

Wionczek, Miguel S.

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What do the Developing Countries Want?

by Miguel S. Wionczek, Mexico City *

By now the need for a code of conduct for technology transfer has been accepted by all groups of countries represented at the UN. Both the proposals of the Group of 77 and the counterproposals of the Western industrial countries were submitted in early December 1975 to the first session of the UNCTAD Commission on Transfer of Technology and will become subject of international negotiations at UNCTAD IV at Nairobi in May 1976. There are chances that the Code could become reality before the end of 1977.

The fact that "The Economist" of London published recently a two pages long article about the UNCTAD discussions on an international code of conduct for transfer of technology suggests that the importance of that issue for the future of North-South economic relations has been finally recognized in industrial countries of the North Atlantic area.¹ The recognition comes after about three years of unsuccessful pleas on the part of the developing countries to take up at intergovernmental level for regulatory purposes the matter of international technology trade, the only part of world commerce left out of the scope of multinational arrangements. The developing countries pleaded for such action for the twofold purpose of establishing some mutually acceptable guidelines for technology trade and of linking it with their developmental needs.

Between 1970 and the summer of 1975 proposals for the regulation of international technology trade, made by a large group of the developing countries at UNCTAD and elsewhere, were meeting strong opposition of major technology exporting countries on a number of grounds. The developing countries were being told on every occasion that technology being a non-defined and complicated object of international transactions, its trade did not lend itself to any international regulation; that technology being mostly private property could not be subject of international regulation, and, finally, that any attempt to regulate international technology trade would affect negatively technology

flows to the developing countries because any regulation would scare technology sellers from entering into contracts with restrictively-minded buyers in small, uncertain and underdeveloped markets.

Proposals of the Group of 77 and Counterproposals

The almost theological discussions about the feasibility and possibility of international regulation of technology trade gave place to a more practical and pragmatic debate only when the developing countries as a group presented to Western industrial countries and the socialist block in May 1975 detailed proposals of a code of conduct on international transfer of technology.² The draft outline was elaborated by experts of the so-called Group of 77 participating in the UNCTAD Intergovernmental Group of Experts on a Code of Conduct on Transfer of Technology that met in Geneva twice in the spring and the fall of last year. It took the form of a draft of the international convention that covers the following fields: objective and principles, scope of application, national regulation on transfer of technology transactions, guarantees, special treatment for developing countries, international collaboration and applicable law and settlement of disputes. The draft of the Group of 77 has not been invented by the experts from developing countries. It represents an improved and refined version of proposals elaborated in Geneva in May 1974 by a private group of 15 technology experts from Western, socialist and the less developed countries, convoked under the auspices of Pugwash Movement on Science and World Affairs, an informal scientific organization which counts among its members a score of Nobel Prize winners.

* The author is in charge of science and technology planning in Mexico. He acted as the chairman of the Pugwash ad hoc Expert Group on Transfer of Technology (Geneva, May 1974), the spokesman for the developing countries in the UNCTAD Intergovernmental Group of Experts on a Code of Conduct on Transfer of Technology (Geneva, May 1975) and the chairman of the first meeting of the UNCTAD Committee on Transfer of Technology (Geneva, November 1975).

¹ Twisting whose arms?, in: *The Economist*, November 29, 1975, pp. 79-80.

² UNCTAD, Report of the Intergovernmental Group of Experts on a Code of Conduct on Transfer of Technology, Annex I and III, TD/B/C. 6/1, Geneva, May 16, 1975.

In answer to the draft of the Group of 77 whose main purpose was to prove that international regulation of technology trade is both possible and feasible, governmental experts from the Western industrial countries drafted last fall a counterproposal of similar length and coverage. Both proposals were submitted in early December 1975 to the first session of the UNCTAD Commission on Transfer of Technology. They are going to become subject of international negotiations at the UNCTAD IV, scheduled for May 1976 at Nairobi, Kenya. The potential importance of the forthcoming negotiations can be understood only if one takes note that the Seventh Special Session of the UN General Assembly, in which Messrs. Kissinger and Genscher played such an important role, agreed by consensus that international code of conduct on technology transfer should be negotiated at the Nairobi Conference and thereafter so that it could become reality before the end of 1977.

Disagreement due to Misconceptions

After the meeting of the UNCTAD Commission on Transfer of Technology it is only fair to state that the gap between the respective positions on the code of the developing countries and industrial countries continues to be very large particularly in respect to the legal nature of the code. The fundamental disagreement is whether the code should be merely a set of voluntary guidelines or should be made binding in an international agreement and ultimately national legislations, as the developing countries propose at this stage. This disagreement should not obscure, however, the degree of progress achieved between May and December 1975 by the developing and the industrial countries in respect to the general content of the code. Nor should the persistence of disagreement make anyone forget that socialist countries decided to participate in the exercise by defining their own detailed position on the major issues

covered by the two above mentioned proposals. There are reasons to believe that socialist countries who participate heavily in international technology trade as importers from the West and exporters to developing countries, may bring their draft proposals to the UNCTAD IV.

A number of preliminary comments on the draft code, proposed by the Group of 77, has been made in recent months by such important bodies as the International Chamber of Commerce and the Licencing Executive Society and by important economic journals published in industrial countries.³ While some parts of the proposal seem to be agreeable and fit for formal negotiations, others are being rejected. Such mixed reaction should not surprise anyone. It reflects the nature of informal prenegotiations on any internationally important subject. The progress of the code could, however, accelerate if the interested parties in technology exporting countries had the opportunity to understand better what the developing countries really propose in that respect. Judging by the first Western commentaries misconceptions continue to abound.

Agreed Statement on the Code of Conduct

For the purpose of creating better conditions for a businesslike dialogue, the authors of the draft outline who represent, among other countries, Argentina, Brazil, Mexico, Peru, Venezuela, Iraq, Egypt, India, the Philippines, Algeria, Nigeria and Ghana, elaborated during the UNCTAD Commission on Transfer of Technology meeting the agreed statement on the code of conduct which may be summarized in the following terms:

³ International Chamber of Commerce, Draft Code of Conduct on Transfer of Technology: Comments on the Report of the UNCTAD Group of Experts, Doc. No. 225-1/68, Paris, Nov. 14, 1975; Technology Transfer — A Self-evident Truth, *Intereconomics*, No. 11, 1975; *The Economist*, op. cit.; and Karl Wolfgang Meck, Technology Transfer — Problems of a Code of Conduct, in: *Intereconomics*, No. 10, 1975.

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V E R L A G W E L T A R C H I V G M B H - H A M B U R G

The important role of technology in the social and economic development of all countries, particularly the developing countries, has been universally recognized. Accelerating the rate of economic growth is not simply a matter of capital formation but, among other factors, of selecting the appropriate technology.

The relative ease with which the accumulated stock of technological knowledge can be transmitted across borders has rendered technology transfer from one country to another more immediately attractive than indigenous technological development. In addition, the technological dependence of developing countries has been increasing, since they do not possess adequate research, engineering, and organisational capabilities to assimilate and adapt the imported technology to their own needs. Developing these capabilities in itself is an important aspect of the transfer process.

The need to accelerate the transfer of technology to developing countries has been constantly emphasized at the United Nations and in other international organizations including the World Intellectual Property Organization (WIPO). However, concern has been growing about the increasing number of obstacles to the effective and economical transfer of appropriate technology, which adversely affect the technological capabilities of developing countries and often tend to perpetuate technological dependence.

In several developing countries today, transfer of technology transactions, whether by public or private enterprises, is being regulated by government authorities. This regulation aims primarily at ensuring that the terms are consistent with the objectives of national development, including the development of national technological capabilities, as well as strengthening the bargaining power of the recipient enterprises. The experience of developing countries which have such regulations provides evidence of the prevalence of restrictive business practices, abuses of industrial property rights, the weak bargaining position of developing countries' enterprises, the overwhelming burden of the direct and indirect costs of transfer of technology in the balance of payments of recipient countries, and the various techniques by which transfers of technology are institutionally tied together with other aspects of trade and investment thus rendering it difficult to isolate or identify the technology components.

However, national regulations vary from country to country, both as regards their scope and application. In addition, such regulatory action represents a one-sided burden falling entirely on the countries importing technology. There is need

therefore to restructure and improve existing relations between suppliers and recipients of technology so as to facilitate access to appropriate technology under equitable terms. It has become clear that present imperfections in the market for technology require the formulation and adoption of international regulations. A Code of Conduct agreed to both by technology supplying and receiving countries could set minimum binding standards based on an equitable balance of the various economic interests involved, while taking into account the particular needs of the developing countries. It is within this broad framework that the formulation of an international Code of Conduct on Transfer of Technology should be viewed.

Fundamental Postulates

The Code of Conduct for Transfer of Technology as proposed by the Group of 77 is based on certain fundamental postulates. The most important is that all countries have the right of access to technology in order to improve the standard of living of their peoples. Transfer of technology can become an effective instrument for the elimination of poverty and economic inequality among countries and for the establishment of a more just international economic order. An unrestricted flow of information on the availability of alternative technologies and for the selection of appropriate technologies is necessary in order to build up the technological capabilities of developing countries.

A major feature of the Code of Conduct as envisaged by the developing countries is its *universality*. The Code is intended to be applicable to all countries and to all enterprises, whether supplying or receiving technology. The universality of the Code will lead to a more equitable relationship between suppliers and recipients of technology transfer transactions benefiting all countries since almost every country is an importer of technology. One of the important purposes of the Code is to establish an appropriate set of guarantees to suppliers and recipients of technology alike, taking fully into account the weaker position of recipient parties in developing countries.

Another major feature of the Code is its *flexibility*. The Code explicitly recognizes the right of all countries to frame their own laws and regulations in accordance with their policies, plans, and priorities. The Code is intended to supplement and strengthen the national regulations, not to supplant them.

The Code of Conduct proposed by the Group of 77 also provides that technology transfer arrangements shall be governed, with regard to their validity, performance, effect and interpretation, by

the law of the countries utilizing the technology in their economies. These countries shall exercise legal jurisdiction over the settlement of disputes pertaining to technology transfer transactions, except where arbitration is permitted by national regulations and agreed to by the parties concerned.

Finally, another major feature of the Code is its legal character. The Code of Conduct is intended by the Group of 77 to be an international legally binding instrument, necessary to ensure that its provisions are fully and universally implemented in all countries to regulate transfer of technology.

Need for a Code of Conduct Universally Accepted

By now the need for a code of conduct has been accepted by all groups of countries represented at the UN as can be judged by the following quote from the consensus declaration adopted by the Seventh Special Session of the UN General Assembly, held in New York last September:

"All countries should cooperate in the elaboration of an international code of conduct for technology transfer, corresponding in particular to special needs of developing countries. The work on this code should thus continue within UNCTAD and be concluded so that decisions, including the decision on the code's legal nature, can be taken at UNCTAD IV, with the objective of adopting a code of conduct before the end of 1977".

Moreover, comments forthcoming from private parties in industrial countries on the proposal submitted by the Group of 77 do not question anymore whether the code on transfer of technology is possible or feasible. A statement by International Chamber of Commerce not only accepts its feasibility but declares that "the conditions for co-operation (in respect to the elaboration of the code) are propitious and the work now being

undertaken should be capable of being brought to a successful fruition, provided all parties approach the issues with realism and understanding of the others' problems."

Those fully cognizant of the full text of the draft outline, prepared by the Group of 77 in UNCTAD, can hardly deny that while defending their interests the developing countries approach the issues with considerable degree of realism. Their proposals do not ask technology owners for anything that might be considered as confiscatory, unfair or retroactive. First, they do not want nor expect to receive any proprietary technology free of charge; secondly, their quest for some preferential treatment is only secondary to their request for elimination from technology trade of restrictive business practices that are illegal in most technology exporting countries; thirdly, they do not consider that their draft of a code involves the issue of retroactivity although it opens the door for the possibility of renegotiating existing technology contracts. Moreover, the draft of the Group of 77 proposes guarantees for *both* sellers and buyers of technology.

The main unresolved issue is that of the legal character of the code. Those who object to a legally binding instrument argue that most technology is produced and traded by private owners. The large majority of other goods and services are, however, also owned and traded privately. If the above mentioned objection had general validity, then it would not be possible to have any international agreement in respect to commodity trade or on regulation of service transactions. The existence of a large number of international regulatory agencies and international commodity agreements strongly suggests that a *legally binding* code of conduct for transfer of technology falls within the limits of the practices of international law as currently applied.

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