
Brazil's 'Open and Universal Access' Agenda Undermines its Own Technological Future

Pat Choate, Ph.D.
Director, Manufacturing Policy Project

The great riddle of 19th and early 20th Century economics was the role that technology exerted in economic progress versus the contributions of labor and capital. By the beginning of the 21st Century, most economists agreed that technological innovation was the motor of development and that its continuity and accumulated creations, what the Institutional Economists called "tools," furthered a progress that persistently reduced squalor and improved the life of nations.

Lawrence A. Kogan's article is in that tradition. His thesis is Brazil is undermining its national innovation efforts by policies and practices whose ultimate effect is to discourage the creativity of the Brazilian people and divert meaningful levels of direct foreign investment.

Kogan buttresses his argument with a detailed description of how the Government of Brazil has sent forth its diplomats to diffuse the concept of intellectual property rights in various international forums. First at the World Trade Organization (WTO), then the World Health Organization (WHO), and then at the World Intellectual

Property Organization (WIPO), among others, he describes and analyses how Brazil has advanced an agenda of “open and universal access” which translates into a “taking” by the state of the creations of others and then making them publicly available without proper compensation, or often even acknowledgement. As a strategy, Brazil, he notes, is forum shopping, changing one provision here, and another there, all the while creating ever more holes in an already cheesy-like regime of global protections.

Unfortunately, Brazil and other developing countries are succeeding. As a condition for entering the Doha Round of WTO talks, Brazil led efforts to change the intellectual property protections for pharmaceuticals, allowing developing nations to force compulsory licensing and then produce patented medicines under terms largely decided by the government. Appropriately, Kogan points out that all except four or five of the more than 400 medicines now on the WHO critical medical list are generic, freely available for production by anyone in the world.

The principal problem is not that a handful of pharmaceutical companies are keeping medicines from peoples in Africa or other developing places, but that those governments do not enforce the integrity of pharmaceutical production inside their countries, nor do they ensure the integrity of the pharmaceutical distribution systems. So, the generic medicines available to billions of people cannot be assumed to be safe.

Brazil’s agenda is an ideological one, backed by a stubborn and confused post-communist politics of state “takings.” Brazil’s leadership in the open and universal access movement is not new. For almost a half century, it led efforts that sought to transfer intellectual properties

developed by innovators from the developed nations to the societies of the underdeveloped countries. While justifying its actions on moral grounds, those efforts were and remain tainted by a corrupt political system where well-connected corporations have used the power of the state to advance a privatized and highly rewarding commercial piracy.

Kogan persuasively argues that Brazil would prosper under a strong regime of intellectual property protections. He points out that it has one of the world's greatest collections of plant and life forms, which could under gird the creation of a world-class pharmaceutical industry, plus the development of biotech, biotechnology, environmental biotech, agro biotech, and chemical sectors, among many others.

But, to seize these opportunities, Brazil needs to acquire and develop technologies on a massive scale. Fortunately, Brazil has the resources and people required for development on such magnitudes.

China is an example of a nation that has well managed this acquisition/development process. Chinese leaders have exchanged market access and incentives with the corporations from the developing nations for technologies and know how. The bargain is simple: foreign companies get the benefits if they bring their best technologies to China and share patent ownership for any technological improvement made in China. With that exchange China is modernizing its economy rapidly and simultaneously it is making the necessary investments in its human capital to become a world-class research and development center from which future innovations will flow. Even as China blatantly violates its WTO commitments to protect foreign intellectual properties, it is creating a domestic structure of intellectual property

protections that is increasingly being used by the Chinese to protect their new creations.

In contrast, to China's pragmatism, Brazil seems more interested in advancing the ideology of open and universal access. Yet, as Kogan notes, Brazil has treaty obligations with the other WTO members to honor and protect the intellectual properties of foreign owners. In this exchange, the United States has given Brazilian exports largely unimpeded access to the American market. Brazil seems to want the benefits of that deal even as it tries to wiggle out of its corresponding obligations.

It is a risky political approach. Specifically, the companies whose technologies Brazil is trying to take are unlikely to invest heavily there, an opportunity cost of great consequence to that nation. Equally important, Brazil risks reopening the piracy and counterfeiting wars of the 1970s and 1980s with the United States.

But most of all, Kogan argues that Brazil is diminishing its own future by not creating a legal, political, and developmental environment in which Brazilians and foreigners are inspired and rewarded for innovating.

This piece is lucid and written strikingly well. A full set of endnotes with sources, elaborations, and aside comments that merit attention backs the analysis. The audience should be Brazilian intellectuals, politicians, media and business people. The Brazilian government's ideological pursuit of an open and universal system is undermining its national technological future.