OCCASION

This publication has been made available to the public on the occasion of the 50th anniversary of the United Nations Industrial Development Organisation.

DISCLAIMER

This document has been produced without formal United Nations editing. The designations employed and the presentation of the material in this document do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations Industrial Development Organization (UNIDO) concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries, or its economic system or degree of development. Designations such as "developed", "industrialized" and "developing" are intended for statistical convenience and do not necessarily express a judgment about the stage reached by a particular country or area in the development process. Mention of firm names or commercial products does not constitute an endorsement by UNIDO.

FAIR USE POLICY

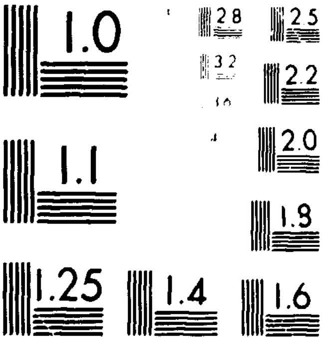
Any part of this publication may be quoted and referenced for educational and research purposes without additional permission from UNIDO. However, those who make use of quoting and referencing this publication are requested to follow the Fair Use Policy of giving due credit to UNIDO.

CONTACT

Please contact publications@unido.org for further information concerning UNIDO publications.

For more information about UNIDO, please visit us at www.unido.org

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



MICROCOPY RESOLUTION TEST CHART

09842

Distr.
LIMITED

ID/WG.325/2
19 August 1980

ENGLISH

United Nations Industrial Development Organization

Fifth Meeting of Heads of Technology Transfer Registries

Buenos Aires, Argentina, 15 - 19 September 1980

A COMPARATIVE STUDY OF THE TECHNOLOGY TRANSFER REGISTRIES OF SELECTED COUNTRIES

REPORT OF THE PHILIPPINE STUDY TOUR*

prepared by

L.R. Bautista **
A.T. Carpio **
B. Noriega**
D. Wendam **
E.M. Payumo **

* The views expressed in this paper are those of the authors and do not necessarily reflect the views of the secretariat of UNIDO. This document has been reproduced without formal editing.

** Members of the Technology Transfer Board of the Philippines.

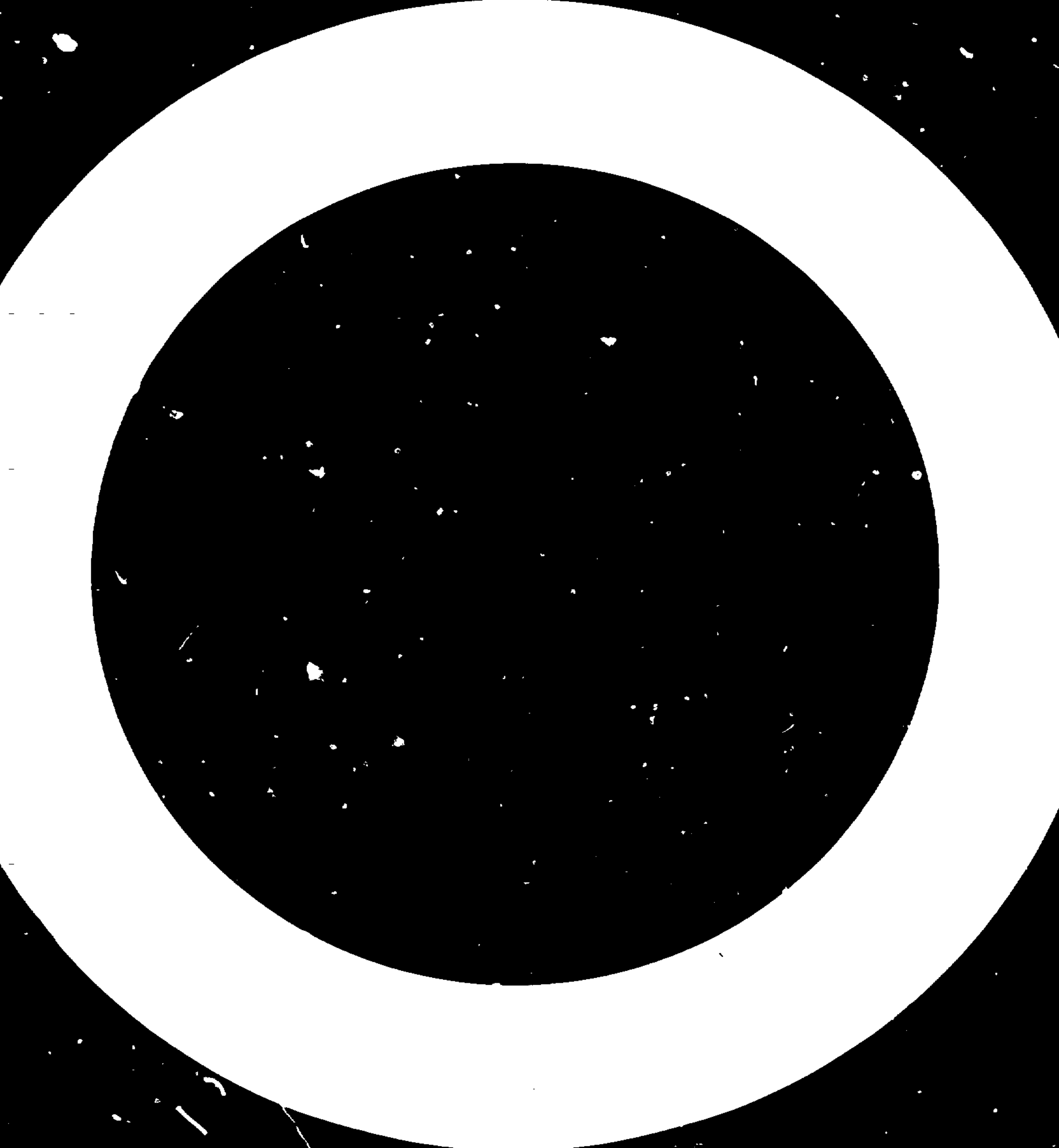
80-42694

CONTENTS

The following is the report of the Technology Transfer Board members on their study and observation tour of the technology transfer registries of Argentina, Brazil, Colombia, Mexico, Spain and the Republic of Korea. Said tour was sponsored by UNIDO as part of its assistance to the Technology Transfer Board of the Ministry of Industry of the Philippines. The study tour was undertaken in April 1980.

SUBMITTED BY:

Atty. Lilia R. Bautista - Vice-Chairman, TTB
Atty. Antonio T. Carpio - Member, TTB
Mr. Bienvenido Noriega - Member, TTB
Mr. Guillermo Soliven - Member, TTB
Mr. Demetrio Wendam - Member, TTB
Ms. Eva M. Payumo - Technical Staff, TTB



ARGENTINA

In the Republic of Argentina, the Ministry of Economy is the "umbrella" organization under which the various offices implementing the Transfer of Technology Law (Law No. 21, 617) operate. This Ministry holds the Secretariats of State for Industrial Development, Trade and Commerce, Finance, Agriculture, Mining, Energy, and Transport, Public Works and Communications.

A. Organization

The Enforcement Authority is normally the Head of the Under-Secretariat, of the Secretariat of State for Industrial Development. Only exceptional matters are referred to higher authorities. The National Register of License Contracts and Transfer of Technology operates under the Technical Under-Secretariat.

Under the Industrial Development Secretariat, there is also a National Institute of Industrial Technology (INTI), an autonomous agency whose main function is to carry out research to promote the technical and economic development of industry, improve processing of raw materials and manufacturing techniques, and foster the exploitation of domestic raw materials and industrial by-products. This agency also assists in the negotiation of technology transfer agreements between prospective licensors and licensees and determines the suitability of imported technologies to local requirements, besides developing domestic technology to reduce the extent of the country's dependence of foreign technology. It is funded by a 0.25% tax imposed on all bank credits to industrial firms, as well as from fees collected for specific services to domestic industries.

B. Transfer of Technology Law

Law No. 21, 617, enacted on August 16, 1977 and amended on September 19, 1978, constitutes the basic statute governing technology transfers, covering practically all areas except exploration and exploitation of hydrocarbons, which is governed by a separate statute (Law No.21, 778 of 1978).

The law covers all transfers of technology that are not incorporated into equipment acquired through outright purchase or lease, or informal transfers free of charge between related companies. On the otherhand, even gratuitous technology transfers must be registered if they involve basic or detailed engineering.

1. <u>Inclusions</u> :

   a. Use of patents, industrial designs and models trademarks, and other industrial property rights.

   b. Use of technical know-how, processes, formulae or specifications for the manufacture of products or rendering of services.

   c. Technical consultancy, assistance and services.

   d. Supply of basic and detailed engineering.

2. <u>Exemptions</u>;

   a. Military secrets

   b. Work contracts involving the furnishing of technology by the owner to his contractor.

   c. Use or reproduction of copyrights

   d. Supply of drawings or catalogues acquired with machinery and equipment.

   e. Transfer or assignment of technology free of charge between related companies, which do not involve basic or detail engineering.

3. <u>Automatic registration</u> (without need for prior examination) is provided for the following services:

   a. Entry of foreign technicians for installation, start-up, or repairs of machinery and equipment.

b. Licensing of trademarks free of charge.

c. Supply of basic or detail engineering for start-up operation without additional cost.

Verification takes place after registration.

4. Non-automatic registration would entail prior examination of contracts by the Enforcing Authority so as to identify the services to be rendered by the licensor, the royalty to be paid, effective term of the contract, and the technical objectives to be achieved by the licensee. Furthermore, the licensor must expressly declare his familiarity with the law.

5. A registration fee, equivalent to one and one-half per cent (1-1/2%) of the contractual amount is charged for registration with the National Register of License Contracts and Transfer of Technology, whose proceeds will be deposited with the INTI for supporting the Register's operations. (Law No. 21, 879).

6. Restrictive provisions which may result in rejection of a contract's registration include the following :

a. When the technology involved can be proven obsolete.

b. When technology of the same specifications and nature as that of the object of the transfer can be proven to be of public knowledge and freely available unedr reasonable conditions in the country.

c. When exports are prohibited or limited, except to countries where the supplier produces for its own account, or has granted exclusive production, use or sales licenses.

d. When the agreed royalty or consideration bears no relation to the trademarks or technology transferred, and the direct or indirect benefits to be gained by their use, e.g.:

(1) if royalty for pure use of trademarks exceeds one per cent (1%) of net sales.

(2) if the royalty for technology related to the automotive industry exceeds two (2) percent of net sales value of the products manufactured with such technology.

(3) if royalty in other cases exceeds five per cent

(5%) of the net sales value of products manufactured or services rendered with the transferred technology.*

e. when the licensee is required, on a <u>non-reciprocal basis</u>, to assign or grant licenses to the licensor for innovations or improvements that may develop with respect to the transferred technology.

f. when the licensee is denied the right to technological improvements which the licensor may develop during the life of the contract.

g. when the licensor is exempt from legal liabilty with respect to flaws or defects inherent in the products or services supplied by him.

h. when the licensee is required to acquire raw materials or equipment from a specific supplier.

i. when sales prices are set for wholesalers, retailers, suppliers, and the public, or unequal conditions for the sale of equivalent goods and services to third parties are established.

j. when the licensee is obliged to employ personnel designated by the licensor, unless such is indispensable for the work to be performed and their remuneration is in line with international standards for the srvices involved.

k. when the licensor is allowed to control the licensee's production or marketing beyond what is necessary for protection of the licensor's rights.

l. when the licensee's use or development of his own technology is limited.

m. when trial and decision in the case of lawsuits which may arise from interpretation or performance of the act are subjected to laws and jurisdiction other than the laws of Argentina, even without prejudice to licensee's suing the licensor before the courts of the latter's own residence.

n. when there are clauses which forbid without just cause, the use of competitive technology.

o. when the technology is determined by the Enforcement Authority to be harmful to the country.

7. Payments system

a. Net sales value - is defined as ex-factory invoice value after deduction of discounts, bonuses, returns and excise taxes. (This is in contrast to the usual definition of net sales value under our current policy which may also net out the value of imported components.)

b. Term of the contract - (1) In the case of contracts licensing the use of industrial property rights, the term shall not exceed the patent registration period granted or its subsequent renewals ; (2) in the case of licenses to use unpatented "knowhow", the term shall not exceed the period of obsolescence, which is presumed to be five (5) years in the absence of proof to the contrary.

c. Technology transfers may be counted as capital contributions to the licensee, in cases permitted under the Law governing companies (Corporation Law). In these instances, the Enforcement Authority under the Transfer of Technology Law shall evaluate such contributions.

8. Enforcement Authority - The Chief of the Technical Under-Secretariat(subordinate to the Secretariat of State for Industrial Development) is the Enforcement Authority under the Law, vested with all necessary powers to evaluate and pass upon technology transfer, including the use of trademarks, patents and knowhow. On the other hand, the National Register of License Contracts and Transfer of Technology is the Advisory Body in all matters relating to the legal system.

9. Documentation and Procedures

a. Technology transfer agreements or amendments to existing contracts must be filed with the Enforcement Authority within thirty (30) calendar days from their execution, for their entry into the "Register". Should these be approved, their validity would be retroactive to execution date. Agreements filed beyond the 30-day period would be counted valid only from date of actual approval by the Authority.

The approval/registration process may be initiated by either licensor or licensee, supplier or recipient.

b. Applications must be accompanied by the following documents :

1) authenticated copies of the Agreement in Spanish (except for technical terms with no Spanish equivalents).

2) Evidence of legal status of the contrcting parties.

3) Proof of legal domicile by both parties in Argentina.

c. Timetable shall be as follows :

1) There is a 15 day period from date of filing for completion of documentation/clarification, after which filing may be deemed complete,

2) The Authority must decide on the agreement. missibility for registration within 90 calendar days from filing, or from date of correction of any omissions previously noted by it. Upon approval,

the agreement may then be registered and issued the pertinent certificate.

3) In the event of objection by the Authority, both licensor and licensee are given fifteen (15) calendar days to state their case and/or to remedy the objectionable conditions. After such period, the Authority has another thirty (30) calendar days within which to issue a resolution approving or rejecting the application.

4) In the event of rejection, or non-resolution by the Authority within the prescribed 30-day period, the application would automatically pass on to the Secretary of State for Industrial Development for final decision within a period of thirty (30) calendar days.

5) All final resolutions/decisions of the Enforcement Authority and/or Secretary of State for Industrial Development shall be published in the official Gazette of the Argentine Republic.

10. <u>General Provisions</u>

a. Secrecy clauses as well as provisions in the contract requiring the return of technical documents or those prohibiting subsequent use of the transferred technology may remain in force even after expiration or cancellation of the registration, provided the technology furnished was not protected by restrictive industrial property rights at time of processing by the Enforcement Authority and if the contract was finally registered.

b. Registration with the National Register auhtorizes the licensee to make the prescribed payments to the licensor, as well as deduct pertinent expenses for tax purposes.

c. Registration automatically lapses if the terms of the contract are not implemented within the prescribed period which shall not exceed two (2) years from registration date. The Authority may re-evaluate and re-register contracts prior to expiry of the original registration when warranted.

d. Confidentiality covers all documents related to registration, which may be examined only by the contracting parties, their representatives and officials of the Authority and Registry.

11. Penalty provisions

a. Fines equivalent to from one (1) per cent up to twenty (20) per cent of the contract amount, as estimated by the Enforcement Authority, and according to the magnitude and gravity of the offenses, would be imposed on individuals or corporations who commit any of the following violations or infractions:

1) Those who engage in activities subject to the provisions of technology transfer law without due registration thereunder; or after lapse or expiration of the term; or when registration has been denied; or in the case of acts which have been automatically registered, when subsequent examination shows that applicable provisions of the law have been breached.

2) Those who fraudulently conceal or alter the true content of their contracts from the Enforcement Authority.

b. In instances where the transfers are gratuitous or royalty-free, fines of up to twenty (20) million pesos (A$20 M) would be imposed.

C. Comments and Observations

The existing Argentine sysytem has been in operation for three (3) years, as compared to the roughly one year and

and a half for our system under the Technology Transfer Board. Actually, Argentina's first law on technology transfers was enacted in 1971. Before that time, such operations were free of regualtion unlike in the Philippines where royalties payable in foreign exchange have always been the subject of some regulation as part of the exchange control system.

The net sales definition used as the royalty base in Argentina corresponds to our TTB's definition excpet that it does not deduct imported raw materials.

The TTB net sales is usually net of landed cost of

imported materials supplied by the licensor.

Royalty rates generally correspond to TTB practice, i.e. 1% for pure trademark use, and up to 5% for use of patents and knowhow. However, the TTB system also provides for supplemental royalty bonuses for export sales, in consonance with national policy to promote exports. The Argentine system makes no similar provision.

Ptohibition on use of restrictive clauses also largely parallels TTB policy. However, they recognize export restriction to countries where the licensor produces for its own account, or has granted exclusive production, use or sales licenses to others.

Argentina also provides for automatic registration covering entry of technicians for start-up operations, as well as trademark licensing without royalty, subject only to verification. In the Philippines, prior specific approval is required in both these instances.

D. Related Institutions

We visited other government offices such as the Department of Small and Medium-Scale Industry, as well as the Foreign Investment Secretariat, both within the Ministry of Economy.

1. The Department of Small and Medium-Scale Industry coordinates all policies dealing with this sector, and is responsible for providing technological assistance, free of charge, unlike the INTI, which charges an "arancel" (fee) for its assistance. The Department conducts special courses on the peculiar problems of businesses and industries on this level ; classified as follows -

very small -- up to 5 employees

small -- from 6 to 51 employees

medium -- from 52 to 100 employees

The classification is an indicative and flexible one, unrelated to capital base.

This sector is important in Argentina in the sense that 47 percent of total production emanates from it: 132,000 firms, or 97% of all companies belong to it; and it constitutes the backbone of the entrepreneurial middle class of the country. Except for the obviously large operations, such as petrochemicals and the automotive industries, small and medium scale firms cober every industry/field, and many large firms subcontract work to them.

2. <u>The Foreign Investment Secretariat</u> (of undersecretary rank) implements the legal system governing foreign investment (Law No. 21, 382 of August 13, 1976 and Decree No. 283/77) through the Registry of Foreign Investments, which is administered by the Central Bank of the Argentine Republic, which monitors capital movements into and out of the country.

The law gives foreign investors the same rights and obligations, that the Constitution and existing laws grant to nationals, subject to special or promotional statutes that may be enacted. As a matter of fact, foreigners can engage 100% in extractive industries (unlike in the Philippines which limits them to minority participation) provided the venture is new and does not entail the purchase of an existing domestic firm. At present there exist no specific incentives for foreign investors, but they participate in industry incentives as a whole.

Registration of foreign investments is either automatic, or subject to prior approval by the Foreign Investment Secretariat or by the Executive Power (the President), as the case may be. All foreign investors, registered or not may enjoy the right to remit profits and repatriate capital during periods of free currency exchange. During exchange control periods such as at present, only registered investors may enjoy these rights. The Central Bank may suspend transfers altogether during times of balance of payments stress. However, the registered investor is compensated by the issue of public bonds denominated in foreign currency equivalent to his blocked pesos.

Profit transfers (after income tax) are subject to special taxes to the extent that they exceed, yearly, a sum equivalent to 12% of the registered foreign capital investment. However, the excess over 12% in any year is also allowed to be offset by the amount by which profits during the previous 5 years were less than 12% of the registered capital.

BRAZIL

In Brazil, the technology transfer registry is within the National Institute of Industrial Property (Instituto National DA Propriedad Industrial--INPI). One of the divisions of the Ministry of Industry and Commerce is the Secretariat for Industrial Technology which has 3 subdivisions: INPI, National Institute of Science and Technology and the National Institute of Metrology and Weights (Weights and Measures). The latter is presently to be converted into a Product Standards Office. Presently, standards are set by industry associations.

At the registry, the following information were derived from discussions with the Director of Registry:

1. The registry operated under Normative Act 015 of September 11, 1975 by the President of INPI using his powers under Law No. 5.648 dated December 11, 1970 and by Article 126 of Law No. 5.772 dated December 21, 1971.
2. Objectives of registration:
   a. Legalize payment of royalties.
   b. Allow deduction of royalty payments from cost of operations. (The law says allow, when applicable, fiscal incentives -- however,

from discussions it appears that what is meant is to allow the claim of royalty as operating costs thereby reducing taxable income).

c. Use of registration as evidence of actual exploitation of patent or actual use of trademarks in Brazil. (Contracts not registered are allegedly null and void).

3. Coverage of registry:

   a. License contract for the exploitation of a patent.

   b. License contract for the use of a trademark.

   c. Contracts for the supply of industrial technology.

   d. Contracts for technical-industrial cooperation.

   e. Contracts for special technical services.

   (One single contract should cover each).

4. Applicability to a contract where the supplier of technology, licensor or supplier of technical services is a Brazilian resident is very limited -- the requirements as to what the contracts will provide and what the contracts should not provide would not seem to be

applicable. Furthermore, where services are involved, the only ones registrable are those related to production. Thus, accounting and management services are not allowed.

5. The registry considers the element of equity holdings by the licensor or supplier of technology and services in the licensee as material particularly in allowing royalty remittance abroad. Although not stated in the law for services, no royalty or fee remittance will be allowed where licensor or supplier owns all or the majority of the equity of the licensee (51%). In case of joint venture, where licensor or supplier is 45% or less, remittance may be allowed on a case-to-case basis but very seldom. Per information, however, payment may be made in cruzeiros but reinvestment of the earnings thereof will not be remitted. (Initially, Nestlé was allowed to be paid in cruzeiros and its royalties reinvested in bottled mineral water, the earning of which can be remitted. Such is no longer allowed).

6. Patent licensing:

   a. Remuneration -- percentage of sales but lump sum may be allowed provided it does not exceed 5% of projected sales for the duration of the contract. (5% limitation is not in the law).

   b. Law allows a percentage of net profit but so far there is yet no case.

   c. Net sales or price is defined as invoice value less taxes, charges, raw materials and components imported either from the licensor or from any other supplier directly or indirectly linked therewith, commissions, return credits, freight, insurance and package expenses, besides other deductions agreed upon by the parties.

   d. Payment for technical documentation may be allowed as an advance of royalty payments but not in addition to it.

   e. Estimate of total value for technicians' services payable in foreign currency must be based on the period to render the services and set up personnel training program. Per information, average per diem is $100 to $150. This is not in addition to a technical assistance fee usually claimed by licensor as a retainer. Local costs are controlled unless there is likely black marketing of cruzeiros.

f. Contracts are null and void with respect to payment if patent licensor owns majority of equity of the licensee whether directly or indirectly, if the patent has been filed in Brazil without proof of priority in the country of origin, or in case of transfer, the previous holder was not entitled to remuneration under the previous cases.

g. Term of contract may not exceed 15 years for patent of invention, 10 years for patent of utility model and industrial model or design. Registration is not valid if patent expires or patent is not granted.

h. Basic conditions in the contract:

   1) Indicate patent no.

   2) State whether license is exclusive and non-exclusive or where sublicensing is allowed. (Prohibition to sublicense is allowed).

3) Supply of necessary information to make product is a must.

4) Must provide that licensee will own improvements and that such information may be passed on the licensor.

5) Licensor is obliged to pass on information on improvements to the licensee. (In practice, exchange of information is reciprocal and may or may not be for a mutually agreed fee).

6) Specify precisely the technical assistance, who will carry out and who will implement program for training.

7) Compulsory for licensee to exploit patent.

8) Determine which party is liable for income tax. (Apparently it is not mandatory for licensor to bear his own withholding tax).

9) Such other terms as the parties may provide.

i. The contract may not:

1) Provide for other unrelated services.

2) Regulate, determine, alter or limit production, sale, publicity or marketing,

distribution or export or hiring of personnel. (Export restriction is allowed only when not permitted by licensor's country or when resulting from an international act or agreement to which Brazil is a party).

3) Provide for tied-in purchase or raw materials from any source the licensor may determine, even domestic sources.

4) Prohibit free use after patent expires.

5) Hinder research.

6) Licensee cannot contest industrial property right acquired or claimed by the licensor.

7) Exempt licensor from liability from defects inherent in the object of the license.

8) Transfer liability and financial responsibility to licensee for maintaining the industrial property right.

7. Trademark licensing:

a. Registered trademarks or those filed for registration can be subject of contract.

b. Fee is a percentage of net sales price or profits.

c. Same definition of net sales.

d. Consideration whether free or for a fee (usually 1%).

e. Payment provision is null and void between parent and subsidiary, if trademark field without proof of priority in the country of origin or when trademark registration is a renewal or in case of transfer, previous holder is not entitled to payment.

f. Term may not exceed the registered period of the trademark.

g. Contract must contain:

   1) Registration no. or application.

   2) Licensee must have option to use other marks with or separately from the products.

   3) Product must be of the same quality of identical product of licensor.

   4) Compulsory to use the mark as required by the Industrial Property Law.

   5) Such other terms as the parties may provide.

h. The contract cannot:

1) Provide for unrelated services.

2) Licensor can waive agreement without reciprocal right of licensee.

3) Regulate, determine, control market and production and price (same as patent).

4) Provide for tied-in purchase of raw materials and equipment.

5) Hinder research.

6) Exempt licensor from liability.

7) Introduce norms which limit publicity.

8) Transfer liability and responsibility to licensee on industrial property right.

8. Supply of Industrial Technology:

a. Contract is for supply of knowhow for production of consumer goods or materials.

b. Imported knowhow must be in line with economic priorities of the country.

c. Fees must take into account the degree of innovation, complexity and quality of products in the market, continuous supply of information, supplier's reputation, R & D and essentiality of product (usually 5%).

d. Term - temporary (usually 5 years) -- INPI reserves the right to investigate on how knowhow is absorbed.

e. Contract may not provide:

1) Reference to industrial property right.

2) Compulsory assignment, free of charge, of improvements by licensee.

3) Provisions for other services.

4) Regulates, determines, controls production, marketing, sales and export, publicity, price.

5) Tied-in purchase of raw materials and parts.

6) Imposes use of foreign trademark with technology.

7) Hinders research.

8) Prevents recipient from contesting validity of industrial property.

9) Prohibits use after a reasonable period has lapsed. (5 years after contract -- confidentiality can remain).

10) Exempts supplier from liability as a result of defects or infringement of industrial property laws.

9. Technical-Industrial Cooperation:

   a. Contracts for the manufacture of specific industrial units and sub-units, machinery and equipment and other corresponding components, and other goods ordered.

   b. Term -- period necessary to acquire technology and 5 years from actual production, which may be extended.

   c. Same provisions substantially on what contracts will provide and what they should not.

10. Specialized Technical Services:

    a. Contract for planning, programming and preparing studies and projects, as well as executing or rendering specialized services needed by the country's production system. (In cases of urgent services not exceeding $20,000 --no need for contract, just invoice).

    b. Fee must take into account:

       1) Nature of services.

       2) Degree of importance.

       3) Relation to total investment.

       4) Any other criteria.

OBSERVATIONS AND COMMENTS:

1. The above regulations were issued by INPI and not actually stipulated in specific legislation in the same manner that we have instituted our regulations.
2. Unlike our practice, it is mandatory that separate contracts be executed for patents, trademarks, supply of specialized services. This practice may thus mean more royalties since each contract has its royalty ceilings although it has the advantage of clearly valuing the technology one is actually rendering.
3. There are no royalty remittance between parents and subsidiaries whether it be patents or trademarks. Such restriction does not appear in other services although in practice such is not allowed either. Payments can be made in cruzeiros but even if reinvested, the earnings can not be remitted. This was a move the TTB attempted for trademarks but was not actually adopted and implemented in view of numerous objections to it.
4. The definition of net sales corresponds to TTB's net sales but exclude as well imported materials by

policy. TTB's rule does not exclude imported raw materials except in instances where local manufacturing programs are maintained.

5. The sanctions under the Brazilian practice is remittances, royalty deductions for tax payments and proof of actual use in licensing at the Patents and Trademarks Office. TTB has only the sanctions of the Central Bank remittances and BOI incentives in preferred areas. Arrangements with BIR and Patents should be worked out to expand TTB's sanctions.

6. In view of the fact that contracts are separately treated, the 5-year limitation applies only to know-how and technical services. Patents and trademarks arrangements are related to the term of patents and trademarks. The TTB's practice is to limit to 5 years, allowing for renewal if there are industrial property rights involved. Perhaps it may be a good practice to separate contracts so they can be separately treated, when knowhow and patents are involved.

7. It is noted that no contracts are allowed when it covers trademarks which are covered by a renewal agreement.

8. The restrictive clauses are more or less the same except that per information, they allow less exceptions than TTB. Some notable differences are:

   a. The imposition of a required percentage of sales for advertising is not allowed in Brazil. We allow such imposition if the percentage is minimal and is in accordance with the going practice in the industry.

   b. Secrecy limitation upon termination of contract is limited to 5 years in Brazil and in our case it is limited to 2 years.

   c. In Brazil, licensee cannot contest the validity of any trademark or patent which is the subject of the contract, the incontestability prohibition in the Philippines apply only to patents.

   d. In Brazil, payment of withholding tax can be shifted to licensee by agreement of the parties.

COLOMBIA

A. Basic Law : Decree 444 (1967); Decree 688 (1967); Decree 1234 (1972); Andean Pact (Decisions 24, 34 and 35)

B. Implementing Office/Ministry :

Comite de Regalias, or Royalty Committee (based at the Ministry of Economic Development, which is the ministry for trade and industrial development, not for national planning). The members of the Committee are the Minister of Economic Development, the the Director of the Institute of Foreign Trade (INCOMEX or Instituto de Comercio Exterior, which is part of the Ministry of Economic Development), the Director for National Planning (of ministerial level), the Superintendent of Exchange Controls at the Ministry of Finance, the Director of the Exchange Registry Office of the Central Bank, and a representative from COLCIENCIAS (or Columbian Fund for Scientific Research). Chairmanship rotates. In practice, it is the representatives of the members who regularly (weekly) meet on the contracts proposed. The Committee is assisted by a a technical secretariat based at the Ministry of Economic Development. The technical secretariat receives the contracts proposed to be entered into by Colombian and foreign parties, studies their legal, economic and technical aspects, conducts plant visits, recommends to the Committee the action that should be taken on the proposed contracts, and communicates to the parties concerned the decisions of the Committee.

C. Policies

1. Scope of coverage of T/T arrangements :

Patents, trademarks, knowhow and other proprietary technology; technical assistance contracts are reviewed and approved by the Central Bank (Exchange Registry Office)

2. Criteria for Approval :

a. encouragement of the use of indigenous raw material (most important factor at present)

b. impact on the balance of payments

c. no new foreign industrial or commercial activities in the three biggest cities on the country, namely Bogota, Medellin and Cali

d. increase in participation of nationals in joint ventures with foreigners

e. extent to which the contract will increase the degree of competition in the market

f. avoidance of pollution

g. contributions of the project to employment

h. contribution to the integration of the Andean countries

i. absence of restrictive business practices

NOTE :

There are no specific technological priorities, and private profitability is not a consideration (since it is assumed that this is a responsibility of the private parties concerned).

3. Definition of royalty base :

Net Sales = Gross Sales less taxes, discounts and commissions.

NOTE :

Cost of imported goods and insurance exclude from the computations.

4. Maximum royalty allowed :

- 3-4% (up to 5 and 7% in highly export-oriented projects); zero for trademarks

5. Forms of royalty allowed :

Either royalty or fee (no double payment), except in very exceptional cases; lump sum not accepted, except at the Exchange Registry Office for technical assistance contracts.

6. Technician's fee :

--a few years ago, about \$350 a day, plus expenses; in general, the equivalent US salary for technician.

7. Maximum term allowed :

   -3 years (5 in very special cases) renewal for another

   3 years

8. Practices Considered Restrictive :

   a. export limitations (except in very special cases, provided that the limitations do not apply to member countries of the Andean Group)

   b. minimum payments for technology transfer

   c. initial payments

   d. additional payments for travels of technician of the party transferring the technology

   e. obligation on the part of the local party to develop and integrate improvements in the technology received without cost to the party transferring the technology

   f. provision for the licensee not to manufacture products which compete with the licensed products

   g. prohibitions on the use of trademarks

   h. subjection of the contract to foreign laws and tribunals

   i. interest payments for delays in the payment of obligations

   j. obligation on the local party to pay local taxes

   k. prohibitions on the production of similar goods once the contract is finalized (expires?)

l. payments for patents or trademarks not registered within the country

m. limitations on the disposition by the local party of machinery acquired from licensor

n. obligation on the local party to allocate and spend a percentage of its revenues on advertising

9. Arbitration law applicable :

   - Colombian law in all cases

10. Policy on royalty remittances between parents and subsidiaries :

    - Such royalty remittances are not allowed since it is assumed that the parent company should give the subsidiary company all the technical assistance required, for free

11. Policy on pure trademarks and franchise agreements :

    - No royalties allowed for these

12. Other significant policies :

    a. all proposed contracts must be in Spanish

    b. patent life is 10 years

    c. publication of newsletters for businessmen

    d. training of negotiators of local firms

    e. even royalty payments for the exhibition of cinematographic films are coursed through the Committee

D. Administrative Procedures :

1. Required filing party :

   - local party (or licensee)

2. Application requirements : contracts in Spanish, together with the following information :

   a. data on the receiver of the technology (identity, activity engaged in, capitalization, foreign equity or participation, employment by skill and nationality, production, exports, equipment, patents used, trademarks used, trademarks used/improved, and quality control systems)

   b. general information on the party transferring the technology

   c. characteristics of the technology being transfrred as well as alternative technologies considered, reasons for selection of the particular technology, the state of competition, machinery and raw materials to be supplied or purchased, and changes/adaptations required on the technology

   d. impact of the technology on volume of production, net sales (local and foreign), raw material use, imports of similar goods, employment, investments and other payments

3. Scope of evaluation :

   -legal, economic and technical aspects of the contract

4. Time-frame for decision-making : about a month or two

5. Final decision-maker : the Royalty Committee

E. Organizational Set-Up

1. Number of technical personnel :

   -7 years for the technical secretariat (2 legal analysts, 3 economists and 2 engineers)

2. Divisions established :

   -legal, economic and technical divisions

F. Other Office Visited

1. COLCIENCIAS (or Columbian Fund for Scientific Research) :

   -the national coordinator of scientific research programs, with an extensive information network (including more than 60 universities) funding from many sources (including international organizations); application of research results has not been significant, though, except in the food processing sector.

2. Exchange Registry Office of the Central Bank

MEXICO

The Law on the Transfer of Technology and Use and Exploitation of Patents and Trademarks of Mexico was enacted in late 1972, with an effective date of 25 January 1973. This law created the National Registry of Technology Transfer within the Ministry of Industry (Secretaria de Patrimonio y Fomento Industrial) which, until January 1980, also had jurisdiction over foreign investment. It was only in January 1980 that technology transfer and foreign investment matters were assigned to 2 separate divisions within the Ministry of Industry.

The purpose of the Mexican law on technology transfer is 3-fold:

1. to eliminate obstacles to Mexico's development and foreign trade;
2. to adjust technology contracts to the guidelines of the government's industrialization policy; and
3. to stimulate the creation of a local scientific and technological infrastructure that permits the adaptation of foreign technology to the conditions and needs of the Mexican economy.

The Mexican government emphasizes that "it has no desire to use the legislation as an instrument to limit the purchase of technology but as a means to help Mexican entrepreneurs obtain the best technology, under the most favorable market conditions."

Herein below are specific information on Mexican technology transfer policies and implementing rules and regulations which were gathered from the Sub-Director of the Technology Transfer Registry:

A. Coverage of technology transfer contracts for registration -

1. The concession to use or the authorization to exploit trademarks;
2. The concession to use or the authorization to exploit patented inventions, improvements and industrial models or designs;
3. The provision of technical expertise in the form of plans, diagrams, models, instructions, guides, formulations, specifications, personnel training and other modalities;
4. The provision of basic or detail engineering for the execution of installations or the manufacture of articles;
5. Technical assistance of any kind; and
6. The provision of company management and operation services.

B. Parties to contracts or agreements pertaining to the above shall be obliged to register such contracts if they are:

1. Mexican physical persons;
2. Foreign residents in Mexico and foreign physical persons established in the country;
3. Agencies or subsidiaries of foreign companies established in the country.

C. Criteria for appropriateness of technology is based on the priorities identified in their national plan for development.

D. Conditions for disapproval of contracts:

1. When the purpose is transfer of technology freely available in the country, provided it refers to the same technology;
2. When the price or royalty is out of proportion to the technology acquired or constitutes an excessive burden to the country's economy;
3. When they contain clauses that permit the supplier to regulate or interfere, directly or indirectly, in the management of the technology-purchasing company;

4. When they establish the obligation to turn over to the technology supplier, in onerous terms or free of charge, the patents, trademarks, innovations or improvements obtained by the importer company;

5. When they impose limitations on the research and technological development of the purchaser company;

6. When there are tie-in clauses in the contract;

7. When they restrict exportation of the goods or services by licensee;

8. When they prohibit use of complementary technology;

9. When licensee is obliged to sell licensed products to licensor only;

10. When they impose upon the importer the permanent employment of personnel appointed by licensor;

11. When they limit the volume of production or impose sales or resale prices on licensed products;

12. When they oblige licensee to sign exclusive sales or representation contracts with licensor, covering the national territory;

13. When contracts exceed allowed maximum term of 10 years;

14. Whey they provide that claims arising from the interpretation or fulfillment of the contract are to be submitted to the jurisdiction of foreign courts.

E. The governing law of all contracts is the Mexican law.

F. Exemptions from the above conditions shall be granted when the contracts and agreements are of special interest to the country because of its positive effects on employment, the balance of payments, industrial development and the country's general advancement.

G. Effect of non-registration:

1. Contracts are considered null and void;
2. Companies shall not be entitled to the fiscal or other benefits granted by law to encourage industry and trade.

H. The prevailing royalty base is net sales, the definition of which is similar to the TTB definition. Local value-added is used when the raw materials used in the process are imported from the licensor or its affiliates.

I. Payment of disclosure fee and initial fee is allowed provided the overall effective rate does not exceed the identified rate for the industry.

J. There are no foreign exchange regulations in Mexico. Any company can remit royalty payments even if its technology transfer agreement is not registered with the registry. Companies, however, are compelled to register their agreements because royalty remittances are included in the company's income tax declarations and proof of registration is necessary to support any deductions from taxable corporate income.

K. Policy on royalty remittances between parent-subsidiary relationships:

1. Payments for trademark and patent use and administrative (management)contracts are not allowed;
2. Payment for technology which is unpatented is allowed only at a very minimal rate.

L. Policy on trademark use:

Mexico has suspended implementation of the policy requiring local companies to use their own trademarks jointly with the foreign trademark. This action was precipitated by the pressure from the private sector on their legislative body. The private sector expressed the impracticability of the policy for marketing purposes. Use of foreign trademarks is therefore presently allowed for a minimal fee -- 1-2% of net sales.

M. Policy on franchise agreements:

Franchise agreements, as a general rule, are allowed. The franchise fee granted is 1% of net sales. However, franchise agreements for fast food centers, i.e. McDonald Hamburgers, etc. are disallowed.

O. Maximum term of contract: 10 years

P. Rule on submission of contracts:

Technology transfer contracts should be submitted to the registry within 60 days after they have been signed. When the documents are presented within this term, registration shall be in effect as of the date they were signed. If the contract is submitted after 60 days from date of signing, registration shall be effective only as of the date they were presented.

Q. Time frame for decision-making:

Ninety (90) days from submission of contract and other supporting documents. If no decision is rendered within the period, contract shall be deemed registered with the registry.

R. Monitoring of registered agreements:

The Mexican registry does not monitor actual implementation of registered technology transfer agreements. Review of such agreements is undertaken only when there are complaints or disagreements filed by either contracting party.

S. The registry does not hesitate to deny an agreement at the first instance due to lack of information supplied by the filing party.

T. Policy on advertising expenses:

Advertising expenses stipulated by the licensor in the contract are not allowed. The Mexican policy is to let the local company decide for itself its budget allocation for advertising expenses.

U. Policy on secrecy provisions in the contract:

As a general rule, secrecy provisions after termination of the contract are not allowed. Exemption to this rule is granted only for very high-level technologies. In this case, secrecy provision is allowed only for a maximum of 2 years after contract termination.

V. Organizational structure:

The registry is composed of 9 technical, economic and legal analysts who report directly to a Technology Transfer Coordinator. The coordinator has the final decision on the agreements. He reports monthly to the General-Director, the decisions rendered by his office for the month. The General-Director is consulted only for very exceptional cases involving policy decision.

COMMENTS AND OBSERVATIONS:

1. Mexican laws, policies, rules and regulations and restrictive business practices are very similar to our own policies.

2. Contracts that are subject to registration refer not only to those entered into between Mexican companies and foreign or foreign-owned companies but also to those between two Mexican companies. This rule was instituted to avoid triangular arrangements involving a parent firm, a Mexican subsidiary and a third Mexican company. Royalty payments between parent subsidiaries are not allowed in Mexico. The Mexican

subsidiary shall therefore be receiving technical support from its parent but shall not be allowed to remit royalty payments for such technical support. This Mexican subsidiary can, however, provide the same technical assistance to another Mexican company for a fee which it will eventually remit to its parent in the form of dividend payments. To avoid excessive royalty chargeswhich shall enure eventually to the parent firm, the Mexican authorities have decided to evaluate contracts between two Mexican firms. This is a policy which the TTB might wish to consider.

3. It is noted that Mexico does not allow payments for trademark and patent use and management contracts between parent and subsidiaries. The TTB has generally allowed minimal payments between parents and subsidiaries for such licenses.

4. Mexico failed in its attempt to introduce the use of joint trademarks on products manufacture in Mexico using foreign technology. Doubts were

raised on the practicability of such a policy, especially with respect to the marketability of the product in the domestic market.

5. Mexico has a rule stipulating that contracts should be on the day the agreement was signed. If the contract is submitted after the 60-day term, registration shall be effective only as of the date they were presented. This is a policy which the TTB should adopt. We have had cases wherein contracts were submitted to the Board for registration only when the term of the contract is already due to expire within the year. This may be due tc ignorance of existing laws or this may be done intentionally in order that any decision the Board may take shall consider the fact that the contract has already been enforced and the technology has been transferred. Chances of denial are therefore very nil even if the activity in question is not in one economic priorities and is not needed by one country.

REPUBLIC OF KOREA

There is no specific technology transfer legislation in South Korea. Technology inducement activities of Republic of Korea nationals are covered by the Foreign Capital Inducement Act (FCIA) which regulates as well, foreign equity investment and foreign loans. The FCIA was promulgated in 1966 and is administered primarily by the Economic Planning Board (EPB).

Republic of Korea's technology inducement policies presently are geared towards deregulation. The primary purpose of the liberalization of their transfer of technology policies is to encourage the entry of imported technology best suited to their needs, especially those coming from Japan.

A. Before liberalization (1966-1977)

1. Coverage -

   Technology inducement contracts covered by the FCIA refer to contracts entered into by a Republic of Korean national for the purchase of industrial property rights and other technology from a foreign national, or introduce the right to use thereof or such technology.

2. Administering agency is the Overall Economic Cooperation Division of the Economic Planning Board.

The Division is composed of 45 staff members, who were mostly trained in the United States. The Division undertakes economic, legal and technical evaluation of the contract for the submission to a Sanction Review Committee chaired by the Assistant Minister in charge of the Economic Cooperation Division and composed of Directors of the following bureaus: Investment Promotion Bureau and Foreign Capital Management Bureau of the EPB, the Local Governments Bureau of the Ministry of Domestic Affairs, the Direct Tax Bureau of the Customs Administration, one of the officials in charge of foreign investment of the Ministry of Commerce and Industry and one official appointed by the Minister of the EPB. The Sanction Review Committee reviews the report of the Division for recommendation to the Foreign Capital Inducement Deliberation Committee composed of the Ministers of the Economic Planning Board, the Ministry of Finance, the Ministry of Agriculture and Fishery, the Ministry of Commerce and Industry, the Minister of Construction, the Minister of Science and Technology, the Bank of

Korea, the Korea Development Bank and the Korea Exchange Bank. The whole process takes 2 to 3 months. It must be noted that Korean law does not stipulate any deadlines within which a decision must be made.

3. In granting authorization for a technology inducement contract, the following matters are evaluated:

   a. necessity to induce;

   b. contents of technology and method of supply;

   c. cost of technology and method of payment;

   d. term of contract;

   e. production and sales plan, and mode of raw material procurement;

   f. optimum level of product price (including domestic wholesale prices, import prices, and prices in major producing countries);

   g. economic and technological impact (including its probable impact on the plan to localize production);

   h. relevancy to similar technology.

   Consideration is also given to the contribution of the agreement to the self-sufficiency of the national economy and its sound development and the improvement of the balance of payments.

4. Definition of royalty base:

The royalty base is net sales price defined as follows: wholesale price less (a) sales discount charge; (b) insurance due; (c) packing charge; (d) transportation cost; (e) sales commission; (f) advertising expenses; (g) overhead expenses; (h) sales returns; (i) overhead expenses. If the local firm is importing its raw material requirements from the technology supplier, the CIF, taxes and charges on such raw materials are also deducted from wholesale price.

5. Maximum royalty allowed is 10% of net sales. Rates, though, are determined by country of origin and not by industry. The average rate granted, however, from 1966-1977 was 3% of net sales only.

6. Contracts containing the following clauses and/or pertaining to the following are not allowed:

a. to obtain the right to use only simple design, trademark exclusive sales right;

b. to sell only materials, parts of the equipment;

c. unfair condition or export limit condition;

d. technology declared by the Minister of Science and Technology as a technology to be developed by local company;

e. low level and outdated technology.

7. Policy on pure trademark and franchise agreements:

Pure trademark and franchise agreements are not prohibited but not encouraged.

8. Contract duration:

A technology inducement contract should have at least a term of 1 year. There was, however, no limit set on the maximum duration of such contracts.

9. Contracts exempted from registration:

a. when the costs for the technology do not exceed 3% of the sales proceeds of the licensed products;

b. when the term of the contract or payment period does not exceed 3 years;

c. when the initial payment does not exceed US $30,000.00.

B. Liberalization phase (197? up to the present)

1. Reasons for liberalization of technology transfer policies:

   a. improved balance of payments situation;

   b. improved bargaining power of licensee;

   c. successful adaptation of imported technologies to local conditions due to strong R & D efforts;

   d. to encourage entry of important essential foreign technology.

2. Coverage:

   The following technology inducement contracts shall be automatically approved:

   a. those with a term of less than 10 years;

   b. those with a royalty less than 10% of net sales;

   c. those involving a lump sum payment less than $ 1 M.

   Contracts which do not fall under any of the above categories have to be submitted to the EPB for approval and registration. The EPB then evaluates said contracts in the light of its rules and regulations.

3. Since the implementation of the liberlized policy, the average royalty rate paid rose to 8% from 3% during the pre-liberalization phase.

C. Related institutions visited:

1. Korea Scientific and Technological Information Center (KORSTIC) -

The aim of KORSTIC is to contribute to the promotion of science and technology and the development of industry in Korea by providing scientific and technological information. Established in 1962, KORSTIC is engaged in the collection, processing and storage of scientific, technological and industrial information comprehensively and the dissemination of necessary information to industries, academic circles, R & D institutes, government organizations and individuals on a non-profit basis.

Hereunder is a more specific description of KORSTIC's activities:

a. acquiring and organizing information materials -- by means of purchases, exchanges or gifts, more than 6500 titles of journals, patent specifications, books, technical reports, abstracts, indexes, standards are acquired for computer-based information services.

b. information processing -- information acquired are classified, indexed, abstracted, translated in order to make them readily available for literature searching; information processing is done by documentatists with academic background in science and engineering, some of whom have industrial experience as well.

c. information dissemination --

   i. publication of: (1) "Technical Information Bulletin by Type of Industry" containing selected information for various specific industries; (2) a number of secondary publications containing the titles and bibliographic descriptions of the articles published in journals as well as new patents; (3) "Technical Information reviewing current developments and highlights in science, technology and industry.

ii. literature searching service --

- computerized information retrieval service;
- manual information tretrieval service

d. technical consultation -- KORSTIC provides technical consultation to industries and other users concerning development of new techniques, new products, and the introduction of foreign technology. KORSTIC Field Liaison Officers visit industries to help them identify their information requirements and solve their information problems.

e. international exchange of information -- KORSTIC provides research results of Korean scientists and engineers to foreign countries and it also acquires select foreign information material from foreign information centers, libraries and international organizations.

The KORSTIC has been successful in disseminating technological and scientific information supportive of Korean industry because it has been able to give the right information to the right user at the right time and in the right form.

2. Technology Transfer Center of the Korea Institute of Science and Technology (TTC) -

The TTC was established at the Korea Institute of Science and Technology (KIST) to solve problems arising in the import of technology and to provide technical services to industries in their technology import.

The objectives of the TTC are as follows:

a. to play a role as a middleman for bridging the gap between technology-giving and technology-receiving organizations;

b. to seek and disseminate information on transferable industrial technologies on behalf of the Korean Government in order to advise Korean industries so that they can effectively import and utilize appropriate technologies from advanced countries as soon as possible;

c. to provide all necessary technical services and advices on technology inducement including preparation of technical assistance agreement, suggestion of unfavorable conditions and terms, recommendation of appropriate technologies Korean industries wish to import, and other matters related to technology imports;

d. to promote international cooperation of technology transfer between developing and developed countries participating international meeting on transfer of technology and exchanging mutual matters of concern and information;

e. to recommend guidelines for the Government to establish an effective and practical technology inducement policy.

The major functions of the TTC include the following:

a. Advice, consultation, and other technical services -

TTC provides Korean industries with advice, consulting service, and other related services on transfer of technology, upon their requests, giving guidance on making technical assistance contract, recommending appropriate supplier of technology, and playing a role as single point of contact for technology-giving and technology-receiving entities in the course of initiation of technology transfer.

b. Operation of data bank on transferrable technology information -

TTC has been responsible for the acquisition and dissemination of available and transferrable technologies from advanced countries to Korean industrial establishments concerned. For this purpose, the Center has been operating a data-bank covering about 20,000 items of technology which are almost up-to-date and renewed periodically.

c. TTC has been appointed a focal point in Korea as far as international cooperation on technology transfer is concerned, on behalf of the Government and private industries. TTC's staff members participate in international meetings, contributing to the mutual cooperative plan of international transfer of technology and exchange of information.

d. Recommendation of guidelines for the Government to establish an effective and pratical technology inducement policy - TTC has been conducting a fact-finding survey annually on imported technologies in order to identify problems arising in the course of importing and adapting advanced technologies and to provice solution for such problems.

In case there are needs to reform existing institutions or to establish a new policy for an effective and practical accomplshment of technology inducement, TTC recommends proper guidelines or political directions of such matters so as to the Government make a final decision with firm belief.

Other findings on TTC:

a. Since the operation funds have been entirely provided by Korean Government, TTC's technical services for industries as far as technology transfer is concerned, are based on free of charge in principle.

b. TTC was set up at KIST as one of its departments so that it may fully use scientists and engineers of KIST laboratories.

c. TTC consists of such qualified technical personnel as mechanical, electronic, chemical, metal and textile engineers, and information specialist.

d. For quick and effective acquisition of technology import information, TTC has its focal points in the United States, European countries and Japan, and uses them as information acquisition sources.

e. In order to meet quickly industries' demand for technology import information, TTC annually conducts a survey of the supply-demand status of industrial technology, and classifies the technologies expected to import in the future into short-term demand and long-term demand, and collect, analyze and process information on appropriate suppliers of such technologies to put into the data-bank.

COMMENTS AND FINDINGS:

1. South Korea's success in dealing with technology transfer can be partially traced to its strong R & D support to private industry in unpackaging imported technologies,

adapting them to local conditions and ultimately developing an entirely new technology out of the foreign technology.

2. Just like Spain, South Korea puts great value on high-level imported technologies which are essential to its industrial development. Technology payments are not reduced by the regulatory body and are left to the decision of the private sector. Their move towards deregulation is, in fact, meant to encourage further the entry of imported technology.

SPAIN

Spain's basic policy with respect to technology transfer is embodied in Decree 2343 of September 21, 1973, regulating the transmission of technology. Recognizing technology as a factor of economic growth and given its stage of industrial development during the early seventies, the acquisition of foreign technology represented a "strategic stocking-up" for Spain. Foreign technology was needed by the Spanish economy to augment and to supplement its indigenous stock of technical knowhow. Control, however, of the material aspects of the importation of fo ign technology has to be ins ituted with the aim of "supervising the selection and acquisition of foreign technology, as well as to the forms in which the acquisition is materialized, while at the same time encouraging the most efficient use of the technology so obtained for the benefit of the national economy."

Two (2) Ministries, the Ministry of Industry and Energy and the Ministry of Commerce and Tourism were given the responsibility to implement the above law. The Ministry of Industry and Energy shall have the power to evaluate and register agreements for the acquisition of foreign technology while the Ministry of Commerce and Tourism shall take charge of authorizing the remittance of the payments in foreign currency due under each agreement approved by the Ministry of Industry. For this purpose, a Register of Technology Agreements was created at the Directorate General of Industrial Promotión and Technology at the Ministry of Industry. Its counterpart at the Ministry of Commerce and Tourism is the Directorate General of Foreign Transactions.

The specific information gathered from the Jefe del Servicio de Transferencia de Tecnologia are as follows:

A. Coverage of registry:

1. Licensing of rights to the use of patents and other types of industrial property;
2. Transfer of unpatented knowhow, drawings, magnetic tapes, storing digital information, diagrams, specifications and instructions and, in general, assignment of any knowhow applicable to production activities that have been developed and kept secret by the firms owning the same;
3. Engineering services, preparation of preliminary studies or designs as well as technical plans for execution, plant assembly, construction and operation services and maintenance and repair thereof;

4. Services in the form of studies, analyses, programming, consulting and advertising on all aspects of management and administration;

5. Training and instruction of personnel, whether or not related to the above-mentioned services;

6. Documentation and technical or economic information services;

7. Other forms of technical assistance.

B. Contracts pertaining to the above and entered into by individual or legal entity domiciled in Spain with an individual or legal entity domiciled abroad or between individual or legal entities legally established in Spain must be submitted to the Registry for registration.

C. Registration must be applied for only by the local company or the buyer of technology and not by the supplier of technology or the foreign company.

D. Clauses considered unfavorable are those which:

1. Prohibit or limit the use of licensee's own technology, or the purchase thereof from other sources or the use of unpatented knowhow after the expiration of the agreement, or clauses that condition, limit or invalidate the recipient's efforts at R & D;

2. Require the assignment of any patents, improvements or innovations introduced or developed by the recipient subsequent to acquiring the technology which is the subject of the agreement;

3. Provide for the transmission of technology in the form of a package deal, including parts or items that are unnecessary or for which there is proven supply capacity in Spain of equivalent quality and reliability, provieded that such parts or items are technically capable of being separated from the technology as a whole supplied under the agreement;

4. Provide for the transmission of technology that is partly or wholly inadequate owing to obsolescence, lack of competitiveness or other similar reasons, or clauses which require quality standards or levels incompatible with the regulations of Spanish law, except in cases where production is mainly intended for markets in which such standards and quality are required;

5. Prohibit or impose excessive geographic restrictions on, or expressly do not authorize in regard to certain

specific areas, the export of the goods produced by the recipient, or require the purchase of raw materials or components and other semi-manufactured products or equipment from the assigner or from suppliers specified in the agreement;

6. Prescribe minimum levels of output or limit the recipient's freedom to decide as to the characteristics of production, as regards levels, models, competitive articles, prices and deadlines, or allows the assigner the right to determine unilaterally the prices of goods produced by the recipient.

7. Condition, for the benefit of the assigner's interests, the sale in the domestic market of the goods produced by the recipient, or compel the recipient to maintain an exclusive relationship with the assigner or impose the use of trademarks registered by the assigner in Spain;

8. Establish the obligation on the part of the recipient to supply on conditions contrary to the interests of the Spanish economy, either to the assigner or to certain specific third parties, the items produced with the aid of the technology transmitted;

9. Grant the assigner the right, not previously acquired by other means, to intervene in, control or condition the recipient's business management, or plans or expansion or diversification;

10. Impose payments appreciably higher than those customarily prevailing in the market in similar situations, or minimum considerations where such payments are based on royalties proportional to different levels of production activity;

11. Provide for payments in the form of royalties proportional to the production level, without deducting the value of imported products or components incorporated into the production process to which the technology in question is applied, or failing to exclude the invoicing for product lines not benefiting from the technology acquired;

12. Impose payments based on royalties on the recipient's level of activity, where the recipient is a subsidiary of the assigner and the latter holds more than 50 per cent of its capital, where the assigner of the technology supplies raw materials or

semi-finished products for use in the process in quantities representing more than 30 per cent of the total cost of the product, or where the recipient is a consulting or engineering company, unless in this latter case it is a question of assignment of process technology for activities in which such process is continuous;

13. Provide for surcharges (differences between the prices stipulated in the agreement and those charged by the supplier or its competitors in the international market) on supplies, materials and equipment associated with the transmission of technology and furnished by the assigner or by suppliers specified in the agreement;

14. Impose an unsuitable duration on the agreement or its direct consequences, whether too short or too long, or provide for the automatic extension of the agreement, or that it requires payments to be made over a period extending beyond the currency of the patents involved;

15. Provide, for the purposes of interpretations, that a foreign language text of the agreement will pre-

vail in the case of an agreement signed in other languages in addition to Spanish.

E. Policy on royalty payments:

The Spanish rules and regulations do not specify the maximum royalty payable. The rules provide only for the base upon which the royalty should be computed which is net sales less value of imported products or components. In actual implementation, however, the Spanish registry does not strictly impose such guidelines. Spanish authorities are not concerned about royalty payments and foreign exchange outflow per se. They are more interested in getting the best technology available in a certain industrial sector and they are willing to authorize any payment for such technology.

F. Policy on royalty payments between parents and subsidiaries:

Spanish law does not allow royalty payments between parents and subsidiaries.

G. Remittance of payments is also not allowed in cases where the licensor supplies raw materials or semi-finished products for use in the licensed products in quantities representing more than 30% of the total cost of the product or where the recipient is a consulting or engineering company, unless it is a question of assignment of process technology on a continuing basis.

H. Use of foreign trademarks is discouraged.

I. Franchise agreements for fast food and other activities are allowed for a minimal fee.

J. Evaluation producedure:

1. Submission of 3 copies of the agreement together with other supporting documents required;

2. Legal, technical and economic evaluation of the contract is undertaken;

3. Filing party is notified of initial findings of the staff and is requrested to introduce amendments or modifications in the agreement to conform with guidelines of the registry;

4. Final study is made after amendments are submitted.

5. Resolution is issued containing decision on the contract. Such resolution is sent to the filing party, the Ministry of Commerce for remittance purposes, to the registry for its files and to the archives.

K. Decision actually rests on the head of the registry and not on the Minister of Industry.

L. There is no specified period within which a decision must be rendered by the registry. On the average, however, the entire process is completed within 2 months from date of filing.

COMMENTS AND OBSERVATIONS:

A. The Spanish government leaves to the private sector the decision on what technology to import. Its basic rationale behind this policy is that only the private sector who can decide on the technology needed since they are the users of such technology. The government does not intervene in this process but supplements the efforts of the private sector by intesifying R & D efforts toward development and adaptation of the imported technology to local conditions.

B. In this connection, royalty payments or the cost of importing technology is not of critical importance to Spain. To encourage the entry of the best and most appropriate technology into the country, royalty payments or the cost of importing such technology are not given primary importance. In fact, in 1973, royalty remittances reached $400 M.

C. Spain's policies specify that the filing party should only be the technology buyer or its legal representative and not the technology supplier. The primary purpose of the registry in evaluating a technology transfer contract is to help improve the bargaining position of the local company. This purose would be defeated if the registry were to deal with the supplier of technology.

D. Spain's information base on technology importations is already extensive. The registry has already computerized the collation of technical information from the various contracts filed and registered in their office. Their law, in fact, stipulates that the registry should periodically notify the national research agencies of the type of technology acquired in order that these agencies may adopt their R & D towards improving the imported technology. The TTB could, in the future, consider computerizing the various information gathered from transfer of technology contracts registered with it. This shall greatly expedite data collection procedures for policy formulations and information dissemination purposes. A systematic and well-managed information bank would enhance the promotional effort of the Board as well as supplement the regulatory aspects.

E. Spanish law also provides that agreements between individuals and legal entities domiciled in Spain and pertaining to the import of foreign technology must be registered with the registry. This means that all contracts through which foreign technology is acquired, whether directly or through a Spanish intermediary, are screened and evaluated by the registry to minimize triangular transactions.

F. Spain is seriously considering the liberalization of its policies on technology transfer. One reason for this is their future entry into the common market. The other reason cited was that Spain would like to concentrate its regulatory powers on the more important contract, specifically those involving transnational corporations and those local companies with more than 50% foreign capital and with more than 50% of their activity dependent on foreign technology. Contractsinvolving small independent companies and one-shot deals shall be treated with more liniency since these contracts account for only 15% of total royalty payments approved by Spain. The contracts involving TNC's joint ventures and wholly owned subsidiaries account for 85% of total royalty payments approved.