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UNITED NATIONS INDUSTRIAL
DEVELOPMENT ORGANIZATION

Workshop on Negotiating Techniques of
Technology Transfer Agreements
Sydney, 12 - 23 March 1979

FINAL REPORT ON THE WORKSHOP ON
NEGOTIATING TECHNIQUES OF TECHNOLOGY TRANSFER AGREEMENTS FOR
SELECTED ESCAP COUNTRIES *

prepared by
the secretariat of UNIDO

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OPENING SESSIONS - 19 MARCH

The Workshop on Negotiating Techniques of Technology Transfer Agreements for Selected ESCAP Countries organised jointly by the Government of Australia and UNIDO in cooperation with LES Australia was opened on 19 March by Mr. F.N. Bennett, Deputy Secretary, Department of Industry and Commerce, who welcomed participants on behalf of the Government. His welcoming speech has been followed by the introductory remarks delivered by Mr. G.S. Gouri of UNIDO and by Mr. M. Whiteman the current President of LES AUSTRALIA/ The Workshop participants elected Mr. Tony Lamond, Assistant Secretary, Department of Industry and Commerce for the Chairman.

The Workshop Programme constitutes the Annex I to the present report, List of Participants Annex II List of Documents is contained in Annex III.

The first session dealt with the prospects and prospectives into ESCAP transfer of technology and two speakers, Mr. P. Grant of CSIRO and Mr. P. Smith from the Patent Office presented two papers. The speakers have outlined the broad prospects and current situation in technology transfer in the region and particularly the scope of trade and technology and the impact of new notions at the national level on the flows of technology from industrialised to the developing countries. They identified and underlined the high cost of technology and the need of even greater use of technology at the national level particularly in terms of technology spin-offs from the imported hardware at national levels.

The speakers raised the issue of the wide differences in the technology level among ESCAP nations and the need of development of national technology transfer policies. The speakers have also discussed the issue of the role of patent and patent protection in the process of technology transfer particularly to developing countries.

SESSION ON 20 MARCH

The morning session dealt with the preparation of licence agreements and negotiation strategy and has been covered by Mr. John Stonier who in principle dealt with acquisition of technology and preparation of the licensor and licensee in this connection. On the basis of the summary of the outline of the agreement he explained basic elements of licence contracts, its objectives and individual provisions. The presentation has been followed by extensive comments by Mr. H.A. Janiszewski who provided the information as to important points in licensing which were of special interest to developing nations. Those were identified as: scope of the agreement, responsibilities of the licensor, duration, payment, confidential provision, nature of the agreement, arbitration and guarantees and liabilities of the licensor. The discussion centred around the critical issues which were of interest to the participants and those were the payments and its estimation, the nature of the agreements, the duration and confidentiality and performance guarantees.

The afternoon session provided the participants with basic methodology of evaluation of various forms of payment in technology agreements and specifically with royalty payments in technology agreements and lump sum payments. In this connection the concept of the royalty being an income sharing device has been explained to the participants as well as methodology of relating the cost of technology to the profits of both licensee and licensor. Furthermore, the concept of net present value has been explained in relation to the assessment of lump sum payments. The participants in the course of the discussion have raised the need of introducing or development of various methodologies which will enable the licensee to evaluate the payment for technology like, the rate of return and/or cost and benefit analysis.

The discussion also examined, in the preliminary manner the role of Government in evaluation or establishment of cost criteria in technology transfer. The issue of taxation of technology payment has been also discussed with the participants being of the view that taxes on royalty should in principle be paid by the licensors as they generate profit.

The afternoon session was devoted to the discussions on the role of the technology regulating agencies in the process of technology transfer. The session was covered by Mr. G.S. Gouri of UNIDO, who in his presentation, provided broad circumstances which led many developing countries to the introduction of regulations of the technology inflows. He also had outlined the role and functions of technological agencies as a central governmental body which may effectively deal with not only assessment and approval of the technology contracts, but may also assist in the proper selection of technology, provide consultation to the local investors as well as cover such areas as foreign investments, industrial property, etc.

The discussions which followed had investigated in detail the impact of such regulating agencies of the technology flows, the selection criteria which may be applied by agency and the modification of regulating the conditions under which technology is being brought to the individual countries. The participants were of the opinion that such agencies may play a very positive role in securing just and equal terms and conditions for technology transfer to the developing countries.

SESSION ON 22 MARCH

The whole day has been devoted to the team work by participants who have been presented with three case studies and who were required, after proper analysis, to present and discuss the optimum solutions. The exercise provided for at similar workshops.

The participants, who were split into four separate groups, have taken an extremely active part in the exercise which, in the case of the first one, called for critical analysis of the licensing agreement and in the second one the elaboration of the licensing fee. The discussions by the teams as well as general discussion, have been very lively and the devotion by participants contributed greatly to the success of the games.

The materials prepared by the Secretariat for the exercise were appreciated, however, they should be adjusted for similar events in the future in order to incorporate suggestions made by the participants. It may as well be possible to extend the scope of exercises for similar workshops in order to assure even more active participation of those attending such programmes.

SESSION ON 23 MARCH

The morning session started with a presentation by Mr. G.S. Couri, who introduced the participants to the work of UNIDO in the field of transfer of technology particularly in the context of co-operation among developing countries.

He referred specifically to UNIDO sponsored programmes on exchange of information on the technology transfer contracts (TIES) which had been initiated by UNIDO with a group of 15 selected developing countries from all regions of the world and started in early 1978. In this connection he presented some of the results achieved and called the developing countries to join the UNIDO operated system of information exchange.

He further elaborated on UNIDO activities in technology transfer in the following specific areas: development of national technological policies and planning; problems of appropriate industrial technology; selection and acquisition of technology and technological advisory services.

While outlining the principles of the operation of technological advisory services he urged participants and their Governments to avail themselves to this new activity of the UNIDO. In the course of discussion which followed the presentation, the participants expressed the views that UNIDO is playing an extremely important role fulfilling the important gap in the activities of the U.N. in the field of technology transfer in general.

They specifically referred to such UNIDO activities as the programme on selection and acquisition of technology, technology advisory service, appropriate industrial technology and national policies and plans. It was felt by the participants that the TIES system should be much more known among countries and some of the participants expressed the desire to investigate possibilities to join the system. They urged the Secretariat of UNIDO to extend its activities in pursuing its programme particularly in relation to industrialisation effort which has been undertaken in the light of Lima Declaration and Plan of Action.

The participants have reviewed the draft report prepared by the Secretariat and after discussion approved of its conclusions. The Secretariat of UNIDO was entrusted with the preparation of the final version of the report and distribution to the participants and Governments of participating countries.

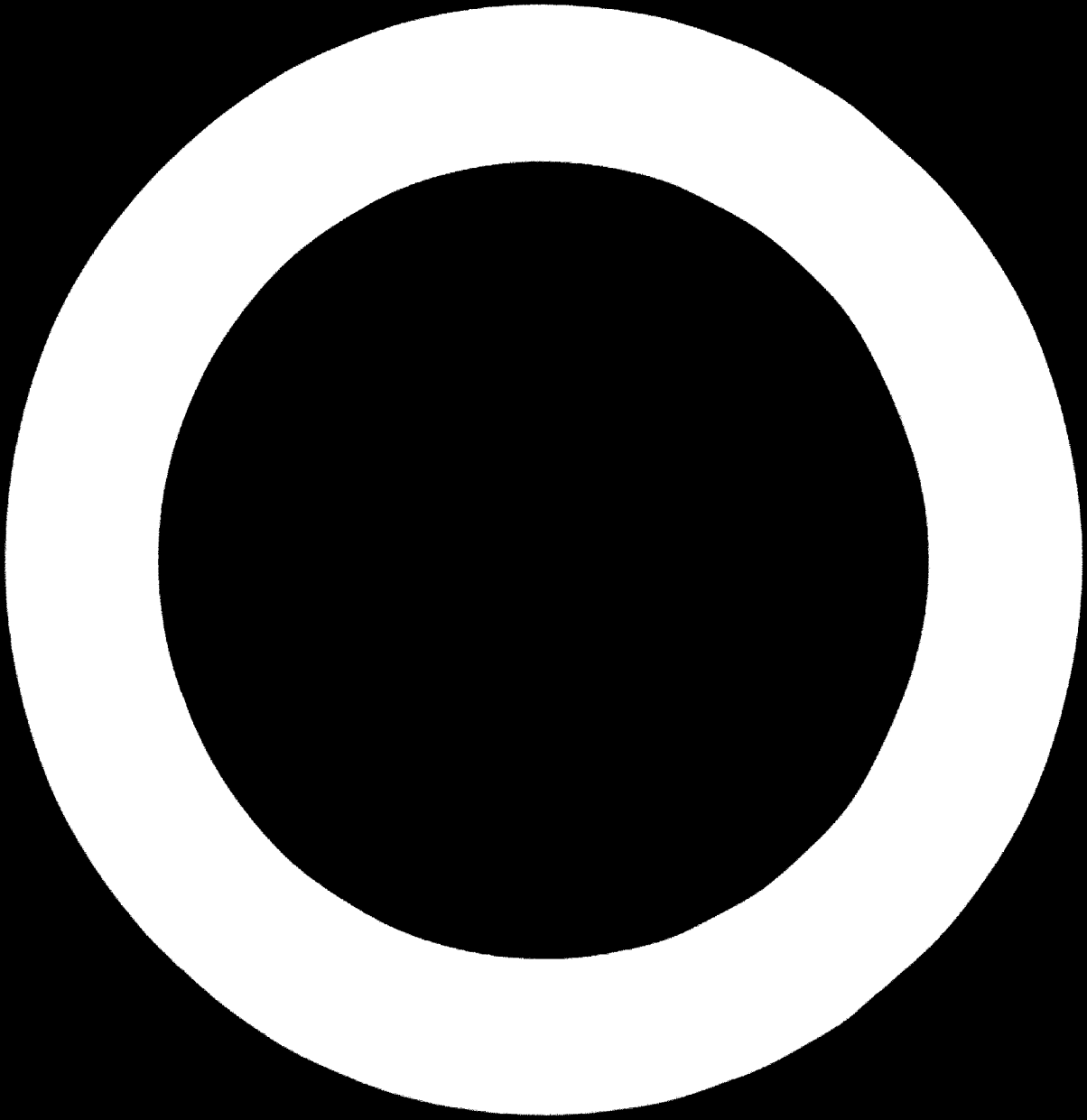
Concluding remarks have been delivered by a representative of the Government of Australia, UNIDO and LRF Australia. The participants expressed their thanks to the Government of Australia, UNIDO and LRF Australia for the efficient organization of the meeting and their contribution which has enabled them to participate in such an important and successful event.

CONCLUSIONS

The background technical material submitted to the participants of the Workshop by the Secretariat of UNIDO has been very much appreciated in view of its high quality and broad coverage of the subjects discussed during the entire Workshop. The papers submitted were complemented by contribution by LES speakers and critical comments by the participants. Specifically two publications by UNIDO found appreciation of participants and those were National Approaches to the Acquisition of Technology and Draft Guidelines for Evaluation of Technology Agreements. In the case of the latter, participants urged the Secretariat of UNIDO to release its final version as soon as possible as, in their view, this paper will prove to be extremely useful as a practical handbook for licensing by developing countries.

1. There was consensus amongst the participants that UNIDO should prepare a guideline on technology transfer agreements indicating standard conditions to be incorporated in the agreements regarding duration of the agreement, training, royalty rates for different industries and the respective rights and liabilities after the termination of agreement. The determination of these, in particular, regarding royalty rates would depend on national priorities and conditions. It is understood that this would only be a guideline and not be treated as a legally binding code and the royalty rates would only be indicative and relative to the standard conditions.
2. Exchange of information regarding technology transfer agreements should be encouraged and organized by UNIDO. The member countries should be encouraged not to treat information which is generally of a commercial nature as confidential as it creates a state of ignorance which is not in their interest.
3. While discussing the role of technology regulating agencies in the developing countries, it was pointed out by some participants that in most of the developing countries either such an agency did not exist or was not well organized or well equipped to effectively discharge its functions. It is therefore recommended that UNIDO should assist, at the request of the Government, in setting up such agencies in countries where there are none and assist in improving their capability where such agencies already exist.

4. Traditional classification of countries in terms of per capita income as 'developed', 'less developed' and 'least developed' needs reclassification from the point of view of the work of UNIDO. It was thought that from the point of view of aiding and assisting industrial development and technological capacities the most important factor is the technological level already achieved by a country. Reclassification of countries should therefore take into account this factor. This would help UNIDO in identifying countries which need assistance to a greater or lesser degree as the case may be.
5. From the study of actual cases discussed in the Workshop it was obvious that the developing countries need to improve their negotiating techniques in the field of transfer of technology agreements. It was therefore felt that UNIDO should organize more workshops on the subject.
6. It was felt that in future such workshops should place more emphasis on case studies rather than general issues connected with transfer of technology.
7. Co-operation of UNIDO with LES and similar professional organizations may contribute towards closer and better understanding of the process of technology transfer and such co-operation should be encouraged.



ANNEX I

AGENDA

Monday, 19 March 1979

9:00 a.m. - 10:00 a.m.

- Registration of Delegates

Delegates should present themselves at the Armoury Room to complete details of their format registration.

10:00 a.m. - 11:00 a.m.

- Opening of the Workshop

Speakers

- Government of Australia
Mr. F. N. Bennett
Deputy Secretary
Department of Industry and Commerce
- United Nations Industrial Development Organization
Mr. G. S. Gouri
Director, Technology Group
- Licensing Executives Society of Australia
Mr. M. Whightman
President
LES Australia.

11:00 a.m. - 12 noon

- Technology Transfer in the ESCAP Region Today and Perspectives

Speakers

- Mr. P. Grant - Chief Patent Officer
Commonwealth Scientific and Industrial Research Organization-Canberra
- Mr. P.A. Smith - Assistant Commissioner
Policy
Australian Patent Officer - Canberra

12 noon - 2:00 p.m.

- Luncheon Interval

2:00 p.m. - 3:30 p.m.

- The Role of Technology and Technology Transfer in the Industrialization Process

Speaker

- Mr. G.S. Gouri - Director, UNIDO

3:30 p.m. - 3:45 p.m.

- Afternoon Tea

3:45 p.m. - 5:15 p.m.

- Forms and Channels for Technology Transfer

Speaker

- Mr. Hubert A. Janiszewski
Technology Development Officer - UNIDO

5:30 p.m. - 7:00 p.m.

- Welcoming Cocktails hosted by
Mr. F.N. Bennett, Deputy Secretary
Department of Industry and Commerce.

Tuesday, 20 March 1979

9:00 a.m. - 12 noon

Speakers

- Licensing - Negotiation and Agreement

- Mr. J. Stonier
Chief Licensing Officer
Broken Hill Proprietary Company
Limited
Melbourne

- Mr. Hubert A. Janissewski
UNIDO

12 noon - 2:00 p.m.

- Lunch Interval
(Delegates will be taken to dine
at Doyle's Restaurant, Rose Bay.)

2:00 p.m. - 5:00 p.m.

Speaker

- Appraisal of Payments for Technology

- Mr. H.A. Janissewski
UNIDO

Wednesday, 21 March 1979

9:00 a.m. - 12 noon

Speakers

- Legal Issues in Technology Transfer
Agreements: Restrictive Business -
Confidentiality - Guarantees and Warrantees

- Mr. J. Kehoe
Solicitor
Baldick McPherson and Walsh
Sydney

- Mr. L. Strano
Chief Economist
Export Finance and Insurance
Corporation
Sydney

- Mr. H. A. Janiszewski
UNIDO.

12 noon - 2:00 p.m.

- Luncheon Interval

2:00 p.m. - 5:00 p.m.

- Role of Technology Regulating Agencies
in Technology Transfer to Developing
Countries

Speaker

- Mr. G.S. Couri
Director, UNIDO

7:00 p.m. - 8:30 p.m.

- Cocktails hosted by Mr. G. S. Couri,
UNIDO at New Great Hotel.

Thursday, 22 March 1979

9:00 a.m. - 11:00 a.m.

- Presentation of Case Study No. 1
by Mr. H.A. Janiszewski, UNIDO

11:00 a.m. - 12 noon

- Presentation of Case Study No. 2
by Mr. D. Ryan, Patent Attorney,
Davies and Callison, Melbourne.

12 noon - 2:00 p.m.

- Luncheon Interval

2:00 p.m. - 3:00 p.m.

- Continuation of Case Study No. 2

3:00 p.m. - 5:00 p.m.

- Presentation of Case Study No. 3
by Mr. H.A. Janiszewski, UNIDO.

Friday, 23 March 1979

9:00 a.m. - 11:00 a.m.

Speaker

11:00 a.m. - 12:15 p.m.

2:00 p.m. - 4:00 p.m.

Speakers

4:00 p.m. - 5:00 p.m.

- Recent Development in UNIDO Work in Technology Transfer - Co-operation Among Developing Countries
- Mr. G.S. Gouri
Director, UNIDO
- Presentation of the Workshop Report to the Participants
- (i) Discussion of the Report and its Adoption
- (ii) Closing of the Workshop
- Government of Australia
Mr. A. Lamond
Department of Industry and Commerce
Canberra
- Mr. G.S. Gouri
Director, UNIDO
- Licensing Executive Society of Australia
Mr. K. Whightman
President
LES Australia
- Farewell Drinks - New Crest Hotel.

ANNEX II

COUNTRIES

AUSTRALIA

Mr. A. Lamond
Department of Industry,
Canberra

UNIDO

Mr. Gangadhar Gouri
Deputy Director
Industrial Operations Division
UNIDO, Vienna

Mr. Hubert A. Janiszewski
Industrial Development Officer
Development and Transfer of Technology Section
UNIDO, Vienna

INDIA

Mr. V.C.S. Navar
Under Secretary to the Government of India
Ministry of Industry
Department of Industrial Development
New Delhi

INDONESIA

Mrs. Augusta Tjahjadi
Head of the Aspects of Investment Division
Investment Co-ordinating Board
Jakarta

Mr. Indra Hasby
Agency for the Development and Application of Technology
Jakarta

Mr. H.D. Pusponeroro
Director, Technology Development, Secretariat of State Minister for Research
and Technology, Jakarta

Ms. Gratioka Hamdani
Chief Division of Legislation
Bureau of Legal Affairs and Organisation
Ministry of Industry
Jakarta

KOREA

Mr. Ka-Jong Lee
Technology Transfer Officer
Bureau of Program Development and Promotion
Ministry of Science and Technology
Republic of Korea

PEOPLES REPUBLIC OF CHINA

Mr. Zhang Xuan-San
Institute of Industrial Studies
The Chinese Academy of Social Sciences
Peking

PAPUA NEW GUINEA

Mr. G.E. Harre
Adviser
National Investment and Development Authority
Papua New Guinea

Mr. Edward Owen
Officer-in-Charge Industrial Planning
Industrial Development Division
Department of Labour and Industry
Papua New Guinea

Mr. F. Miro Miro
Assistant Director
National Investment and Development Authority
Papua New Guinea

PAKISTAN

Mr. Iqbal Jafar
Director General
Investment Promotion Bureau
Jakarta

PHILIPPINES

Mr. Ronol dela Cruz
Industry Development Specialist
Ministry of Industry, Manila

SRI LANKA

Mr. De Silva
Deputy Director
Ministry of Industries and Scientific Affairs
Colombo

Mr. N.R. Perera
Director
Ministry of Industry
Colombo

SWITZERLAND

Mr. Marc Besso
Secretary
LBS International
Switzerland

THAILAND

Mr. Somsao Chulkarat
Director
Industrial Economics and Planning Division
Bangkok

AFGHANISTAN

Mr. Abdul Hadi Dastwar
General Director
Ministry of Mines and Industries
Kabul

OBSERVERS

Mr. L. Strano
Chief Economist
Export Finance and Insurance Corporation
Sydney, Australia

Ms. Margaret Phillips
Research Officer
Australian Development Assistance Bureau
Canberra, Australia

Dr. B. Silberstein
Sydney, Australia

Mr. M.A. Firmin
Firmin and Blanc
Auckland, New Zealand

Mr. P. Moore
Department of Industry and Commerce
Canberra, Australia

Mr. W.J. Brocklebank
Department of Industry and Commerce
Canberra, Australia

Mr. P.D. Mooney
Department of Industry and Commerce
Canberra, Australia

ANNEX III

The following documents were included in the workshop held in Australia. Department of Industry and Commerce, Attn: Mr. Keith J. Wilson Assistant Secretary, International Branch, Canberra, Australia

UNIDO ICIB/50
ID WG. 282/123
ID WG. 272/4
Ties Phase I Result
UNIDO ICD 133
IB/W/188
ICIB/55
Agreement
Cover pages ID WG. 228/1
DTPS No. 10
7
5
3
2

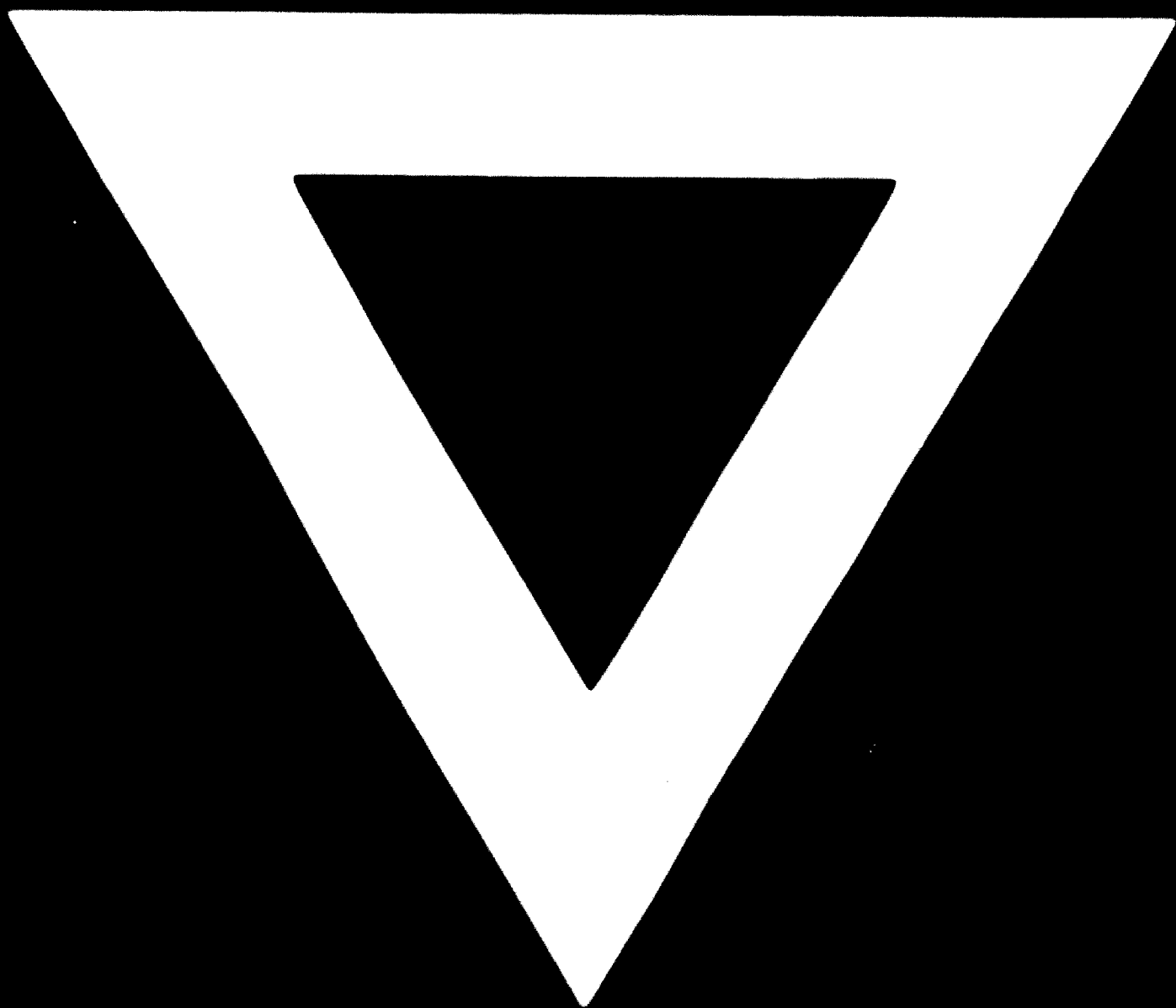
ICIB 51
ICIB.40
ICIB 41
ID/WG. 228/1

ID/WG. 228/3 Rev. 1
UNIDO ICIB 118
ID. WG 275/9
ICIB 56
ID/WG. 272/1
ID/WG. 206/3
ID/WG. 275/8
IB/187

Draft Guidelines for Evaluation of Transfer Technology Agreements



C-148



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