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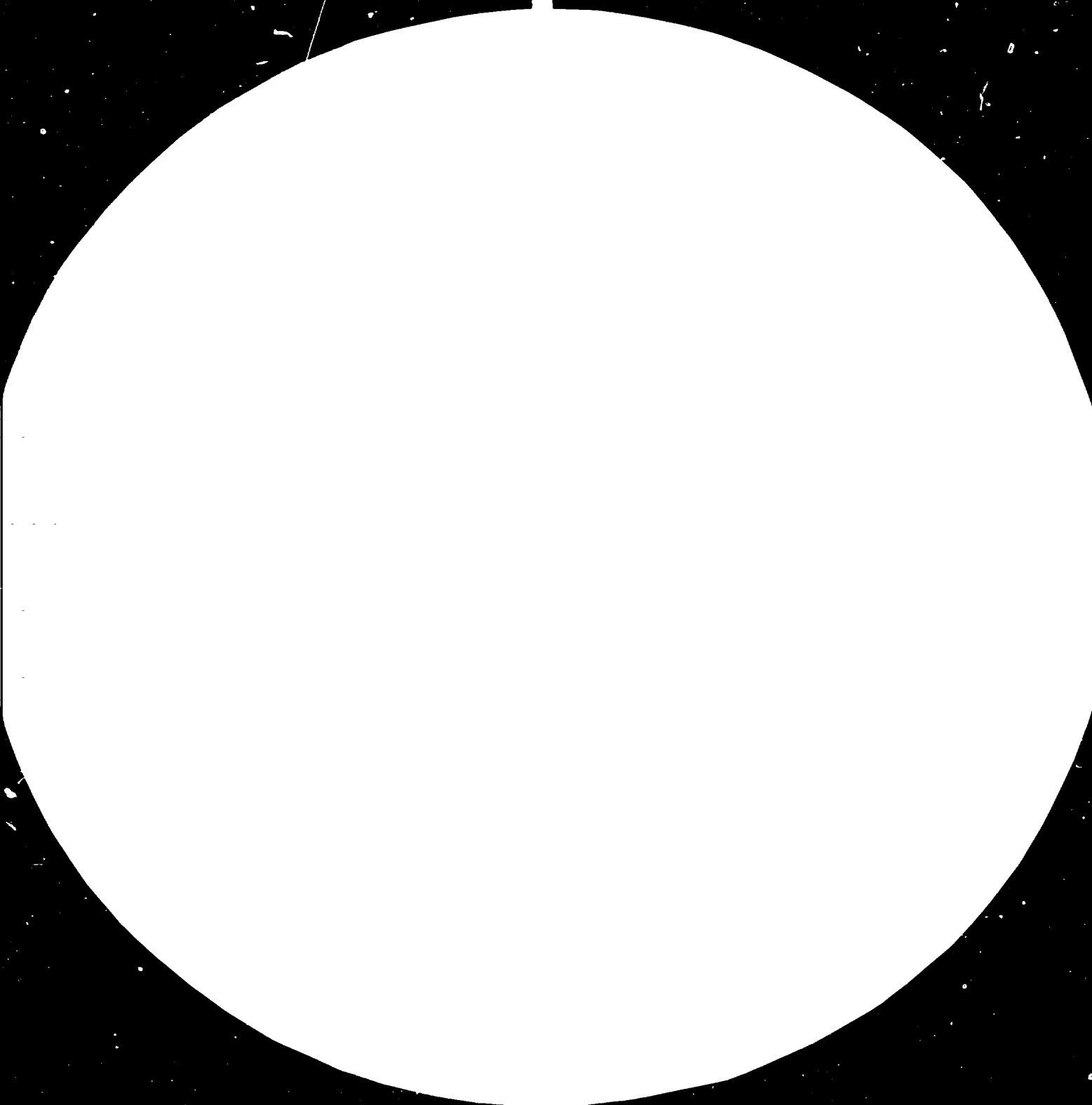
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United Nations Industrial Development Organization

Second Meeting of the Ad hoc UNCTAD/UNIDO
Group of Experts on Trade and Trade-related
Aspects of Industrial Collaboration
Arrangements

Vienna, Austria, 1 - 12 June 1981

ISSUES TO BE COVERED BY THE SECOND MEETING OF THE
AD HOC UNCTAD/UNIDO GROUP OF EXPERTS ON TRADE AND
TRADE-RELATED ASPECTS OF INDUSTRIAL COLLABORATION
ARRANGEMENTS*

Joint report by the secretariats of UNCTAD and UNIDO

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Annex: Documents available for the first and second meetings of the Ad Hoc UNCTAD/UNIDO Group of Experts on Trade and Trade-related Aspects of Industrial Collaboration Agreements

Introduction

1. In 1978, the Trade and Development Board of the United Nations Conference on Trade and Development (UNCTAD) at its eighth session, and the Permanent Committee of the Industrial Development Board at its eleventh session approved the setting up of an ad hoc UNCTAD/UNIDO group of experts. The terms of reference of the group were to undertake an examination, in pursuance of resolution 96(IV) of the Fourth United Nations Conference on Trade and Development, Part II, section D, paragraphs 8 and 9, of the trade and trade-related aspects of industrial collaboration which would be of benefit to the developing countries in relation to international co-operation in the industrial development of developing countries.^{1/}

2. In 1980, the Trade and Development Board at its twentieth session, and the Industrial Development Board of the United Nations Industrial Development Organization (UNIDO) at its fourteenth session, in noting the report^{2/} of the first meeting of the Ad hoc UNCTAD/UNIDO Group of Experts on Trade and Trade-related Aspects of Industrial Collaboration Arrangements held in October 1979, approved the convening of a second meeting of the Group in early 1981 and requested the Group to prepare its final recommendations, including, if necessary, future action, and to submit these recommendations to the Executive Heads of UNCTAD and UNIDO.^{3/}

3. In the meantime, the secretariats of UNCTAD and UNIDO have prepared various reports which identify and analyze in some detail the issues and problems relating to the various forms of trade and industrial collaboration.^{4/} Taking into account the views expressed by the first meeting of the Ad hoc UNCTAD/UNIDO Group of Experts, as well as by the UNCTAD Trade and Development Board, the Committee on Manufactures and the UNIDO Industrial Development Board, the points set out in this report deserve particular attention in order to assist the Group in making its final recommendations.

^{1/} Trade and Development Board resolution 172(XVIII) of 17 September 1978; ID/B/215, para. 146.

^{2/} ID/B/234; TD/B/774.

^{3/} A/35/16, Vol.II, para. 155; Trade and Development Board resolution 213(XX) of 25 March 1980.

^{4/} See Annex.

I. ROLE OF TRADE AND INDUSTRIAL COLLABORATION

4. Trade and industrial collaboration at both enterprise and governmental levels are now recognized as important elements of international economic relations, with corresponding implications for promoting world economic growth. The short-term aims of developing countries in promoting trade and industrial collaboration involve expanding the manufacturing sector and acquiring and developing technological capabilities. In the long term, the aim is to achieve the goals set by the Lima Declaration and Plan of Action on Industrial Development and Co-operation^{5/} and the International Development Strategy for the Third United Nations Development Decade.^{6/}

5. The important role played by trade and industrial collaboration in the development of world trade and in the expansion and diversification of trade of the developing countries is illustrated by the fact that rapid growth in East/West trade during the period 1965-1974 was accompanied by an increase in the number and value of industrial co-operation agreements between eastern and western enterprises (less than 100 agreements in the mid-1960s; more than 1,000 agreements by the end of 1973). However, while exports from the West to the East increased by 19 per cent during this period, imports from the East only increased by 15 per cent.

II. PROBLEMS AND OBSTACLES FACED BY DEVELOPING COUNTRIES

6. In connection with their efforts to promote trade and industrial collaboration, developing countries face the following constraints:

(a) General problems

- (i) At both enterprise and government levels, developing countries hold a relatively weaker bargaining position than developed countries and present procedures, practices and contracts do not make adequate allowance for this;
- (ii) Contracts and agreements often contain inadequate provisions for the maximum utilization of domestic raw materials, facilities and other available inputs, and for the adaptation of technology to local conditions, factors which constitute some of the objectives of economic development in the developing countries;

^{5/} ID/CONF.3/31, chapter IV.

^{6/} General Assembly resolution 35/56.

- (iii) Long-term industrial co-operation arrangements are required in order to ensure continuity in the supply of components and spare parts, the training of nationals, technical assistance, etc. and to ensure that the plant operates as efficiently as in the country of its manufacture.
- (b) Financial and commercial constraints
- (i) Developing countries and their enterprises need long-term financing, but this is not readily available under enterprise-to-enterprise arrangements. Facilities would need to be provided by government institutions;
 - (ii) More effective guarantees for plants are required (e.g. covering stipulated performance) since non-fulfilment of contracts owing to shortfalls in quality or quantity is considerably more costly to a developing country enterprise than the generally accepted maximum penalty of 10 per cent of the value of the contract;
 - (iii) Provisions need to be made to cover against the withdrawal or bankruptcy of the contracting parties;
 - (iv) Where there is a lack of foreign exchange, buy-back arrangements are an important means of financing new industrial projects as this helps minimize the financial outlay on capital investments. These arrangements call for appropriate trade policies and measures, including special treatment for the resultant products, but it may not be possible to negotiate buy-back agreements exclusively at enterprise level.
- (c) Legal questions
- (i) It is important that contracts or agreements reflect clearly the responsibilities and obligations of the parties concerned, as well as the penalties attached to non-fulfilment;
 - (ii) The present system of international arbitration, which is not recognized by some developing countries,^{7/} is a long, costly and onerous procedure and developing countries often have to accept settlements on unfavourable terms. There is a need for quicker and more equitable procedures; these could be provided by technical expert services or by procedures similar to conciliation.

The complex nature of the above-mentioned problems and the magnitude of the financial risks involved preclude satisfactory solutions at enterprise level and indicate that solutions depend on government financial and commercial policies.

^{7/} The constitutions of these countries recognize only arbitration by national legal and judicial bodies.

7. It may be noted that some of these problems are the subject of increasing attention. Agreements in the petroleum and mining sectors show a trend towards greater recognition of the principles of equity and mutuality of interests and of the host country's inherent sovereignty over its natural resources. While these developments have substantially improved the legal and economic position of the developing countries in these sectors, the same principles need to be applied to other forms of industrial co-operation.^{8/}

III. RELEVANCE OF EAST/WEST CO-OPERATION AND THE LOME CONVENTION ^{9/}

8. Certain aspects of East/West trade and industrial co-operation are relevant when considering arrangements between developing and developed countries at both government and enterprise levels. Long-term agreements for large-scale investment projects, financed through compensation deliveries and providing technology and know-how, have had a considerable impact on the expansion and diversification of East/West trade.

9. A promising form of industrial co-operation is tripartite co-operation, in which western and eastern enterprises jointly construct and equip industrial plants for third countries.

10. Governmental and institutional mechanisms have played an important part in the evolution and development of East/West industrial co-operation at enterprise level. Governmental arrangements have been noted as probably

^{8/} A detailed analysis of the evolution of provisions in these agreements is contained in documents entitled "Major features and trends in contracts and agreements in the international petroleum industry", ID/WG.337/3 February 1981; "Major features and trends in mining agreements", ID/WG.337/4 February 1981; and "Features and issues in turnkey contracts in developing countries", ID/WG.337/5 Part I, February 1981, United Nations Centre on Transnational Corporations.

^{9/} A detailed analysis of these subjects is contained in a note by the secretariat of the ECE, entitled "The Development of East/West Industrial Co-operation", ID/WG.337/1, 7 February 1981, paras.14-32, 94-125 and 163-181. See also Council Regulation (EEC) No. 3225/80 of 25 November 1980 on the conclusion of the second ACP-EEC Convention signed at Lomé, 31 October 1979, title V, Articles 65-82.

the most decisive factor in establishing a sound framework for the development of industrial co-operation at the enterprise level. Longer-term intergovernmental agreements generally provide for the establishment of joint commissions entrusted with implementing agreements and, where no such commission is established, representatives of the countries concerned meet annually to monitor implementation.

11. The Lomé Convention reflects the fact that the two groups of countries recognize the need to organize economic co-operation by means of institutional mechanisms with special arrangements for constructive and continuous dialogue, in order to promote industrial co-operation and the expansion of trade for mutual benefit. The Convention covers, in some detail, the objectives of industrial co-operation; the obligations of the EEC with regard to financial and technical co-operation; the industrial fields to be developed; relevant information and institutional activities; and institutional arrangements to review progress in the implementation of the overall programme of industrial co-operation in the African, Caribbean and Pacific states.

12. East/West industrial co-operation and the Lomé Convention use institutional arrangements at bilateral and multilateral levels to provide a framework for co-operation and trade expansion on a long-term basis. Thus, trade and industrial co-operation are organized and monitored in a systematic manner for mutual benefit through the production and marketing of new manufactures. The activities are carried out by the enterprises and organizations themselves; institutions set up within an intergovernmental framework keep governments informed about enterprises' relations with one another.

IV. ROLE OF GOVERNMENTS IN TRADE AND INDUSTRIAL CO-OPERATION

13. Developed and developing countries hold different views on the role of governments and intergovernmental agreements in promoting trade and industrial co-operation.

14. The developed market economy countries consider that intergovernmental agreements are not a vital prerequisite for industrial co-operation and that the role of governments is one of encouraging and facilitating the process of development not of controlling it. As a basis for trade and industrial

co-operation with developing countries, these developed countries attach importance to investment guarantees; acceptance of the existing system of international arbitration and the legal practices and procedures for the settlement of disputes; and tax arrangements avoiding double taxation and providing concessions to attract investments.

15. The Socialist countries of eastern Europe base international economic relations with both developed market economy countries and developing countries on intergovernmental framework agreements, usually of 5-10 years duration. The agreements define the aims, nature, scope and areas of co-operation and provide for mechanisms to identify co-operation projects and to co-ordinate and supervise their implementation.

16. Developing countries take the view that intergovernmental framework agreements for industrial co-operation are useful in that the general principles embodied in such agreements provide secure guidelines for the parties concerned and thus foster long-term co-operation. Within such a framework it is possible to supervise the implementation of contracts, facilitate the settlement of disputes and examine the particular interests of developing countries (e.g. long-term credits, buy-back arrangements, marketing, training of personnel, performance guarantees, risk insurance etc.) with the involvement of the governments of the parties concerned.

17. The mutuality of interest involved in trade and industrial collaboration calls for consultations among the parties concerned with a view to evolving a practical approach for dealing with any issues and problems that arise.

V. SUGGESTED INTERIM MEASURES FOR URGENT ACTION

18. Until solutions are found to many of the problems discussed above, a few interim practical measures could be taken to provide particular assistance to the developing countries in promoting and facilitating trade and industrial collaboration.

Flows and channels of information^{10/}

19. Trade and industrial co-operation have been steadily growing, particularly at enterprise level, and new types of collaboration arrangements have been constantly evolving. Many governments and enterprises, especially those in the developing countries, are not sufficiently informed about many aspects of existing arrangements and - more importantly - about the full range of opportunities for such collaboration and the advantages and experience to be gained in this respect.

20. At present there is no integrated system which has the capacity to collect, analyze, organize and disseminate information and material available from the United Nations system and other sources which would be of use to the decision-making process at both government and enterprise levels. Initially, an experimental clearing or referral mechanism for information on trade and industrial collaboration might be considered, to be set up on a co-operative basis involving the international organizations concerned.

Technical assistance^{11/}

21. The development of trade and industrial collaboration at enterprise level would be greatly facilitated by providing appropriate technical assistance to enterprises and governmental bodies in developing countries. Such assistance would include: the identification of specific industries or branches which are suitable for industrial collaboration projects; an assessment of the feasibility and the potential benefits of such arrangements; assistance in explorations, negotiations or consultations in connection with collaboration arrangements; seminars or workshops to discuss problems at technical level, to promote the exchange of relevant information and experience between governments and enterprises, and to bring together prospective partners.

^{10/} A detailed discussion of the subject is contained in "Flows and channels of information on trade and industrial collaboration". Note of the UNCTAD secretariat, ID/WG.337/2 , March 1981.

^{11/} The type of assistance to developing countries covering some of the aspects listed here is contained in "The UNIDO System of Consultations as an instrument for Industrial Redeployment and Development", UNIDO/EX.122 of July 1980, and "System of Consultations", Report by the Executive Director, ID/B/257, March 1981.

VI. FURTHER ACTION TO PROMOTE INDUSTRIAL COLLABORATION

22. In the light of the problems and obstacles to trade and industrial collaboration, particularly those faced by the developing countries, it is important that mutually acceptable measures be taken at national and international levels.
23. At the national level, there is a need for appropriate action to deal with the range of problems and issues, raised at the first meeting and highlighted in the present note, that tend to impinge upon industrial co-operation. These problems involve the areas of activity in which governments might have a role to play in enterprise-to-enterprise arrangements. When dealing with trade or commercial aspects of enterprise-to-enterprise arrangements, there is a need for mechanisms which could deal with problems that arise in such agreements, settle disputes, establish a focal point for the discussion of operational problems that arise and also review the implementation of collaboration arrangements.
24. At the international level there is an urgent need for (a) a set of mutually agreed equitable principles and guidelines covering enterprise-to-enterprise trade and industrial collaboration and (b) an examination of ways and means to encourage and promote collaboration arrangements and help arrive at mutuality of interest between enterprises in developed and developing countries.
25. Taking into account the considerations discussed in the present document, the provisions of General Assembly resolution 3362 (S-VII), section IV, para.7, which requests the preparation of a general set of principles for bilateral industrial co-operation, and the views expressed at the first meeting of the group in October 1979 concerning the desirability of drawing up a list of elements of general applicability that might be introduced in enterprise-to-enterprise agreements,^{12/} the Group of Experts might wish to consider the establishment of a joint UNCTAD/UNIDO ad hoc group with the following terms of reference:
- (a) To suggest a set of multilaterally agreed equitable principles and guidelines concerning enterprise-to-enterprise trade and industrial collaboration arrangements;

^{12/} See ID/B/234, para.16; TD/B/774, para.16.

- (b) To identify the ways and means by which governments could encourage and promote such arrangements.

26. The Group may recommend that the Industrial Development Board of UNIDO and the Trade and Development Board of the United Nations Conference on Trade and Development consider this matter at their next regular sessions.

ANNEX

DOCUMENTS AVAILABLE TO THE AD HOC UNCTAD/UNIDO GROUP OF EXPERTS ON
TRADE AND TRADE-RELATED ASPECTS OF INDUSTRIAL COLLABORATION
ARRANGEMENTS

A. First meeting, Geneva, 22-26 October 1979

International co-operation for industrial development, restructuring and trade. Trade and Trade-related Aspects of Industrial Collaboration Arrangements. Joint report by the secretariats of UNCTAD and UNIDO; ID/B/C.3/74/Rev.1

International co-operation for industrial development, restructuring and trade. Report of the Permanent Committee on the work of its eleventh session (paras. 131-146); ID/B 215

International co-operation for industrial development, restructuring and trade. Industrial collaboration arrangements. Report by the UNCTAD secretariat; TD/B/C.2/179 also issued as UNCTAD/ST/MD/12.

Industrial co-operation and collaboration arrangements in the context of industrial restructuring. Report by the UNCTAD secretariat; TD/185/Supp.3

International co-operation for industrial development, restructuring and trade. Intergovernmental agreements as an instrument of industrial co-operation. Note by the UNIDO secretariat; ID/B/C.3/68 also issued as UNCTAD/ST/MD/19.

Various papers submitted to the meeting of senior experts on industrial co-operation between developing and socialist countries, Sofia, Bulgaria, 4-8 September 1979; ID/WG.299/1-9.

B. Second meeting, Vienna, 1-12 June 1981

System of consultations. Report of the Ad hoc UNCTAD/UNIDO Group of Experts on Trade and Trade-related Aspects of Industrial Collaboration Arrangements. ID/B/234 also issued as TD/B/774, and ID/B/234/Add.1 also issued as TD/B/774/Add.1

Extracts from the Report of the Committee on Manufactures on its Ninth Session (TD/B/822 - TD/B/C.2/207) attached to letter of invitation.

The development of East/West industrial co-operation. Note of the secretariat of the Economic Commission for Europe (ECE);
(February 1981); ID/WG.337/1

Flows and channels of information on trade and trade-related aspects of industrial collaboration arrangements. Note of the UNCTAD secretariat,
(April 1981); ID/WG.337/2

Major features and trends in contracts and agreements in the international petroleum industry. Prepared by the United Nations Centre on Transnational Corporations. (February 1981); ID/WG.337/3

Features and issues in turnkey contracts in developing countries, PART I;
(February 1981). Prepared by the United Nations Centre on Transnational Corporations; ID/WG.337/5

Major features and trends in mining agreements. Prepared by the United Nations Centre on Transnational Corporations; (February 1981); ID/WG.337/4

Features and issues in turnkey contracts in developing countries, PART II;
(April 1981). Prepared by the United Nations Centre on Transnational Corporations; ID/WG.337/...

The UNIDO System of Consultations as an instrument for Industrial Re-deployment and Development; (July 1980); UNIDO/EX.122

System of Consultations. Report by the Executive Director. (March 1981);
ID/B/257

