Brazilian Policies More Flexible

INPI announces changes in official attitude; bureaucracy given less emphasis; openess emphasized

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The INPI has been examining technology transfer agreements for more than 15 years. Over 30,000 agreements were analyzed during this period, which represents a unique accumulated experience among developed and developing countries.

Only a few countries have been able to gain such experience and to develop a technology transfer policy that serves as an effective instrument of support for the development of national industry.

Japan adopted this policy in the past through its Ministry of Industry and International Trade. It did so and won although it did have to face some difficulties. Bureaucracy hampered several contracts and hindered others, but the final result was very positive.

Just recently we learned from Akio Morita, from Sony, in his book "Made in Japan," about the problems he encountered in obtaining the approval of that Ministry for a transistor technology contract. According to him, the bureaucrats complained first about the amount to be paid and then that Sony was a company too small to purchase such sophisticated technology. Sony finally won the battle.

This event occurred in the mid-1950s, and it must have been repeated in other instances many times in the following years. But we all know that Japanese bureaucracy has changed so much that it has become the most important ally of Japanese industry. The practice that is adopted is common knowledge. It consists of applying the rules on a case-by-case basis, depending on what is more advantageous for the company and for the country.

Alliance

The bureaucratic/corporate alliance is thus one of the main factors of Japanese success.

Returning to our own country, what happened to our development model from this aspect?

After the war Brazilian industries were established so as to replace imports, and this model prevailed until the 1970s, when the basic inputs and capital goods industries appeared. The State played an important role in this process, not only as investor but also in developing and helpingprivate Brazilian companies.

By investing in the basic industry and in infrastructure, the State encouraged investments by the private sector. It went even further by granting long-term loans to private enterprise. Conditions were thus created for private industry to grow. The figure of the national industrial entrepreneur became stronger and stronger. This was not common before then because the entrepreneurs had engaged only in farming and in minor trade.

The State accompanied the growth of our industry closely, and one can hardly imagine the industrial park we have today without the participation and often paternalistic intervention of the State.

State Participation

However, the essence of State participation did not change over time. While the process of replacing imports evolved, the bureaucratic procedures remained the same: those of the 1970s were similar to those of the 1950s. Even worse, now that the period of replacing imports has passed, we still have to cope with the same procedures. Our rules are interventionist and still paternalistic. We are not saying that the State should not intervene or participate in the economy. Much to the contrary.

The State's participation and intervention in the economy is indispensable. This is important in modern capitalism, whether in Japan, in the United States or in Europe. What has to change is our attitude, which should be adapted to the economic moment in Brazil. We are out-of-date as regards the reality of our country and of Brazilian companies.

Time has passed and the State has lagged behind in its procedures, which are still typical of an economy concerned with replacing imports. The country has changed, companies have grown and Brazilian entrepreneurs have proved to be competent. We have companies that compete on the international market; some are already as big as their foreign competitors.

Paternalism is certainly no longer appropriate and entrepreneurs are entirely right in rejecting it. We can no longer tell our companies and entrepreneurs what to do as if they did not know themselves. We must adopt a more suitable position in connection with the small universe of a company's life. This belongs to the company and should be respected.

We must become allies of Brazilian companies, like the Japanese bureaucrats did and still do. This position

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does not require any concessions. On the contrary, it requires a modern way of dealing with issues. It requires that our bureaucrats remain constantly informed and updated so that they can provide suggestions that are acceptable to companies.

What I have just said is an introduction to our analysis of the INPI and, more precisely, of the changes that are under way at the Department of Technology Transfer Contracts.

As mentioned, we have been working for 15 years. The INPI and the Department of Contracts were created practically at the end of the period of replacing imports. Their managers and specialists thus proceeded according to a certain model. Besides the provisions of the law, new rules were established and other consolidated rules were brought from the 1950s and 1960s.

For better or worse they served to fight or contain the abuses of the so-called restrictive commercial practices. We were still seeking to replace imports. Most Brazilian companies in the new sectors — capital goods and basic inputs — had never contracted any technology abroad and the participation of the Department of Contracts was thus important in negotiating these contracts.

Fifteen years have gone by and the rules are still the same. What worries us most, however, are not the rules themselves but our attitude. Either we change our attitude or Brazilian companies will have to pay the price of bureaucracy and have less chances of success. By seeking the "right" thing, we will doubtlessly attain the "doubtful" thing.

Change of Attitude

Within the sphere of the Department of Technology Transfer Contracts this change of attitude means to stop applying the current rules mechanically. This requires the technical staff to fully understand the entire context of the contract. They must know the company, the scenario in which it operates, its market strategy, its concern with research and development, and many other aspects. Based on this knowledge, they must know the weight of each contractual clause and, in discussing the matter with the company, they must establish which contractual conditions are acceptable. It is evident that anything not permitted by law cannot be negotiated.

INPI specialists would thus abandon the old-fashioned attitude of making requirements based on the absolute "truth" of the rules. These apply to any contract in any sector, which cannot be considered as absolutely correct. The right thing is to regard the rules as negotiation parameters and not as a purpose in themselves.

In this sense the Department of Technology Transfer Contracts is reviewing or will soon review the old bureaucratic procedures that date back to the phase of replacing imports. The first step is to expand our knowledge about the main Brazilian companies that contract foreign technology. Individual seminars are being organized with these companies so that they can present their corporate strategies. We may then possibly question, for instance, the sometimes incorrect dogma that these companies depend on foreign technology. The fact that they already use foreign technology should *a priori* be no reason to hinder them from contracting further technology abroad.

For example, we recently objected to a contract made by a Brazilian company, the largest of its sector. We even denied the contract on the argument that, holding more than 60% of the domestic market, this company should be able to walk alone with its own means. Its Japanese competitor, which also operated on the international market and thus had a market share at least 30 to 40 times greater than that of our company, had a technology contract with a United States company. The issue should thus not be restricted to the aspect of the size of the Brazilian company. It would be more important to determine whether the company, like its Japanese competitor, is concerned with absorbing the foreign technology and with also engaging in research for the development of such technology.

This point was finally considered and the positive result led us to adopt a different position and to thus approve the contract. This example is somewhat similar to the Sony example we described before. It shows that we can become the allies of Brazilian companies, if we analyze situations from a different, less restrictive, less orthodox and less old-fashioned viewpoint.

Change in Procedures

Another change to be made by the Department of Contracts refers to the procedures regarding certain contractual clauses. For example, it makes no sense for us to automatically apply Ministry of Finance Ordinance No. 436. As everyone knows, this Ordinance was issued in 1958 and is used to establish the amounts of technology transfer contracts. It is unconceivable to apply the percentages of this ordinance directly and automatically, because it is 30 years old.

More than the fact that we are dealing with different technologies, which are certainly more sophisticated than those of 30 years ago, what matters is a technical attitude of determining and showing, when applicable, that the payments established in a contract are or are not appropriate. Within this context it is not possible to simply apply the ordinance because there is nothing to warrant that, by applying it blindly, we will be paying what the technology is really worth.

There is thus a new model to be pursued. The changes are substantial and require patience. They also require an awareness that they can only be achieved with a joint effort — the bureaucratic/corporate alliance I mentioned earlier.

You can be assured that we are convinced that the changes will be successful. The Department of Contracts is accustomed to changes. So much so that, at the beginning of the 1980s, we invited other government entities, research institutes and business entities to join us in work groups for the analysis of all foreign technology transfer contracts. It was quite unusual for a government entity to behave in such a way at that time. We opened the doors of the INPI to the community in a transparent process of analysis and decision.

I remember how much the INPI gained as a result of this. Opening the doors by no means made us weaker. On the contrary, we became stronger. The results of that work prove this from all angles of analysis — the contracts approved, the amounts remitted abroad for transfers of technology, etc.

This opening was so strong that the work groups are today part of the Department of Contracts. But this step forward did not change the structure or the attitude. We

did begin to perform our duties more efficiently within a new profile, but it continued to be old-fashioned.

It is this profile that we want to change now. In summary, we must establish more dialogue with the Brazilian companies that contract foreign technology. We can no longer make decisions without comprehensive and effective discussions in which the reason and justification of each contractual provision is understood.

There is still a lot to be done. But I believe that the path to be followed will certainly make our Institute more open to society. This is what we are doing and what we will continue to do tenaciously.