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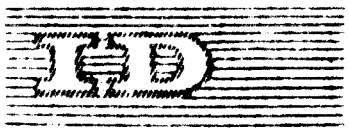

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REVIEW OF LEGISLATIVE AND ADMINISTRATIVE SYSTEMS FOR THE REGULATION OF TECHNOLOGY TRANSFER AGREEMENTS 1/

prepared by

the secretariat of UNIDO

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CONTENTS

Introduction

The purpose of this paper is to describe briefly existing administrative and legislative systems, which have been adopted in selected countries throughout the world for regulating, promoting and channelling the inflow of foreign technology into these countries.

Parallel to increasing industrialization of these countries the attention of industrialists and governments has been increasingly called to the fact that the impact of agreements concerning importation of technology on the overall economy of a country is usually not limited to spending certain amounts of a foreign currency.

This impact is of a far more complex character and includes among others:

(a) Effect on balance of trade;
(b) Effect on balance of payments;
(c) Effect on the development of certain branches of the industry;
(d) Immediate effect on those branches of industry which supply components necessary for license production;
(e) Effect on the export potential of a given country;
(f) Effect on employment.

As may be seen from this enumeration, the impact of agreements for technology importation is of a complex nature, which requires attention not only of entrepreneurs and immediate users of technology but also of many other sectors of economy in general.

The following chapters describe in detail existing administrative and legislative systems in selected regions (Socialist countries of Europe; systems adopted in Western Europe, USA and Japan; systems in selected countries of Asia and Latin America) and attempts at regulating transfer of technology of regional and international character.

I Administrative Systems for Regulation of Technology Inflow in Socialist Countries of Europe

All centrally planned economies of the socialist countries of Europe have adopted in general a similar system for governmental control of the inflow of foreign technology, which is based on the principle of governmental monopoly over foreign trade transactions.

This principle gives authorization for governmental or government controlled enterprises to negotiate and conclude agreements of various characters with foreign companies.

In order to unify the administrative system under the ministries of foreign trade, specialized trading agencies (or foreign trade enterprises) have been established with the aim of supplying their local industrial counterparts with the required goods and technologies and of selling their products on foreign markets.

With the growing industrial potential of the socialist countries, more and more such trading agencies have been created; for example their number in Poland has increased from 6 operating agencies in 1949 to almost 60 in the early 1970s.

Taking into consideration the complex nature of technology transfer agreements which may include delivery of technology, delivery of equipment, know-how supplies, training facilities, possibilities of joint ventures both at home and abroad, establishment of various sales nets specialized trading agencies charged exclusively with these types of transactions have been created

These specialized trading agencies are Licencintorg in the Soviet Union, Polservice in Poland, Technika in Bulgaria, Polytechnoa in the CSSR, Licencia and Tesco in Hungary, and the Zentrales Büro für Internationalen Lizenzhandel in the German Democratic Republic.

The administrative scheme for technology purchase requires usually that such a purchase should be included in five year national planning cycles with an appropriate indication of the industrial ministries charged with its implementation. When a suitable investor is being named (or industrial enterprise), the investor contacts the trading agency, which

undertakes the necessary steps to start and finalize the agreements.

Such a system has certain advantages and disadvantages. To the former belongs, first of all, the possibility of highly advanced specialization and commercialization of knowledge, experience and expertise, particularly very valuable for licensing arrangements as well as for high level negotiations with foreign partners. This is of primary importance when dealing with multinationals and other international companies.

On the other hand, the disadvantage of this system lies mainly in the heavy bureaucratic machinery and the number of decision levels (they usually include the planning commission, industrial ministry, ministry for foreign trade, investors and foreign trading agencies), which have the right and obligation to impose their views and opinions in each particular case.

Another disadvantage is that no immediate contact is established between potential licensors and potential licensees.

One should, however, underline the fact that the many decision levels provided for accurate and detailed screening of the agreements which, with particular view to this system, should first of all fit into national development plans.

The currency considerations in terms of approval of contracts are not of primary concern once the investments have been included in the development plans.

A more detailed information on systems in CMEA (Council of Mutual Economic Systems) countries can be obtained from the text of Mr. Singh (1) and Mr. White (2).

II. Regulations of Technology Transfer in Selected Countries of Western Europe, USA and Japan

Generally in western Europe, and particularly in member countries of the European Community, there is no Government regulation concerning technology transfer in terms of currency control and other governmental inter-

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(1) K.D.N. Singh: "The Changing Role of Governments in the Regulation and Promotion of Licensing Arrangements" (UNIDO: ID/WG.178/3)

(2) White US/USSR: "Technology and Patents Sale and License Prospects" by LES/USA Inc.

[illegible] agreements.

On the other hand, governmental control over provisions which might restrict trade or interfere with competition is becoming increasingly significant.

Therefore, consideration should be directed to anti-trust and similar matters as developed by the Common Market. This extends of course far beyond licensing and, up to the present, attention has been directed to various buying and selling arrangements and similar contracts.

In recent years, however, the Commission of the Common Market in Brussels has taken up the subject of license agreements, and there have in fact been a number of decisions made on such agreements at both the Luxembourg Court and the Commission itself.

In short, the Commission of the Common Market in Brussels is now in the process of formulating more precisely which provisions can be included in licensing agreements and which are illegal (3). This will result in considerable changes to licensing practices within the Common Market. (4)

The basic act for the above-mentioned considerations is Article 85 of the Rome Treaty, which says that practices "likely to affect trade harmfully between member states and which have the object or effect of preventing, restraining or distorting competition" are not permissible and are illegal. The actual trend of developments in the Common Market seems to show that the Commission is slowly starting to exercise a certain control over licensing arrangements. In the period of 1964 to 1970 some 3,500 agreements related to know-how and industrial property were notified to the Commission.

An interesting situation exists in France as a consequence of a law of 1967 (decree no. 67/72 of 21 January 1967), modified in 1970, which provided for the following:

(1) A contract between a French and foreign party relating to the assignment or licensing of the French party of "industrial property rights ....

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(3) See "National Approaches in Western Europe on the Acquisition of Technology by Licensing" by C.G. Wickham

(4) Ibid

technical assistance ... know- ow and engineering" must be filed with the Ministry of Industry at least two months before its coming into effect.

(2) These will be examined by the Ministry in order to consider whether technology available in France has been assessed; the Ministry is obliged to give its views within forty days of contract submission.

(3) Yearly statements of expenditures under contract have to be reported to the Ministry.

This decree has been of interest in so far as it provided for the Ministry not to approve or reject a license, but just to express its views on the agreement to the French party. In 1970 a new decree, no.70/441 replaced the old one of 1967 with provisions of reporting agreements as described above to the Ministry of Industrial and Scientific Development. This new law did not forseee the possibility of the Government expressing its opinion on reported contracts.

An extremely interesting situation has develped in Spain where a new decree no.2343 of September 21 1973, regulating the transfer of technology, and a Governmental order of 5 December 1973, regulating the registration of contracts for the transfer of technology, were introduced (both texts are reproduced as annexes I and II to the present paper).

Under the decree all written contracts related to:

i) Assignment of rights for the use of patents and other forms of industrial property;

ii) Transfer of unpatented know-how, plans, magnetic tapes with digital information, diagrams, specifications, etc;

iii) Engineering services;

iv) Services in the form of studies, analyses, programming, consultancy and advice on management and administration;

v) Services in the form of education and training of personnel;

vi) Documentation and technical or economic information services;

vii) Other forms of technical assistance

shall be submitted for approval to the Registry of Contracts for Transfer of Technology established within the Ministry of Industry. The Decree

stipulates [illegible] conditions under which contracts would be approved [illegible] that all contracts in force at the date of the decree must be registered within one year.

The [illegible], stipulates in detail the way contracts have to be submitted for registration and approval and gives a detailed description of [illegible] provisions which will not be allowed under the new legislation.

Important to note at the moment it is not possible to evaluate the effect of this new legislation on transfer of technology in Spain. It should be also underlined that recent Spanish legislation bears a number of similarities to earlier Mexican legislation, which will be described in the next section of this paper.

In the USA, Government intervention in licensing agreements is mainly based on the Sherman and Clayton acts, which are major basic anti-trust legislations. In recent times, a number of case decisions were directed against particular licensing provisions, which may hamper or reduce competition. M.B. Finnegan in one of his publications [5] enumerated some of the restrictive clauses in patent and know-how agreements, which would be considered illegal in the United States:

i. Tie-in clauses forcing the licensee to purchase materials and components from the licensor;

ii. Limitations and restrictions on the licensee's approaches as to other products and services, or to obtain competitive technology;

iii. Restricted or limited use of patented material, which would create a monopolistic situation;

iv. Package licenses including patents not required by the licensee;

v. Price fixing;

vi. Territorial restrictions within the USA;

vii. Certain types of cross licensing provisions.

A number of decisions of US codes have led in many cases to enforce transfer of know-how by the licensor whenever a misuse of the patent right was found.

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(5) M.B. Finnegan: Anti-trust Problems in the USA and EEC/LES Conference Tokyo, 1972

An entirely different approach to the question of regulation and promotion of foreign technology inflow has been adopted in post-war Japan, where one of the major driving forces of a rapid growth of Japan's economy has been the vigorous introduction of foreign technology.

For this purpose Japan adopted a system which requires that all technology agreements including their extension and/or amendments are subject to approval by the Japanese Government. Such approvals are granted almost automatically by the Bank of Japan for payments not exceeding US$ 50,000. All other cases are submitted to the Ministry of International Trade and Industry (MITI), which has to consult all other agencies concerned and to give its approval within thirty days. However, concerning the terms of individual licensing agreements, no rules have been published or guidelines established (6). All judgements are made on a case-by-case basis by competent authorities in each respective field. As mentioned above, all submissions related to seven specified sectors required a case-by-case analysis up to July 1973, but since then such a procedure is mandatory only for licensing agreements for computer technology. (7)

Close co-operation with the government and industry has ensured that this regulating policy has functioned in the best interest of industry and and the country's overall economy. Generally, the Government's decisions are based on whether technology conforms to national goals.

An interesting aspect of licensing in Japan should be mentioned, namely that licensing agreements must be also reported to the Fair Trade Commission (FTC), which was set up under anti-monopoly legislation and which has issued guidelines prohibiting certain restrictions on the export, acquisitions of competitive technology, tie-in clauses, etc.

III. Adminstrative and Legislative Systems for Regulation and Promotion of Foreign Technology Transfer in Selected Countries of Latin America and Asia

The countries of Latin America have been particularly active during the last five years in regulating and controlling the inflow of technology into their industries.

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(6) M. Okano: "Practical Remarks concerning the Selection of Technology..." UNIDO ID/WG.178/4

(7) "Essential Preparations for International Licensing..." UNIDO ID/WG.206/1

While India is well advanced in these matters, there is the feeling that a new dimension has been introduced by some Latin American countries in this particular field.

For the purpose of this paper detailed analysis will be provided for Argentinian and Mexican systems as well as Andean legislation, in addition to a short description of the administrative system prevailing in India.

Two laws were enacted in Argentina in 1971, law no. 9135, prohibiting the imposition of certain restrictive conditions on the automobile industry, and law no. 19231, which prescribes the regulation of agreements for foreign technology and patents and creates a national registry for all such agreements. These laws stipulate that contracts will not be approved if they contain clauses which, among others, force the purchase of equipment, raw materials or components from certain sources, restrict export, include unreasonable grant-back provisions, provide trade-mark licensing without know how, impose jurisdiction of foreign courts or require unreasonably high payments.

A new law, no. 20794, was issued in late 1974 in Argentina replacing the earlier ones, the main provisions of which are contained in Article no. 5 (stipulating which contract approvals will be rejected), and article no. 6 (enumerating restricted clauses, which cannot appear in contracts). To the most interesting provisions of the law belong the conditions stipulated in article 6, which says that "the authority of application may deny the approval of any contract governed by the present law when the acquisition of the technology in the proposed manner produces directly or indirectly any of the following effects:

(a) establishes the obligation of acquiring raw material, intermediate products or capital assets from specific origin or source of supply;

(b) regulates, alters or limits production, distribution, marketing or exploitation; or the distribution of markets or the execution of any of them;

(c) establishes resale prices to wholesalers or retailers;

(d) exempts foreign contracting parties from their liability in the event of action by third parties;

(e) prohibits the licensee from [illegible] designs, processes, technical materials, equipment [illegible] different from those mentioned [illegible] proposed contract;

(f) establishes rules in things [illegible] the licensor's [illegible] the [illegible] advertising;

(g) imposes on the licensee the obligation of contracting personnel to be [illegible] the licensor. (8)

The law provides for the obligation that contracts and their amendments or extensions should be submitted within thirty days after signature to the National Registry for License Contracts and Transfer of Technology (created by law no: 10231 of 1971).

For observing the rules of the law, a number of penalties have been foreseen. An interesting novelty in this law is the article no: 14, which opens the possibility of getting advice from the National Registry on agreement conditions prior to official submission for approval and registration. This way, the legislation gives the opportunity for extra negotiations with foreign partners and local entrepreneurs.

The Mexican legislation introduced as from January 1, 1973, provides for the creation of a national registry of technology transfer. The law was prepared after very extensive discussions and assessment of the experiences of Argentina, Japan and other countries in this field. The basic orientation of the Mexican technology transfer policy derives from fundamental principles in economics and international relations. The Mexican legislation in this field is oriented towards the development of an efficient and rationalized process for technology importation. Although there is recognition of the country's dependence on foreign technology, an important objective of this legislation is to gain a degree of control

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(8) The text of the law is being reproduced according to "Les Nouvelles" March 1975, Vol. No. 10, no:1 (for full text see Annex no. 3)

[illegible] in terms of cost and technological impact (9).

[illegible] that all agreements must be examined by the National [illegible] and it goes into considerable detail in [illegible] practices that must be eliminated from [illegible].

[illegible] article of the law stipulates that the following [illegible] (see Article):

(1) When their [illegible] in the transfer of technology freely available in the country, provided this is the same technology;

(2) When the price of consideration does not represent the technology acquired or constitutes an unjustified or excessive [illegible] on the national economy;

(3) When provisions are included which permit the supplier to [illegible] intervene directly or indirectly, in the administration of the transferee of the technology;

(4) 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;

(5) When there is an obligation to acquire equipment, tools, parts or raw materials exclusively from any given source;

(6) When the exportation of the transferee's products or services is prohibited, against the best interests of the country;

(7) When limitations are imposed on technological research or development by the transferee;

(8) When the use of complementary technologies is prohibited;

(9) When there is an obligation to sell the products manufactured by the transferee exclusively to the supplier of the technology;

(10) When the transferee is required to use permanently personnel designated by the supplier of the technology;

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(9) **The Mexican Law** of Technology and Transfer and its Impact on the National Economy" by E. Aguilar, UNIDO/ID/WG.178/7

(11) When the volume of production is limited or sale and resale prices are imposed for domestic consumption or for exportation;

(12) When the transferee is required to appoint the supplier of technology as the exclusive sales agent or representative in Mexico;

(13) When an unreasonable term of duration is established; such terms shall in no case exceed ten years;

(14) When the parties submit to foreign courts for decision in any controversy in the interpropation or enforcement of the foregoing acts, agreements or contracts.

The law, however, taking into account a need for elasticity and facts of life, provides for the possibility of approving contracts including clauses as stipulated under Article 7, points 1 - 14. No exception, however, exists for the sections 1,4,5,7, 11 and 14 of this article. Mexican legislation requires compulsory registration of all contracts being in force at the date of introduction of the law and those contracts which have been concluded both before and after this date.

Usually the National Registry is obliged to issue its decisions within 90 days of the submission date.

As may be seen from the above short review of the Mexican legislation, it gives the Government 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 technical autonomy. (10) 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 procedures existing in the country.

The Mexican law bears a number of similarties with the legislation of Argentina, systems in Japan and decision no:24 of the Junta Cartagena. However, a basic distinction should be underlined, which is that the

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(10) Ibid.

[illegible] is not the central issue. Contrary to the Ar[illegible] agreements between nationals or [illegible] companies or subsidiaries of foreign companies.

A [illegible] law is that it gives the right to [illegible] the registration of contracts of which [illegible] element is that the legislation covers [illegible] contracts (Article 2 of the law).

[illegible] has been adopted in India [illegible] Pakistan, Egypt and Indonesia.

India for [illegible] its administrative guidelines and regulations concerning technology transfer, which has enabled the Government to exercise more or less firm control over technology importations. According to one source[11] something like 2,000 agreements have been signed in the past 25 years in India involving so-called foreign collaboration, which is the term usually covering licensing and know how agreements.

Actually, India has created the following administrative system and [illegible] for approval of all contracts involving foreign technology: within the Ministry of Industrial Development there is the Secretariat of Industrial Approvals composed of three committees:

(a) The Licensing Committee;

(b) The Foreign Investment Board;

(c) The Project Approvals Board.

All applications for acquiring a licence have to go through these committees before the Government gives the so-called letter of intent to the industry, thus enabling it to start negotiations with a foreign company. Generally, the current guidelines for foreign licessing agreements in India are as follows:

(1) If a certain technology is available in the country the same technology should not be imported;

If a certain technology can be bought by fixed payment, this should be done. Equity participation is not encouraged;

License fees should be reasonable;

Royalties, if any, should normally not exceed a five-year period and 5% of the sales value of the product;

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(11) "Foreign Licensing Agreements and Experience in Developing Countries with Special Reference to India" by Dr. G.V.C. Ratnan, presented at UNIDO Seminar in Manila, 1974

(5) When technology is imported, the supplier of technology is obliged to associate himself with one of the national R+D institutions so that at the expiration of the agreement the country will be self-reliant with regard to the technology;

(6) As far as possible, restrictive clauses concerning sub licensing and exportation of goods manufactured under license should be eliminated;

(7) Whenever substantial exports are involved, some of the above-mentioned provisions are relaxed, as one of the cost important objectives of the Indian Government is encouraging exports;

(8) Under special circumstances involving sophisticated technology, special conditions beyond these guidelines are possible (12).

To be quite complete, the current review could include descriptions of the existing regulations in Brazil and Colombia, as well as existing systems of explicit guidelines in the Philippines and Indonesia. However, because of their similarity to those already analysed above, these countries have not been treated separately here.

An interesting publication in this respect has recently been issued by UNCTAD under the title "Preparation of a draft Outline of a Code of Conduct on Transfer of Technology; Selected Principal provisions in National Laws, regulations and Policy guidelines, regional regulations and other material relevant to the preparation of a draft outline of a Code of Conduct on Transfer of Technology" (13)

IV. Regional and International Attempts at Regulation of Technology Transfer

So far, one could name only a few cases of regional character concerned with the regulation of transfer of technology, out of which two are functioning and the third one is under deep and thorough consideration.

The earliest regulation was an anti-trust legislation of the European

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(12) UNIDO Seminar held in Manila, 1974

(13) UNCTAD Publication TD/B/CD/AC.1/2/Suppl.1/Addendum 1

Common Market set up by the Treaty of Rome in 1957, article 85, which says:

"1. The following shall be deemed to be incompatible with the Common Market and shall hereby prohibit any agreement between enterprises, any decisions by associations of enterprises and any concerted practices which are likely to affect trade between the Member States and which have as their object or result the prevention, restriction or distortion of competition within the Common Market, in particular those consisting in:

(a) the direct or indirect fixing of purchase or selling prices or of any other trading conditions;

(b) the limitation or control of production, markets, technical development or investment;

(c) market sharing or the sharing of sources of supply;

(d) the application to parties to transactions of unequal terms in respect of equivalent supplies, thereby placing them at a competitive disadvantage; or

(e) the subjecting of the conclusion of a contract to the acceptance by a party of additional supplies which, either by their nature or according to commercial usage, have no connection with the subject of such contract.

"2. Any agreements or decisions prohibited pursuant to this article shall be null and void.

"3. Nevertheless, the provisions of paragraph 1 may be declared inapplicable in the case of:

- any agreements or classes of agreements between enterprises;
- any decisions or classes of decisions by associations of enterprises, and
- any concerted practices or classes of concerted practices,

which contribute to the improvement of the production or distribution of goods or to the promotion of technical or economic progress while reserving to users an equitable share in the profit resulting therefrom, and which:

(a) neither imposes on the enterprises concerned any restrictions not indispensable to the attainment of the above objectives;

(b) nor enables such enterprises to eliminate competition in respect of a substantial proportion of the goods concerned".

Directly concerned with the transfer of technology is regulation no: 17 of the Council of 6 February 1962 and particularly article 24 Other considerations concerning Common Market regulations of licensing and transfer of technology agreements have been included in section II of this paper.

A different approach has been adopted by countries of the Andean group (Chile, Colombia, Ecuador, Bolivia, Peru and Venezuela), which approved in December 1970 decision no:24 of the Commission of the Cartagena Agreement on common regulations governing foreign capital movement, trade marks, licenses and royalties.

The Andean legislation provides for the mandatory submission to appropriate governmental institutions of member-countries for examination and approval of every contract (14) relating to the importation of technology or to patents or trade marks. These governmental institutions will "evaluate the real contribution of the imported technology by reference to an estimate of the probable profit from it, to the price of the goods incorporating technology or to other specific ways of quantifying the effects of the imported technology " (15).

Paragraph 20 of the above-mentioned Decision 24 is a key one for the Andean regulations of technology transfer agreements as it contains specific provisions and conditions which will not be authorized by governmental institutions of member countries (see Annex IV).

Accordingly, paragraph 25 of Decision 24 enumerates specific restrictive clauses in trade-mark agreements, which will not be allowed in contracts and which are:

(a) clauses prohibiting or restricting the exportation or sale in specific countries of products, or similar products, prepared under the trade-mark concerned;

(b) clauses requiring the use of raw material, intermediate goods or equipment supplied by the trade-mark owner or subsidiaries thereof. In exceptional cases the importing country may accept clauses of this nature, provided that the price corresponds to the price levels current on the international market;

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(14) Decision of Andean Group no:24 of December 1970 of the Commission of the Cartagena Agreement, para. 18 (for full text see Annex IV)

(15) Ibid.

(c) clauses fixing the sale or resale prices of the products manufactured with the trade mark;

(d) clauses requiring the payment of royalties to the trade mark owner for unused marks;

(e) clauses requiring the permanent use of staff supplied by the trade mark owner;

(f) clauses with equivalent effects.

As may be seen, a number of national legislations in Latin America have been affected by the Andean Group Resolution and vice versa. So far, only some of the countries, signatories of Decision 24, have adopted and introduced national mechanisms, like screening, evaluating and approving of transfer of technology agreements. These are Peru, Ecuador, and recently Venezuela.

Probably the most controversial and discussed attempt at international regulation of transfer of technology is the so-called International Code of Conduct on Technology Transfer. For the purpose of this paper a draft proposal of the Code of Conduct will be commented on as it was presented at the recent meeting of an intergovernmental group of experts convened by UNCTAD in the period of 5 to 16 May 1975 in Geneva.

The proposal of Group of 77, presented at the above-mentioned UNCTAD meeting, was based on the Pugwash draft, and considered that (according to the Pugwash draft) "...while technology transfer mechanisms including those involving international technology trade transactions, may differ according to political and economic systems and levels of development, the access to modern technology represents one of the basic conditions for social and economic development of all countries and the maintenance of world peace and the increase of overall prosperity. It is considered of vital importance to establish and implement international rules that would enable every country to appropriate equal footing in the international technology transfer". (16)

Following the above principle objectives, the Pugwash Code of Conduct

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(16) See UNCTAD Doc. TD/B/AC.11/L.12 "The Possibility and Feasibility of an International Code of Conduct in the Field of Transfer of Technology".

(see Annex 5) was submitted by the UNCTAD Secretariat for consideration within the governmental group on transfer of technology, which met in July 1974.

The developing countries represented by the Group of 77 at the Committee on Transfer of Technology, which is a body established by the UNCTAD Trade and Development Board in July 1974, introduced a draft outline of the proposed code of conduct of technology transfer, which became the basic working document of the recent session of the intergovernmental group of experts (17). It seems, however, that the document submitted by the group of 77 cannot in its present form be accepted by all countries and become an international instrument governing transactions related to the transfer of technology.

Apart from other questions, there still exists a basic controversy on a fundamental question as to whether the code of conduct should become a legally binding legislative act or a set of principles which countries may voluntarily observe.

The very important issue in connection with this document is that the proposed draft is far too broad and detailed in scope and includes a number of unrealistic conditions, which could hardly be accepted not only by suppliers but also by recipients of technology. Taking this into consideration, it is felt, however, that the work on a code of conduct will continue and probably by the end of the seventies the document will find its final form acceptable to all interested parties.

The value of a code of conduct is enormous for both recipients and suppliers of technology, and one could expect that the trading of technology at the international level will undergo basic modifications.

Finally, it should be underlined that a code of conduct opens for a number of developing and industialized countries new prospects in terms of clearly set up principles of technology transfer; for a number of developing countries it presents a certain set of guidelines concerning the way of handling transfer of technology agreements at the national level.

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(17) See UNCTAD document TD/B/C6/1

CONCLUSION

As regards [illegible] the level of national and international regulation of the transfer of technology, a number of countries have adopted different systems. For the purpose of the present paper, one could distinguish two main approaches: one is of a more administrative nature, without a more specific legislative system. This system has been applied by socialist countries of Europe, India and some other countries not analysed here, such as the Philippines and Pakistan. In this connection, it should be noted that within an administrative system the availability of foreign currency for purchase of foreign technology plays, to a certain degree, an important role.

The other approach is of a legislative nature, with necessary administrative machinery, and has been adopted by such countries as Mexico, Argentina, Japan, Spain and Brazil.

One could say that world trade in technology is facing basic changes, with more and more active participation of governments. It seems from the development in this specific area of trade with its direct impact on industrialization that the time of unrestricted trade in technology is gone forever.

Even such industrialized countries as Japan, France, the USA, Spain and EEC countries have come to the conclusion that there should be a certain central role played by the government or by its administration on the trade of technology in the sense of its regulation and channelling.

Experience in attempts of international regulation of transfer of technology is yet too fresh to give a clear picture whether such attempts are justified and could be successfully carried on.

A great deal of effort has been made, mainly by UN agencies with encouragement from the governments of many developing countries.

It should also be mentioned that particular activities of UNIDO in practical adaptation of any international regulation of transfer of technology at the national level are of immediate use.

ANNEX I

SPAIN : DECREE 2343 OF 21 SEPTEMBER 1973 REGULATING THE TRANSFER OF TECHNOLOGY

Article 1 : The transfer from abroad of technology set out in documented contracts, covenants and agreements, the regulation of which is the purpose of this Decree, may take one or more of the following forms :

(a) Transfer of patent rights and of other types of industrial property.

(b) Transmission of non-patented knowledge, of plans, magnetic tapes carrying digital information, diagrams, specifications and instructions and, in general, the transfer of confidential information applicable to productive activities that has been accumulated by and is the property of the enterprises controlling it.

(c) Project study and development, preparation of preliminary or feasibility studies and technical plans for the execution of projects; services connected with the assembly, construction and operation of plants and their maintenance and repair.

(d) Any aspect of research, analysis, programming, consultative and advisory services for management and administration.

(e) Staff training and re-training, whether or not connected with those services.

(f) Technical or economic documentation and information services.

(g) Other forms of technical assistance.

Article 2 : In respect of contracts in any form for the transfer of foreign technology, concluded by individuals or corporations other than the Administration of the State domiciled, resident or legally established in Spain, the Ministries of Industry and Trade shall have the following functions and powers :

(a) The Ministry of Industry shall take appropriate administrative measures, in co-operation with the other departments specifically concerned, to ensure that foreign technology is acquired in the manner most beneficial to the national economy.

(b) The Ministry of Trade shall take the final decision regarding the authorization of foreign currency payments in connexion with the above mentioned contracts.

Article 3 : .....

Article 4 : Before reaching a decision concerning the registration of the contracts to which the present Decree refers, the Ministry of Industry shall call for a mandatory report, which shall be binding, from the department or departments competent to deal with the subject of the contract or the type of technology to which it refers.

Both the time taken to reach a decision concerning applications for the registration of contracts and that taken by the Ministries concerned to issue their reports shall conform to the provisions of the Administrative Procedure Act.

Article 5 : If in the opinion of the Ministry of Industry or, as appropriate of the competent Ministry the contracts include restrictive clauses which prevent, jeopardize or hinder the technological development of the recipient of the technology, limit his managerial freedom or represent an unfair practice by the party ceding the technology, entry of such contracts in the Register shall be refused or, where appropriate, they shall be recorded with a note of such circumstances which shall produce the effects referred to in Article 7 of this Decree. No contract on which the report of any of the departments referred to in article 4 is unfavourable may be registered.

In particular, no contract which implies any limitation on the export possibilities of the 'resident' part or of his or its sources of supply shall be registered until a report has been received from the Ministry of Trade.

The aforesaid reasons for refusing registration, or for permitting registration with a note in the Register, shall apply in general to all contracts except those relating to the transfer of technology for the production or use of equipment for national defence, in which certain restrictive clauses may be justified as in the national interest.

A contract on international technical co-operation that lays down in adequate detail the specific conditions binding on the co-operating parties to private contracts for the transfer of technology shall in each specific case be registered without the note of the circumstances prescribed in the first paragraph of this article.

Refusal of registration shall be communicated together with the reasons therefor to the party concerned, which shall be allowed a month to remedy the indicated deficiencies. In such case any new application for registration shall comply with the procedures and time-limits laid down in the preceding articles.

Article 6 : .....

Article 7 : Administrative authorization of the installation, extension or transfer of an industry included in the sectors listed in articles 1 and 2 of Decree No. 2072 of 27 July 1968 may be subject to the condition that the enterprise has not been refused registration of a contract or had a contract entered in the Register with a note of the unfavourable circumstances referred to in the first paragraph of article 5 of this Decree.

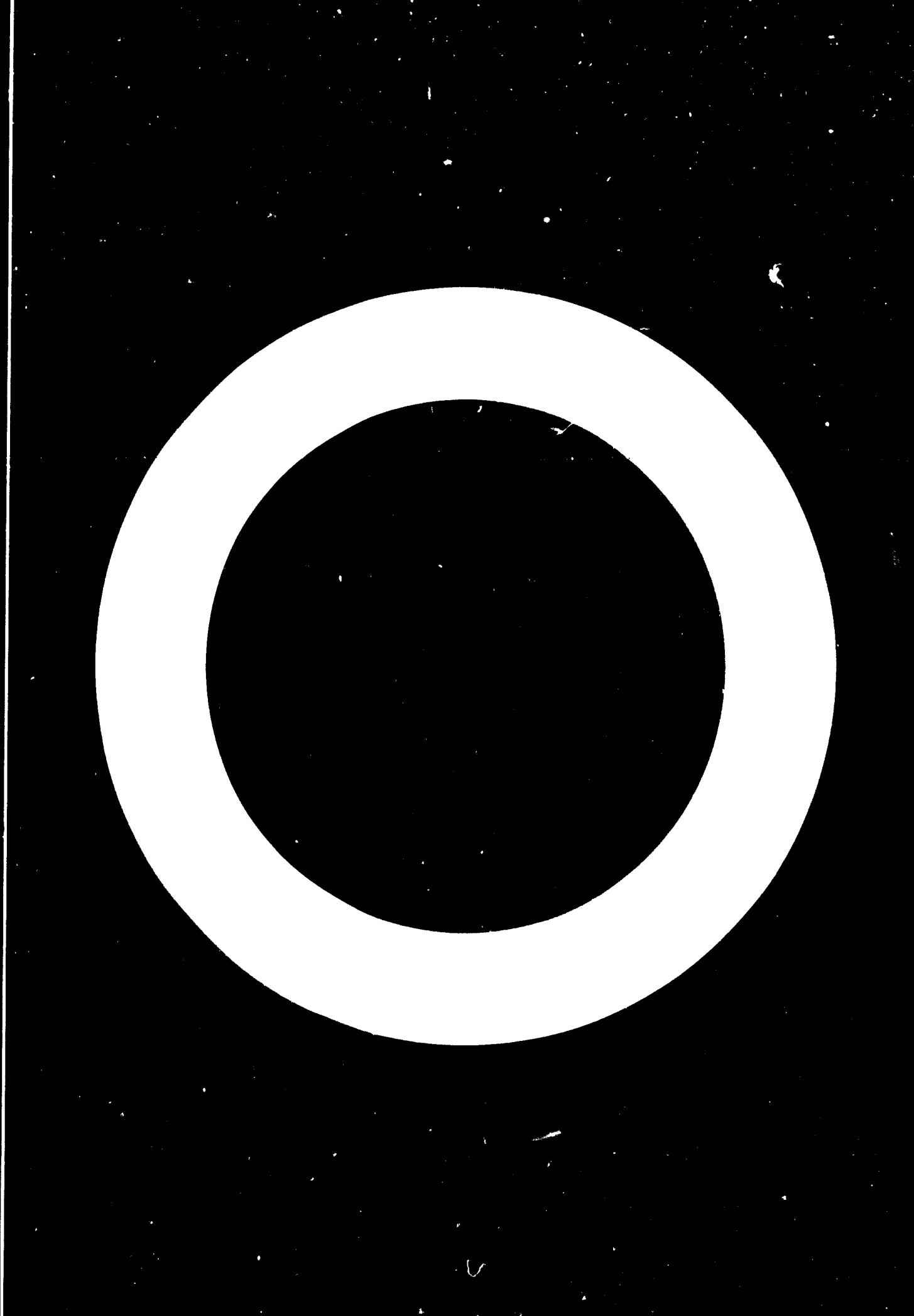
Entry of contracts in the Register may be regarded as a technical condition that the industries included in article 2 of the aforesaid Decree may be required to satisfy, and may also be taken into account, in accordance with the rules in force, in granting the benefits applicable under the procedures for the encouragement and promotion of productive activities.

Article 8 : Individuals or corporations resident or legally established in Spain who have contracts entered in the Register shall communicate within two months any alterations in the said contracts and any substitutions, extensions, variations and modifications of their terms and conditions initially registered, and any such information shall be included in the mandatory report provided for in article 4.

If as a result the Register concludes that the contract has become unfavourable, the provisions of article 5 shall by analogy apply.

Article 9 : The Ministry of Industry shall periodically ensure appropriate dissemination of information which may help to give a clearer picture of the market for the acquisition of foreign technology. The national research centres shall also be informed periodically of the type of technology contracted for, so that they may adjust their research programmes as far as possible to technological objectives that complement or improve upon the commercially current technology. In either case due caution shall be taken to protect any information which may constitute an industrial secret, especially if the technology is connected with national defence.

Articles 10 - 13 : .....



ANNEX II

DRAFT: MINISTRY OF INDUSTRY ORDER OF [illegible]
REGULATING THE ENTRY OF CONTRACTS FOR THE TRANSFER
OF TECHNOLOGY IN THE REGISTER ESTABLISHED BY
DECREE No. 2343 OF 27 SEPTEMBER 1974

Section 1

1.1 The duty to apply for entry of documents, contracts, covenants and agreements in the Register established by Decree No. 2343 of 27 September 1974 shall relate to all contracts, covenants and agreements under which foreign technology is acquired directly or indirectly through the agency of a Spanish national, regardless of the nature of the consideration given by the recipient of the technology: that is to say, in a tangible form, monetary or otherwise, or in an intangible form.

1.2. Such application shall be made by any individual or corporation domiciled, resident or legally established in Spain who is a recipient of technology.

1.3. The application shall be submitted in triplicate in the form of a request to the Director General of Industrial Development and Technology and shall be accompanied by three copies of the contract, which for the purposes of this Order shall be drawn up in Spanish, of the memorandum and of the documentary evidence specified in sub-paragraphs 1.5 and 1.6 below.

1.4. The memorandum shall include information and data on the contracting parties, the technological content of the transfer, the scope and terms of the agreement, and any other data supporting the content.

The appropriate forms for the application and the memorandum shall be provided by the office of the Ministry of Industry.

1.5. The documentary evidence shall comprise -

(a) A public document declaring the applicant's representative status;

(b) Where the applicant is an industrial enterprise, a copy of the entry relating thereto in the Industrial Register or, where appropriate, the most recent addition thereto;

(c) A copy of the Government's decision, if any, authorizing foreign participation in the capital;

(d) Where advisory or project development services are concerned, complete texts of the agreed technical offers and specifications;

(e) Any other documents that the Ministry of Industry may consider necessary.

1.6. The organizations, entities and enterprises referred to in article 5 of Decree No. 417 of 3 April 1968 which contract for the provision of technical studies and services by foreign advisory and project development enterprises shall attach to their applications documentary evidence of an attempt to obtain the required services from at least two enterprises which are listed in the special section of the Register of Consultant and Industrial Project Development Enterprises established under the aforesaid Decree, and which work in the sector to which the contract belongs.

The aforesaid evidence shall include the definite proposals by the Spanish enterprises or, failing these, some other authentic means of proof. If such evidence cannot be furnished because only one enterprise or not capable of providing the required service is listed in the aforesaid special section, the applicant shall enclose with any offer by the listed enterprise the appropriate certification issued by the Office of the General Direction of Industrial Development and Technology.

Where the certification referred to in the preceding paragraph establishes the inability of enterprises listed in the aforesaid special section to supply a specific percentage - less than 85 per cent - of the required services, it shall also be necessary to produce evidence of attempts to obtain the services corresponding to the remaining percentage from the enterprises listed in the special section, provided that the activities covered by each of those percentages are technically separable.

Section 2

2.1 Applications shall be submitted directly to the Office of the Director General of Industrial Development and Technology of the Ministry of Industry or in accordance with any other procedure provided in article 66 of the Administrative Procedure Act.

2.2. The applications shall be classified by the Office of the Director General of Industrial Development and Technology in accordance with the provisions of the following paragraphs indicating the procedure to be followed in each case:

(a) Contracts relating to the transfer of technology for the production or use of defence equipment. The document shall be sent to the appropriate military department, which shall report whether the existence of restrictive clauses is justified by the national interest, in accordance with the provisions of article 5, third pars., of the Decree;

(b) Contracts for the transfer of technology concluded under agreements for international technical co-operation which lay down in adequate detail the specific conditions under which private individuals or corporations shall co-operate shall be registered according to article 5, fourth paragraph, of the Decree;

(c) Contracts not covered by either of the foregoing paragraphs and, because of the subject of the transfer or of the type of technology agreed on, falling within the competence of a ministerial department other than the Ministry of Industry. The documents shall be submitted to the Technical Office of the Secretary-General of the particular Ministry, together with a request for the report referred to in article 4, first paragraph, of the Decree. If the conclusion of the report is non-registration with notes, the circumstances and objections to be communicated to the party shall be stated in the report, as provided for in article 5, fifth paragraph, of the Decree and section 2.4 of this Order;

(d) Contracts not covered by the foregoing paragraphs whose investigation is the responsibility of the Ministry of Industry because of their subject. The appropriate sectoral department shall examine such contracts and indicate, if necessary, the importance and scope of the restrictive clauses contained therein, if any, and the special effect of the expenditure entailed in the light of the industrial policy of the sector for which the transfer is intended. The sectoral department shall propose the category, if any, under which the contract should be registered.

2.3 For the purposes of registration of contracts classified under categories (c) and (d) which limit a "resident's" export possibilities or his sources of supply, the competent Ministry shall request from the Ministry of Trade the mandatory report referred to in article 5, second paragraph, of the Decree.

2.4 When during the processing of a case circumstances arise in which in accordance with the provisions of this Order, there appear to be grounds for not registering a contract or for registering it with notes, the Office of the Director General of Industrial Development and Technology shall so inform the party concerned, in all cases before any hearing is held, in order that he may within one month remedy or modify the defects which cause the contract to be placed in the category in question. Such remedial measures shall be specified in an appropriate document signed by the same contracting parties and providing that the defects originally agreed on which are referred to in the communication from the Office of the Director General of Industrial Development and Technology shall be omitted or amended.

Section 3

For the purposes of the provisions of article 5 of Decree No. 2343 of 1973, the Ministry of Industry or the Ministry competent to deal with the matter shall make a comprehensive evaluation of the situation of the sector and of the features of the process and the product for which the technology

covered by the contract is to be used, in relation to the rights and obligations which the parties assume under the contract.

In this comprehensive evaluation, provisions of the following types shall be among those regarded as unfavourable terms or aspects of the contract:

1. Provisions which prohibit, impose conditions on, or limit the use of the recipient's own technology or the acquisition of technology from other sources, or the use of non-patented special knowledge on the expiry of the contract, or which impose conditions on, limit or annul research, innovation and technological development by the recipient;

2. Provisions for the obligatory transfer of the patents, improvements or innovations introduced or developed by the recipient after acquiring the technology covered by the contract;

3. Provisions for the transfer of technology in packages which include unnecessary parts or components or in respect of which there is proved to exist an available domestic supply of equivalent quality and reliability; provided that such parts or components are technically separable from the other considerations covered by the contract;

4. Provisions for the transfer of technology which is wholly or partially obsolete, insufficiently competitive or deficient for other similar reasons or by reasons of an obligatory standardization of typification of quality incompatible with the standards established by Spanish law, unless the product is intended primarily for markets in which such standards and qualities are required;

5. Provisions prohibiting, imposing excessive geographical restrictions on, or not expressly authorizing in respect of specific areas, the export of goods produced by the recipient, and provisions obliging the acquisition of raw materials or components and other intermediate goods or equipment from the transferer or suppliers specified in the contract;

6. Provisions establishing minimum levels of activity or limiting the freedom of the recipient to determine features of production in respect of levels, model, competitive articles, prices and terms or entitling the supplier to fix unilaterally the prices of the goods produced by the recipient;

7. Provisions imposing conditions favourable to the interests of the supplier on the sale in the domestic market of goods produced by the recipient, and obliging the recipient to form an exclusive relation with the supplier or to use brands registered by the supplier in Spain;

8. Provisions obliging the recipient to sell, under conditions contrary to the interest of the Spanish economy, to the supplier or to specified third parties goods produced with the assistance of the transferred technology;

9. Provisions giving the supplier a right, not acquired previously by other means to intervene in, control or impose conditions on the business management of the recipient or his strategy of expansion or diversification;

10. Provisions requiring payments appreciably higher than those normally charged in the market in similar situations, or minimal counterpart services when the payments are based on fees proportional to the various levels of activity;

11. Provisions establishing payments in the form of fees proportional to the level of production without deduction of the value of products or components imported and incorporated in the production process to which the acquired technology is applied, or without excluding invoicing for lines of goods not affected by the acquired technology;

12. Provisions establishing payments based on fees above the level of activity of the recipient, where he is a subsidiary of the supplier and his share of the supplier's authorized capital exceeds 50 percent, or where the supplier of the technology has furnished raw materials or intermediate products used in the process in quantities exceeding 30 percent of the total cost of the product, or where the recipient is an advisory or project developing enterprise and process technology is not transferred for activities in which the process is continuous;

13. Provisions "overpricing" (charging a difference between the prices agreed on in the contract and those charged on the international market by the supplier or his principal competitors) for supplies, materials and equipment associated with the process of technology transfers and obtained from the transferor or from suppliers specified in the contract;

14. Provisions fixing an unsuitable duration, either too short or too long, for the contract or its direct consequences, or providing for an automatic extension of the contract and fixing payments for a period longer than the life of the patents involved;

15. Provisions stipulating that where the contract has been drawn up in a language other than Spanish the foreign-language version shall prevail in its interpretation.

Section 4

4.1 A decision that a contract for the transfer of technology shall be entered in the Register shall be communicated to the applicant, the Office of the Director General of Foreign Trade of the Ministry of Trade and to the competent department of the Ministry of Industry within ten days of its signature.

The communication to the Office of the Director General of Foreign Trade shall be accompanied by a copy of each of the following documents: application, contract, memorandum, documentary evidence produced and, where appropriate, report by other competent ministerial departments.

4.2 A decision to register the contract with notes shall specify the restrictive circumstances and clauses in the contract which have given rise to its inclusion in that category and shall be communicated to the applicant and to the Office of the Director General of Foreign Trade of the Ministry of Trade within the period and in the manner specified in paragraph 4.1, and to the competent department of the Ministry of Industry, for the purposes stated in article 7 of the Decree.

4.3 A decision not to register the contract shall specify the restrictive clauses which, because they prevent, jeopardize or impede the technological development of the recipient, or limit his freedom of enterprise, or constitute an abuse by the supplier of the technology, have caused that decision to be reached. It shall be communicated within the period specified above to the applicant and to the competent department of the Ministry of Industry for the purposes referred to in paragraph 4.2.

4.4. In any case, any decision on a contract shall be communicated to the competent ministries which have submitted reports because of the subject of the transfer or the type of technology agreed on by the contract.

Section 5

In accordance with the provisions of article 3 of Decree No. 2343 of 21 September 1973 and notwithstanding the provisions of articles 6 and 7 thereof, the validity of any documented contract, covenant or agreement to which this Order applies shall depend on its prior entry, with or without notes, in the Register of Contracts of Transfer of Technology.

Section 6

6.1 Any change made in a contract entered in the Register shall be communicated to the Office of the Director General of Industrial Development and Technology within two months, in accordance with the provisions of article 8 of the Decree, and shall be accompanied by three copies of the new amended and agreed text, the memorandum provided for in section 1 of this Order, and the appropriate documentary evidence.

6.2 The memorandum shall include, in addition to the matter specified above, information on the execution of the contract until the time of its amendment and the reasons for any substitutions, extensions, variations or changes in the original text.

6.3 In the examination of such changes in the previous sections for the initial registration, the procedures and time-limits to be observed shall be the same as those provided.

6.4 If as a result of the amendments to the agreement it is entered in the Register in a different category, or is deleted from the Register, the procedure established for general purposes shall apply by analogy.

ANNEX NO. III

ARGENTINA - LAW NO. 20 794 1/

SCOPE OF APPLICATION

Article 1.- This law governs any contract having as principal or secondary objective the transfer of technology from abroad that may have effect in the national territory and from which obligations arise or may arise for individuals or companies of public or civil law domiciled in the country with respect to titulars domiciled abroad.

Article 2.- Contracts for the transfer of technology even when the licensor is domiciled in the country are also included in the provisions of this law, provided:

a) They relate to companies of foreign capital or of affiliates or branches of companies domiciled abroad.
b) There is reason to presume that they relate to a technology transferred from abroad by application of the criterion mentioned in article 14, except when the local licensor company can prove to be the true owner or to be in effective possession of the technology transferred or the know-how to be furnished.

Article 3.- The contracts referred to in the previous articles especially include:

a) The acquisition of the rights or licenses for the exploitation or use of letters patent or of industrial designs and models; or of other industrial rights that in the future may be created.
b) The supply of technical know-how by means of processes, plans formulas, plant designs, diagrams, models instructions, formulations, specifications, training of personnel or in any other manner, aimed at obtaining the required results.
c) The contracting of personnel from abroad for the installation or starting up of capital assets or of production processes.
d) The contracting of consultancy or advisory services and the rendering of technical services.
e) Exceptionally, the exclusive acquisition of the rights or licenses for the use or exploitation of trademarks under the circumstances stated in article 9.

Article 4.- Contracts ruled by the present law must be submitted, in all cases, to the approval of the authority of application, not only when they create obligations to transfer funds abroad in payment of royalties, commissions, fees or of any other indebtedness or when they relate to other type of consideration, but also in the case of concessions granted gratuitously.

Article 5.- The authority of application shall deny the approval of the contracts ruled by this law when:

a) The technology to be acquired is contrary to the objectives of national policies and plans as regards to technology and development, or if it operates negatively within the consumption patterns or

1/ The context of this Annex has been reproduced from "Les Nouvelles" March 1975 Vol.X No.1.

in the redistribution of wealth or when it is estimated that it does not promote technical, economic and social progress.

c) The technology to be supplied corresponds to a level obtainable in the country or if rights are granted to directly or indirectly regulate, alter, interrupt or prevent national technological research or development.

d) Adequate guarantees are granted to the licensee the maintenance of which by the licensor will not imply additional costs or charges to the licensee to the effect that:

1. The content of the technology to be transferred is total and complete to ensure the obtention of the defined objectives and that the licensee has the indispensable autonomy to achieve them.
2. The licensee shall receive a regular and permanent flow of the technology acquired, through the commitment by the licensor to inform on and supply every technical improvement and provide goods or services related to the technology acquired during the enforcement of the agreement.
3. The adequate training of national personnel for them to assimilate and handle the technology which is the object of the contract.
4. The prices of the capital assets spare parts input and/or raw materials components of the technology to be transferred and/or necessary to carry out the production to which the technology refers, shall not be higher than the current prices on the international market.
   In the cases in which these assets have no current international price listings, the authority of application may estimate the prices by carrying out the pertinent studies.
5. In the cases in which the licensee agrees to sell all or part of his licensed production to the supplier of the technology or to a purchaser appointed by the latter, the prices of the goods produced by the licensee shall not be lower than current prices on the international market. The authority of application shall be also entitled to estimate those prices when the goods produced have no current international price listings.
6. In the case that the licensor grants more favorable contractual conditions to another authorized licensee, said conditions shall be extended automatically to the first licensee.

d) An analysis of the explicit and implicit costs indicates that the price or consideration agreed upon exceeds the benefits to be drawn from the technology to be acquired.

e) The prices of each one of the intangible assets constituting the object of the contract are not set out separately and, correlatively thereto, the terms in which they have to be paid, when such identification is possible.

f) Guarantees are required from the licensee for the maintenance of assessment rates, taxes, duties, exchange rates, special forms of benefits, or payment of royalties or any other type of remuneration contributing to keeping indeterminate the total price to be paid.

g) Obligation is imposed on the licensee to cede gratuitously or for a price the patents, innovations or improvements that could have been obtained in the country related to the contracted license or the technology transferred.

h) Amounts net of taxes are agreed upon for the payment of royalties taxes which in the country of residence or the recipient of the funds are considered as payments on account of taxes payable in the foreign country.

i) They are not drawn up in writing or are not written in Spanish, excepting technical terms that have no equivalent in Spanish.

j) They establish the right of the licensor to receive royalties from the licensee in respect of patents, licenses or trademarks not susceptible of being used or the use of which has no significant economic value or has equivalent effect such as the joint compulsory licenses.

k) They contain clauses establishing the applicability of foreign legislation for the interpretation or execution of the contract or extending the jurisdiction thereon to foreign courts of law or arbitration.

RESTRICTIVE CLAUSES AND LIMITATIONS

Article 5.- The authority of application may deny the approval of any contract governed by the present law when the acquisition of the technology in the proposed manner produces directly or indirectly any of the following effects:

a) Establishes the obligation of acquiring raw materials, intermediate products or capital assets from a specific origin or source of supply even within the country.

b) Regulates, alters or limits production, distribution, marketing or exploitation; or the distribution of markets or the exclusion of any of them.

c) Establishes resale prices to whole salers or retailers or to the licensor, or the application to third parties of unequal conditions for the sale of equivalent goods or services to the detriment of the latter's competitive situation.

d) Exempts the foreign contracting party from its liability in the event of actions by third parties, originated in defects inherent to the technological contents of the contract.

e) Prohibits the licensee from employing other designs, processes, production methods, equipment or other goods different from those contained in the proposed contract.

f) Establishes rules limiting or subjecting to the licensor's approval, the publicity or advertising to be carried out by the licensee.

g) Impose on the licensee the obligation of contracting personnel to be appointed by the licensor (the remuneration to be for account of the company receiving the technology) when that requirement is not considered indispensable.

The foregoing enumeration does not exclude the right of the authority of application to deny the approval of contracts containing restrictive clauses that produce effects similar to those mentioned above.

Article 7.- Clauses establishing the prohibition to the local contracting party to use the technology acquired once the contract has expired shall not be considered valid except in those cases in which it is protected by industrial property rights. In the latter case the authority of application shall only approve those contracts in which conditions are set down by which the local contracting party may continue using the technology once the term of the contract has expired.

Article 8.- The authority of application may deny the approval of contracts in which as a result of the general evaluation of the operations of the company receiving the technology the approval of the new contract were to be deemed inconvenient, taking into account commitments that have been previously assumed.

CONCESSIONS ON THE USE OR EXPLOITATION OF TRADEMARKS

Article 9.- The authority of application shall deny the approval of contracts the objective of which is the exclusive acquisition of rights or licenses for the use or exploitation of trademarks, with the exception of:

a) Contracts registered in conformity with article 7 of decree law 19231 (registered as law 19231) and supplementary regulations issued in consequence thereof provided a clause is included therein by which:
   1. The licensee undertakes to develop within a period not exceeding five years a local substitute trademark of its own; or
   2. The licensor undertakes to transfer gratuitously or without any consideration whatsoever the rights of the foreign trademark or to allow its gratuitous exploitation as regards the rights or licenses for its use or exploitation.

   In no case may the term of the contracts be extended beyond December 31 1979 even when they relate to the term established originally in the contracts or to the term for which an option has been made or resulting from renewal.

b) The contracts that may be entered into, provided that:
   1. The licensor undertakes to grant the licensee, licenses that make it possible to export the product to other countries.
   2. The licensee undertakes not to use it on the national market.
   3. The price to be paid be fixed on a percentage of the estimated balance of foreign currency that may enter the country as a consequence of the exploitation of the trademark, with the express restriction of not paying any amount if the export operations are not affected.

   In either of both assumptions, the approval would be subject to the condition that none of the causes set forth in articles five and six of the present law are applicable.

CAPUT [illegible] AND [illegible]

Article 10.- The National Executive Power may establish by sectors activities or specific goods the maximum values to be allowed for payments or considerations that licensees may provide in view of the contracts that they may enter into, as well as the maximum terms for their duration taking into account conditions of the sectors or activity, the profitability of the technology to be incorporated in relation to the national economy and the characteristics of the product.

Article 11.- Maximum values shall be established with respect to the net sales value of the products to be manufactured through the application of the acquired technology. If the different nature of the contract so requires, another criteria will be applied based substantially on the economic evaluation of the acquired technology in the manner established in the regulation.

Article 12.- Net value of licensed products is understood to be the value of the invoicing at plant gate after deducting discounts bonuses and returns, less the value of the input supplied by the licensor directly or through other presumably related firms placed at the plant or/of the licensee, and excise taxes and sales or those that may substitute replace or complement them in the future or any other tax that may be created subsequently thereto with reference to the same taxables acts.

Article 13.- The prices or considerations agreed upon may be paid when so authorized by the application authority by means of the payment of a predetermined lump amount, provided it does not exceed the total amount resulting from the application of the maximum values referred to in Article 10 in relation to the estimated volume of sales during the period in which the contract is in force.

Article 14.- The amounts to be paid in respect of prices for the technology, whatever its legal denomination for the contracts stated in article 3, shall be considered to all effects as profits when they refer to relations between affiliates and their parent companies or vice versa, as well as when between the licensor and the licensee there exists economic unity or a community of interests. The same criterion shall be applied if the examination of the contract for acquisition of the technology were to lead to the conclusion that it has not been entered into with a third party according to international trading practice or if the analysis of the financial position of the licensee were to indicate that the effective technical administrative, financial and commercial management is not in the hands of its natural authorities domiciled in the country. The total amount to be paid in respect of profits and as the price of the technology shall be subject to the ceilings or assessments that may result by application of articles 13 and 20 of law No. 20557, as may be applicable.

Article 15.- The amount of royalties or, in its case, of a lump predetermined amount or any other consideration agreed upon, may not be computed as capital contribution nor consist in shares or capital quotas, of the licensee, except in the cases contemplated in the preceeding article, if in the judgment of the authority of application its approval were to fill a special need of the company and were convenient to the country's interests in which case the approval of the Executive Power will be required in each instance.

Article 18.- Fees and expenses for advisory or technical services, supply of engineering details for the construction of facilities or manufacture of products, consultancy studies, instruction and training of personnel shall be paid for at a rate that must be determined in relation to the nature and importance of the work to be carried out or of the services to be rendered.

Article 19.- Approval by the Executive Power shall be required, subsequent to a favorable resolution by the authority of application, when the maximum values referred to in Article 10 have not been fixed for the approval of a contract in which the price exceeds 5 percent of the net estimated sales value or when the duration of the contract exceeds the period of five years.

Article 20.- In order to approve the legal duration of the contracts, within the authorized limits, the authority of application shall take into account, according to the nature of the technology to be transferred, that those periods:

a) Permit local assimilation of the know-how.
b) Do not extend over the period in which the know-how acquired is estimated to become obsolete.

CONDITIONS FOR THE VALIDITY OF CONTRACTS

Article 21.- The contracts referred to in Articles 1 to 4 and their amendments or extensions must be submitted within the period of 30 consecutive days after they have been entered into in order to be approved by the authority of application and be subsequently registered in the National Registry for License Contracts and Transfer of Technology created by decree law 19231/71 (registered as law 19231) and must be in compliance with the requirements that the implementing decree may establish.

The lack of compliance with this obligation shall give rise to the application of the penalty stated in item a) of Article 31.

Article 22.- Contracts entered into by the armed or security forces when by a decree of the Executive Power they are regarded as a military secret concerning unavoidable reasons of national defense, are exempted from the obligation established in the preceding article.

Article 23.- Contracts entered into between the licensor and licensee or third parties shall be null and void when:

a) A contract for the transfer of technology ffrom abroad has been formalized or carried out without the knowledge and approval of the authority of application, and

b) When the parties have acted under false pretenses to conceal, alter or modify the actual content of the contracts entered into and, especially, in respect of the characteristics of the technology to be transferred, of the explicit costs thereof, of the term of duration or of any other stipulations in the various clauses of the contract.

Article 22.- Contracts shall neither be valued nor enforceable between the parties or with respect to third parties as regards the rights and obligations stipulated therein, and their compliance may not be claimed at law courts or out of court while they are not approved and inscribed in the registry. The same shall apply to contracts the registration of which may have expired or may have been cancelled.

EXPIRATION AND REINSCRIPTION

Article 23.- Registration of the contracts in the registry will expire as a matter of law when their implementation has not yet begun or has not produced any effect in the country within the term that in each case the authority of application may establish and up to a maximum of two years. The latter authority may approve reinscription in cases duly justified, provided it is requested before the period has elapsed and that it is applicable on the basis of the new evaluation to be carried out of the contract.

FORBIDDEN USES AND STATEMENTS

Article 24.- The use or mention of licenses, patents, trademarks or any of the contracts included in Article 3 as a means for identifying or advertising is prohibited if the contracts authorizing their acquisition have not previously been approved and their registration carried out. Noncompliance with this requirement shall make the penalty stated in item a) of Article 34 applicable.

AUTHORITY OF APPLICATION

Article 25.- The Ministry of Economy through the State Secretariat of Industrial Development shall constitute the authority of application of the law, the National Institute of Industrial Technology to be in charge of the Management and Administration of the National Registry for License Contracts and Transfers of Technology.

Article 26.- An Advisory Committee is created within the jurisdiction of the Ministry of Economy (State Secretariat of Industrial Development) in order to assist the authority of application with respect to the resolutions to be adopted for the compliance with the provisions of the law. The Advisory Committee shall be made up by the following permanent members:

a) Representing the authority of application:

   1. A president, whose duties are to call meetings of the committee which it shall chair and represent, and a secretary who shall act as coordinator and shall be in charge of the technical and administrative office of the committee.

   2. A delegate of the National Department of External Economic and Financial Policy.

b) A representative of the State Secretariat of Science and Technology of the Ministry of Culture and Education.

c) A representative of the National Institute of Industrial Technology.

d) A representative of the National Development Bank.

e) A representative of the Central Bank of the Argentine Republic.

Article 27.- The president of the Advisory Committee may invite the ministries state secretariats institutions and official and private bodies to appoint representatives so that they may form part of the Advisory Committee as nonpermanent members, when this is considered advisable in view of the nature of the matters to be dealt with.

Article 28.- A Consulting Committee is created within the jurisdiction of the Ministry of Economy at which the bodies forming part of the Advisory Committee established in article 25 and delegates of the ministries of Defense and Justice of the General Economic Confederation and the General Labor Confederation will be represented.

The functions of this committee will be to evaluate periodically the application of the law on transference of technology and propose the policies to be followed in this respect.

Article 29.- Payments abroad corresponding to contracts regulated by the present law, can only be made in accordance with the regulations that to this end the Central Bank of the Argentine Republic may establish, after complying with the essential requirements of approval of the contract and its inscription in the registry.

Article 30.- The authority of application shall have the necessary powers to ensure the due observance of the provisions of the central law and control the compliance with the contracts registered, being empowered: to request information to any individual or company, also in the form of sworn declaration; to carry out audits, inspections or technical reviews of the books, papers, correspondence or any other evidence of the contracting firms; to require the help of the public force or request orders for official entry and search when considered necessary and to precautionary close down facilities or shops and impound merchandise manufactured in infringement of the provisions of this law. These powers can also be exercised in the events covered by Article 21.

The National Registry for License Contracts and Transfers of Technology shall coordinate with the Central Bank of the Argentine Republic the provision of information considered indispensable to ensure a control over the compliance with foreign exchange matters in the contracts.

The implementing decree shall establish the provisions to be taken to ensure the verification and control of prices corresponding to the importation of raw materials, intermediate products or capital assets, related to the contracts for the acquisition of technology from abroad.

When it is verified that there is a lack of compliance with the considerations agreed to or with the commitments undertaken in the agreements made, this shall give rise to the application of the penalties established in Article 34.

Article 31.- The authority of application shall determine the information to be supplied to the National Registry for License Contracts and Transfer of Technology for the correct evaluation of contracts submitted to its approval and the verification of compliance therewith.

Refusal or refusal to supply information or the giving of false information shall give rise to the application of the penalties established in Article 34.

Article 32.- The National Registry for License Contracts and Transfer of Technology shall prepare statistics and reports on the contracts registered and their amendments establishing the amount of royalties agreed upon the amounts of the payments made abroad in that respect and the general and specific characteristics of technological trading in the country.

Article 33.- The National Registry for License Contracts and Transfer of Technology is empowered to give advice to those requesting it in respect of the treatment, negotiation and execution of the contracts referred to in articles 1 and 3. The conditions for rendering this advice shall be determined in the decree implementing this law.

PENALTIES

Article 34.- Infringement to the present law, its implementing regulations and the resolutions that the authority of application may issue by virtue of the powers granted to it shall be subject to the penalties imposed by the State Secretariat of Industrial Development. The penalties will be applied by the State Secretary of Industrial Development to the individuals or companies or to both simultaneously, that may be responsible of those infringements, prior indictment that shall be drawn up after hearing the defendants, subject to the rules of procedure that may be established and may consist, jointly or severally in:

a) Fines of up to one million (1,000,000 pesos) which may be applied "in solidum" to the individuals or companies responsible of the infringements;

b) Special disqualification to exercise commercial acts for a period of up to two (2) years to promoters, founders, directors, administrators, syndic (statutory auditors) or managers of the companies comprised in this law, without prejudice of applying the penalties determined by Article 248 of the Penal Code, when relating to autarchical State bodies or State corporations or other entities in which the State has share participation;

c) Temporary suspension of the rights arising from the inscription of the contract in the registry;

d) Cancellation of the inscription of the contract in the registry;

e) Withdrawal of the legal capacity in the case of civil or commercial associations, or cancellation of the inscription in the National Commercial Court when relating to business companies without corporate form.

APPEALS

Article 35.- The petitions established in the preceding article may be appealed against before the National Court of Appeals for Federal and Administrative Contentious matters of the Federal Capital.

Appeals should be filed together with respective supporting arguments before the authority of application within ten (10) working days as from the date the resolution is notified at the domicile stated in the presentation.

SUNDRY AND TEMPORARY REGULATIONS

Article 36.- Contracts entered into before the date the present law is enforced which have not been presented to the register nor have definite insertion granted by the register shall adapt their clauses to the provisions of this law and shall be exempted from the penalty stated in article 19 if the contracts and their proposed amendments are filed before December 31, 1977.

Article 37.- The National Executive Power is empowered, prior a favorable resolution of the authority of application, to order the inscription of contracts that have started to be implemented at the date this law is enforced provided it is estimated that the recision of these contracts may cause significant damage to the national economy, in the following cases:

a) Contracts entered into by public bodies containing clauses that do not conform to the provisions of the law; or

b) Contracts for the exclusive acquisition of rights or licenses for the use or exploitation of trademarks that have not been presented to the National Registry for License Contracts and Transfer of Technology subject to the provisions of item a) of article 9.

Article 38.- The present law, which is of public policy and has retroactive effect, shall rule in all the national territory a revokes decree-law No. 19231/74 (registered as law 19231) as from the date of its enforcement, with the exception of Article 1 which is hereby ratified, by which the National Registry for License Contracts and Transfers of Technology is created, and the different contracts complied with during the enforcement of those regulations. Until the implementing decree of the present law is issued the provisions of decree No. 6187/71 and supplementing regulations shall be enforceable provided they are not against the present law.

Article 39.- Matter of form.

ANNEX IV

COMMON RULES FOR THE TREATMENT OF FOREIGN CAPITAL AND ON TRADEMARKS, PATENTS LICENSES AND ROYALTIES

(Decision No. 24 of December 1970 of the Commission of the Cartagena Agreement)

(Extracts)

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18. - Every contract relating to the importation of technology or to patents or trademarks shall be examined and submitted for approval to the competent authority of the Member Country concerned, which shall evaluate the real contribution of the imported technology by reference to an estimate of the probable profit from it, to the price of the goods incorporating technology or to other specific ways of quantifying the effects of the imported technology.

19. - Contacts relating to the importation of technology shall, as a minimum, contain clauses relating to the following matters :

(a) identification of the way in which the technology is to be transferred;

(b) contractual value of each of the elements involved in the transfer of technology, expressed in a form similar to that used in the registration of foreign direct investments, and

(c) duration of the contract.

20. - The Member Countries shall not authorize the conclusion of contracts relating to the transfer of foreign technology or to patents which contain:

(a) clauses whereby the supply of technology entails an obligation on the country or the importing enterprise to acquire from a specific source capital goods, intermediate products, raw materials or other technology, or to use, on a permanent basis, staff specified by the enterprise supplying technology. In exceptional cases the importing country may accept clauses of this nature for the acquisition of capital goods, intermediate products, raw materials or other technology or to use, on a permanent basis, staff specified by the enterprise supplying technology. In exceptional cases the importing country may accept clauses of this nature for the acquisition of capital goods, intermediate products or raw materials, provided that their price corresponds to the price levels current on the international market;

(b) clauses whereby the enterprise selling technology reserves the right to fix the sale or resale price of products manufactured on the basis of the technology concerned;

(c) clauses containing restrictions on the volume and structure of production;

(d) clauses prohibiting the use of competing technology;

(e) clauses giving the supplier of technology a total or partial option to purchase;

(f) clauses obliging the purchaser of technology to transfer to the supplier inventions or improvements obtained through the use of the technology concerned;

(g) clauses requiring the payment of royalties to the patentee for unused patents, and

(h) clauses with equivalent effects.

Save in exceptional cases, duly recognized by the competent authority of the importing country, clauses shall not be admissible where they prohibit or in any way restrict the exportation of products manufactured on the basis of the technology concerned.

In no case shall such clauses be admissible in relation to trade in the subregion or for the exportation of similar products to third countries.

21. - The transfer of technology in intangible form shall give a right to the payment of royalties, subject to the authorization of the competent national authority, but it shall not be considered as a contribution of capital.

When such technology is supplied to a foreign enterprise by its parent company or by another subsidiary of the same parent company, the payment of royalties shall not be authorized and no deduction for the purpose of tax shall be admissible under this heading.

22. - The national authorities shall carry out, on a continuous and systematic basis, the task of identifying technology available on the world market for the different branches of industry, with a view to having the most favorable alternative solutions at their disposal, and the most suited to the economic conditions of the subregion, and shall transmit the results of their work to the Council (Junta) (of the Cartagena Agreement). These activities shall be carried on in coordination with those to be adopted under Chapter V of these Rules in relation to the production of national or subregional technology.

23. - On the proposal of the Council, the Commission shall, before November 30, 1972, approve a program designed to promote and protect the production of subregional technology, as well as the adaptation and assimilation of existing technology.

Such program shall inter alia provide for :

(a) special tax or other benefits to stimulate the production of technology, especially technology involving the intensive use of subregional inputs or designed to make effective use of production factors in the subregion;

(b) promotion of the exportation to third countries of products prepared on the basis of subregional technology, and

(c) channeling of national savings towards the establishment of subregional or national centers for research and development.

24. - The Governments of the Member Countries shall, when purchasing products, give preference to those incorporating subregional technology, in the manner considered suitable by the Commission. The Commission, on the proposal of the Council, may make proposals to the Member States for the imposition of a tax on products using foreign trademarks which are subject to the payment of royalties, when technology of public knowledge or readily available is used in teh manufacture of the products.

25. - License contracts for the use of foreign trademarks on the territories of the Member Countries may not contain restrictive clauses of the following kinds :

(a) clauses prohibiting or restricting the exportation or sale in specific countries of products prepared under the trademark concerned, or similar products;

(b) clauses requiring the use of raw materials, intermediate goods or equipment supplied by the trademark owner or subsidiaries thereof. In exceptional cases the importing country may accept clauses of this nature provided that the price corresponds to the price levels current on the international market;

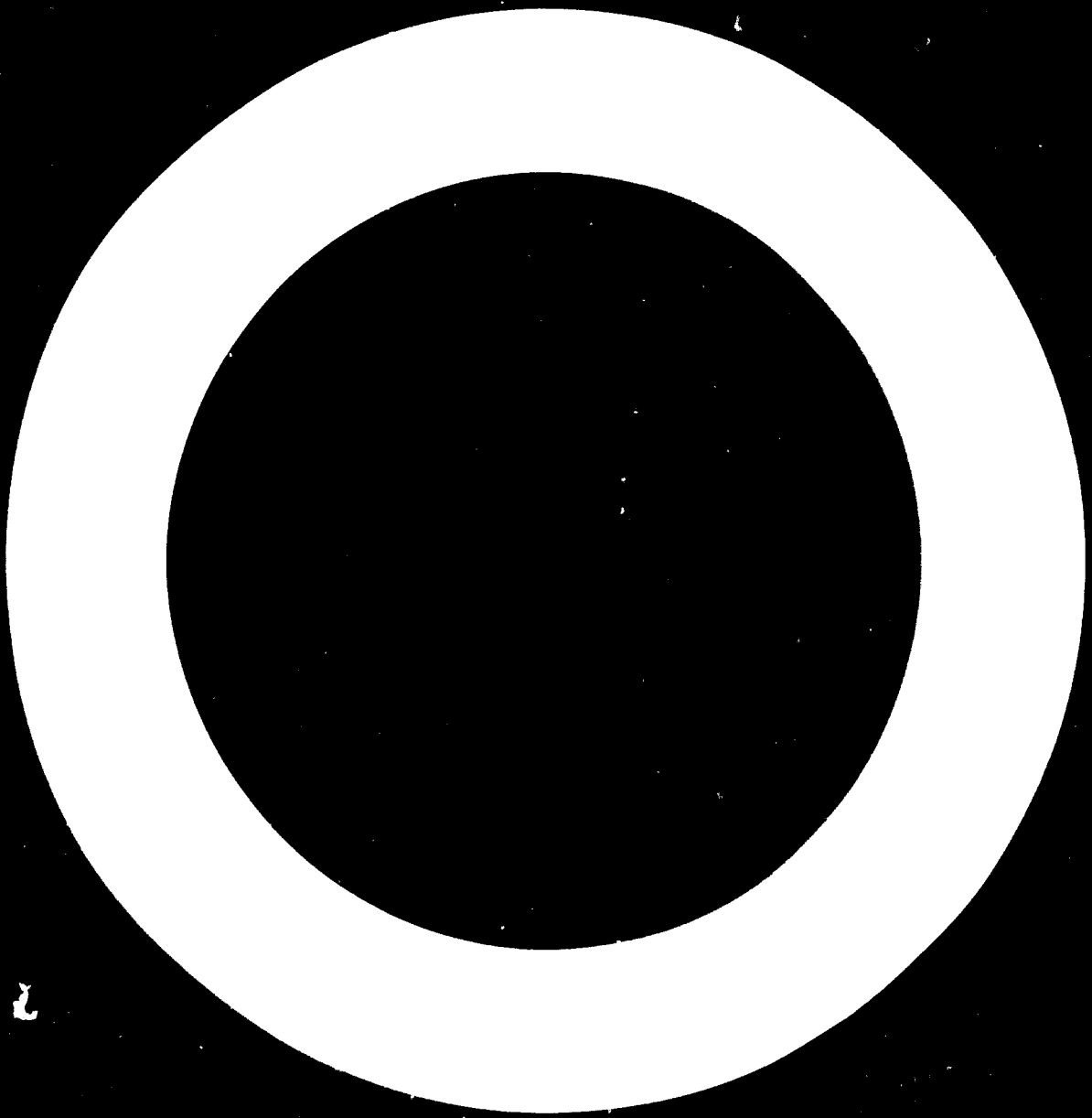
(c) clauses fixing the sale or resale price of the products manufactured under the trademark;

(d) clauses requiring the payment of royalties to the trademark owner for unused marks;

(e) clauses requiring the permanent use of staff supplied by the trademark owner, and

(f) clauses with equivalent effects.

26. - The Commission, on the proposal of the Council, may specify manufacturing processes, products or groups of products for which patents may not be granted in any of the Member Countries. It may similarly decide upon the treatment of patents already granted.



ANNEX V

PREAMBLE

The decision to direct the attention of this Working Group of the Pugwash Conferences on Science and World Affairs to a consideration of a Code of Conduct on Transfer of Technology reflects a growing demand of the international community for regulation in this field. We have taken note particularly of:

i) paragraph 9 of resolution 89 (III) of UNCTAD, adopted in April 1972 asking for a study of possible bases for new international legislation regulating the transfer of patented and unpatented technology from developed to developing countries;

ii) the agreement of the Heads of State of Governments of the Non-Aligned Countries in September 1973 to continue the efforts within international organizations to obtain easier and less costly access to modern technology and for the adoption of such an international code, taking due account of the independence of the developing countries;

iii) the October 1973 resolution of the Interparliamentary Council calling upon Parliaments and Governments of all countries of the world, inter alia, to draw up new international legislation for the transfer of technology, including a code of conduct governing this transfer;

iv) the statement by the United Nations Advisory Committee on the Application of Science and Technology (ACAST) in November 1973 giving emphasis to the great importance of moving rapidly towards the formulation of a code;

v) the request by UNCTAD's Trade and Development Board in September 1973 that the Intergovernmental Group on Transfer of Technology at its third session study the possibility and feasibility of an international code of conduct in this field;

vi) the recommendation of the 23rd Pugwash Conference on Science and World Affairs to establish a Working Group to "formulate a preliminary draft Code of Conduct" on transfer of technology;

vii) paragraphs 15 and 20 of the United Nations General Assemby resolution 3041 (XXVII) which noted with appreciation that intergovernmental action was being mobilised by UNCTAD in a number of fields, including restrictive business practices and transfer of technology, and recommended that the Trade and Development Board of UNCTAD should select the areas in which action can be initiated for the negotiation and adoption of multilateral legal instruments within its field of competence.

I. OBJECTIVES AND PRINCIPLES

1. While technology transfer mechanisms, including those involving international technology trade transactions, may differ according to political and economic systems and levels of development, the access to modern technology represents one of the basic conditions for socio-economic development of all countries and the maintenance of world peace and increase in overall prosperity. It is considered of vital importance to establish and implement international rules that would enable every country to participate on equal footing in the international technology transfer. Therefore, the present Code of Conduct on Transfer of Technology has the following objectives and principles:

i) to establish general equitable rules of behaviour in the international technology markets taking into consideration particularly the justified needs of developing countries and legitimate rights and obligations of technology producers and suppliers and technology recipients;

ii) to make clear the distinction between proprietary technology and freely available technology and reflect this distinction in terms and conditions of technological transactions;

iii) to foster the expansion of international trade in proprietary technology on terms mutually beneficial to suppliers and recipients by eliminating restrictive technology trade practices and regulating monopolistic rights accruing to some proprietary technology owners for the purpose of assuring the strengthening of the negotiating power of developing countries;

iv) to ensure fair pricing of technology trade transactions, by assessing all direct and indirect costs to the recipients and profits to the suppliers, and taking into consideration, inter alia, the duration of a contract and the dynamics of technological progress;

v) to introduce as a minimum the most-favoured-licensee clause in the international technology trade transactions involving developing countries;

vi) to expand free flow of non-proprietary technology on a non-discriminatory basis and through appropriate channels and mechanisms to suit the requirements of developing countries;

vii) to ensure the responsibility of suppliers and recipients to adapt technological trade transactions and flows of freely available technology to factor proportions of the countries with different development levels and to their local development needs and absorptive capacity;

viii) to increase the contribution of technology, under specially favourable conditions, for the solution of pressing social problems in developed and developing countries; and

ix) to ensure that technological transactions entail the strengthening of local technological capability of developing countries, which would permit their endogenous technological advancement for the purpose of diminishing gradually their technological dependence upon the outside world and assuring their increasing participation in the world technology production and trade.

II. SCOPE OF APPLICATION

2. For the purpose of this Code of Conduct the term "technology transfer" covers any kind of transfer of proprietary or freely available technology, independently from its legal form. It includes, inter alia, the following:

i) licensing agreements covering patents, inventors' certificates, utility models and industrial designs as well as trademarks, service names, and trade-names transferred together with proprietary or freely available technology;

ii) licensing agreements covering the provision of know-how and technical expertise in the form of plans, diagrams, models, instructions, guides, formulations, specifications, and involving personnel training;

iii) agreements covering provision of basic or detailed engineering designs for the installation and operation of plant and equipment and for the production of goods and services;

iv) purchases of machinery, equipment, intermediate goods and raw materials, insofar as they are part of transactions involving technology transfer;

v) industrial and technical co-operation agreements of any kind including international sub-contracting as well as provision of management and marketing services; and

vi) technology transactions associated with the establishment and operation of wholly owned subsidiaries or affiliates and of joint ventures with various degrees of participation.

3. The provisions of the Code of Conduct apply to all transactions covering transfer of technology regardless of the parties involved whether private capital, state or regional, or international institutions. These provisions should be considered as minimum standards for achieving adequate conditions of technology transfer with regard to the development possibilities of developing countries.

III. RELATIONS BETWEEN SUPPLIERS AND RECIPIENTS OF TECHNOLOGY

4. The following clauses and/or practices, inter alia, in transfer of technology arrangements are likely to have significantly adverse effects as restrictive business practices, whether in developed or developing countries, and shall not be utilized:

i) clauses and/or practices prohibiting or limiting in any way the export of products manufactured on the basis of the technology in question including restrictions on exports to certain markets, permission to export only to certain markets, and requirement of prior approval of the licensor for exports; a)

ii) clauses and/or practices restricting the sources of supply of raw materials, spare parts, intermediate products and capital goods; b)

iii) clauses and/or practices using quality controls or product standards by the supplier as a means of introducing unwarranted requirements on the technology recipients;

iv) clauses and/or practices requiring the acceptance of additional technology not desired by the recipient, as a condition for obtaining the technology in question, and requiring the remuneration for such additional technology, e.g. package licensing;

v) clauses and/or practices requiring higher technology payments on goods produced for exports vis-à-vis goods for the domestic market;

vi) restrictions in obtaining competing or complementary technology through patents and know-how from other licensors with regard to the sale or manufacture of competing products;

vii) clauses and/or practices restricting the recipient's volume, scope and range of production or field of activity;

viii) clauses and/or practices whereby the supplier of technology reserves the right to fix the selling or resale price of the products manufactured;

ix) clauses and/or practices requiring the recipient of technology to enter into exclusive sales or representation agreements with the supplier of technology; a)

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a) It was considered that in certain appropriate circumstances this might be justified.

b) This paragraph is to be read in conjunction with para (vii) in Chapter V.

x) limitations on the research and development (R+D) policy and activities of the recipient company;

xi) grant-back provisions establishing a unilateral flow of technical information and improvements from the technology recipient without reciprocal obligations from the technology supplier. All new technologies, patents and improvements developed by the technology recipient as a result of the agreement shall be the property of the technology recipient;

xii) clauses and/or practices obliging the recipient to convert technology payments into capital stock;

xiii) requirements by the supplier in licensing arrangements, except management contracts, to participate in the management decisions of the recipient enterprise;

xiv) requirements to use the staff designated by the technology supplier;

xv) requirements that the recipient pay royalties during the entire duration of manufacture of a product or the application of the process involved and, therefore, without any specification of time;

xvi) clauses and/or practices prohibiting or restricting the use of the technology after the termination or expiry of the contract in question;

xvii) continuation of payments for unused or unexploited technology;

xviii) licensee's undertaking not to contest the validity of the supplier's patents;

xix) restricting the use of the subject matter of a patent and any unpatented know-how license which relates to the working of the patent once the patent has expired;

xx) the charging of royalties on patents after their expiry.

5. The following clauses and/or practices, inter alia, in transfer of technology arrangements involving the use of trade marks are likely to have significantly adverse effects, whether in developed or developing countries, and shall not be utilized:

i) requirements prohibiting or restricting exports by the licensee of goods covered by a trade mark licensing arrangement;

ii) the tying of the supply of imports of a product bearing a particular trademark to the trademark owner and thereby prohibiting imports from a third party or a licensee;

iii) the use of protection afforded under the trademark system to restrict a licensee's activities; a)

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a) For example, to act as a distributor rather than a manufacturer of the trademarked product. It was recognised that such a restriction might be justified where "house marks" or "family marks" were involved.

iv) obligations to use a particular trademark with patented process or the know-how supplied; a)

v) restrictions in obtaining competing or complementary technology from other licensors with regard to the sale or manufacture of products involving trademarks.

IV. RELATIONS AMONG SUPPLIERS OF TECHNOLOGY

6. All horizontal cartel activities among technology suppliers involving restrictions on territory, quantity, price and customers affecting the transfer of technology shall not be utilized against developing countries, particularly the following practices:

i) import cartels;

ii) rebate cartels and other price fixing arrangements;

iii) national export cartels;

iv) international cartels, which allocate markets or control exports or imports.

7. Any adverse effects of the following cartel activities on the transfer of technology should be avoided:

i) private and semi-official agreements on certain standards in developed countries;

ii) specialization cartels if they do not lead to a dominant position;

iii) cartels for the exchange of technical information;

iv) rationalization cartels if they do not lead to a dominant position;

v) small-scale industry and small-scale marketing cartels.

V. GUARANTEES

8. The supplier shall guarantee that:

i) the technology acquired is in itself suitable for the manufacture of products covered by the agreement;

ii) the content of the technology transferred is in itself full and complete for the purposes of the agreement;

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a) It was considered that in certain appropriate circumstances this might be justified.

iii) the technology obtained will in itself be capable of achieving a predetermined level of production under the conditions specified in the agreement;

iv) national personnel shall be adequately trained in the operation of the technology to be acquired and in the management of the enterprises;

v) the technology is the most adequate to meet the particular technological requirements of the recipient given the supplier's technological capabilities;

vi) the recipient shall be informed and supplied with all improvements on the techniques in question during the lifetime of the agreement;

vii) where the recipient of the technology has no other technological alternative than acquiring capital goods, intermediate inputs and/or raw materials from, or selling his output to, the technology supplier or any source designated by him, the prices of the articles shall be consonant with current international price levels;

viii) for a certain period of time the supplier shall guarantee to provide spare parts, components, and servicing of the technology without additional charges for maintaining this guarantee;

ix) all transfer of technology arrangements should include a provision by which if licensor grants more favourable terms to a second licensee these terms will be automatically extended to the first licensee.

9. The recipient shall guarantee that:

i) the acquired technology will be used as specified in the contract;

ii) all legitimate payments as specified in the contract shall be made to the technology supplier;

iii) the technical secrets as defined in the contract shall be honoured;

iv) the quality standards of the products specified in the contract will be reached and maintained where the contract includes the use of the supplier's trade mark, trade name, or similar identification of goodwill.

v) the socio-economic conditions and needs of the country of the recipient have been taken into account while entering into a technology transfer agreement.

VI. ACTION BY GOVERNMENTS

10. Governments of developing countries shall, if they have not already done so and consistent with their development objectives and social and economic policies, take the necessary legislative and administrative measures to enforce the application of the standards on transfer of technology as set out in Chapters III, IV and V of the present Code.

11. Governments of developed countries, both with market and socialist economies, recognize the rights of developing countries to take the necessary measures set out in the preceding paragraph and shall accept the standards set out in this Code, and encourage the transfer of technology to developing countries based on these standards.

VII. LAWS AND JURISDICTION FOR SETTLEMENT OF DISPUTES

12. The following provisions shall govern the procedures for jurisdiction and settlement of disputes:

i) the technology transfer agreements between technology suppliers and recipients from different countries should be subject, with regard to their scope, enforcement and interpretation, to the laws of the technology-receiving country,

ii) in the event of a dispute between a supplier of technology and a recipient of technology, legal jurisdiction for settlement of the dispute shall reside in the courts of the technology-receiving country;

iii) if the laws applicable to the technology transfer agreements do not exclude recourse to arbitration in this field and the parties concerned agree in their contracts to submit their possible disputes to arbitration, such disputes will be settled according to the procedures set out in the contract;

iv) in order to permit the solution of technical disputes at an early stage and thus minimize the need for legal arbitration or judical settlement of disputes, parties may insert in their arbitration procedures provisions whereby disputes of a technical nature would be submitted as soon as possible after they arise to impartial technical experts appointed in a way acceptable to all parties concerned.

VIII. INTERNATIONAL ORGANIZATIONS

13. The international organizations, within the limits of their competence, shall assist the developing countries in the application of the standards of the Code on Transfer of Technology.

IX. MEASURES ACCORDING SPECIAL TREATMENT TO DEVELOPING COUNTRIES

14. In addition to the provisions of Chapters III, IV and V, transfers of technology to the developing countries shall include forms of preferential treatment designed to take account of the weaker position of their enterprises in the technological, financial or managerial field. To this end, Governments of developed countries shall by every means available ensure that

their technology supplying firms grant preferential measures in transactions involving the transfer of technology to developing countries. Such measures shall include, inter alia:

i) phasing out of down payments, or including such payments as part of royalties on production, on a soft basis;

ii) scaling down of the charges for technology in proportion to the size of the recipient's market;

iii) untying of credits for the purchase, from the most competitive source, of capital goods, spare parts and intermediate components;

iv) rebates on imports of raw materials, equipment and components for licensed production;

v) development of local technological capability and R+D by technology suppliers with affiliated companies in developing countries;

vi) development of the R+D and technological capability of the recipient firm;

vii) adapting the technology to be transferred to make it appropriate to conditions and factor endowment of the recipient country;

viii) transferring to the recipient firm non-proprietary technology which the supplier may possess in the field of activity of the recipient;

ix) sub-licensing rights under special concessional terms.

X. IMPLEMENTATION AND REVISION

15. The Code of Conduct for Transfer of Technology should be the object of a multilateral legal instrument to be internationally negotiated and agreed upon, and to become binding on signatories once the conditions for its entry into force, to be established in the legal instrument itself, are fully met. In addition, such instrument should further define the necessary measures for the full implementation of, and full compliance with, the Code of Conduct, as well as establish the conditions for its revision.


75.11.19