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United Nations Industrial Development Organization

Regional Workshop on Technology Acquisition through
Licensing Agreements by Exchange of Experience between
Selected Developing Countries in Asia and the Far East

Kuala Lumpur, Malaysia,
13 - 23 October 1975

FINAL REPORT ^{1/}

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INTRODUCTION

1. Background

The importance of technology transfer licensing agreements in the overall scheme of industrial growth cannot be over-emphasized. Not only the developing countries but also most of the developed countries are net importer of technology. Despite the efforts being made by the developing as well as the developed countries to build up indigenous technology and be increasingly self-reliant in this field, the expenditure on importation of technology is expected to go up substantially in most of the countries. It is therefore imperative that suitable institutional framework is created and strengthened not only to safeguard the interest of the licensee, but also to gradually reduce dependence on foreign technology. The training aspect and exchange of experience deserve special attention in the scheme of technology transfer. The recommendations of the UNIDO Seminar on Know-How about Licensing Arrangements requested UNIDO to concentrate further efforts on a more practical approach by organizing regional workshops concerning major policy issues and finding practical solutions related to technology transfer and licencing.

2. Objective of the Workshop and Action by UNIDO

With a view to furthering the above-mentioned objectives, UNIDO in co-operation with the Government of Malaysia organised a Regional Workshop on Technology Acquisition through Licensing Agreements by Exchange of Experience in Asia and the Far East at Kuala Lumpur from October 13 to 22 October 1975. The purpose of the Workshop was not only to provide the participants with detailed knowledge of major policy issues in transfer of technology and licencing, but also to enable them to accumulate practical knowledge in negotiating, selecting and drafting various transfer of technology agreements through case studies and syndicate exercise.

The Workshop was open to government nominees of selected countries of the Asian Far East Region and the following countries participated : India, Indonesia, Malaysia, Papua and New Guinea, Singapore, Philippines and Thailand.

3. Agenda and Programme

A list of the agenda items considered by the workshop is enclosed as Annex I.

4. Participants

Participants in the consultations included :

- (a) Senior government officials responsible for licensing policies;
- (b) Senior executive officers of the public and private sector in Malaysia;
- (c) UNIDO secretariat;
- (d) Observers from international organizations;
- (e) Observers from various Malaysian agencies representing the public and private sector;
- (f) Consultants invited by UNIDO.

A final list of participants is given in Annex II.

5. Inauguration of the Workshop

The Workshop was inaugurated by the Hon. Datuk Haji Mansah bin Haji Abu Samah, Minister of Trade and Industry, Government of Malaysia on the 13 October, 1975. The Minister addressed the delegates on the importance of holding such a workshop for the developing countries and he also spoke about the regulatory mechanism devised in Malaysia for the acquisition of technology from abroad. This address was followed by brief speeches by the UNDP representative and Mr. H.A. Janiszewski, Director of the programme. Both of them welcomed the delegates to the workshop and expressed the hope that the deliberations would prove to be fruitful.

6. Election of Officers

The following were elected officers of the workshop :

- (i) Chairman - Mr. Zainuddin Hj. Din,
Director, Industries Division,
Ministry of Trade and Industry,
Kuala Lumpur, Malaysia
- (ii) Rapporteur - Mr. N.S. Choudhary,
Director, Ministry of Industry and
Civil Supplies, Government of
India, New Delhi

7. Discussion papers, Case Studies and Syndicate Exercises

In all, nine papers were presented by various consultants. The presentation of each paper was followed by a discussion. Three case studies were also presented. Besides, the workshop also devoted considerable time to three syndicate studies. (See Annex III).

8. Approval of the Report/Closure of Workshop

At its closing session on the 22nd October, 1975, the report of the rapporteur was adopted unanimously by the workshop. It was also decided that the final report would be prepared by UNIDO Secretariat on the basis of the draft report approved by the Workshop.

The Workshop records its deep appreciation to the Government of Malaysia, particularly the Ministry of Trade and Industry for organising the Workshop and providing host facilities. Special thanks are due to the consultants who presented papers and led discussions during the Workshop. The participants expressed their sincere thanks to UNIDO and their staff for all the efforts they have made to organize such a successful workshop.

CONCLUSIONS AND RECOMMENDATIONS
OF THE WORKSHOP

1. The Workshop appreciated the complexity of problems of transfer of technology to developing countries as distinct from the problems of transfer of technology among developed countries. These problems are accentuated because of different technological levels of licensors and licensees and inequality of bargaining capabilities. In order to overcome this problem, suitable institutional framework could be set up in developing countries to aid technology transfer.
2. The Workshop noted with satisfaction the initiative already taken by UNIDO in implementing the recommendations of the Seminar on Know-how about Licensing Arrangements, held in Manila in June 1974. The workshop urged UNIDO to take expeditious action for implementing these recommendations.
3. The Workshop felt that the task of industrial development in developing countries through technology transfer is very complex and would need concerted action at the national, regional and international levels. In the circumstances, there is a pressing need for governments at the national level to take urgent action for strengthening the structures involved in development and transfer of technology.
4. The Workshop also urges the strengthening of the institutions of the United Nations like UNIDO for assisting effectively the countries of the region in matters relating to the transfer of technology.
5. In order to facilitate absorption of technology, the licensing agreements may, as far as possible, provide for the association of a local consultant and/or an inbuilt R&D programme. In order to progressively reduce dependence on foreign technology, the development of indigenous technology should receive greater attention and resource allocation.
6. As UNIDO will have an immense task on its hands in assisting the developing countries in problems of development and transfer of technology and related matters, it would be necessary to

strengthen the Technology Transfer Section to enable it to perform its tasks more effectively.

7. Towards this end, there is need for having a cadre of consultants representing different disciplines. Licensing activity is to be considered in the context of input requirements for accelerated industrial growth. Therefore, this activity should eventually cover other services like advice on selection of technology, detailed engineering services, erection and operation of plant, management assistance etc..

8. The Workshop discussed the problem of reducing the cost of technology acquired in developing countries.

In this connection, the example of socialist countries, who have been acquiring technology on centralized basis was noted. Such procedures could be considered by individual countries on merits.

9. The Workshop was of the view that UNIDO should continue to organize workshops on the regional level with emphasis, as in the existing workshop, on an integrated approach to the problems involved in technology acquisition through licensing agreements. A consideration of the legal, administrative, economic, financial business, and related factors, together with the case studies and syndicate studies, gave a more practical emphasis to the subject.

10. The workshop was also of the view that UNIDO, may organize special national workshops and meetings to train personnel in the selection, transfer and adaptation of technology. For example, a workshop on chemicals, drugs and pharmaceutical industry in Thailand and a workshop on transfer of technology in specific industrial sectors in Indonesia could be considered.

11. It would be useful to have a comprehensive check-list of all the points/clauses in the light of which agreements could be scrutinised by licensees. This would also introduce a certain amount of uniformity in the approach of licensees and thereby strengthen their bargaining power with licensors. UNIDO which has already prepared a check-list, should update and circulate it periodically.

12. The Workshop noted that initiative had already been taken by UNIDO for organizing an information bank on global basis following the recommendations of the Second General Conference of UNIDO, held in Lima, in March 1975. The Workshop also noted that UNIDO had already set up an information service on technology transfer for developing countries.

13. The Workshop was briefed on the proposed Regional Centre for Technology Transfer. It was felt that consideration be given to all existing facilities at national, regional and international levels so that duplication of effort is avoided and the existing facilities are fully utilized. In this context, the participants were of the view that priority should be given to the establishment and strengthening of national centres of technology transfer. If and when established, the Regional Centre should have more of a coordinating function and not be merely a primary data bank. A programme for giving effect to this priority should be established and implemented by UNIDO in cooperation with ESCAP.

14. While there is need for a concerted effort at international and regional levels in arriving at the most reasonable and fair basis for the transfer of technology, the approach to global solution to the issue must also take into consideration each country's aspirations and national priorities. Any attempt to indicate a broad approach should be limited largely to laying down of broad guidelines/institutional framework, which would provide for adequate flexibility to the countries concerned with its implementation.

SUMMARY OF DISCUSSIONS

13 October 1975 (afternoon)

In the first part of the afternoon session, Mr. Janiszewski, Director of the programme, spoke about essential preparations for international licensing. He emphasized the importance of relations between licensees and licensors in any arrangement for transfer of technology. Mr. Janiszewski said that the relations between licensees and the licensors would depend on a number of factors. In this regard, the technical level of the economy of the recipient country would be very relevant. The higher the technical level, the longer the agreement would be likely to last. This may be attributed to the fact that in a large number of cases of transfer of technology, failure occurs due to inadequate adaptive capability of the recipient country. An important thing to remember in this type of arrangement is to have technology of a level which is easy to be adapted by the licensee. No arrangement for transfer of technology could work successfully unless there is mutual trust between the two parties. This assumes all the more importance in view of the fact that the element of time plays a very important role on account of rapid changes in technology. Another vital factor governing technology transfer arrangements is the motivation behind the approach of the licensee and the licensor. Some of the well-known motivating factors which result in technology transfer agreements are profit-making, avoiding high cost of research and development, accessibility to foreign markets, improvement in the quality of the product, increasing the competitiveness of the product and an attempt to reduce unemployment. On the part of the licensor, such arrangements stem from the difficulty experienced by them in setting up subsidiaries in a particular country or in an attempt to find foreign markets for expansion. Mr. Janiszewski also spoke about the structural framework of the licensing agreements and mentioned the various types of agreements such as know-how agreements, the patent licensing agreements, trade-mark agreements, etc.. In this context, he also briefly touched upon the various

parameters of the licensing agreements such as, the fees payable, scheduling of payments and the attendant problems arising from tax liability, of these payments, restrictive clauses, etc.. Mr. Janiszewski also drew attention to the difficulty experienced by most of the developing countries in finalizing arrangements for technology transfer on account of non-availability of adequate information about the alternative sources for a specified technology. In the absence of such information, the licensee is at the mercy of one or two licensors who are in a position to dictate their terms.

Mr. Janiszewski felt that some sort of centralized information system should be developed for making available thorough information in respect of prospective licensors to the interested parties in developing countries.

The subject was then thrown open for discussion. One of the delegates pointed out the importance of having a check-list of points which are to be kept in mind in preparing such licensing agreements. It was explained by one of the experts that a check-list on the lines mentioned by the delegate was prepared sometime back in] the shape of a UNIDO booklet. He suggested that it would be useful if the various points contained in this check-list could be discussed with a view to updating it in the light of discussions in the workshop. One delegate drew attention to the difficulty experienced by licensees on account of the licensors asking for fees in the shape of various charges such as royalty payments, know-how fee, drawings and designs fee, erection and commissioning charges and management fees. He said that on account of the multiplicity of these charges, it becomes very difficult to assess the reasonability of the payments. Another suggestion made was that the fees payable under the licensing agreements should not be exempted from payment of tax on a selected basis. The need for having a uniform policy on the question of taxation of licensing fees was emphasized. A suggestion was also made that in order to overcome the difficulty arising from the multiplicity of modes of payment, it would be better if a simplified system is evolved. This could be done by laying down certain standards for determination of the net fees to be payable to the licensors in specified industries. Such

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payments would cover all aspects of the technology transfer agreement and would be net of taxes. The advantage of this project would be that there would be much less ambiguity and the licensees and the licensors would have a clear picture of the fees involved in the agreement. One delegate desired to know whether a simple formula could be designed to determine the face value and the working value of royalty and other payments. It was explained that it would be difficult to have any fixed formula for this purpose because the basis of determining these values varies from case to case and industry to industry. In some cases, these are worked out on the basis of value of sales whereas, in other cases, they are determined on the basis of total profits.

Another point raised was whether both equity participation and royalty payments should be agreed to in the same agreement. The consensus among the delegates was that this would have to be decided on the merits of each case. In certain arrangements, it would perhaps be desirable to allow the licensor to have equity participation in order to ensure his continued interest in the project. In other cases involving comparatively simpler technology, the better course would be outright purchase of technology on payment basis.

The second part of the afternoon session was devoted to a talk by Mr. K.D.N. Singh, UNIDO Consultant, on "Contractual Arrangements in Licensing Agreements". Mr. Singh informed the delegates that in terms of number of technology and licensing agreements and payment of license fees, the agreements between developed countries account for a much greater percentage of the total number of all such arrangements. An essential feature of agreements between enterprises in developed countries was that both the licensor and licensee enterprises functioned from a more or less similar technological base. The transfer of technology therefore becomes a much easier and at the same time, a more limited process. On the other hand, in technology agreements between enterprises from developed as well as developing countries the technological base is usually completely different and the scope and content of the technology contract tends to be much more comprehensive and composite in content. It was this basic

difference in the contents of licensing that necessitated a more detailed examination of the problems of licensees from developing countries. Mr. Singh pointed out that the licensing mechanism had become a major vehicle for trade in technology between enterprises in different countries but in view of the special problems of licensees from developing countries, this aspect of the industrial licensing agreements had been receiving increasing attention of late. He spoke about the various stages in the establishment of an enterprise, namely a pre-feasibility study for selection of products, a detailed project study to determine the size of the project, its investment and returns etc., the process of selection of technology and licensor, where such technology has to be acquired, detailed engineering, installation of the plant and equipment, the actual process of acquisition of know-how and management techniques. Licensees in developing countries have necessarily to avail of much greater assistance from licensors in some of these stages as the technological level of the licensee enterprise is likely to be inadequate and any gap may not be able to be covered by other national consultancy or other agencies. The licensing agreements consequently cover a number of the above stages also, apart from the patent or trademark rights and the unpatented know-how accompanying such rights. Mr. Singh also touched upon the various types of operational arrangements in licensing agreements, namely turnkey contracts, composite know-how agreements, joint venture arrangements and the relatively fewer pure licensing agreements involving patents or trademarks or both and the contractual implications for the licensee in each of these cases. Mr. Singh went on to explain that another major difficulty of licensees from developing countries was that adequate information about alternative sources of technology was not readily available in most of these countries. He expressed the view that there ought to be an information-gathering system which should function as a national technology bank and should gradually develop and maintain the latest information about various sources of technology for different sectors and for specified industries. Mr. Singh referred to the situation existing in a number of developing countries in respect of foreign investment as a vehicle for transfer of technology. He expressed the view

that there should be an adequate trade-off between foreign investment and technological inflow, which should also be reflected in payments made for technology and contractual arrangements featured in licensing agreements. He stated that foreign equity participation is not only desirable but also essential in certain types of licence agreements where the assistance of the licensor is required on a continuing basis over a period of time. An important point to be considered in developing countries on the question of import of technology is whether such inflow should be permitted on an indiscriminate basis, including ordinary consumer goods. Mr. Singh expressed the view that total dependence on foreign technology should be avoided, so that the growth of indigenous technology could also take place with relatively simple techniques. He was therefore of the view that import of technology for ordinary products should not be encouraged. In this connection, he also briefly discussed the problems posed by the concept of appropriate technology. He stated that there should be a clear distinction between products required for national economy and products which have necessarily to be internationally competitive. He felt that whereas in the former case, the use of labour-intensive methods and non-sophisticated technology may be acceptable, though this may be at some cost to the consumer. In the latter case, the effort should go in for the best technology available. Mr. Singh also mentioned the inadequacy of the patent laws in developing countries. He was of the view that in most cases patents operated only to the disadvantage of developing countries and that these laws have become outdated and that consequently the entire question of patent needs to be examined in detail in respect of each country with a view to introducing basic changes. Mr. Singh also spoke about the role which should be played by government in its capacity as a regulatory authority for technology transfer agreements in many developing countries. He expressed the view that the government or the regulatory institution should not substitute itself for the licensee and take over the task of negotiating the agreement. The best arrangement would be to have adequate guidelines laid down

for the finalizing of licensing agreements. Within the broad framework of the guidelines, the licensees should have requisite flexibility for finalizing the terms and conditions of the agreements because, in the ultimate analysis, a successful licence agreement would depend on the co-operation and goodwill between the licensor and the licensee.

During discussions following the above talk, several delegates spoke about the concept of appropriate technology and its importance for the developing countries. One delegate mentioned that the real test for appropriateness of technology should be the value added to the utilization of scarce resources and the objective should be the maximisation of this value added. He also suggested that in order to determine the appropriateness of technology for a project, it would be desirable to disaggregate the various operational stages and determine the appropriate technology for each stage. Another point made in regard to the appropriate technology was that the development of this technology is a factor of time and thus requires to be updated continuously. Appropriateness of technology is to be determined by enterprises looking for imported technology and no general guidelines can be laid down for this purpose. Some of the delegates warned against the danger of obsolete technology being made available by the licensors and they were of the view that to safeguard against this possibility, the regulatory authority ought to have requisite powers and it should exercise them effectively. A point was raised whether, as a general policy, 100% foreign companies should be permitted to pay fees to their parent companies for the transfer of technology. In this context, the system working in India was cited and it was pointed out that a list of industries where foreign investment should not normally be permitted, should be finalized and another list of high priority industries where investment may be desirable, may be prepared. With the help of these lists, it would be possible to regulate foreign investment and the payment of fees to the licensors. One of the delegates suggested that some of the developing countries do not have facilities for the evaluation of imported technology and whether the help of a third country could be sought for this

purpose. It was felt that in the long run, it would be in the interest of each country to develop its own technical expertise for the evaluation of technologies. In a number of countries this type of expertise already exists and the remaining countries are also taking steps to build up such expertise.

14 October 1975, (morning)

In the morning session, Mr. K.D.N. Singh presented his paper on "Preparation of Licence Agreements and Negotiating Strategy". He emphasized the importance of the licensee having a very clear concept of what he expects from the agreement. In order to enable the licensee to have a clear understanding of his requirement, he indicated a set of points which ought to be gone into by the licensee before he negotiates for the agreement. These are :

- (1) Definition : This should cover definition of products, processes, know-how, units of measurement and other basic concepts in a particular agreement;
- (2) Explanation of the technology to be acquired;
- (3) Warranty/guarantee of technology to be supplied;
- (4) Details of technological services to be provided such as know-how, engineering and technological services, marketing, after sales services etc.;
- (5) Technology payments, $\sqrt{\text{Lump-sum fee, royalty payment or combination of both}}$;
- (6) Duration of the agreement and life of the applicable patent or patents, if any;
- (7) Access to improvements/grantback;
- (8) Training;
- (9) Territorial sales rights;
- (10) Supply of components and intermediate products and pricing of such products;
- (11) Arbitration;
- (12) Confidentiality;
- (13) Sublicensing;
- (14) Governing law;
- (15) Language of agreement;

- (16) Currency of payment and place of payment;
- (17) Inspection and reporting.
- (18) Termination of the agreement
- (19) Other clauses relevant to particular licence agreements.

Mr. Singh explained the significance and implications of each of the above clauses and said that it was essential that adequate care must be exercised by the licensee in negotiating the details of each clause so that difficulties and complications do not arise later owing either to ambiguity or defective formulation of a particular clause. Each of the clauses was discussed by Mr. Singh. Some of the specific points made by Mr. Singh in this regard were as follows : (1) While defining the terms of warranty, improvements and innovations in technology should invariably form part of the agreement and the licensee should insist on having access to such changes. (2) With regard to patents, Mr. Singh was of the view that patents should be clearly listed, third-party patent infringement should be jointly defended and that a suitable clause should be included in the agreement to ensure that the licensee can continue to use the patent even after the expiry of the agreement, either with or without royalty payment. (3) On territorial sales rights, it is essential that undue export restrictions should not be accepted and that either an export market is clearly stipulated or that the restrictions should be confined to countries where the licensor has granted exclusive manufacturing or sales rights. The licence should also at least be exclusive for the country of the licensee. (4) In providing for training facilities the details of training needs should be clearly specified and should cover the field of designing and marketing, apart from gradual reduction of the number of expatriates required for the running of the plant. (5) The payment terms require to be carefully evaluated, particularly where substantial lump-sum fees are involved. Minimum royalty should be avoided and a computation formula has to be clearly specified. A formula often accepted is that sales should comprise ex-factory sales value minus the value of imported components. It is also important that capitalization of know-how fees is avoided as far as possible, or at most, kept at a very low percentage

of the total equity capital. (6) While negotiating for the supply of components and intermediate products by the licensor, it has to be made sure that standard bought-out items and the items internationally available are priced by the licensor on internationally competitive terms. This would partially take care of the possibility of a substantial mark-up by the licensor in respect of prices of components and intermediate products supplied by him, which constitutes a major problem in many licence agreements. The termination clause should also ensure that the technology, except when covered by industrial property rights, can continue to be utilized after the period of the agreement is completed.

In the discussion which followed the above presentation, several important issues were raised by the delegates. One point made was regarding the tax liabilities of technology payments. It was stated that, very often, the licensors insist on being paid a specified net amount and they are not willing to accept any clause on tax liabilities with regard to such payment. Mr. Singh expressed the view that each country should lay down a clear policy that all technology payments would be subject to applicable tax and no exception should be made in any individual case. A uniform policy in this regard would discourage the licensor from asking for tax exemption and would thus strengthen the hands of the licensee. One of the delegates observed that the tax on profits being higher than the tax on royalty payments, there is a tendency among the licensors to ask for higher royalty payments in lieu of investment. It was explained that arrangements for payment of royalty are limited to a definite period of time where as the benefits of investment flow on indefinitely. Although it would be desirable to fix a maximum level of royalty payments, and this has been done in several countries like India, Mexico and Malaysia, it would not be correct to stipulate that royalty payment should be discouraged vis-a-vis capital participation. Another point made was regarding the cost of advertisement and sales promotion, and a suggestion was made that these expenses should be borne by the licensor. This matter was discussed and the general view was that advertisement and sales promotion are basically the responsibility

of the licensee and as such these expenses should be borne by him. One delegate pointed out that in joint venture arrangements the licensors are not permitted by their countries to remit money in cash for investment in the ventures and that the participation is allowed only in the form of capital assets such as machinery. This, according to the delegate was not always in the interest of the joint-venture companies because it was always a problem to determine the proper price of the machinery and to judge its quality. It was explained that capitalization of know-how should be discouraged as far as possible and it is in the interest of the recipient country to limit this to the minimum. So far as participation through supply of machinery is concerned, the joint-venture ought to insist on the licensor to furnish at least two quotations in order to evaluate the cost of the machinery. As regards quality, the licensee should depute its technical engineers to inspect the machinery and certify its conditions. The absence of suitable guidelines for acquiring service technology for consultancy, hotel etc. was also pointed out. It was explained that in such cases the regulatory authority plays a more positive role to assist the licensee.

The importance of associating local agencies for absorption of service technology was discussed. In several countries, the regulatory authority insists on the association of local consultancy agencies with all arrangements for transfer of technology in these areas. The problems experienced by the recipients of technology in the adaptation and absorption of technology were also discussed. It was pointed out that in cases involving sophisticated technology, the agreements continue for a long period of time and in some cases even after 10 or 15 years, the licensees come up for extension of such agreements. There was a general consensus that there ought to be an institutional frame work to facilitate the absorption of technology. In some of the countries such as India, local agencies have been set up for specific areas such as petrochemical, machinery and equipment, iron and steel etc. for providing a focal point for absorption of technology. It was stated that the association of

local consultant in licensing agreements for service industries should be made obligatory. Such association would be useful, not only for selection of technology, negotiation and finalisation of agreements but would also create a base for transfer of technology in those areas.

14 October 1975 (afternoon)

In the afternoon session, Mr. N. Okano spoke about the different aspects of licensing, turn-key and joint-venture contracts. He emphasized that the import of technology by itself should not be considered harmful. He cited the case of Japan which had made considerable progress in the industrial field, but even now it continued to be a net recipient of technology. The relevance of imported technology comes from the fact that it is generally cheaper to buy technology than to develop it through R&D and it is always much quicker. It is precisely for this reason, Mr. Okano explained, that among the developed countries also there is increasing interdependence on mutual give and take basis. For successful licencing negotiations a spirit of reciprocity is very essential. Mr. Okano discounted the belief that the licensee is always in a weak position vis-à-vis the licensor. He pointed out that in certain areas there is very stiff competition among the donors of technology and in such a situation, the licensee is definitely in a position of advantage. Mr. Okano stated that in order to view the licensing arrangements in proper perspective, it is very necessary to distinguish between patent licence and know-how licence. Some of the salient points made by Mr. Okano are as follows :

- (1) The determination of the technology payments on the basis of the cost of R&D as insisted by licensors in some cases, is not correct;
- (2) The payment of technology is largely determined by the usual market mechanism of demand for and availability of the relevant technology. Where the technology is closely held by a small number of companies, and the number of prospective licensees

is large, there is a high premium on such technology.

- (3) For a proper evaluation of technology, the loss of business interest by the licensor would not be a valid ground. In fact, technology should be evaluated on the basis of the extent of profits which are likely to be made by the licensee;
- (4) All licensing agreements and contracts must have a specific termination clause so that after the expiry of the contract, the licensee is free to use the patent and sub-licence the know-how.

The above presentation was followed by a discussion in which the delegates raised issues such as centralized import of technology, disaggregation of technology package and compulsory licensing system. It was stated that in order to avoid repetitive import of technology both in terms of time and source, a single agency should negotiate with the licensor and this agency can disseminate the technology to the individual licensees. It was mentioned that this practice is already being followed in some of the socialist economies and also in a number of countries such as Japan, USA etc., where private companies are functioning as licensing agents.

A question was raised regarding the insistence of licensors to make available the whole technology package even where the licensee is interested in having only a component of such technology. It was observed that at the time of finalization of agreements, the licensee ought to spell out clearly the different components of technology in which he is interested. It was mentioned by a delegate that in his country a licensee is not able to avail of all the improvements carried out by him on patented products, because the patent holder is not willing to accord the required permission. The limitation of the patent law in most of the countries was pointed out and it was felt that until the patent law is suitably amended to take care of such situations, not much can be done. Some countries like USA and Japan had already initiated action for the amendment of the patent law.

In the second afternoon session, Mr Okano made a presentation on "Selection of Technology and Its Adaptation". Mr. Okano emphasized the need for continuous contact and evaluation of information among the companies in different part of the world. This is essential because rapid changes in technology necessitate frequent adjustments in products and processes. Mr. Okano expressed the view that before selection of suitable technology, the licensee must make a thorough evaluation of the same in the light of factors such as utilization of local resources, return on investment etc.. He felt that in making demand estimates, the export potential should also be taken into consideration. Another important point mentioned by Mr. Okano was regarding the product life and the timing of its introduction in the market. He expressed the view that although benefits of a particular technology may undergo change from time to time, generally speaking, more sophisticated technology has greater consistency in terms of cost benefit ratio than less sophisticated technology.

In the discussion that followed, some of the delegates drew attention to the unsatisfactory working of this patent system in several countries. It was mentioned that even though the licensee got the right to patents, it was not always possible for him to make use of that right because he did not possess the capability to utilize the patent. It was, therefore, felt that in all cases of transfer of patent rights in developing countries, the licensor should also transfer the required know-how. At this stage, a question was raised about the progress made with regard to the establishment of information bases as decided during the Mexico and Manila conference. It was emphasized that the developing countries would continue to be seriously handicapped in finalizing licencing agreement until a suitable clearing house for information about acquisition of technology is established. The representative of ESCAP informed the delegates that the question regarding the establishment of a regional centre for transfer of technology was under active consideration and some preliminary work had already been done in this regard. He stated that recently a meeting of a group of experts from six countries was held in Bangkok and guidelines for the preparation of a feasibility study for the

establishment of the centre had been prepared.

In the end, the representative of WIPO informed the participants of the work being done within the United Nations system in evolving a suitable framework for the transfer of technology. An international code of conduct on the transfer of technology was being prepared and a review of the international patent system was being undertaken. These matters were being pursued by UNCTAD and WIPO. WIPO was also preparing a new model law for developing countries on inventions and know-how. The representative of WIPO also stated that every year about a million patents are being taken out in countries all over the world. Although a record of all these patents is being maintained, the real difficulty comes in the dissemination of information relating to these patents within a reasonable frame.

15 October 1975 (morning)

In the morning session, Mr. Janiszewski presented a paper on "Restrictive Business Practices in Licensing Agreements" prepared by Mr. E. Aguilar, Director of the National Registry for Transfer of Technology, Mexico. The speaker examined the various types of restrictive practices resorted to by licensors in technology transfer agreements with special reference to the experience gained in such transaction in Mexico. The speaker pointed out that in almost all the countries special agencies have been set up with the necessary authority and governmental support to rationalize licensing procedures and to acquire technology on terms and conditions consistent with the recipient country's economy. He stated that technology transfer, very often, involves a high price not only in terms of direct payments of royalty but also on account of various types of contractual obligations that recipient companies in the developing countries are forced to accept. These restrictions help to perpetuate non-competitive market structures which tend to

do significant harm to the entire economy of the recipient country. It was in this background that in 1973, a specific legislation called "The Law for the Registration of the Transfer of Technology and the Use and Exploitation of Patents and Trademarks" was enacted in Mexico. Since more than 80% of the technological inflow into Mexico originates from the United States, the speaker examined at some length the anti-trust law which helps to regulate the restrictive practices in that country. He stated that under U.S. Law, technological knowledge is considered as intellectual property and that a legal monopoly can be used to obtain only a limited control for the holder of the monopoly. The speaker stated that more than 75% of the technological licensing agreements do not involve patents and that they fall within the category of know-how licensing contracts, It therefore becomes important that governments of developing countries must study carefully the implications of contractual arrangements for technology transfer both in the legal and economical areas with special reference to any particular licensing contracts. The speaker also drew attention to the following types of restrictive clauses whose presence in the contract are not approved by government when the proposals come up for registration of contracts :

- (i) If the technology to be transferred is freely available in Mexico;
- (ii) If it compels the licensee to grant back to the licensor the patents, trade-marks, innovations or improvements it makes;
- (iii) If it limits the licensee's research and development efforts;
- (iv) If it imposes any restrictions on the export of goods or services by the licensee in a way contrary to Mexico's interest;
- (v) If it establishes excessively long terms of enforcement;
- (vi) If it calls for disputes to be submitted to the jurisdiction of courts in a foreign country;
- (vii) If it asks for an excessive price;
- (viii) If it provides for the licensor to interfere with the management of the licensee;
- (ix) If there is a clause requiring the licensee to purchase equipment, raw materials, etc. from a particular supplier;

- (x) If it prohibits the use of complementary technology;
- (xi) If there is a restriction on the free sale of goods;
- (xii) If it requires the licensee to permanently employ personnel appointed by licensor;
- (xiii) If it imposes restrictions on the production or sale price of goods produced by the licensor; and
- (xiv) If it requires the licensee to sign exclusive sales or representation contracts with the licensor in Mexico.

Of the above, the first six provisions are unexceptionable and if the contract violates one or more of these, it would not be approved by the Mexican Registry. Other conditions can be waived if the National Registry of Technology Transfer feels that the contract is in the interest of the country. The speaker also briefly mentioned the various types of provisions which are included in the contracts and which restrict operations by the licensee. These are :

- (i) tying clauses and package licencing;
- (ii) excessive royalty payments;
- (iii) field-of-use and cross-licencing arrangements;
- (iv) territorial restrictions;
- (v) price-fixing
- (vi) grantback provisions.

Referring to the need for determining adequate level of payments, the speaker expressed the view that in Mexico, this is generally done through techno-economic evaluation on a case by case basis. Some of the factors which go into such consideration are the projected volume of sales or production during the life of the agreement, the duration of the contract, the manner in which payments are going to be made and the tax liability of the payments. The speaker also referred to the efforts made in Mexico to gradually reduce the use of foreign trade-marks in the domestic market and also to permit the creation and development of Mexico owned trade-marks. The speaker also mentioned that the government keeps a very close watch to ensure that licensees are not exploited through the inclusion of grantback clauses in the agreements.

Where the inclusion of such clauses is agreed to, it is invariably done on the basis of reciprocity.

In the discussion which followed the above presentation, questions were raised about a number of related issues. One delegate wanted to know as to why the duration of patents on models of industrial designs has been fixed as 10 years, whereas the duration of patents of inventions and improvements is granted for 15 years. It was further stated that normally, due to rapid changes in technology, a duration of 5 to 6 years ought to be adequate for such patents. In deserving cases, further extension of the duration could be considered. Another delegate referred to the need for the annunciation of national objectives in the enactment of the technology transfer legislation in Mexico. It was explained that the basic objectives were two-fold, namely, to reduce dependence on foreign technology over a period of time and to strengthen the bargaining power of the licensee vis-à-vis the licensor. Another delegate raised the question of the effect of the legislation on the inflow of technology in Mexico. It was explained that the new legislation had been in operation for about 2 1/2 years and the climate for technology licencing and investment continued to be as favourable as before. Besides, the enforcement of the new legislation had resulted in a saving of about US\$ 200 millions, as a result of the re-negotiation of existing contracts.

In the second session in the morning, Mr. Janiszewski, Director of the Workshop, spoke about the "Existing Administrative and Legislative Systems in selected Countries" for regulating, promoting and channelling the inflow of foreign technology into these countries. The speaker explained that the impact of transfer technology agreements is not limited to the out-go of foreign currency but covers several other sectors of economy such as balance of trade, balance of payments, sectorial development of industry, export potential of the country and employment. He mentioned that in countries such as India, socialist countries, Pakistan, Philippines and Japan, the technology transfer is regulated through administrative measures. In some other countries such as Mexico, Argentina, Spain,

Brazil and other countries, legislative enactments have been devised to regulate inflow of technology. The speaker then proceeded to give salient features of the existing system in each country. Some of the important points made by him are summarized below :

- (i) In the socialist countries of Europe specialised trading agencies have been established with the objective of supplying goods and technologies to the local industrial units. The main advantage of this system is that highly advanced specialisation and expertise are available for negotiations with foreign companies and this is of particular importance when dealing with multi-national and other international companies. However, due to the involvement of a number of decision-making levels, delays occur in the finalisation of agreements. Also, there is no immediate contact between potential licensors and potential licensees.
- (ii) In most of the countries of the European Community, there is no government regulation concerning technology transfer in terms of currency control and as to the terms of the agreement. However, the governmental control of these agreements is now becoming more prominent in some countries;
- (iii) In France, all contracts for transfer of technology are required to be submitted to the Ministry of Industry. The Ministry examines these contracts from the point of view of indigenous availability of technology and communicates its views within a specified period to the French party. The Ministry, however, does not approve or reject the contract;
- (iv) In Spain, all contracts for transfer of technology are to be submitted for approval to a special agency set up within the Ministry of Industry. Detailed guidelines have been laid down to indicate the conditions on which contracts would be approved. A new decree issued in 1973 required all existing contracts to be registered within a period of one year. There is considerable similarity between the Spanish legislation and the Mexican legislation;

- (v) In the USA, government intervention in licensing agreements is mainly based on the Sherman and Clayton acts, which are major basic anti-trust legislations. Some of the restrictive clauses in patent and know-how agreements which would be considered illegal under the anti-trust laws are given below :
- (1) Tie-in clauses forcing the licensee to purchase materials and components from the licensor;
 - (2) Limitations and restrictions on the licensee's approaches as to other products and services, or to obtain competitive technology;
 - (3) Restricted or limited use of patented material, which would create a monopolistic situation;
 - (4) Package licences including patents not required by the licensee;
 - (5) Price fixing;
 - (6) Territorial restrictions within the USA;
 - (7) Certain types of cross licencing provisions.
- (vi) In Japan, all technology agreements including the extension and/or amendments are required to be submitted for approval by the Japanese Government. Such approvals are granted almost automatically by the Bank of Japan if the value of contracts does not exceed \$ 50,000. No guidelines have been formulated concerning the terms of individual licencing agreements and decisions are made on a case by case basis. A broad criterion taken into account is whether technology conforms to the national objectives. Licensing agreements are also required to be reported to the Fair Trade Commission, which has issued guidelines prohibiting certain restrictions on export, acquisitions of competitive technology, tie-in clauses, etc..

- (vii) In Argentina, laws were enacted in 1971 prohibiting the imposition of restrictive clauses in certain types of agreements and to regulate technology transfer 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, impose jurisdiction of foreign courts or require unreasonably high payments;
- (viii) In India, all proposals for technology transfer are considered by a central agency called the Foreign Investment Board. Guidelines have been laid down for the consideration of technology transfer agreements. Some of the important aspects of these guidelines are :
- (1) If a certain technology is available, indigenously it will not be allowed to be imported;
 - (2) Equity participation will not be generally encouraged. A list of industries has been finalised where equity participation could be considered;
 - (3) Another list of industries has been prepared with a view to identifying areas where import of technology would not normally be permitted;
 - (4) Where technology is imported, the licensee is required to associate a local R&D organisation or a consultancy organisation to facilitate the absorption of the technology;
 - (5) The inclusion of restrictive clauses concerning sub-licencing and exportation of goods is not permitted;
 - (6) Where substantial exports are involved, the above guidelines can be relaxed;
 - (7) The agreements are generally approved for a period of 5 years and the licensee is expected to reduce dependence on the licensor over the above period.

The speaker also referred to the various attempts made for the regulation of transfer of technology on a regional basis. In this connection, he referred to the implications of antitrust legislation of the European Common Market and the Andean legislation. He also drew attention to the attempt being made for regulation of technology at the international level through the so-called "International Code of Conduct on Technology Transfer". He expressed the view that experimentation with international regulation of transfer of technology is of recent origin and it is too early to form any opinion about the success of such efforts.

During the discussion, one of the delegates observed that it was perhaps not correct to say that there was no Government regulation of technology transfer in countries of Western Europe as mentioned by the speaker. It was explained that what was intended was that there is no regulation in terms of currency control and terms of agreement and that is a fact. Another point raised in the discussion related to the effectiveness of the regulatory control in France where technology transfer agreements are submitted to Government only for comments. It was clarified that the purpose of this provision in France is to provide Government with necessary statistical information and not to have any regulatory control. The general view was that legislation for the regulation of technology transfer tends to make the system somewhat rigid and normally it should be possible to exercise the desired control over such arrangements through suitable administrative systems. At the same time, in certain circumstances it would be desirable to have legislation for selected aspects of technology transfer arrangements.

15 October 1975 (afternoon)

In the afternoon session, Mr. Zainuddin presented a paper on "Licencing Policy in Malaysia". He stated that in Malaysia, technology is being acquired at a very rapid rate and it is expected that payments for foreign technology would increasingly constitute a significant proportion of balance of payments. This would pose a serious problem not only to balance of payments position, but would also burden the cost structure of the local enterprise. He observed that all agreements for technology transfer are required to be submitted for prior approval of the Ministry of Industry and Trade. He pointed out that necessary guidelines have been laid down by the Ministry for the approval of these agreements. The main features of these guidelines are summarized below :

- (i) Very often the licensor wants to have separate agreements for various components of technology transfer and thus tries to get higher payments. As a matter of policy, government has discouraged the execution of separate agreements for various services.
- (ii) Remuneration for technology takes the form of lump-sum fees, running royalty or combination of both. He stated that the Government preferred the payment of running royalty, as compared to lump-sum payment. Regarding the rate of royalty payment, the speaker stated that normally a maximum of 2% of net sales is permitted for the first 5 years of commercial production. However, in exceptional cases, higher royalty payments can be considered for various reasons such as higher utilisation of domestic resources, export-oriented cases, high technology content and priority industries. Taxes are invariably required to be paid by the licensor. Agreements are in the first instance valid for a period of five years but extension can be considered if necessary, subject to the terms being renegotiated. The speaker also referred to the problem of restrictive clauses and said that special care is taken to ensure that such clauses do not go into the agreements.

In finalizing the agreements the licencees are expected to explore alternative sources for technology and they are also required to compare the proposed rates of payment with the international rates. Regarding the arbitration provision, a condition is always laid down that this would take place within the territory of Malaysia and in accordance with the Malaysian laws. Finally, the speaker explained that all agreements are required to have the termination clause.

The above presentation was followed by an exhaustive discussion of the licensing systems for technology transfer obtained in different countries. The delegates made brief presentations on the subject. The main points of the presentation are summarized below :

Singapore

1. Singapore does not have administrative or legislative control over technology acquisition through licensing agreements.
2. The entrepreneurs are free to acquire whatever technology they wish to purchase and the selection of technology is left to the discretion of the entrepreneur.

Philippines

In the Philippines, there is no specific government agency in charge of licensing agreements. The Board of Investment, in the course of its work in evaluating both the technical and financial viability of an enterprise wishing to register with it to avail of the various incentives offered, scrutinizes the licencing agreements entered into by the said firm. The B.O.I. can, as such, refuse to register a project with unacceptable licencing arrangement.

In 1973, pursuant to the recommendations of a group of experts on the adoption of government regulation in the screening of licensing agreements, the B.O.I. adopted guidelines for evaluation of licencing agreements submitted by applicants for registration with the B.O.I. taking into account the following factors :

- (a) The need of the industry for the technology and/or trade-mark;
- (b) The reasonableness of the cost of know-how and
- (c) Restrictive clauses in the licencing agreements

For determining the reasonableness of the cost of know-how or trade-mark, the Central Bank of the Philippines has set the ceiling of 5% royalty fee for know-how and 2% for trade-marks. The B.O.I., however, assesses royalty rates in the light of the type of technology involved and the market price for such technology. The 5% or 2% rate of royalty is a mere guideline for foreign exchange conservation purposes. In some cases, such rates may be reduced. In certain instances, the 5% or 2% ceiling is enhanced.

In connection with the restrictive provisions of the licencing agreements likely to affect trade and development, the B.O.I. is particularly concerned with restrictive business practices identified by a Committee which met in Geneva in March 1973, under the sponsorship of the UNCTAD. The said Committee has identified two categories of clauses which are indicators of restrictive business practices (Category A clauses are those which are restrictive prima facie and can only be allowed if there are overwhelming economic justifications therefore. Category B clause are those which may be restrictive in nature but can be allowed where advantages can accrue to the economy directly or indirectly).

As may be seen from the above, there is a lot of flexibility lodged in the B.O.I. in the application of the said guidelines.

Papua New Guinea

Papua New Guinea brought into force an Act to control Foreign investment on the 6th December, 1974. This Act is the National Investment and Development Act 1974 which among other things establishes a statutory authority - the National Investment and Development Authority - which has as one of its responsibilities recommending to the Minister for National Development approval or prohibition of agreements. The agreements which need such approval include royalty,

management, industrial property including trade-marks, copyright of industrial design, licencing, know-how and technical assistance agreements.

Although clear guidelines are published in respect of foreign investment in a Priorities Schedule, comprehensive guidelines concerning agreements have not yet been promulgated although the legislation provides that agreements can be prohibited by the National Executive Council where :

- (i) There are restrictive provisions in the agreement not in the best interest of Papua New Guinea.
- (ii) The proposed agreement would reduce any amount payable to Papua New Guinea.

The legislation spells out in detail the administrative procedures to be followed and requires that the details of all agreements existing on the 6th December 1974 be furnished to the National Investment and Development Authority (N.I.D.A.). It further requires that no agreement shall be entered into after the 5th December 1974 unless details of the agreement have been given to NIDA and approval obtained from the Minister for National Development following a report from NIDA. Where the Minister considers that an agreement should be prohibited, he may issue a show cause notice and on a receipt of representation from a party to the agreement either approve the agreement or refer it to the National Executive Council for prohibition.

Control of agreements is at Ministerial level and has not been delegated to the bureaucracy. Heavy penalties are provided for a person who enters into an agreement prohibited by the National Executive Council.

Indonesia

At present Indonesia does not have any special body/centre of technology transfer to regulate the import of technology alone. Import

of technology is a part of the import capital which is governed by the Foreign Investment Law 1967. Foreign investment, according to this Act, covers plant and equipment including new inventions belonging to the foreign investors and materials imported into Indonesia as long as this is not financed by the Indonesian foreign exchange. In the absence of a special agency, it is not possible to have a uniform system for the regulation of licensing agreements.

Some of the criteria used for scrutinizing technology transfer proposals are as follows :

- (1) The technology proposed to be imported should not be available indigenously.
- (2) Suitable training programme according to the needs of the project should form part of the licensing agreement.

Foreign investment is invited in Indonesia to accelerate the growth of those industries for which adequate resources cannot be made available from within. Foreign investment is also used as a vehicle for the import of advanced technology and management skills.

All applications for technology transfer are screened by a co-ordinating investment body which replaced the Board of Investment in 1973. The technical aspects of the proposal are examined by the respective departments of Government to whom the applications are sent for comments. The terms of royalty payments are looked into by the Ministry of Finance which takes into account the views of the other departments. All remittances of royalties are required to be reported to the Central Bank of Indonesia.

Time limits have been prescribed for the utilisation of service of expatriates. Limits of debt equity ratio have been prescribed. These are generally between 3:1 and 4:1.

The Government has prescribed a list of industries in which foreign investment and technology transfer are not permitted.

The list is also relevant to domestic investment.

The problem of fixing levels for the payment of royalty is inherent in the difficulty to establish a definite value for the use of technology or know-how. Normally the accepted rate of royalty is a maximum of 2% and is allowed for a period of 5 years.

Certain incentives in the form of tax holiday, duty free import of raw materials and investment allowance are available to new industries set up in Indonesia.

India

Guidelines for the regulation of technology transfer have been laid down in India. Firstly, separate lists of industries where technology transfer is permitted and where technology transfer is not considered necessary are published for the benefit of the entrepreneurs. There is a further sub-category of industries in which foreign investment can be considered. Guidelines also indicate the upper limit of the rates of royalty payable in respect of each industry. Government's policy with regard to technology transfer is highly selective and due consideration is given to indigenous availability of know-how at the time of consideration of the proposal.

For the consideration of individual proposal for technology transfer a central body known as the Foreign Investment Board has been set up. This Board consists of representatives of various departments of the Government concerned with the consideration of such proposals. Proposals are in the first instance scrutinised by the technical authority and are then submitted for the consideration of the Board. Departure from the guidelines is made only where a proposal is export-oriented or where it involves the import of an essential technology. With a view to facilitating the absorption of technology, the association of local consultancy bodies is considered desirable in cases where technology involved is of a

complex nature. Agreements are normally approved for a period of 5 years. In exceptional cases where the absorption of technology is not completed, extension of agreements can be permitted.

While approving technology transfer agreements, due care is taken to ensure that restrictive clauses are not included. All remittance of technology payments are required to be approved by the Reserve Bank of India.

16 October 1975 (morning)

Mr. R. Lalkaka (ESCAP) made a presentation on the progress made towards setting up the regional centre for technology transfer. He explained that since the recommendations of the UNIDO seminars at Manila and Mexico City, progress had been made in strengthening regional co-operative efforts on technology transfer. Pursuant to the decision of UN ESCAP at New Delhi, March 1975, a feasibility study was now being prepared on the establishment of a regional centre for technology transfer (RCTT). He added that the study to-date had indicated that the primary function of the RCTT would be to strengthen national capabilities and assist in setting up national centres of technology transfer (NCTT). Based on the country investigations now underway, it was felt that the main requirements were in the areas of information on alternative technologies and assistance on evaluation, adaptation and purchase of know-how.

The delegates recognised the need for regional co-operation with a view to promoting self-reliance. It was emphasized, however, that the RCTT during its first phase of operation should concentrate on helping to set up and strengthen NCTTs.

With regard to the information system, participants pointed out the complexity and enormity of the task of collecting information. It was suggested that the RCTT should co-ordinate with the existing information systems and the proposed global technology bank, and provide a clearing house type of service.

It was observed that there is need to avoid undue overlapping with work being done by UNIDO, UNCTAD and other agencies as well as by sub-regional systems such as Technonet and ASCA. However, it was pointed out that the tasks to be undertaken in future were so colossal that, with proper co-ordination, there need be no duplication in practice.

It was also emphasised that the responsibility for the main work to be done on technology transfer was at the national level, and that international regional or sub-regional organisations could only play a supportive and co-ordinating role.

It has also been mentioned that in view of its competence in the field of industrial technology transfer, UNIDO should have a key role in the RCTT being set up by ESCAP.

Mr. Lalkaka presented a case study on "Acquiring Technology for Metallurgical Industries". By way of preamble, Mr. Lalkaka explained that metallurgical industry is highly capital intensive and processes are specific to the characteristics of raw materials. He referred to the various stages. He referred to the paradigm in his paper on the Technology Transfer Process which gives various alternatives for each parameter of the process, namely source, mode of technology transfer, transfer mechanism, nature of the recipient company and the result over a period of time. He also mentioned the main constraints which come in the way of technology acquisition and added that a recent survey of the metal working industry in the Philippines had revealed that the three major constraints to technology acquisition are lack of capital, lack of training and lack of information. He also speaks about relative usage of the different technology transfer channels. He stated that the same study had shown that the three most popular channels were technology

education and training, joint-venture companies and licencing of foreign technology, in the above order. The speaker also referred to the importance of the capacity of the recipient company to absorb the acquired technology and said that this capability was crucial to the whole process.

As a background of the above general observations about metallurgical industry, Mr. Lalkaka presented a study on a technology transfer case relating to India. He explained that by insisting on the disaggregation of package know-how, considerable saving was effected in setting up a steel mill.

In the course of the discussion on the above case study, a question was raised regarding the criteria used for choosing the particular licensor out of several bids which had been received. It was explained that this was done after detailed investigation into the capability of the different licensors who had offered to give the know-how and the terms offered by them.

16 October 1975 (afternoon)

Mr. Okano presented two sets of Case Studies from chemical and pharmaceutical industry. The total number of cases explained by him was 16. The presentation was followed by a discussion. It was pointed out that in several cases, it appeared that unforeseen and unavoidable developments had been responsible for the failure of the projects and that no amount of planning could have helped. Another point raised relating to agreements in food and pharmaceutical industries was that the question of disclosure of the results of tests by Food and Drugs Administration, U.S.A., before the signing of agreements deserved to be considered seriously because this would enable the licensee to have some idea of the possibility of success of the products.

A case study of an agreement finalized in Mexico in the early sixties was presented by Mr. Janiszewski. It was mentioned that the

contract carried a number of restrictive clauses such as indefinite duration of the contract, limiting the sale of products to Mexico, secrecy clause and the liability for payment of tax being that of the licensee. An important aspect of this particular case was that the licensee was a wholly-owned subsidiary of the licensor.

During the discussions, it was stated that in view of the unfavourable terms, the agreement ought to have been cancelled by the Government of Mexico. This could not, however, be done because the licensor had already obtained a patent for the product and the patent was still valid. Another question was asked whether sectoral priorities were taken into consideration in finalising the contract and evaluating the proposal. It was stated that this factor was taken into account. Another delegate drew attention to the fact that sometimes, subsidiaries of multinational corporations export products at prices which are significantly lower than international prices, to their parent company in a country where they are likely to have benefit of a lower tax rate.

October 17, 20 and 21, 1975

Before starting the syndicate studies, a panel discussion was held to ascertain the views of the participants on the type of technical assistance that would be required by their country from UNIDO in the field of technology transfer. This has been based upon circulation of a specially prepared questionnaire and detailed description of UNIDO functions vis-à-vis other UN agencies. Results of the discussions formed part of the recommendations of the Workshop.

SYNDICATE EXERCICES

The workshop devoted three days to syndicate exercises in critical appraisal of technology licencing agreements presented at the workshop and drafting of modal agreements.

The participants were divided into five working groups and three separate and different exercises were given.

The exercises prepared during the workshop by experts and comprising hypothetical situations including all necessary costing, financial and other data, have been presented and commented on briefly by experts before being given to participants for the development of optimal solutions.

The overall objectives of these exercises were to test the practical application of various aspects of technology licencing agreements discussed by the participants during the following days.

This approach and selection of exercises have been met with enthusiasm by the participants who were given the opportunity to test acquired knowledge in simulated situations.

ANNEX I

AGENDA

Monday, 13 October

- 8.30 a.m. - 9.30 a.m. Registration of participants (Hotel Equatorial)
10.00 a.m. - Opening of the Workshop
. UNDP
. UNIDO
. Minister of Trade and Industry, Malaysia
- 2.00 p.m. Election of Officers
2.15 p.m. Essential Preparations for International
Licencing - Mr. H.A. Janiszewski
7.30 p.m. Dinner reception hosted by Hon. Minister of
Trade and Industry at Sri Yasmin, Ampang
Complex

Tuesday, 14 October

- 10.00 a.m. Preparation of Agreements/Negotiating Strategy
- Mr. K.D.N. Singh
2.00 p.m. Licencing, Turnkey and Joint Ventures
- Mr. M. Okano
4.00 p.m. Selection of Technology and its Adaptation
- Mr. M. Okano

Wednesday, 15 October

- 10.00 a.m. Restrictive Business Practices in Licencing
Agreements
- Mr. E. Aguilar
11.30 a.m. Legislative and Institutional System for
Technology Regulations
- Mr. H.A. Janiszewski
3.00 p.m. Licencing Policy in Malaysia
- Mr. Zainuddin HJ. Din, Director, Industries
Division, Min. of Trade and Industry
7.30 p.m. Reception hosted by UNIDO (Hotel Equatorial)

Thursday, 16 October

- 10.00 a.m. Regional Centre for Technology Transfer
- Mr. R. Lalkaka
11.00 a.m. Case Study Presentation :
Licencing in Metallurgical Industry
- Mr. R. Lalkaka

- 1.00 p.m. Lunch hosted by MICC (Malaysian International Chamber of Commerce) at Royal Selangor Golf Club
- 2.00 p.m. Case Study Presentation :
Licencing in Chemical Industries
- Mr. M. Okano
- 4.00 p.m. Case Study Presentation :
Licencing in Drugs & Pharmaceuticals
- Mr. M. Okano

Friday, 17 October

- 10.00 a.m. Case Study Presentation :
Licencing in Rubber Industry
- Mr. H.A. Janiszewski
- 11.30 a.m. Syndicate Sessions - Problem I
(5 groups)
- 2.00 p.m. Syndicate Sessions - Problem II

Saturday, 18 October

- morning Visit to factories

Sunday, 19 October

- morning Sight-seeing tours of Kuala Lumpur

Monday, 20 October

- 10.00 a.m. Reports of Syndicate I & II
- 1.00 p.m. Lunch hosted by FMI (Federation of Malaysian Manufacturers) at Hotel Equatorial
- 3.00 p.m. Panel discussions on other Aspects of International Licencing in Countries of the Region (all experts)

Tuesday, 21 October

- 10.00 a.m. Panel Discussion -
Technical assistance requirements from UNIDO
- 3.00 p.m. Summing of Discussions

Wednesday, 22 October

- 10.00 a.m. Adoption of the report
- 11.30 a.m. Closing of the workshop by the Secretary
General of the Ministry of Trade and Industry

ANNEX II

LIST OF PARTICIPANTS

Participants of the various countries

- India : -Mr. R.V.S. CHALUVADI, Man.Dir., Nat. Research Development Corporation of India, 61 Ring Road, Lajpat Nagar III, New Delhi 110024
- Mr. N. Singh CHOUDHARY, Director, Foreign Collaboration, Ministry of Industry and Civil Supplies, Udyog Bhawan, New Delhi

Indonesia :

- Mr. Slamet DIRHAM, Chief, Division of Industrial Project Evaluation, Bureau of Investment, Department of Industry, Jl. Bangka II/20c, Kemang, Jakarta Selatan
- Mrs. Ita S.H. CAMBIRA, Legal Advisor, Centre for Research and Development of Industry, Jl. Perdatan 1/5, Jakarta (Sel.)
- Mr. I.R.H. Saiful Tasar, Chief, Division of Metal & Engineering Industries, Jln. Kebalen V/13, Blik S/III, Kebayoran Baru, Jakarta-Selatan

Papua and New Guinea :

- Mr. Makuna RAWALI, National Investment and Development Authority, P.O.Box 5053, Boroko
- Mr. Gordon SMITH, Secretary to Board of National Investment and Development Authority, P.O.Box 2299, Kenebebe, PNG

Philippines :

- Mr. R.P. Ramirez, Department of Industry, 3rd Floor Chronicle Bldg., Pasig, Rizal

Singapore :

- Mr. LING HUN POH, Principal Engineer, 179, River Valley Road, Singapore 10
- Mr. YAP HU WIN, Act.Princ.Assistant Secretary, Ministry of Science & Technology, Kay Siang Road, Singapore 10

Thailand :

- Mr. Pabice POTHISIRI, Chief, Technical Division, Food & Drug Administration, Ministry of Health, BK 11,

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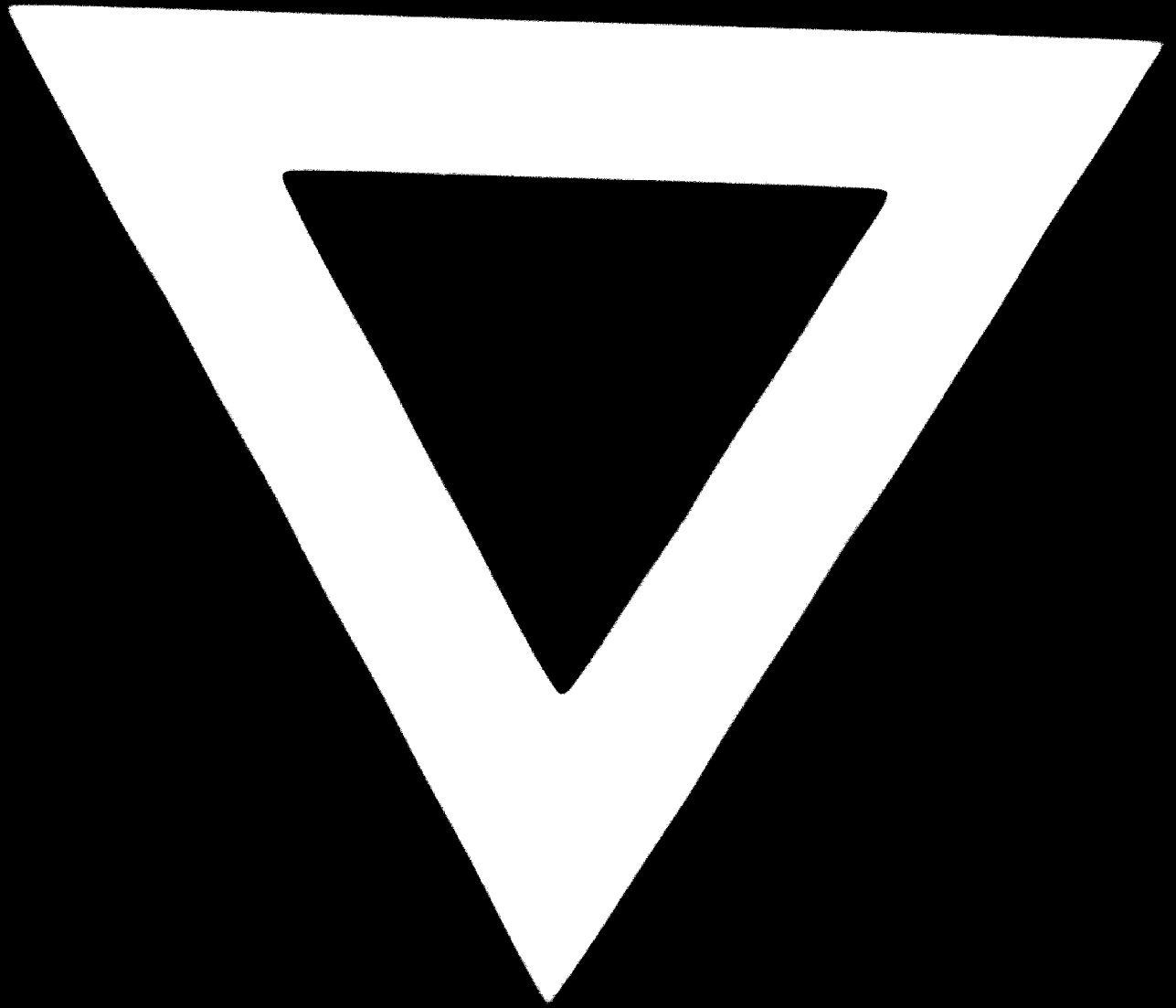
- Mr. H.A. JANISZEWSKI, IIS/ISID

ANNEX III

LIST OF DOCUMENTS

- ID/WG.206/1 "Essential Preparations for International Licensing"
A Review of Selected Aspects of License Negotiation
prepared by the Secretariat of UNIDO
- ID/WG.206/2 "Review of Legislative and Administrative Systems for
The Regulation of Technology Transfer Agreements"
prepared by the Secretariat of UNIDO
- ID/WG.206/3 "Restrictive Business Practices in Licensing Agreements"
by Mr. E.H. Aguilar, UNIDO, Vienna
- ID/WG.206/4 "Selection of Technology and its Adaptation - Japanese
Experience"
by Mr. M. Okano, Manager Foreign Department, Sumitomo
Chemical Co. Ltd., Osaka, Japan
- ID/WG.206/5 "Licensing, Turn-key and Joint Venture Contracts"
by Mr. M. Okano
- ID/WG.206/6 "Acquiring Technology for Metallurgical Industries"
prepared by ESCAP/UNIDO, Bangkok, Thailand
- ID/WG.206/7 "Contractual Arrangements and Policy Aspects in Technol-
ogy Licensing"
by Mr. K.D.N. Singh, UNIDO Project Manager, Capital-
Goods Development Programme, Mexico
- ID/WG.206/8 "Preparation of Licence Agreements and Negotiating
Strategy"
by Mr. K.D.N. Singh





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