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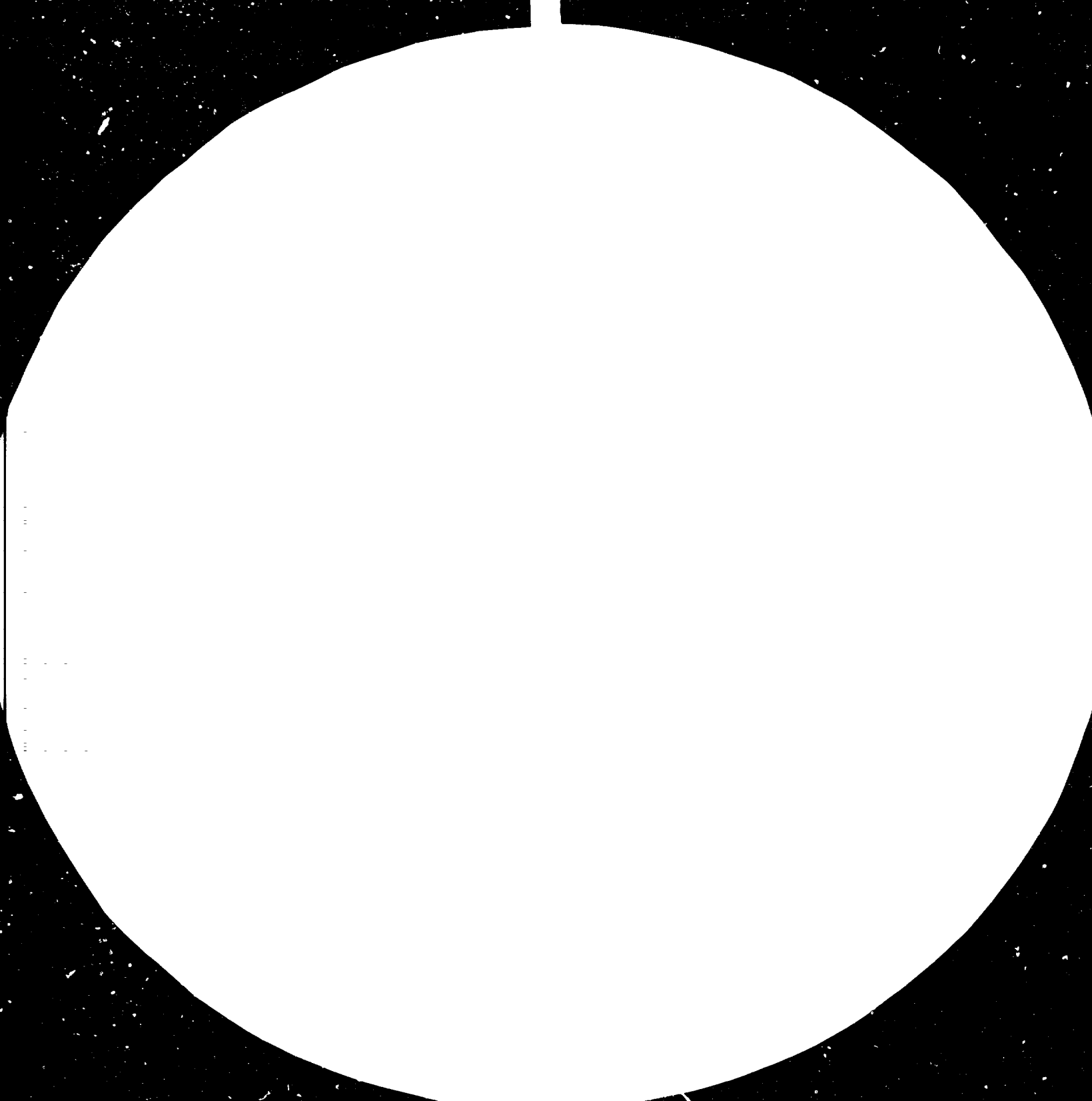
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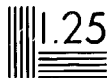
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Resolution test chart showing patterns of vertical and horizontal lines with numerical labels: 1.0, 1.1, 1.25, 1.4, 1.6, 1.8, 2.0, 2.2, 2.5, 2.8.



NEWSLETTER

TECHNOLOGICAL INFORMATION EXCHANGE SYSTEM

Issue Number 21

June 1983

12732

Dear Reader,

I am pleased to report on the International Forum on Technological Advances and Development, held in Tbilisi, USSR, from 12 to 16 April 1983. This meeting was organized by UNIDO in co-operation with the USSR and the Georgian State Committee for Science and Technology as a preparation to the Fourth General Conference of UNIDO. In previous issues of the TIES newsletter, we have informed you in detail about the objectives and expectations of this meeting and I am therefore happy to report that the discussions at the Forum were very stimulating and resulted in concrete conclusions and recommendations. In particular I would like to mention here that it was concluded that the opportunity cost to developing countries for overlooking the technological advances is high, both in terms of the acquisition of inappropriate technologies and the aggravation of their technological dependence.

There is therefore a need for every developing country to take concrete actions of both a short-term and long-term nature. Short-term actions would include forecasting and assessment of the socio-economic impact of technological advances, careful choice of technologies and equipment to be imported and a strengthening of the negotiating capacity for their acquisition.

Long-term actions will call for imaginative attempts to apply the technological advances for improving the standard of living and upgrading the general technological level of the population as a whole. In this connection, it was recognized that no uniform prescriptions should be sought or applied for countries at different levels of development nor indeed for each type of technological advance. However, it was suggested that each country give consideration to acquiring a minimum level of capability in regard to important technological advances. This is particularly relevant for small developing countries in the early stages of technological development. Such countries would need a similar technological awareness as other countries in an interdependent world economy. A selective policy in accordance with their priorities was recommended.

The concept of "Technologies for Humanity" emerged from this meeting as a means towards identifying those technological needs that have a clear and urgent character to the human community which through concerted action could be solved.

Finally I would like to stress that high technology cannot be thought of as an escape route from the problems of development but should be seen within the range of available technology options from the traditional to the advanced.

A full report of the meeting can be requested from my office and has the symbol ID/WG/389/6.

G.S. Gouri
Director
Division for Industrial Studies

Technology acquisition

METHODOLOGY FOR EVALUATING DIRECT DAMAGE RESULTING FROM FAILURE TO FULFILL WARRANTY OR GUARANTY

Introduction

The consequences of failing to fulfill warranties/guarantees lower quality, lower consumption, delay completion dates - entail loss of sales and hence profit. This article describes in detail a methodology to evaluate direct damage resulting from such a failure. As an illustration the damages resulting from delayed commissioning of a plant has been taken, but the philosophy can be applicable to other type of damages such as those resulting from failing to meet planned capacity, raw material consumption, quality specifications or infringement of third party rights and infringement of licensor's patent rights by third parties. The article is taken from a contribution by Mr. Marc Beno (Licensing Manager, Lonzo), to the expert group meeting on warranty and guarantee provisions in technology transfer agreements.

Damages resulting from delayed commissioning of plant

The delay in commissioning a production unit means that its owner will have to postpone the appearance of his products on the market. If the unit was planned to be on stream just before a main sales period begins, as for example in the case of the fertilizer industry, such a postponement could mean the loss of a year's sales before the effective sales volume could begin again; in other cases, the delay may not show major consequences. This suggests that in each case the economic facts resulting from a delay must be analysed before the contract is signed and a proper remedy clause drafted. It is generally useful to set a defined amount as liquidated damage due for every day of delay.

The loss of profit resulting from late start-up is relatively easy to calculate: if the yearly capacity of the plant is a units in n days, the daily loss amounts to $\frac{a}{n}$ units. In general, n varies between 300 and 330 days. (Some manufacturers prefer to state the capacity of the plant in units per hour.) If the profit generated by one manufactured unit is b \$, the daily loss would be $\frac{a \cdot b}{n}$ \$. However, there is also an out-of-pocket loss to be considered, caused by the impact of the delayed start-up on fixed and variable costs: the investment has been made; interests on the spent capital are running; the plant has to be depreciated; the labour force has been hired and trained and wages are to be paid; the raw materials have been bought and stocked and interests on these expenditures have to be added.

It is suggested that this loss be calculated to include the investment, the interests resulting from expenditures, the wages and other overheads. To calculate the interest on the spent amount, the formula is well known:

$$I. \quad I = \frac{C \cdot i}{100}$$

I = interests

C = amount spent on plant, machinery, building, storage facility, laboratories, offices, raw materials, labour etc.

i = rate of interest.

The question is whether one should choose the bank rates for loans or the calculated rate of return of the project. Each of these rates can be justified, the choice will very much depend on the specific case. The most justified and simplest way in our view is to choose the calculated rate of return of the project.

First of all, it gives an objective value of the true loss incurred by the licensee. Since all factors of the project have been accounted for, including current bank interests, overheads, lost profits etc., the drawback is that the raw material consumption (which does not in effect take place), is assumed. It is felt that this is a minor inconvenience with regard to simplicity. Choosing the bank interest rates in our view has more drawbacks than advantages, since they do not take into consideration most of the relevant factors. Of course, one may be able to consider that raw materials are not consumed, but one has to calculate and separately list all other factors such as profit loss, labour, capital spent, depreciation and other overheads.

The suggested calculation then reads as follows: using the formula I., the daily loss (l_d) may be calculated as follows:

$$II. \quad l_d = \frac{C \cdot r}{100 \cdot 365}$$

l_d = daily loss

C = capital spent

r = internal rate of return

365 = may be changed into the number of actual production days on which the plant capacity is based, e.g. 345, 330 or 300 etc.

and the loss during the whole time of the delay will be:

$$III. \quad l_t = l_d \cdot D$$

l_t = total time of delay

D = number of days which have passed between the planned and the effective start-up

l_d = daily loss

In combining formulas II and III, we shall obtain

$$IV. \quad l_t = \frac{C \cdot r \cdot D}{360}$$

The question now is whether an increment on this amount is justified. A justification can be drawn from the occurrence of sales cycles. In cases where the contractual start-up of the plant misses the sales cycle, the relevant loss can be claimed. In such a case, D in formula IV. may be the number of days of the cycle to be considered. Another justification may be that supply contracts may be terminated by customers and damages accrue to them, not to mention the loss of reputation as a reliable supplier. Of course, we cannot evaluate the consequences in advance since the partners are unknown at the time of contracting and the market may change from time to time. As it was said earlier, only the effective damage can be claimed.

UNIDO activities

LIMA MEETING ON INDUSTRIAL DEVELOPMENT STRATEGIES

The High-level Expert Group Meeting Preparatory to the Fourth General Conference of UNIDO: Industrial Development Strategies and Policies for Developing Countries held 18-22 April 1983 in Lima, Peru, aimed at establishing a dialogue with experts in one key area of greatest overall concern to policymakers responsible for industrial development in developing countries and of direct relevance to practically the entire agenda of UNIDO IV. The Meeting addressed itself to the following questions:

- What lessons for the future could be drawn from the experience of strategies and policies and from the pattern of industry established in the last decade in the developing countries?
- What strategy options emerge for industrial development in the third world in the 1980s and 1990s in the light of the current crisis and changing global conditions?
- What new possible approaches could be conceived at the international level to support national endeavours by the developing countries and to respond to emerging challenges?

It was felt that by raising these key questions and initiating an in-depth discussion along these lines, the Meeting did fulfill an important task. In the sessions of the meeting, and especially in the working groups, a number of essential observations and recommendations were made which will undoubtedly be complemented and substantiated in the further preparatory work for and in the actual debate at UNIDO IV. It is evident that prevailing external forces and lessons drawn from past experience call for a re-assessment of and a search for new approaches for industrial strategies and policies for the 1980s and 1990s by developing countries.

From the discussions, a number of essential messages can be singled out. First, the increased economic interdependence, the far-reaching internationalization of industrial production arising from developments in the past decades, and the international operations of large and powerful transnational entities have narrowed the options for individual developing countries in their choice of industrial development strategies and policies. Currently, the international economic crisis is hampering industrial growth for the developing countries and directly influencing their strategy decisions.

Secondly, most developing countries seem to have relied extensively on external growth prospects and have largely neglected internal potentials and requirements. An increasing attention to the utilization of internal growth dynamics is now being observed while at the same time, due to severe balance-of-payments problems, exports of manufactures are being promoted.

Thirdly, the current crisis has revealed the vulnerability of established production structures in developing countries and the need for greater efficiency in the management of resources, operation of industrial plants, planning of new investments, and in the application of science and technology for industrial development.

Against this background and on the basis of the discussions a number of observations can be made. Given the external pressures on the developing countries, a global move towards economic recovery, the resolution of international financial problems, and a halt in protectionism of developed countries are fundamental issues to be attended to by the international community. Without an international economic environment conducive to continued industrial development of the third world, no national strategies and policies can overcome the prevailing problems.

At the level of national measures, it can be concluded that there is obviously no one strategy applicable to all - or even many - developing countries. Rather, the specific conditions, resources and prospects of individual countries are decisive for the choice of the particular approach. It is also evident that in the future a developing country cannot confine itself to homogeneous industrial strategy. Rather the strategy must reflect the complex pattern of short- and long-term considerations and a mix of a number of different development priorities.

These complex industrial strategies and policies being perceived by national policy-makers in the third world for the 1980s and 1990s are characterized by multifaceted approaches aiming at:

- Establishing a socially and economically viable industrial production structure;
- Adjusting previously established production structures; and
- Creating flexible production systems better able to be adapted to changing external conditions and technological advance.

To this end, industrial strategies are being conceived which can no longer be categorized in the traditional manner (e.g., export-oriented, import-substitution) but which will encompass for instance both low and high technology, both domestic and foreign inputs, both industrial and agricultural priorities. Whereas these strategies may be characterized as overall integrated approaches, it seems likely that a differentiation of their application will be pursued which could lead to the emergence of two kinds of industrial activities: one more employment-, domestic market- and domestic input-oriented traditional segment of industry and one modern, high technology and internationally oriented segment.

It was against this increasing complexity of national industrial strategies and policies and the rapidly changing international conditions that the call was made for an expanded role for the international community in supporting the industrial development aspirations of the developing countries, for expanded international industrial co-operation as a framework and support for the individual national strategies and policies, for greater transparency of national actions for development and adjustment in both developed and developing countries, and for a greater participation by UNIDO in the surveillance and conception of industrial development strategies and policies in the developing countries.

EXPERT GROUP MEETING ON GUARANTY AND WARRANTY PROVISIONS IN INTERNATIONAL TRANSFER OF TECHNOLOGY TRANSACTIONS - WITH SPECIAL REFERENCE TO PUBLIC ENTERPRISES IN DEVELOPING COUNTRIES

Between 11 and 15 April, the above expert group meeting, organized jointly by UNIDO and ICPE, met at ICPE headquarters in Ljubljana, Yugoslavia. The meeting brought to Ljubljana experts from Egypt, Switzerland, Argentina, USA, Venezuela, FRG and Yugoslavia, as well as a representative of UNCITRAL.

The purpose of the meeting was to review background material prepared by some of the invited experts as well as other available material on the warranty and guaranty provisions on international transfer of technology transactions.

The group, as a matter of fact, faced a formidable task of not only reviewing available materials but designing the detailed outline and content of the manual/guide which will serve entrepreneurs from developing countries in their operations.

furthermore, the expert group was expected to move from the traditional strictly legal approach to guaranty/warranty issues and attempt at defining approaches which will combine legal aspects with managerial and developmental problems.

It seems that most of the objectives of the meeting were met and extremely lively and in-depth discussions contributed greatly to the efforts of both ICPE and UNIDO in preparing the manual/guide.

The expert group agreed that the manual will consist of three parts: a general part containing ten chapters covering, purpose, scope and basic definitions, characteristics of technology transfer; formulation of objectives by technology recipients and suppliers; criteria for the establishment of scope of guarantees; overview of guaranty and warranty provisions; monitoring of project implementation; procedures to assure performance, corrective actions and remedies and an overview of enforcement procedures. The general part will be followed by a checklist of activities by the recipient/supplier of technology in the procurement of technology.

Finally, part three will consist of a descriptive and illustrative list of major guaranty provisions, including an extensive commentary, glossary of terms, bibliography and reference materials.

The draft manual is expected to be available in late August/beginning of September, after which a smaller group will possibly review it once again.

It is the intention of ICPE and UNIDO to present the final manual at the next TIES^{1/} meeting, to be held in October in Caracas, Venezuela.

We believe that the first copies of the manual will be available around spring 1984 and published in UNIDO's Development and Transfer of Technology Series.

Sweden

Plant level co-operation meeting to promote technology transfer for small- and medium-scale enterprises.

The transfer of technology flow between enterprises in the industrialized countries and the developing countries is considerably constrained by the fact that only a limited number of enterprises are in the position financially, and from a risk taking standpoint, to explore business opportunities, let alone pay for technology transfer costs well in advance of realized earnings. Even under licensing arrangements without equity involvement there are risks, uncertainties and time delays associated with royalty payments. Also, few licensors are in the position to incur the additional costs of technical support services that may be associated with the successful transfer of an operationally efficient plant.

^{1/} Technological Information Exchange System.

In order to overcome such constraints and promote an efficient transfer of technology at the plant level, UNIDO has initiated a programme in this area with the assistance of SIDA (Sweden). In previous issues of the TIES newsletter, we reported its objectives and activities in detail. In short, this programme is intended to facilitate the transfer of technological know-how through plant level co-operation on a mutual beneficial basis and UNIDO's role is therefore to assist individual entrepreneurs to articulate their technological needs and afford them the opportunity for making contact with potential partners. To execute the project within a workable framework, a limited number of developing countries (India, Egypt, Kenya and Sri Lanka) and a specific sector (metalworking, light engineering) were selected. Some 100 enterprises in developing countries were visited by a team of experts and based on the information collected, company profiles were prepared articulating the technological needs. Suitable partners were then identified, having selected Sweden as a technological source country. Swedish enterprises interested in collaborating on the basis of the company profiles then prepared their terms of reference for such a collaboration. Fourteen of such intents for possible collaboration were discussed and finally agreed upon. A meeting to bring together the potential partners and discuss the proposals in detail was held in Malmö, Sweden. Financial institutions like Swedefund also participated in the discussions.

The results of these discussions were promising. One licensing agreement for the production of two flute-bearing heads was signed. One memorandum of agreement was signed for the production of segmental saws in India through the establishment of a joint venture company. In addition, four agreements were signed for the transfer of know-how associated with the delivery of special purpose machines and training for the production of such products as control valves, tubular heating elements, numeric controlled lathes and chucks.

UNIDO was requested by the developing countries to provide assistance in the drafting of agreements which would comply with the legislative framework prevailing in their country and to assist in the design of suitable training programmes and in some cases assist in the location of suitable financial sources.

The general feeling of the participants was that the programme was successful in matching small and medium scale enterprises located in different regions and through its preparatory work reduced risks. In addition, through its technical assistance programmes it is able to follow the negotiations towards a successful technology transfer.

Registry news

Peru

The National Commission on Foreign Investment and Technology (CONITE) has contributed to the discussion on the appropriate methodology for monitoring technology transfer contracts with the following considerations:

Technology transfer contract monitoring

Article no. 137 of the Peruvian Constitution states that "the State authorities, registers and supervises direct foreign investment and the transfer of foreign technology as a complement of the national ones, provided these encourage employment, the country's capitalization and national investment and contribute to the development in accordance with the economic programme and integration policy".

In addition, the resolution of the Board of Directors of CONITE no. 005-81-EFC-35 states that "CONITE shall supervise the performance of approved contracts and especially if the elements and subject matter of the contract are being effectively operated under adequate economic conditions and in accordance with the terms and conditions authorized". A proper methodology to execute such tasks is at present under consideration. The criteria for such a methodology could be summarized as follows:

Criteria

Since the number of contracts approved by CONITE is large it is convenient to differentiate between two types of contracts, namely:

1. new contracts
2. renewed contracts

Taking this distinction into consideration, and realizing that it is practically impossible and perhaps even unnecessary to closely monitor all approved contracts, a sample number of contracts from each set of contracts should be selected for monitoring. The sample number of contracts should be selected on the basis of the following criteria. For new contracts these criteria are the level of royalty; the total amount of payment expected to be paid to licensor; expected utilization of local resources; annual sales value of product under consideration vis-à-vis total enterprise sales value; level of participation of the licensor in licensee's equity structure and the extent of training obligations. For renewed contract the criteria will be slightly different, since the previous duration of contract will be taken into consideration.

On the basis of these criteria, a selection of contracts is made and a work programme established. The monitoring will only start two years after the approval of the agreement to give the enterprise sufficient time to incorporate the agreed transfer of technology into its production. This assumes of course that the duration of the contract is more than two years.

Monitoring

The monitoring itself consists of two inter-related steps. First, the recipient enterprise is requested to provide factual information on the object of the agreement. The format used and the type of information requested will depend on each individual case. Secondly, a plant visit is made by CONITE officials to discuss in detail the information obtained in the first step. Particular attention should be given to the following elements: training, technical visits, supply of formulae, models and designs etc., quality control, number of

consultant visits and innovations introduced by the licensee.

Conclusions

This brief description of the methodology on monitoring technology transfer contracts underlines the importance of the close contact the approval authority should have with the entrepreneurs. The plant visits are essential in obtaining detailed and factual information on the implementation of the agreement and will give the approving authority the feedback for the good execution of its task which apart from protecting the local business interest is also the promotion of the appropriate transfer of technology.

CHINESE EXPERIENCE ON UTILIZATION OF FOREIGN INVESTMENT

(The following article is abstracted from a country paper prepared by the Chinese Government at the ad hoc intergovernmental meeting on transnational corporations. It is believed that it is in the interest of our readers that after publication of the various legislative forms the Chinese Government has adopted over the past years to facilitate foreign investment and associated technology transfer, an assessment of these efforts is given.)

Brief account of the utilization of foreign investment

In China there are a few forms of utilizing foreign capital. In the coming years, however, the most important form should be the absorption of direct investment, including equity joint ventures, co-operation enterprises, joint exploration and exploitation and compensation trade. Since 1979 we have made encouraging progress in the absorption of direct investment from Hong Kong, Macao and foreign countries and in foreign economic and technological co-operation in general. By the end of 1981, 40 joint ventures using Chinese and foreign capital have been endorsed by the Chinese Government with a total amount of investment of more than \$US 189 million, of which the investment from foreign partners totalled about \$US 87.5 million. Among these 40 ventures, there are 13 light industry projects, 2 woollen fabrics projects, 9 factories producing machinery and electronic appliances, 3 food-stuff enterprises, 1 pharmaceutical plant, 1 farming project, 2 raising and breeding projects, 8 tourist and service projects and 1 leasing service project. In addition to the above, more than 390 contracts for co-operation enterprises have been approved with a total investment of \$US 1.8 billion provided by foreign partners. As regards oil exploration and exploitation, China has concluded and implemented 9 agreements on geophysical survey in the South China Sea and the southern Yellow Sea with 48 oil companies from 13 countries such as the United States, Japan, United Kingdom, France and Italy. Moreover, China has concluded 4 contracts on oil exploration and exploitation in Bo Hai and a part of the Beibu Gulf with Japan's oil consortium and two French oil companies. The amount of investment totalled \$US 839 million, of which \$US 498 million was provided by foreign investors. 590 contracted projects for medium- and

small-sized compensation trade have been approved and put into operation, of which machineries and equipment was provided by foreign investors to the value of approximately \$US 460 million.

To further the absorption of direct foreign investment, the China investment promotion meeting was held in Guangzhou from 7 to 11 June 1982 with the co-sponsorship of the Ministry of Foreign Economic Relations and Trade of the PRC and the United Nations Industrial Development Organization. At that meeting, the Chinese pertinent factories and enterprises held talks on 130 projects with foreign enterprises and business personnel from Hong Kong and Macao. Among the 130 projects there are 70 on which letters of intent or memoranda were signed, either in the form of equity joint ventures, contractual joint ventures or compensation trade. At present relevant parties from the Chinese and foreign or external sides are making frequent contacts, exchanging necessary information and carrying out feasibility studies so as to actively create conditions for the realization of these projects as soon as possible.

It is only three years since China began to utilize foreign capital, introduce advanced technology and equipment and run equity joint ventures. Up to the present the number of projects completed is limited and the amount of capital utilized is far from being large. The whole work is still at its initial stage. However, by running these projects, we realize that where the principle of equality and mutual benefit is adhered to and good faith is cherished by both the Chinese and foreign partners, there is the appropriate field for co-operation. Taking the equity joint ventures that have been put into operation for example, the foreign partners have gained profits and the Chinese partners have achieved some economic results as well. We believe that through making further efforts and by summing up experiences and raising the operational and administrative standard of the joint ventures, more gains will be obtained for both the Chinese and foreign partners.

SOFTWARE LICENCE

One of the recommendations made at the last TIES meeting of heads of technology registries in New Delhi was that the UNIDO secretariat should continue its work in assisting the member countries to handle and evaluate licensing agreements for computer software.

The initial work and suggestions of the secretariat were contained in document ID/WG.383/3 which has already been reprinted for the interest of our readers in TIES news-letter nos. 19 and 20.

Now we should like to inform our readers that the secretariat is co-operating with the European Association of Computer Users and through them with the Institute of Purchasing and Supply in the United Kingdom. The institute is very much involved in the elaboration and development of various model and recommended agreements for computer soft-

and hardware. From these sources we have received two draft agreements which we reproduce hereunder and which in our view may be of interest and use by the TIES members. The first one is entitled "Non-disclosure agreement for the trial of computer programming" and is intended as a model text to be used exclusively for the testing of a programme prior to its acquisition or licensing.

The second draft entitled "Software licence" should be primarily used when licensing packaged software.

By publishing these drafts we wish to invite our readers to comment on their usefulness in the hope that these will help us in drawing up our own models. So far extensive assistance in this respect has been received from only a few registries (Philippines, Malaysia, Portugal, Venezuela) and we hope that others will soon follow.

D R A F T

NON-DISCLOSURE AGREEMENT FOR THE TRIAL OF COMPUTER PROGRAMMES

Customer
 Name
 Address
 Telephone Number
 Contact Name(s)

Supplier
 Name
 Address
 Telephone Number
 Contact Name(s)

Programme

Specified Computer

Specified Location

Trial Period

Charge

In consideration of the Customer's interest in the Programme and upon payment of the charge specified above, the Supplier hereby grants to the Customer a non-exclusive non-transferable right to use the Programme on the Specified Computer at the Specified Location, subject to the following:

1. The Programme may be used only for the purposes of testing and evaluation.
2. The Programme remains the sole and exclusive property of the Supplier.
3. The Customer shall not copy or duplicate the Programme nor disclose the Programme or any part thereof to any third party.
4. The Customer and the Supplier shall keep confidential all information obtained under or in connection with this Agreement and shall not disclose the same to any third party.
5. The Trial Period may be extended by agreement in writing between the parties but at

the end of the Trial Period or extended Trial Period the Customer shall either enter into a Licence Agreement with the Supplier for the use of the programme or return the programme to the supplier together with all material associated with the Programme. Alternatively, at the option of the Supplier, the Supplier may request that the Customer destroy the Programme and all associated material and certify to the Supplier that this has been carried out.

6. The Customer shall indemnify the Supplier against any loss, claim or damage arising out of the Customer's use or possession of the Programme provided that such loss claim or damage is not caused by the negligence of the Supplier, his employees or agents. Under no circumstances shall the Supplier be liable to the Customer for loss of business or of profits or for any consequential costs arising out of the Customer's use or possession of the Programme.

FOR THE CUSTOMER	FOR THE SUPPLIER
<u>Signature</u>	<u>Signature</u>
<u>Name</u>	<u>Name</u>
<u>Title</u>	<u>Title</u>
<u>Date</u>	<u>Date</u>

D R A F T

SOFTWARE LICENCE

1. Definition

- (i) "Documentation" shall mean the manual or manuals and other documents associated with the Programme supplied by the Licensor to the Licensee.
- (ii) "Equipment" shall mean the computer or computers described in the Appendix and situated at the location or locations identified in the Appendix.
- (iii) "Licence" shall mean this document with its appendices.
- (iv) "Licensee" shall mean
- (v) "Licensor" shall mean and shall include the Licensor's legal personal representatives, successors and assigns.
- (vi) "Programme" shall mean the computer programme in machine readable form, as described in the Appendix, but excluding the source code.

2. Licence

The Licensor hereby grants to the Licensee a non-exclusive, non-transferable licence to use the Programme on the Equipment on the terms and conditions contained herein and for the period stated in the Appendix.

3. Charges

The charges set out in the Appendix shall become payable from the date or dates specified

in the Appendix. Once only licence charges shall be fixed and not subject to any variation. The Licensor shall have the right to vary periodic licence or maintenance charges by giving to the licensee not less than 3 months written notice in advance of such variation effective at the end of the initial period stated in the Appendix or at any time thereafter. Before such variation is implemented the Licensor shall satisfy the licensee that, as a result of such variation, the charges will not exceed the Licensor's then current standard scale of charges.

4. Terms of Payment

4.1 Following acceptance under Clause 6, payments are due on the dates or at the intervals specified in the Appendix and shall be made within 30 days or receipt by the Licensee of a correct invoice.

4.2 The Licensee reserves the right to withhold payment against any invoice which is not submitted in accordance with the Licence and shall forthwith notify the Licensor accordingly in writing.

4.3 If the payment of any sum due under the Licence shall be delayed by the Licensee other than in accordance with Sub-Clause 4.2, the Licensor shall be entitled to charge interest at the rate stated in the Appendix hereto on the amount of the delayed payment for the period of the delay.

5. Delivery

The Programme and Documentation shall be delivered on the media to the location and installed (if applicable) by the date, all as specified in the Appendix.

6. Acceptance

6.1 Where no acceptance tests are specified in the Appendix, acceptance of the Programme shall be deemed to take place on delivery and installation (if applicable) of the Programme and Documentation in accordance with Clause 5.

6.2 Where acceptance tests are specified in the Appendix, acceptance of the Programme shall be deemed to take place on the satisfactory completion of such tests on the Equipment of other equipment as provided under Sub-Clauses 7.2 and 7.3.

7. Use

7.1 Except as specified in the Appendix, the Programme shall be used only for the Licensee's own data processing and shall not be used to provide a data processing service to any third party whether by way of trade or otherwise.

7.2 The Licensee may use the Programme only on the Equipment. If the Programme cannot be used because the Equipment or any part thereof is temporarily inoperable, then the Licence will be deemed to apply, without any additional payment to the Licensor but at the Licensee's risk and expense, to any other compatible equipment until the Equipment becomes operable.

7.3 The Licensee may not transfer the Programme permanently to other equipment without the consent in writing of the Licensor which shall not be unreasonably withheld.

7.4 The Licensee shall follow all reasonable instructions given by the Licensor from time to time with regard to the use of the Programme. The Licensee shall permit the Licensor, at all reasonable times, to verify that the use of the Programme is within the terms of the Licence.

7.5 Except for test purposes, the Licensee may not use the Programme before acceptance under Clause 6.

8. Documentation

8.1 The Licensor shall supply to the Licensee with the Programme those items of the Documentation specified in the Appendix.

8.2 The Licensee may not take copies of the Documentation without the Licensor's written agreement which shall not be unreasonably withheld. At the request of the Licensee the Licensor shall provide such additional copies of the Documentation as the Licensee may reasonably require for the normal operation of his business, at the Licensor's then current standard scale of charges.

9. Programme Copying

The Licensee may only make such copies of the Programme as are necessary for his operational use and security. This Licence applies to such copies as it applies to the Programme.

10. Performance

The Licensor undertakes that, provided it is operated in accordance with the Licensor's instructions, the Programme will, from the date of delivery, perform in accordance with the Licensor's published Specification and the Documentation. The Licensor does not guarantee that the Programme is free of minor faults not affecting such performance. The undertaking given in this Clause is in lieu of all warranties as to fitness for purpose.

11. Maintenance and Support

11.1 Where a maintenance service is included in the terms of the Licence, it shall be provided as specified in the Appendix.

11.2 Under such maintenance service error correction will be provided on the condition that the Licensee has

- (i) provided adequate information in respect of any malfunction in the Programme
- (ii) incorporated all error correction amendments issued by the Licensor, and
- (iii) not otherwise changed the Programme.

11.3 Where a new issue or update of the Programme and/or Documentation or part thereof is released by the Licensor it shall be installed (if applicable) by the Licensor under

the maintenance service and accepted and used by the Licensee except where the Licensee opts to retain and use the superceded issue of the Programme, in which case the Licensor shall use his best endeavours to provide a maintenance service on terms to be agreed.

12. Modifying or Merging

The Licensee may not without the prior written consent of the Licensor, modify the Programme or merge the Programme with programmes not provided by the Licensor.

13. Ownership

13.1 The Programme (including the source code) and the Documentation and all parts thereof and copyright therein shall remain the property of the Licensor. Except only to the extent that rights are necessary to enable the Programme and Documentation to be used by the Licensee in accordance with the Licence, no rights in any copyright, patent, registered design or trade mark owned by the Licensor shall pass to the Licensee.

13.2 The Licensee shall follow all such reasonable instructions given by the Licensor from time to time with regard to the use of trade marks owned by the Licensor and other indications of the property and rights of the Licensor.

14. Assignment and Sub-Letting

Neither party shall assign, sub-let or otherwise transfer the Licence without the prior written consent of the other party, which shall not be unreasonably withheld.

15. Patents, Designs and Copyright

15.1 The Licensor shall fully indemnify the Licensee against all damages, (excluding consequential damages) costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement in the United Kingdom of copyright by the use or possession of the Programme or Documentation supplied by the Licensor under the Licence, subject to the following:

- (i) The Licensee shall promptly notify the Licensor in writing of any alleged infringement of which he has notice;
- (ii) The Licensee must make no admissions without the Licensor's consent;
- (iii) The Licensee, at the Licensor's request and expense shall allow the Licensor to conduct any negotiations or litigation and/or settle any claim. The Licensee shall give the Licensor all reasonable assistance. The costs incurred or recovered in such negotiations or settled claim shall be for the Licensor's account.

15.2 If at any time an allegation of infringement of copyright is made in respect of the Programme, or if in the Licensor's reasonable opinion such an allegation is likely to be made, the Licensor may at his own expense modify or replace the Programme so as to avoid the infringement, without detracting from its

overall performance, the Licensor making good to the Licensee any loss of use during modification or replacement.

16. Indemnity and Insurance

16.1 The Licensor shall indemnify and keep indemnified the Licensee, against injury (including death) to any persons or loss of or damage to any property (including the Programme) which may arise out of the act, default or negligence of the Licensor, his employees or agents in consequence of the Licensor's obligations under the Licence and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto, provided that the Licensor shall not be liable for nor be required to indemnify the Licensee against any compensation or damages for or with respect to injuries or damage to persons or property to the extent that such injuries or damage result wholly from any act, default or negligence on the part of the Licensee his employees or contractors (not being the Licensor or employed by the Licensor).

16.2 The Licensee shall indemnify and keep indemnified the Licensor for the duration of the licence against injury (including death) to any persons or loss of or damage to any property (including the Programme) which may arise out of the act, default or negligence of the Licensee or any contractor employed by the Licensee (other than the Licensor) and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

16.3 Without thereby limiting his responsibilities under Sub-Clause 16.1, the Licensor shall insure with a reputable insurance company against all loss of or damage to property and injury to persons (including death) arising out of or in consequence of the Licensor's obligations under the Licence and against all actions, claims, demands, costs and expenses in respect thereof, save only as is set out in the exceptions in Sub-Clauses 16.4 and 16.5.

16.4 Except in respect of injury (including death) to any person or loss of or damage to any property not belonging to the Licensee, the liability of the Licensor to the Licensee under Sub-Clause 16.1 in respect of any one act or default shall not exceed the sum stated in the Appendix hereto.

16.5 The Licensor shall not be liable to the Licensee for loss of use or of profit or of contracts suffered by the Licensee and arising out of such injury, loss or damage.

17. Termination

17.1 The Licensee may terminate the Licence by giving three months prior written notice to the Licensor to take effect at the end of the initial period stated in the Appendix or at any time thereafter.

17.2 The Licensor may not terminate the Licence except in the circumstances described in Sub-Clause 17.3 and 17.4.

17.3 The Licence may be terminated forthwith by either party if the other party is in

fundamental breach of the terms of the licence and fails to remedy such breach within 14 days of receipt of notice thereof in writing.

17.4 Either party may terminate the Licence if the other party shall become bankrupt or make an arrangement with his creditors to go into liquidation.

17.5 Termination of the Licence shall not prejudice any rights of either party which have arisen on or before the date of termination.

17.6 Within seven days of termination the Licensee shall destroy all copies, forms and parts of the Programme under his control (including merged programmes) and shall certify to the Licensor in writing that this has been done.

18. Source Coding

Unless otherwise agreed, the Licensee shall only have access to the source coding of the Programme in the event that the Licensor is in fundamental breach of the terms of the Licence or becomes bankrupt or makes an arrangement with his creditors to go into liquidation.

19. Confidentiality

19.1 The Licensee undertakes not to disclose the Programme to any third party (other than a subsidiary or parent company of the Licensee) without the prior written consent of the Licensor.

19.2 The Licensor's consent referred to in Sub-Clause 19.1 shall be given (*inter alia*) to enable the Licensee to disclose (under conditions of confidentiality satisfactory to the Licensor) the Programme to a third party for the performance of services for the Licensee.

19.3 The Licensor and the Licensee shall keep confidential all other information obtained under or in connection with the Licence and shall not divulge the same to any third party without the consent in writing of the other party.

19.4 The provisions of this Clause shall not apply to:

- (i) Any information in the public domain otherwise than by breach of this Licence.
- (ii) Information in the possession of the receiving party thereof before divulgence as aforesaid.
- (iii) Information obtained from a third party who is free to divulge the same.

19.5 The Licensor and the Licensee shall only divulge confidential information to those employees who are directly involved in the Licence or use of the Programme and shall ensure that such employees are aware of and comply with these obligations as to confidentiality.

19.6 The provisions of this Clause shall come into effect on the signing of the Licence and shall continue in force notwithstanding the termination of the Licence.

20. Force Majeure

Neither party shall be liable for failure to perform its obligations under the Licence if such failure results from circumstances beyond the party's reasonable control.

21. Waiver

No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of the Licence shall either be or be deemed to be a waiver or in any way prejudice any right of that party under the Licence.

22. Training

The Licensor shall provide instruction in the use of the Programme for the Licensee's personnel in accordance with the requirements of the Appendix. Unless otherwise specified no charge shall be made for such instruction but the Licensee shall be responsible for paying any travel or living expenses.

23. Publicity

The Licensor shall not, without the prior written consent of the Licensee, advertise or publicly announce that he is undertaking work for the Licensee.

24. Arbitration

Except where otherwise provided, if any dispute or difference arises between the Licensee and the Licensor in connection with or arising out of the Licence and provided that either of them shall have given to the other notice in writing thereof, such dispute or difference shall be referred to a single arbitrator to be agreed between the Licensee and the Licensor or, failing such Agreement within fourteen days from receipt of such notice in writing, to be nominated by the President for the time being of the British Computer Society on the application of either party and any such reference will be deemed to be a submission for arbitration within the meaning of the Arbitration Act 1950 (unless otherwise specified in the Licence) or any statutory re-enactment or amendment thereof for the time being in force.

25. Law

Unless otherwise agreed in writing between the parties, the Licence shall be subject to and construed and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England.

7. Maintenance Service & Period

8. Initial Period of Licence

9. Licence Charges

10. Payment Terms

12. Training

The Licence charges shall include the provision of days training at Additional training will be charged at £..... per day. Consultancy will be charged at £ per day.

13. Indemnity and Insurance

The liability of the Licensor to the Licensee under Sub-Clause 16.1 in respect of anyone act or default shall not exceed £.....

14. Terms of Payment (Sub-Clause 4.3)

The rate of interest to be charged by the Licensor to the Licensee in the event of delays in payment shall be

15. Acceptance Tests

16. Special use (Clause 7.1)

APPENDIX

Clause 11.1 Delays by the Contractor

(i) Percentage of Contract Price to be deducted as damages for each week between the agreed Completion Date and the actual Acceptance Date.%

(ii) Maximum percentage of the Contract Price which the deductions may not exceed.%

Clause 19.4 Indemnity and Insurance

The liability of the Contractor to the Customer under Sub-Clause 19.1 in respect of any one act or default shall not exceed. £.....

Clause 20.5 Terms of Payment

The rate of interest to be charged by the Contractor to the Customer in the event of delays in payment shall be.%

APPENDIX

Licence No: .

1. Programmes

2. Equipment

3. Location(s)

4. Delivery Date

5. Media

6. Documentation Title No. of Copies

Meetings

TIES NEW DELHI FOLLOW-UP MEETING

On 6 to 8 July, UNIDO will hold a meeting of selected heads of technology registries to discuss ways for expanding the TIES system and add new dimensions to its activities.

The following heads of registries will be invited: Mr. A. Vaz Pinto, Foreign Investment Institute, Portugal; Ms. L. Bautista, Technology Transfer Board, Philippines; Mr. S.L. Kapur, Ministry of Industry, India, and G. Amaré, SIEX, Venezuela.

The recommendations of the meeting and its report will be submitted to the Eighth Meeting of Heads of Technology Transfer Registries to be held in Latin America towards the end of this year.

* * *

United Nations Commission on International Trade Law, 16th Session (UN Meeting), Vienna, Austria, 24 May - 3 June 1983.

Expert Group Meeting Preparatory to the Fourth General Conference of UNIDO on Human Resources Development for Industrialization, Yaoundé, Cameroon, 30 May - 3 June 1983.

Meeting of the Group 77: Global Meeting on Industrialization (ID-5), Vienna, Austria, 30 May - 3 June 1983.

Workshop on Institutional and Structural Responses of Developing Countries to Technological Advances, Dubrovnik, Yugoslavia, 7 - 11 June 1983.

Programme for the Identification and Promotion of Industrial Investment Projects Related to one Specific Industry Sector (Electronics), Tokyo, Japan, 11 July - 5 August 1983.

High-Level Preparatory Meeting for the Fourth General Conference of UNIDO on Industrial Co-operation Among Developing Countries, Bangkok, Thailand, 18 - 22 July 1983.

High-Level Preparatory Meeting for the Fourth General Conference of UNIDO on Energy and Industrialization, Oslo, Norway, 22 to 26 August 1983.

Publications

UNIDO/IS.228/Add.1/Rev.1. Bibliography of documents relating to the transfer of technology compiled by the UNIDO Technology Programme. Addendum.

UNIDO/IS.368. A statistical review of the world industrial situation 1982.

UNIDO/IS.370. Monitoring progress made in accelerating industrialization in the developing countries. Third survey, 1981-1982.

UNIDO IS.375. Boosting the economic impact of industrial R&D. A contract-oriented development programme for the Thailand Institute of Scientific and Technological Research (TISTR).

UNIDO/IS.376. Opportunities for co-operation among the developing countries for the establishment of the petrochemical industries. Sectoral working paper series no. 1.

UNIDO/IS.379. The development of African capacities for the design and manufacture of basic agricultural equipment. Sectoral working paper series no.2.

UNIDO/IS.380. Industrial development strategies and policies and socio-economic development in the developing countries. Social aspects of industrialization working papers.

UNIDO/CPE.5. Co-operation with national committees of UNIDO. Brief summary of major UNIDO programmes and activities.

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