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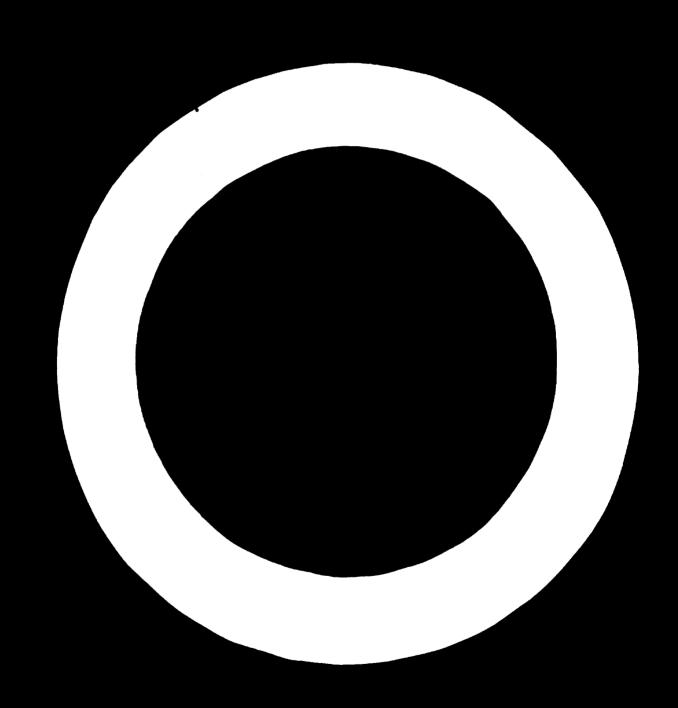
Distr. LIMITED ID/MG.178/8 25 November 1974 ORIGINAL: EMOLISM

United Nations Industrial Development Organization

Regional Seminar on Know-how About Licensing Arrangements Manila, Philippines, 30 May-6 June 1974

PINL PEPORT 1/

We regret that some of the pages in the microfiche copy of this report may not be up to the proper legibility standards, even though the best possible copy was used for preparing the master fiche.



INTRODUCTION

1. Background

The Far East Asian region with its vast human and significant natural resources counts for approximately 5% of the world's gross industrial product. It is now noticeable that transfer of technology approximately increasing attention by the governments of the region. In fact, the benefits and drawbacks to developing countries from an accelerated process of transfer of technology and know-how through licensing arrangements are fully appreciated.

The region consists of countries with a clear licensing policy as well as countries where such a policy is still in an early stage of formulation.

2. Objectives of the Seminar and Action by UNIDC

Taking into account the above-mentioned problems of technology transfer by licensing arrangements, UNIDO, in co-operation with the Government of the Philippines, organized a regional seminar on "Knew-how about Licensing Arrangements" in Manila from 30 May - 6 June 1974. The Seminar was intended to discuss between government officials dealing with licensing in their respective countries all aspects of licensing arrangements, their impact on national accommiss and industrialization as well as discuss in depth the past experience and formulate proposals for appropriate assistance for evaluating and negotiating licensing proposals. Special attention was given at the Seminar to the exchange of experience among participants on licensing arrangements and practices in their respective countries. It was expected that the participants and enterprise level through this Seminar.

As a follow-up of the Seminar an establishment of the regional expert assistance totalling to 12 m/m available for Far East Asian countries to conduct evaluations and studies at the national level is foreseen.

3. Agenda and Programme

The agenda and programme of the Seminar are given in all nex I to this report.

4. Participants

Participants in the Seminar included:

- (a) Senior government officials responsible for licensing policies;
- (b) UNIDO consultants;
- (c) Observers from international organisations;
- (d) Observers from various Philippine agencies representing the public and private sector.

A full list of participants is given in annex II.

5. Opening of the Seminar

Mr. H.A. Janiszewski, Associate Industrial Development Officer, Industrial Institutions Section, Industrial Services and Institutions Division of UNIDO, welcomed all participants and observers on behalf of UNIDO.

Mr. E. Tordesillas, Vice-Chairman of the Board of Investments (BOI), welcomed the participants on behalf of the host government.

Opening remarks were also given by Mr. R. Lalkaka, UNIDO regional advisor to ESCAP, Mr. S. Patel, Chief, Industrial Technology Branch, UNCTAD, and Mr. R. Goldscheid UNIDO consultant.

6. Election of Officers

The following were elected officers of the Seminar:

Chairman:

Mr. E.L. Tordesillas Vice-Chairman of BOI

Vice-Chairman:

Mr. A. Limjoco

Governor, Central Bank of the Philippines

Rapporteur:

Mr. C.V.S. Ratnam

Managing Director, MRDC of India

7. Discussion Papers

Eleven discussion papers were presented by, or on behalf of, consultants and participants (see annex III).

The highlights of each paper were briefly presented by the consultants in about half ar hour. This was followed by an intensive discussion of the project of ca. 2-2 1/2 hours. At the end of the discussion the chairman and resporteur presented the salient points and recommendations.

8. Closing of the Seminar

At its closing session on 6 June 1974 the report of the rapporteur was unanimously approved and UNIDO was authorised to take further necessary actions on it.

The recommendations by the participants were discussed and unanimously adopted.

RECOMMENDATIONS OF THE SEMINAR

The Seminar, having duly considered and discussed the issues on the approved agenda, recommended that:

1. For the Attention of Governments:

- It was recognized that the essential need for developing countries was to evolve appropriate legislations/executive measures for the regulation of technology coming into their countries. Such legislation/executive measures could cover by and large the provisions of anti-trust legislation and measures in the USA, Japan and the EEC countries.
- (b) It was recommended that the governments of developed and developing countries provide guidelines so that both the technology donors as well as technology acceptors could negotiate within those guidelines. This would greatly help the process of technology transfers under conditions beneficial to the buyer and the seller. These guidelines could be revised from time to time depending upon experience. However, once the guidelines are formulated, they should be applicable for a reasonable length of time for ensuring stability.

In this connection the document prepared by a group constituted by the Pugwash Conference on Code of Conduct for technology transfer might be considered useful. However, there is need for adapting these guidelines to existing and future particular needs of individual countries.

- (c) In the developed countries there was need for a more enlightened view among licensors as well as in governments because one-sided and exploitative licence agreements in the long run will be self defeating.
- (d) There was a came for governments of developed countries to devise measures such that technology could be made available to developing countries at terms less onerous than at present.

2. For the Attention of International, Regional and Other Agencies:

- (a) The Seminar requests the Executive Director of UNIDO to bring to the attention of the seminar countries the recommendations of the Seminar and to make necessary budgetary provisions for implementing these recommendations, particularly the recommendation on the creation of the unit envisaged under recommendation 1(c).
- (b) In the context of the problems and difficulties enumerated above and the need in developing countries for further developed knowledge and skills in different

aspects of technology licensing, the Seminar was strongly of the view that the technical assistance and expertise provided by UNIDO in this field should be substantially expanded. In particular, UNIDO could concentrate on the following areas:

- i. Greater assistance in the formulation and improvements of policies and guidelines in respect of technology acquisition and licensing in developing countries should be available at the national and regional levels.
- ii. UNIDO should organize mystematic and continuous flow of information to developing countries regarding alternate sources of technology and latest improvements and developments in technology. In this connection, the interests of member countries have to be taken into consideration by UNIDO.
- recommended that an institutional unit for technology licensing should be created at UNIDO headquarters, as early as possible, which will be responsible for collection, analysis and dissemination of information and data regarding licence agreements and experiences available in developing sountries in this field. This unit would serve as a clearing unit for such information. For this purpose, the unit could collect from developing countries essential data on licence agreements in those countries, analyse and evaluate such data to suit specific objectives of member countries.
- iv. This should serve as a permanent forum in this area for exchange of experiences between developing countries on licence agreements and technology transfer.
 - Some of the above-mentioned services might be provided by the Regional Advisor on licence agreements to be made available to participating countries. These services would be strengthened wherever necessary.
 - v. The Seminar considered it necessary that the UNIDO should organise a series of meetings, conferences, etc. at both regional and national levels in these countries with a view to study, analyse and advise on licensing practices in these countries.
 - vi. The strong need for organisation by UNIDO of a series of working meetings, studies, surveys at national, regional and international levels relating

- to licensing practices in specific industrial sectors was expressed. The choice of the subjects could be decided by UNIDO in consultations with the member countries concerned.
- vii. It was felt by the participants that need existed for greater co-ordination of efforts between various UN bodies in the field of transfer of technology. It relates specifically to the activities of UNCTAD and UNIDO.
- viii. The UN organizations like UNIDO, ESCAP, and UNCTAD should play a much greater role in guiding the developed and developing countries in the transfer of technolog, and in negotiating licensing agreements. They should draw equitable guidelines which the national governments could take up and use as the basis for drawing up or strengthening their open guidelines.
 - ix. As requested by participants from Thailand, UNIDO should organise a programme in Thailand for the training of personnel dealing with licence agreements and transfer of technology in that country. This is subject that to the approval of the Government of Thailand.
 - x. The Seminar recommended that a regional workshop on licensing and technology transfer be organized by UNIDO at Kuala Lumpur durin. February/March 1975, for exchanging information based upon case studies on licence agreements and technology transfer. This is subject to the approval of the Government of Malaysia.

SUMMARY OF DISCUSSIONS

1. Basic Elements of International Licence Agreements Involving Developing Countries

It was observed that international licensing in comparison to other means of trade involves a comprehensive amount of commercial, financial, legal and technical problems which both sides have to consider carefully and in the overall context of the particular transaction. Moreover, as in most cases, the licence agreements tend to last for a period of 5-10 years, the following points should be clearly defined to avoid future misunderstandings and disputes:

- (a) clear definition of particular technology being subject to the agreement;
- (b) estimation of the potentials of the technology (including its description, employment effect, etc.);
- (c) territory (both as regards rights of use as well as sales);
- (d) duration of the particular agreements;
- (e) governing laws;

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(f) financial considerations, especially in long-term agreements.

The need for elastic approach to licensing processes by both sides has been especially underlined. It was stressed also that the need for a common language is of particular importance and in this area the role of UNIDO is seen as an agency which could provide for donors and recipients a suitable forum for mutual discussions. It was the general feeling that training of nationals of developing countries in matters relating to licensing is of great importance from the point of view of strengthening their negotiating capabilities. It is also essential that the licenses should profit from the continuous research and development efforts of the licensor. A strong need for national regulations on technology transfer through licensing in the developing world has been stressed.

2. Practical Remarks Concerning the Selection of Technology Including Main Considerations of the Purchase of Intermediate Products, Components, etc. in Licency Agreements

The acute problems which most developing countries are facing are selection of technology, alternative sources of technology, and analysis of available technologies. Criteria for technology selection were specified as follows:

- (a) economic viability;
- (b) availability of trained manpower;
- (c) raw materials supply;
- (d) markets:
- (e) product life;
- (f) commercial proven process;
- (g) availability of components and intermediate products;
- (h) pollution aspect;
- (i) patent aspects:
- (j) olimatic conditions.

In addition to the oriteria of technology selected as specified, which could be adapted by any country, the following are guidelines for importation of technology in Japan:

- (a) impact on domestic technology development;
- (b) impact on medium and small scale industries;
- (c) impact on industrial order:
- (d) quality of donor and receiving companies.

It was underlined that a clear licensing policy whether in developed or developing countries with explicit guidelines is of fundamental importance to the national economy. A detailed description of the functions and activities of the Japan Ministry of International Trade and Industry, in connection with government policies on licensing was given. A review of balance of payments in licensing in the world has been discussed and the question of necessary choices between development of indigenous and imported technologies explored. The need for an information centre on licensing conditions and sources of alternative technologies has been mentioned several times.

1. Legal. Commercial and Financial Considerations in Licensing Negotiations:

A historical and economical background for the need of legislation in licensing has been given with special emphasis on the part of US and EEC antitrust law related thereto. A recommendation was made that developing countries should fermulate at least such a legislation that would be in conformity with the laws on restrictive business practices which now exist in industrially developed countries.

It was a common opinion that in principle in licence agreements the differential rate of royalties should not appear. However, there are certain particular cases where such different levels could be applied. The lack of information on licence agreements in developing countries has been confirmed and the need for establishment of some aind of information pool, preferably at UNIDO, was underlined. Possibilities of bringing the cases related to developing countries violating anti-trust legislation to the US or EEC anti-trust courts were broadly explored.

4. Mexican Law on Technology Transfer and its Impact on National Economy

In general, the need among developing countries for the establishment or strengthening of national machineries for handling licensing arrangements has been obvious during the discussions at the Seminar. In this connection a detailed description and the first year of experience of the recent Mexican law has been presented. It was stressed that the main objectives of Mexican policies in licensing are:

- (a) definition of technological requirements;
- (b) selection and adaptation of technology;
- (o) strengthening and negotiating power by domestic enterprises.

Moreover, the concrete financial effects of the Mexican legislation have been presented with detailed figures concerning the number of agreements already reviewed and savings achieved due to the legislation. It was observed that each country—willing to introduce any legislation related to technology transfer should first of all take into consider tion its own economic and politice; situation, define goals of such a policy and review other countries, positive and negative experiences. The need for a continuous exchange of experience among developing countries on licensing policies was mentioned. In this light UNIDO's role has been explored in detail.

5. International Regulation of Transfer of Technology

Possibilities of establishing international regulations of technology transfer have been widely discussed based upon the Code of Conduct in Technology Transfer elaborated in the Puguash Conference and UNCTAD. It was however stressed very clearly that taking into consideration the different needs of developing countries, their various levels of development, establishment of international

legislation right now might be a premature step. It was underlined that the countries should have to make first of all their own arrangements for regulating the flow of technology and overcome abuses that existed in technology transfer. On the other hand there was a feeling among the delegates on the need to continue dialogue on international regulation of technology transfer. In this field coordination of activities of UN agencies is much desired in order to save time and avoid waste of resources and efforts.

6. West-European Approaches on the Acquisition of Technology through Licensing

The developed economy approach to licensing (West-European especially) is based on a principle of a private company to company transaction. In general, the governments do not restrict this kind of activity with the exception of anti-trust and taxation regulations. Some, however limited, restrictions may exist in connection with the current foreign exchange situation. The legislation, as far as existing, tends rather to oncourage enterprises to licensing which forms an important element of balance of payments. The alternative sources of available technologies from medium and small-sized companies from Europe for developing countries has been mentioned.

1. The Changing Role of Governments in the Regulation and Promotion of Licence Agreements

Governments, particularly in developing countries, should have a leading role in setting up proper national policies in technology transfer. The examples of successful Japanese, Mexican, Argentine—and Indian policies have been mentioned in the course of the Seminar. It is also obvious that there is no commonly applicable recipe for the establishment of national licensing policies by the particular governments. Each country should and could take its own measures and apply its own patterns. These policies may be based upon foreign exchange control, foreign investment control, other legislative measures, domestic production protection, development of particular industries, etc. In this context the great role of UNIDO has been mentioned which has all facilities to assist developing countries in establishing and/or strengthening national machineries for handling licensing and technology transfer agreements.

8. National Approaches on the Acquisition and Adaptation of Technology through Licensing in Asia with Special Reference to India, Thailand, the Philippines, the Republic of Korea and Indonesia

The Asian region gives a cross section of all possible approaches to international licensing. India and the Republic of Korea have a clear policy and well established institutional arrangements in this area, Thailand adapts an approach of different nature, similar to the one of Western Europe. Licensing in other countries, like Indonesia, and the Philippines has a different approach without a clear government policy and decisions taken on enterprise to enterprise transactions. A short review of the existing situation in Malaysia, Iran and Pakistan was given in the course of the discussions with special emphasis on existing governmental policies. It was agreed that UNIDO will be supplied with updated information on the licensing situation by these particular countries.

9. Exchange of Experience between Participants on Licensing and Technical Co-operation Agreements

A detailed analysis of India's experience on technology transfer, licence agreements, existing types of technology transfer, evaluation of technology, selection of appropriate technology, untying of technology and foreign aid, = channelling of import of technology for small-scale industry was given. Similar, but shorter, analyses were presented in the case of Pakistan, Sri Lanka, Malaysia, the Republic of Korea, Singapore, Thailand and the Philippines. In this field the Republic of Korea has published a paper on sources of available technologies which contains a list of over 4,000 technologies with their short description, patent situation, and names of potential licensors. The paper has been published by the Ministry of Science and Technology of the Republic of Korea. 'n thie connection it was agreed in principle that, provided UNIDO will establish a licensing information centre, the countries which participated in the Seminar will contribute, among others, by supplying basic information on licence agreements in their respective countries. The ide, of organizing a workshop by UNIDO which should be devoted to selected industries and during which licensing cases will be presented and discussed, has been explored. It was a general belief that a panel discussion meeting between developing countries themselves would play a very useful rols in the process of collecting information, the lack of which is especially felt during negotiations of licence agreements.

AMOUNT I

ACCORDA

- 1. Registration and administrative matters
- 2. Organisation of the Seminar:
 - (a) Election of officers
 - (b) Adoption of the Agenda and Programme
 - (c) Organisation of the work
- 3. Presentation of discussion papers by consultants and participants.
- 4. Discussions
- 5. Draft Report
- 6. Adoption of Recommendations
- 7. Closing Remarks

PROGRAMO

Wednesday, 29 May 1974

15:00 Registration of participants at the Bayview Hotel, Roxas Blwd., Manila, Philippines

Thursday, 30 May 1974

9:00 Registration of delayed participants

10:00 Opening of the Seminar by the representative of the Government of

the Philippines and by the representative of UNIDO

Election of the chairman and rapporteur of the Seminar

R. Goldscheider: "Basic elements of international licensing agreements involving developing countries"

Priday. 31 Nay 1974

9:00 N. Okano: "Practical remarks concerning the selection of technology including main considerations of the purchase of intermediate products, components, etc. in licensing agreements"

14:00

E. Quenther: "Legal, commercial and financial considerations in licensing negotiations. US-EEC anti-rust laws concerning international licensing"

Seturday, 1 June 1974

9:00

H. Thomsen: "West European approaches on the acquisition of technology through licensing"

14:00

free

Sunday, 2 June 1974

free

Monday, 3 June 1974

9:00

K. Venkatarament "Mational approach on the acquisition and adaptation of technology through licensing in Asia, with special emphasis to India, Thailand, the Philippines, South Korea and Indonesia". This paper was presented by Mr. H.A. Janissewski, UMID.

14:00

K.D.M. Singh: "The changing role of the governments in the regulation and promotion of licensing arrangements"

Tuesday, 4 June 1974

9:00

E.M. Aguilar: "Mexican law on technology transfer and its impact on national economy"

14:00

Discussion

Wednesday, 5 June 1974

9100

Panel discussion: "Exchange of experience between participants on licensing and technical co-operation agreements"

14:00

Presentation of the report prepared by the Secretariat of the Seminar

Thursday, 6 June 1974

9100

8,

Adoption of the report of the Seminar

Closing of the Seminar

LIST OF PARTICIPANTS

Participants

- Mr. C.V.S. Ratnam, Managing Director National Research Development Corporation of India New Delhi, India
- 2. Mr. S.P. Shukla, Joint Secretary to the Government of India, New Delhi, India
- 3. Mr. M.A. Ibrahim, Chief, Bureau of Planning and Development Ministry of Industry, Jakarta, Indonesia
- 4. Mr. S. Ukardi, Chief, Investment Bureau Ministry of Industry, Jakarta, Indonesia
- Mr. M. Emami, Legal Adviser Industrial Development and Renovation Organization of Iran Teheran, Iran
- 6. Mr. Bak-Kwang Kang, Counsellor of Science and Technology Office of Policy and Planning, Ministry of Science and Technology Seoul, Republic of Korea
- 7. Mr. Choong Kim, Division Chief, Bureau of Foreign Investment Promotion, EPB, Seoul, Republic of Korea
- 8. Ms. I. Rogayah, Assistant Director, Industries Division Ministry of Trade and Industry, Kuala Lumpur, Malaysia
- 9. Ms. K. Abdul Rahman, Assistant Director, Industries Division Ministry of Trade and Industry, Kuala Lumpur, Malaysia
- 10. Mr. H. Aquil, Chief Research Officer Ministry of Industries, Islamabad, Pakistan
- 11. Mr. A. Sattar, Additional Director General Departmen of Investment Promotion and Supplies Government of Pakistan, Karachi, Pakistan
- 12. Mr. E.L. Tordesillas, Vice Chairman Board of Investments, Rizal, Philippines
- 13. Mr. A.L. Limjoco Jr., Governor Board of Investments, Rizal, Philippines
- 14. Mr. G. Itchon, Special Assistant Central Bank of the Philippines, Manila, Philippines
- 15. Mr. C. Lomotan, Deputy Governor Central Bank of the Philippines, Manila, Philippines
- 16. Mr. P. Afable, Vice Chairman and Executive Director National Science and Development Board, Manila, Philippines

- 17. Mr. T. Evalle, Director
 Philippine Patent Office, Quezon City, Philippines
- 18. Mr. D. Wendam, Assistant Director
 Philippine Patent Office, Queson City, Philippines
- 19. Mr. A. Arisabal Jr., Director, Board of Investments
 Executive Director, Metals Industry Research and Development
 Center, Pasig, Risal, Philippines
- 20. Mr. L.C. Mariano, Director Mational Economic Development Authority, Manila, Philippines
- 21. Mr. D. Selvaretnam,

 Economic Development Board, Singapore I, Singapore
- 22. Mr. H.R. Perera, Deputy Director, Policy Divisions
 Ministry of Industries and Scientific Affairs, Colombo 2,
 Sri Lanka
- 23. Mr. Ch. Malaigrong, Industrial Economics and Planning Division munistry of Industry, Bangkok, Thailand
- 24. Ms. S. Saikeo, Social Sciences Research Division Mational Research of Thailand, Office of the Prime Minister Bangkok; Thailand

Opservers

- 1. Mr. R. Lelkaka, Regional Advisor on Transfer of Technology UNIDO/CECAP
- 2. Mr. S.J. Patol, Chief, Trausfer of Technology Branch UNCTAD
- 3. Mr. R. Harben, Chief, External Relations Division WIFO
- 4. Ms. L.R. Bautista, Assistant Director Board of Investments, Rizal, Philippines
- 5. No. L. Tansinsin, Chief, Division of Engineering Industry and Trade, MSDB, Philippines
- 6. Mr. E. Hugo, Assistant Director Central Bank of the Philippines, Manila, Philippines
- 7. Ms. Ch. Angeles, Board Secretary and Policy Counsel MIEDC, Philippines
- 8. Mr. E. Villavicencio, President Chamber of Industries, Philippines
- 9. Mr. N.B. Salanio, Planning Systems and Consultative Services Department, MERDC, Philippines

- 10. Mr. A.Z. Tiangee, Associate Director Central Bank of the Philippines, Manila, Philippines
- 11. Mr. F. Santillan Philippine Investors Commission, Philippines
- 12. Mr. S. Montenegro, Patents and Trademarks Division Philippine Patent Office, Quoson City, Philippines
- 13. Mr. F. Duban, Senior Executive Assistant Department of Trade, Manila, Philippines
- 14. Mr. J. Ascaño, Assistant Director Board of Investments, Rizal, Philippines
- 15. Ms. J. Padilla, Legal Officer
 Philippine Patent Office, Queson City, Philippines
- 16. Mr. K.N. Kohli, Asian Development Bank

UNIDO Secretariat

- Hr. Hubert A. Janissewski, Assoc. Industrial Bevelopment Officer Industrial Institutions Section, Industrial Services and Institutions Division, UNIDO, Vienna
- 2. Mr. K.D.N. Singh, UNIDO Consultant

Consultants

- 1. Mr. E. Guenther, President Bundeskartellamt, Berlin, Fed. Rep. of Germany
- 2. Mr. M. Okano, Manager, Foreign Department Sumitomo Chemical Co. Ltd., Osaka, Japan
- 3. Mr. E. Aguilar, Director General, National Registry of Transfer of Technology, Ministry of Commerce and Industry, Nexico City, Nexico
- 4. Mr. H. Thomsen, Director
 The Export Council of Norway, Oslo, Norway
- 5. Mr. R. Goldscheider, Partner
 The Industrial Property Rights Group, New York and Lendon

AMMEX III

LIST OF DOCUMENTS

- ID/MG.178/12 Mational Approaches on the Acquisition and Adaptation of Technology through Licensing in Asia. With Special Emphasis to India, Indonesia, the Philippines, Republic of Korea and Thailand.

 K. Venkataraman, India.
- ID/WG.178/29 Basic Elements of International Licensing Agreements Involving Developing Countries.
 R. Goldscheider, USA.
- ID/WG.178/3 The Changing Role of Governments in the Regulation and Promotion of Licensing Arrangements.
 K.D.K. Singh, UMIDO Consultant.
- Practical Remarks Concerning the Selection of Technology Including Main Considerations of the Purchase of Intermediate Products, Components, etc. in Licensing Agreements. N. Okano, Japan.
- ID/WG.178/5 West-European Approaches on the Acquisition of Technology Through Licensing.
 H.B. Thomsen, Norway.
- Legal, Commercial and Financial Considerations in Licensing Negotiations. UB and EEC Antitrust Laws Concerning International Licensing.

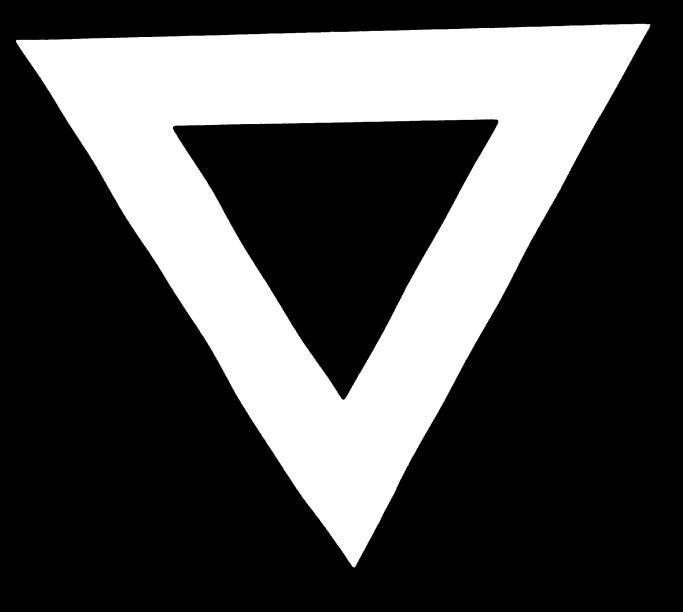
 E. Quenther, Fed. Rep. of Germany.
- ID/MG.178/7 Nexican law of Technology Transfer and its Impact on the National Economy. E.N. Aguilar, Nexico.
 - International Regulation of Transfer of Technology. S. Patel, UNCTAD.
 - Foreign Licensing Agreements. Experience in Developing Countries with Special Reference to India. C.V.S. Ratnam, India.
 - Mational approach on the Acquisition and Adaptation of Technology, in Come of Korea.

 Bab-Kuang Zang, Republic of Korea.
 - Beed to Promote International Licensing Transactions, Pakistan's Experience.

 N. Aquil, Fakistan.

³ A limited number of these documents are available from UNIDO upon request.

These papers were not presented a efficial UNIDO decuments.



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