UNITED NATIONS INTERNATIONAL CODE OF CONDUCT ON THE TRANSFER OF TECHNOLOGY

BY

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I. BACKGROUND – HOW DID WE GET WHERE WE ARE?
   A. RESULT OF PUSH BY
      1. CERTAIN DEVELOPING NATIONS ECONOMISTS ENCOURAGED AND ASSISTED BY
      2. UNCTAD COMMITTEE ON TRANSFER OF TECHNOLOGY
   B. MEETINGS AND DRAFTS OF CODE
      1. PUGWASH CODE
      2. SERIES OF UNCTAD MEETINGS
      3. LDC DRAFTS
   C. CURRENT STATUS
      1. OCTOBER 16-NOVEMBER 10, 1978 U.N. CONFERENCE
      2. FEBRUARY 19-MARCH 3, 1979 U.N. CONFERENCE
      3. UNCTAD IV CONFERENCE – MAY 1979
      4. DECISION ON FURTHER SESSIONS TO BE MADE AT 2/19-3/3/79 CONFERENCE

II. LATEST DRAFT – FROM 10/16-11/10/78 U.N. CONFERENCE
   A. PREAMBLE (TAB 2)
      1. LEGALLY BINDING (?) (11-13)
   B. OBJECTIVES (TAB 3)
      1. "PARTIES TO TECHNOLOGY TRANSFER TRANSACTIONS AND <u>GOVERNMENTS CONCERNED</u>" (1)

2. "ENCOURAGE TRANSFER OF TECHNOLOGY TRANSACTIONS" (III)
3. RESTRICTIVE BUSINESS PRACTICES (IX)
4. GUARANTEES/RESPONSIBILITIES (X)

C. PRINCIPLES (TAB 3)

1. RIGHT OF EACH STATE TO FACILITATE AND REGULATE THE TRANSFER OF TECHNOLOGY (II)
2. USE OF "ECONOMIC AND OTHER MEASURES BY THE WORLD COMMUNITY AGAINST CERTAIN STATES FULLY APPLIES TO TRANSFER OF TECHNOLOGY" (IV)

D. DEFINITIONS (TABS 4A, 4B & 4C)

NOT LIMITED TO LICENSE FROM LARGE DEVELOPED NATION CORPORATIONS TO LDC ORGANIZATIONS. I WISH IT WAS.

1. PARTY (IA)

   INDIVIDUALS, CORPORATIONS, UNIVERSITIES

2. TRANSFER OF TECHNOLOGY TRANSACTIONS (3)

   A. LICENSING OF PATENTS OR TRADEMARKS (3A)

      I. NAKED LICENSES ARE INCLUDED – SHOULD NOT BE

      II. RECOMMENDATION (1) THE CODE OF CONDUCT SHALL NOT APPLY TO TRANSFER OF TECHNOLOGY TRANSACTIONS WHICH ARE NAKED ASSIGNMENT, SALE OR LICENSE OF PATENTS, INVENTOR'S CERTIFICATES, UTILITY MODELS, INDUSTRIAL DESIGNS, TRADEMARKS, SERVICE MARKS AND TRADE NAMES

   B. INTERNATIONAL TRANSFER OF TECHNOLOGY (4)

      I. RECOMMENDATION (2) TRANSFER OF TECHNOLOGY SHOULD BE DEFINED AS "ONLY THOSE ARRANGEMENTS IN WHICH KNOW-HOW AND TECHNICAL INFORMATION IS PROVIDED FROM ONE PARTY TO ANOTHER ACROSS NATIONAL BOUNDARIES".

3. ACQUIRING PARTY (IB)

   I. RECOMMENDATION (3) THE CODE OF CONDUCT SHALL NOT APPLY TO TRANSFER OF TECHNOLOGY TRANSACTIONS WHEN THE ACQUIRING PARTY IS LOCATED IN A DEVELOPED COUNTRY.

4. SUPPLYING PARTY (Ic)

   I. RECOMMENDATION (4) THE CODE OF CONDUCT SHALL NOT APPLY TO TRANSFER OF TECHNOLOGY TRANSACTIONS WHEN THE SUPPLYING PARTY IS A SMALL BUSINESS (AS DEFINED BY THE U.S. GOVERNMENT), A UNIVERSITY OR ONE OR A SMALL NUMBER OF INDIVIDUALS.

   II. RECOMMENDATION (5) THE CODE OF CONDUCT SHALL NOT APPLY TO TRANSFER OF TECHNOLOGY TRANSACTIONS WHEN THE TRANSACTIONS IS AN EMPLOYMENT OR CONSULTANT AGREEMENT OR IS AN AGREEMENT WHICH HAS RESEARCH AND DEVELOPMENT AS ONE OF ITS PURPOSES.

5. RIGHTS TRANSFERRED TO MORE THAN ONE COUNTRY

   I. OFTEN TECHNOLOGY TRANSFER AGREEMENTS COVER "WORLD-WIDE", "U.S. & CANADA", "WESTERN EUROPE", ETC.

   II. RECOMMENDATION (6) THE CODE OF CONDUCT SHALL NOT APPLY TO TRANSFER OF TECHNOLOGY TRANSACTIONS WHICH OCCUR WHEN THE TECHNOLOGY IS INITIALLY TRANSFERRED WITHIN NATIONAL BOUNDARIES BETWEEN THE SUPPLYING PARTY AND THE ACQUIRING PARTY.

6. SMALL TRANSFER OF TECHNOLOGY TRANSACTIONS

   1. RECOMMENDATION (7) THE CODE OF CONDUCT WILL NOT APPLY TO TECHNOLOGY TRANSFER TRANSACTIONS IN WHICH BOTH PARTIES AGREE THAT THE CONTEMPLATED PAYMENTS INVOLVED FOR THE FIRST FIVE YEARS OF THE AGREEMENT

WILL NOT EXCEED $1,000,000 BASED ON THE VALUE OF THE U.S. DOLLAR AS OF JANUARY 1, 1979.

E. SPECIAL TREATMENT FOR DEVELOPING NATIONS (TAB 5)

F. NATIONAL REGULATION OF TRANSFER OF TECHNOLOGY TRANSACTIONS (TAB 6)

1. WHILE STATES HAVE RIGHT TO REGULATE TECHNOLOGY TRANSFER AGREEMENTS, REGULATION WILL SLOW LARGE TRANSACTIONS AND STOP SMALL TRANSACTIONS (3.3G)

G. RESTRICTIVE BUSINESS PRACTICES (TAB 7)

1. GENERAL

I. ALL TECHNOLOGY TRANSFER AGREEMENTS ARE A SERIES OF COMPROMISES. RESTRICTIVE BUSINESS PRACTICE LANGUAGE MAY PREVENT LEGITIMATE TRADE OFF ARRANGEMENT.

II. HAVE BEEN VARYING NUMBERS OF RESTRICTIVE BUSINESS PRACTICES INVOLVED IN VARIOUS NEGOTIATIONS

2. CHAPEAU (A)

I. SUBSIDIARY ARRANGEMENTS INCLUDED?

II. MANDATORY OR VOLUNTARY

3. GRANT BACK (B1)

I. EXCLUSIVE (?)

II. WITHOUT OFFSETTING CONSIDERATIONS

4. CHALLENGES TO VALIDITY (B2)

I. "UNREASONABLY"

5. EXCLUSIVE DEALING (B3)

6. RESTRICTIONS ON RESEARCH (B4)

7. RESTRICTIONS ON USE OF PERSONNEL (B5)

8. PRICE FIXING (B6)

9. RESTRICTIONS ON ADAPTATIONS (B7)

10. EXCLUSIVE SALES OR REPRESENTATION AGREEMENTS (B8)
    i. "REQUIRING"
11. TYING ARRANGEMENTS (B9)
    i. "UNREASONABLY"
    ii. QUALITY MAINTENANCE
12. EXPORT RESTRICTIONS (B10)
    i. "UNREASONABLY"
    ii. QUANTITY LIMITATIONS
    iii. USE OF PATENT OR TRADEMARK RIGHTS TO RESTRICT EXPORTS
    iv. USE OF LICENSES GRANTED TO OTHERS TO RESTRICT EXPORTS
13. CARTELS/PATENT POOL OR CROSS-LICENSING AGREEMENTS (B11)
    i. CROSS LICENSE–TERRITORIES
    ii. CROSS LICENSE–SUBSIDIARIES
    iii. CROSS LICENSE–UNREASONABLY
    iv. CROSS LICENSE–TECHNOLOGY SUPPLIER
    v. CROSS LICENSE–QUANTITIES
14. RESTRICTIONS ON PUBLICITY (B12)
    i. "UNREASONABLY"
    ii. MISREPRESENTATION IN PUBLICITY
    iii. SAFETY
15. PAYMENTS AND OTHER OBLIGATIONS AFTER EXPIRATION OF INDUSTRIAL PROPERTY RIGHTS (B13)
16. RESTRICTIONS AFTER EXPIRATION OF ARRANGEMENT (B14)
    i. IF TECHNOLOGY IS NOT LEGALLY PROTECTED OR HAS NOT ENTERED PUBLIC DOMAIN
17. LIMITATIONS ON VOLUME, SCOPE, ETC. (B15)
    i. VOLUME
    ii. FIELD OF ACTIVITY

18. USE OF QUALITY CONTROLS (B16)
    I. SAFETY AND PRODUCT LIABILITY
19. OBLIGATION TO USE TRADEMARKS (B17)
    I. VOLUNTARY (?)
20. REQUIREMENT TO PROVIDE EQUITY OR PARTICIPATE IN MANAGEMENT (B18)
    I. VOLUNTARY (?)
21. UNLIMITED OR UNDULY LONG DURATION OF ARRANGEMENTS (B19)
    I. "UNDULY LONG"
    II. QUICK POINT CASE
22. LIMITATIONS UPON USE OF TECHNOLOGY ALREADY IMPORTED (B20)
23. EXCEPTIONS (C)
    I. GOVERNMENT OF PEOPLE WHO GRANT APPROVAL, NOT OF LAW. USUALLY APPROVERS HAVE NO PRACTICAL EXPERIENCE.

H. GUARANTEES/RESPONSIBILITIES/OBLIGATIONS (TAB 8 & 8A)

1. CLAUSES APPLICABLE TO BOTH NEGOTIATING AND CONTRACTUAL PHASE (A)
    I. RESPONSIVE TO ECONOMIC AND SOCIAL OBJECTIVES OF THE COUNTRIES INVOLVED
2. NEGOTIATING PHASE (B)
    I. USE OF LOCALLY AVAILABLE RESOURCES
    II. UNPACKAGING
    III. FAIR AND HONEST BUSINESS PRACTICES
        A. CONFIDENTIAL INFORMATION
3. CONTRACTUAL PHASE (C)
    SHALL/SHOULD
    I. ACCESS TO IMPROVEMENTS (C4I)

ii. CONFIDENTIALITY (C4ii)

iii. SUITABILITY FOR USE (C4v)
IMPRACTICAL CLAUSE

iv. QUALITY STANDARDS

a. SAFETY OR HEALTH REASONS (?)

v. COMPLETENESS OF INFORMATION

a. UNDEVELOPED TECHNOLOGY (?)

I. GROUP OF 77 CHAPTER ON GUARANTEES (TAB 8B)

J. GROUP OF 77 CHAPTER ON APPLICABLE LAW AND SETTLEMENT OF DISPUTES (TAB 9)

1. AGREEMENT PROBABLY WILL NEVER BE POSSIBLE

2. 3rd ARBIT ATOR MUST BE OF DIFFERENT NATIONALITY FROM PARTIES OR OTHER ARBITRATORS (B3)

K. INTERNATIONAL MACHINERY (TAB 10 & 10A)

1. ESTABLISHMENT OF PERMANENT UNCTAD BODY TO REVIEW CODE, ETC.

III. CONCLUSIONS

A. WHAT WILL HAPPEN?

1. WILL BE CODE

i. WILL BE VOLUNTARY

ii. WILL BE PERMANENT UNCTAD BODY TO REVIEW CODE, ETC.

iii. WHILE MAY NOT INCLUDE SUBSIDIARIES INITIALLY, WILL EVENTUALLY