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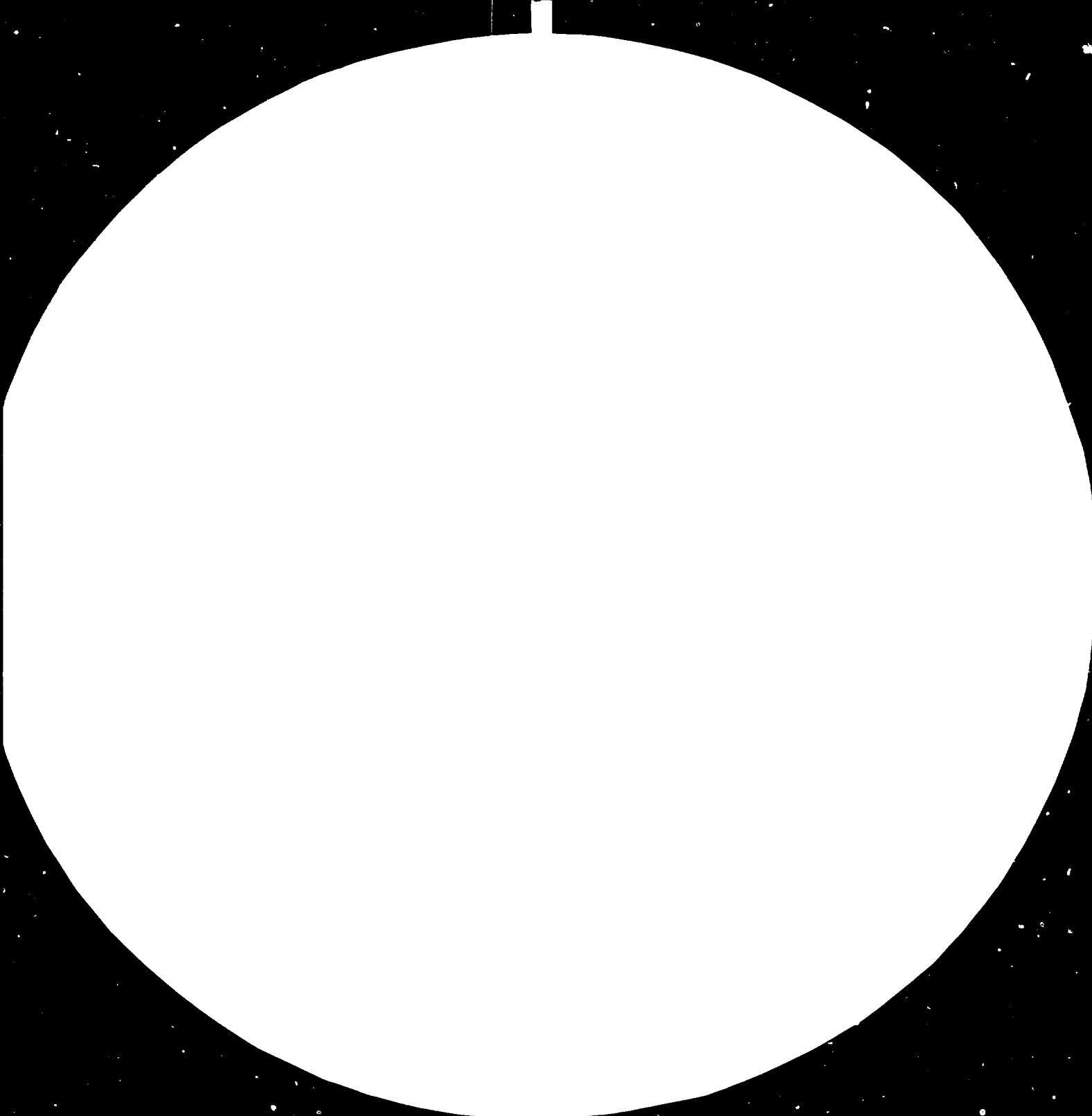
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MEASUREMENT OF RESOLUTION IN THE HUMAN VISUAL SYSTEM

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10501-E



Distr.
LIMITED

ID/WG.337/9/Rev.1
22 June 1981

Original: ENGLISH

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

REPORT

001130

V.31-26968

Letter, dated 12 June 1981, from the Chairman of the Ad hoc
UNCTAD/UNIDO Group of Experts on Trade and Trade-related
Aspects of Industrial Collaboration Arrangements

I have the honour to submit herewith on behalf of the Ad hoc UNCTAD/UNIDO Group of Experts on Trade and Trade-related Aspects of Industrial Collaboration Arrangements the report of the second meeting of the Group, which was convened in pursuance of the decisions by the UNCTAD Trade and Development Board at its twentieth session in March 1980 and the UNIDO Industrial Development Board at its fourteenth session in May 1980.

The Group met at the Hofburg Congress Centre at Vienna from 1 to 12 June 1981. At the request of the Group, Mr. M. Trifunović served as Chairman and Mr. R. Roberts and Mr. W. Wilczynski as Vice-Chairmen.

In accordance with the above-mentioned decisions of the UNCTAD Trade and Development Board and the UNIDO Industrial Development Board, the Group considered further the issues concerning trade and trade-related aspects of industrial collaboration arrangements in the light of the results of the studies made available to it by the UNCTAD and UNIDO Secretariats as well as documentation provided by UNCTC and ECE, and taking into account the views expressed at the twentieth session of the UNCTAD Trade and Development Board and the ninth session of the UNCTAD Committee on Manufactures.

The Group examined the range of issues in enterprise-to-enterprise agreements, including those within the framework of intergovernmental agreements. It also considered the role of Governments, including intergovernmental framework agreements, in the light of relevant experience in promoting and facilitating trade and industrial co-operation in their various forms. Moreover, the Group examined the need for building up expertise in developing countries and improving exchange of information and material in this field.

The views of the Group in regard to the problems and issues it had examined at its second meeting including suggestions on specific matters are reflected in chapters I and II of this report.

The Group's agreed conclusions and recommendations are contained in the Conclusions and Recommendations (paragraphs 13-18). In this regard I wish to draw particular attention to paragraphs 15 and 18 regarding future action which the Group considers important in promoting and facilitating trade and industrial co-operation at both enterprise and governmental levels.

In accordance with the Group's recommendations, I wish to request you to transmit this report to the UNCTAD Trade and Development Board and the UNIDO Industrial Development Board for consideration at their next regular sessions.

On behalf of the members of the Group, I wish to express our appreciation for the opportunity to examine many of the important problems and issues, particularly from the viewpoint of the objectives and concerns of the developing countries, in their efforts to promote industrial development and to expand and diversify their trade. Trade and industrial co-operation, whether at enterprise level or the governmental level, involves mutuality of interests and benefits for all the parties concerned, and the solution to the problems and issues in this field should be seen in this light.

It is our hope that the recommendations of the Group will be given particular consideration by UNCTAD and UNIDO.

Signed: Miljko Trifunović



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INTRODUCTION

1. The Ad hoc UNCTAD/UNIDO Group of Experts on Trade and Trade-related Aspects of Industrial Collaboration Arrangements held its second meeting at Vienna from 1 to 12 June 1981 pursuant to the decisions by the UNCTAD Trade and Development Board at its twentieth session in March 1980 and by the UNIDO Industrial Development Board at its fourteenth session in May 1980.

2. The terms of reference of the Ad hoc Group were:

To undertake an examination, in pursuance of the objectives contained in paragraphs 8 and 9 in section II, D of Conference Resolution 96 (IV) of 31 May 1976, of the trade and trade-related aspects of industrial collaboration which would be of benefit to developing countries in relation to international co-operation in the industrial development of developing countries.^{1/} The experts shall take into account current practices in enterprise-to-enterprise arrangements as they concern trade and trade-related aspects of international co-operation on the industrial development of developing countries.^{2/} They will also bear in mind the role of governments in supporting such enterprise-to-enterprise arrangements, including the possible role of intergovernmental and other framework agreements or arrangements for promoting industrial collaboration bilaterally, trilaterally or multilaterally. In their deliberations, the experts would take into account the sectoral consultations in UNIDO referred to in paragraph 10 in section II, D of Conference Resolution 96 (IV).

3. The members of the Group, who served as experts in their individual, personal capacity were (see also annex II): K. Abdallah-Khodja, J. Croddy, B. Högberg, I. Klaric, J. Matus, A. Navas Sierra, A. Oluwunmi, V. Ordoñez, Y. Piscoulov, R. Roberts, M. Trifunović, L. Ujházy, U. Vohra, W. Wilczynski, Wu Jiaying and H. Yamaoka.

1/ Paragraphs 8 and 9 state "As there exists a close interrelationship between industrial development and trade, concerted co-operation between UNCTAD and the United Nations Industrial Development Organization is required in implementing the various measures in their respective areas of competence, bearing in mind the central role of the United Nations Industrial Development Organization in industrial development and co-operation and of UNCTAD in trade and development in the United Nations system"; and, "UNCTAD and the United Nations Industrial Development Organization should co-operate fully in their respective areas of competence in promoting the action described in section II, B, paragraph 5, above". Section II, B deals with international co-operation for industrial development, restructuring and trade.

2/ In approving the establishment and organization of the Group, it was the understanding of the UNIDO Permanent Committee that the Ad hoc Group of Experts would take into account all types of agreements and/or arrangements.

4. At the request of the Group, Mr. M. Trifunović served as Chairman, and Mr. R. Roberts and Mr. W. Wilczynski as Vice-Chairmen.

5. The Group adopted an agenda which appears as annex I.

6. The participants of the Group are listed in annex II.

7. The Group had before it various documentation prepared by the UNCTAD and UNIDO Secretariats including UNCTC and the ECE Secretariat. These documents are listed in annex III.

8. The representatives of the Executive Director of UNIDO and of the Secretary-General of UNCTAD broadly outlined the matters before the Group for its consideration, focusing on specific issues which the Group might address at its second and probably final meeting. They recalled the important decisions in the United Nations system including the International Development Strategy for the Third United Nations Development Decade recently adopted by the United Nations General Assembly. The Strategy recognized that the acceleration in the tempo of production in developing countries will require a rapid expansion and a diversification of their international trade. For developing countries, in general, exports and imports of goods and services should expand at an annual rate of not less than 7.5 per cent and 8 per cent respectively. Moreover, developing countries as a whole should expand manufacturing output at an average annual rate of 9 per cent to enable them to make a significant contribution during the decade towards raising the share of developing countries in world manufacturing production, and in laying the basis for achieving the target of 25 per cent of world production by the year 2000 as set out in the Lima Declaration and Plan of Action. The Strategy further provides that industrialization should be aimed at meeting in an integrated way the overall requirements of the development of the national economies of developing countries and manufacturing activities should be geared towards not only satisfying growing domestic demand and employment requirements, but also increasing the share of developing countries in world exports of manufactured goods.

9. They emphasized that issues identified in the joint report by the secretariats of UNCTAD and UNIDO might be examined in the light of two important considerations: first, the relatively weak bargaining position of developing countries, and secondly, the fact that complex industrial projects involved heavy financial outlays and various commitments over long-term periods. Often public enterprises constituted integral elements of national development plans and strategies, hence, industrial collaboration agreements

and contracts were important instruments of public policy in the developing countries. It was therefore essential to examine the issues and problems impinging on industrial co-operation and trade expansion in the context of national development and the New International Economic Order.

10. The UNCTAD and UNIDO representatives drew attention to the need for further action particularly at the international level to promote and facilitate trade and industrial collaboration at both governmental and enterprise levels. In this connection, they stressed the need for practical interim measures for improving the flows and channels of information as well as technical assistance in promoting the development of trade and industrial collaboration, particularly at the enterprise level.

11. As regards future action, particularly at the international level, to promote and facilitate trade and industrial collaboration, the UNCTAD and UNIDO representatives drew attention to the need to consider the possibility of drawing up multilaterally agreed equitable principles and guidelines concerning enterprise-to-enterprise trade and industrial collaboration arrangements and for the identification of ways and means by which governments could encourage and promote such arrangements and help achieve mutuality of interests among the parties concerned.

12. The UNCTAD and UNIDO representatives presented the various documentation prepared by both secretariats and in collaboration with UNCTC and ECE to facilitate the work of the Group in its deliberations. They expressed much appreciation to the UNCTC and ECE for their valuable contributions to the documentation and the work of the Group.

CONCLUSIONS AND RECOMMENDATIONS

13. The Group noted that enterprise-to-enterprise arrangements were increasingly becoming an important and dynamic element in industrial co-operation and trade between developing and developed countries. The Group recognized the need to consider specific provisions in industrial collaboration arrangements on an enterprise-to-enterprise basis which would help developing countries to enter into contractual arrangements for furthering international trade. The Group recognized the need to build up expertise in developing countries which would equip them to enter into beneficial industrial collaboration arrangements on an enterprise-to-enterprise basis. The Group identified as of particular importance to the success of industrial collaboration arrangements that agreements should include appropriate provisions on performance guarantees, training, supply of raw materials and utilities, marketing, including where appropriate, buy-back arrangements, provision of spare parts, arrangements for maintenance and repair, provision of technology, financing, pricing mechanisms, and settlement of disputes including arbitration.

14. While enterprise-to-enterprise arrangements depended primarily on the initiative of entrepreneurs in the countries concerned, governments can play an important role in promoting and facilitating industrial collaboration arrangements leading to trade. Intergovernmental agreements may foster long-term co-operation and assist in the industrial development and diversification of trade of developing countries. In this connection, the Group noted the diverse role which existing intergovernmental and other multilateral framework agreements play in promoting and facilitating trade and industrial co-operation.

15. The Group recommends that the UNCTAD and UNIDO secretariats continue to examine the various matters pertaining to the trade and trade-related aspects of industrial collaboration arrangements including those referred to in paragraph 34 of its report on its first meeting, taking into account studies and relevant documentation available in other international organizations including the UNCTC, ECE and other regional economic commissions. The multi-year technical assistance programme on trade and industrial collaboration should be strengthened taking into account the activities outlined in paragraph 62 of the present report. The Group further recommends the full utilization of existing mechanisms for exchange of information on trade and industrial collaboration.

16. The Group considered that in view of the close inter-relationship between industrial development and trade, UNCTAD and UNIDO should continue and further strengthen their co-operation in their respective areas of competence in promoting international co-operation for industrial development and trade, particularly of the developing countries.

17. In view of the complexity of the problems exposed at its second meeting, the Group recommends that there should be further examination of the problems and issues involved in industrial collaboration arrangements at both the enterprise and intergovernmental levels, taking into account the UNIDO sectoral consultations, and for this purpose the Ad Hoc Group should continue its work.

18. The Group requests the Secretary-General of UNCTAD and the Executive Director of UNIDO to transmit the present report on the Group's second meeting to the UNCTAD Trade and Development Board and the UNIDO Industrial Development Board for consideration at their next regular sessions, drawing particular attention to the above conclusions and recommendations.

I. CHARACTERISTICS OF ENTERPRISE-TO-ENTERPRISE ARRANGEMENTS INCLUDING THOSE WITHIN THE FRAMEWORK OF INTERGOVERNMENTAL AGREEMENTS

19. The Group reaffirmed that industrial co-operation and trade between developed and developing countries needs to be further encouraged and strengthened to facilitate the industrialization and healthy economic development of the developing countries and also to improve the prospects of international economic relations. Many experts recalled the objectives set out in the Lima Declaration and Plan of Action and UNCTAD resolution 96 (IV) and the International Development Strategy for the Third UN Development Decade which they considered should be borne in mind in the consideration of the issues and problems in this field. The IDS, recently adopted by the UN General Assembly, recognized that an acceleration of the tempo of production in developing countries will require a rapid expansion and diversification of their international trade. For developing countries in general, exports and imports of goods and services should increase at an annual rate of not less than 7.5 per cent and 8 per cent, respectively. Other experts noted that a number of Governments had entered reservations on the Lima Declaration and Plan of Action.

20. The Group noted that enterprise-to-enterprise arrangements, including those within the framework of intergovernmental agreements, were increasingly becoming an important and dynamic element in trade and industrial co-operation between developing and developed countries. Co-operation agreements were not only increasing in number but also becoming more and more complex and wider in scope than in the past. The trends in such co-operation were moving away from the traditional forms towards wider coverage of industrial processes; they included not only the delivery of equipment but also the organization of processes of production and marketing. Many experts noted that the enterprises or Governments of the developing countries were often, but not always, still the weaker parties in the bargaining process for negotiating such arrangements. Other experts maintained that the bargaining strength of some developing countries is in many respects stronger than that of, especially small and medium-sized enterprises, in developed countries. There was mutuality of benefits and interests involved in trade and industrial co-operation.

21. The Group further noted that many problems and issues still persisted in the area of trade and industrial co-operation, particularly at the enterprise level. It also noted that the developing countries considered such co-operation was an important means of enabling them to accelerate industrial

development and expansion for the diversification of their trade, particularly in manufactures and semi-manufactures.

22. The Group noted that trade and industrial co-operation at the enterprise level between developed market economy countries and developing countries relied primarily on the initiative of enterprises in the countries concerned. Some experts noted that between developing and planned economy countries, intergovernmental framework agreements foster and stimulate the enterprises.

23. As regards the role of Government in promoting and facilitating trade and industrial collaboration arrangements, many experts considered that Government had an important role to play in this regard. Some experts also felt that Governments could play a role in encouraging arrangements in the earlier stages of seeking and identifying appropriate partnerships, as well as at the later stages of finalizing agreements. Some experts noted that intergovernmental framework agreements provided guidelines for the parties concerned thus fostering long-term co-operation. Moreover, such framework agreements may make it possible to discuss the implementation of arrangements, contracts and disputes. They provided a forum to discuss problems in the implementation or application of some industrial collaboration arrangements. Other experts reiterated the view earlier expressed in the first report, that in so far as some Governments were concerned, their role was one of encouraging and facilitating the process of development but not of directing and controlling it.

A. Some main issues relating to enterprise-to-enterprise agreements

24. The Group examined in some detail the range of subjects and the issues and problems related thereto in contractual arrangements between enterprises in developing countries and developed market economy countries as well as those covered by intergovernmental agreements. These included, inter alia, guarantees, training, supply of raw materials, marketing of resultant products, technology, maintenance, repair and spare parts for equipment, pricing mechanisms, financing, and settlement of disputes including arbitration. Discussions took into particular account chapter II of the joint UNCTAD/UNIDO report ID/WG.337/6. The Group agreed that these were some subjects which could be considered, as necessary, in negotiating contractual arrangements.^{1/}

^{1/} In the opinion of one expert the words "as necessary" should be replaced by "where necessary".

1. Guarantees

25. The Group considered that appropriate solutions concerning guarantees in contractual arrangements at enterprise levels were important and often crucial to the success of such arrangements. In reviewing the experience in this regard, the Group noted that some of the more frequent problems that had arisen in this area related, inter alia, to the nature of the guarantee, the determination of responsibility and damages and penalties.

26. As regards performance guarantees, the Group noted that in some contracts the period of guarantee which traditionally ended at the point of delivery or completion of the plant, had been extended by a year or two to include the period of actual production of the product(s) in order to ensure that the expected performance level was not only attained but also that the product continued to conform to the expected or agreed quality. It was also noted that some contracts specified a minimal acceptable level of performance and in many cases these related to the different stages of the process of setting up the plant. The problem of guarantees was difficult, particularly in cases of plants where part(s) of the equipment or components were subcontracted in the host country. In these cases, foreign contractors were hesitant or had difficulty in guaranteeing performance shortfalls due to faults in locally manufactured parts or components of the plant or the quality of the domestic raw materials used in production of the end product(s). Moreover, it was difficult to ascertain the cause of the shortfall.

27. Another complex problem raised by a number of experts was the determination of the damages and the penalties or compensation for such damages. It was suggested by some experts that outside consultants or experts, not in any way related to the supplier of equipment or the foreign partner, monitor performance at every stage of the setting up and test-run of the plant and a reasonable period beyond; this might be useful in ensuring the performance of the plant or the production process. Other experts thought that there were obvious difficulties in this, in that it was unlikely that outside experts would be fully familiar with the operation of the plant. In this connection, the sharing of risk between the host enterprise and the foreign contractor or partner was mentioned.

28. The Group considered that some of the problems attributable to performance guarantees could be mitigated at the negotiating stage by ensuring that adequate training in negotiating was available, and that the owner/buyer

guaranteed that adequately trained personnel would operate the plant during the guarantee period. In this connection, it was noted that some foreign contractors, especially the larger enterprises, had established their own training facilities to help ensure the attainment of the specified or agreed performance levels.

29. The Group considered that the matter of performance guarantees was mainly the responsibility of the parties concerned at the negotiation phase and should be settled by them on mutually agreeable terms. Governments played only a marginal role in this area, if any.

2. Training

30. The Group considered that industrial training at all levels was a crucial element in industrial co-operation, bearing in mind the long-term industrialization objectives of developing countries. It also noted that, in general, contracts between enterprises contained only scanty provisions in this regard, the result was that many practical problems arose during the contract implementation and that the skills acquired by the purchaser were often partial and fragmentary.

31. The Group stressed that contracts should be clear as to the objectives of training as well as to the types, levels, selection of trainees, costs and timing. In particular, the need was stressed for specific provisions relating to the verification as to whether those trained were able to accomplish the tasks set out in the contract. The value of a well-conceived long-term training programme was pointed out, together with the need to train technicians and trainers in particular.

32. To overcome these problems the Group felt that the respective roles of Governments and enterprises could be complementary. Enterprises had a limited capacity to train, focusing generally on the skilled worker level for the operation and maintenance of plant and equipment. Some experts felt that the role of Governments would be important in arranging training of a more general type, but particularly at the management level in order to complement the training provided by enterprises.

33. To facilitate the complementarity between the roles of Government and enterprises, some participants felt that it might be useful to improve the organization and co-ordination of suppliers of training existing in the developed countries through the establishment of focal points; these could be of assistance, for example, in the selection of the most appropriate

training facilities in those countries. Some experts felt that Governments had a special role to play in the establishment of such focal points, particularly in those cases where intergovernmental agreements had been concluded between the developed and developing country. This subject was being examined further in the preparations undertaken by UNIDO for the global Consultation on the Training of Industrial Manpower. Some experts also felt that the UN Organizations also had an important role to play in the general field of training.

3. Supply of raw materials and utilities

34. The Group noted that the objectives of the Governments in developing countries in promoting and facilitating trade and industrial co-operation was the utilization of indigenous raw materials or resources in the processing or manufacture of goods particularly for export. Such a policy was an important means for expanding income, production, employment and for enabling these countries to augment their scarce foreign exchange resources which these countries need for developmental imports. Thus, many trade and industrial collaboration arrangements provided for the maximum utilization of domestic inputs or resources.

35. Some experts noted that some contracts or agreements specify that a percentage of the plant or production input had to originate in the country of the foreign supplier or partner or in third countries. It was noted that in some developing countries the proportion of domestic input including equity participation was established by government policy. For instance, the proportion permitted for export oriented or high technology ventures was often much higher than that which catered mainly to the domestic market. Some experts recalled that in many developing countries legislation called for the progressive increase of domestic inputs in the final product and the local manufacture of components, spare parts or accessories. Some experts recalled that in many developing countries it was possible to progressively increase the domestic input to up to 60 per cent of the value of the final product, beyond that point many difficulties arose particularly in regard to inputs requiring specialized material or technology which may be beyond the capability of the host country to supply at that point in time. Other experts indicated that in some countries it was possible to raise the domestic input to 95 per cent. Some experts cautioned that while investment and other economic policies were matters

to be determined by the country concerned, such restrictive policies could have a deleterious effect on foreign direct investment and a restraining effect on industrial collaboration.

36. A number of experts noted the experience in some countries where the foreign partner discouraged the greater utilization of domestic inputs including the local manufacture of components. The Group recognized that the issue of pricing was complex and there was not sufficient information available to examine this problem in greater depth. It was mentioned by some experts that perhaps a practical approach to this problem especially in the cases where the prices of raw material inputs fluctuated substantially, was to make provisions in the contracts or agreements (without the need for renegotiation) which required the parties concerned to reveal periodically the pricing mechanisms or practices applied. Other experts had considerable doubts whether such changes after the signing of the contract would be equitable.

37. The Group also noted that contracts or agreements often did not include provisions concerning utilities, e.g. power or energy, water, waste disposal etc., to deal particularly with the longer-term requirements of enterprises. This had led to practical problems which had affected the smooth operations of the enterprises.

4. Marketing of resultant products

38. The Group noted that some contracts or agreements including those within the framework of intergovernmental agreements had provisions which provided for the marketing of the resultant products in the country of the foreign partner, or in third countries, i.e. buy-back or counter-trade arrangements. Some experts stressed that such provisions were particularly important for ventures or enterprises which were export-oriented as they provided markets for the resultant product(s). Other experts felt that marketing was not necessarily the responsibility of the foreign partner. The experience in East-West industrial co-operation in this regard was useful. In this connection, the need for quality control and the importance of technological improvement or adaptation was mentioned.

39. Some members of the Group also noted that many of the products were competitive in the world markets and faced various types of restrictions or commercial policies including tariffs and non-tariff measures, which

was an area within the purview only of Governments. Other members of the Group felt that such restrictions and policies could be justified in maintaining the industrial base of the countries concerned. In this connection, some experts drew attention to such important problems in the field of trade as protectionism in its various forms, which impeded the access of goods produced under industrial collaboration arrangements on the basis of comparative advantage to the markets of the countries implementing protectionist measures. The experts could not agree on whether or not these matters were questions for this Group.

40. Some experts noted that the products arising from contracts between enterprises in developing and developed market economy countries were often not granted special treatment. Special treatment could only be accorded by Governments. Some experts noted that such projects were subject to safeguard actions and other forms of restrictions especially when the product had successfully penetrated the markets of the developed countries concerned. Furthermore, the experts felt that many of these restrictions including the new ones that had been emerging were being applied outside the framework of internationally agreed rules. Other experts stated that such restrictions were within the framework of internationally agreed rules and were used sparingly. It was also pointed out by some experts that in the GSP schemes some preference-giving countries discriminated among developing countries in various ways thus negating the agreed objectives of the GSP. Some experts were of the view that it was essential if trade and industrial collaboration was to be promoted and facilitated that some reasonable assurance of market access was given to the products of such collaboration. Furthermore, some experts considered that the developed countries concerned should adopt appropriate measures to deal with adjustment problems and thus allow greater access for products in which the developing countries had comparative advantages. Other experts noted that developed countries are committed to adjustments in their economies, and have already adopted appropriate adjustment assistance programmes.

5. Technology

41. The Group recognized the role of technology in industrial and economic development particularly of developing countries. It also recognized the need to facilitate an adequate transfer of technology and development of

technology so as to strengthen the technological capabilities of developing countries. In this connection, the Group stressed the importance of improving the flow and quality of technological information including information on alternative technologies and on the selection of appropriate technologies suited to the specific needs of developing countries. In this connection, the Group noted the work in UNCTAD on a draft international code of conduct on the transfer of technology which has reached a fairly advanced stage.

42. The Group considered that provisions relating to technology were one of the major elements in contracts and agreements in industrial co-operation and trade connected with such co-operation. Those provisions related to the transfer of the necessary knowledge for the manufacture of a product, the application of a process or for the rendering of a service including the operation and functioning of plant and equipment and turn-key projects.

43. Some experts pointed out that in enterprise-to-enterprise arrangements it was important to also include provisions for the adaptation or improvement of technology to suit local conditions as well as regards payment for the technology acquired. Among the problems that had arisen, particularly for enterprises in developing countries, were restrictions on the technology supplied to that available at the time of negotiating the contracts. New technologies subsequently developed were supplied on the basis of new contracts at high cost. Other experts stressed that the commercial terms on which the contract was based often applied to existing technology, and that as improved technology had inevitably involved further cost to its producer, it might not be inappropriate that the recipient should be asked for further payment. The result was that the production process was based on the old technologies rather than on the more suitable new technologies, thus impinging on the capacity of the enterprise to adapt to the market of the resultant product.

44. Some experts noted that some Governments played a role in certain areas including those pertaining to the terms and conditions of transfer of technology, e.g. in defining the rights and obligations of the contracting parties.

6. Repair, maintenance and spare parts

45. The Group considered that problems associated with the repair and maintenance of equipment and the supply of spare parts were closely linked to question of arbitration since unresolved issues relating to these problems often formed the core of disagreement.

46. Whilst there were certain measures that buyers could take to check on the technical reputation and financial status of suppliers, such as the financial rating agencies, engineering consultants etc., a significant degree of protection could be obtained through well-drawn up contracts. It was also recognized that the consequences of events such as bankruptcy might be considerable to buyers involved in long-term arrangements with firms which become bankrupt.

7. Financing

47. The Group recognized the vital importance of finance in contracts relating to industrial co-operation. However, as regards particular financing mechanisms, some experts stressed the importance of linking finance with buy-back arrangements in industrial collaboration contracts or agreements. Some considered that such a link might impede industrial co-operation because often capital goods' suppliers or the foreign partner may not have sufficient experience or the required resources or facilities for buy-back products. A number of experts, however, stressed that buy-back and counter-purchase arrangements had several advantages. Among these advantages were that such arrangements ensured that the quality and price of the product met the agreed specifications, thus compelling the partners to give high priority to such performance. Moreover, many developing countries faced foreign exchange difficulties and needed channels or markets for the products of industrial collaboration. It was noted that problems concerning the quantity, quality and price of buy-back products had often caused difficulties in this field.

48. The Group agreed that some Governments in both developed and developing countries could become involved in the financial aspects of some industrial co-operation contracts and agreements, at least insofar as establishing a clear infrastructure of investment and industrial co-operation policies. This involvement arose from the importance given to such questions as interest rates and export credit insurance. In this regard, some experts suggested it might be helpful to undertake a survey of existing investment industrial co-operation guidelines embodied in legislation of countries that have crystallized this, for the information of other countries, where such guidelines are not available.

8. Pricing

49. There was general agreement that pricing is a commercial matter, of direct concern to the partners of an enterprise-to-enterprise agreement. Some experts felt that Governments had an important role to play in laying down domestic guidelines to govern enterprise-to-enterprise agreements. It was recognized by the Group that information in this area was important both with respect to policy issues and mechanisms on the workings of financial infrastructure, as well as with more direct information with regard to product and equipment prices. Some experts emphasized that buyers must know what they are paying for. They recognized that unpackaging in the technology transfer process might be appropriate for some developing countries.

50. Some experts felt that there should be indexation of the prices of raw materials, wages and other inputs and the point was made that it might be appropriate to allow not only for price increases but also for price decreases. There was a further suggestion that United Nations agencies might have a role to play in the monitoring of prices for capital equipment but it was recognized that such monitoring might be a complex exercise. There was also recognition that it might be important to use the competitive mechanism of invitation to bid in comparing the prices of different equipment suppliers.

9. Settlement of disputes including arbitration

51. Some experts noted that there are existing procedures regarding settlement of disputes through international arbitration. They noted that in some countries national law was the only law recognized as applicable to the settlement of disputes. Other experts noted that other countries recognized the right of the contracting parties to choose both the law and the forum relating to their disputes.

52. Some experts noted that one approach to avoiding disputes was to monitor closely the entire process of implementation of a given project. The contractual arrangements should provide for procedures to settle disputes. In this connection, some experts felt that there was a need to examine in what ways existing arrangements for the settlement of disputes could be improved with a view to making them more expeditious and less costly.

53. Some experts pointed out that existing arbitration procedures were long and costly. They pointed out that these procedures adversely affected and were detrimental to industrial co-operation and should be resorted to only as the final step for settling disputes. Other procedures of an informal nature, such as conciliation, should be explored initially. Other experts were of the view that international procedures for dispute settlement and arbitration had been carefully developed to ensure fair and equitable settlement of disputes.

B. Relevance of East-West experience in industrial and trade co-operation

54. The Group had before it various studies prepared by ECE on this subject, including a report which summarized briefly East-West experience in this field entitled "The Development of East-West Industrial Co-operation" (ID/WG.337/1).

55. The representative of the Economic Commission for Europe noted the evolution and rapid growth of East-West industrial co-operation which at present were mainly of two types: projects in the raw materials sector, in which technology and equipment supplied by the Western partner was usually financed by counter-deliveries of resultant products; and, projects for manufactured goods, particularly industrial machinery, semi-finished materials such as metallurgical products and chemicals, and to a lesser extent, consumer goods.

56. He also noted that of the many forms of industrial co-operation practised in East-West trade, licensing based on payment in resultant products was the earliest and most numerous, until it was superseded by co-production or specialization in production, in which each partner specialized in the manufacture of specific components which were exchanged for assembly of the complete product by each partner who then sold the final product in its designated market area. He said co-operation based on sub-contracting experienced rapid growth during the earlier period, i.e. from 1965 to 1970. Thereafter co-production ventures became more numerous, as did joint ventures for marketing purposes, located in Western countries. The tripartite form of industrial co-operation had experienced a rapid expansion in later years and could be considered a further evolution of earlier bilateral types of co-operation.

57. As regards the role of intergovernmental agreements and related measures, some experts noted that such agreements are playing a useful role in East-West industrial co-operation. For instance, mixed commissions of governmental and enterprise officials had found it possible under the provisions of these agreements to make interventions on behalf of individual projects to accelerate action by governmental bodies, besides assisting interested enterprises in the partner countries to locate suitable co-operation partners and identify industrial and product sectors for co-operation.

58. Some experts noted that many aspects of East-West trade and industrial co-operation may be relevant to similar co-operation between enterprises in developing and developed countries including at the intergovernmental level. In this connection, the Group noted the network of industrial and trade co-operation agreements which socialist countries had with many developing countries. However, other experts pointed out that while East-West experience provided useful guidelines for co-operation with developing countries it might not be suitable or possible to extrapolate or transfer many of the practices applied in East-West trade and industrial co-operation to developing countries in view of the divergencies among these countries, e.g. as regards natural resource endowments, adequacy of infrastructure, and generally at the levels of industrial or economic development.

59. Some experts thought it would be extremely useful if the UNCTAD and UNIDO secretariats made full appraisal of the experience and results obtained from industrial co-operation programmes, projects and agreements between developing and developed countries.

60. A number of experts pointed to the role that can be played by the processes of regional and sub-regional economic integration to facilitate and stimulate industrial co-operation agreements and programmes, both on a larger scale and covering longer periods of time. Some experts felt that there was a need for globalizing the benefits of regional and sub-regional economic groupings.

C. Multilateral arrangements to promote industrial co-operation

61. The representative of the ACP described their experience concerning the arrangements set up within the framework of the Lomé Convention to

promote co-operation at the enterprise-to-enterprise level. The Convention provided a multilateral framework within which production and marketing could be organized on a long-term basis. The framework provided a forum for dialogue where different views were expressed and harmonized, as distinct from enterprise-to-enterprise negotiations on a bilateral basis. It also provided for establishing contacts for economic development on a wider basis and with due regard to promoting the interests of all the participants through a clear agreement on the obligations and responsibility of the parties concerned. He also described the network of institutional arrangements set up under the Lomé Convention, especially the Centre for Industrial Development, the European Development Bank and the European Investment Bank, which provided, inter alia, for the undertaking of feasibility studies, the collection and dissemination of information, bringing together potential partners, providing financial, technical and other assistance, and, in general, creating a climate of confidence and understanding for fostering and promoting industrial collaboration arrangements for the mutual benefit, especially of medium and small enterprises who would not otherwise be able to engage in such operations.

D. Role of technical assistance

62. The Group recognized the fundamental importance of technical assistance particularly to Governments and enterprises in developing countries. Such assistance would be particularly helpful in connection with the preparation of pre-feasibility and feasibility studies; in the exploration, negotiations or consultations concerning trade and industrial collaboration arrangements; and the organization of workshops or seminars to provide a mechanism for the examination of problems at the technical level; for exchange of up-to-date information and experience; and to bring together prospective partners of collaboration arrangements.

63. Some experts considered that the UNCTAD and UNIDO secretariats should strengthen the technical assistance on trade and industrial co-operation with support to other bodies within the United Nations system including the United Nations Centre of Transnational Corporations and the United Nations Development Programme (UNDP), taking into account the activities outlined above. Some experts also felt that the United Nations Secretariat should not directly negotiate specific contracts.

II. FLOWS AND CHANNELS OF INFORMATION ON TRADE AND INDUSTRIAL
COLLABORATION ARRANGEMENTS

64. The Group recognized that the availability of detailed, precise and up-to-date information was essential in promoting and facilitating trade and industrial collaboration at both enterprise and governmental levels. In noting the information and material presently available within the United Nations system and from other sources, the Group recognized the need for a comprehensive system to collect, process, analyse, organize and disseminate such information and material to both Governments and other potential users including private enterprises in connection with trade and industrial co-operation. However, it also noted that the establishment of such a system called for resources which were beyond the capacity of any single organization in the United Nations system.

65. The Group noted that the information services within the United Nations system are currently under review. Accordingly, it considered that co-operative arrangements should be instituted making full use of those existing sources of information, and this might provide a practical approach in the interim, to these problems. These arrangements could be developed and evolved in accordance with the needs and experience of both Governments and private enterprises in this field.

Annex I

AGENDA

1. Adoption of the agenda and organization of work
2. Examination of the characteristics of enterprise-to-enterprise agreements including those within the framework of intergovernmental agreements;
 - (a) trade and industrial co-operation practices including those outside the scope of intergovernmental agreements;
 - (b) nature, scope and implications of buy-back agreements within the framework of trade and industrial co-operation arrangements in promoting industrial co-operation;
 - (c) identification of provisions which might be of assistance to developing countries including new and innovative forms of co-operation.
3. Examination of available information pertaining to item 2 above and ways and means of improving existing flows and channels of such information including information that becomes available.
4. Conclusions and recommendations
5. Adoption of the Report

Annex II

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Annex III

LIST OF DOCUMENTS

System of Consultations. Report of the <u>Ad hoc</u> UNCTAD/UNIDO Group of Experts on trade and trade-related aspects of industrial collaboration arrangements ID/B/234 and Add.1 also issued as TD/B/774 and Add.1	ID/B/234 ID/B/234/Add.1
Extracts from the report of the committee on manufactures on its ninth session (attached to letter of invitation)	TD/B/822 - TD/B/C.2/207
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 (UNCTC): (February 1981)	ID/WG.337/3
Major features and trends in mining agreements. Prepared by the United Nations Centre on Transnational Corporations (UNCTC): (February 1981)	ID/WG.337/4
Features and issues in turnkey contracts in developing countries, part I: Prepared by the United Nations Centre on Transnational Corporations (UNCTC); (February 1981)	ID/WG.337/5
Issues to be covered by the second meeting of the <u>Ad hoc</u> UNCTAD/UNIDO Group of Experts on trade and trade-related aspects of industrial collaboration arrangements. Joint report by the Secretariats of UNCTAD and UNIDO; (April 1981)	ID/WG.337/6
Management contracts in developing countries: An analysis of their substantive provisions. Prepared by the United Nations Centre on Transnational Corporations; (April 1981)	ID/WG.337/7
Features and issues in turnkey contracts in developing countries, part II: Prepared by the United Nations Centre on Transnational Corporations; (April 1981)	ID/WG.337/8
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
Survey of six corporations and nine industrial associations on their present and/or future relationships with developing countries in promoting north-south industrial co-operation. Report prepared by C.F. Knebell. UNIDO consultant: (May 1981)	
Three decades of the United Nations Economic Commission for Europe	E/ECE/962
East-west industrial co-operation	ECE/TRADE/132
Some means to improve the financing of east-west statistical outline of recent trends in industrial co-operation (Note by the Secretariat)	TRADE/R.373/Add.5
The role of small and medium-sized enterprises in intra-regional trade (Note by the Secretariat)	TRADE/R.383/Add.1
Counter-trade practices in the ECE region (Note by the Secretariat)	TRADE/R.385
East-west co-operation in the automotive sector and counter-trade arrangements (Note by the Secretariat)	TRADE/R.385/Add.1
Institutional arrangements at the national level for counter-trade in selected Western countries	TRADE/R.385/Add.3
Promotion of trade through industrial co-operation; Statistical outline of recent trends in industrial co-operation (Note by the Secretariat)	TRADE/R.392
Review of recent trends, policies and problems in intra- regional trade (Note by the Secretariat)	TRADE/R.401
Promotion of trade through industrial co-operation; Statistical survey of recent trends in industrial co- operation (Note by the Secretariat)	TRADE/R.407
A quantitative survey of the development of east-west industrial co-operation (Note by the Secretariat)	TRADE/R.408
East-west industrial co-operation and technology trans- fer in the chemicals industry (Note by the Secretariat)	TRADE/R.409
Counter-trade practices in the chemicals industry: The experience of selected western chemicals/producers and plant contractors in east-west trade (Note by the Secretariat)	TRADE/R.410

East-west industrial co-operation in the automotive sector: A review of the experience of western partners (Note by the Secretariat)

TRADE/R.417

Promotion of trade through industrial co-operation: Proposed establishment of an ECE information centre on industrial co-operation (Note by the Secretariat)

TRADE/R.418

Recent development in industrial co-operation: Co-operation in third markets (Note by the Secretariat)

TRADE/AC.14/R.1

Joint venture legislation in Eastern Europe and Yugoslavia: A survey of recent developments, 1977-1979 (Note by the Secretariat)

TRADE/AC.14/R.2

Restructuring of world industry. New dimensions for trade co-operation

TD/219

Industrial collaboration arrangements

TD/B/C.2/179



