

**[BPTTT DEPARTMENT ADMINISTRATIVE ORDER
NO. 6 s. 1992, March 15, 1993]**

**AMENDMENTS TO THE REVISED RULES OF PROCEDURES OF THE
TECHNOLOGY TRANSFER REGISTRY**

Pursuant to the provisions of Executive Order No. 133 Reorganizing the Department of Trade and Industry and its Attached Agencies and Sec. 79-B of the Revised Administrative Code, the following Amendments to the Revised Rules of Procedure of the Technology Transfer Registry are hereby promulgated:

SECTION 1. The definition of a technology transfer arrangement under Section 1(b), RULE I is hereby amended as follows:

Technology Transfer Arrangements shall refer to contracts or agreements enter into by and between domestic companies and foreign companies and/or foreign- owned companies involving the: transfer of systematic knowledge for the manufacture of a product or the application of a process; rendering of a service including management contracts; licensing of computer softwares; and the transfer, assignment or licensing of all forms of industrial property rights including marketing/distributorship agreements involving the license to use foreign trademarks, tradenames and service marks and other marks of a proprietary nature.

SECTION 2. The definition of packaging cost under Section 1(g), RULE I hereby amended as follows:

Packaging Cost shall refer to cost of materials incurred in the process of pl the licensed product in container(s) necessary for transporting products to s areas of destination.

SECTION 3. Section 2 (a), (b), and (c) of RULE II is hereby amended to read as follows:

- a. Formulate policies that would promote the inflow of appropriate technology into the desired/preferred sectors of activity with focus on the developmental role of the government in the field of technology transfer.
- b. Establish general and equitable standards on which to base the relationships between/among the parties to the technology transfer arrangement taking into consideration their legitimate interest, and giving due recognition special needs of the country for the fulfillment of its economic and social development objectives.
- c. Encourage technology transfer arrangements under conditions

where the bargaining positions of the parties to the technology transfer arrangements are balanced to achieve mutually satisfactory arrangements.

SECTION 4. Section 7, RULE IV is hereby amended as follows:

The Registry shall render action on applications for registration in accordance with the following schedule:

1. Within two (2) working days for the following technology transfer arrangements:

- i. agreements involving the transfer of technology through the licensing of patents and/or know-how and trade secrets with a royalty fee not exceeding 5% of net sales;
- ii. agreements which are royalty-free; and
- iii. amendatory agreements to TTR registered agreements involving minor changes such as addition of new products involving the same technology under the same terms of a TTR registered agreement or change of technology supplier/technology recipient or change in corporate name of technology supplier/technology recipient.

2. Sub-section 2 is duly deleted in its entirety.

3. Sub-section 3 shall now become sub-section 2 of Section 7.

x x x

SECTION 5. Section 10 (1), RULE IV is hereby amended as follows:

In evaluating technology transfer arrangements, the Registry shall take due consideration for agreements where:

- 1) The use of the technology/industrial property right(s) will lead to substantial contribution to the national development objectives and goals.

SECTION 6. Section 11, RULE IV on the evaluation of royalties/fees is hereby amended in its entirety to read as follows:

Royalties/fees not exceeding 5% of net sales shall be granted automatically provided the technology transfer arrangement involves the transfer of technology through the licensing of patents and/or know-how and trade secrets; otherwise the technology payment shall be assessed using the following criteria:

1. technology cost in relation to the benefits that will be derived by the technology recipient and the national economy such as the following:

a. employment generation;

b. export earnings;

- c. use of indigenous raw materials and local equipment and services;
- d. efficiency improvements;
- e. spill-over of technology to local industries; and
- f. programs for the transfer, adaptation, and assimilation of technology.

2) equitable and fair sharing of the profit from the licensed activity bet the technology supplier and the technology recipient.

In addition to the foregoing and if applicable, the following factors will also considered in the determination of the reasonableness of the technology payment

- 1) scope, complexity and pioneering nature of the technology; and
- 2) level of priority of the licensed activity.

Minimum royalty shall not be allowed, unless the requested minimum royalty is proven to be less than the royalty payments due based on historical sales and sales projection of the licensed projection of the licensed product(s).

For uniformity, royalty base shall be expressed in terms of net sales whenever applicable.

A bonus royalty of 2% of net foreign exchange earnings, as herein defined, may be allowed if the technology supplier commits to assist the technology recipient the export of the licensed product(s).

SECTION 7. Section 12 (1), (5), (14), and (15), RULE IV are amended as follows:

Restrictive business clauses shall not be allowed in any technology transfer arrangement, specifically, the following clauses shall be prohibited:

- 1. those which restrict directly or indirectly the export of the licensed under the technology transfer arrangements, unless justified for the protection the legitimate interest of the technology supplier such as export to countries exclusive licenses to manufacture and/or distribute the licensed product(s) h already been granted;

x x x

- 5. those which provide free of charge that major improvements made by the technology recipient shall be communicated to the technology supplier; and/or be patented in the name of the technology supplier; and/or shall be exclusive assigned to the technology supplier;

x x x

- 14. those which require the technology recipient to keep part or all of