

**EARC REPORT NO. 20  
TECHNOLOGY DEVELOPMENT &  
ACQUISITION**

*Published by :*  
**CABINET SECRETARIAT  
RASHTRAPATI BHAVAN  
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No. EARC/VI/A(4)/83

प्राथमिक प्रशासन सुधार आयोग

ECONOMIC ADMINISTRATION REFORMS  
COMMISSION

10, Janpath

New Delhi, 7th June, 1983.

L. K. JHA  
Chairman

To -

Shrimati Indira Gandhi,  
Prime Minister of India,  
New Delhi.

Madam, .

Under one of our terms of reference, viz., "The Simplification of Administrative Procedures", we had taken up among other things a study of industrial approvals. So far we have submitted the following Reports under this head:

1. Clearances under the MRTP Act (Report No. 1)
2. Clearances under the Industries (Development & Regulation) Act (Report No. 8)
3. Capital Goods Clearances (Report No. 14)

It was our intention to round off this series with a report on foreign collaboration approvals. While we were at work on this, the Government issued a New Technology Policy Statement. We therefore decided to enlarge the scope of the report so as to cover the measures and procedures needed to accelerate the pace of indigenous technological development, as also to facilitate the acquisition of technology where needed, in the light of the objectives and considerations set forth in the Technology Policy Statement. We thought that we would provide an outline of practical measures for the implementation of the policies set out in that Statement. Accordingly, we submit herewith our *Report No. 20 on Technology Development and Acquisition*.

2. Copies of the Report are also being forwarded to the Finance Minister, the Minister of Industry, the Minister of State for Science and Technology and to the Cabinet Secretary.

Yours faithfully,

Sd/-                      Sd/-  
(Raja J. Chelliah) (R. Tirumalai)

Sd/-  
(L. K. Jha)

Encl.: Two copies of the Report.

D.O. No. EARC/VI/A(4)/83

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ECONOMIC ADMINISTRATION REFORMS  
COMMISSION

10, Janpath

New Delhi, 7th June, 1983.

CHAIRMAN  
L. K. Jha

Dear Shri

On behalf of the Commission, I have great pleasure in forwarding herewith a copy of our letter to the Prime Minister together with its enclosure, viz., our Report No. 20, entitled 'Technology Development and Acquisition'.

Yours sincerely,

Sd/-  
(L.K. Jha)

Shri Pranab Mukherjee,  
Finance Minister,  
New Delhi.

Shri N.D. Tiwari,  
Minister of Industry,  
New Delhi.

Shri Shivraj V. Patil,  
Minister of State for Science & Technology,  
New Delhi.

Copy with a copy of the Report to Shri C.R. Krishnaswamy Rao Sahib, Cabinet Secretary, Cabinet Secretariat, New Delhi.

Sd/-  
(L. K. Jha)

# ECONOMIC ADMINISTRATION REFORMS COMMISSION

EARC REPORT No. 20

VI/A/4

## Technology Development & Acquisition

### I

#### *Introductory*

Our earlier reports on Industrial Approvals covered industrial licensing, capital goods clearances and clearances under the MRTP Act and we had intended to complete the series with a report on foreign collaboration approvals. Meanwhile the Government issued a comprehensive Technology Policy Statement in January 1983. This Statement lays down the aims and objectives and priorities and sets out the basic issues in regard to the development of indigenous technology and technology acquisition and transfer. The Statement goes on to say that Government will evolve instruments for the implementation of the policy and spell out, in detail, guidelines for Ministries and agencies as well as for industries and entrepreneurs. In the context of the Technology Policy Statement, we thought it fit to enlarge the scope of our examination to consider the modalities of implementation of the new Technology Policy in the area of development of indigenous technology as well as in that of technology acquisition. This report seeks to set out a procedural framework for the implementation of the new Technology Policy.

### II

#### *Technology Policy Statement : A Resume*

2.1 At the outset, we should like to recapitulate some important elements of the Technology Policy Statement.

2.2 In regard to the development of indigenous technology, the Policy Statement emphasises, *inter alia*, the following three points.

First, a strong Central Group will be constituted to undertake technology forecasts and technology assessment studies and to draw up programmes of purposeful research.

Second, a preferential regime of incentives will be provided to users of indigenously developed

technologies and for products and processes resulting from such uses through fiscal and other measures, so that the disadvantage suffered by products so developed in comparison with improved products, or those based on imported technologies and brand names, is neutralised or reduced.

Third, interaction will be encouraged among design engineering organisations, academic and research institutions and industry, so as to strengthen and upgrade technological capability.

2.3 As regards the acquisition of technology the following principles have been set out.

First, import of technology and foreign investment for the purpose will continue to be permitted only on a selective basis where: need has been established; technology does not exist within the country; and the time to generate the technology indigenously would delay the achievement of development targets.

Second, lists of technologies that have been adequately developed so that import is unnecessary will be prepared and periodically updated; in such areas no import of technology will be normally permitted, and the onus will be on the seeker of foreign technology to demonstrate to the satisfaction of the approval authority that import is necessary.

Third, Government may from time to time identify and notify areas of high national priority in respect of which procedures will be simplified further to ensure the timely acquisition of the required technology.

Fourth, the technology assessment system will be reviewed and a mechanism consisting of competent groups will render advice in all cases of technology import relating to highly sophisticated technology, large investments and national security.

Fifth, where the need to import technology is established, every effort should be made to ensure that it is of the highest level, consistent with requirements and resources.

Sixth, there shall be a firm commitment for the absorption, adaptation and subsequent development of the imported know-how through adequate investment in research and development to which importers of technology will be expected, to contribute.

Last, a National Register on Foreign Collaboration will be developed to provide analytical inputs at various stages of technological acquisition.

2.4 While some elements of the New Policy Statement, such as the avoidance of import of technology where indigenous technology has adequately developed and selectivity in the import of technology and foreign investment, are in the nature of a continuation of the existing policy, some others are either entirely new elements or represent a change of approach or a new emphasis. Clearly, the existing policies and procedures need to be examined and modified or replaced by a fresh approach and a new procedural framework in order that the objectives and principles stated above may be realised expeditiously and efficiently.

### III

*Absence of  
urge in  
Indian  
industrial  
units to  
improve  
technology.*

3.1 A major problem which has to be faced at the very outset is that in general Indian industrial units, with some honourable and distinguished exceptions, have shown no strong desire to improve their technology. The only occasion when most of them try to acquire technology is when they are setting up a project or going into a wholly new field of production. The technology usually comes to them as a part of the know-how for using the plant and machinery which they are installing. What they evaluate is the capital cost of the machinery, with a view to assessing the profitability of the project. Not much attention is paid to the quality of the technology nor is there any attempt to make a comparative evaluation of alternative types of technology for getting the desired production. In many cases, the sources of equipment and therefore of technology have been determined by the accident of foreign exchange availability from particular sources, or the willingness of particular foreign parties to invest in or collaborate with Indian ventures.

3.2 Since for most new major projects—particularly those for establishing a new line of production—there are substantial imports of plant and machinery, the technology comes in as a part of the package. The choice of imported technology is not based on any judgement of the comparative merits of imported technology and indigenous technology or of different imported technologies, but is linked to the procurement of plant and machinery and the acquisition of the requisite know-how to

make effective use of the same. In the case of industries where the bulk or all of the equipment is indigenous, it is rare that any import of technology takes place.

3.3 Once the production has been established, most enterprises do not make efforts to improve upon the original technology which is imported. This is not so much because they want to rely on overseas sources for future technological improvements but because they are rarely concerned with any further changes or improvements in the technology which they started with.

*Creating climate for use of improved technology whether imported or indigenous.*

3.4 One of the first steps that we have to take to bring about an improvement of technology in Indian industry on a continuing basis is to create conditions in which industrial units will realise that it is in their own interest to improve their technology. The signals necessary to give such an orientation to Indian industry have to come from the policies of the Government affecting industry and not from policies in the technology field itself. It will therefore be useful at this stage to dwell upon the policy tools which can be used to stimulate the quest for better technologies (whether indigenous or imported) in the industrial field—particularly in the private sector.

*Role of Competition.*

3.5 For enterprises to be motivated to improve their technology, they must be made to see that improved technology will be more rewarding to them than staying with the old technology. In countries where there is keen competition among domestic industries and they also have to face competition from imports, not only profitability but even survival depends on technological improvements. No other stimulant is needed, though the tax laws do provide some reliefs linked to expenditure on R&D. In India not only competition from imported products is usually minimal or non-existent, but even internal competition in conditions of scarcity is very very limited. In such a situation, there is no strong incentive for industry to embark on research or the acquisition of new technology—whether indigenous or imported. Our passenger car industry is a classic example of technological obsolescence resulting from the absence of competition. With a strict regulation of domestic production and the absence of competition from imports, the manufacturers made no efforts to effect either cost reductions or technological



improvements, whether through indigenous development or through imports of technology. It was only with the impending advent of Maruti with Suzuki collaboration on the scene that the other manufacturers are at last trying to bring about modernization and technological upgradation.

*Appropriate signals within the framework of controls and tax-laws in regard to—*

3.6 Obviously with all our constraints of internal and external resources, we cannot in the foreseeable future see the free-play of competition as a method of getting Indian Industry technology-minded. But in some respects, even within the framework of our controls and tax laws, a new impetus can be given.

*(a) expansion of capacity*

3.7 First of all, in industrial licensing, we should follow the principle that when it comes to the expansion of capacity, a manufacturer whose technology is better and, therefore, whose product is more popular, cheaper or of better quality, will be given preferential treatment. What has militated against such a policy is that if for any product some units have idle capacity because they cannot sell their product, while others have a back-log of orders, the latter are not allowed to expand on the consideration that such expansion would further aggravate the difficulties of the former and render some of existing capacity idle. We feel the time has come when even on general considerations and particularly in the context of promoting technological improvements, *Government should announce that in permitting expansion, better product acceptability arising from quality and/or cost differentials would be given adequate weight, and that units which are unable to sell their product must improve their technology so as to offer a better product to the consumer at a price which he finds acceptable.*

*(b) administered prices and*

3.8 The second line of action would lie in the sphere of administered prices. When the price which a unit gets is linked to its costs or the capital employed then there is no incentive for it to bring about a reduction in costs, or to reduce the capital needs of a product through better technology, even though it may be very much in the national interest to do so. *Therefore, in the field of administered prices, an announcement to the effect that if there is a lowering of costs, the unit will be allowed to earn more profits in consequence, will be a significant step in the right direction.*

(c) *better utilisation of capacity and diversification.*

3.9 The third factor which encourages the search for better technology is the possibility of getting higher production from installed capital equipment. This can take the shape either of greater output of the product for which the plant was initially installed or of diversification into an allied field of production. In general, to get more out of invested capital is as much in the national interest as in the interest of the industrial unit concerned. For quite some time, instead of an attitude of encouragement, the official policy seemed to be to question the legitimacy and even the permissibility of output exceeding the licensed capacity. This shackle has recently been removed and licensed capacity is no longer operating as an obstacle to higher production.

3.10 This liberality of approach needs to be extended to diversification too. The 1982 announcements about re-endorsements of licences with reference to higher production did not specifically refer to diversification. It is true that there are extant instructions of an earlier date under which a special approval procedure has been laid down for diversification without an industrial licence. However, the approach is restrictive. The special approval procedure applies only to diversification in particular industries, and in respect of those industries also, only to diversification within specified groups and directions and within the overall licensed capacity; and in the case of MRTP/FERA units, such proposals have to be placed before a Task Force. There is also no reference in these instructions to diversification arising from technological development or innovation. *We would recommend a far more liberal attitude, with fewer restrictive limitations, to any proposal for getting more out of the installed capacity through the application of technology, whether this be in the form of a straight augmentation of output or of a diversification of that output.*

3.11 *We would add that it would be useful to gather and publish together in one place all the various measures introduced with a view to encouraging the maximum utilisation of the installed capacity (in the form of the augmentation of output or its diversification) through research and development, whether in-house or external.*

3.12 *In short, a new climate of thinking has to be created in which every industrial unit will be constantly striving for technological improvements. It is only in such an atmosphere that steps can be taken to promote the use of*

*indigenous technology in preference to imported technology and also to encourage new research both in national laboratories and within the industrial units themselves.*

*Directing industrial research into specific areas*

4.1 We proceed now to consider the measures needed for accelerating the pace of technological development in the country and promoting the use of technologies so developed.

4.2 While scientific research must be free, technological research cannot be a freelance exercise. It must be sponsored either by the State or by private industry. The role of the Central Group for Technology Forecast and Assessment envisaged in the Technology Policy Statement, will be crucial in this context. *The group should first draw up a scheme of priorities. Once the scheme of priorities is approved by Government, the Group should work out a programme of specific research in different laboratories.* In drawing up priorities, it has to be remembered that technological research is expensive and is also something of a gamble because its success cannot be taken for granted. Except where research is sponsored by industry itself, whether in the public sector or in the private sector, the selection of the fields of research which the laboratories should undertake should be governed by the priority which the product has for us. *Also there should be a clear commitment that if the research is successful, appropriate investments to make use of it would be made, if necessary, by the public sector itself.* Where such an assurance exists, e.g., in atomic energy and space research, we have achieved spectacular results. But the free-lance type of research where there is no assured market in view can be, as it has been in the past, both wasteful and frustrating.

*A perspective view of the industries which are definitely going to expand in the next plan and which can use indigenous technology, once it has been developed, would be most useful from this angle. Apart from specific industries, the focus can be on certain objectives which could be generally beneficial. Measures to conserve energy, to make greater use of low-grade coal, etc., are examples of this kind.*

*First practical step : enumeration of ready-to-use technologies*

4.3 As a first practical step in this direction, which, we believe, can be implemented without delay or difficulty, we would recommend the following. *The Government should ask the Council of Scientific and Industrial Research (CSIR) / Department of Science and Technology (DST) to prepare a complete list of the*

*Back up of investment*

*technologies that have been developed in the National laboratories and are ready for use on a commercial scale. Since large public investments have been made to finance the development of such technologies, the public sector should have the first right (but not the obligation) to use the technologies developed by the National Laboratories. Thereafter, the Government should make an announcement that the entrepreneurs who wish to set up manufacturing facilities based on such technologies would get the necessary industrial approvals freely.*

*A preferential regime for indigenous technologies*

4.4 More generally, following an important element of the approach enunciated in the Technology Policy Statement, it is necessary to evolve, as a part of a long-term policy, a preferential regime for indigenous technologies in respect of administrative controls as well as fiscal levies.

*Industrial Licences to be given Liberally*

4.5 We find that as early as 1976, licensing requirements were dispensed with for all industrial undertakings pertaining to the manufacture of an article on the basis of technology developed by any laboratory established by the CSIR or approved in this behalf by the Department of Science and Technology. The exemption, however, was subject to the following conditions :

- (a) The article of manufacture shall not be reserved for the small scale sector; it shall not belong to the industries reserved for the public sector under the Industrial Policy Resolution of 1956; it shall not fall in the list of industries requiring special regulation such as coal, textiles, milk food, vanaspati, leather, matches or the fermentation industry.
- (b) The industrial undertaking shall not be one falling within the purview of the Monopolies and Restrictive Trade Practices (MRTP) Act or the Foreign Exchange Regulation Act.
- (c) The industrial undertaking shall obtain a certificate from the DST that the article proposed to be manufactured is on the basis of technology developed by any of the laboratories mentioned above.

4.6 Although this exemption has been in existence for seven years, the results have been far below expectations. We believe that the main

reason for this state of affairs is the built-in limitations of the scheme. *We recommend that industrial licences to set up new production based on technology which is indigenously developed should be given liberally. While the small-scale angle cannot be ignored, all the other restrictions need to be liberalised.* Many industries in the public sector list are being licensed to the private sector on various considerations. *If there is indigenously developed technology of a worth-while character of which the public sector is not able to make immediate use, consideration should be given to its use by the private sector. Similarly, the MRTP companies need not be denied the benefit of the above-mentioned exemption.* The bigger houses have the best capacity both for in-house R&D and for making use of technology developed in the national laboratories. The likely adverse effects of an increase in the market share of a dominant undertaking or of a marginal increase in the economic activity of a large house may well be out-weighed by the beneficial effects of the use of a better technology, such as more efficient production and the greater availability of needed goods to the community at a lower price. *Nor need we rule out the FERA companies in this context.* Among the considerations for allowing their continued presence in this country is their greater access to high technology and our expectations of transfers of technology taking place through them in due course. With their resources and the technological back-up available to them abroad, they should be particularly well-placed to ensure the adaptation and improvement of imported technology as well as the development of new technologies within this country. They would also be particularly able to put to use technologies developed indigenously, whether under their own auspices or in other organizations, in industrial production within the country. *In the effort to foster indigenously developed technology and its use within the country, it stands to reason that every advantage should be taken of the efforts of such promising parties.* In particular, where the party which has developed the technology is willing to risk its own capital in its industrial application, there should be minimum interference from Governmental agencies. While some aspects such as possible side-effects, environmental considerations, etc., may need to be examined, *there should be no need for Governmental agencies to sit in judgement over the efficacy or suitability or economic viability of the technology in cases where the entrepreneur has sufficient confidence in it to be willing to invest his capital in its commercial use.*

4.7 *Having regard to the above we would recommend that in the place of earlier announcements there should be a fresh statement on the preferential regime for indigenous technologies, which (as mentioned earlier) should bring together in one place all the various facilities and provisions, should be strongly positive and should not have any restrictive over-tones.*

4.8 A further thought occurs to us. As the preference for indigenously developed technology (or imported technology indigenously adapted and improved) arises from the fact that it is as good as technology from foreign sources and perhaps better suited to Indian conditions, it follows that there should be possibilities of exporting it, at least to other developing countries where conditions might be more akin to those in India than those in the developed countries. The pace of technological development within the country will gain a further impetus if there are some instances of successful export of technology, as these will not merely bring in foreign exchange but will also help to build up confidence and improve capabilities further. *Possibilities of exports of technology, therefore, need to be pursued in a purposeful manner with the help of our Commercial Representatives abroad.*

## V

*Linkages  
between the  
laboratories  
and the user  
industries*

5.1 Another important area to which the Technology Policy Statement draws attention in the context of positive measures to be taken for the development of indigenous technology is the need to encourage interaction among industry, research institutions and design engineering organisations. In this context, we would like to point out that there is a very wide gap between the technology developed in the laboratory and its plant-level application. *Every effort should be made to bridge this gap by associating representatives of industry at all stages in the various industrial research programmes being planned and carried out in the National Laboratories.* That is not a novel proposition and would probably receive ready assent in all hands. But *we would also recommend the converse, viz. the association of those engaged in research activities with industry, whether at the Board level or at other appropriate levels, so that they can give the benefit of their scientific and technological experience and expertise to industry, and receive in turn a first-hand knowledge of the actual problems and needs of industry.* We understand that there have been instances of such association in the public sector; for instance, we are told that an officer at the Bhabha Atomic Research Centre used to be a Director on the Board of Hindustan

Copper Ltd., and an eminent Professor of Chemical Engineering from the Department of Chemical Technology of the University of Bombay, on the Board of Hindustan Organic Chemicals Ltd. This, too, therefore, is not quite a novel proposition. However, we would recommend a more wide-spread application of this principle.

*The Role of  
Consultancy  
and  
Engineering  
Organizations*

5.2 The role of the Consultancy and Engineering Organizations is crucial in establishing linkages between laboratories and user industries. It is the function of these organizations to transform the laboratory know-how into industrial processes suitable for commercial production. In this, they act as an effective bridge between the laboratory and the industry. It must also be remembered that technology is not developed only in laboratories or research organizations. Technological innovations and developments can arise on the shop-floor of an industry in the effort to find solutions to practical operational problems. It can also come about on the drawing board in an engineering establishment, whether with-in industry or in separate industrial research or consultancy/engineering organizations *Consultancy and engineering organisations could therefore be not merely mediating agencies between the laboratory and industry, but may also themselves be the originators of technological development. Every effort needs to be made, therefore, to build up and enhance the capabilities of the consultancy and engineering organisations. A growing role for these organizations will also open up larger employment opportunities for our technically qualified personnel.*

5.3 Over the years, a number of engineering/consultancy organisations have come up in the public sector and some of them hold important positions in certain areas, such as MECON in the iron and steel industry, Engineers India Ltd., in the oil refineries, petrochemicals and other related areas, PDIL and FEDO in the fertilizer sector, and the CMPDI in coal mining. There are also reputed consultancy/engineering organisations in the private sector. *The existing capabilities in these and other areas need to be fostered and built up further. While considerable experience has been acquired in the preparation of feasibility reports for projects, project management and detailed engineering, the expertise and experience in basic design engineering continues to be relatively limited, though it has made some headway in some areas. Design engineering capabilities need to be substantially expanded.* Organizations such as those mentioned

above have not only a crucial role to play in mediating between the development of know-how in research organizations or laboratories and the commercial-scale application of that know-how, but can also play a vital role in the absorption and adaptation of know-how imported from abroad.

5.4 The provision of support for such organizations and measures for ensuring their growth can take many forms. We feel that, *as a First step, CSIR & DST should organise a National Seminar of Consultancy and Engineering Organisations, to explore the ways and means of increasing their role and enhancing their capabilities.* Such a seminar will throw up suggestions which can be considered by the Government for devising specific measures.

## VI

*Fiscal incentives :*  
*A. Taxation of income from sale of technology*

6.1 We turn now to fiscal incentives. The Wealth Tax recognises the need for providing a special regime for intellectual property. Under the Act, the right under any patent or copyright belonging to the assessee is exempt, provided it is held by him in his own right as an inventor or author. In the scheme of taxation of incomes, however, there was no similar recognition until 1-4-1970, when Section 80 MM of the Income Tax Act was introduced allowing a 40% deduction to companies on incomes earned through the transfer of technical know-how or the rendering of technical service within India. This Section has since been withdrawn as recommended by us in our report on the Taxation of Companies, because it led to tax avoidance through the transfer of technology and services between concerns within the same business group. However, *there still remains a case for supplementing the other measures aimed at the fostering of indigenous technology development and use through an appropriate tax concession which does not lend itself to the kind of misuse to which Section 80 MM was subject.*

*Present scheme of income taxation*

6.2 Under the present scheme of taxation of income, the treatment of receipts accruing from sales of patented technology depends on the nature of the transaction. A patented technology is normally considered a capital asset. If the sale of such technology amounts to total or partial assignment of the capital rights and the payment made is in consideration of such assignment, the transaction is treated as on capital account and does not attract income tax, except to the extent of capital gains, if any. On the other hand, if the payment is for the use of a patented technology, and no assignment of capital rights is involved, the amount so received is treated as income in the hands of the



*Bias against inventor-owner & in favour of sale of technology on assignment basis*

recipient, and is liable to income tax. Moreover, where a person habitually sells his own patents or carries on the vocation of an inventor, the sale proceeds would be treated as business income. The system is obviously weighted against the professional inventor-owner. Moreover, it also tends to encourage transactions on an assignment basis which may lead to monopolistic ownership and impede the wider diffusion of technology. There is good reason to believe that sales on user basis would promote greater competition and wider diffusion. This would be encouraged if the taxation scheme were at least neutral between transactions on an assignment basis and those on a user basis. (Since the technology in question would be indigenously produced, repetitive transactions of sale would not have the adverse implications apprehended in respect of repetitive imports of technology).

*Relief by way of deduction and phasing to inventor-owners of technology*

6.3 Having regard to these factors, *we would recommend that substantial relief may be provided by way of a deduction to be allowed from incomes accruing to the inventor-owners (both individuals and bodies, whether corporate or not) from the sale of indigenously developed technology which is patented or registered in India, including the designs registered and protected under the Indian Designs Act. The life of a patent or design is protected for long periods ranging from 5 to 15 years. The relief or deduction to be provided in regard to income tax need not be coterminous with the period of protection provided by the Patents and Designs Acts. In our opinion, it should be adequate if the relief is limited to a period of, say, five years from the date of registration of the patent or the design.*

6.4 Moreover, *in regard to incomes accruing in the shape of a lumpsum, one-time payment, the facility of phasing the receipt of such income over a period of say, three years, for tax purpose should be allowed. A similar facility of phasing has already been extended to copyrights payments received by authors.*

6.5 Since these benefits would be confined to the inventor-owners (including corporate bodies) of the patented or registered technology, there should be no scope for tax evasion or avoidance through collusive deals.

*Tax concession to buyer of indigenous technology*

6.6 Apart from the above which deals with tax benefits to the developer-seller of indigenous technology, the question arises whether an inducement could be provided also to the *buyer* of indigenous

technology through an appropriate tax concession. We have made some recommendations regarding payments for patents and copyrights in our Report on The Direct Taxes : The Computation of Income, but those were mainly by way of rationalisation and not liberalisation. The tax concession, if any, can take only one (or both) of two forms :

- (a) where the deduction of such an expenditure has to be spread over a certain number of years, allowing the expenditure to be debited in one year, i.e. treating it as akin to normal revenue expenditure; and
- (b) allowing a weighted deduction for payments for indigenous technology, i.e. allowing a deduction more than 100% of the expenditure.

(The former is already a possibility in some cases, but payments for copyrights or patents have to be written off over a number of years. The latter, i.e. a weighted deduction, is now possible in respect of R & D expenditure and contributions to research organisations, but not in respect of payments for the purchase or use of indigenously developed technology). We are aware that arguments can be advanced against either of the concessions suggested above. *We make no specific recommendations in this regard, but would merely suggest that the possibility of providing an inducement for the use of indigenous technology through some appropriate tax concession to the buyer deserves consideration.*

#### **B. Excise Duty.**

6.7 We also recommend that *a somewhat lower rate of excise duty should be considered for products to be manufactured by using technologies which have been indigenously developed.* It may not be desirable or necessary to give an across-the-board excise concession; *a selective approach should be followed* and the deserving areas should be identified. Also, the concession should be admissible only for a specified period. One way of exercising the selectivity would be to extend the concession to products manufactured by using technologies developed in the National Laboratories. However, this may be inadequate. As already pointed out, technologies can get developed outside the National Laboratories also—on the shop-floor in public and private sector industries, or at the drawing-board in engineering establishments whether within industry or in separate consultancy/engineering organisations. At the

same time, we have to ensure that a provision for excise concession for production based on indigenous technology does not become a means of tax avoidance. *We could perhaps ensure that the benefit accrues only to deserving cases by prescribing a certification or recommendation by the Ministry concerned with the industry in consultation with the Department of Science and Technology. The selection of items for such certification for the purpose of the excise concession should be done with reference to well-defined criteria relating to the economic usefulness of the technology such as product improvement, cost reduction, the use of indigenous raw-materials, the conservation of scarce resources, etc.*

## VII

### *Import of technology : General approach.*

7.1 We have now to consider the policies and procedures governing the import of technology. The existing policies and procedures governing the import of technology are briefly set forth in the Annexure to this Report. These mechanisms and procedures have grown over the years and reflect three main concerns: the determination of the need for a proposed import; the rightness of the price proposed to be paid; and the acceptability of the detailed terms and conditions of the collaboration agreement. Our examination of this system leads us to believe that there is considerable scope for streamlining the system. But at this stage, as a preliminary to the outlining of specific measures in this regard, it may be useful to consider what our general approach to technology imports should be.

7.2 As mentioned earlier, the Technology Policy Statement itself envisages imports of technology on a selective basis. Such imports are not necessarily indicative of technological under-development. Countries which are at the highest level of technological development are also the most active participants in the international trade in technology engaging in both imports and exports of technology: indeed, some of them are net importers of technology. It is a fallacy to believe that as India progresses in technological development, imports of technology will become unnecessary, or that the continued imports of technology are bound to harm the cause of indigenous technological development; nor will the stoppage of such imports necessarily hasten the pace of such development. It must also

be remembered that at least some protests against the import of technology emanate from industries or firms having a low level of technology and consequently apprehensive of competition from others who seek foreign collaboration.

7.3 From the point of view of national priorities there is no particular advantage in devoting valuable time, finance and man-power resources to finding solutions to problems for which answers already exist elsewhere; it is far more important that such efforts should be directed towards areas not covered by research in the developed countries. The real point of concern is not that some imports of technology take place but that Indian industries (unlike their counterparts in developed countries, particularly Japan) do not make any effort to improve upon such imported technologies, either through in-house R & D or through the sponsoring of R & D in the national laboratories of other research organisations. The approach should not be one of 'catching up' with technological development abroad through a strenuous effort starting from scratch, but one of acquiring the best available technology from whatever source and then adapting it to Indian conditions and improving it. In this context, the Japanese and Korean experiences are of great value and we should be prepared to learn from them. The scientific and technological talent in India is of no lesser calibre and can be fully relied upon to achieve similar success in adaptation and improvement, provided our scientists and technologists are given liberal access to modern technology and are supported by a proper infrastructure.

7.4 It may be feared that greater liberality towards imports may lead to an excessive outgo of foreign exchange. In this context, it is important to remember that our production apparatus is suffering from an increasing degree of obsolescence. This is impeding not only the efforts to increase productivity but also the export effort to generate adequate foreign exchange resources for accelerating the process of growth. It is of the utmost importance to remove these obstacles to development. We believe that the outgo of foreign exchange on the import of technology will be more than compensated by the modernization of the production apparatus and the increased import saving or export earnings that this could bring about.

## VIII

*Clearance of technology imports; need to streamline the system.*

8.1 If it is accepted that imports of technology will continue to be necessary, then it follows that *access to the needed imports should be made simple and easy and not subjected to time-consuming and frustrating procedural barriers.* In this context, we must refer to the frequent pleas of industrialists that technology imports should be placed on the OGL. We do not endorse such an approach. We do feel, however, that while unnecessary imports of technology should not be allowed to take place, felt needs must be recognised and met promptly. The test for the need for technology import is now applied in each individual case. In <sup>an</sup> ~~over~~ view, this is the most serious weakness of the existing system. Each individual proposal has to undergo examination, often sequential rather than simultaneous, by diverse agencies; argument from first principles often ensues; the large number of cases at various stage of consideration tend to clog up the machinery; and the result is delays and the consequent costs. *The essential objective of reform should be to identify areas and types of need so that categories of cases can be classified as eligible for technology import, facilitating the prompt and almost automatic clearance of individual cases.*

*Three lists :  
(a) liberal imports list;  
(b) banned list; &  
(c) imports on merits.*

8.2 What we would suggest is that *there should be a list of areas identified as being in need of technology imports, in which additions or deletions can be made from time to time; a list of types and categories of technology imports which would not normally be permitted; and a list of areas' in which proposals for the import of technology would have to be considered on merits on a case by-case basis.* (What we have in mind is something analogous to the procedure for the clearance of imports of capital goods, under which there is a list of capital goods placed on the OGL, a list of banned items, and a list of items which will be cleared for import without DGTD scrutiny, leaving a residuary area in which the indigenous non-availability will have to be established on a case-by-case basis.)

*A high-level body for categorising technologies for import & laying down guidelines.*

8.3 There could be several considerations governing the choice of areas or industries where imports of technology will be allowed freely, e.g. areas of high or sophisticated technology, or major technological gaps, where the need has necessarily to be met by imports; areas in which our own National Laboratories or research organisations do not consider it worth while to commit large resources for research and development; areas in which the

need is urgent, and we cannot afford to wait for the development of technology within the country ; etc. Clearly, considerable knowledge and great care have to go into the compilation of the 'liberal imports' list (which would provide a kind of green channel for technology imports), the banned list, and the list of categories for case-by-case clearance on merits. *For this purpose, we would recommend the setting up of a high-level Standing Body. This body will not be responsible for the clearance of individual cases, but will compile and review periodically the three lists mentioned above. It should also consider the kinds of technologies to be imported and the broad technological and economic parameters for such imports, and should lay down clear guidelines. Once such guidelines are available, it should be possible to confine the detailed examination of the need for import only to proposals falling within the third list. Proposals which fall in the 'liberal imports' list could be cleared quickly without routine examination by various agencies; the clearance should be virtually automatic in such cases. The SIA should put such proposals forthwith to the appropriate apex clearance body for clearance.*

*Composition  
of the Stand-  
ing Body.*

8.4 *The Standing Body that we have in mind should consist of the representatives of not only the Government Departments concerned at the highest level, such as the Department of Science and Technology, the DGTD, the Ministry of Industry, the Department of Economic Affairs, etc. but also eminent scientists and technologists working in the National Laboratories or elsewhere. The membership of the body should be broad-based and not confined to the closed circuit of the scientific and technological talent available within the Government. The Body should meet as often as necessary to prepare and review the three lists and keep them up-to-date.*

*Liberal  
imports :  
Some Sug-  
gested consi-  
derations.*

8.5 While the Body, when it is established, will no doubt identify areas for the free import of technology on a variety of considerations, there are a few which we should like to put forward.

*(a) Industries  
in need of  
moderniza-  
tion.*

8.6 The first is that there are several industries, some of them of crucial importance, which are in urgent need of modernization. There could be instances in which technology imports have once taken place, and the general view might be that the need for imports no longer exists. But industrial technology is not static. *The continuing improvement and modernization of several important industries is very necessary, and if this required the updating*

*of technologies through imports, there should be no inhibition about allowing such imports. It would of course be for the high-level body referred to above to identify the areas or industries where such modernisation and upgradation of technology through imports is necessary.*

8.7 A point which needs to be considered in this context is the question of "repetitive imports". In general, the concern to minimise foreign exchange outgo by limiting repetitive imports and ensuring the wider diffusion of the technology that is imported is quite sound, but we feel that it is possible to carry this too far. Different processes come to be developed for producing the same product and the newer technology may be more productive, cost-effective, or energy-efficient. It would be wrong to shut out such imports on the ground that technology has already been imported once in the industry concerned. Further, the imposition of conditions in regard to the lateral transfer of technology does carry a cost, and it is necessary to evaluate the costs against the benefits. Again, in the prevailing regime of restrictions on the import of technology, an indigenous manufacturer who has once imported a technology tends to acquire a monopolistic position and is able to impose onerous terms on the lateral transfer of such technology, if he is willing to transfer it at all. This is not a desirable situation. Lateral transfer can perhaps be organised better if the technology is imported initially by the public sector; but even in such a case, this would be economical only if there is an adequate number of users of such technology, and they are prepared to obtain the same from the public sector source. This may not always be the case. Lastly, in any lateral transfer the initial indigenous acquirer of technology (whether in the public sector or in the private sector) might have to assume warrantly responsibility and liabilities, and this may not be wholly satisfactory; it may be desirable that the foreign party from which the technology is acquired should continue to be responsible for its performance and should not be absolved of warranty responsibilities and liabilities. *In the light of the foregoing, while caution in respect of repetitive imports is warranted, it may not be prudent to erect it into a rigid principle. Flexibility in this regard seems necessary as what is involved is an evaluation of costs and benefits, and it is possible that at least in some instances the benefits arising from repetitive imports may out-weigh the costs.*

*(b) Readiness of indigenous technology for commercial application to be assessed.*

8.8. *Secondly we would suggest that before it is decided that an import of technology is not necessary in a given area, the reported availability of indigenous technology should be very carefully assessed with reference to the state of development of the technology and its readiness for commercial application.* There have been instances in which technologies as yet in the process of development, or not adequately adapted or upscaled for commercial application, have been made the basis for commercial projects, leading to serious difficulties. The Vitamin 'C' project of Hindustan Antibiotics Ltd. based on a technology developed by the National Chemical Laboratory is an example of this. We are told that there have also been other instances in which, on the receipt of a proposal from a public sector agency for foreign collaboration in connection with a project, the indigenous development of the technology in question was taken in hand. We refer to these instances not in the spirit of fault-finding but in order to emphasise the importance of studying the history of such projects and the difficulties they went through, so that appropriate lessons can be drawn for the future. To deny clearance for the import on technology on the ground that indigenous technology is available on a laboratory scale or on a benchscale, or that a national laboratory is working or can commence work on the development of such technology, would not serve the cause of self-reliance, but would merely subject the project in question and consequently the economy as a whole to heavy costs with no certainty as to outcome.

*(c) Liberal imports of technology where the products in question are being imported*

8.9. *Thirdly, wherever goods are being allowed to be imported on an Open General Licence, there is a strong case for liberality towards imports of technology for producing such goods.* It makes little sense to allow the free import of goods and place restrictions on the import of knowhow and technology which would enable the indigenous manufacturers to produce such goods. In that situation, no protection is really available to indigenous technology; on the other hand, a higher price has to be paid for importing the product embodying the technology. This anomaly needs to be removed. In such cases, therefore, technology imports should be allowed liberally.



(d) *Technology imports for energy-saving.*

8.10 Fourthly, there is considerable evidence to suggest that important branches of our production apparatus are comparatively more energy-intensive. This is true in the areas of industrial machinery, boilers, transport equipment, consumer-durables, etc. The Japanese industry has made considerable strides in introducing energy-conserving and energy saving technologies. The reduction in energy consumption is a matter of very great importance and, in this area, we cannot afford to wait for the indigenous technology to be developed. We, therefore, recommend that *our industry should be liberally allowed to import technology which could enable them to save on energy.*

(e) *Imports of drawings and designs.*

8.11 Fifthly, a greater degree of freedom needs to be allowed in regard to the import of drawings, designs and other technical data. At present there is a special procedure for the import of drawings and designs according to which such imports not exceeding Rs. 10 lakhs in value per year are permitted to Industrial undertakings. Decisions on such applications are taken by a Committee headed by a Joint Secretary in the Ministry of Industry and the processing is expected to be completed within 45 days. The processing involves consultation with the Directorate General of Technical Development (DGTD), the administrative ministry and the Department of Economic Affairs (DEA). The data readily available on clearances issued under this procedure show that the special procedure has not resulted in a very large number of such imports. The present procedure suffers from the fact that there is a limitation of value and that one party can make such imports only once in a year. There has been a recent announcement liberalizing (among other things) the import of drawings and designs by exporters. Under this announcement, the upper limit for allowing the automatic import of technological drawings and designs against REP licences by manufacturer-exporters has been raised from Rs. 10 lakhs to Rs. 20 lakhs in the case of those who export at least 25% of their production of select products subject to a minimum of Rs. 5 lakhs, or those who export select products of a value of Rs. 1 crore annually, it will also be open to the manufacturer concerned either to use his own REP licence or to acquire an REP licence from another exporter for this purpose. While these liberalizations are welcome we would point out that technological improvement is important not merely in the context of export production but also in that of internal development. We cannot really have a technologically modern,

innovative, cost-effective and quality-conscious sector for export production, and in parallel, an obsolescent, inefficient and high cost domestic sector. Besides, while providing facilities to those who are already exporting a part of their output is certainly necessary, it has also to be kept in mind that some possible exports might have failed to materialise precisely because of out-moded technology, and that the provision of access to drawings and designs might facilitate exports by units and industries which are not at present in the export area. *We would therefore recommend that the liberality shown to export industries in the matter of import of drawings and designs should be extended to industries in general or at least to a select range of industries particularly to the public sector capital goods industries. There should be no value limitation on the imports of drawings and designs, nor any restrictions on the number of times of import in a year. We would also suggest a similar liberality towards the import of drawings and designs for diversification and product mix exchanges or upgrading, particularly in the case of products of high priority.*

*(f) Filling gaps in process know-how and design in indigenous technology.*

8.12 Lastly, in cases where industrial units, whether in the public sector or in the private sector, wish to adapt an existing technology and improve upon it, *we recommend that they should be allowed to draw upon external sources in filling gaps in the process know-how and designs.*

*Implication of inclusion in 'liberal import' list.*

8.13 In the foregoing paragraphs we have set forth some of the considerations which could govern the inclusion of certain types of cases of technology imports in the 'liberal import' list. The proposed high level body will doubtless prepare a comprehensive list with these and other considerations in view. The important point is that once an item or category has been included in such a list, a judgement in regard to the need for the import of technology is implied in that inclusion, and that this is an aspect which need not be gone into in the processes of clearance of individual proposals. Proposals falling in the 'liberal import' list like all other proposals may still have to go through the machinery for clearance and some of the details may undergo examination in this process (about which we shall have something to say presently), but at any rate the question of the need for the import of technology could be presumed to have been answered in advance in such cases.

## IX

*Process of clearance.*

9.1. We have now to consider the mechanism for the clearance of individual proposals for the import of technology, the agencies involved, the kinds of questions which get asked in this process as well as the final stage of taking foreign collaboration agreements on record.

*Reducing number of 'scrutiny agencies'...*

9.2. In so far as the machinery is concerned, we shall confine ourselves to making some general observations, leaving it to the Government to consider detailed measures. *To begin with, we would say that the number of agencies which need to scrutinise a proposal for technology import should be as few as possible. There seems to be scope for a reduction in the number of agencies at present involved in the scrutiny.* For instance, it seems doubtful that the National Research Development Corporation has a special view-point to contribute over and above whatever considerations the Department of Science and Technology bring to bear on the question. However, it is for the Government to decide which particular agency or agencies can be dropped from the list of "scrutiny agencies".

*... and multiplicity of stages.*

9.3. *Secondly, the examination should be a joint, one-time examination by the approval body, and not separate and sequential examination by a number of different bodies or agencies.* Proposals should be received with the necessary number of copies and circulated to the agencies concerned, but thereafter the consideration should be at a joint meeting. Such proposals should not be dealt with on files or through correspondence in the usual Secretariat manner. The examination should also not be a multi-stage affair. In several cases, after a proposal for foreign collaboration has been examined by the various scrutinising agencies, and before it can be placed before the FIB, there is a reference to a Technical Evaluation Committee, which is one more stage in the processing. We would not question the need for a proper technical examination of such proposals. Clearly, there cannot be a detailed discussion on technical issues at the FIB meeting. However, before a case is submitted to the FIB, the various agencies concerned do subject the proposal to a detailed technical examination, and their comments are incorporated in the FIB paper. In the normal course, a further consideration of the proposal by the TEC should not be necessary. Perhaps a reference to the TEC would be needed in certain cases, such as those relating to proposals of

major significance or involving complex technical issues, or those in respect of which there are differences among the various agencies. Such cases should be relatively small in number. References to the Technical Evaluation Committee could perhaps be far more selective than they are now. We are told that even in cases which fall within the delegated authority of the administrative Ministries, the Ministries sometimes make a reference to the TEC. Considering that the administrative Ministries enjoy very limited delegated authority, cases which they can clear cannot possibly involve any major issues. A reference to the TEC in such cases probably arises from a desire to involve as many persons and agencies as possible in the decision-making. Reference to the TEC as a means of diffusion of responsibility should not be encouraged. It is not for the Commission to say in what cases a reference should be made to the TEC. We would merely suggest that *the Government should undertake a careful review of the role of this Committee, and lay down clearly the categories of cases which should be referred to it, so as to minimise the number of cases in which an examination by the TEC gets added to the processes of clearance.*

*Need to review the role of the TEC.*

*Need to enlarge delegated authority of administrative Ministries.*

9.4 Reference was made in the preceding paragraph to the delegated authority of the administrative Ministries to accord approvals for foreign collaboration cases. In May 1981 the Government issued certain orders in this regard, subject to certain conditions. For instance, the delegated powers are limited to cases not involving foreign equity participation; the item proposed to be manufactured has to be consistent with the priorities set out in the Industrial Policy Statement; the proposal should not be one involving an extension of a period of collaboration approved earlier; the royalty and lumpsum payments, the number of instalments, the period of the agreement, etc., should conform to certain guidelines; and the foreign exchange outgo in each case should not exceed Rs. 50 lakhs in the aggregate. We understand that this delegation has not been very effective, and that cases falling within the delegated powers of the Ministries tend to get even more delayed than those which need a reference to the FIB. We are not surprised by this, because a delegation which is hedged in with so many restrictions and guidelines cannot really be effective. Such careful delimitation of delegated authority coupled with the injunction that 'an excessive outgo of royalty, and/or lumpsum payments could not be permitted'

is unlikely to be conducive to any confidence in the clearance of individual cases by the administrative Ministries. The answer to this is not to lay down more guidelines or to cancel the delegation on the ground that it has not been effective, but to make it more effective by freeing the delegation from some of the shackles which hamper its exercise. Earlier in this report we suggested a categorisation of types of cases in which imports of technology would be freely allowed; this, together with some simplifications and liberalizations which we shall shortly suggest in regard to the payment and other terms of the agreements, should not merely facilitate the exercise of delegated authority, but should also enable the area of delegation to be enlarged. One possibility is to limit submission to the FIB to cases in which the need for the import of technology has to be examined on merits, i.e., cases falling in the third list referred to in paragraph 3.2 above, leaving cases which fall within the purview of the first list (the 'liberal imports' list) to be handled by the administrative Ministries in the light of the guidelines to be issued by the Government having regard to the various recommendations made by us. *We do not propose to make specific recommendations in regard to the precise manner in which delegated area can be enlarged and reference to the FIB minimised, but would merely urge this as a desirable objective which deserves very careful consideration by the Government.*

*The scrutiny of price.*

9.5 Turning now to the kind of questions which get raised in the processes of scrutiny, we have already dealt with the most important, namely, that of the need for an import of technology. Another issue which looms large in the scrutiny is the appropriateness of the price to be paid. There is reason to believe that the rule of thumb of 5% royalty for a period of 5 years and a ceiling of 8% for the aggregate payment of lumpsum and royalty (these payments being subject to a tax liability of 40%) has reduced the net return to the party providing technology to a level much lower than what developed countries pay for higher technologies. In the technology market, as in any other market, the kind of product the buyer gets depends on the kind of price he is willing to pay. If he insists on low rates of royalty payments, he will end up with an inferior product. There is evidence to show that compared to other countries, the Indian technological imports contain a much larger percentage of older designs.

9.6 It is not merely a question of getting what one pays for. In respect of some product imports it might be possible to take the view that we need not go in for the costliest in the world, but could settle for the second or third best and save some money. This kind of consideration is not relevant in the case of technology imports. We are not suggesting that we should go in for the most sophisticated technology in each case; 'the best' does not necessarily mean 'the most sophisticated' but the most appropriate in the light of requirements and relevant conditions. But once a technology has been chosen as the most appropriate for a given situation, the going price has to be paid for it; it is extremely unlikely that it can be had for a range of prices, out of which the cheaper or the cheapest can be chosen.

*Ceilings on rates of royalty etc. to be dispensed with.*

9.7 It is sometimes argued that the ceilings are only indicative and are being operated in a flexible manner and that there have not been any serious complaints about the low quality of imported technology. We find the latter argument unpersuasive. In the prevailing environment of controls and clearances, the parties concerned are unlikely to waste their time in engaging in a controversy with the authorities over the norms and guidelines; they would rather try and operate within those norms and guidelines so as to obtain speedy clearances and get ahead with their projects, making such compromises in regard to quality or other considerations as may be necessary. Besides as already pointed out, the regulation of capacity within the country through industrial licensing and the restrictive attitude to imports protect the Indian entrepreneur from the rigours of competition, and quality is not a condition of survival. This results in an acquiescence in and a perpetuation of lowlevel and out-moded technologies. In such a situation, the fact that entrepreneurs do not often complain that they are obliged to go in for second-rate or out-moded technologies because of price constraints does not indicate that what is being imported is the best. It would be dangerous to delude ourselves with such complacent arguments.

9.8 As regards the argument that the existing ceilings are being operated in a flexible manner, the question for consideration is whether there need be any such ceilings at all. It is no doubt because of the foreign exchange outgo involved that it has been considered necessary to impose ceilings on such payments. We feel, however, that this is

a misplaced consideration. In the context of product imports, whether under OGL or under other forms of import licensing, the crucial consideration is the need for the import; there is no scrutiny of the price paid. When products are allowed to come in without a scrutiny of prices it does not make sense to seek to impose ceilings on payments for technology. The answer to this is not the raising of the ceilings, as that may merely push up the price of low technologies without being adequate for the higher technologies. Whatever payments are negotiated between the importer and the exporter should be normally respected and accepted. It is in the interest of the importer to pay as little as possible. The fear that through collusion larger payments would be made to transfer resources out of the country is unfounded, because this method would carry a burden of 40% tax, whereas other methods of illicit transfer do not suffer from this drawback, and those who are interested in such illicit transfers would always prefer other methods to collusive deals for the transfer of technology. *We, therefore, recommend that the indicative ceilings on the payments for technology imports may be removed.*

*Other terms of collaboration agreements*

9.9 The processes of scrutiny also involve a good deal of attention to the detailed terms of the collaboration agreement, such as the period of agreement, restrictive clauses, particularly those relating to exports and sub-licensing, and the applicability of the Indian laws and acceptable arrangements for arbitration in the event of disputes. *Much of this meticulous examination seems to us misplaced and unnecessary. We feel that the Government need concern itself with only a few limited aspects.*

*Period of agreement.*

9.10 For instance, the current procedure prescribes that the total period of agreement of foreign collaboration should be 8 years within which the period for payment of royalty should be limited to 5 years. We feel that the period of agreement should be left to be decided by the parties to the deal. The limitation of the period creates not only avoidable irritation and a good deal of paper-work to get the administrative decisions for the cases at the margin, but also induces the seller to block the flow of contemporary technology to the buyer. *We therefore, recommend that as in the case of the price to be paid, there should be much greater flexibility in regard to the period of the agreement and that there should be no rigid formula in this matter,*

*Export right.*

9.11 As regards restrictive clauses regarding exports, it is doubtful whether insistence on unrestricted export right as a general condition is really useful in all cases. It must be remembered that we cannot get something for nothing; any right the buyer stipulates has to be paid for through a higher price. In some cases, it is quite possible that because of high domestic demand and the absence of an exportable surplus or for some other good reason, exports of the product may not actually materialise. *We, therefore, recommend that there should not be a routine insistence on unrestricted export in every case. There is much to be said for a limited but exclusive export right in preference to an unrestricted but non-exclusive export right, particularly if competition with the party providing the technology is involved.*

*Scrutiny of agreement to be confined to a few limited aspects.*

9.12 As already mentioned, *we feel that it should be adequate if the scrutiny of collaboration agreements is confined to two or three important areas such as*

- (a) *the avoidance of undue restrictions on the use of the technology and on sub-licensing.*
- (b) *the applicability of the Indian laws, and*
- (c) *the arrangements for arbitration.*

*In respect of these matters, in place of general instructions or loosely formulated standard conditions, Government should devise standard clauses in language normally in use in the international business and legal community and circulate these widely. Such clauses should be as few as possible and no attempt should be made to envisage and provide for remote and rare contingencies or for objectives not strictly relevant to the import of technology.*

*Expediting the process of 'taking agreement on record'.*

9.13 The detailed scrutiny of terms does not end with the governmental approval to the collaboration proposal; it continues further into the process which is known as "taking the collaboration agreement on record". The negotiations between the buyer and the seller have to be resumed after the FIB approval, and in due course, the detailed agreement has to be submitted to the Government for being taken on record; only after the agreement is so taken on record and the fact conveyed to the Reserve Bank that payments under the agreement can be made. It has been brought to our notice that considerable



delays take place in this process, which one would have expected to be largely a matter of routine. Unfortunately, this stage now appears to provide the occasion for a minute and petti-fogging examination of the fine print of the agreement, resulting in queries being raised in respect of the most minor and insignificant variations from what are considered to be standard provisions.

9.14. Delays at this stage seem to be the result of two factors: on the one hand, the detailed collaboration agreements are sometimes said to contain new features not considered at the time of the FIB approval, or deviations from the broad terms approved by the FIB; on the other hand, it also appears that many of the questions raised arise from a lack of knowledge of the industry, the circumstances of technology transfers and common international practices. The officials concerned are evidently not always able to distinguish between significant deviations from standard clauses or from the terms approved by the FIB, and other changes which have no special importance from the Governmental point of view; perhaps they tend to find safety in raising questions.

9.15. The answer to this is three-fold: to reduce the scope of the scrutiny so that it is concentrated on a few important aspects; to ensure that the scrutiny at the pre-FIB stage covers all the essential points, minimising the need for a post-FIB scrutiny; and to improve the quality of the scrutiny at the level of the Ministry.

9.16. Some of the recommendations that we have already made should serve to reduce the scope of the scrutiny to a few limited aspects. *These should, as far as possible, be looked into before and not after FIB approval.* It is difficult to see how a collaboration proposal can be put up to FIB for approval without a reasonably clear understanding of the salient features and significant terms of the proposed collaboration. As regards the quality of scrutiny, the quickest way of improving this is to make the applicant parties assist the scrutinising agencies by answering a check-list or questionnaire.

9.17 *We would suggest that in respect of each aspect of concern and interest to the Government questions regarding conformity to the governmental norms and guidelines should be put down in a check-list and the parties should be asked to answer them clearly and categorically, and to give explanations for any departures, modifications or*

*special features.* If this is submitted along with the application for approval to the foreign collaboration, the various agencies involved in the Pre-FIB scrutiny would be able to consider all the relevant aspects at that stage itself. *The parties should also be asked as far as possible to submit copies of agreements (initialled subject to Government approval) along with their applications for foreign collaboration approval.* We believe this does happen in some cases. Even if this is not possible in all cases, an answer to the check-list should always be provided.

9.18 *At the post-FIB stage, when copies of the agreements are submitted for being taken on record, these should once again be accompanied by a check-list. This would be the same check-list as before, but with added questions to ascertain whether any changes have been made in the broad terms approved earlier.* Perhaps the check-list could be so standardised as to serve the purpose at both stages. These check-lists or questionnaires can be treated as declarations and the parties can be required to affirm that the contents are true. It is of course true that the form of application for approval to foreign collaboration (Form 'FC') is itself very elaborate, asks for all the relevant information and is accompanied by instructions which give indications of governmental policies. However, the very size and elaborateness of the form probably militates against the quick scrutiny of the important aspects. It would be ideal if, with the confinement of governmental scrutiny to a few limited aspects as recommended by us, this form itself could be simplified. The check-list that we have in mind, however, is for the examination of the information given in the form—the kind of examination which the form has to undergo in the Government. If there could be an advance self-examination by the parties themselves in the shape of answers to a check-list, we have no doubt that it would save the time of governmental agencies, and also improve the quality of their scrutiny.

9.19 Under such an arrangement, it should be possible to expedite the process of taking agreements or record and make it almost automatic. We would suggest that *the administrative Ministries should be given a reasonable time, say, a month, for the examination of the agreement with the help of the check-list. The agreement should be definitely taken on record and a communication issued to this effect not later than one month*

*from the submission of the agreement by the party to the SIA. The SIA should ensure this through proper monitoring. Where the scrutiny reveals significant deviations from standard clauses or significant departures from the terms of the FIB approval, the case should be quickly placed back before the FIB rather than be delayed through protracted noting or correspondence on the part of the administrative Ministry.*

## X

*Summary of  
Conclusions  
and Recommendations:*

10. The following is a summary of our conclusions and recommendations :

10.1 (a) Indian industries have shown no strong desire to improve their technology or to acquire new technology, whether indigenous or imported. It is necessary to create conditions in which they will realise that it is in their own interest to improve their technology. Even within the existing framework of controls and tax laws, a new impetus to technological improvement can be given through the following steps:

- (i) In permitting the expansion of capacities, better product acceptability arising from quality and/or cost-differentials should be given adequate weight.
- (ii) In the field of administered prices, if there is a lowering of cost through improved technology the unit concerned should be allowed to earn more profits in consequence.
- (iii) A far more liberal attitude, with fewer restrictive limitations than at present, needs to be adopted to any proposal for getting more out of the installed capacity through the application of technology, whether this be in the form of a straight augmentation of output or of a diversification of that output.
- (iv) It would be useful to gather and publish together at one place all the various measures introduced with a view to encouraging the maximum utilization of the installed capacity through research and development, whether in-house or external.

- (b) It is only in a new climate of thinking in which every industrial unit is constantly striving for technological improvement that steps can be taken to promote the use of indigenous technology and to encourage new research both in National Laboratories and within the industrial units themselves.

(paragraphs 3.1—3.12)

*Directing  
industrial  
research into  
specific areas*

- 10.2 (a) The Central Group for Technological Forecast and Assessment envisaged in the Technology Policy Statement should first draw up a scheme of priorities and then work out a programme of specific research for different laboratories. The selection of fields of research should be governed by (i) the priority that the products have for us, (ii) a perspective view of the industries which are to expand and can use the technology if developed, and (iii) general beneficial objectives such as measures to conserve energy, to make greater use of low-grade coal, etc. There should be a clear commitment that if the research is successful, appropriate investments to make use of it would be made.

(paragraphs 4.1—4.2)

- (b) As a first practical step, the Government should ask the CSIR/DST to make a complete list of the technologies that have been developed in the National Laboratories and are ready for use on a commercial scale. The public sector should have the first right (but not the obligation) to use these technologies. Thereafter, the Government should make an announcement that the entrepreneurs who wish to set up manufacturing facilities based on such technologies would get the necessary industrial approvals freely.

(paragraph 4.3)

- (c) Industrial licences to set up new production based on indigenously developed technology should be given liberally without any restriction except from the small-scale angle. It is not necessary to debar the larger houses which have the best capacity both for in-house R & D and for making use of technology developed in the National Laboratories, or FERA companies which have the necessary

resources and back-up to ensure the adaptation and improvement of imported technology as well as the development and utilisation of new technologies within the country.

(paragraphs 4.5—4.6)

- (d) There should be no need for Governmental agencies to sit in judgement over the efficacy or suitability or economic viability of the technology in cases where the entrepreneur has sufficient confidence in it to be willing to invest his capital in its commercial use.

(paragraph 4.6)

- (e) A fresh statement on the preferential regime for indigenous technologies should be made which would be strongly positive and would not have the restrictive overtones of past statements.

(paragraph 4.7)

- (f) As successful exports of technology will not merely bring in foreign exchange but will also provide a further impetus to the pace of technological development within the country, possibilities of exports of technology need to be pursued in a purposeful manner with the help of our Commercial Representatives abroad.

(paragraph 4.8)

*Link between  
research  
and industry*

- 10.3 (a) The wide gap between the technology developed in the laboratories and its plant-level application should be bridged by associating representatives of industries at all stage with the various industrial research programmes being planned and carried out in the National Laboratories. Similarly, those engaged in research activities should be associated with industry at appropriate levels, so that they can give the benefit of their scientific and technological experience and expertise to industries and receive in turn a first-hand knowledge of the actual problems and needs of industry.

(paragraph 5.1)

*Role of  
consultancy  
and  
engineering  
organisations*

- (b) Consultancy and engineering organizations could be not merely mediating agencies between the laboratory and industry but may also themselves be the originators of technological development. Every effort should be made

to build up and enhance the capabilities of consultancy and engineering organizations, both in the public sector and in the private sector. In particular, expertise and experience in basic design engineering need to be substantially expanded.

(paragraphs 5.2—5.3)

- (c) As a first step, the Council of Scientific and Industrial Research and the Department of Science and Technology should organize a National Seminar of Consultancy and Engineering organisations with a view to eliciting suggestions which can be considered by the Government for devising specific measures.

(paragraph 5.4)

*iscal  
incentives*

- 10.4(a) There is a case for supplementing the other measures aimed at the fostering of indigenous technology development and use through an appropriate tax concession which does not lend itself to the kind of misuse to which the erstwhile section 80 MM of the Income Tax Act was subject.

(paragraph 6.1)

*A. Income-tax  
concession*

- (b) To bring about the wider diffusion of technology, the taxation scheme should be neutral between transfers of technology on an assignment basis and those on a user basis.

(paragraph 6.2)

- (c) Substantial relief should be provided by way of a deduction to be allowed from income accruing to the inventor-owner (both individuals and corporate and other bodies) from the sale of indigenously developed technology which is patented and registered in India, including the designs registered and protected under the Indian Designs Act. This relief should be limited to a period of, say, 5 years from the date of the registration of the patent or of the design.

(paragraph 6.3)

- (d) In respect of income accruing in the form of a lump-sum one time payment, the inventor-owner should be allowed the facility of phasing the receipt of such income over a period of say, three years, for taxation purposes.

(paragraph 6.4)

- (e) In addition, the possibility of providing an inducement for the use of indigenous technology through an appropriate tax concession to the buyer deserves consideration.

(paragraph 6.6)

B. *Excise concession*

- (f) A reduction in the excise duty should be considered for products manufactured by using technologies which have been indigenously developed. To ensure that the benefit accrues only to deserving cases there should be a certification or recommendation by the Ministry concerned with the industry in consultation with the Department of Science and Technology. The selection of items for such certification for the purpose of the excise concession should be done with reference to well-defined criteria relating to the economic usefulness of the technology, such as product improvement, cost reduction, the use of indigenous raw-materials, the conservation of scarce resources, etc.

(paragraph 6.7)

*Technology imports: general approach*

- 10.5 The Technology Policy Statement itself envisages imports of technology on a selective basis. Such imports are not necessarily indicative of technological under-development. Countries at the highest levels of technological development are also active participants in the international trade in technology, engaging in both imports & exports. Our approach should be not one of catching up with technological development abroad through a strenuous effort starting from scratch, but one of acquiring the best available technology from whatever source and then adapting it to Indian conditions and improving it. In this context, the Japanese and Korean experiences are of great value. The outgo of foreign exchange on the import of technology will be more than compensated by the modernisation of the production apparatus and the increased import saving or export-earning that this would bring about.

(paragraphs 7.2—7.4)

*Import clearance: re-orientation of system*

- 10.6 (a) Access to the needed imports should be made simple and easy and not subjected to time-consuming and frustrating procedural barriers. The essential objective

of reform should be to identify areas and types of need so that categories of cases can be classified as eligible for technology import, facilitating the prompt and almost automatic clearance of individual cases.

(paragraph 8.1)

*Three lists...*

- (b) There should be (i) a list of areas identified as being in need of technology imports, in which additions or deletions can be made from time to time; (ii) a list of types of categories of technology imports which would not normally be permitted; and (iii) a list of areas in which proposals for the import of technology would have to be considered on merits on case-by-case basis.

(paragraph 8.2)

*...to be prepared  
by a high  
level Standing  
Body*

- (c) For this purpose, a high-level Standing Body should be set up. This body will not be responsible for the clearance of individual cases but will compile and review periodically the three lists mentioned above. It should also consider the kinds of technologies to be imported and the broad technological and economic parameters for such imports, and lay down clear guidelines. The Standing Body should consist of not only the representatives of the Government departments concerned at the highest level such as the Department of Science and Technology, the DGTD, the Ministry of Industry, the Department of Economic Affairs, etc., but also eminent scientists and technologists, whether within or outside the Government. The body should meet as often as necessary to prepare and review the three lists and keep them up-to-date.

(paragraphs 8.3-8.4)

*Liberal  
imports: some  
guiding con-  
siderations*

- (d) There are several industries, some of them of crucial importance, which are in urgent need of modernization. These should be identified by the high-level body referred to above. The upgradation of technologies through imports should be freely allowed in such cases.

(paragraph 8.6)

- (e) While caution in respect of repetitive imports is warranted, this should not be erected



into a rigid principle. Flexibility in this regard is necessary, as what is involved is an evaluation of costs and benefits, and it is possible that at least in some instances the benefits arising from such repetitive import may out-weigh the costs.

(paragraph 8.7)

- (f) Before it is decided that an import of technology is not necessary in a given area, the reported availability of indigenous technology should be very carefully assessed with reference to the state of development of the technology and its readiness for commercial application. Past instances in which technologies as yet in the process of development or not adequately adapted or upscaled for commercial production were made the basis for commercial projects, leading to serious difficulties, should be carefully studied so that appropriate lessons can be drawn for the future.

(paragraph 8.8)

- (g) Wherever goods are being allowed to be imported on an Open General Licence there is a strong case for liberality towards imports of technology for producing such goods.

(paragraph 8.9)

- (h) Industries should be given the freedom to import technology which would enable them to save on energy.

(paragraph 8.10)

- (i) The liberality shown to export industries in the matter of import of drawings and designs should be extended to industries in general or at least to a select range of industries, particularly to the public sector capital goods industries. There should be no value limits on the imports of drawings and designs, nor any restrictions on the number of times of import in a year. A similar liberality should also be extended to the import of drawings and designs for diversification and product-mix exchange or upgrading, particularly in the case of products of high priority.

(paragraph 8.11)

- (j) For the adaptation and improvement of existing technology recourse to external sources

for filling gaps in the process know-how and design should be freely allowed.

(Paragraph 8.12)

*'Liberal  
import' list:  
implications  
for processing*

- (k) Proposals falling in the 'liberal import' list (on considerations such as those listed above as well as others which the high-level Standing body might formulate) may still have to go through the machinery for clearance but the question of the need for the import of technology should be presumed to have been answered in advance in such cases.

(paragraph 8.13.)

*Process of  
clearance of  
individual  
cases: reforms*

- 10.7(a) In so far as the mechanism for the clearance of individual proposals is concerned, the number of agencies which need to scrutinise a proposal should be as few as possible. There seems to be scope for a reduction in the number at present involved in the scrutiny.

(paragraph 9.2)

- (b) The examination should be a joint one-time examination by the approval body and not separate and sequential examination by a number of different bodies and agencies.

(paragraph 9.3)

- (c) The Government should undertake a careful review of the role of the Technical Evaluation Committee and lay down clearly the categories of cases which should be referred to it so as to minimise the number of cases in which the examination by this Committee gets added to the processes of clearance.

(paragraph 9.3)

- (d) The area of the delegated authority of the administrative Ministries for according approvals to foreign collaboration proposals needs to be enlarged, and references to the FIB minimised. This is a desirable objective which deserves very careful consideration by Government.

(paragraph 9.4)

- (e) There is reason to believe that the ceilings on royalty and know-how payments tend merely to push up the price of lower technologies

without being adequate for the higher technologies, making it difficult for India to obtain the most appropriate technology from the best source for a given purpose. When products are allowed to come in without a scrutiny of prices it does not make sense to impose ceilings on payments for technology. The indicative ceilings on the payments for technology imports should be removed.

(paragraphs 9.5—9.9)

- (f) As in the case of the price to be paid, there should be much greater flexibility in regard to the period of the agreement and there should be no rigid formula in this matter.

(paragraph 9.10)

- (g) There should not be a routine insistence on unrestricted export right in every case. There is much to be said for a limited but exclusive export right in preference to an unrestricted but non-exclusive export right, particularly if competition with the party providing the technology is involved.

(paragraph 9.11)

- (h) The scrutiny of collaboration agreements should be confined to a few important areas such as the avoidance of undue restrictions on the use of the technology and on sub-licensing, the applicability of the Indian laws and the arrangements for arbitration. In respect of these matters Government should devise standard clauses (as few as possible) in language normally in use in the international business and legal community and circulate these widely.

(paragraph 9.12)

- (i) The process of taking agreements on record needs to be expedited and made almost automatic; the quality of Governmental scrutiny also needs to be improved. With the confinement of the scrutiny to a few important aspects as recommended earlier, it should be possible to look into them mostly before and not after the FIB approval. In respect of each aspect of concern and interest to the Government, questions regarding conformity to the governmental policies should be put down in a check-list and the parties should be asked to answer them clearly and categorically, and to give explanations for any departures, modifications or special features.

he parties should also be asked wherever possible to submit copies of agreements (initialled subject to Government approval) along with their application for foreign collaboration approval. At the post, FIB stage, when copies of the agreements are submitted for being taken on record these should once again be accompanied by a check-list, which should be the same as before but with added questions to ascertain changes, if any. The check-list could be standardised to serve the purpose at both stages. The process of examination of the agreement with the help of the check-list should be completed expeditiously, and the agreement taken on record not later than one month from the date of submission of the agreement by the party to the SIA. The SIA should ensure this through proper monitoring. Where the scrutiny reveals significant deviations from standard clauses or significant departures from the terms of the FIB approval, the case should be quickly placed back before the FIB rather than be delayed through protracted noting or correspondence on the part of the administrative Ministry.

(paragraphs 9.13—9.19)

## Annexure

### *A note on the existing policy and procedure for clearance of imports of technology*

*FIB and its Sub-Committee.*

The procedure that is now in operation came to be evolved substantially with the setting up of the Foreign Investment Board (FIB) in 1969 and the streamlining of the industrial approval procedures brought about by the introduction of the Secretariat for Industrial Approvals (SIA) in 1973. The FIB which is chaired by the Secretary, Department of Economic Affairs is responsible for expeditious disposal of all cases relating to foreign investment/collaboration. The membership of the FIB includes Secretaries in Departments of Industrial Development, Technical Development, Petroleum, Company Affairs and Science and Technology. It also includes Secretary, Planning Commission, Director General, Council of Scientific and Industrial Research (CSIR) and Secretary of the administrative Ministry concerned with the proposal. The Joint Secretary in charge of the SIA in the Department of Industrial Development functions as the Member-Secretary of this body. Recently, the Chairman, National Research and Development Corporation (NRDC) has been added as a special invitee to advise the Board particularly on the availability of the indigenous technologies. Along with the setting up of the Board, a Sub-Committee of the FIB was also established. The Sub-Committee was supposed to function at the level of Joint Secretary, the Joint Secretary in the Department of Industrial Development being the Chairman and representatives of the members of the FIB being the other members.

*Scheme of delegation of powers.*

2. A scheme of delegation of powers depending on the nature and importance of the cases was also laid down which specified the categories of cases to be reserved by the FIB for the decision of the Cabinet Committee, the categories of cases to be disposed of by the Sub-Committee of the FIB and the categories of cases which were within the delegated authority of the administrative ministries. A copy of the scheme of delegation is at Statement 1.

3. Although the scheme of delegation has been in existence for about 15 years, the Sub-Committee of the FIB has hardly ever functioned after 1973. It has remained only on paper. The administrative ministries, no doubt, are clearing cases under the delegated powers. Here again, with the flux of time and increase in prices the scope of the delegation which was narrow even in its conception, has further been narrowed down. Readily available data pertaining to the years 1981 & 1982 show that the number of cases cleared by the administrative ministries under the delegated powers constituted about 1/3rd of the total number of clearances effected by the FIB. Moreover, as revealed by a recent review made by the Ministry of Industry, the disposal under the delegated powers by the administrative ministries was far slower than the disposal by the FIB. Only 1/8th of the total applications received in 1981-82 were cleared by the ministries within the stipulated time limit of 60 days; clearance of about 1/4th of the applications received during that year took more than six months.

*Guidelines.*

4. The existing procedure operates within the norms and policies laid down in the guidelines on foreign collaboration. The guidelines provide an illustrative list of industries where no foreign collaboration, financial or technical is considered necessary. The list includes a number of important industries such as cement, paper and pulp, industrial machinery, fertilizers and chemicals, electrical equipment etc. As regards equity participation, the guidelines lay down that such participation has to be justified, having regard to the factors such as priority of the industry the nature of technology involved, whether it will enable or promote exports and the alternatives available for securing similar technological transfer. The ceiling for foreign equity participation is 40% although exceptions can be considered on merits. Portfolio investment is not permissible except when it is coming from oil-exporting developing countries and that too, only in respect of new companies.

*Rates of Royalty, period of agreement, etc.*

5. The technical collaboration is normally considered on the basis of annual royalty payments or lumpsum payments. In regard to the former, the guidelines lay down that the percentage will depend on the nature of technology but should not ordinarily exceed 5%. Such payments are subject

to the Indian taxes. The lumpsum payments are required to be phased in three equal instalments, the first being paid on the agreement being taken on record, the second, on the transfer of documentation and the third, on the commencement of production. Although no fixed ceiling has been laid down for payment of know-how the instructions to entrepreneurs lay down that the total of the lumpsum and royalty payments should not be more than 8% of the total expected sales, over a period not exceeding 10 years. Normally, the period of agreement is restricted to eight years, and the period for payment of royalty to five years, allowing three years for the gestation of the project. Besides, there are a number of other standard instructions prescribing various 'dos' and 'don'ts' to be observed by the entrepreneurs while finalising the agreements with the foreign collaborators. They relate to the applicability of the Indian Laws, avoidance of restrictive clauses, sub-licensing, use of patents etc.

*Processing of  
the proposal:  
Scrutiny  
Agencies.*

6. The process of examination of the proposal starts with the applicant filling in the prescribed form in all its details in 16 copies. Once the form is received in the SIA, which is the centralised processing unit for all industrial approvals, further processing begins. The first important stage is the examination by the scrutiny agencies and the other concerned authorities. There are as many as 10 such bodies viz. Directorate General of Technical Development (DGTD), NRDC, CSIR, Department of Science and Technology (DST), Department of Economic Affairs, Department of Company Affairs, Deptt. of Petroleum, Ministry of Commerce and Development Commissioner, Small Scale Industries (DCSSI) and the Planning Commission. Over and above those, a new body, namely, the Technical Evaluation Committee (TEC) has been introduced in 1976. This body was brought into being to improve the scrutiny of the proposal from the indigenous angle. The Technical Evaluation Committee consists of DGTD as the Chairman and representatives of CSIR, DST and NRDC as members. The principal function of this Committee is to evaluate the technology proposed to be imported against indigenous technology, if available the need for upgradation of such technology and the reasonableness of the terms of collaboration. The technical scrutiny agencies such as NRDC, DGTD, DST and CSIR forward their comments to TEC, who, in turn, furnish their comments to

the SIA. These are made available to the administrative ministry who then furnish their own comments on the proposals. Thereafter, a case summary is prepared and taken to the FIB for its consideration and decision.

*Time limits  
for process-  
ing*

7. Different stages in the processing of the case along with the time limits prescribed for each stage is indicated in Statement 2. The total time allotted for clearance of a case is 60 days, of which 27 days are reserved for the examination by the TEC, 7 days for the examination in the administrative ministry, 6 days for the preparation of the case summary and 7 days for the consideration of the FIB. The rest of the time is taken by clerical work. The FIB is supposed to meet twice in a month to consider and clear the cases on its agenda.

8. Although the prescribed time limit is only 60 days, in a large number of cases this limit is not being adhered to. An analysis of the receipt, disposal and pendency of the FIB cases for the last 5 years is available in Statement 3. It shows that the number of cases pending at the end of the year has increased over the last 2 years. What is more, the number of applications pending for periods ranging between 3 to 6 months, 6 to 9 months, 9 to 12 months and for period exceeding 12 months has also been on the increase over the last two years. About 1/3rd of the applications pending at the end of the 1981 and 1982 were pending for periods ranging between 3 to 6 months.

*Taking  
agreement  
on record*

9. It is to be remembered that these delays are delays prior to the issue of approval to the collaboration. For the entrepreneur, this is only the end of the first chapter of the story. After the receipt of approval, he has to enter into a formal agreement with the collaborator and file the agreement with the administrative ministry which examines it in terms of the approval given and the standard 'dos' and 'don'ts' prescribed for such agreements. This scrutiny takes its own time and in some cases, the agreement is also referred to the Department of Economic Affairs. It is only after the agreement is formally "taken on record" by the administrative ministry that an intimation is sent to the Reserve Bank of India through the Department of Economic Affairs. Only then the entrepreneur is in a position to make payments to the collaborator and thus consummate his collaboration. Since the agreements are being taken on



record by individual administrative ministries, no centralised data are available on the delays that take place in this process. The drill prescribed for the disposal of the foreign collaboration cases extends only up to the stage of the issue of the foreign collaboration approval. No drill or time-limit is prescribed for the agreements being taken on record by the administrative ministries. Complaints about narrow and clerical approach to the examination of the agreements and persistent delays are, however, very common. That the problem is quite serious is evident from the fact that the Ministry of Industry have recently constituted a Committee to go into this question and suggest measures to streamline the procedures and reduce delays.

*Short-comings  
of the  
existing  
procedure*

10. Summing up, the existing system is characterized by a number of shortcomings which would directly militate against the basic principles and approach enunciated in the new Technology Policy in regard to the acquisition and technology assessment. The clearance procedure is characterized by long delays. There are too many scrutiny and commenting agencies. There is also avoidable duplication in the process. There is scope for reducing the comprehensive coverage of the case-by-case clearance and introducing a larger degree of selectivity in the process of control and monitoring. There is little effective delegation in the exercise of control and clearing functions and such delegation as exists has not been working well. There is reason to believe that insistence on simplistic norms regarding the rates of payment and the period of agreement has been counter-productive. A vital area such as the final stage of taking the agreement on record has not been covered by any procedure, which has resulted in costly delays in effective clearance of proposals of import of technology.

**Scheme of Delegation**

*(A) Categories of cases to be reserved by Foreign Investment Board for decision of the Cabinet Committee (PPE)*

- (a) Cases where the total investment in equity capital in any Indian Company including foreign equity Capital Investment (issue of free shares for technical know-how inclusive) exceeds Rs. 2 crores.
  - (i) In any new Indian company where the foreign equity investment exceeds 40% of the total issued equity capital; or
  - (ii) In any existing Indian company the fresh foreign equity investment will maintain the existing foreign investment at a level above 40% or result in the foreign equity investment exceeding 40% of the total issued equity capital.
- (b) Any cases of importance involving any special point on which the Foreign Investment Board may desire guidance from the Cabinet Committee.

*(B) Cases to be dealt with by Foreign Investment Board*

- (a) Cases involving foreign investment in equity capital (including issue of free shares for technical know-how) of an Indian company whether new or existing.
  - (i) Where the resultant foreign investment in the equity capital exceeds 40% of the total issued capital provided the latter does not exceed Rs. 2 crores.
  - (ii) Where the resultant foreign investment in the equity capital is between 26% and 40% of the total issued equity capital irrespective of the amount of total investment in the equity capital; and

- (iii) Where the resultant foreign investment in the equity capital is upto 26% and the total issued equity capital is more than Rs. 1 crore.
  - (b) All cases of foreign investment in preference shares carrying no voting power.
  - (c) All cases reserved for decision of the Foreign Investment Board by the Sub-Committee of the Board.
- (C) *Cases to be disposed of by the Sub-Committee of the Foreign Investment Board*

*I. Cases Involving Foreign Investment*

Cases involving foreign investment in equity capital (including issue of free shares for technical know-how) of an Indian Company whether new or existing when the total investment is Rs. 1 crore or less and the resultant foreign investment in the equity capital does not exceed 26% of the total issued equity capital.

*II. Cases of Technical Collaboration*

- (a) All cases of royalty payments with or without technical know-how payments in cash exceeding Rs. 5 lakhs (gross) per annum even if they are within the prescribed ceilings.
- (b) All cases of technical know-how payments exceeding 10% of the issued equity capital in cash or royalty payments which exceed the ceiling rate of royalty prescribed by the Department of Industrial Development.
- (c) Cases of existing foreign majority Indian Companies where the gross royalty-cum-technical know-how fees in cash exceed 50% of the gross dividend receivable by the foreign investing company from the Indian company even if the royalty and the technical know-how fees are within the ceilings.
- (d) Special cases of importance referred to by the administrative Ministries concerned for decision by the Sub-Committee.

**(D) *Administrative Ministries***

All cases of technical collaboration involving payment in cash of royalties not exceeding the prescribed ceilings and all cases of technical know-how fees payable in cash not exceeding 10% of the issued equity capital, provided the aggregate gross payment does not exceed Rs. 5 lakhs per annum in any one case. Such cases should be in conformity with the criteria outlined in the guidelines on foreign collaboration regarding period of agreement, standard clauses etc.

*Statement—2*

Sl. No.	Nature of Activity	Outer time-limit prescribed for completion of the activity (No. of days)	
1	Scrutiny & referral of cases to Administrative Ministries/TEC etc. . . . .	3	
2	Comments of Technical Authorities (TEC/Textile Commissioner etc.) . . . . .	27	(30)
3	Comments of Administrative Ministry . . . . .	7	(37)
4	Preparation of summary for PIB . . . . .	6	(43)
5	Consideration by the FIB . . . . .	7	(50)
6	Preparation of the minutes of the meeting . . . . .	3	(53)
7	Approval of minutes . . . . .	3	(56)
8	Preparation of dispatch letters . . . . .	3	(59)
9	Despatch of letter . . . . .	1	(60)
	<b>TOTAL</b> . . . . .	<b>60</b>	

## Receipts, Disposals and Pendency of FC Applications during the year 1978, 1979, 1980, 1981 and 1982.

F.C. Cases	Applica- tions pending at com- men- cement of the year	No. of applica- tions (net of return during the year)	Total (2+3)	No. of applica- tions dispos- ed during the year	% (5 to 4)	Balance pending at the end of the year	Age of pending applications							
							Upto 3 month (8 to 7)	% (10 to 7)	3 to 6 months (12 to 7)	% (12 to 7)	6 to 9 months (14 to 7)	% (14 to 7)	9 to 12 months (14 to 7)	% (14 to 7)
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
1978 . . .	125	128	553	429	77.58	124	80	64.52	35	28.23	6	4.84	2	
1979 . . .	124	501	625	459	73.44	166	118	71.08	20	12.05	15	9.04	10	
1980 . . .	166	618	784	711	90.69	73	57	78.08	12	16.44	2	2.74	1	
1981 . . .	73	419	492	328	66.67	164	89	54.27	53	32.31	17	10.37	4	2.43
1982 . . .	164	482	646	445	68.89	201	97	48.25	77	38.21	13	6.47	5	2.49

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