J. LANG asked its member firms to estimate on a yearly basis the total domestic sales they had lost due to lack of pharmaceutical patent protection over the decade 1974-85. A "lost sale" would be considered any sale by other companies. Either National or Foreign of a drug chemically identical to one that the respondent marketed in Brazil and on which it enjoys a current patent in the U.S. of Lang's 23 member firms responded to the survey. Below are individual company estimates of total lost sales during the 13-year period, plus additional comments by either individuals or ECDOFF.

THE RESULTS: INDIVIDUAL COMPANY LOSSES

4. A. SMITH KLINE FRENCH (ECDOFF)
- TOTAL LOST SALES: DOLS 35.0 MILLION
- COMMENT: OF THE ABOVE TOTAL, DOLS 84.0 MILLION WERE LOST IN DRUGS VENTED FOR MANUFACTURING, WHICH TOOK 3.9 MILLION IN VETERINARY MEDICINES.

B. PFIZER
- TOTAL LOST SALES: DOLS 34.0 MILLION
- COMMENT: A PFIZER EXECUTIVE ADDRESSED THAT HIS FIRM WAS ABLE TO "MAXIMIZE" ITS VULNERABILITY TO PATENT INFRINGEMENTS BY BEING VERY SELECTIVE IN CO-SIGNING AGREEMENTS WITH CO-FIRM. THEIR DECISION TO INTRODUCE THE PRODUCT IN THE WORLD MARKET. "THIS IS SOMETHING WE ARE TRYING TO DO," HE SAID. "IT IS OUR STRATEGY TO SELL IT IN BRAZIL." OF COURSE, THIS STRATEGY CARRIES WITH IT THE OPPORTUNITY COSTS OF SELLING IT ELSEWHERE. THE FIRM SEEN TO BE TAKING A RISK BY SELLING IT IN BRAZIL, BUT THEY FEEL THAT SELLING IT IN BRAZIL WILL BRING THEM THE ADDITIONAL BUSINESS THEY'RE LOOKING FOR.

THE LAW
- TOTAL LOST SALES: DOLS 42.0 MILLION
- COMMENT: A PFIZER EXECUTIVE TOLD ECDOFF THAT HIS FIRM WAS ABLE TO "MAXIMIZE" ITS VULNERABILITY TO PATENT INFRINGEMENTS BY BEING VERY SELECTIVE IN CO-SIGNING AGREEMENTS WITH CO-FIRM. THEIR DECISION TO INTRODUCE THE PRODUCT IN THE WORLD MARKET. "THIS IS SOMETHING WE ARE TRYING TO DO," HE SAID. "IT IS OUR STRATEGY TO SELL IT IN BRAZIL." OF COURSE, THIS STRATEGY CARRIES WITH IT THE OPPORTUNITY COSTS OF SELLING IT ELSEWHERE. THE FIRM SEEN TO BE TAKING A RISK BY SELLING IT IN BRAZIL, BUT THEY FEEL THAT SELLING IT IN BRAZIL WILL BRING THEM THE ADDITIONAL BUSINESS THEY'RE LOOKING FOR.
TOTAL LOST SALES: DOL$ 36.1 MILLION

1. BRISTOL-MYERS

TOTAL LOST SALES: DOL$ 36.1 MILLION

J. LEPETIT-DOW

TOTAL LOST SALES: DOL$ 30.2 MILLION

COMMENT: THE ABOVE FIGURE REPRESENTS ONLY LOSSES DURING 1982-1981. ACCORDING TO A COMPANY REP., DATA FOR EARLIER YEARS IS UNAVAILABLE.

K. AYERST

TOTAL LOST SALES: "ABOUT" DOL$ 19 MILLION

COMMENT: A COMPANY REP TOLD ECONOFF THAT LACK OF PATENT PROTECTION HAD BEEN THE PRIMARY CAUSE FOR CANCELLING A DOL$ 2 MILLION EXPANSION WHICH WAS TO FOCUS ON CLINICAL TESTING OF DRUGS THE COMPANY WAS DEVELOPING. "WE (I.E., AYERST BRAZIL) WERE COMPETING WITH OPERATING DIVISIONS IN OTHER COUNTRIES WHICH COULD OFFER PATENT PROTECTION. THE COMPANY FINALLY DECIDED THAT HAVING SUCH AN OPERATION IN BRAZIL WOULD BE TOO RISKY." ALONG WITH THE CANCELLED PROJECT WENT 40 PROJECTED ADDITIONAL JOBS.

L. SCHERING

TOTAL LOST SALES: DOL$ 6.1 MILLION

M. BEECHAM

TOTAL LOST SALES: DOL$ 6.1 MILLION

N. MERCH SHARP AND DOHME

COMMENT: A COMPANY REP RESPONDED THAT "WAS VERY LITTLE AFFECTED BY PIRATE PRODUCTS."

F. ALCAN

COMMENT: ACCORDING TO THE COMPANY'S FINANCIAL MANAGER, ALCAN DOES NOT "HAVE ANY SPECIAL CASE THAT SHOULD BE EMPIHIZED."

G. SYNTEX

COMMENT: ACCORDING TO SYNTAX'S LOCAL REP., THE FIRM "HAS NOT SUFFERED LOSS IN SALES DUE TO PIRATES OF OUR PRODUCTS."

H. MERCH SHARP AND DOHME
LIMITED OFFICIAL USE

RAW MATERIAL

P. WARNER-LAMBERT

COMMENT: FOUR YEARS AGO WARNER-LAMBERT ABANDONED DIRECT MARKETING OF ITS DRUGS IN BRAZIL AND LICENSED TO A NATIONAL COMPANY WHICH ITS PARKE-DAVIS (P-D) AND WARNER CHILDS OTI LINES OF ETHICAL DRUGS. THE COMPANY'S REMAINING BUSINESS IN BRAZIL WAS CONCENTRATED ON CONSUMER PRODUCTS SUCH AS CHEWING GUM, CANDIES, RACER BLADES, AND TOOTHBRUSHES. ITS LOCAL PRESIDENT TOLD ECONOF THAT "DUE TO THE ABSENCE OF A SPECIFIC PHARMACEUTICAL DEPARTMENT IT WOULD BE ALMOST IMPOSSIBLE TO RECONSTRUCT THE SALES LOST DUE TO LACK OF PATENT PROTECTION DURING THE PERIOD P-D AND UC WERE STILL OPERATING UNDER OUR OWN MANAGEMENT." HE ADDED THAT "DUE TO THE CONTINUOUSLY ASPHALTING PRICE CONTROL POLICY THAT THE GOVERNMENT HAS EXERTED OVER THE PHARMACEUTICAL INDUSTRY IN GENERAL, OUR LOCAL SUBSIDIARY WAS NOT ABLE TO CONTINUE PRODUCING." SUCCESSION DEPENDS RESULTS FROM ITS PHARMACEUTICAL OPERATIONS. THAT WE WERE PRACTICALLY FORCED INTO LICENSING OFF THE P-D AND UC LINES AT A FIRE-SALE PRICE TO ACHIEVE THE ONLY PRACTICAL WAY TO CONTINUE MAINTAINING OUR PRESENCE IN A PHARMACEUTICAL MARKET AS IMPORTANT AS BRAZIL.

TOTAL LOST SALES

5. THE 16 LARGE MEMBERS WHICH RESPONDED TO THE SURVEY DOCUMENTED LOSSES TOTALING DOL 482.6 MILLION OVER THE TEN-YEAR PERIOD. SINCE SEVERAL OF THE RESPONDENTS DID NOT HAVE COMPLETE DATA FOR THE DECADE, AND NINE COMPANIES

BT $1554

TOTAL LOST SALES

- TOTAL LOST SALES: DOLS 25.4 MILLION
- R. JOHNSON AND JOHNSON
- TOTAL LOST SALES: DOLS 301 MILLION


O. SYDNEY KOSK

COMMENT: THE FIRM'S LOCAL GENERAL MANAGER TOLD ECONOFF THAT OVER THE LAST TEN YEARS IT HAD NOT LOST ANY SALES DUE TO PIRATE COMPETITORS. HE ADDED, HOWEVER, THAT AFTER THE 13-YEAR PATENT ON ONE OF ITS DRUGS EXPIRED, A LOCAL COMPANY STARTED MANUFACTURING THE RAW MATERIAL AT A HIGHLY PRICE - AND AFTER THAT POINT IMPORTATION OF THE MATERIAL WAS BANNED. "THUS," HE SAID, "WE HAVE PAID ABOUT DOLS 200,000 PER YEAR FOR ABOUT EIGHT YEARS OVER WHAT WOULD HAVE BEEN THE LARED COST OF THAT RAW MATERIAL AT THE INTERNATIONAL PRICE." IN THIS AND MANY OTHER CASES, WITH WHICH ECONOFFS ARE FAMILIAR, CIP HAS REFUSED TO ALLOW ANY PRICE ADJUSTMENT TO OFFSET THE HIGHER COST OF THE MANDATORY PURCHASE OF A LOCALY PRODUCED
LIMITED OFFICIAL USE
DEPARTMENT OF COMMERCE

INCOMING TELEGRAM

LIMITED OFFICIAL USE SECTION 84 OF 85 SÃO PAULO 85568

STATE PLEASE PASS USTB

USDOC FOR 433/91/EN/AA/05/PETERFIELD

BRAZILIA PLEASE PASS RECEP AND SALVADOR DA BAHIA

E.D. 12250: N/A
TAS: ETRD, CIND, CINL, BR
SUBJECT: IMPACT OF LACK OF PATENT PROTECTION: SURVEY OF

ABDOTT, ALLERGAN, A.K., CHSMED, FARMATIL, FELICES, ROGER,
SEARLE, SNOW, AND TIPA) DIDN'T RESPOND AT ALL. THIS
FIGURE SHOULD BE REGARDED AS A BARE MINIMUM. IT ALMOST
CERTAINLY IS CONSIDERABLY LARGER THAN THE ACTUAL GLOBAL
TOTAL. TO ARRIVE AT SUCH A TOTAL ONE WOULD HAVE TO FACTOR
IN THE PROBABLE LOSSES IN YEARS NOT COVERED BY DATA ON
SUFFERED BY COMPANIES WHICH NEVERTHELESS CAME NOT TO
RESPOND TO THE SURVEY. HOWEVER, THE TOTAL WOULD HAVE TO
INCLUDE THE COCOCIBE LOSSES OR "OPPORTUNITY COSTS"
OF THE KIND DESCRIBED BY PETERFIELD IN PARA 1.

6. ONE FINAL POINT: THE ESTIMATES LOSSES WERE DERIVED FROM
THE VALUE OF UNIT SALES, IN BRAZILIAN CURRANCE (CRONIROOMS)
CONVERTED TO DOLLARS. HOWEVER, PHARMACEUTICAL PRICES
IN BRAZIL ARE MUCH LOWER THAN IN MOST OTHER MARKETS;
REPORTEDLY THEY ARE THE LOWEST IN LATIN AMERICA, AND IN THE
WORLD ARE UNDERM. IN INDIA AND PAKISTAN. THIS THE
DOLLAR LOSS IS CORRESPONDINGLY LOWER THAN THAT WHICH
WNEKEW RESULTED FROM A SIMILAR NUMBER OF "LARGE" UNIT
SALES IN THESE OTHER MARKETS.

7. WITH ALL OF THE ABOVE CONSIDERED, THE PROBABLE LOSSES FOR THE TEN-YEAR
PERIOD APPROXIMATING DOLLARS 1 BILLION IN 85 FLORINOS IS
AN AMOUNT THAT SEEM UNREASONABLE. A LAUG REPORT RECENTLY TOLD ECONOFF THAT, IN PREPARING
A POSSIBLE JOINT ACTION, THE U.S. PHA IS GATHERING FROM
THE MEMBERS WITH OPERATIONS IN BRAZIL COMPLETE DATA ON
LOSSES FROM PATENT PROTECTION AS WELL AS OTHER PROBLEMS.
BASED ON OUR PERSONAL, THE PHA'S QUESTIONNAIRE AND OUR
UNDERSTANDING THAT THE ASSOCIATION IS NOT INTERESTED
TO ELEICIATION, WE EXPECT ITS SURVEY TO PROVIDE
MORE COMPLETE FIGURES THAN LAUG OBTAINED. OUR SOURCE
PROVIDED TO PROVIDE US A COPY OF THE PHA SURVEY WHEN
COMPLETE.

LOCAL R & D: A NON-STARTER

8. SALES LOSSES OF SUCH MAGNITUDE, COUPLED WITH NO PROSPECT OF CHANGE IN BRAZIL'S PATENT REGIME, APPEAR TO PRECLUDE ANY POSSIBILITY OF ITS DEVELOPING THE ELIGIEST

DEGREE OF GENUINE SELF-SUFFICIENCY IN DRUG RESEARCH AND
DEVELOPMENT. ALL OF OUR SOURCES REPORT LITTLE OR NO LOCAL
BASIC RESEARCH UNDERWAY OR CONTINUED. WHAT LITTLE
"RESEARCH" EXISTS IS MAINLY DEVOTED TO CLINICAL TESTING OR
TO PERFECTIONING THE SCIENCE OF PATENTS, I.E., "REVERSE
ENGINEERING" OF DRUG COMPOUNDS. THE MOST FREQUENTLY CITED
REASON FOR THE LACK OF SIGNIFICANT R & D IS LACK OF PATENT
PROTECTION. AS ONE EYES IT, "IT DOESN'T MAKE ANY
SENSE FOR MNC'S OR EVEN LOCALS TO DO ANY RESEARCH GIVEN
THE LACKEY ENVIRONMENT THAT EXISTS HERE. IF THERE WERE
SOME BRILLIANT BRAZILIAN SCIENTIST WHO DISCOVERED THE
CURE FOR CANCER, THE SMARTEST THING HE COULD DO WOULD BE TO
TRAVEL TO THE U.S. OR EUROPE AND SELL IT TO A MNC WHO
COULD PATENT IT. THAT'S THE ONLY WAY HE COULD DEFEND
HIMSELF AGAINST PATENTS AND BE COMPENSATED FOR HIS WORK.
IN BRAZIL, THE ONLY LOCAL RESEARCH CONSISTS OF MASTERING
THE TECHNOLOGY OF COPYING DRUGS."

9. A LOCAL JOURNALIST WHO HAS WRITTEN EXTENSIVELY ABOUT
THE PHARMACEUTICAL INDUSTRY, HOWEVER, RECENTLY COUNTERED
TO ECONOFF THAT "MNC'S DON'T WANT TO CONDUCT RESEARCH IN
BRAZIL" AND THAT "PATENT PROTECTION HAS VERY LITTLE TO DO
WITH THAT SENTIMENT. AS PROOF, HE CLAIMED THAT "EVEN
BEFORE THE LOSS OF PATENT PROTECTION (IN 1959), MNC'S
CONDUCTED NO DRUG RESEARCH IN BRAZIL." COMMENT: WE FIND
THIS CHARGE PLausible, BUT ATTACHED, WITH THE POSSIBLE
EXCEPTION OF CERTAIN TROPICAL DISEASES BRAZIL APPEARS TO
LACK ANY COMPARATIVE ADVANTAGE IN OR ATTRACTIVENESS FOR
PHARMACEUTICAL RESEARCH. NEVERTHELESS, REGARDLESS OF WHAT WAS
OR WAS NOT DONE BEFORE 1959 THE SUBSEQUENT LACK OF PATENT
PROTECTION SETS TO GUARANTEE THAT BRAZIL WILL REMAIN A
NON-STARTER IN THE IDENTIFICATION AND DEVELOPMENT OF NEW
MEDICINES. END COMMENT.

9T

85568
BR RUEHOC
DE RUEHOC 1300/05 1821230
215 GOCC 179
3 B212322 83 25
FM ANCONSELU SAO PAULO
TO RUEHOC/STATE VASCON 81304
INFO RUEHOC/GOCC VASCON
RUEHOC/AMBASSADOR BRAZILIA 1221
RUEHOC/AMBASSADOR RIO DE JANEIRO 1183
ZEN/AMBASSADOR PORTO ALEGRE TOUCH
ZEN/AMBASSADOR PART ISOTO TOUCH
ZEN/AMBASSADOR SALVADOR BAIA TOUCH
BY
LIMITED OFFICIAL USE SECTION 85 OF 85 SAO PAULO 01568

STATE PLEASE PASS 1STR

USDOC FOR 1326/EPD/UMGA/PETER FIELD

BRAZILIA PLEASE TOUCH RECIFE AND SALVADOR BAIA BAIA

E.O. 12356: N/A
TAGS: ETRO, E/HO, I/MY, BR
SUBJECT: IMPACT OF LACK OF PATENT PROTECTION: SURVEY OF
WHY DO LAID-BACK?

10. GIVEN LOSSES OF THE MOUNTING LITIGATION CITED ABOVE, ONE WOULD
EXPECT PATENT PROTECTION TO BE AMONG U.S. PHARMACEUTICAL
PRODUCERS' HIGHEST CONCERNS. HOWEVER, AS PREVIOUS REPORTING
HAD INDICATED AND AS THE ABOVE CONFIRMS, FOR THESE
COMPANIES (WITH THE NEWLY DISCOVERED PROMINENT EXCEPTION
OF JOHNSON & JOHNSON), THE PATENT PIRACY ISSUE TAKES A
BACK SEAT TO OTHER PROBLEMS, PARTICULARLY PRICING.

11. IN THE FACE OF THE SEEMINGLY ENORMOUS LOSSES SUFFERED
BY HIS FELLOW MEMBERS (IF NOT BY HIS OWN COMPANY), THE
LAID-BACK ATTITUDE OF ABBOTT'S LOCAL TOP EXECUTIVE THE
CURRENT HEAD OF LABS SEEMS SURPRISING. HIS EXPLANATION:
"WITH THE BOX DRIVER OF ACHS, THE LOCAL COMPANIES
ARE SMALL, UNDERCAPITALIZED, HAVE NO TECHNOLOGY AND NEVER
WILL HAVE ANY. THE ONLY WAY THEY CAN MAINTAIN THEIR 10
PERCENT SHARE OF THE MARKET AND EKE OUT AN EXISTENCE IS
THROUGH COPYING. IF YOU LOOK AT LATIN AMERICA, YOU WILL
FIND THAT BRAZIL HAS THE LOWEST NATIONAL DRUG INDUSTRY,
AND THE LOWEST DRUG PRICES. I THINK those TWO FACTS ARE
CAUSALLY RELATED. WITHOUT LOCAL COMPANIES TO HINDER OUR
COLLECTIVE BEHIND, THE GOB WOULD TREAT THE PHARMACEU-
TICAL INDUSTRY EVEN WORSE THAN IT DOES NOW. THIS IS THE
PRICE WE PAY FOR DOING BUSINESS IN THIS COUNTRY. WE WOULD
ALL BE BETTER OFF IF THE LOCAL COMPANIES WERE STRONGER,
AND ONE WAY THE MNC'S CAN HELP THEM OUT IS TO TURN A BLIND
EYE TO THEIR PIRATE ACTIVITIES."

12. OTHER COMPANY REPS VOICED SIMILAR SENTIMENTS. ONE
SAID HE VIEWED PIRACY AS A SORT OF "LOCAL TAX" ON OPER-
ATIONS WHICH HAD TO BE PAID. "SURE THE TAX IS MILD," HE
SAID, "BUT IT IS AFFORDABLE. DESPITE, IF WE WERE TO MAKE
AN ISSUE OF PIRACY, WE WOULD PUSH THE LOCALS INTO A LIFE
OR DEATH STRUGGLE AGAINST US. THEY WOULD INTRIGUE
AGAINST US WITH THE GOVERNMENT AND IN GENERAL MAKE OUR
LIVES MISERABLE."

BY
01568

LIMITED OFFICIAL USE