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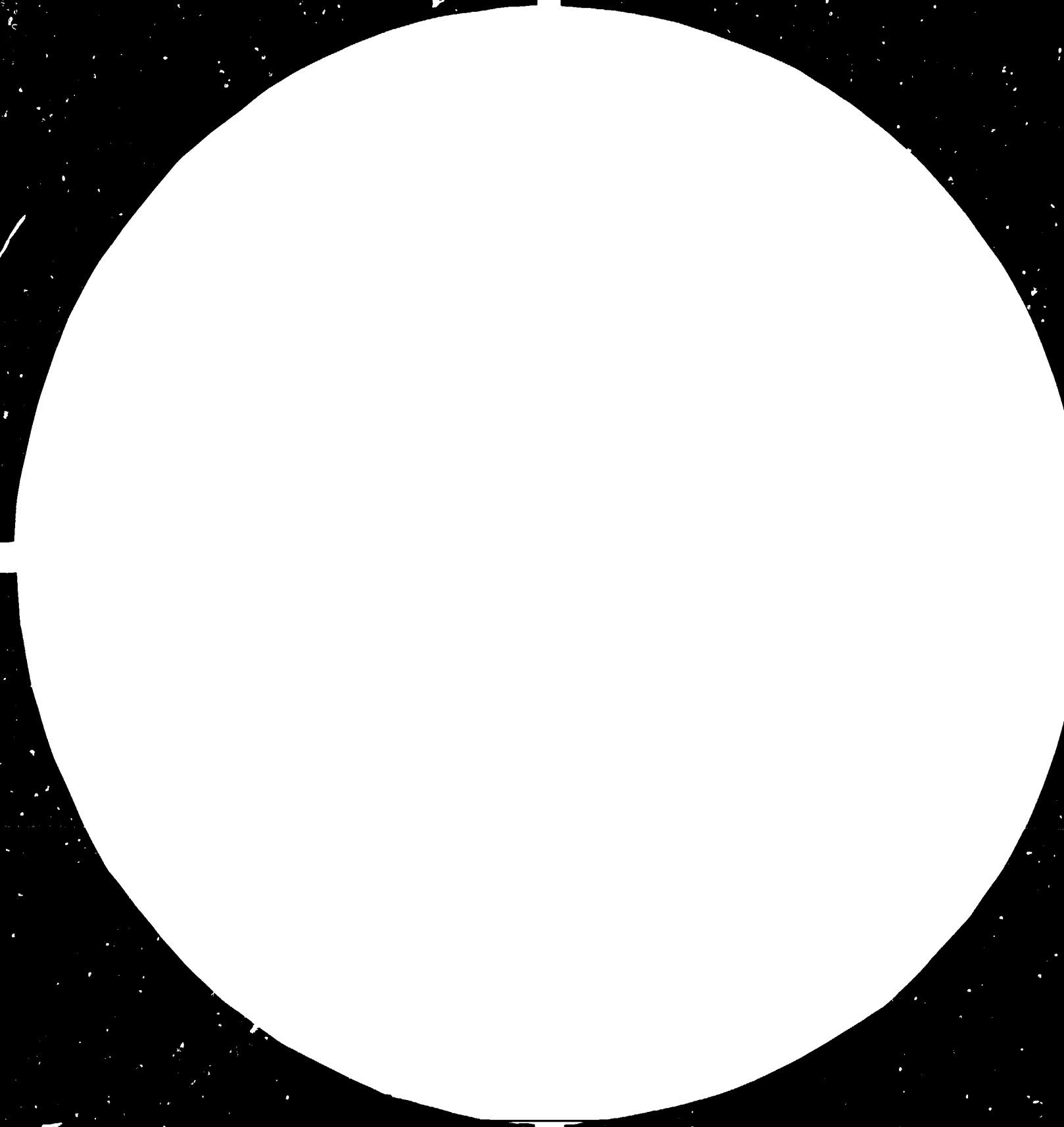
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J.Cieslik
UNIDO Consultant

22 December 1983

Suggested programme of work on the studies and projects
to be carried out by UNIDO secretariat within the frame-
work of TIES in 1984

- I.Guidelines for the evaluation of contractual arrangements
in the hotel industry
- II.Guidelines for the evaluation of the franchise agreements in the
fast food sector
- III.Registry information system with special emphasis on computeri-
zation
- IV.Monitoring technology transfer agreements
- V.Guidelines for the evaluation of the contractual arrangements
in the food processing industry
- VI.Study on the evaluation of contractual arrangements between
equity-related partners (tentative proposal)

I. ELABORATION OF THE REVISED VERSION OF THE STUDY ON HOTEL CONTRACTS

ID/WG.405/1

Introduction

The paper has been discussed during Caracas Meeting and the participants requested UNIDO secretariat to prepare revised version of the document for the IXth TIES Meeting. Special attention ought to be given in the revised version to the effects of international hotel chain operation on the balance of payment of the host country, acceptable level of remuneration for the services provided by the foreign partner and specific contractual provisions safeguarding the interest of the hotel owner.^{1/} The discussion revealed that several developing countries have already defined their approaches to the operations of transnational hotel chains and gained substantial experience in registering agreements in this sector. Some countries indicated the existence of the empirical studies on the effects of transnational hotel chains on the economy of the host country.

Following the recommendations of the Caracas Meeting UNIDO secretariat requested several developing countries to provide additional copies of contracts registered in the hotel sector as well as the information on relevant policies and results of the empirical country studies.

1. Overall concept of the second version

It is recommended that the concept of the "revised" version be adopted. It means that the large parts of the first version will be incorporated in the final version in the unchanged form. Substantial revision of Chapter III and IV will be necessary in order to meet recommendations of the TIES meeting in Caracas.

^{1/}Report of the VIIIth TIES Meeting, Caracas, Venezuela, 17-20 October 1963, para 3(1)

2. Outline and structure of the final version

It is recommended that the structure of the first version be, in principle, maintained in the revised version.

3. Title of the study

Two alternative approaches might be adopted:

- to stick with the old title and reflect the revised version in the document symbol, i.e. ID/WG.405/1/Rev.1
- after substantial revision of Chapters III and IV new title might be more suitable: "Guidelines for the Evaluation of the Contractual Arrangements in the Hotel Industry".

4. Revision of Chapter I

The basic shortcoming of this Chapter results from the fact that it relies entirely on statistical data taken from CTC study "Transnational Corporations in International Tourism". The CTC study covers the period up to 1970. It would be highly desirable to update the statistical figures. However the amount of work required and lack of background information sources in the VIC library (hotel directories) has to be taken into account.

5. Revision of Chapter II

Para 1(a)

The data given in Table 4 should be supplemented by the information on the strategies of individual chains with respect to the types of contractual arrangements used. This can be found in Seyser's thesis.

Para 2

This paragraph shall begin with the balance of payments considerations, i.e.:

- systematic analysis of the various factors directly or indirectly related to the transnational hotel operations which affect the balance of payment

of the host country;

- presentation of the results of the empirical studies submitted by the registries.

c. Revision of Chapter III

This Chapter requires substantial revision. In the first instance additional contracts received from the registries have to be included in the sample. The examples of contract clauses may also be taken from the CTC study on management contracts (ST/CTC/27). The recommendations regarding the formulation of each clause have to be elaborated in much greater detail. After presentation of the alternative formulations the importance of a given clause for the hotel owner and the host country should be specified. The analysis of each provision shall result in a final recommendation. These recommendations can be formulated in a positive way by drafting model clauses and/or in a negative way by presenting formulations or whole provisions which should be avoided.

The introductory part of Chapter III has to be further elaborated. The general information on the management contracts and their structure shall be added at the beginning.

Special attention has to be given to the payments. ~~xxxxx~~ This is the most sensitive issue in the evaluation and negotiation procedure. The registries expect that the Guidelines will define precisely:

- "acceptable" forms of payment to the foreign partner;
- "acceptable" level of payment.

The issue of "acceptable" payments might be approached in various ways. First, it might be attempted to extend LSEP analysis on the management contracts. This can be eventually linked with the acceptable return on investment to the

new owner. On the other hand the analysis of the contracts and the survey of literature may help identifying forms and levels of payments widely accepted in the industry and this can also be an important indication for the registries.

7. Revision of Chapter IV

It is absolutely necessary to collect additional franchise agreements as the whole analysis cannot be based on one contract only.

The comments made with reference with Chapter III are, in principle, applicable, to Chapter IV as well.

8. Availability of information

The general type of information already gathered is sufficient for completing the final version. However very much depends on the cooperation of the registries in supplying requested data. Meanwhile 5 copies of contracts have been received from Colombia.

9. Programme of work

An attempt shall be made to obtain relevant information from the registries by the end of April, 1984.

Once the country inputs are collected the ~~final version~~ elaboration of the final version of the study would require approx. 2 man/weeks.

11. LABORATION OF THE REVISED VERSION OF THE STUDY ON THE FRANCHISE
AGREEMENTS IN THE FAST FOOD SECTOR ID/WG.405/2

Introduction.

The VIIIth Meeting of TIES held in Caracas requested UNIDO secretariat to complete the final version of the study on the franchise agreements in the fast food sector and present it to the next TIES Meeting. The final version should include country studies on the effects of these chain operations and additional background material (samples of contracts, etc.) to be provided by TIES member countries.^{1/} Consequently UNIDO secretariat requested additional member countries to provide relevant information on the subject.

1. Overall concept of the second version

It is recommended that the concept of the "revised" version be adopted, i.e. large parts of the text of the first version will be incorporated in the unchanged form. However it is absolutely necessary to increase substantially the empirical basis of the study and especially the number of contracts being investigated.

2. Outline and the structure of the final version

It is recommended that the structure of the first version be, in principle, maintained in the revised version.

3. Title of the study

Two alternative approaches might be adopted:

- to maintain the ~~xxxx~~ old title and reflect the revised version in the document symbol, i.e. ID/WG.405/2/Rev.1
- to introduce new title "Guidelines for the Evaluation of ~~XXXXXXXXXX~~ ~~XXXXXXXXXX~~ the Franchise Agreements in the Fast Food Sector".^{1/}

The latter one seems to be more suitable provided substantial revision of ^{1/}Report of the VIIIth TIES Meeting, Caracas, Venezuela, 1/-20 October 1983, para 3(j).

Chapter III will be made.

4. Revision of Chapter I

The discussion on the international fast food chain operations concentrates on the activities of the few major chains: McDonald's, Kentucky Fried Chicken, Burger King, Pizza Hut. The information on these chains has been collected (literature, brochures, etc) and should be included in Chapter I. Differences in the use of various contractual provisions by individual chains have to be emphasized.

5. Revision of Chapter II

The quality and scope of the analysis in this Chapter will largely depend on the inputs received from the registries. Paragraph one should be expanded in order to include the empirical results of the studies on the effect of the international chain food operations. An attempt should be made to deal not only with economic and financial issues but also with socio-cultural ones. The various policy options should not be discussed in hypothetical way but practical experience and relevant policies should be presented including the experience with registration of the franchise agreements.

6. Revision of Chapter III

As it was stated before in the fast food sector developing countries are dealing in practice with 4-5 transnational chains which are using standard formats of ~~standard~~ franchise agreements. Thus, the analysis shall start with presentation and the evaluation of the standard provisions from the franchisee and host country point of view with due account to the differences occurring among leading chains. ~~Such~~ Such standard provisions can be already derived from the literature, brochures, model contracts, etc. Next the analysis of the sample contracts shall

make possible to determine the most optimal formulation of each provision as well as the real "rigidity" of the standart provisions i.e. the propensity of the franchisor to adjust a given formulation under the pressure of the licensee.

7. Availability of information

The general type information already collected is sufficient for completing[?] the final version. It is absolutely necessary to increase substantially the number of contract the analysis will be based upon.

8. Programme of work

An attempt should be made to obtain relevant information from the registries by the end of April 1984.

Once the country inputs are collected the elaboration of the final version of the study would require approx. 2 man/weeks.

III. PROGRAMME OF WORK IN THE AREA OF REGISTRY INFORMATION SYSTEMS
WITH SPECIAL RESPECT TO COMPUTERIZATION

Introduction

The experience of individual TIE countries as well as the cooperation within TIES indicated clearly that the effective functioning of the registry information system ~~is~~ is the precondition of its successful performance. ~~The experience of~~ ~~is~~ This area of registry activities is gaining importance once the registry decides to expand its functions, e.g. towards monitoring and/or to computerize its information system. On the other hand the establishment of efficient national registry information systems would greatly facilitate the exchange of information within the TIES System.

During recent TIES Meeting in Caracas several countries expressed interest in this area and called UNIDO secretariat for providing assistance in the establishment of their information systems with special emphasis on computerization.

The future programme of work in this field requires careful preparation and coordination. It is suggested that such programme of work consists of the following, closely interrelated elements:

- organization of the informal expert group meeting on the registry information systems;
- conducting series of expert missions in TIES member countries for the purpose of implementation, extension and/or computerization of the registry information systems;
- preparation of the Manual on the Establishment of the Registry Information System.

1. Informal expert group meeting on the registry information systems

There are already several experts with substantial experience and interest in the area of registry information systems. The major goal of such meeting would be to define common approaches to the various ~~xxxxxx~~ aspects of the registry information systems and elaborate detailed programme of work in this field. The most important issues to be discussed are the following:

- common elements of the registry information systems;
- interrelation between manual and computerized information system;
- unified approach to the computerization of registry information systems with special emphasis on the compatibility with TIES (for that purpose the Bogdanowicz proposal might be taken into consideration);
- necessary adjustments of the TIES System;
- problems associated with the extension of the basic information system towards monitoring and other advanced functions;
- possible linkages with other information networks (national and international).

In addition the expert group meeting shall discuss the feasibility, concept, outline and the programme of work on the ~~establishment of the registry information~~ Manual on the Establishment of the Registry Information System (see p.3)

The meeting will be expected to elaborate and approve following documents:

- a) Guidelines for the implementation of the registry information systems. In the first version the Guidelines would be used by the experts assisting in the implementation of the registry information systems. The Guidelines may also be presented to the next TIES Meeting.
- b) Detailed outline and the programme of work on the Manual on the Establishment of the Registry Information System.

2. Series of expert missions in TIES member countries

Depending on the resources available a series of expert missions should be conducted aimed at implementing (computerizing) registry information systems in a number of ~~selected~~ TIES member countries. An effort should be made to include in the sample countries at different levels, with different problems to be solved, e.g. countries with newly established registries interested basically in the efficient manual system, countries wishing to computerize their registries, implementation monitoring, independent registries and those functioning within a ministry, etc. The missions of individual experts should be coordinated with the programme of work on the Manual (see p. 3). Therefore mission reports should contain recommendations on the issues to be dealt with in the Manual. The results of the missions should be presented in the aggregated form to the TIES Meetings.

3. Manual on the Establishment of the Registry Information System

Based on the experience collected during the expert missions in individual countries a comprehensive Manual on the Establishment of the Registry Information System should be prepared. It will serve as a basic tool for the registries for ~~the~~ solving various problems connected with the functioning of their information systems. In addition~~at~~, the Manual shall contribute to the unification of the individual systems and assure ~~the~~ compatibility within TIES.

The outline of the Manual is given in Annex 1. It is recommended that the final version of the Manual be prepared for the Tenth Meeting of TIES.

MANUAL ON THE ESTABLISHMENT OF THE REGISTRY INFORMATION SYSTEM

(outline)

I. Introduction

In the Introduction major objectives of the Manual will be defined:

- to assist the newly established registries in implementing basic information system
- to assist matured registries in the modernization and extension of their information systems with special emphasis on computerization
- to enable effective exchange of information among countries within TIES
- to define the role of the information system in the functioning of technology transfer registry.

II. Implementation of the basic information system

The principal activities, common to all registries, are associated with the evaluation and approval of technology transfer agreements.

Within the concept of the basic information system following elements will be designed:

- model input forms
- model contract card
- model registration form
- storage systems and facilities
- internal information flows during evaluation procedure
- external information flows during evaluation procedure.

III. Extension of the basic information system

In this Chapter the methods of extension of the registry information system will be discussed in order to adjust the system to the new require-

ments resulting from launching new forms of registry activities, e.g.:

- monitoring
- active participation of the registry in formulating government policies in the area of technology transfer, technological development, foreign economic relations, etc.
- advisory services for industrial enterprises.

IV. Computerization of the registry information system

The overall concept of the manual information system outlined in Chapters II and III will contain necessary provisions enabling smooth transition to the computerized system. In Chapter IV the issues related to computerization will be discussed:

- factors affecting decision on implementing computerization
- basic requirements with respect to hardware, personnel, etc.
- the overall concept of the software for the computerized registry information system.

V. Participation of the registry in the exchange of information within TIES, regional networks, etc.

The concept of the information system will contain necessary elements for effective participation in TIES and other international exchange.

Additional issues discussed in Chapter V will include:

- suggested adjustments of the TIES formats facilitating active participation of the member countries in the exchange of information
- design of information linkages within TIES under manual system
- design of information linkages within TIES under computerized system
- information flows resulting from regionalization of TIES and/or participation of the member countries in other regional networks (e.g. SAIT).

Conclusions

IV. ELABORATION OF THE SECOND STUDY ON MONITORING

Introduction

During VIIIth TIES Meeting UNIDO document on monitoring (ID/WG.405/7) has been discussed. The Meeting requested the UNIDO secretariat to elaborate on the monitoring of technology transfer agreements particularly with regard to the establishment of approval criteria for the renewal of technology agreements.^{1/} For that purpose UNIDO secretariat requested several countries requested several registries to provide information on their experience on the subject.

1. Suggested direction of work on the next study on ~~the~~ monitoring

The first study was of general character and therefore it is suggested that the second one be action oriented, i.e. it shall provide guidelines for the implementation of the monitoring function.~~Since~~ In practice two types of monitoring can be distinguished: renewal monitoring and continuous monitoring. Therefore these two types shall be discussed separately in the second study (see Annex 1).

2. Outline of Chapter I

The ad-noc monitoring in the case of approval of the extension of an old agreement is performed quite often by the registries although well established rules and procedures usually do not exist. It might be expected that the registries will provide basic information on the subject which enable identifying major obstacles in that area as well as systematize the experience achieved so far in this area. This shall lead to the elaboration of the well defined programme for the implementation of the renewal monitoring at the registry level including practical examples, evaluation criteria, designing forms, information flows, etc.

^{1/}Report of the VIIIth TIES Meeting, Caracas, Venezuela, 17-20 October 1983, para 3(j).

3. Outline of Chapter II

Practically the implementation of comprehensive continuous monitoring started in Philippines and Poland. The experience of these two countries has to be presented in detail. Under present circumstances it will be difficult to formulate detailed programme of action. Alternatively, a set of minimum conditions for effective, comprehensive monitoring shall be proposed. The information aspects of comprehensive monitoring (including computerization) should be discussed as well.

4. Amount of work required

With the assumption that the registries will provide sufficient background information the preparation of the second study on monitoring will require approx. 3 man/weeks.

IMPLEMENTING THE MONITORING FUNCTION BY TECHNOLOGY

TRANSFER REGISTRY

(outline)

SUMMARY

INTRODUCTION

I. RENEWAL MONITORING

1. Summary of the experience of individual countries
2. Suggested programme of action aimed at implementing renewal monitoring

II. COMPREHENSIVE MONITORING

1. Analysis of the experience of the Philippines and Poland
2. Basic conditions necessary for effective comprehensive monitoring
3. Information requirements of the comprehensive monitoring

CONCLUSIONS AND RECOMMENDATIONS

V. STUDY ON THE CONTRACTUAL ARRANGEMENTS IN THE FOOD PROCESSING SECTOR

The VIIIth TIES Meeting requested UNIDO secretariat to present a study on the evaluation of contractual arrangements in the food processing.^{1/}

In view of the fact that similar study has to be prepared for the second consultation on the Food Processing Industry to be held in October 1984, a decision was reached that a joint study on the subject will be prepared by the UNIDO Technology Programme and the relevant section of the Division of Policy Co-ordination.

The concept of the study and the suggested programme of work is outlined in the annexed document "Terms of reference".

^{1/}Report of the VIIIth TIES Meeting, Caracas, Venezuela, 17-20 October 1983, para 3(p).

TERMS OF REFERENCE
(draft version)

Preparation of a checklist of specific elements suggested for inclusion in contractual agreements in the food-processing industry

1. Introduction

The First Consultation on the Food-Processing Industry, held in The Hague in November 1981, concluded that developing countries need assistance in their negotiations with foreign partners, with regard to the legal regime to which transfer of technology and foreign investment would be a subject. In order to strengthen developing countries bargaining position in their trade negotiations with foreign partners, it recommended that UNIDO in collaboration with relevant United Nations bodies, should prepare a checklist of specific elements suggested for inclusion in agreements, permitting efficient co-operation between the parties. ^{1/}

2. Purpose of the project

The main objective of the project is the preparation of a checklist which would serve as a contractual guideline for trade negotiations between different parties from developing and developed countries in the food-processing sector. It is expected that it will include the main types of contracts prevailing in this sector and the most critical issues which should deserve particular attention when negotiating contractual agreements. However, it is not expected to constitute the form of model contract for this industrial branch.

3. Scope of the project

Because of the complexity and differentiation of the food-processing sector as well as different methods of analysis to be used, the project will be divided into two parts. The first part will define the role of the various contractual arrangements with foreign participation and/or co-operation in the food-processing sector in developing countries and the major provisions incorporated in such contracts. The second part will have empirical character and is expected to determine the most critical elements and provisions included in selected contractual arrangements.

In view of the scope of the analysis and the available time framework it is expected that two consultants will be involved in the project. They will work in close co-operation with the UNIDO secretariat.

^{1/} Report from the First Consultation on the Food-Processing Industry, The Hague, Netherlands, 9-13 November 1981, document ID/278, page 6, para (2).

4. Duties of the consultants

Within the first part, the consultant A is requested to prepare a paper which should read:

- a) Analysis of the role of various contractual arrangements (joint ventures, turnkey deliveries, licensing and franchise agreements, management contracts, etc.) as alternatives to direct foreign equity participation in the food-processing sector in developing countries;
- b) Identification of the most common contractual arrangements occurring in the food industry and its individual branches ^{2/} and which are expected to gain importance in the future;
- c) Concise description of the most essential provisions in the selected types of contracts with special emphasis on the elements typical for the food industry as well as the contractual differences existing among various branches of the food-processing sector.

Within the second part, the consultant B is requested to prepare a paper which will include the identification of the most critical issues and elements occurring in contractual agreements in selected food-processing industries. The first priority should be given to the vegetable fats and oils and fruits and vegetable processing industries. If possible the analysis should also cover sugar, meat and dairy industries.

This is expected to be achieved through a comparative empirical analysis of the major provisions included in the contractual arrangements in selected food-processing industries in developing countries. To this end, sample contracts, already in operation, should be collected by the UNIDO secretariat through technology transfer registries and other government agencies in selected developing countries.

The selected food-processing industries and selected developing countries in which these industries are relatively well developed, are listed on the attached sheet.

In addition, an attempt will be expected to be made by the consultant to obtain comments from the representatives of the food-processing enterprises and respective government agencies on the major problems arising in the process of implementation (i.e. ex post comments) on the importance and possible formulation of contractual provisions. For that purpose, the consultant might be requested to conduct field missions in selected developing countries.

^{2/} According to nomenclature adopted at the Global Preparatory Meeting to the First Consultation on the Food-Processing Industry, the following branches are included in this aggregate sector: meat-processing industry, dairy industry, fisheries industry, cereal industry, sugar industry, vegetable oils and fats industry, animal feed industry, fruits and vegetable industries, beverage industry (including tea and coffee), chocolate and confectionery industries.

Such empirical analysis should allow for presenting the paper which will include:

- a) Standard format of contracts with breakdown by type of contracts and industry branch, with a view to outline the checklists of basic contractual provisions included in trade arrangements;
- b) Typical ways of formulating the different contractual provisions in the selected food-processing industry;
- c) Formulation of checklist based on critical issues associated with specific contractual provisions.

The consultants' assignments will be divided into two phases each. During the first phase, the consultants are required to prepare draft papers which will be submitted to the ad hoc expert group meeting. During the second phase, the consultants are required to incorporate the findings and conclusions agreed upon during the meeting, and prepare the final version of the project.

The papers should be written in English and should consist of approximately 25-30 pages each.

The consultants will be required to attend the ad hoc expert group meeting which will be held in Vienna in May/June 1984. They are expected to submit the first draft of the papers to the UNIDO secretariat by the end of April 1984.

UNIDO will have the right to comment on the draft papers submitted by the consultants. The comments by UNIDO should be incorporated into the final version of the papers by the consultants. The consultants may be asked to assist the UNIDO secretariat in the preparation of the final document which will be presented during the Second Consultation.

Braunches and countries to be considered for analysis of existing contractual arrangements in the food industry

1. Vegetable Oils and Fats

Indonesia
Nigeria
Malaysia
Philippines
Brazil
Mexico
Venezuela
India
Thailand
Kenya
Ghana
Pakistan
Senegal
Cameroon
Ivory Coast
Egypt
Sudan
Paraguay

4. Meat Industry

Argentina
Brazil
Mexico
Sudan
Kenya
Indonesia
India
Philippines
Venezuela
Viet Nam
Turkey

2. Fruits and Vegetable Processing

Brazil
Venezuela
Kenya
Malaysia
Philippines
Mexico
India
Thailand
Tanzania
Ivory Coast
Egypt
Turkey
Cuba
Republic of Korea
Tunisia

5. Dairy

Turkey
Ghana
Iran
Cameroon
Ivory Coast
Saudi Arabia
Jordan
Senegal
Malaysia
Nigeria
Philippines
Venezuela
Thailand
Kenya
India
Mexico
Peru
Argentina
Pakistan
Egypt
Brazil

3. Sugar Industry

India
Thailand
Nigeria
Kenya
Jamaica
Cuba
Brazil
Philippines
Argentina
Turkey
Egypt
Peru

VI. STUDY ON THE EVALUATION OF CONTRACTUAL ARRANGEMENTS BETWEEN
EQUITY-RELATED PARTNERS
(tentative proposal)

It is well documented in the numerous empirical studies that the majority of licensing agreements is being concluded among partners with equity relationship, i.e. between parents and their wholly, majority or minority controlled subsidiaries. This takes place in the first instance in the international operations of large TNCs.

Consequently substantial part of licensing contract, management and franchise agreements submitted for registration falls into that category. However in the day-to-day operations of the registries there is a tendency to evaluate such agreements in the same manner as the arms-length transactions. Such approach is in principle incorrect and may bring negative effects for the host country.

The recent experience shows that the registries are becoming increasingly interested in some aspects of the contracts between related partners e.g. evaluation of fees and royalties in such cases (Malaysia, Nigeria).

The proposed study would offer complex proposal, in the form of guidelines, as how to evaluate contractual arrangements involving equity participation. Except payments other aspects deserve special treatment e.g. restrictive practices. The registration of such contracts requires close policy co-ordination and co-operation among government bodies responsible for technology transfer and DFI which in case of some countries might be quite difficult.

This is a tentative proposal and if necessary it might be elaborated in detail.

