does not imply that the long term policies are equal. It is also quite obvious that R&D plays an important role in order to promote technological and economic development.

Brazil and Poland have gone through important political and economic transformation in the last 30 years. The consequences of the Second World War and the cold war have impacted those countries, by the establishment of dictatorships and also a complete lack of economic freedom. The economic activity was organised and planned by the state. The transformation of the Brazilian and Polish society induced by the democratization process had its far-reaching consequences. Free market economy stimulated new forms of consumer behaviours. The consumers gained an opportunity to choose between various international trademarks. These two cases indicate how profound changes experienced Brazil and Poland, particularly if we consider the fact that those markets were practically closed to foreign products until the 90. It should be noted that Brazil and Poland had also a new form of economic integration in the international trade in terms of service market. The fashion franchising agreement is quite important in order to understand the economic development of Brazil and Poland and therefore the comparison is not limited to the present moment but also to the more important aspect of how the democratization and the establishment of free market standards has enabled the development of fashion business. This comparison aims at reflection how the political liberalization of two different societies has had the impact on promotion of the IP development in a similar way stimulating the economic growth at the same time.

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