

Consulting Services, Technology Transfer
and Licensing in Brazil

Background

Given the complexity of government regulations and the protectionism affecting not only the sale of Canadian products but also services and technology, the Embassy has prepared the following report based on interviews with the relevant government agencies and consultants. The report is not exhaustive because of the many variations from the rule of thumb. The major focus of the report is on consulting services and technology transfer which are the two areas most frequently enquired about.

This report will show that Brazilian regulations in these areas are complex and will require carefully drafted proposals. The intent of the controls is to (a) ensure that the country obtains the full benefit of foreign technology and services; (b) that the technology and services can be used to fullest advantage following the transfer; (c) to afford some protection for a national capability when this has been developed; (d) to control the flow of foreign currency out of the country.

INPI

With regard to the sale of both services and technology, the key player is the INPI (National Institute for Industrial Property) which must approve all contracts of this nature for which payment is to be affected in foreign currency.

The INPI is a government Board subordinated to the Ministry of Industrial Development and Commerce. As a deliberative body its composition varies, usually being composed of experts from INPI staff, plus members of trade associations. On occasion individual companies are called to provide an opinion on specific cases. The main thrust of INPI deliberations are to determine if any local company produces or can produce a similar item; in which case authorization for the transaction with the foreign company will be denied.

INPI does not publish in its official bulletin or elsewhere, the nature of any official action which it issues on such agreements. The content of official actions are only made available to the Brazilian recipient or licensee by letters signed by INPI officials. In view of this policy it is difficult to anticipate how INPI will react to the wording of certain standard clauses.