

Two Years With Mexican Law

*Law Transference of Technology,
its purpose and progress, as viewed
by Director General*

BY ENRIQUE AGUILAR*

Without doubt after more than two years since the Law of Transference of Technology went into effect, the objectives of this law are widely known at a national and international level. However, I shall mention some of the objectives which are of special importance and which were considered during the conception of the Law, and when it was submitted to Congress.



E. Aguilar

Mr. Marquez of the Mexican Petroleum Institute (IMP) referred to problems affecting the country, relating to better utilization of human resources, to the utilization of financial resources in a more efficient manner, and to attempt a greater independence in the technological area. I concur amply with Mr. Marquez' observations, and specially in the concerns of the oil sector in the sense that it is not possible to talk of "dependence" or on the contrary of "independence" as a central objective in the policy of Mexico. I think that in this field, as in many others, we must accept and try to understand the necessity to operate within a system of interdependence wherein we can take advantage of the technological developments generated in other countries, while making an effort to generate greater technology that will permit us to export technological knowledge and participate actively in this dynamic Transfer of Technology at an international level.

A very positive panorama was presented on the progress obtained in this field by the Mexican Petroleum Institute. Implicit reference was made of the accomplishments of the IMP as well as by other enterprises in Mexico. For the first time, aspects of selection and contracting of technology have been integrally approached to avoid isolated measures and decisions which do not contribute to a definite technological growth in the companies. This would apply to the company level as well as to the level of an investing institution or to the level of the nation as a whole.

It is important to act based on more ample concepts and try to realize efforts, at the level of negotiation, that take into account the progress developed by the Mexican com-

**Director General, National Register of Transfer of Technology, Mexico; on June 25, Mr. Aguilar accepted a position with UNIDO.*

panies in the technical areas, as well as in the administrative level and in the commercialization of the products.

In this sense I shall note that the Law does not have as its only purpose the reduction of technological payments. If one of the central preoccupations of this Law is to reduce payments for technology to reasonable levels, it is also a central objective to strengthen the capacity of the Mexican entrepreneur in the areas of selection and

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negotiation of contracts and the implementation of projects. What is intended here is, on one side, to act directly on the economic aspects, but in a more decisive form on the generation of human resources that will permit a greater technological independence.

When we confronted this problem, a great interest of the authorities, and especially the Minister of Industry and Commerce, was that this legal body would be applied with great objectivity. At no time was the control or regulatory aspect to be emphasized unduly, because it could have a negative effect in the long run. That is why in the application of the Law the formal aspects have been treated with a criteria close to the Law, but on the other hand a flexible criteria has been maintained that will permit Mexico to consolidate a position as an attractive country for the transfer of technology and foreign investment. This, when analyzed in an isolated manner, cannot be appreciated in its due context.

Mexico introduced legislation on this subject in 1973 and it considered the experiences of other countries, such as the case of Argentina and the spirit that ruled Decision 24 of the countries that form part of the Andean Pact. The experience of Japan was closely analyzed. An attempt was made to define a policy adequate to the conditions of Mexico while trying to avoid the problems that have been encountered or arisen in other countries.

I can advise you that in the opinion of many foreign companies and entrepreneurs in the United States, Europe, and Japan, that have dealt directly with the authorities of the Government of Mexico in the resolution of these problems, that the National Register of Transfer of Technology of Mexico has maintained an adequate balance. It has permitted establishment of an efficient system that contributes to the objectives of the country and to the objectives of the companies involved. With the exception of Japan, such a generalized and accepted opinion has never existed in the relations of other countries.

It is public knowledge that Mexico has achieved important savings in the payment of royalties. Even in those cases where foreign companies have had to accept conditions lower than they anticipated, these modifications

have been achieved with the direct participation of the companies involved.

No one can think that our decisions have been arbitrary. In all justice I can say that we have given opportunity to all the contracting parties to defend their points of view, and I believe that we have achieved very positive results and that we remain friends with such companies.

Many who have had something to do with the work of the Register may believe that handling such problems is easy, but I invite you, as I have always cordially done, to make an effort to understand the position of the Register. It handles these very complex problems for the economy of the country.

We know that effective and efficient development by the national industry is that which establishes goals linked to the objectives of the economic policy of the country.

I do not feel, that there is great difficulty in obtaining an affinity in these concepts. I know that if projects must be analyzed on the basis of a cost-benefit analysis at the company level, it also is very important that aspects that transcend company scope be taken into account. This the companies then can understand, in a clearer form, the problems affecting the national economy and the considerations that must be taken into account to solve problems and obtain accomplishments and objectives which benefit the whole country.

Let's now refer to the experience of the Register in the evaluation and registration of contracts.

A summary of the activities from the Law's effective date, February 1, 1973 to May 31, 1975 shows 6,528 contracts were presented to the Register.

Of these, 4,244 contracts were presented for their inscription in the Register. The Director has evaluated a total of 2,440 cases from a technical, economical and legal point of view. From those it has issued approximately 2,200 resolutions. Seventy-seven percent of them were approved and approximately 600 cases were rejected. Three hundred seven reconsideration recourses were filed, of which 148 were positively resolved, based on the efforts by the companies involved.

To date the decisions of the Register have originated 24 judicial appeals ("Amparo" suits), of which 10 were resolved favorably to the Register. Fourteen are pending a decision.

I would like to mention briefly some aspects of Article 7 of the Law that have resulted in negative resolutions in the first stage.

Of the total of negative decisions, 82 percent refer to Fraction II of Article 7 of the Law — the aspect related to payments.

For many of our friends this is a very high number. One friend said to me that our policy, as he interpreted it, has been one of invariably reducing the royalties contracted. He suggested that the criterion is that of reducing established payments by half. If this were so, this could be a relatively simple task, but the truth is that we have had great difficulties in handling these problems, and in particular the handling of this fraction of Article 7 of the Law.

It is our opinion that we have not at any time acted arbitrarily. We can prove this in the sense that, in a good number of cases when we have been submitted additional information after a negative decision, we have modified our decisions. It is important to have access to complete

information.

In 22 percent of the cases, the negative was in relation to Fraction VII of Article 7, the fraction relating to exports. In 35 percent reference was made to Fraction XI of Article 7. In 43 percent, reference was to Fraction XIII, which relates to excessive terms of duration. Finally, in 20 percent the contracts were denied or negative resolutions were issued on the basis of Fraction XIV of Article 7. This relates to the matter of applicable laws and courts.

It would be interesting to analyze a bit more profoundly the viewpoints and criteria being handled at the level of companies. It is our opinion that companies, both supplier and purchaser of technology, have shown a great desire to collaborate and they have generated an attitude of cooperation at all times with the Register.

I believe that if the policy of Mexico, in matters of regulation of transfer of technology, is deemed at the international level as a healthy and objective policy and as a flexible policy, we must recognize that this merit and part of this recognition corresponds to the companies and their representatives in Mexico. I wish to take this opportunity to say that the authorities of the Ministry of Industry and Commerce appreciate the efforts made in this field by Mexican companies and entrepreneurs.

To conclude, I will point out certain aspects of technological policy of Mexico for the future.

We believe that, once the phase of registration of contracts is passed and once this important requirement has been fulfilled, the Register of Transfer of Technology must constitute and cover a dynamic function. It must guide national entrepreneurs so they can conduct transactions, taking into account the technological requirements that exist at managerial level and the need to develop technical, legal and economical bases that permit better selection and utilization of foreign technology. Based on experience in Mexico through the application of the Law, an important source of information is now readily available. It will make possible the formulation of policies in matters of science and transfer of technology.

We believe that greater attention must be given to the incorporation of the variable technology as a dynamic agent in productivity and as an instrument to strengthen the capacity of the national scientific system. Thus we see, as one of the important objectives at medium term, is that of simultaneously acting on the regulation of the transfer of technology while promoting the internal offer of technology.

It is important to develop mechanisms that permit an even higher increment in research and development and a methodical effort in the assimilation and adaptation of imported technologies in the shortest possible time. It will be necessary to establish priorities at sectorial levels so that they may develop based on two perspectives: The first, to generate local technology, and the second, the importation of technical knowledge from abroad.

In mentioning these two points, I want to emphasize that it is necessary to define a strategy that adequately describes the Government support in these two areas. We feel that the joint participation between national companies and institutions and government bodies will promote the technological development of Mexico based on the two perspectives to which I made reference.

Jointly, they must design supporting mechanisms so that

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Opportunities in Malaysia

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5. To strengthen the bargaining power of local industries
6. To see to the development of local research and development
7. To avoid restrictive business practices

In applying these guidelines, the government will not lose sight of the need to promote the inflow of technology. The normal rate of royalty payment is based on 2 percent of net sales. A slight deviation from this normal rate is allowable, depending on the merits of each case. In addition, the government does not encourage lump-sum payments.

Licensing agreements, either for local manufacture or marketing, must be recorded with the Ministry of Trade and Industry. A licensee may sue in his own name against infringement of his rights. The government does not allow export territorial restrictions.

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administrative, fiscal, economic, and technological efforts help generate Mexican technologies. Instruments must be adequate to the case — to the times — for the importation in selective form of processes and technologies from abroad.

There is no doubt that we have advanced in the conceptual sense of the problem, and that we in Mexico are aware that, for the purpose of maintaining and developing the technological area, we cannot prescind the importation of foreign technology. We must make efforts so that this importation be as adequate as possible and carried out in terms and conditions that permit a strong positive economic development.

Now far a few words related to the measures being taken at an international level to elaborate an international code of conduct on transfer of technology.

Mexico has supported establishment of a code of principles that may serve as a basis and guide for all countries, both developed and in process of development, in the transfer of technology.

In Mexico, a guide of this nature would only have a complementary function, but we are also conscious that many other countries have not yet come to understand and achieve an adequate comprehension of the complexity and implications that derive from such process.

The position of the developed countries, concretely the position of the countries in group "B" within the United Nations, in which the United States, Western Europe, and Japan participate have maintained a very strict policy in this respect. It has been argued that these type of transactions operate primordially at the level of companies and that there was no point in establishing an ordinance that in any manner interferes with the free exchange of information and commerce in technological matters.

Our point of view is that, if an International Code of Conduct is not approved, each community could independently establish the measures of an administrative or legislative type. As a result in the not-too-distant future we would be operating within a totally disarticulated system.

Without a doubt, there would be duplication of effort and inconsistency in the measures adopted.

It is because of this that we have maintained a very open position. We have tried to define and contribute to the elaboration of a code of conduct with the participation of all countries involved to develop an instrument and a guide that will permit better cooperation and understanding. This reunion has a very positive character by virtue of establishing better communications. It will give us an opportunity to better understand the problems that affect the supplier companies and the objectives and limitations of the respective governments.

(EDITOR'S NOTE: Jaime Alvarez Soberanis has been named the Director General of the National Register of Transfer of Technology, replacing Mr. Aguilar. Mr. Soberanis was assistant director in the area of legal evaluation in the Register.)

Europeans Should Consider Quebec

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we intend to screen more closely foreign capital in Canada, a close study of our legislation shows that the spirit of the legislators was far from attempting to close our frontiers to foreign technology.

How does the province of Quebec, which I represent in the Benelux, look for foreign technology?

Firstly, Quebec has opened five Délégations in Europe: those Délégations are supported by a licensing office in Montreal. This Montreal group is an autonomous part of the Department of Industry and Commerce of the Government of Quebec, and it is manned by professionals entirely devoted to licensing contracts. Their job consists in knowing the Canadian industrial and distribution networks, and to channel new technology opportunities brought from the various Quebec Délégations to the proper hands.

But their activity is not limited to waiting for new opportunities. The licensing group organizes tours for industrialists. Those tours may either be centered on an exposition or directed toward a geographical area. They may bring together industrialists having technology to offer as well as industrialists looking for new technology. In 1974, we prepared 14 such missions.

Receives Industrialists

The licensing group also receives foreign industrialists and prepares for them whatever meetings may be necessary. In some cases, the Department of Industry and Commerce will even finance evaluation or feasibility studies. Two main rules of conduct are maintained: the services are free of charge, paperwork is kept to a minimum.

One could compare our work to that of a marriage counselor. I am an industrial marriage counselor. My job consists in placing people in contact with each other, but I make sure I get out of the picture before the wedding night.

I told you why we were looking for European technology, but why should you be considering giving a license to Quebecers? Some months ago, at a previous meeting, you heard about the "American not-made-here-complex",