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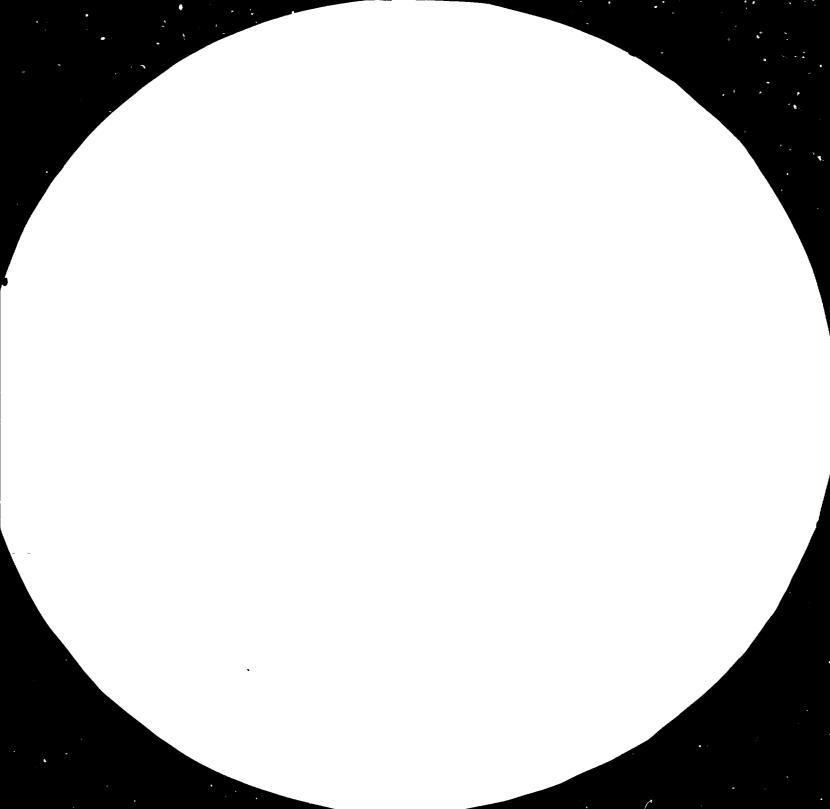
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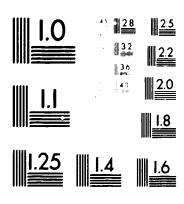
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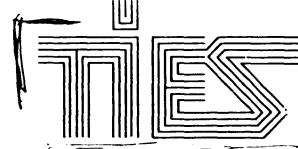
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NEWSLETTER.

TECHNOLOGICAL INFORMATION EXCHANGE SYSTEM

Issue Number 22.

14588

August 1983

Dear Reader.

I am pleased to report that the next TIES Meeting of Heads of Technology Transfer Registries will be held in Caracas, Venezuela, from 17 to 20 October 1983. The meeting will address itself to the consolidation, strengthening and broadening of the co-operative scheme among technology transfer registries. In addition several topics of common interest will The background papers will be discussed. include various UNIDO studies on the evaluation of technology transfer agreements in specific sectors. These sectors are the hotel, fastfood and software industries. A major publication jointly prepared by UNIDO and the International Centre for Public Enterprises on guarantee and warranty provisions in technology transfer agreements will be reviewed as well.

Since UNIDO will be organizing an international conference on industrial development (UNIDO IV) in 1984, the TIES meeting will address itself to some of the major issues to be discussed.

As can be observed from the above, the agenda is busy and stimulating and I hope to report to you in one of our next issues of the TIES Newsletter on the outcome.

G.S. Gouri
Director
Division for Industrial Studies

UNIDO activities

The Meeting of Selected Heads of Technology Transfer Registries was held at Vienua from 6 to 8 July 1983 and was organized by UNIDO at the request of the Seventh Meeting of Heads of Technology Transfer Registries, held at New Delhi, India, in December 1982. The purpose of the meeting was to discuss the future orientation of the TIES system and new areas of the system's activities which would be considered by the eighth regular meeting of the TIES system, to be held in October in Caracas, Venezuela. The objectives were to review the feasibility of a periodical review of trends in technology transfer and to prepare suggestions and recommendations for the further crosolidation, orientation and extension of the TIES system. A number of items and issues were discussed and the following conclusions and recommendations were adopted for further

discussion at the next meeting of the TIES system in Caracas. The following are the conclusions and recommendations, and we would gladly welcome comments and/or suggestions from our members concerning these.

- (a) It was agreed that a publication on trends in technology transfer, as discussed at New Delhi would constitute a unique contribution towards the provision of a consolidated informative report aimed particularly at policymakers, registries and academic and business munities involved in the process of technology transfer in the developing countries. The paramount importance of technology transfer to industrial development makes it even more desirable that such a publication be issued as soon as possible by UNIDO. An outline of a periodical review of technology transfer trends was discussed and adopted with the recommendation that UNIDO prepare a draft issue paper on the basis of this outline for discussion at the next TIES meeting in October.
- (b) It was decided that an increased membership of the TIES system by those countries having a central registry on technology transfer contracts would enhance its value, and in this connection it was recommended that regional focal points be established. UNIDO would then provide these regional focal points with a list of potential new member countries and a consolidated set of information on TIES in order to facilitate the promotion of the system in the region. If appropriate, regional or subregional organizations may assume the role of focal points.
- (c) The level of active participation of present TIES members in the regular exchange of information was found to be lacking and should be substantially improved. Therefore, greater efforts should be undertaken to urge the members to provide as much information as possible to the TIES system. In particular, the recently initiated system on service agreements has received an inadequate response from member countries and UNIDO is requested to evaluate the potential value of continuing this part of the information exchange.
- (d) It was agreed that an organized information system on technology transfer contracts at the national level is indispensable for the active participation in the regular exchange and contribution of information at the national level towards the preparation of an annual review and in this connection the meeting recommended that UNIDO assist the TIES members in strengthening their national information systems and ensure that those systems are compatible for the purposes of information exchange.

Compiled by the Technology Group of UNIDO

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- (e) The informal information exchanged on experiences related to the evaluation of specific contracts was considered to be an important element of the TIES system and the meeting recommended therefore that this ad hoc exchange of information be promoted either at the bilateral or regional levels, in addition to the already accepted modus operandifor all TIES members.
- (f) The training programmes for registry personnel was considered to be an essential component of all registry activities and in this connection it was recommended that training programmes be made available for registry personnel either on a regional or global basis. UNIDO was urged to locate suitable financing for these training programmes.
- (g) In view of the fact that the promotional aspect of technology transfer is considered to be an important element of the registries activities, it was recommended that those registries having experience in such promotional activities (which could take the form of seminars on technology transfer negotiation) should make available to other registries the fruits of their experience. UNIDO is requested to collect all available information that may be utilized for promotional activities and is urged to locate suitable financing for assisting in their execution.
- (h) Technology transfer among developing countries could play an important role in the TIES activities and the meeting therefore recommended that the registries should study the modalities under which such transfers take place in detail. In addition, the technologies available from other developing countries should be made available to respective registries by the potential licensees. Lists of such technologies have been prepared by India, the Republic of Korea, Spain, Portugal and Yugoslavia and registries were urged to follow their example and prepare similar lists concerning technologies available from their countries. 'UNIDO was requested to assist the TIES members in preparing guidelines for dealing with transactions for technologies coming from other developing countries as well as descriptions of technologies available.
- (i) It was felt that the registries could play an active role in the preparation of long and medium term technological import requirement forecasts, which may be exchanged among the members of the TIES system.
- (j) A more active contribution from the <u>TIES</u>

 Newsletter was called for and it was recommended that inter alia registries should prepare brief (500 words) case studies on the evaluation of technology transfer contracts which were subsequently to be published on a regular basis in the <u>TIES Newsletter</u>.
- (k) The importance of the various studies the TIES system has produced over the past years in the field of technology transfer was recognized and it was recommended that at least three joint studies per year should be initiated in the fields of common interest. UNIDO was requested to co-ordinate these studies on the basis of inputs reverved from the TIES members. UNIDO was also requested to secure sufficient

funding in order to ensure that these studies reach a high standard and that the results of these studies are disseminated among interested parties other than TIES.

* * *

INDUSTRIAL CO-OPERATION AMONG DEVELOPING COUNTRIES

In preparation for the Fourth General Conference of UNIDO, a high-level expert group meeting took place in Bangkok, Thailand from 18 to 22 July 1983 on the subject of Industrial Co-operation Among Developing Countries (ICDC). Considering the slow progress towards achieving the Lima target of increasing the share of developing countries to at least 25 per cent of world industrial production, co-operation among developing countries was bound to become the focal point of a new international strategy for development in order to strengthen their internal economies and enable them to deal with the industrialized countries on a more equitable and balanced basis. The meeting undertook a thorough examination of ways and means to exploit the full potential of industrial co-operation among developing countries and gave attention to harmonization of industrialization policies, joint investment programming, joint development of production units, physical and institutional infrastructure development, development of human resources, and of technological, energy and financial capacities, and the strengthening of negotiation capacity vis-à-vis the developed countries in the acquisition of technology and other resources for industrial production. In order to establish an effective South-South cooperation, changes would however be required in infrastructure links, in laws and regulations and administrative systems which for historical reasons were geared to the North and thus not apt to South-South co-operation.

There was considerable discussion on the kind of industrial development which should be promoted by developing countries, as well as on the need for alternative industrialization strategies which could be studied by UNIDO, and ICDC was felt to be more meaningful if the structure and pattern of industrialization took into account the human and material resource endowments of the developing countries, the basic needs of the population and the need to ensure an equitable distribution of income.

Triangular arrangements could be envisaged with an international agency such as UNIDO acting as "moderator" to ensure equitable terms of technology transfer. Multilateral arrangements could also be envisaged which could enable matching one country's resources to the technology, management and finance of Trade among developing countries in products appropriate to their needs and markets would provide an important means for accelerating industrialization in many developing countries. However, ICDC would only be viable if it provided credible alternatives to North-South industrial links either in terms of access and/or conditions of availability of factors of production. The effectiveness required the will and commitment of sovereign States and governmental action was necessary to provide a suitable framework. Naturally, account should be taken of the entrepreneurial capacities and capabilities at the national

level, with a pooling of scientific resources for undertaking education, training, research and development activities as well as an efficient and effective organization of collecting and disseminating information on ICDC supply and demand. In this latter aspect, UNIDO could and should perform the function of a clearing-house by providing information on technology, human resources, raw materials, etc. UNIDO could be a sort of matchmaker by identifying promising areas or projects where co-operation would be beneficial and effective.

Registry news

QUINTRY PROFILES - ARGENTINA

One of the items which came up for discussion at the recent meeting of Sclected Heads of Technology Transfer Registries, 6-8 July 1983, Vienna, was the wish to publicize country profiles which would cover different countries' legislation governing foreign investment, technology transfer, industrial property, payments, institutional arrangements, etc. In this connection, we are pleased to issue the first of these profiles on Argentina:

Legislation

- A) Foreign Investment
- 1) Laws
- a) Law No. 21,382 (1977), amended by Law No. 22,208 (1980).
 - b) Decree No. 103/81 (1/19/81).

2) Registration

The law divides foreign investment into three categories for the purpose of authorization, namely:

- Investments for which prior approval by the National Executive Power is indispensable (National Defence and Security, Public Utilities, Sanitary Services, Postal Services, Electric Light and Power, Gas, Transportation and Telecommunications, Radio Broadcasting and Television Stations, Newspapers, Magazines and Publishing Companies, Energy, Education and Publishing Companies, Energy, Education and Banks, Insurance and Finance Companies; Investments that exceed US\$ 20 million, and others).

- Investments that only require prior approval by the implementation Authority (Under Secretariat for Economy of the Ministry of Economy).

Investments that may be made without any prior approval whatsoever (Reinvestment of profits, and others).

Once the approval requirements have been met, foreign investments are to be registered with a special register kept for this purpose by the Central Bank of the Argentine Republic.

3) Scope

"Foreign investments can be made in the form of Intangible Assets, in accordance with the specific legislation" (Art. 3.5 law No. 21,382).

iaw No. 19,550 (Business Association Law) allows only investments in the form of Intangiole Assets if it is possible to execute it (only Industrial Property Rights).

B) Industrial Property

1) Laws

a) Patents Law No. 111 (1864).

h) Models and Industrial Designs Law No. 16,478 and Decree Law No. 6,673/63.

c) Trademarks Law No. 22,362 (1980). Decree No. 552/81 (3/24/81).

2) <u>Scope</u>

a) Fatents: Are not allowed in pharmaceutical sector (products).

b) Trademarks: Are allowed in all sectors.

C) <u>Technology Transfer</u>

a) Law No. 22,426 (1981). Decree No. 700/81 (3/25/81).

2) Regulation

Onerous legal acts whose objective is transfer, assignment of licensing of technology or trademarks by persons domiciled abroad in favour of persons domiciled in Argentina, always provided that such acts produce effects in the Argentine Republic, are included in the regime of the law. The legal acts formalized between a foreign capital local company and the company that controls it directly or indirectly, shall be subject to approval by the Enforcing Authority. Remainder acts shall be recorded for information.

3) Scope

Technology is understood to mean invention patents, industrial models and designs and all technical knowledge needed to manufacture a product or to provide a service.

4) Restrictive Practices

The law does not fix clauses which are not allowed to appear in contracts. Only allowed are the clauses that are in line with normal market practices among independent enterprises.

5) Remuneration

Payment for the use of trademarks will not be approved (related business enterprises only).

6) Taxation

a) Federal Income Tax

The effective withholding tax rate on payments is 18 per cent (45 to 40 per cent). These payments are tax-deductible to licensee, always provided that the licensee withholds and pays the appropriate tax within the due date of the respective tax returns (the 20th day of the fifth month after the end of the riscal year).

b) Federal Stamp Tax
The rate is 1 per cent.

Institutional Arrangements

A) Competent

Same text.

B) Office Staffing

Management - 3

Evaluation - Engineers: 2 Lawyers: 3

Economist: 1

Study/Evaluation

- Technical, economic and legal evaluation on contracts between related business enterprises.

- Legal evaluation about object of contracts included in the ragime of the law, between

unrelated business enterprises.

- Statistical evaluation about all contracts registered and approved in the Technology Transfer Office of the Instituto Nacional de Tecnologia Industrial (INTI).

C) Competence

INTI is the competent authority for all acts included in the regime of law 22,426 (Technology Transfer).

D) Co-ordination

Figure 1 shows INTI's relation with the National Executive Power.

Figure 1:

NATIONAL EXECUTIVE POWER

MINISTRY OF ECONOMY

SECRETARIAT OF INDUSTRY AND MINING

INTI

TECHNOLOGY TRANSFER OFFICE

E) Evaluation

1) Payments

- Related business enterprises:

INTI allows payments when they do not exceed 5 per cent net value of product of service sales; or when they do not exceed foreign enterprises' R&D expenses as a percentage of their sales; or when they do not exceed the rate between unrelated business enterprises of similar products or services.

Unrelated business enterprises:
 Does not require evaluation.

2) Forms of payment

INTI does not have preferred forms of payment.

3) Restrictive Practices

INTI does not have a list of restrictive practices that are not allowed.

THE NATIONAL PAPER ON EVALUATION AND ANALYSIS OF TECHNOLOGY TRANSFER TRENDS AND ITS FULLRE POLICY IN THE REPUBLIC OF MOREA

The fundamental objective of technology development lies in technological self-reliance

making it mandatory for developing nations to concurrently implement technology import and their own research and development. Since developing countries cannot permanently break away from their dependence on foreign technologies they will need to accumulate technical capabilities and enhance their technical levels which will be capable of creating technologies resulting from the absorption and adaptation of imported technologies.

The Republic of Korea's model of the past technological development process and its future course is briefly outlined here, using the machinery and electronics industries as an example.

Between 1950 and 1960, the two industries chiefly imported components for assembling and in the 1970s they began to import some mechanical processing and design technologies for modification and application in order to increase the product localization rate. In the 1980s, when the Fifth Five-year Economic Development Plan is to be carried out, the industries are seeking the so-called advanced country type technology imports, acquiring industrial key technology on a selective basis under the strategy of technological innovation. In the other hand they are making efforts to build the capabilities for developing new technologies and adapting and modifying imported technologies for achieving technological self-reliance in the end

As an institutional support policy of the Government for the promotion of technology imports the idea of the "gradual liberalization policy of technology import" was conceived as a means for allowing private business firms to quickly import required advanced technologies at their own discretion. With this particular policy, the Government took institutional measures to switch the leading role in the technology development programme from the Government to private industries, and to promote direct importation of industrial key technologies from their sources in 1978. Under these measures, the first step of technology import liberalization was taken, and this was followed by the second liberalization step in 1979, and the third in 1980. Under these steps, imports of technology with a contract period of less than 10 years and running royalties at less than 10 per cent of net sales are automatically approved upon request to the pertinent Government agency, thus greatly simplifying the procedures for approval of technology import applications and shortening the Government's lead time for approval. When the capital liberalization policy, now being considered by the Government, is set in motion, it is expected that imports of foreign technology will be completely liberalized and the present approval system replaced by a reporting system.

Between 1952 and 1982 there were a total of 2,281 technology transfer projects with a royalty payment of US\$ 681 million during the whole period. The contribution of foreign investment to the promotion of technology transfer activity in the country has been significant. Generally speaking, developing nations attract foreign investment to meet their financial requirements, increase employment and production, introduce advanced tech-

nology and develop overseas markets. The major motive in the case of the Republic of Korea, however, was and remains the transfer of foreign investors' technology, business experience and marketing capability. A survey of national business motives for joint ventures with foreign companies revealed that 35 per cent of local business establishments surveyed had been motivated by technology transfer. This means that many domestic firms want to have access to advanced technology through joint ventures with foreign partners.

The transfer of technology is possible with technology licensing agreements, but many TNCs with industrial key technologies in strategic industries are reluctant to provide the required technologies without their capital participation. This is why domestic firms prefer joint ventures with foreign investors, especially in technology-intensive industries. Foreign firms investing in national strategic industries, such as chemicals, machinery and electronics, represented over 70 per cent, showing that foreign investment in the economy is closely related to the country's industrial development policy.

In recent years, the pattern of foreign investment in the mepublic of Korea has undergone some changes as the country's economic committions have changed. For instance, the increased wage level has driven foreign investors to move from the labour-intensive sector before 1976 to the technology-intensive and capital-intensive industries. The contribution of foreign investment to the development of national industrial technology, especially to the development of strategic industries, in the course of technology transfer is particularly clear in the machinery and electronics sectors. The electronics industry is highly technology-intensive and the Republic of Korea is far below the level of advanced countries in this particular industry, but today, its electronics industry is one which has strong international competitiveness. In 1980, the industry achieved exports totalling US\$ 2,003 million, 11 per cent of the country's total export achievement, including US\$ 1,049 million earned by firms with foreign equity. In other words, companies with foreign equity contributed more than half (52 per cent) of the industry's exports.

In the case of the country's machinery industry, there had been little technological know-how until the early 1960s, but over the past 20 years foreign investment, along with technology transfer from advanced countries, has provided the motivating force for the industry to grow to the present level. Between early 1960 and 1980, the machinery industry drew 121 foreign investment projects and 512 technology transfer projects. Included in these are 109 investment projects and 451 technology transfer projects from advanced countries, such as the United States, Japan, Federal Republic of Germany and France.

Thus the Government of the Republic of Korea is closely studying concrete measures for improving the investment environment and providing incentives to promote foreign investments, especially those of TNCs in possession of highly technology-intensive industrial

technologies, in addition to eliminating institutional impediments to the promotion of foreign investments.

With respect to the trend of royalty payments, contract periods and other restrictive business practices, the results were analysed and evaluated by the Technology Transfer Center based on a total of 200 import contracts for technologies which domestic business firms have introduced since 1979. The recent report of the survey shows that some gradual changes in the country's technology transfer trend have occurred in terms of the above contractual arrangements.

The annual analysis on the trend of royalty payments shows a slow increase from 1962 through 1976 followed by the start of a sharp expansion in 1977, with the royalty payment in the same year amounting to US\$ 58 million, US\$ 85 million in 1978, US\$ 94 million in 1979, US\$ 107 million in 1980 and almost the same level in 1981 respectively. Despite such serious factors as the global recession, coupled with social unrest and economic recession at home caused by the rising oil prices on two occasions, a continued increasing trend, though gradual, has been noted. It is evaluated as attributable to the results of the liberal policy which was gradually introduced. An analysis has shown that the overall royalty payment has increased as a result of an increase in royalty scale for each technology imported since the policy, but not because of the sharp increase in the number of technologies actually imported. Illustratively, from the report's data the total annual royalty payment for 296 cases of technologies in 1978 recorded US\$ 85 million, while the amount totalled US\$ 107 million in 1981 for 247 cases of imported technologies, representing a decrease of 49 cases from the previous year and giving an increase of US\$ 22 million in payments over the 1978 figure. Such an increase in the scale of royalty payment per imported technology has several reasons, one of the most conspicuous being that a high royalty has to be paid because the level of technologies imported is gradually becoming more sophisticated.

One of the most important contract conditions is its duration. The comparative analysis of trends of contract duration, as shown in the survey report, indicates that the duration gradually becomes longer following the liberal policy, with contracts of 5 years and over occupying 67 per cent of the total. When analysing reasons for the longer period, it may be suggested that firstly, the import of highly sophisticated technology requires a longer period for its digestion and absorption, and secondly, the request from the licensor as a joint venture partner has naturally to be complied with because the technology import is contingent to the joint venture.

In the meantime, the analysis related to the export restriction clause for the licensed product shows that 48 cases, or 24 per cent out of a total of 200 cases of technology import contracts surveyed, are totally banned from any export, restricted from the export territory or prior approval is required from the licensor when the export is desired.

When reviewing prescribed clauses obligat-

ing the licensee to procure raw materials, intermediate products and other requipment from the licensor, (called the tie-in clause), 33 cases corresponding to 16.5 per cent of the total cases include such clauses.

In the case of prohibiting or restricting the manufacture of products which are identical or similar to licensed products during the term of technology import, 23 cases corresponding to 11.5 per cent of the total cases are noted.

Regarding the clause prohibiting any continued use of the technology on expiration of the term of contract, 17 cases corresponding to no more than 8.5 per cent of the total cases belong to the category of this clause.

The clause obligating the technology importer to obtain prior approval from the technology supplier when the former wishes to conclude a separate technology import contract with a third party, represents as many as 23 cases corresponding to 4.5 per cent of total contracts.

In the case of the grant-back clause obligating the technology recipient to authorize the technology supplier to unilaterally decide on the right of use when the recipient so desires regarding the products of their own invention or finding, totals 23 cases corresponding to 11.5 per cent of the total contracts.

The last is the clause relating to the arbitration and governing law. The problem of arbitration and governing law is one of the most difficult clauses experienced by domestic business firms during the course of negotiations for technology import. Before the implementation of the policy, the Government encouraged use of the good offices of the International Commercial Arbitration Association when arbitrating and settling matters in accordance with the laws of a third country, as far as the applicable law was concerned. However, in most technology import contracts with TNCs, such governmental administrative guidance was not necessarily successful because most of the TUNCs insisted that the issue of litigation be settled under the legal system of their own country. In the report, the clauses claim that the technology supplier should settle the issue of aroitration and governing law in their own country and their own laws occupy respectively 7 per cent and 14.5 per

In the past four years of the Republic of Korea's gradual technology import liberalization, the simplified approval procedures and the reduced approval time enabled local industries to import advanced industrial technologies in good time, and this institutional support is of great significance to the promotion of technology import. However, the said policy has given rise to several problems in terms of high royalty payment and restrictive business practices mentioned before, as was expected to be before the policy was implemented.

In order to effectively cope with such problems, as well as in preparation for the capital liberalization policy now being con-

sidered by the Government, the Government has enforced the Monopoly Regulation and Pair Trade Law since 1981. In a nutshell, the Government's basic direction of technology import policy will be placed on the posicive support for local industry with pricrity being given to private businesses under the concept of prior approval and subsequent guidance, to be followed by the administrative guidance designed to effectively help utilization of the transferred technology.

PORTUGAL - FOREIGN INVESTMENT INSTITUTE'S ACTIVITY

Direct foreign investment operations made from January to March 1983 reached Esc. 3,169 million or 2.7 times the value authorized over the same period of the preceding year. Of this amount, the share that concerned capital increases by means of capitalization of the asset revaluation reserves was small as it accounted for 2 per cent in the first quarter of this year, as against 4 per cent in the first quarter of 1982.

As for currency imports in the period under analysis, in the first three months of 1983 they dropped to 72 per cent from 87 per cent in 1982. This decrease was, however, due to the greater importance, up to this moment, of the capital increase projects in which capital import is lower than 50 per cent of the value of the operation.

Nevertheless, it is to be underlined that 39 per cent of the foreign direct investment authorized so far this year was channelled into the creation of new companies, while in the first quarter of 1982 the share ascribable to this kind of operation was 13 per cent.

A sectoral breakdown shows that banks and other financial institutions (37 per cent) restaurants and hotels (13 per cent) and the manufacturing of metal products (13 per cent) are the branches that received most of the funds coming from foreign direct investments. The most important sectors in the first half of 1982 were wholesale trade (40 per cent), manufacturing of metal products (17 per cent) and real estate operations (13 per cent). standing among the countries of origin of the funds were, in the three months under analysis, Hong Kong (22 per cent), France (21 per cent) and the United Kingdom (12 per cent). In the same period of the preceding year, the first positions went to France (23 per cent), Federal Republic of Germany (12 per cent) and the United States (9 per cent).

Recent legislation

INDIA ISSUES NATIONAL TECHNOLOGY TRANSPER POLICY

Since India acquires a major part of its technology from abroad, the nation's policy makers are becoming increasingly interested in the various aspects of technology transfer, and in particular its regulation and control. Being aware of the imperfect marinet in technology, and with a view to achieving a multi-

tude of other objectives, the Indian Coverment has announced a Technology Transfer Policy. The national aims have been indicated as follows:

The basic objectives of the Technology Policy will be the development of indigenous technology and efficient absorption and adaptation of imported technology appropriate to national priorities and resources. Its aims are to:

- Attain technological competence and selfreliance to reduce vulnerability, particularly in strategic and critical areas, making the maximum use of indigenous resources;

- Provide the maximum gainful and satisfying employment to all strata of society, with emphasis on the employment of women and weaker sections of society;

- Use of traditional skills and capabilities, making them commercially competitive;

- Ensure the correct mix between mass production technologies and production by the masses:
- Ensure maximum development with minimum capital outlay;
- Identify obsolescence of technology in use and arrange for modernization of both equipment and technology;
- Develop technologies which are internationally competitive, particularly those with export potential;
- Improve production speedily through greater efficiency and fuller utilization of existing capabilities, and enhance the quality and reliability of performance and output;
- Reduce demands on energy, particularly energy from non-renewable sources;
- Ensure harmony with the environment, preserve the ecological balance and improve the quality of the habitat; and
- Recycle waste material and make full utilization of by-products.

NEW SCIENCE AND TECHNOLOGY POLICIES IN MEXICO

The Mexican Government has defined its science and technology policy for the coming five years (1983-1988) in the recently published Mational Development Plan for 1983-1988. Por the interest of our readers, we have summarized two important science and technology developments. Of particular in erest is the intended reassesment of the L-esent technology transfer policy.

1. Strangthening of the infrastructure

The growth of the national system of science and technology will be stimulated through:

- The allocation of resources strictly in accordance with the science and technology development plan applying criteria related to the quality and efficiency of the research centres;

- The development of human resources through scholarship programmes in national institutes having SET capacities and which have proven research programmes in their respective fields;

- Promotion of a better utilization of the present science and technology infrastructure through the development of a greater cooperation to complement capabilities and to share financial resources and facilitate the repair and maintenance of installed equipment;

 - National integration of information systems on science and technology according to subject; - Development of co-operation between the productive sector and the research and development centres:

- Strengthening of the programmes of shared risk or other financial schemes which involve the participation of the private sector in research and development projects;

- Stimulation of the demand for technological advisory services by the productive system through the establishment of information centres and advisory and extension services centres by sector spread throughout the country in association with development services like standardization, metrology and quality control. Technology transfer and international cooperation
- An evaluation committee will be incorporated in the existing legal framework governing technology transfer in order to review a structure vis-a-vis the current situation in the country.
- Studies will be carried out on how the public sector's buying power can be utilized in the rationalization of acquisition of foreign technology and for the promotion of national research and development.
- National engineering and consultancy firms will have their capacity to identify, select, assimilate and adapt scientific and technological knowledge from abroad strengthened.

In order to ensure that the international technical co-operation will be consistent with the development objectives of the country, particularly in the field of science and technology, a co-ordination committee involving various ministeries will be established.

FORTUGAL - THE NEW INVESTMENT INCENTIVES SYSTEM

1. Introduction

Decree-Law 132/83, published the 18th March, creates an Investment Incentives System which constitutes a new IIIS (Integrated Investment Incentives System), replacing the one in force since Decree-Law 194/80 was published.

Besides setting off both the sectoral and regional localization components, in what concerns project evaluation, two new regimes have been created - the regional/ sectoral priority and the incentives to the transfer of location - which by their own far-reaching aims greatly improve the set of opportunities which are offered to investors by Portugal.

The new System can be defined, after all these improvements, as a set of fiscal and financial benefits which are granted to investments in mining, quarrying and manufacturing industries.

Besides all installation or expansion of productive units projects, those concerning the replacement of equipment may now be considered too under the scope of the System.

2. General requisites

The tangible fixed assets eligible for incentives may not comprise, in general, used

equipment or light vehicles, and land in the case of the manufacturing industries.

Each firm may be only entitled to financial incentives provided its own funds finance the project by, at least, 30 per cent of the overall value thereof or its own funds exceed 30 per cent of the fixed assets.

The project promoter shall prove the project is economically and financially feasible.

Firms shall own an adequate accounting system and prove they have no debts towards both the State and/or the Social Security.

3. Regimes

The System comprises 8 distinct regimes, which are not cumulatively applicable, except for those mentioned in F) and H) below.

All the amounts indicated below may be yearly adjusted by a rate equal to 75 per cent of the offical inflation rate established every year by the Institute of National Economy.

A - General regime

This regime is to apply to all projects higher than 20 million escudos.

Incentives are granted should the project's classification by points (P) be equal to or higher than 5. That score is obtained through the weighed sum of three factors computed according to the following formula:

 $P = 0.35 P_1 + 0.35 P_2 + 0.30 P_3$ where

P₁ - economic productivity

P2 - sectoral productivity

Pa - regional productivity

For projects higher than 250 million escudos a macroeconomic appraisal of the project is also required.

The economic productivity (P₁) relates, by means of formulas, the value of the directly productive investment with production, exports being rewarded and imports penalized.

 P_1 will be reduced should raw and subsidiary materials account for over 70 per cent of the sales generated by the project.

The sectoral priority (P2) varies according to the item of the Economic Activity Classification of the project and ranges from 0 to 10.

The regional priority (P₃), which ranges from 3 to 10, benefits the regions located far from the big centres to the detriment of the already existing industrial poles of Lisbon, Oporto and Setubal.

The mining and quarrying industries and, in general, those that use national resources or waste products for energy purposes score the maximum classification by points regardless of their geographical location.

The financial incentives consist of interest rate rebates for up to five years, at the utmost. The formula, by which that subsidization

is computed, relates the classification by points (P) with the basic discount rate of Banco de Portugal and also with the degree of proportion of the promoter's own funds in the project's financing.

B - Regional/sectoral priority regime

This regime, which is to apply to projects lower than 100 million escudos, does not take into account the economic productivity referred to above as P_1 but otherwise only considers P_2 and P_3 . The scores of both these two factors classify the projects entitled to different tax and financial incentives.

Thus the maximum values (P_2 = P_3 =10) provide the tax benefits set off in the table in A above and a 7 per cent interest subsidization. Under this regime no incentives are available should P_2 = 0.

C - Simplified regime (for small-sized projects)

Projects lower than 20 million escudos may qualify for this regime provided they create new jobs in sectors where $P_2 \not \equiv 0$ and should firms employ less than 50 workers and have made no collective lay-offs throughout the preceding year.

The tax incentive consists in a deduction from the industrial tax base of 50 per cent of the value of the new equipment, which may reach up to 70 per cent in case $P3 \ge 7$.

The financial incentive consists in a non-repayable subsidy granted for each job created (and maintained), equal to 14 times greater than the unemployment allowance per month in case $P_3=3$. Should P_3 be 7 or 10 that subsidy is increased by 25 per cent and 50 per cent respectively.

Together with those incentives, subventions can also be granted for purposes of the training of staff, provided that they do not exceed by 50 per cent the financial incentives referred to above.

D Extraordinary regime of capital donations

These subsidies $\frac{\lambda}{2}$ fonds perdu, which are to be used in the acquisition of new tangible fixed assets, are only granted in case P \geqslant 7 and P $_2\geqslant$ 5.

They directly depend on both the final classification by points (P) and the amount of own funds invested in the project.

E - Contractual regime (for project of high economic and social impact)

This regime is to apply to projects higher than 1 billion escudos and the incentives are computed on a case-by-case basis.

 ${\mathbb F}$ - Regime of incentives to the transfer of location

This regime is to apply to firms that, without reducing the number of jobs, wish to transfer the productive units from regions where $P_3 = 3$ to regions where $P_3 = 10$.

From the fiscal point of view they benefit from both real estate transfer tax exemption (on the acquisition of buildings and land) and from capital gains tax (on gains resulting from transfers, when reinvested).

The financial incentives available are as follows:

- A subsidy à fonds perdu amounting to 50 per cent of the total costs of the transfer of the productive equipment;

- A subsidy a fonds perdu for each dismissed worker entitled to redundancy payment, the maximum value of which being 12 months the unemployment allowance:

- Sundry subsidies à fonds perdu to be directly granted to workers with respect to dislodgement and settlement expenses.

G - Tax incentive regime for merging and cooperation among firms

These incentives are granted to firms under reorganization through either mergers (merging of firms or the merging of one firm's total or partial assets into another) or co-operation agreements for the purposes of marketing, promotion, know-how transfer, staff training, etc.

The tax incentives to be granted are as follows:

- Exemption from real estate transfer tax (on the transfers of buildings) and from capital gains tax resulting from the operation concerned or from capital increases;
- Deduction from the taxable income of the losses in the previous three years up to the fifth financial year;
- Maintenance of the deductions already granted to the merged firms as a result of the investment carried out in tangible fixed assets.
- ${\mathbb H}$ Subsidy regime for research and technological development

This regime is to apply to the firms eligible for any of the regimes mentioned above and that conclude, through the competent entities, a research and/or technological development contract approved by the Ministry of Industry. It consists in a subsidy a fonds perdu equal to 50 per cent of the expenses resulting from the contract for a maximum period of three years.

4. Submission of the applications for incentives

In general, the applications for incentives are submitted at the Foreign Investment Institute (FII) by means of an application form addressed to the Minister of Finance and Planning:

- Should they apply for the contractual regime foreseen in the Foreign Investment code;

- In the case of new firms with more than 25 per cent of foreign capital;

- In the case of firms, already established, with more than 50 per cent of foreign capital.

In the remaining cases applications may be directly made at banks or at the Institute for the Support to Small and Medium Industries (IAPMEI) should the firms be duly credited by that Institute.

Should the incentives be exclusively of a tax nature and not fall under the jurisdiction of the FII or the IAPMEI, applications are to be made directly at Direcção-Geral das Contribuições e Impostos (the General Taxation Board).

Technology acquisition and TAS

INDUSTRIAL CO-OPERATION

Industrial co-operation with the Association of South-East Asian Nations (ASEAN) is pursued through three different schemes, namely the ASEAN Industrial Projects to serve regional and international markets, the ASEAN Industrial Complementation Scheme involving specialization in production and exchange of products and components within specific industry sectors/subsectors, and the ASEAN Industrial Joint Ventures in the private sector. Priority shall be given to projects which utilize the available materials in the member states, contribute to the increase of food production, increase foreign exchange earnings or save foreign exchange and create employment.

1. ASEAN Industrial Projects (AIP)

The large-scale government-sponsored AIP was conceptualized from the advantage of economy of scale within a market mechanism. At least one ASEAN industrial project will be set up in each member country. The first five projects have been identified and agreed upon as follows: ammonia-urea project (Indonesia); ammonia-urea project (Malaysia); copper products (the Philippines); diesel engines project (Singapore), this project was cancelled; and rock salt-soda ash project (Thailand).

In terms of the total capital investment of the AIP, it was agreed that 70 per cent will be from concessional long-term borrowings from the Japanese Government, the remaining 30 per cent being shared between five member countries. The host country shall have 60 per cent of the equity, with the remaining 40 per cent to be shared equally by the other four countries.

The establishment procedure of each AIP normally proceeds along the following lines:

- a) Identification of large-scale industries which require a regional market to be viable in the early stage.
- b) Removal, complete or partial, of intraregional trade barriers facing these industrial products.
- c) Declaration of government policy support (effective subsidy) for investment in these areas.

- d) Response forthcoming from the private sector by way of investment proposals.
- e) Establishment of institutional arrangements to improve such conditions as may be required to achieve other normal goals, such as equitable distribution of benefits and costs resulting from the regional industries.

2. ASEAN Industrial Complementation Scheme (AIC)

The idea of AIC is to co-ordinate the industrial production of various complementary goods within the private sector and to give these goods preferential treatment within the ASEAN region. The Basic Agreement on AIC signed in 1981 provides the guidelines and institutional framewor: within which the ASEAN government machinery and the private sector, through the ASEAN Chambers of Commerce and Industry (ASEAN-CCI), will collaborate in pursuing industrial complementation. The ASEAN-CCI has a significant role to play in unis scheme and has been one of the most active organizations among the ASEAN institutions. A number of regional clubs have been set up, and hey attempt to co-ordinate production among members. These arrangements indicate the crucial role of the private sector in regional co-operation. At present, a complementation programme or package in the automotive industry has been agreed upon. The allocation of the first package consists mainly of the following existing products.

Indonesia: diesel engines (80-135 mi/h); axle, wheel rim for motorcycles.

Malaysia: spokes, drive chains and timing chains for motor cycles, safety belt, crown wheels and pinions.

Philippines: body panels for passenger cars transmission.

Singapore: universal joints, oil seals and V-belt.

Thailand: body panels for commercial vehicles of one ton and above, brake drums for trucks, heavy duty shock absorbers, stabilizers bumpers and trunnion brackets.

The AIC Guidelines are set out as follows:

- a) An AIC package must be participated in by at least four of the five member countries, unless otherwise decided by the ASEAN governmental bodies.
- b) Identification of products for inclusion in an AIC package shall be done by ASEAN-CCI; approval of the package and associated trade preference shall be undertaken by the ASEAN governmental bodies.
- c) "Exclusivity privileges" shall be enjoyed by AIC products. The exclusivity period for ongoing projects (existing products) is limited to two years from the date of accreditation, and four years for new projects or new products.
- d) "Trade Preferential Arrangement" shall be applied to AIC products, i.e. the reduction of tariffs by 50 per cent for products manufactured under the AIC scheme.

3. ASEAN Industrial Joint Ventures (AIJV)

While the AID and AIC projects are primarily for large-scale projects, the ALJV is an individual and smaller project which can be approved individually by the ASEAN Economic Ministers who will have to maintain an equitable distribution of benefits accruing from the AIJV in the long run. The proposal for AIJV was made by ASEAN-CCI for a new concept to speed up the rate of implementing industrial co-operation. In fact it is a new option for such co-operation among ASEAN countries. The AIJV is different from the AIC in that the AIJV does not require total ASEAN ownership. Non-ASEAN nationals could take part in an AIJV project. It can be observed that the AIC is concerned with reciprocity as implied in equitable package provisions, whereas the ALJV has emphasized equity sharing and market. From this comparison, the latter has some attractive features and has gained some favourable reception from the private sector.

The main principles of ALJV are as follows:

- a) Participation in an AIJV will comprise at least two ASEAN countries but is not limited to only ASEAN countries, provided that membership by the ASEAN nationals is at least 51 per cent. ASEAN investors in AIJV projects are to be accorded national status by the host country for the purpose of qualifying the projects for national treatment;
- b) An approved AIJV product is to be granted ASEAN Preferential Trading Arrangements (PTA) to the extent of 50 per cent preferential treatment; further tariff cuts can be negotiated among the participating ASEAN countries;
- c) The AIJV product will have "exclusivity privileges" (similar to those under the AIC programmes);
- d) Other ASEAN countries, which choose not to join the AIJV, are free to do so but their similar products cannot enjoy such an exclusive and special tariff preference;
- e) Without prejudice to the right of identification by ASEAN Governments, the ASEAN-CCI shall identify AIJV products for possible allocation to member countries. The principle is to have equitable distribution of benefits for the ASEAN countries. Whenever feasible, AIJV products are to be equitably allocated to the participating ASEAN countries;
- f) An AIJV product shall be of internationally accepted quality, the price should be relatively competitive and there should be an assurance of continuity of supply.

* * * TECHNOLOGY PAYMENT EVALUATION IN INDIA

In the <u>TIES Newsletter</u> No. 17 and No. 20 we reported on a methodology for establishing fair prices for technologies, based on the concept of profit—sharing. The methodology followed a simplified discounted cash—flow analysis and compared technology fees paid to the licensor and the expected profits the recipient may make through the use of the technology over a ratio. This ration is called "licensor's share of

enterprise profit* (LSEP). It is argued that a fair price for technology can be translated into a fair profit share.

The following article will discuss further the use of the methodology for the purpose of evaluating technology transfer agreements, based on an analysis carried out by the Indian Secretariat of Industrial Approvals. The full text of the study will be published shortly by UNIDO and may be ordered from the Technology Programme.

At the beginning of this year, the Indian Government issued a technology policy statement which has as its main objective the development of national technologies with an efficient absorption of imported technologies appropriate to national priorities and resources. This policy statement (the main elements of which appear on page 17 of this issue of the TIES Newsletter) is one of the main guidelines for the evaluation of technology transfer agreements by the Central Technology Transfer Registry System. The task of the Central Technology Transfer Registry System is to evaluate and approve license agreements for all industrial sectors with the exception of the simpler types of contract such as the purchase of capital goods or simple technical training agreements, dealt with by the Central Bank of India or the respective ministeries, and in cases where foreign collaboration is associated with unusually large state investments (e.g. fertilizers, oil exploration, etc.) which are handled by the Prime Minister's office. In 1982, the Central Registry approved 477 purely technical collaboration agreements. Additionally, 113 technical collaboration agreements which were associated with some form of financial collaboration were approved. evaluation criteria applied has been summarized in the form of guidelines. With respect to technology payments these guidelines stipulate that royalties should be calculated on the net ex-factory sales price of a given product, exclusive of excise duties and minus the cost of the imported components. Also, minimum royalties should not be permitted.

The administrative mechanism of the system's method is as follows: after acceptance by the Secretariat for Industrial Approval, a given contract will be evaluated by a technical evaluation committee and after consultations with the respective administrative ministry, an evaluation report will be submitted to the Foreign Investment Board for ultimate approval. Although the technical evaluation committee has no obligation to review the financial aspects of the technology transfer proposal, it can and does give its views on the payments. Although no specific criteria are being used for the assessment of payments, some rough indications are that, apart from exceptions, royalties must not exceed 5 per cent. When down payments are added, total payments should not exceed 8 per cent of the net ex-factory price of the product, minus excise duties and the c.i.f. value of imported components. It is therefore difficult to quantify the methods which the Indian authorities use for their method of technology payment evaluation. The most common method applied is the comparison of what was previously accepted in similar cases (although for this method, a well-functioning institutional memory is a prerequisite. Since no specific method was applied, the Secretariat for Industrial Approval was very interested in investigating the LSEP method as a goal for the evaluation of technology payments, and with the assistance of UNIDO initiated an exercise which involved a detailed analysis of approved technology transfer contracts.

Results

For the purpose of the study, a random sample of some 60 contracts was selected. Since the Central Registry down not monitor technology transfer agreements and only records the approved payments, it was not possible to obtain all the information in order to apply the method and additional information was obtained directly from the enterprises concerned. Factual data was obtained on actual profits and technology fees, but it was not possible to obtain this information on all enterprises, and the contracts were therefore classified into groups according to the type of information obtained, namely:

- Where the information was obtained on actual payments for technology and profit (12 contracts);
- Where information was obtained on actual payments for technology while profitability was estimated using statistics from the Reserve Bank of India (20 contracts);
- 3. Where no additional information was obtained from the recipient enterprise and the information on technology payments and profitability were projected (25 agreements).

An interesting comparison with respect to the usefulness of the LSEP for monitoring the implementation of agreements (groups I and II) and evaluation of agreements (group III) was therefore possible. The results of the exercise are represented in the following tables.

Assessment of results

In view of the difficulties encountered in obtaining the necessary information from the enterprises concerned for the application of the method, the most striking fact observed was the limitations of a method for monitoring purposes which is based purely on factual information. The use of average profitability can overcome this limitation, but is probably a bit unreliable as far as monitoring a contract is concerned.

The results indicated that the average LSEP ratio is 19.85, 30.08 and 34.00 for Tables I, II and III respectively, with fluctuations between 0.2 and 60 per cent. It can be seen that for the same product (items No. 9, 17, 18, 19 and 20 of Table II) the LSEP varies considerably on agreements which were concluded on almost the same terms and conditions. All the contractual arrangements analysed show a profit, not due to the managerial capacity of the Indian entrepreneur, but largely to the fact that those agreements which showed a loss were excluded from the sample as no LSEP could be calculated. Furthermore, a statistical analysis determines that there is no relationship between royalty and LSEP.

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TABLE I 1/

No.	ISIC	Rate of Royalty	Term	Equity of Foreign Collaborator	Down Payment	nsv	ROS	NPBT	LSEP
1	2	3	4	5	6	7	8	9	10
ı	3710	2	8	3.232	NII.	254908	5677	22582	20%
2	3851	5	6	NIL	792	39154	1430	5886	20%
3	3819	3	10	25%	NIL.	67861	1141	3461	24,817
4	3829	NII.	5	252	400 per annum	83282	1667	7475	187
5	3829	3.12 / 52 $\frac{2}{}$	5	NIL	949	58258	2842	2967	49
6	3851	5	5	NIL	1046	20696	1477	949	60
7	3831	5	5	NIL	745	13427	1326	1458	48
8	3811	NIL	5	24%	6183	102531	6183	23365	20
9	3710	5 <u>3</u> /	10	31.4%	1000	46.7400	1000	48635	02
10	3829	- 4/	7	402	NIL	2026267	19978	86804	23
11	5000	5	4	40%	NII.	99252	11.85	12447	8

^{1/} Calculations based on historical value, discount factor 10%, all calculations in thousands of Indian Rupees.

2/ Royalty rate 5 for exports

3/ Yearly

4/ US\$ 50 per machine to 1981. US\$ 15 per machine from 1981.

NSV - net sales value; ROS - royalty on sales; NPBT - net profit before tax; LSEP - licensor's share of enterprise profit.

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TABLE II 1/

No.	ISIC	Royalty Rate	Term	Equity of collaborator	Down payment	Profit percentage assumed and used	Net sales value	ROS (includ- ing down payment)	NPBT	LSEP (as %)
	2	3	4	5	6	7	8	9	10	11
	3829			NIL	100	9.74	13968	338	1361	20
	-	,	(NIL	150	9.74	3927	338	382	47
	3811 3811	,	Á	NIL.	700	9.74	16108	1179	1569	43
•	3824	,	10	NIL	3000	9	181644	7016	16348	30
		3	• • •	NIL	150	7	1111	168	100	62
	3839	,	ξ.	NIL	175	9	5611	540	505	51
	6100	,	ί.	NIL	NIL	8	31855	17 9 1	2867	38
	3720	,	,	NIL	1147	9	95266	2576	B 574	23
	3113	,		NIL	590	9	9233	858	831	50
,	3113	3	,	NIL	1070	5	242960	5876	12148	33
0	3559	2.5	j 1ŭ	NIL	300	8	2475	400	1.98	66
13	3823	6	10	NIL	50	8	1862	126	149	46
12	3829	7.5	7	20%	NIL	8	69237	2770	5539	33
13	3699	9	10	NIL	NIL	8	9667	200	773	20
14	3823	2	10		250	11	2385	257	262	49
15	3824	3	10	NIL	228	10	21334	535	2133	20
16	3824	7	10	NIL	157	7	17430	1220	816	40
17	3720	5	4	NIL	NIL	7	168461	5280	11792	30
18	3780	3	5	NIL		, ,	33134	730	2319	24
19	3720	3	5	NIL	204	7	57893	847	4052	17
20	3720	3	5	NIL	NIL	,	37073	047	7776	

^{1/} Calculations based on historical value except factor 10%, all amounts in thousands of Indian

NPBT, which has been calculated assuming average profitability, discount

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TABLE III 3/

No.	ISIC	Royalty rate	Term	Equity of collaborator	Down payment	NSV	ROS	Profit percentage assumed and used	NPBT	LSEP
	2	3	4	5	6	7	8	9	10	11
	3819	5	5	26%	1263	217307	9356	10.7	23252	28
	3824	Š	5	39%	970	62377	2026	8.5	5302	27
	3839	3	5	NIL	900	35133	2448	7.7	2705	47
	3829	Š	5	NIL	986	39,11	2844	7.2	2859	50
,	3851	\$	5	NIL	493	22365	1508	7.2	1610	48
	3823	Ā	5	35%	201	42639	1619	7.6	3240	33
,	3851	3	\$	402	700	8533	1222	13	1109	52
	3829	Š	5	NIL	310	232243	9901	7.2	16721	37
í	3824	Š	5	NTL	1460	205252	11371	9.7	19909	36
.0	3851	Š	Š	NIL	823	48283	6114	11	5311	53
1	3823	Š	Š	392	912	102513	4805	9.3	9533	33
2	3823	Ă	5	NIL	424	46859	2395	10.5	4920	32
3	3831	5	5	NIL	473	56596	6078	7.4	4188	59
i	3219	Š	5	NIL	828	83834	5244	13	1090	32
5	3819	š	Š	NIL	NIL	94158	3821	9.7	9133	29
6	3513	3	Š	NIL	244	319941	19379	13	41592	32
7	3699	š	Š	NIL	NIL	27100	1528	10	2710	35
.8	3851	Š	5	NIL	NTL	13993	741	12	1679	30
9	3420	Š	5	NIL	3105	139955	12466	9	12596	50
0	3823	3	Š	WIL	MIL	71552	2935	10.5	7512	28
1	3211	Š	5	NIL	309	3228	478	10	332	59
ž	3823	5	3	NIL	500	52216	2461	9.4	4908	33
3	3829	5	5	NIL	1000	57635	4110	7.5	4322	48
24	3829	5	Š	NIL	418	10107	1144	7.4	747	60
25	3839	3	Š	NIL	300	116299	1093	12	13955	07

^{1/} Calculations based on projected values, discount factor 10%, all amounts in thousands of Indian Rupees, profit remittance to foreign equity holder.

Conclusions

The usefulness of the LSEP method for monitoring contracts by a regulatory body in the present form is rather doubtful. First, it seems to be difficult to obtain accurate data on all contracts. Furthermore, it is doubtful whether the information obtained is useful for making a relevant LSEP calculation because actual profit depends on many factors that cannot be quantified. Taxation also plays an important role, as profits can be hidden to avoid having to pay it. If a registry attempts to monitor contracts, an in-depth study on individual contract would be much more useful than a method which relies on indicators, such as the LSEP one. In other words, the results found in Table I cannot be used to determine benchmarks or any other monitoring criteria. However, the Secretariat for Industrial Approvals concluded that for an evaluation of agreements and even during the negotiation period, the concept of profit-sharing as a criteria for evaluation/negotiation could be useful .

While evaluating an agreement certain assumptions on the profitability of the use of the acquired technology have presumably been made by the recipient enterprise and the concept of profit-sharing may give the registry/recipient enterprise an additional tool in determining a fair technology price.

In determining that the concept is useful, several weaknesses in the methor were also identified which requires a more in-depth study. In particular, the tax problem was identified as a major hindrance. The price of technology is determined by the amount, after tax, which the technology supplier receives from the licensee and in this connection, different tax structures on lump sum payments, royalties and profit remittances in the case of joint ventures, can diffuse the concept of profit-sharing if used in a comparative sense.

It could be argued that the profit share should be calculated over the duration of the contract as only then does there exist a relationship between the parties. On the other hand, the life of the technology may go beyond the duration of the contract and hence will continue to contribute to the profit of the recipient enterprise.

All these comments will be included in a detailed report on this subject which will be presented at the forthcoming TIES meeting in Caracas.

BILATERAL INVESTMENT TREATIES

The following article has been contributed by a former UNIDO staff member, presently working for UNCTAD. It analyses the consequences of bilateral investment treaties for the developing countries, in particular those of the United States vis-is-vis the existing technology transfer legislation in developing countries.

A notewothy development which deserves the greatest attention on the part of developing country governments is the systematic effort of the United States Government to promote

bilateral investment treaties with as many countries as possible, particularly the developing countries.

These proposed treaties embody the principle of "national treatment" and aim at guaranteeing the free transfer of capital and earnings between the "parties" concerned (i.e. the Government of the United States and a government of a developing country). It also aims at "promoting greater economic co-operation between the US and any given country" by agreeing upon the treatment to be accorded to such investments as well as their encouragement and protection.

To date the US Administration has signed bilateral investment treaties with Panama and Egypt. In January 1983, a similar agreement was initiated by Costa Rica and negotiations are being pursued with Morocco, Zaire, Honduras, the United Republic of Cameroon, Gabon and Burundi. "Contacts" have been made with Malaysia, Philippines, Argentina and Colombia. Initial talks have already taken place with Jamaica, Barbados and Antigua and negotiations with China were to start in June 1963.

While the two concluded treaties, i.e. Panama and Egypt have yet to be ratified by the respective governments they no doubt constitute a departure from previous efforts by these two countries to formulate and apply national policies seeking to orient foreign direct investments in key sectors of the economy.

A fact which cannot be overlooked is that in the national context foreign investment activities remain hig'ly sensitive issues with overriding political and economic implications. A bilateral treaty by its own nature will considerably reduce the bargaining position of government agencies vis-a-vis potential US investors and could jeopardize the sovereign right of a developing country's government which needs to regulate such activities in strict accordance with national development goals.

It has been reported that the investment treaty with Egypt presently under review by the Egyptian Cabinet met increasing "political opposition" on relinquishing Egyptian sovereignty over certain sensitive areas.

The proposed treaty is also bound to cause considerable apprehension on the part of developing countries that have enacted legislation in this field and acquired considerable experience in the enforcement of these policies. In this connection bilateral investment treaties might be construed as an attempt on the part of the US Administration to provide relief to US investors in fulfilling specific requirements with respect to their operations.

To the extent that bilateral investment treaties comply with government development policies and laws and do not interfere with the host government's decision making process regarding, inter alia, (i) economic priorities; (ii) the degree of foreign equity participation in key sectors of the economy; (iii) the development of national technological capabilities; (iv) trade expansion policies; and

(v) social policies in general; these treaties might be construed as useful instruments for the promotion of increased co-operation in this field.

Examination of key provisions

An objective examination of some of the key provisions contained in the proposed investment treaty, has enabled us to reach the following, though preliminary, conclusions:

1. The scope and aim of the treaty is ambiguous and one-sided. Its introductory part calls for the desire to promote "greater economic cooperation between the parties, particularly with respect to investments by nations and commanies of one party in the territory of the other party". It also calls for the parties to conclude a treaty concerning "the encouragement and reciprocal protection of investments".

In this connection, it can only be expected that the flow of investment (not including portfolio-investment) from developing countries into the US is bound to be rather negligible and therefore the degree of reciprocity is questionable.

- 2. The proposed treaty will considerably hinder the negotiating position of host developing countries by imposing upon them a pre-conceived notion as to how foreign investment activities can contribute to national development goals. The treaty wrongly pre-supposes that by agreeing upon the treatment to be accorded by the parties "such investments will stimulate the flow of private capital and the economic development of both parties". In this connection, cost-benefit considerations at the enterprise level for convenience sake are equated with socio-economic objectives at the macro level.
- The treaty is in direct conflict with national laws and policies of many developing countries over: (i) their sovereign right on the use and exploitation of natural resources; (ii) the permissible level of foreign equity participation in key sectors of the economy; (iii) the juridical status of an economic unit; (iv) fiscal, monetary, technology transfer and employment policies, etc.

As already indicated the proposed treaty embodies the principle of "national treatment" and calls for the parties to agree that "discrimination on the basis of nationality by either party against investments in its territory by nationals or companies of the other party, is not consistent with either a stable framework for investment or maximum effective utilization of economic resources".

Article I states that for the purpose of this treaty, "the juridical status of a company or a party shall be recognized by the other party". Under must national laws including those of developin; countries a natural or a legal person as well as "an economic unit" assumes specific juridical status. The proposed treaty therefore might run into conflict with national legislation in this area. It should also be noted that many countries in latin America adhere to the "Calvo Doctrine" which calls for the settlement of disputes

under national jurisdiction and courts. This is bound to entail certain difficulties for the entering into a bilateral investment treaty of the kind currently proposed.

With respect to foreign equity participation the treaty defines investment as to mean "every kind of investment", including but not limited to: (i) tangible and intangible property; (ii) intellectual and industrial property rights; (iii) know-how and goodwill; (iv) rights to search for or utilize natural resources; (v) rights to manufacture, use and sale of products, etc.

To illustrate some of the areas of potential conflict, we could refer to well-established Government criteria in regard to limitations on: the level of remittances in the form of dividends or royalties; measures that discourage the capitalization of foreign know-how; limitations on the permanent employment of foreign personnel; limitations on the acquisition of domestic firms; limitations on the borrowing of funds from local firancial institutions, etc.

It should be mentioned that the proposed bilateral treaty and other related initiatives in this area, seem to ignore althogether the existence of national laws and development policies which in the context of many developing nations provide the legal foundation and rationale vis-a-vis foreign investment activities.

One of the treaty's major shortcomings is that while providing a general framework for US investments, it implicitly disregards the proper consideration of those issues that form part of the decision making process at the national level. The treaty for instance undermines or ignores the role that government agencies are called to play in determining whether foreign investment proposals are likely to be of significant benefit to the developing courtries' economy. Similarly, the treaty does not seem to respond to the need for selectivity in this area and for the examination of investment proposals on a case-by-case basis.

Among those provisions that make the draft treaty totally inconsistent with developing countries' development programmes, one might quote the following:

Article II, paragraph 7 (Treatment of Investments) "neither Party shall impose performance requirements as a condition for the establishment, expansion or maintenance of investments owned by nationals or companies of the other Party, which require or enforce commitments to export goods produced, or which specify that goods or services must be purchased locally, or which impose any other similar requirements, and which potentially or actually have an adverse effect on the trade and/or investments of the nationals or companies of the other Party".

Article YII, paragraph 1 (compensation for expropriation) "No investment or any part of an investment of a national or a company of either Party shall be expropriated or nationalized by the other Party or a political subdivision thereof...."

Article V, paragraph 1 (transfers). Each Party shall permit all transfers related to an investment in its territory of a national or company of the Party to be made freely and without delay into and out of its territory. Such transfers include, but are not limited to, the following: returns; compensation; nayments made arising out of a dispute concerning an investment..."

Article VI, paragraph 1 (consultations). "The Parties shall, upon the written request of either of them, promptly hold consultations to discuss the interpretation or application of the Treaty or to resolve any dispute in connection therewith. Consultations shall be held should one Party request consultations on grounds that its nations interests are or are likely to be adversely affected by laws, regulations, administrative practices or procedures, adjudicatory decisions, or policies of the other Party that pertain to or affect investments of its nationals or companies in the territory of such other Party, including conditions imposed on establishment. consultations will aim at correcting the potential adverse effect that laws, regulations administrative practices or procedures, adjulicatory decisions or policies may have on the Party requesting the consultations".

Concluding remarks

From the above it can be seen that the efforts of the US Administration in these areas are closely interrelated and deserve to be followed in a systematic manner.

- Those governments of developing countries that have initiated contacts towards the negotiation of a bilateral investment treaty with the United States might wish to seek appropriate counselling and to carefully monitor developments in this area.
- In this connection it has been reported that the present Administration continues to be concerned about the performance requirements imposed on US investors such as local procurement of goods and services and minimum export requirements and it is felt that bilateral investment treaties provide a partial solution to such proclems.
- Finally, the US is considering other related unilateral actions, such as: tying Generalized System of Preferences benefits to the removal of performance requirements or denying financial coverage (i.e. through the Overseas Private Investment Corporation) to projects where these requirements exist.

Recent publications

- ID/299 Manual on the production of rattan furniture.
- ID/265 Manual on jigs for the furniture industry.

- ID/300 Production management for small- and medium-scale furniture manufacturing firms in developing countries.
- ID/301 Industrial Development Abstracts Nos. 11701 to 12000.

ID/SER. M/5 Industry and Development No. 5. and

ID/SER.

M/7 Industry and Development No. 7.

ID/282 Environmental protection within the context of the work of UNIDO.

Meetings

- 29-30 August High-Level Meeting of Legal Experts (UNESCO Meeting), Vienna, Austria.
- 2) August-2 September High-Level Preparatory Meeting for the Fourth General Conference of UNIDO on Energy and Industrialization, Oslo, Norway.
- 29 August-9 September UNCITRAL Working Group on International Contract Practices, 6th Session (UN Meeting), Vienna, Austria.
- 30 August-2 September Meeting on Contractual Arrangements for Pipeline Construction Industry of ESCAP Countries, Djakarta, Indonesia.
- 2-5 September Technical Consultation on Cooperation among Developing Countries in the Pharmaceutical Industry, Tunis, Tunisia.
- 7-13 September Ministerial-Level Plenipotentiary Meeting on the Establishment of the International Centre for Genetic Engineering and Biotechnology, Madrid, Spain.
- 19-23 September First Consultation on the Wood and Wood Products Industry, Helsinki, Finland.
- 25-26 September Investment Promotion Meeting for Permanent Missions (UN Meeting), Vienna, Austria.
- 17-20 October 8th Meeting of Heads of Technology Transfer Registries, Caracas, Venezuela.
- 17-21 October Regional Investment Promotion Meeting for Southern African Countries, Lusaka, Zambia.
- 17-≥1 October UNCITRAL Ad Hoc Expert Group on the New International Economic Order (UN Meeting), Vienna, Austria.
- 7-11 November Expert Group Meeting on Popular Participation in Local Planning for Social Integration in Urban Areas, Vienna, Austria.
- 14-16 November Investment Promotion Meeting for Peru, Lime, Peru.
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