

Pharmaceutical Industry Threatened by U.S. Move

A group of 18 American pharmaceutical companies, represented by the Pharmaceutical Manufacturers' Association (PMA), filed a complaint with the Office of the U.S. Trade Representative on June 11 based on section 301 of the U.S. Trade Act of 1974, which deals with unfair trade practices. The group contends that American companies have already lost approximately \$12 million from the sale of medicines in Brazil, the formulas of which are copied by local producers without authorization.

The president of the Brazilian Patent and Trademark Office contends that American companies have in fact increased their market share since a 1945 decree-law prohibiting the granting of patents for chemico-pharmaceutical articles was passed. Despite another attempt to protect their market in 1969 with a law prohibiting patents for manufacturing processes, the market share of the Brazilian producers continued to decline from about 25 percent in the early 1960s to 15 percent in 1986.

Brazilian government officials nevertheless affirm their goal of protecting the fledgling industries in the medium term. They consider the decrease in market share primarily a result of a series of acquisitions of Brazilian companies by foreign ones, which left the remaining national industries facing stiffer foreign competition in the short run.

The Americans contend that a lack of patent protection hurts not only foreign companies but also domestic ones. Without the necessary incentive to invest in new inventions (since they would not be protected by patent laws), Brazilian companies find themselves at a disadvantage compared with foreign subsidiaries receiving technological support from the controlling companies abroad. This disadvantage has led to the "denationalization" of the industry in Brazil, with fewer and fewer national companies able to compete with foreign subsidiaries, despite the 1945 law.

The PMA had decided in early May to postpone any action and to continue negotiations with Brazil, since the Brazilian government had made clear its desire to include this issue in consultations with the U.S. government on patent and market reserve policies. The PMA was also wary of a strong reaction to any move it might initiate by the Constituent Assembly.

Consultations on the issue began on June 8 and were described as "disappointing" by an official of the U.S. Department of Commerce. Nevertheless, Brazilian officials hope that the U.S. government will reject the PMA's complaint and continue to pursue a constructive dialogue on this and other issues involving intellectual property rights.

—Gustavo Leonardos

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