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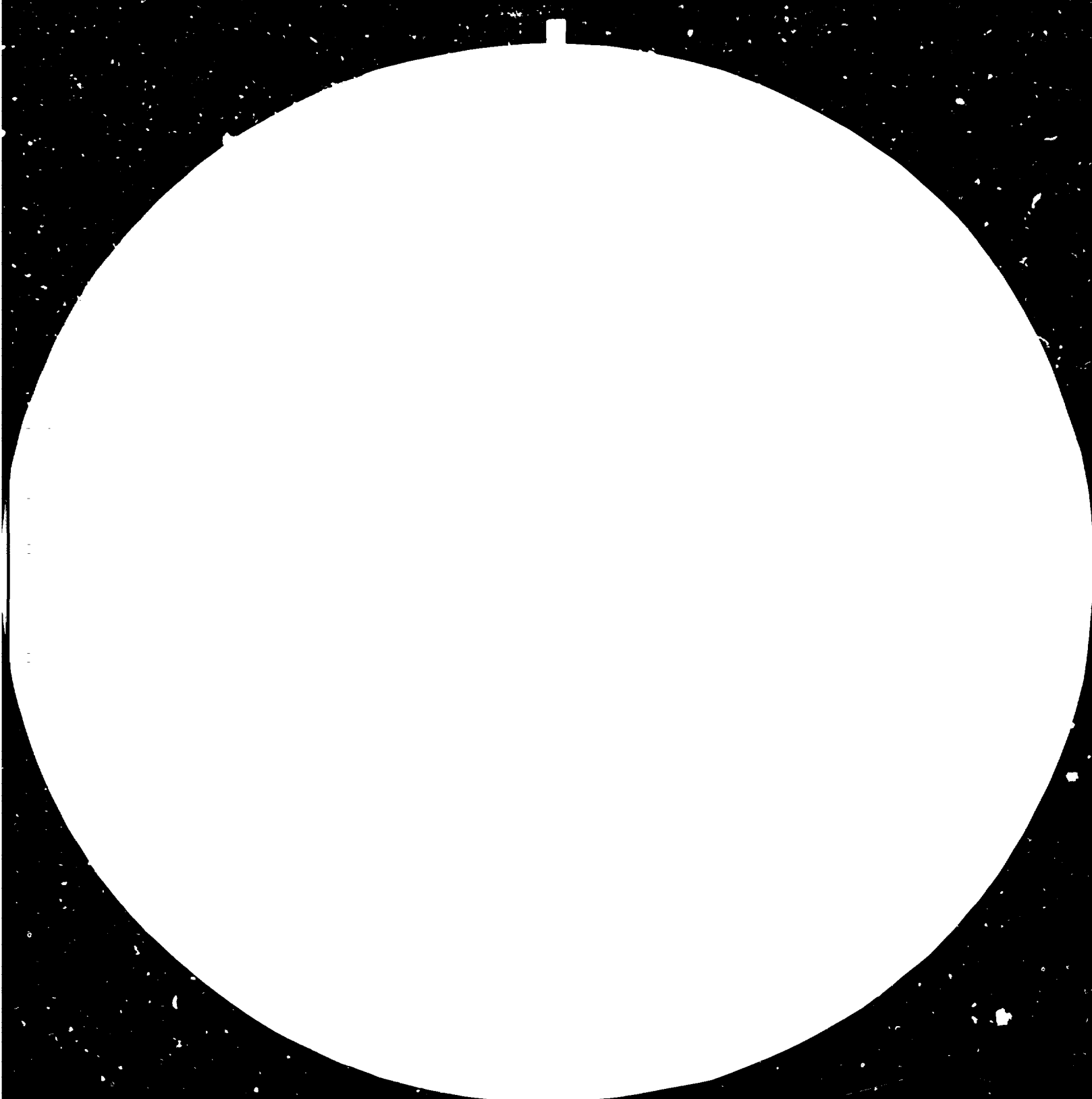
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TECHNOLOGY TRANSFER BY PORTUGAL

AN OVERVIEW *

by

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INTRODUCTION

The level of development of the Portuguese economy, if we wish to measure it in a simplified manner by using the indicator of GNP per capita, places the country in a position far from that of most other European countries, in particular those of the EEC, which it intends to join in the near future.

At the same time, the economic system has been characterised by a high degree of openness to the outside world, both with respect to international trade and, more recently, regarding capital movements and transfers of technology.

Modernisation of the system of production is urgent so that Portugal can join the EEC at minimum social cost and ensure better standards of living and a decline in the rate of unemployment.

An industrial development strategy to a great extent conditioned by the extremely high dependence on oil (70 per cent of the sources of primary energy and 25 per cent of imports) has been set out in general terms at Government level. This underlined "the need for a policy of research and development and for the active encouragement of technological innovation at all levels as part of a policy of industrial development aimed at the creation of a dynamic, competitive and export-oriented industry".

The technological areas considered as having priority, defined together with industrial priorities, are as follows:

- 1 - Optimum use of national raw materials
- 2 - Protection of the competitiveness of traditional manufacturing industry
- 3 - Development of industrial sectors benefiting from comparative advantages
- 4 - Development and implementation of technologies of the future that will bring about independence

So as to attain the above objectives, the first priority requirement is the dynamisation and mobilisation of national technological capacities. However, it will be absolutely necessary to have recourse to foreign technology at the same time as there will certainly be an increase in national expenditure on R & D, which at present accounts for a minute 0.32 per cent of the GNP. Naturally this is a very brief reference regarding a whole series of complex problems. But I do not wish to omit it so as to indicate more precisely - that is to say, with due modesty - the role played by the Foreign Investment Institute (IIE) in the field of transfers of technology.

According to the Foreign Investment Code - which might in fact also be called that of transfers of technology - the IIE is in a privileged position for negotiating with the foreign investor in general and multinational companies in particular for it is the only body dealing directly with the foreign investor, representing for him the various branches of the Public Administration.

By the fact that the importation of capital and of technology is subject to a system of prior authorisation, the importance of the IIE as an "authorising body" is evident. It should be emphasized, however, that it proceeds by following a line of discussion and negotiation, attempting by this means to arrive at solutions that may be accepted by the investor or by the lessor of the technology, to the maximum benefit of this country. On the other hand, as will be mentioned below, the orientation of the IIE is at the same time such as to encourage technological development, in a manner that is not merely defensive but promotional.

GENERAL CHARACTERISTICS OF THE LEGISLATION

In order that the objectives that underlay in 1977 the legal regulation of Foreign Direct Investments (FDIs) and Transfers of Technology (T/Ts) which forms an integral part of the Foreign Investment Code (CIE)⁽¹⁾ may be clearly understood, one should bear in mind that the great majority of Portuguese companies are very small and are therefore in a weak negotiating position vis-à-vis the foreign companies on which they are dependent or with which they are associated by means of various legal forms of contract.

The legal framework created by the CIE and the institutional support given by the Foreign Investment Institute (IIE) is thus a positive factor with respect to the protection of the interests of these companies.

On the other hand, there was also awareness of the need to establish clear rules of the game that would state explicitly the essential parameters for the assessment of investments and foreign technology and would as a counterpart to this give those companies that set themselves up in this country a number of guarantees and incentives. International Investment and the transfer of technology were recognised as essential to the modernisation of the Portuguese economy.

At the same time the Foreign Investment Code has an underlying principle of selectivity with respect to Foreign Investment, which is not confined to the case-by-case appreciation of investment projects but goes as far as to announce a list of priority sectors, which was drawn up at the end of 1980 (see Annex). There have thus been identified the sectors which it is thought will bring together

(1) Decree-Law No. 343/77, of 24 August 1977, and associated Decrees

on the one hand optimum conditions regarding comparative advantages offered by this country, and on the other hand stimulating effects on FDI that are potentially more important: as a rule, these will be investments requiring capital and technology that will lead to a denser industrial network by a synergetic effect and will have an impact on the sales market.

As to contracts regarding Technology, the Code is chiefly concerned with clearly establishing the content of the Technology to be transferred and the way in which it will be transferred (stipulation of the minimum content of contracts), at the same time as it attempts to prevent a number of practices that have negative effects on the lessee and on the national economy (excessive payments, restrictive clauses and the non-use of national technological capacities).

DEFINITION OF THE PRINCIPLE OF TRANSFER OF TECHNOLOGY (T/T)

According to the Code, 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 specialised in the construction and maintenance particularly of industrial units, roads, bridges and ports;
- d) any other form of technical assistance.

The scope of the concept of technology transfer is indeed rather wide, encompassing different items from technical assistance to the repair of a piece of equipment to the licensing of use of patents or know-how.

Due to the fact that the relevance and characteristics of the contracts differ on financial, economic, technological and juridical grounds, the Institute has adopted a classification of technology transfer agreements involving nine basic types (licensing strictu sensu; sale of know-how and/or industrial property rights; studies; engineering; one-shot technical assistance; routine technical assistance; servicing of equipment; training; other, including particularly franchising and software).

The Institute normally arranges the types referred to into two classes:

- Licensing agreements (strictu sensu and sale/cession);
- Servicing agreements, covering all the remaining types.

As a rule, this last category of T/T is the object of a brief assessment aimed above all at verifying that national technological capacity does not exist and that the price to be paid is in accordance with international standards.

The extent of the assessment is naturally greater if it is a matter of a licensing contract, covering as a rule legal, economic and technological aspects.

The suitability of the technology and the verification that conditions exist for its effective transfer and acquisition are aspects that often imply the cooperation of the Ministry of Industry.

Assessment of the economic aspects takes account of the effect of the T/T on the lessee company and on the national economy (direct and indirect cost of the T/T; effects on employment and Balance of Payments and effects brought about in the sector in question).

As to the legal assessment, which aims to verify that the text is in conformity with the law, more will be said below and in some detail.

QUANTITATIVE AND REGULATORY FEATURES OF IMPORTATION OF TECHNOLOGY

During 1981 611 contracts for the transfer of technology were registered, this number corresponding to an increase of the order of 32 per cent compared with the previous year. Of this total, 11 per cent were for the renewal of contracts and 87 per cent for new contracts.

Only a small proportion of these totals - 2.3 per cent - was for contracts associated with new projects of Foreign Investment. On the other hand, only 29 per cent of the total were for licensing contracts. The so-called Servicing contracts thus continued to be highly important, outstanding among them being Servicing of Equipment and Studies.

It is interesting to note the distribution of contracts among the major groups of licensees:

	<u>1981</u>	<u>1980</u>
. Companies with foreign capital (ECCEs)	- 36%	- 28%
. Private companies without foreign capital	- 34%	- 39%
. Public bodies (including Public Corporations)	- 30%	- 33%

If we consider together "classes of licensees" and "types of contract", we see that licensing contracts concern mainly private companies without foreign capital (52 per cent), followed by ECCEs (47 per cent). The major users of "servicing contracts" are public bodies (42 per cent) and also the ECCEs (31 per cent).

It is further possible to verify the considerable and increasing importance of contracts entered into between interconnected companies (14 per cent and 13 per cent in 1980 and 1981 respectively). This fact was due almost exclusively to licensing contracts, where connections between licensor and licensee companies predominate (22 per cent in 1980 and 33 per cent in 1981).

With regard to sectorial distribution of T/T agreements, it is important to note that the majority of the agreements (72%) continued to be turned towards the manufacturing industry which, nevertheless, has seen its relative position decrease when compared to previous years.

The sector which occupied the most important position in terms of number of agreements continued to be the Chemical Industry (23%), followed by the Electrometallomechanicals and Electronics (13%), Textiles and Clothing (12%) and Paper Industries (10%); these 4 sectors had already been the most important ones in 1980; the positions of the last two, however, changed places among themselves.

According to the CIE, contracts for the transfer of technology are prohibited from including any clauses considered to be restrictive. We transcribe hereunder in its entirety Article 28 of Decree-Law No. 348/77, of 24 August 1977:

ARTICLE 28

1. In agreements for the 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.
2. All agreements for the transfer of technology shall indicate the duration thereof.
 3. In cases where the transfer of technology assumes special interest for the national economy some of the clauses listed in Paragraph 1 above may be authorised.

The objectives are clear that it is desired to pursue with the list transcribed above, which cannot be considered as out of line with the provisions which, by means of various legal measures (see laws for the protection of competition, EEC Directives, Guidelines of the ICC (UNIDO) and OECD for multinational companies), the Governments of the various countries and international institutions are making efforts to enforce.

So it is not surprising that, in its first phase of existence, a "defensive" attitude was the predominant characteristic of the manner in which the IIE acted with respect to T/T contracts subjected to its prior approval. In fact, studies carried out on representa-

tive samples of contracts approved before 1976 showed the negotiating weakness of Portuguese companies regarding the granting of technology: the overwhelming majority of contracts contained export restriction clauses, half "required return to the supplier of inventions and improvements introduced into imported technology and contained provisions limiting the supply, production and distribution policies of the concessionaire companies". The exercise of industrial property rights was in most cases limited.

At all events, attention should be drawn to the flexibility permitted to the Institute in the supervision of these clauses, without which difficult situations might have arisen for the companies concerned and, in the final analysis, been prejudicial to the inflow of technology.

Also noteworthy is the care expressed in this provision to make explicit the applicability of the "rules of the game" to interconnected companies, which is indeed repeated in more precise form in Decree No. 53/77, of 24 August 1977, which regulates the abovementioned Decree-Law in matters of Transfers of Technology. In fact, its second article lays down:

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 organisations 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.

There has proved to be a considerable difference between the occurrence and the real importance of the prohibited clauses referred to in the law. The IIE has paid particular attention to the clauses that provide for limitations or prohibitions regarding exports, not only because of their obvious and immediate effects on trade but also owing to the small size of licensee companies and thence the impossibility of their competing in future in external markets which such a practice entails.

The intervention of the IIE reduced by 50 per cent the occurrence of this restrictive clause in licensing contracts examined in 1961. The concern to maintain a balanced situation has led to the acceptance of market limitations for other territories where the licensor has granted licences. On the other hand the licensee, specially when it is a small or medium-sized company, has every interest in obtaining an exclusive licence, a wish justified in the majority of cases owing to the initial investment effort and the small size of the market. Licensors as a rule protect their interests in case licensees do not show themselves able to develop a reasonable level of quality and/or quantity production.

The transfer to the licensor, compulsory and without payment, of improvements or inventions also takes place fairly often. A compromise solution that has at times been accepted is the establishment of conditions of reciprocity.

The compulsory acquisition from the licensor of raw materials and intermediate products, with consequences for the import price level and the non-diversification of sources of supply, is another of the clauses which attempts have been made either to eliminate from contracts or at least to transform so that they function more as a guarantee of sales than an obligation to purchase, but always at international prices.

One aspect on which the law is silent, but which is considered highly important, is that concerning clauses inserted after the contract has come into operation. These are quite frequent, albeit very variable in content. At times they concern legitimate rights of the licensor, especially when these are industrial property rights the validity of which extends beyond the period of the contract, or when their purpose is to protect know-how considered secret, which leads to limitation of the possibility of the lessee transferring it to third parties after the contract has expired. At the opposite extreme there are contractual provisions incompatible with a true transfer of technology, examples being those clauses that require the destruction of equipment, or those that prohibit manufacture of the product that features in the contract using the know-how acquired during the validity of the contract.

It is thus foreseen that a revision of the Code will include a new "prohibited clause" referring to obligations entered into after the contract has come into operation, which finally come to formalise what has been the practice of the Institute. To counterbalance this, matters that are considered less important may come to be treated in the law in a more flexible manner. This is the case of the clause referring to the language of the contract, as well as that referring to transfers of inventions and improvements introduced by the lessee.

With respect to the period of validity of the contract, the IIE intervenes in 22 per cent of contracts registered, which results in the almost total elimination of contracts of unstated or indeterminate validity and to a general reduction in the period. In many cases, even so, provision is made for the possibility of renewal, generally for annual periods.

The Code contains no reference to the matter of payment for technology. This is however one of the questions that frequently leads to the intervention of the IIE: 24 per cent of licensing contracts (strictu sensu) have had the level of royalties reduced by 2%, which has led to a fall in the average royalty rate from 4.7 to 4.4 per cent.

A certain degree of development is therefore justified in this matter - payment for imported Technology - so that it may be quantified and questions of a concrete nature discussed that fall within the competence of the department that deals with the assessment of T/T contracts.

PAYMENTS FOR THE CONTRACTUAL IMPORTATION OF TECHNOLOGY

The imbalance between the flow of payments for imports of technology in Portugal compared with the flow of export receipts is highly important and has a tendency to increase, as can be seen from the following table:

TABLE I

Rights for Patents, Trademarks, Models, etc.

		1972	1973	1974	1977	1978	1979	1980
								(10 ⁶ escudos)
Payments	(1)	293	357	518	764	779	1072	1584
Receipts		24	38	47	105	83	131	186
Balance		-269	-319	-471	-659	-696	-941	-1362
Coverage (%)		8.2	10.6	9.1	13.7	10.7	12.2	12.0

SOURCE: Central Bank

A study made by the IIE⁽²⁾ concludes that there is an underassessment of those sums in respect of receipts, adding "... it is not likely that receipts concerning exports of technology exceed 8% of payments".

Portuguese total technological payments amounted to 4.2 billion escudos in 1980 and 5.8 billion escudos in 1981. Growth rate for the period 1979/81, at current prices, was 36.1%.

Five countries (USA, Germany, United Kingdom, Switzerland and France) were the recipient countries of about 70/75% of total payments, USA being the most important destination, despite a continuous regression in relative terms that took France into first place in 1981.

(1) A whole range of flows are not included: technical assistance to management and services, engineering studies, personnel training,...

(2) SIMÕES, Vitor Corado - Payments for technology; Portugal

(10⁶ escudos)

MAIN COUNTRIES	1978	%	1979	%	1980	%	1981	%
U.S.A.	566	26.1	544	19.5	707	16.8	824	14.2
FRANCE	334	15.4	496	17.9	514	12.3	1003	17.3
SWITZERLAND	317	14.6	278	10.0	534	12.7	621	10.7
GERMANY	256	11.8	312	11.2	675	16.0	676	11.6
UNITED KINGDOM	173	8.0	261	9.4	564	13.4	644	11.1
BELGIUM	115	5.3	243	8.7	314	7.5	399	6.9
SWEDEN	98	4.5	137	4.9	115	2.7	132	2.3
T O T A L	2171	100	2782	100	4204	100	5796	100

SOURCE: FII; Based on Central Bank

It is interesting to note that almost 60 per cent of payments have gone to EEC countries, while EFTA has received only 20 per cent of payments in the last four years. The Netherlands, Spain and Italy appear at times, but not regularly, with figures of the order of 4 or 5 per cent or even 7.8 per cent of total payments, as happened with Spain in 1981.

It is further worth noting to which sectors go such transfer of technology and detecting any correlation between countries of origin and sectors importing technology over the last three years:

(10⁶ escudos and ₣)

PAYMENTS UNDER T/T (CONTRACTS BY SECTORS OF ACTIVITY

SECTORS	1979	1980	1981
31 - Food Processing	10.8%	8.1	6.5
31 - Pulp and Paper	6.9	4.2	4.1
35 - Chemical Sector	33.1	38.2	29.9
37 - Iron and Steel Basic Industries	4.9	5.4	3.4
38 - Metal Products	17.5	21.7	22.7
41 - Electrical Energy	4.8	2.6	2.6
50 - Construction			6.5
83 - Business Services	5.5	3.8	3.9
Other	16.5	16.0	20.4
VALUE	2782	4204	5796
TOTAL %	100.0	100.0	100.0

Sectoral breakdowns show that chemicals and metal products, machinery and equipment account for about 60% of the payments.

A cross-analysis - country/sector - shows the following:

Chemical sector → Germany

Metal products and equipment → U.S.A.

Pulp and paper → Sweden

Food processing → Switzerland

An analysis that takes account of the percentage of foreign capital existing in lessee companies is also of great interest, and leads to the conclusion that the contractual importation of technology is much more common among such companies than among those without any foreign participation: the ECCEs accounted in 1980 for 61 per cent of the total of payments for technology, while in 1981 this percentage

was 63.8 per cent. If we consider only those companies with a majority of foreign capital, even so the percentages were high: 51 and 48.8 per cent in 1980 and 1981 respectively.

On the other hand, the majority of contracts entered into by the ECCEs are with the parent company or its subsidiaries: 52 per cent of total payments made in 1980 and 51 per cent in 1981 - which emphasises the particular factors concerned in the assessment of such contracts, especially difficulties of establishing boundaries between the various categories of the leasing of technology and the respective payment; it often happens that the Portuguese subsidiary shows a very low negotiating capacity vis-à-vis the parent company. It is natural that a tax system more favourable to the cession of technology than to profit and distributed dividends contributes nothing to improve this situation. However, certain progress has been observed in this field, showing that it is worth following a way of negotiation, avoiding falling into the temptation of general prohibitions of royalty payments between interconnected companies which often, we believe, will not avoid payments under other headings (e.g. servicing). It would be of greater interest to distinguish those interconnected companies that form part of the Portuguese economy, generating acceptable levels of national value added and positive results for the Balance of Payments from those that have an almost zero industrial impact and a high degree of dependence on imports. That is, the appreciation from the economic point of view of contracts for the transfer of technology is in the first place done so as to have an idea of the effects of the company's activities, without attaching any less importance to whether at the same time there is a participation in the joint stock and in the control of management.

ISSUES CONNECTED WITH METHODS OF PAYMENT

Basis on which Royalties and Royalties rates are calculated

On these issues the law lays down that it shall be compulsory for T/T contracts to contain a "detailed description of the technology content and of the exact form in which it is supplied, as well as the types, forms and amounts of payment due" and moreover that "sale prices of goods and services shall be fixed at levels not above those ruling on the international market whenever transactions are foreseen in these same goods and services between the party supplying and that receiving the Technology".

After 4 years of operation of the IIE, contracts having been frequent in which this Institute has intervened so as to improve the contractual balance with respect to payments, it is not clear what a legal text might have to contain so as to be a solid support in negotiations. For the variety of situations is so great that (save in the case of servicing contracts, in which assessment of the payments involved is relatively easier) there would be a risk of having to obey very strict rules which in practice could be unfair and a hindrance to the flow of Technology.

Negotiating problems arise above all in the field of Licensing Contracts, which are as a rule paid for by means of royalties and, to a less extent, by a lump sum. More often the following questions are put:

a) Basis on which Royalties are calculated

By far the most usual criterion is the calculation of a percentage

on "sales"^(xx). It is rare (with the exception of the electrical engineering and electronics industries) for there to be companies that negotiate a basis for Royalties that is linked to their overall performance (e.g., profit or additional profit) or to the degree of industrial transformation that they make possible (e.g., deducting from the basis of the calculations the value of purchases from the lessor of raw materials and intermediate goods). This situation has not proved easy to change, albeit something has been achieved towards transforming fixed payments into payments linked to production/sales, at times differentiating sales to the external market.

b) Level or rate of royalties

The difficulty of access to detailed information regarding the rates usual in other countries and/or with other lessors of technology, the inequalities in negotiating power between the parties and their capital links are some of the factors to bear in mind in the appreciation of contracts submitted for the approval of the IIE.

Despite the difficulty of comparing the different contracts, even those within the same sector, it is becoming possible to ascertain and make known those royalty rates which are understood to be maxima, which at least has the advantage of resolving anomalous situations. However, this is a "reasonable limit" which is by no means satisfactory for a correct assessment of contractual charges.

(xx) It is interesting to note that the legal measure that defined a list of priority sectors for foreign investment stated clearly what were the requisite features that projects must contain so as to benefit from automatic approval. In the chapter on payments for Technology connected with these projects, the following is the rule stated:
"The total charges to be incurred with the transfer of technology are not to exceed 5 per cent of the national value added generated by the project."

In licensing contracts the average royalty rate in 1931 was 4.45 per cent, against some 4 per cent in 1920. In 1921 the IIE intervened in 24 per cent of these contracts, and the average reduction obtained in the respective rates was of the order of 2.2 per cent.

RESULTS OF APPLICATION OF THE CODE

It can today be stated that the creation of new laws and regulations and of an institution oriented towards the control of FDI and T/T has not caused a reduction in their flow.

Statistics show that high growth rates were attained without excessive concentration either by countries of origin or by sectors of activity. Neither has there been any slowing-down in respect of T/T contracts, and their number has been increasing.

	TRANSFER OF TECHNOLOGY CONTRACTS REGISTERED	FOREIGN DIRECT INVESTMENT AUTHORISED	
		Nr.	Value (10 ⁶ Esc)
1978	Service - 135 Licensing - <u>81</u> TOTAL 216	128	1 893
1979	Service - 318 Licensing - <u>189</u> TOTAL 507	252	4 245
1980	Service - 443 Licensing - <u>170</u> TOTAL 613	321	10 734
1981	Service - 576 Licensing - <u>235</u> TOTAL 811	378	11 584
TOTAL	2 147	1 079	28 456

This is certainly in part due to the reasonableness of the criteria used. It is rare for an application to be rejected, whether in the field of FDI or in that of T/T contracts.

In the same way the effects have been felt of concrete actions to promote and welcome foreign investment carried out with a certain intensity throughout the 4 years that the IIE has been in existence.

The lessons learned regarding licensing activities, which will be progressively reduced over time, today already constitute an important basis for the correct launching of actions of various natures intended to create conditions for the more correct importation of technology and for its acquisition.

We wish in particular to mention those actions that aim to make available to lessees general information as to the negotiation of T/T contracts, available technologies (with particular reference to small and medium-sized companies), support in the pre-negotiation stage, monitoring the effects of the importation of T/T vis-à-vis existing expectations of expansion in activity or improvement in productivity, and further as to increasing the degree of technological independence. Many of these actions involve the strengthening of coordination with Portuguese and international bodies.

**PAYMENTS RESULTING FROM CONTRACTS FOR
THE TRANSFER OF TECHNOLOGY**

<u>YEARS</u>	<u>VALUE</u> (10 ³ esc.)	<u>VALUE</u> (USD)
1978	2 170 683	49 404 443
1979	2 781 627	56 856 083
1980	4 203 573	83 967 341
1981	5 795 921	94 172 180
Average growth rate 1978/1981	38.7%	24.0%

From an overall appreciation of the criteria for assessing T/T (set out in Article 29 of the CIE transcribed above) we are today convinced that these criteria are correct and that the activity of the IIE has been shown to be beneficial, in particular owing to the significant reduction in restrictive clauses and in the level of payments, as well as through the maximisation of the use of national technological capacities. There is naturally a good deal of room for improvement in this field, and it is certain that only with an increase in national investment in R & D and by strengthening cooperation with specialist international organisations will it be possible to accelerate and correctly orientate the process of technological development in this country.

PRESIDENCY OF THE CABINET

PRIME MINISTER'S OFFICE

DECISION NO 382/80

1. Direct foreign investment has a complementary role in relation to domestic investment and should be directed towards specific areas where its induced effects can be helpful by providing added technology, capital stock and trade relations that at present cannot be procured by the domestic investor.

2. With a view to finding out the areas where priority should be given to foreign investment, two studies based upon different methods of investigation were run by the Foreign Investment Institute. One of them was conducted using selective and ordinating patterns whereby the areas graded according to joint criteria, some of which subjective, such as on science, art, technology, market potentialities for the sale and purchase of products, manpower, capital stock, synergetic effects, patrimony and natural resources of the country, strategical plans and policies, and other objectives (production, establishments, trade with foreign countries, labour, raw materials, energy and capital stock).

The other, an economic study in its essence, aims at maximisation of social welfare. There, the areas were selected according to their economic effectiveness measured in terms of international competitiveness at shadow prices and taking into account, also, comparative dynamic advantages generated by a division of expected international labour and the strength of multinational corporations in the technical and marketing fields.

3. In spite of the obvious diversity of the methods used, the results obtained were largely coincident and, after having been properly coordinated, made it possible to establish four areas of equivalence by order of interest to the domestic economy in so far as foreign investment is concerned. Also, after having been subsequently

tested, the reliability of this classification was fully confirmed.

4. Since the definition of areas of priority is the first step for liberalisation of capital stock activity, it has been decided to begin with no other than the areas that should be given first priority. On the other hand, a few sectors of interest to the national economy were not considered in this initial stage either because of their being subject to legal restrictive measures on foreign investment (mines and fisheries), or because of peculiar characteristics involved (agriculture and tourism) preferably requiring negotia - tions.

5. To give execution to the provisions set forth under Art. 7, n^o 1 , paragraph c) of the Foreign Investment Code (Law n^o 348/77 of Au - gust 24) and pursuant to a proposal of the Foreign Investment Ins - titute, the Cabinet has decided the following in their meeting held on 28 October 1980:
 - 1 - That for the purposes of Art. 7, n^o 1, paragraph c) of Law n^o 348/77, priority shall be given to foreign investment aimed at:
 - a) Preservation and processing of fruit and alimentary horti - cultural products (ISIC 3113);
 - b) Manufacture of spice components (under ISIC 3121.9);
 - c) Transformation of chemical inorganic by-product stocks (un - der ISIC 3511);
 - d) Transformation of chemical organic by-product stocks-pig - ments (under ISIC 3511);
 - e) Manufacture of basic pharmaceutical products (under ISIC 3511);
 - f) Reclaiming animal by-products (under ISIC 3522);
 - g) Manufacture of tensoactive products (under ISIC 3529.9);

- h) Manufacture of electrical industrial machinery and appliances (ISIC 3831);
- i) Manufacture of motor-vehicle parts and accessories (ISIC 3948.3);
- j) Manufacture of motorcycles and bicycles (ISIC 3844);
- l) Building and repair of aircraft (ISIC 3845);
- m) Manufacture of optical instruments, instruments for medical -surgical use, and precision instruments (ISIC 3851).

2 - Establish the following qualifications which shall be mandatory for the granting of the permit referred to in the aforementioned article 7, nº 1, paragraph c) of Law nº 348/77 of August 24:

- a) The purpose for which a new enterprise is to be created must always be confined to its main activity and to activities in connection therewith, provided that such activities have been recognized as such by the Foreign Investment Institute;
- b) Confirmed economic feasibility of the project;
- c) The total charges to be incurred with the transfer of technology not to exceed 5 percent of the national added value generated by the project;
- d) All imported capital stock shall be in foreign currency only;
- e) A ratio of total capital stock/assets owned by the firm of not less than 30 percent;
- f) A positive accumulated balance in foreign currency (including indirect imports) within a maximum five-year period of project life;
- g) No harmful effect of the project upon the quality of ambiental conditions.

