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## Licences for East-bloc countries

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way to create a policy to cover the economic risks of export credits. In Argentina and Brazil the question of export credit insurance has not yet gone further than the complicated initial stage. Whereas in Brazil, after an unfortunate start with an impracticable system, it is possible, in theory, to cover both economic and political risks, in Argentina plans are still shelved. By setting up a special joint firm, the private insurance sector has shown its willingness to cover the economic risks; however, it is anticipated that from the beginning the State will be prepared to assume the political risks. As far as the principle is concerned, the relevant negotiations have long been concluded in a positive way, but a deadlock has been reached over technical details. In the remaining countries of Latin America no definite steps have yet been taken to set up export credit insurances, although the necessity for these is generally recognised and is continually reiterated in all relevant programmes.

#### **Bureaucracy is often a Bottleneck**

In spite of many lacunae and deficiencies — and contrary to what is often asserted — it must be

said that in the field of financing exports of capital goods from Latin America there is no perceptible bottleneck — at least for the volume of goods currently being exported. However, the variety of systems already in operation should not be allowed to obscure the fact that much remains to be done. Where there are still considerable gaps, these need to be filled. The main complaint of exporters is that the many bureaucratic obstacles make it more difficult to take advantage of such schemes. In many countries the red-tape is so extensive and tedious that exporters are more often deterred from making use of the opportunities offered than encouraged. For this reason, consideration is being given to the possibility of tightening up and simplifying the available means of obtaining export finance assistance by setting up special export banks. In the present stage the industrialised countries could collaborate — under their development aid programmes — mainly with technical assistance, i.e. by passing on the know-how necessary to build up and improve the system of financing and insurance. It does not appear that financial support is necessary at present in this sector.

### **EAST-WEST TRADE**

## **Licences for East-bloc Countries**

By Werner Siech, Berlin

**T**he granting of licences to East-bloc countries is still a disputed problem, although many entrepreneurs have changed their minds in a certain—positive—way as regards this group of questions. In the Federal Republic official and semi-official quarters are promoting this change of mind. For, independent of all political deliberations numerous manufacturers are bearing in mind that time does not stop and that many other giving nations are quickly prepared to take advantage of opportunities, that German entrepreneurs possibly do not observe.

It stands to reason that the traditional export business—i.e. deliveries of goods—now as ever comes first and will always be predominant. However, it should be as much a matter of course that entrepreneurs deal with other forms of business in the East, if for various reasons the export of goods cannot take place. Due to the prevailing conditions or the limited delivery powers, respectively, of the Eastern countries and due to their bilateral thinking the actual trade volume will always be limited.

#### **Preparation of Licence Transactions**

Among others it should be a symptom of these new tendencies that the German Federal Bank in its quite informative monthly report of April, 1966, pertaining to the "Development of Patent and Licence Transactions with Foreign Countries in 1964/1965" has

covered also the Soviet Union and Poland with regard to data and branches, while in the preceding Patent and Licence Report of April, 1964, (in 1965 no such report had been published) this had not been the case. Although in this context it is not possible to enter into particulars of these statistics, it should be mentioned, however, that the German balance of licences vis-à-vis these two East-bloc countries has been favourable for the Federal Republic in 1964 and 1965.

Of course the Agfa-Gevaert case in Moscow caused some uneasiness in the minds of Western licensors. This discomfort can, however, be overcome through a number of positive deliberations: According to experiences hitherto made as regards the issuing of licences to East-bloc countries—and in this connection not only patents are meant but also brands, trade names and know-how—one should not judge too hastily. Independent of the one or other individual case, that "somehow" might be different, there are thousands of firms in the West which need not apprehend any conflicts in licence transactions with the East. Let us not forget that also in the purely Western licence business similar marginal cases occur occasionally.

On the assumption of most precise contract terms, that usually are the result not only of negotiations between the two partners but also of very detailed analyses of licences, the so-called pre-investment

studies, no complications will arise due to the well-known observance of contracts by Eastern countries. Moreover, it should be taken into consideration that there is a vast number of cases where trade mark problems cannot arise at all—as did in the Agfa-Gevaert case in Moscow—since brands and trade names do not exist.

It would therefore be deplorable and unrealistic if the true conditions were not recognised and a certain case would serve "to treat all things alike". As regards all similar occurrences it is in any case always commendable to examine all particulars and contexts beyond the conventional reporting of the press. Unfortunately language barriers frequently are a major obstacle. Mere translations often do not suffice to clear up backgrounds, to take mentalities into consideration or to avoid misinterpretations.

Some of the trade fairs and exhibitions staged in Moscow revealed another fact, that might give the traditional thinking in terms of pure goods exports new impulses for the issuing of licences. Many exhibitors used to Western trade fairs and exhibitions as well as corresponding transactions could not book one single order. The exhibitors therefore realise by now that the Soviet Union is not so much interested in buying as in copying on the basis of licences.

Whoever wants to do business with the East should realise that he must get rid of the usual—Western—stereotype way of thinking. While formerly—i.e. in the years preceding 1939 or, in the case of the USSR, before 1941—just in business with the East the motto had been: produce, export and make money—today the granting of licences must be included additionally.

The disappointments and disillusion experienced during trade fairs and exhibitions staged so far in the East may in some cases have been quite a shock, but, on the other hand, they may also have had beneficial effects, as thus the actual conditions have been revealed, within the scope of which the future business with the East may be carried on.

### **Transaction of the Licence Business**

As regards the practical procedure in licence transactions, one should start from the fact that—apart from Yugoslavia—in the whole East they can only be carried on with the official central agencies established just for this purpose. With that we do not mean the well-known Foreign Trade Agencies but the Licence-Holding-Corporations, of which a few shall be mentioned in this context: in Poland the "PolSERVICE", in Czechoslovakia the "Polytechna", in Hungary the "Licencia", in Rumania the "Masinimport", in the USSR the "Licensintorg", in the People's Republic of China the "Techimport", in Bulgaria the "Technoexportstroy", in Yugoslavia the "Gramex", etc. It must, however, be taken into consideration that this list is not obligatory in all cases. In practice there may be shiftings between competences and responsibilities. In most instances especially the Eastern country's Foreign Trade Agency will

have to be contacted to whose province the particular branch of Industry or line of business belongs.

Apprehensions with regard to the observance of contracts need not be entertained today. It is, however, much to be recommended to formulate the contracts so unambiguously and clearly that no wrong interpretations should be possible. Moreover, all Eastern states did not only sign the European Agreement on International Commercial Arbitration of April 21, 1961, but their legislative bodies approved and ratified it, too.

Potential interested parties may like to know the dates at which in 1964 the agreement became effective in the individual Eastern countries: Bulgaria: Aug. 11, 1964 Yugoslavia: Jan. 7, 1964, Poland: Dec. 14, 1964, Rumania: Jan. 7, 1964, Czechoslovakia: Feb. 11, 1964, USSR: Jan. 7, 1964, Hungary: Jan. 7, 1964.

An impartial balancing of all present conditions may come to the conclusion that the granting of licences to East-bloc countries is to be recommended, if the licencer is prepared to adapt himself to the special conventions of the licence business with Eastern states, i.e. long-drawn, tough negotiations, a most accurate stipulation of each individual clause in the contract and much patience. Only in such cases where the Eastern licensee himself is very much interested in a licence from the West, a shorter duration of negotiations may be anticipated. What is always decisive is the value of the licence in question to the Eastern economies. With regard to licence fees paid by the Eastern countries the following summarised view may be offered: If so far lump sum payments have been usual, today there would be no hesitations about concluding also traditional licencing agreements with Eastern nations, if a basis for that can be found in negotiations. The adaptation to Western patent and licence principles, respectively (e.g. international commercial arbitration, the Soviet Union's accession to the Paris Convention of March 20, 1963, as of July 1, 1965) makes the just stated opinion appear justified.

Some figures from the USA may be interesting in this connection: In 1965 the US Department of Commerce approved 264 applications for the export of technical data to East-bloc countries and 608 applications for the registration of US patents. In the first quarter of 1966 these figures were 76 and 123, respectively.

In any case there should be hardly any doubt that of the three trade opportunities with the East—i.e. goods trade, compensation transactions and the granting of licences—the latter will experience a considerable expansion during the coming years. While the former two activities, above all the traditional goods trade, against foreign exchange will necessarily be limited due to the always bilateral transactions, such a limitation does not exist as regards the granting of licences. By no means must it be always a question of patent licences, for also know-how licences are in very great demand.