Cieślik, Jerzy; Rapacki, Ryszard

Restrictive Clauses in East-West Licensing Trade: The Case of Poland

Economics of Planning

Suggested Citation: Cieślik, Jerzy; Rapacki, Ryszard (1981) : Restrictive Clauses in East-West Licensing Trade: The Case of Poland, Economics of Planning, ISSN 0013-0451, The University of Birmingham, Birmingham, Vol. 17, Iss. 1, pp. 37-51

ECONOMICS OF PLANNING

The University of Birmingham

Centre for Russian and East European Studies

CREES is an interdisciplinary centre with a staff of sixteen, collaborating in research and teaching with disciplinary departments, especially in the fields of the social sciences, history and engineering. Established in 1963 on the basis of a long standing tradition of research in Russian affairs at the University of Birmingham, it is a major centre for applied research in these fields at postgraduate and post-doctoral levels.

Areas of special interest to members of staff include Soviet economic organisation and policy, economic planning (including mathematical methods), Soviet science and technology (including science policy and science/industry relations), the Soviet industrialization process, peasant studies, sociology including political sociology, Soviet education and Soviet social policy.

The Alexander Baykov Library, a substantial collection of works in these and related fields, comprising some 50,000 volumes, mainly in Russian and Polish, is situated in the Centre's premises. It is one of the leading libraries of its kind in Western Europe. The Centre also provides an information service on Soviet and East European affairs.

Enquiries to: The Secretary, Centre for Russian and East European Studies,
University of Birmingham, P.O. Box 363, Birmingham, B15 2TT, U.K.
Telephone 021-472-1301 Ext. 2124

ECONOMICS OF PLANNING

CONTENTS

No. 1

VOL 17-1981 ISSN 0013–0451

Economics of Planning, Vol. 17, No. 1, 1981, *Printed in Great Britain*

Restrictive Clauses in East-West Licensing Trade: The case of Poland

Jerzy Cieślik and Ryszard Rapacki

Aims of the Paper and Methods of Analysis

A: Aims of the Paper

Historical experience has proved that technology transfer in the form of licence purchases can be an important factor in the acceleration of economic growth and in wide-ranging changes in the structure of the economy. However, much depends on the conditions under which technology transfer takes place, including contractual terms of licensing agreements. The final version of a contract is always a compromise between the licensor and the licensee and much depends on the bargaining power of the parties involved, on the ability to foresee the long-term effects of the transaction, and on the parties' ability to negotiate.

The aim of this paper is to determine how contract conditions in licensing agreements between Poland and the industrialized market-economy countries influence the long-term effects of imports of modern technology. Analysis is confined to two essential aspects of this problem. The first concerns the effects of the diffusion of modern technical solutions throughout the whole economy. Unlike technology purchases by individual western enterprises, technology imports in a planned economy are considered as a source of modernization of entire branches or industries, and not only of certain enterprises. Simultaneously, technology imports should permanently narrow the technological gap, i.e. they should make it possible for the licensee, with the licensor's assistance, continuously to modernize the technology acquired.

The second issue dealt with in the analysis is the export-promotion effect. When, after 1970, Poland launched an extensive technology importing programme, it was assumed that this would prove an essential stimulus which would, in the long run, change Poland's position in the international division of labour; in the short term, export growth would constitute the main source of foreign exchange needed to repay credits drawn for technology imports (licences, know-how, machinery and equipment).

B: Methods of Analysis and Description of Empirical Material

The present analysis has an empirical character. In order to establish existing trends and practice, some contract terms of Polish licensing imports from highly industrialized western countries since the Second World War have been analysed. As it was impossible directly to scrutinize licensing agreements, information provided by the Computer Centre of Foreign Trade has been used. This was a serious limitation and, in many cases, it was not possible to obtain data which would have been of much interest to the authors. However, well over 90 per cent i.e. 600), wort – in terms of licensing fees – some 730 million dollars of licensng agreemens[1] concluded wit highly industrial-

[1]Owing to differences in contract terms, annexes to already-existing contracts were treated as separate agreements.

TABLE 1. The structure of contracts analysed, by industries and countries of purchase

	Number of agreements		Value % of the total
		Share %	
Industry: a			
machinery and equipment	248	41.3	34.1
chemicals	88	14.7	19.1
transport equipment	73	12.2	19.8
electrical equipment	69	11.5	13.3
electronics and precision instruments	52	8.7	4.9
other: *b*	70	11.7	8.7
Country:			
1 Federal Republic of Germany	154	25.7	11.3
2 United Kingdom	91	15.2	10.2
3 France	82	13.7	22.0
4 United States	53	8.8	19.0
5 Italy	43	7.2	13.2
6 Sweden	42	7.0	4.3
7 Switzerland	28	4.7	7.5
8 Japan	26	4.3	3.1
Other countries	81	13.5	9.4
Total	600	100.0	100.0
until 1970	189	31.5	16.2
1971–1975 period	283	47.2	48.7
1976–1980 period	128	21.3	35.1

Source: Authors' calculations, based on statistics of the Computer Centre of Foreign Trade.
a According to the Polish Foreign Trade Classification.
b The main components of this group were: metal-working industry — 22 licensing agreements; mineral industry — 16; and metallurgy — 12.

ized western countries have been covered. As particular contracts differ significantly as regars the scale of technology transfer, the analysis includes the number and value of agreements, i.e. the value of licensing fees.[2] A more detailed description of those agreements studied is provided in Table 1.

The analysis covers the period from 1949 — that is, from the year in which Poland purchased its first licence, from Switzerland — until the end of 1980. As there are clearly distinct stages in licensing policy in this period, it has been sub-divided into: 1949–1970, the stage of sporadic purchases and of a lack of clearly set out priorities in licensing policy; 1971–1975, which saw an important leap forward in the quantity and quality of imported licences, marked by an effort to concentrate purchases in

[2]Total of the lump sum and royalties.

selected branches and spheres of licence utilization; and 1976–1980, when the expansion of investments and imports was strongly checked. The last period witnessed an effort at rationalization of licence purchases, *inter alia*, through the use of experience acquired in the previous stages.

Licence imports from industrialized western countries are marked by a very high concentration in both their branch and geographical cross-sections. Three industries (machinery and equipment, chemicals and transport equipment) account for approximately 70 per cent, both in terms of the number and value of all licence purchases. Three countries — the Federal Republic of Germany, the United Kingdom, France by number, and France, the United States and Italy by value — delivered more than 50 per cent of the licences that Poland had purchased during this period.

The limited availability of empirical material and the fact that this is the first analysis of its kind in connection with Poland have caused the authors to be very cautious in putting forward final conclusions.

Contract Terms and Technical Development on the Part of Licensees

The terms on which technology transfer based on licensing takes place often influence the scale of effects obtained by the licensee's economy in the long run. Licensing contract clauses can either favour or hamper the licensee's R and D, the upgrading of manpower qualifications, raising of the general technical level, etc.

In their research, the authors focussed their attention on two aspects of the broadly-understood influence of contract terms in licence imports to Poland on the long-range effects within the importer's economy. The first concerned the possibilities of licence diffusion beyond the enterprise of the direct licensee; the second concerned the range of post-licence co-operation between the licensee and the licensor or, more precisely, the range of partners' mutual commitments to exchange information about the object of the licence.

One of the explicitly declared aims of licensing policy pursued by Poland has been to ensure the utilization of licensing technology throughout the whole national economy, and to create conditions for permanent global contacts concerning the latest generations of technology through technical co-operation with licensors. A description of the practical implementation of these aims is given below.

A: Diffusion of Imported Technology in the National Economy

In their analysis of the diffusion scale of licensing policy in the national economy, the authors assert that the limitation of the licensee's rights to the utilization of the licence in one specific enterprise entails preponderant control of the sum of benefits obtained through the spreading of licence technology beyond the licensee's enterprise. On the other hand, the right provided by the contract to use the licence in any plant creates pre-conditions for the appearance of multiplier effects in the economy, owing to the diffusion of licence solutions imported by other enterprises, branches, etc.

It must be noted, however, that this is largely a simplifying assumption. The confinement of licence utilization to one specific enterprise diminishes the diffusion scale only in regard to the object of the licence (the final product, technological process, etc.) but has no impact on the licensee's possibilities of 'extorting' technological progress in other plants or enterprises which co-operate in the putting on stream of the licence and in further licence production (subcontractors, recipients of the product manufactured under licence, etc.).

This remark, combined with the figures in Table 2, seems to indicate that the contractual terms constituted quite a serious restriction of licence technology diffusion beyond the direct licensee's enterprise. 202 out of 600 licences representing 40 per cent of postwar licence imports value had their utilization confined to one given enterprise.

TABLE 2. The range of licensees' rights to utilize licences in Poland

	In a given enterprise		In any chosen enterprise		N.A.		Total	
	number	% of the total value	number	% of the total value	number	% of the total value	number	% of the total value
Industry:								
machinery and equipment	81	35.5	149	63.0	18	1.5	248	100.0
chemicals	27	54.8	39	27.4	22	17.8	88	100.0
transport equipment	19	3.8	53	96.0	1	0.2	73	100.0
electrical equipment	20	68.9	46	30.1	3	1.0	69	100.0
electronic and precision instruments	24	46.1	26	53.6	2	0.3	52	100.0
other	31	62.6	34	36.1	5	1.3	70	100.0
Country of purchase:								
1 Federal Republic of Germany	48	27.9	91	62.1	15	10.0	154	100.0
2 United Kingdom	21	24.0	62	71.1	8	4.9	91	100.0
3 France	24	50.9	58	49.1	—	—	82	100.0
4 United States	23	62.7	26	35.3	4	2.0	53	100.0
5 Italy	8	14.8	32	82.6	3	2.6	43	100.0
6 Sweden	21	74.6	16	24.4	5	1.0	42	100.0
7 Switzerland	10	27.6	12	69.1	6	3.3	28	100.0
8 Japan	14	62.7	8	20.3	4	17.0	26	100.0
Other countries	33	24.9	42	63.9	6	11.2	81	100.0
Total	202	40.2	347	55.5	51	4.2	600	100.0
until 1970	49	19.0	115	66.7	25	14.3	189	100.0
1971–1975 period	108	34.9	154	61.4	21	3.7	283	100.0
1976–1980 period	48	57.5	78	42.2	5	0.3	128	100.0

Source: Authors' computations, based on statistics of the Computer Centre of Foreign Trade.

On the other hand, it should be noted that 58 per cent of the total number of licences (56 per cent in terms of value) had no formal restrictions on the range of their diffusion.

The branch structure of contract terms is comparatively uniform; only electrical equipment and transport equipment indicate significant deviations from the average.[3] The low share of restrictive contract terms in the transport equipment industry is quite comprehensible in view of the very nature of technological process and the chain of strong interdependence between its different stages and the high proportion of subcontracting in the final product. In electrical equipment, on the other hand, the data available allows no reliable interpretation of the large share of restrictive clauses.

Contracts with enterprises from Sweden and Japan indicate the highest proportion of clauses restricting diffusion — both in terms of number and value of licensing agreements: 50 and 74.6 per cent in the case of Sweden; 53.8 and 62.7 per cent in the case of Japan. The lowest proportion of such clauses is to be found in contracts with Italian

[3]The high proportion of restrictive clauses in 'other industries' can be attributed mainly to metallurgy, due to the specificity of the technology of ore-processing.

(18.6 and 14.8 per cent, respectively) and British (23.1 and 24.0 per cent, respectively) firms.

If the three periods in Table 2, i.e., time delimitations of different stages in licensing policy, are considered, one fact attracts attention — the shift in the proportion of contractual terms concerning diffusion in favour of those which restricted it after 1970 compared with 1945–1970 period, particularly in terms of value. This fact can be partly explained by the shift in priorities of Poland's licensing policy: more stress was put on the concentration and comprehensiveness of licence purchases. This was connected with the desire to obtain access to most modern technologies, and caused a feedback effect on the part of licensors who, through contract restrictions imposed on the scale of the diffusion of their technologies in the licensees' economy, sought to prevent an excessive breach in their technical monopoly and the creation of additional competitors.

The upward trend towards increasing the share of restrictions on diffusion seems to testify simultaneously to the limited effectiveness of Poland's licensing policy in this field.

B: Post-licence Co-operation

Turning now to contract terms concerning post-licence co-operation it is worthwhile pointing out two interesting facts derived from figures in Table 3.

First, successive periods display an increase in licensors' commitments to convey improvements of the object of the licence to the licensee (79.4 per cent in the 1945–1970 period against 89.8 per cent in the 1976–1980 period). This may be considered as a reflection of an increasing awareness of the long-term goals of the licensing policy pursued by Poland and of the benefits stemming from closer co-operation with licensors.

Second, the predominance of licensors' commitments to inform licensees about improvements of the object of the licence over the analogous commitments of the licensee should be noted. In these circumstances, it is difficult to argue that contract terms had a negative influence on the possibilities of carrying out R and D and of upgrading the technical level of an industry or branch. The discrepancy observed here is probably a reflection of the partners' real possibilities of conducting research and contributing to the development of technology — i.e., a representation of the technological gap existing between parties involved.

Electronics and precision instruments industry display the highest proportion of licensors' commitments to keep licensees informed about their research; this proportion is lowest in the chemicals industry.

Among licensors, Japanese and French firms are the most willing as regards post-licence co-operation; Swedish and British firms are the most reluctant.

Restrictive Clauses in Licensing Contracts and the Development of Polish Exports

As already stressed at the beginning of this paper, according to the strategy of economic development adopted after 1970, the influx of modern technology into Polish industry and other sectors of the economy was intended to bring about an increase in exports to heavily-industrialized western countries. It is therefore natural that enterprises which negotiated licensing agreements should strive to ensure export possibilities for production based on imported technologies. Licensors, on the other hand, are usually conducting export activities on many markets at the same time as granting licences. Bearing in mind the benefits to be obtained from licensing contracts, they nevertheless strive to offset the negative impact that such agreements might have on their own market position. This discrepancy results, *inter alia*, in clauses which restrict the export activities of licensees.

TABLE 3. The range of partner (licensor and licensee) commitments to exchange information on improvements

	Licensor						Licensee						Total	
	Not bound to exchange information		Bound to exchange information		N.A.		Not bound to exchange information		Bound to exchange information		N.A.			
	a	%*b*	*a*	%*b*	*a*	%*b*	*a*	%*b*	*a*	%*b*	*a*	%*b*	*a*	%*b*
Industry:														
machinery and equipment	27	10.9	210	84.7	11	4.4	79	31.9	155	62.5	14	5.6	248	100.0
chemicals	8	9.1	71	80.7	9	10.2	26	29.5	51	58.0	11	12.5	88	100.0
transport equipment	8	11.0	62	84.9	3	4.1	28	38.4	39	53.4	6	8.2	73	100.0
electrical equipment	9	13.0	59	85.5	1	1.4	25	36.2	41	59.4	3	4.3	69	100.0
electronics and precision instruments	5	9.6	47	90.4	—	—	23	44.2	25	48.1	4	7.7	52	100.0
other	9	12.9	59	84.3	2	2.8	41	58.6	25	35.7	4	5.7	70	100.0
Country of purchase:														
1 Federal Republic of Germany	15	9.7	132	85.7	7	4.5	44	28.6	91	59.1	16	10.4	154	100.0
2 United Kingdom	11	12.1	72	79.1	8	8.8	37	40.7	45	49.4	9	9.9	91	100.0
3 France	7	8.5	73	89.0	2	2.4	34	41.5	45	54.9	2	2.4	82	100.0
4 United States	7	13.2	45	84.9	1	1.9	20	37.7	31	58.5	2	3.8	53	100.0
5 Italy	5	11.6	35	81.4	3	7.0	19	44.2	20	46.5	4	9.2	43	100.0
6 Sweden	7	16.7	33	78.6	2	4.7	17	40.5	22	52.4	3	7.1	42	100.0
7 Switzerland	4	14.3	23	82.1	1	3.6	11	39.3	15	53.6	2	7.1	28	100.0
8 Japan	1	3.9	25	96.1	—	—	8	30.8	17	65.4	1	3.8	26	100.0
Other countries	9	11.1	70	86.4	2	2.5	29	35.8	47	58.0	3	3.7	81	100.0
Total	66	11.0	508	84.7	26	4.3	222	37.0	336	56.0	42	7.0	600	100.0
until 1970	25	13.2	150	79.4	14	7.4	83	43.9	90	47.6	16	8.5	189	100.0
1971–1975 period	29	10.2	243	85.9	11	3.9	73	25.8	195	68.9	15	5.3	283	100.0
1976–1980 period	12	9.4	115	89.8	1	0.8	66	51.6	51	39.8	11	8.6	128	100.0

Source: Authors' computations, based on statistics of the Computer Centre of Foreign Trade.
a Number of agreements.
b % — percentage of the number of agreements.

TABLE 4. Export restrictions in licensing agreements, by industry and country

	Type of restriction						no restriction		N.A.		Total	
	export ban		partial restriction									
			only to socialist countries		specified countries excluded							
	a	%*b*	*a*	%*b*	*a*	%*b*	*a*	%*b*	*a*	%*b*	*a*	%*b*
Industry:												
machinery and equipment	26	5.5	72	43.9	115	39.0	31	11.4	4	0.2	248	100.0
chemicals	22	6.0	11	11.5	30	29.7	17	50.9	8	2.0	88	100.0
transport equipment	5	0.3	17	21.0	38	77.2	13	1.5	—	—	73	100.0
electrical equipment	2	0.2	16	9.5	37	52.8	13	37.4	1	0.1	69	100.0
electronics and precision instruments	4	1.5	18	39.3	21	45.3	8	12.8	1	1.0	52	100.0
other	9	7.3	11	36.1	33	45.7	13	7.8	4	3.0	70	100.0
Country:												
1 Federal Republic of Germany	20	10.8	46	25.6	69	40.6	18	23.0	1	0.0	154	100.0
2 United Kingdom	15	7.7	18	40.8	37	47.1	12	3.1	9	1.1	91	100.0
3 France	4	1.4	19	23.0	42	30.5	17	45.1	—	—	82	100.0
4 United States	3	1.4	14	31.5	22	37.3	12	29.8	2	0.0	53	100.0
5 Italy	2	0.0	7	1.7	21	94.8	12	1.3	1	2.2	43	100.0
6 Sweden	3	0.3	13	47.4	20	51.1	4	0.2	2	1.0	42	100.0
7 Switzerland	5	1.6	5	65.6	15	31.9	3	0.9	—	—	28	100.0
8 Japan	1	0.3	2	6.9	16	76.2	7	16.6	—	—	26	100.0
Other countries	15	11.5	21	23.9	32	50.8	10	10.6	3	3.1	81	100.0
Total	68	3.8	145	27.7	274	47.5	95	20.2	18	0.8	600	100.0
until 1970	33	15.7	59	53.4	54	19.2	34	9.7	9	1.9	189	100.0
1971–1975 period	27	1.4	60	28.6	157	63.7	34	5.5	5	0.8	283	100.0
1976–1980 period	8	1.7	26	14.6	63	38.0	27	45.6	4	0.1	128	100.0

Source: Authors' computations, based on statistics of the Computer Centre of Foreign Trade.
a Number of agreements.
b % — percentage of the value of the licensing agreements.

TABLE 5. Type of licences, and the right of the licensee to use the licensor's trademark

Country	Nature of licence rights						Trademark						Total	
	sole rights		no exclusivity		N.A.		entitled to use		not entitled to use		N.A.			
	a	%*b*	*a*	%*b*	*a*	%*b*	*a*	%*b*	*a*	%*b*	*a*	%*b*	*a*	%*b*
1 Federal Republic of Germany	43	40.7	98	52.0	13	7.3	113	63.7	27	16.7	14	19.6	154	100.0
2 United Kingdom	14	51.4	63	42.2	14	6.3	48	74.2	25	17.3	18	8.5	91	100.0
3 France	33	42.4	41	53.5	8	4.0	53	44.7	21	48.9	8	6.5	82	100.0
4 United States	17	17.0	32	74.9	4	8.0	34	45.2	11	44.4	8	10.3	53	100.0
5 Italy	14	86.9	24	9.6	5	3.6	30	67.2	6	16.5	7	16.3	43	100.0
6 Sweden	15	57.3	19	22.0	8	20.7	27	83.7	6	8.2	9	8.2	42	100.0
7 Switzerland	10	24.0	16	73.4	2	2.0	20	90.1	3	4.8	5	5.0	28	100.0
8 Japan	7	16.0	17	79.3	2	4.8	9	19.0	4	7.8	13	73.2	26	100.0
Other countries	19	15.4	55	53.3	7	31.3	51	65.3	21	4.0	9	20.8	81	100.0
Total	172	40.1	365	51.4	63	8.5	385	59.1	124	27.3	91	13.6	600	100.0
until 1970	25	10.0	137	82.8	27	7.2	96	63.0	55	20.9	38	16.1	189	100.0
1971–1975 period	108	51.8	148	35.0	27	13.2	186	72.0	52	10.5	45	17.2	283	100.0
1976–1980 period	39	37.9	80	59.6	9	2.5	103	39.4	17	53.6	8	7.0	128	100.0

Source: Authors' computations, based on statistics of the Computer Centre of Foreign Trade.
a Number of agreements.
b % — percentage of the value of the licensing agreements.

A: Clauses Directly Restricting the Licensee's Export Possibilities

With regard to clauses which directly restrict the licensee's exports, there are several typical situations (see Table 4) concerning Polish licence imports from industrialized market-economy countries. First, there are contracts which prohibit the export of goods manufactured under licence; at the other extreme are contracts which do not restrict exports in any way. Between the two extremes, there are those intermediate situations in which only markets of particular importance to the licensor are 'protected' against the export activities of the licensee. The two most frequently employed solutions in practice are:

(a) the licensee is granted full freedom to export to socialist countries, when these markets are of little interest to western enterprises; and
(b) exports are authorized except for those to clearly specified countries. The specified countries are usually markets of vital importance to the licensor, and specially to his own country.[4]

Figures in Table 4 indicate that licensing agreements which prohibit all exports constitute 11.4 per cent of the total number and only 3.8 per cent of the total value of licensing agreements. This may mean that the complete export ban applied only to licences of a relatively smaller value. It is also worthwhile noting an important decline, after 1970, of contracts which impose a total ban on exports; this could be the reflection of stronger pressures exerted by Polish licensees aiming at the elimination of the relevant clause, and it is connected with their increasing interest in exports. On the other hand, the number of agreements without export restrictions is constantly increasing; this trend became particularly strong after 1975.

Agreements with partial export restrictions are the most numerous type. Their share in the analysed period amounts to 70 per cent of the number and 75 per cent of the value of all agreements. However, emphasis is shifting toward a 'selective' restriction of exports to specific countries, and with the growing interest of Polish licensees in exports to market-economy countries, this form of agreement is proving convenient. On the other hand, many western firms are actively developing their export to socialist countries' markets and do not want to leave all matters in the hands of their licensees.

A cross-section of licensing agreements by industrial branches indicates that metallurgy, included in 'other industries', and the chemicals industry, especially in terms of number, include a large share of contracts comprising total export bans. In contrast, the chemicals industry has also the highest share of agreements without any export restrictions whatsoever: 50.9 per cent of the value of agreements compared with the 20.2 per cent average. Table 4 indicates that American, French and Japanese firms are more liberal regarding licensees' exports than firms in other countries. Unfortunately, the empirical material in the authors' possession is not adequate for an explanation of these differences to be attempted.

B: Clauses Indirectly Influencing the Licensee's Position on the World Market

Apart from territorial restrictions, export possibilities of goods manufactured on the basis of imported technologies are determined by competition on the market of the product in question. In addition to the licensor, other firms producing goods on the basis of their own technologies compete with the Polish exporter; and if the licensor sells the technology to other licensees in other countries, the number of competitors increases even more, as usually occurs regarding transnational corporations *vis-à-vis* their foreign subsidiaries. In these circumstances, the licensee does not have much opportunity to enter foreign markets, even if his contract has no formal restrictive clauses.

[4] The possibility of exporting to some countries or to a group of countries often requires the licensor's consent for each separate transaction. Such consent is often granted at extra charge, to be paid by the licensee.

TABLE 6. Sub-licensing rights, by country and industry

	Type of restriction						N.A.		Total	
	Sub-licensing banned		Sub-licensing authorized to socialist countries		Sub-licensing banned to specified countries					
	a	%*b*	*a*	%*b*	*a*	%*b*	*a*	%*b*	*a*	%*b*
Industry:										
machinery and equipment	212	68.8	9	1.9	3	0.5	24	28.8	248	100.0
chemicals	72	97.1	1	0.2	2	0.5	13	2.2	88	100.0
transport equipment	63	97.8	4	0.8	2	1.3	4	0.1	73	100.0
electrical equipment	59	93.9	1	0.0	—	—	9	6.1	69	100.0
electronics and precision instruments	45	71.2	2	3.4	3	9.1	2	16.3	52	100.0
other	62	97.8	1	0.1	2	1.8	5	0.3	70	100.0
Country:										
1 Federal Republic of Germany	127	90.6	6	2.2	3	4.0	18	3.1	154	100.0
2 United Kingdom	77	92.7	3	0.4	—	—	11	7.0	91	100.0
3 France	74	76.4	1	0.0	3	2.2	4	21.4	82	100.0
4 United States	49	96.1	—	—	1	0.1	3	3.8	53	100.0
5 Italy	38	90.6	2	0.7	1	1.0	2	1.7	43	100.0
6 Sweden	35	94.3	—	—	1	0.0	6	5.7	42	100.0
7 Switzerland	23	36.1	1	0.1	—	—	4	63.8	28	100.0
8 Japan	22	92.6	1	2.9	1	0.7	2	3.8	26	100.0
Other countries	68	93.1	4	5.6	2	0.3	7	1.0	81	100.0
Total	513	85.9	18	1.0	12	1.0	57	11.9	600	100.0
until 1970	152	61.2	7	2.2	3	2.8	27	33.9	189	100.0
1971–1975 period	240	84.9	9	1.1	5	0.8	29	13.2	283	100.0
1976–1980 period	121	98.9	2	0.3	4	0.8	1	0.0	128	100.0

Sources: Authors' computations, based on statistics of the Computer Centre of Foreign Trade.
a Number of agreements.
b % — percentage of the value of the licensing agreements.

This would seem to be an important problem for the development of Polish exports, since nearly two-thirds of the relevant licences, in terms of number, are agreements by which Polish enterprises are not granted sole rights, i.e. the licensor either has already concluded or may conclude other licensing agreements concerning the same technology (see Table 5).

One of the basic problems of Polish exporters to western countries is to overcome the consumers' 'confidence barrier' with regard to the majority of Polish manufactured goods. The right to use the licensor's trademark or brand, especially if this enjoys a good image on the world market, may be very helpful; this is usually done by marking on the package that the product was produced under licence of the relevant firm.

Concerning this aspect of the country's technology imports, Poland's situation is favourable (see Table 5), since three-quarters of licensing agreements (number) include a clause authorizing use of the licensor's trademark.[5] The fact that it is often advantageous for the licensor if the licensee uses his trademark provides some explanation of this. Striving to preserve their image in the world, well-known firms not only grant the right to use their trademark to the licensee but often even impose it. A conflict of interests may arise when the licensee fails to ensure a satisfactory quality standard of the product manufactured under licence.

C: Restrictions in Technology Exports

Mastery of an acquired technology offers the possibility of exporting not only products manufactured under licence but also the technology itself. Experience has proved that, in this respect, the licensee's position is far worse than that of the original licensor. However, it should be borne in mind that a licensing agreement is often only part of a 'package' venture, e.g. industrial co-operation, within the framework of which the offer of the firm granting a sub-licence may be more attractive.

The majority of Polish licensing agreements (amounting to 95 per cent of number and value of contracts about which the data were available) with firms from market-economy countries prohibit sub-licensing (see Table 6). Cases of lack, or partial lack, at least, of sub-licensing restrictions are few and far between. There are no meaningful differences between various branches or between geographical cross-sections. It may therefore be concluded that licensors from highly industrialized western countries consider the protection of their interests in international licence turnover to be more important than those in trade turnover.

Summary and Conclusions

Analysis carried out to date leads to the following conclusions:

(a) In a country such as Poland, with a centrally-planned national economy, there exist possibilities for following an homogeneous and comprehensive licensing policy; but even then it is difficult to eliminate restrictive contract clauses which diminish the benefits stemming from licence purchases.

(b) Restrictive contract clauses are commonplace in Poland's licensing agreements with highly industrialized western countries, especially restrictions on the exports of goods manufactured under licence (more than 80 per cent of agreements have clauses which either completely or partly prohibit exports); technology exports by means of sub-licensing (an almost total ban); and the diffusion of imported technology to other enterprises (more than one-third of all agreements worth 40 per cent of the total). On the other hand, in instances of post-licensing co-operation — as well as those with possibilities for utilizing the licensor's trademark — the contractual terms are relatively favourable for Polish licensees.

(c) The foregoing shows that it is impossible to give an unequivocal appraisal of contract terms in the fields analysed herein. In part, contract terms may have had a negative impact on the Polish economy (exports of products made under licence, technology exports, range of diffusion), while in other respects that impact may have been positive (e.g. post-licence co-operation, right to use the licensor's trademark). The analysis indicates the possible directions of influence that particular restrictive clauses may have, but does not provide fully substantiated conclusions as to the strength and depth of their impact on the final effects related to licence imports.

(d) There are no clear indications that restrictive clauses in Poland's licensing contracts with firms from industrialized western countries ranked among the most important factors explaining unsatisfactory results of foreign technology utilization up to date. One cannot, however, neglect their overall impact on the efficiency of economic processes in Poland's economy. What needs special attention here is the growing share of restrictive clauses in contract terms applying to certain fields, e.g. formal restrictions on the scale of diffusion after 1970. This provides a fair basis for thinking that this problem has been underestimated in Poland's licensing policy hitherto. This may have been due to the lack of awareness among the participants of the decision-making process of the manifold consequences for economic development that the restrictive clauses in licensing agreements may have.

(Revised manuscript received November 1981)

[5] These figures are based on the number of agreements about which the authors had information concerning the exclusivity clause (sole rights).