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*for a sustainable future*

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## INTRODUCTION

1. No one disputes the importance of technology and the role it plays in the economic growth of countries.

2. Nevertheless, when technology is studied from different angles, something is lost of the overall view and it may be forgotten that the level of technological achievement is the sum of domestic technology and technology acquired from outside.

Worldwide studies have shown that this combination gives quite similar results in a large number of countries. For example, in Spain it is estimated that the total expenditure is something of the order of 1 per cent of gross domestic product. This value is not very dissimilar from that obtained for a wide range of countries.

3. It is in the comparison of each of the components that enormous differences are to be noted. There are vast differences between what the most developed countries spend on research and development and what is spent by the least developed countries.

In other words, the major difference is in the different proportions of domestic research and acquired technology, given that all countries produce some work of their own and also import technology.

In industrialized countries the proportions are at levels of 70/30, 80/20 and above. In medium-level countries the proportion hovers around the 50/50 mark and the least developed countries show a much greater imbalance.

4. The problem of these proportions or disproportions is not of an economic nature, in terms of the costs of technology, since it is very often preferable to acquire foreign technology than to undertake one's own development.

5. The problem lies in the risk of creating a state of dependence with long term dangers. This risk takes on greater significance in medium-level countries which do have the possibility of minimizing negative effects or disadvantages which may accompany ill-judged transfer of foreign technology.

In other words, the countries at an intermediate stage of development are aware that the transfer of technology is only a part, albeit a very important one, which has to be adequately dealt with in the context of an overall policy for technology.

6. If one considers and analyses the phenomenon of transfer of technology on a world scale over a long period of time, one discovers coincident events which may be interpreted as a logical process tending to repeat itself in a cyclical fashion, at a number of levels.

It would not be over-bold to postulate a theory of the transfer of technology involving four fundamental stages.

7. These stages might be:

- (i) Demand for technology. The prime objective is to obtain foreign technology regardless, to some extent, of terms.
- (ii) When there is an infrastructure of scientific and technical capacity, manufacturing activity and a minimum level of consumption, the objective is to improve the manner and conditions in which the technology is transferred. Restrictive or unfair terms are made difficult or suppressed. This could be called the stage of "Registers" of contracts for transfer of technology.
- (iii) When the above objective has been wholly or largely achieved, the next objective sought is the stimulation of research and development and the assimilation of the technology acquired. The supervision and control of contracts becomes discriminating, making transfer of technology subject to assimilation programmes and the technological development of the environment of the receiving enterprise - i.e. the raising of the technology level of the sector in which it and in the sectors which supply it (suppliers) or the sectors which consume its production.
- (iv) The final stage of the cycle would be the liberalizing of the transfer of technology which, for practical reasons, has improved in relevance and adaptation, as well as in regard to contractual conditions. Nevertheless, it seems that this liberalizing of the traditional begins with a reduction of controls to a few cases of serious abuses.

At the same time, governments experience difficulty in obtaining access to certain technologies and involve themselves actively in seeking obtain "advanced" technologies, granting incentives and allowing certain restrictions or conditions which were previously considered unfair.

Thus it seems that one cycle ends and a new cycle begins, but on a new technological level.

8. It is clear that the stages are not sharply divided, and that the evolution from stage to stage is a continuous process, even before observable the earlier legislation is modified and adapted to new objectives.

9. A study of the phenomenon of the transfer of technology worldwide shows that each country adopts different measures in the various stages described, according to criteria appropriate to its situation and its needs at the time. There are countries which might appear to have rushed to set up controls while others give the impression of delaying their intervention. However, an outside observer cannot judge the decisions of governments since they are not privy to all the real factors in each of the countries, whose governments undoubtedly know what is appropriate for them and the most fitting moment to intervene or liberalize.

10. The report on the experience in Spain will be set out along the lines suggested by the Secretariat of UNIDO, with four sections: legislation, registry, operating criteria and follow-up.

#### LEGISLATION

11. Before 1972 there was no specific legislation on the transfer of technology. The legislation, insofar as it referred to the import of foreign technology, did so within a more general context or, quite logically, in connection with the subject of foreign investment.

12. It could be said that this corresponded to a period in which the prime objective was to facilitate the entry of technology in order to permit significant industrial development.

A good account of that period of time and the situation in the years 1972 and 1973 can be found in document TD/B/AC.11/17, "Major Issues Arising from the transfer of technology: A Case Study of Spain", drafted by Mr. O'Brien for the Secretariat of UNCTAD with our assistance.

13. However, there was control of foreign payments through the Bank of Spain (Spanish Foreign Currency Institute), with a consequent control over new contracts to which variable criteria were applied, depending on the greater or lesser availability of foreign exchange. On an irregular basis, this body consulted the Ministry of Industry, which issued a non-binding report, indicating possible

defects or the inclusion of terms which in its judgement were prejudicial to the receiver of technology.

14. In 1973 Decree 2343/1973 was issued, regulating the transfer of foreign technology. Its preamble sets out the objective of acquiring the necessary technology for the development process and on terms which lead to the greatest profit for the national economy. It establishes a Register at the Ministry of Industry for the compulsory registration of contracts, and entrusts the Ministry, in collaboration with other interested ministries, with undertaking the relevant measures to ensure that the transfer takes place under the most favourable terms.

15. The procedure for the registration of contracts is set out in an Order of the Ministry of Industry of 5 December 1973 which lists the terms or clauses considered unfavourable, in principle. It formalizes the control stage with the aim of improving the terms of acquisition of foreign technology.

16. It is interesting to note the level of co-ordination involved and the participation of the sectoral administration in evaluating the contracts, while at the same time there is a centralization of measures and of information which can be used in formulating the Government's policies for technology.

17. 1973 marked the beginning of a seemingly static period, but one in which, as we shall see later, there is a constant evolution through the measures taken by the Registry which, under the Decree, has wide powers of evaluation and interpretation.

18. The Order of the Ministry of Industry dated 30 July 1981 consolidates the evolution of the measures taken by the registry and officially endorses a more liberal treatment based on a realistic view of experience acquired; this represents a substantial change in the focus of evaluation of contracts. Restrictive and unfair clauses continue to be considered undesirable, but attention is centred on programmes for the assimilation of foreign technology, and what in the third stage of our theoretical scheme we called the raising of the technological level in the sector of operation and the supplier and consumer sectors, which the order defines as the "environment".

19. This significant change becomes very important when the Spanish receiving enterprise is an associate or affiliate of the transferring foreign enterprise.

In this case it is possible to question the existence of a genuine transfer of technology, there being simply "use of foreign technology" in an enterprise established in Spain.

20. If this interpretation is accepted, the only transfer would be through:

- (a) Persons working in Spain (programmes of training and technology assimilation).
- (b) Transmission of technology to the "environment", generally composed of smaller national enterprises, very often with low technology levels.

21. A few years later, the evolution of the criteria of the criteria used by registry is legally formalized in the Order of the Ministry of Industry of 22 February 1985 which provides for automatic registration of "lower value" contracts, going so far as to dispense with the procedure of examination by the sectoral Directorates/General of the Ministry of Industry.

This Order is also significant in showing a liberalizing position which has no doubt received a certain impetus from the prospect of entry into the European Economic Community (EEC).

22. Recent measures taken by the Government and deductions from economic policies and international relations are sure indicate that Spanish legislation will, in the future formalize the transition to the fourth phase of the proposed theory.

23. With regard to the reasons for the establishment of the Register of Contracts and the factors that influenced it, the foregoing explains the circumstances preparing the way, but external influences must also be taken into account.

Since before the 1970s, officials of the Ministry of Industry took part in studies on the phenomenon of transfer of technology from all angles - industrial development, productivity, industrial property, research and so on - and particularly through meetings and programmes of OECD, UNCTAD, WIPO, CEPE.

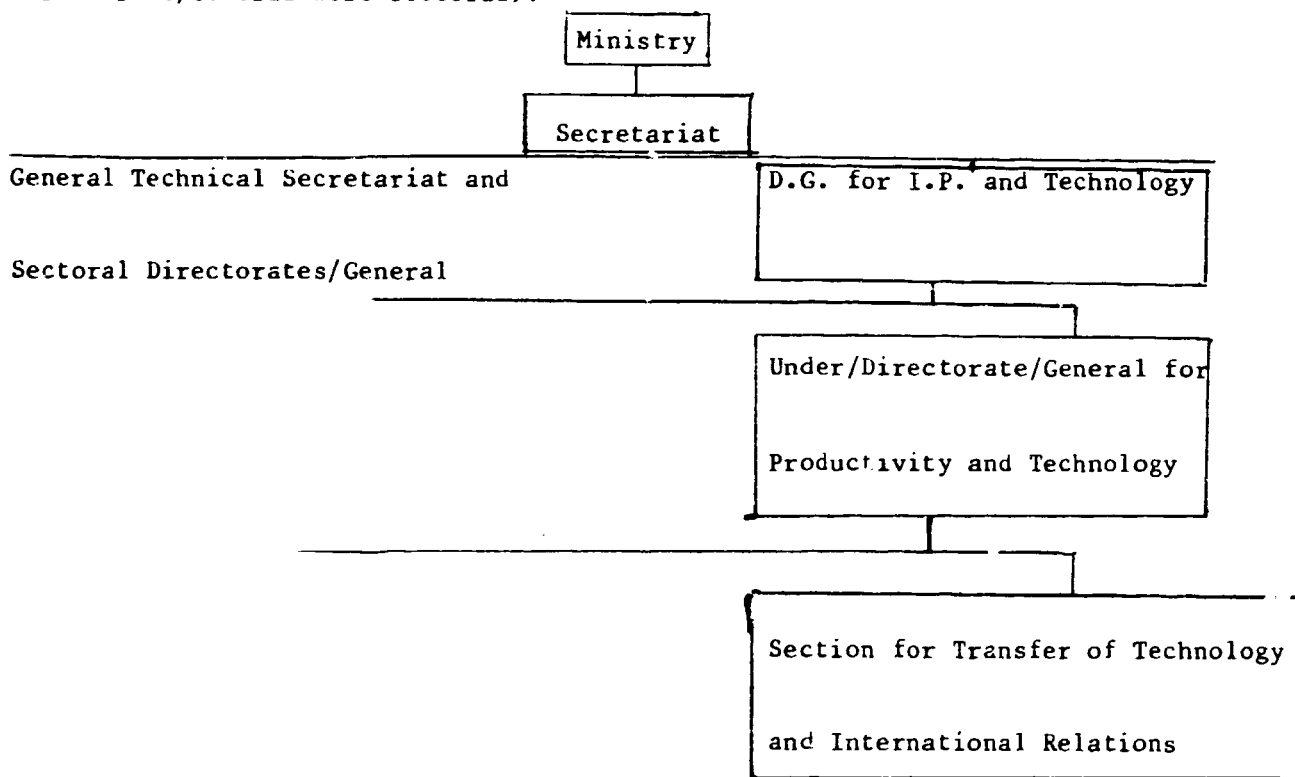
Spain was a member of the initial group in UNCTAD to form the Intergovernmental Group on the Transfer of Technology, which tackled the subject of an International Code of Conduct. It was in Madrid (Alcalá de Henares) that a seminar was held in 1972 on incentives and obstacles to the transmission of technology in member countries of the CEPE.

The UNCTAD projects were perhaps those which played the most important role in the development of specific legislation for regulating transfer of technology. In the same way, latterly the influence of the UNIDO programme for co-ordinating registries of contracts was played a highly significant role in the development of

the Spanish registry, and in the corresponding legislation described in the preceding paragraphs.

#### THE CONTRACTS REGISTRY

24. The co-ordination and centralization of information on transfer of technology was entrusted to a Registry to be set up in a Directorate/General of the Ministry of Industry. This was the Directorate/General for Industrial Promotion and Technologies, established during the most recent administrative reorganization and the only Directorate with a horizontal character /the remainder of the Directorate/General were sectoral).



25. The Registry was located in the Section for Transfer of Technology and International Technical Relations. This meant that it was at the lowest administrative level, but with legal powers to initiate and undertake proceedings acting as a representative of the State Administration. Nevertheless, the



registrations had the status of administrative resolutions and had to be signed by the Director/General.

Progressively over time, the other responsibilities of the Section were eliminated and finally the administration of the Registry was raised to the level of "service", with several sections.

26. It should be made clear that the above organizational chart only includes the permanent and exclusive part of the Registry, and, as will be seen below, the structure includes a wider area of participation, both within the Ministry of Industry and in other ministries concerned with the economy.

The resources provided were initially very meagre. Limited space, and a staff of four for the central office. The resources were gradually expanded in an attempt to cover needs. The number of technically qualified staff (lawyers, engineers and economists) was increased and auxiliary facilities were provided including computerization of the records.

27. The fact is that the Registry as a whole includes resources which are difficult to quantify because for the technical and economic evaluation of contracts it operates in collaboration with the specialist services of the sectoral Directorates/General of the Ministry of Industry, or with other departments if the subject of the contract, by its nature, falls within the purview of other ministries (public works, agriculture, etc).

28. The Registry is operations began with 2,000 contracts already in force, which had to be revalidated by registration with the Registry. This process was automatic, with registration being granted for the term approved by the Spanish Foreign Currency Institute; in the case of contracts of unlimited duration, the registration was for five years.

The early years required great efforts to achieve the objective of gathering information on contracts in force and at the same time processing and evaluating new contracts, which averaged 650 a year.

29. The complete approval process comprises two stages. One is evaluation and registration of the contract with the Registry. The second is the final approval of payment, which is the responsibility of the Department of Trade with the co-operation of the Bank of Spain. An inescapable pre-condition for the approval of payment is the prior registration of the contract with the Registry.

30. The evaluation and registration of the contract is based on information provided by the receiving enterprise and information available in ministerial departments.

31. The receiving enterprise submits:

- The contract, signed in Spanish.
- A memorandum in standardized form.
- Other documents legally required under Spanish administrative law.

32. The memorandum comprises:

- Identification and information on the Spanish enterprise.
- Identification and summary information on the foreign enterprise.
- Summary of the contract terms.
- Description of the technological content.
- Anticipated advantages or justification of the acquisition of foreign technology.
- Magnitudes of forecasts for production, imports, exports and payments during the period in which the contract in force.

33. The procedure for processing comprises the following steps:

- Opening of a file, legal-administrative review of the documentation submitted and classification of the contract by the Registry.
- Referral for a report by the competent authority, depending on the subject matter. This may be a sectoral Directorate/General within the Ministry of Industry or in another ministry.
- Study and report from the Directorate/General or ministry.
- Review of the complete procedure by the Contracts Registry.
- If the review brings to light deficiencies or unfavourable terms in the contract or other unjustifiable circumstances, the deficiencies are notified to the Spanish enterprise for correction or re-negotiation, if it appropriate. A period of time limit is allowed.
- If no unfavourable aspects are noted in the course of the review, or these have been satisfactorily corrected, a positive resolution in favour of registration of the contract is prepared.
- Once the resolution has been signed, the requesting enterprise and the Ministry of Trade are informed, with a copy of the document, so that payments arising from the contract may be authorized.

34. During the 12 years in which the Contracts Registry has been in operation, the number of refusals has not exceeded one per cent of cases. This is probably because adequate changes were introduced in contracts to make them acceptable. That is to say, a high level of success has been achieved in improving contractual terms.

The percentage of objections to authorization of payment is much less - generally in connection with financial conditions analysed by the Department of Trade (exchange risk insurance, concealed credits, etc).

35. The final phase of approval is, therefore, authorization of foreign payments. The above shows the practical importance of the work of the Registry, providing a stimulus to the improvement of terms of acquisition and support for the negotiating capacity of Spanish enterprises in the difficult and ill-regulated technology market.

#### OPERATING CRITERIA:

36. Because of our inexperience in controlling the transfer of technology in a regulated, systematic way, our list of objections (unfavourable terms) included a virtually exhaustive catalogue of unfavourable conditions which have been considered in international forums.

37. In the beginning, the Registry was confronted with several dilemmas: for example, whether to apply strictly the conditions provided in the law or to take advantage of the broad interpretative and discretionary powers which the law offered, in order to achieve the same goal over a period of time, convincing both parties : the supplier and the recipient of technology.

38. As was to be expected, the enterprises reacted initially with antagonism, claiming that the process involved "more controls" and "more red tape". These were very delicate months, in view of the significant administrative delays that we caused.

Public opinion was receptive, apart from the scepticism always aroused by State interventions, which are not exactly models of efficiency and diligence.

39. The problems were overcome by using the following two simultaneous approaches:

- (i) Respecting the authorizations or approvals already granted by the Spanish Foreign Exchange Currency Institute for up to five years from their appearance in the Registry.
- (ii) Trying to convince everyone involved that the Registry's main function was to bolster the negotiating capacity of the weaker enterprises vis-à-vis suppliers of technology always in a stronger negotiating position

40. The liberal attitude represented by the first approach and the proverbial patience of citizens with their government administration did the rest.

Which does not mean that the Registry has won the affection of the enterprises - particularly foreign enterprises but also national ones which seek, through the contracts, to acquire monopolies at any price.

41. This liberal philosophy has dominated the Registry's operations, however, and the benefit of the doubt has usually been granted to the extent possible, with the laws requiring that contracts be reviewed maximum period of five years. The contracts are reviewed at the time of the renewal of registration.

A realistic outlook and the responsibility of promoting the acquisition of appropriate foreign technology have combined to lead the Registry to accept conditions which, although somewhat unfavourable, were in a way necessary to defend the just interests of the enterprises transferring the technology.

42. Some new contracts, on the other hand, have been evaluated with a very strict scrutiny of the circumstances, the technology itself and the contractual conditions.

43. It is not easy to identify general, homogeneous criteria, because in fact none exist, and could hardly exist in such a complex phenomenon, the evaluation of which involves a considerable number of agencies, many different people and laws which allow a broad margin of discretion and require the use of good judgement.

44. It should be kept in mind that contracts and their circumstances are always different, although they may be placed in groups or categories in an effort to apply homogenous criteria.

45. Such groupings may be based on:

- The links between the contracting enterprises; parent-affiliate relations).
- Earlier or future relations between the two parties, even if not involving capital.
- The principal type of service or advantage extended: licenses for the use of patents, licensing of the use of non-patented knowledge, licensing or cession of the use of trade marks, technical assistance, engineering services, etc ...
- The technology itself, difficulties in acquiring it; desirability or otherwise of traditional technologies.
- Other factors.

46. For simplicity's sake, four groups of contracts have been identified:

- Contracts between linked enterprises;
- Contracts between independent enterprises;  
and, within each of these groups,
- Contracts for licensing, even though they may include technical assistance;
- Contracts for particular technological services.

47. Since parent-affiliate contracts may be completely free of limiting or improper clauses, attention has to be given to payments, the balance of trade and effects on the country's economic sector.

48. Contracts for technical services have an effect limited to the period during which these services are being provided; they are of little importance afterwards, with some exceptions.

Licensing contracts are the most difficult to evaluate properly because of the wide variety of benefits or disadvantages to which they can give rise.

49. The criteria have evolved over time. Legislation, has not so much brought about changes in the criteria as adapted itself to the new criteria found desirable, so as legally to permit their application.

Over the years, experience taught us to stop taking into account certain conditions which are theoretically unfavourable but were rarely encountered in practice and had no serious effects.

50. We began to operate in a discriminating manner, devoting more attention to major contracts involving large payments and less attention to smaller contracts, with the exception of cases in which the Spanish enterprise clearly seemed to need strong support in negotiation or renegotiation.

51. One important development was the transfer of the "focal point" from the contract to the receiving enterprise. An attempt was made to evaluate the enterprise's performance in technological aspect: R & D technological dependence, trade balance, etc ... The result of this change of focus was the Order of 30 June 1981 which formalized the change in criteria.

52. Another significant development was the general liberizing trend which coincided with overtures aimed at joining EEC, and which was clearly enunciated in the Order of 22 February 1985, although this Order had been prepared several years before and fell somewhat short of the liberalization which would have seemed desirable.

53. The Registry actually operates more liberally, in respect of the great majority of contracts, than the legal text rather timidly provides for.

54. Results and conclusions arrived at through sincere efforts at evaluation are difficult to quantify. Here again we see that the transfer of technology is an important component of development but not the first factor or the second. Others are more important. And there is a risk of counting as positive or negative results of policies concerning then transfer of technology results due primarily to other factors: political, economic and social.

55. To begin with, we can observe that the overall results of Spanish policy applied through the Registry have been positive:

- The flow of foreign technology has not only not diminished, it has increased.
- Spanish R & D and assimilation plans have had an impact on the technology balance of payments, in which exports provide a coverage of near 30 per cent.
- Contracts currently being submitted are relatively free of unfavourable conditions, a fact which also attests to the improved negotiating capacity of Spanish enterprises.

- We note that imports of modern and new technologies are proportionally higher.
- There is no doubt that significant savings have been made in the cost of technology and the associated imports, but in all honesty it is impossible to quantify these savings.

56. A further and very important result, although its advantages may to some extent be offset by some latest disadvantages, is that a very large proportion of Spain's manufactured exports are produced with the help of imported technology - either technology which has been acquired previously and assimilated or the technology coming into the country each year under contracts in force.

57. We may add that, although there might have been better and cheaper ways of acquiring foreign technology, the Contracts Registry has expedited the natural process of improvement in the acquisition of foreign technology, without appreciably hampering the entry of new technologies under transfer of technology contracts or through foreign investment. This technology was an important factor in speeding up economic growth before the present worldwide crisis, and even during the crises.

#### FOLLOW-UP OF CONTRACTS

58. This point is being dealt with separately as requested by the UNIDO Secretariat; it is apparently one which concerns every country having controls or regulations affecting the transfer of technology.

59. When the Spanish Registry was set up the original intention was to have a systematic follow-up of contracts. Subsequent experience showed that it would be advisable to limit the follow-up to a certain proportion of contracts which could be considered particularly important.

In fact, "follow-up", like "co-ordination", is something which everyone talks about but which is very difficult to carry out. Twelve years' experience makes us sceptical of claims of follow-up of all or even a substantial proportion of technology contracts. It is rather different when the aim is limited to a small number of cases or enterprises or to what might be called strategic contracts.

60. In our experience follow-up should be regarded as something - i.e., if everything is going all right, no action should be taken. If something important happens the entrepreneur goes to the Registry to explain his problem. This is the time for advice to be given when the entrepreneur consults the Registry before signing contracts. In Spain contracts have to be submitted to the Registry only after

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61. The Registry can also act in exceptional, and therefore in special, circumstances. Because of its special nature, even in the exceptional cases which have occurred in Spain, the Registry has intervened only in an advisory capacity.

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62. However, the way in which the Registry operates in Spain is a limit on the validity of the registration enable long-term contracts at each renewal or extension of registration, thus providing a follow-up of contracts and of the enterprises which import foreign technology.

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63. From this viewpoint follow-up has valuable and tangible results. A review may lead to further improvements in long-term contracts, thus bringing about a reduction in the contractual price of technology.

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#### POSSIBLE FUTURE IDEAS

64. In Spain and, apparently, in some other countries at a similar stage of development, facts are emerging which clearly indicate that the introduction of this report will be confirmed.

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Liberalizing criteria are likely to be applied more fully when the transfer of technology is fully liberalized.

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65. The new objectives are likely to change the Registry's function. It will be not to act as an intervention instrument but merely to provide advice based on all the accumulated information and experience, such as locating sources of technology, giving advice on national development activities and advising or informing the Government on scientific and technological policies.

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ANNEX 1

DECREE 2343

## PRESIDENCY OF THE GOVERNMENT

DECREE 2343 of 21 September 1973, regulating the transmission of technology.

Technology is a factor of economic growth that may be obtained and applied either as a result of its creation or development within the national economy or through its acquisition in the international market by the process known as the «transmission of foreign technology».

The international transmission of technology, carried out in the form of agreements, has undergone considerable development over the last few decades, since no country, not even the most highly-developed, is technologically self-sufficient, as is shown by the world growth and the origin-destination pattern of the figures for invisible transactions of this type. In the specific case of Spain at its present stage of industrial development, the acquisition of foreign technology represents a strategic «stocking-up».

In view of the objective conditions of the phenomenon on an international scale, as well as the recommendations made by specialist world agencies, it has been thought desirable that the material aspects of the transmission of foreign technology should be subjected to a degree of governmental control.

This control will be aimed at supervising the selection and acquisition of foreign technology, as well as 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.

In this way, the Administration will gain detailed knowledge of the contents of the technology transmitted and the conditions on which it is acquired, while the general public\* will have definite information as to the criteria of preference, from the standpoint of public interest, governing the contractual forms of acquisition. That is why this Decree makes it compulsory to record technology agreements on a Register created for this purpose within the Ministry of Industry.

Furthermore, it is necessary to link up this regulation of the material aspects of the transmission of technology with the competence vested in the Ministry of Commerce as regards the authorization of the payments abroad to which the agreements in question may give rise.

In view of the foregoing, upon the recommendation of the Ministers of Industry and Commerce, and after deliberation by the Council of Ministers at its meeting on 14 September 1973,

### BE IT ENACTED AS FOLLOWS:

**Article 1.** The transmission of technology from abroad, carried out by means of contracts, agreements or in any other documentary form, the regulation of which is the purpose of this Decree, may take one or more of the following forms:

- a) Licensing of rights to the use of patents and other types of industrial property.
- b) Transmission of unpatented know-how, drawings, magnetic tapes storing digital information, diagrams, specifications and instructions and, in general, assignment of any know-how applicable to production activities that has been developed and kept secret by the firms owning the same.
- c) 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.
- d) Services in the form of studies, analyses, programming, consulting and advising on all aspects of management and administration.
- e) Training and instruction of personnel, whether or not related to the above-mentioned services.
- f) Documentation and technical or economic information services.
- g) Other forms of technical assistance.

**Article 2.** With respect to agreements for the transmission of foreign technology, regardless of the form thereof, entered into by individuals or legal entities (except the State Administration), domiciled, resident or legally established in Spain, the Ministries of Industry and Commerce shall have the following duties and responsibilities:

a) The Ministry of Industry shall take the pertinent administrative action to ensure that the acquisition of foreign technology is carried out on the most beneficial terms for the national economy, in coordination with the other Departments concerned in each specific instance.

b) The Ministry of Commerce shall issue the final decision as to the authorization of the payments in foreign currency, if any, due under each agreement.

**Article 3.** For the purposes of the preceding article, a Register of Technology Agreements is hereby created at the Directorate General of Industrial Promotion and Technology of the Ministry of Industry and application must be made for registration thereon of all agreements and related documents of this nature signed by an individual or legal entity (with the exception hereinabove specified) resident, domiciled or legally established in Spain, and the purpose of which is to acquire technology from an individual or legal entity resident, domiciled or legally established abroad.

Application must also be made for the registration of agreements between individuals or legal entities domiciled, resident or legally established in Spain, when the technology transmitted through such agreements has been acquired abroad.

Requests for the registration of the agreements referred to in the preceding two paragraphs may be lodged by any of the procedures contemplated in Art. 66 of the Administrative Procedure Act.

For the purposes of the foregoing paragraph, where the transmission of technology is related to national defence or research agencies connected therewith, the

procedure to be followed shall be coordinated with the military authorities concerned.

**Article 4.** Before resolving as to the registration of the agreements referred to herein, the Ministry of Industry shall request the compulsory and binding report of the Department or Departments having competence by reason of the subject-matter of the contract or the type of technology involved.

Both the terms for resolving upon applications for the registration of agreements, and the terms allowed to the Ministries concerned for the issuance of their reports, shall conform to the provisions of the Administrative Procedure Act.

**Article 5.** If, in the judgment of the Ministry of Industry, or, as the case may be, of the Ministry having competence on account of the subject-matter, the agreements in question include restrictive clauses which prevent, are detrimental to or hamper the technical development of the recipient, limit the latter's free initiative or represent an abuse on the part of the supplier of the technology, then such agreements will not be entered on the Register or, where appropriate, will be registered together with a note recording the said circumstances, which will give rise to the consequences specified in Art. 7 hereof. Agreements on which the report of any of the Departments referred to in Art. 4 hereof is unfavourable may not be registered.

In particular, no agreement will be registered if it involves any limitation of the export opportunities of the residents or of its sources of supply, without the prior report of the Ministry of Commerce.

The above-mentioned grounds for non-registration, or for qualified registration, are established in general for all agreements except those involving the transmission of technology relating to the production or use of military equipment, in which certain restrictive clauses may be justified for reasons of national interest.

Where, in agreements relating to international technical cooperation, the specific conditions of the private technology agreements through which such cooperation is to be implemented are set forth in sufficient detail, such technology agreements shall in any event be registered without the inclusion of any note recording the said specific conditions in so far as they may be affected by the provisions of the first paragraph of this article.

Refusal of registration shall be notified to the applicant together with the reasons therefor, and the applicant shall be allowed a term of one month in which to correct the defects indicated. In order to apply anew for registration, if appropriate, the provisions of the preceding articles shall apply as regards procedures and terms.

**Article 6.** The recording of a technology agreement at the Registry of the Ministry of Industry shall be a necessary prerequisite for the authorization of the Ministry of Commerce as regards any transfers abroad of foreign currency under such an agreement.

For this purpose, the said Registry shall forward to the Ministry of Commerce the complete files of the agreements that have been registered, together with the reports of the Ministries having competence on the subject-matter.

The Directorate General of Foreign Transactions of the Ministry of Commerce shall resolve, within a term of twenty days, as to the approval in principle of the transfers, and shall so notify the interested parties and the Ministries that have reported on the application.

No technology agreement shall be effective as regards the transfer abroad of the payments in foreign exchange generated thereby until it has been resolved upon by the Directorate General of Foreign Transactions.

The authorization of each transfer abroad shall be subject to verification by the Ministry of Commerce of the authenticity and regularity of the transactions and the fulfilment of the conditions required by the law.

**Article 7.** With respect to industries included in the sectors listed in Arts. 1 and 2 of Decree 2072 of 27 July 1968, the

administrative authorization required for their installation, expansion or relocation may be made conditional upon the company or firm concerned not having been refused the registration of any technology agreements, or not having had the same registered with the annotation of the unfavourable conditions referred to in the first paragraph of Art. 5 hereof.

The registration of agreements may be considered as a technical prerequisite of the industries included in Art. 2 of the said Decree, and it may likewise be taken into account, in accordance with the provisions applicable in each instance, in the granting of the benefits available for the encouragement and promotion of productive activities.

**Article 8.** Individuals or legal entities resident or legally established in Spain having agreements filed at the Registry shall notify, within a term of two months, any amendments thereto, as well as any substitutions, extensions, alterations or changes in the particulars and conditions stipulated in the document originally registered, in which case the report required by Art. 4 hereof shall be requested.

If this report should entail removal from the Register, the provisions of Art. 5 shall be applicable by analogy.

**Article 9.** The Ministry of Industry shall periodically give suitable publicity to such data as may help to ensure a more widespread awareness of the market for foreign technology. Likewise, the type of technology acquired shall be periodically notified to the national research centres in order that they may adapt their research programmes, to the extent possible, to technological objectives aimed at supplementing and improving the technology that is being commercially transmitted. In both cases, proper precautionary and protective measures shall be adopted with respect to industrial secrecy, particularly in the case of technology relating to national defence.

**Article 10.** The agencies, organizations and firms referred to in Art. 9 of Decree 617 of 4 April 1968, acquiring studies and technical services from foreign consulting and engineering firms, shall produce evidence, prior to the registration of the relevant agreements, of having attempted to secure the same services from the firms registered in the Special Section of the Register of Consulting and Industrial Engineering Firms.

**Article 11.** Decree 418, of 25 February 1965, setting forth the conditions of agreements on international technical or financial cooperation, in relation to freedom of industrial installation, is hereby repealed.

**Article 12.** The Ministries of Industry and Commerce are hereby authorized to issue the necessary provisions for the development and implementation of this Decree, within the areas of their respective jurisdictions.

**Article 13.** This Decree shall come into effect as of the day following its publication in the Official State Gazette.

#### FINAL PROVISION

All technology agreements currently in effect must be registered, within a term of one year, in the manner prescribed in this Decree.

Thus be it enacted by this Decree, given in Madrid, the 21st day of September 1973.

**FRANCISCO FRANCO**

The Minister Under-Secretary  
of the Presidency of the Government  
**JOSE MARIA GAMAZO Y MANGLANO**

ANNEX II

ORDER 5/12/73

## MINISTRY OF INDUSTRY

Order of 5 December 1973 concerning the recording of technology agreements on the Register created by Decree 2343/1973, of 21 September.

Sir:

Decree 2343/1973, of 21 September (Official State Gazette No. 236, of 2 October 1973), regulating the transmission of technology, authorized the Ministries of Industry and Commerce, within their respective spheres of competence, to develop the provisions set forth therein.

The application of the rules established in the said Decree requires the urgent and prior development of the provisions relative to the recording of agreements on the Register created by the Decree.

In the light of the experience gained in the functioning of this Register, administrative provisions will subsequently be issued dealing with the remaining aspects of the Decree.

First.

1.1. The obligation of requesting the registration of contracts, agreements and similar documents on the Register created by Decree 2343/1973, of 21 September, applies to all such documents through which foreign technology is acquired, whether directly or through a Spanish intermediary, regardless of the nature of the consideration furnished by the recipient of the technology, that is to say, whether or not it is of a monetary or other tangible nature, or is intangible in any form.

1.2. This registration must be applied for by the individuals or legal entities receiving the technology, domiciled, resident or legally established in Spain.

1.3. Applications must be made in triplicate in a formal petition addressed to the Director General of Industrial Promotion and Technology, accompanied by three copies of the agreement, which for the purposes of this Order must be signed in Spanish, an informative memorandum and the supporting documents specified below in paragraphs 1.5. and 1.6.

1.4. The memorandum shall include information and particulars concerning the contracting parties, the technology transmitted, and the scope and conditions of the agreement, along with other particulars justifying the acquisition of the technology.

The forms of application and informative memorandum will be provided by the appropriate departments of the Ministry of Industry.

1.5. The supporting documents shall necessarily include:

a) A public document evidencing the representative capacity, if any, in which the applicant is acting.

b) A copy of the entry of the establishment on the Industrial Register, or, where applicable, of the latest enlargement thereof, in the case of industrial enterprises.

c) A copy of the administrative resolution authorizing the foreign investment, if any, in the capital of the applicant company.

d) Complete texts of the technical offers and specifications agreed upon in the case of consulting or engineering services.

e) Such other documents as, in the judgment of the Ministry of Industry, may be necessary in each instance.

1.6. The agencies, organizations and companies referred to in Art. 9 of Decree 617/1968, of 4 April, entering into agreements for the purchase of technical studies and services from foreign consulting and engineering companies, must accompany their application by documentary evidence that they have attempted to obtain the services in question from at least two firms recorded in the Special Section of

the Register of Consulting and Industrial Engineering Firms created by the said Decree and operating in the field of activities covered by the agreement.

This evidence must be provided in the form of firm proposals from the said Spanish companies, or, in default thereof, by any other reliable means of proof. If such evidence cannot be furnished, on account of there being only one firm, or none at all, capable of performing the service in question and registered in the above-mentioned Special Section, then the applicant must produce, together with the offer from the registered company, if any, a certificate issued by the Directorate General of Industrial Promotion and Technology to this effect.

Where the certificate mentioned in the foregoing paragraph recognizes the inability of the firms registered in the said Special Section to provide a certain percentage of the services in question that is less than 85 per cent thereof, it will also be necessary to produce evidence showing that an attempt has been made to secure the remainder of such services from firms registered in the Special Section, provided that the activities covered by each of the above-mentioned percentages are technically separable.

## **Second.**

2.1. Application must be made directly to the Directorate General of Industrial Promotion and Technology of the Ministry of Industry, or by any of the other procedures established in Art. 66 of the Administrative Procedure Act.

2.2. The Directorate General of Industrial Promotion and Technology shall classify the applications in accordance with the provisions contained in the following paragraphs, in which the action appropriate to each case is specified.

a) Technology agreements relating to the production or use of military equipment. They shall be forwarded to the military Department concerned, which shall report as to whether the existence of restrictive clauses is justified on the grounds of national interest, pursuant to the provisions of paragraph three, Art. 5, of the Decree.

b) Technology agreements entered into pursuant to international technical co-operation agreements which establish in sufficient detail the specific conditions of the co-operation between private legal entities in which such agreements are to be implemented. They shall be registered as provided in paragraph four, Art. 5, of the Decree.

c) Agreements which are not included in either of the above paragraphs, and which, on account of the subject-matter or the type of technology transmitted, fall within the competence of a Ministry other than the Ministry of Industry. They shall be forwarded to the General Technical Secretariat of the Ministry concerned with a request for the report mentioned in paragraph one, Art. 4, of the Decree. If the report is against registration or recommends qualified registration it must specify the particulars and objections to be conveyed to the interested party, as established in paragraph five, Art. 5, of the said Decree and in section 2.4 of this Order.

d) Agreements not included in the foregoing paragraphs, the examination of which rests with the Ministry competent on account of the subject-matter. The pertinent Directorate General shall issue a report thereon specifying the importance and significance of the restrictive clauses, if any, contained therein as well as the special effects of the pertinent costs, in the light of the industrial policy of the sector towards which the technology is aimed. The Directorate General responsible for the sector in question shall recommend the type of registration applicable, or even non-registration.

2.3. For the registration of agreements coming under paragraphs c) and d) entailing a limitation of the export possibilities of the «resident» or of its sources of supply, the Ministry having competence on account of the subject-matter shall request from the Ministry of Commerce the compulsory report referred to in paragraph two, Art. 5, of the Decree.



2.4. If, during the examination of the application, there are seen to exist conditions that, in accordance with the provisions of this Order, may presumably determine non-registration or registration with qualifying annotations, the Directorate General of Industrial Promotion and Technology shall inform the applicant accordingly, and in any event prior to the hearing stage, if any, so that it may, within a term of one month, remedy or modify the particulars giving rise to such classification. As evidence that this action has been taken, a document shall be submitted, signed by the same contracting parties, agreeing to waive or modify the points originally covenanted and referred to in the notification from the Directorate General of Industrial Promotion and Technology.

#### Third.

For the purposes of Art. 5 of Decree 2343/1973, the Ministry of Industry or the Ministry having competence on account of the subject-matter, shall make a combined evaluation of the situation of the sector and the characteristics of the process and product for which the technology transmitted under the agreement is intended, in relation to the rights and obligations of the parties thereunder.

This combined evaluation shall take into account, as unfavourable conditions or aspects of the agreement, the following, among others:

1. That it prohibits, conditions or limits the use of the recipient's own technology, or the purchase thereof from other sources, or the use of unpatented know-how after the expiration of the agreement, or that it conditions, limits or invalidates the recipient's efforts at research, innovation and technological development.

2. That it requires the assignment of any patents, improvements or innovations introduced or developed by the recipient subsequently to acquiring the technology the subject of the agreement.

3. That it provides 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, provided that such parts or items are technically capable of being separated from the technology as a whole supplied under the agreement.

4. That it provides for the transmission of technology that is partly or wholly inadequate owing to obsolescence, lack of competitiveness or other similar reasons, or that it requires 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. That it prohibits, imposes excessive geographic restrictions on, or expressly does not authorize in regard to certain specific areas, the export of the goods produced by the recipient, or that it requires 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. That it prescribes minimum levels of output or limits 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. That it conditions, for the benefit of the assigner's interests, the sale in the domestic market of the goods produced by the recipient, or that it compels the recipient to maintain an exclusive relationship with the assigner or imposes the use of trademarks registered by the assigner in Spain.

8. That it establishes 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. That it grants the assigner the right, not previously acquired by other means, to intervene in, control or condition the recipient's business management, or plans of expansion or diversification.

10. That it imposes 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. That it provides 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. That it imposes 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. That it provides for surcharges (differences between the prices stipulated in the agreement and those charged by the supplier or its main 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. That it imposes an unsuitable duration on the agreement or its direct consequences, whether too short or too long, or provides 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. That it provides, for the purposes of interpretation, that a foreign language text of the agreement will prevail, in the case of an agreement signed in other languages in addition to Spanish.

#### Fourth.

4.1. The resolution allowing registration of technology agreements shall be notified to the applicant and to the Directorate General of Foreign Transactions of the Ministry of Commerce within ten days after signature. It shall also be notified to the relevant Directorate General of the Ministry of Industry.

The notification sent to the Directorate General of Foreign Transactions shall be accompanied by a copy of each of the following documents: application, agreement, informative memorandum, supporting documents produced and report, if any, from other competent Ministries.

4.2. The resolution allowing qualified registration, i.e., registration with annotations, shall specify the restrictive clauses and conditions in the agreement that have led to such classification, and notification thereof shall be sent to the applicant and to the Directorate General of Foreign Transactions of the Ministry of Commerce, in the term and manner established in paragraph 4.1., as well as to the competent Directorate General of the Ministry of Industry, for the purposes provided in Art. 7 of the Decree.

4.3. The resolution rejecting registration shall specify the restrictive clauses which, on account of the fact that they prevent, are detrimental to or hamper the recipient's technological development, limit its business freedom or represent an abuse on the part of the assigner of the technology, have served as grounds for such resolution. Notification thereof shall be sent, within the term established hereinabove, to the applicant and to the competent Directorate General of the Ministry of Industry, for the same purposes as mentioned in the foregoing paragraph 4.2.

4.4. In all cases, the resolutions adopted with respect to the agreements shall be notified to the competent Ministries that have issued reports in regard to the subject-matter of the agreement or the type of technology.

Fifth.

Pursuant to the provisions of Art. 3 of Decree 2343/1973, dated 21 September, and without prejudice to Arts. 6 and 7 thereof, the effectiveness of any contract, agreement or similar document regulated hereby shall be subject to the prior registration thereof, with or without annotations, on the Register of Technology Agreements.

Sixth.

6.1. In the event of any amendments being made to the agreements recorded on the Register, notification of the scope thereof shall be sent to the Directorate General of Industrial Promotion and Technology within a term of two months, in accordance with the provisions of Art. 8 of the Decree, such notification to be accompanied by three copies of the new text of the amended agreement, the informative memorandum specified in Section 1 of this Order, and the relevant supporting documents.

6.2. The memorandum shall include, in addition to the particulars previously specified herein, information concerning the implementation of the agreement up to the time of its amendment and the reasons that have led to the substitutions, extensions, changes and amendments made with respect to the original text.

6.3. With respect to such amendments, the same procedure and terms as established in the preceding sections for the purposes of the original registration shall apply.

6.4. If the amendments made to the agreement give rise to any changes in registration or to the cancellation thereof, the procedure established in general shall be applicable by analogy.

Which I do convey to you for your information and other purposes.  
May God grant you many years.

Madrid, 5 December 1973.

LOPEZ DE LETONA

To the Director General of Industrial Promotion and Technology.

ANNEX III

ORDER 30/7/81

ANNEX IV

ORDER 22/2/85

Ministry of Industry and Energy

3513 ORDER of 22 February 1985 to simplify the procedures for enrolment in the Register of Contracts for the Transfer of Technology

Gentlemen:

In paragraph (2) of the Ministerial Order of 5 December 1973, it is provided that contracts for the transfer of foreign technology, which this Department is responsible for examining since the subject falls within its competence, will be the subject of a report and recommendation by the corresponding sectoral Directorate-General.

The requirement of this general procedure, which does not deal with the qualitative and quantitative content of the contract, can have the result that insufficient attention is given to some documents, and may concomitantly reduce the possibility of a more suitable evaluation of those contracts which, because of their economic and technological importance, require a more detailed study. Special attention must be devoted to this situation at a time when the Register of Contracts for the Transfer of Technology is becoming an instrument for the effective support of technological policy, instead of being an obstacle to the entry of foreign technology, the selective analysis of which must be increased.

For this reason, this Ministry has seen fit to make the following provisions:

Point 2.2 (2) (d) of the Order of 5 December 1973, which sets out rules for entering contracts for the transfer of foreign technology in the Register created by Decree 2343/1973 of 21 September, is modified, to read as follows:

"(d) Contracts not included in previous subparagraphs, the examination of which is the responsibility of the Ministry of Industry and Energy within whose competence the subject falls. The corresponding sectoral Directorate-General will report on them, making reference, as appropriate, to the importance and implications of the restrictive clauses contained therein, if any, and to the particular impact of the corresponding costs in the light of industrial policy in the sector to which the transfer is oriented; and it will recommend the type of registration or non-registration, as the case may be. With contracts of less economic substance that have no restrictive effect, the report and recommendation by the sectoral Directorate-General may be dispensed with, but in its place the full text of the contracts being registered in the stated circumstances will be submitted."

For your information and action.

Madrid, 22 February 1985.

ANNEX V

MEMORANDUM FORM



# Ministerio de Industria y Energía

Dirección General de Innovación Industrial  
y Tecnología

Expediente número:

--	--

Solicitante

Nombre y Apellidos	Teléfono
Dirección	Cargo

Empresa Receptora

En representación de

Nombre o Razón Social
-----------------------

Clase de inscripción

SOLICITA DE V. I. que previos los trámites reglamentarios en vigor, se proceda a la inscripción

INICIAL
DE LA PRORROGA, del contrato que fue inscrito con vigencia hasta la fecha:
DE LA MODIFICACION
DE LA APLICACION DEL CONTRATO MARCO, inscrito con el número

en el Registro de Contratos de Transferencia de Tecnología, creado por el Decreto 2343/73 de 21 de septiembre, del contrato con:

Empresa Cedente

Nombre o Razón Social
-----------------------

Objeto del Contrato

Sobre:
--------

Para cuyo fin se acompañan a la presente instancia y memoria, tres ejemplares de:

Documentos que se acompañan

a. Contrato en español, firmado por ambas partes		Caso de haber aportado algún documento con anterioridad citar número de expediente:
b. Documento público acreditativo de la representación con que actúe el solicitante		N.º Expediente
c. Copia de la Inscripción del establecimiento en el Registro Industrial		N.º Expediente
d. Copia de la resolución de la Administración autorizando la inversión extranjera		N.º Expediente
e. Otros documentos (enumerarlos)		

Modelo: CTT.

SERVICIO DE PUBLICACIONES  
MINISTERIO DE INDUSTRIA Y ENERGIA



..... de ..... de 19.....

Firma y sello de la Empresa



# CODIGOS

## CLASIFICACION NACIONAL DE ACTIVIDADES ECONOMICAS

Para conocer cual es la CNAE de una actividad concreta y poder cumplimentar este dato, puede consultarse el Decreto 2518/1974, de 9 de agosto, que la aprobó. Si no pueden consignarse los tres o cuatro dígitos, según corresponda, se cumplimentarán al menos los dos primeros, con arreglo al siguiente encuadramiento:

01. Producción agrícola.
02. Producción ganadera.
03. Servicios agrícolas y ganaderos.
04. Caza y repoblación cinegética.
05. Silvicultura.
06. Pesca.
11. Extracción, preparación y aglomeración de combustibles sólidos y coquerías.
12. Extracción de petróleo y gas natural.
13. Refino de petróleo.
14. Extracción y transformación de minerales radioactivos.
15. Producción, transporte y distribución de energía eléctrica, gas, vapor y agua caliente.
16. Captación, depuración y distribución de agua.
21. Extracción y reparación de minerales metálicos.
22. Producción y primera transformación de metales.
23. Extracción de minerales no metálicos ni energéticos, turberas.
24. Industrias de productos minerales no metálicos.
25. Industria química.
31. Fabricación de productos metálicos (excepto máquinas y material de transporte).
32. Construcción de maquinaria y equipo mecánico.
33. Construcción de máquinas de oficina y ordenadores (incluida su instalación).
34. Construcción de maquinaria y material eléctrico.
35. Fabricación de material electrónico (excepto ordenadores).
36. Construcción de vehículos automóviles y sus piezas de repuesto.
37. Construcción naval, reparación y mantenimiento de buques.
38. Construcción de otro material de transporte.
39. Fabricación de instrumentos de precisión, óptica y similares.
- 41 y 42. Industrias de productos alimenticios, bebidas y tabaco.
43. Industria textil.
44. Industria del cuero.
45. Industrias del calzado y vestido y otras confecciones textiles.
46. Industrias de la madera, corcho y muebles de madera.
47. Industria del papel y fabricación de artículos de papel; artes gráficas y edición.
48. Industrias de transformación del caucho y materias plásticas.
49. Otras industrias manufactureras.
50. Construcción.
61. Comercio al por mayor.
62. Recuperación de productos.
63. Intermediarios del comercio.
64. Comercio al por menor.
65. Restaurantes y cafés (sin hospedaje).
66. Hostelería.
67. Reparaciones.
71. Transporte por ferrocarril.
72. Otros transportes terrestres.
73. Transporte marítimo y por vías navegables interiores.
74. Transporte aéreo.
75. Actividades anexas a los transportes.
76. Comunicaciones.
81. Instituciones financieras.
82. Seguros.
83. Auxiliares Financieros y de seguros. Actividades inmobiliarias.
84. Servicios prestados a las Empresas.
85. Alquiler de bienes muebles.
86. Alquiler de bienes inmuebles.
91. Administración Pública. Defensa Nacional y Seguridad Social.
92. Servicios de saneamientos de vías públicas, limpieza y similares.
93. Educación e investigación.
94. Sanidad y servicios veterinarios.
95. Asistencia social y otros servicios prestados a la colectividad.
96. Servicios recreativos y culturales.
97. Servicios personales.
98. Servicios domésticos.
99. Representaciones diplomáticas y organismos internacionales.

## CODIGO PROVINCIAL

- |                  |                  |                             |
|------------------|------------------|-----------------------------|
| 01. Alava.       | 18. Granada.     | 35. Palmas, Las.            |
| 02. Albacete.    | 19. Guadalajara. | 36. Pontevedra.             |
| 03. Alicante.    | 20. Guipúzcoa.   | 37. Salamanca.              |
| 04. Almería.     | 21. Huelva.      | 38. Santa Cruz de Tenerife. |
| 05. Avila.       | 22. Huesca.      | 39. Santander.              |
| 06. Badajoz.     | 23. Jaén.        | 40. Segovia.                |
| 07. Baleares.    | 24. León.        | 41. Sevilla.                |
| 08. Barcelona.   | 25. Lérida.      | 42. Soria.                  |
| 09. Burgos.      | 26. Logroño.     | 43. Tarragona.              |
| 10. Cáceres.     | 27. Lugo.        | 44. Teruel.                 |
| 11. Cádiz.       | 28. Madrid.      | 45. Toledo.                 |
| 12. Castellón.   | 29. Málaga.      | 46. Valencia.               |
| 13. Ciudad Real. | 30. Murcia.      | 47. Valladolid.             |
| 14. Córdoba.     | 31. Navarra.     | 48. Vizcaya.                |
| 15. Coruña, La.  | 32. Orense.      | 49. Zamora.                 |
| 16. Cuenca.      | 33. Oviedo.      | 50. Zaragoza.               |
| 17. Gerona.      | 34. Palencia.    |                             |

Empresa receptora:

Expediente número:

**DATOS DE LA EMPRESA RECEPTORA**

<b>1. Nombre o Razón Social.</b>		<b>2. N. I. F.</b>		
<b>3. Domicilio</b>		<b>4. Teléfono</b>		
<b>5. Población</b>	<b>6. Provincia</b>	<b>7. Capital social (miles de ptas.)</b>		

8. Principales accionistas españoles	N. I. F. en el caso de personas jurídicas	Part. %

9. Accionistas Extranjeros	País	N. E. X.	Part. %

**10. EMPLEO (número de personas en 19...)**

Directivos	Técnicos titulados	Administrativos	Obreros	Total

**11. Técnicos asignados a I+D en el último ejercicio (número de personas)**

--	--	--	--	--

**12. MAGNITUDES ECONOMICAS DE LA EMPRESA EN LOS AÑOS ANTERIORES AL DE ESTA SOLICITUD (miles de pesetas).**

	19	19	19
VENTAS TOTALES			
PAGOS TOTALES POR COMPRA DE TECNOLOGIA			
VENTAS EN ESPAÑA			
EXPORTACIONES			
IMPORTACIONES			
VENTAS CON TECNOLOGIA EXTRANJERA			
INGRESOS TOTALES POR VENTA DE TECNOLOGIA			
GASTOS REALIZADOS EN I+D			

Empresa receptora:	Expediente número:
--------------------	--------------------

**DATOS DE LA EMPRESA RECEPTORA**

1. Nombre o Razón Social.		2. N. I. F.	
3. Domicilio		4. Teléfono	
5. Población	6. Provincia	7. Capital social (miles de ptas.)	

8. Principales accionistas españoles	N. I. F. en el caso de personas jurídicas		Part. %

9. Accionistas Extranjeros	Pais	N. E. X.		Part. %

10. EMPLEO (número de personas en 19. . . )

Directivos	Técnicos titulados	Administrativos	Obreros	Total

11. Técnicos asignados a I+D en el último ejercicio (número de personas)				
--	--	--	--	--

12. MAGNITUDES ECONOMICAS DE LA EMPRESA EN LOS AÑOS ANTERIORES AL DE ESTA SOLICITUD (miles de pesetas).

	19	19	19
VENTAS TOTALES			
PAGOS TOTALES POR COMPRA DE TECNOLOGIA			
VENTAS EN ESPAÑA			
EXPORTACIONES			
IMPORTACIONES			
VENTAS CON TECNOLOGIA EXTRANJERA			
INGRESOS TOTALES POR VENTA DE TECNOLOGIA			
GASTOS REALIZADOS EN I+D			



Empresa receptora:

Expediente número:

DATOS DE LA EMPRESA CEDENTE



19. Nombre o Razón Social:

20. N. E. X.

21. Domicilio Postal:  
Dirección:

22. País

23. PARTICIPACION EN EMPRESAS ESPAÑOLAS

Nombre o Razón Social	NIF	Part. %

24. Vinculación financiera indirecta entre empresas receptora y cedente a través del accionista:

25. Otros datos sobre la empresa cedente (clase de empresa o entidad, división o filial de una empresa multinacional, actividad principal, etc.)

Empresa receptora:	Expediente número:
--------------------	--------------------

**DATOS DEL CONTRATO Y SU APLICACION**

**E1**

	día	mes	año	
<b>26. Fecha de entrada de solicitud.</b>				

	día	mes	año	
<b>27. Fecha del contrato.</b>				

	día	mes	año	
<b>28. Duración del contrato hasta</b>				

<b>29. Plazo por el cual se solicita la inscripción</b> (Muy importante, consultar las instrucciones)	
--	--

<b>30. Destino de la Tecnología</b>	si no	Inversión (miles de ptas.)	Loca- lizac.
¿Vinculada a nueva instalación o ampliación de Industria?			

<b>31. Porcentaje que representan los pagos sobre la inversión, o el valor del equipo a construir, en el caso de estudios y proyectos, ingeniería y asistencia técnica.</b>	%
<input style="width: 40px; height: 20px;" type="text"/>	

32. Prestaciones	si no
COMPRA DE PATENTE	
LICENCIA DE PATENTE	
KNOW-HOW	
ASISTENCIA TECNICA	
INGENIERIA BASICA	
INGENIERIA DE DETALLE	
ESTUDIOS Y PROYECTOS	
COMPRA DE MARCA	
LICENCIA DE MARCA	

<b>33. Areas o países a los que se permite exportar los productos obtenidos</b>

	Canon %	Pago inicial (miles de ptas.)	Otros pagos (miles de ptas.)
<b>34. Pagos por la Tecnología</b>			



Empresa receptora	Expediente número
-------------------	-------------------

DATOS DEL EXPEDIENTE	E2
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38. DIFERENCIAS esenciales entre la tecnología que se adquiere y las tecnologías existentes en España.

**RAZONES POR LAS QUE SE ADQUIERE ESTA TECNOLOGIA Y VENTAJAS PARA LA EMPRESA RECEPTORA Y PARA EL PAIS**

39. Razones de carácter TECNOLÓGICO: Papel que va a jugar la tecnología que se adquiere en el conjunto de la política tecnológica de la empresa. Grado en que va a servir de base para la generación de tecnología propia. Grado en que las cláusulas del contrato pueden limitar o condicionar los esfuerzos propios en I + D.

40. Razones de carácter COMERCIAL: Grado en que ayudará a la mejora de la competitividad de la producción. Mercados exteriores a los que se propone exportar. Grado en que las cláusulas del contrato afectan a la libertad de exportación e incluso a la libertad de gestión de la empresa receptora.

41 Razones de carácter SOCIAL: Grado en que va a servir de base para la creación de puestos de trabajo, perfeccionamiento de personal, etc.:



42. **COSTES E INVERSIONES:** Grado en que la aplicación del contrato permitirá reducir los costes de producción y las inversiones. En el caso de inversiones extraordinarias, o grandes inversiones, indicar el plazo en que se proponen amortizables.

43. **EQUIPOS, COMPONENTES Y MATERIAS PRIMAS:** Procedencia de la maquinaria y equipos de primera instalación. Grado en que va a afectar a la importación de componentes, y materias primas. Grado en que va a ayudar al empleo de materias primas y recursos nacionales y a la sustitución de importaciones.

44. **ENERGIA Y CONTAMINACION:** Grado en que va a repercutir en el ahorro energético, y en potenciar recursos energéticos nacionales, así como en la reducción de la contaminación. En su caso, distinguir entre el efecto sobre la actividad propia del receptor y la actividad de los usuarios o consumidores.

45. **NORMAS DE SEGURIDAD:** Garantías de que cumple con las normas de seguridad en el país de origen y/o país del cedente de la tecnología. Si procede, citar las normas de seguridad.

46. **Otros OBJETIVOS PRIORITARIOS:** Grado en que la aplicación de la tecnología va a representar una aportación al logro de otros objetivos prioritarios de la política industrial española y otras ventajas para el país.

47. **Planes para ASIMILAR** la tecnología que se adquiere, adaptarla a las condiciones españolas, mejorarla y como consecuencia reducir la dependencia del exterior (incluso de marcas).

**Nota:** En el caso de que algún o alguno de los puntos requieran mayor extensión, añadir páginas complementarias.

## DISPOSICIONES QUE REGULAN LA INSCRIPCION EN EL REGISTRO DE CONTRATOS DE TRANSFERENCIA DE TECNOLOGIA

- Decreto 2343/73, de 21 de septiembre, por el que se regula la transferencia de tecnología (B.O.E. núm. 236, de 2-10-1973).
- Orden de 5 de diciembre de 1973, por la que se regula la inscripción de contratos de transferencia de tecnología en el Registro (B.O.E. núm. 30, de 17-12-1973).
- ~~Orden de 20 de julio de 1981, por la que se modifica la regulación de la inscripción de~~ contratos de transferencia de tecnología, establecida en la Orden del Ministerio de Industria de 5 de diciembre de 1973 (B.O.E. núm. 193, de 13-8-1981).



# CLASIFICACION UNIFORME PARA EL COMERCIO INTERNACIONAL

## PRODUCTOS ALIMENTICIOS Y ANIMALES VIVOS DESTINADOS PRINCIPALMENTE A LA ALIMENTACION

00. Animales vivos, destinados principalmente a la alimentación.
01. Carnes y preparados de carne.
02. Productos lácteos y huevos de aves.
03. Pescado, crustáceos y moluscos, y sus preparados.
04. Cereales y preparados de cereales.
05. Legumbres y frutas.
06. Azúcar, preparados de azúcar y miel.
07. Café, té, cacao, especiales y sus preparados.
08. Piensos para animales (excepto cereales sin moler).
09. Productos y preparados comestibles diversos.

## BEBIDAS Y TABACO

11. Bebidas.
12. Tabaco y sus manufacturas.

## MATERIALES CRUDOS NO COMESTIBLES, EXCEPTO LOS COMESTIBLES

21. Cueros, pieles y pieles finas sin curtir.
22. Semillas y frutas oleaginosas.
23. Caucho en bruto (incluso el caucho sintético y regenerado).
24. Corcho y madera.
25. Pulpa y desperdicios de papel.
26. Fibras textiles (excepto las mechas de lana peinada (tops) y sus desperdicios (no manufacturadas en hilados, hilos y tejidos).
27. Abonos en bruto y minerales en bruto (excepto carbón, petróleo y piedras preciosas).
28. Menas y desperdicios y desechos de metales.
29. Productos animales y vegetales en bruto, n.e.p.

## COMBUSTIBLES Y LUBRICANTES MINERALES Y PRODUCTOS CONEXOS

32. Hulla, coque y briquetas.
33. Petróleo, productos derivados del petróleo y productos conexos.
34. Gas natural y artificial.
35. Corriente eléctrica.

## ACEITES, GRASAS Y CERAS DE ORIGEN ANIMAL Y VEGETAL

41. Aceites y grasas de origen animal.
42. Aceites y grasas fijos de origen vegetal.
43. Aceites y grasas de origen animal y vegetal, elaborados, y ceras de origen animal y vegetal.

## PRODUCTOS QUIMICOS Y CONEXOS, N.E.P.

51. Productos químicos orgánicos.
52. Productos químicos inorgánicos.
53. Materias tintóreas, curtientes y colorantes.
54. Productos medicinales y farmacéuticos.

55. Aceites esenciales y productos de perfumería, preparados de tocador y para pulir y limpiar.
56. Abonos manufacturados.
57. Explosivos y productos de pirotecnia.
58. Resinas y materias plásticas artificiales, y ésteres y éteres de la celulosa.
59. Materias y productos químicos, n.e.p.

## ARTICULOS MANUFACTURADOS, CLASIFICADOS PRINCIPALMENTE SEGUN EL MATERIAL

61. Cuero y manufacturas de cuero, n.e.p. y peletería curtida.
62. Manufacturas de caucho, n.e.p.
63. Manufacturas de corcho y de madera (excepto muebles).
64. Papel, cartón y artículos de pasta de papel, de papel o de cartón.
65. Hilados, tejidos, artículos confeccionados de fibras textiles, n.e.p. y productos conexos.
66. Manufacturas de minerales no metálicos, n.e.p.
67. Hierro y acero.
68. Metales no ferrosos.
69. Manufacturas de metales, n.e.p.

## MAQUINARIA Y EQUIPO DE TRANSPORTE

71. Maquinaria y equipo generadores de fuerza.
72. Maquinarias especiales para determinadas industrias.
73. Máquinas para trabajar metales.
74. Maquinaria y equipo industrial en general, n.e.p. y partes de máquinas n.e.p.
75. Máquinas de oficina y equipo para la elaboración automática de datos.
76. Aparatos y equipo para telecomunicaciones y para grabación y reproducción del sonido.
77. Maquinaria, aparatos y artefactos eléctricos, n.e.p. y sus partes eléctricas (incluso las contrapartes no eléctricas, n.e.p. del equipo eléctrico de uso doméstico).
78. Vehículos de carretera (incluso aerodeslizadores).
79. Otro equipo de transporte.

## ARTICULOS MANUFACTURADOS DIVERSOS

81. Artefactos y accesorios sanitarios y para sistemas de conducción de aguas, calefacción y alumbrado, n.e.p.
82. Muebles y sus partes.
83. Artículos de viaje, bolsos de mano y otros artículos similares para contener objetos.
84. Prendas de vestir y sus accesorios.
85. Calzado.
87. Instrumentos y aparatos profesionales, científicos y de control, n.e.p.
88. Aparatos y materiales fotográficos y artículos de óptica, n.e.p.; relojes.
89. Artículos manufacturados diversos, n.e.p.

58. Resultado práctico del contrato durante la vigencia de la inscripción concedida, con especial atención a:

- Transmisión de mejoras o innovaciones por parte de la empresa cedente.
- Desarrollo de mejoras o innovaciones por parte de la empresa receptora.
- Aplicación de las mismas (en caso negativo, motivo de la no aplicación, incluso los obstáculos derivados de las cláusulas del propio contrato).
- Grado de reducción de la dependencia tecnológica.
- Justificación de la prórroga que se solicita (razones tecnológicas, comerciales, etc.).

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Empresa receptora:

Expediente número:

PRORROGA DE VIGENCIA

V

55. Reproducción del cuadro de previsiones cumplimentado en la Inscripción Inicial o última Prórroga de Vigencia, recogiendo las eventuales modificaciones introducidas durante el trámite.

AÑO					
VENTAS					
VENTAS EN ESPAÑA					
EXPORTACION					
IMPORTACION					
IMPORTACION DE LA CEDENTE					
PAGOS AL CEDENTE					
DESGLOSE DE LOS PAGOS					
POR CANON					
PAGO INICIAL					
OTROS PAGOS					

56. Cuadro de datos reales correspondientes al período de inscripción que ha terminado.

AÑO					
VENTAS					
VENTAS EN ESPAÑA					
EXPORTACION					
IMPORTACION					
IMPORTACION DE LA CEDENTE					
PAGOS AL CEDENTE					
DESGLOSE DE LOS PAGOS					
POR CANON					
PAGO INICIAL					
OTROS PAGOS					

57. Razones principales por las que se ha producido la desviación o diferencia entre magnitudes previstas las reales.

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Empresa receptora:

Expediente número:

**PROGRAMA DE DESARROLLO TECNOLOGICO**



Según la Orden de 30 de julio de 1981, en el caso de que en la empresa se acumule una dependencia del exterior, por tecnología y uso de marca que afecte a más del 30% de su cifra de negocios, la empresa receptora deberá presentar un programa que se comprometa a desarrollar y que contribuya de manera apreciable, a la consecución de:

**a. Reducción de la dependencia tecnológica por medio de:**

- Asimilación de la Tecnología recibida .....
- Desarrollo tecnológico del sector .....

**b. Otras acciones:**

- Utilización de recursos nacionales y sustitución de importaciones .....
- Fomento de las exportaciones .....
- Creación de puestos de trabajo .....
- Ahorro de energía .....
- Reducción de la contaminación .....
- Otros objetivos prioritarios de la política industrial española .....


54. PROGRAMA, o en su caso, actualización del presentado anteriormente (vease instrucciones)



Empresa receptora:

Expediente número:

**DATOS DEL CONTRATO Y SU APLICACION** **ES**

**48. PREVISIONES DE LA APLICACION DEL NUEVO CONTRATO, referidas a productos o servicios relacionados con el mismo (procesos o productos afectados por la tecnología) Miles de ptas.**

AÑO					
VENTAS					
VENTAS EN ESPAÑA					
EXPORTACION					
IMPORTACION					
IMPORTACION DE LA CEDENTE					
PAGOS AL CEDENTE					
DESGLOSE DE LOS PAGOS					
POR CANON					
PAGO INICIAL					
OTROS PAGOS					
CANON EQUIVALENTE					

**49. Aclaraciones sobre el cuadro anterior, si procede.**



## Ministry of Industry and Energy of Spain

Order of 30 July 1981 amending the regulations concerning the registration of technology transfer agreements as established through the order of the Ministry of Industry of 5 December 1973.

Sir,

The experience gained in the application of the order of the Ministry of Industry of 5 December 1973 concerning the inscription of technology transfer contracts in the Registry, created by Decree 2343/1973 of 21 September gives grounds for modifying the evaluation

of the consequences of the presence of clauses which are in general unfavourable and to treat in a special manner those cases where the recipient company is accumulating an external technological dependence which will significantly affect its activities. Furthermore, in order to obtain a further knowledge of the content of the transfer, it appears desirable for statistical purposes that be presented to the Registry of Transfer of Technology of the Ministry of Industry and Energy contracts of this nature entered into by the State which by Decree 2343/1973 of 21 September are exempt from the registration process. In this light and as proposed by the General Directorate of Industrial Innovation and Technology, this Ministry has decided as follows:

First, the third paragraph of the order of 5 December 1973 concerning the inscription of technology transfer contracts in the Registry created by Decree 2343/1973 of 21 September shall be established in the following terms:

Third

3.1 Concerning article 5 of Decree 2343/1973, the Ministry of Industry and Energy, or the Ministry competent in the matter will make a comprehensive evaluation of the situation in the sector and of the characteristics of the process and product for which the technology transferred is intended, in relation to the rights and obligations of the parties to the contract.

3.2 The following, *inter alia*, will be regarded unfavourable conditions or aspects of the contract.

a. to limit the acquisition of technology from other sources, as well as condition, limit or cancel the research, development or innovation efforts of the recipient, to make it obligatory to transfer improvements developed by the recipient in the technology transferred through the contract or to condition the utilization of the knowledge not patented once the validity of the contract has expired.

b. to transfer a technology for which there is proven capacity of national delivery with equivalent quality and reliability, or a technology considered pollutant where cleaner technologies exist or a technology which involves energy wastage or which utilizes imported material or components instead of national substitute products.

c. to prohibit, limit geographically in an excessive manner, or not authorize specifically with respect to certain areas, the export of the goods produced by the recipient, as well as to make obligatory the acquisition of raw material or components and other intermediate goods or equipment from the transferrer or of suppliers mentioned in the contract.

d. to impose the use of trade names registered by the transferrer in Spain, as well as to establish the right of the transferrer when not obtained earlier through other means to intervene control or condition the management of the recipient company or its strategy of expansion or diversification.

e. to impose payments substantially higher than those normally practised in the market in similar circumstances or to impose minimum payments when the payments are based on royalty rates proportional to the rate of activity in its different expressions.

f. to establish payments through royalty rates proportional to the level of production, without deduction of the value of the products or components supplied by the transferrer and incorporated in the production process to which the transferred technology is applied, or not to exclude the billing corresponding to production lines not affected by the acquired technology.

g. to impose an inappropriate duration of the contract or of its direct consequences, either because of its shortness or because of its prolongation, or to extend the validity of the contract or its inscription in the Registry without the introduction of improvements in the terms of the contract.

close co-operation and co-ordination among existing regulatory agencies should take place so as to strengthen the bargaining position of ASEAN member countries; all ASEAN member countries should support the continuation of the Technological Information Exchange System (TIES) of UNIDC.

### Technological Transfer Centre of Korea Executed Local Consultation Tour

The Technological Transfer Centre held a seminar and provided information on technology transfer at cities including Seoul and Incheon from 13 May to 12 June under the co-sponsorship of Korea Chamber of Commerce and Industry. By means of seminars and consultations, this Centre furnished overall information covering suppliers, required documents and official procedures for technology transfer. The Centre intended to undertake a second consultation tour at the latter half of this year.

### Recent Legislation

The Ministry of Industry and Energy of Spain decided last July to amend the regulation concerning the registration of technology transfer agreements. The following is a translation of the amendment of the order of the Ministry of Industry of 5 December 1973 to be followed by the full text of the order of 1973.