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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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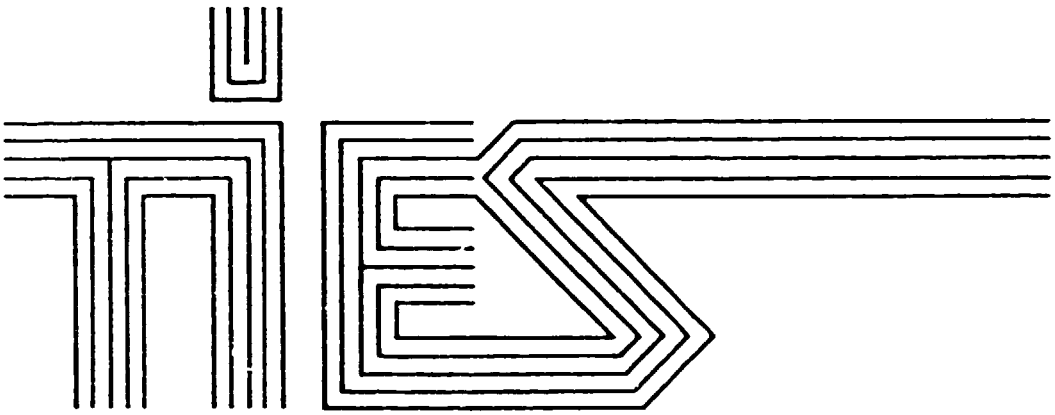

NEWSLETTER

Technological Information Exchange System

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Compiled by the Industrial Technology Promotion Division, Department for Industrial Promotion, Consultations and Technology, UNIDO, P O Box 300, A-1400 Vienna, Austria

Dear TIES Reader,

Still in line with UNIDO's objective of strengthening the capabilities of developing countries in the acquisition and negotiation of technology, we are engaged in activities that seek to promote an effective liaison between local research and development activities and private industry. In several developing countries with established research and development systems, focus is given towards increasing the effectiveness and relevance of existing national research and development capacity, such as through the building of linkages among institutions and an emphasis on the process of commercialization. Again the contractual element is critical. The Technology Acquisition and Negotiation Section is now endeavouring to prepare guidelines and model contracts that could be utilized by research and development institutions in developing countries, including universities, in their contractual relationships with utilizers of their knowledge base. At the same time, we have also been collecting sample contracts that are used by some R&D institutions in developing countries, particularly those engaged in contract research. In this issue, of the *Newsletter* we print one sample agreement for contract research and one sample agreement for joint research between two R&D institutions.

On a lighter note, we are very pleased by the positive reaction we have been receiving regarding the *TIES Newsletter*. At some point in the future we may reprint some of the comments and suggestions made by readers, with some of the problems and experiences they encounter in the acquisition and transfer of technology — a sort of Reader's Forum. We thank our readers for their encouragement and quite obvious interest. It is indeed most heartening.

Technology Acquisition and Negotiation Section
Technology Development and Promotion Division

CONTENTS

UNIDO NEWS

UPDATE ON BOT GUIDELINES

A group of seven experts, supported by staff of the Technology Acquisition and Negotiation Section, met in Vienna on 8 – 10 December 1992 to start work on the preparation of Guidelines for the Development, Negotiation and Contracting of BOT Projects.

Essentially, one of the foci of the meeting was the formulation of terms of reference for the preparation of the Guidelines. After in-depth discussion, it was agreed that the undertaking will be guided by the following objectives:

- to give developing countries basic and strategic orientation so as to strengthen their capabilities in introducing, promoting and implementing BOT strategy and projects;
- to provide practical information clearly and simply on the structure, procedures and basic issues of BOT arrangements;
- to support dissemination and the learning process of BOT strategy; and
- to contribute towards reducing the time and expense of BOT bidding, negotiation and contracting through the preparation of standard procedures and model documentation

The Guidelines will address the widest possible range of suitable projects for promotion on a BOT basis. For instance, it could cover small-scale social infrastructure, such as water treatment facilities, hospitals and large projects such as commercial and trade centres, storage and distribution centres, industrial estates and complexes, and infrastructure concerning water, electricity, communications, transport, etc

The Guidelines are intended to be used by decision makers at high government and political levels in developing countries, as well as professionals engaged in BOT projects. At the same time, they will be of interest to banks and financial institutions, investors and contractors.

The meeting was preceded by a round table discussion with representatives of banks, financial institutions, governments and international agencies active in promoting and implementing BOT projects. Among the institutions represented were The Chase Manhattan Bank, Chartered West LB Ltd., the European Investment Bank, European Bank for Reconstruction and Development, the Banco do Brazil A.G., Commission of the European Communities, the National Centre for Technology Transfer of Pakistan and the United Nations Commission for International Trade Law (UNCITRAL). This one-day meeting was dedicated to presentations and discussions on such topics as financial strategy and implementation of BOT projects, the private banking experience on BOTs, advantages and disadvantages of BOT arrangements for host countries and issues in the negotiation and contracting of BOT projects. This proved to be a very stimulating session, as it generated a discussion of issues from different perspectives, i.e., the bank, the financial engineer, the lawyer and the host country.

Based on the schedule worked out by the experts, the Guidelines shall be ready in draft form by mid-1993 and will be presented to a second meeting of experts in November 1992.

UNIDO AT UNCTAD MEET ON INVESTMENTS AND TRANSFER OF TECHNOLOGY

UNIDO recently participated in the UNCTAD Ad Hoc Working Group on the Interrelationship between Investment and Technology Transfer held in Geneva, Switzerland from 25 – 29 January.

The Working Group was established to examine interrelationships between investment and technology transfer; identify the factors conducive to facilitating the flows of investment and technology to developing countries; examine the role of private firms, governments and international organizations in the transfer of technology; consider the role of new and emerging technologies in investment decisions and national capacities for innovation and adaptation; encourage initiatives and exchange of experiences conducive to facilitating technology transfer and the generation, transfer and diffusion of technology. Issues related to the development and transfer of environmentally-sound technologies were also a subject of consideration by the Working Group.

It was noted that these are areas of substantive interest and relevance to UNIDO, as well as other units of the United Nations system.

Three issues were identified as having the unifying theme of interrelationship between investment and technology transfer. These are:

- investment flows, transfer of technology and competitiveness (various channels and modes of tech-

nology transfer, measures leading to increased flows of technology and investment, impact of new and emerging technologies, etc.);

- technology and capability building in developing countries, particularly the least developed countries and in countries undergoing the process of transition to a market economy;

- the transfer and development of environmentally-sourd technologies (a workshop will be held on the transfer and development of environmentally-sound technologies).

Further work of the Working Group will center around the above three issues and will be carried out on the basis of review and analysis of existing literature, review of existing work of the United Nations System and selected non-governmental organizations; and an exchange of national experiences based on country-case studies.

UNIDO was represented at the meeting by Messrs. J. M. de Caldas-Lima, Chief of the Technology Acquisition and Negotiation Section and A. Akpa, Officer-in-Charge of the UNIDO Liaison Office at Geneva.

TAN SECTION CALENDAR OF EVENTS

1993 is another hectic year for the Technology Acquisition and Negotiation Section. This arises both from existing activities, as well as from new programmes launched and the steady increase in the demand for workshops and seminars on technology transfer negotiations. Added to this is the increasing mobilization of the Section to provide inputs to UNIDO's TECHMART Programme and investment promotion activities through seminars/workshops on technology transfer contracting and negotiation. Hereunder is a rundown of the meetings, workshops and seminars on chnology transfer contracting and negotiation scheduled to take place in 1993:

- Workshop on technology transfer contracting and negotiation, Conakry, Guinea, April

- Workshop on technology transfer contracting and negotiation, Douala, Cameroon, April

- Workshop on technology transfer contracting and negotiation, Congo, provisionally in May

- Workshop on joint venture and technology transfer contracting in cooperation with the Investment Division, Kenya, May (tentative)

- Experts Group Meeting on new and emerging technologies and future prospects of international cooperation back-to-back with a meeting with the Licensing Executives Society (LES), Vienna, Austria, June

- Consultative meeting on BOT, Vienna, Austria June

- Workshop on technology transfer negotiation in conjunction with the TECHMART Programme, Brazil, August

- Fifth African-TIES Meeting, Rabat, Morocco, September

- Workshop on technology transfer contracting and negotiation, Rabat, Morocco, September

- Workshop on technology transfer negotiation, in conjunction with TECHMART, Tunisia, October

- Workshop in Harare, Zimbabwe, in November in cooperation with PRODEC

- Workshop in New Delhi, India (dates under consideration), focusing on the commercialization of R&D results through licensing agreements and other forms of developer-user relationships

REGISTRY NEWS

INDIA LIBERALIZES RULES ON FOREIGN TECHNOLOGY COLLABORATION

Since June 1991, India has adopted important policy initiatives, as a result of a comprehensive policy reappraisal indicating a need for change in the management of the economy. The new initiatives focus on opening the domestic market to increased competition and preparing industry to become internationally competitive. Foreign investments and technological collaboration to obtain higher technology, to increase exports and to expand the production base are the hallmarks of the new policy package. Consequently, Government has taken a series of initiatives leading to policy changes in respect of industrial licensing, the public sector, the Monopolies Regulation and Trade Practices (MRTP) Act, foreign investment, foreign technology, capital markets, trade, exchange control and taxation.

The following decisions have been taken with respect to foreign technology transfer agreements:

(i) Indian companies will be free to negotiate the terms of technology transfer according to their own commercial judgement. The predictability and independence of action that will now be available will provide Indian industry with the competence for efficient absorption of the technology.

(ii) Automatic permission will be given for foreign technology agreements in high priority industries up to a lump sum payment of RS 1 crore [one million], 5 per cent royalty for domestic sales and 8 per cent for exports, subject to total payments of 8 per cent of sales over a 10-year period from the date of the agreement of seven (7) years from the commencement of production.

(iii) The prescribed royalty rates can be net of taxes and will be calculated according to standard procedures.

(iv) Automatic permission will be given to industries not covered in high priority industries, provided there is no foreign exchange involved for any payments.

(v) In the case of foreign technology agreements in the hotel industry, automatic approval will be available subject to the lump sum fee not exceeding US$ 200,000 for technical and consultancy services, franchising and marketing/publicity support, payment not exceeding 3 per cent of the gross room sales; and management fees not exceeding 10 per cent of the foreign exchange earnings provided the foreign company has at least 25 per cent equity.

(vi) Similarly, automatic approvals are available for applications under 100 per cent export-oriented units and export processing zone schemes subject to certain conditions.

(vii) All other proposals will need specific approval under the general procedures in force.

(viii) The Government has also decided that there would be no condition prohibiting the use of any foreign brand name/trade mark on goods for sale within the country. The companies are now free to use foreign brand names/trade marks for internal sales as well as exports as in the past.

(ix) Extensions of existing foreign collaboration agreements will need the approval of the Government and the company will have to file an application in the prescribed form (10 copies) with the Secretariat for Industrial Approvals (SIA) in the Department of Industrial Development.

VENEZUELA:

NEW LICENSING REGULATIONS

The new licensing regulations (Decree 2095, Official Gazette 25.3.92) following Andean Decision 291 (O.G. 4284 of 26 June 1991) maintain the requirement of registration of any agreement for the import of any form of technology into Venezuela. However, the regulations do away with the concepts of "net technological sales" and "occasional services".

There is no ceiling on royalties payable to a parent company, and no limitation of exports is allowed (especially to Andean countries). Distribution agreements involving foreign-owned trademarks must be registered as well. Restrictive clauses are limited to those contained in Decision 291. The sole penalties provided for violation of the regulations are the suspension or revocation of the registration and, accordingly, of the payment of royalties. It is an open question whether the contract remains valid between the parties after the registration has been suspended or revoked.

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NIGERIA:

NOTAP SIGNS M.O.U. WITH RMRDC AND FIIRO

NOTAP (National Office for Technology Acquisition and Promotion of Nigeria), in April 1992, signed a Memorandum of Understanding with the Raw Materials Research and Development Council (RMRDC) and the Federal Institute of Industrial Research, Oshodi (FIIRO) on information sharing and networking.

RMRDC, which is primarily involved with the promotion of the use of indigenous raw materials, maintains a Raw Material Information System (RMIS) that has databases on raw material basic information, process and technology, import/export statistics and an investment package. FIIRO, on the other hand, has an Industrial Information Centre with databases on company profiles, scientific, technical and economic publications, product and industry profiles, research and development information and data on available Nigerian technologies, among others. NOTAP, by virtue of its mandate, has databases primarily on foreign technologies coming into Nigeria and is building up a library of technology profiles.

All three agencies are engaged in entrepreneurship development and realize that they could build a synergistic effort in achieving this goal through complementation in the use of their respective information systems.

Subsequently, on 9 November 1992, an Information Workshop on Networking and Sharing of Database was organized, with assistance from UNIDO. The workshop tackled the following important issues, among others: the level of information access permissible to other parties; issues related to information networking such as single-user/multi-user environment, query and response or remote log-in, communication network, etc.; methodology of information sharing, including specification and infrastructure for administration of the network; and manpower development and training plans.

To facilitate the operation of information sharing and networking, a data network technical committee was set up with representation from all three agencies.

This MOU was a result of UNIDO's efforts to assist the Federal Government of Nigeria in rationalizing its technology transfer and development activities.

TECHNOLOGY ACQUISITION

TECHNOLOGY TRANSFER TRENDS: AN OVERVIEW OF STRATEGIC PARTNERING

by Professor Lynn Mytelka, Carlton University LAREA CEREM, Université de Paris X, 92001 Nanterre, France)

(Last of a series)

CHAPTER V

PRIVATE SECTOR MANAGED PROGRAMMES FOR THE PROMOTION OF STRATEGIC PARTNERSHIPS

Private sector managed programmes for the promotion of strategic partnerships are of a more recent vintage than the more common public sector programmes discussed in Chapter 4 (*TIES Newsletter* Issue No. 47). Three such programmes will be examined below: Canada's PRECARN Associates incorporated in 1987, its VISION 2000 Inc., a private-public sector partnership formed in 1989 and the five-year Canada-US R&D consortia created in 1989 to develop an electrohydraulic ventricular assist device (EVAD). As in the previous chapter, the focus will be on the scope and orientation, programme management, programme and project financing, participation in each of these programmes. One of the principal results of the first two programmes thus far, is their ability to launch a number of research consortia. The EVAD consortia, on the other hand, is on the way to developing a commercializable product.

1. PRECARN Associates

PRECARN Associates is a non-profit corporation incorporated in Canada in 1987. Its membership includes 34 Canadian-based corporations ranging from natural resource sector companies such as Alcan, Falconbridge, Inco, Noranda, Petro-Canada and Shell, to energy producers such as B.C. Hydro, Hydro-Quebec, Ontario Hydro and TransAlta Utilities Corporation to high-tech firms,

amongst which are Asea-Brown Boveri, Bell Northern Research, CAE Electronics, Hatch Associates, Hewlett Packard, MPR Teltech and Spar Aerospace. In contrast to all of the other programmes discussed, the initiative to set up PRECARN came from the private sector and is managed by that sector

1. Scope and Orientation

PRECARN Associates engages in precompetitive R&D in the field of intelligent systems technologies, ranging from the simplest expert systems to the development and application of autonomous robotic devices. This sector was chosen because of the considerable corporate and university expertise that already existed in Canada and the twin needs of avoiding wasteful duplication and creating critical mass if that expertise were to result in a competitive Canadian position in this field.

2. Management and Financing

All PRECARN members make an annual payment to the Corporation of $25,000. Of this amount, $100 is a membership fee and $24,900 is a contribution to the research and development programme undertaken by PRECARN. This latter amount is eligible for Canadian government investment tax credits. In addition, members cover the costs associated with their own participation on the Board of Directors, on committees and at briefing sessions and workshops and they make significant additional contributions of a project-specific nature, such as covering the salaries of researchers participating in joint projects as well as overhead and equipment costs for these projects. In total, PRECARN and its membership have committed about $12 million for the first five projects and a further $6 million in cash and in-kind support for the administration and feasibility study programme (PRECARN: 1992, 5)

In addition to its membership fees, about 10 per cent of PRECARN's administrative costs during its first three years were borne by a grant from the National Research Council (NRC) of Canada. Grants from the NRC, Federal Department of Industry, Science and Technology Canada, through its Strategic Alliance Programme, and provincial governments currently contribute roughly $20 million for project support (PRECARN: 1992, 5).

The project cycle in PRECARN begins with a call for research proposals. These are reviewed by PRECARN's Technical Advisory Committee composed of representatives from industry (70 per cent) and from universities (30 per cent), which then decides whether to support a feasibility study. Feasibility studies may take up to six months and may receive up to $100,000 CAD in support from PRECARN. "... on average, the participants match PRECARN's support through in-kind support" (PRECARN: 1992, 1).

The Technical Committee reviews the results of feasibility studies and recommends some for long-term research support (four to five years). This Committee also reviews technical progress of the research, while the Exploitation Committee monitors the research for exploitable results and helps in the dissemination of all results (PRECARN: 1992, 1).

OWNERSHIP OF INTELLECTUAL PROPERTY HAS NOT BEEN A PROBLEM IN PRECARN

Ownership of the intellectual property resulting from research undertaken in a PRECARN project has not been an issue. Of the four on-going projects, PRECARN Associates owns the intellectual property in two and the industrial participants in the other two. However, all members of PRECARN, whether they participate in a particular project or not have access to the resulting technology. Companies, which were members of PRECARN in the year that a particular project started, are assured of royalty-free licence rights to any intellectual property arising from that research. Members joining PRECARN in the second year of a project pay 25 per cent of the third party royalty rate, those joining in the third year of a project pay 50 per cent, in the fourth year 75 per cent and thereafter 100 per cent of the third party royalty rate. All members of PRECARN also receive regular briefings and reports on the progress of research in each PRECARN project (PRECARN: 1991)

In addition to managing joint research projects, PRECARN has created an Institute for Robotics and Intelligent Systems (IRIS), which is itself a network of researchers from 18 universities across Canada. The institute has received a grant of $23.8 million over four years from the Federal Government's Centres of Excellence programme. All PRECARN members have preferential access to the results of the IRIS research network. "If the university owning the results wishes to issue an exclusive licence, PRECARN has a right of first refusal on behalf of its membership. If a non-exclusive licence is issued, PRECARN members pay 50 per cent of the third party royalty rates". (PRECARN, 1991).

3. Participation

PRECARN pays special attention to bringing together both users and producers of new technology.

Therefore while the research projects are of a longer-term nature, they address identified needs and applications within the Canadian economy and they involve the very parties who can apply the research results to those needs (PRECARN: 1991).

All PRECARN proposals must involve at least two PRECARN members, university researchers and should normally include both a producer and a consumer of the contemplated technology. The four projects currently underway all meet these conditions

4. Results

In the five years since its incorporation PRECARN has competed for and won $23.8 million over four years to support 22 university-based research projects in the IRIS network. These projects involve computational perception, knowledge-based systems and intelligent robotic

systems. Eleven feasibility studies for joint R&D have been approved for support, eight of which had been completed by 1992, two were underway and one had been abandoned.

From the eight completed feasibility studies, six research projects have been approved. Four of these six are currently underway. The first began in July 1990 and the remaining three started up during 1991. Funding is being negotiated for a fifth, but the sixth thus far has not been able to find sufficient private sector support. The total cost of the four projects underway is $33.8 million over five years. These projects involve 14 PRECARN members, four universities and two government agencies.

AS THE CASE OF PRECARN ILLUSTRATES, A MINIMUM OF THREE YEARS IS REQUIRED TO STIMULATE FORMATION OF INTER-FIRM PARTNERSHIPS, SECURE FINANCING FOR THE DEFINITIONAL PHASE, UNDERTAKE THE NECESSARY FEASIBILITY STUDIES AND ORGANIZE THE FINANCING FOR THE RESEARCH PHASE.

2. VISION 2000

Like ESPRIT and EUREKA, the initiative to form VISION 2000 came from the public sector. Like ESPRIT, there was also immediate involvement by the private sector through attendance by CEOs from Canada's leading communications companies at meetings organized by the Department of Communications (DOC) and Industry, Science and Technology Canada (ISTC). The objective of these meetings, however, was not solely to involve the private sector in the design of a programme, but rather to convince the private sector that they should fund and manage the programme. By 1991 this was indeed the case.

1. Scope and Orientation

VISION 2000 is a private-public sector partnership "designed to enhance the competitiveness of the Canadian communications industry. Its primary objective is to facilitate strategic alliances in advanced personal communications. The principal goals of Vision 2000 are to foster collaboration in research and development, to accelerate innovation in communications and information technology, and to introduce new products and services to domestic and world markets" (VISION: NDb, 3). VISION 2000 is thus a market driven programme whose membership comes overwhelmingly from the business community.

THE VISION 2000 CONSORTIUM IS A PRIVATE COMPANY SUPPORTED BY ITS MEMBERSHIP FEES AND MANAGED BY THE PRIVATE SECTOR

2. Management and Financing

Both the management and financing of the VISION 2000 initiative differ from the programmes we have discussed thus far. First, VISION 2000 Inc. is a private sector company supported by its membership fees. The VISION 2000 Inc secretariat, as of 1991, is fully responsible for managing and financing the Vision 2000 initiative. But there is also a Vision 2000 programme office within the Department of Communication. It collects and disseminates information, engages in partner brokering and undertakes promotional efforts for Vision 2000 Inc. The brokering function has proven to be especially important in the Canadian context where a culture of cooperation among firms was not well developed and where a neutral arbiter in negotiations has on occasion been needed to help firms overcome their fear that project ideas will be appropriated by rivals.

Second, unlike the European Community programmes and EUREKA, there is no direct public financing of VISION 2000 Inc. As in PRECARN, partners finance their own participation. Public sector support for Vision 2000 projects, however, comes through the participation of public sector research laboratories as partners, the various support roles played by the DOC's Vision 2000 programme office and through a variety of government programmes that fund R&D and strategic partnering activity such as the Microelectronics and Systems Development Programme and the Strategic Technologies Programme.

The project cycle in PRECARN begins when a Canadian company, research institute, university or government agency responds to Vision 2000's Request for Expression of Interest whether or not that firm or institute is a member of Vision 2000 Inc. While the initial approach must include a presentation of a project concept that fits within the scope of VISION 2000's activities, it does not need to specify who the collaborators might be. Rather, after discussion with the initiator, the Project Review Committee nominated by the Board of Directors of VISION 2000 Inc. will attempt to form a project consortia brokering for both partners, and funding. In this, they are assisted by the Vision 2000 Programme office in the Department of Communications Canada (VISION: NDb, 4-5; VISION, 1992).

The Project Review Committee plays a central management role within VISION 2000 Inc. that combines elements of the roles played by the ESPRIT Secretariat and EUREKA's National Project Coordinators. Its terms of reference, for example, include the following responsibilities:

> i. to review project concepts and full proposals with a view to verifying that projects are innovative, pro-active and, where appropriate, use leading-edge technologies and that the project is potentially marketable and has business viability;
>
> ii. to make recommendations to the Directors regarding the support required. This might include assistance in setting up a strategic partnership, help in planning a project, representation to government authorities for an experimental license, allocation of spectrum or support for a policy decision, co-funding of a feasibility study, identifying and soliciting sources of funding;
>
> iii. to look for an overall "mix" of projects with national, regional and inter-regional aspects.

iv. to provide opportunities for participation by small- and medium-sized companies;

v. to suggest potential new members who may be invited to join consortia and VISION 2000. (VISION: NDa, 1-2; VISION: NDb, 4-5).

3. Participation

Among its 40 members, VISION 2000 counts Canada's major telecommunications and information technology companies, among which are Northern Telecom, MPR Teltech, UNITEL, IBM, Ericsson Communications, Gandalf Technologies, Rogers Cantel Inc. Bell Canada and Mitel; two Federal Government Ministries – DOC and ISTC – the Ministère de Communications du Quebec, two universities –Sheridan College of Applied Arts and Technology and the University of Victoria's Faculty of Engineering – and several government research laboratories. The composition of VISION 2000's membership with its predominance of private sector companies thus resembles PRECARN associates rather than EUREKA, whose members are national governments. Although universities are key participants in some of VISION 2000's on-going projects, few are members of the corporation. VISION 2000 Inc. also includes few small companies among its membership although efforts are being made to include SMEs among project partners. VISION 2000 does, however, accept foreign-based multinational corporations among its members, provided that the research they undertake as part of the VISION 2000 initiative is done in Canada.

4. Results

VISION 2000 Inc. was inaugurated in 1989. Its first two years were difficult ones during which the Business Plan and the Research and Development Framework were developed, its first president resigned, leaving the Department of Communications to manage the programme, initiate the process of identifying and promoting the formation of R&D consortia and broker the first series of projects announced in May 1991. In this it was aided by an executive committee composed of representatives from private and public sector corporations and from the DOC.

Despite these growth pains, VISION 2000 now has a new private sector chairman and president. More impressive still, in just under three years it has successfully launched fifteen R&D projects with a combined value of almost $30 million. The projects involve 44 different partners of which 22 are private company, 11 are universities and 12 are public sector bodies including laboratories of the Department of Communications Canada and Transport Canada , City of Calgary, the Montreal Museum of Fine Arts , the Canadian Automation Research Centre to name only a few. The projects are focussed on satellite, cellular and radio communications technologies. Of the $30 million in project costs, only $7.7 million comes from the Department of Communications through the participation of its various laboratories. The remainder is provided by VISION 2000 membership subscriptions, partner finance in cash and in-kind and grants from a variety of government programmes.

3. The EVAD Consortium

Of all the programmes discussed in Chapters 4 and 5, the EVAD Consortium has the narrowest focus. It is also the consortium which has moved most quickly towards the development of a number of commercializable products.

1. Scope and Orientation

EVAD is a Canadian-American R&D consortium created in 1989 for the purpose of developing an electrohydraulic ventricular assist device (EVAD). Since then it has enabled one of the partners to develop other artificial heart components as well. Its membership includes the Heart Institute as well as electrical engineers and electrochemistry specialists from the University of Ottawa, artificial heart researchers from the University of Utah's Institute for Biomedical Engineering and corporate sponsors such as Alcan International Limited and Ballard Technologies Corporation. The Consortium has a five-year term.

THE EVAD CONSORTIUM SECURED FINANCING FROM A WIDE VARIETY OF PUBLIC AND PRIVATE SOURCES IN TWO DIFFERENT COUNTRIES

2. Management and Financing

The EVAD R&D Consortium was initially a US-led project whose objective was to modify existing technology developed at Utah over the previous 12 years. When it became evident that the Utah devices were not practical for implantation, Canadian scientists and engineers set to work developing alternatives. Financing for the Consortium was obtained from a variety of sources including nearly $7 million from the Canadian Federal Ministry of Industry, Science and Technology (ISTC) and the National Research Council, a $2.8 million grant from the Ontario Technology Fund; $8.4 million in aid from the University and State of Utah and the Washington-based National Institute of Health (NIH) and almost $4 million from corporate partners.

3. Participation

The involvement of industry partners is credited with having provided the strict discipline needed to keep academic researchers on track. This has speeded research results and led to breakthroughs in the fields of energy transfer, electronics, surface materials and miniature pump design in addition to the successful development of an electrohydraulic ventricular assist device.

As a member of the Consortium, the University of Utah shares intellectual property rights to the EVAD technology but only for ventricular assist applications. For artificial heart development it must purchase the EVAD components under a separate arrangement.

4. Results

EVAD adopted a narrow focus, but in the course of its

first three years it achieved a number of technical milestones in related fields. These included the development of

- an infrared telemetry system for the control and monitoring of devices and patients;
- a unified system for ventricular assist with a potential world market value of $10,000 million;
- an enhanced transcutaneous energy transmission (TET) system for transfer of energy across the skin, which eliminates the need for certain invasive procedures;
- a patentable modification to the surface of biomaterials that can be used to prevent clotting in implanted cardiovascular devices; and
- a pulse level simulator.

At present the EVAD devices are being sold to the University of Utah for incorporation into artificial hearts. Because the partners, however, are not commercial manufacturers of the additional components developed through the EVAD Consortium, attention is now shifting to the search for potential partnerships in device manufacturing. Many of these devices, moreover, could find applications in others fields such as aerospace and defence.

CHAPTER SIX

STRATEGIC PARTNERING IN DEVELOPING COUNTRIES

Many of the factors which discouraged the formation of linkages between research institutions and universities in the industrialized countries were particularly powerful disincentives to the development of such partnerships in the developing world. This was especially true of the way in which historical practices of technology acquisition through licensing and direct foreign investment and a lack of competitive pressures resulting from both market forces and import substitution industrialization policies combined to reduce the incentive to innovate and hence to develop linkages between users and suppliers of technology.

During the 1980s, changing competitive conditions stimulated multinational corporations to decentralize R&D to overseas subsidiaries, establish inter-firm technology collaboration agreements with foreign partners and reshape supplier-client relations from one-way to two-way partnerships. In those countries in the developing world where some measure of technological accumulation had taken place and where the incentive system (see Figure 1 in *TIES Newsletter* No. 45, p.8, 1992) was conducive to stimulating innovative behaviour in locally-based firms, a range of activities related to strategic partnering began to emerge. This chapter will briefly examine five such activities, notably:

- The acquisition of technological capabilities by developing country firms in the developed countries;
- The decentralization of r&d by multinational corporations to subsidiaries in the developing world;
- Changes in supplier-client relations within developing countries and between firms from developing and developed countries;
- Linkages between universities and local firms in developing countries; and
- The emergence of inter-firm technological collaborative agreements.

1. The Acquisition of technological capability through investments in the developed countries

During the 1980s, a number of large firms in the developing world created research-intensive activities in the USA and Europe, either through greenfield investments or by acquiring outright or obtaining an equity interest in an exisiting company. These investments were designed to achieve a number of specific objectives. In the case of Hindustan Machine Tools of India, the decision to establish a small electronics operation in the USA was taken in order to gain access to advanced electronics technology needed in the production of electronically controlled machine tools. Similarly, Metal Leve of Brazil "opened an R&D centre in Ann Arbor, Michigan, in order to acquire the latest technology in the manufacture of auto engine pistons" (Cantwell & Tolentino: 1990, 41).

A number of oil companies from developing countries have engaged in overseas ventures in order to acquire technology. Landoil Resources Corporation of the Philippines, for example, took an equity interest in "Charriot Resource Corporation, a Canadian energy company, in order to supplement the firm's limited technological expertise in petroleum exploration". Petroleos de Venezuela has used its purchase of refineries and petrol stations in Germany, Sweden and the USA in order to acquire the expertise of foreign operators (Cantwell & Tolentino: 1990, 41).

Acquisitions have also been used by the main Korean semiconductor manufacturers as a means to acquire know-how in the fabrication, assembly and testing of integrated circuits. This knowledge has subsequently been transferred back to the Republic of Korea.

Joint ventures are still another vehicle for acquiring technological capabilities and moving beyond such one-way relationships to joint knowledge production and sharing. The case of Sime Darby of Malaysia is illustrative. Sime Darby invested in agro-genetic engineering through a joint venture with the US firm International Plant Research Institute, that specialises in the research application of genetic engineering technology to tropical crops. These two firms have agreed to establish the ASEAN Biotechnology Corporation in Malaysia, which is involved in research on new types of perennial plants and training

Malaysian scientists and the ASEAN Agri-Industrial Corporation, which is involved in agro-industrial projects in the ASEAN region based on advanced technology (Cantwell & Tolentino: 1990, 41).

HEWLETT PACKARD, IBM AND WANG LABORATORIES ARE AMONG THE COMPANIES THAT HAVE DECENTRALIZED R&D TO SUBSIDIARIES IN THE DEVELOPING COUNTRIES

2. Decentralization of R&D by MNCs to local subsidiaries in the developing world

Whereas in the first type of activity it is the local firm which acquires technological capabilities through investments overseas, here the relationship is exactly reversed. Decentralization of R&D by multinational corporations (MNCs), which initially focussed upon subsidiaries at home and in other advanced industrial countries, has since spread to countries outside of Europe and North America, notably to several of the dynamic Asian economies. Both Wang Laboratories (USA) and Nixdorf of Germany for example, have established research laboratories in Singapore, the latter to develop UNIX-based computer systems. Hewlett Packard's colour injection R&D used in its laser printers is also located in Singapore. Texas Instruments has located a software design facility in Bangalore (India), where researchers are using computer aided design techniques to design VLSI circuits (Singhal et al.: 1990, 249). IBM has established a software development company in Shenzhen, China.

Many mid-sized high growth companies in the advanced industrial countries are also looking for R&D partners abroad. This offers still other opportunities for collaborative R&D among Latin American partners in which a foreign partner provides a needed asset. However, much depends upon the developing country firm's credibility as a partner and this, in turn, is related to the strength of their technological capabilities and their track record as innovators.

3. Changes in supplier-client relations

In line with changing supplier-client relations among firms in the industrialized countries, supplier-client relations among some firms in the developing countries are also becoming two-way product development partnerships. Automation of the Brazilian banking system is a case in point.

At the end of the 1980s, the Brazilian automated banking systems sector consisted of "...six major and generally highly competitive systems suppliers (Itautec, SID, Digirede, Edisa, Digilab and Procomp) and four others of lesser importance" (Frischtak: 1990, 29). Some of these firms, moreover, had begun to export their systems.

In his analysis of the development of the automated banking systems sector in Brazil, Claudio Frischtak identifies four interrelated factors that were of particular importance in stimulating innovation. On the demand side, growth and concentration of financial activities and the standardization of routines within the banking sector "generated considerable demand for informatics resources. The increasingly decentralized data handling by the banking system, relying less on mainframes and more on micro- and mini computers ..." stimulated domestic demand still further (Frischtak: 1990, 28). Thus market forces played a dynamic and positive role within the incentive system.

On the supply side, two factors made it possible for local firms to enter into the market for banking automation equipment. First, the new informatics policy adopted in mid-1976 "reserved the domestic market and reoriented demand in favour of national producers of data processing equipment". In the context of growing demand, this set in motion new policy dynamics. Without financing, however, would-be innovators would not have been able to respond. It was of considerable importance, therefore, that with the exception of "... Procomp, a newcomer in the market in 1985 and highly successful as a supplier of banking terminals, all other producers are associated with a financial group or conglomerate, which not only constitutes an important market for their products but offers them access to group financial and other resources" (Frischtak: 1990, 29).

CHANGING SUPPLIER-CLIENT RELATIONSHIPS ARE ENABLING COMPANIES IN THE DEVELOPING COUNTRIES TO BUILD TECHNOLOGICAL CAPABILITIES

North-South supplier-client relations are also changing. In the clothing industry, for example, large retailers and garment manufacturers from Europe and North America are increasingly working more closely with subcontractors and other suppliers in Hong Kong, the Republic of Korea, Taiwan and Thailand. Designs provided by European or American clients may be modified after discussion with Asian suppliers. In many cases, Asian suppliers also supply some design inputs. In addition, they take full charge of sourcing decisions for fabrics, colours and accessories.

Newer forms of one-way relationships, such as, OEM and second-sourcing arrangements are also of interest to firms in the developing world, since there is some evidence to suggest that these may lead to a more effective transfer of technology, thereby strengthening the ability of firms to innovate in the future. In a few instances such relationships have given rise to opportunities for partnering. Thus a Japanese researcher recently described the Hitachi-Gold Star (Republic of Korea) relationship as one that involved "a sharing of research and development work" (Yamada 1990, 22).

4. University-enterprise linkages

In addition to supplier-client linkages, partnerships between firms and universities or research institutions also sprang up in during the 1980s. Latin America offers a number of quite distinct models of this sort.

- CIT, the Centro para la Innovaçion Tecnologica,

was established within the National Autonomous University of Mexico (UNAM) in 1983 with the aim of creating links between the university and the productive sector. By the late 1980s, it employed 35 technicians and researchers and had signed over 170 contracts with industrial firms. Twelve processes or products developed by the CIT were already on the market or in the final stages of execution by the end of the decade (ECLAC: 1990, 111).

- PACTO, the Science and Technology Management Programme at the University of São Paulo (Brazil) is the oldest centre for teaching, research and consulting on the management of technology in Latin America. It is host to the Latin American Technology Management Association, which currently has over 150 members. PACTO stimulated the creation of ANPEI, a club of 50 firms organized into a self-managing group with the objective of discussing ways of coping with reduced government funding for research (Interview: J. Markovitch, Director of PACTO, Ottawa, 17 January 1992).

- FUNDACION CHILE, is a non-profit private foundation, created in 1976 as a joint venture between the Government of Chile and ITT with a $50 million endowment, half from each partner. The goals of the Fundación Chile are not simply R&D but innovation, that is the application of new knowledge in production. This includes negotiating transfers of technology, generating some new knowledge in-house and creating and managing new enterprises based on these technology. The choice of technologies to import is made on a strictly commercial basis with exports in mind. The focus is upon selecting particular products for which world demand was rising. Initially they specialized in marine resources, forestry and agrobusiness. Currently they are exploring the possibility of moving into environmental technologies and informatics.

  By 1992, a total of 30 enterprises had been created by the Fundación. Current policy is to sell these companies when competitors have established themselves in the Chilean market. Six companies have been sold so far.

  One of the most successful was a fisheries project involving a transfer of technology for commercial salmon farming. Investment costs totaled $4 million. The company was subsequently sold for $21 million. Another is a vertically integrated company in the furniture sector. The Fundación Chile purchased a forest, created a research centre to develop modern forestry techniques and uses the wood to manufacture furniture. Designs are bought from Italian and other designers and a sales outlet is planned for Chicago in a joint venture with a foreign partner. As a result of these activities, 60 per cent of the Fundación Chile's budget of $10 million per year is earned through contracts with private firms and a further 20 per cent consists of profits from these enterprises. Only 20 per cent comes from interest on their endowment. (Interview: I. Lavados, Director, Fundación Chile, Ottawa, 17 January 1992).

- CEGESTI, the Centro de Gestion Technologica e Informatica Industrial in Costa Rica, funded by UNDP and UNIDO, is laying the groundwork for the formation of strategic partnerships. It was established with the intention of providing the training, technical information and management consulting needed to stimulate small- and medium-sized firms (SMEs) to think strategically and to incorporate innovation into their growth strategies. The training programme focuses on teaching firms to initiate changes via the creation of small experiments that operate as laboratories for apprenticeship. As part of a Costa Rican programme to foster innovative behaviour in SMEs, nine local firms were chosen from a variety of sectors – chemicals, pharmaceuticals, metalworking, software – with the intent of strengthening the firm's innovation capacity. For this purpose, CEGESTI trained nuclei of two persons, mainly industrial engineers trained in technology management who worked as advisors to the managing director. The nuclei have been in place for approximately a year and a half, during which time all but one have been successfully developing pre-investment projects. In addition to identifying potential innovation projects within the firm, the nuclei are responsible for establishing linkages with local universities and managing the ensuing R&D project. In interviews with the directors of the participating firms, the impact of this programme has already been felt in the following areas: increased sales; productivity gains; development of new products and services; development of new markets; development of innovations projects, five of which had been approved for funding by Costa Rican government; and an interest in hiring the nuclei at the end of the contract period.

By its very design, CEGESTI's programme not only stimulates firms to innovate but it lays the groundwork for strategic partnering among these firms and between firms and research institutions in their domestic environment. (Interview: F. Machado, Director of CEGESTI, Ottawa, 17 January 1992).

5. Inter-firm collaboration

Inter-firm technological collaboration is also emerging in developing countries. It has been stimulated in a number of ways.

By building in-house technological capabilities, several large Brazilian firms have, for example, been able to attract foreign R&D partners. EMBRAER is a case in point. Risk-sharing public sector financial support and procurement policies during the 1960s and 1970s, coupled with design inputs provided by the Aerospace Technology

Centre staffed by engineers trained at the Aeronautical Technology Institute and abroad, enabled EMBRAER to adjust to changes in domestic and foreign market conditions, to spot market niches and to export. Techological accumulation subsequently enabled it to engage in R&D collaboration with Aermachii and Aeritalia of Italy when it sought to enter the military aircraft market (ECLAC: 1990, 69).

The diversification of AGROCERES over the 1970s and 1980s, is another example. The ability of AGROCERES to diversify out of its initial specialization in the development of hybrid maize into R&D vegetable seeds, pesticides and high yield breeds of swine and poulty and subsequently into plant biotechnology and fine chemicals owes much to its partnership with the Empresa Brasileira de Pesquisa Agro-Pecuari, the Universidade Federal do Rio de Janeiro and the Universidade Estadual de Campinas, through which it built up its technological capabilities. From this strong base, AGROCERES has more recently formed an R&D partnership with a foreign firm, NORAGRO (ECLAC: 1990, 112).

In ASIA, the ASEAN group inaugurated its VSLI project in 1986. By its conclusion in 1992 the design for a VLSI chip and a multi-project chip fabrication process had been jointly developed. This VLSI project had primarily involved universities from across the ASEAN region. In Thailand, however, participation in the VLSI project stimulated the development of a strategic partnership between four Thai universities, NECTEC, a government research institute, and IRC, a private Thai company. The objective of their partnership is to develop a Thai-character display chip.

In China, a joint venture between Analogic Scientific Inc. of the USA, an electronics company, and China Keijan Company, specialized in superconductive magnet technology joined forces to create NMR image scanning equipment, a colour ultrasonic doppler blood image system and other diagnostic equipment (Li Xu-E: 1992, pp. 21-22).

NIGERIA:

HIGHLIGHTS OF NOTAP 1991 ANNUAL REPORT

The following are extracts from the 1991 NOTAP Annual Report. We encourage readers to use the TIES Newsletter as a means of disseminating information on the activities and accomplishments of their offices, which have a bearing on technology transfer and related concerns.

ACTIVITIES OF THE OFFICE IN LINE WITH THE GOVERNMENT LIBERALIZATION POLICY

Introduction: Current trend in investment promotion and transfer of technology policies in developing countries such as Nigeria.

Compared to the 1970s the 1980s and early 1990s have seen a greater tendency towards the liberalization of foreign investment and transfer of technology policies in developing countries. Although there are significant exceptions to this trend, the policy balance seems to be shifting more towards promotion than control of foreign investments and technology flows, no doubt as a result of the decreased investment flows, increased debt burden and the general decline in the economic and trade performance of most developing countries, including Nigeria, during the present decade. However, the technological dependence of developing countries on foreign sources, particularly on transnational corporations, has also been a major source of pressure towards liberalization. Nevertheless, the concerns underlying the tendency towards regulation and control still persist in most countries, as well as Nigeria, albeit at a more subdued level in view of a certain preoccupation with crisis management.

Recent policy developments in this nation and other developing countries, thus seem to reflect a new accommodation between investment promotion and control policies, rather than a complete displacement of regulatory or control-oriented policies. Given the pre-industrial or early industrial nature of most developing country economies, the most immediate emphasis in investment-promotion policies tends to be on the transfer of technology, more so than on the promotion of technological innovation as such. Although the declared objectives of most transfer of technology policies are invariably the development of an indigenous technological capacity, the crucial transition from importation to adaptation and absorption into an indigenous technological base is yet to be achieved – or even addressed in systematic terms in most developing countries. However, this is not the case in a few more advanced developing countries which, thanks largely to their rapid technological progress, have acquired the ability to compete internationally in a wide range of products in a short space of time.

Technological development policies in most developing countries are closely intertwined with investment promotion and transfer of technology policies. The relaxation of investment controls in a large number of countries has been largely influenced by the desire to encourage increased inflows of technology. Moreover, countries that have placed greater emphasis on the development of an indigenous technological and productive capacity (such as Brazil, India and Nigeria) still encourage inflows of foreign technology, but seek to ensure that such inflows do not displace local innovative efforts.

Review of deregulatory policies of the Federal Government

The Government implemented a Structural Adjustment Programme (SAP) to run from July 1986 to June 1988. This was a radical reform programme designed to restructure the economy, expand non-oil exports, reduce the import content of locally manufactured goods, achieve

self-sufficiency in foods and give a larger role to the private sector. The cornerstone of the SAP was the introduction of the Second-Tier Foreign Exchange Market (SFEM) in September 1986 – and revised to merge the two tiers in July 1987 – whereby overvaluation of the Naira was corrected (e.g., imported goods subsidy was eliminated). Accompanying this were several other major reforms – the abolition of import licenses (with reliance placed on the foreign exchange auctions to allocate scarce foreign exchange resource), cuts and realignments in import duties (designed to reduce protection of local industries and force manufacturers to reduce import dependence), abolition of export duties through demand management policies to ward off the inflationary dangers of large scale devaluation and the progressive privatization of numerous parastatal companies and industries.

The objective of present government industrial policy has been defined to achieve an accelerated pace of industrial development, with the industrial sector becoming the prime mover of the economy. The elements of this objective include:

(a) providing greater opportunities;

(b) increased export of manufactured goods;

(c) dispersal of industries;

(d) improving the technological skills and capability available in the country;

(e) increased local content of industrial output;

(f) increased private sector participation in the manufacturing sector; and

(g) attracting foreign capital.

Accelerating the pace of industrial development will require enormous capital investment. While Government welcomes domestic private capital investments, it also recognizes that such investment may not be available at the required volume.

Government therefore welcomes foreign capital into the manufacturing sector. Indeed, the Structural Adjustment Programme was embarked upon with the prospect of increased inflow of foreign capital and technology.

The main component of government strategy for attracting foreign capital is the liberalization of access to foreign exchange for individuals and companies provided through the foreign exchange market (FEM). Easier capital and dividend repatriation through less cumbersome procedures is a by-product of recent changes in the regulations.

Another element of government strategy consists of amendments to the Nigerian Enterprises Promotion Decree 1977 (NEPD). These amendments are designed to open up more areas for foreign investment. Thus in the amended Decree, only one list of scheduled enterprises (instead of three) has been retained and this list contains businesses exclusively reserved for Nigerians. Foreigners and Nigerians alike are now free to own up to 100 per cent equity, separately or in partnership, in any unscheduled enterprise. Foreigners are welcome to invest in the scheduled enterprises with a minimum capitalization of twenty million Naira (N20,000,000.00), with the prior approval of the Industrial Development Coordination Committee (IDCC).

Government is to continue to cultivate and improve bilateral trade links with other countries as a means of encouraging foreign capital investment in the economy.

A package of incentives designed to promote investment, employment, product mix and various other aspects of industry has been approved by Government. In addition, the nature and application of these incentives have been considerably simplified. In general, the package of incentives can be grouped into five. These are:

1. Fiscal measures on taxation and interest rates;

2. Effective protection with import tariff;

3. Export promotion of Nigerian products;

4. Development banking;

5. Foreign currency facility for international trade.

Government strategy for increased export of manufactured goods rests on making Nigerian exports more competitive internationally and export activities more profitable for industrialists.

The major planks for this strategy are:

(a) the regulatory environment;

(b) promotion of export free zones;

(c) liberalization of access to foreign zones;

(d) allowing a market-determined exchange rate for the Naira; and

(e) fiscal and financial incentives.

The Nigerian Export Promotion Council is the premier organization responsible for the administration of various incentive schemes and measures aimed at encouraging exports. It is also responsible for administering the Export Development Fund.

A new trade and exchange rate regime has been adopted by the Government to ensure efficient and competitive local production. Adjustment in the exchange rate regime is expected to provide greater access to external markets than before to industries relying extensively on local resource endowments. The facility also provides for easier movement of investible funds, goods and services in and out of Nigeria in line with the following policy measures.

i. Foreign exchange market

The foreign exchange market came into operation in

September 1986, resulting in the abrogation of import levy and import license. The market also provides manufacturers easy access to foreign exchange.

ii. Repatriation of import capital

An approved "Status" permit for imported capital investment is conferred on companies with non-resident investment in cases where the original investment was imported in the form of equity, either by way of cash and/or plant and machinery. The purpose of this "Status" is to facilitate timely repatriation of remittances of other capital claims.

iii. Foreign currency domiciliary account

Banking regulations in Nigeria make it possible for exporters of non-oil products to retain the proceeds of exports in bank accounts denominated in foreign currency. Such accounts are operated at the owners discretion for external transactions or conversion to Naira, but in accordance with existing Central Bank of Nigeria guidelines.

iv. Payment for technology fees

In order to ensure effective assimilation and diffusion of foreign technology within a specific time-frame at fair and equitable contractual and payment terms, the rate for payments in technology transfer transactions have been liberalized and reviewed upwards. Fees for technical services are based on net sales (rather than profit before tax). Furthermore, the rates applicable are as follows:

(a) **Royalty:** royalty in respect of know-how, patents and other industrial property rights shall now range from 1-5 per cent of net sales;

(b) **Technical/Management Services:** fees in respect of technical assistance/management services shall also range from 1-5 per cent of net sales or 2-5 per cent of profit before tax.

The upper level of the above ranges will be considered as incentive remuneration or compensations allowed to deserving cases where:

(a) the local value added is not lower than 70 per cent; or

(b) the products are intended for the export market and the fees for these services can be serviced from the export proceeds; or

(c) the benefits derived by the enterprises are considered desirable in the national interest.

In line with the liberalization policy of Government enumerated above, technology policy is translated into programmes by this office considering that it will not be possible to do everything at once and there is thus a need for selective action. The main elements of such an action programme, which include developing technological capabilities is far too complex to become the exclusive domain of a single institution. The development of an appropriate infrastructure should include the recognition of different types of institutional functions to be performed and the establishment of an appropriate co-operative network among the several responsible bodies, so that they work together in the same direction and not in opposite directions.

Activities of the National Office for Technology Acquisition and Promotion (NOTAP – formerly NOIP)

Originally, the National Office for Technology Acquisition and Promotion (NOTAP – formerly NOIP) was created by Decree No. 70 of 1979 as a purely defensive government agency to protect the national economy and national industries against the negative effects of uncontrolled inflows of foreign technology. This has resulted in a significant improvement in the terms and conditions of technology transfer agreements registered by the Office since its inception in 1983.

In the past few years (especially after SAP in 1986), the Office has gradually shifted its main thrust from a purely defensive into an offensive role, particularly in the area of promotion of foreign technology acquisition and development of local technological capabilities, as envisaged in the liberalization policy of the Government. The overall objectives of policy and active strategy of the Office concerned with acquisition and promotion of foreign technology, normally include the following goals:

(a) stimulating flows of technology to preferential or priority areas, according to the national development plan;

(b) ensuring that technology is obtained in conditions reflecting fair international practices;

(c) improving the process of adapting and absorbing technology;

(d) defence and development of local technological capabilities.

Due to its privileged position between the foreign suppliers and domestic recipients, the Office represents a powerful tool to assist the Government in building up an indigenous capacity in industrial technology, as well as to exercise a greater role in the selection and acquisition of foreign technologies.

Among other advantages, the existence of the Office will permit the:

(a) provision of fair negotiation conditions with direct beneficial effects on the foreign exchange balance on the conditions for the assimilation of technology and on the competitiveness of industry both externally and internally;

(b) supply to the Government information about supply conditions from different sources and for different sectors, for the benefit of the domestic business community;

(c) identification of the technological gaps and stimulating the development of local technological capabilities.

(d) conducting continuous or regular sector based analyses of registered agreements in order to establish long-term trends in relation to technological development.

(e) development of linkages with national and international information systems that contain information on sources of technologies and dissemination of such data to the domestic firms, including the possibility of using the experience of other developing countries by access to the TIES system.

(f) establishment of close relationships between the regulatory agency, policy making institutions and domestic R&D facilities so as to become more directly relevant to domestic technological needs.

Technology Advisory Services

Nigeria depends heavily, amongst others, on the access to imported technology. The strengthening of negotiation capabilities and not control/regulation by the Government has become a major issue for the recipients of technology. Business communities often encounter difficulties in the negotiation of technology transfer contracts, particularly in evaluating the terms and conditions at which foreign technology is acquired. The Technological Advisory Services (TAS) of the Office is designed to provide rapid, objective and impartial advice to enterprises in the negotiation of different types of technology contracts, particularly for major industrial projects. Within the TAS programme, the Office provides assistance on all the relevant issues related to technology acquisition through contractual arrangements, including assistance in the evaluation of proposals and selection of suppliers, preparation for negotiation, drafting of agreements and advice during negotiation, especially at the inter-ministerial level when public projects are concerned.

The main thrust of TAS is to provide impartial advice to negotiators so that fair and reasonable conditions reflecting internationally acceptable practices might be achieved. This kind of approach has even induced the suppliers of technology to look at TAS as a means of facilitating the negotiation of agreements with the recipient counterparts in this country. In this context an increased trend in demands for TAS to advise on negotiations has been observed in the Office and TAS has been instrumental in assisting both negotiating parties to bridge their positions and to achieve mutually advantageous deals.

TAS has, in the past and presently, provided services in such areas of transfer of technology transactions as joint ventures, turn-key deliveries, licensing agreements and franchising arrangements. Such services have been welcomed by entrepreneurs and have helped to reduce technology transfer payments and improve conditions of technology transfer.

Technology Development Services (TDS)

NOTAP is now required to depart more from control functions and provide technology development services, particularly with respect to the adaptation and diffusion of imported technology into the Nigerian economy. It is expected that such technology development services functions will accelerate:

- indigenous capability building in industrial technology;
- greater self-reliance in the promotion and acquisition of industrial technologies required by the country's economy;
- absorption and dissemination of acquired technologies in the production and services sectors of the economy; and
- improved capability to promote the acquisition and development of technologies most relevant to Nigeria's industrial and economic development goals.

In the light of current expectations, the main thrust in the functions of NOTAP, as an agency of the Nigerian Government responsible for technology acquisition and promotion, will be less technology regulatory, and more technology development and promotion. The specific functions may be summarized as:

- regulatory;
- monitoring;
- development;
- advisory;
- promotion/consultancy to industry.

NOTAP, in its technology development services functions, cooperates with Nigeria's technology system and R&D institutions. In this way, the investigation and analysis of the economic benefit, the technical suitability, the adaptability and utilization of imported technologies in the country's economy are to be achieved.

Furthermore, the Office, without setting up its own laboratories and engineering workshops, is expected to utilize the facilities of the existing network of R&D institutions and technology centres in the country for its technology development services function. In this way, it avoids the enormity of the complex technical facilities required for all aspects of industrial technology and the forbiddingly high financial and human resource investment required.

Secondly, it sets up and utilizes for its work, standing technical committees comprising NOTAP in-house staff, to identify expertise in the area of technology both as individuals and as corporate R&D target institutions and others from industry, universities and polytechnics in order to:

(a) evaluate that which NOTAP has identified hav-

ing to be carried out.

(b) evaluate the technology concerned in order to unpackage it, and

(c) identify the institute or centre to undertake the adaptation work on the imported technology.

Thirdly, NOTAP is expected to undertake periodic techno-survey research and data gathering to obtain information on available technologies, to up-date capabilities for technology development in the country and establish a register of technology development capability and activities within the country.

Fourthly, NOTAP is expected to establish a talk/feed back system with existing industries on technology requirements, the type of technology services needed by industry, and through this establish joint technology development services activities involving the Office's Technology Development Services Unit, target R&D institutes, other public agencies and academia to assess the suitability for unpackaging, adapting and diffusing imported technologies.

The Office is also expected to undertake the coordination of imported technology adaptation services of its Task Force on

(a) the adaptation of imported technology and its diffusion in industry;

(b) the upgrading of indigenous technology to reduce technology imports;

(c) the development of new technologies from the process of adaptation of imported technology, and

(d) the widespread diffusion of technologies so developed or adapted.

Lastly, NOTAP is now expected to establish direct relationships with target R&D institutes and not through the supervising ministry for the speedy exercise of its new functions, in line with the liberalization policy of the Government.

(In the next issue of the TIES Newsletter, highlights of the report relating to the evaluation and registration activities of NOTAP will be published).

SAMPLE PROJECT SPONSORSHIP AGREEMENT

ARTICLES OF AGREEMENT made this
day of of One Thousand Nine Hundred and between
incorporated under the
with the registered office at
(hereinafter referred to as SPONSOR), of the one part
AND
(herein referred to as INSTITUTE), of the other part

WHEREAS the SPONSOR is desirous of sponsoring with the Institute a project on *(Insert short description of project)*

AND WHEREAS the INSTITUTE has agreed to take up work on the sponsored project with the scope of work defined herein making use of its staff and facilities.

AND WHEREAS the parties are now desirous of recording the terms of agreement between them for this sponsorship.

NOW THEREFORE IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES hereto as follows:

1. Title of the project *(Insert title of project)*

2. Scope of work *(Give description of the scope of work)*

3. Duration of project

The period of operation of this agreement shall be years months from the effective date of this agreement. This is subject to extension by mutual agreement. In the event of the period of the project being extended beyond that stipulated herein, the terms for extension will be the same as herein stipulated unless any modified terms are mutually agreed upon.

In the event of suspension of work under the Sponsor's instructions or lack of instructions, the duration of the project would be correspondingly extended. For any suspension of work at the Sponsor's instructions and for restarting the work, the Sponsor must give a minimum of two (2) months notice. In the event of any suspension without such notice or with a shorter notice, the expenses for such period will be borne by the Sponsor.

4. Place of work *(Give details)*

5. Estimate of cost

(a) The cost of the project will be:

1. Salaries and wages
2. Engineering services
3. Consumables
4. Contingencies

SUB-TOTAL

5. Overheads
6. Equipment

TOTAL

(b) The cost of the equipment/consumables is tentative and in case the actual cost is higher, the additional cost incurred will be charged to the sponsor.

(c) The above estimates do not include the cost of bulk

raw materials/chemicals which will be charged extra at actual cost.

(d) The above cost estimates take into account the staff working at the Institute. For any visits outside the Institute, for any meetings, seminars, symposia or any other purpose undertaken specifically for the project, whether along with the representatives of the sponsor or alone, travel expenses by air or equivalent as also First Class Boarding and Lodging including incidental experses and local conveyance, shall be payable by the Sponsor in addition to the above estimated costs

(e) If for successful implementation of the project, the Institute finds it necessary to consult any outside agency, a clearance for it will be taken from the Sponsor and the charges for such consultancy will be borne by the Sponsor

(f) If the sponsor specifically asks for the services of the Institute staff, in addition to the travel, boarding, lodging, incidental and local conveyance charges as per clause 5(d) above per diem charge of per person deputed would be chargeable, when the above visits are from amongst the staff working on the project. However, for staff not working on the project, ___ per diem will be charged.

6. Mode of payment

(a) The payment for the purchase of equipment shall be made in advance.

(b) Payment for the balance of expenses as per the estimated cost would be made by the Sponsor to the Institute in advance as follows: *(Give details)*

(c) Actual charges for the additional equipment, raw materials and travelling, if any, will be paid against the bills which the Institute will send to the Sponsor from time to time.

(d) The per diem charges for the deputation of personnel shall be paid against bill raised immediately after deputation.

7. Progress review

(a) The Institute will submit periodical reports on the progress of work as may be mutually decided and a detailed project report at the completion of the work.

(b) During the course of the work, review meetings as may be mutually decided between Sponsor's representatives and the Institute staff may be arranged if so desired. The travelling and other expenses of staff of the Institute will be payable by the Sponsor.

(c) Any pilot plant, semi-commercial trials, unless specified in the scope of work of the agreement, will be carried out by the Sponsor at his own expense. The Institute would render all reasonable help, but the travelling and per diem charges for any personnel deputed for this purpose would be payable by the Sponsor to the Institute

8. Patents

(a) If the work defined under the Scope of work of this agreement involves the use of patents of third parties or previous patents of the Institute, Sponsor will negotiate for their use with the patentees and bear all financial and legal responsibility for the same.

(b) If the work on this project results in the development of a patentable know-how, the patent shall be taken in the name of the Institute. The patent and all the results of the research would be the sole property of the Institute.

9. Secrecy

The results of the research, any data and information as a result thereof, the reports prepared on the progress of the work, whether interim or final, shall be treated as confidential between the Institute and the Sponsor and shall not be divulged to any third party or any third person unless so authorised by the parties hereto. However in accordance with clause 10(a), the Institute shall be free to divulge the results of the research under this sponsorship to a third party in case the Sponsor fails to license the know-how or having licensed it fails to commercialise it. Under license of the process developed as a result of this sponsorship, the Sponsor shall use the information furnished by the Institute only for establishment of one plant/facility. This will not be used for any other plant/facility without signing a separate licensing agreement, and payment of premium and royalty thereof. The Sponsor shall instruct all his officers and representatives receiving such information to keep such information confidential. The provisions of this clause shall remain effective perpetually.

10. Utilisation of results

(a) In consideration of the Sponsor having sponsored the project and borne the costs, the Sponsor shall have the first option of licensing the patents/know-how resulting from the work on this project. If the Sponsor fails to license the know-how for this project within one year of the completion of the project, the Institute shall be free to license it to any other party. If after having licensed the know-how the Sponsor fails to commercialise the know-how, signified by the start of payment of royalties, within three years of licensing the know-how, the Institute shall be free to cancel his license and to license the know-how to other parties

(b) For licensing the know-how, the following terms of licensing would be available to the Sponsor. *(Insert the licensing terms)*

(c) The Sponsor normally shall not have the right to sub-license the know-how or to supply the plants based on this know-how without a specific licensing agreement permitting such sub-licensing.

For sub-licensing of the know-how by the Sponsor to third parties, and for supply of plants based on this know-how by the Sponsor, separate terms of license shall be negotiated

11. Freedom to work in related areas

The entering into this agreement by the Institute does not preclude the Institute in accepting sponsorship from any other sponsor for work in the related areas, or for improvements of process, products, raw material and other conditions or to take up in-house work in these fields.

12. Termination of the contract

In the case of breach of any covenant on the part of the Sponsor, the Institute will be entitled to terminate the contract by giving an opportunity to the Sponsor to rectify the breach within a period of three months and on such termination the Institute shall be free from all obligations to the Sponsor. The Sponsor will be liable for all costs and expenses incurred by the Institute up to the date of termination of the contract.

13. Force Majeure

The Institute shall not, in any way, be held liable for non-performance either in whole or in part of this agreement, or for any delay in the performance thereof, in consequence of any strike, lock-out, non-availability of materials, fire, breakdowns or accidents, riots, war, insurrection, or restraints imposed by central or state governments, acts of legislature or by any other authority or by reason of any other causes whatsoever beyond its control.

14. Modifications

If, however, the Sponsor desires any alteration in the scope of work, involving extra cost on staff or equipment etc. of the Institute, the terms would be modified by mutual consent.

15. Effectivity of agreement

The effectivity of this agreement shall be from the date of signing of the agreement, receipt of advance payment for equipment and for the first installment of recurring expenses, delivery of any crucial equipment/facility without which work cannot be commenced, whichever is later.

16. Arbitration

In the event of any dispute arising in connection with this contract, the same shall be referred to the arbitration of the , whose decision shall be final and binding on both parties.

17. Jurisdiction

Jurisdiction of shall apply to this agreement.

IN WITNESS WHEREOF, THE AGREEMENT has been executed in duplicate by the duly authorised representatives of the Institute on the one hand and the Sponsor on the other, each party holding one copy thereof.

For and on behalf of

For and on behalf of

SAMPLE AGREEMENT FOR JOINT RESEARCH

AGREEMENT BETWEEN *(Name)* AND *(Name)*. Recognizing the need for widening and deepening the development of modern methods of chemistry in the light of their importance to industry; taking into consideration the need to extend international R&D cooperation, and *(Names of parties to agreement)* hereinafter referred to as the Sides, agree to carry out joint research and its further realization in accordance with the following:

1. Goals of Cooperation

1.1 To achieve a qualitatively higher level of materials science and high technology;

1.2 To improve the existing and develop new procedures of physico-chemical analysis and monitoring;

1.3 To create a system of scientific centres aimed at the customer's problems, including the development of technology, analytical procedures of software and training of highly skilled personnel.

2. Mechanism of the Agreement

2.1 Forms of cooperation

2.1.1 Coordination of work, providing joint research in scientific and commercial projects in the field of modern chemistry and its application;

2.1.2 Carrying out commercial analysis and monitoring;

2.1.3 Exchange of delegations and individual research for short- and long-term (exceeding four (4) months) missions to carry out contract work;

2.1.4 Exchange of scientific information and publications;

2.1.5 Mutual scientific and coordinative consultations;

2.1.6 Holding joint seminars, conferences and exhibitions.

2.1.7 The Sides will also try to develop other forms of cooperation, such as organization of joint scientific laboratories and other joint ventures in their or other countries.

2.2 Organization and lines of cooperation

2.2.1 Work will be carried out corresponding to the programme which is to be drawn preferably before , where the annual exchange of specialists in the form of short- and long-term missions will be defined;

2.2.2 Applications for trips of scientists and specialists will be made in no less than six months in advance. The host Side will inform about its consent or refusal, as well as propose change of dates no less than three months in advance. The host Side shall be informed through the official channels of the date of arrival, flight number, etc., no less than two weeks in advance. If the scientist or specialist is going on a long-term mission, he has the right to be accompanied by his family, which he must support himself;

2.2.3 The Sides shall inform one another about the results of research work concerning the object of present Agreement that have been carried before the confirmation of the Programme;

2.2.4 The transfer of technical information, instruments, experimental products, analytical procedures and software for temporary use in the period covered by the present Agreement will be considered by the Sides mutually and gratis or as property in accordance with concrete contracts or special agreement;

2.2.5 In order to supervise the action of the Agreement, representatives of the Sides shall make up a working group, members of which shall meet once a year for the working conference in and by turns. Persons responsible for separate parts of the works are appointed from the staff of the organizations participating in the present Agreement.

3. Protection of Intellectual Property

3.1 Patentable objects of invention developed by one of the Sides and applied in the work carried out in accordance with the programme shall belong to the Side that has developed them, and can be passed over free of charge from one Side to another for carrying out the work according to the present Protocol on a strictly confidential basis;

3.2 In case patentable inventions are obtained with immediate participation of officials of both the Sides, both Sides are to solve the problem of expedience, order and procedure of patenting of every joint invention;

3.3 In case of cessation of action of the present Agreement the Sides regulate the rights and obligations connected with the protection of joint inventions and useful industrial models that shall have been created in the period of action of the present Agreement.

4. The Sides Pledge Themselves

4.1 To enter into mutual contacts and correspondence on scientific and technical issues and inform one another about the source of work;

4.2 To coordinate scientific, technical, financial and coordinative problems concerning the methods of R& D and achievement of technical parameters and competitiveness of the products of joint works, as well as to inform immediately of hindrances in order to come to an agreement in this respect;

4.3 Should any argument arise concerning problems of joint activities, the Sides will do their best to settle them in an amicable way;

4.4 Not to divulge R&D information, documents, and know-how concerning the works covered by the Agreement in case they are recognized to be confidential.

Publication and other forms of revealing such information as well as its transfer to a third side are possible only by mutual consent of both the Sides;

The obligations concerning confidentiality shall be valid for a period of five years after the termination of the present Agreement.

4.5 To transfer, to sell and to use in third countries the results of joint R&D works as well as know-how only by mutual written consent of both the Sides, signed by representatives of the organizations coordinating the work;

4.6 To render mutual necessary assistance in realizing the R&D results, organizing the commercial production in their and/or any third country on conditions that are to be stated in a special agreement;

4.7 To provide one another with information and instruments necessary for the fulfillment of joint work;

4.8 When drawing associate contracts, each Side is responsible for the observance of the conditions of the Agreement during the fulfillment of the subcontracts;

4.9 To provide the scientists coming on an exchange basis with equipment, etc. necessary for successful research.

5. Financing

5.1 Should any possibility to carry out commercial work for organizations other than the Sides arise as a result of the research fulfilled, then such work will be financed in accordance with a contract which will define the conditions of financing, the order of settings, responsibility for the fulfillment of contractual obligations and expected results of work;

5.2 The Sides will also seek to bear equally the expenses within the bounds of this Agreement;

5.3 Joint seminars, conferences, and other actions are financed according to the Programme of cooperation.

5.4 The same Programme must state the conditions of financing the trips of scientists.

6. Ways to Solve Controversial Problems

All the problems connected with the fulfillment of this Agreement are to be promptly solved by the heads of the organizations involved and by the members of the working groups on the basis of correspondence and in the course of working conferences.

7. The Conditions of the Supplement and Modification of the Agreement

The present Agreement can be supplemented, defined and altered by mutual consent of both the Sides.

8. The Term of the Agreement

8.1 The Agreement takes effect on the date hereof and shall be valid for a period of four (4) years.

8.2 The Agreement is automatically extended for the next year if one of the Sides does not let the other Side know about its intention to break off the Protocol six (6) months before its expiry.

8.3 Each Side has the right to terminate the Agreement before its expiry. The other Side must be informed of such intention six (6) months in advance.

9. Responsibility for the fulfillment of the Agreement

9.1 The Sides are free from liability for complete or partial nonfulfillment of the obligations concluded under the present Agreement, if such nonfulfillment is caused by circumstances beyond their control. The Side which is unable to fulfill its obligations will advise the other Side in writing of the commencement and cessation of such circumstances not later than thirty days from such commencement or cessation.

9.2 The correspondence on all problems is forwarded to the following addresses:

(Insert addresses of both Sides)

The Agreement is executed in two (2) copies each in and English in on . All these copies are of equal power.

(signed) (signed)

LEGISLATION

INDIA :

NOTE FOR GUIDANCE OF ENTREPRENEURS FOR FOREIGN INVESTMENT & TECHNOLOGY TRANSFER AGREEMENTS

I. EXTRACTS FROM STATEMENT ON INDUSTRIAL POLICY dated 24 July 1991

Paragraph 39 B – Foreign Investment

i. Approval will be given for direct foreign investment up to 51 per cent foreign equity in high priority industries (Annex III). There shall be no bottlenecks of any kind in this process. Such clearance will be available if foreign equity covers the foreign exchange requirement for imported capital goods.

ii. While the import of components, raw materials and intermediate goods, and payment of know-how fees and royalties will be governed by the general policy applicable to other domestic units, the payment of dividends would be monitored through the Reserve Bank of India (RBI) so as to ensure that outflows on account of dividend payments are balanced by export earnings over a period of time.

iii. Other foreign equity proposals, including proposals involving 51 per cent foreign equity which do not meet the criteria under **i.** above, will continue to need prior clearance. Foreign equity proposals need not necessarily be accompanied by foreign technology agreements.

iv. To provide access to international markets, majority foreign equity holding up to 51 per cent equity will be allowed for trading companies primarily engaged in export activities. While the thrust would be on export activities, such trading houses shall be at par with domestic trading and export houses in accordance with the Import-Export Policy.

Note: While the RBI would consider applications falling under items **i.** and **iv.**, applications in respect of item **iii.** will be considered by the Government of India, Ministry of Industries (SIA).

Paragraph 39 C – Foreign Technology Agreements

i. Automatic permission will be given for foreign technology agreements in high priority industries up to a lump sum payment of Rs. 1 crore, 5 per cent royalty for domestic sales and 8 per cent for exports, subject to total payments of 8 per cent of

ments of 8 per cent of sales over a 10-year period from the date of agreement or seven (7) years from commencement of production. The prescribed royalty rates are net of taxes and will be calculated according to standard procedures.

ii. In respect of industries other than those in Annex III, automatic permission will be given subject to the same guidelines as above if no free foreign exchange is required for any payments.

iii. All other proposals will need specific approval under the general procedures in force.

iv. No permission will be necessary for hiring of foreign technicians, foreign testing of indigenously developed technologies. Payment may be made from blanket permits or free foreign exchange according to RBI guidelines.

Note: (1) Application in respect of items i. and ii. would be considered by RBI. All other proposals should be submitted to the Government of India, Ministry of Industry (SIA). (2) In respect of item ii., foreign exchange requirement is required to be met from Exim Scrips.

II. STANDARD CONDITIONS ATTACHED TO APPROVALS FOR FOREIGN INVESTMENT AND TECHNOLOGY AGREEMENTS

1. The total non-resident shareholding in the undertaking should not exceed the percentage(s) specified in the approval letter.

2(a). The royalty will be calculated on the basis of the net ex-factory sale price of the product, exclusive of excise duties, minus the cost of the standard bought-out components and the landed cost of imported components, irrespective of the source of procurement, including ocean freight, insurance, customs duties, etc. The payment of royalty will be restricted to the licensed capacity plus 25 per cent in excess thereof for such items requiring industrial licence or on such capacity as specified in the approval letter. This restriction will not apply to items not requiring industrial license. In case of production in excess of this quantum, prior approval of the Government would have to be obtained regarding the terms of payment of royalty in respect of such excess production.

(b) The royalty would not be payable beyond the period of the agreement if the orders had not been executed during the period of agreement. However, where the orders themselves took a long time to execute, then the royalty for an order booked during the period of the agreement, but executed after the period of agreement, would be payable only after a Chartered Accountant certifies that the orders in fact have been firmly booked and execution began during the period of agreement, and the technical assistance was available on a continuing basis even after the period of agreement.

(c) No minimum guaranteed royalty would be allowed.

3. The lump sum shall be paid in three installments as detailed below, unless otherwise stipulated in the approval letter:

- First third after the approval for collaboration proposal is obtained from the Reserve Bank of India and the collaboration agreement is filed with the authorized dealer in foreign exchange;
- Second third on delivery of know-how documentation;
- Third and final third on commencement of commercial production, or four years after the proposal is approved by the Reserve Bank of India and the agreement is filed with the authorized dealer in foreign exchange, whichever is earlier.

The lump sum can be paid in more than three installments, subject to completion of the activities as specified above.

4. All remittances to the foreign collaborator shall be made as per exchange rates prevailing on the date of remittance.

5. The applications for remittances may be made to the authorized dealer in Form A2 with the undernoted documents:

(a) A "no objection" Certificate issued by the Income Tax authorities in the standard form or a copy of the certificate issued by the designated bank regarding the payment of tax where the tax has been paid at a flat rate of 30 per cent to the designated bank.

(b) A certificate from the Chartered Accountant in Form TCK/TCR (depending on the purpose of payment).

(c) A declaration by the applicant to the effect that the proposed remittance is strictly in accordance with the terms and conditions of the collaboration approved by RBI/Government.

6. The agreement shall be subject to Indian Laws.

7. A copy of the foreign investment and technology transfer agreement signed by both the parties may be furnished to the following authorities:

(a) Administrative Ministry/Department.

(b) Department of Scientific and Industrial Research, New Delhi.

(c) Concerned Regional Office of Exchange Control Department, RBI.

(d) Authorized Dealer designated to service the Agreement.

8. All payments under the foreign investment and technology transfer agreement including Rupee payments

(if any) to be made in connection with engagement/deputation of foreign technical personnel such as passage fare, living expenses, etc. of foreign technicians, would be liable for the levy of cess under the Research and Development Cess Act, 1986 and the Indian Company while making such payments should pay the cess prescribed under the Act.

9. A return (in duplicate) in Form TCD should be submitted to the Regional Office of the Reserve Bank of India in the first fortnight of January each year.

III. HIRING OF FOREIGN TECHNICIANS

No permission is necessary for hiring foreign technicians and no application needs to be made to the Government for this purpose irrespective of whether the hiring of foreign technicians is under an approved collaboration agreement or not. As regards to the release of foreign exchange either against blanket permits or in free foreign exchange, the Reserve Bank of India/Authorized Dealers may be approached, as per the RBI guidelines.

IV. DEPUTATION OF INDIAN PERSONNEL FOR TRAINING ABROAD

For deputing Indian personnel for training and other purposes abroad, the entrepreneur may approach only the the RBI/Authorized Dealers, as per the RBI guidelines.

V. FOREIGN TESTING OF INDIGENOUS RAW MATERIALS AND PRODUCTS AND INDIGENOUSLY DEVELOPED TECHNOLOGY

Entrepreneurs may approach the RBI/Authorized Dealers for authorizing payments, either against blanket permits, or in free foreign exchange, as per the RBI guidelines.

VI. NEW CLASSIFICATION SYSTEM

Entrepreneurs may note that the description of article(s) to be manufactured should be stated according to the Indian Trade Classification System.

Copies of the Indian Trade Classification (based on Harmonized Commodity Description and Coding System), published by the Ministry of Commerce, Directorate General of Commercial Intelligence and Statistics, Calcutta, can be obtained on payment from the Controller of Publications, 1 Civil Lines, New Delhi, 110 054 or from any of the agents authorized to sell Government of India publications.

ANNEX III

LIST OF INDUSTRIES FOR AUTOMATIC APPROVAL OF FOREIGN TECHNOLOGY AGREEMENTS AND FOR 51 PER CENT FOREIGN EQUITY APPROVALS

1. Metallurgical Industries

i. Ferro alloys
ii. Castings and forgings
iii. Non-ferrous metals and their alloys
iv. Sponge iron and pelletisation
v. Large diameter steel welded pipes of over 300mm diameter and stainless steel pipes.

2. Boilers and Steam Generating Plants

3. Prime Movers (other electrical generators)

i. Industrial turbines
ii. Internal combustion engines
iii. Alternate energy systems like solar, wind, etc. and equipment therefor
iv. Gas/hydro/steam turbines up to 60 MW.

4. Electrical Equipment

i. Equipment for transmission and distribution of electricity including power and distribution transformers, power relays, HT-switch gear synchronous condensers
ii. Electrical motors
iii. Electrical furnaces, industrial furnaces and induction heating equipment
iv. X-ray equipment
v. Electronic equipment, components including subscribers' end telecommunication equipment
vi. Component wires for manufacture of lead-in wires
vii. Hydro/steam/gas generators/generating sets up to 60 MW.
viii. Generating sets and pumping sets based on internal combustion engines
ix. Jelly-filled telecommunication cables
x. Optic fibre
xi. Energy efficient lamps and
xii. Midget carbon electrodes.

5. Transportation

i. Mechanised sailing vessels up to 10,000 DWT including fishing trawlers
ii. Ship ancillaries
iii. (a) Commercial vehicles, public transport vehicles including automotive commercial three wheeler jeep type vehicles, industrial locomotives; (b) Automotive two wheelers and three wheelers; (c) Automotive components/spares and ancillaries
iv. Shock absorbers for railway equipment
v. Brake system for railway stock and locomotives.

6. Industrial Machinery

i. Industrial machinery and equipment

7.

i. Machine tools and industrial robots and their controls and accessories
ii. Jigs, fixtures, tools and dies of specialised types and cross land tooling
iii. Engineering production aids such as cutting and forming tools, patterns and dies and tools.

8. Agricultural Machinery

i. Tractors
ii. Self-propelled Harvestor Combines
iii. Rice transplanters

9. Earth Moving Machinery

i. Earth moving machinery and construction machinery and components thereof.

10. Industrial Instruments

i. Indicating, recording and regulating devices for pressure, temperature, rate of flow weights levels and the like.

11. Scientific and Electromedical Instruments and Laboratory Equipment.

12. Nitrogenous and Phosphatic Fertilizers falling under:

i. Inorganic fertilizers under '18 Fertilizers' in the First Schedule to IDR Act, 1951

13. Chemicals (other than fertilizers)

i. Heavy organic chemicals including petrochemicals
ii. Heavy inorganic chemicals
iii. Organic fine chemicals
iv. Synthetic resins and plastics
v. Man made fibres
vi. Synthetic fibres
vii. Industrial explosives
viii. Technical grade insecticides, fungicides, herbicides, and the like
ix. Synthetics detergents
x. Miscellaneous chemicals (for industrial use only):
(a) Catalysts and catalyst supports
(b) Photographic chemicals
(c) Rubber chemicals
(d) Polyols
(e) Isocyanates, urethanes, etc.
(f) Speciality chemicals for enhanced oil recovery
(g) Heating fluids
(h) Coal tar distillation and products therefrom
(i) Tonnage plants for the manufacture of industrial gases.
(j) High altitude breathing oxygen/medical oxygen
(k) Nitrous oxide
(l) Refrigerant gases like liquid nitrogen, carbondioxide, etc. in large volumes
(m) Argon and other rare gases
(n) Alkali/acid resisting cement compound
(o) Leather chemicals and auxiliaries

14. Drugs and Pharmaceuticals according to Drug Policy

15.

i. Paper and pulp including paper products
ii. Industrial laminates

16.

i. Automobile tyres and tubes
ii Rubberised heavy duty industrial beltings of all types
iii. Rubberised conveyor beltings
iv. Rubber reinforced and lined fire fighting hose pipes
v. High pressure braided hoses
vi. Engineering and industrial plastic products.

17. Plate Glass

i. Glass shells for television tubes
ii. Float glass and plate glass
iii. H.T. insulators
iv. Glass fibres of all types.

18. Ceramics

i. Ceramics for industrial uses.

19. Cement Products

i. Portland cement
ii. Gypsum boards, wall boards and the like.

20.High Technology Reproduction and Multiplication Equipment

21. Carbon and Carbon Products

i. Graphite electrodes and anodes
ii. Impervious graphite blocks and sheets.

22. Pretensioned High Pressure RCC Pipes

23. Rubber Machinery

24. Printing Machinery

i. Web-fed high speed offset rotary printing machines having output of 30,000 or more impressions per hour
ii. Photo composing/type setting machines
iii. Multi-colour sheet-fed offset printing machines of sizes 18" x 25" and above
iv. High speed rotograture printing machines having output of 30,000 or more impressions per hour.

25. Welding Eletrodes other than those for Welding Mild Steel

26. Industrial Synthetic Diamonds

27.

i. Photosynthesis improvers

ii. Genetically modified free living symbiotics nitrogen fizer
iii. Pheromones
iv. Bio-insecticides.

28. Extraction and Upgrading of Minor Oils

29. Pre-fabricated Building Material

30. Soya Products

i. Soya texture proteins
ii. Soya protein isolates
iii. Soya protein concentrates
iv. Other specialized products of soyabean
v. Winterised and deodourised refined soyabean oil.

31. (a) Certified high yielding hybrid seeds and synthetic seed and (b) Certified high yielding plantlets developed through plant tissue culture

32. All food processing industries other than milk food, malted foods, and flour, but excluding the items reserved for small-scale sector

33. All items of packaging for food processing industries excluding the items reserved for the small-scale sector

34. Hotels and tourism-related industry

MEXICO:

LAW FOR THE PROMOTION AND PROTECTION OF INDUSTRIAL PROPERTY (Part 3)

(Translation of the Spanish original published in the **Official Federal Journal** of 27 June 1991, and effective as of 28 June 1991)

MARKS, SLOGANS AND TRADE NAMES (continued)

CHAPTER IV

Trade Names

Article 105: The trade name of a company or industrial, commercial or service establishment, and the right to its exclusive use will be protected, without the need of a registration. The protection will cover the geographic zone of the actual clientele of the company or establishment to which the trade name is applied, and will extend throughout the entire country if there is a massive and constant dissemination thereof at the national level.

Article 106: Whoever is using a trade name may request the Ministry to publish it in the **Gazette.** The effects of said publication will be to establish the assumption of good faith in the adoption and use of the trade name.

Article 107: Applications for publication of a trade name are to be filed in writing with the Ministry, accompanied by documents proving the effective use of the trade name applied to a particular activity.

Article 108: When the application has been received and the legal requirements satisfied, an examination on the merits will be conducted to determine if there exists any previously published, identical or confusingly similar trade name, applied to the same activity, or if there exists an identical or confusingly similar registration for a mark covering products or services closely related to the primary activity of the business or establishment in question; if not, the trade name will be published.

Article 109: Trade names that lack elements to distinguish the particular business or establishment from others of their kind will not be published, nor will those that infringe the relevant provisions of **Article 90** of this Law.

Article 110: The effects of the publication of a trade name will subsist for ten years from the filing date of the application, and they may be renewed for equal periods of time. The effects will terminate, absent a renewal.

Article 111: The transfer of a business or establishment will carry with it the right to the exclusive use of the trade name, unless there is any provision to the contrary.

Article 112: Trade names will be governed, in all applicable aspects and in absence of a special provision, by the provisions for marks contained in this Law.

CHAPTER V

Registration of Marks

Article 113: To obtain the registration of a mark, a written application is to be filed with the Ministry, containing the following data:

1. Name, nationality and address of the applicant;

2. The distinctive sign of the mark, mentioning if it is nominative, without denomination or mixed and, in such case, if it is tridimensional;

3. The date of first use of the mark, which may not be altered at a later time, or the assertion that it has not been used;

4. The products or services to which the mark will be applied, and

5. All other data called for in the Regulations of this Law.

Article 114: The application for registration of a mark is to be accompanied by the voucher of payment of the government fees set forth in the respective law, as well as the specimens of the mark.

Article 115: In the specimens of the mark filed with the application, no words or legends that could deceive or induce the public to error should appear. When the application is filed to protect a mark without denomination, the specimens thereof shall contain no words that constitute or could constitute a mark.

Article 116: If the mark is applied for on behalf of two or more persons, the rules for use and licensing of the mark and its assignment of rights are to be filed along with the application.

Article 117: When the registration of a mark is applied for in Mexico within the periods of time established in International Treaties, or within six months from the date of having done so in other countries, the filing date of the first application in another country may be recognized as the priority date.

Article 118: In order to recognize the priority date referred to in **article 117**, the following requirements must be satisfied:

1. The priority must be claimed when applying for the registration, and the country of origin and filing date of the application in that country must be recited;

2. The application filed in Mexico must not purport to be applied to products or services other than those contemplated in the application filed abroad, otherwise priority will be recognized only to those recited in the country of origin;

3. Within three months from the filing of the application, the requirements established in International Treaties, this Law and its Regulations must be complied with; and

4. There must be reciprocity in the country of origin.

Article 119: Once the application is received, a formal examination will be carried out as well as of the documentation submitted, to verify that the requirements established in this Law and Regulations have been satisfied.

Article 120: If the application or the documentation that accompanies it do not satisfy the requirements of this Law or its Regulations, the applicant will be so notified in writing, to remedy the error or omission within a term of two months; failure to do so within said period of time will lead to the application being deemed abandoned.

Article 121: If at the time the application is filed, the requirements of sections 1, 2 and 4 of **Article 113** of this Law are satisfied, and if the voucher of payment of government fees is submitted, that will be the filing date; otherwise, the filing date will be the day such requirements are satisfied, provided this is done within the term granted therefor.

Article 122: When the application is complete, an examination will be carried out to verify if the mark is registrable in the terms of this Law. The Ministry will give written notice to the applicant of any bar to the registration of his mark, giving him a two-month period to assert his rights. If the interested party fails to answer within said term, the application will be deemed to be abandoned. If the applicant answers within the term granted to him, the Ministry will then continue processing the application.

Article 123: If, when the applicant answers within the applicable period of time for the purpose of remedying the legal bar, the mark is modified or substituted, the latter will be subject to a new prosecution and government fees on a new application must be paid, and the requirements set forth in **Articles 113 and 114** of this Law and the applicable requirements of its Regulations must be complied with.

Article 124: If the bar relates to the existence of one or more identical or confusingly similar registrations of marks, upon which a nullity, lapsing or cancellation proceeding exists or is filed, at the petition of the party or *ex officio*, the Ministry will hold in abeyance the processing of the application until the respective proceeding is resolved.

Article 125: When the prosecution of the application is concluded, and the legal and regulatory requirements have been satisfied, the applicant will be required to pay the government fees for the registration of the mark and the issuance of the certificate. Failure to pay the government fees within two months will lead to the application being deemed abandoned.

If the Ministry rejects the registration of the mark, it will so notify the applicant in writing, asserting the reasons and legal grounds for its resolution.

Article 126: The Ministry will issue a certificate for each mark as evidence of its registration. The certificate will include a copy of the mark and the following will be recorded therein:

1. The registration number of the mark;

2. The distinctive sign of the mark, indicating if it is nominative, without denomination, or mixed and, in such case, if it is tridimensional;

3. The products or services to which the mark will be applied;

4. Name and address of the holder thereof;

5. Location of the establishment, in such case;

6. Filing date of the application, the recognized priority date and date of first use, in such case; date of issue; and

7. Its term.

Article 127: The resolutions on registrations of marks and their renewals are to be published in the **Gazette.**

Article 128: The mark is to be used in the national territory just as it was registered, or with modifications that do not alter its essential characteristics.

Article 129: The Ministry may declare the compulsory registration and use of marks on any product or service or prohibit or regulate the use of marks, whether registered or not, *ex officio* or at the request of the representative organizations, when:

1. The use of the mark is an element associated with monopolistic or oligopolistic practices or unfair competition, which can cause serious distortions in the production of, distribution of or trade with particular products or services;

2. The use of the mark impedes the efficient distribution of, production of or trade with products and services; and

3. The use of marks impedes, places obstacles or renders more expensive the production, rendering or distribution of basic products or services to the people, during times of national emergency and as long as they last.

The respective declaration will be published in the Official Journal.

Article 130: If a mark is not used for three consecutive years on the products or services for which it was registered, its registration will lapse unless justified reasons exist, in the opinion of the Ministry.

Article 131: The legend "Marca Registrada" (registered mark), its abbreviation "Marc.Reg.", the initials "M.R" or the letter "R" within a circle, ®, may only be displayed on the products or services for which said mark is registered.

Article 132: When a mark of foreign origin or a mark that is owned by a foreign person is intended to be applied to products manufactured or produced in national territory, it may be linked to a mark originally registered in Mexico. The holders of linked marks shall give notice to the Ministry.

Article 133: The renewal of the registration of a mark is to be requested by the holder within six months prior to the expiration of its term. The Ministry will, however, process those petitions that are filed within a period of six months after the expiration of the term of the registration. Upon expiration of this later term, if the renewal application is not filed, the registration will lapse.

Article 134: The renewal of the registration of a mark will be in order only if the interested party pays the respective government fees and declares, in a sworn written statement, that the mark has been used on the products or services to which it applies, and that such use has been uninterrupted for a period equal to or longer than that provided for in **Article 130** of this Law.

Article 135: If one and the same mark is registered to protect two or more classes of products or services, it will be sufficient to renew it in any of said classes and renewal will occur in all registrations, following the payment of the respective government fees.

CHAPTER VI

Licenses and Assignments of Rights

Article 136: The holder of the registration of a mark may grant, by means of an agreement, a license to one or more persons, with respect to all or some of the products or services to which said mark is applied. The license shall be recorded with the Ministry in order for it to be enforceable against third parties.

Article 137: To record a license with the Ministry, it will be sufficient to prepare the respective application in the terms set forth in the Regulations of this Law.

Article 138: The cancellation of the recording of a license will be in order in the following cases:

1. When jointly requested by the holder of the mark and the user to whom the license was granted;

2. As a result of the nullity, lapsing or cancellation of the registration of the mark; and

3. By a court order.

Article 139: The products that are sold or the services that are rendered by the user shall be of the same quality as those manufactured or rendered by the holder of the mark. Moreover, such products or the establishment where the services are rendered or contracted shall indicate the name of the user and all other data provided for in the Regulations of this Law.

Article 140: The user to whom a license has been granted and who is recorded with the Ministry, will be entitled to exercise legal actions to impede the counterfeiting, imitation or illegal use of the mark, as if he himself were the holder, unless otherwise agreed upon.

Article 141: The use of the mark by the user to whom a license, recorded with the Ministry, has been granted, will be deemed to be use by the holder of the mark.

Article 142: A franchise will exist when, with the license of a mark, technical knowledge is transmitted or technical assistance is provided, allowing the person to whom it is granted to produce or sell products or render services uniformly and with the operational, commercial and administrative methods established by the holder of the mark, for the purpose of preserving the quality, prestige and image of the products or services distinguished by the mark.

Whoever grants a franchise shall provide to the person to whom it is intended to be granted, prior to the execution of

the respective agreement, information about the status of his business, in the terms established in the Regulations of this Law. The provisions contained in this chapter will apply to the recording of a franchise.

Article 143: The rights to an application for the registration of a mark or to a registered mark may be assigned to one or several persons, in the terms of and following the formalities established in the common legislation. Said assignment of rights shall be recorded with the Ministry, according to the provisions of the Regulations of this Law, in order to be enforceable against third parties.

Article 144: Except for a provision to the contrary, when there is a merger of corporate entities, it will be understood that there exists an assignment of the rights to the registered marks.

Article 145: For the purpose of their assignment, the registrations of marks on one and the same holder will be deemed to be associated when said marks are identical and cover similar products or services, or when they are confusingly similar and are applied to the same or similar products or services.

Article 146: When the holder of registrations of two or more associated marks considers that no confusion will exist in the event any of them is used by another person for the products or services to which said mark is applied, he may request that the imposed association be dissolved. The Ministry will issue a final resolution on the matter.

Article 147: The assignment of any of the associated marks will only be recorded when all of them are assigned to the same person.

Article 148: When a petition is made for the recording of an assignment of a registered mark in respect to which prior, unrecorded assignments occurred, the intermediate ones must also be mentioned. The Ministry will record all the assignments.

Article 149: No recording will be made of the assignment of the registration of a mark that may be considered null. For this purpose, before recording the assignment, the respective file will be reviewed and if the registration of the mark falls within the cited circumstances, a proceeding for the declaration of nullity will be initiated *ex officio*.

Article 150: The Ministry may reject the recording of a license or assignment of rights by reason of public interest. The Ministry shall state the reasons and legal grounds for the resolution rejecting the requested recording. The recording of a license will also not be possible when the applicability of this Law is expressly excluded from the respective agreement, without detriment to the fact the parties may submit to international arbitration in the case of controversy.

CHAPTER VII

Nullity; Lapsing and Cancellation of a Registration

Article 151: The Registration of a mark is null and void when:

1. It has been granted against the provisions relating to services, to easily distinguish them from others of their kind. For the purposes of this section, considered as requirements and conditions for the grant of the registration are those set forth in sections 1 through 15 of **Article 90**.

2. The mark is identical or confusingly similar to another one that has been used in the country prior to the filing date of the application for the registered mark and applied to the same or similar products or services, provided that the person asserting a senior right due to prior use proves to have used the mark uninterruptedly in the country, prior to the filing date or, in such case, to the date of first use declared by the person who registered it;

3. The mark was being used abroad previously, in the same hypothesis of section 2, if in addition to the use, a foreign registration exists and in the country of origin there is reciprocity with Mexico;

4. The registration was granted on the basis of false or inexact information contained in its application, and such information is essential;

5. It was granted as a result of error, inadvertence or a difference of criterion, while there exists another registration that is considered as infringed, by virtue of being a mark that is equal or confusingly similar and which is applied to equal or similar services or products;

6. When the agent, representative, user or distributor of the holder of a mark registered abroad applies for and obtains a registration of said mark or a confusingly similar one, in his own name, without the express consent of the holder of the foreign mark. In this case, the registration will be deemed to have been obtained in bad faith.

The cancellation actions derived from this Article may be exercised within a term of five years from the effective date of the publication of the registration in the **Gazette**, except for those related to section 1 and 6, which may be exercised at any time, and to section 3, which may be exercised within a term of one year.

Article 152: The registration will lapse in the following cases:

1. When not renewed in the terms of this Law; and

2. When the mark has not been used for more than three consecutive years, unless there are justified reasons, in the opinion of the Ministry.

Article 153: The cancellation of the registration of a mark will be in order if its holder has caused or tolerated that it converts into a generic name corresponding to one or several of the products or services for which it was registered, in such way that, in commerce and in the

generalized use by the public, the mark has lost its distinctive nature as a means of distinguishing the product or service to which it is applied.

Article 154: The holder of the registration of a mark may at any time request in writing the cancellation of his registration. The Ministry may require the acknowledgement of the signature that appears on the petition, in the cases established in the Regulations of this Law.

Article 155: A declaration of nullity, lapsing or cancellation of the registration of a mark will be administratively made by the Ministry, *ex officio*, at the request of a party of the Federal prosecutor, when the Federation has an interest in the matter. The lapsing referred to in section I of **Article 152** of this Law will not require the administrative declaration by the Ministry.

APPELLATIONS OF ORIGIN

CHAPTER I

Protection of an Appellation of Origin

Article 156: Understood as an appellation of origin is the name of a geographic region of the country which is used to designate a product that originates there, and the quality or characteristics of which are due exclusively to the geographic medium, which includes natural and human factors.

Article 157: The protection which this Law grants to the appellations of origin begins with the declaration issued by the Ministry for such purpose. Illegal use thereof will be sanctioned even in cases in which it is accompanied by indications such as "class", "type", "manner", "imitation" and other similar words that create confusion in the public or that imply unfair competition.

Article 158: The declaration of protection of an appellation of origin will be made *ex officio* or at the request of the party showing to have a legal interest therein. For the purposes of this Article, the following will be deemed to have a legal interest:

I. The individuals or corporate entities directly engaged in the extraction, production or preparation of the product or products intended to be protected by the appellation of origin.

II. Chambers or associations of manufacturers or producers; and

III. Agencies or entities of the federal government and of the governments of the states of the Federation.

Article 159: Petitions for a declaration of protection of an appellation of origin shall be in writing, and accompanied by evidence upon which the petition is based, indicating the following.

I. Name, address and nationality of the petitioner. If it is a corporate entity, it shall also express its nature and the activities it is engaged in.

II. Legal interest of the petitioner.

III. Indication of the appellation of origin.

IV. Detailed description of the product or products to be covered by the appellation of origin, including their characteristics, components, form of extraction, production or preparation. When essential to establish the relationship between the appellation of origin and the product, the official standards set forth by the Ministry to which the product, its extraction, preparation or production and its form of packaging, packing or bottling shall be subjected, are also to be indicated;

V. Place or places of extraction, production or preparation of the product intended to be protected with the appellation of origin and delimitation of the territory of origin, in terms of geographic elements and political divisions;

VI. Detailed description of the links among name, product and territory; and

VII. All others which the petitioner deems necessary or relevant.

Article 160: When the petition has been received by the Ministry and the respective government fees have been paid, the information and documentation filed will be examined.

If, in the opinion of the Ministry, the documentation submitted does not satisfy the legal requirements or is insufficient to understand and analyze any of the elements of the petition, the petitioner will be required to make the necessary clarifications or additions, granting him a two-month term for this purpose. If the petitioner does not comply with the requirement within the granted term, the petition shall be deemed as abandoned, but the Ministry may continue its processing *ex officio* in the terms of this chapter, if it deems it convenient to do so.

Article 161: When the documents submitted satisfy the legal requirements, the Ministry will publish an abstract of the petition in the **Official Journal**.

If the proceeding is initiated *ex officio*, the Ministry will publish in the **Official Journal** an abstract of the particulars and requirements established in sections 3 to 7 of **Article 159** of this Law.

In both cases, the Ministry will grant a term of two months from the date of publication to allow any third party to justify his legal interest, submit his observations or objections and submit whatever evidence he deems appropriate.

Article 162: For the purposes of this chapter, every type of evidence will be admitted, except for depositions and testimony. Expert evidence will correspond to the

Ministry or to whomever it designates. The Ministry may, at any time prior to the declaration, conduct the investigations it deems relevant and compile the elements it deems necessary.

Article 163: At the expiration of the term referred to in **Article 161** of this Law, and once the analyses have been made and the evidence reviewed, the Ministry will issue its resolution.

Article 164: The declaration of the Ministry granting protection to an appellation of origin will make a final determination of the elements and requirements provided for in **Article 159** of this Law. If the resolution grants protection to the appellation of origin, the Ministry will make the declaration and have it published in the **Official Journal**.

Article 165: The duration of the declaration of protection of an appellation of origin will be determined by whether the conditions that led to its grant subsist, and will cease to be effective only by another declaration of the Ministry.

Article 166: The terms of the declaration of protection to an appellation of origin may be amended at any time, either *ex officio* or at the request of an interested party, following the procedure established in this chapter. The respective petition shall contain the information required by sections I to III of **Article 159** of this Law and shall set forth in detail the requested amendments and the reasons therefor.

Article 167: The Mexican State will be the holder of the appellation of origin, it can be used only with the Ministry's authorization.

Article 168: The Ministry, through the Ministry of Foreign Affairs, will process the registration of the appellations of origin that have been the subject matter of a declaration of protection in the terms of this Law, to obtain its recognition abroad in accordance with the International Treaties.

CHAPTER II

Authorization of Use

Article 169: The authorization to use an appellation of origin shall be requested with the Ministry, and it will be granted to every individual or corporate entity who satisfies the following requirements.

1. To be directly engaged in the extraction, production or preparation of the products protected by the appellation or origin;

2. To perform such activity within the territory determined in the declaration;

3. To comply with the official standards established by the Ministry in accordance with the applicable laws, with respect to the products in question; and

4. To satisfy all other requirements set forth in the declaration.

Article 170: An application to obtain an authorization to use an appellation of origin shall contain the information and be accompanied by the documents mentioned in the Regulations of this Law.

Article 171: Upon receipt of the application for authorization to use an appellation of origin, the Ministry will proceed in the terms of **Article 160** of this Law, and if the legal requirements are satisfied, the Ministry will grant the respective authorization.

Article 172: The effects of the authorization to use an appellation of origin will last for ten years from the filing date of the application with the Ministry, and may be renewed for like periods of time.

Article 173: The user of an appellation of origin shall use it just as it appears protected in the declaration; otherwise, the authorization will be canceled.

Article 174: The right to use an appellation of origin may be transferred by the authorized user in the terms of the common legislation. Said transfer will be effective only as of its recording with the Ministry, and provided the new user shows he satisfies the conditions and requirements established in this Law to obtain the right to use the appellation of origin.

Article 175: The authorized user of an appellation of origin, in turn, by means of an agreement, may permit the use of it only to those parties distributing or selling his products. The agreement must be authorized by the Ministry and shall be effective as of the date of the recording with the Ministry.

The agreement shall contain a clause establishing the obligation in charge of the distributor or merchant to comply with the requirements of sections 3 and 4 of **Article 169** and those established in the Regulations. In case the distributor or merchant does not comply with this obligation, the recording will be canceled.

Article 176: The authorization granted to the user of an appellation of origin will cease its effects in the following cases:

1. Nullity, in any of the following cases:

a. When it was granted against the provisions of this Law;

b. When it was granted on the basis of false information and documents;

2. Cancellation, when the authorized user uses the appellation of origin in a different manner from that established in the declaration of protection;

3. At the expiration of its term.

Article 177: The administrative declarations of nullity and cancellation will be made by the Ministry *ex officio*, at the request of a party, or of the Federal Prosecutor.

Article 178: In addition to the publications provided for in this chapter, the declarations issued and the authorizations granted by the Ministry will be published in the **Gazette**, as well as any act, the result of which is the termination of the effects of the rights granted in respect of an appellation of origin.

ADMINISTRATIVE PROCEDURES

CHAPTER I

General Rules Governing Procedure

Article 179: Every application or petition addressed to the Ministry under the provisions of this Law and other provisions deriving from it shall be presented in writing and in the Spanish language.

Article 180: Applications and communications shall be signed by the interested party or his representative and shall be accompanied by a voucher evidencing the payment of the respective government fees, where applicable. Absent any of these elements, the Ministry will reject the application or communication.

Article 181: When the applications and communications are filed through an attorney, the attorney shall prove his legal capacity with:

1. If the principal is an individual, a simple power of attorney signed before two witnesses;

2. In the case of a Mexican corporate entity, a public deed or power of attorney with a notarial acknowledgement of the signatures, and the legal existence of the corporate entity and the powers of the grantor must be evidenced; and

3. A power of attorney granted in accordance with the applicable legislation of the place of grant or according to the International Treaties, if the principal is a foreign corporate entity. When the power of attorney certifies the legal existence of the corporate entity in whose name the power is granted, as well as the right of the grantor to grant it, the validity of the power of attorney shall be taken for granted, unless there is evidence to the contrary.

The legal capacity of the applicant or petitioner shall be proven in every file being processed; however, if the power of attorney is recorded in the General Registry of Powers of Attorney established by the Ministry, a simple copy of the record in the Registry will suffice.

Article 182: When an application or communication is filed by several persons, the communication shall indicate which of them will be the common representative; otherwise, the first named person will be deemed to be the common representative.

(To be continued in the next issue of the *TIES Newsletter*)

RECENT PUBLICATIONS

LES NOUVELLES

Journal of the Licensing Executives Society

Volume XXVII No.4, December 1992

UNIDO Role in Technology Transfer, Charles Warner, Page 181

Technology Scouting at Air Products, Merrill S. Brenner, Page 185

New Tax Rules Affect Licensing, John Wills, Page 190

Merchandising Sports Marks Internationally Ian S. Blackshaw and Gilian Hogg, Page 198

Multifaceted Role of Licensing Consultant, Charles K. Murray, Page 198

New Rules Affect Licensing in Venezuela, Manuel Villina Grisanti, Page 201

Spain: Full Liberalization of Licensing, Fernando Pombo, Page 207

The Ultimate Marketing Strategy, Allan Feldman, Page 209

Drafting a Granting Clause, Ronald B. Cooley, Page 212

Software Licensing Into Korea, Fred M. Greguras and Moon Sung Lee, Page 215

LESIAC Report, Edward P. Grattan, Page 220

PRESS RELEASE

At the request of our colleagues from the Centre d' Etudes Internationales de la Propriété Industrielle (CEIPI), we publish hereunder the 1993 Programme of Training Courses on Licenses and Transfer of Technology.

Mr. Jacques Henri Gaudin, Director of CEIPI's training programme, has been engaged with UNIDO as a consultant on technology transfer contracting and negotiation.

ANNUAL TRAINING COURSES ON LICENSES AND TRANSFER OF TECHNOLOGY

PROGRAMME FOR 1993

14-18 June 1993 to 11-15 October 1993

to be held at:

Maison du Commerce International
4, quai Kléber
Strasburg
France

The courses will be presented by practitioners to licensing executives from industry, lawyers, patent attorneys and other practitioners in licensing and R&D cooperation.

Jacques Henri Gaudin
Director
Centre d'Etudes Internationales de la Propriété Industrielle CEIPI)
Division Internationale
Université Robert Schuman
Place d'Athènes – F67084 Strasbourg Cedex
France
Tel. (33) 88 61 43 75 – Fax (33) 88 60 37 10

Since 1975, the International Division of CEIPI proposes two courses of further training on the different aspects of licensing, transfer of technology and R&D cooperation: strategies, agreements, applicable laws and rules. The duration of each course is 24 hours.

These further training courses are designed to improve the knowledge of any professional having short experience in the field of licensing, transfer of technology and R&D cooperation. They meet 20 to 25 attendees.

The lecturers are exclusively international experts within the field of international technology transfer and licensing with a long experience of every possible form of such operations and a long teaching skill in the field.

The courses are in French or English depending on the lecturers. The attendees are expected to understand English and French.

Each course includes two workshops on a licensing case, which is an element of the documentation distributed.

FIRST SESSION

Licensing and Transfer of Technology Agreements
14 June 1993, 14.00, to 18 June 1993, 12 noon.

Monday, 14 June 1993 (14.00 to 17.00)

Jacques Henri GAUDIN:
PURPOSES AND STRUCTURE OF LICENSING AND TECHNOLOGY TRANSFER AGREEMENTS

- Industrial Technology: components and transferability; protection by secrecy or industrial property rights
- Checklist of the provisions of licensing and technology transfer agreements (information, training, technical assistance)
- Main characteristics of technology transfer and licensing agreements, depending on the licensee's needs

Tuesday, 15 June 1993 (09.00 to 17.00) and Wednesday, 16 June 1993 (09.00 to 12.00 noon)

Keith WEATHERALD
CLAUSE BY CLAUSE STUDY OF LICENSE AND KNOW-HOW AGREEMENTS

- Contractual definitions
- Granting of rights and technical assistance obligations
- Improvements: definition and rights granted
- Secrecy: protection, non-disclosure agreement, penalty
- Guarantees granted by the licensor, guarantee of means or result, guarantee of free work (infringement suits)
- Obligation to work the license: minimum of exploitation, quality standards, non-competition clause
- Workshop Wednesday, 16 June 1993 (10.30 to 12.00 noon) with J. H. Gaudin

Wednesday, 16 June 1993 (14.00 to 17.00) and Thursday, 17 June 1993 (09.00 to 17.00)

Christoph KAMM
CLAUSE BY CLAUSE STUDY OF LICENSE AND TECHNOLOGY TRANSFER AGREEMENTS (continuation)

- Compensation and payments (lump sum, royalties, buy-back, etc.)
- Fiscal treatments
- Term of the agreement
- Miscellaneous: extension and renewal, anticipated termination; force majeure;
- Assignment of obligations and rights to a third party; sub-licenses; contract law; disputes
- Workshop: Thursday, 17 June 1993 (10.30 to 12.00 noon) with J. H. Gaudin

Friday, 18 June 1993 (09.00 to 12.00 noon)

Michel ESPAGNON
SOFTWARE LICENSING

- Specificity resulting from software protection by copyright
- Typology of the Agreements including software
- Specific clauses

SECOND SESSION

Strategy and Rules in Transfer of Technology and Technical Cooperation
11 October 1993, 14.00 to 15 October 1993 12.00 noon

Monday, 11 October 1993 (14.00 to 17.00) and Tuesday, 12 October 1993 (09.00 to 17.00)

Jacques Henri GAUDIN
INDUSTRIAL LICENSING AND COOPERATION AGREEMENTS

- Licensing Out and industrial franchising
- Policy, factors of decision, negotiation
- Licensing Out to joint venture companies or third parties
- Licensing In
- Licensing In on industrial know-how and property rights
- Licensing In from Research Centre or Engineering Company
- Cooperation Agreements and Joint R&D Ventures
- Horizontal and vertical cooperation
- Organisation of the cooperation and organisation of the exploitation of results, without formation of corporate joint venture
- Workshop: Tuesday, 12 October 1993 (15.30 to 17.00) on Licensing Strategies

Wednesday, 13 October 1993 (09.00 to 17.00)

Thomas ROSE and Xavier de MELLO
LICENSING AND ANTITRUST OR COMPETITION LAWS

- Antitrust or competition laws and procedures in the United States and the EEC
- Case law in the United States
- Block exemptions and case law in the EEC

Thursday, 14 October 1993 (09.00 to 10.30)

Xavier de MELLO
LITIGATION – ARBITRATION

Thursday, 14 October 1993 (10.30 to 12.00 noon)

Jacques Henri GAUDIN

- Analysis and use of the Brussels Commission Block Exemptions on Patent and Know-How License Agreements

Thursday, 14 October 1993 (14.00 to 17.00)

Victor BENTATA
LAWS OF DEVELOPING COUNTRIES ON FOREIGN INVESTMENTS AND TECHNOLOGY TRANSFERS

Friday, 15 October 1993 (09.00 to 12.00 noon)

Jacques Henri GAUDIN

- Workshop (09.00 to 10.30) on competition laws
- Analysis and use of the Block Exemption on R&D Agreements (10.30 to 12.00 noon)

(For those readers who are interested in participating in these courses, or who would like to obtain additional information, a registration form is included in this issue of the *TIES Newsletter*, as well as the address to which enquiries should be addressed.)

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The *TIES Newsletter* is primarily devoted to issues of technology transfer policies and negotiation, including related developments in the international context, as well as updates of activities in this area. In the space below readers are invited to provide:

(a) A brief indication of their current professional activities and the relevance of the *TIES Newsletter* to these; and

(b) Comments on the information given in the *TIES Newsletter* and the way it is presented, so as to allow for improvement of future issues.