rates, certain fees are charged for the processing and examination of the applications, as well as the registration and issuance of the receipt or certification for the amendments or modifications to acts, agreements or contracts already registered. Finally, fees are also charged for annualities for the life of the registrations, for inspection and vigilance.

In order to show the exact figure for said fees and the form and conditions of payment, a copy of the complete text of the Decree, just as it was published, is included in Appendix Two of the present study.

Appreciation.

Thank you, distinguished colleagues, for your patience and tolerance for your friend. I trust that you will at least in part be rewarded for the same by receiving some benefit from my exposition.

TRANSFERENCE OF TECHNOLOGY IN THE ARGENTINE REPUBLIC

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Submitted for Publication
in LES NOUVELLES
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1. *Antecedents.*

The norms that rule the transference of technology, in our country, are not very old. They appear in June 1971 in the law 19.135 of Reconvention of the automotor industry according to which all the "enterprises that develop industrial activities in the country, for the production of automobiles or parts of them," were obliged to register all the contracts" in which licenses, patents, trademarks and other assimilable amounts are agreed. The lack of register will prevent the remittance of royalties abroad. Moreover, this law establishes that the limit of royalties the parties may agree for the payment of technology is 2% of the net sales, and that only the profits produced by the goods or services under license may be taxed.

This law intends to strengthen the power of decision of the local enterprise and promote the development of domestic technology. For this reason it is forbidden to include in the contracts, clauses restricting exports, sales and others later mentioned in law 19.231. The enterprises exporting manufactured products have a right to reimbursement of 50% of the export duties, if they do not pay royalties or other assimilable amounts.

Later, on September 10, 1971, law 19.231 is passed which, together with its Decree No. 6187 of December 22, of the same year, are the legal norms that rule the transference of technology in our country.

2. *Systems of Transference of Technology.*

The law forsees three ways to transfer technology.

The first and more usual one, is to grant a license for the use of technology, paying a certain percentage during the period of the contract.

The second one, according to the law, is formalized through the payment of a previously settled lump sum. Although the word investment is used, here it means purchase of technology. This is the system of transference of technology our law promotes. So much so that it exempts the actions of formalization from stamp tax and establishes that lines of credit through the Bank of Development are to be created in favour of the purchasers of technology.

To conclude we have the case of technology as investment of capital. This case of investment of non-material goods, is taken from the law of Foreign investments and must conform law 19.231.

3. *Contracts to be Registered*

Law 19.231 creates the National Registry of Contracts of Transference of Technology. In this Registry they must be recorded "all the actions that may have effect within the national territory and that obliges persons or entities having a domicile in the country". . . "to pay or grant any kind of compensation to persons resident abroad or to foreign entities" in relation to the grant for use and the exploit of manufacturer's trademark, letters patent, industrial models and designs, when their value may be determined, granting of technical knowledge through plans, diagrammes, models, instructions, formulas, specifications, training of personnel, provision of engineering for the carrying out of plants or the manufacture of products, and the occasional, periodical or permanent technical assistance.

The Registry does not have a restrictive concept of technology applied only to the knowledge used in the manufacture of a product.

The opinion accepted is that of the International Chamber of Commerce that considers technology an ordered system of specialized knowledge for the manufacture of a product or the rendering service.

Thus there are included the knowledge about marketing, advertising, accountants, direction of personnel, administration, etc.

Our law does not forbid the signature of a contract of transference of technology between a parent company and its subsidiary, and thus the remittance of royalties by virtue of this contract. Nevertheless, this may be modified according to a recent decision of our Supreme Court of Justice. It decided that between the local company and the foreign one, which is the holder of 99% of its shares, there may be no contract whatsoever, because being the same and one person, it is ruled by the principle that states that no one may make a contract with himself. This it is not allowed to deduct the royalties payed, from the balance sheet for income tax purposes and such payments have been added to the dividends. Thus they do not obtain the taxable profits of the royalties. Considering both as the same person, it is believed that the parent company transfers to the subsidiary, is comprised in the investment or normal effort any enterprise accomplishes for its own benefit, and thus it deserves no reward.

The law mentions payments or "tant" any kind of compensation. The Registry has interpreted this concept including not only the obligations of amounts of money and to do and not do, but also the obligations of not doing that may be imposed to the licensee. In short, any obligation assumed by the local contracting party is considered as compensation.

Even when there exists no compensation, the contract must be registered whenever it is signed by a person resident in the country and another, abroad. The Registry believes it is so important to know the technology that enters the country as what is payed for it.

The law establishes a difference between the contracts signed before and after its enforcement. For the former it was established the regime of automatic registry. Any contract signed before September 10, 1971, had to be presented before the Registry, before February 28, 1972. The contracts that fulfilled this requisite remained in force until December 31, 1973, undergoing no examination. All these contracts automatically registered, had to be adapted to the regulations of the law 19.231 before that date. They had to be registered again and fulfill the same formalities forseen for the new contracts.

Later in this exposition, we are going to refer to the contracts signed after September 10, 1971 and to their regulations.

Lack of Registry.

Contracts not registered have no legal force, and their fulfillment may not be claimed before the Courts of the country. Another consequence of the lack of registry is the impossibility of remitting royalties abroad, since the Central Bank requires, for their authorization, the certificate granted by the Registry of Contracts. And the expenses and expenditures occasioned by the contract may not be deducted from the balance sheet for income tax purposes.

4. *Requisites to be fulfilled for the presentation of the contracts.*

Modifications and extensions.

All the modifications and/or extensions of the approved contracts must also be registered. If they are merely formal modifications, the Ministry of Industry has delegated to the Assistant Secretary the authority to approve them, if not, they must be handled as if they were new contracts.

Idiom.

All the contracts must be written and worded in the national tongue. It has been observed that most of the contracts automatically registered, had been signed in other languages; a few of them were literary translations, and the least had been worded in our country according to our ways and habits.

Date of presentation.

The law states that the contract or its modifications, must be registered within sixty days running since the date of presentation. If it is presented after this term elapses, it has value, if approved, since the date of presentation. In the other case it is valid since the date of signature.

Blank forms.

Together with the contract, the local contracting party has to present a blank form where he is required to furnish information about his company and the technology contracted. He must state, among others, the relation between the contracting parties, if the foreign company has participation in the local one or vice versa, and in what proportions of its capital; if there are other contracts in force between them and their object.

He must state if the contract is new or a renewal of a previous one, its aim pointing out patents, models, etc. and explaining in detail any other technology included.

The aim of the license, if it is to manufacture, sell, if sublicenses may be granted, etc.; how are the payments to be made and what is the estimated amount to be payed for the royalties. The obligations of the local contracting party, as use of certain machinery, or if there is any limitation in the sale of the product to purchasers appointed by the foreign contracting party. If the technology can be used for other products than the one object of the contract and if other technology can be applied to the product. He must also inform if all the trademarks and patents owned by the licensor in our country can be used for the product under contract. The interference of the licensor in the marketing, it there is one, and which is it. The licensor's responsibility before any claim or other action against the licensee. The guaranties granted by the purchaser for the technology he acquires, etc.

Information on "Economic and Market Aspects" has to be supplied if any study of technical-economic practicability has been made, or any other evaluation to decide the contracting of technology. Explain if the demands of the export market determine the necessity of producing with a definite technology.

The transactions related with the contract, such as the purchase of raw materials, and equipment, investment of capital of the foreign company, must be detailed. Technical-economical information to which we refer later, is also required.

5. *Procedure for the approval of the contract.*

The law 19.231, in its regulations, forsees the publicity of the acts to be recorded and the right to oppose to such inscriptions by those showing a legitimate interest.

The decree did not regulate this norm, thus, there is no regime of publicity nor of opposition. Instead, the regime established that any information, document or other report required by the registry, enclosed in the application, will be considered affidavit and information for official use.

When the contract is presented for its approval, together with the information, it is analyzed by the officials of the Registry, from a legal, economic, and technical point of view. They examine the clauses to see if they are in accordance with the law. From the economic point of view they determine if the compensation for the technology obtained is reasonable. They study the technology from the technical point of view considering its novelty or its obsolescence; if it can be obtained in the country, etc. and other factors. The technicians of the Registry, when studying the contract, visit the factory of the local contracting party, to have a more exact idea of the use of the technology.

Once the report of the Registry is obtained, it is studied by the Advisory Commission, formed by representatives of the Executive Power, of the Under-Secretary of Science and Technique, the Institute of Industrial Technology, The National Bank of Development and the Central Bank. The Advisory Commission will consider the report of the Registry and the political aspect; if it is convenient for the country to acquire such technology, it will decide according to the National policies of the Government.

6. *Study of the Contract From the Judicial Point of View.*

The law 19.231 authorizes the Registry to reject the contracts when their object is the use in a national product of a foreign trademark or of a national trademark that belongs to a person resident abroad or foreign entity, when there is no innovation or technological supply. These are licenses for the use of a trademark and the Registry has denied the inscription.

The Registry may also deny the inscription when:

a) The object of the contract implies the import of technology that it has been proved it may be obtained

in the country,

b) The price or compensation has no relation with the license under contract of the transference of technology.
c) Rights are granted which facilitate the direct or indirect regulation or alteration of the production, distribution, marketing, investment, investigation or home technological development. This clause that may be applied to different situations, is strictly observed by the Registry. No clause allowing the interference of the foreign contracting party in the licensee's activity, is accepted.
d) There is an obligation to purchase equipment or raw material of a definite origin and abroad. This clause is also strictly observed and no clause in which the licensee "binds himself to acquire certain raw material or equipment," is accepted. No matter if the acquisition is to be made abroad or within the country.
e) It is forbidden to export or to sell for export national products, and when the sale has to be authorized from abroad, or when exports are somehow limited or regulated. Not withstanding the amplitude of this clause which allows to deny a contract that forbids to export to only one country, the Registry considers the market to which national industry has access, for its interpretation.

   The contract forbidding to export to any other country, will not be considered the same as one forbidding to export to some countries. If the foreign contracting party forbids the export to some countries because he has granted licenses in these countries, he must prove their existence; and in every case it must be the same technology for the same product.
f) The obligation to grant is established under title acquired by purchase of gratuituously; the patents, trademarks of manufacture, innovations or improvements that may have been obtained in the country in relation with the contracted license or the transfered technology. The Registry believes that the local contracting party has to have the most absolute freedom to trade or use the technology he may create. In no case, the Registry allows him to bind himself to convey the technology obtained. He may allow the foreign contracting party to have a priority in the purchase, whenever the licensee cannot sell it at a better price or to other purchaser.
g) Prices of sale or resale are established for the domestic production. This clause is strictly applied; the licensee cannot bind himself to sell the product at a maximum or minimum price.
h) The Judicial notice and decision of cases that may have been originated in the interpretation or fulfillment, are extended to foreign courts, instead of the National Court having jurisdiction. According to the clause, there is no impediment for the Argentine Courts to apply the foreign law if the parties have stipulated it. According to the Registry, arbitrage is foreseen, whenever it takes place within the country, with national arbitrators and with the possibility to go to law afterwards.

7. *Study of the Contract From the Economic Point of View.*

The price of technology and the term of the contract are very important.

Price of technology.

The law authorizes the Executive Power to fix "by areas, activities or specific goods a maximum percentage to which payments must agree" . . . "Such percentage maximum will be established according to the characteristics of the good and the net profits it produces, the conditions of the area or activity, the requirements of the economic development and home interests."

These percentages have not been fixed. The Registry fixes them for each particular case, and the general opinion is to accept the 5% of the net sale price of the licensed product, as a limit.

Another disposition in relation to prices determines that it may only affect the net profits produced by the licensed goods or services. That is to say that if the product or service do not produce profits, royalties may not be remitted.

What this disposition tries to prevent is that local companies may remit their profits, as if they were royalties, evading taxes for what was not declared as profits and obtaining the benefits of the deductions granted to the royalties.

The Registry authorizes a percentage of royalties before the contract is carried out, that is to say, not knowing if there will be profits or not. The Central Bank, who authorizes the remittance of royalties, does not demand either, the proof that the licensed product has already given profits; it only requires the approval of the Registry to authorize the payment.

We may add that since October 1971, payments in foreign currency are suspended. Today, the payments can only be made through the "external bonds for investment and development," the dividends and depreciation charges of which are payed in dollars. To authorize the payment with bonds, the Central Bank demands the licensor to present a written express agreement of the licensee to collect the royalties.

The Executive Power who is entitled to authorize exceptions to this clause, has delegated such duty to the Ministry of Industry and Mining, by decree No. 6.699 of October 2, 1972.

Term of the contract.

The term or period of the contract is another subject taken into consideration. The law establishes no term whatsoever and the Registry determines it in each case. Nevertheless, the maximum period of five (5) years, is usually accepted and longer periods may be accepted in certain circumstances. The cases when licenses are granted for the exploit of private rights, as patents, are not included in this assumption. In these cases, licenses may be granted for the whole period of the patent, even if it may result in the price to be payed. It would be admitted to pay for the technology during the first five years, and to pay a "right of usufruct", according to the words of the Registry, much lower price during the rest of the period.

The technicians of the Registry assure that, in our country, if the acquired technology is developed and investigated normally, in five years it may be replaced by a home technology, in most cases.

According to the Registry, when the term of the contract has expired, the local contracting party, although he may be obliged to return the plans, diagrams, instruction books, and other material of information, can never bind himself not to produce the product object of the contract on the basis of all the knowledge he acquired and for which he payed. Of course this opinion is not taken into consideration when dealing with private rights, because their use without a license is an infringement.

8. *Study of the Contract From the Technical Point of View.*

The Registry studies the contract from the technical point of view, considering in the "Technical and Economic Information" that the contracting party must include in the blank form mentioned above.

The local enterprise must state which is the activity it carries on and which has been the evolution of the production in the last five accounting years; personnel employed, incorporation of new technologies, total investments in equipments and machinery, age of the principal equipments, etc.

It must also describe with details the technology and it must technically justify its incorporation. It also has to state if alternative technologies were previously considered and in the affirmative case, detail them and explain why they were rejected, their costs, etc.

The local enterprise has to explain if the technology complements, replaces or is independent of the present productive processes of the enterprise and the modifications in its technical structure its instruction will cause; if the incorporation implies the creation of demands of raw materials or homemade machinery. It must indicate the participation of Argentine technicians in the incorporation of the new technology.

It must also declare if there are any plans for the technical-scientific innovation and development, and which is the amount invested in it.

With all this information, the Registry determines which is the degree of novelty of the technology, the possibilities of its use and development in our country and its profit among others.

9. *Expiration of the Contract — Proof of Exploit.*

If the contract has no rule of execution or does not take effect during the period since its approval, it will expire as a matter of law.

It is also foreseen that the Ministry of Industry, authority in charge of the application of the laws, may authorize, in duly justified cases, "whenever the petition is presented before the expiration of the term," if the technology to be transfered has not turned obsolete.

The local contracting party has to present each year, an "Affidavit," in order to prove the execution and exploit of the contract. In this affidavit, he must present information related with the local enterprise, the relation between the contracting parties; if there has been any change since the date of inscription. He must also explain which has been the "evolution of the license during the period" and detail if he has had rule of execution; which of the technological contribution originally foreseen, did he receive, and if they were incorporated any new processes or products. He must give an account of the compensations or payments made to the licensor for royalties received or purchases made during such period. He has to furnish information in relation with the personnel employed for the production concerning the acquired technology, in all the company, for the Argentine market and for exports, specifying the licensed products. Lastly he must mention the investigations made, if any, and the expenses and development of the same.

Resolution 97 of the Ministry of Industry establishes that this affidavit must be presented within two months after the expiration of the annual term. If it is not presented, the approval originally granted will expire.

The inscription is automatically renewed by the presentation of the affidavit.

10. *Terms to Dictate Cancellation of Contracts and Procedure of Appeal.*

The law establishes that the resolution approving or denying the inscriptions of the contracts, their modifications and extensions, must be dictated within ninety days running, since its presentation. If no resolution has been dictated when this term elapses, the interested party will request urgent official communication to the Ministry of Industry. If there is no news within ten days since the date of presentation, the silence will be considered as an approval.

Any resolution may be appealed before the Federal Chamber and the term to file the appeal is of ten (10) days, (working days), since the notification to the interested party in the domicile elected when presenting the application of inscription. This remedy of appeal has to be presented before the Ministry of Industry who will take it to the judicial authority.

It is to be noted that the law 19.549 on Administrative proceedings, is subsequent to law 19.231, and it establishes that all the terms must be calculated in working days and not running days. Moreover it establishes silence on the part of the Administration implies the denial of the act. According to the regulations, each Direction may adopt this new procedure.

Not long ago, on September 26, the Ministry of Industry dictated resolution No. 97 adopting the procedure indicated in this law and thus modifying law 19.231, that is to say, all the terms must be calculated in working days and silence on the part of Administration means denial.

11. *Tariff to be Payed for the Inscription of the Contracts.*

The tariff to be payed for the inscription of the contracts will be fixed according to the average year amount of the payments in money to which they are obliged, according to the following scale:

Up to $1,000,000 per year	$ 300
Between $100,000 and $250,000	$ 600
More than $250,000	$2000

This payment is independent from the payment for information and the revenue stamp corresponding to each contract.

If there is no compensation in money, an estimation has to be made to calculate the amount that has to be payed.

If the amount is not permanent, it has to be estimated the average amount per year that the contract draws. If this amount is surpassed, the difference has to be payed afterwards.

12. *Breaking the Law.*

Fraudulent infringements to the regulations of the law will be penalized with the following sanctions:

1) cancellation of the inscription.
2) Fines up to one million pesos.
3) Disability to engage in trade or industry of up to two years.
4) In case of a company, the loss of the legal capacity.

Up to this date, none of this infringements have been registered, thus no sanction has yet been imposed.

Even though the crime of fraudulent infringement has not been typified, this does not mean that the norm may not be enforced. It would be a fraudulent infringement to omit a clause in the contract under approval.

13. *Taxes.*

All the contracts of license for the transference of technology have to pay a stamp tax of 10% of their value.

The law exempts from this tax, those acts formalized as "investments through the payment of a predetermined total amount." The purchase of technology is thus, exempted from taxes.

The law also establishes, as we already mentioned, that the expenses and expenditures occasioned by the contract, may be deducted from the balance sheet for tax purposes. We mean, all the expenses as rate for inscription, royalties, etc.

Lastly we have to mention, that royalties to be payed abroad, have to pay taxes. The law 19.409, which introduced several reforms in the tax system, establishes that the 41% of the amount to be payed for income tax, will be kept as definite and only payment. The same law considers, not admitting proof on the contrary, that the net income taxable is 80% of the amounts payed. Thus the 14% of the 80% is payed.

The local contracting party may make the deductions above mentioned, after these withholdings have been made.

14. *Statistics.*

To conclude we present some statistics which are the

result of the study of more or less 1,400 contracts presented to the Registry before December 31, 1972. They are non official figures, and according to these contracts, they are the figures of this year, 1973.

It was foreseen, that during this year, more or less 120,000,000 US$ would be payed for technology.

It is interesting to notice that according to the Argentine GEC (General Economic Confederation) our country transfers technology for an approximate value of US$20,000.

According to these figures, the more important sellers of technology to our country are the United States with 41.99% of the mentioned amount, and 41.6% of the contracts:

Italy, with 15.58% and the 6.29%.

Switzerland, with 7.89% and 7.96%.

France, with 7.64% and 10.01%.

Germany, with 6.69% and 11.23% of the contracts.

Then follow: Great Britain, Panama, Holland, Venezuela, and Sweden; and the 10 countries mentioned absorb 95.24% of the payments and 91.04% of the contracts.

The fields where the largest amounts are payed are:

Vehicles and automobiles	19.23%
Pharmaceutic products	12.31%
Food products and fishing	7.28%
Metal products except machinery and equipment	6.44%
Other chemical products	5.15%

In the Pharmaceutical field it was pointed out that, of the mentioned percentage, corresponding to 23,077,640 dollars, only an infimate proportion is payed for real technology, more or less three million dollars. The rest is payed to obtain the exclusive right in the sale of certain drug.

It was also noticed how unimportant was the percentage corresponding to machinery, only 10%.

According to this study only the 19% of the amount to be payed corresponds to companies of wholly national capital, 64% is payed by local enterprises with 50% or more of foreign participation in the capital and 36% is payed by enterprises with less than 49% of foreign participation in their capital.

The rates to be payed are the following:

the 6.84% forsee from 0 to 2% of the sales,

the 27.76% forsee from 2 to 5% of the sales

the 40.25% forsee from 5 to 8% of the sales

the 10.51% forsee from 8 to 15% of the sales

the 1.27% forsee from 15 to 30% of the sales

the 0.56%, that is to say, 8 contracts, from 30 to 51%.

The average terms of these contracts is nine and a half years.

THE PROBLEMS OF TRANSFERENCE OF TECHNOLOGY IN THE PRESENT SITUATION OF VENEZUELA

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1. *Introduction:*

The problem of the transference of technology from one country to other is the subject in vogue, mainly in those countries lacking national technology and which look forward to their economic development through the areas of production.

This circumstance, which has turned in the main premise, no doubt, inclines the opinion to the fundamental economic conceptions, discrediting the juridical conceptions ruling economics.

We make this remark, very important for us, because we are worried about the plans anticipated by the governments of the Latin American countries on regional or subregional development. These plans withdraw from the juridical structure and try to impose an economic concept not fitted for development and that may be an obstacle for it.

A proof of what we state is in Article 26 of the Andean Pact, Decision 24: Common Regime for the treatment of Foreign Capitals and on Marks, Patents, Licenses and Royalties, which grants to the Commission, at a proposal of the Board, the authority to decide over already granted patents. This is a very serious statement because it ignores that the right the owner of an invention has over it is a real right of property and not a privilege as mentioned in Decision 24.

Article 26:

> The Commission, at the proposal of the Board, may point out the process of production, products or groups of products to which *privilege* of patent may not be granted in the Member Countries. Moreover, it may decide about the treatment of the already granted *privileges.*

Privilege is a free grant made by the Government of something it owns. The creative idea is, in its origin, not the property of the Government, but on the contrary, as stated by SHAPELIER in 1739, it is the most untouchable, sacred, legitimate and personal property. If man cannot be the owner of his ideas, of his intellectual creations, neither can he be the owner of the material and non material things which are out of him. Today, the wealth of a country is not related with the territorial extension, nor the mineral reserves in the underground, but with the technological development, where man plays an important role as the producer of creative ideas of progress. Progress is based in the technological development, thus the development of these creative ideas has to be encouraged.

The lack of information in our Universities and Institutes of professional education, has helped to discredit the basic principles of industrial property or as the socialists prefer to call them, the juridical principles that protect inventions. For this reason, some pseudo-economists of the American Continent affirm that the regime of patents is one of the defects of Capitalism, an obstacle for the industrial development of the developing countries, contrary to the conquest of the socialist regime.

Nevertheless, the socialist I. CHERVIAKOV of Moscow, published in 1972, in the Magazine of the National Sovietic Group of AIPPI a work under the title of "PROBLEMS OF THE JURIDICAL PROTECTION OF INVENTIONS IN DEVELOPING COUNTRIES." There he stated, "the principal task of the developing countries is to stop economic backwardness and create a national independent economy. The right of patents plays an important role in the fulfillment of these tasks, it is directly related with the creation and use of inventions, and their import. Thus, the legislation on patents is directly related with industrialization, which is the means of overcoming economic backwardness and assures its effective realization."

The protection of inventions encourages the investigation in the technical and industrial fields, prevents the copy of ideas, that the quality of the products lessen because of lack of know-how required in any patented idea. Under these conditions it is difficult to acquire know-how in the competitive market, because the holder of the foreign patent would not see with good eyes the copy made of his idea because of the lack of protection, and no national, local industry will invest in investigation if it will not obtain a patent.

The lack of an effective system of patents, does not promote technical and industrial investigation and deviates the investment made by the private enterprise in scientific investigation.

As an example we may mention that in USSR, during