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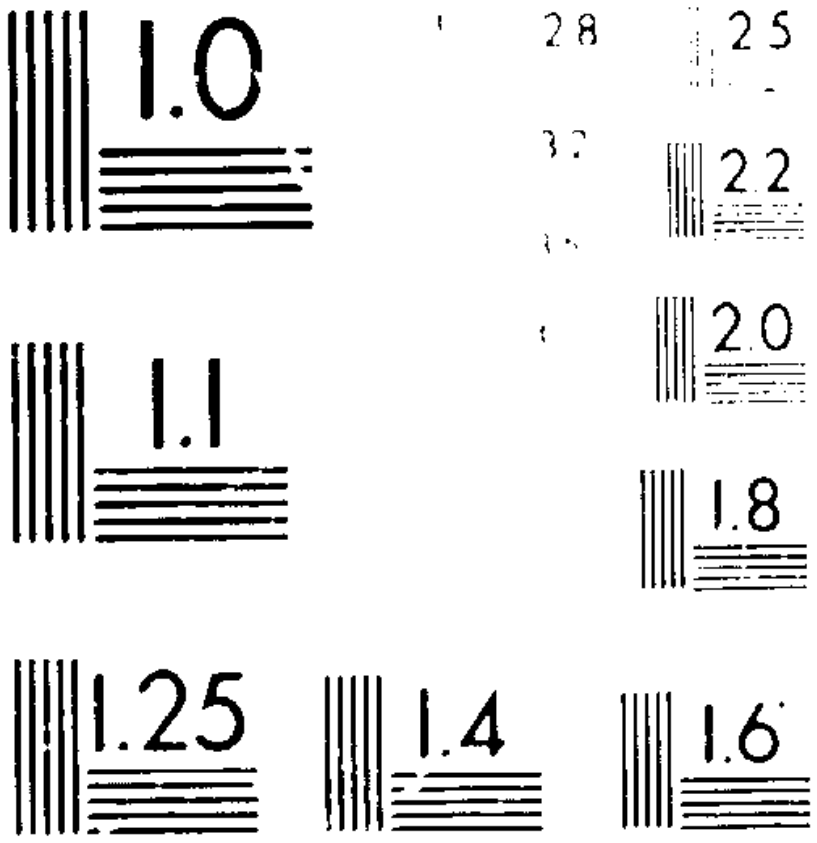
UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION
Vienna International Centre, P.O. Box 300, 1400 Vienna, Austria
Tel: (+43-1) 26026-0 · www.unido.org · unido@unido.org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NEWSLETTER

TECHNOLOGICAL INFORMATION EXCHANGE SYSTEM

Issue No. 28 12772 March 1985

Dear Reader,

The Fourth General Conference of the United Nations Industrial Development Organization (UNIDO), reaffirmed the importance of industrialization as a major factor in the overall development of developing countries and one which promoted a dynamic world economy. The Conference reviewed the background to the current international economic problems and their impact on industrial development. The broad objectives contained in the Lima Declaration and Plan of Action on Industrial Development and Co-operation and the New Delhi Declaration and Plan of Action on Industrialization of Developing Countries and International Co-operation for their Industrial Development, adopted at the Second and Third General Conferences of UNIDO, based on the principles contained therein, have been seen to be far from attainment. The Conference reviewed the progress in and constraints on the attainment of those objectives and adopted a series of practical measures in its resolutions addressed to the international community and UNIDO, relating to such issues as: the development of human resources; the strengthening of scientific and technological capacities; the mobilization of financial resources; energy and industrialization; industrial restructuring and redeployment; domestic industrial processing of raw materials; rural development and self-sufficiency in food supplies; the least developed countries; economic co-operation among developing countries; and the Industrial Development Decade for Africa. The Conference paid particular attention to the special problems encountered by Africa and the least developed countries and also agreed on measures designed to overcome those problems. In addition, and bearing in mind the mandate of UNIDO to promote industrial development, the General Conference addressed itself to a certain number of broader themes that were central in setting the context for the Conference itself. UNIDO has further expanded its activities following the General Conference by significantly strengthening its programme of assisting the negotiating capabilities of developing country entrepreneurs through training workshops.

In this connection I should like to mention that in March a workshop on technology transfer evaluation jointly organized by UNIDO and the Nigerian Office for Industrial Property (NOIP) will take place in Lagos. The workshop is addressed to NOIP's staff and representatives from various Nigerian Government agencies who are directly or indirectly concerned with the management of technology transfer and development in Nigeria. The presentations and the discussions will be centred around the economical aspects and impact of transfer of technology, with special attention to equity-related transfer of technology. The experience of NOIP as well as registries in other developing countries, namely India, Portugal and the Philippines, will be extensively examined by experts from those countries. The main issues for discussion will be:

1. Remuneration considerations and evaluation in equity and non-equity modes of technology transfer;

2. Multiple payments for elements of the technology portfolio i.e. separate fees/royalties for trademarks, know-how, technical assistance, managerial services, the use of short-term expatriate staff; parent-subsidiary payments, etc.;

3. Technology transfer with equity participation: trade-off between equity ratio and royalties for technology services; impact of different rates of national tax on enterprise profits and royalties;

4. CKD imports and transfer pricing;

5. Issues arising from licensee equity components being credit financed by the licensor;

6. Determination, monitoring and management of 'local value added'; components and materials for forward conversion by the enterprise; evaluation of total value added at the level of the Nigerian economy;

7. Linking royalty payments to local value added;

8. The evaluation of technology agreements in which the 'licensor' is not the owner of technology and is intermediating transfer of third party technology.

The workshop will be complemented by the analysis and evaluation of case studies, and based on the materials prepared by the experts, a course leader's guide on the evaluation of agreements involving equity participation will be prepared in order to continue with similar exercises in other developing countries.

Compiled by the Technology Group of UNIDO P.O. Box 300, A-1400 Vienna, Austria

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Opinions expressed in this newsletter do not necessarily reflect the views of UNIDO.

On the occasion of this workshop, Mr. Fred Okono, Director of NOIP, has prepared an overview paper on the Nigerian experience in regulating technology which will be published in this issue of the Newsletter.

In addition to this workshop in Nigeria, three more workshops are planned for 1985 in Africa covering negotiation aspects of transfer of technology. Furthermore, a pilot training course is under preparation on the interrelationship of project preparation and technology acquisition negotiation in co-operation with the Warsaw School of Economics. We will keep our readers informed of the exact place and dates of these activities and I am convinced they will contribute substantially to the development of an increased negotiation capability in developing countries.

G. S. Gouri
Director
Division for Industrial Studies

Registry news

The following is taken from a paper by Mr. Fred Okono, Director of the National Office of Industrial Property at Lagos, Nigeria, concerning technology transfer regulation in Nigeria.

Introduction

The present study summarizes the recent experience of Nigeria in regulating technology imports. Although the law on technology transfer was introduced in Nigeria in 1979, the regulatory machinery only became fully operational at the beginning of 1983. Thus the findings contained in the study are of a preliminary character. It is expected that in the course of time it will be possible to conduct a more thorough analysis of this important issue.

Legal and institutional framework for controlling technology transfer in Nigeria

The major act providing the legal and institutional framework for controlling technology transfer in Nigeria is the National Office of Industrial Property Decree No. 70 of 1979. It imposed the obligatory registration of all technology agreements concluded with foreign partners by Nigerian companies. It also created an institutional framework for controlling technology inflows into Nigeria by establishing a government agency called the "National Office of Industrial Property".

The National Office of Industrial Property (NOIP) is one of the main instruments for carrying out Nigerian Technology Policy, which in turn is a basic expression of the overall development policy. Nigerian technological policy has several goals that have to be considered when a transfer of technology agreement is being analysed. The principal goals of the technological policies to be achieved are the following:

(i) To encourage the flow of technology into the country in order to strengthen industrial development;

(ii) To encourage domestic enterprises to acquire foreign technologies suitable to indigenous requirements: in this sense, it is considered particularly important that the technology contributes to the creation of full employment of the Nigerian labour force;

(iii) To strengthen the negotiating capacity of Nigerians so that they may obtain the required appropriate technology at the best terms and conditions and especially prices;

(iv) To assist Nigerian enterprises in the selection of foreign technology;

(v) To achieve a more efficient process for a rapid absorption and assimilation of foreign technology by Nigerian technicians;

(vi) To properly adapt foreign technologies to the requirements of local markets;

(vii) To gradually develop local technologies;

(viii) To encourage future exportation of locally developed technologies to other markets especially those of the neighbouring countries.

Although formally established in 1979, the National Office only began full scale operation in 1983. During the first period of its activities the Office concentrated on the registration function, involving careful evaluation of all agreements submitted by local companies. It is expected however that in the course of time other functions, such as advisory services for Nigerian enterprises negotiating technology agreements and the monitoring of the execution of registered agreements, will definitely gain importance within the NOIP programme of work.

The National Office of Industrial Property is a corporate body (parastatal) originally established within the Federal Ministry of Industries. With the creation of a Federal Ministry of Science and Technology and later the Ministry of Education, Science and Technology whose functions encompass the promotion and administration of technology transfer programmes, the National Office was transferred to the new Ministry in 1980.

In accordance with Decree No. 70 of 1979, the National Office has its governing body called the Governing Council, responsible for the formulation of policy for the National Office and for the discharge of other functions conferred on it by Decree No. 70 of 1979. The Governing Council consists of high ranking representatives of several ministries, scientific and academic institutions and the Director of NOIP. The Chairman of the Governing Council is the Permanent Secretary of the Federal Ministry of Education, Science and Technology.

The Director is the Chief Executive Officer of the National Office of Industrial Property and is appointed by the Federal Executive Council on the recommendation of the Minister.

The major objective of the evaluation of a technology agreement is to determine the socio-cost-benefit of the agreement to the national technological and economic goals of the country. In this way the agreement is examined from three points of view i.e. legal, technical and economic aspects. Each of the analyses is undertaken by highly trained personnel using the underlisted criteria:

(a) The type and nature of technology to be transferred, with special reference to:

  (i) the age of the technology;

  (ii) the industrial sector where it is going to be applied;

  (iii) the degree of complexity involved;

  (iv) the type of items to be produced;

  (v) provision of new job opportunities.

(b) The royalty payments i.e. the cost of the technology with special reference to:

  (i) total amount of payments during the term of the agreements;

  (ii) its impact on the national balance of payments;

  (iii) the rate of royalties with respect to other sources of technology available;

  (iv) the impact on the profits of the recipient enterprise;

(c) The way in which the agreements contribute to the improvement of national technological capabilities;

(d) The existing relationship among the parties involved, e.g. parent-subsidiary agreements;

(e) The other contributions or disadvantages of the agreement in the light of national interest.

Section 4 (d) of the Decree No. 70 clearly defines the categories of contractual arrangements subject to registration by the National Office. These categories include:

  (i) the use of trade-marks;

  (ii) the right to use patented inventions;

  (iii) the supply of technical expertise in the form of 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.

As can be seen from the above list, the scope of registration of technology transfer agreements is rather broad compared to other developing countries. 1/

The overall concept of the registration procedure is to ensure that technological transactions concluded at the enterprise level are subordinated to the long-term policy objective of Nigeria's socio-economic development. In addition, however, Decree No. 70 specifies some requirements to be met before the contracts are approved. They relate principally to the question of payments for acquired technology and restrictive clauses included in the contracts.

(a) Payments for imported technology

In the first instance, the law makes it clear that the contract shall not be registered where its purpose is the transfer of technology freely available in Nigeria (para 6(2)(q)). In other words it excludes as a matter of principle any contract which does not involve effective, real transfer of technology but is being signed purely for financial purposes or in order to strengthen the control over the recipient of technology. This happens mostly in the case of contractual arrangements concluded between parent and subsidiary companies.

With respect to the price for technology, paragraph 6(2)(6) reads: "The Director shall not register any contract or agreement where the price or other valuable consideration therefore is not commensurate with the technology acquired or to be acquired".

As a result, the law imposes an obligation upon NOIP to define, in the process of contract evaluation, the "right" price for imported technology. This is one of the most essential but very difficult tasks of the technology transfer registry. A detailed analysis of the methods used by NOIP for this purpose is beyond the scope of this study. It should be emphasized however that international exchange of information and experience within UNIDO's Technological Information Exchange System (TIES) is a valuable contribution to solving this problem.

(b) Discretion of the National Office

1/ In that respect the category (v) i.e. the supply of machinery and plant requires further clarification. According to the NOIP interpretation outlined in the "Guidelines to assist enterprises in negotiating transfer of technology agreements under Decree No. 70 of 1979" the purchase agreements involving the import of machinery and equipment against import license need not be submitted to the NOIP unless the contract involves the use of foreign personnel for its installation, commissioning and operations.

Despite strict formulation of Decree No. 70, especially with respect to the restrictive clauses, the law grants substantial discretion for the final approval of the agreement to the National Office. According to the paragraph 6(3)....."In any case where 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 convergance between the terms and conditions of a contract or agreement and the specifications laid down in subsection (2) above".

Recent trends in Nigeri 's technology imports

The total number of transfer of technology agreements received by NOIP since its inception is 231 (see table 1). Of this number, 110 were received prior to January 1983 when the Office became fully operational. The 231 agreements submitted to NOIP for evaluation since inception are made up of 180 new applications and 51 renewals. This means that new applications represent 78 per cent of total agreements submitted, while renewals represent 22 per cent.

As can be seen on table 1, the 231 agreements submitted to the National Office came from four major industrial sectors i.e. engineering sector (light/heavy), agro-based sector, mineral based and the service sector. The engineering sector had the largest share of the agreements, with a total of 89 applications (38 per cent) followed by agro-based with 73 (32 per cent), mineral-based with 48 (21 per cent) and the services with 21 (9 per cent) applications.

As for the approved agreements, 62 agreements were registered up to the end of April 1984. The break-down shows 21 approvals representing 34 per cent for agro-based, 20 approvals (24 per cent) for mineral-based industries and 6 approvals representing 10 per cent for the service sector.

Sources of imported technology

A study of the pattern of technology flow in relation to the countries of origin of imported technology shows that of the 231 contracts received by the Office 163 had collaboration with transferors from Western Europe (U.K. suppliers playing the leading role), followed by North and South American sources with 33 contracts, Asia 19 and other areas 17 (see table 2). The same pattern was maintained in each sector. The summation from the aforementioned pattern of flow suggests that 70 per cent of imported technology into Nigeria emanates from Western European countries followed by an estimated 14 per cent from North and South America, Asia 8 per cent and 7 per cent from other areas respectively.

Level of payment involved in technology transfer agreements

An examination of the level of payment involved in the 231 applications received (see table 3) showed that a total of 123 applications, represented 53 per cent of the total required payments above 500,000 Naira throughout the life of the agreement, whereas the balance of 108 contracts represented 47 per cent of the total required payment below 500,000 Naira respectively.

The effects of NOIP intervention

Here it may be recalled that although NOIP was established by Decree in September 1979, it did not commence evaluating technology agreements until 1982. The Office was in full operation by January 1983. In short, the Office has been in operation for less than two years. While the effects of the law in such areas as payments and restrictive clauses were felt almost immediately through the screening exercise, effects on the flow of technology have not yet had a similar impact. The situation in this respect will become more noticeable over the next five years, when the National Office will tackle other functions such as assisting in the selection of industrial technologies. In this connection it may be mentioned that the attempt by the Office to relate technology payments to the degree of local value added, in some cases the impact of technology in employment creation or the amount of export and import potential in other cases, will also greatly influence the flow of technology.

In the process of evaluation, fees and royalties charged were found to be excessive in 90 per cent of the technology transfer agreements submitted for registration. Consequently, in the majority of cases the National Office requested lowering the level of remuneration to the foreign supplier. In general, the average approved or recommended royalty rate is about 1 per cent of net sales and 1.5 per cent of profit before tax in respect of technical and management agreements.

These rates contrast remarkably with the average figure of 3 per cent of net sales (sometimes turn-over) demanded prior to the evaluation of agreements. Indeed, payment levels demanded were in some areas as much as 5 per cent of the transferee's turn-over. The effect of the intervention by the National Office was to effectively reduce the royalty rate demanded by the transferors, thereby ensuring that Nigerian enterprises do not pay unduly high prices for imported technology while in addition scarce foreign exchange is conserved

Taking into account the agreements already approved it can be estimated that the intervention of the Office resulted in the savings of the national economy amounting to 33 million Naira (approx. US$44 million).

Despite the fact that Decree No. 70 specifically prohibits certain restrictive clauses and contractual terms to be included in technology transfer agreements, such provision can still be found in many contracts submitted for registration (see table 4). This applies in the first instance to the provisions on foreign jurisdiction and the restrictions on exports. Other unfavourable terms most often found in the agreements relate to the lack of guarantee clauses, excessively long duration and lack of provisions for training of the transferee's personnel (see table 5).

Table 1: Number of agreements submitted and registered by the NOTP since inception till April 1984

Industrial sector	Applications submitted	Applications registered	Pending applications
Agro-based	73	21	52
Mineral based	48	15	33
Engineering	89	20	69
Services	21	6	15
Total	231	62	169

Note: Negotiations are still going in respect of pending agreements.

Table 2: Number of agreements submitted according to source of technology by sector

Industrial sector	North and South America	Western Europe	Asia	Other	Total
Agro-based	4	66	-	3	73
Mineral-based	9	26	8	5	48
Engineering	13	58	10	8	89
Services	7	12	1	1	21
Total	33	162	19	17	231

Table 3: Level of payment involved in the agreement submitted

Industrial sector	Agreement submitted	Agreement involving payments above 5m Naira	Agreements involving payments less than 5m Naira
Agro-based	73	36	37
Mineral-based	48	28	20
Engineering	89	42	47
Services	21	17	4
Total	231	123	108

Table 4: Nature and frequency of restrictive clauses in agreements submitted for registration

Type of restriction	Number of agreements containing restrictive clauses	Percentage (%)
Excessive controls of transferee's operation	16	7
Non-reciprocal transmission of improvements, patents, etc.	9	4
Tie-in clauses	21	9
Export restrictions	72	31
Restriction on production volume	16	7
Foreign jurisdiction	97	42
Limitations to research and development	5	2
Price Restrictions	5	2

Note: The same agreement may contain more than one restrictive clause.

Table 5: Nature and frequency of other unacceptable contractual terms in the agreements submitted for registration

Contractual terms	Number of agreements containing contractual terms	Percentage (%)
No provision for training of transferee's personnel	88	38
Excessively long duration	97	42
No provision for guarantees	114	49
Transferee obliged to pay transferor's taxes	56	24
Missing provisions (termination rights, force-majeure etc.	9	4

In the process of approval of agreements the National Office attempted to eliminate all undesirable clauses as much as possible and requested the insertion of desirable ones.

However, because of the economic and technological importance of certain projects and the strong bargaining position of foreign partners, the Office concentrated on eliminating in such cases the least acceptable restrictions.

Major problems encountered in the implementation of Decree No. 70 of 1979

The major constraints working against the immediate take-off of the Office was the lack of suitable infrastructures such as accommodation and manpower, etc. The arrangements associated with the re-location of the Office from the Federal Ministry of Industries to the Ministry of Science and Technology also delayed the take-off of the Office as originally planned. All these problems were resolved by late 1982 and the Office began effectively working from January 1983.

As soon as the Office was effectively operational it was faced with the problems of public acceptance and appreciation of its role, particularly amongst the business community. The existence of the Office was seen by some as another bureaucratic bottleneck to their operations. However, this negative impression by the business community of the activities of NOIP during its formative years was gradually corrected through sustained public enlightenment campaigns organized by the Office. It is interesting to note that business enterprises are now appreciating the role of NOIP and the need for the services and advice of the Office on technology transfer agreements. To this end many companies have been seeking assistance from the Office on the process of negotiation on an informal basis and this has helped improve the quality of agreements submitted for registration.

Generally, the technical partners or technology transferors to Nigerian companies were very resentful, putting up strong resistance and always refusing to co-operate on offering better terms and conditions with equitable payment for their technology, as provided by the law particularly when that implies modifying the already signed agreements. This situation is gradually changing, especially since they know the conditions demanded by NOIP are in most cases internationally recognized and that they have complied with similar conditions in other countries.

Prior to the establishment of the National Office of Industrial Property (NOIP) as a machinery to regulate the acquisition of foreign technology, no government institution was charged with such responsibility. The Foreign Exchange Department of the Federal Ministry of Finance under the Exchange Control Act of 1962, approved remittances of payments due under technology agreements under the yearly guidelines provided by that Ministry. With the establishment of the Office, there was a change in procedure and all agreements involving technology transfer were to be submitted to NOIP for proper scrutiny. By the provision of section 7 of Decree No. 70 of 1979 establishing the Office, payments on technology transfer agreements are permitted only on production of a certificate of registration issued by the Office by the Foreign Exchange Control Department, the Central Bank of Nigeria or any licensed financial institution in the country. This change in procedure makes it mandatory for all companies concerned to submit their agreements to NOIP for evaluation.

Conclusion

The National Office has been able to provide effective support and assistance to Nigerian enterprises in their efforts to acquire foreign technology at reasonable terms and conditions for rapid industrialization. The activities of the National Office have led to a further improvement of the negotiating skills of enterprises and improved contractual terms and conditions in subsequent agreements. These will be enhanced by the guidelines meant to assist enterprises in their negotiations with foreign partners. Apart from ensuring that the terms in registered agreements are fair and equitable, the evaluation of technology agreements has also led to substantial savings in foreign exchange outflow. In the case of evaluation also, the National Office has attempted to distinguish between transferors with foreign equity and non-equity participation with the aim of establishing a system of determining discriminatory compensation in line with the level of participation, and other terms and conditions. This has however, posed some problems with the transferors of foreign equity interest who usually insist on separating their equity contributions from the technology being transferred.

UNIDO activities

Extract of UNIDO's work programme for 1985 on contractual arrangements

Work on contractual arrangements that began in 1977 in the fertilizer industry will be completed in 1985, with the publication of four models of contracts which can be used for plant construction. In this context, priority attention will be given to setting-up a programme of workshops on contract negotiation.

Three documents will be completed with regard to contractual arrangements in the pharmaceutical industry. These include a paper on items that could be included in contractual arrangements for the setting-up of turn-key plants for the production of bulk drugs or intermediates, a document on arrangements for technical assistance for the formulation of pharmaceutical forms, as well as a reference paper analysing other areas in the pharmaceutical sector to which attention may need to be directed. These three papers will form the substantive input to a meeting of an ad hoc panel of experts in the pharmaceutical industry on contractual arrangements who will meet in Vienna in 1985.

The basic document on guidelines and master agreements for the import, assembly and manufacture of agricultural machinery and on training will be completed and used as the basic substantive input to an expert group meeting on the subject which will be convened in Vienna during the first half of 1985. Work is continuing on the UNIDO model form of agreement for licensing of patents and know-how in the petrochemical industry, including annexures: an integrated commentary and alternative text of some clauses, and this work will form the basis for a draft paper placed before the Third Meeting of the Advisory Panel on Petrochemicals to be held in Vienna during 1985.

Work will be initiated on a checklist of clauses for inclusion in contractual arrangements in the field of industrial training, and a draft paper will be prepared on a contracting checklist for the wood processing industry.

At the same time, preparatory work to be undertaken during 1985 will lead to the issuing in 1986/1987 of a number of technical reports containing checklists of elements for inclusion in contractual arrangements; these documents will generally also benefit from the knowledge of international groups of experts, as was the case for the UNIDO model forms of model contracts and guidelines. A report on trade and trade-related aspects of industrial collaboration arrangements will also be prepared for the consideration of the Industrial Development Board.

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First Consultation on the Building Materials Industry, Athens, Greece, 25-30 March 1985

The Industrial Development Board, at its seventeenth session in April-May 1983, decided to include the First Consultation on the Building Materials Industry in the Programme of Consultation meetings for the biennium 1984-1985 and at its eighteenth session in May 1984, the Industrial Development Board endorsed the proposed co-sponsorship with the United Nations Centre for Human Settlements (Habitat) of the First Consultation on the Building Materials Industry. An ad hoc Expert Group Meeting on the Building Materials and Construction Industry was convened by UNIDO in Vienna, Austria, from 15 to 17 December 1982 to review the findings of studies prepared by the UNIDO secretariat on the sector and to identify issues and possible areas for discussion at the First Consultation. In order to advise UNIDO and UNCHS (Habitat) on the selection of the priority issues to be considered at the First Consultation, a Global Preparatory Meeting was convened from 24 to 28 September 1984 which recommended that the issues to be considered at the First Consultation should be:

Issue 1: Development of the building materials industry, including:

financing, planning and programming methods, emphasizing alternative scale plants, particularly in the cement industry.

Issue 2: Measures to strengthen indigenous technological capabilities in the production of building materials,

related to, among other things, the appropriate choice of products, selection, adaptation and transfer of technology, training, organization of production, design and production of capital goods, and research and development.

Issue 3: Measures required to develop building-materials production in the informal economy, including:

research and development, information, training, and quality improvement.

As a follow-up to the recommendations of the Global Preparatory Meeting UNIDO and UNCHS (Habitat) prepared background documentation for the discussion of the proposed issues, a list of which may be found in this Newsletter under the section covering Publications. Furthermore, a comprehensive World-Wide Study on the Building Materials Industry is being prepared by the Division of Industrial Studies (DIS), Sectoral Studies Branch of UNIDO.

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Progress report on the information system on transnational corporations - Report of the Secretariat

The present report describes the work carried out since the ninth session of the Commission on Transnational Corporations and presents the activities to be carried out during the covering period taking into account an assessment of the experience gained to date in developing the information system.

The first section of the report provides an overview of the objectives of the information system, the approach followed to date and the emphasis to be given to the future work in the light of the experience gained.

The report contains eight sections which describe the current state of work and the proposed focus of future activities under each of the components of the information system. The subsequent section describes the support provided by the Centre for Transnational Corporations in strengthening or establishing national information systems. The final section sets out steps taken and planned to strengthen the storage and retrieval capability of the Centre's information system.

The report may be had on request from Documents Distribution, United Nations, New York, USA, quoting symbol number E/C.10/1984/15.

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UNDP's Computerized Information Referral System (INRES)

Technical Co-operation among Developing

Countries (TCDC) involves the deliberate and voluntary sharing or exchange of technical resources, skills and capabilities between two or more developing countries for their individual or mutual development. The Buenos Aires Plan of Action, adopted by the United Nations Conference on TCDC in September 1978, recognized that information has a critical role to play in the TCDC process. It therefore recommended further development of the global Information Referral System (INRES) initiated by UNDP in 1975, and the expansion of the System's Inquiry Service for rapid matching of specific needs of developing countries with available capacities from other developing countries.

The first stage of the development of INRES was the compilation of a Directory of Services for TCDC. This provided an initial compendium of information on the institutional skills and capacities available in developing countries. A first issue was published in 1977, and a revised and updated edition was issued in 1978. These Directories, like others of its kind, had some inherent limitations: problems of updating, certain difficulties in the way data were presented, and the numerous correlations required to permit their effective utilization.

To overcome these handicaps and meet the TCDC information requirements of countries more efficiently, it was decided to establish a computerized INRES data bank. Work on this project began in 1982, and by 1984 had reached the point where initial operations could start.

The information on developing countries' capacities which is available through the INRES Computerized Inquiry Service has been obtained through questionnaires distributed to institutions in developing countries selected in consultation with the governments concerned. The completed questionnaires were reviewed at appropriate government levels to ensure their concurrence and endorsement of the data which each institution submitted. As of September 1984, questionnaires were received from over 2,100 institutions located in 97 countries. As a result, the data bank contains more than 50,000 line entries.

The INRES data bank has been created on the IBM 3081 Computer at the New York Computer Services of the United Nations and contains multi-sectoral information on the capacities of institutions in developing countries for providing Education and Training Courses, Research and Technological Development Services, Consultancy and Expert Services plus Scientific and Technical Information Services. In addition, the data bank contains information on the previous TCDC project experience of these institutions.

More details may be obtained on request from TCDC/INRES Inquiry Service, United Nations Development Programme, United Nations, New York, USA.

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Interregional Seminar on Regulatory Administration for Promoting National Development, Bangkok, Thailand, May 1983

The report of this seminar has recently been made available to us, and we reprint hereunder the preface and a summary of discussions. The complete document may be had on request from the United Nations Department of Technical Co-operation for Development (UNDTCD), United Nations, New York, USA, quoting document number TCD/SEM.84/4.

Public administration systems carry out a number of important functions for development. These include execution of traditional government functions, as well as national planning, direct management of the public sector, and facilitative and regulatory functions to assure harmony of private action with national objectives. The regulatory functions are usually administered through rules and standards to monitor, guide or modify major aspects of private enterprise operations, as well as public commercial activities. Historically, regulatory administration in the industrialized countries has included a wide range of government activities which have an impact on major aspects of private enterprise operations, such as market entry and exit; rate, price and profit structure; and competitive environment. With the changing role of government since the mid-twentieth century, many other areas have come under government supervison: health, safety, environmental and consumer protection and employment standards.

In the context of developing countries, regulatory administration has taken on added meaning and is seen as a major instrument available to governments to enforce compliance with nationally established requirements in the various economic and social planning spheres. Regulatory administration has assumed particular importance, with the determination of developing countries to exercise effective economic sovereignty and control over their national resources and environment and to ensure that their use by the private sector, especially its foreign components, is in harmony with nationally desirable objectives.

In the process of planning and realizing their development objectives, governments of developing countries have initiated policies, and created organizations and procedures to promote and regulate various economic and social aspects. The results of these promotional and regulatory activities have varied considerably, often reflecting considerable inadequacies in policies, organizational design and process and procedures. One important area in which these inadequacies have been reflected in varied performance is regulation and promotion of investment and technology, especially from external sources. Increasing emphasis is now being placed at the national level on a more flexible regulatory administration in order to sustain levels of local investment, while at the same time ensuring that any external capital flows, where desired, are consistent with the growth of domestic entrepreneurial capacity. With regard to the latter, there is also a growing feeling that the enhancement of

institutional capabilities may require going beyond the mere registration, monitoring and restriction of investment and technology to the active promotion of new forms and areas of investment and local technological development.

The United Nations, for some time now, has been cognizant of the importance of regulatory administration and the corresponding institutional needs. For example, United Nations experts in public administration and finance have drawn attention to the strategic importance of regulatory administration, particularly in relation to institutional development for planning the New International Economic Order. They have emphasized that the demands and needs of the latter have required the adaptation of many existing public administration capabilities and the creation of new ones, including the establishment of monitoring/controlling institutions. The General Assembly itself, in its resolution 34/137 of December 1979 on the role of the public sector in promoting the economic development of developing countries, has further underscored the central role of government in many countries as a lever for introducing national development plans and establishing social and economic development priorities, and the corresponding need, where appropriate, to devise ways and means of strengthening the institutional and managerial capabilities of government in such functions.

Systematic study on regulatory administration in the developing countries is very limited. This study is the first attempt by the United Nations to review the policies and administrative measures that have been taken or might be implemented for improving regulatory administration, with particular references to the facilitation of investment, particularly from external sources. The purpose of the study is to broaden knowledge of a relatively understudied topic; to ascertain the priority areas for action on the part of national governments; and to identify possibilities of international support for national measures.

The study is based on the results of research carried out by the Development Administration Division of the United Nations Department of Technical Co-operation for Development (UNDTCD), and a United Nations Interregional Seminar on Regulatory Administration for Promoting National Development organized by the United Nations Department of Technical Co-operation for Development, in collaboration with the Economic and Social Commission for Asia and the Pacific (ESCAP) in Bangkok, Thailand, from 9 to 13 May 1983.

The Seminar was attended by senior officials from Brazil, China, India, Indonesia, the Ivory Coast, Malaysia, Mexico, Thailand, Venezuela, Zaire, and Zimbabwe. Also attending were representatives of ESCAP's Unit on Transnational Corporations, the United Nations Industrial Development Organization (UNIDO), the Regional Centre for Technology Transfer (RCTT), the World Health Organization (WHO), the International Labour Organisation (ILO), and the United Nations Educational, Scientific and Cultural Organizaton (UNESCO).

The study comprises five chapters. The first chapter (Introduction) reviews broadly the state-of-the-art on regulation, focusing on its concept and contents in the context of market-economy countries, regional and international levels and common regulatory issues. This chapter also includes a review of the purpose and focus of the study, which is regulation and promotion of investment, especially from external sources in developing countries, along with a brief reference to the issues, findings, and suggestions for improvement in regulatory administration for national development. The next three chapters discuss experiences from selected countries in the specific areas of regulatory policy, organization and process. The last chapter makes a comparative review of measures that might be taken for improving regulatory administration as the basis for identifying priority areas for action, research and training at the national and international levels. The following were suggested:

(i) Information systems to improve the monitoring of compliance, by way of reducing duplicated reporting to multiple government agencies;

(ii) Methodologies for evaluating the social and economic impact of regulations at the project level (e.g., measuring local content or origin of goods and materials); and

(iii) Further exchange of experience in more specialized areas, e.g., banking, utilities, foreign trade, industry and technology.

In addition, the following observations were made:

(i) The attempts by certain countries to improve accountability and responsiveness was noted. These included public reporting, consultation with business and community associations, including publicity of regulations and procedures.

(ii) The efforts of some countries to simplify regulations and procedures was noted, together with their potential benefits.

(iii) Generally, satisfactory results were observed as a result of the introduction of the "one-stop" agency or "package" application.

(iv) Training was recognized as an important ingredient in the enchancement of regulatory administration. One suggestion was that this could be done through exchange of experiences and visits. UNIDO has already provided some facilities in the field of technological negotiation for industrial development. UNCTC and ILO have also provided limited training in some aspects of regulatory administration. However, there are other areas, such as knowledge of the national policy environment; the imperatives of national development planning and regulation; policy analysis; public law; private business administration. The application of these skills and knowledge to other non-industrial and social sectors may also be requested.

(v) Finally, the attention of the Seminar was drawn to the questions of the allocation of responsibility for regulatory improvement. Any efforts in this direction might also take stock of regulations in all the functional areas of government.

Technology acquisition

GUIDE ON GUARANTEE AND WARRANTY PROVISIONS IN TECHNOLOGY TRANSFER TRANSACTIONS

The UNIDO Development and Transfer of Technology Branch is preparing a "Guide on Guarantee and Warranty Provisions in Technology Transfer Transactions".

Abstracts of the chapters of the guide dealing with individual guarantee and warranty clauses will be published in the present and forthcoming issues of the Newsletter. These chapters take into account the overall context of technology transfer transactions and do not strictly deal with the legal viewpoints of such transactions.

In this issue we present the guarantee on the suitability of technology, which represents a rather controversial part of the guarantee provisions of transfer of technology transactions.

Comments and discussions on the subject of guarantee and warranty provisions related to these transactions will be welcomed by the UNIDO Secretariat. Such contributions are to be forwarded to UNIDO's TIES Newsletter Editor and may, if desired, also be published.

Suitability of the technology

(a) Purpose and function

The recipient of technology pursues certain objectives by the acquisition of the technology. If these objectives cannot be achieved through the technolgoy transferred, the technology has no value for the recipient and the transaction is proved to be useless. In such a situation, a suitability guarantee could ensure one or more of the following functions, out of which the first one, strictly speaking, could not be considered a suitability guarantee in the developmental context:

- technical exploitability
- commercial exploitability
- capability of achieving certain results under specified conditions

This last form of suitability guarantee has some similarity to a performance guarantee and is discussed as controversially. Actually, there may be no need for a suitability guarantee if a broad performance guarantee has been agreed to. On the other hand, a suitability guarantee may be particularly important when it is not possible to agree on a performance guarantee. Generally, a supplier will be reluctant to agree to a performance guarantee when the technology is not part of a turn-key or product-at-hand agreement. If he only licenses know-how, e.g., without equipment, plant, etc., he may not be willing to guarantee the performance of this particular plant, because the set-up of important elements for working the technology is beyond his control or influence. But in such a case, a suitability guarantee could be granted.

A suitability guarantee is only likely to be granted for proven technologies. If a recipient knows that he acquires a new and unproven technology, he will also be aware of the fact that further research and development may be necessary, before the technology can be exploited economically on an industrial basis.

(b) Present legal situation and contractual practice

Very few laws or regulations have specific rules on the suitability aspect governing transfer of technology transactions. In some countries, such laws or guidelines require that the technology must be a "proven process" (India, Guidelines for Public Enterprises, Sect. 1.1).

The former Argentinian Law on Transfer of Technology of 1974 (No. 21.617) contained the following "implicit clause":

Illustrative clause 12

"The supplier guarantees that the technology to be transferred, enables the recipient, through the acquisition, to achieve his proposed technical aims ..." (Art. 8 (a)).

However, both in countries with common law and with civil law, the general principles of commercial law apply on fitness or technological exploitability of technology transactions. But the parties are free to negotiate and agree upon other terms and conditions than those stipulated, as the relevant provisions are not a part of the mandatory law. *

Present contractual practice often restricts the scope of such guarantees on fitness or technological exploitability.

For example, some recent model provisions define a scope, which states that the patents, technical information and other data transferred under the contract are suitable for the purpose stipulated in the contract e.g. for manufacturing and packaging of the product if used in accordance with the supplier's specific instructions given pursuant to the contract. Such a provision provides for a specification which condition the suitability guarantee.

Often contractual provisions only guarantee the commercial exploitability in general:

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* See, e.g., U.S.A, Uniform Commercial Code, Section 2-312. For Germany, Fed. Rep. of, Strumpf. Der Know-How Vertrag, 3rd rev. ed., Heidelberg (Verlag Chemie) 1977, p. .

Illustrative clause 14

The CONTRACTOR also hereby agrees that such documents referred to in this article 4.5 shall cover and be based upon the commercially proven know-how available to the Process Licensors (such documentation to cover the know-how at the time of the signing of the Contract, or if mutually agreed to, at a later date) UNIDO, PC. 25, rev 1, section 4.5 p. 100.

In some cases, the licensor rejects any suitability guarantee and only guarantees that the technology is technically exploitable or has been technically tested by the supplier.

Illustrative clause 16

"The grantor guarantees that the process has been technically tested in his works and that it has evidenced the following characteristics ... The grantor will take no part in the use made by the grantee of the know-how hereby ceded and accordingly gives no undertaking that the grantee will obtain similar results in the use thereof." (ORGALIME, Practical Guide for Preparing a Know-How Contract, 3rd ed., Bruxelles, 1969, p. 27)

Consequences

In present contractual practice, no direct linkages have been made between suitability clauses and consequences for non fulfilment, as they are actually linked to performance guarantees. However, in some cases a termination clause of the contract is related to the suitability clause.

Illustrative clause 19

"The licensee may terminate this agreement (at any time) by / (number of) months / written notice to the licensor upon the occurrence of any of the following events:

(iv) the occurrence of technical advances which substantially alter the basic technology or the availability of new technology which enables the product to be manufactured (the process to be applied) in a substantially different manner or with a substantially different effect as referred to in article ..." (WIPO, Licensing Guide, Fn. 254 (iv).)

Termination as such, as a consequence of unsuitablity of the technology as stipulated in clause 19 above, applies only for the period of project implementation or after such a period when the technology is paid for by royalties still running. In other cases, after the implementation period when the recipient already has paid for the technology, the right of the recipient to terminate the contract must be linked with the right to be paid back part or all of his payments or a termination clause at this stage will not be of any value at all to him.

Alternatively or prior to the right of terminating the contract, it may provide for a negotiation procedure between the parties, in order to modify the contract or to conclude a new one in its place. If the technological advance or the new technology has been made or acquired by, or is available to the supplier the contract may further provide for the renegotiation to be extended to the terms and conditions upon which the technological advance or new technology are to be made available to the recipient.

(c) Problems and possible solutions

Scope of guarantee. The main problem encountered is the view of many suppliers that the transfer of technology, especially the transfer to countries with a different type of technical, economic and social infrastructure, different qualification of personnel and different use of inputs, is heavily risk loaded. Suppliers will maintain that this hinders them in granting suitability guarantees. On the other hand, the technology is even more risk laden for the recipient who does not know the technology yet and has not used it. The better supplier and recipient know each other and the better they can evaluate the present working of the technology as well as the conditions under which it is going to be applied in the recipient's country, the easier suitability guarantees may be obtained. This demonstrates the importance of extensive communication and mutual information in the preparatory stage of the negotiations.

The most extensive suitability guarantee would assure the attainment of certain results.

If such a guarantee cannot be reached, at least the technical and commercial exploitability should be assured. It may be accompanied by the supplier's assurance that he has successfully worked the technology himself and his readiness to let the recipient verify this by visiting the supplier's plant, (see, e.g., ECE, Trade/222/Rev.1, para 41). Such a provision may be useful independently of the content of the other parts of the guarantee. Of course, it will not be possible to obtain suitability guarantees for unproven technologies. Such agreements should always provide for the right to terminate the contract, e.g., if, when the recipient concludes that he does not succeed, independently of his ability, to exploit the technology on a commercial basis. Alternatively, the recipient should ensure that there is no obligation on his side to exploit the technology or to pay royalties independently of the performance of the technology. See illustrative clause 16.

Criteria for measuring the suitability. Since the recipient is going to use the technology at his plant, he needs a suitability guarantee geared to conditions prevailing there. The supplier will only be ready to accept such conditions, if they are known and familiar to him. Usually, he will refer back to the conditions of his own plant, a compromise may be to specify the conditions in the contract.

The recipient will have to take care that the specifications are realistic in view of manufacturing conditions in his plant. Otherwise, the suitability guarantee will be without practical meaning.

Separation of responsibilities. If several parties are involved, it should be classified in the suitability guarantee or in some other part of the contract, to which extent the

suitability depends on conditions set by third parties and who is responsible to meet the specifications set forth.

Corrective action. If the guarantee has been proven to be unsuitable, i.e. not commercially exploitable, measured against the specification contained in the suitability clause, the general types of corrective action should apply. First of all, the supplier should be obliged to complement, rectify or up-date the technology in such a way that it responds to the suitability guarantee. Subsequently or alternatively, damage claims should be possible. If the technology cannot be exploited commercially, the right of the licensee to terminate the contract and/or to be paid back part or all of his payments is of particular importance.

Alternatives. As mentioned before, a suitability guarantee may be substituted by a strong performance guarantee. On the other hand, performance guarantees often require a higher degree of "packaging" and involvement of the supplier and therefore may conflict with some other objectives of the recipient.

Extensive information about the technology in the pre-contractual phase may acquaint the recipient with the technology to such a degree that suitability guarantees may become less important.

Suitability may be partially replaced by royalties based on production units. In this case, the recipient will not be refunded for his efforts to make the technology work, but he has not to pay for the technology itself. At the same time, the supplier may be stimulated to assist the recipient in arriving at industrial production in order to obtain royalties.

No suitability guarantee should be contracted, if the supplier only accepts a "negative" suitability guarantee whose main purpose is to disclaim or exclude implied warranties existing under the relevant applicable law.

(d) Check list

1. Type of technology
   - proven/unproven
   - familiar/unfamiliar to recipient
   - commercial exploitation by supplier or others
2. Scope of guarantee
   - achievement of specified results
   - commercial exploitability, feasibility
   - industrial exploitability
   - technical exploitability
   - right of visit to supplier's plant
3. Criteria for measuring suitability
   - conditions at recipient's plant
   - conditions specified in the agreement
   - conditions at supplier's plant
   - adequacy of conditions for recipient's situation
   - definition of commercial, industrial, technical exploitability
   - specification of visits to supplier's plant
4. Separation of responsibilities
   - third party involvement with effect on suitability guarantee
   - independance of suitability guarantee and obligation to use technology
   - interdependance of (limited) suitability guarantee and type of payments (down payments regardless of suitability?)
5. Corrective action
   - forms of rectification
   - form, extent of damage claims
   - right of (unilateral) termination
6. Alternatives
   - strong performance guarantees
   - prior information on technology
   - technical assistance by supplier (on preferential terms)
   - payments in relation to effective production only
   - application of implied warranties of relevant law
7. Requirements under applicable law

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LICENSING OF TRADEMARKS - THE EXPERIENCE OF INDIA

The following is extracted from a paper recently received from Mr. S. Kapur, Secretary to the Government, Punjab Transport Department at Chandigarh, India on the transfer of technology, licensing of trademarks and consultancy services, according to the experience of India. We feel this will be of some interest to our readers, so in this issue you will be able to read the section pertaining to licensing of trademarks. The next issue will contain the relevant section on consultancy services.

General position

Like patents, trademarks are limited monopoly rights granted by a government within its territorail jurisdiction. As in the case of patents, registration of a trademark by a company in its own country does not automatically give protection in other countries of the world, and if it desires to establish claim of ownership of a trademark and its protection in any foreign country it has to register the mark in such country and observe the relevent local laws and regulations with respect to renewal and fees etc. The position would, however, be different in the case of countries which, unlike India, are signatories to International Conventions like the Paris Convention. Trademark registration abroad is facilitated by international treaties, conventions or other reciprocal arrangements in the country. An important differeuce between a patent right and a trademark is in the life of the right. While a patent right is usually limited to a fixed period a trademark right can usually be extended for an indefinite period by periodic renewals. Accordingly, while patent grants are usually for the life of the patent or patents, the term of a trademark license is not limited by any such consideration.

Assurance of quality

The trademark is a mark of identity distinguishing the goods of the proprietor and signifying to the purchasing public a certain quality and consistency of content or performance. To preserve such identification and retain the goodwill in the mark the owner licensor would normally insist that the licensee maintains quality standards that will not detract from the goodwill or the market acceptance that has been built for the licensee's products in the world markets. Accordingly, trademarks license agreements always stipulate a positive commitment on the part of the licensee to adhere to the quality and specifications laid down by the licensor.

License only on exclusive basis

Unlike a patent right which may be granted on an exclusive or non-exclusive basis, a trademark license is normally granted to one party within a country, for the trademark might become common property if several parties were given the right use it.

Common Law

In Common Law licensing of a trademark by its proprietor for use in relation to goods other than those of the proprietor was not permitted on the grounds that such licensing would result in deception of, and confusion to, the purchasing public. However, the trend of modern commercial development has necessitated a relaxation in, or rather a reversal of, this rule of Common Law.

Position in India

The only statute directly concerned with trademarks is the Trade and Merchandise Marks Act, 1958. It is "An Act to provide for the registration and better protection of trademarks and for the prevention of the use of fraudulent marks on merchandise." This Act does not distinguish between foreign trademarks and indigenous trademarks.

In keeping with the objectives of the Act, the provisions relating to the use of trademarks also aim at conferring rights on the "Registered User" to take appropriate action for preventing misuse and infringement of the trademark.

Legal position

Under section 49 of the Act, all applications for registration as Registered User require approval of the Central Government which, having regard to the circumstances of the case and to the interests of the general public, and the development of any industry, trade or commerce in India, may direct the Registrar to refuse the application. The Government of India has been using this provision to restrict the use of foreign trademarks not in vogue in the country as also to discourage those that are already in vogue, in order that indigenous industry does not face undue competition.

Voluntary registration

These provisions do not cause any obligation on the proprietor or the user to seek formal registration of the 'Trade Mark' or to any 'Registered User' agreement under the law. The only consequence of registration is that the proprietor/registered user can seek the protection of law if there is any infringement. Non-registration by the user of a 'Register User' agreement does not prohibit the use of a trademark in the country, provided there is agreement between the proprietor and the intending user.

Foreign exchange regulation Act

Under section 28(1)(C) of the Foreign Exchange Regulation Act, 1973 a person resident outside India or a company which is not incorporated under any law in force in India or in which the non-resident interest is more than 40 per cent: "Shall not, except with the general or special permission of the Reserve Bank, permit any trademark which, or it is entitled to use, to be used by any person or company for any direct or indirect consideration."

The provisions of this Act can be used to prohibit the use of a foreign brand name only if there is some consideration, direct or indirect. FERA companies, i.e. companies with more than 40 per cent foreign equity holding, can freely use trademarks in India of which they are proprietors. They cannot, however, permit the use of their brand names by any other person or company in India, except with the permission of the Reserve Bank of India, if they are to receive any consideration, direct or indirect, for such use.

Consideration is the critical factor

Under section 36 of the Trade and Merchandise Marks Act, 1958 the registered proprietor of a trademark can assign his rights to any other person and to give effectual receipts for any consideration for such assignment. Any foreign company or FERA

company can assign a trademark under these provisions without attracting provisions of FERA, provided these companies do not receive any consideration for such assignment. Thereafter, such trademark is the property of the Indian assignee and can be used freely in the country.

Use of foreign trademarks

For the last several years it has been the general policy of the Government of India to discourage the use of foreign brand names. It is felt that foreign trademarks constitute a reputation monopoly and inhibit development of reputations of domestic trademarks. They do not bring in technology; they are merely promotional schemes for which there seems little justification for payment of valuable foreign exchange. A stipulation is made in the standard conditions of all Letters of Intent to the effect that in considering requests for foreign collaboration:

> "The use of foreign brand names will not be permitted for the purpose of internal sales."

In the letter of approval for foreign collaboration, the standard condition reads as under:

> "Foreign brand names will not ordinarily be allowed for use on the products for internal sales although there is no objection to their use on products to be exported."

However, the use of foreign brand names is quite common in India. At one time, a large number of foreign companies were operating in the country. After the enforcement of FERA (Foreign Exchange Regulation Act) many of them have diluted their foreign share-holding and become Indian companies; most of them continue to use the trademarks of the erstwhile foreign companies (e.g. CADBURY, NESCAFE, EXIDE, H.M.V. etc.). There is nothing in any law to prevent such use. FERA companies continue to freely use foreign trademarks under proprietory title or suitable arrangements with the parent company (e.g. LUX, SUF, EVEREADY, etc.).

Use of hybrid brand name of trademark

There is nothing to prevent a foreign company from permitting use of its trademark by any person in India, provided there is no consideration for such use. Even where a foreign trademark is not used by an Indian company, the fact of association with a well known foreign company is widely publicized through the media. Two common methods are: (a) through a "hybrid" brand name or a trademark clearly showing such association e.g. TOSHIBA-ANAND, TATA-MERCEDES, ADVANI-OERLIKON, MARUTI-SUZUKI; or (b) extensive newspaper advertisements emphasizing the name of the collaborator through whose association the product will be manufactured, e.g. Hyderabad Allwyn and Seiko of Japan. It may be noted that the hybrid trademarks quoted in (a) are Indian brand names and <u>not</u> foreign. Further, it will be noticed that both the private sector and public sector are making use of this device.

In many cases "House Marks", i.e. the name of the company or a part thereof, are also used as brand names. When FERA was enforced, several well-known foreign companies operating in India diluted their shareholding and established Indian companies with the same name as the foreign company. In many cases the "House Marks" continued to be used by the Indian companies. DUNLOP, GOODYEAR, CEAT, FIRESTONE, AVERY, etc. are well-known brand names in India as well as abroad. These brand names are associated with the Indian companies, as well as with foreign companies with the same or similar names.

Even though all Foreign Collaboration approvals contain the usual condition: "Foreign brand names will not ordinarily be allowed for use for internal sales, "Indian companies are actually using names like e.g. VESPA-XE, VESPA-170, SUZUKI, YAMAHA, etc. All these are very well known brands of Italian and Japanese two wheelers.

Despite the restrictive character of Section 28(1)(c) of the Foreign Exchange Regulation Act, 1973 the Government of India in 1976 exempted, by a general order, pesticides and other chemicals used for protection of plants and life-saving drugs from these provisions. In effect, the Government recognized that in relation to certain products, the use of foreign brand names could be justified.

Foreign trademarks on capital goods

Ministry of Industry also announced in 1981 a decision to allow the use of such trademarks for internal sales of capital goods manufactured with foreign collaboration. This was a pragmatic, even though belated, relaxation of the existing policy and recognition of the tremendous progress made by the country's capital goods industry which is poised to compete with the industrial world's giants. It also under-scores the administration's efforts to encourage production of quality goods. Unfortunately, this decision could not be implemented for a variety of reasons and has, therefore, remained on paper only. A national debate is underway whether the existing restrictive policy needs to be continued. Advocates of change point out that the Indian industry has developed and grown over the years and there would seem to be no reason to encourage it to keep on depending on such artificial and fragile props as protection from competition with foreign trademarks. A reversal of, or a relaxation in, the existing policy to refuse such transfers only in a limited number of cases, where local industries' interests really warrant such a dispensation, would be, they urge, in the best interests of industry as also the consumer.

Remuneration for trademarks

Because of the peculiar nature of the Indian policy, as clearly indicated above, on import of foreign trademarks, remuneration for their use by Indian licensee companies is generally not computed and paid separately. It is normally lumped with payments on account of know-how. Therefore, it would not be appropriate to attempt any kind of detailed analysis of such payments in the Indian context.

Generally for import of know-how (including such use of the trademark as may be permitted) a royalty of up to 5 per cent of ex-factory sales price minus standard bought-outs is normally allowed for a period of 5 years. Besides, 3 per cent down-payment (computed on the same basis for 5 years as the royalty mentioned above) is also permitted. However, longer durations (up to 10 years) and higher payments (beyond 8 per cent) are sometimes permitted for exceptional cases.

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SOFTWARE POLICIES IN SELECTED DEVELOPING COUNTRIES

The following is extracted from a recent paper written by Mr. Carlos M. Correa, Sub-Secretary for Informatics at the Ministry for Science and Technology of Argentina concerning the commercialization of software. The paper originally appeared as a conference room paper at the Ninth Meeting of the Heads of Technology Transfer Registries held last October in Beijing, People's Republic of China. It is planned to issue the complete paper later on this year as a UNIDO document which may be had on request.

The main objective of this chapter, as mentioned earlier, is to describe the policy and legal framework applied in a number of selected developing countries in connection with software development and importation. In order to obtain a comprehensive picture, the analysis includes a brief reference to the overall informatics policy implemented in such countries, and particularly to the structure of hardware supply. The latter is closely related to and strongly influences the software supply, due to a diversity of technical and commercial reasons. It is clear, for instance, that because of compatibility requirements in some cases and of suppliers' pressure in others, hardware acquisition is frequently tied to the licensing of software provided by the same supplier. On the other side, the type of hardware available, and the existence or not of local manufacture thereof, set important limits to the local production of software, especially of systems software.

The review contained in this section will focus on three developing countries that have established well defined strategies and policies in the area of informatics: Brazil, Mexico and India.

(a) Brazil

Governmental efforts to set the conditions for the emergence of a Brazilian informatics industry started in 1972, with the creation of the Co-ordinating Commission for Data-Processing Activities (CAPRE). In 1976 a national informatics policy was announced structured around the following five objectives:

To obtain the technological capacity that would enable electronic equipment and software to be designed, developed and produced in Brazil;

To ensure that national corporations play a predominant role in the national informatics market;

To obtain a favourable balance of payments in products and services related to informatics;

To create jobs for Brazilians and more professional employment opportunities for Brazilian engineers and technicians; and

To create the opportunity for the development of a Brazilian parts and components industry in informatics.

The basic instrument of such a policy has been the granting of a market reserve to national enterprises, initially in connection with minicomputers, printers and terminals, and later broadened to include microcomputers and other items. While these segments of the market were excluded to foreign firms (even to joint-ventures), their participation in Brazil was promoted for the local production of large-scale computers. As a result of this policy, in 1982, 41 per cent of a US$2 billion market was supplied by national firms, in many cases on the basis of national technologies.

Issues relating to software development and importation came at a relatively late stage of the Brazilian informatics policy. In 1979, Presidential Guidelines for the informatics sector outlined, among the responsibilities of the Special Secretaria for Informatics (SEI), "to provide stimuli, incentives and guidance for the national software and services industries". A Special Commission on Software and Services, set up in 1980, prepared a set of recommendations with a view to the development and consolidation of the domestic software and service industry. This Commission issued a comprehensive set of guidelines for that purpose.

The measures adopted now in connection with this issue are the following:

(i) consideration of software requirements in the appraisal of applications for equipment importation and manufacturing projects (SEI Normative Act 001/80 and 016/81);

(ii) preference to domestic alternatives in government procurement (SEI Normative Act 005/81);

(iii) inclusion of software requirements into the state entities' Informatics Master Plans (SEI Normative Act 015/81);

(iv) joint participation of SEI and the National Institute of Industrial Property (INPI) in the evaluation of contracts for software importation (Normative Act INPI 053 and SEI 013/81);

(v) establishment of a software registry (SEI Normative Act 027/82), which is a pre-condition, inter alia, for contracting a given software by State entities and the approval by INPI of contracts for software importation.

The criteria applied by INPI in connection with this latter type of contract are largely based on those applicable to know-how contracts under INPI Normative Act 015/75. Among other consequences, this implies that confidentiality obligations may only last for five years, that exclusion of supplier's liability for defects is not allowed, and that the contracts may not include restrictive clauses.

One major criterion applied by INPI is the requirement to transfer the source-code as an integral part of the contract, in order to permit the recipient access to the software internal structure and enable him to maintain, adapt and improve it. Another important point (as conterplated in SEI Normative Act 027/82) is that software developed abroad may be registered when it is of relevant interest for Brazil, there are no local alternatives available, and the rights to exploit, maintain, update and enhance it have been transferred to a specialized national firm.

(b) India

India's policy in the computing industry, as established during the sixties, contemplated three stated goals: (i) to participate in the ownership and control of foreign subsidiaries; (ii) to satisfy, at the end of that decade, most of the country's needs by wholly Indian producers; (iii) to participate in the manufacture of the most advanced systems available internationally.

While the first goal was partially attained - IBM refused to accept local participation and left the country in 1978 - the second one was largely achieved through State-owned enterprises (mainly ECIL) and private firms. As to the third goal, between 1972 and 1980 the number of computers installed in India grew 6.5 times and the average technological gaps fell from 8.3 to 2.6 years. *

The establishment of a local industry put strong requirements on software development, for which the country was deemed to have comparative advantages. Among other measures and mechanisms adopted, the creation of a National Centre for Software Development and Computing Techniques, and the activities of the Regional Computer Centre (Asian Institute of Technology) and the UNDP-UNFSSTD Interact programme may be mentioned.

Major enterprises entered into that field. The Tata Group, for instance, established a joint-venture with Burroughs for software production.

(c) Mexico

In September 1981, the Mexican Government implemented a programme to encourage the development of a computer industry, aiming at five basic goals: (i) to supply locally 70 per cent of the computer needs within five years; (ii) promote exports; (iii) diversify investment in the computer sector; (iv) promote national technological development.

The programme includes tax incentives, preferential treatment in government purchases, import quotas, etc., and sets a number of requirements in connection with the participation of local capital - as a minimum 51 per cent - and with regard to local content and export performance.

Mexican policy on the transfer of software is based on the law of transfer of technology, as amended in January 1982 and implemented by the rules issued in November 1982. In accordance with this regulation, contracts relating to the transfer (sale or leasing) of computer programmes and to maintenance services thereof must be registered with the Registry of Transfer of Technology. This obligation applies both to the sale and leasing of programmes, but excludes programmes:

(i) for equipment of less than 8 bits and central memory of 48 Kb;

(ii) whose unique function is amusement;

(iii) consisting of operating systems embedded into equipment which is not mainly aimed at data processing (contracts on production or process control system, however, are subject to registration).

In principle, contracts relating to computer programmes are governed by the same rules as any other type of contract falling under the transfer of technology law.* Special rules are established with regard to the kind of information to be submitted with the application, and as to the requirement of "technical guarantees" to be offered by the supplier.

Since the entering into force of the new Law, 296 contracts on computer software were submitted for registration, out of which 20% were approved and 92 rejected. The 296 applications considered involved payments for US$11.9 million; the approved contracts amounted to US$5.4 million, that is with a reduction of 55%. The applications referred to involved 55 foreign suppliers (95% located in the USA) and 221 firms domiciled in Mexico, out of which 18% were majority owned by foreign companies, and 38% wholly nationally owned.

Rejection by the Registry was based on aspects relating to (i) confidentiality; (ii) lack of

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* See Joseph Grieco "Between dependency and autonomy: India's experience with the international computer industry", International Organization, 36, 3, Summer 1982.

* It should be noted that this law applies to the importation of software and to the domestic transfer thereof as well.

guarantees as to quality and limitation of responsibility; (iii) excessive prices; (iv) existence of local supply of services that could substitute those to be imported. Although the Registry has not yet defined specific criteria for the evaluation of software contracts, it is attempting to co-ordinate its action with the Secretaría de Programación y Presupuesto and insert it in the framework of the informatics overall policy.

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REPORT ON THE STUDY OF TECHNOLOGY TRANSFER IN THE PETROCHEMICAL SECTOR ON THE CAMAÇARI INDUSTRIAL COMPLEX IN BRAZIL

The following paper has been translated from Portuguese and serves to show some of the activities of the Brazilian National Institute for Industrial Property (INPI):

1. Introduction

The purpose of this report is to show some of the results of the study being carried out by INPI on technology transfer in the petrochemical sector at Camaçari.

The study was divided into two main phases. The first was to consist mainly of gathering information on the manner in which technology transfer contracts were negotiated and also facts related to the remittances made by companies. The second phase would deal with the question of agreements between shareholders and the question of the importation of inputs, in particular the importation of catalysts.

This report, then, will just show some of the results of the first phase. It is somewhat preliminary in nature, given the fact that this phase has not yet ended.

2. Companies investigated

The criterion used to select the firms which enter into this study was basically that of the existence of technology transfer contracts analysed by INPI and limited to plant establishment. Thus, there were 19 firms which had submitted contracts for registration. In addition to these, two firms were included whose contracts were held in the Institute archives, even though these had not been presented for registration because they were prior to 1973. Consequently, 21 firms were studied.

The majority of these firms are companies incorporated under the system of a one-third shareholding for each type of partner (tripartite model). There are also firms with participation by foreign firms greater than 33 per cent. In both these cases however the dominant fact is that these foreign firms were suppliers or licensers of technology adopted by national firms associated with them.

This focal point was conceived in conformity with the following associative model: the foreign partner should also be the actual supplier or licenser of technology. At the moment there is as yet no need to give further consideration to this model, it being clear, nevertheless, that one of the purposes of this study was to assess its validity, since it was a determining factor in the process of technology transfer at Camaçari.

The following aspects should be taken into consideration:

- With respect to countries of origin of suppliers of technology, 23 contracts were concluded with United States firms, nine with Japanese firms, three with Dutch firms, four with German firms, one with a Danish firm one with a United Kingdom firm, one with a United States and Dutch firm jointly and one with a United Kingdom and Japanese firm jointly;

- In six of the 19 firms, there is Japanese participation, either as investor, supplier of engineering services or owner of the process;

- United States firms are shareholders in two of the pilot firms, but supply the process technology for the majority of the firms analysed;

- In the majority of cases, the foreign partner is a supplier of either engineering services or process technology;

- Concerning suppliers of technology, it is appropriate to point out the existence of four categories, defined as follows:

  - Private firms undertaking production activities operating chemical or petrochemical plants, making up the majority of the cases;

  - Companies engaged in the development of new processes, where the patent rights constitute their main source of revenue, such as UOP;

  - International engineering firms with their own processes, as sublicensers or subsuppliers, of which LUMMUS and LURGI are examples;

  - State enterprises and bodies set up and subsidized by their Governments for the purpose of developing technology, such as DSM.

The majority of the contracts belong to categories FTI + STE together and FTI alone. Only 13 contracts include patent licences, which shows that at the time the contracts were drawn up, the foreign companies often did not register their patents in the country.

3. Contract clauses

Some of the contract clauses taken from the contracts of firms are shown below.

(a) Secrecy

In the majority of cases the technology covered by the contract was protected only by foreign patents, with their owners not registering them in Brazil, perhaps because our petrochemical industry base is still in its infancy.

The secrecy clause attempts to delay the national firm taking over ownership of the technology being negotiated, since what would normally be purchased is treated as "licensed" by this device. Thus, even if the technology is immediately absorbed, the national company cannot deal in it with any other firm within the country or outside.

In the petrochemical sector, the period of secrecy defined in the contract is generally longer than the period of validity of the patent itself.

With regard to the contracts analysed, 30 contain extremely strict secrecy clauses, varying from a period of ten years, beginning with the plant's operational start-up, to open-ended. Of the remaining nine contracts, since two refer exclusively to licences for exploitation of patents and two do not have this type of restriction, secrecy was for five years from the beginning of production.

Ten contracts were drawn up with an open-ended period of secrecy, though after the INPI analysis, four of them were reduced to 25 years starting from the end of the contract (the period of validity for all of them was 15 years after the start of operations). Of the remaining six, one was reduced to ten years starting from the date of signature; one to ten years starting from the date of receipt of each item of information; two to five years as from the start-up of operations and for two an indeterminate period was maintained.

Only five other contracts had their periods of secrecy modified after the INPI analysis. The secrecy periods of 15 other contracts were maintained, these varying on average between ten and 15 years from the date of start-up of production.

Of all the contracts, it was established that only two really related to the purchase of technology, no clauses establishing a period of secrecy being included in the objectives.

(b) Production capacity

Another clause common to technology transfer contracts is the one regulating installed production capacity. Above the capacity for which the unit was planned, the national firm will have to pay the excess production achieved or, in certain cases, negotiate new contractual terms with the supplier of technology in cases of expansion or even the installation of a new plant.

Of the 43 agreements drawn up, only two do not have restrictions limiting installed capacity; 22 contained in their terms the amounts to be paid in the case of a possible expansion, or even installation of a new unit; and 19 limited the "licence" to a fixed installed capacity, not laying down conditions for expansion.

These restrictions should not be seen separately from those of secrecy, since they are complementary. Thus the fact is, even if a national firm managed to absorb the transferred technology, it would be prevented from carrying out its project of expansion.

There is no doubt that these two restrictions - secrecy and control of production capacity - are the most pernicious if one thinks in terms of the absorption of technology and its development.

Consequently, it can be stated that, by the form of contract which they negotiated, principally in respect of these two matters, national firms renounced, for a long time, the development of their own technology.

(c) Guarantee of performance and patents

Of the 43 contracts analysed, 18 did not include clauses guaranteeing the performance of the unit. Of the remaining 25, two fixed the "liability" at 50 per cent of the value owed in respect of technology, while in the remainder the percentage relating to guarantee of performance did not reach 50 per cent, the fact being that in several agreements it was found that the responsibility value fixed did not represent 15 per cent of the value of the technology.

With regard to the patent guarantee, in which the supplier affirms that he will be responsible for any action or lawsuit initiated against the recipient in respect of the use of patents belonging to third parties, this was found to be total in only three contracts. In nine agreements there are no responsibility clauses, while in 29 contracts this guarantee is partial, in many cases included in the 50 per cent of total "liability".

(d) Export restrictions

Only two contracts contained export restrictions. While these did not preclude the export process, they did make the supplier of technology the exclusive agent for the export sale of contract products. These restrictions were retained after the INPI analysis.

It should be borne in mind that these restrictions probably appear in agreements between shareholders, since this was the normal practice at the time, in order to escape the control of INPI. This question can only be resolved in the second phase of this study, when it is intended to analyse the shareholders' agreements signed between the parties.

(e) Obligation to purchase inputs

The main input which is the subject of this obligation is the catalyst.

Only four contracts include provisions regarding the obligation to buy this input, whether from the supplier itself or whether from a source designated by the supplier.

However, as in the case of export restrictions, this obligation must probably be set out in other agreements, for example, in a contract of guaranteed supply.

As the production of catalysts in the country is in principle not viable for reasons of scale, their importation was inevitable, the only remaining question in this circumstance being that of their origin.

Meanwhile, it would be advisable to tackle this aspect in the second phase of the study, in which imports by each of the firms connected with the Export Trade Department of the Bank of Brazil (CACEX) will be surveyed.

(f) Form of payment

Among the agreements negotiated, fixed-price payments predominate, with 36 contracts following this form. With regard to the remaining contracts, two of them used a percentage on liquid sales; two used fixed price plus fixed price per unit of product; and three were free.

The explanation for the fact that the majority of contracts had a fixed-price form of payment, is to be found in the participation of the supplier of technology in the capital of the national firm, given the fact that the payment for the technology was made through shares in the company.

(g) Other restrictive clauses

In addition to the restrictive clauses mentioned above, other clauses equally contrary to the interests of the national firm were found, such as:

- The "licence" is subject to a predetermined percentage of participation in the share capital, or alternatively where the supplier ceases to hold x per cent of the joint venture capital, the licence would be cancelled;

- Improvements relating to the technology which is the subject of the contract would have to be bought by the receiving company, even if these improvements were developed during the contractual period;

- The receiving firm could not request patents covering the information transmitted in the contract;

- The supplier would not take responsibility for loss of profits, arising from faults in the productive process;

- Clauses excluding Brazilian legislation.

In the 17 contracts where some or the other of these restrictions were observed, these were retained after the INPI analysis.

4. Remittance of foreign exchange in respect of technology and engineering services of selected petrochemical companies

This part sets out details of remittances in respect of technology transfer resulting from contracts with selected firms.

These data were obtained from the Central Bank of Brazil, by consulting the Registration Certificates and the respective Remittance Extracts of each of the companies, in the period January 1971 to June 1981 inclusive.

The information contained in these extracts refers basically to the beneficiary company, the year in which the remittance was made and the type of remittance.

On the basis of the information it is evident that during the setting up of the Bahia petrochemical complex, the amounts remitted were about US$93.4 million as payments for technology transfer, made up of US$27.7 million for technology whether patented or not and US$65.7 million for engineering services, corresponding respectively to 30 per cent and 70 per cent of the total remitted in the period from January 1971 to June 1981.

With regard to the countries of origin of licensers, suppliers of technology and providers of services, the United States of America, Netherlands and Japan stand out by order of magnitude, accounting for about 80 per cent of the remittances effected in that period, of which 58 per cent were payments for services and 22 per cent for technology, with the United States of America standing out in respect of the latter.

Other information obtained was on the ratio between remittances and investments. For better understanding and also for clarification of these relationships, the companies were divided into five groups, as follows:

GROUP 1 - companies where Petroquisa's shareholding is greater than 50 per cent and the remainder of the shares do not include any significant holding by any foreign group;

GROUP 2 - made up of companies where the shareholdings are distributed in accordance with the tripartite model;

GROUP 3 - group of companies where the majority of the share capital is held by a private national group and, in some cases, by a government investment agency, with minority shareholdings by foreign groups;

GROUP 4 - companies where the shareholdings of the foreign partner and the national partner are equal, with the Government having a minority shareholding;

GROUP 5 - foreign companies.

It will be noted that the criterion of grouping companies by their share composition determined the corresponding investment profile of each of the groups defined.

It can be seen that the companies comprising Group 1, being under the majority control of Petroquisa, whose function was to supply raw materials to the companies in the remaining groups, are characterized by average investments of large proportions.

Companies making up the remaining groups attracted medium- or small-scale investment, depending on whether the joint capital contributed by the economic agents involved (private national groups, foreign groups or State) was equally distributed, in the case of Groups 2 and 4, or unequally, in the case of Groups 3 and 5.

The important thing to emphasize is that since small-scale investments continued, in

the main, to be subject to the majority control of national groups, this fact ultimately reflected the real differences in financial-economic support between the three types of partners. This is also reflected in the high ratio of remittances to investments in Group 3 compared with Group 2, which could be explained by the incipient bargaining power of private national groups in dealing with foreign suppliers of technology, when Petroquisa was not at their side or only to an insignificant extent.

Another factor which tends to increase that ratio is the degree of foreign participation in the share composition of companies, when this is not compensated by the participation of Petroquisa, which can be seen by comparing Groups 3 and 4.

In the case of Group 5, which shows small-scale investment with the total capital being foreign, the ratio is similar to that of Group 4. Indeed, if the expenditure and technology are considered as being in effect remittances (US$2.8 million), the ratio would become 6.3 instead of 0.2. However, since most of the expenditure on technology was converted into investment, the ratio in the table is understated.

To summarize, it can be stated that the lower remittance/investment ratio of Group 2 in relation to Groups 3, 4 and 5 is due to the presence of Petroquisa in the former, while the lower ratio of Group 3 in relation to Groups 4 and 5 is explained by the high or total foreign participation in the share structure of the companies in the last two groups. Thus the lower the degree of participation by Petroquisa, together with a greater participation of foreign groups in the enterprises, the higher the ratio of technological remittances to investments made.

Recent legislation

DRAFT REVISION OF DECREE 2442 - Venezuela
EXPLANATION OF REASONS FOR THE DRAFT REVISION

I. Introduction

Venezuela has experienced radical changes in its economic situation which oblige it to adopt new strategies and develop policies better adapted to national interests.

One sector which calls for urgent priority attention is that of foreign investment and the transfer of technology to the country.

To that end, the Office of the Superintendent of Foreign Investment organized a seminar on "Foreign Investment and Economic Development", which was held at Caraballeda from 20 to 22 June 1984.

The statements by the eminent personalities who attended the seminar as representatives of the Government, entrepreneurs and workers and the work of the specialists in the various fields covered by the complex subject of foreign investment and importation of technology showed significant agreement on the need to adapt the system, stimulate foreign investment in certain sectors and explore methods of assimilating technology.

In order to follow up the achievements of the seminar, the Office of the Superintendent of Foreign Investment immediately established a committee consisting of officials of the Office and other public administration bodies concerned with the subject, and invited various persons from the private sector who were expert in the matter to participate. Thus, a multidisciplinary group was formed, the work of which culminated in the draft revision of Decree No. 2442 on which we are about to comment.

II. Principal characteristics

The principal characteristics of the draft decree being proposed to the National Executive through the Ministry of Finance may be summed up as follows:

A. Reduction of bureaucratic formalities

Formalities which administrative practice itself has shown to be superfluous are eliminated so that the proposed regulations constitute a body of law with a high level of practical sense without reducing the necessary control which the State must exercise over those aspects which require supervision by the competent national body in accordance with the provisions of Decision No. 24. It should be emphasized that all the amendments are in keeping with the spirit and purpose of this Decision.

B. Grouping together of related provisions

The draft decree groups together in a single body of law provisions which had been scattered throughout different legal texts such as Decree-Law No. 746 on technology contracts already existing on 31 December 1973, Resolution No. 324 on reinvestments and other Resolutions of the Ministry of Finance or the Office of the Superintendent of Foreign Investment, which were very complicated to cope with. This has led to the presentation of a text containing all the basic regulations, which will be easier to consult and will speed up decision-taking by potential investors.

C. Limitation of excessive discretionary latitude

The draft attempts to establish clear rules both for the Office of the Superintendent of Foreign Investment and for the investors. In that way, juridical gaps have been filled which had rendered dealings with the body concerned more difficult and left a wide field open for discretionary interpretations. However, the Committee preferred to retain a certain amount of discretion for the competent national body as the only way of rapidly dealing with and solving certain problems which were so variable and changeable that it was impossible to adopt universal formulae for their solution.

III. The most important provisions of the draft decree

1. Currency for registration

In accordance with the provisions of Decision No. 24, registration in foreign currency is effected in all the countries of the Andean Pact, except Venezuela. Registration in foreign currency should not be confused with a guarantee by the State to sell dollars or other foreign currency at the rate of exchange at which the investment was made, since Decision No. 24 itself clearly states that the rate of exchange for the re-export or transfer abroad of any sum to which the investors are entitled shall be that ruling at the time the transfer is made. Registration in foreign currency should be seen as a security for the investor, who even in the event of a strict exchange control system would have guaranteed access to the foreign exchange market, up to the amount and within the limitations established by Decision No. 24, in order to make the transfers abroad to which they are entitled. It is considered that as well as complying with the legal requirement under Decision No. 24 to permit registration in fully convertible currency, the implementation of this provision would generate a sense of security and confidence in foreign investors. It is proposed that new foreign investment should be registered directly in United States dollars or, according to the wish of the investor, in any other fully convertible currency admitted by the Central Bank of Venezuela.

With regard to investments made before 18 February 1983, it is proposed to facilitate the corresponding registration in dollars, at the rate of Bs 4.30 to the dollar. In this respect, it should be pointed out that this seems to be the most just and reasonable solution since foreign investment before that date was in fact made at the rate of Bs 4.30 to the dollar. Any other solution could be considered discriminatory against foreign investors with investments already existing on 18 December 1983, since it would give preferential treatment to foreign lenders (for whom the debt has indeed been recognized at a rate of Bs 4.30 to the dollar) over the investor and would also produce the immediate and undesirable effect of arousing mistrust and reducing incentives for potential investors.

2. Reinvestment

With regard to the reinvestment of profits, provisions found in different texts, such as Decree No. 2442 and Resolution No. 324 of the Ministry of Finance, have been included.

The provisions also adopt the administrative practice which had been followed by the Office of the Superintendent of Foreign Investment with respect to reinvestment, likewise making it possible to accumulate over one or more financial years the reinvestment to which the investors are entitled.

3. Non-remittable profits

In general, the existing system for the distribution and remittance of profits and the re-export of capital has been clarified, establishing the limits within which foreign investors may remit their profits abroad and the alternatives of investment or utilization available for non-remittable profits, with the formalities to be complied with in each case.

4. Control of undertakings

The articles of the draft decree group together the powers granted to shareholders for the appointment and dismissal of officials and members of the boards of directors, irrespective of nationality, these being the powers which guarantee the control of the undertaking by particular shareholders. In this way, the proposed regulations provide for the expression of the will of national and foreign shareholders.

5. Conversion of undertakings

With regard to the conversion of undertakings, it is proposed to adopt the provisions of Decision No. 24 - for example, not to require prior authorization for the sale to national investors of shares, capital holdings or rights which are the property of foreign investors in undertakings operating in unreserved sectors, which will mean a substantial reduction in the procedures which have to be gone through at the Office of the Superintendent of Foreign Investment.

6. New investments in real estate

Although these are not expressly covered by Decision No. 24, a new chapter is introduced designed to regulate situations resulting from the acquisition by foreigners of real estate in the country, it being clearly established that such acquisitions are authorized provided that the resources used to pay for the purchase come from abroad and the procedure of subsequent registration at the Office of the Superintendent of Foreign Investment is complied with. This regulation is necessary, since it is not possible to apply to this type of investment the same rules as to investment for commercial or industrial undertakings, such as the rules on the conversion of undertakings or the control of the technical, administrative, commercial and financial management of the undertaking. At the first meeting of competent national bodies responsible for the implementation of the Common Regulations on the Treatment of Foreign Capital, held at Lima, Peru, in July 1982, the need to establish special regulations for investment in the real estate sector was specifically mentioned, but so far none have been promulgated; the proposal would fill this gap

7. External credit

With regard to the utilization of external credit, it is stipulated that external credit contracts for periods of more than two years shall require prior authorization from the Office of the Superintendent of Foreign Investment whereas for credit facilities of up to two years it will only be necessary to register them after each utilization, which simplifies the formalities without altering the regulations currently in force.

8. Transfer of technology

With respect to the transfer of technology, provisions to be found in different instruments have been brought together. Decree No. 746 of 11 February 1975 contains provisions which are mostly of temporary validity, and some restrictive clauses which were to be deleted from contracts already existing on 31 December 1973. These restrictive clauses have therefore been collected together in the draft decree and their meaning and present application clarified, thus simplifying the processing of contracts which do not require prior assessment, such as contracts which do not stipulate any consideration in return, which are subject to a special registration procedure.

9. Capitalization of external credit

It is proposed to include in the transitional provisions a mechanism to authorize the capitalization of credit balances by the holders of credits in foreign currency contracted before 18 February 1983, which will mean a decrease in the level of private foreign debt and a consequent saving in foreign exchange in the short and medium term.

10. Transfer of shares by reason of succession by a residuary legatee

When shares are transferred, by reason of succession by a residuary legatee, from a national investor to a natural person of foreign nationality, no prior authorization from the Office of the Superintendent of Foreign Investment will be required nor will the rules set forth in Decision No. 24 of the Commission of the Cartagena Agreement concerning the limitation of shareholding by foreign investors apply.

11. Procedures and recourses

In general, all the provisions which it was considered came within the reserved legal area, or which were already governed by the Organic Law on Administrative Procedures and other laws promulgated during the time in which the decrees whose revision is proposed were in force, have been deleted from the regulations.

IV. Final comments

The Committee's work was at all times subject to the parameters set by the framework of the regulatory area.

By reason of this limitation, no attempt whatever was made to alter the spirit and purpose of Decision No. 24 of the Commission of the Cartagena Agreement, which is the governing instrument of the common regulations for foreign investment and transfer of technology within the Andean Group.

An analysis of the draft decree will show that its fundamental orientation is towards the adaptation of the regulations to the economic circumstances prevailing in Venezuela and in the world. The Committee is conscious that the text submitted is subject to further revision, and is therefore ready to consider any new element which might help to improve the draft.

Publications

UNIDO/PC.31 Rev.1	Design and evaluation. A manual of policies, procedures and guidelines for UNIDO-executed projects and programmes. Volume I. Projects
UNIDO/PC.109	Round-Table Ministerial Meeting on Co-operation among Developing Countries in the Food Processing Industry, Novi-Sad, Yugoslavia, 7-11 May 1985. Co-operation between Yugoslavia and developing countries in the agro-food industry. National paper
UNIDO/PC.109/ Corr.1	Corrigendum
UNIDO/IS.445/ Rev.1	The UNIDO programme of technological advances: Microelectronics
UNIDO/IS.477/ Add.1	The vegetable oils and fats industry in developing countries. Statistical Digest. Sectoral Studies Series No. 13, Volume 2
UNIDO/IS.500	Overview of the microelectronics industry in selected developing countries
UNIDO/IS.501	Conceptual model for determining a country's desired level of external borrowing from the debtor country's perspective
UNIDO/IS.503	The present situation of the agricultural machinery industry in North America and Western Europe. Sectoral Working Paper Series No. 24
UNIDO/IS.505	Second world-wide study on capital goods: The sector in figures. Sectoral Studies Series No. 15, Volume II
UNIDO/IS.507	Electric power equipment in developing countries: Options and strategies. An analysis of eleven country case studies. Sectoral Working Paper Series No. 25
UNIDO/IO.596	Population growth and industrialization
UNIDO/IO.605	Industrial capacity utilization. Working paper on UNIDO technical assistance
UNIDO/IO/R.143	Computer model for feasibility analysis and reporting (COMFAR). User's guide and reference manual

Provisional list of documents for First Consultation on the Building Materials Industry, Athens, Greece, 25-30 March 1985

ID/WG.434/2	Issue No. 1: Development of the building materials industry

ID/WG.434/3 Issue No. 2: Measures to strengthen indigenous technological capabilities in the production of building materials

ID/WG.434/4 Issue No. 3: Measures required to develop building materials production in the informal economy, including research and development, information, training and quality improvement

Background papers

ID/WG.434/1 Small-scale building materials production in the context of the informal economy

ID/WG.425/1/Rev.1 Research priorities for the building materials industries in developing countries

ID/WG.425/2 + Corr.1 Long-term forecasting and planning of the construction and building materials industries

ID/WG.425/3 Measures and actions to increase the production of indigenous building materials in the context of enhanced import substitution

ID/WG.425/4/Rev.1 Outline of a policy for mastery and selection of technology in relation to capital goods for cement, brick and plaster manufacturing - International co-operation in these industries

UNIDO/IS.512 The building materials industry in developing countries: Analytical appraisal (Sectoral Studies Series No. 16, Volume I)

Information papers

ID/WG.425/7 + Corr.1 Report (of the Global Preparatory Meeting for the First Consultation on the Building Materials Industry)

ID/WG.395/2 Promoting the use of wood in construction

Meetings

1985	PLACE/TITLE	FURTHER DETAILS
Apr 16-19	Brisbane, Australia Queensland Electronics Exhibition	Queensland Exhibitions GPO Box 1812 Brisbane, Queensland 4001 Australia
Apr 19-24	Brussels, Belgium International Trade FAir for Equipment of Motor Car Workshops and Accessories	Interconvention c/o Swissair CH-8058 Zurich-Flughafen Switzerland
Apr 22-26	Prague, Czechoslovakia 10th World Congress of the International Measurement Confederation	IMEKO Secretariat H-1371 Budapest P.O.B. 457 Hungary
Apr 23-24	Manchester, UK Computers in Textiles	S.R. Beech, UMIST P.O. Box 88 Manchester M60 1QD, UK
Apr 30 May 04	Jakarta, Indonesia International Telecommunications and Business Com'ns Systems Exhibition	Interconvention c/o Swissair CH-8058 Zurich-Flughafen Switzerland

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