Review of Systems for Regulation

A brief description of various legislative and administrative systems to regulate technology transfer agreements

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INTRODUCTION

The purpose of this paper is to describe briefly existing administrative and legislative systems, which have been adopted in selected countries throughout the world for regulating, promoting and channeling the inflow of foreign technology into these countries.

Parallel to increasing industrialization of these countries the attention of industrialists and governments has been increasingly called to the fact that the impact of agreements concerning importation of technology on the overall economy of a country is usually not limited to spending certain amounts of a foreign currency.

This impact is of a far more complex character and includes among others:

(a) Effect on balance of trade;
(b) Effect on balance of payments;
(c) Effect on the development of certain branches of the industry;
(d) Immediate effect on those branches of industry which supply components necessary for license production;
(e) Effect on the export potential of a given country;
(f) Effect on employment.

As may be seen from this enumeration, the impact of agreements for technology importation is of a complex nature, requiring attention not only of entrepreneurs and immediate users of technology but also of many other sectors of economy.

The following chapters describe in detail existing administrative and legislative systems in selected regions (Socialist countries of Europe; systems adopted in Western Europe, U.S.A. and Japan; systems in selected countries of Asia and Latin America), and attempts to regulate transfer of technology of regional and international character.

I. ADMINISTRATIVE SYSTEMS FOR REGULATION OF TECHNOLOGY

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INFLOW IN SOCIALIST COUNTRIES OF EUROPE

So-called centrally planned economies of the socialist countries of Europe have adopted in general a similar system for governmental control of the inflow of foreign technology, which is based on the principle of a governmental monopoly over foreign trade transactions.

This principle gives authorization for governmental or government controlled enterprises to negotiate and conclude agreements of various characters with foreign companies.

In order to unify the administrative system under the ministries of foreign trade, specialized trading agencies (or foreign trade enterprises) have been established to supply their local industrial counterparts with the required goods and technologies and sell their products on foreign markets.

With the growing industrial potential of the socialist countries, more and more such trading agencies have been created; for example their number in Poland has increased from six operating agencies in 1949 to almost 60 in the early 1970s.

Taking into consideration the complex nature of technology transfer agreements which may include delivery of technology, delivery of equipment, know-how supplies, training facilities, possibilities of joint ventures both at home and abroad, establishment of various sales nets specialized trading agencies charged exclusively with these types of transactions have been created.

These specialized trading agencies are Licencintorg in the Soviet Union, Polservice in Poland, Technika in Bulgaria, Polytechnea in the CSSR, Licencia and Tesco in Hungary, and the Zentrales Büro für Internationalen Lizenzhandel in the German Democratic Republic.

The administrative scheme for technology purchase requires usually that such a purchase should be included in five-year national planning cycles with an appropriate indication of the industrial ministries charged with its implementation. When a suitable investor is being named (or industrial enterprise), the investor contacts the trading agency, which undertakes the necessary steps to start and finalize the agreements.

Such a system has certain advantages and disadvantages. To the former belongs, first of all, the possibility of highly advanced specialization and commercialization of knowledge, experience and expertise, particularly very valuable for licensing arrangements as well as for high-level negotiations with foreign partners. This is of primary importance when dealing with multinationals and other international companies.

On the other hand, the disadvantage of this system lies mainly in the heavy bureaucratic machinery and the number of decision levels (they usually include the planning commission, industrial ministry, ministry for foreign trade, investors and foreign trading agencies), which have the right and obligation to impose their views and opinions in each particular case.

Another disadvantage is that no immediate contact is established between potential licensors and potential licensees.

One should, however, underline the fact that the many decision levels provide for accurate and detailed screening of the agreements which, with particular view to this system, should first of all fit into national development plans.

The currency considerations in terms of approval of contracts are not of primary concern once the investments have been included in the development plans.

A more detailed information on systems in CMEA (Council of Mutual Economic Systems) countries can be obtained from the text of Mr. Singh[1] and Mr. White.[2]

II. REGULATIONS OF TECHNOLOGY TRANSFER IN SELECTED COUNTRIES OF WESTERN EUROPE, U.S.A. AND JAPAN

Generally in western Europe, and particularly in member countries of the European Community, there is no government regulation concerning technology transfer in terms of currency control and other governmental intervention as to the terms of these agreements.

On the other hand, governmental control over provisions which might restrict trade or interfere with competition are becoming increasingly significant.

Therefore some consideration should be devoted to antitrust and similar matters as developed by the Common Market. This extends of course far beyond licensing and, up to the present, attention has been directed to various buying and selling arrangements and similar contracts.

In recent years, however, the Commission of the Common Market in Brussels has taken up the subject of license agreements, and there have in fact been a number of decisions made on such agreements at both the Luxembourg Court and the Commission itself.

In short, the Commission of the Common Market in Brussels is formulating more precisely which provisions can be included in licensing agreements and which are illegal.[3] This will result in considerable changes in licensing practices within the Common Market.[4]

The basic act for the above-mentioned considerations in Article 85 of the Rome Treaty, which says that practices "likely to affect trade harmfully between member states and which have the object or effect of preventing, restraining or distorting competition" are not permissible and are illegal. The actual trend of developments in the Common Market seems to show that the Commission is slowly starting to exercise a certain control over licensing arrangements. In the period of 1964 to 1970 some 3,500 agreements related to know-how and industrial property were notified to the Commission.

An interesting situation exists in France as a consequence of a law of 1967 (decree no. 67/82 of 21 January 1967), modified in 1970, which provided for the following:

(1) A contract between a French and foreign party relating to the assignment or licensing of the French party of "industrial property rights ... technical assistance ... know-how and engineering" must be filed with the Ministry of Industry at least two months before its coming into effect.

(2) These will be examined by the Ministry in order to consider whether technology available in France has been assessed; the Ministry is obliged to give its views within forty days of contract submission.

(3) Yearly statements of expenditures under contract have to be reported to the Ministry.

Expresses View Only

This decree is of interest in so far as it provides for the Ministry not to approve or reject a license, but just to express its views on the agreement to the French party. In 1970 a new decree, no. 70/441 replaced the old one of 1967 with provisions of reporting agreements as described above to the Ministry of Industrial and Scientific Development. The new law did not foresee the possibility of the government expressing its opinion on reported contracts.

An extremely interesting situation has developed in Spain where decree no. 2343 of September 21, 1973, regulating the transfer of technology, and a Governmental order of 5 December 1973, regulating the registration of contracts for the transfer of technology, were introduced.

Under the decree all written contracts related to:

i) Assignment of rights for the use of patents and other forms of industrial property;
ii) Transfer of unpatented know-how, plans, magnetic tapes with digital information, diagrams, specifications, etc;
iii) Engineering services;
iv) Services in the form of studies, analyses, programming, consultancy and advice on management and administration;
v) Services in the form of education and training of personnel;
vi) Documentation and technical or economic information services;
vii) Other forms of technical assistance

shall be submitted for approval to the Registry of Contracts for Transfer of Technology established within the Ministry of Industry. The Decree stipulates in detail the conditions under which contracts would be approved and also declares that all contracts in force at the date of the decree must be registered within one year.

The order of December 5, 1973, stipulates in detail the way contracts have to be submitted for registration and approval and gives a detailed description of contractual provisions which will not be allowed under the new legislation.

Unfortunately, at the moment, it is not possible to evaluate the effect of this new legislation on transfer of technology in Spain. It should be also underlined that recent Spanish legislation bears a number of similarities to earlier Mexican legislation, which will be described in the next section of this paper.

U.S.A.

In the U.S.A. government intervention in licensing agreements is mainly based on the Sherman and Clayton acts, which are major basic antitrust legislations. In recent times, a number of case decisions were directed against particular licensing provisions, which may hamper or reduce competition. Mr. M. B. Finnegan in one of his publications[5] enumerated some of the restrictive clauses in patent and know-how agreements, which would be considered illegal in the United States:

i. Tie-in clauses forcing the licensee to purchase materials and components from the licensor;
ii. Limitations and restrictions on the licensee's approaches as to other products and services, or to obtain competitive technology;
iii. Restricted or limited use of patented material, which would create a monopolistic situation;
iv. Package licenses including patents not required by the licensee;
v. Price fixing;
vi. Territorial restrictions within the U.S.A.;
vii. Certain types of cross licensing provisions.

A number of decisions of U.S. courts have led in many cases to enforced transfer of know-how by the licensor whenever a misuse of the patent right was found.

Japan's Approach Different

An entirely different approach to the question of regulation and promotion of foreign technology inflow has been adopted in post-war Japan, where one of the major driving forces of a rapid growth of Japan's economy has been the vigorous introduction of foreign technology.

For this purpose Japan adopted a system which requires that all technology agreements, including their extension and/or amendments, are subject to approval by the Japanese government. Such approvals are granted almost automatically by the Bank of Japan for payments not exceeding U.S. $50,000. All other cases are submitted to the Ministry of International Trade and Industry (MITI), which has to consult all other agencies concerned and to give its approval within thirty days. However, concerning the terms of individual licensing agreements, no rules have been published or guidelines established.[6] All judgments are made on a case-by-case basis by competent authorities in each respective field. As mentioned above, all submissions related to seven specified sectors required a case-by-case analysis up to July 1973, but since then such a procedure is mandatory only for licensing agreements for computer technology.[7]

Close cooperation with the government and industry has ensured that this regulating policy has functioned in the best interest of industry and the country's overall economy. Generally, the government's decisions are based on whether technology conforms to national goals.

An interesting aspect of licensing in Japan should be mentioned, namely that licensing agreements must be also reported to the Fair Trade Commission (FTC), which was set up under antimonopoly legislation and which has issued guidelines prohibiting certain restrictions on the export, acquisitions of competitive technology, tie-in clauses, etc.

III. ADMINISTRATIVE AND LEGISLATIVE SYSTEMS FOR REGULATION AND PROMOTION OF FOREIGN TECHNOLOGY TRANSFER IN SELECTED COUNTRIES OF LATIN AMERICA AND ASIA

The countries of Latin America have been particularly active during the last five years in regulating and controlling the inflow of technology.

While India is well advanced in these matters, there is the feeling that a new dimension has been introduced by some Latin American countries in this particular field.

For the purpose of this paper, detailed analysis will be provided for Argentinian and Mexican systems as well as Andean legislation, in addition to a short description of the administrative system prevailing in India.

Argentina

Two laws were enacted in Argentina in 1971 — law no. 9135, prohibiting the imposition of certain restrictive conditions on the automobile industry, and law no. 19231, which prescribes the regulation of agreements for foreign technology and patents and creates a national registry for all such agreements. These laws stipulate that contracts will not be approved if they contain clauses which, among others, force the purchase of equipment, raw materials or components from certain sources, restrict export, include unreasonable grant-back provisions, provide trademark licensing without know-how, impose jurisdiction of foreign courts or require unreasonably high payments.

A new law, no. 20794, was issued in late 1974 in Argentina replacing the earlier ones. The main provision are contained in Article no. 5 (stipulating which contract approvals will be rejected), and article no. 6 (enumerating restricted clauses, which cannot appear in contracts). To the most interesting provisions of the law belong the conditions stipulated in article 6, which says that "the authority of application may deny the approval of any contract governed by the present law when the acquisition of the technology in the proposed manner produces directly or indirectly any of the following effects:

(a) establishes the obligation of acquiring raw material, intermediate products or capital assets from specific origin or source of supply;
(b) regulates, alters or limits production, distribution, marketing or exploitation; or the distribution of markets or the execution of any of them;
(c) establishes resale prices to wholesalers or retainers;
(d) exempts foreign contracting parties from their liability in the event of action by third parties;
(e) prohibits the licensee from employing other designs, processes, production material, equipment or other goods different from those mentioned in the proposed contract;
(f) establishes rules limiting or subjecting to the licensor's approval the publicity or advertising;
(g) imposes on the licensee the obligation of contracting personnel to be appointed by the licensor . . .[8]

The law provides for the obligation that contracts and their amendments or extensions should be submitted within 30 days after signature to the National Registry for License Contracts and Transfer of Technology (created by law no: 19231 of 1971).

For observing the rules of the law, a number of penalties have been foreseen. An interesting novelty in this law is the article no. 33, which opens the possibility of getting advice from the National Registry on agreement conditions prior to official submission for approval and registration. This way, the legislation gives the opportunity for extra negotiations with foreign partners and local entrepreneurs.

Mexico

The Mexican legislation introduced as from January 1, 1973, provides for the creation of a National Registry of Technology Transfer. The law was prepared after very extensive discussions and assessment of the experiences of Argentina, Japan and other countries in this field. The basic orientation of the Mexican technology transfer policy derives from fundamental principles in economics and international relations. The Mexican legislation in this field is oriented toward the development of an efficient and rationalized process for technology importation. Although there is recognition of the country's dependence on foreign technology, an important objective of this legislation is to gain a degree of control over this major import, both in terms of cost and technological impact.[9]

The law requires that all agreements must be examined by the National Registry of Technology Transfer, and it goes into considerable detail in enumerating the kind of restrictive practices that must be eliminated from the contract.

The most important article of the law stipulates that the following contracts will not be registered (see Article 7):

(1) When their purpose is the transfer of technology freely available in the country, provided this is the same technology;

(2) When the price of consideration does not represent the technology acquired or constitutes an unjustified or excessive burden on the national economy;

(3) When provisions are included which permit the supplier to regulate or intervene directly or indirectly, in the administration of the transferee of the technology;

(4) When there is an obligation to assign onerously or gratuitously to the supplier of the technology, the patents, trademarks, innovations or improvements obtained by the transferee;

(5) When there is an obligation to acquire equipment, tools, parts, or raw materials exclusively from any given source;

(6) When the exportation of the transferee's products or services is prohibited, against the best interests of the country;

(7) When limitations are imposed on technological research or development by the transferee;

(8) When the use of complementary technologies is prohibited;

(9) When there is an obligation to sell the products manufactured by the transferee exclusively to the supplier of the technology;

(10) When the transferee is required to use permanently personnel designated by the supplier of the technology;

(11) When the volume of production is limited or sale and resale prices are imposed for domestic consumption or for exportation;

(12) When the transferee is required to appoint the supplier of technology as the exclusive sales agent or representative in Mexico;

(13) When an unreasonable term of duration is established; such terms shall in no case exceed 10 years;

(14) When the parties submit to foreign courts for decision in any controversy in the interpretation or enforcement of the foregoing acts, agreements or contracts.

The law, however, taking into account a need for elasticity and facts of life, provides for the possibility of approving contracts including clauses as stipulated under Article 7, point 1-14. No exception, however, exists for the sections 1, 4, 5, 7, 13, and 14 of this article. Mexican legislation requires compulsory registration of all contracts being in force at the date of introduction of the law and those contracts which have been concluded both before and after this date.

Usually the National Registry is obliged to issue its decisions within 90 days of the submission date.

As may be seen from the above short review of the Mexican legislation, it gives the government the power to determine the registration, evaluation and acceptance or denial of contractual transactions that take place in Mexico.

A second principle is to safeguard national economic and technical autonomy.[10] This explains why the basic criteria for determining the acceptance or refusal of technology contracts take into account the national objectives and legislative norms and procedures existing in the country.

The Mexican law bears a number of similarities with the legislation of Argentina, systems in Japan and decision no: 24 of the Junta Cartagena. However, a basic distinction should be underlined, which is that the aspect of foreign exchange control is not the central issue. Contrary to the Argentinian law of 1971, Mexico registers agreements between nationals or persons settled in Mexico and agencies or subsidiaries of foreign companies.

A distinctive element of the Mexican law is that it gives the right to foreign-based licensors to request the registration of contracts of which they are parties. The most important element is that the legislation covers compulsory registration for all existing contracts (Article 2 of the law). A different approach of a more administrative nature has been adopted in India and some other countries like Pakistan, Egypt, and Indonesia.

India for years has been known for its administrative guidelines and regulations concerning technology transfer, which has enabled the government to exercise more or less firm control over technology importations. According to one source,[11] something like 2,000 agreements have been signed in the past 27 years in India involving so-called foreign collaboration, which is the term usually covering licensing and know-how agreements.

Actually, India has adopted the following administrative system and procedure for approval of all contracts involving foreign technology. Within the Ministry of Industrial Development there is the Secretariat of Industrial Approvals composed of three committees:

(a) The Licensing Committee;
(b) The Foreign Investment Board;
(c) The Project Approvals Board.

All applications for acquiring a license have to go through these committees before the Government gives the so-called letter of intent to the industry, thus enabling it to start negotiations with a foreign company. Generally, the current guidelines for foreign licensing agreements in India areas follows:

(1) If a certain technology is available in the country the same technology should not be imported;
(2) If a certain technology can be bought by fixed payment, this should be done. Equity participation is not encouraged;
(3) License fees should be reasonable;
(4) Royalties, if any, should normally not exceed a five-year period and 5% of the sales value of the product;
(5) When technology is imported, the supplier of technology is obliged to associate himself with one of the national R&D institutions so that at the expiration of the agreement the country will be self-reliant with regard to the technology
(6) As far as possible restrictive clauses concerning sublicensing and exportation of goods manufactured under license should be eliminated;
(7) Whenever substantial exports are involved, some of the above mentioned provisions are relaxed, as one of the cost important objectives of the Indian government is encouraging exports;
(8) Under special circumstances involving sophisticated technology, special conditions beyond these guidelines are possible.[12]

To be quite complete, the current review could include descriptions of the existing regulations in Brazil and Colombia, as well as existing systems of explicit guidelines in the Philippines and Indonesia. However, because of their similarity to those already analyzed above, these countries have not been treated separately here.

An interesting publication in this respect has recently been issued by UNCTAD under the title "Preparation of a Draft Outline of a Code of Conduct on Transfer of Technology; Selected Principal provisions in National Laws, regulations and Policy guidelines, regional regulations and other material relevant to the preparation of a draft outline of a Code of Conduct on Transfer of Technology".[13]

IV. REGIONAL AND INTERNATIONAL ATTEMPTS AT REGULATION OF TECHNOLOGY TRANSFER

So far, one could name only a few cases of regional character concerned with the regulation of transfer of technology, out of which two are functioning and the third one is under deep and thorough consideration.

The earliest regulation was an antitrust legislation of the European Common Market set up by the treaty of Rome in 1957, article 85, which says:

"1. The following shall be deemed to be incompatible with the Common Market and shall hereby prohibit any agreement between enterprises, any decisions by associations of enterprises and any concerted practices which are likely to affect trade between the Member states and which have as their object or result the prevention, restriction or distortion of competition within the Common Market, in particular those consisting in:

(a) the direct or indirect fixing of purchase or selling prices or of any other trading conditions;
(b) the limitation or control of production, markets, technical development or investment;
(c) market-sharing or the sharing of sources of supply;
(d) the application to parties to transaction of unequal terms in respect of equivalent supplies, thereby placing them at a competitive disadvantage; or
(e) the subjecting of the conclusion of a contract to the acceptance by a party of additional supplies which, either by their nature or according to commercial usage, have no connection with the subject of such contract.

"2. Any agreements or decisions prohibited pursuant to this article shall be null and void:

"3. Nevertheless, the provisions of paragraph 1 may be declared inapplicable in the case of:

— any agreements or classes of agreements between enterprises;
— any decisions or classes of decisions by associations of enterprises, and
— any concerted practices or classes of concerted practices, which contribute to the improvement of the production or distribution of goods or to the promotion of technical or economic progress while reserving to users an equitable share in the profit resulting therefrom, and which:

(a) neither imposes on the enterprises concerned any restrictions not indispensable to the attainment of the above objectives;
(b) nor enables such enterprises to eliminate competition in respect of a substantial proportion of the goods concerned".

Directly concerned with the transfer of technology is regulation no: 17 of the Council of 6 February 1962 and particularly article 24. Other considerations concerning Common Market regulations of licensing and transfer of technology agreements have been included in section II of this paper.

Andean

A different approach was adopted by countries of the Andean group (Chile, Colombia, Ecuador, Bolivia, Peru and Venezuela), which approved in December 1970 decision no:24 of the Commission of the Cartagena Agreement on common regulations governing foreign capital movement, trademarks, licenses and royalties.

The Andean legislation provides for the mandatory submission to appropriate governmental institutions of member-countries for examination and approval of every contract[14] relating to the importation of technology or to patents or trademarks. These governmental institutions will "evaluate the real contribution of the imported technology by reference to an estimate of the probable profit from it, to the price of the goods incorporating technology or to other specific ways of quantifying the effects of the imported technology".[15]

Paragraph 20 of the above-mentioned Decision 24 is a key one for the Andean regulations of technology transfer agreements because it contains specific provisions and conditions which will not be authorized by governmental institutions of member countries.

Accordingly, paragraph 25 of Decision 24 enumerates specific restrictive clauses in trademark agreements, which will not be allowed in contracts and which are:

(a) clauses prohibiting or restricting the exportation or sale in specific countries of products, or similar products, prepared under the trademark concerned;

(b) clauses requiring the use of raw material, intermediate goods or equipment supplied by the trademark owner or subsidiaries thereof. In exceptional cases the importing country may accept clauses of this nature, provided that the price corresponds to the price levels current on the international market;

(c) clauses fixing the sale or resale prices of the products manufactured under the trademark;

(d) clauses requiring the payment of royalties to the trademark owner for unused marks;

(e) clauses requiring the permanent use of staff supplied by the trademark owner;

(f) clauses with equivalent effects.

As may be seen, a number of national legislations in Latin America have been affected by the Andean Group Resolution and vice versa. So far, only some of the countries, signatories of Decision 24, have adopted and introduced national mechanisms, like screening, evaluating and approving of transfer of technology agreements. These are Peru, Ecuador, and recently Venezuela.

International Code

Probably the most controversial and discussed attempt at international regulation of transfer of technology is the so-called International Code of Conduct on Technology Transfer. For the purpose of this paper a draft proposal of the Code of Conduct will be commented on as it was presented at the recent meeting of an intergovernmental group of experts conveyed by UNCTAD in the period of 5 to 16 May 1975 in Geneva.

The proposal of Group of 77, presented at the above mentioned UNCTAD meeting, was based on the Pugwash draft, and considered that (according to the Pugwash draft)" . . . while technology transfer mechanisms including those involving international technology trade-transactions, may differ according to political and economic systems and levels of development, the access to modern technology represents one of the basic conditions for social and economic development of all countries and the maintenance of world peace and the increase of overall prosperity. It is considered of vital importance to establish and implement international rules that would enable every country to appropriate equal footing in the international technology transfer".[16]

Following the above principle objectives, the Pugwash Code of Conduct was submitted by the UNCTAD Secretariat for consideration within the governmental group on transfer of technology, which met in July 1974.

The developing countries represented by the Group of 77 at the Committee on Transfer of Technology, which is a body established by the UNCTAD Trade and Development Board in July 1974, introduced a draft outline of the proposed code of conduct of technology transfer, which became the basic working document of the recent session of the intergovernmental group of experts.[17] It seems, however, that the document submitted by the group of 77 cannot in its present form be accepted by all countries and become an international instrument governing transactions related to the transfer of technology.

Apart from other questions, there still exists a basic controversy on a fundamental question as to whether the code of conduct should become a legally binding legislative act or a set of principles which countries may voluntarily observe.

The very important issue in connection with this document is that the proposed draft is far too broad and detailed in scope and includes a number of unrealistic conditions, which could hardly be accepted not only by suppliers but also by recipients of technology. Taking this into consideration, it is felt, however, that the work on a code of conduct will continue and probably by the end of the seventies the document will find its final form acceptable to all interested parties.

The value of a code of conduct is enormous for both recipients and suppliers of technology, and one could expect that the trading of technology at the international level will undergo basic modifications.

Finally, it should be underlined that a code of conduct opens for a number of developing and industrialized countries new prospects in terms of clearly set up principles of technology transfer; for a number of developing countries it presents a certain set of guidelines concerning the way of handling transfer of technology agreements at the national level.

CONCLUSIONS

As may be seen from the review of national and international regulations of the transfer of technology, a number of countries have adopted different systems. One could distinguish two main approaches: one is of a more administrative nature, without a necessary legislative system. This system has been applied by socialist countries of Europe, India and some other countries not analyzed here, such as the Philippines and Pakistan. In this connection, it should be noted that within an administrative system the availability of foreign currency for purchase of foreign technology plays, to a certain degree, an important role.

The other approach is of a legislative nature, with necessary administrative machinery, and has been adopted by such countries as Mexico, Argentina, Japan, Spain and Brazil.

One could say that world trade in technology is facing basic changes, with more and more active participation of governments. It seems from the development in this specific area of trade — with its direct impact on industrialization — that the time of unrestricted trade in technology is gone forever.

Even such industrialized countries as Japan, France, the U.S.A., Spain and EEC countries have come to the conclusion that there should be a certain central role played by the government or by its administration on the trade of technology in the sense of its regulation and channeling.

Experience in attempts at international regulation of

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transfer of technology is yet too fresh to give a clear picture whether such attempts are justified and could be successfully carried on.

A great deal of effort has been made, mainly by U.N. agencies with encouragement from the governments of many developing countries.

It should also be mentioned that particular activities of UNIDO in practical adaptation of any international regulation of transfer of technology at the national level are of immediate use.

NOTES

1. K.D.N. Singh: "The Changing Role of Governments in the Regulation and Promotion of Licensing Arrangements," (UNIDO: ID/WG. 178/3).
2. White: "U.S./USSR: Technology and Patents — Sale and License Prospects" by LES (U.S.A.), Inc.
3. See "National Approaches in Western Europe on the Acquisition of Technology by Licensing" by C. G. Wickham.
4. Ibid
5. M. B. Finnegan: "Antitrust Problems in the U.S.A. and EEC", LES Japan Conference, Tokyo, 1972.
6. M. Okano: "Practical Remarks concerning the Selection of Technology . . ." UNIDO ID/WG. 178/4.
7. "Essential Preparation for International Licensing . . . ." UNIDO ID/WG. 206/1.
8. The text of the law is being reproduced, according to "Les Nouvelles," March 1975, Vol. 10 No. 1.
9. "The Mexican Law of Technology and Transfer and its Impact on the National Economy" by E. Aguilar, UNIDO/ID/WG. 178/7.
10. Ibid.
11. "Foreign Licensing Agreements and Experience in Developing Countries with Special Reference to India" by Dr. C. V. C. Ratnan, presented at UNIDO Seminar in Manila, 1974.
12. UNIDO Seminar held in Manila, 1974.
13. UNCTAD Publication TD/B/CG/AC1/2/Suppl. 1/Addendum 1.
14. Decision of Andean Group No. 24 of December 1970 of the Commission of the Cartagena Agreement, Para. 18.
15. Ibid.
16. See UNCTAD Doc. TD/B/AC. 11/L.12 "The Possibility and Feasibility of an International Code of Conduct in the Field of Transfer of Technology."
17. See UNCTAD document TD/B/C6/1.

Deciding on Products to be Licensed

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avoid later misunderstandings or disappointments. For us, the client's attitude is very important in determining the wisdom of a license undertaking. If he is disposed to support our efforts with enthusiasm, willing for an all-out cooperation with an eventual licensee; if his contacts with prospective licensees show openness, goodwill and integrity in his approach to business, our job is much easier and likely to be more productive.

Now for product characteristics and details.

It is trite to state that attractions of a licensing project are governed by characteristics of distinctive merit. But, keeping in mind the "what's in it for me" yardstick, we never forget that the merits of any characteristic is not objective truth. Merits arise from relationships to specific needs, to specific markets, existing or potential. They can be important only as they relate to the situation and requirements of a particular company. For example, an American manufacturer of electric stoves saw no possibility of licensing his product in Europe. He had no patents. Such products were already extensively produced in Europe. His assets were a good trade name — which meant nothing in Europe, and an excellent product, well engineered and competively successful — which might.

Construct Model

In order to evaluate licensing prospects, we constructed a model: an established European appliance company, without an electric range line of its own, with suitable plant capacity and a good marketing setup. While under competitive conditions, this company would probably not want to invest in the development and production engineering of its own electric range, it might be disposed to take on a successfully proven line from the United States under an appropriately structured license. By "appropriate structure", we would include values such as access to engineering, intramural component supply and procurement possibilities, broader product exchange and even investment opportunities.

While from one point of view, our model suffered from its limited options, it also meant that, in taking on the licensing project, REFAC would be able to fish or cut bait without protracted effort. So, with our downside risk limited, we put together a preliminary licensing package. The REFAC staff in Europe identified seven companies that conformed substantially to our model — and one of these eventually became our licensee.

Product characteristics come under various classifications. There are those that indicate product status. Are we dealing with a raw or semi-developed idea or with a fully developed and tested product? What is the market — is it established or merely anticipated? If the product is now being sold, in what volume and to what kind of customers? Is it being exported and where? Examine the product literature.

Details of competition can be exceedingly important. What competitive products are on the market? What are the comparative advantages and disadvantages. Is comparative test data available? Also, who are the competitors? Given the best computer invention in the world, I still would not want to challenge IBM — or, for that matter, try to license them.

Evaluate the basic market trend, and long-term growth potential. Do we have an improved vacuum tube or a new type of integrated circuit. A case in point: more than 20 years ago, we acquired licensing rights to the original patents for producing printed circuits by die-stamping. The patents had not been reduced to practice. Development work done by the inventor had gone as far as to identify major problems. But, the long-term potential of the process intrigued us. We knew the pressures that almost require companies in this most competitive industry to take up techniques that reduce costs. Thus, we were persuaded to try to license the patents and bootstrap the solution of problems and the perfection of the die-stamping technique by interchanging R&D within a worldwide closed-circuit of licenses. It took a lot of work over years to set this up — but it was well worth the effort. Circuit diestamping today is well established and our licensees continue to pay us royalties.

Proprietary details of a product obviously are of in-