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Exploiting Innovative Technology in Offshore Markets: The LDC View

*Celso Souza**

Although I am the official representative of my country, the views herein are solely my own, and I would not presume to set forth the lesser developed country ("LDC") view on such complex problems as technology, the transfer of technology and intellectual property.

I have noted with interest what has been said here concerning the extremely complex nature of the legal aspects involving innovation, technology and its transfer. I was struck by the fact that the United States and Canada, countries sharing such an extensive borderline and with such a degree of similarity in their economic development processes, still have a long way to go with regard to the harmonization of rules and procedures concerning intellectual property. I find this encouraging as a representative of a Third World country.

The representative from IBM spoke about Brazilian participation in the GATT negotiations. Brazil joined in the agreement to bring about discussions of intellectual property rights when this began. This was not merely a face-saving gesture for Brazil, although we know that some states, particularly in Africa, are known to have very firm positions in discussions on intellectual property rights. They are unwilling to negotiate, but Brazil is now firmly on the path to greater understanding and fuller discussion of this issue.

The import of technology from overseas has helped developing countries. Knowledge is a critical input in the development process. Where it is lacking, there is a deterrent to international trade competitiveness. It has tremendously altered the traditional advantages that developing countries have, based on natural competitive advantages. The fact that Brazil has a large territorial base and can still count on relatively low labor costs is diminished by the need to assure Brazil's technological competitiveness in world markets.

The growing importance of technology in export products may be one reason which explains how a small country such as Japan, made up of small volcanic islands, has risen to prominence in the world. Technology is the only resource that will allow the LDCs to close the economic gap.

The essential issue for LDCs is to accelerate the pace of technology transfer and then to make technology available to local capitalists. But

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how can LDCs be sure that technology is being transferred or will be transferred? The intangible nature of technology makes it extremely difficult to measure the effect of transfers of technology. This effect can be measured by looking at the balance of payments and examining trade in capital goods, foreign investment flows, disbursements for technology fees, corporate grants or even receipts of buy-outs. Buy-outs, for instance, can also include payments for trademarks as technology transfer, even though no actual technology transfer may be involved.

In assessing technology, developing countries aim at the maximum possible availability of information to local corporations and individuals. We do not want to buy black boxes. Specifically, in the case of developing countries, governments must be attentive in order to provide maximum access to information transferred into the country. One example is the statement by Brazil regarding an acquisition by Fairchild Industries, which said that U.S. government involvement was indeed a factor in the acquisition. If the U.S. government is concerned about technology being acquired in such a highly sophisticated field, it is easy to understand why, in a country like Brazil, or any other developing country, the government is worried not only about accelerating the pace of the transfer, but also making sure that the benefits of technological inventions are secured.

Regarding the question of devices for intellectual property protection, the fundamental question is, does the country have a legal system which accelerates the pace of the transfer? Does this transfer mean that the benefit of new techniques would be available to a wider spectrum of beneficiaries in developing countries? There is no easy answer to this question.

A recent study of this by the United Nations Conference on Trade and Development ("UNCTAD") has shed some light on the current trends of technology transfer. It says, "An overview from the 1960s to the present shows a rapid increase from the 1960s to the early 1970s of whole major types of technology-related goods, including imports of capital goods for direct investment, licensing, and technical cooperation, and ranks the United States as the major technology supplier." Another characteristic was the diversification of technology flows by geographical origin, as exemplified by the rising importance of Japan and Western Europe as technological suppliers. The stagnation of technology flows beginning in the 1980s, particularly to developing countries, and the emergence of the United States as a major importer of technology, were also identified in the study. The effect of the main external economic factors on technology flows to different country groupings was measured by the capacity to import which was depressed largely due to service payments on debt.

Macro-economic adjustments to this involvement have been made in varying degrees by all groups of developing countries. These have involved changes in the structure of imports. Champions in import technology temper investments and adjust the rate of investment itself. In

the case of Brazil, this aspect is changing. Toward the mid-1980s we noted a marked shift in Brazilian industries which traced the capacity for technology more to the lack of an efficient system of intellectual property protection.

It is interesting to note that most of the enterprises represented on this panel do business in Brazil, and have been in Brazil for a long time. There are complaints about intellectual property protection in Brazil, but I think that the market reasons are a predominant factor in explaining why technology flows go in one direction rather than in another.

Some studies suggest that informational technology transfers are not very sensitive to intellectual property protection. Also, a recent study, published by a visiting professor of Johns Hopkins University, put forth some points which may be of interest. It says that the impact of enhanced intellectual property rights protection upon Third World economies may vary significantly and there is no strong evidence that these countries would necessarily benefit from the reform of their intellectual property systems.

The political economy of intellectual property rights protection helps to explain the resistance of LDCs to reform, even when a strong case based on economic self-interest is developed. The uncertainty in terms of economic as well as legal, political and philosophical differences between the North and South suggests that radical proposals are not the way to bring about negotiations.

I believe that we can expect some sort of increased flexibility. The agreement resulting from the most recent negotiations in the Uruguay Round is a good step in that direction, particularly in the case of Brazil where there have been some changes in the application of our laws. Not all of you are aware of this, but there is a growing registration of software and some components and parts in other industries.

One possibility for LDCs may lie in the reverse trade flows to the transferring manufacturer. If no compromise is reached, we may see the world divided in two. On one side will be the matter of intellectual innovation, on the other will be the post-industrial environment. A society is condemned to underdevelopment until it has access to the technology of mankind.

I firmly believe that governments do have a very important role to play in bringing together developing and developed countries, finding a way to solve the problems concerning intellectual property protection on the one hand, and on the other accelerating the pace and effect of technology transfers. It is my personal conviction that businessmen and corporations have a great deal to do in this respect because the dialogue is much more fluid, and because businessmen and corporations are much more flexible. When problems of this magnitude come to the bureaucratic level, positions tend to be rather stiff and it is very difficult to move toward a final understanding. Those of you here today have a very im-

portant role to play in this process, as developing countries expect to see an increased role for modern technology in their development.