

Philippine Policies Encourage Technology

BY DIONISIO A. TEJERO*



Guidelines and practices are designed to encourage technology transfer to improve socioeconomic conditions

Technology is a global wave that all must ride, and no country dare be left behind. Technologies transform society. Transformation, however, can have positive or negative implications. Therefore, it is necessary to guide technological change through deliberate decision-making.

The ability to make crucial decisions has been described by Charles Weiss as "technological capacity." Weiss states that, "In guiding technological change, a country requires technological capacity for a wide variety of tasks: identifying and defining technological feasible development goals and strategies at the sector and project levels; shopping for, selecting, negotiating for and acquiring technology and ensuring its adaptation to local problems, conditions and resources; implementing, using and improving that technology in solving practical problems as they arise; evaluating the effect of technology and assessing its social and environmental impact."¹

The enactment of technology transfer regulations in the Philippines is based on this guideline. This is pronounced in the established functions of the Technology Transfer Registry,² the more salient of which are:

1. Formulate policies that would promote the inflow of appropriate technology into the desired/preferred sectors of activity with focus on the developmental and regulatory roles of government in the field of technology transfer.

2. Establish general and equitable standards x x x giving due recognition to the special needs of the country for the fulfillment of its economic

and social development objectives x x x.

3. Encourage technology transfer arrangements under conditions x x x to achieve mutually acceptable satisfactory agreements.

4. Measure the extent of technology absorption and adaption of technology transfer agreements.

5. Issue rules and regulations for the effective, efficient and economic implementation of policies relative to technology transfer.

The formulation of guidelines on technology transfer in the Philippines commenced with the organization of the Technology Transfer Board, by virtue of Presidential Decree No. 1520 promulgated in June 1978, as an attached agency of the Ministry of Trade and Industry. The Board was abolished on February 27, 1987, pursuant to Executive Order No. 133, reorganizing the Department of Trade and Industry. This agency is now attached to the Bureau of Patents, Trademarks and Technology Transfer. It is called the Technology Transfer Registry. The powers and functions of the old Board were retained. The decision-making power, however, is now with the Director of the Bureau.

This office performs two roles, as a regulatory agency and as a promotional body. As a regulatory agency, it ensures:

1. Technology is obtained on the best available and fair terms.

2. Technology flows into preferred or priority areas of industry.

3. The level and nature of technology being imported is appropriate to our needs.

4. There is proper selection of technology.

5. The technology will be fully utilized and adapted.

As a promotional body, its role is achieved through efforts to present

and explain directives and government policies relating to technology transfer, to the domestic community and to foreign suppliers of technology. There is a deliberate move to be more promotional to provide an environment conducive for business to grow on a sustained basis. Thus, the Registry is enjoined to render advisory service to the private sector in technology sourcing. It also aids in the negotiation of agreements, and it collects and disseminates information on technologies that could be tapped by the private sector for starting up production activities or improving productivity.

◀ Assess Performance ▶

This office and the rules on transfer of technology have been in existence for almost 10 years. How do we assess its performance? How successful was it in attracting foreign licensors?

In reply to these queries, it would be best to present the Philippines situation during the 10 year period.³

1. From June 20, 1978, the date of its establishment, to April 7, 1988, the Board (now the Registry), was able to register 812 agreements.

2. By types of agreements, these are:

Types of Assets	Total
Patents, Trademarks, Know-how	233
Patents, Trademarks	9
Patents, Know-how	56
Trademarks, Know-how	237
Patents	9
Trademarks	67
Know-how	117
Purely consultancy	84
	812

*Senior Assistant Vice-President & Legal Director, San Miguel Corporation, Manila; paper presented at LES Australia/New Zealand-Les International Conference, April 1988.

3. We have agreements with:	
United States	378
Japan	139
Switzerland	55
U.K.	57
Germany	41
Australia	20
Others	122
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	812

4. The types of agreements, classified as new/renewal, are:	
New (44.95%)	365
Renewal (55.05%)	447
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Considering the free flow of technology worldwide and the fact that new technologies are being generated around the world at an accelerating pace, the Philippine experience is not much to crow about. I hazard to state that this could be due to a misunderstanding of our rules on technology transfer.

◀ Government Moves ▶

Conscious of this fact, the present government has initiated moves to attract foreign licensors. The same started with a change in the organizational setup of the Technology Transfer office. This was done with Executive Order No. 133, on February 27, 1987. After consultation with business organizations, including the European Chamber of Commerce, American Chamber of Commerce, various industry and professional organizations including LES Philippines and the Intellectual Property Association, the new office revised the Rules of Procedure on Technology Transfer. These rules were submitted to the Secretary of Trade and Industry for approval.⁴

Today, I am privileged to discuss with you the salient features of these rules, the latest guidelines on technology transfer in the Philippines.

The changes are due to the following factors:

1. Reorganization of the Technology Transfer Office.
2. The present administration's avowed commitment for transparency.
3. Greater focus on its promotive and facilitative roles to encourage and support private-sector initiative.

Following are the highlights of the Revised Rules:

1. First, the objectives of functions of the Registry were made more explicit. For instance, it is now indicated that the objective is to establish *general* and *equitable* standards of relationship between the recipient and the supplier, giving due recognition to the special needs of the country for the fulfillment of its economic and social objectives; and to achieve a balance in this relationship between the licensor and the licensee at all stages of the transaction. The rationale for this is to ensure that the best terms in the negotiation process are attained by the licensee. The monitoring function is also more clearly enunciated in the statement of functions, i.e. to measure the extent of technology absorption and adaptation under the technology transfer agreement to ensure that mastery of the technology is taking place so that a certain level of technological development is attained for industry to grow and flourish.

The new thrusts of the Department of Trade & Industry came into play in the formulation of the statement of functions. On the premise that industrial strategy should be centered on the private sector as the vehicle of growth, there is the deliberate move to be more promotional in order to provide an operating environment conducive for business to grow on a sustained basis. Accordingly, the Registry is enjoined to render advisory service to the private sector in technology sourcing as well as in the negotiation of agreements; to collect and disseminate information on technologies that could be tapped for starting up production activities or improving productivity.

2. The second highlight concerns the policy guidelines in evaluating technology transfer agreements. The Registry Office has on several occasions been criticized for the vagueness of the entire process of evaluating agreements. Under the current rules, there is an attempt to put down in writing the factors that are used and taken into account in the evaluation process. Thus, in the determination of the appropriateness and need for technology, cri-

teria shall consist of, among others, the following:

(a) The use of the technology/industrial property rights is consistent with the national development objectives and goals such as employment generation, export promotion, use of indigenous raw materials, conservation of energy, regional industrial dispersal, etc.

(b) The use of technology/industrial property rights answers an immediate need taking into account the gap between the requirement of the industry and the national technological capability.

(c) The use of technology/industrial property rights does not result in environmental pollution and/or hazard to employees of the technology recipient and to the community at large.

Similarly, in determining reasonableness of the technology payments, the following are considered: scope, nature and complexity of the technology; importance of the technology in relation to the technology recipient's overall activity; degree of mastery of the technology by the technology supplier; stage of the licensed product in the product life cycle; use of indigenous raw materials and services; energy savings; level of priority of the licensed activity; employment generation; export earnings and its effect on the balance of payments; spill-over of technology to local industry; technology supplier's share in the technology recipient's profit; and royalty approved for the industry under which the licensed product is classified.

Also, the use of net sales as royalty base, the discouragement of minimum royalty provisions and the fixing of the maximum royalty fee for use of trademark to a level of 1% have been specified. On the brighter side, it is also explicitly indicated that a bonus royalty of 2% based on net foreign exchange earnings may be allowed for companies which export their licensed products.

3. Under the item on restrictive business provisions, please note that there now are exemptions to

the prohibitions including the following:

(a) Export restrictions may be considered justified for the protection of legitimate interests of technology suppliers and recipients, such as exports to countries where any of the party's industrial property rights will be infringed or where exclusive licenses to use the technology in these countries have already been granted.

(b) The post-termination restriction on use of know-how may be allowed in cases of early termination of the agreement due to reasons attributable to the recipient.

(c) The tied-in provision on raw material and intermediate component purchase may be allowed when necessary to maintain the quality standards set by the supplier.

(d) Duration exceeding five years may also be allowed when the licensed activity has a long gestation period or in case of royalty-free agreements.

The revised rules also incorporated what were previously considered under a TTB resolution as allowable conditions under which renewals or agreements could take place. These are:

(a) In the case of agreements involving fast-moving technologies.

(b) In case of agreements involving valid and subsisting industrial property rights.

(c) In case of agreements involving complicated technologies.

4. Finally, all agreements are now required to provide particularly for the following:

(a) That the technology, if used in accordance with the instructions of the supplier, is suitable for the manufacture of the products.

(b) That the supplier shall warrant that to the best of its knowledge, it is not aware of third parties' valid patent rights, which would be infringed by the use of the supplier's technology.

(c) That the recipient shall have continued access to improve-

ments under the agreement.

5. I think that prospective technology transferors will be heartened to note that processing time has been reduced from 60 to 45 days for new applications. Fees have been increased, but documentation requirements have been reduced.

Earlier, I impliedly stated that the limited number of technology transfer agreements flowing into the country may be due to a lack of a clear understanding of our guidelines. I am hopeful that, with our revised rules, we will be able to attract more licensors. The rules of procedure were expanded, and are now clearer and more comprehensive.

At this stage, it is relevant for all concerned to know that, notwithstanding the list of restrictive business practices provided by our rules and the limitation on royalty fees, exemptions from these rules are allowed. Under Section 2, Rule V of the revised rules, it is provided:

Section 2. *Exceptional cases.* In exceptional or meritorious cases where substantial benefits will accrue to the economy, such as technology content, increase in foreign exchange earnings, employment generation, regional dispersal of industries and/or substitution with or use of local raw materials, exemption from any of the above requirements may be allowed after evaluation thereof on a case to case basis.

I would like to believe that licensors are concerned with the socioeconomic development of countries where these technologies are transferred. They are also aware that, if these concerns are properly addressed and development is on an upswing, it will eventually rebound to their benefit. The aforesaid provision of our Rules can be taken advantage of, and in fact we encourage licensors to do so. In the process, application of the restrictive rules specifically on royalty payments can be minimized.

CONCLUSION

Our revised rules and guidelines have taken cognizance of the impact of rapidly changing technologies on the socioeconomic development of our country. The policy-makers are aware that new tech-

nologies are associated with and have a range of effects on employment, income distribution, trade, education, social mobility, technological knowledge and the structure and organization of work.

The main thrust of our rules is to provide guidelines that would enable us to gain the most benefits from these technologies while minimizing their negative consequences. The focus now is on the promotional aspect of the work of the Technology Transfer Registry rather than on its regulatory functions. The private sector is being encouraged to participate more in the task of nation building. The rules are so formulated to provide an atmosphere that will ensure sustained growth of businesses, specifically these industries where substantial benefits will accrue to the country.

We are hopeful, like our policy-makers, that more licensors will look our way and invest their time, technology, know-how, and capital to help build a strong nation. Two years ago, we were able to change our leaders peacefully. I am very positive that we can also change the course of our society and transform the same into a progressive, dynamic, peaceful and technologically advanced country.

NOTES

1. Charles Weiss, Mario Kamenetzky and Robert H Mayberry, "Guiding technological change," in M. Anandakrishnan, ed.; *Planning and Popularizing Science and Technology in Developing Countries* (Oxford, England, Tycooly, 1985).

2. The Technology Transfer Board, created by Presidential Decree No. 1520 in June 1978 was abolished and in its stead, a Technology Transfer Registry was established pursuant to Executive Order No. 133, promulgated on July 24, 1987. The Registry is now attached to the Bureau of Patents, Trademarks and Technology Transfer, an attached agency of the Department of Trade and Industry.

3. Source, Technology Transfer Registry, Bureau of Patents, Trademarks and Technology Transfer, Department of Trade and Industry (April 7, 1988).

4. Source, Revised Rules of Procedure, Technology Transfer Registry, Bureau of Patents, Trademarks and Technology Transfer, Department of Trade and Industry, submitted for approval to the Secretary of Trade and Industry, as of April 8, 1988. Although not officially approved, this paper writer has assumed that the approval is a matter of course and accordingly, has used the same as the basis for discussion and presentation.