



ITSSD: Brazilians' Private Property Rights Threatened By Government's Compulsory License

Princeton, NJ / June 22, 2007 – While nearly two months have passed since the Government of Brazil inflamed investor passions by issuing its first compulsory license against foreign drug patents, the ambers of economic and political discontent yet remain.

Brazilian business owners and entrepreneurs now speak nervously amongst themselves about how their government's historical act will affect their property interests. They also question whether their children will ever have the opportunity to profit from their knowledge and ideas, rather than from their hands. And, they wonder if Brazil will ever emerge from the ashes of socialist ideology to join the enlightened community of technologically advanced and prosperous nations that recognize and respect private property rights. In this regard, President Lula can no longer seek refuge among the country's uneducated poor to whom he has promised a better future, for it is their children's prospects, as well, which are arguably threatened.

In two related articles appearing in Washington, DC and Porto Alegre, Brazil, international business, trade and regulatory attorney Lawrence Kogan reviews the multiple bases offered by the Brazilian government for its illegal 'taking' of the American HIV/AIDS drug Efavirenz at less than 'fair' compensation. "Unfortunately", he concludes, "they boil down to a single rationale – 'public interest' over 'private interest'".

According to Mr. Kogan, "it is obvious that some Brazilian lawyers have helped the government to place a politically positive 'spin' on a legally and economically unsustainable interpretation of the Brazilian Constitution and Industrial Property Law and the WTO TRIPS Agreement. They are justifiably concerned about how this act of expropriation will impact their local clients and 'play' in the New York, London and Sao Paulo financial centers. After all, there are not only R&D-related foreign direct investment inflows hang in the balance; Brazil's future ability to innovate and prosper from home-grown intellectual property is also now at risk."

Even more troubling, notes Kogan, is that "the long-simmering socialist movement within Brazil has joined ranks with global health activists. Their collective goal is simply to eliminate private property rights as the legal foundation for life science and information technology-based products in the global marketplace."

*The Institute for Trade, Standards and Sustainable Development (ITSSD) is a non-partisan non-profit international legal research and educational organization that examines international law relating to trade, industry and **positive** sustainable development around the world. These ITSSD articles are accessible online at: <http://www.itssd.org/publications.htm>.*

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