

LEGISLATIONS NOUVELLES.

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Dans notre Dossier Brevet 1981 -II, nous avons donné, en langue française, une compilation de certaines dispositions des législations nouvelles en matière de transfert de technologie.

Depuis lors, est intervenu en Argentine un changement de politique du Gouvernement Argentin qui répond à la situation signalée il y a déjà quelques années par le Professeur Aracama ZORRAGUIN à savoir qu'en présence des dispositions drastiques promulguées par la loi n° 21617 (déjà assouplies par la loi n° 21.879), Les bailleurs de procédés nouveaux se refusaient la plupart du temps, à les transférer ou à les licencier à l'industrie du pays et que celle-ci ne disposait plus que de technologies obsoletes.

Soucieux du retard que cela comportait pour le développement du pays le Gouvernement vient (à contre-courant de ce que l'on constate, à l'heure actuelle au Brésil) d'opérer une modification radicale des textes .

Le 12 Mars 1981, une nouvelle loi (n° 22 426) a été promulguée qui lève les barrières mises aux transferts de technologies , sauf en cas de liens financiers entre parties.

Depuis lors, les licences et les accords de transferts de technologies ne sont plus sujets à approbation . L'unique obligation, sauf la réserve exprimée ci-dessus, est de remettre les accords pour information à l'Institut National de la Technologie Industrielle - (anciennement de la compétence du Registre National des licences et Contrats de Transfert de technologie).

Cette nouvelle procédure fait l'objet d'un décret d'application n° 580 du 25 Mars 1981 , entré en vigueur le 1er avril 1981.

Nous reproduisons une traduction anglaise de la nouvelle loi telle qu'elle est communiquée par l'O.N.U.D.I en sa Newsletter n°9 de mai 1981.

Argentina

As a consequence of its economic policy the Government of Argentina has changed its legislation regarding the regulation of Transfer of Technology effective 1 April 1981. Since the second half of the 1970's the Argentinian industrial sector has been going through a radical process of restructuring. The main leitmotiv of that process has been the attempt to drastically reduce, in a programmed fashion, the overall protective system in order that the economy as a whole may respond to signals of international comparative advantages.

In July 1980, tariffs on all goods not produced in the country were eliminated, a maximum tariff of 55% (50% of the tariff positions had nominal rates in excess of 100% in April 1976) was set for all goods made locally and it was decided that this should

be reduced to 20% by 1984. In March 1981 the government issued a new law on technology transfer which, on par with its liberalization policy, lifts all regulation barriers on technology transfer except when the supplier and recipient companies are financially linked.

At the same time, the application authority was transferred from the National Registry of Licenses and Technology Transfer Contracts to the National Institute of Industrial Technology and consequently the Registry has been dissolved. The new law explicitly states that the role of the state in providing assistance to local entrepreneurs in the acquisition of technology should not be by the regulation of technology transfer but through the development of adequate technology information systems.

Below we reproduce the Spanish text of the new law and a rough unofficial English version. The regulatory guidelines of the Argentinian law will be published in the next issue of the TIES Newsletter.

O.N.U.D.-I Newsletter May 1981.

LEGISLATION NOUVELLE

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ESPAGNE : Voir notre dossier 1981 - II

Le Ministère de l'Industrie et de l'Energie Espagnol, sous la date du 30 Juillet 1981 a amendé le règlement relatif à l'enregistrement des accords de transfert de technologie tel qu'il était établi à la date du 5 décembre 1973 par le Ministère de l'Industrie en exécution du Décret n° 2343 / du 21 Septembre 1973.

Il est exposé aux motifs :

Que suite à l'expérience acquise par l'exécution du Décret du 5 décembre 1973, il y a matière à modifier l'évaluation des conséquences de la présence de clauses qui, en général, sont défavorables et de traiter de manière spéciale, les cas où le Preneur accumule une dépendance technologique externe qui affectera de façon significative ses activités.

Au surplus, en vue d'obtenir une connaissance plus approfondie du contenu des transferts, il apparaît désirable pour des raisons statistiques que soient présentées à l'Office d'enregistrement des transferts de technologie du Ministère de l'Industrie et de l'Energie les Contrats d'espèces qui en étaient exemptés par le Décret 2343/73.

Ministry of Industry and Energy of Spain

Order of 30 July 1981 amending the regulations concerning the registration of technology transfer agreements as established through the order of the Ministry of Industry of 5 December 1973.

Sir:

The experience gained in the application of the order of the Ministry of Industry of 5 December 1973 concerning the inscription of technology transfer contracts in the Registry, created by Decree 2343/1973 of 21 September gives grounds for modifying the evaluation

of the consequences of the presence of clauses which are in general unfavourable and to treat in a special manner those cases where the recipient company is accumulating an external technological dependence which will significantly affect its activities. Furthermore, in order to obtain a further knowledge of the content of the transfer, it appears desirable for statistical purposes that be presented to the Registry of Transfer of Technology of the Ministry of Industry and Energy contracts of this nature entered into by the State which by Decree 2343/1973 of 21 September are exempt from the registration process. In this light and as proposed by the General Directorate of Industrial Innovation and Technology, this Ministry has decided as follows:

First, the third paragraph of the order of 5 December 1973 concerning the inscription of technology transfer contracts in the Registry created by Decree 2343/1973 of 21 September shall be established in the following terms:

Third

3.1 Concerning article 5 of Decree 2343/1973, the Ministry of Industry and Energy, or the Ministry competent in the matter will make a comprehensive evaluation of the situation in the sector and of the characteristics of the process and product for which the technology transferred is intended, in relation to the rights and obligations of the parties to the contract.

3.2 The following, *inter alia*, will be regarded unfavourable conditions or aspects of the contract.

a. to limit the acquisition of technology from other sources, as well as condition, limit or cancel the research, development or innovation efforts of the recipient, to make it obligatory to transfer improvements developed by the recipient in the technology transferred through the contract or to condition the utilization of the knowledge not patented once the validity of the contract has expired.

b. to transfer a technology for which there is proven capacity of national delivery with equivalent quality and reliability, or a technology considered pollutant where cleaner technologies exist or a technology which involves energy wastage or which utilizes imported material or components instead of national substitute products.

c. to prohibit, limit geographically in an excessive manner, or not authorize specifically with respect to certain areas, the export of the goods produced by the recipient, as well as to make obligatory the acquisition of raw material or components and other intermediate goods or equipment from the transferrer or of suppliers mentioned in the contract.

d. to impose the use of trade names registered by the transferrer in Spain, as well as to establish the right of the transferrer when not obtained earlier through other means to intervene control or condition the management of the recipient company or its strategy of expansion or diversification.

e. to impose payments substantially higher than those normally practised in the market in similar circumstances or to impose minimum payments when the payments are based on royalty rates proportional to the rate of activity in its different expressions.

f. to establish payments through royalty rates proportional to the level of production, without deduction of the value of the products or components supplied by the transferrer and incorporated in the production process to which the transferred technology is applied, or not to exclude the billing corresponding to production lines not affected by the acquired technology.

g. to impose an inappropriate duration of the contract or of its direct consequences, either because of its shortness or because of its prolongation, or to extend the validity of the contract or its inscription in the Registry without the introduction of improvements in the terms of the contract.

h. to require that the version of the contract in the foreign language is to prevail in its interpretation when the contract has been signed in other languages than Spanish.

3.3 In those cases where the recipient company has accumulated an external technological and trademark dependence which affects more than 30% of its turnover the procedure will be as follows:

a. the possible restrictive clauses, limitations and abuses of the contract will be analyzed.

b. the effects derived from the external technology dependence will be examined, on the basis of a programme which the recipient enterprise will undertake to develop and which will contribute in a considerable manner to the assimilation of the received technology in the technological development of the concerned sector of the industry as a whole.

c. it will also be necessary to take into account the action initiated or to be initiated by the recipient company with regard to the utilization of natural resources, import substitution, the development of exports in terms of their value added, the creation of jobs, energy saving, reduction of pollution and of landscape deterioration and other elements which will contribute towards the attainment of the priorities of Spanish industrial policy.

Second, to the order of December 1973 mentioned above shall be added a seventh paragraph reading as follows:

Seventh

The technology transfer contracts entered into by the State which by article two of Decree 2343/1973 of 21 September are exempt from the process of inscription in the Registry shall however be presented for statistical purposes to the General Directorate of Industrial Innovation and Technology.

Third, the registration of valid contracts will be maintained as it stands until the period of their validity has expired at which time and for the purpose of extension they will be considered under the newly established norms.

EMPLOYEES' INVENTIONS

a comparative study

In an era in which western industrial nations and Japan are so heavily dependent upon technological innovation for their economic survival, the effect of legal rules upon scientific endeavours should not be overlooked. One of the most important problems upon which law is brought to bear is that which concerns the proprietary rights which inevitably attach themselves to patents and inventions: who owns and controls an invention — the inventor or his paymaster? Another question no less important is that of whether (and, if so, how) the law may realistically be utilised so as to stimulate inventors, the predominant majority of whom are employed by others, to make inventions and to disclose them for the ultimate benefit of all.

This study contains an introductory explanation of the nature and significance of employee-invention problems, together with accounts of the national laws of six developed capitalist economies. From it the reader may see that, while the problems faced by each of the six countries are much the same, the solutions which they adopt may be radically divergent. The economic performance of each of these countries in the future may provide some indication as to which set of legal solutions is the most effective.

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Employees' Inventions: a comparative study, edited with an introduction by Jeremy Phillips, will be published in October 1981 by Fernsway Publications, 14 Fernsway, Bainbridge Holme Road, Sunderland, Tyne and Wear, SR3 1YS, England, at the price (inclusive of postage and packing) of £10.25 (Europe) and £11.75 (all other places).

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