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MEXICAN LAW OF TECHNOLOGY TRANSFER AND
ITS IMPACT ON THE NATIONAL ECONOMY 1/

by

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**MEXICAN LAW OF TECHNOLOGY TRANSFER
AND ITS IMPACT ON THE NATIONAL ECONOMY.**

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MEXICAN LAW OF TECHNOLOGY TRANSFER AND
ITS IMPACT ON THE NATIONAL ECONOMY.

Introduction.

Before entering into a discussion concerning the Mexican Law of Technology Transfer, it is pertinent to consider technology transfer - within the framework of Mexico's overall technological policy.

Also the paper examines the relation of Mexico's foreign policy on economic relations, as well as the existing criteria for regulation in the field of technology transfer.

Finally, an attempt is made to assess what has been achieved so far through the application of the law.

I.- MEXICO'S TECHNOLOGICAL POLICY.

Mexican technological policy has several goals and is oriented - towards:

- (i) A more efficient process for the adaptation of imported technology.
- (ii) The gradual development of local technologies.
- (iii) Encouraging domestic productive units to acquire technologies appropriate to local factor requirements.

A central objective of this policy is to encourage the rational -

use of resources which implies a modification of the national demand for certain technologies.

Part of the reason for such a modification comes from the process of industrialization followed to date by Mexico which has demonstrated the difficulties of reaching national social economic goals with greater resource use. It was therefore necessary, in the field of technology use, to design new strategies and to define new objectives. Recently we have set new goals and priorities; goals which not only consider quantitative growth but the overall impact on our society.

We can say that Mexico today is in a transitional stage, where we are less interested in statistical growth and more concerned with qualitative development. It follows that it is difficult to draw final conclusions about the new policies.

For example, in searching for a satisfactory relation between foreign technical assistance and employment, it is necessary to plan the requirements for the appropriate technology. To achieve this relationship it is important to develop a new "recipient enterprise attitude" very different from that previously adopted by private enterprises, which was basically oriented only to the domestic market operations and itself protected from foreign competition.

This new attitude that we are actively trying to develop has a great deal to do with the various phases of the technology transfer

process starting from:

- (i) The definition of technological requirements.
- (ii) The selection and adaptation of technology.
- and (iii) The strengthening of the negotiating power by domestic companies.

The national supply of technology (from whatever source) requires, the improvement of human resources at different levels; the creation and development of engineering and design capability; the improvement of existing research institutions; increasing production efficiency of local companies and the establishment of information-systems on a sector by sector basis.

In as far as a developing country moves to a higher technological base, it is more prepared to negotiate its foreign technology and it becomes better equipped to deal with these complicated negotiations and choices.

In Mexico we are giving great attention to assisting local enterprises in developing negotiating skills conducive to obtain better contractual terms. From practical experience we know that the negotiating strength depends on:

- a) A clear definition of the technical objectives to be reached;
- b) A better definition of the technological requirements to be satisfied;
- c) A higher degree of knowledge concerning alternative sources of domestic and international supply.

- d) The technical capability to evaluate these;
- e) A technical infrastructure locally available to absorb and - adapt foreign technology;
- f) The degree of support that the recipient companies may have from government agencies in the stage of negotiation and information field.

To put into practice the Mexico's technology policy it was necessary to design an appropriate machinery that could be adapted to the different kinds of enterprises that form the country's productive base. This base varies greatly mainly because it shows different-characteristics and behavior, thus implying different treatment.

In this context it was important to distinguished the various productive organizations within Mexico. These are:

- (i) State owned enterprises.
- (ii) Large private-national enterprises.
- (iii) Small and medium private-national enterprises.
- (iiii) Foreign subsidiaries.

This distinction is important precisely because of the different-objectives pursued by these enterprises; their ability to react - to technological problems and the degree of interlinkage between - them and the government. This required the application of different criteria and ways of cooperation in each case.

After definition of the general objectives, Mexico entered into -

the difficult task of establishing priorities in various industrial sectors.

This was particularly important because (i) technological requirements (ii) competition in international markets and (iii) creation of employment play a very important part in establishing objectives and obviously differ from sector to sector.

Mexico's experience shows that one of the most difficult organizational aspects has been the application of technology transfer policies and the creation of effective agencies with competent technical personnel which cannot be improvised or formed at a short notice.

In summary, the basic orientation of Mexico's technology transfer policy derives from fundamental criteria in economics and international relations, because we know there is a very close relationship between Mexico and the various international sources of supply.

II.- INTERNATIONAL ECONOMIC RELATIONS AND TRANSFER OF TECHNOLOGY.

Mexico's policy of technology transfer is based on the principle that there is a fundamental inter-relation between the flow of information and technology from outside and the flow of foreign capital.

This close relationship between foreign investment and technology-transfer takes into account the effect that each of these two has upon the other. This concept is different to that which was accepted in most developing countries in the past where it was widely -

considered that the flow of goods and capital was regulated by the market.

The presence of multinational corporations, simultaneously operating on the capital goods and the technology market undertaking their decisions on focal centres has influenced the revision of the traditional way of looking at this problem, due to the profound effect that they have had in the external relations particularly of developing nations.

So it was found necessary to define an integrated approach in the analysis and policy formulation of problems dealing with foreign trade, investment, and transfer of technology.

These considerations determined that Mexico's policies of technology transfer and foreign investment was enmarked by the frame of a broader policy on economic relations at the international level.

There are three important implications to be derived from this decisions that should help in understanding the Mexico's transfer of technology policy.

- 1.- The basic orientation for this policy, emerges from an understanding of economic international principles.
- 2.- The transfer of technology legislation is oriented to the development of an efficient and rationalized process of importation of technology, to reinforce, and complement the industrialization process and to meet overall socio-economic objectives.

3.- The need to coordinate various government agencies having direct responsibility in the field of technology and those that deal with questions relating to technical collaboration agreements.

III. MEXICAN LAW OF TECHNOLOGY TRANSFER.

In order to visualize how national economic objectives influenced the law of technology transfer, we note the following key principles.

A first principle has to do with the regulatory role that the government has in this area.

As foreign policy formulation is one of the important functions of government, and considering the interdependence between economic and political relations with foreign countries it became evident that there was a need for the government, to establish norms that could regulate technological transactions with foreign suppliers.

"The Law of the Transfer of Technology and the use and exploitation of Patents and Trademarks" gives the state the power to determine the registration, evaluation and acceptance or denial of contractual transactions that take place in Mexico.

A second principle is to safeguard national, economic and technological autonomy. This explains why the basic criteria for determining the acceptance or refusal of technology contracts take into account the national objectives and legislative norms and procedu-

res existing in the country.

The Mexican law goes into considerable detail to enumerate the kinds of restrictive practices that must be eliminated from contracts in order to qualify them for registration. Thus, registration is denied to any contract that:

- 1.- Where the technology to be transferred is freely available in Mexico (para I art. 7°).
- 2.- Obliges the licensee to grant back to the licensor the patents trademarks, innovations or improvements it makes (para IV - art. 7°).
- 3.- Limits the licensee's research and development efforts (para V art. 7°).
- 4.- Prohibits or restricts the export of goods or services by the licensee in a way contrary to Mexico's interest (para VII art.7°)
- 5.- Establishes excessively long terms of enforcement (para XIII - art. 7°).
- 6.- Calls for disputes, to be submitted to the jurisdiction of courts in a foreign country (para XIV art. 7°).
- 7.- Sets a price out of proportion to the technology acquired or imposes an excessive burden on Mexico's economy (para II - art. 7°).
- 8.- Permits the licensor to regulate or interfere with the management of the licensee (para III art. 7°).
- 9.- Obliges the purchase of equipment, tools, parts or raw materials from a certain supplier, only (para VI art. 7°).
- 10.- Prohibits the use of complementary technology (para VIII art. 7°).

- 11.- Requires that goods produced by the licensee be sold to the licensor, only (para IX art. 7°).
- 12.- Obliges upon licensee to permanently employ personnel appointed by licensor (para X art. 7°),
- 13.- Limits production volumes or imposes sales prices on goods - produced by the licensee (para XI art. 7°),
- 14.- Obliges the licensee to sign exclusive sales or representation contracts with licensor in Mexico (para XII art. 7°).

Except for the first six provisions, for which no exceptions can be made, the law establish that contracts that do not meet one - or more of these conditions may be registered; if the National Registry of Technology Transfer believes the contract is of special interest to the country.

The norms and stipulations mentioned above are clear and coherent and take into consideration the need to improve the productive - efficiency in the country, which is a pre-condition to participate and compete in international markets.

A third principle is based on the fact that the economic international policy of a country has to contribute in a positive manner to the economic objectives at the national level.

This explains why in the criteria for application of the law - emphasis is made in evaluating the effect that a technology contract can have on:

- i) The balance of payments.
- ii) The creation of jobs.
- iii) The improvement of national technological capabilities.

In the implementation of the law an effort has been made to introduce a consistent criteria, applied with a high degree of flexibility. Although flexibility is important, we have tried to be selective and careful in assessing the worth of a particular technology in terms of its input and its value to Mexico.

Among the specific objectives of this legislation is the assistance to the recipient companies in the selection and negotiation of technology contracts.

As mention above the Mexican Law of Technology cannot be seen as a piece of legislation that stands alone by itself, because it forms part of a broader policy of industrial development, and national growth.

It is on the basis of this legislation-enacted in January 1973 - that the process of importation of technology into Mexico has changed.

The Mexican Law was developed from similar legislations and governmental decrees in various countries i,e Japan, Argentina, and Decision 24 of the Andean Group; however the Mexican Law, introduces some fundamental changes in terms of scope, objectives and motivating factors, in the overall concept and application of the law.

For example, a clear distinction between the Mexican initiative - and various legal enactments in South America, is that the aspect of foreign exchange control is not the central issue.

Mexico does not have foreign exchange regulations and has main - tained a consistent policy in this area for over 30 years. This - is considerable different from the Argentinian, Brazilian and the Andean Group regulations in this area.

In contrast to the Argentinian law, the Mexican legislation covers the registration of agreements signed between nationals, or per - sons, established in the country, and agencies or subsidiaries - of foreign companies established in Mexico.

Another distinctive element is that foreign-based licensors have the right to request the registration of contracts to which they - are parties. Just as much as Mexican licensees are entitled to do so, although the obligation holds only for the Mexican enterprise.

In order to present a closer picture of the Mexican Law we'll - cover in some detail relevant aspects of his legislation.

First of all, this legislation introduces a new element which - is the compulsory registration of all existing contracts. Article 2nd of the law, describes the type of contracts that have to be - presented for examination, these include contracts that cover: -

- i) The use of trademarks.
- ii) The right to use patented inventions.
- iii) The supply of technical expertise in the form of plans, diagrams, operating manuals, training of personnel, and others.
- iv) The supply of basic or detail engineering.
- v) Technical assistance of any kind.
- vi) The provision of operating or managerial assistance.

On the other hand article 9 provide a list of services which are contained in contracts that are not subject for registration, - those are:

- i) Foreign technicians under contract for the installation of factories.
- ii) Designs, catalogues, or general assistance acquired together - with machinery and equipment.
- iii) Assistance required for repairs or emergencies.
- iv) Technical training provided by schools, or by companies for - their workers.
- v) Finally, the operations of border assembly plants shall be governed by the legal regulations applicable in their case.

As already mention, article 7° of the law goes into considerable detail to enumerate the type of restrictive practices that most - be eliminated from contracts. Article 7° as described previously - contain fourteen clauses out of which eight can be handled on a - discretionary basis by the register.

Article 7° is the most important one of the law and therefore we

will summarize the basic criteria for its application.

Clause I.- "When the purpose is the Transfer of Technology freely available in the country, provided it refers to the same technology".

In connexion with this clause a contract can not be accepted when:

- 1.- The object of the contract exclusively covers the exploitation of a patent that is not longer valid in the country.
- 2.- It involves technical know how that is of the public domain.
- 3.- It covers the continuing supply of technical services that the recipient company could perform, without and additional cost.
- 4.- It covers foreign technical know how that a local research institute is a position to provide.

Note.- The above four considerations are applicable when the technology "freely available in the country", is substantially similar to the one under consideration.

Clause II.- "When the price or remuneration is out of proportion with the technology acquired or constitutes a unwarranted or excessive burden on the country's economy.

It is not possible to establish general rules concerning the most adequate level of payments. What is important is to conduct a careful techno-economic evaluation of each case and to determine if -

the payments involved, do in fact, relate to the **RESEARCH AND KNOWLEDGE** that is to be provided.

- It is essential that either in the contract or separately the base and formula to calculate royalty payments is clearly specified.
- It is important that the contract clearly specifies that **TAXES** due on royalties are the responsibility of licensee.
- A differentiation is made between payments involving know how fees and containing royalties.
- Contrary to what is followed in other countries we have not established royalty limits on various sectors.

In order to accurately determine the total flow of payments involved the following should be considered:

- i) The manner in which are going to be effected.
- ii) Projected volume of sales or production during the life of the agreement.
- iii) The duration of the contract.
- iiii) The specified dates when payments should take place: given special attention to a scheduled program for implementation of an industrial project.

We have found that in practice, the various modalities for covering technology payments changes considerably from case to case. In this context we have establish on a sector by sector basis some

reference-points for comparison.

For this purpose the following indexes are considered important:

- a. TOTAL SALES OF THE RECIPIENT COMPANY.
Royalties related to products of the contract.
- b. TOTAL SALES OF PRODUCTS OF THE CONTRACT.
Royalties on products of the contract.
- c. NET INCOME DERIVED OF PRODUCTS OF THE CONTRACT.
Royalties related to products of the contract.
- d. TOTAL INVESTMENT IN MACHINERY AND EQUIPMENT.
Total payments involved.

The above reference indexes are found to be very useful in determining to what extent the payments involved affect the manufacturing cost and the financial situation of the recipient company.

As a general rule maximum royalties are not accepted. However, if the foreign licensor insist on a minimum royalty, we would then request the incorporation of a maximum royalty fee.

Note.- After a revision of many cases that contained minimum royalty provisions we have found that they operated only on few cases. -
The concept of a maximum royalty is not always acceptable because there are cases were, for reasons beyond the control of the recipient company, such as market demand, etc. the licensee may be put in an unfavorable position, particularly in cases were new products

are involved, or were the sector of industry is highly competitive and dynamic.

In order to determine if the payments involved constitute and - excessive burden on the economy, it is necessary to examine to - what extent the total flow of payments (both, explicit and impli - cit) may be detrimental to the country.

- By explicit payments we understand, those that pertain to royal - ties and fees specified in the contract.

- By implicit payments we understand those that result, among other things, from tie-in clauses which normally appeared in (i) overpricing of raw materials, parts, equipments, etc. obtained from licensor (ii) underselling of products exported through licen - sor, etc., etc.

Although, the definition of what may be construed as a negative - effect to the economy is a very difficult question and requires - the technical support from various agencies; the register can at least examine some of the most obvious implications that result - from contractual arrangements with foreign companies. In this - context it is important to determine (i) what is the effect of - payments on the recipient company; (ii) the industrial sector - to which it belongs; (iii) and how it affects the country's ba - lance of payments; additionally it should also be determined --- (iv) what can be the effect of said payments for technology in the cost of goods and services produced and how this may affect the -

consumer sector, etc.

There are many other aspects that have to be studied on a sector by sector basis and at the macro-economic level, in order to define appropriate policies oriented to reduce technology payments, that could have a negative effect on the nations economy.

It should be mention that clause II is closely interlinked with clauses: I, IV, VII and XIII of art. 7° .

It is not possible, within the scope of this paper to discuss in full what is the internal criteria for the application of clause II of article 7° ; nevertheless, in addition to the general criteria mentioned above, each contract is evaluated from the legal, technical and economic point of view and specific guidelines have been developed for the application of clause II in the following areas:

1.- Use of trademarks.

a) A deliberate effort is being made to gradually reduce, the use of foreign trademarks in the domestic market particularly when:

i) There are not yet established in Mexico.

ii) There impact in the sale of products is of minor significance due to the type of products or services involved.

b) On a selective basis the use of new foreign trademarks

could be authorized:

- i) When there are considered important for the export of -
products manufactured under license.
- ii) When it brings alone a recognized technical prestige -
and is required under a particular market situation.
- c) It is important to promote the creation and development -
of Mexican owned trademarks.
 - i) In order to gradually identify the products as Mexican-
both domestically and internationally.
 - d) When licensor does not participate in the capital of the
recipient company, payments for the use of trademarks are
maintain in the range of one percent on sales.
 - e) No payments for the use of a trademark are authorized when
the licensee is a wholly-own subsidiary of licensor.

2.- The right to use patented inventions.

The law of industrial property of Mexico considers three kinds -
of patents that are subject of regulation by the registry:

- a) Patents on inventions.
- b) Patents on improvements.
- c) Patents on industrial models or designs.

- The duration of patents on inventions and improvements is -
granted for 15 years.

- The duration of patents on models and industrial designs is
granted for 10 years.

These provisions as well as others that relate to the validity, exploitation and termination of patents, are carefully appraised by the registry.

In connexion with contracts that cover the use of patents the following is taking into account.

- When a patent has being requested but not yet granted by the industrial property office; any payment for this concept will be conditioned to the grating of this patent.
- When the contract covers payments for the right to use several patents, it is important to determine the duration of all of them and to differentiate the so called basic or peripheral patents.
- It is also important to determine whether or not the patented know how is being used in the manufacturing process.
- It is important to determine the degree of exploitation of the patents involved in the "territory" of the contract.
- The registry will insist that any possible infringement on licensor patent rights by a third party, shall be the sole responsibility of licensor.
- Contractual provisions limiting the "field of use of a patent", in a justified manner can not be accepted.
- Licensor should be responsible to defray all expenses related to the registration and maintinance of its patents in Mexico.

3.- The supply of technical assistance.

Payments for technical assistance normally covered through

"know how fees" should be examined in close detail and a differentiation should be made between lump-sum payments and those for the continuing supply of technical assistance over the life of the agreements.

In connexion with the question of know how payments, the following should be taken into consideration:

- When the object of the contract covers technical know how that could be assimilated directly by licensee i, e formulations, drawings, specifications, etc. payments on a continuous basis are not accepted in principle.
- Concerning the know how incorporated in drawings formulas and/or technical know how, no limitations, other than those pertaining to confidentiality shall be accepted.
- The registry will not accept any restriction at the end of the agreement concerning the use of non patented know how.

4.- Basic or detail engineering.

The supply of engineering services relies on the technical capability of licensor. In practice, basic and detail engineering are obtained from different sources, and it is therefore important to define the degree of responsibility of all parties involved.

A very important aspect concerning the supply of engineering services relates to the type and scope of guarantees required by the recipient company.

- When licensor is responsible of supplying basic engineering -
together with process technology licensee should obtain speci -
fic guaranties in the following areas:

- i) Volumes of production.
- ii) Yields.
- iii) Quality of products.

There are many considerations concerning the proper evaluation -
of engineering services, but it is important that the amount of
payments for these services, should be compared with alternative
offers on substantially similar basis.

Finally it is essential that contracts covering the supply of -
basic and/or detail engineering should clearly specified the -
type and scope of these services as well the manner in which the
corresponding payments should be effected.

5.- Continuing technical assistance.

For practical purposes the evaluation of payments concerning -
technical assistance is clasified in the following manner:

A.- PRE OPERATIONAL PHASE.

- i) Pre-investment studies;
- ii) Technical assistance for the purchase of equipment;
- iii) Technical assistance in the erection and installation of
plants;
- iv) Plant start up;
- v) Training of technical personnel in the above areas.

B.- OPERATIONAL PHASE.

- i) Assistance in the purchase of spares, raw materials, parts, etc.;
- ii) Quality control;
- iii) Assistance in the operation of the plant including repair and maintenance, production efficiently and others;
- iv) Technical services to clients;
- v) Technical improvements of processes, and products;
- vi) Training of technicians in licensor's or licensee's plant.

The following considerations are taking into account:

- It is important that the contract clearly specified the various services involved and the corresponding payment for them; in a separate manner.
- It is important to determine the time required to efficiently-cover the various services in the pre-operational phase.
- A definition of the scope of technical assistance to be obtained in the operational phase.
- Determine the relationship between the kind of assistance to be supplied by licensor and the complexity of the manufacturing process in its various phases.
- The degree of technical change in the sector of industry in question.
- The technical capability of licensee.

6.- Managerial assistance.

The kind and scope of these services will greatly depend on the functions to be covered. In general terms, these services are - obtained over a limited period of time; covering among others, - the following aspects:

- i) Planning and programing.
- ii) Research and development activities.
- iii) Inventory control and accounting.
- iv) Financing and purchasing.
- v) Promotion and marketing.

Managerial or administrative services have to be evaluated in - consideration of the following:

- i) The sector in which they are applied.
- ii) The requirements of the recipient party.
- iii) The type and scope of the same.

In this context the following should be considered:

- a) A definition of the differences services involved.
- b) The provision for training programs in order that the various functions can gradually be cover by licensee's staff.
- c) Payments for this concept shall be viewed in relations with the economic benefits to the recipient company.
- d) The responsibility and functions of licensor should be clearly delineated.
- e) Managerial assistance in the area of marketing is in principle not acceptable when the recipient company has been established

for the sole purpose of manufacturing and selling intermediate products.

Clause III.- "When they contain clauses that permit the supplier - to regulate or interfere, directly or indirectly, in the manage - ment of the technology-purchasing company".

In connection with this clause a contract can not be accepted when:

- The object of the contract covers the use of patents, trademarks, and technical know how in its various forms; and through this - contract licensor acquires a decision making position in the - running of the business.
- The licensor acquires the right to decide in areas that go beyond the object of the contract.

A contract can be accepted when:

- The sole purpose of the contract is to provide administrative - and managerial assistance.
- On a limited period of time the licensor technical personnel - could participate in various managerial activities. Provided - these services are deemed to be essential for the well functioning of the licensee's enterprise.
- When trademarks are involved and managerial assistance is pro - vided to maintain adequate quality standards.
- Establish the right for the licensor to inspect the books of - licensee, in regards to continuing royalty payments.

Clause IV.- "When they establish the obligation to assign to the technology supplier, in onerous terms or free of charge, the patents, trademarks, innovations or improvements obtained by importer company".

In connection with this clause a contract can not be accepted when:

- It establish the obligation to assign the property of trademarks or patents developed by licensee.
- Obliges licensee to assign to licensor, licensee's owned trademarks at the termination of the contract.
- When the exchange of information on improvements or innovations developed by either party is not conducted on reciprocal basis.

In regards to:

- i) The territory.
- ii) The degree of exclusivity.
- iii) Remuneration related to this.

Clause V.- "When they impose limitations on the research or technological development of the purchaser company".

In connection with this clause a contract can not be accepted when:

- Limits or prohibits licensee the right to enter into R & D - programs concerning new products, process, equipment, etc. or to improve the products or process licensed.
- Limits or conditions-without justification-the incorporation of said improvements into licensed products.

- Limits or conditions without reason, the incorporation of improvements obtained from a third party.
- Limits without justification the field of use a patented information.
- Prohibits to the recipient company to enter into R & D efforts once the contract is terminated.
- Obliges licensee to return drawings, formulas, operating manuals, etc. after the termination of the contract.

Clause VI.- "When they establish the obligation to purchase equipment tools, parts or raw materials from a certain supplier only",

In general terms a contract can not be accepted when:

- Licensee is forced to acquire from licensor or a certain supplier only, parts, spares, raw materials, etc., etc., that are available from international sources on better terms.

Clause VII.- "When they prohibit or restrict the export of goods or services by the technology importer in a way contrary to the country's interest".

In connection with this clause a contract may not be accepted when:

- Contains a total prohibition for exports.
- Obliges licensee to export to certain geographical areas where licensor has not granted exclusive licensee rights to third companies.
- Establish a ceiling concerning the volume of export sales.

- Obliges licensee to export only through licensor in detriment-
of licensee's successful market penetration in third countries.
- Obliges licensee to pay a higher royalty on export sales.

A contract may be accepted when establish certain limitations for exports to areas where:

- i) Licensor has previously granted exclusive rights under a patent.
- ii) Licensor is not authorized by legislation or regulation in its own country, to export directly or indirectly.

Clause VIII.- "When they prohibit the use of complementary technology".

In connection with this clause a contract may not be accepted when:

- Prohibits access to other sources of supply to obtain complementary technology that could enable licensee to reach higher yields better quality of products, or a reduction in manufacturing costs, etc., etc.
- Prohibits the manufacturing of products that could expand or complement licensee's production line.

Clause IX.- "When they establish the obligation to sell the goods produced by the importer to the supplier company only".

In connection with this clause a contract can not accepted when:

- Obliges licensee to sell exclusively to the technology supplier all the products manufactured under the contract at a price fixed by licensor.

- The obligation to sell all or part of its production under conditions unfavorable to licensee.

In order to determine when the obligation to sell to licensor may be acceptable by the registry it is essential to examine each case on its own merits.

Clause K.- "When they impose upon the importer the permanent employment of personnel appointed by the supplier company".

In connection with this clause a contract can not be accepted when:

- Licensee is obliged during the life of the agreement or for an excessive period of time to employ personnel appointed by the supplier company.

Under certain conditions licensor technical personnel can be authorized to work with the recipient company, provided, licensee is in a position to decide the conditions and the duration of his appointment.

Clause XI.- "When they limit the volume of production or impose sales or resales prices on goods produced by the importer company for the domestic or foriegn markets".

In connection with this clause a contract can not be accepted when:

- Establish minimum volumes of production.
- The recipient company is not authorized to exceed certain volumes of production.

- Gives to licensor the right to fix a price on products.
- Obliges licensee to discontinue the use of non-patented know-how upon termination of the agreement.

Clause XII.- "When they oblige the importer to sign exclusive sales or representation contracts with the supplier company, covering the national territory".

We have found that in practice a restriction of this kind, occurs rarely, however the acceptance of this clause will depend on the type of products involved and the prevailing conditions in the market.

Clause XIII.- "When they establish excessively long terms of enforcement. In no case may these terms exceed a ten year obligation on the importer company.

In connection with this clause it is essential that the duration of contracts has to be specified in a precise manner, because there is a close relationship between the duration of a contract and the payments involved.

As a general rule all obligations to the recipient company should not exceed a period of ten years.

Note.- There is nothing in the law of technology transfer that prevents the registry of accepting a new contract after termination of the original one.

From practical experience we have found that the question of -

"confidentiality" after the termination of the contract becomes - a central issue and closely relates to this clause.

Within the context of this clause it is important to determine the minimum period required for the technology to be effectively - absorb by the recipient company, which in turn depends on:

- i) The degree of complexity of the technology.
- ii) The technical capability of the recipient company.
- iii) The sector of industry.

In the application of clause XIII due consideration is giving to - the existence of trademarks and/or patents from licensor.

Clause XIV. - "When they provide that claims arising from the inter - pretation or fulfillment of such act, contracts or agreements are to be submitted to the jurisdiction of foreign courts".

No comments.

PROGRESS REVIEW OF ACTIVITIES.

A summary of the activities of the Mexican Registry of Technology in the areas of (i) evaluation of contracts; and (ii) re-negotia - tion of contracts is as follows: - Period covering from January - 29th, 1973, April 1st 1974.

1.- NUMBER OF CONTRACTS PRESENTED TO THE REGISTRY.

a) Contracts submitted for registration.	1426 (25.7%)
b) Contracts submitted for information	4112 (74.3%)
c) Total number of contracts presented.	5538 (100%)

2.- CONTRACTS SUBMITTED REGISTRATION.

Of all contracts submitted for registration, 857 were evaluated from the legal, economic and technical point of view.

(i) 62.4% positively.

(ii) 37.6% negatively.

In 157 cases where registration was denied (57% of all the negative resolutions) the affected parties did appeal the registry decision.

On the remaining 43% the decision was not appeal; for two main reasons:

- In a large number of these cases the parties have expressed their williness to adjust their contracts to the law.
- In a small number of cases the resolution was accepted and the recipient company decided not to continue with the agreement.

Note.- Persons that consider themselves affected, by decisions of the registry may request in the eight days following notification, the reconsideration of decision (art. 14).

Most frequent violations to article 7°.

Although, it is probably to early to reach definite conclusions on the most frequent violations of "all" contracts submitted to the technology registry it is possible to anticipate a large number of violations to art. 7° of the law. The information so far available relates to contracts that already were studied by the-

interested parties, that is, contracts submitted for registration, which in principle had already being adjusted to the law.

A preliminary sampling of some of the contracts entered into, - prior to the law (submitted for information only) demonstrate that they contained more serious and frequent violations than those examined so far. Chart I shows the frequency in which the various clauses of article 7° where violated.

Although the chart refers only to contracts for which registration was denied and does not include a large number of cases that were modified after discussions held with officials of the registry; - it presents a rather interesting picture.

In eighty percent of the cases clause II of article 7° was applied, but it should be mentioned that many of these,(in addition to - clause II) contained violations to other clauses of the law.

The economic and technical considerations that served to determined excessive payments; not in relation with the services acquired; or represented a unwarranted burden on the country's economy where of varied nature. However it is pertinent to mention three main - aspects in connexion with the above:

a) From the economic point of view we considered payments in relation to similar products or processes in a given sector; additionally royalty payments on similar products in other countries and the licensing history of the companies involved were taken

into account.

- b) From the technical point of view we have access to technical - studied developed specifically by the National Council on - science and technology (CONACYT) and other institutions such- as research institutes.
- c) In general terms the techno-economic evaluation concerning - this aspect was conducted in close rapport with the recipient companies.

Most frequent violations to other clauses are by degree of impor- tance the following:

Clause XIII	(41.2%)
Clause XI	(39.1%)
Clause V	(28.5%)
Clause IV	(26.3%)
Clause VII	(25.9%)
Clause XIV	(20.4%)

Re-negotiation and modification of contracts.

An important number of contracts upon which the initial registry's decision was negative, have been revised and modified. So far 130 of contracts examined were modified and adjusted to the law. This was possible through a continuing effort and intensive negotiations with the parties concerned.

On 15 cases the resolution was changed through the process of - appeal.

- The re-negotiation of contracts has taken place on very informal basis and the registry has been able to influence the revision on three different stages:

- a) Before the contract has been officially submitted (sometimes before signing).
- b) After submission, but before reaching a final decision.
- c) After a contract was denied.

In the re-negotiation stage, the registry have acted with a high degree of receptiveness and flexibility. A deliberate effort was made to understand the complexities involved in contract negotiations and to appreciate, what is equitable and what is not in a technology agreement .

An important amount of information was gathered an a very active team or researchers is maintain to provide objective and consistent resolutions.

There is a recognition on the need to introduce a consistent - an well defined approach in the implementation of the law trying at the same time to be selective and careful enough to assess - the worth of a particular transaction in terms of its input and its value to Mexico.

C H A R T 1

NEGATIVE RESOLUTIONS ON VIOLATIONS TO ARTICLE 7°.

(BALANCE TO 31st March, 1974)

Total number of negative resolutions 274

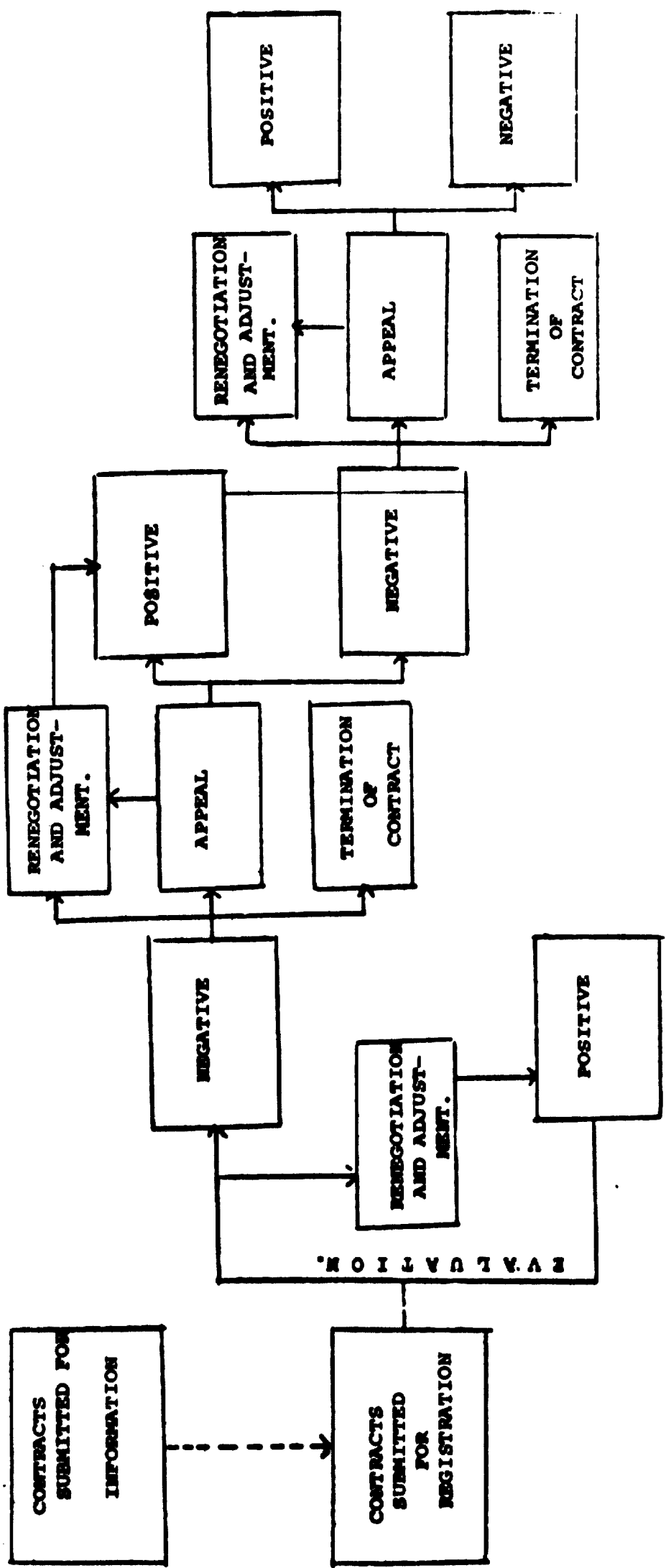
C L A U S E	No. NEGATIVE RESOLUTIONS	
	INDICATING A VIOLATION.	
I.- Technology involved was freely available in the country.	3	(1%)
II.- Remuneration was not in relation to the technology acquired or constituted an excessive burden on the country's economy.	225	(82.1%)
III.- Interference with the management of licensee	23	(8.4%)
IV.- Obliging licensee to grant back to licensor patents, trademarks improvements, etc.	72	(26.3%)
V.- Limiting licensee's R & D efforts.	78	(28.5%)
VI.- Obligation to acquire from Licensor equipment, parts, raw materials, etc.	45	(16.4%)
VII.- Restricting exports, contrary to Mexico's interest.	71	(25.9%)
a) Total prohibition.	52	(19.0%)
b) Restrictions on important geographical areas or countries.	19	(6.9 %)

C H A R T I

C L A U S E	No. NEGATIVE RESOLUTIONS INDICATING A VIOLATION	
VIII.- Prohibiting the use of complementary technology.	9	(3.3%)
IX.- Obligation to sell licensed products to the supplier company only.	3	(1.1%)
X.- Calling for permanent employment of personnel appointed by licensor.	1	(0.4%)
XI.- Limiting production volumes or imposing sales price on licensed products.	107	(39.1%) *
XII.- Obligating licensee to sign exclusive-sales contracts.	3	(1.1%)
XIII.- Establishing excessively long terms of duration of contracts.	113	(41.2%)
a) Obligatory period exceeding 10 years	50	(18.3%)
b) Excessive period under 10 years.	23	(8.4%)
c) Obligations to licensee exceeding 10 years.	40	(14.5%)
XIV.- Calling for contract disputes to be submitted to the jurisdiction - of courts in a foreign country.	56	(20.4%)

* Most of violations to clause XI resulted from a prohibition to licensee, not to use the technical information after termination of the agreement.

1st. RESOLUTION 2nd RESOLUTION 3rd RESOLUTION



FLWSHEET OF THE EVALUATION PROCESS - RESOLUTION AND RENEGOTIATION OF - CONTRACTS PRESENTED TO THE NATIONAL REGISTRY OF TECHNOLOGY TRANSFER.

SUMMARY

The basic orientation of Mexico's technology transfer policies - derives from fundamental criteria in economics and international - relations. The Mexican legislation in this field is oriented toward the development of an efficient and rationalized process for the - importation of technology. Although there is a recognition on the country's dependence on external technology, an important objective of this legislation is to gain a degree of control over this - major import, both in terms of cost and technological impact.

The technology law requires that all agreements be examined by - the National Registry of Technology Transfer and goes into considerable detail to enumerate the kinds of restrictive practices - that must be eliminated from contracts.

A preliminary evaluation of contracts submitted for registration - showed that they contained serious restrictions that were in detriment of the recipient companies and created obstacles to meet the economic and social objectives of Mexico.

The main benefits obtained so far through the application of the - law can be listed as follows:

- Important savings on foreign exchange through the reduction of technological payments.
- A reduction on the cost of goods manufactured under license con to ducive/ameliorate inflationary pressures.

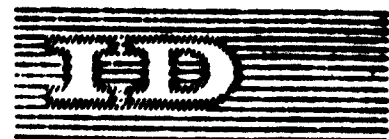
- Opening export possibilities to Mexican products which otherwise had to be sold domestically; due to contractual limitations.
- Better possibilities to acquire equipment, raw materials etc. - from international sources.
- A more efficient process in the selection and negotiation of - foreign technologies with the support of the technology registry.
- The creation of a "new" recipient enterprise attitude" toward - the promotion of local technological capabilities and a more - closer cooperation between the government and the productive - units in the country.

The preliminary review presented in this paper served to corroborate the justification of having enacted a technology law in Mexico. It presents a clear evidence of the unsatisfactory conditions - that characterized the technology agreements existing in Mexico - prior to January 1973.

Nevertheless, this important initiative can not be seeing as a - controlling element only as it should serve to promote the acquisition of foreign technology for the creation of a more efficient industry; to the development of technology generated locally and - hopefully in the shortest period of time to reach a more equitable relationship with licensor's from industrialized countries.



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MEXICAN LAW OF TECHNOLOGY TRANSFER AND
ITS IMPACT ON THE NATIONAL ECONOMY

by

Enrique M. Aguilar
Director General
National Registry of Technology Transfer
Mexico

Corrigendum

Page 19, line 21

For a justified read an unjustified

Page 26, line 20

For to export read not to export

A N N E X I

LAW FOR THE REGISTRATION OF THE TRANSFER OF TECHNOLOGY AND THE USE AND EXPLOITATION OF PATENTS AND TRADE-MARKS ADOPTED BY CONGRESS ON DECEMBER 28, 1972 AND PUBLISHED IN THE OFFICIAL BULLETIN ON THE 30th. OF THAT MONTH.

LUIS ECHEVERRIA ALVAREZ, Constitutional President of the United States of Mexico, to its inhabitants, GREETINGS :

The Hon. Congress of the Union has sent to me the following

D E C R E E

The Congress of the United States of Mexico hereby decrees:

LAW FOR THE REGISTRATION OF THE TRANSFER OF TECHNOLOGY AND THE USE AND EXPLOITATION OF PATENTS AND TRADE-MARKS.

ARTICLE 1 . The National Register for the Transfer of Technology, in charge of the Ministry of Industry and Commerce, is hereby created.

The National Council of Science and Technology shall be a Consulting Body, as provided in the Law creating the Council.

ARTICLE 2 . The registration in the Register mentioned in the preceding article, is obligatory for all documents containing acts, contracts or agreements of every nature which are effective in the National Territory and which have been entered into for the following purposes :

- a) The licensing of the use or exploitation of trade-marks.**
- b) The licensing of the use or exploitation of patents for inventions, improvements, industrial models and drawings.**
- c) The furnishing of technical information by plans, diagrams, models, instruction sheets, instructions, formulas, specifications, formation and training of personnel or otherwise.**

- d) The supplying of basic or detailed engineering plans for the building of facilities or manufacture of products.
- e) Technical assistance in whatever form it may be furnished.
- f) Services for the administration and operation of business enterprises.

ARTICLE 3 . The following shall have the obligation to apply for the registration of the acts, agreements or contracts specified in the preceding article when they are parties to or beneficiaries thereof :

- I . Individuals or companies of Mexican nationality.
- II . Foreigners residing in Mexico and the foreign companies established in the country.
- III . Agencies or branches of foreign companies established in the Republic.

The suppliers of Technology who reside in a foreign country may request the registration in the National Register for the Transfer of Technology of the acts, agreements or contracts to which they are parties.

ARTICLE 4 . The documents containing the acts, agreements or contracts referred to in Article 2, shall be filed with the Ministry of Industry and Commerce for registration in the National Register for the Transfer of Technology, within 60 days from the date of their execution. If filed within this period, the registration shall be effective from the date of their execution. Upon expiration of said period, the registration shall be effective only from the date of filing.

Further, any amendment of the acts, agreements or contracts referred in Article 2, must be filed for registration with the Ministry of Industry and Commerce, as provided in Article 2. When the parties terminate the contracts or agreements prior to the termination date stipulated therein, notice shall be given to the Ministry of Industry and Commerce within 60 days from the date of termination.

ARTICLE 5 . Proof of registration shall be required in order to enjoy the benefits, incentives, aids or facilities provided by the Law of Promotion of New and Necessary Industries or other provisions or

regulations governing the establishment or expansion of industrial business, or for the establishment of shopping centers along the border or in the free zones or areas, or for the approval of the manufacturing programs of persons who, being required to do so, have not registered the acts, agreements or contracts mentioned in Article 2 or the amendments thereof, in the National Register for the Transfer of Technology.

ARTICLE 6 . The acts, agreements or contracts mentioned in Article 2 and its amendments, which have not been registered in the National Register for the Transfer of Technology, shall not have any legal effect and therefore may not be enforced before any authority and compliance thereof may not be enforced before the National Courts.

Also, the above mentioned acts, agreements or contracts, the registration of which has been canceled by the Ministry of Industry and Commerce, shall have no legal effect and their compliance may not be enforced in the National Courts.

ARTICLE 7 . The Ministry of Industry and Commerce shall not register the acts, agreements or contracts mentioned in Article 2 in the following cases :

- I . When their purpose is the transfer of Technology freely available in the country, provided this is the same Technology.
- II . When the price or consideration does not represent the Technology acquired or constitutes an unjustified or excessive burden on National Economy.
- III . When provisions are included which permit the supplier to regulate or intervene, directly or indirectly, in the administration of the transferee of the Technology.
- IV . When there is an obligation to assign onerously or gratuitously to the supplier of the Technology, the patents, trade-marks, innovations or improvements obtained by the transferee.
- V . When limitations are imposed on technological research or development by the transferee.
- VI . When there is an obligation to acquire equipment, tools, parts or raw materials exclusively from any given source.

- VII . When the exportation of the transferee's products or services is prohibited, against the best interests of the country.
- VIII. When the use of complementary technologies is prohibited.
- IX . When there is an obligation to sell the products manufactured by the transferee exclusively to the supplier of the Technology.
- X . When the transferee is required to use permanently personnel designated by the supplier of the Technology.
- XI . When the volume of production is limited or sale and resale prices are imposed for domestic consumption or for exportation.
- XII . When the transferee is required to appoint the supplier of Technology as the exclusive sales agent or representative in Mexico.
- XIII. When an unreasonable term of duration is established. Such term shall in no case exceed 10 years, obligatory for the transferee.
- XIV. When the parties submit to foreign Courts for decision in any controversy in the interpretation or enforcement of the foregoing acts, agreements or contracts.

The acts, agreements or contracts referred to in Article 2, which are effective in Mexico shall be governed by the laws of Mexico.

ARTICLE 8 . The Ministry of Industry and Commerce may register in the National Register for the Transfer of Technology the acts, agreements or contracts which do not satisfy one or more of the requirements mentioned in the preceding article, when the Technology transferred is of special interest to the country. This exception shall not apply to the requirements cited in Sections I, IV, V, VII, XIII, and XIV of the preceding Article.

ARTICLE 9 . The acts, agreements or contracts required to be registered in the National Register for the Transfer of Technology do not include those relating to :

- I . The immigration of foreign technicians for installation of factories and machinery or for making repairs.
- II . The furnishing of designs, catalogues or advice, in general, which is acquired with the machinery or equipment and which may be necessary for the installation thereof, provided this does not include the making of subsequent payments.
- III . The assistance in repairs or emergencies, provided these are part of any act, agreement or contract previously registered.
- IV . The instructions or training furnished by institutions of learning, personnel training centers or by the Company to its workers.
- V . The operation of "Assembly Plants" shall be governed by the legal provisions or regulations applicable thereto.

ARTICLE 10 . The Ministry of Industry and Commerce shall pass on the registration and non-registration in the National Register for the Transfer of Technology within a period of 90 days following the filing with it of the documents containing the acts, agreements or contracts referred to in Article 2. Upon the termination of this period without the Ministry having rendered its decision, the respective act, agreement or contract shall be registered in the National Register for the Transfer of Technology.

ARTICLE 11 . The Ministry of Industry and Commerce may cancel the registration in the National Register for the Transfer of Technology, of the acts, agreements or contracts when the terms under which they were registered are amended or modified contrary to the provisions of this Law.

ARTICLE 12 . The Ministry of Industry and Commerce is authorized to verify at any time the compliance of the provisions of this Law.

ARTICLE 13 . The official personnel who participates in the proceedings relating to the National Register for the Transfer of Technology shall be required to keep secret all technological information concerning the processes or products covered by the acts, agreements or contracts being registered. This shall not include information which is in the public domain pursuant to other laws or regulations.

ARTICLE 14 . The persons who consider themselves to be affected by the rulings of the Ministry of Industry and Commerce may, as provided in this Law, request within eight days from the effective date of notice thereof, the reconsideration of such rulings, submitting the evidence which they may deem appropriate.

The petition for reconsideration shall be filed in writing with the Ministry.

In the petition for reconsideration the petitioner shall offer proof and submit that in his possession. Oral and confessional evidence shall not be admitted. The Ministry may introduce the evidence it may deem pertinent in rendering its ruling.

When the period of proof has elapsed, the Ministry shall render its decision within a period not to exceed 45 days. Upon the expiration of this period without a decision being rendered, the reconsideration shall be deemed to be in favor of the petitioner.

TRANSITORY ARTICLES

FIRST This Law shall become effective 30 days following its publication in the "Diario Oficial" of the Federation.

SECOND. The acts, agreements and contracts referred to in Article 2 which have been entered into prior to the effective date of this Law, shall be adjusted to conform to the provisions hereof and registered in the National Register for the Transfer of Technology within two years following the effective date thereof. The Ministry of Industry and Commerce may extend this period when special circumstances so justify.

The documents containing the acts, agreements or contracts shall be filed with the Ministry of Industry and Commerce for its information, without passing on their contents, within 90 days following the date the Law becomes effective.

THIRD . When the provisions of the previous article are complied with, within the periods therein established, the parties may continue to enjoy the benefits and incentives referred to in Article 5, which have been previously granted to them. Otherwise, such benefits and incentives shall be canceled.

FOURTH. Until the acts, agreements, or contracts referred to in Article 2 have been adjusted to the provisions of this Law and have been registered, the parties shall not have the right to enjoy the benefits, incentives, aids or facilities referred to in Article 5, nor shall their manufacturing programs be approved.

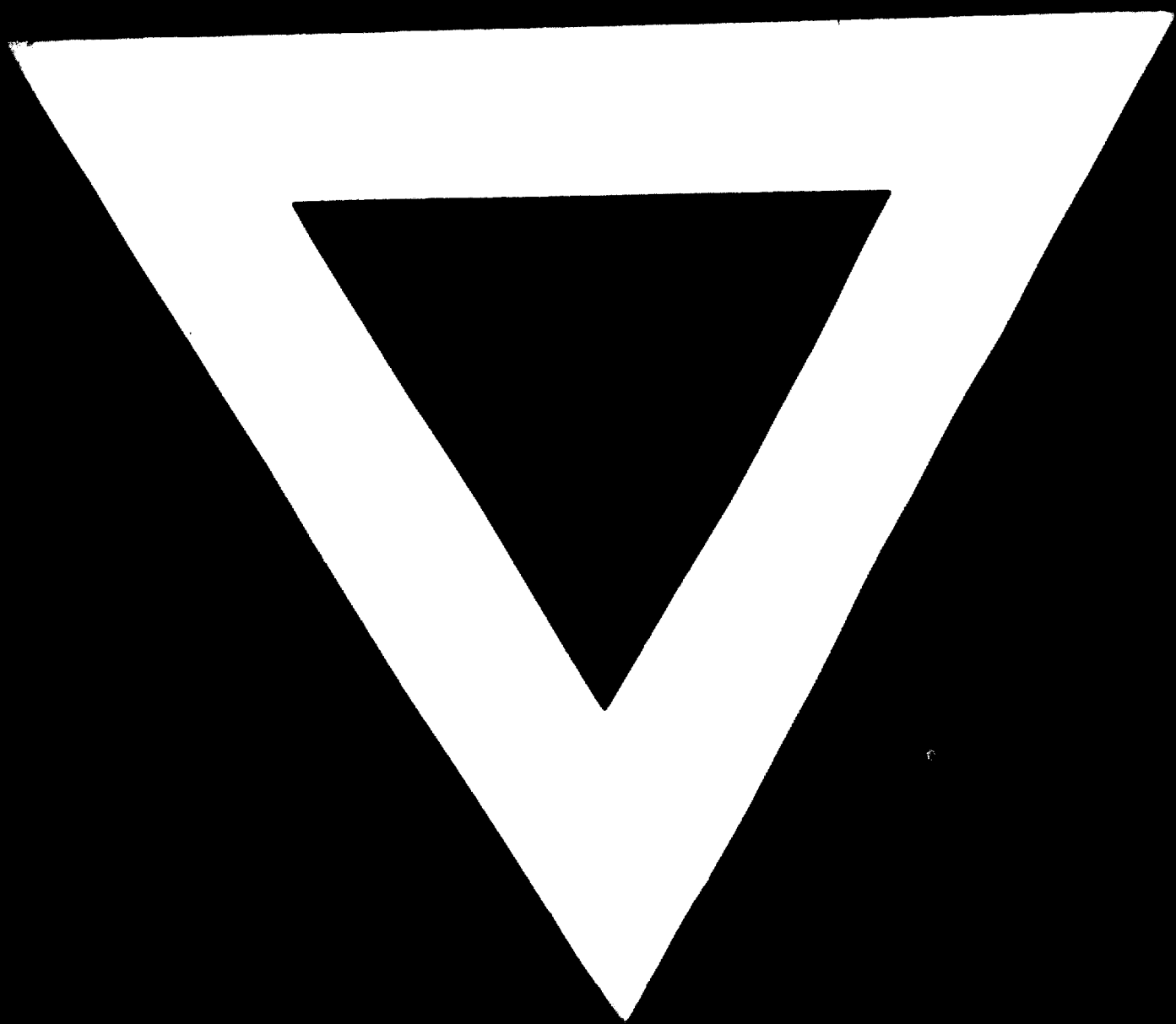
FIFTH . Upon the termination of the periods referred to in Transitory Article Second and the extensions thereof, the acts, agreements and contracts which have not been registered in the National Register for the Transfer of Technology, shall not be legally effective, as provided in Article 6.

SIXTH . In the case of acts, agreements or contracts which have been executed prior to the date of this Law, the ruling of the Ministry of Industry and Commerce on their registerability in the National Register for the Transfer of Technology, shall be issued within 120 days following the date of filing the documents.

Mexico, D. F., December 28, 1972. "YEAR OF JUAREZ".

In compliance with Section I of Article 89 of the Federal Constitution of the United States of Mexico and for its publication and observance, I hereby issue the Law in the residence of the Executive Power in the City of Mexico, Federal District, on December 28, 1972. "YEAR OF JUAREZ".





74.10 .1