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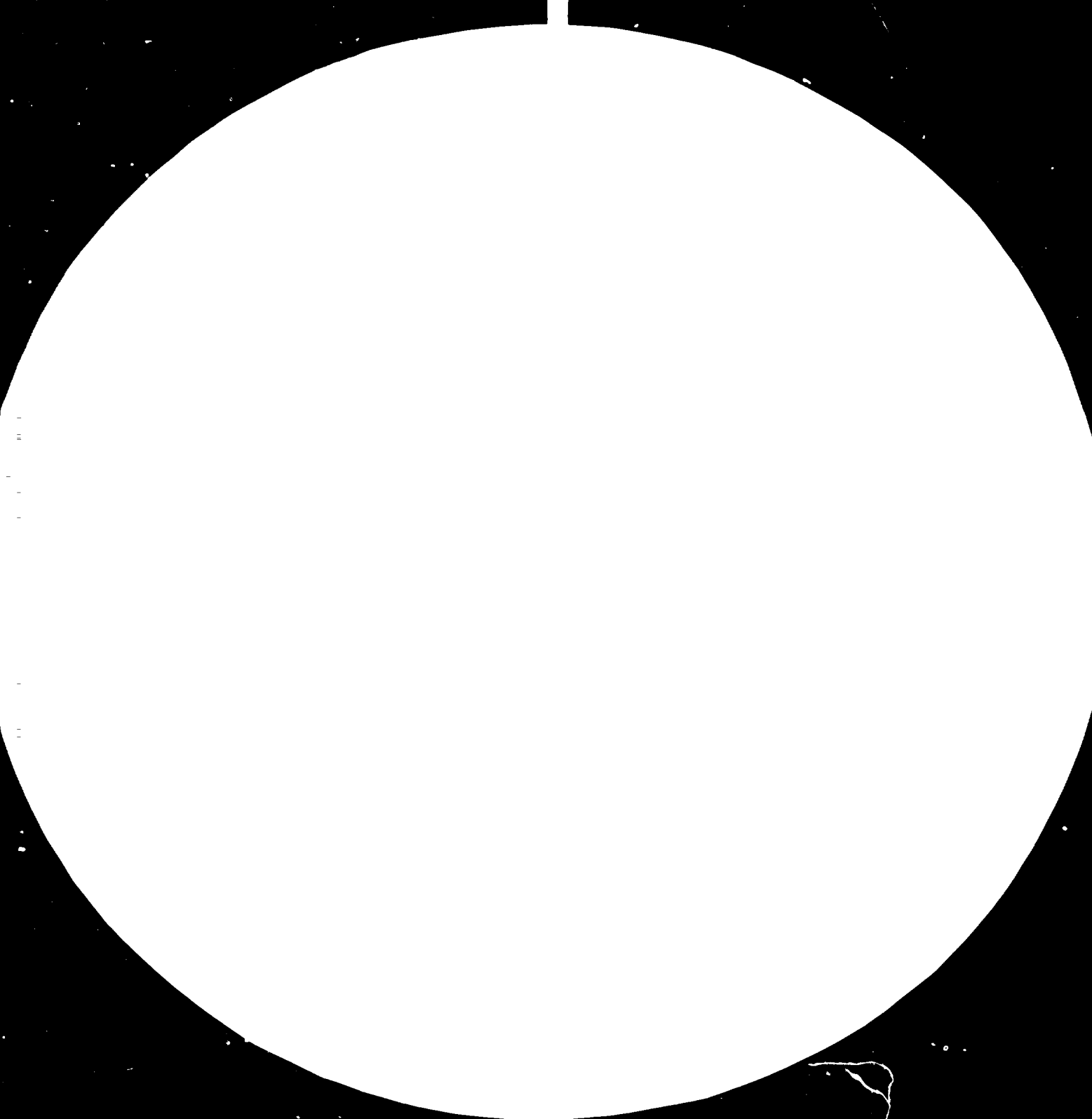
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DEVELOPMENT ORGANIZATION

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ENGLISH

REVIEW OF SYSTEMS FOR REGULATING TECHNOLOGY INFLOWS IN
SELECTED DEVELOPING COUNTRIES*

compiled by
the secretariat of UNIDO

J. Monkiewicz

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Corrigendum

Page 2, fourth paragraph

Delete the first sentence beginning "The present volume ...".

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P R E F A C E

In the age of science and technology the development, transfer and regulation and control of technology are crucial issues of national policy in both the developing and the developed economies. The importance of science and technology for social and economic development was stressed at the United Nations Conference on Science and Technology for Development held at Vienna in 1979.

Since developing countries acquire a major part of their technology from abroad, policy makers in these countries are increasingly interested in various aspects of technology transfer, particularly in its regulation and control. A steadily growing number of Governments of developing countries have adopted a policy of controlling the inflow of foreign technology and have taken steps to set up regulatory agencies.

The expanding role of Governments with respect to technology development and transfer is particularly marked in Latin America and to a lesser degree in certain Asian, African and Arab States. This trend is expected also to continue in the future. One may expect also that some international or regional measures will be formulated particularly in a view of current discussions on relations between the industrialized countries of the North and the developing countries of the South.

The regulation of technology inflow may embrace two (2) distinct but closely inter-related goals. On the one hand, it may concentrate on obtaining the most favourable commercial conditions in technological agreements with an emphasis on eliminating restrictive provisions, such as tied-in clauses and over-pricing. This could be called a "negative approach" since the Government assumes the function of a guardian against infringement of the national interest.

On the other hand, Government action may concentrate on promoting, through legislation and other measures the inflow of appropriate industrial technology in order to bridge major technological and production gaps. This "positive approach" lays the basis for more efficient use of imported technology to accomplish accepted national goals.

In practical terms both positive and negative aspects of a policy on technology inflow should be carried out simultaneously, only when a judicious balance has been reached between these two (2) approaches can the inflow of foreign technology serve as an effective instrument for technological growth in developing countries.

At present the policies of developing countries stress the negative aspects of technology inflow policy. There is, however, a growing awareness in these countries of the need to complement negative measures with their positive ones.

The present volume in the Development and Transfer of Technology Series represents a collection of data on government regulations of technology transfer. With the co-operation of the government institutions in the countries selected for this study the secretariat of the United Nations Industrial Development Organization was collect and publish the most recent information on the regulation of inflow of foreign technologies in these countries and its effects.

The material on the situation in some of the Arab countries (unfortunately data were not available on all of them) was compiled in response to the recommendation of the UNIDO-WIPO Conference on Industrial Property and Transfer of Technology for Arab States, organized by the United Nations Industrial Development Organization and the World Intellectual Property Organization and held at Baghdad from 5 to 10 March 1977, that the Industrial Development Centre for Arab States (IDCAS), in co-operation with WIPO and UNIDO, undertake a survey of the situation of industrial property and

transfer of technology in the Arab countries. It discusses recent trends in legal and institutional measures related to technology inflow in selected developing countries of Latin America, Asia and the Far East, the Arab world, Africa and Europe. It also evaluates the existing legal and institutional arrangements.

The first chapter reviews recent legislative measures undertaken in selected developing countries to regulate the growing technology inflow. It begins with the Andean Pact - historically the first example of such complex legal regulation of technology import and ends with Nigeria which only approved regulatory measures in June 1979.

The second chapter describes the organization and functions of agencies regulating technology transfer that are operating in some developing countries.

The third chapter analyses the effectiveness of selected regulatory agencies.

Materials on the Arab countries were collected by Selim Kerollos of the Suez Oil Company, Cairo, Egypt, and complemented by a UNIDO fact-finding mission.

This study has been prepared by Jan Monkiewicz of Warsaw Polytechnics, Warsaw, Poland, in co-operation with the secretariat of UNIDO.

It is expected that in the future UNIDO will issue a revised and updated version of the present document.

LEGISLATION CONCERNING AGENCIES REGULATING THE INFLOW OF TECHNOLOGY

Generally speaking, three (3) closely interrelated aspects of the import of technology can be distinguished in the laws and regulations of developing countries - industrial property regulations, foreign investment laws and licensing arrangements. Historically, industrial property regulations were the first to emerge, forming the basis of technological policy in developing countries for a long time, particularly before they became independent. Next, attention was given to foreign investment laws, which seem at present to be the most thoroughly developed both in terms of legislation on technology transfer and particularly on licensing are of much later origina and subsequently less widespread and refined.

Industrial property regulations per se do not influence particular contracts concerning the inflow of technology - they create the framework for the development and transfer of technology. Such regulations usually include patent arrangements, trade marks, utility models and industrial design.

Foreign investment laws govern the inflow of technology through direct foreign investment. They usually regulate the registration and approval of foreign investment cases; establish rules relating to ownership and establish principles governing repatriation of profits, fiscal and tariff treatment and various guarantees to foreign investors.

Recently the regulation of technology transfer arrangements, especially licensing, has increased, evidence of the growing role of licenses in technology transfer to developing countries. Such regulation usually covers the registration and approval of licensing contracts (both patent and know-how) transfer, service agreements etc.; fees and royalties; and fiscal and tariff treatment of licensors with respect to payments derived from such operations. All these aspects

of technology transfer regulations are discussed below.

Latin America

Andean Group

One of the earliest and most important decisions concerning the regulation of the inflow of technology and the treatment of foreign investment by developing countries was taken by the Andean Group^{1/}.

The historic Decision 24 of the Commission of the Cartagena Agreement, together with Decisions 84 and 85, set a precedent for treating the flow of technology and established a basis a direct government role in the acquisition of foreign technology. These Decisions influenced legislation both in and outside Latin America. Extracts from Decision 24 legislation reproduced below:

Members of the Andean Pact include Bolivia, Chile, Colombia, Ecuador, Peru and Venezuela.

"Article 6 Control of fulfilment of the obligations contracted by foreign investors shall be the duty of the organization which registers the investment, in co-ordination with the proper government divisions and agencies in each case.

In addition to the functions indicated in other provisions of the present regime and of those established in the respective regulations, the

^{1/} Decision No. 24 of December 1970 of the Commission of the Cartagena Agreement "Common Rule of Treatment for Foreign Capitals and on Trade Marks, Patents, Licenses and Royalties". English translation of the law was provided in "Key Legislative and Administrative Acts and Measures Affecting and Regulating the Flow of Foreign Technology in Selected Developing Countries" - ID/WG.275/2, 11 April 1978.

competent national body shall:

Control fulfilment of the commitments of national participation in the technical, administrative, financial and commercial management, and in the capital, of the company;

Authorize in an exceptional way the purchase of shares, participations or rights of national or mixed companies by foreign investors, in accordance with the provisions contained in Articles 3 and 4 of the present regime;

Establish a system of information and control of the prices of the intermediate products which may be furnished by suppliers of foreign technology or capital;

Authorize the remittance abroad, in freely convertible currency, of every amount which the companies or investors may be entitled to remit in accordance with the present regime and with the national laws of the respective country;

Centralize the statistical, accounting, information and control registrations connected with direct foreign investments, and

Authorize licensing contracts for the use of imported technology and for the exploitation of trade marks and patents.

Article 18 Every contract on importation of technology and on patents and trade marks must be examined and submitted for the approval of the competent body of the respective Member Country, which must appraise the effective

contribution of the imported technology, by means of an estimate of probable profits, the price of goods containing technology, or other specific forms of measuring the effects of the imported technology.

Temporary Provisions:

Article A The present regime will become valid when all the Member Countries have deposited in the Office of the Secretary of the Board the Instruments by which it is put into practice in their respective territories in accordance with the provisions of the second paragraph of Article 27 of the Cartagena Agreement.

Article B Foreign investment, which exist in the territory of the Member Countries at the time in which the present regime becomes valid, must be registered before the respective competent national body within the following six (6) months. These investments will continue to enjoy the benefits granted by current provisions in every respect which is not contrary to the present regime.

Article C While the regulations established in Temporary Article G of the present regime have not become valid, the Member Countries will abstain from signing unilateral agreements on industrial property (trade marks and patents) with third countries.

Article D Within the three (3) months following the date on which the present regime becomes valid, each Member Country will designate the organization or organizations

which are competent for the authorization, registration and control of foreign investments and for the transfer of technology, and will inform the other Member Countries and the Board regarding that designation.

Article E All contracts on the importation of technology and on licences for the exploitation of trade marks and patents of foreign origin signed prior to the date on which the present regime becomes valid must be registered before the competent national body within the six (6) months following that date.

Article F Within the six (6) months following the date on which the present regime becomes valid, the Committee, upon request of the Board, will approve the regulations of the Subregional Office of Industrial Property (Trade marks and Patents).

Article G Within the six (6) months following the date on which the present regime becomes valid, the Committee, upon request of the Board, will adopt regulations for applying the provisions on industrial property (trade marks and patents) which will comprise, among others, the subjects which appear in Annex No. 2.

Article H Member Countries commit themselves not to establish incentives for foreign investment other than those contemplated in their industrial development legislation at the time that the present regime becomes valid, as long as the obligation referred to in Article 28, second paragraph, of the Cartagena Agreement, on harmonizing industrial development

legislation, has not been fulfilled.

Likewise, before November 30, 1972, the Committee, upon request of the Board, will adopt the necessary measures to harmonize the regime of incentives applicable to the other sectors.

Article i Within the three months following the date on which the present regime becomes valid, the Committee, upon request of the Board, will determine the treatment applicable to capital belonging to national investors of any Member Country other than the recipient country.

Within the same period of time, the Committee, upon request of the Board, will determine the rules which are applicable to the investments that the Corporación Andina de Fomento (Andean Corporation of Development) may make in any of the Member Countries."

Argentina

Two (2) laws concerning transfer of technology were enacted in Argentina in 1971, Law No. 19135, which prohibited the imposition of certain restrictive conditions on the automobile industry, and Law No. 19231, which prescribed the regulation of agreements for foreign technology and patents and created a National Registry for Licence Contracts and Transfer of Technology. These laws stipulated that contracts would not be approved if they contained clauses that required equipment, raw materials or components to be purchased from certain sources; restricted exports, included unreasonable grant-back provisions, provided trade mark licensing without know-how, imposed jurisdiction of foreign courts or required unreasonably high payments.

A new law, Law No. 20794, was enacted in late 1974, replacing the earlier ones, the main provisions of which are contained in Article 5 (stipulating which contract proposals will be rejected), and Article 6 (enumerating restricted clauses that will not be permitted in contracts).

An interesting novelty in this Law is Article 33, which made it possible to obtain advice from the National Registry on the terms of an agreement before officially submitting it for approval and registration. In this way, the law gives local entrepreneurs the opportunity to carry on extra negotiations with foreign partners.

In August 1977, the Government again revised its transfer of technology policy, liberalizing in particular screening and approval procedures by enacting Law No. 21.617^{1/}.

Contrary to what was provided in Law 19.231 and in conformity with Law 20.794, contracts of a gratuitous nature are included within the scope of this Law. The reason for their inclusion is to obtain for the national Government a full knowledge of all technological actions and at the same time to give greater security to the local recipient with regard to his rights under the licensing instrument in the event of third-party infringement.

Excerpts from Law No. 21.617 are given below:

"Article 1 Any voluntary act of legal consequences having as its principal or

^{1/} Transfer of Technology Law; Law No. 21.617, Buenos Aires, August 12, 1977. English translation was provided in "Key Legislative and Administrative Acts", op. cit. ID/WG/275/2 p. 76, 11 April 1978. See also J. Otamendi - Update on Licensing in Argentina, LPS Nouvelles, Journal of the Licensing Executives Society, September 1979, Vol. XIV, No. 3, pp. 194-198.

accessory object the transfer, assignment or licensing of technology or trade marks by persons domiciled abroad, for a price or free of charge, to physical or corporate persons, whether public or private, domiciled in this country, must be registered in the National Register of Licence Contracts and Transfers of Technology established by Law No. 19.231 and confirmed by Law No. 20.794 and always provided such acts produce effects in this country.

Article 2 The following voluntary acts of legal consequences are included in the preceding article, their enumeration being merely illustrative:

(a) The acquisition of rights or the grant of licences for the use of patents, industrial designs and models, trade marks or any other industrial property right that may be established in the future;

(b) The supply of technical knowledge by means of the description of processes, formulae, specifications, or other means, for the manufacture of products or the rendering of services;

(c) Technical consultancy, assistance and services;

(d) The supply of basic and detail engineering.

Article 3 The voluntary acts of legal consequences included in the preceding articles, whereby technology or trade marks originating from abroad are transferred to another person also domiciled in this country,

must be registered even though the supplier is domiciled in this country. The local supplier of such technology or trade marks shall be liable for the damages that may be suffered by the recipient because of failure to register an act included in this article when he does not notify such recipient of the existence of the conditions stated therein.

The Law, however, in Article 4 excludes expressly certain technology transactions from this obligation:

(a) Acts executed by the Armed or Security Forces or by agencies related to national defence, whenever the National Executive Power decrees that they qualify as military secrets.

(b) The supply of technology, in work lease contracts, provided by the owner of the construction to the contractor to enable him to execute the work.

(c) Licence agreements for use or reproduction of copyrights or selected rights even when they include the use of a name, pseudonym, trade mark, sign, logo or any other particular sign that serves to identify the holders of said rights and to permit the necessary control of their reproductions."

Brazil

The flow of technology into Brazil is at present regulated by Normative Act No. 015, Registration of Contracts Providing for

the Transfer of Technology and Related Agreements, of 11 September 1975 which gives authority to the National Industrial Property Institute (INPI) to evaluate and approve technology agreements^{1/}. INPI was created in 1970 and at present its authority over transfer of technology includes all types of agreements as described in the extracts given below.

"2. - Concept and Basic Conditions of a Licence
Contract for the Working of a Patent: Objective A
"licence" contract shall be deemed to be a contract specifically designed to authorize the actual working by third parties of the subject of a patent regularly filed or granted in Brazil, where an industrial property right has been duly established in terms of Law No. 5.772/71 (Industrial Property Code).

- Concept and Basic Conditions of a Licence
Contract for the Use of a Trade Mark or Publicity
Slogan: Purpose. A "licence" contract shall be deemed to be a contract specifically designed to authorize the effective use, by third parties, of a mark or publicity slogan that has been properly filed or registered in the country, where an industrial property right has been duly established in terms of Law No. 5.772/71 (Industrial Property Code).

- Concept and Basic Conditions of a Contract
for Technical-Industrial Co-operation: A contract for "technical-industrial co-operation" shall be deemed to be a contract for the specific purpose of acquiring knowledge, techniques and services required for the

^{1/} Ato. normativo No. 015 de 11 de setembro de 1975, Revista de propriedade industrial Brazil, No. 256 setembro 16, 1975.

manufacture of industrial units and submits machinery, equipment, components thereof and other capital goods, upon order.

6. - Concept and Basic Conditions of a Specialized Technical Services Contract: Subject. A "technical services" contract shall be deemed to be a contract for the specific purpose of planning, programming and formulating studies and projects, and likewise for the performance or furnishing of services of a specialized kind that are needed by the country's production system.

Note: In cases where urgent technical services are furnished individually by foreign technicians and the total amount of remuneration does not exceed \$20,000, or the equivalent amount in some other currency, the contract formality may be waived; and registration may be made directly on the basis of the invoice, in which the services must be duly specified."

On 12 January, 1978 a new law Normative Act 30, reflecting Brazilian striving for technological independence, was issued^{1/}. According to this Act, Brazil will no longer approve technology transfer agreements in the automobile industry except those relating to specialized technical services when it is found necessary.

A further step in establishing stricter regulation of technology inflow was the enactment of Normative Act 32 of 5 May 1978^{2/}. It establishes a system of compulsory prior examination for patent and trade-mark licence agreements that call for royalty payments and

^{1/} Act 30, Official Bulletin, Brazilian Patent Office, January 30, 1978.

^{2/} Act 32, Official Bulletin, Brazilian Patent Office, May 9, 1978.

for all agreements involving technology (technical-industrial co-operation, specialized technical services etc.) with the exception of technical services up to \$20,000 and contracts related to the inspection or supervision of services connected with the assembly of imported equipment^{1/}.

Mexico

Mexico's Law on the Transfer of Technology and the Use of Exploitation of Patents and Trade-Marks which came into force on 1 January 1973, established provides a national registry of technology transfer^{2/}. The Law was prepared after extensive assessment of the experience of Argentina, Japan and other countries in this field.

Mexico's policy towards technology transfer assumes a close relation between the flow of technology from abroad and the flow of foreign capital. Thus it was considered necessary to adopt an integrated approach in formulating policy on foreign investment, trade and technology transfer. The Mexican legislation in this field is oriented towards the development of an efficient procedure for importing technology. Although the country's dependence on foreign technology is recognized an important objective of the legislation is to gain a degree of control over this major import, both in terms of cost and technological impact. Emphasis is placed on evaluating the effect that a technology contract can have on the balance payment, the creation of jobs and the improvement of national technological capabilities. The Law requires that all agreements concerned with transfer of technology be examined by the National

^{1/}See D. A. Daniell - The Pulse of Brazil's INPI, Les Nouveyles, Journal of the Licensing Executive Society, March 1979, Voll. XIV, No. 1 pp. 44-55.

^{2/}Law for the registration of the transfer of technology and the use and exploitation of patents and trade marks, 28 December 1972, Official Bulletin, 30 December 1972 - for a detailed analysis of this Law.

Registry of Technology Transfer and it goes into considerable detail in enumerating the kind of restrictive practices that must be eliminated from contracts.

Peru

The legal framework for technology inflow in Peru consists of three (3) sets of rules^{1/}:

- Industrial property regulations^{2/}
- Rules on technology transfer and patent and trade mark licensing^{3/}
- Regulations on taxation and remittance of royalties^{4/}.

According to these rules ITINTEC the authority administering industrial property regulations is the Institute for Industrial Technological Investigation and Technical Norms whereas the National Commission of Foreign Investments and Technology (CONITE) is in charge of registration and approval of technology import arrangements. CONITE assumed its functions only in 1977 according to Decree-Law 215/1, thus replacing ITINTEC in this area.

Technology transfer regulations require that all contracts related to the importation of technology, patents and trade marks must be examined and approved by CONITE. Currency control is exercised by the Ministry of Economic Affairs and Finance and the Central Bank of the Nation, the competent agencies named by Decree-Law 18.275.

^{1/} See R. Domino - Environment for Licensing in Peru, Les Nouvelles, Journal of the Licensing Executives Society, March 1979, Vol XIV, No. 1 pp. 39-43.

^{2/} Supreme Decree No. 001-71-IC/DS, Normes Legales, Argentina, Vol. 59 at 1971.

^{3/} Decree Law 18900, Decree Law 21826, Normes Legales, Argentina, Vol. 60 at 321 (1971) and Vol. 83 at 334 (1977).

^{4/} Supreme Decree 287-68-HC; Decree Law 21953, Normes Legales, Vol. 61 at 404 (1968); and Vol. 86 at 249 (1977).

Venezuela

The legal framework for regulating the flow of technology is based on Decisions 24, 37, 84 and 85 of the Commission of the Cartagena Agreement^{1/}. The regulatory agency competent to deal with the flow of technology is the Superintendency of Foreign Investments (SIEEX) in the Ministry of Development.

An extract from Decree No. 63 of 29 April 1974 describing the duties is given below:

Chapter VII Importation of Technology and Use and Exploitation of Patents and Trade Marks:

54. Any contract concluded by foreign, national or joint enterprises relating to the importation of technology and the use and exploitation of patents and trade marks shall be approved and registered by the Superintendency of Foreign Investments within thirty (30) working days from the date of its conclusion.

55. The following documents shall likewise be subject to registration under the foregoing article: deeds, contracts and agreements of any kind liable to have effects on national territory, irrespective of whether or not such documents involve payment or any consideration, and which have been concluded for the following purposes:

^{1/}See: Decree No. 63 of 23 April 1974 "Regulations under the Common Regime for the Treatment of Foreign Capital on Trade Marks, Patents, Licenses and Royalties"; Decree No. 746, 11 February 1975 "Technology Contract Registration"; Decree No. 2.442, 8 November 1977 "Regulation governing common treatment of foreign capital, trade marks, patents, licenses and royalties". English translation of said laws is given in "Key legislative and administrative acts . . . op. cit., ID/WG.275/2; 11 April 1978.

1. Licence to use or authorization to exploit trade marks;
2. Licence to use or authorization to exploit patents for inventions, improvements and industrial designs;
3. The supply of technical know-how in the form of plans, diagrams, models, instructions, formulae, specifications, the training or preparation of personnel and other forms;
4. The supply of basic or specific engineering in connection with the installation of plant or the manufacture of goods;
5. Technical assistance in whatever form it is provided;
6. Administrative and management services.

56. The contracts referred to in the preceding articles shall, as a minimum, contain relevant and detailed information on the following matters:

- (a) The identity of the contracting parties together with express indication of their nationality and domicile, as well as of any intermediaries;
- (b) A description of the technological contribution and identification of the patents or trade marks which are the subject of the contract;
- (c) Details of terms and conditions for the transfer of technology;
- (d) The contractual value of all the elements involved in the transfer of technology expressed in a form similar to that

provided for registration of direct foreign investment in Decision No. 24 of the Cartagena Agreement and in these Rules;

(e) The duration of validity which, in the case of technological contracts concluded after the entry into force of these Rules, shall not exceed five (5) years;

(f) The mode of payment and the recipient country.

57. In accordance with its duties as laid down in Articles 20 and 25 of Decision No. 24 of the Cartagena Agreement the Superintendency of Foreign Investments shall be empowered to define, after consultation with the Minister of Development, those restrictive trade and other clauses which, if contained in the contracts referred to in Articles 54 and 55 of these Rules, would preclude their registration.

58. Technological contracts signed after the entry into force of these Rules shall contain a clause requiring the supplier to train national personnel with a view to making the best possible use of the technology provided under the contract and to promote development and technological research activities in the country.

59. Technological contributions made under the deeds, contracts and agreements referred to in Articles 56 and 58 above shall entitle the supplier to the payment of royalties, subject to the approval of the Superintendency of Foreign Investments, but shall not, however, be deemed a contribution by the owner or supplier of the technology to the capital of the recipient undertaking, whether national or joint.

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

First paragraph: The following shall be deemed to be technological contributions: any supply, sale, lease or assignment relating to trade marks, patents or industrial designs; assistance with technical processes and administrative procedures through the provision of qualified personnel; instruments, models, documents or instructions concerning manufacturing processes and techniques; and any other article or service of a similar nature which the Superintendency of Foreign Investments deems should be classed as such.

Second paragraph: This provision shall not apply to personal services which are occasional or which represent an amount below the relevant ceiling fixed by the Superintendency of Foreign Investments. The duty to inform the Superintendency of Foreign Investments in advance shall be applicable in all cases.

60. The Superintendency of Foreign Investments may at any time verify that contracts are carried out in accordance with the approved terms and, in this connection, the contracting parties shall, if so requested, report on the activities performed under the contracts and, in particular, on whether the process, patent or trade mark is being effectively exploited in satisfactory economic conditions.

In the event of a breach of the terms of an approved contract, the Superintendency may, according to the gravity of the breach, suspend or revoke the registration of the contract, stating its reasons for so doing.

61. Contracts relating to the importation of technology and to patents and trade marks, which were concluded before January 1, 1974 and are still in force, shall be submitted to the Superintendency of Foreign Investments for registration within six (6) months from the date of entry into force of these Rules.

62. Payments of royalties and other fees for the use of trade marks, patents or industrial designs shall not be permitted beyond the period of validity of the industrial property titles granted under the Industrial Property Law.

63. The deeds, agreements or contracts, as well as amendments thereto, referred to in Articles 56 and 58, which have not been registered with the Superintendency of Foreign Investments, shall have no legal effect and accordingly shall have no effect either as between the parties or as against third persons."

Asia and the Far East

India

In India, for several years both import of technology and foreign capital investment have been subject to considerable

regulation^{1/}. The process of approving a foreign collaboration agreement^{2/} is part of the process of industrial approvals. For industry covered by the Industries (Development and Regulations Act of 1951, the entrepreneur is first given a letter of intent, which stipulates whether or not foreign collaboration will be considered for the project. Thereafter, he goes ahead with other negotiations, including those for foreign collaboration, if permitted. An industrial license is issued only after such negotiations receive the approval of the Government.

Although foreign-exchange regulations do not refer specifically to technology licence agreements, the power under these regulations to refuse remittances of foreign exchange makes the regulation of technology licensing possible. The policy is to permit sophisticated foreign technology having high priority to be imported that the country could not otherwise acquire.

The Foreign Investment Board (FIB) is authorized to evaluate and approve agreements pertaining to foreign collaboration and which include, inter alia, transfer of foreign technology.

According to the Statement on Industrial Policy laid before Parliament on 23 December 1977, foreign collaboration is permitted in fields of high priority, particularly in industries requiring sophisticated technology and/or offering significant export potential. In such areas preference would be for outright purchase of the best available technology and then adapting such technology to the country's needs. The Indian firms permitted to import foreign technology are required in appropriate cases to set up adequate research and development

^{1/} See: National Approaches to the Acquisition of Technology, UNIDO, Development and Transfer of Technology Series, New York 1977.

^{2/} In India, the term "foreign collaboration agreement" is widely used and also covers in principle direct foreign investment; joint-venture agreements and technology transfer agreements such as licensing agreements and service contracts.

facilities so that imported technology will be properly adapted and assimilated.

The Government does not encourage the inflow of foreign technology into areas of low priority and where adequate domestic capacity exists.

In the above-mentioned Industrial Policy Statement the Government proposed the establishment of a national registry of foreign collaboration in the Secretariat for Industrial Approvals to monitor the progress of the various proposals of foreign collaboration approved by the Government and to determine whether the Indian firms that permitted to import foreign technology have been able to set up adequate research and development facilities so that the imported technology will be properly adapted and assimilated.

Foreign investment and acquisition of technology are allowed only when the terms agreed upon by the Government are observed. Where foreign technology is not needed, existing collaboration is not renewed.

For all cases of foreign investment approved, profits, royalties, dividends etc. may be freely repatriated.

Republic of Korea

The Republic of Korea has adopted over a period of years various laws pertaining to the regulation of flow of foreign technology and development of indigenous technological capabilities^{1/}. The basic

^{1/} See: Bak-Kwong Keng - National Approach to the Acquisition and Adoption of Technology - in the Case of Korea, Ministry of Science and Technology, Republic of Korea, 11 September 1978.

provisions of this legislation are discussed below.

The purpose of the Foreign Capital Inducement Law enacted in 1966 and revised in 1973 and 1976, is to promote the inflow of technology for which the period of royalty payment exceeds one year, together with foreign investment and loans, by allowing tax privileges for royalty payments. The Law stipulates the criteria for judging technology to be acquired and sets priorities and procedures for acquiring it. The Economic Planning Board assumes the primary role in approving foreign technology contracts, in co-operation with the Ministry of Commerce and Industry, the Ministry of Science and Technology and other agencies. When an application to acquire foreign technology is considered the need for technology, its content, the method of supply, amount and method of payment, terms and conditions of the contract and economic and technological feasibility in general are reviewed.

The purpose of the Technology Development Promotion Law enacted in 1967 and revised in 1972, is to build up the country's technology capabilities and also to expedite the modification and adaptations of acquired technology through various incentives, including tax exemptions and financial support. These benefits can be secured by those who acquire advanced foreign technology and incur research and development expenditures to assimilate and improve that technology.

The Engineering Service Promotion Law of 1973 deals with technology contracts for which royalties must be paid for less than one year. The Ministry of Science and Technology holds the primary responsibility for administering the Law in co-operation with the Ministry of Finance and other agencies concerned.

In 1976, as a result of the above-mentioned acts, the Government decided to centralize its control over technology inflow by establishing the Technology Transfer Centre, whose main functions are:

- (a) To review and check adequacy of technology and eliminating unfavourable terms of licensing agreements;
- (b) To collect and distribute overseas technical information for industry;
- (c) To assist industry in identifying and evaluating relevant technologies, unpackaging technologies, and negotiating for the best terms;
- (d) To review techno-economic feasibility of the project for which foreign technology is proposed;
- (e) To arrange for research and development to be carried out to accelerate the digestion and adaptation of foreign technology.

The essential activities of the Centre are further refined in order to cut red tape to facilitate the introduction of required foreign technologies. Up to now technology has been acquired using the same procedures as for capital goods, technology being regarded as identical with capital goods. As a result, many ministries and agencies take part in deliberating on technology transfer proposals. The procedures for government approval are complicated and time-consuming, making it difficult to cope effectively with the rapidly changing technology market. To remedy this situation and meet mounting needs for technology, technology transfer procedures are to be simplified and the criteria for government reviewing less stringent. According to the revised Presidential Decree for the Foreign Capital Inducement Law, projects involving comparatively small charges and short periods - with advance payment of up to \$30,000 and royalty payment of up to 3% of net sales for up to three (3) years - will be automatically approved with screening procedures hitherto used. Projects with high royalties and those concerned with the defence, nuclear power and computers will continue to be screened by the government as before.

The Philippines

In 1978, by Presidential Decree 1520 a Technology Transfer Board was set up within the Ministry of Industry to perform the central co-ordinating functions in technology inflow to the Philippines^{1/}.

The Board is composed of representatives from the National Economic and Development Authority, Central Bank of the Philippines, National Science Development Board, Technology Resource Centre, Board of Investments and Philippines Patent Office and is chaired by the Minister of Industry or his representative.

All cases of technology transfer arrangements must be registered with the Board after due evaluation and in the light of the technology transfer policy promulgated by the Board.

Rule I, sec. 1 of the Decree states: "Technology Transfer Arrangements" shall refer to contracts or agreements entered into directly or indirectly with foreign companies and/or foreign-owned companies having as their principal or accessory objective the transfer, assignment or licensing of technology or trade marks in the following manner:

- (1) The transfer, assignment or licensing of the use or exploitation of patents (whether registered with the Philippine Patent Office or not) for inventions, improvements, industrial models and drawings;
- (2) The licensing of the use or exploitation of trademarks;

^{1/} Provided to UNIDO by the Ministry of Industry of the Government of the Republic of the Philippines.

(3) The furnishing of technical know-how and information by plans, diagrams, models, instruction sheets, instructions, formulae, specifications, and training of personnel;

(4) Technical consultancy, services and assistance in whatever form it may be furnished.

Turkey

The inflow of technology into Turkey is regulated by Foreign Investment Encouragement Law No. 6224 of 1954, Petroleum Laws No. 6286 and No. 6987 and Decree No. 17 relating to invisible transactions notifications. The employment of foreign specialists is regulated by Laws No. 2707 and No. 2880.

The aim of Turkey's technological policy is to increase gradually indigenous technological capacities and lesser dependence on foreign technology.

The Foreign Investment Encouragement Law plays a decisive role in technology transfer regulation, covering all cases of transfer within the framework of foreign investment. Excerpts of the Law are reproduced below^{1/}.

"Subject of the Law

Article 1 This law shall apply to the foreign capital imported into Turkey and to loans made from abroad by the decision of the Foreign Investment Encouragement Committee and the approval of the Council

^{1/} English translation of the law is given in "Key Legislative and Administrative Acts . . . op. cit., ID/WG.275/2, 11 April 1978.

of Ministers provided that the enterprise in which the investment shall be made:

- (a) Will tend to promote the economic development of the country;
- (b) Will operate in a field of activity open to Turkish private enterprises;
- (c) Will entail no monopoly or a special privilege.

The Foreign Investment Encouragement Committee referred to in this Article and established according to Article 8, will hereinafter be referred to as "The Committee".

Foreign Capital Base

Article 2 For the purpose of the application of this Law, the term "Foreign Capital Base" shall mean the sum of the values assessed and fixed in the manner described hereunder:

- (a) The following items imported from abroad for the efficient establishment, expansion or reactivation of an enterprise as envisaged by this Law:
 - i) Capital in the form of foreign exchange;
 - ii) Machinery, equipment, instruments and the like, machinery components, spare parts and materials and other necessary goods approved by the Committee;
 - iii) Intangible rights such as licenses, patent rights and trade mark and services.

(b) The experts selected by the Committee will assess the value of the imported capital in the form of goods, services and intangible rights and will determine whether these are goods and values imported for the purpose of the enterprise approved by the Committee.

The assessment made by the experts may be reviewed and modified by the Committee."

Simple licensing and know-how agreements are subject to approval procedure in accordance with the Decree on Invisible Transaction Notifications.

The screening and evaluation of technology transfer arrangements is based on three (3) main criteria:

The novelty of the transferred technology,
Its impact on production capacity,
Its impact on export performance.

Arab Countries

Iraq

The legislative framework for technology transfer in Iraq consists of the following laws^{1/}:

Law 21 of 1957 for trade marks (amended in 1962 and 1968),
Law 25 of 1959 on regulation of trade marks,
Law 65 of 1970 on patents and industrial design,
Law 22 of 1973 for foreign investment.

^{1/}See: Situation of Industrial Property in the Arab States, WIPO, Geneva 1978, pp. 45-50.

Registration of trade marks is assigned to the Office of Registration of Trade Marks in the Ministry of Economics. All trade marks together with the names and addresses of their proprietors, description of their goods, declaration of assignments, transfers and cessions affecting them, must be recorded in a Register in the custody of the Registrar.

Patents and industrial designs are recorded in one Patent Register in the Directorate General of Registration and Supervision of Companies in the Ministry of Economics. The most important statements on technology transfer stipulated in the patent Law 65 of 1970 are given in articles 27 and 28, which are reproduced below.

"

Article 27

(1) The patentee shall notify the Registrar of the date of exploitation of the invention within thirty (30) days from the date of initiating the exploitation.

(2) If the invention is not exploited in Iraq within three (3) days from the date of granting the patent or where the exploitation is not commensurate with that country's need and if exploitation of the invention is suspended for at least two (2) years, the Registrar may grant a compulsory licence for exploitation of the invention to whoever applies for it. In granting the compulsory licence, it is stipulated that the applicant shall be capable of exploiting the invention seriously. The patentee shall be entitled to apply to the Registrar claiming a fair compensation within ninety (90) days from the date of making public the decision to grant the compulsory licence; the Registrar's decision to that effect shall be liable to opposition with the Minister within thirty (30) days

from the date on which the decision is served on the patentee. The Minister's decision in that behalf shall be conclusive.

Article 28

If the exploitation of the invention is of great importance to the industry and if such exploitation necessitates the use of another invention in respect of which a patent has already been granted, the Registrar may grant the patentee a compulsory licence to exploit the former invention in case the proprietor thereof refuses to agree to such exploitation on reasonable terms estimated by the Registrar. And contrary to the foregoing, the proprietor of the former invention may be granted a compulsory licence to exploit the subsequent invention if his invention is of greater importance. In granting the licence, due regard shall be had to assessing the compensation due to either party against the other in accordance with the terms and conditions referred to in Article 27 of this Law.

Technology transfer occurring by virtue of foreign investment is regulated by Law 22 of 1973. According to this Law all investments are classified into three (3) groups and subject to approval:

- (a) Investment projects up to \$15 million are the responsibility of the appropriate minister;
- (b) Investment projects from \$15 to \$60 million are approved by a steering committee of planning, consisting of the planning minister and representatives from industry, agriculture, transport, building and services;

(c) Investment projects of over \$60 million are approved by the National Planning Board."

Kuwait

The legislative and administrative framework for technology inflow is determined by Decree 2/1961, Decree 4/1962 and Decree 6/1965 promulgating the industrial law^{1/}.

The industrial law established the Industrial Development Committee, which is responsible among other things for evaluating and approving technology transfer projects. The basic principles of industrial policy of Kuwait are set forth in articles 7-15 of this Law. The articles creating legislative and administrative framework are reproduced below.

"Article 7. No new industrial firms may be set up or any alteration, whether in their capacity, size, location or industrial purpose may be introduced, unless a permit to this effect has been obtained in advance from the Minister of Commerce and Industry.

Article 8. As from the date of the enforcement of this Law, the permit specified under Article 7 may not be granted except to Kuwaiti nationals, whether these be individuals or companies established in accordance with the provisions of the law of commercial companies, and provided that the responsible manager shall be a Kuwaiti national or the majority

^{1/} Law No. 2 of 1961 on Trademarks, Tradenames and Protection Against Unfair Competition; Law No. 4 of 1962 on Patents and Industrial Designs, in: Situation of Industrial Property . . . op. cit. pp. 57-62.

of the members of the Board of Directors be Kuwaiti nationals.

Non-Kuwaiti nationals owning any existing industrial firms at the time of the enforcement of this law and having no Kuwaiti partners in possession of 51% of the capital of the industrial firm shall complete liquidation of their works within two (2) years from the date of enforcement unless they satisfy the provisions of this Article within the registration period provided for under Article 6 hereof.

Article 9. Granting or refusal to grant the permit shall be subject to the recommendations of the Industrial Development Committee, which will be issued within sixty (60) days from the date of application.

In case it was recommended not to grant the permit reasons are required to be stated. In case the application was approved the Minister of Commerce and Industry shall issue a resolution specifying the conditions according to which the permit shall be granted; and these conditions shall be recorded in the permit certificate and shall cover the following points, in particular:

- (A) The industrial firm to join Kuwait Chamber of Commerce and Industry;
- (B) The firm to adhere in production to the measurements and specifications defined by laws and resolutions issued in this respect;
- (C) The firm to observe the conditions laid down by any other

Government authority for the purpose of maintaining general security and public health."

Morocco

Technology transfer to Morocco is regulated only in the context of the foreign investment policy. The basic stipulations are contained in Decree 2-76-479 issued on 14 October 1976 and a series of laws enacted in 1973 that provided for some privileges for investors in Morocco.

Decree 2-76-479, relating to contractual works, supply or services for the State established the institutional procedures for technology inflow: technology transfer projects are approved by responsible ministers on the recommendation of their departments.

Saudi Arabia

The flow of technology from abroad is governed by Foreign Capital Investments Regulation Decree No. 35 of 1964^{1/}.

According to Article 1, foreign capital is defined as any coin, currency notes, securities, machinery, equipment, spare parts, raw materials, products, transportation facilities and intangible rights, such as invention rights, trade marks and similar assets, where such capital is owned by a natural or corporate person who is not of Saudi Arabian nationality.

Article 2 spells out that: "Foreign capital shall be entitled to benefit from the terms hereof where the following two (2) conditions have been fulfilled:

^{1/} Decree No. 35 of 1964 on Foreign Capital Investments Regulation, Official Gazette, January 1964.

(a) That the capital shall be invested in economic development projects not including, for the purposes hereof, projects of the petroleum or mining industry;

(b) That such investment shall be licensed by the Minister of Commerce and Industry acting on the recommendation of the committee provided for in Article 5 hereof."

According to Article 3 "All applications for licence to invest foreign capital must be submitted to the Foreign Capital Investments Bureau of the Ministry of Commerce and Industry on the form prescribed, for the purpose of supplying such information as may be required by the Minister of Commerce and Industry. The applicant should submit written evidence in support of the information contained in his application."

According to Article 4: "The Foreign Capital Investments Bureau shall transmit to the Chairman of the committee, provided for in Article 5 hereof, the applications received by the Bureau and any information and documents submitted therewith, together with a detailed memorandum concerning each such application. The Chairman shall call a meeting of the committee whenever the need arises.

Article 5: A committee for foreign capital investments shall be set up at the Ministry of Commerce and Industry and shall be composed as follows:

The Deputy Minister of Commerce and Industry
or his substitute in the event of his absence to
act as Chairman

A representative from the Ministry of Finance
and National Economy

A representative from the Ministry of
Agriculture

A representative from the Ministry of
Petroleum and Mineral Resources

A representative from the Supreme Planning Board and
The Director-General of Industrial Affairs at the Ministry of Commerce and Industry."

Sudan

Technology inflow in the Sudan is regulated primarily by the Trade Marks Act of 1969, the Trade Marks Rules of 1969 and the Patent Bill of 1971, excerpts of which are reproduced below. Some other issues are dealt with in the Development and Encouragement of Industrial Investment Act of 1974 and the Promotion of Agricultural Investment Bill of 1976^{1/}.

The Trade Marks Act of 1969 - Section 22 licensing

"Article 2: Arrangements relating to the use of a registered trade mark by related persons must be recorded, at the instance of either party, within a period of six (6) months from the date of the instrument and upon payment of the prescribed fee and the Registrar shall issue a certificate of registration under his hand in the prescribed form. The registration shall be as from the date of application and its duration shall not in any case exceed that of the mark itself. On failure of such recordal, the licence shall be null and void.

Article 3:

(a) The Minister may, by order, provide that agreements concerning the use of trade marks by related persons, and amend-

^{1/} See: Situation of Industrial Property . . . op. cit. pp. 97-100.

ments or renewals of such agreements, which involve the payment of royalties abroad shall require his approval, taking into account the needs of the country and its economic development;

(b) The transfer of royalties abroad shall be subject to existing currency regulations.

The Patent Bill of 1971

Provisions of the Patent Bill related to technology transfer are mainly contained in Part I, chapters VIII and IX, which settle the rules for patent licensing and part II, which relates to technical know-how contracts. Basic stipulations are reproduced below.

Part I. Chapter VIII

Contractual Licenses

Section 28. Licence contracts

(1) The applicant for or owner of a patent may, by contract, grant to some other person or undertaking a licence to exploit his invention.

(2) The licence contract shall be in writing and shall require the signatures of the contracting parties.

(3) Every licence contract shall be registered in the Patent Office, on payment of a fee prescribed by the regulations the licence shall have no effect against third parties until such registration.

Section 32. Licence contracts involving payments abroad

The Minister may, having regard to the need of the country and its economic development, by order, provide that, on pain of invalidity, licence contracts or certain categories thereof, and amendments or renewals of such contracts, which involve the remittance of money abroad, shall require the prior approval of the Minister.

Section 33. Invalid clauses in licence contracts

(1) Clauses in licence contracts or relating to such contracts shall be null and void in so far as they impose upon the licensee, in the industrial or commercial field, restrictions not deriving from the rights conferred by the patent.

Part I. Chapter IX

Compulsory Licences

Section 34. Compulsory licence for non-working and similar reasons

(1) At any time after the expiration of a period of four (4) years from the date of the filing of an application for a patent, or three (3) years from the date of the grant of a patent, whichever period last expires, any person interested may, in accordance with the conditions specified in Section 44, apply for the grant of a compulsory licence upon one or more of the following grounds:

a. That the patented invention, capable of being worked within the country, has not been

so worked within the terms of sub-section (3);

b. That the working of the patented invention within the country does not meet on reasonable terms the demand for the product;

c. That the working of the invention within the country is being prevented or hindered by the importation of the patented article;

d. That, by reason of the refusal of the registered owner of the patent to grant licences on reasonable terms, the establishment or development of industrial or commercial activities in the country is unfairly and substantially prejudiced.

(2) In all the above cases, a compulsory licence shall not be granted if the owner of the patent justifies himself by legitimate reasons but importation shall not constitute a legitimate reason."

Tunisia

Technology transfer from abroad is regulated by Law 69-35 of 1969 relating to the creation of an investment code and Law 74-74 of 1974 relating to investments in the manufacturing industries for domestic market and Law 69-35 requires prospective investors to obtain approval for their investments from the State Secretariat of Planning and National Economy.

All investments are classified into three (3) categories with different tax treatment:

(a) Category A covers all investments up to D50,000,

(b) Category B covers all investments that create at least ten (10) permanent working places with capital of D50,000-D250,000,

(c) Category C is reserved for investment projects creating more than fifty (50) permanent jobs with capital of over D250,000.

According to article 4 of Law 74-74, all cases of investment for the purpose of reconverting, expanding, re-equipping or transferring a manufacturing enterprise, are subject to the licence or to the declaration requirement.

Article 5 spells out the types of investment subject to the licence requirement. These are:

- "- Direct or indirect investment made by non-residents or foreign nationals;
- Investment made through importation of used capital goods;
- Investment totalling D250,000 or more, exclusive of working capital; this amount may be modified by decree;
- Investment in certain activities whose list is set up by decree."

The licence is issued by the Minister of National Economy, on the advice of the Investment Promotion Agency. Failure to start the implementation of a licensed or an approved project within a year from the receipt of the licence or the approval, will cause the licence or approval to be withdrawn on the advice of the Investment Promotion Agency.

Algeria

The legislative framework for technology inflow in Algeria is in its early stage. The basic law regulating technology transfer is Avis 72 of 1 February 1973 of the Ministry of Finance dealing with the financial aspect of technological arrangements^{1/}. According to this Law all contracts are submitted for registration. During the First Plan they were followed by Central Bank. Later, when a decentralization took place, the task of controlling the contracts were coordinated between the Central Bank and the Planning Secretariat. The lack of trained professionals however did not allow to analyze deeply the contracts and the task was left to relevant directors in the - Ministries. Contracts referred explicitly to industrial property, are scrutinized at INAPI (Institut Nationale Algérien pour Propriété Industrielle).

Europe

Portugal

Decree-Law No. 239/76 of 6 April 1976 defined a code for direct foreign investment in Portugal and laid down general conditions for this kind of investment and fixed the rights and guarantees inherent in accepting it.

Among the principles underlying this code was the recognition of the value of foreign investment for national economic development provided that it was harmonized with national economic policy. Thus, the Decree-Law attempted to establish balance between safeguarding the interests of the country and encouraging the foreign investor.

^{1/} Avis no. 72 du Ministère des Finances fixant le procédure et les modalités de transfert de fonds au titre des contrats conclus par les entreprises publiques nationales avec les entreprises étrangères, Ministère des Finances, Direction des Finances Extérieures, République Algérienne Démocratique et Populaire, 1er Février 1973.

In these circumstances, it has become necessary to revise the provisions of Decree Law No. 239/76^{1/} and to publish a new code of foreign investment which should take into account the system of selectivity and control which is necessary in the national interest, and at the same time contribute towards the promotion of investment^{2/}.

As regards transfers of technology, the system of case by case authorization has also been maintained in view of the importance which such transfers may assume in the development of a national technological capacity within the scope of the Plan and their possible contribution towards this objective within the framework of an overall policy; furthermore, existing agreements for the transfer of technology which have not already been appraised by the Bank of Portugal shall be submitted to the Institute for registration purposes, since this will better safeguard not only the national interest but also of the bodies supplying and receiving the technology.

The Institute of Foreign Investment has maintained its responsibility for the evaluation of investment projects and for the granting of the respective authorizations as well as for the presentation for approval to a higher authority of applications for investment under the contractual regime.

The said Institute works closely with the Bank of Portugal and with all State organizations which are required to give an opinion on such projects and will, for all purposes, be the only body with which the investor has to deal.

^{1/}Detailed description of regulation system of technology transfer may be found in an article by H. A. Janiszewski, F. Bello, E. Ferreira, "Licensing in Portugal" in Les Nouvelles of March 1979, Volume XIV No. 1 pp. 36-38.

^{2/}Foreign investment code, Institute of Foreign Investment, Lisboa 1977, Decree Law No. 348/77.

The Bank of Portugal as the central bank and under the guidance of the Government kept its responsibility for monetary and exchange matters and especially for the control of exchange operations. The excerpts of the law are reproduced below.

Chapter V
Transfer of Technology

"Article 25

(1) Joint agreements for the transfer of technology between residents in Portugal and residents abroad shall in all cases depend on special and prior authorization being granted by the competent authority.

(2) Appeals against decisions taken by the competent authority may be made to the Minister of Planning and Economic Co-ordination.

Article 26

(1) Agreements for the transfer of technology are deemed to cover all acts and transactions in connection with:

(a) The sale of or the granting of rights for the use of patents, trade names, models, drawings or inventions as well as the transfer of other non-patented know-how;

(b) The rendering of technical assistance in the field of company management, the production or marketing of any goods or services which entail expenditure arising from consultations with or the movement of experts, the drawing up of plans,

the supervision of production, market studies or personnel training;

(c) Agreements with specialized companies for the construction or maintenance of industrial units, roads, bridges and ports;

(d) Any other form of technical assistance.

(2) Even when connected with direct foreign investment or with investment in branches of foreign companies, transfer of technology is deemed to be covered by the provisions of this chapter.

Decree 53/77
Regulations Governing Transfer of
Technology, 24 August 1977

Having regard to the provisions governing agreements for the transfer of technology as contained in Articles 25 to 28 of Decree-Law No. 348/77 of 24 August, the Government decrees, under the terms of subparagraph (c) of Article 202 of the Constitution, the following:

Article 1

The drawing up of agreements for the transfer of technology between residents in Portugal and residents abroad, as well as the alterations or renewal thereof, shall in all cases depend on special prior authorization being granted by the Institute of Foreign Investment, hereinafter referred to as the Institute.

Article 2

(1) The provisions of this Decree shall apply to all agreements for the transfer of technology, whether

or not they involve industrial property rights, whether or not private or public bodies or international organizations are parties thereto and whether or not they are drawn up individually or in conjunction with direct foreign investments.

(2) Also covered by the provisions of this Decree are transfers of technology in which the recipients are associate companies, branches or any other form of representation of foreign companies.

Article 3

Agreements for the transfer of technology are deemed to cover all acts or contracts in connection with:

(a) The granting or licensing of rights for the use of patents, trade names or marks, models, drawings or inventions as well as the transfer of other non-patented know-how;

(b) The rendering of technical assistance for company management and for the production or marketing of any goods or services entailing expenditure arising from consultation with or the movement of experts, the drawing up of plans, supervision of production, market studies or personnel training;

(c) Agreements with companies specialized in the construction and maintenance particularly of industrial units, roads, bridges and ports;

(d) Any other form of technical assistance.

Article 4

(1) Agreements for the transfer of technology as well as all or any alteration thereto shall be deemed legal, especially for payment purposes, only when duly appraised, authorized and registered by the Institute.

(2) The full text of draft agreements for the transfer of technology is to be submitted in triplicate to the Institute, which may request any clarification necessary for the appraisal thereof and which will give its decision thereon within a period of ninety (90) days renewable for one further period of ninety days by order of the Minister of Planning and Economic Co-ordination."

Spain

Dramatic changes in the treatment of the flow of technology into Spain were introduced by Decree 2343 of 21 September 1973, which established a register for technology transfer contracts, followed by the Ministry of Industry Order of 5 December of the same year. Excerpts of both acts are given below^{1/}.

Decree 2343 of 21 September 1973
Regulating the Transfer of Technology

Article 1

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

^{1/} Key legislative and administrative acts . . .
op. cit ID/WG.275/2, 11 April 1978.

- (a) Transfer of patent rights and other types of industrial property;
- (b) Transmission of non-patented knowledge, of plans, magnetic tapes carrying digital information, diagrams, specifications and instructions and, in general, the transfer of confidential information applicable to productive activities that has been accumulated by and is the property of the enterprises controlling it;
- (c) Project study and development, preparation of preliminary or feasibility studies and technical plans for the execution of projects; services connected with the assembly, construction and operation of plants and their maintenance and repair;
- (d) Any aspect of research, analysis, programming, consultative and advisory services for management and administration;
- (e) Staff training and re-training, whether or not connected with those services;
- (f) Technical or economic documentation and information services;
- (g) Other forms of technical assistance.

Ministry of Industry Order of 5 December 1973
Regulating the Entry of Contracts for the Transfer
of Technology in the Register Established by
Decree No. 2343 of 21 September 1973

Section 1

1.1. The duty to apply for entry of documented contracts, covenants and agreements in the Register established by Decree No. 2343 of 21 September 1973

shall relate to all contracts, covenants and agreements under which foreign technology is acquired directly or indirectly through the agency of a Spanish national, regardless of the nature of the consideration given by the recipient of the technology; that is to say, in a tangible form, monetary or otherwise, or in an intangible form.

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

Other Countries

Nigeria

There is very little legislation in Africa concerned directly with the transfer of technology^{1/} except in Nigeria. In 1970 Nigeria issued a Patents Act (Decree No. 60) and in 1979 the National Office of Industrial Property (NOIP) was established. Its tasks cover among others the approval and registration of all contracts related to technology transfer. In connection with this aspect of technology regulation the Decree spells out:

"Section 5

(1) Every contract or agreement which on the date of the coming into force of this Decree had been entered into by any person in Nigeria and which still has effect on the commencement of this Decree in relation to any matter referred to in Section 4(d) of this Decree shall be registered with the National Office in the prescribed manner not later than six (6) months after the commencement of this Decree.

^{1/} See: National Approaches to the Acquisition of Technology, Development and Transfer of Technology Series No. 1; UNIDO, New York 1977.

(2) As from the commencement of this Decree, every contract or agreement entered into by any person in Nigeria with another person outside Nigeria in relation to any matter referred to in Sec. 4(d) of this Decree shall be registered with the National Office in the prescribed manner not later than sixty (60) days from the execution or conclusion thereof.

(3) Every application for the registration of a contract or agreement under this section shall be addressed to the Director and shall be accompanied by such number of certified true copies of such contract and agreement and by all other related documents and information as may be specified in any particular case by the Director."

STRUCTURE AND FUNCTIONS OF REGULATORY AGENCIES IN SELECTED DEVELOPING COUNTRIES

A key position within the governmental machinery established for regulating the acquisition and utilization of foreign technology is usually occupied by national offices for the transfer of technology. They may bear a variety of names and execute somewhat different functions, but still they are the main governmental agencies implementing national technological policies. Such offices have been created by now or are going to be created in Argentina, Brazil, Colombia, Ethiopia, Guatemala, Malaysia, Mexico, Peru, Philippines and Turkey.

National offices for technology transfer usually have three (3) closely related functions: regulatory, co-ordinating and promotional. In some cases the regulatory functions predominate, in others the co-ordinating or promotional ones.

In executing regulatory functions the offices evaluate all agreements involving the transfer of technology, make recommendations

for approval and at last register the agreements approved. They may also, along with other responsible agencies, establish priorities for the technology inflow.

The evaluation includes three (3) basic aspects:

- (a) Legal - to determine whether agreements conform with existing national legislation etc.;
- (b) Technical - to select appropriate technology, to determine whether it can be adapted and it can be utilized etc.;
- (c) Economic - to appraise the project's commercial effectiveness.

The co-ordinating functions of the agencies reflect the fact that technology transfer affects many areas of the economy administered by different bodies. The actions and policies of these bodies must be co-ordinated to make technology transfer effective.

Equally important are the promotional functions of the national offices - interpreting government policies to both the domestic business community and the foreign suppliers.

This chapter and decision concerns itself with administrative structures regulating the flow of technology. Furthermore an attempt has been made to support presented structures by excerpts of corresponding legislation in those countries in order to describe fully applied legislative and administrative systems.

Latin America

Andean Pact

Extracts of Decision 84 of the Cartagena Agreement concerning the contents of technology agreements are given below.

"Contracts for the importation of technology shall contain the following data:

Concessionary (name and profession),
Grantor (name and nationality).

Affiliation between concessionary and grantor, if any
particulars of the technology being transmitted and its
intended use. Description of the subject of the agree-
ment: process technology, product technology, trade
marks, patents, technical assistance, operative skills,
training. Mode of payment of royalties (fixed and
variable, parts and basis for the variable payment):
amount of the fixed sums of periodic payment, and
percentages where payments are variable.

The guidelines of the Andean Pact pertaining to trans-
fer of technology are reproduced as adopted by member
countries."

Guidelines for the Authorization, Registration
and Control of Foreign Investment

Every application for foreign investment must contain:

I. Particulars of the investor

- (a) Name and commercial style
- (b) Nationality
- (c) Constitution of the directory
- (d) Composition of personnel and management
- (e) Economic activity
- (f) Copy of the public deed of organization

II. Details of the investment

- (a) Financial resources in currency or credit:
Currency in which the investment
is made

Capital of national origin
Capital of foreign origin
Credit from main office
(or parent company)
Credit from other sources
Effective interest to be paid
for credits

(b) Physical or tangible resources such as:

Industrial plants
New and used machinery
New and used equipment
Spare parts
Loose parts and pieces
Raw materials
Intermediate products

(c) Resources derived from technology
or intangibles such as:

Trade marks
Industrial designs
Management capacity
Technical knowledge (know-how)
patented or not patented
Possible alternative technologies

Technical knowledge (know-how) may be presented
in the following forms:

(i)Objects:

Samples
Non-registered models
Machinery, devices, pieces, tools
Manufacturing apparatus

(ii)Technical documents:

Formulae, estimates
Plans, drawings
Unpatented inventions

(iii) Instructions:

Elaboration (or working up) notes,
manufacturing, functioning (operation)
of the product or of the process
Explanations or practical advice
for performance
Technical booklets
Complementary explanations
of patents
Manufacturing circuits
Control methods
Amount to be paid for royalties
Particulars of the receiver of royalties.

Article 19:

Contracts on importation of technology must contain, at least, several clauses on the following subjects:

- (a) Identification of the forms by which the imported technology is transferred;
- (b) Contractual value of each of the elements involved in the transfer of technology, expressed in a form similar to the one used in the registration of direct foreign investment; and
- (c) Determination of the period of validity.

Article 22:

National authorities will undertake a continuous and systematic task of identification of available technologies on the world market for the different industrial fields, in order to make

available the most favourable and advisable alternative solutions for the economic conditions of the subregion and will forward the results of their work to the Board. This work will be furthered in a co-ordinated way with those which may be adopted in accordance with Chapter V of this regime in connection with the production of national or subregional technology.

Article 23:

The Committee, upon the request of the Board, shall approve, before November 30, 1972, a programme directed towards promoting and protecting the production of subregional technology, as well as the adaptation and assimilation of existing technologies.

This programme must contain, among other elements:

(a) Special benefits, tributary or of another kind, to stimulate the production of technology and especially those connected with the intensive use of items of subregional origin or those which may be designed to take advantage efficiently of subregional productive factors;

(b) Development of exports to third countries of products manufactured on the basis of subregional technology; and

(c) Channelling of internal saving towards the establishment of subregional or national centres of research and development.

Article 24:

The Governments of the Member Countries shall give preference in their acquisitions to products which include technology of subregional origin in the form that

the Committee may consider advisable. The Committee, upon request of the Board, may propose to the Member Countries the establishment of taxes (or duties) against the products which use trade marks of foreign origin and which cause the payment of royalties, when technology of public domain or easy access is used in their production.

Article 26:

The Committee, upon request of the Board, may indicate production processes, products or groups of products, with respect to which no patent privileges may be granted in any of the Member Countries. Likewise, it may decide on the treatment of privileges already granted.

Article 54:

Member Countries shall create a Subregional Office of Industrial Property (Trade marks and Patents) which will have the following functions:

- (a) Serve as a liason organization between the national offices of industrial property (trade marks and patents);
- (b) Gather and publish information regarding industrial property (trade marks and patents) for the national offices;
- (c) Prepare typical licensing contracts for the use of trade marks and exploitation of patents in the Subregion;
- (d) Advise the national offices on all matters connected with applica-

tion of common regulations on industrial property (trade marks and patents) which may be adopted in the regulations referred to in Provisional Article G;

(e) Further study and present recommendations to the Member Countries on invention patents.

Article 55:

The Committee, upon request of the Board will establish a subregional system for the development, promotion, production and adaption of technology, which in addition will have the function of centralizing the information referred to in Article 22 of the present regime and distribute it among the Member Countries, together with the information it may obtain directly on the same subjects and on the conditions of commercialization of technology."

Argentina

The decisions of the National Registry are reviewed by an advisory committee composed of officials of the Secretariat of Industrial Development, The Secretariat of Science and Technology, and the National Development Bank before they are submitted through the Technical Under secretariat to the Secretary of State for Industrial Development for final approval or rejection (see Figure I).

Prior examination and binding clauses

Article 7:

Voluntary acts of legal consequences which, in accordance with the preceding articles are subject to nonautomatic registration according to the provisions of this Law, shall be subject to prior examination by the Enforcement Authority.

For the act to be approved, it must at least include the following clauses:

(a) Identification of the services which will be rendered by the supplier of the technology or trade marks;

(b) Identification of the services which will be rendered by the recipient of the technology or trade marks. The consideration for each one of the services rendered by the supplier shall be specified with the greatest accuracy possible;

(c) Determination of the effective term of the contract;

(d) In acts that involve the transfer of technology, the technical aims which the recipient intends to achieve by said transfer must be indicated;

(e) A declaration by the supplier of the technology that he is familiar with this Law.

Brazil

In Brazil the techno-economic evaluation of technology agreements is carried out by the National Industrial Property Institute (IMPI) under the Ministry of Industry and Trade within the scope of a contract for "furnishing of industrial technology" as outlined below.

Purpose A contract "for the furnishing of industrial technology" shall be deemed to be a contract specifically designed to allow the acquisition of knowledge and techniques not covered by industrial property rights filed or granted in the country and which are to be applied in the production of consumer goods or inputs in general.

The contract must cover in particular:

(a) The supply of all the technical engineering data for the process or the product, including the methodology of technological development used to obtain it, such data being represented by the body of formulae and technical information, documents, industrial designs, instructions for operations and other like elements allowing manufacture of the product;

(b) The furnishing of data and information to update the process or product;

(c) The furnishing of technical assistance by the furnisher's technicians and the training of specialized technical personnel of the acquirer.

Functions of the National Institute
of Industrial Property

Article 1

The National Institute of Industrial Property (INPI) is hereby established as an autonomous federal organ attached to the Ministry of Industry and Trade, with head office and domicile in the Federal District.

Sole paragraph: The Institute shall enjoy the privileges of the State in respect of the assets, income and services relating to or deriving from its essential purposes.

Article 2

The primary purpose of the Institute shall be to execute at the national level the provisions of law governing the social, economic, legal and technical functions of industrial property.

Sole paragraph: Without prejudice to any other duties that may be allotted to the Institute, it shall adopt for the purpose of national economic development measures to accelerate and regulate the transfer of

technology and to improve conditions for the negotiation and use of patents. It shall also advise on the signature, ratification and denunciation of conventions, treaties, contracts and agreements relating to industrial property.

Article 5

The President of the Institute shall be nominated by the Minister of Industry and Trade and may be appointed and dismissed only by the President of the Republic.

Article 6

The Executive shall make regulations for the structure, duties and operation of the various organs of the Institute and for the conduct and engagement of its staff.

Mexico

In 1978 the Registry of Foreign Investment and the Registry of Technology Transfer were amalgamated. As regards technology transfer, the following rules will apply.

Article 4

The documents containing the acts, agreements or contracts referred to in Article 2, shall be filed with the Ministry of Development for registration in the National Register for Foreign Investments and the Transfer of Technology, within sixty (60) days from the date of their execution. If filed within this period, the registration shall be effective from the date of their execution. Upon expiration of said period, the registration shall be effective only from the date of filing.

Further, any amendment of acts, agreements or contracts referred in Article 2, must be filed for registration with the Ministry of Industry and Commerce, as provided in Article 2. When the parties terminate the contracts or agreements prior to the termination date stipulated therein, notice shall be given to the Ministry of Industry and Commerce within sixty (60) days from the date of termination.

Article 10

The Ministry of Industry and Commerce shall pass on the registration and non-registration in the National Register for the Transfer of Technology within a period of ninety (90) days following the filing with it of the documents containing the acts, agreements or contracts referred to in Article 2. Upon the termination of this period without the Ministry having rendered its decision, the respective act, agreement or contract shall be registered in the National Register for the Transfer of Technology.

Article 11

The Ministry of Industry and Commerce may cancel the registration in the National Register for the Transfer of Technology, of the acts, agreements or contracts when the terms under which they were registered are amended or modified contrary to the provisions of this Law.

Article 12

The Ministry of Industry and Commerce is authorized to verify at any time the compliance of the provisions of this Law.

Asia and the Far East

India

The Technical Evaluation Committee (TEC) considers a proposal for foreign collaboration from the technical angle and furnishes comments to the Secretariat for Industrial Approvals and to the ministry dealing with the subject. The comments of TEC, CSIR, DCSSI, the ministry etc. are placed before the Foreign Investment Board for consideration. The various aspects of the proposals, such as need for foreign collaboration, the priority of the industry and the reasonableness of the terms offered the Foreign Investment Board (FIB) decides to recommend or reject the proposal. The Secretary of the Department of Economic Affairs, in his capacity as the FIB chairman, submits favourable recommendation to the Minister of Industry for final approval, after which SIA notifies the individual applicants.

The Secretary, Ministry of Finance (Department of Economic Affairs), serves as chairman of the Foreign Investment Board, which is responsible for all matters relating to the approval of collaboration proposals. The Foreign Investment Board and the Joint Secretary in charge of SIA, Department of Industrial Development, serves as secretary.

The members of the Board include:

- (1) Secretary, Ministry of Industry
(Department of Industrial Development)
- (2) Secretary, Ministry of Petroleum
- (3) Secretary, Ministry of Commerce
- (4) Secretary, Department of Company Affairs
- (5) Secretary, Planning Commission
- (6) Secretary, Department of Science
and Technology
- (7) Secretary of the ministry concerned

- (8) Director General, Council of Scientific and Industrial Research
- (9) Director General, Technical Development

The Technical Evaluation Committee is composed of representatives of CSIR and the Department of Science and Technology. The Director General of Technical Development serves as chairman.

The Government is considering the creation of a national registry that will take over the work of recording foreign collaboration agreements carried out at present by the various ministries. It will maintain registers containing particulars of all proposals for technical and financial collaboration between Indian entrepreneurs and foreign firms approved by Government such as:

- Name of the Indian entrepreneur
- Sector and type of technology or services
- Description of product
- Name of foreign licensor and country
- Foreign equity participation, indicating the amount and proportion of foreign holding
- Duration of contract
- Remuneration payable to the firm (a) for production on process technology (type of payment such as lump-sum fees, annual royalty to be specified); (b) for technological services including management training and use of foreign personnel
- Annual likely production of Indian enterprise as a result of technology agreement

additional functions include:

- (a) Monitoring the process of proposals on the basis of annual returns from Indian firms;
- (b) Examining the steps taken by the Indian firm to establish Research and Development facilities to enable the technology acquired to be absorbed;

(c) Follow-up action on the efforts made by the Indian firm to obtain information from the collaborator on improvements in the technology supplied;

(d) Comparing the quality of the product with the specifications provided for;

(e) Examining the reports concerning the training facilities offered employees of the Indian firms in the collaborator's industrial units and the services provided by experts who sent work with the Indian firm;

(f) Examining further steps involved in adapting the technology with respect to raw materials, modernization of equipment and improvement in the specification of the end product.

Republic of Korea

In the Republic of Korea a special body called the Final Decision Committee has been established to issue decisions on transfer of technology agreements which are divided into two (2) categories.

Contracts with a duration exceeding three (3) years,

With an initial royalty exceeding \$30,000 and running royalties exceeding 3% of net sales fall into the first category.

The Foreign Capital Inducement Deliberation Committee has as its chairman the Minister of the Economic Planning Board. Its members include the Ministers of Finance, Agriculture and Forestry, Commerce and Industry, Construction and Science and Technology; the governors of the Bank of Korea and the Foreign Exchange Bank; and outstanding economists, lawyers, scholars nominated by the president.

Contracts with a duration of up to three (3) years, an initial royalty of up to \$30,000 and running royalties of up to 3% of net sales, fall into the second category.

The Foreign Capital Investment Review Committee consists of a chairman; the Assistant Minister of Economic Co-operation of the Economic Planning Board Members (20): Directors of each ministry and banks and institutes.

Contracts related to purely engineering services with a duration of one (1) year or less are dealt with by the Engineering Service Promotion Review Committee composed of a chairman, the Vice-Minister of Science and Technology, and the directors of each ministry as members.

Contracts other than engineering service contracts with a duration of less than one (1) year are dealt with by the Division of Foreign Exchange of the Ministry of Finance.

Philippines

Figure VI shows the machinery for regulating the transfer of technology in the Philippines.

Functions of the Technology Transfer Board^{1/}:

Sec. 1. Functions in general. The Board shall have the following functions:

- (a) Formulate policies, including a system of priorities which would promote an integrated approach to the developmental and regulatory roles of the Government in the field of technology transfer;

^{1/} Government communication.

(b) Issue rules and regulations for the effective, efficient and economic implementation of policies and guidelines relative to technology transfer;

(c) Establish a system of co-ordinating all governmental activities on technology transfer and ensure continuing and meaningful interaction among various government agencies, particularly with respect to the determination of the impact of technology transfer on national development;

(d) Serve as a forum for the continuing interchange of ideas and information among the government agencies, concerned, the private sector and the general public on policy issues, problems and alternative approaches relating to technology transfer; and

(e) Perform such other functions as may be necessary for the accomplishment of its objectives.

Sec. 2. Specific Function. All technology transfer arrangements as above-defined must be registered with the Board after due evaluation in the light of the technology transfer policies set by the Board, subject to such sanctions the Board and/or its member agencies may impose for the effective implementation of this requirement.

Requirements for registration:

Sec. 1. Filing of technology transfer arrangements. All agreements shall be submitted in duplicate to the Board for approval and registration accompanied by Application Form No. TTB-1 to be accomplished in duplicate, containing the following: (1) general

information about the agreement; (2) information about the technology recipient; and (3) information about the technology supplier.

Sec. 2. Supporting documents. The documents to be submitted by the applicant in support of his application are:

(a) Audited financial statements of the technology recipient, viz: profit-and-loss statements and balance sheets for the three (3) preceding years, if applicant has been operating for more than three (3) years; if not, statements during the period he has been operating;

(b) Projected financial statements of the technology recipient for the next five (5) years;

(c) Proof of patent and/or trade mark registration, if any;

(d) Such other papers as may be required by the Board.

Sec. 3. Date of official acceptance. The date of full compliance by the applicant with all the pertinent requirements of the Board shall be deemed the date of official acceptance which shall be duly recorded in the Application Entry Book.

Failure of the applicant to comply with any of the requirements in connection with the application for registration within a period of fifteen (15) calendar days from the date of notification shall be construed as an abandonment of the application unless for good cause shown and upon written request the Board extends said period.

Evaluation procedure:

Sec. 1. Scope of evaluation. The technical staff rendering assistance to the Board shall evaluate the terms and conditions of all agreements taking into account the legal, technical and economic aspects of the agreement in the light of the policies and guidelines prescribed by the Board.

Sec. 2. Modifications required. The parties to an agreement may amend or modify the agreement at any time during its evaluation upon advice by the board, to conform with the policies and guidelines relative to technology transfer arrangements. Any such amendments or modifications shall be submitted to the Board within five (5) days from execution thereof.

Sec. 3. Decision. The Board shall render a decision approving or rejecting the registration of an agreement within sixty (60) days from the date of official acceptance. In case the agreement is revised during its evaluation pursuant to Sec. 2 hereof, the decision of the Board shall be rendered within the unexpired portion of the said sixty-day period or within forty-five (45) days from the time the amended agreement is filed with the Board, whichever is longer. Upon the expiration of this period, without a decision having been rendered, the agreement shall be deemed automatically approved and registered, provided, however, that provisions in the agreement which contravene Secs 1c, d and 3 of Rule V shall be deemed not written; provided, further, that the payment for the technology or industrial right shall not exceed the maximum rate

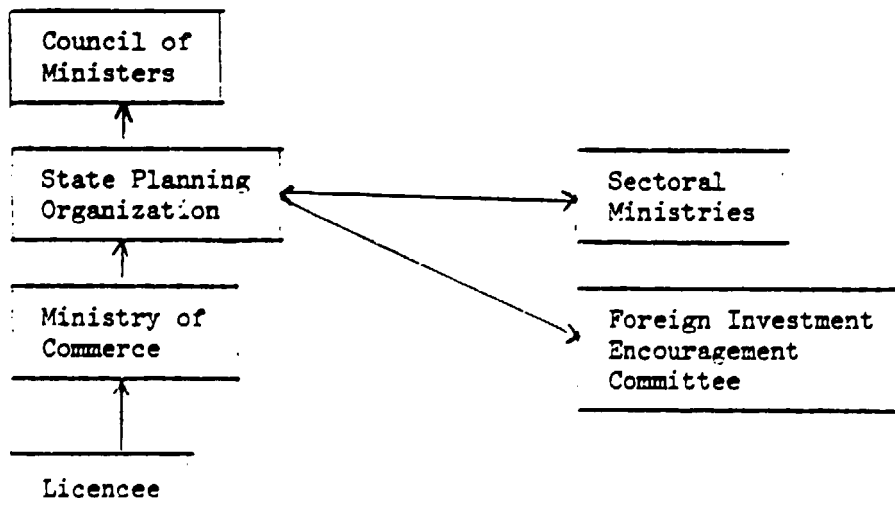
established by the Board. The decision of the Board rejecting the registration of a contract shall state therein the reasons for such rejection.

Sec. 4. Notice of approval. Upon rendering a favourable decision within the applicable period referred to in Sec. 3 of this Rule, the Board shall issue a notice of approval which shall specify the proposed terms and conditions of registration. From the date of receipt of said notice, the applicant shall have thirty (30) calendar days within which to submit his acceptance and/or the required documents or modifications. Failure to do so within the said period may be construed as a rejection of the proposed registration.

Sec. 5. Draft contracts. Applicants may, prior to execution of contracts, submit drafts thereof to the Board for consultation, for which approval in principle may be granted, registration being withheld until execution thereof and filing of the formal application.

Turkey

Figure: Organization set-up regulating the flow of technology.



Function of the Foreign Investment Encouragement Committee

Article 8.

(a) In order to carry out the duties provided for by this Law, a Committee is formed under the chairmanship of the General Manager of the Central Bank of the Turkish Republic and consisting of the following members: the Director General of the Treasury, the Director General of Domestic Trade, the Director General of Industrial Affairs, the Chairman of the Board of Research and Planning of the Ministry of State Enterprises and the Secretary General of the Union of Chambers of Commerce, Industry and Commodity Exchanges. In cases where it finds it necessary, this Committee may ask the opinion, on an advisory basis, of representatives of other ministries and institutions. The Committee shall give its decision on any application, within fifteen (15) days, at the least, of their submittals.

The Director General of Domestic Trade will act as Secretary General of the Committee. If necessary, the Committee may be called to a meeting of the Secretary General.

The remuneration to be paid to the Chairman and members of the Committee will be fixed by the Council of Ministers.

(b) Any decision of the Committee may be appealed by the parties concerned within thirty (30) days as from the date of the notification thereof. The competent authority to deal with such appeals is constituted by the Ministers of Finance, Economy and Commerce and State Enterprises. The decisions of this authority are final.

Article 9.

(a) The Ministry of Economy and Commerce is the

competent authority in the application of the provisions of this Law.

(b) The Ministry of Economy and Commerce shall have the authority to order release from the custody of the customs of foreign capital imported in kind according to the decisions of the Committee.

For the simple licence agreement, the licensee applies for approval to the Ministry of Finance, where a financial evaluation is carried out while a techno-economic appraisal is carried out by the Ministry of Industry and Technology.

Arab Countries

Iraq

The Ministry of Industry occupies a key position in the execution of policy on technology import. Each case of technology transfer is analyzed by an ad hoc committee composed of representatives of the following:

- Industrial union
- Industrial development department
- Central Bank
- Industrial property office
- Industrial research and control
- Industrial chemical property.

Sometimes the licensee also participates.

In evaluating an agreement, the committee considers whether the contract has any harsh conditions; examines its technical content, determining what is new in terms of what exists in particular regarding know-how, and establishes whether the same licence was previously applied for.

There is no definite evaluation and approval procedure to be

followed; the evaluation is done according to experience and circumstances.

Kuwait

The Industrial Development Committee attached to the Ministry of Commerce and Industry plays the central role in the government machinery for technology transfer.

The Minister of Commerce and Industry or his Deputy serves as Chairman of this committee. The members include one (1) representative each from the Port and Customs Administration of the Ministry of Finance and Oil, the Industrial Affairs Department of the Ministry of Commerce and Industry, the Ministry of Commerce and Industry, the Planning Board, the Credit and Savings Bank and three (3) representatives from the private industrial sector nominated by Kuwait Chamber of Commerce and Industry. The members of the Committee are appointed and the term of their office determined by the Ministry of Commerce and Industry.

Two (2) of the main functions of the Industrial Development Committee are: To promote the development of national industries and to study after reviewing applications for industrial permits to recommend whether the permits should be issued.

Procedure of Establishment of Industrial Firms according to Decree Law 6 of 1965

Every owner or manager of any existing or under establishment industrial firm is required to submit an application to the Industrial Affairs Department of the Ministry of Commerce and Industry within six (6) months from the date of the enforcement of this Law for the registration of the firm in the special register kept for that purpose. No industrial firm shall be registered unless it proves to be registered in accordance with the provisions of this Law.

Article 10.

The following considerations shall be taken into account on issue of permits:

(1) The economic requirements of the country and the possibilities of local consumption and exportation.

(2) The requirements of the country's social and economic plan.

(3) The purpose of the firm not to be inconsistent with the public order or public interest.

Article 11.

The Minister shall, under a resolution to be issued by him, determine the manner of submitting the applications for permits, the statements to be included in the applications, the documents supporting such applications and the fees to be collected thereon.

The application for a permit shall be submitted accompanied by a report covering the study of the project and its technical and economic advantages. This study shall show in particular the project's sources of raw material, the costs of production, the amount of capital sufficient to realize its purposes, its requirements (for labour, possibilities of marketing of its products and all relevant matters.

Article 21.

The number of Kuwaiti labourers and staff employed by every industrial firm shall not be less than 25% of the total number of the firm's labourers and employees. The Minister of Commerce and Industry may, in case sufficient Kuwaitis are not available,

exempt the firm from such a stipulation or reduce the percentage referred to.

Article 22.

The industrial firms shall be under obligation to participate with the State in the field of arrangements and programmes laid down by the latter for vocational training or for industrial studies and research and production efficiency. The Minister of Commerce and Industry shall, upon the recommendation of the Industrial Development Committee, issue a resolution determining the nature of such participation.

Morocco

No specialized agency has been set up to deal with technology transfer. Agreements involving technology transfer are examined by all departments concerned with the projects. Projects that are recommended for implementation must be approved by the responsible minister. Additionally the Office of Exchange must be consulted on currency issues.

According to Decree 2.76.479, after the contractor has been selected, the enterprise implementing the project should agree with the contractor on the schedule of construction and with the approval of the Office of Exchange, choose the foreign bank with which it will have dealings. The Office of Exchange must approve every foreign payment in foreign exchange either for purchasing the equipment or paying the fees of foreign personnel chosen according to job descriptions.

Saudi Arabia

All cases of technology transfer are supervised by a committee composed of representatives from the Ministries of Finance and National Economy, Agriculture, Petroleum and Minerals and the Supreme Planning

Board; the Director General of Industrial Affairs; and a legal advisor. The Deputy Minister of Commerce and Industry or his substitute serves as chairman.

The Committee's functions are:

- (a) To determine whether the proposed license or the enterprise is economically feasible;
- (b) To examine any complaints or claims arising from the application and submit recommendations;
- (c) To recommend penalties for enterprises violating the laws of the country;
- (d) To consider the draft regulations for implementation;
- (e) To consider matters that may be referred to it by the Minister of Commerce and Industry.

Approval and evaluation procedures differ from technology agreements involving industrial projects and those for contracting, maintenance and technical services.

Industrial Projects

Investors interested in establishing a joint-venture industrial project must submit an application to the Director General of the Department of Industry in the Ministry of Industry and Electricity describing in detail the products to be manufactured and giving the capital estimates. The application may be accompanied by a detailed economic feasibility study, or the investors may request that they be allowed a reasonable period in which to complete such a study.

The Department then makes an evaluation of the market demand for the proposed products. If it is shown that there is a good market for the proposed products, the investor is allowed a maximum period of six (6) months in which to submit a detailed economic, technical and marketing study.

The investor must submit this together with three (3) completed licence application forms, obtainable from the Department or the Secretariat of the Foreign Capital Investment Committee to the Secretariat.

The Secretariat of the Committee gives a copy of the application to both the Department of Industry and the Industrial Studies and Development Centre for evaluation. When the Secretariat receives the evaluation from both agencies, it submits the application and the evaluation results to the Foreign Capital Investment Committee, which makes its recommendation and to the Minister for Industry and Electricity . The Minister agrees with the Committee's recommendation, he issues a ministerial decision approving the issue of the licence.

Licences for contracting, maintenance and technical services

Eight (8) copies of the application forms relevant to the business applied for must be submitted to the Secretariat of the Foreign Capital Investment Committee. The Secretariat submits the application to the Committee, which makes its recommendation to the Minister for Industry and Electricity. The minister issues a ministerial decision approving the issue of the licence if he agrees with the Committee's recommendation.

Sudan

There is no specific government agency regulating technology inflow. Every technology transfer agreement is evaluated by the responsible ministry and either amended or rejected according to certain criteria, e. g. value of the royalty, quantity of local materials used, duration of the licence, creation of additional skills. In approving the agreement, the responsible ministry consults the Ministry of Commerce and Supply, the Ministry of Industry and Mining and the Bank of Sudan regarding transfer of royalties.

Tunisia

Technology transfer is regulated by an Ad Hoc committee composed of representatives of the ministry concerned with the project, the Ministry of Planning, the Ministry of Finance, specialized private personnel, and Prime Ministry sometimes a foreign consultant. The committee contacts companies using the process to find out what their experience with the process has been. It draws up detailed specifications for the process, prepares tender documents and invites offers. After receiving offers, it studies them from a technical and economic point of view and issues a report to the responsible ministry, which finally approves or rejects the proposed licence.

Algeria ^{1/}

The agency in Algeria that is in charge of the acquisition of foreign technology is the Algerian Institute of Standards and Industrial Property (INAPI) which is responsible for administering a national system of standards and executing industrial property legislation and of all matters related to industrial property rights. INAPI has been placed within the Ministry of Light Industries, but ministries concerned with industrial development affect its functioning.

On the basis of two (2) laws issued by the Ministry of Finance, INAPI is responsible for reviewing all licensing contracts that include industrial property rights. Since patenting is not extensive and foreign trade marks are practically unused the rules of the Ministry of Finance have less important coverage than would be desirable. Although the number of foreign licensing agreements is small, it is growing. INAPI has, however, had little opportunity of participating in formulating the relevant contracts, although one of its fields of activity is precisely to analyse this type of contract.

^{1/} for more detailed description, see UNIDO/ICIS.96

Europe

Portugal

Functions of the Institute of Foreign Investment

The Foreign Investment Institute to be set up under the authority of the Minister responsible for Planning shall co-ordinate, guide and supervise direct foreign investment in Portugal.

The Foreign Investment Institute shall:

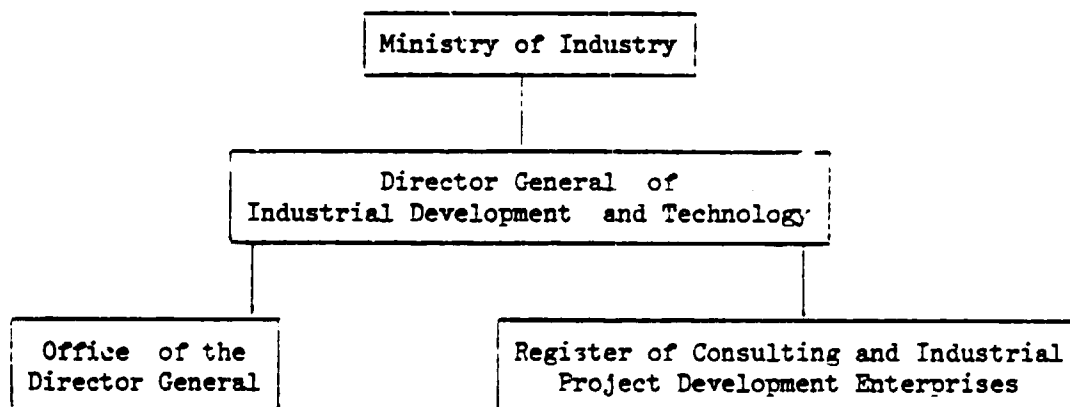
- (a) Receive and guide potential foreign investors and foreign exporters of technology and ensure the representation before them of all State Departments and bodies responsible for matters in connection with the fulfillment of their investments or transfers of technology, as well as take action on and submit proposals or give opinions on such legal and administrative measures as are required for the promotion and stimulation of direct investment or of transfers of technology;
- (b) Grant the authorizations legally acquired for direct foreign investment and for agreements for the transfer of technology;
- (c) Submit to the Government, together with its opinion, the papers in connection with the granting of authorization of investments under the contractual regime;
- (d) Carry out all necessary procedures for the registration of direct foreign investments, of foreign re-investments and of agreements for the transfer of technology in accordance with the terms of the law and maintain an up-to-date record of all companies having foreign capital participation;

(e) Act as the controlling instrument of direct foreign investment or of any transfers of technology and accompany the application and implementation thereof except where competence for so doing has been relegated by law to another body.

Spain^{1/}

Figure shows the machinery for regulating the flow of foreign technology in Spain.

Organizational Set-Up for Regulating the Flow of Technology:



Evaluation and approval procedure based on the Ministry of Industry Order of 5 December 1973.

1.3. The application shall be submitted in triplicate in the form of a request to the Director General of Industrial Development and Technology and shall be accompanied by three (3) copies of the contract, which for the purposes of this Order shall be drawn up in Spanish, of the memorandum and of the documentary evidence specified in subparagraphs 1.5 and 1.6 below.

^{1/} See also Peter O'Brien's Foreign Technology and Industrialization in Spain; Journal of World Trade Law, September 1975.

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

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

1.5. The documentary evidence shall comprise:

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

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

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

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

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

1.6. The organizations, entities and enterprises referred to Article 9 of Decree No. 617 of 4 April 1968 which contract for the provision of technical studies and services by foreign advisory and project development enterprises shall attach to their applications documentary evidence of an attempt to obtain the required services from at least two enterprises that are listed in the special section of the Register of Consulting and Industrial Project Development Enterprises established under the aforesaid Decree and that work in the sector to which the contract belongs.

The aforesaid evidence shall include the definite proposals by the Spanish enterprises or, failing these, some other authentic means

of proof. If such evidence cannot be furnished because only one enterprise or non capable of providing the required service is listed in the aforesaid special section, the applicant shall enclose with any offer by the listed enterprise the appropriate certification issued by the Office of the Director General of Industrial Development and Technology.

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

Functions of the Registry

Article 2

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

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

(b) The Ministry of Trade shall take the final decision regarding the authorization of foreign currency

payments in connection with the above mentioned contracts.

Article 4

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

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

Article 5

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

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

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

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

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

Other Countries

Nigeria

In a Federal decree establishing the National Office of Industrial Property (Decree No. 60 of 1970) its functions were defined as follows:

(1) 1. There is hereby established a body to be known as the National Office of Industrial Property (hereinafter in this Decree referred to as "the National Office") which shall have the functions conferred on it under or pursuant to this Decree.

2. The National Office shall be a body corporate with perpetual succession and a common seal and may sue or be sued in its corporate name.

(2) 1. There shall be as the governing body of the National Office a council to be known as the Governing Council of the National Office of Industrial Property (hereinafter in this Decree referred to as "the Council") which shall be responsible for the formulation of policy for the National Office and for the discharge of the other functions conferred on it by this Decree.

2. The Council shall consist of a Chairman and the following other members, that is

- (a) One representative each of the following Federal Ministries:
Economic Development;
Finance;
Internal Affairs;
Justice;
Trade; and
Works and Housing;
- (b) One representative of the National Science and Technology Development Agency;
- (c) One representative of the universities in Nigeria to be appointed by the Commissioner after consultation with the National Committee of Vice-Chancellors;
- (d) One representative of polytechnics and colleges of technology in Nigeria to be appointed by the Commissioner after consultation with the rectors and principals thereof; and
- (e) The Director.

3. The Chairman shall be the Permanent Secretary of the Federal Ministry of Industries or such other officer of that Ministry not below the rank of Principal Secretary as the Permanent Secretary may designate in that behalf.

4. The supplementary provisions in the Schedule to this Decree shall have effect with respect to the proceedings of the Council and the other matters therein mentioned.

(3) The Commissioner may give to the Council directions of a general character or relating generally to particular matters but not to any individual or case with regard to the exercise by the Council or the National Office of its functions under this Decree and it shall be the duty of the Council to comply with the directions or cause them to be complied with.

(4) Subject to section 2(1) of this Decree, the National Office shall carry out the following functions:

(a) The encouragement of a more efficient process for the identification and selection of foreign technology;

(b) The development of the negotiating skills of Nigerians with a view to ensuring the acquirement of the best contractual terms and conditions by Nigerian parties entering into any contract or agreement for the transfer of foreign technology;

(c) The provision of a more efficient process for the adaptation of imported technology;

(d) The registration of all contracts or agreements having effect in Nigeria on the date of the coming into force of this Decree, and of all contracts and agreements hereafter entered into, for the transfer of foreign technology to Nigerian parties; and without prejudice to the generality of the foregoing, every such contract or agreement shall be so registrable if its purpose or intent is, in the opinion of the National Office, wholly or partially for or in connection with any of the following purposes, that is to say:

- (i) The use of trademarks;
- (ii) The right to use patented inventions;
- (iii) The supply of technical expertise in the form of the preparation of plans, diagrams operating manuals or any other form of technical assistance of any description whatsoever;
- (iv) The supply of basic or detailed engineering;

- (v) The supply of machinery and plant;
- (vi) The provision of operating staff or managerial assistance and the training of personnel;

(e) The monitoring, on a continuous basis, of the execution of any contract or agreement registered pursuant to this Decree.

IV. GENERAL ANALYSIS OF PRESENT ACTIVITIES AND EFFECTIVENESS OF REGULATORY AGENCIES IN SELECTED DEVELOPING COUNTRIES

The present chapter analyses briefly the activities and effectiveness of regulatory agencies in selected developing countries on the basis of material to which UNIDO has been given access. The evaluation is not exhaustive, and it is hoped that a later revised and up-dated version of the present document more detailed data, based on surveys in individual developing countries, can be presented.

Latin America

Andean Pact

Criteria for technology importation are set forth in Decision 24 of the Cartagena Agreement. Pertinent extracts of the Decision are given below.

Article 20.

Member Countries will not authorize the signing of contracts concerning the transfer of foreign technology or patents which contain:

- (a) Clauses by virtue of which the furnishing of technology bears with it the obligation, for the recipient country or company, to acquire from a certain source capital goods, intermediate products, raw materials or other technologies, or of employing in a permanent way personnel indicated by the company which

supplies the technology. In exceptional cases, the recipient country may accept clauses of this nature for the acquisition of capital goods, intermediate products or raw materials, provided that their price corresponds to current levels in the international market;

(b) Clauses according to which the company that sells the technology reserves the right to establish the prices of sale or resale of the products that may be manufactured on the basis of the respective technology;

(c) Clauses that contain restrictions regarding the volume and structure of production;

(d) Clauses that prohibit the use of competitive technologies;

(e) Clauses that establish an option to purchase, totally or partially, in favour of the supplier of the technology;

(f) Clauses that compel the purchaser of technology to transfer to the supplier the inventions or improvements that may be obtained by virtue of the use of the respective technology;

(g) Clauses that compel (the users) to pay royalties to the owners of patents for patents that are not used; and

(h) Other clauses with equivalent effects.

Except in exceptional cases, duly qualified by the competent body of the recipient country, no clauses will be accepted in which the exportation of the products manufactured on the basis of the respective technology is prohibited or limited in any way.

In no case shall clauses of this nature be accepted in connection with subregional trade (interchange) or with

the exportation of similar products to third countries.

Article 21

Intangible technological contributions shall grant the right to the payment of royalties, after authorization is given by the competent national body, but they cannot be computed as capital contributions.

Article 25

Licensing contracts for the exploitation of trade marks of foreign origin in the territory of the Member Countries may not contain restrictive clauses such as:

(a) Prohibition or limitation to export or sell in certain countries the products manufactured under cover of the respective trade mark or similar products;

(b) Obligation to use raw materials, intermediate goods and equipment supplied by the owner of the trade mark or his affiliates. In exceptional cases, the recipient country may accept clauses of this nature provided the price of same corresponds to current levels on the international market;

(c) Establishment of prices of sale or resale of the products manufactured under cover of the trade mark;

(d) Obligation to pay royalties to the owner of the trade mark for trade marks that are not used;

(e) Obligation to employ permanently personnel furnished or indicated by the owner of the trade mark;

and

(f) Other obligations of an equivalent effect.

Requirements that are satisfied:

(a) Shortage of internal savings;

(b) Shortage of foreign exchange;

- (c) Lack of directive or administrative capacity;
- (d) Need of access to scarce technological knowledge;
- (e) Lack of capacity or of commercial contacts for the sale of merchandise in international markets;
- (f) Lack of local entrepreneurship.

Plan for progressive national participation:

- (a) Percentage of shares to be placed in the hands of national investors;
- (b) Period of time and conditions for carrying out this transfer;
- (c) Form of determining the value of each placement.

Effects of the new investment:

- (a) Approximate date of beginning of normal operations;
- (b) Operation capacity;
- (c) Exportable production;
- (d) Additional employment generated;
- (e) Importation of raw materials or intermediate products in annual production; and
- (f) Use of national raw materials and items.

Technology import before adoption of Decision 24

The countries of the Andean Group are not prepared to handle technology well; in general, there is a lack of personnel and adequate structures to generate or acquire technology appropriate to the development programmes of these countries.

Andean Group countries paid annually US\$40-US\$45 million in the period 1972-1974 in direct expenses related to the purchase and use of technology; this figure was expected to rise to to US\$60 million per year in 1975.^{1/} In the same year, the subregion will be paying US\$100 million abroad for advisory services. In addition to these direct costs there are also very steep indirect costs arising from mistakes that are made failure to make sound decisions in matters related to technology; failure to develop possibilities of generating technology, advisory services, and teaching, not having the proper information on hand to aid in choosing among different solutions to technological problems available in different parts of the world.

Studies made in countries belonging to the Andean Group show that many of the contracts concerned with the supplying of capital or technology include restrictive clauses imposed by the owners.

In a study of 150 contracts in Bolivia, Colombia, Ecuador and Peru, it was found that more than two-thirds of the contracts included restrictive clauses.^{2/} One of the most characteristic clauses tied the supply of technology or know-how to the supply of raw materials or intermediate goods. The study further showed that the subsidiaries of foreign companies in the Andean countries "overbilled" (overbilling defined as the FOB price paid in those countries for raw materials, less the international FOB price, divided by the international FOB price and multiplied by a hundred), by an average of 155%, and companies overbilled by 19%. The amount spent for raw materials and intermediates by Andean Group countries was six times the total paid in royalties (the US\$40-US\$45 million mentioned above) and 24 times the earnings declared by the same companies.

In Chile, a study of 39 companies revealed the following data on overbilling:

^{1/} UNIDO ID/WG.275/8, 24 May 1978.

^{2/} UNIDO ID/WG.275/8, 24 May 1978.

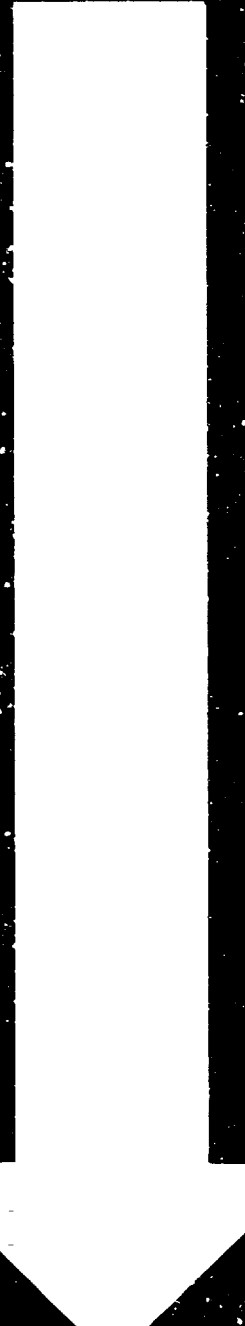
| <u>Number of Products</u> | <u>Overbilling (%)</u> |
|---------------------------|------------------------|
| 110 | 0 |
| 9 | 1- 30 |
| 14 | 31-100 |
| 12 | 101-500 |
| 2 | Over 500 |

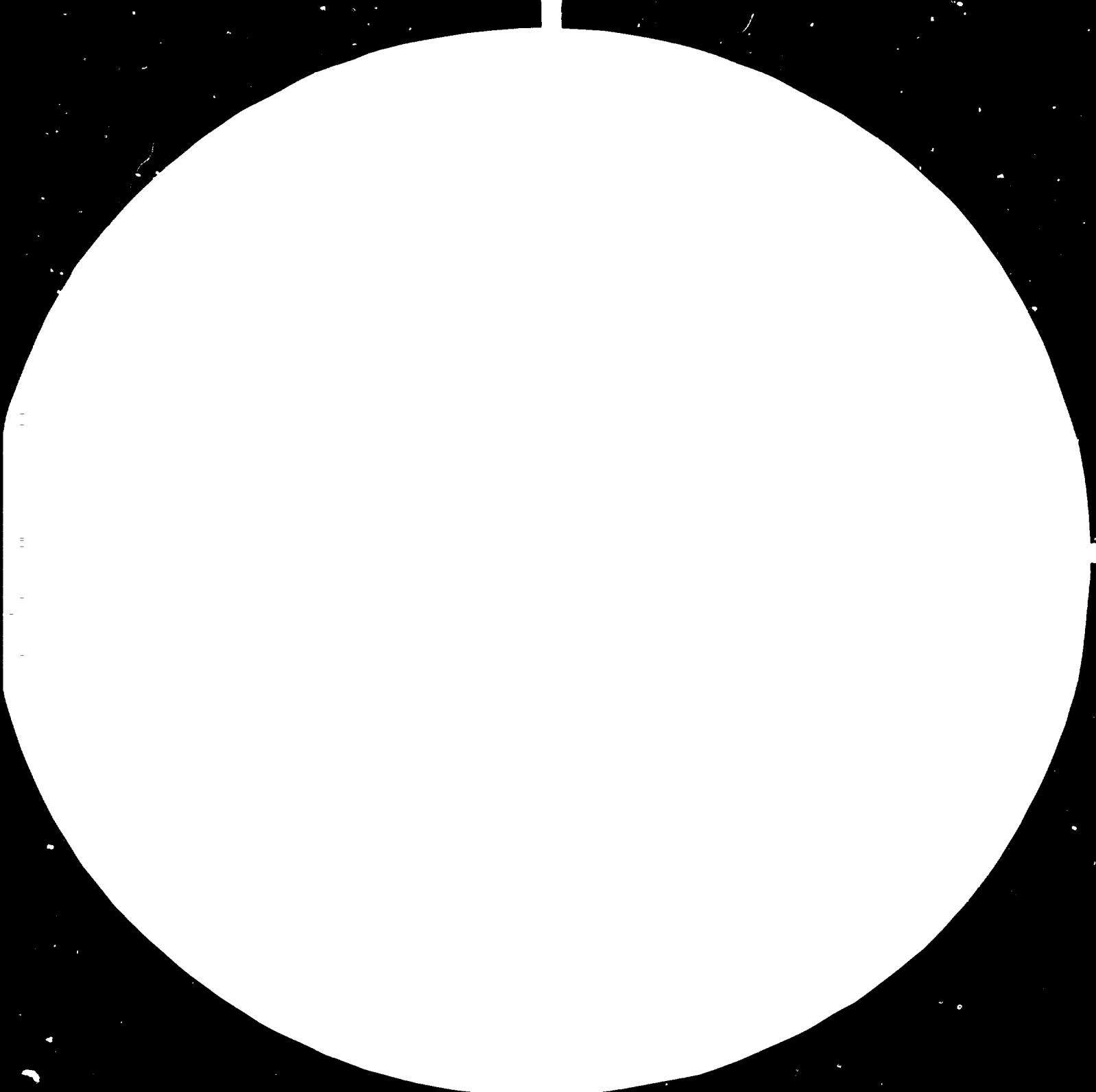
Overbilling has allowed foreign companies to remove money from the Andean countries while declaring lower incomes to avoid paying the corresponding taxes.

Another clause that appears again and again is one limiting exports. An analysis of 247 contracts in Bolivia, Colombia, Ecuador and Peru found that 200 contained clauses totally prohibiting export of products manufactured with the imported technology; 12 permitted exports to bordering countries; and 35 permitted exports throughout the world. In Chile, of 162 contracts, 117 included clauses prohibiting exports and 86% contained clauses restricting export activities. In this case, 92% of the clauses prohibiting export applied to national firms manufacturing with imported technology. This is logical, since technology sellers try to close export doors to companies owned by nationals of the Andean countries; however, clauses forbidding export do not apply to their own subsidiaries, so that these are able to act in the international sphere, producing in one country and selling to another.

As for the relationship between the home office of a foreign company and its subsidiary in an Andean country, bargaining power from the national viewpoint is nil: the contract is negotiated between the home office and the branch, which obviously has the same interests as the parent company. Naturally companies work this system to their own advantage.

An analysis of 34 contracts in Bolivia illustrates other types of restrictive clauses: 24 provided that technical assistance could be bought only from the home office; 22 tied future know-how to the







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know-how originally delivered; 3 set prices for the final product; 11 flatly prohibited the manufacture of similar products, effectively eliminating competition; 5 specified that controversies would be judged in the country supplying the technology; 28 left quality control of the raw materials and intermediates up to the home office, a very important provision, since it is through quality control of the raw materials that the home office can act when there is no tying clause concerning the purchase of inputs - it can indicate that certain raw materials do not meet the quality control standards set for the process and thus prevent purchases from being made except where it stipulates. There are even contracts in which any patentable improvement of the originally transferred technology becomes the property of the parent office, even if it is discovered by nationals of the country acquiring the technology.

Finally, studies of the patent system in the Andean Group countries show that 90% of the patents belong to foreign companies and only 2% are commercially exploited. The patent system has been used by large foreign companies to hinder production and to obtain a monopoly on importing the articles patented by these countries.

A patent holder in a country of the subregion can demand that a product be acquired through him, even though production in that country does not incorporate the technology subject of the patent; he often takes advantages of this by offering the buyer very unfavourable conditions.

Argentina

The following are the most recent criteria for the importation of technology (Law No. 19.231):

Implicit clauses

Article 8:

Any act included in the system of this Law will be subject to the following provisions whether or not

they are included in its text, except when the Enforcement Authority expressly decides otherwise and gives grounds for such decision at the time of approval.

(a) The suppliers guarantee that the technology to be transferred, will enable the recipient, through such acquisition, to achieve his proposed technical aims with the scope described in the voluntary act of legal consequences;

(b) The suppliers of technology shall directly or indirectly supply adequate training for assimilation and handling of that technology, if such training should be necessary;

(c) In the event that the party receiving the trade marks or technology has no alternative other than to purchase capital goods, inputs, raw materials and/or spare parts from the suppliers of said technology or trade marks, or to sell its production to the latter, the sale or purchase price shall be in keeping with that of such goods or products ruling in the international market. The Enforcement Authority will be authorized to estimate this price when no current international price quotation is available;

(d) The recipient shall keep confidential those technical secrets specified as such in the voluntary act of legal consequences for the agreed term, which may exceed the term of the contract;

(e) In those acts that include the use of the supplier's trade mark or names or similar forms of identification vis-à-vis customers, the recipient shall maintain the quality levels of products or services specified in the voluntary act of legal consequences when such products or services are identified by means of such trade marks or names.

When the Enforcement Authority deems it advisable, it may request that the foregoing

provisions be expressly included in the act to be registered as a condition for its approval.

Contractual features that may be liable to objection:

Article 10

Registration of those voluntary acts of legal consequences that are subject to non-automatic registration according to the foregoing article, may be rejected when they incorporate one or more of the following features:

(a) When technology to be transferred can be proven to be obsolete;

(b) When the technology having the same specifications, nature and quality as that which is the object of the transfer can be proven to be of public knowledge and freely available in this country. It shall be understood that it is of public knowledge when it is not protected by secrecy or by rights inherent to industrial property. It shall be understood that technology is freely available in this country when any interested party may have access thereto under reasonable conditions;

(c) They forbid or limit exports by the recipient, except to those countries where the supplier produces for its own account or has granted exclusive production, use or sales licenses;

(d) The agreed consideration bears no relation to the transferred technology or trade marks and to the direct or indirect benefits to be achieved through their use. It will be presumed that such lack of relation exists, unless proof to the contrary can be produced when.

(i) The acts consist of licenses

to use trade marks without the contribution of technology, and the payment to the supplier or for his account exceeds 1 per cent of the net sales value of the products or services using such trade marks;

(ii) The technology related to the final motor vehicles or auto parts industries, according to the definition of Law No. 19,135 and the payment to the supplier or for his account exceeds 2% of the net sales value of the products manufactured with such technology;

(iii) In other cases, payments to the supplier or for his account exceed 5% of the net sales value of the products manufactured or services rendered with the transferred technology. When it is a case of single or periodic fixed payments, the percentage equivalent of such payments in relation to the recipient's estimated sales during the full term of the contract shall be taken into account.

(e) They compel the recipient to assign or grant licenses with respect to the innovations, improvements or developments that may be achieved in regard to the transferred technology, except when a reciprocity clause exists;

(f) They do not grant the recipient the right to receive the improvements relating to the transferred technology that the supplier may develop during the life of the voluntary act of legal consequences;

(g) They exempt the suppliers from the liability to which it may be subject towards the recipient or by reason of eventual legal action by third parties, arising from flaws or defects that are inherent in t

products or services rendered by the supplier under the act in question. Such liability shall include both that arising from the eventual infringement of industrial property rights of third parties, as well as that which may correspond under the applicable legal provisions, as a consequence of damages suffered by the recipient or by third parties that are the direct and immediate result of the correct use of the transferred technology or of the use that may result from the supplier's instructions if any;

(h) They impose the obligation to acquire raw materials, intermediate products or capital goods from a specified origin or source of supply;

(i) They establish sales prices to wholesalers, retailers, to the public or to the suppliers of the technology or trade marks, or the application to third parties of unequal conditions for the sale of equivalent merchandise or services;

(j) They impose upon the recipient the obligation to employ personnel to be appointed by the suppliers, whose remuneration shall be for the account of the recipient, unless such obligation is considered indispensable taking into account the work to be performed by such personnel in relation to the transferred technology and that the remuneration of such personnel is in line with that generally current in the international market for the services to be rendered by the aforesaid personnel;

(k) They allow the supplier to control or regulate the production or marketing of the recipient beyond what is necessary for the protection of his rights under the act in question.

Brazil

Criteria for Technology Import in Brazil

When coming from abroad, the technology to be transferred must:

(a) Be consistent with the criteria of priority selection based on the nature of the product or process and its significance for national development, according to government policy for the sector concerned;

(b) Correspond to levels that cannot be attained or obtained in the country, as verified by comparison with effective and available domestic capacity to carry it out or with already existing alternative sources;

(c) Afford, within the short term, effective advantages for progress in the sector concerned, consistently with the objectives of national policy or plans with regard to industrial technology and development;

(d) Create qualitative conditions for the product resulting from its application, primarily with a view to export;

(e) Permit import replacement in respect of the product, including inputs and components necessary for its manufacture;

(f) The degree of novelty of the technology, evaluated on the basis of the length of time for which it has been known and used;

(g) The degree of complexity of the technology, by comparing it, where feasible, with techniques and processes designed for the same objective, whether furnished by the same or another party;

(h) The qualitative level of the product resulting from application of the technology, in the market context;

(i) The continuing and subsequent furnishing of everything relevant to the updating of the information and technical data, particularly in the case of a sector in which technology is dynamic, i.e., is subject to continuing development and where innovations are not eligible for protection;

(j) The reputation and importance of the furnisher in the sector;

(k) Where applicable, the furnisher's capacity for research and development;

(l) The type of production or branch of activity, according to the degree of essentiality;

(m) The term stipulated for complete transfer of the content of the technology and for full and complete absorption of it by the acquirer.

The amount of the remuneration shall be calculated on a percentage basis or as a fixed value per product unit, in either case on the basis of or in relation to the net sales price, net receipts from sales, or where applicable, shall likewise take into account the profit derived from the product resulting from application of the technology.

Note: For the purpose of calculating the remuneration, the "net price" shall be deemed to be the invoice value, based on actual sales, after deduction of taxes, charges, inputs and components imported whether from the furnisher of technology or from any furnisher directly or indirectly linked to him, commissions return credits, freight, insurance and packaging expenses, and any other deductions agreed upon by the parties.

Law No. 5.772/71 (Industrial Property Code) and Law No. 4.137/62 (concerning the prevention of abuse of economic power) in particular prohibit any clause that:

(a) Regulates, determines, alters or limits the production, sale, price, publicity or disclosure, distribution, marketing or export, and likewise the hiring of personnel and the reservation or distribution of markets or the exclusion of any market except, in the latter case, when permitted by the industrial property legislation, when it is proved to be required by specific legislation of the furnisher's country, or furthermore when resulting from an international instrument or agreement to which Brazil is a party;

(b) Stipulates as an obligation or condition the purchase of inputs or components necessary for manufacture of the product or utilization of the process, or of machinery and equipment, from the furnisher of the technology and/or any other source determined by the latter, including those of domestic origin;

(c) Imposes the use of a foreign, trade mark or publicity slogan for the furnishing of the technology;

(d) Contains provisions likely to limit, regulate, alter, interrupt or hinder the research and technological development policy and activities of the acquirer of the technology;

(e) Is designed to prevent the acquirer from challenging, whether administratively or through legal proceedings, the industrial property rights claimed or obtained in the country by the furnisher of the technology;

(f) Prohibits the free use of technology after a reasonable period of time has elapsed following each transfer of the latest information;

(g) Exempts the furnisher from responsibility in the event of any action brought by third parties in respect of faults, defects, or infringement of industrial property rights inherent in the technological content of the contract.

Mexico

The following basic criteria have been adopted in Mexico for approval of technology agreements as set forth in the Law on the Registration of the Transfer of Technology.

Article 7:

The Ministry of Industry and Commerce shall not register the acts, agreements or contracts mentioned in Article 2 in the following cases:

- (I) When their purpose is the transfer of technology freely available in the country, provided it is the same technology;
- (II) When the price or consideration does not represent the technology acquired or constitutes an unjustified or excessive burden on the national economy;
- (III) When provisions are included which permit the supplier to regulate or intervene, directly or indirectly, in the administration of the technology;
- (IV) When there is an obligation to assign onerously or gratuitously to the supplier of the technology, the patents, trade marks, innovations or improvements obtained by the transferee;
- (V) When limitations are imposed on technological research or development by the transferee;
- (VI) When there is an obligation to acquire equipment, tools, parts or raw materials exclusively from any given source;

Figure:

Process for approving or rejecting agreements presented to the Mexican National Registry of Technology Transfer and Foreign Investment

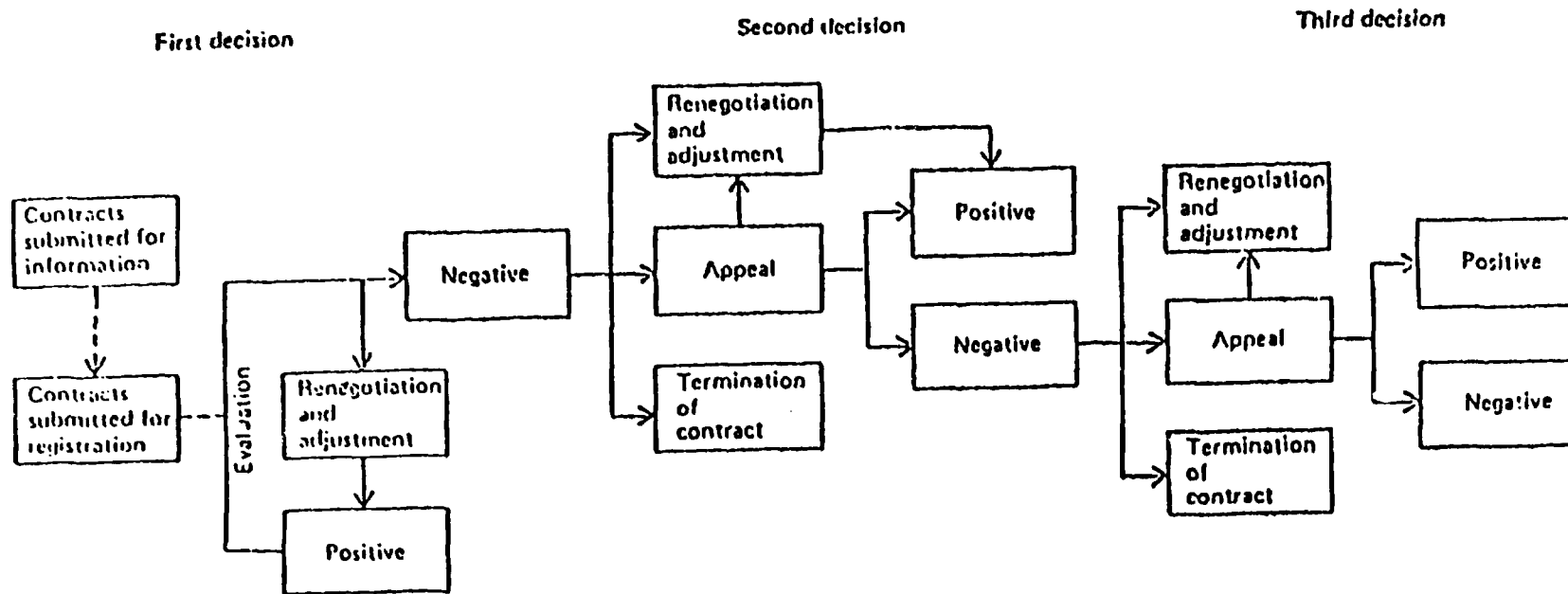


Figure gives a flow sheet for processing contracts submitted to the National Registry for registration (i.e. approval). It shows that agreements that are rejected after evaluation may be renegotiated. At this stage the Government may take a direct part in the negotiations to ensure that the agreements shall conform with its policies.

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

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

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

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

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

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

(XIII) When an unreasonable term of duration is established. Such term shall in no case exceed 10 years, obligatory for the transferee;

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

Effectiveness and results of the Technology Law.

The establishment of the registry has enabled policy makers to know for the first time precisely what characteristics of foreign investment in Mexico are and the effects it has upon the economy. Thus policy makers are able to formulate more effective policies.

Since May 1973, when the Law came into effect, the conditions under which foreign investment flows into Mexico have changed substantially.

Firstly, foreign investment has been adjusting to the minority joint-venture participation that the Law establishes as a general rule. Out of 392 new enterprises that have been created with foreign participation since the Law came into effect, only 10 have been established in exceptional conditions and usually on a temporary basis. Furthermore, participation of European countries and Japan has increased even if the United States of America still accounts for three fourths of foreign investment in Mexico.

Secondly, new foreign capital is flowing into priority sectors of the economy such as the chemical and the capital goods industries.

Thirdly, takeover of Mexican companies or trend of the 1950s and 1960s has been stopped.

Fourthly, the law has been able to produce some very important contributions to development goals through day to day negotiations, such as numerous export programmes, import substitution projects, the creation of jobs, training programmes for Mexican workers and technicians and location and relocation of investments are being made in less developed areas of the country.

Finally, it is important to mention that all these results have been obtained without slowing up the required inflow of foreign investment.

The most important benefit to Mexico have been the following:

- (a) Substantial foreign-exchange savings as a result of lower payments for the technology acquired;
- (b) Reduction of the costs of some manufactured goods;
- (c) More taxes collected because of the elimination of considerable tax evasion by subsidiaries of international corporations, made possible by excessive royalty rates.

(d) Opening of export markets to Mexican manufacturers;

(e) Lower prices for capital goods and components that previously had to be imported from the licensor, in spite of the existence of lower-priced alternative suppliers;

(f) Increasing awareness among Mexican entrepreneurs of the importance of obtaining full information on technological alternatives, making a careful evaluation and selection of products, processes and licensor, and negotiating terms of contracts from the strongest possible position as ways of achieving higher productivity and profits;

(g) Greater local efforts assimilate, adapt and improve imported technologies through local research and development.

Most frequent reasons for negative resolutions have been the following:

| | <u>As % of rejected agreements</u> |
|--|------------------------------------|
| 1. Excessive or unjustified payments | 68.5 |
| 2. Excessive duration of agreements | 31.6 |
| 3. Prohibition to use non patented technology or to manufacture goods, at the end of the agreement | 30.7 |
| 4. Submission of agreements to foreign laws or courts | 18.5 |
| 5. Grant-back clauses on innovations produced by licensee | 16.8 |
| 6. Export restrictions contrary to the interest of the country | 14.5 |

As a consequence of the renegotiation process promoted by the Registry, payments and restrictive clauses have been substantially reduced and eliminated.

Similarly, many independent Mexican enterprises have received considerable support in the approval of new licensing agreements, that is not reflected in statistics, since their contracts have been "clean" by the time they have been submitted to the Registry.

Peru

Criteria for evaluation and approval

Peru will not agree to the approval of contracts for technology transfer containing the following provisions:

1. Obligation for the licensee to acquire from a specific source capital goods, intermediate products or raw materials, or to make permanent use of the technology supplier;
2. Claims giving the licensor the right to fix the sale or resale prices of the licensee's products;
3. Claims prohibiting the use of competing technologies;
4. Those obliging the licensee to grant back any improvements or inventions;
5. Clauses requiring payments of royalties for not used patents or trade marks;
6. Any payments of royalties originating from the subsidiary or an affiliate of the parent company;

7. Obligations to sell products, wholly or in part, to the supplier of technology;

8. Agreements where settlement of disputes and conflicts are to be settled outside of Peru;

9. Clauses prohibiting or limiting export of the products to third countries.

Table: Brief assessment of results of Peruvian Legislation regulating the flow of technology 1/
Royalty Payments in US\$ over 1971-1974 by Peru

| <u>Year</u> | <u>Gross royalties</u> | <u>Net royalties</u> |
|-------------------|------------------------|----------------------|
| 1971 ^x | 1,306,249 | 663,465 |
| 1972 | 12,381,277 | 6,148,646 |
| 1973 | 11,404,430 | 5,799,152 |
| 1974 ^x | 5,873,840 | 2,853,366 |
| <hr/> | | |
| TOTAL | 30,965,796 | 15,464,629 |

^x first and second trimester respectively

1/ Data available from "Efecte del proceso de importacion de tecnologia en el Peru by ITINTEC, Lima

Table Payments of royalties (%) in terms of their destination

| Destination | % | | | | Contracts | |
|----------------|--------------|--------------|--------------|--------------|------------|--------------|
| | 1971 | 1972 | 1973 | 1974 | Number | % |
| USA and Canada | 60,4 | 43,0 | 42,3 | 34,6 | 185 | 46,5 |
| Europe | 33,5 | 38,9 | 48,5 | 52,3 | 170 | 41,6 |
| Other Americas | 6,1 | 7,6 | 7,0 | 6,9 | 40 | 9,2 |
| Others | - | 4,5 | 2,2 | 6,2 | 9 | 2,7 |
| TOTAL | 100,0 | 100,0 | 100,0 | 100,0 | 404 | 100,0 |

Table Number of agreements containing restrictive provisions

| Countries | Agreements | | Restrictive Clauses | |
|----------------|------------|--------------|---------------------|--------------|
| | Number | % | Number | % |
| USA | 188 | 46,5 | 875 | ,2 |
| Europe | 168 | 42,6 | 634 | ,8 |
| Other Americas | 37 | 9,0 | 130 | 7,7 |
| Others | 11 | 2,5 | 38 | 2,3 |
| TOTAL | 404 | 100,0 | 1677 | 100,0 |

To evaluate the contracts, CONITE requires the parties to fill out forms furnishing basic quantitative data (sales volumes, necessary import of spare parts, etc.). Recently, CONITE has authorized an average royalty of 2% gross for trade marks and 5% gross for technology and patents^{1/}.

Venezuela

The broadly defined criteria for evaluating and approving technology agreements as outlined in Decree No. 746 of 11 February 1975 are reproduced below.

Article 1.

Imported technology, patent and trade mark contracts in effect on 1 January 1974, that were submitted for registration within the period legally established in Decree No. 502 of 29 October 1974, will have to be adjusted on or before 31 December 1975, to the dispositions of Decision 24 Articles 20, 21, 25 and 51, and to the norms stipulated in Chapter VII of the Reglamento, contained in Decree No. 63 of 28 April 1974, so as to eliminate the prohibited clauses therein indicated as well as those clauses which:

(a) Prohibit the manufacture or sale of products made with the imported technology after completion of the contract period;

(b) Prohibit the use of technical knowledge acquired through the contracted technology after completion of the contract period;

(c) Prohibit the use of commercial trade marks that are similar or resemble the one contracted for, after completion of the contract period;

^{1/} See R. Domino - Environment for Licensing in Peru, Les Nouvelles, March 1979, Vol. XIV, No. 1 pp. 39-43.

- (d) Require the use of a predetermined system of quality control;
- (e) Require the user to sell a part, or all, of the production to the technology suppliers;
- (f) Call for royalty payments for technical assistance not transferred;
- (g) Involve royalty payments even when the user has purchased the technology outright;
- (h) Oblige the user to pay taxes that are the responsibility of the technology supplier;
- (i) Require the technology user to grant an irrevocable authorization to the suppliers for the sale of the products manufactured with the technology;
- (j) Require the user to license the technology suppliers to use any improvements or inventions made by the user in relation to processes or products covered by the contract.

Unique paragraph

The Superintendency of Foreign Investment can, in each case, evaluate the degree of restriction or prohibition of any of the clauses indicated in this Article, in the context of the technological development and economic and social interests of the nation.

Article 2.

The Superintendency of Foreign Investment, having received prior approval from the Council of Ministers, may prohibit other clauses as restrictive, defining them as having an effect equivalent to those spelled out in the previous Article, and this not allowable for the purpose of contract registration.

Article 3.

Imported technology, patent and trade mark contracts in effect as of 1 January 1974 that have not been submitted to the Superintendency of Foreign Investments for registration within the legal limits should be revised within three months of the date of promulgation of the present Decree.

Article 4.

Within the periods established by Articles 1 and 3, the interested parties must present to the Superintendency of Foreign Investments all the documents which contain legal acts, contracts or agreements duly revised.

Article 5.

Having first evaluated the content of the documents, with their annexes and other pertinent information, the Superintendency of Foreign Investments will indicate within 90 legal working days following the deadlines established in the previous Articles, or from the moment when the last of the pertinent information is in the hands of the Superintendency of Foreign Investments, whether the contract is acceptable for registration.

Article 6.

Once the deadlines stipulated in Articles 1, 3 and 5 have passed, the competent authorities will require the presentation of the technology, patent or licence contract's Proof of Registry issued by the Superintendency of Foreign Investments, in order to concede, or allow, any class of fiscal incentives, assistance, benefits, facilities, or stimulate of any form for companies operating in the country, established by national laws or reglamentos.

Article 7.

All technology, patent and trade mark contracts that foreign, mixed or national companies contemplate signing must receive prior Superintendency of Foreign Investments authorization and be registered after signing with the Superintendency of Foreign Investments. The Superintendency must, in each case, decide within 60 legal working days following the date a petition is submitted whether a contract is acceptable.

Unique paragraph

When the contract presented for registration corresponds exactly to the draft contract authorized, the period will be reduced to 15 days.

Asia and the Far East

India

Criteria for evaluating technology importation.

Technical collaboration, that is technology importation is considered on the basis of annual royalty payments linked to the value of actual production. The percentage of royalty will depend on the nature of technology but should not ordinarily exceed 5 per cent. Royalty is calculated on the basis of the ex-factory selling price of the product net of excise duties minus the landed cost of imported components. Royalty payments are subject to Indian taxes. Wherever appropriate, payments of a fixed amount of royalty per unit of production are also permitted. Royalty payments are generally limited to a period of 5 years.

Lump-sum payments are also considered in appropriate cases for the import of drawings, documentation, and other forms of know-how. In deciding on the reasonableness of such payments, account will be taken of the value of production so that lump-sum and the recurring royalty, if any, will be an acceptable proportion of the value of production. Such payments are subject to deduction of Indian taxes. The lump-sum is normally divided into three parts and paid out

- (a) 1/3rd when the agreement is recorded ;
- (b) 1/3rd when documentation is transferred; and
- (c) 1/3rd when production begins.

Guidelines for foreign collaboration arrangements.

Entrepreneurs are advised to take note of the following guidelines

in negotiating foreign collaboration agreements so as to ensure that their proposals shall conform to the policies of the Government:

(a) Entrepreneurs should, to the fullest extent possible, explore alternative sources of technology, evaluate them from a techno-economic point of view and furnish the reasons for preferring the particular technology and sources of import;

(b) The Indian party should be free to sublicense the technical know-how product design or engineering design under the agreement to another Indian party on terms to be mutually agreed to by all parties concerned, including the foreign collaborator, and subject to the approval of the Government;

(c) The payment of a minimum guaranteed royalty should not be required regardless of the quantity and value of production;

(d) Arrangement of clauses that in any manner bind the Indian party with regard to the procurement of capital goods, components, spares, raw materials, pricing policy, selling arrangements etc. should be avoided;

(e) To the fullest extent possible, no restrictions should be placed on free export to all countries;

(f) The use of brand names will not be permitted for internal sales;

(g) Suitable provision should be made for training Indians in production and management. There should also be adequate arrangements for research and development, engineering design, training of technological personnel and other measures for the absorption, adaptation and development of the imported technology.

Exemptions may be granted for proposals envisaging substantial exports. Lists of gaps in technology have also been published.

Separate lists of industries where technology transfer is not considered necessary are published for the benefit of entrepreneurs. There is a further subcategory of industries in which foreign investment can be considered.

Effectiveness of the guidelines

Implementation of the guidelines has not posed any serious difficulties and in fact has greatly strengthened the bargaining power of licensees. Undesirable and restrictive provisions have also been avoided. Limiting the duration of agreements to five years, with exceptions in a few special cases involving highly sophisticated technology, has spurred licensee enterprises to make maximum efforts to absorb imported technology effectively as rapidly as possible. Royalty payments can usually be adjusted within the limit prescribed, through, in some cases, they have been accompanied by fairly high initial lump-sum fees. The avoidance of restrictive export provisions has posed some problems, which have usually been satisfactorily resolved. Sublicensing provisions initially provoked some controversy, but most foreign licensors now accept that the Government's goal is primarily to ensure that similar technology shall not be imported through numerous foreign technology agreements, all at considerable cost. Repetitive purchases of technology now receive greater attention, but it is still too early to evaluate the potential benefits of such a clause vis-à-vis the commercial obstacles in enforcing it.

The criteria for approving technology agreements are well defined. Basically, no collaboration will be permitted if the industry is not eligible for foreign collaboration. In many cases, the letter of intent itself makes this position clear, thus making an application for foreign collaboration unnecessary. With regard to industries that are prima facie eligible, the views of the technical authorities and of the Council of Scientific and Industrial Research on the availability of the know-how within the country must be considered. Payment of a royalty is not allowed for a period of more than five years. Since projects take time to reach the production stage after the signing of the contract, the period of the agreement could be up to eight years from the date of the signing of the agreement, provided that the period of the payment of royalties does not exceed five years. For royalties, the ceilings described in the guidelines are taken into account. Past cases of import of similar technology are also considered. Where an investment is involved, the royalty may be fixed at a slightly

lower level, since dividend remittances will also be entailed. Lump-sum payments are allowed where specific services are to be performed at the beginning of the contract.

After the terms of the approval are communicated to the entrepreneur, he executes the agreement and submits copies to the relevant production ministry, which scrutinizes the agreement and asks the entrepreneur to revise clauses that do not conform to the Government's policy. It is only after the agreement is taken "on record" that the Department of Economic Affairs authorizes the Reserve Bank of India to permit the remittances.

No "validity period"/period after which the approval will expire if the agreement has not been implemented/ is specified. The period imposed for the implementation of the industrial licence ensures the implementation of the agreement. Since 1970, the Indian entrepreneur has had to submit an annual return indicating the royalties remitted, the steps taken for research and development and other relevant particulars. The follow-up is not, however, strictly monitored or scrutinized.

Extensions of technology agreements are not encouraged, with the result that they are generally not sought. About 15 per cent of the agreements approved in recent years have been extended. The test for granting extensions is whether the applicant has had sufficient time to absorb the technology. Extensions are allowed only for those products in respect of which the applicant has not had sufficient time to absorb the technology. Generally, lower royalty rates are prescribed for extensions; sometimes, royalties are allowed only for exports.

The existence of patents and the payment of fees, therefore, do not appear to be checked when licence agreements are scrutinized. The Government has recently issued instructions to the effect that in scrutinizing licence agreements, the validity of the patent should also be taken into account, and it should be specifically provided in the agreement that the royalty paid in pursuance of the agreement will constitute compensation paid to the holder of the patent for its use.

The royalties in India are taxed at a rate of 50 per cent. The rates do not seem to have been fixed with any specific reference to the desirability of importing technology, nor do they affect imports.

The Indian Investment Centre, an autonomous institution financed by the Government, provides information and assistance to entrepreneurs in securing technology from abroad.

A few detailed studies on collaboration between foreign and Indian companies are available. It is not possible to do more than mention them here.

TABLE : Foreign collaboration approved by the Government, 1969 - 1978

| Sch. Ind. No. | Industry | 1969 | 1970 | 1971 | 1972 | 1973 | 1974 | 1975 | 1976 | 1977 | 1978 |
|---------------|--|------|------|------|------|------|------|------|------|------|------|
| 1 | Metallurgical | 6 | 11 | 10 | 13 | 11 | 23 | 19 | 12 | 7 | 18 |
| 2 | Fuels | - | - | - | - | 1 | 1 | - | - | 1 | 4 |
| 3 | Boilers and steam generating plants | 1 | 1 | 1 | 3 | 3 | 5 | 3 | 1 | 4 | - |
| 4 | Prime movers, (other than electrical generators) | 1 | 4 | - | 1 | - | 4 | - | 1 | 1 | 5 |
| 5 | Electrical equipment | 19 | 22 | 52 | 39 | 55 | 72 | 53 | 63 | 67 | 46 |
| 6 | Telecommunications | 2 | 4 | - | - | 1 | - | - | - | - | 2 |
| 7 | Transportation | 17 | 15 | 16 | 19 | 31 | 34 | 15 | 18 | 18 | 20 |
| 8 | Industrial machinery | 18 | 34 | 32 | 45 | 54 | 69 | 50 | 57 | 74 | 76 |
| 9 | Machine tools | 12 | 6 | 28 | 19 | 19 | 14 | 12 | 19 | 10 | 20 |
| 10 | Agricultural machinery | 10 | 3 | 13 | - | 1 | - | - | - | - | - |
| 11 | Earth-moving machinery | 1 | - | 1 | 2 | 2 | - | 1 | 1 | 1 | 2 |
| 12 | Miscellaneous mechanical and engineering | 4 | 6 | 4 | 7 | 11 | 13 | 9 | 13 | 4 | 7 |
| 13 | Commercial, office and household | - | - | 6 | 4 | 6 | 5 | 1 | 1 | 1 | 2 |
| 14 | Medical and surgical appliances | - | 1 | 1 | 2 | 1 | 4 | 3 | 1 | 1 | 1 |
| 15 | Industrial instruments | 5 | 3 | 4 | 3 | 2 | 6 | 2 | 4 | 9 | 9 |
| 16 | Scientific instruments | 1 | - | - | 1 | 1 | - | - | 1 | 1 | 2 |

| Sch. I. d. No. | Industry | 1969 | 1970 | 1971 | 1972 | 1973 |
|----------------------|--|------|------|------|------|------|
| 17 | Mathematical, surveying and drawing instruments | - | - | - | - | - |
| 18 | Fertilizer | - | 1 | - | - | - |
| 19 | Chemical, other than fertilizer | 17 | 10 | 37 | 31 | 16 |
| 20 | Photographic raw film and paper | - | 1 | - | - | - |
| 21 | Dyestuffs | - | - | 1 | - | - |
| 22 | Drugs and pharmaceuticals | - | 3 | 2 | 1 | 3 |
| 23 | Textiles, including those dyed, printed or otherwise processed | 1 | 1 | 5 | 2 | 1 |
| 24 | Paper and pulp, including paper products | 3 | 1 | 4 | 5 | 6 |
| 25 | Sugar | - | - | - | - | - |
| 26 | Fermentation | - | 2 | 1 | 3 | 1 |
| 27 | Food processing | 1 | - | 1 | - | 1 |
| 28 | Vegetable oil and vanaspathi | - | - | - | - | - |
| 29 | Soaps, cosmetics and toilet preparations | - | - | - | - | - |
| 30 | Rubber goods | - | 8 | 1 | 8 | 5 |
| 31 | Leather, leather goods and pickers | 1 | - | 3 | 1 | 1 |
| 32 | Glues and gelatine | - | - | 2 | - | 1 |

1974 1975 1976 1977 1978

| | | | | |
|----|----|----|----|----|
| - | 1 | - | - | - |
| - | - | - | - | - |
| 41 | 40 | 32 | 23 | 30 |
| - | - | 1 | 1 | - |
| - | 1 | - | - | - |
| - | 2 | 1 | 3 | 2 |
| 5 | 3 | 2 | 2 | 2 |
| 6 | - | 2 | 3 | 4 |
| - | - | - | - | - |
| - | - | - | 2 | - |
| 2 | 4 | 2 | 2 | 2 |
| - | - | 1 | - | 1 |
| 2 | 1 | - | 1 | - |
| 12 | 9 | 4 | 4 | 7 |
| 3 | 4 | 1 | 3 | 6 |
| 1 | 2 | - | - | 1 |

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| Sch. Ind. No. | Industry | 1969 | 1970 | 1971 | 1972 | 1973 | 1974 | 1975 | 1976 | 1977 | 1978 |
|---------------|------------------------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|
| 33 | Glass | 1 | 1 | 4 | 2 | 6 | 5 | 2 | 5 | 5 | 1 |
| 34 | Ceramics | 1 | 2 | 4 | 4 | 3 | 5 | 7 | 7 | 1 | 6 |
| 35 | Cement and gypsum products | - | 1 | 1 | 1 | 1 | 1 | 2 | 4 | 3 | 3 |
| 36 | Timber products | 1 | 1 | 1 | - | - | 2 | 2 | - | - | - |
| 37 | Consultancy | 3 | 6 | 1 | 6 | 1 | 6 | 6 | - | 2 | 4 |
| 38 | Miscellaneous, non-scheduled | 9 | 35 | 9 | 35 | 20 | 20 | 17 | 23 | 13 | 24 |
| | Total | 135 | 183 | 245 | 257 | 265 | 359 | 271 | 277 | 267 | 307 |

Source: Government of India

Republic of Korea

Criteria of importing technology

Technology may be imported that:

- (a) Opens new export markets
- (b) can be used for manufacturing components for industry and for process development for the capital goods industry.
- (c) Costs more to develop locally than to import.
- (d) Has the potential for reducing costs and increasing productivity.
- (e) Furthers the public good.

Payment for imported technology, as a rule, should not exceed 3% of the net amount of product sales, but an exception can be made for technologies destined for other than the manufacturing sector.

The payment period for the imported technology should not exceed three years, except where the payment has nothing to do with sales, such as a fixed sum or advance payments or guarantee monies.

Technology aiming at the import of raw materials or intermediate products or the import of a trade mark under the cloak of a technology licence agreement will not be approved.

The following restrictive provisions must, as a rule, be deleted or amended if they are contained in a technology licence agreement:

(a) Provisions preventing the recipient enterprise from exporting or selling the products to third markets except when the technology supplier has obtained a patent on the product or has supplied the same technology to the third market.

(b) Restrictions on the recipient enterprise from using competitive goods or technology.

(c) Provisions stipulating a guaranteed minimum payment to the supplier for the technology.

A licence agreement should contain the following provisions:

(a) A guarantee from the technology supplier of the quality of the product manufactured on the basis of the technology acquired.

(b) Obligation of the technology supplier to provide during the newly developed technology contract period.

(c) Provisions for preventing a third party from being brought to court on a matter concerning the induced technology.

Although these guidelines exist, the importance to economic development of true technology to be imported may allow them to be applied flexibly, project by project.

TABLE 16 Technology import by industry, 1962-- 1977

| Industry | <u>agreements</u> | | | <u>Royalty</u> |
|------------------------------------|-------------------|-----------|------------|------------------|
| | approved | Cancelled | Expired | US \$ (1000) |
| Primary industry | <u>9</u> | | <u>5</u> | 2,446.8 |
| Agriculture + livestock | 9 | | 3 | 2,446.8 |
| Secondary industry | <u>842</u> | <u>45</u> | <u>299</u> | <u>155,436.4</u> |
| Foods | 12 | | 8 | 2,690.6 |
| Pulp + paper | 10 | 1 | 3 | 810.9 |
| Textiles | 19 | | 5 | 965.5 |
| Chemical fibres | 20 | 2 | 7 | 12,824.5 |
| Ceramics + cement | 18 | 3 | 6 | 1,659.2 |
| Petroleum + chemical production | 166 | 3 | 59 | 54,437.9 |
| Pharmaceuticals | 27 | 2 | 18 | 1,454.4 |
| Iron + non-ferrous metals | 61 | 7 | 27 | 30,344.7 |
| Electronic + elec. equip. | 175 | 10 | 73 | 19,829.8 |
| Shipbuilding | 16 | 1 | 3 | 6,093.1 |
| Machinery | 255 | 14 | 73 | 22,709.3 |
| Other | 43 | 2 | 17 | 1,625.5 |
| Tertiary industry | <u>56</u> | <u>1</u> | <u>27</u> | 13,715.3 |
| Electricity | 17 | | 5 | 6,173.4 |
| Communication | 30 | | 19 | 5,551.8 |
| Construction | 9 | 1 | 3 | 1,990.1 |
| Total | 907 | 46 | 331 | 171,598.5 |

Source: Economic Planning Board.

TABLE 17: Technology import by country, 1962 - 1977

| Country | Year | | | | | | | | | | | | Total | Percentage |
|--------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|------------|------------|--------------|
| | 1962-1966 | 1967 | 1968 | 1969 | 1970 | 1971 | 1972 | 1973 | 1974 | 1975 | 1976 | 1977 | | |
| U.S. | 12 | 11 | 14 | 10 | 17 | 6 | 10 | 17 | 12 | 22 | 27 | 51 | 209 | 23.0 |
| Japan | 10 | 23 | 32 | 45 | 62 | 35 | 34 | 47 | 62 | 58 | 79 | 77 | 564 | 62.1 |
| F.R. Germany | 4 | 1 | 1 | 1 | 1 | 1 | 3 | 3 | 2 | 1 | 5 | 16 | 39 | 4.1 |
| France | 1 | - | - | - | - | - | 1 | 1 | 2 | 2 | - | 5 | 12 | 1.4 |
| Other | 3 | - | 3 | 4 | 4 | 3 | 2 | 1 | 8 | 15 | 19 | 21 | 83 | 9.2 |
| Total | 30 | 35 | 50 | 60 | 84 | 45 | 45 | 50 | 69 | 86 | 98 | 130 | 907 | 100.0 |

Source: Economic Planning Board, 1978

TABLE 18: Organization and Activities of TTC

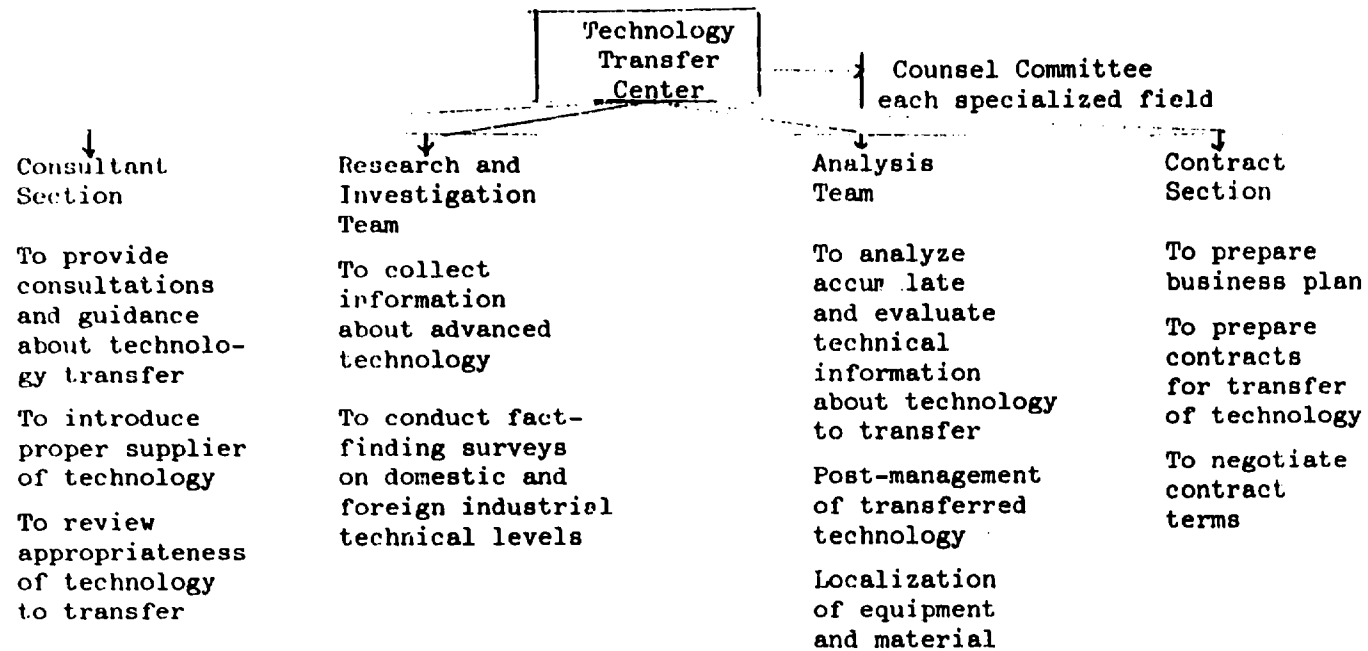
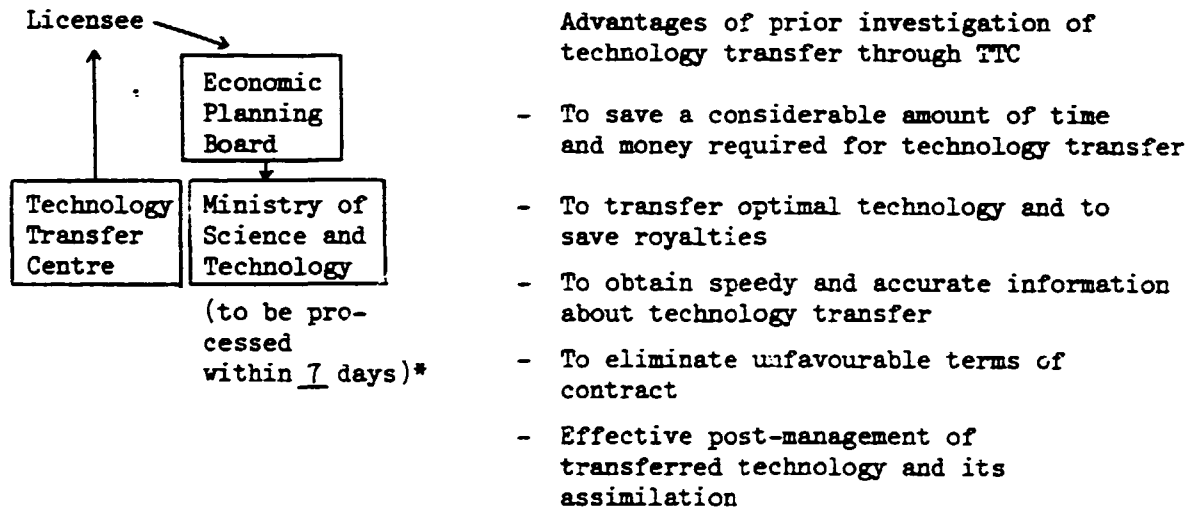
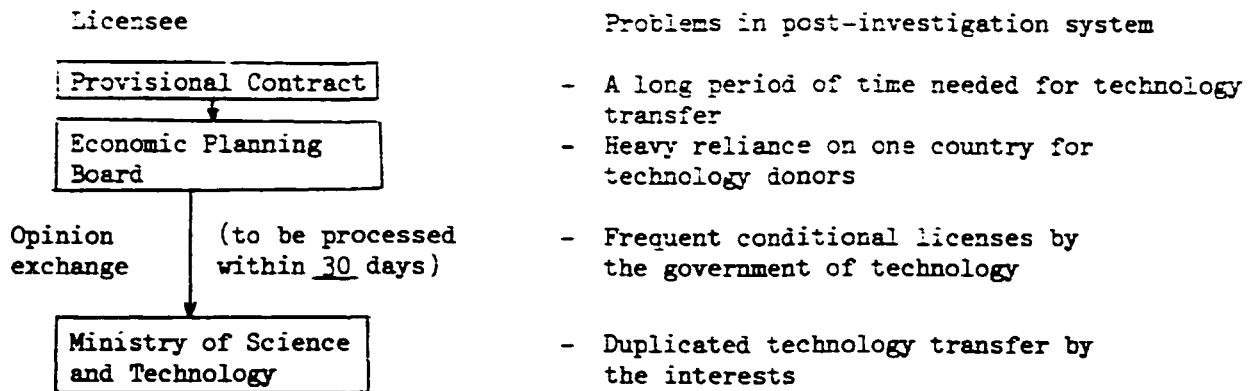


TABLE 19: Scope of Activities of TTC

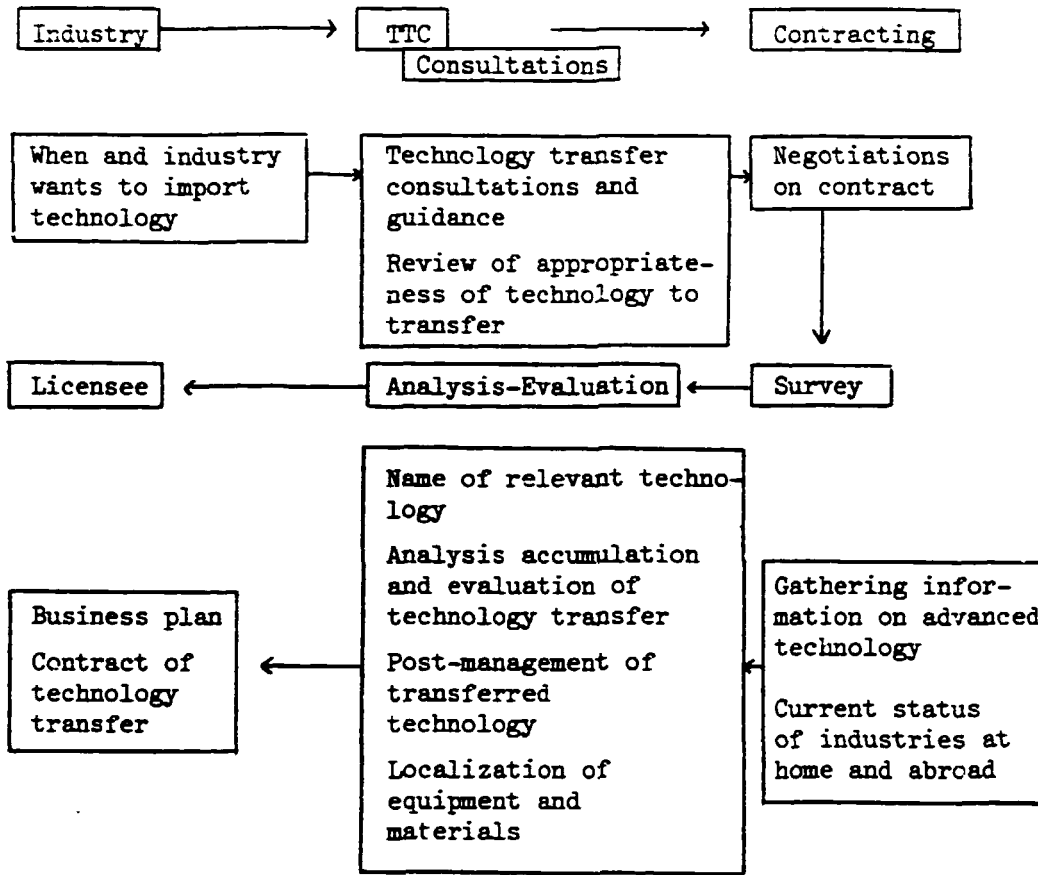
| | | |
|----|--|---|
| A) | Consultation, guidance and introduction of technology | <ul style="list-style-type: none"> - To consult and select source of technology - To check adequacy of technology and settle the cost - To prepare contracts |
| B) | Review of appropriateness of technology to transfer | <ul style="list-style-type: none"> - To review appropriateness of technology to transfer - To eliminate unfavourable terms of contract |
| C) | Acting as an agent for technology transfer | <ul style="list-style-type: none"> - To prepare programmes for technology transfer - To prepare technology transfer contracts |
| D) | Promotion of joint technology transfer for minor industries | <ul style="list-style-type: none"> - To introduce identical technology for the interests |
| E) | Accumulation, analysis evaluation and dissemination of technical information for transfer of proper technology | <ul style="list-style-type: none"> - To collect, analyze and circulate various technical and economic information and data on technology transfer - To establish information flow system with international organizations |
| F) | Promotion of research for assimilation and improvement of imported technology | <ul style="list-style-type: none"> - To introduce proper institute to perform research for assimilation and improvement of imported technology - To furnish technical information necessary for such research - To help engineers and technicians to acquire necessary training in transfer technology |
| G) | Post-management of imported technology and presentation of technology transfer policy approaches | <ul style="list-style-type: none"> - To make a periodic survey of imported technology - To recommend effective technology transfer policy approaches |

TABLE : Flow-sheet of evaluation of technology agreements



* President Decree of Foreign Capital Inducement Act

TABLE 20: Procedures for Consultations on Technology Transfer



The Technology Transfer Centre

In 1975, the Technology transfer Centre conducted a fact-finding survey of imported technology in order to identify problems arising due to the import of foreign technology, and provide solutions for such problems. The survey revealed problems related to the type, the licence period and the application of imported technology as discussed below.

As in other developing countries, in the Republic of - Korea importers of technology are required to obtain the government's approval for technology import contracts concluded with foreign suppliers. Because many technology importers are not well aware of the government-established standards and regulations concerning technology import, they are apt to - obtain a conditioned approval for their import contracts.

According to the above mentioned survey, about 80 per cent of technology import contracts concluded by industries were conditionally approved by the government.

Technology import contracts conditionally approved by the government up to 1975 are shown below:

Table 17 : The major clauses of technical assistance agreements conditionally approved by government and their frequency:

| Contents conditionally approved by government | Frequency |
|--|---------------|
| 1. Shortening of contract period in agreement | 24.8% |
| 2. Reduction of technical fees | 22.1% |
| 3. Request of quality guarantee of product | 7.0% |
| 4. Recommendation of utilizing local raw materials available | 6.1% |
| 5. Amendment of royalty payment method | 2.9% |
| 6. Shortening of foreign technical expert's invitation and reduction of its fees | 11.7% |
| 7. Ban of using foreign trade mark to local market goods | 10.2% |
| 8. Request to export all of the products | 7.9% |
| 9. Request to surely export some parts of the products. | 7.3% |
| T o t a l | 100.0% |

Recently, the Technology Transfer Centre, after eight months of research, produced a list of 1,758 foreign technologies needed over the next five years, with the names of the technology owners, for the production of 1,500 items in the machinery, electronics, metal.

The Philippines

Extracts of the Presidential Decree No. 1520 of 11 June, 1976, concerning the criteria for importing technology, are given below.

RULE V

Section 1. In evaluating agreements, the Board shall be guided by such policy guidelines as the Board may impose, which shall include:

- (a) Appropriateness and need for the technology/industrial property right;
- (b) Reasonableness of the technology payment in relation to the value of the technology, to the technology recipient and the national economy as well. For this purpose, the rate of payment for contracts involving manufacturing or processing technology shall not go beyond the rate that will be established by the Board for the specific technology or industrial right to be transferred;
- (c) Restrictive business clauses shall not be allowed in any agreement; specifically, the following clauses shall be prohibited:
 - (i) Those which restrict the use of technology supplied after the expiry of the agreement (without prejudice to the application of the Philippine Patent Law);
 - (ii) Those which require payments for patents and other industrial property rights after their expiration, termination or invalidation;
 - (iii) Those which restrict the technology recipient from access to continued improvements in techniques and processes related to the technology involved during the period of the agreement even if the technology recipient is willing to make additional payments thereon;

- (iv) Those which provide that patentable improvements made by the technology recipient shall be patented in the name of the technology supplier; required to be exclusively assigned to the technology supplier, or required to be communicated to the technology supplier for his use, free of charge;
- (v) Those which require the technology recipient not to contest the validity of any of the patents of the technology supplier;
- (vi) Those which restrict a non-exclusive technology recipient from obtaining patented or unpatented technology from other technology suppliers with regard to the sale of manufacture of competing products.
- (vii) Those which require the technology recipient to purchase its raw materials, components and equipment from the technology supplier or a person designated by him (except where it could be proved that the selling price is based on international market prices or the same price that the supplier charges third parties and there are no cheaper sources of supply);
- (viii) Those which restrict directly or indirectly the export of the products manufactured by the technology recipient under the agreement;
- (ix) Those which limit the scope, volume of production or the sale or resale prices of the products manufactured by the technology recipient;
- (x) Those which restrict the research activities of the technology recipient from improving the technology;
- (d) The agreement shall provide that the law of the Philippines shall govern the interpretation of the contract;
- (e) The agreement shall provide for a fixed term not exceeding five (5) years and shall not contain an automatic renewal clause in order to ensure adequate adaptation and absorption of technology.

Section 2. Exceptional cases. In cases where substantial benefits will accrue to the economy, such as in export-oriented ventures, labour-intensive industries, those that would promote regional dispersal of industries or which involve substantial

use of local raw materials, exemption from any of the above requirements may be allowed when feasible under such guidelines to be determined by the Board.

Monitoring of the projects

Rule VIII

Section 1. For the purpose of monitoring the progress of projects which are being undertaken under approved and registered agreements, parties shall submit to the Board the following on an annual basis:

(a) Report on the benefits derived by the recipient company from the specific technology transfer, including new developments and improvements taken advantage of under the agreement;

(b) If the recipient company has a foreign employee discharging technical or advisory functions, a programme of activities which includes a report of services being rendered or to be rendered and a programme of training Filipino counterparts in said functions;

(c) Report on the implementation of the above training programme or of training programmes offered by the supplier in its industrial units for the recipient's personnel;

(d) Steps taken by the recipient company to establish research and development facilities to enable the absorption of technology;

(e) Report on steps taken in the adaptation of technology with respect to raw materials, modernization of equipment and improvement in the specification of the end-product; and

(f) Report on the compliance with the specific terms and conditions of registration, if any.

Amendments and Renewals

Rule IX.

Section 1. Amendments or modifications of an agreement other than those mentioned under Sections 2 and 4 of Rule VI, shall be filed with the Board for approval and registration within 30 days from such amendment or modification. Such amendments or modifications shall be approved and registered in the same manner as agreements newly filed with the Board.

Section 2. Renewal of Agreements. Renewals of agreements shall be filed with the Board for approval and registration within 60 days before the expiration of the original term of the agreement.

Turkey

Criteria for evaluating technology transfer agreements

All agreements on technology transfer are evaluated from the commercial, financial and industrial points of view.

In evaluating the project, the Ministry of Commerce takes into account the novelty of the technology to be brought into the country, the increase in production capacity that can be expected as a result, and the minimum export output (usually 15% anticipated).

The State Planning Organization (SPO) and particularly its ad hoc Foreign Investment Committee, taking into consideration the findings of the Ministry of Commerce, undertakes a detailed project evaluation to determine the project's compliance with development planning, its effect on employment, and its economic viability. The SPO also undertakes consultations as to the technological content of the project with Ministries concerned, and especially with the Ministry of Finance.

The Ministry of Finance applies the following criteria:

- (a) the period of agreements should not exceed five years (for extension, the approval of the responsible authorities should be sought);
- (b) the royalty rate should not be more than 4% gross.
- (c) the agreement should be implemented in accordance with the Turkish Law;
- (d) no lump sum payment should be made;

- (e) taxes and other dues are to be paid in Turkey from the royalties of the licensor;
- (f) the current exchange rate is applicable at the time of transfer (no guarantee of exchange rate);
- (g) payments are to be made in a convertible currency;
- (h) the local firm should be able to continue production without the use of a foreign registered mark after the termination of the agreement;
- (i) the know-how should not be limited to certain restricted fields but should also include possible improvements over the period of the agreement;
- (j) no export restrictions should be placed on the sale of the product produced in Turkey under licence;
- (k) the licensor warrants should include a provision that the production by the licensee will be of the same quality as that of the licensor;
- (l) the net sales price should be taken as the base for computing royalties, and all packaging, transportation, insurance, taxes, and the import price should be deducted from it;
- (m) the technicians of the licensor visiting Turkey should not be paid beyond what they receive to cover the costs of accommodation, daily subsistence and transportation;
- (n) in case of conflict, the arbitration of the Paris International Chamber of Commerce should be sought.

The Ministry of Industry and Technology, and in particular its Industrial Department, carries out the bulk of the economic and technical screening of the agreements. Here, in consultation with the Department of Science and Technology and the Industrial Property Section, contracts are screened from the technical and economic points of view. Internal guidelines (unpublished) have been elaborated for evaluating the agreements. The following elements are taken into consideration:

- (a) whether similar technology is already being used in the country;
- (b) whether the technology has novelty subject matter of the agreements;
- (c) to what extent it will increase foreign-exchange earnings, create employment and raise income;
- (d) what the share of foreign inputs in the total output of a particular project is.

The following types of provision are not permitted in agreements:

- limitations on exports;
- tie-in requirements;
- price fixing of final and intermediate products;
- annual minimum royalties;
- overly high payments in relation to the value of the technology;
- restrictions on use of local raw materials, spare parts and components;
- unjustified quality control;
- restrictions on production and export;
- restrictions on use of technology after expiration of agreement;

- one-sided grant-backs;
- restrictions on use of trade-marks.

The following provisions should be included in all agreements:

- (a) duration of contracts should not exceed five years;
- (b) the licensor should warrant the validity of patents and the defence against third-party infringements;
- (c) each party should have the right to terminate a contract prior to notification;
- (d) the maximal royalty rate is 3% on net sales;
- (e) the licensor should guarantee that the quality of products manufactured by the licensee will be the same as that of his products;

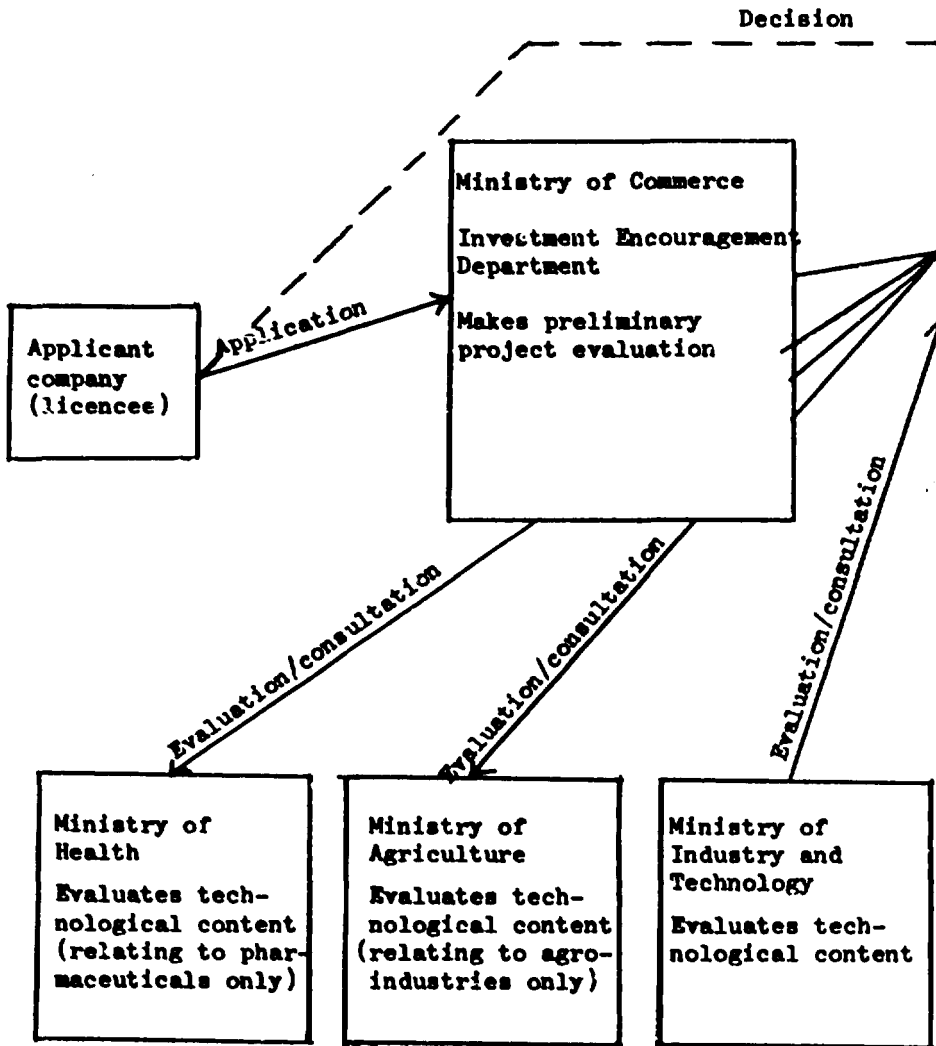
Preference should be given to a licensor with a large network of licensees. When comparing the check list of the Ministry of Finance with that of the Ministry of Industry and Technology, the similarities are obvious.

Evaluation and approval procedure

According to Law 6224, a local entrepreneur wishing to import technology is obliged to submit a special application in quintuplicate to the appropriate department of the Ministry of Commerce. After a preliminary evaluation by the Ministry of Commerce, the application, in quadruplicate, is passed along with comments to the State Planning Organization for final assessment and recommendations. On the basis of the Organization's assessment, the council of Ministers issues a decree

Figure:

Evaluation and approval procedure based on Law 6224



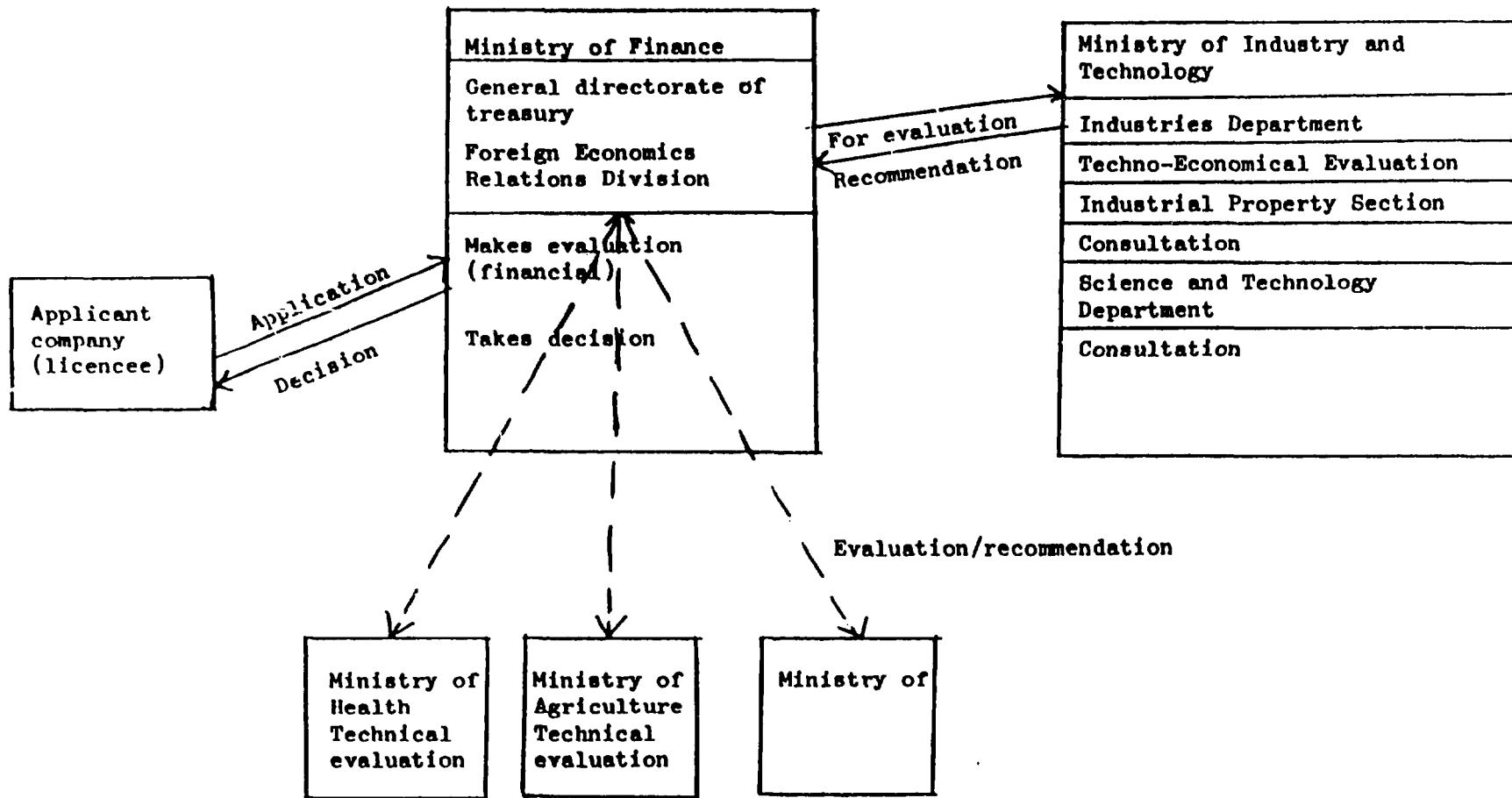
State Planning Organization
Ad-hoc Foreign Investment
Committee
Makes project evaluation
Evaluation results
High Planning Council
Prepares report for Council
of Ministers
Prepares draft decrees

Recommendation

Council of Ministers
Makes final decision
based on recommendat-
ion of High Planning
Council

Figure:

Evaluation and approval procedure based on decree 17 for simple technology licencing and know-how agreements



published in the government gazette concerning a particular case which is the formal basis for the beginning of projects and illustrate procedure described above.

Arab Countries

Iraq

Criteria for importing technology.

The government gives priority to the petroleum and petrochemicals industries in its industrial and economic development. Technology transfer transactions are evaluated as follows:

- (a) a prefeasibility study on the project is made by technical and economical personnel in the organization and sent to the Ministry of Planning;
- (b) technical experts in the Ministry of Planning re-evaluate the project. If it is approved, the Ministry of Planning makes a feasibility study of optimum capacity and selected processes;
- (c) when the project's feasibility has been determined, the steering committee for planning examines the study. If the project falls within the authority of the Committee, the Committee approves it, including the technical tract according to country policy;
- (d) If the capital investment is more than the amount the Committee is authorized to deal with, then the project is sent to the country planning board for approval.

In the evaluation, the main focus is on the commercial and economic terms of the agreement and the technical superiority of the project over what exists in Iraq. There is no definite procedure to follow, but the evaluation is made based on experience and circumstances. In future, a definite procedure will be established.

Volume of imports

Imported technology plays a secondary role in Iraq's industrial development. In principle, no foreign investments are permitted, and at the moment there is only one joint venture. Turn-key deliveries represented in the period 1970-1974 about 20% of all new plants established, and 10 import licences were issued during 1970-1976.

Kuwait

Criteria for importing technology

Government priorities for industrial and economic development are new industries apart from petroleum, banks and trade and foreign investment.

There are no specific guidelines for evaluating technology transfer transactions. Each case is analysed separately, mostly by consultants.

In the period 1970-1976, Kuwait issued 940 import licences and 4069 trade marks.

Promotion of foreign investors

Extracts of Decree 6 of 1965 are given below.

Article 14.

Upon the recommendation of the Industrial Development Committee and after the approval of the Council of Ministers, the Minister of Commerce and Industry may:

- (a) Exempt the industrial firms that have been registered or granted a permit in accordance with the law from all existing taxes, including income tax or any other tax that may be imposed in future, for a period not exceeding 10 years from the date of the issue of the permit or registration or from the date of the commencement of production;
- (b) Exempt the following imports from customs duty:
 - i. machines, equipment and spare-parts required by the industrial firm;
 - ii. raw materials and semi-processed goods required by the industrial firm for production purposes;
- (c) Raise the rate of customs duty on imports similar to local products for a period not exceeding 10 years, provided that local products shall be satisfactory in terms of quantity, quality and consumers' interests. Nevertheless, the Minister of Commerce and Industry, upon the recommendations of the Industrial Development Committee, may decide to extend the validity of the high rate of customs duty for more than 10 years if economic circumstances demanding continuation of local industry protection arise;

- (d) Exempt the export of the local industry products from all export duties and taxes.

Article 15.

The owner of any industrial firm complying with the provisions hereof, may:

- (a) apply for the allocation of a plot of land and such applications shall be submitted to the concerned authorities responsible for the allocation of these plots of land after agreement of the Minister of Commerce and Industry;
- (b) obtain from the Ministry of Commerce and Industry on application, all information, statistical statements, technical maps, exploration results and other studies and researches relating to any specific industry which may be of interest to the applicant provided that these be available at the Ministry.

Article 16.

The State may contribute financially towards the costs of studies and researches carried out by the owners of industrial projects for the purposes of setting up modern industries, in order to find out whether these industries prove to be successful and prospective, subject to the recommendations of the Industrial Development Committee and the approval of the Minister of Commerce and Industry.

Should the project prove to be successful the owner of the project shall bear all costs of studies and research, but should it prove to be a failure the State shall then bear one half of these costs.

Article 17.

In case of setting up of new industries, the owners of the industrial firms shall, after the approval of the Minister of Commerce and Industry, have the right of priority to obtain loans from the Savings and Credit Bank, which shall determine the terms and amounts of the loans.

Article 18.

Preference, with regard to government purchases, shall be given to local industry products provided that these products prove to be equivalent to the foreign products from the point of quality, sort and the prevailing prices at normal economic conditions.

Morocco

Criteria for importing technology

Government priorities for industrial and economic development are farming and agricultural industry and the export of finished products.

What little was spent on indigenous research and development over the period 1970-1980 was mainly for the phosphate industry.

Promotion of foreign investments

Foreign investment is seen as a vehicle for technology transfer. Certain conditions must be met by investors. The production equipment of the investment project must have a value of at least DH 100,000 net of tax. The enterprise must belong either to Moroccan citizens or to a corporation at least 50% of whose capital belongs to Moroccan citizens.

The main incentives given to foreign investors are:

- (a) exemption from customs duties on equipment, machinery and materials whether imported or locally acquired;
- (b) complete exemption from products tax on equipment, machinery and materials whether imported or locally acquired;
- (c) complete exemption from professional profits tax during the first 10 years of operation for firms locating in the provinces of tanger Tetouan, Al Hoceima, Taza, Nader, Qujda, Kasr El Souk, Ouarzazate, Tarfaya and in the Circle of Essaouira;
- (d) reduction of professional profits tax by 50% for other areas, with the exception of the prefecture of Casablanca;
- (e) guaranteed transfer of dividends;
- (f) guaranteed retransfer of capital invested by foreign investor:
 - i. of the share of capital brought into Morocco in the form of, or through the use of, clearing accounts;
 - ii. for the share of capital brought in Morocco by debit of capital account and invested for a minimum of five years;
- (g) Reimbursement of 2% of the interest charge on loans approved by the National Bank for Economic Development. For all investments exceeding DH 30 million further concessions may be granted by special agreements negotiated with the Government.

Saudi Arabia

Criteria for importing technology

No specific criteria have been drawn up; each case is handled separately. Government priorities for industrial and economic development are the petrochemical industry and downstream products and agricultural industry.

Amount of technology imported

Imported technology plays a major role in Saudi Arabia's economic development. Little was spent on indigenous R+D during the period 1970-1976. Technology transfer takes place mostly through foreign investments in the form of turn-key deliveries. Before 1970, 143 plants were acquired from abroad, whereas during the period 1970-1979 the number increased to 1026. Foreign investment accounts for about 20% of total capital investment, and joint-venture projects represent about 90% of all plants.

Sudan

Criteria for importing technology

Policy guidelines for technology transfer reflect government priorities for industrial and economic development. The main priorities are to satisfy basic human needs and to achieve an average annual gross rate of GDP of 8,57% with an annual increase in per capita of 6% in real terms.

Licence agreements are rejected if they contain restrictive clauses. The following, however, are not considered to be prohibited restrictions:

- (a) limitations on the degree, extent, quantity, territory or duration of exploitation of the subject of the patent;
- (b) limitations justified by the interest of the licensor in the technically flawless exploitation of the subject of the patent;
- (c) the obligation imposed on the licensee to abstain from all acts capable of impeding or preventing the grant of the patent or prejudicing its validity.

Assessment of the role of imported technology

Imported technology is of primary significance for Sudan's economic development. Indigenous research and development are limited and highly concentrated on infrastructure and services. Most research and development work is done in production units and less than 10% in institutions of higher learning (see table).

Table: Expenditures for Research and Development during 1973-1974.

| Area | Productive Sector Intergral | Prod. Sec. Non Intergral | Higher education | General services |
|------------------------------------|-----------------------------|--------------------------|------------------|------------------|
| Advanced technology | 23,896 | 423,878 | - | 8,000 |
| Industrial productivity technology | 15,840 | - | 600 | - |
| Infrastructure and services | 24,350 | 1,461,000 | - | 146,149 |
| Agricultural technologies | - | - | 4,380 | 444,516 |
| Advanced Communication services | - | - | - | 156,516 |
| Natural science and engineering | 48,000 | - | 11,542 | 53,376 |
| Social sciences | 70,494 | - | 7,295 | 112,101 |
| TOTAL | 182,580 | 1,884,878 | 23,617 | 920,658 |

Thus, most industrial technology must be imported from abroad. The principal means of technology transfer are turn-key deliveries. During the period 1970-1977 Sudan imported 624 plants with a total capital investment of 632,3 million LSd. The bulk of this import, terms of both number of units and value of investment was directed to light industries - textiles and food. These are the largest branches of industry, employing in the period 1970-1977 90% of all in the public sector. (see table).

Table: Turnkey deliveries, 1970 - June 1977

| Industry | Plants | | | Capital investment (millions LSd) | | |
|---|------------|-----------|------------|--------------------------------------|--------------|--------------|
| | Private | Public | Total | Private | Public | Total |
| Textiles and bags | 220 | 12 | 232 | 140.7 | 108.8 | 249.5 |
| Food | 184 | 7 | 191 | 38.3 | 214.8 | 253.1 |
| Basic metals/ Engineering Electric- ity | 96 | - | 96 | 20.1 | - | 20.1 |
| Chemicals and fertilizers | 56 | 1 | 57 | 10.7 | 90.0 | 100.7 |
| Leather and plastics | 46 | 2 | 48 | 5.7 | 3.2 | 8.9 |
| TOTAL | 602 | 22 | 624 | 215.5 | 416.9 | 632.3 |

Source: Ministry and Industry and Mining Data Act of 1974.

It is estimated that during the period 1976-1985, 31 industrial units will be imported for the public sector, with a total capital investment of LSd 360. As in the previous years most of the imported technology will be directed to the textile and food-processing industries. (see table).

Table: Turn-key deliveries for the public sector.

| Industry | Units (number) | Capital investment (million LSd) |
|-----------------|----------------|-------------------------------------|
| Sugar | 3 | 100 |
| Textile | 15 | 105 |
| Food processing | 8 | 5 |
| Kenaf | 2 | 20 |
| Cement | 1 | 25 |
| Tanning | 1 | 5 |
| Fertilizer | 1 | 100 |
| | <hr/> 31 | <hr/> 360 |

Turn-key deliveries are supplemented by import of licences. Over the period 1970-1976 Sudan acquired 462 licences.

Foreign capital plays a minor role in the transfer of technology. During the period 1970-1976 only two projects were reported to have foreign investment - a foundry and an oil refinery.

Tunisia

Policy guidelines for evaluating technology transfer transactions^{1/}

No distinct criteria relating to technology transfer alone exists. Rather they evolve from the goals of government industrial policy, which are full employment and food market equilibrium.

The evaluation procedure differs depending on whether the technology is transferred to the public or the private sector. In the case of the government sector, a technical committee draws up the criteria for evaluating the technology according to project and the imported technology.

^{1/} Government communication

In the case of the private sector, enterprise indicates to the owner of the technology the guidelines he will use in evaluating the technology after the approval of the Ministry of Commerce and the Central Bank.

Investment classification and financial incentives/Law 73-74 of 1974/
Article 7.

Licensed or unopposed investments are classified into one of the categories of Article 9 below according to the number of permanent jobs they create, and are entitled to the benefits of Article 11 and 12 of this law.

They are also entitled to the advantages of Articles 15, 16 and 20 hereunder, according to the following criteria:

Project location;

Export percentage within the sales figure (turnover) after tax;

Value added of the product to be manufactured.

Article 8.

Excluded from the classification and therefore ineligible for the benefits and guaranties of this Law are investments made for equipment renewals, those creating fewer than ten permanent jobs and those including less than 30% in capital stock.

Article 9.

The investments referred to in Article 7 above are classified into five categories:

Category A - investments creating 10 to 20 permanent jobs

Category B - investments creating 21 to 50 permanent jobs

Category C - investments creating 51 to 100 permanent jobs

Category D - investments creating 101 to 150 permanent jobs

Category E - investments creating more than 150 permanent jobs

Article 10.

A job is considered permanent when it secures at least 280 workdays per annum.

Article 11.

The investments referred to in Article 9 above are entitled to the following benefits:

- (1) Payment of a fixed fee for the registration of the instruments incorporating the enterprise;
- (2) Taxation relief on income or profits when reinvested in the capital of the enterprise.

Such tax relief, which may be granted only to the original subscriber, is based on half the value of the stock warrant and is applied to:

A maximum of 30% of the overall annual income in the case of natural persons who are liable for personal income tax;

A maximum of 50% of the annual profits in the case of corporate bodies which are assessed for the tax on profits from trade and manufacture or the tax on profits from non-commercial professions;

- (3) Exemption from customs duties and turnover taxes on imported capital goods which are necessary for production.

Such an exemption is granted for non-Tunisian-made capital goods.

If the enterprise purchases capital goods on the domestic market from producers, it is entitled to the exemption from turnover taxes.

It is also entitled for its local purchases from non producers, to the reimbursement of customs duties and turnover taxes already paid on imported capital goods, under the same conditions as those laid down in the legislation for exporting industries.

With respect to Category A investments, the exemption is limited to 25% of the customs value of imported items.

In cases of expansion, total exemption is granted if the number of jobs after expansion is in excess of 20.

Article 12.

The investments referred to in Article 9 above are also exempted from the proportional corporate income tax for the first five years of actual operation of the enterprise, in the following proportions:

- 40% of taxable profits for Category A investments
- 60% of taxable profits for Category B investments
- 70% of taxable profits for Category C investments
- 80% of taxable profits for Category D investments
- 90% of taxable profits for Category E investments

The enterprises benefiting from the above exemptions are also exempted from the business licence fee during the same period.

Article 13.

In cases of additional job creation during the exemption period provided for in Article 12 above, the investments classified in one of the Article 9 Categories shall be reclassified in accordance with the new number of employees and for the rest of the exemption period.

At the end of the period of exemption from corporate income tax, as per Articles 12, 14, 15 and 16 of this Law, the enterprises which create additional jobs shall benefit from a reduction in the said tax in proportion to the increase in the number of jobs, during the preceding three years, provided the new reduction does not exceed 20 to 25%.

This reduction is applicable to the year in which the increase in the number of jobs has been established.

Article 14.

An expansion taking place during the exemption period of Article 12 above entitles the enterprise to the reclassification benefits for the rest of the period, after which the enterprise is entitled - for the rest of another period of five years starting with the expansion investment - to the benefits of the category corresponding to the number of jobs created by the expansion.

Expansion investments to be made upon expiration of the exemption period of Article 12 above are eligible for classification in accordance with the criteria of Article 7 of this Law and entitled to the corresponding classification benefits. With regard to these expansion investments, the exemption from corporate income tax is based on overall cumulative profits. However, the exemption is reduced by 75%.

Article 15.

Licensed or unopposed investments to be made in the territorial zones which will be determined by decree, will benefit from the provisions below, over and above their classification advantages:

- (1) Payment of fixed fees for the registration of deeds on capital increases;
- (2) Exemption from corporate income tax for one additional year under the same conditions as per Article 12 above;

- (3) Exemption for the first five years of actual operation from the Stockholder's Tax on the profits distributed to shareholders and to partnership shares issued for the establishment of the enterprise, provided such profits do not exceed annually $\frac{6}{100}$ of the nominal value of the stock certificates;
- (4) Allowance for interest rate on loans for the financing of the investment, not to exceed 5%;
- (5) Investment subsidy not to exceed 10% of the total investment, exclusive of the working capital.
This subsidy does not come into the computation of the minimum percentage of capital stock required for the classification of the investment.
- (6) Payment of the costs of infrastructure works in accordance with the decree referred to in paragraph one of this Article.

Article 16.

Licensed or unopposed investments to be made with a view to exporting more than 10% of the overall sales after tax, during the first five years of actual operation, entitle the enterprise to the exemption from corporate income tax for one additional year under the same conditions as those of Article 12 of this Law, over and above their classification benefits.

Algeria

An agency following continuously the execution of contracts in Algeria does clearly not exist. This task is done, for every company, at the ministry level, but no overall retrospective analysis is done which would allow to capitalize past difficulties and solutions. The work which is done in many corporations abroad, by the licensing division, on a significant number of contracts aimed at finding their weaker points and discovering means to avoid them, need to be done in the Algerian Government with the double purpose of finding concrete solutions to problems and of training a number of professionals apt to benefit from the rich experience the country is currently going through.

The acquisition of foreign technology is performed mainly in the form of turnkey projects or under a most recent formula called "performance-guaranteed". But an important effort of developing local technical capacities took and takes place, aimed at the growth of the productive capacity, the design and the management capacity, at the same time.

Europe

Portugal

Criteria for Technology Importation as per recent legislation
/Law 348/77/

Article 5.

1. The appraisal of transfers of technology shall take into account, primarily, not only their possible effect on the national economy but also the scientific and technological capacity already available in Portugal, such as the availability of research and consultancy services, including engineering, in departments, centres, institutes or companies both public and private.

2. Specific guidelines or criteria for appraisal and authorization purposes may be established for a certain sector, branch of activity or product by means of a joint order of the Minister of Planning and Economic Co-ordination and the minister responsible for the sector concerned and these shall be taken into account by the Institute.

3. The National Board for Scientific and Technological Research shall keep the Institute informed of the existence in Portugal of those departments, centres, institutes or companies engaged in technological research and its application.

Article 6.

1. Agreements for the transfer of technology shall contain:
- (a) A detailed description of the nature of the transfer and of the practical form it will take as well as the type, form and amount of payments envisaged;
 - (b) An indication of the period for which the agreement is to remain in force;

(c) A guarantee that the recipient of the technology concerned will be kept informed of all or any improvements introduced into it during the agreement period unless such improvements are patentable or constitute an invention;

(d) An indication that components, spare parts and services related with the technology concerned will be supplied at the request of the recipient of the technology as well as an indication of the terms governing the supply thereof;

(e) A statement to the effect that the selling price of goods and services will be fixed at levels not exceeding those in force on the international market whenever transactions in such goods and services between the supplier and the recipient of the technology are envisaged.

2. Whenever transfers of technology include rights protected in the country receiving the technology by means of patents, trade names, models, drawings or other legal forms of industrial property, the agreement shall include the following:

(a) A detailed list of the ownership of the titles to the industrial property involved;

(b) An indication of the time scale for the use of the rights conferred by means of the titles referred to in the above paragraph.

3. Agreements for the transfer of technology shall include, whenever possible, appropriate programmes for the training of personnel.

Article 7.

1. In agreements for the transfer of technology, parti-

cularly those governing relations between foreign companies and their branches in this country, the following clauses shall not be permitted:

- (a) Those which tie the provision of technology to the acquiring of capital goods or of intermediate products and other technologies from a specific source;
- (b) Those which oblige the purchaser of the technology to transfer free of charge to the seller all or any inventions or improvement arising from the use of the technology concerned;
- (c) Those which restrict the volume and structure of production;
- (d) Those which either directly or indirectly restrict markets to which the importer of technology could have access;
- (e) Those which limit the distribution channels to be used if such limitation is harmful to the buyer of the technology or to the economic and commercial policy of the country;
- (f) Those which reserve to the seller of the technology the right to fix the selling or resale price of products incorporating such technology;
- (g) Those which insist on the predominance of a foreign language in the agreements for interpretation purposes.

2. In cases where the transfer of technology assumes special interest for the national economy, agreements containing one or more of the clauses listed in the preceding paragraph may be authorized.

Article 28.

1. In agreements for transfer of technology, particularly where these regulate relations between foreign firms and their branches in this country, the following clauses shall not be permitted:

- (a) Those which tie the provision of technology to the acquiring of capital goods or of intermediate products and other technologies from a specific source;
- (b) Those which oblige the purchaser of the technology to transfer free of charge to the seller all or any inventions or improvements arising from the use of the technology concerned;
- (c) Those which restrict the volume and structure of production;
- (d) Those which either directly or indirectly restrict markets to which the importer of technology could have access;
- (e) Those which limit the distribution channels to be used if such limitation is damaging to the buyer of the technology or to the economic and commercial policy of the country;
- (f) Those which reserve to the seller of the technology the right to fix the selling or resale price of products incorporating such technology;
- (g) Those which insist on the predominance of a foreign language in the agreements for interpretation purposes.

Data on technology import

No annual statistics are available on payments arising from licensing agreements. However, a study of 152 companies conducted by the Ministry of Finance revealed that in 1972 these payments amounted to Esc 211,903,000 , of which Esc 129,635,000 related to manufacture under licence and the licensing of technical processes; Esc 42,061,000 to the registration of patents and Esc 42,207,000 to research and/or experimental work. The values recorded by the

*1 = approximately Esc 40

Bank of Portugal for patents, trade names, models, drawings, inventions and copyrights amounted in that same year to a total of Esc 293 million.

More recent statistics on payments made through the banking system point to a rise to Esc 500 million in 1976. However, it may be assumed that expenditure on the import of technology has risen significantly since then.

It may be concluded that Portugal's technological requirements cannot be solved through licence agreements.

The purchase of capital goods abroad seems to be one of the most important means of acquiring technology not only for small and medium sized companies but also for certain activities entailing high levels of investment.

This is confirmed by the conclusions reached in the medium and longterm plan which reads as follows: "In the case of most industries, the ratio of imported equipment to total equipment used is higher than the percentage that was established for the purpose of identifying the dependence on imported inputs. This reveals high widespread technological dependence despite the fact that the value of the imported capital goods in the total imports is not very high /20% in normal periods/".

To evaluate the freedom of action of the licensee, study of the Ministry of Finance was focused specifically on detecting restrictive clauses of the following types: prohibiting or restricting exports; making the use of trade names compulsory; placing limitations on the supply of raw materials and capital goods and on the use of the technology; obligations relating to new products; predominance of a foreign language for purposes of interpretation.

Agreements are listed below according to type (percentage).

| List according to percentage | Trade names | Patents | Know-how | Models and drawings | Engineering |
|------------------------------|-------------|-----------|--------------------|---------------------|---------------------------------|
| | 17 | 10 | 17 | 7 | 16 |
| | Management | Personnel | Personnel training | | Technical assistance and others |
| | 8 | 6 | 7 | | 12 |

In the metal-mechanical sector licensing rights for models, drawings or inventions accounted for 42% of the agreements; patents for 39%; know-how for 29% and trade names for 22%. In the chemical sector the granting of know-how predominated (32%) followed by patent rights (26%), trade names (24%), and engineering studies (21%). With regard to textiles, the highest percentage of the agreements relate to personnel training (20%), personnel management studies (17%) and models, drawings or inventions (14%).

Table gives a breakdown of contracts by country.

Agreements by Countries

| | France | Great Britain | German Fed. Rep. | U.S.A. | Spain | Switzer-land | Belgium | Other | Total |
|------------------------|--------|---------------|------------------|--------|-------|--------------|---------|-------|-------|
| No. | 324 | 188 | 181 | 137 | 133 | 118 | 98 | 275 | 1,454 |
| % in relation to total | 22 | 13 | 13 | 9 | 9 | 8 | 7 | 19 | 100 |

Portugal's dependence on French technology becomes more evident if agreements covering models and drawings (25%) and engineering (24%) are included, in which case the average comes fairly close to the average percentage relating to know-how agreements (22%). The Federal Republic of Germany and the United Kingdom accounted for 15% and 13% respectively of the engineering agreements.

The total number of restrictive clauses found in the 1949 agreements under examined consideration was 32 which is negligible. The most common were clauses forbidding or restricting exports, and these appeared in 36 agreements. In 27 agreements a foreign language was to prevail for purposes of interpretation.

As for the restrictive clauses by sector of activity, agreements in the chemical sector were found to contain 18 and those in the metallomechanical sector 23.

To sum up, a total 1494 agreements were signed by 474 companies, which reveals a highly concentrated demand for foreign technology, 10 of these companies were responsible for 173 agreements.

Seven of these companies, responsible for 89% of the agreements, are large public corporations engaged in fundamental sectors.

Considering the number of companies existing in Portugal, and the fact that 474 companies referred to above are among those having the highest technological standard, it may be concluded that the foreign technological requirements of the small and medium companies have not been provided for.

Despite the fact that Portugal is essentially an importer of technology, 35 agreements to supply technology to foreign countries were signed in the last four years. This means that Portugal's technology is now on an international standard in certain sectors such as pharmaceutical products; rolling stock; shipbuilding and repair; oil refining; air transport and engineering and other technical services.

TABLE 30

| COUNTRY | TRADE NAMES | | PATENTS | | KNOW-HOW | | MODELS AND DRAWINGS | | ENGINEERING | | MANAGEMENT | | No | % |
|-------------------|-------------|------------|------------|------------|------------|------------|---------------------|------------|-------------|------------|------------|------------|--------------|------------|
| | No | % | No | % | No | % | No | % | No. | % | No | % | | |
| France | 41 | 19 | 29 | 20 | 57 | 22 | 25 | 25 | 57 | 24 | 22 | 19 | 231 | 19 |
| Great Britain | 22 | 10 | 22 | 15 | 27 | 10 | 11 | 11 | 30 | 13 | 26 | 22 | 138 | 13 |
| Fed. Rep. Germany | 30 | 13 | 15 | 10 | 37 | 14 | 11 | 11 | 36 | 15 | 13 | 11 | 142 | 13 |
| U.S.A. | 24 | 11 | 17 | 11 | 19 | 7 | 9 | 9 | 23 | 10 | 16 | 14 | 108 | 10 |
| Spain | 20 | 9 | 14 | 9 | 25 | 10 | 14 | 14 | 11 | 5 | 6 | 5 | 90 | 8 |
| Switzerland | 19 | 9 | 10 | 7 | 23 | 9 | 6 | 6 | 16 | 7 | 11 | 9 | 85 | 8 |
| Belgium | 21 | 10 | 13 | 9 | 13 | 5 | 5 | 5 | 15 | 6 | 11 | 9 | 78 | 7 |
| Other | 43 | 19 | 28 | 19 | 59 | 23 | 20 | 19 | 48 | 20 | 13 | 11 | 211 | 20 |
| TOTAL | 220 | 100 | 148 | 100 | 260 | 100 | 101 | 100 | 236 | 100 | 118 | 100 | 1,083 | 100 |

Table gives a breakdown of licence agreements by type for the sectors in which they predominate.

Types of agreement for sectors in which licensing agreements predominate, 1973/74 - 1976/77

| Sector | Trade names | | Patents | | Know-how | | Models and drawings | | Engineering | | Total | |
|---|-------------|-----|----------|-----|----------|-----|---------------------|-----|-------------|-----|----------|-------|
| | (number) | (%) | (number) | (%) | (number) | (%) | (number) | (%) | (number) | (%) | (number) | (%) |
| Textiles, clothing and footwear | 11 | 4 | 3 | 2 | 18 | 7 | 14 | 14 | 1 | 0.4 | 115 | 8 |
| Chemical industries, petroleum subproducts ^{a/} | 56 | 24 | 38 | 26 | 83 | 32 | 11 | 11 | 50 | 21 | 332 | 23 |
| Non-metallic mineral products, except petroleum by-products and coal | 3 | 1 | 4 | 3 | 16 | 6 | 6 | 6 | 12 | 5 | 74 | 5 |
| Base metallurgical industries | 2 | 1 | 8 | 5 | 12 | 5 | 9 | 9 | 31 | 13 | 103 | 7 |
| Metal products, machinery, equipment and transport material ^{b/} | 56 | 24 | 57 | 39 | 75 | 29 | 42 | 42 | 19 | 8 | 314 | 22 |
| Building and public works | 5 | 2 | 5 | 3 | 10 | 4 | 6 | 6 | 47 | 20 | 104 | 7 |
| | | | | | | | | | | | TOTAL | 1,042 |

^{a/} 332 agreements can be broken down as follows: basic chemicals 192, fertilizers, soap, detergents and cleansing products, perfumes etc, 45, and oil refining, 73.

^{b/} Non-electrical machinery accounted for 120 agreements; radios, TV sets, telecommunications and other electronic material, 75, metal products, except transport material, 64, and the construction of transport material, 51.

Spain

Criteria for Technology Importation

"For the purposes of the provisions of article 5 of Decree no. 2343 of 1973, the Ministry of Industry or the Ministry competent to deal with the matter shall make a comprehensive evaluation of the situation of the sector and of the features of the process and the product for which the technology covered by the contract is to be used, in relation to the rights and obligations which the parties assume under the contract."

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

1. Provisions which prohibit, impose conditions on, or limit the use of the recipient's own technology or the acquisition of technology from other sources, or the use of non-patented special knowledge on the expiry of the contract, or which impose conditions on or limit research, innovation and technological development by the recipient;
2. Provisions for the obligatory transfer of the patents, improvements or innovations introduced or developed by the recipient after acquiring the technology covered by the contract;
3. Provisions for the transfer of technology in packages which include unnecessary parts or components or in respect of which there is proved to exist an available domestic supply of equivalent quality and reliability; provided that such parts or components are technically separable from the other considerations covered by the contract;
4. Provisions for the transfer of technology which is wholly or partially obsolete, insufficiently competitive or deficient for other similar reasons or by reasons of an obligatory standardization or typification of quality incompatible

with the standards established by Spanish law, unless the product is intended primarily for markets in which such standards and qualities are required;

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

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

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

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

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

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

11. Provisions establishing payments in the form of fees proper to the level of production without deduction of the

value of product components imported and incorporated in the production process to which the acquired technology is applied, or without excluding invoicing lines of goods not affected by the acquired technology;

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

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

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

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

Other countries: Nigeria

The Decree No. 70 ^{1/} of 24 September 1979 lists the restriction provisions that will keep the technology agreements from being approved and subsequently registered.

Article 2. Section 6.

The Director shall not register any contract or agreement where he is satisfied that it falls within any of the following specifications, that is to say:

- (a) Where its purpose is the transfer of technology freely available in Nigeria;
- (b) Where the price or other valuable consideration therefore is not commensurate with the technology acquired or to be acquired;
- (c) Where provisions are included therein which permit the supplier to regulate or intervene directly or indirectly in the administration of any undertaking belonging to the transferee of the technology and are, in his opinion, unnecessary for the due implementation or execution of such contract or agreement;
- (d) Where there is an onerous or gratuitous obligation on the transferee of the technology to assign to the transferor or any other person designated by the transferor patents, trade marks, technical information, innovations or improvements obtained by such transferee with no assistance from the transferor or such person;

- (e) Where limitations are imposed on technological research or development by the transferee;
- (f) Where there is an obligation therein to acquire equipment, tools, parts or raw materials exclusively from the transferer or any other person or given source;
- (g) Where it is provided that the exportation of the transferee's products or services is prohibited or unreasonably restricted or where there is an obligation on such transferee to sell the products manufactured by it exclusively to the supplier of the technology concerned or any other person or source designated by the transferer;
- (h) Where the use by the transferee of complementary technologies is prohibited;
- (i) Where the transferee is required to use permanently or for any unconscionable period personnel designated by the supplier of the technology;
- (j) Where the volume of production is limited for sale and where resale prices are, in contravention of the Price Control Decree 1977 or any other enactment relating to prices, imposed for domestic consumption or for exportation;
- (k) Where the transferee is required to appoint the supplier of technology as the exclusive sales agent or representative in Nigeria or elsewhere;
- (l) Where the contract or agreement is expressed to exceed a period of 10 years or other unreasonable term where this is less than 10 years;
- (m) Where the consent of the transferer is required before any modification to products, processes or plant can be effected by the transferee;

(n) Where an obligation is imposed on the transferee to introduce unnecessary design changes;

(o) Where the transferer, by means of quality controls or prescription of standards, seeks to impose unnecessary and onerous obligations on the transferee;

(p) Where there is provision for payment in full by the transferee for transferred technology which remains unexploited by him;

(q) Where there is a requirement for the acceptance by the transferee of additional technology or other matter, such as consultancy services, international subcontracting, turn-key projects and similar package arrangements, not required by the transferee for or in connexion with the principal purpose for which technology is to be or has been acquired by him;

(r) Where the transferee is obliged to submit to foreign jurisdiction in any controversy arising for decision concerning the interpretation or enforcement in Nigeria of any such contract or agreement or any provisions thereof.

(3) Notwithstanding the foregoing provisions of this section, in any case where the Council is satisfied that it would be in the national interest so to do, it may direct the Director to issue a certificate to an applicant notwithstanding any divergence between the terms and conditions of a contract or agreement and the specifications laid down in subsection (2) above.

(4) Where the parties, on the direction or advice of the Director, subsequent to a refusal by the Director to issue a certificate of registration, make required adjustments in respect of any contract or agreement or terms and conditions thereof, the Director may issue the requisite certificate of registration.

Other basic stipulations of the Law governing the inflow of foreign technology in Nigeria are reproduced below:

Effects of registration

Section 7. For the purposes of the Exchange Control Act 1962 and subject to section 8 of this Decree, no payment shall be made in Nigeria to the credit of any person outside Nigeria by or on the authority of the Federal Ministry of Finance, the Central Bank of Nigeria or any licensed bank in Nigeria in respect of any payments due under a contract or agreement mentioned in section 4 (d) of this Decree, unless a certificate of registration issued under this Decree is presented by the party or parties concerned together with a copy of the contract or agreement certified by the National Office in that behalf.

Cancellation of registration

Section 8.

(1) Where the Director is satisfied that any contract or agreement has, subsequent to the registration thereof, been amended or modified in contravention of the provision of this Decree, he shall give notice in writing to the parties concerned of his intention to cancel the certificate of registration and the provisions of section 9 of this Decree relating to appeals shall apply to any such notice as if it were a notice to reject an application for registration.

(2) Where no appeal is lodged as provided under subsection (1) above, the Director shall with the approval of the Council cancel the certificate of the party concerned.

Appeals, etc.

Section 9.

(1) Any person aggrieved by the proposal of the Director to reject an application for registration may, within 60

days after the date of notice of intention to reject the application is given to him, lodge with the Secretary a notice of appeal to the Council.

(2) The notice of appeal shall be in writing setting out the grounds on which it is made and the Secretary shall lay it before the meeting of the Council next holding after the notice of appeal was lodged with him.

(3) Where an appeal is allowed the Council shall cause the Director to issue a certificate of registration in that behalf and where an appeal is disallowed the aggrieved party shall, subject to the applicable rules of court, have a right of further appeal to the Federal Revenue Court.

(4) Appeals shall lie from decisions of the Federal Revenue Court under this section in the same manner and to the same extent as appeals from the decisions of the Court in civil proceedings given by that Court sitting at first instance.



