CURRENT LEGISLATION OF ARGENTINA, BRAZIL AND MEXICO ON INDUSTRIAL PROPERTY AND TRANSFER OF TECHNOLOGY

Summary

Several Latinamerican countries have recently adopted extensive measures to control dealings with foreign countries relative to licenses for patents, trademarks, etc., although they cannot do without importation of foreign technology in order to continue their industrialization. The legislation in these countries on industrial property and transfer of technology, namely, Argentina (1971 and 1974), Brazil (1970) and Mexico (1973), was inspired by that of the Andean Pact countries of 1969.

Generally, the legislation of Argentina, Brazil and Mexico is quite radical: they create a Technology Registry to examine and approve all technology import and all patent, trademark and know-how contracts and they set forth a number of restrictions which if found in such contracts result in their rejection by the registry. Some provisions, in particular for example, those of the Argentinian law relative to the use and exploitation of trademarks, violate the Paris Treaty and otherwise are very controversial. The discretionary powers of the Registries are extremely broad. These regulations establish a maximum of 5% (3% in Mexico) of the net sales value for royalties and a maximum of five years (ten years in Mexico) as terms for the licenses or other contracts.

WITH RESPECT TO THE MEXICAN LAW, FOR INSTANCE, SOME HAVE ALREADY CONCLUDED THAT THINGS ARE GOING WELL AND WITHOUT ADVERSE EFFECT ON THE TECHNOLOGY FLOW INTO MEXICO. THE REGISTRY IN THAT COUNTRY IS APPARENTLY IN GOOD HANDS WITH THE JURISTS AND ECONOMISTS STAFFING IT BEING WILLING TO COMPROMISE. HOWEVER, FROM THE VIEWPOINT OF DEVELOPED COUNTRIES THE STRINGENT REGULATIONS OF THE ABOVE-MENTIONED COUNTRIES DO NOT EXACTLY SPUR TECHNOLOGY IMPORTATION, ON THE CONTRARY, THEY DISCOURAGE IT.

ALTHOUGH IT IS CLEAR THAT INDUSTRIAL PROPERTY AND TECHNOLOGY TRANSFER CONTROLS ARE HERE TO STAY AS REGARDS THESE COUNTRIES, ONE WOULD HOPE THAT THE ADMINISTRATION AND IMPLEMENTATION OF THE LAWS IN THIS RESPECT WOULD BE SUCH THAT THE INTERESTS OF THE TECHNOLOGY TRANSFERORS ARE TAKEN INTO ACCOUNT WHILE RECONCILING THEM WITH THOSE OF THE TECHNOLOGY TRANSFEREES AND THOSE OF THE GIVEN COUNTRIES. THE ECONOMIC EVALUATION OF SUCH CONTRACTS SHOULD BE EQUITABLE AND FAIR TO ALL.

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