

Systems Affecting Technology

The second part of report by UNIDO of systems regulating technology inflows in selected developing countries

BY SECRETARIAT OF UNIDO

(EDITOR'S NOTE: This extensive and highly significant report is being published in its entirety in Les Nouvelles in 1982. The first installment was published in the March 1982 issue.)

STRUCTURE AND FUNCTIONS OF REGULATORY AGENCIES IN SELECTED DEVELOPING COUNTRIES

A key position within the governmental machinery established for regulating the acquisition and utilization of foreign technology is usually occupied by national offices for the transfer of technology. They may bear a variety of names and execute somewhat different functions, but still they are the main governmental agencies implementing national technological policies. Such offices have been created by now or are going to be created in Argentina, Brazil, Colombia, Ethiopia, Guatemala, Malaysia, Mexico, Peru, Philippines and Turkey.

National offices for technology transfer usually have three closely related functions: regulatory, coordinating and promotional. In some cases the regulatory functions predominate, in others the coordinating or promotional ones.

In executing regulatory functions the offices evaluate all agreements involving the transfer of technology, make recommendations for approval and at last register the agreements approved. They may also, along with other responsible agencies, establish priorities for the technology inflow.

The evaluation includes three (3) basic aspects:

- (a) Legal—to determine whether agreements conform with existing national legislation, etc;
- (b) Technical—to select appropriate technology, to determine whether it can be adapted and it can be utilized, etc.;
- (c) Economic—to appraise the project's commercial effectiveness.

The coordinating functions of the agencies reflect the fact that technology transfer affects many areas of the economy administered by different bodies. The actions and policies of these bodies must be coordinated to make technology transfer effective.

Equally important are the promotional functions of the national offices—interpreting government policies to both the domestic business community and the foreign suppliers.

This chapter and decision concerns itself with administrative structures regulating the flow of technology. Furthermore, an attempt has been made to support presented structures by excerpts of corresponding legislation in those countries in order to describe fully applied legislative and administrative systems.

LATIN AMERICA

Andean Pact

Extracts of Decision 84 of the Cartagena Agreement concerning the contents of technology agreements are given below:

"Contracts for the importation of technology shall contain the following data:

- Concessionary (name and profession),
- Grantor (name and nationality).

Affiliation between concessionary and grantor, if any particulars of the technology being transmitted and its intended use. Description of the subject of the agreement: process technology, product technology, trademarks, patents, technical assistance, operative skills, training. Mode of payment of royalties (fixed and variable, parts and basis for the variable payment): amount of the fixed sums of periodic payment, and percentages where payments are variable.

"The guidelines of the Andean Pact pertaining to transfer of technology are reproduced as adopted by member countries."

Guidelines for the Authorization, Registration and Control of Foreign Investment

Every application for foreign investment must contain:

- I. Particulars of the investor
 - (a) Name and commercial style
 - (b) Nationality
 - (c) Constitution of the directory
 - (d) Composition of personnel and management
 - (e) Economic activity
 - (f) Copy of the public deed of organization
- II. Details of the investment
 - (a) Financial resources in currency or credit:
 - Currency in which the investment is made
 - Capital of national origin
 - Capital of foreign origin
 - Credit from main office (or parent company)
 - Credit from other sources
 - Effective interest to be paid for credits
 - (b) Physical or tangible resources such as:
 - Industrial plants
 - New and used machinery
 - New and used equipment
 - Spare parts
 - Loose parts and pieces
 - Raw materials
 - Intermediate products
 - (c) Resources derived from technology or intangibles such as:
 - Trademarks
 - Industrial designs
 - Management capacity
 - Technical knowledge (know-how) patented

or not patented
Possible alternative technologies
Technical knowledge (know-how) may be presented in the following forms:

(i) Objects:

Samples
Non-registered models
Machinery, devices, pieces, tools
Manufacturing apparatus

(ii) Technical documents:

Formulae, estimates
Plans, drawings
Unpatented inventions

(iii) Instructions:

Elaboration (or working up) notes, manufacturing, functioning (operation) of the product or of the process
Explanations or practical advice for performance
Technical booklets
Complementary explanations of patents
Manufacturing circuits
Control methods
Amount to be paid for royalties
Particulars of the receiver of royalties.

Article 19: Contracts on importation of technology must contain, at least, several clauses on the following subjects:

- (a) Identification of the forms by which the imported technology is transferred;
- (b) Contractual value of each of the elements involved in the transfer of technology, expressed in a form similar to the one used in the registration of direct foreign investment; and
- (c) Determination of the period of validity.

Article 22: National authorities will undertake a continuous and systematic task of identification of available technologies on the world market for the different industrial fields, in order to make available the most favorable and advisable alternative solutions for the economic conditions of the subregion and will forward the results of their work to the board. This work will be furthered in a coordinated way with those which may be adopted in accordance with Chapter V of this regime in connection with the production of national or subregional technology.

Article 23: The Committee, upon the request of the Board, shall approve, before November 30, 1972, a program directed toward promoting and protecting the production of subregional technology, as well as the adaption and assimilation of existing technologies.

This program must contain, among other elements:

- (a) Special benefits, tributary or of another kind, to stimulate the production of technology and especially those connected with the intensive use of items of subregional origin or those which may be designed to take advantage efficiently of subregional productive factors;
- (b) Development of exports to third countries of products manufactured on the basis of subregional technology; and
- (c) Channeling of internal saving toward the establishment of subregional or national centers of research and development.

Article 24: The Governments of the Member Countries shall give preference in their acquisitions to products which include technology or subregional origin in the form that the Committee may consider advisable. The Committee, upon request of the Board, may propose to the Member Countries the establishment of taxes (or duties) against the products which use trademarks of foreign origin and which cause the payment of royalties, when technology of public domain or easy access is used in their production.

Article 26: The Committee, upon request of the Board, may indicate production processes, products or groups of products, with respect to which no patent privileges may be granted in any of the Member Countries. Likewise, it may decide on the treatment of

privileges already granted.

Article 54: Member Countries shall create a Subregional Office of Industrial Property (Trademarks and Patents) which will have the following functions:

- (a) Serve as a liaison organization between the national offices of industrial property (trademarks and patents);
- (b) Gather and publish information regarding industrial property (trademarks and patents) for the national offices;
- (c) Prepare typical licensing contracts for the use of trademarks and exploitation of patents in the Subregion;
- (d) Advise the national offices on all matters connected with application of common regulations on industrial property (trademarks and patents) which may be adopted in the regulations referred to in Provisional Article G;
- (e) Further study and present recommendations to the Member Countries on invention patents.

Article 55: The Committee, upon request of the Board will establish a subregional system for the development, promotion, production and adaption of technology, which in addition will have the function of centralizing the information referred to in Article 22 of the present regime and distribute it among the Member Countries, together with the information it may obtain directly on the same subjects and on the conditions of commercialization of technology.

Argentina

The decisions of the National Registry are reviewed by an advisory committee composed of officials of the Secretariat of Industrial Development, The Secretariat of Science and Technology, and the National Development Bank before they are submitted through the Technical Under secretariat to the Secretary of State for Industrial Development for final approval or rejection (see Figure I).

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Prior examination and binding clauses

Article 7: Voluntary acts of legal consequences which, in accordance with the preceding articles are subject to nonautomatic registration according to the provisions of this Law, shall be subject to prior examination by the Enforcement Authority.

For the act to be approved, it must at least include the following clauses:

- (a) Identification of the services which will be rendered by the supplier of the technology or trademarks;
- (b) Identification of the services which will be rendered by the recipient of the technology or trademarks. The consideration for each one of the services rendered by the supplier shall be specified with the greatest accuracy possible;
- (c) Determination of the effective term of the contract;
- (d) In acts that involve the transfer of technology, the technical aims which the recipient intends to achieve by said transfer must be indicated;
- (e) A declaration by the supplier of the technology that he is familiar with this Law.

Brazil

In Brazil the techno-economic evaluation of technology agreements is carried out by the National Industrial Property Institute (INPI) under the Ministry of Industry and Trade within the scope of a contract for "furnishing of industrial technology" as outlined below.

Purpose—A contract "for the furnishing of industrial technology" shall be deemed to be a contract specifically designed to allow the acquisition of knowledge and techniques not covered by industrial

property rights filed or granted in the country and which are to be applied in the production of consumer goods or inputs in general.

The contract must cover in particular:

(a) The supply of all the technical engineering data for the process or the product, including the methodology of technological development used to obtain it, such data being represented by the body of formulae and technical information, documents, industrial designs, instructions for operations and other like elements allowing manufacture of the product;

(b) The furnishing of data and information to update the process or product;

(c) The furnishing of technical assistance by the furnisher's technicians and the training of specialized technical personnel of the acquirer.

Functions of the National Institute of Industrial Property

Article 1: The National Institute of Industrial Property (INPI) is hereby established as an autonomous federal organ attached to the Ministry of Industry and Trade, with head office and domicile in the Federal District.

Sole paragraph: The Institute shall enjoy the privileges of the State in respect of the assets, income and services relating to or deriving from its essential purposes.

Article 2: The primary purpose of the Institute shall be to execute at the national level the provisions of law governing the social, economic, legal and technical functions of industrial property.

Sole paragraph: Without prejudice to any other duties that may be allotted to the Institute, it shall adopt for the purpose of national economic development measures to accelerate and regulate the transfer of technology and to improve conditions for the negotiation and use of patents. It shall also advise on the signature, ratification and denunciation of conventions, treaties, contracts and agreements relating to industrial property.

Article 5: The President of the Institute shall be nominated by the Minister of Industry and Trade and may be appointed and dismissed only by the President of the Republic.

Article 6: The Executive shall make regulations for the structure, duties and operation of the various organs of the Institute and for the conduct and engagement of its staff.

Mexico

In 1978 the Registry of Foreign Investment and the Registry of Technology Transfer were amalgamated. As regards technology transfer, the following rules will apply.

Article 4: The documents containing the acts, agreements or contracts referred to in Article 2, shall be filed with the Ministry of Development for registration in the National Register for Foreign Investments and the Transfer of Technology, within sixty (60) days from the date of their execution. If filed within this period, the registration shall be effective from the date of their execution. Upon expiration of said period, the registration shall be effective only from the date of filing.

Further, any amendment of acts, agreements or contracts referred in Article 2, must be filed for registration with the Ministry of Industry and Commerce, as provided in Article 2. When the parties terminate the contracts or agreements prior to the termination date stipulated therein, notice shall be given to the Ministry of Industry and Commerce within sixty (60) days from the date of termination.

Article 10: The Ministry of Industry and Commerce shall pass on the registration and nonregistration in the National Register for the Transfer of Technology within a period of ninety (90) days following the filing with it of the documents containing the acts,

agreements or contracts referred to in Article 2. Upon the termination of this period without the Ministry having rendered its decision, the respective act, agreement or contract shall be registered in the National Register for the Transfer of Technology.

Article 11: The Ministry of Industry and Commerce may cancel the registration in the National Register for the Transfer of Technology, of the acts, agreements or contracts when the terms under which they were registered are amended or modified contrary to the provisions of this Law.

Article 12: The Ministry of Industry and Commerce is authorized to verify at any time the compliance of the provisions of this Law.

ASIA AND THE FAR EAST

India

The Technical Evaluation Committee (TEC) considers a proposal for foreign collaboration from the technical angle and furnishes comments to the Secretariat for Industrial Approvals and to the ministry dealing with the subject. The comments of TEC, CSIR, DCSSI, the ministry, etc., are placed before the Foreign Investment Board for consideration. The various aspects of the proposals, such as need for foreign collaboration, the priority of the industry and the reasonableness of the terms offered the Foreign Investment Board (FIB) decides to recommend or reject the proposal. The Secretary of the Department of Economic Affairs, in his capacity as the FIB chairman, submits favorable recommendation to the Minister of Industry for final approval, after which SIA notifies the individual applicants.

The Secretary, Ministry of Finance (Department of Economic Affairs), serves as chairman of the Foreign Investment Board, which is responsible for all matters relating to the approval of collaboration proposals. The Foreign Investment Board and the Joint Secretary in charge of SIA, Department of Industrial Development, serves as secretary.

The members of the Board include:

- (1) Secretary, Ministry of Industry (Department of Industrial Development)
- (2) Secretary, Ministry of Petroleum
- (3) Secretary, Ministry of Commerce
- (4) Secretary, Department of Company Affairs
- (5) Secretary, Planning Commission
- (6) Secretary, Department of Science and Technology
- (7) Secretary of the ministry concerned
- (8) Director General, Council of Scientific and Industrial Research
- (9) Director General, Technical Development

The Technical Evaluation Committee is composed of representatives of CSIR and the Department of Science and Technology. The Director General of Technical Development serves as chairman.

The government is considering the creation of a national registry that will take over the work of recording foreign collaboration agreements carried out at present by the various ministries. It will maintain registers containing particulars of all proposals for technical and financial collaboration between Indian entrepreneurs and foreign firms approved by government, such as:

- Name of the Indian entrepreneur
- Sector and type of technology or services

Description of product
 Name of foreign licensor and country
 Foreign equity participation, indicating the amount and proportion of foreign holding
 Duration of contract
 Remuneration payable to the firm (a) for production on process technology (type of payment such as lump-sum fees, annual royalty to be specified); (b) for technological services including management training and use of foreign personnel

Annual likely production of Indian enterprise as a result of technology agreement

Additional functions include:

(a) Monitoring the process of proposals on the basis of annual returns from Indian firms;

(b) Examining the steps taken by the Indian firm to establish Research and Development facilities to enable the technology acquired to be absorbed;

(c) Follow-up action on the efforts made by the Indian firm to obtain information from the collaborator on improvements in the technology supplied;

(d) Comparing the quality of the product with the specifications provided for;

(e) Examining the reports concerning the training facilities offered employees of the Indian firms in the collaborator's industrial units and the services provided by experts who sent work with the Indian firm;

(f) Examining further steps involved in adapting the technology with respect to raw materials, modernization of equipment and improvement in the specification of the end product.

Republic of Korea

In the Republic of Korea a special body called the Final Decision Committee has been established to issue decisions on transfer of technology agreements which are divided into two categories

Contracts with a duration exceeding three (3) years, With an initial royalty exceeding \$30,000 and running royalties exceeding 3% of net sales fall into the first category.

The Foreign Capital Inducement Deliberation Committee has as its chairman the Minister of the Economic Planning Board. Its members include the Ministers of Finance, Agriculture and Forestry, Commerce and Industry, Construction and Science and Technology; the governors of the Bank of Korea and the Foreign Exchange Bank; and outstanding economists, lawyers, scholars nominated by the president.

Contracts with a duration of up to three years, an initial royalty of up to \$30,000 and running royalties of up to 3% of net sales, fall into the second category.

The Foreign Capital Investment Review Committee consists of a chairman; the Assistant Minister of Economic Cooperation of the Economic Planning Board Members (20); Directors of each ministry and banks and institutes.

Contracts related to purely engineering services with a duration of one year or less are dealt with by the Engineering Service Promotion Review Committee composed of a chairman, the Vice Minister of Science and Technology, and the directors of each ministry as members.

Contracts other than engineering service contracts with a duration of less than one year are dealt with by

the Division of Foreign Exchange of the Ministry of Finance.

Philippines

Functions of the Technology Transfer Board:*

Sec. 1. Functions in general. The Board shall have the following functions:

(a) Formulate policies, including a system of priorities which would promote an integrated approach to the developmental and regulatory roles of the government in the field of technology transfer;

(b) Issue rules and regulations for the effective, efficient and economic implementation of policies and guidelines relative to technology transfer;

(c) Establish a system of coordinating all governmental activities on technology transfer and ensure continuing and meaningful interaction among various government agencies, particularly with respect to the determination of the impact of technology transfer on national development;

(d) Serve as a forum for the continuing interchange of ideas and information among the government agencies, concerned, the private sector and the general public on policy issues, problems and alternative approaches relating to technology transfer; and

(e) Perform such other functions as may be necessary for the accomplishment of its objectives.

Sec. 2. Specific Function. All technology transfer arrangements as above-defined must be registered with the Board after due evaluation in the light of the technology transfer policies set by the Board, subject to such sanctions the Board and/or its member agencies may impose for the effective implementation of this requirement.

Requirements for registration:

Sec. 1. Filing of technology transfer arrangements. All arrangements shall be submitted in duplicate to the Board for approval and registration accompanied by Application Form No. TTB-1 to be accomplished in duplicate, containing the following: (1) general information about the agreement; (2) information about the technology recipient; and (3) information about the technology supplier.

Sec. 2. Supporting documents. The documents to be submitted by the applicant in support of his application are:

(a) Audited financial statements of the technology recipient, viz: profit-and-loss statements and balance sheets for the three preceding years, if applicant has been operating for more than three years; if not, statements during the period he has been operating;

(b) Projected financial statements of the technology recipient for the next five years;

(c) Proof of patent and/or trademark registration, if any;

(d) Such other papers as may be required by the Board.

Sec. 3. Date of official acceptance. The date of full compliance by the applicant with all the pertinent requirements of the Board shall be deemed the date of official acceptance which shall be duly recorded in the Application Entry Book.

Failure of the applicant to comply with any of the requirements in connection with the application for registration within a period of 15 calendar days from the date of notification shall be construed as an abandonment of the application unless for good cause shown and upon written request the Board extends said period.

Evaluation procedure:

Sec. 1. Scope of evaluation. The technical staff rendering assistance to the Board shall evaluate the terms and conditions of all agreements taking into account the legal, technical and economic aspects of the

*Government communication.

agreement in the light of the policies and guidelines prescribed by the Board.

Sec. 2. Modifications required. The parties to an agreement may amend or modify the agreement at any time during its evaluation upon advice by the board, to conform with the policies and guidelines relative to technology transfer arrangements. Any such amendments or modifications shall be submitted to the Board within five days from execution thereof.

Sec. 3. Decision. The Board shall render a decision approving or rejecting the registration of an agreement within 60 days from the date of official acceptance. In case the agreement is revised during its evaluation pursuant to Sec. 2 hereof, the decision of the Board shall be rendered within the unexpired portion of the said 60-day period or within 45 days from the time the amended agreement is filed with the Board, whichever is longer. Upon the expiration of this period, without a decision having been rendered, the agreement shall be deemed automatically approved and registered, provided, however, that provisions in the agreement which contravene Secs. 1c, d and 3 of Rule V shall be deemed not written; provided, further, that the payment for the technology or industrial right shall not exceed the maximum rate established by the Board. The decision of the Board rejecting the registration of a contract shall state therein the reasons for such rejection.

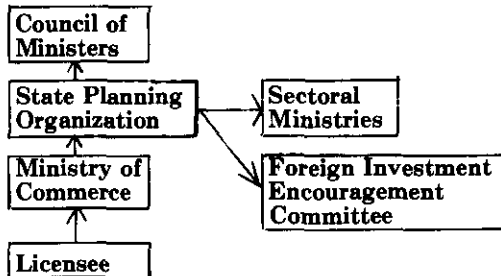
Sec. 4. Notice of approval. Upon rendering a favorable decision within the applicable period referred to in Sec. 3 of this Rule, the Board shall issue a notice of approval which shall specify the proposed terms and conditions of registration. From the date of receipt of said notice, the applicant shall have 30 calendar days within which to submit his acceptance and/or the required documents or modifications. Failure to do so within the said period may be construed as a rejection of the proposed registration.

Sec. 5. Draft contracts. Applicants may, prior to execution of contracts, submit drafts thereof to the Board for consultation, for which approval in principle may be granted, registration being withheld until execution thereof and filing of the formal application.

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Turkey

Figure: Organization setup regulating the flow of technology.



Function of the Foreign Investment Encouragement Committee:

Article 8: (a) In order to carry out the duties provided for by this Law, a Committee is formed under the chairmanship of the General Manager of the Central Bank of the Turkish Republic and consisting of the following members: the Director General of the Treasury, the Director General of Domestic Trade, the Director General of Industrial Affairs, the Chairman of the Board of Research and Planning of the Ministry of State Enterprises and the Secretary General of the Union of Chambers of Commerce, Industry and Commodity Exchanges. In cases where it finds it necessary, this Committee may ask the opinion, on an advisory basis, of representatives of other ministries and institutions. The Committee shall give its decision on any application, within 15 days, at the least, of their submittals.

The Director General of Domestic Trade will act as Secretary General of the Committee. If necessary, the Committee may be called to a meeting of the Secretary General.

The remuneration to be paid to the Chairman and members of the Committee will be fixed by the Council of Ministers.

(b) Any decision of the Committee may be appealed by the parties concerned within 30 days as from the date of the notification thereof. The competent authority to deal with such appeals is constituted by the Ministers of Finance, Economy and Commerce and State Enterprises. The decisions of this authority are final.

Article 9: (a) The Ministry of Economy and Commerce is the competent authority in the application of the provisions of this Law.

(b) The Ministry of Economy and Commerce shall have the authority to order release from the custody of the customs of foreign capital imported in kind according to the decisions of the Committee.

For the simple license agreement, the licensee applies for approval to the Ministry of Finance, where a financial evaluation is carried out while a technological appraisal is carried out by the Ministry of Industry and Technology.

ARAB COUNTRIES

Iraq

The Ministry of Industry occupies a key position in the execution of policy on technology import. Each case of technology transfer is analyzed by an ad hoc committee composed of representatives of the following:

- Industrial union
- Industrial development department
- Central Bank
- Industrial property office
- Industrial research and control
- Industrial chemical property.

Sometimes the licensee also participates.

In evaluating an agreement, the committee considers whether the contract has any harsh conditions; examines its technical content, determining what is new in terms of what exists in particular regarding know-how, and establishes whether the same license was previously applied for.

There is no definite evaluation and approval procedure to be followed; the evaluation is done according to experience and circumstances.

Kuwait

The Industrial Development Committee attached to the Ministry of Commerce and Industry plays the central role in the government machinery for technology transfer.

The Minister of Commerce and Industry or his Deputy serves as Chairman of this committee. The members include one representative each from the Port and Customs Administration of the Ministry of Finance and Oil, the Industrial Affairs Department of the Ministry of Commerce and Industry, the Ministry of Commerce and Industry, the Planning Board, the Credit and Savings Bank and three representatives from the private industrial sector nominated by Kuwait Chamber of Commerce and Industry. The members of the Committee are appointed and the term

of their office determined by the Ministry of Commerce and Industry.

Two of the main functions of the Industrial Development Committee are: To promote the development of national industries and to study after reviewing applications for industrial permits to recommend whether the permits should be issued.

Procedure of Establishment of Industrial Firms according to Decree Law 6 of 1965

Every owner or manager of any existing or under establishment industrial firm is required to submit an application to the Industrial Affairs Department of the Ministry of Commerce and Industry within six months from the date of the enforcement of this Law for the registration of the firm in the special register kept for that purpose. No industrial firm shall be registered unless it proves to be registered in accordance with the provisions of this Law.

Article 10: The following considerations shall be taken into account on issue of permits:

(1) The economic requirements of the country and the possibilities of local consumption and exportation.

(2) The requirements of the country's social and economic plan.

(3) The purpose of the firm not to be inconsistent with the public order or public interest.

Article 11: The Minister shall, under a resolution to be issued by him, determine the manner of submitting the applications for permits, the statements to be included in the applications, the documents supporting such applications and the fees to be collected thereon.

The application for a permit shall be submitted accompanied by a report covering the study of the project and its technical and economic advantages. This study shall show in particular the project's sources of raw material, the costs of production, the amount of capital sufficient to realize its purposes, its requirements (for labor, possibilities of marketing of its products and all relevant matters).

Article 21: The number of Kuwaiti laborers and staff employed by every industrial firm shall not be less than 25% of the total number of the firm's laborers and employees. The Minister of Commerce and Industry may, in case sufficient Kuwaitis are not available, exempt the firm from such a stipulation or reduce the percentage referred to.

Article 22: The industrial firms shall be under obligation to participate with the state in the field of arrangements and programs laid down by the latter for vocational training or for industrial studies and research and production efficiency. The Minister of Commerce and Industry shall, upon the recommendation of the Industrial Development Committee, issue a result determining the nature of such participation.

Morocco

No specialized agency has been set up to deal with technology transfer. Agreements involving technology transfer are examined by all departments concerned with the projects. Projects that are recommended for implementation must be approved by the responsible minister. Additionally, the Office of Exchange must be consulted on currency issues.

According to Decree 2.76.479, after the contractor has been selected, the enterprise implementing the project should agree with the contractor on the schedule of construction and with the approval of the Office of Exchange, choose the foreign bank with which it will have dealings. The Office of Exchange must approve every foreign payment in foreign exchange either for purchasing the equipment or paying the fees of foreign personnel chosen according to job descriptions.

Saudi Arabia

All cases of technology transfer are supervised by a committee composed of representatives from the Ministries of Finance and National Economy, Agriculture, Petroleum and Minerals and the Supreme Planning Board; the Director General of Industrial Affairs; and a legal advisor. The Deputy Minister of Commerce and Industry or his substitute serves as chairman.

The Committee's functions are:

(a) To determine whether the proposed license or the enterprise is economically feasible;

(b) To examine any complaints or claims arising from the application and submit recommendations;

(c) To recommend penalties for enterprises violating the laws of the country;

(d) To consider the draft regulations for implementation;

(e) To consider matters that may be referred to it by the Minister of Commerce and Industry.

Approval and evaluation procedures differ from technology agreements involving industrial projects and those for contracting, maintenance, and technical services.

Industrial Projects

Investors interested in establishing a joint-venture industrial project must submit an application to the Director General of the Department of Industry in the Ministry of Industry and Electricity describing in detail the products to be manufactured and giving the capital estimates. The application may be accompanied by a detailed economic feasibility study, or the investors may request that they be allowed a reasonable period in which to complete such a study.

The Department then makes an evaluation of the market demand for the proposed products. If it is shown that there is a good market for the proposed products, the investor is allowed a maximum period of six months in which to submit a detailed economic, technical, and marketing study.

The investor must submit this together with three completed license application forms, obtainable from the Department or the Secretariat of the Foreign Capital Investment Committee to the Secretariat.

The Secretariat of the Committee gives a copy of the application to both the Department of Industry and the Industrial Studies and Development Center for evaluation. When the Secretariat receives the evaluation from both agencies, it submits the application and the evaluation results to the Foreign Capital Investment Committee, which makes its recommendation and to the Minister for Industry and Electricity. The Minister agrees with the Committee's recommendation, he issues a ministerial decision approving the issue of the license.

For licenses for contracting, maintenance, and technical services eight copies of the application forms relevant to the business applied for must be submitted to the Secretariat of the Foreign Capital Investment Committee. The Secretariat submits the application to the Committee, which makes its recommendation to the Minister for Industry and Electricity. The minister

issues a ministerial decision approving the issue of the license if he agrees with the Committee's recommendation.

Sudan

There is no specific government agency regulating technology inflow. Every technology transfer agreement is evaluated by the responsible ministry and either amended or rejected according to certain criteria, e.g. value of the royalty, quantity of local materials used, duration of the license, creation of additional skills. In approving the agreement, the responsible ministry consults the Ministry of Commerce and Supply, the Ministry of Industry and Mining and the Bank of Sudan regarding transfer of royalties.

Tunisia

Technology transfer is regulated by an ad hoc committee composed of representatives of the ministry concerned with the project, the Ministry of Planning, the Ministry of Finance, specialized private personnel, and Prime Ministry, sometimes a foreign consultant. The committee contacts companies using the process to find out what their experience with the process has been. It draws up detailed specifications for the process, prepares tender documents and invites offers. After receiving offers, it studies them from a technical and economic point of view and issues a report to the responsible ministry, which finally approves or rejects the proposed license.

Algeria*

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The agency in Algeria that is in charge of the acquisition of foreign technology is the Algerian Institute of Standards and Industrial Property (INAPI) which is responsible for administering a national system of standards and executing industrial property legislation and of all matters related to industrial property rights. INAPI has been placed within the Ministry of Light Industries, but ministries concerned with industrial development affect its functioning.

On the basis of two laws issued by the Ministry of Finance, INAPI is responsible for reviewing all licensing contracts that include industrial property rights. Since patenting is not extensive and foreign trademarks are practically unused the rules of the Ministry of Finance have less important coverage than would be desirable. Although the number of foreign licensing agreements is small, it is growing. INAPI has, however, had little opportunity of participating in formulating the relevant contracts, although one of its fields of activity is precisely to analyse this type of contract.

EUROPE

Portugal

Functions of the Institute of Foreign Investment:

The Foreign Investment Institute to be set up under the authority of the Minister responsible for Planning shall coordinate, guide and supervise direct foreign investment in Portugal.

*For more detailed description, see UNIDO/ICIS.96

The Foreign Investment Institute shall:

(a) Receive and guide potential foreign investors and foreign exporters of technology and ensure the representation before them of all State Departments and bodies responsible for matters in connection with the fulfillment of their investments or transfers of technology, as well as take action on and submit proposals or give opinions on such legal and administrative measures as are required for the promotion and stimulation of direct investment or of transfers of technology;

(b) Grant the authorizations legally acquired for direct foreign investment and for agreements for the transfer of technology;

(c) Submit to the government, together with its opinion, the papers in connection with the granting of authorization of investments under the contractual regime;

(d) Carry out all necessary procedures for the registration of direct foreign investments, of foreign reinvestments and of agreements for the transfer of technology in accordance with the terms of the law and maintain an up-to-date record of all companies having foreign capital participation,

(e) Act as the controlling instrument of direct foreign investment or of any transfers of technology and accompany the application and implementation thereof except where competence for so doing has been relegated by law to another body.

Spain*

The following chart shows the machinery for regulating the flow of foreign technology in Spain.

Organizational Setup for Regulating the Flow of Technology



Evaluation and approval procedure based on the Ministry of Industry Order of 5 December 1973:

1.3. The application shall be submitted in triplicate in the form of a request to the Director General of Industrial Development and Technology and shall be accompanied by three copies of the contract, which for the purposes of this Order shall be drawn up in Spanish, of the memorandum and of the documentary evidence specified in subparagraphs 1.5 and 1.6 below.

1.4. The memorandum shall include information and data on the contracting parties, the technological content of the transfer, the scope and terms of the agreement, and any other data supporting the content.

The appropriate forms for the application and the memorandum shall be provided by the office of the Ministry of Industry.

1.5. The documentary evidence shall comprise:

(a) A public document declaring the applicant's representative;

(b) Where the applicant is an industrial enterprise, a copy of the entry relating thereto in the Industrial Register or, where appropriate, the most recent addition thereto;

(c) A copy of the government's decision, if any, authorizing foreign participation in the capital;

(d) Where advisory or project development services are concerned, complete texts of the agreed technical offers and specifications;

*See also Peter O'Brien's Foreign Technology and Industrialization in Spain; Journal of World Trade Law, September 1975.

(e) Any other documents that the Ministry of Industry may consider necessary.

1.6. The organizations, entities and enterprises referred to Article 9 of Decree No. 617 of 4 April 1968 which contract for the provision of technical studies and services by foreign advisory and project development enterprises shall attach to their applications documentary evidence of an attempt to obtain the required services from at least two enterprises that are listed in the special section of the Register of Consulting and Industrial Project Development Enterprises established under the aforesaid Decree and that work in the sector to which the contract belongs.

The aforesaid evidence shall include the definite proposals by the Spanish enterprises or, failing these, some other authentic means of proof. If such evidence cannot be furnished because only one enterprise or not capable of providing the required service is listed in the aforesaid special section, the applicant shall enclose with any offer by the listed enterprise the appropriate certification issued by the Office of the Director General of Industrial Development and Technology.

2.4 When during the processing of a case circumstances arise in which in accordance with the provisions of this Order, there appear to be grounds for not registering a contract or for registering it with notes, the Office of the Director General of Industrial Development and Technology shall so inform the party concerned, in all cases before any hearing is held, in order that he may within one month remedy or modify the defects which cause the contract to be placed in the category in question. Such remedial measures shall be specified in an appropriate document signed by the same contracting parties and providing that the defects originally agreed on which are referred to in the communication from the Office of the Director General of Industrial Development and Technology shall be omitted or amended.

Functions of the Registry

Article 2: In respect of contracts in any form for the transfer of foreign technology, concluded by individuals or corporations other than the Administration of the State domiciled, resident or legally established in Spain, the Ministries of Industry and Trade shall have the following functions and powers:

(a) The Ministry of Industry shall take appropriate administrative measures, in cooperation with the other departments specifically concerned, to ensure that foreign technology shall be acquired in the manner most beneficial to the national economy;

(b) The Ministry of Trade shall take the final decision regarding the authorization of foreign currency payments in connection with the above mentioned contracts.

Article 4: Before reaching a decision concerning the registration of the contracts to which the present Decree refers, the Ministry of Industry shall call for a mandatory report, which shall be binding, from the department or departments competent to deal with the subject of the contract or the type of technology to which it refers.

Both the time taken to reach a decision concerning applications for the registration of contracts and that taken by the Ministries concerned to issue their reports shall conform to the provisions of the Administrative Procedure Act.

Article 5: If in the opinion of the Ministry of Industry or, as appropriate, of the competent Ministry the contracts include restrictive clauses which present, jeopardize or hinder the technological development of the recipient of the technology, limit his managerial freedom or represent an unfair practice by the party ceding the technology, entry of such contracts in the Register shall be refused or, where appropriate, they shall be recorded with a note of such circumstances which shall produce the effects referred to in Article 7 of this Decree. No contract on which the report of any of the departments referred to in Article 4 is un-

favorable may be registered.

In particular, no contract which implies any limitation on the export possibilities of the "resident" party or of his or its sources of supply shall be registered until a report has been received from the Ministry of Trade.

The aforesaid reasons for refusing registration, or for permitting registration with a note in the Register, shall apply in general to all contracts except those relating to the transfer of technology for the production or use of equipment for national defense, in which certain restrictive clauses may be justified as in the national interest.

A contract on international technical cooperation that lays down in adequate detail the specific conditions binding on the cooperating parties to private contracts for the transfer of technology shall in each specific case be registered without the note of the circumstances prescribed in the first paragraph of this article.

Refusal of registration shall be communicated together with the reasons therefore to the party concerned, which shall be allowed a month to remedy the indicated deficiencies. In such case any new application for registration shall comply with the procedures and time-limits laid down in the preceding articles.

OTHER COUNTRIES

Nigeria

In a federal decree establishing the National Office of Industrial Property (Decree No. 60 of 1970) its functions were defined as follows:

(1) 1. There is hereby established a body to be known as the National Office of Industrial Property (hereinafter in this Decree referred to as "the National Office") which shall have the functions conferred on it under or pursuant to this Decree.

2. The National Office shall be a body corporate with perpetual succession and a common seal and may sue or be sued in its corporate name.

(2) 1. There shall be as the governing body of the National Office a council to be known as the Governing Council of the National Office of Industrial Property (hereinafter in this Decree referred to as "the Council") which shall be responsible for the formulation of policy for the National Office and for the discharge of the other functions conferred on it by this Decree.

2. The Council shall consist of a Chairman and the following other members, that is

(a) One representative each of the following Federal Ministries:

Economic Development;

Finance;

Internal Affairs;

Justice;

Trade; and Works and Housing;

(b) One representative of the National Science and Technology Development Agency;

(c) One representative of the universities in Nigeria to be appointed by the Commissioner after consultation with the National Committee of Vice-Chancellors;

(d) One representative of polytechnics and colleges of technology in Nigeria to be appointed by the Commissioner after consultation with the rectors and principals thereof; and

(e) The Director.

3. The Chairman shall be the Permanent Secretary of the Federal Ministry of Industries or such other officer of that Ministry not below the rank of Principal Secretary as the Permanent Secretary may designate in that behalf.

4. The supplementary provisions in the Schedule to this Decree shall have effect with respect to the proceedings of the Council and the other matters therein mentioned.

(3) The Commissioner may give to the Council directions of a general character or relating generally to particular matters but not to any individual or case with regard to the exercise by the Council or the National Office of its functions under this Decree and it shall be the duty of the Council to comply with the directions or cause them to be complied with.

(4) Subject to section 2(1) of this Decree, the National Office shall carry out the following functions:

(a) The encouragement of a more efficient process for the identification and selection of foreign technology;

(b) The development of the negotiating skills of Nigerians with a view to ensuring the acquirement of the best contractual terms and conditions by Nigerian parties entering into any contract or agreement for the transfer of foreign technology;

(c) The provision of a more efficient process for the adaptation of imported technology;

(d) The registration of all contracts or agreements having effect in Nigeria on the date of the

coming into force of this Decree, and of all contracts and agreements hereafter entered into, for the transfer of foreign technology to Nigerian parties; and without prejudice to the generality of the foregoing, every such contract or agreement shall be so registrable if its purpose or intent is, in the opinion of the National Office, wholly or partially for or in connection with any of the following purposes, that is to say:

(i) The use of trademarks;

(ii) The right to use patented inventions;

(iii) The supply of technical expertise in the form of the preparation of plans, diagrams operating manuals or any other form of technical assistance of any description whatsoever;

(iv) The supply of basic or detailed engineering;

(v) The supply of machinery and plant;

(vi) The provision of operating staff or managerial assistance and the training of personnel;

(e) The monitoring, on a continuous basis, of the execution of any contract or agreement registered pursuant to this Decree.