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INDUSTRIAL COOPERATION AND  
JOINT INVESTMENT VENTURES  
BETWEEN YUGOSLAV AND  
FOREIGN FIRMS

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R A D O V I 11



JUGOSLOVENSKI  
INSTITUT  
ZA EKONOMSKA  
ISTRAŽIVANJA

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**INDUSTRIAL COOPERATION AND JOINT INVESTMENT  
VENTURES BETWEEN YUGOSLAV AND FOREIGN FIRMS**

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and  
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Jugoslovenski institut za ekonomska istraživanja  
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## P R E F A C E

If capital movements exist between a capitalist and a socialist country, they are mediated by the governments. So far this proposition has been taken more or less for granted. And for a long time it described the practices of Yugoslavia in relation to her foreign partners. However, with the development of selfgovernment in the country, with full business autonomy of enterprises, state interventions have become superfluous not only in internal economic relations but also in business ventures transcending national borders. At first state monopoly in foreign trade was eliminated. Next, various forms of direct industrial cooperation between Yugoslav and foreign firms have been developed. Finally, since 1967 joint investment ventures have also become possible legally, and have begun to take place in practice.

Industrial cooperation and joint ventures between firms belonging to two different economic systems are undoubtedly of great theoretical and practical interest. Since this process started in Yugoslavia and has been developed most fully in this country, the Yugoslav experience might prove useful to other countries.

The present study analyses legal and economic aspects of a certain number of contracts between Yugoslav and foreign firms. Various forms of industrial cooperation have by now been tried out by quite a few enterprises and a considerable amount of experience has been accumulated. Joint ventures have only become legally possible, and the study describes one of the first contracts that have been signed. The study has been financed by the United Nations Economic Commission for Europe.

Of the two authors, Dr M. Sukijasović is responsible for the legal aspects and Mr. Dj. Vujačić for the economic aspects of the analysis. The authors and the Institute express their gratitude to the Yugoslav firms that made the relevant information available.

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It is hoped that the study will contribute to the better understanding of possibilities for an expanding international economic cooperation and, more specifically, facilitate further contacts between Yugoslav and foreign firms. The Institute will continue to work in this field and will gladly provide additional information to anyone interested.

Belgrade, December, 1968

Branko Horvat  
Director of the Institute

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## INDUSTRIAL COOPERATION BETWEEN YUGOSLAV ENTERPRISES AND FOREIGN FIRMS

### I. General points

Proclamation of the general economic reform of July 1965 gave a start to building a new system of industrial cooperation between home enterprises and foreign firms. That means that there began changing not only Yugoslav foreign trade, foreign exchange and customs tariff legislation but also the regulations governing the entire economic life in both the internal and foreign trade sectors. Foundations were laid for a co-ordinated development of various economic spheres and branches, and conditions were created for their stabilization through market criteria.

At the basis of this new economic regime there are four statutes and also a number of regulations designed to facilitate their implementation. Those are: the Law Amending the Law on Traffic of Goods and Services with Foreign Countries of July 8, 1966, the Law on Foreign Exchange Transactions of July 15, 1966, the Law on Customs and Tariffs of July 24, 1965 and the Law on Foreign Credit Transactions of July 15, 1966.

According to the Law Amending the Law on the Traffic of Goods and Services provision is made for many forms of business-technical cooperation between domestic and foreign firms. According to Article 23, economic organizations and institutions may, among other things, conclude agreements on business-technical cooperation with foreign firms.

By these agreements the following ones are especially meant: the agreement on joint programming of production; distribution of current

production and its complementing; joint designing of plants, installations and equipment; joint preparation and introduction of new industrial products; joint manufacture of parts, assemblies and sub-assemblies to complete the same final products or complete machinery, by supplying one another with these products or machinery; joint marketing in third countries; and erection of service workshops and personnel training.

The Law on Foreign Exchange Transactions governs foreign exchange payments with foreign countries. It distinguishes goods and services which are freely imported from goods and services whose importation is controlled. Payment for the former may be without restriction. In accordance with Article 20, importation may be controlled in three ways: (i) by fixing a global foreign currency quota; (ii) by fixing a foreign exchange quota; and (iii) by fixing commodity quotas, i.e. by issuing import permits. In setting controls, the Federal Executive Council will be governed by the trend toward reducing foreign payment restrictions.

Pursuant to this law, Yugoslavia has liberalized, beginning with January 1, 1967, all her export and about a half of her import. In other words, of the total of the goods, 36.9 per cent is completely free and 19.6 per cent is conditionally free imported in Yugoslavia. These figures mean that about 2,500 items may be imported into Yugoslavia either absolutely freely or freely under certain conditions. On the other hand, control of import embraces fewer than 2,000 articles, of which figure only a couple of dozens are subject to import licences, while the rest, that is much more numerous, is subject to the regime of the global currency quota. This liberalization constitutes the direct result of the policy of "moderate protection of home industry". Under this policy a new definitive customs tariff takes the central place. Fiscal elements have been eliminated and the average level of tariff protection has been reduced by about 50%, as compared to the level of the 1962 Decree. Article 15 of the Law on Customs Tariffs, made it possible to create a column of conventional rates, beside the already existing one of autonomous rates (a system of mixed autonomous and conventional tariffs). In such a way, when carrying out the aims of the reform, customs in Yugoslavia became a regulator of protection of home industry for the first time since World War II. Generally speaking, all these changes have enabled Yugoslavia to join GATT and become a full member of it on July 26, 1966.

Finally, decentralization and greater freedom of enterprises found its reflection in the Law on Foreign Credit Transactions. Article 6 of this Law permits working organizations to independently decide whether to engage in credit transactions with foreign countries. Credit operations with foreign countries envisage, among other things, the obtaining or granting credits for paying imports, exports, services and investments. Domestic enterprise may grant credits of a foreign beneficiary either from its own working capital or from the funds borrowed in Yugoslavia or abroad.

The above mentioned range of legislation should be complemented by the November 22, 1967, Decision on Production Cooperation Which Is Considered a Long-Term One. The Decision is adopted for the purpose of bringing into life Article 27 of the Law on Foreign Exchange Transactions. As a matter of fact this Article of the Law provides for a certain deviation from the general currency regime in cases of a long-term production cooperation agreed upon between domestic enterprises and foreign partners.

This preferential deviation comes to currency stimulation of a long-term production cooperation, which implies domestic partner's paying for imports under the said agreement with currency earned by exporting his deliveries under the same agreement. In this connection the sum of currency realized by exporting domestic deliveries is taken for the limit. In other words, in case the value of the home partner's deliveries is smaller than that of the goods imported from his foreign partner the settlement of balance is effected under the general currency regime of Article 20 of the Law on Foreign Exchange Transactions, which concerns the corresponding category of the goods imported. A similar settlement is done in case the delivery value of the home partner exceeds that of the foreign one. This privilege referring only to the transactions the agreement on a long-term production cooperation, the above mentioned Decision was aimed at fixing what was to be considered a long-term cooperation according to Article 27 para. 1. of the Law on Foreign Exchange Transactions.

The Decision differentiates between a long-term cooperation in production and reciprocal deliveries of component parts and that in production and reciprocal deliveries of manufactures. The first kind of cooperation is present in case the following conditions are

fulfilled: cooperation in production and mutual deliveries of parts, assemblies, sub-assemblies and semi-manufactures which serve completing products of the same technological group of homogeneous production; cooperation effected on basis of the agreement made by the domestic manufacturing organization and a foreigner; cooperation lasts three years at least. The latter kind of cooperation is present in case the following conditions are fulfilled: products in question should be of the same technological group of homogeneous production; those products should be manufactured under the agreement on division of production program /specialization/ for completing the assortment of those products; cooperation should last three years at least; the imported products should be exported into one of the countries with which Yugoslavia has arranged for the same way of payment as that with the country from which products are imported, or into the country in which payment is effected by currency of the same quality.

Non-realization of one of these conditions bears the agreement to the effect that the transactions done under it go out of the frame of foreign exchange self-financing. That means that the domestic partner, whose agreement was approved by the National Bank of Yugoslavia or Federal Secretariat for Economy, cannot make use of the foreign exchange privileges defined by Article 27, para. 1 of the Law on Foreign Exchange Transactions.

Nevertheless, such a cooperation may exist without currency stimulation, i. e. under the general foreign exchange regime, which means, that the domestic partner will charge for export of his goods and also pay import of the goods of the foreign partner in accordance with the general restrictions laid down for a certain nomenclature. It is worth reminding, that agreements on long-term cooperation and mutual deliveries of manufactures, which are generally not so numerous, did not answer all the conditions required. That is why those agreements were not applied in practice, since the domestic partner was not able – within the frames of the general regime – to earn necessary foreign exchange for paying import of manufactures. Therefore, further analysis, when treating a long-term production cooperation, will deal with cooperation in production of component parts only.

Such a new regime facilitates industrial cooperation between the Yugoslav enterprises and foreign establishments on credit basis exclusively.

That statement goes also for such agreements that include production factors on the basis of properly interests. Under this system, a foreign partner may advance production of one of the Yugoslav plans either by opening financial credit or by delivery of investment equipment. He cannot go further than that. Relations between him and the domestic partner are nothing else, but those of a creditor and a debtor.

As is known, new legislation on investments of foreign capital, that came into force on July 27, 1967, brought in qualitative changes into the regime built during the economic reform. Namely, now the foreign partner may join his funds with those of the domestic partner, to make long-term investments into a Yugoslav organization with the aim of achieving general business aims at common risk. Industrial cooperation becomes production-industrial cooperation. However, the subject of this monograph comprises only those cases from the practice of industrial cooperation, in which no foreign investment into domestic enterprise is made.

## II. Forms of industrial cooperation in Yugoslav Practice

In the development of Yugoslavian economy so far the following forms of industrial cooperation can be sighted:

- technico-technological cooperation, which consists of buying licence or technical documentation and of production of parts, assemblies, sub-assemblies or manufactures, thanks to the bought licence or technical documentation;
- production cooperation that consists of the delivery of parts, assemblies and manufactures against the documentation and treatment of the buyer;
- production cooperation, that consists of mutual deliveries of parts, assemblies and sub-assemblies with the view of manufacturing a definite complex product, a family of products or a group of them;
- production cooperation, that consists of production and delivery of semi-manufactures or manufactures made by means

of machines or complete installations received on the basis of technical assistance or in any other way from the developed foreign partner-buyer;

- production cooperation, that consists of arranged division of the programme and mutual complementing of the assortment of products;
- production cooperation that consists of common production of complete equipment and installations, either for one or for more markets;
- business cooperation that consists of rendering technical assistance and exchange of experiences;
- production cooperation that consists of processing or finishing certain parts or semi-manufactures.

All the enumerated forms of production and business cooperation, that have developed in Yugoslav practice, may be divided into two groups:

- a) productional cooperation;
- b) business cooperation with the view of carrying out a certain business.

In relation to this, all the hitherto made industrial cooperation agreements that do not envisage common financial investments, appear under different names. Differences between them spring up due to the stress put on a particular aspect of collaboration, or on the specific purpose and subject of the agreement. Therefore they may first of all be divided into two large groups: agreements on productional cooperation; and agreements on carrying out a certain business. Three sub-groups should be differentiated in the frames of the first group. Those are: agreements on programming of production; agreements on rendering technical services; and licence agreements. All the three sub-groups are connected with production while the agreements from the first sub-group are of pure production character. Besides, the agreements of all the three sub-groups are characterized by relative lastingness (from three years and up). The subject of the agreements that belong to the first sub-group boils down to production and mutual supplies of

component parts, assemblies and sub-assemblies as well as semi-manufactures that are built into manufactures. This production and mutual supplies are founded on technical and technological documentation which the partners mutually exchange. It happens, that in the first phase of cooperation the foreign partner only provides the domestic one with this documentation. But in the later phases of cooperation use of the documents acquires a reciprocal character, which means that the domestic partner cedes his documentation to his foreign one on basis of which the latter manufactures his assortment of parts and assemblies.

In the second sub group of agreements the stress lies mainly on technical assistance which the foreign partners render the domestic partners. Deliveries of parts are affected in one direction basically, i.e. from the foreign to the domestic partner. Technical and technological documentation are not exchanged, but ceded (the foreign partner cedes it to the domestic one). The agreements of the third sub-group envisage selling of the licence to the home partner, due to which the latter becomes familiar with the manufacture of some product. This selling is usually accompanied with deliveries of certain component parts within a certain period, presenting or giving for temporal usage of the equipment, training the personnel and so forth. Hence, these agreements also establish some cooperation in production which is not a joint one, the partners' interests being not so closely related as those from the agreements of the first two sub-groups.

Practice testifies, that there are about one hundred agreements on programming of production and those on rendering technical assistance between the Yugoslav and foreign partners now. Out of this figure, 55 agreements comply with the required conditions from the above mentioned Decision on Production Cooperation Which is Considered a Long-Term One. These agreements cover the following productional groups: electronics and electrical engineering, machine tools, trucks; and other metal products. Of the above figure, 45 agreements accounts for the West Europe, 1- for the USA and 9- for the socialist countries of the East Europe. The parties to these agreements made use of the currency privileges envisaged by Article 27, para. 1. of the Law on Foreign Exchange Transactions.

According to what the competent branches of the National Bank of Yugoslavia and Federal Secretariat for Economy have found out,



several dozens of agreements on industrial cooperation do not answer the required conditions from the quoted Decision. Some of them do not envisage production and supplies from one technological group of the homogeneous production, others are concluded for less than three years. Therefore, the domestic partners to these cooperative agreements were not allowed to make use of the foreign exchange stimulation ruled for the agreements on long-term cooperation.

Licence arrangements (third sub-group) are rather numerous. Some of them are concluded as independent, while others make integral parts of the agreements on long-term cooperation. In the first case they are subject to the general foreign exchange regime and in the second to the regime which extends on the basic agreement.

Agreements on carrying out a certain business (another large group) are complex in so far as they contain some elements of the agreements from the first group. But the cooperation they establish has aims other than those foreseen by the agreements of the first group. Those are in fact various forms of engineering or agreements known under the name of "turnkey contracts".

#### A. AGREEMENTS ON PRODUCTION COOPERATION

##### 1. *Agreements on Programming of Production*

The following agreements from this sub-group will be treated here:

- Agreement on industrial cooperation between the Italian firms "Castor and Imel" of Turin, on the one hand, and the Yugoslav enterprise "Rade Končar" of Zagreb, Yugoslavia on the other hand,
- Agreement on cooperation between the West German firm "Braun" A.G. of Frankfurt, and the Yugoslav enterprise "Iskra" of Kranj;
- Agreement on long-term cooperation between the Swedish Firm SKF of Goteborg; Sweden and Yugoslav enterprise "Pretis" of Sarajevo.

The major features of all the three agreements are: joint production of parts necessary for the assembly of manufactures, close

cooperation in carrying on business and especially in marketing; absence of any standard form of business organization; fairly long lasting. So, the subject of the "Castor-Končar" agreement consists of joint programming of the manufacture of the superautomatic washing machines; division of labour and mutual exchange of supplies for the purpose of completing these machines; mutual free-of-charge cession of technical documentation both for the production and assembly of the existing models and for the production and assembly of subsequent modifications and improvements; "Castor's" supplying "Rade Končar" on credit with the means of production; and sale of finished products on the basis of an agreed apportionment of markets. The joint division of labour and production is effected by "Rade Končar" manufacturing electric motors and heaters and "Castor" the actual machines. "Rade Končar" will build electric motors and heaters into the machines supplied by "Castor", while "Castor" will build into its own machines the electric motors and heaters supplied by "Rade Končar".

The "Braun-Iskra" agreement is somewhat similar. "Iskra" has received a franchise to assemble and sell in Yugoslavia certain models of Braun's electric razors. For the purpose of assembly "Iskra" will purchase certain parts from "Braun" and will manufacture the others on the basis of technical documentation that "Braun" will make available. Furthermore, to enable "Iskra" to start its own production, "Braun" will give "Iskra" the necessary machinery free of charge and supply the necessary expert assistance. "Iskra" is to pay for the imported parts by supplying the other parts from its own production. The razors thus manufactured will be sold in Yugoslavia, under the joint brand name of "Braun-Iskra". Since "Iskra" is initially expected to be primarily engaged in the assembly of imported "Braun" parts, and in view of the servicing to be performed by "Iskra", this agreement is also similar to the agreement of the second sub-group.

The "SKF" - "PRETIS" agreement provides for the joint production and marketing of ball-bearings.

Some other agreements belong to this category as well; for instance, agreement between "Iskra", Kranj and "Central Date Corporation", Minneapolis, USA (production of electronic computers); between "Electronic Industry", Niš and "Sperry Rand Corporation", Switzerland (production of electric razors of the brand "Remington Selectric", between

"Potisje", Ada and "Fimeg", Trst (production of lathes and one-spindle automation, and so on.

As it was already stressed, foreign parties to these agreements do not make financial investments. However, they make technical investment, investing first of all know-how and that without any compensation, then equipment, either on credit (to "Končar") or free of charge (to "Iskra"). Know-how is later on exchanged the domestic partner being bound to inform his foreign partner of all the innovations he developed in course of the production. So in this later phase the home partner also invests know-how.

Economic motives of Yugoslav partners for establishing the above forms and examples of production cooperation are:

- relatively speedy mastering of new, qualitative products;
- production of some elements of final product in large series that results in smaller expenses per a unit of production;
- gaining of technical knowledge and technical treatments from the developed partner;
- acquiring of a greater sum of foreign exchange necessary for importing of certain materials and parts;
- qualifying for competitive appearance on the domestic and foreign market, that should result in greater profit.

Next are the main motives of foreign partners from the developed countries for entering into the long term cooperation agreements: a) lower prices for the parts, assemblies and sub-assemblies bought from the partners from the underdeveloped countries; b) greater sale of manufactures of their own production. In the respect of lower prices, looked upon through the hitherto practice of Yugoslav enterprises, realization of economic motives that refer to the lower prices, is effected in case the price of the imported parts is lower from that of the parts of home production, i. e. if.

$C_u < C_d$ , where:

$C_u$  = the price of the imported product from the foreign partner

$C_d$  = the price of the domestic partner.

In view of the risk the developed partner has to run when importing parts, assemblies and sub-assemblies from the less developed

partner, the price of the parts of the foreign partner must in the majority of cases be lower from that of the domestic seller for about 10%.

It is mainly non-compliance with the fixed deadlines that is understood under risk here, as well as risk of a possible bad quality of the imported parts. On the other hand, the import of these parts, assemblies and sub-assemblies for industrial products of a higher degree of processing in the OECD countries is regularly charged with the rates of appr. 15 per cent.

If the factor of risk and the factor of customs are taken into consideration, then the cooperation will be economically possible in case relation of prices satisfies the conditions against the equation:

$$C_u = 0,75 C_d$$

Further elaboration will illustrate the extent to which in the Yugoslav industrial cooperation practice so far the cited economic motives were successful.

## 2. Agreements on Rendering Technical Services

From this sub-group the present writers take into consideration the five inter-related agreements between Italian Firm "Aspera Frigo" of Turin, Italy, and the Yugoslav electro-industrial enterprise "Obod" of Cetinje, in the period of 1959 till the end of 1966.

These agreements are similar to those under 1. They are predicated upon the desire of Yugoslav enterprises to modernize their operations and undertake a new line of production. Thus, they provide for mutual supply of individual parts, assembly of the machinery, their running in and testing, cession of technical documentation, credit etc. These agreements also lack any form of business organization and have been concluded for five to seven year periods. However, despite these obvious similarities with the agreements under 1, there is a difference: here there is no joint programming of production, because the total technical accomplishment of the domestic partner is not up to the standards of the foreign partner.

Under the provisions of the above mentioned agreements, "Obod" manufactures refrigerators by importing compressors and fitting them into its own casings. Hence, the subject of its agreement with Aspera

Frigo of 14th July, 1966 was to learn to produce a certain electric motor forming one part of the compressor (first phase). The Italian partner secures "Obod" credit to purchase equipment, and at the same time is committed to erect plants, set up an assembly line and start production by a certain deadline. The assembly line, working in two shifts, must produce 500.000 electric motors per annum, the same quality as those produced by "Aspera Frigo" at its own plant in Turin.

These electric motors are to be manufactured according to the technical specifications of "Aspera Frigo", which will also timely inform its Yugoslav partner about any subsequent modifications in the manufacture of compressors. During the term of validity of the agreement, "Obod" is to supply the majority of the motors it manufactures to its Italian partner, sell the balance to third parties, while it will purchase other compressor parts from "Aspera Frigo". The value of these mutual supplies will be balanced later.

The Additional agreement on cooperation marked the beginning of the second phase in learning to produce compressors. This time "Aspera Frigo" agreed to teach "Obod" to manufacture compressor housings and lids and to effect the final assembly, filling and testing of compressors. Again, the Italian partner agreed to set up an assembly line in the production of housing and lids and for the production of compressors electric motors as well. Furthermore, "Aspera Frigo" will permit "Obod" to export whatever quantities of assembled compressors "Aspera" does not need for its own refrigerators. The partners will agree on permissible markets.

Practice showed that the relations established by the agreements from this sub-group in the initial phase mainly come to assembling of the parts imported by the home partner from his foreign partner. But home partners are not satisfied with such a state of affairs, positive consequence the of which is engaging of capacity. Therefore, they do their best to master production of parts and assemblies, so that their collaboration with the foreign partners reached, as soon as possible, the degree of division of programs of production, that is specialization. In that way the tendency is that the agreements of this sub-group, by lapse of time, get the character of the agreements of the first sub-group.

The inquiries "Castor Končar", "Obod - Aspera", "Frigo", "Braun-Iskra" and other similar examples of cooperation, show the following average results:

- a) saving of time, i.e. difference in time of mastering the manufacture of particular parts in case mastering by the domestic partner was effected through his own constructions and according to the technical documentation of the developed partner, makes 14-20 months averagely.
- b) mastering expences in case of using foreign technical documentation are lower by 50-70%
- c) if standard quality of the developed partner is marked with 1,00, coefficient of the achieved quality of the product, in case of mastering the manufacture of it by the domestic partner through his own development, constitutes averagely 0,7 - 0,8 and in case of foreign technical documentation being used it makes 0,93 - 0,99,
- d) effects reflected on an increased profit by means of larger sales and lowering production expences result in bigger profit and that by 60-70%.

The above given figures demonstrate clearly economic efficiency of such forms of productional cooperation.

### 3. Licence Agreements

This sub-group includes inter alia the following agreements:

- The Bottling Appointment Agreement between the American "Pepsi-Cola" Company, New York and the Yugoslav enterprise "Centroprom", Belgrade;
- Agreement between "American Cyanamid Company of Wayne, New Jersey and Yugoslav enterprise "Zorka", Chemical Industry of Šabac.

These agreements come to franchise and making use of the brand (Franchise and Brand Agreements). Under the first agreement the "Pepsi Cola Company" appointed "Centroprom" as its bottlers and authorised it to hire a manufacturer to make the drink according to the Company's formula. This agreement gave "Centroprom" the exclusive right to bottle, sell and distribute "Pepsi Cola" in Yugoslavia for ten years.



The same day "Centroprom" concluded a special agreement with "Bukovička Banja", Arandjelovac of which the American company approved. Under this second agreement, the enterprise of Arandjelovac manufactures the mentioned beverage and bottles it, while "Centroprom" is responsible for the standard appearance of the bottles. "Centroprom" retains all sales rights. For purposes of this production, the American Company ceded, free of charge, certain water treatment equipment. As a matter of fact, the essence of this agreement consists of the fact that "Centroprom" is committed to purchase from the Pepsi Cola Company a minimum annual quantity of all units of Pepsi Cola concentrate.

The relationship between "Centroprom" and "Bukovička Banja", its sub-licencee, is not under controversy. "Bukovička Banja" performs specified services for "Centroprom" for an agreed compensation. As to relationship between "Centroprom" and the Company, Article 18 of the Agreement explicitly states that "nothing in this Agreement shall create or be deemed to create any relationship of agency, partnership or joint venture between the "Bottler and the Company". The Company has a right of inspecting the Bottler's books. Generally, the Agreement is characterized by a comparatively long period of lasting and close cooperation of the partners in selling "Pepsi" on the Yugoslav market.

The agreement between the "American Cyanamid Company" and "Zorka" is somewhat similar to the "Pepsi" - "Centroprom" agreement. It is a licencing arrangement under which the American partner permits his Yugoslav partner to use his American know-how to convert cyanamid concentrates into final products; to put the American's trade-mark, and then sell them in Yugoslavia.

This category also includes recently concluded agreement between the American Company "Coca Cola", New York on the one side and "Generalexport", Belgrade and "Slovenija vino", Ljubljana on the other side (manufacturing and bottling of beverage "Coca Cola"); the agreement between the West German firm "Knorr of Heilbronn and "Kolinska", Ljubljana (manufacturing of soup) etc.

The economic effects of execution of some licence agreements in Yugoslavia were watched by means of corresponding inquiries. In this case too the effects are expressed by the following indicators:

- a) savings of time spent on mastering a new product;
- b) savings of mastering expenses;

- c) effects, measured by coefficient of product quality, as compared to the standard quality of the more developed partner;
- d) effects in an increased profit.

Inquiries are undertaken against the example of licence production of tractors Fergusson-IMT; Motors Perkins-IMR, picking machines Pittler-Prvomajska, and lathes Morando-Potisje.

The results of the inquiries give the following effects:

- applying of licences while mastering motors, tractors and machine tools facilitates savings of time, from 2 to 5 years; basically the time of mastering such kinds of products through licence production, shortens from 2 to 5 years;
- well-prepared and correctly used mastering of new kinds of those products, by means of licence, enables saving of mastering expenses by 200-500%.
- in relation to the standard quality of the foreign partner (1,00), mastering of a new adequate product by the domestic partner, relying on his own constructing provides an average coefficient of the quality 0,7-0,9; while mastering which relies on the licence and technical documentation gives 0,92-0,98 coefficient quality;
- mastering thanks to licence provides profit greater by 50-70%.

#### B AGREEMENTS ON CARRYING OUT A CERTAIN BUSINESS

Out of the numerous agreements that enter this group, the attention will be paid to the agreement on erection sugar mills, made between the Yugoslav manufacturers of equipment "Jedinstvo", of Zagreb and "Djuro Djaković" of Slavonski Brod, on the one hand, and Italian firms "Nuove Reggiane" and "Ansaldo San Giorgio" on the other hand.

Under the provisions of these agreements, home investors entrust home or foreign manufacturers the work of erection complete plants and starting production. Home and foreign suppliers of equipment happen rather often to cooperate, irrespectively of the fact

who of them is the bearer of work. So the agreements between home contractor contain usually a provision stating, that some part of the equipment will be produced by a foreign firm. Following such an arrangement home contractor underwrites a separate contract with foreign firms on technology and delivery of part of equipment.

Complications usually arise in connection with the guarantee of technological efficiency of the plant, the erection of which is the subject of the agreement. In actual fact the home contractor guarantees the home investor certain technological effect. By the same token he wants foreign suppliers of equipment, with whom he entered into special agreement, to supply him with the same guarantee.

Global effects of various forms of industrial cooperation of the Yugoslav industry of processing metals in 1967, are shown in the table below:

in million of dollars				
Number Ord.	Form of cooperation	Export	Import	Balance
1.	Technical cooperation (licence)	23,5	29,0	- 5,5
2.	Cooperation on the basis of technical documentation	3,0	3,8	- 0,8
3.	Mutual supplies of parts, assemblies and sub-assemblies	7,2	7,1	+ 0,1
4.	Cooperation regarding division of the program	1,2	1,6	- 0,4
5.	Cooperation regarding complete machinery and individual equipment	7,4	6,8	+ 0,6
6.	Cooperation regarding processing, finishing, etc.	1,0	0,2	+ 0,8
7.	Cooperation regarding "ad hoc" business	2,0	2,2	- 0,2
8.	Technical assistance	0,5	0,3	+ 0,2
9.	Cooperation regarding division of assortment	1,0	1,3	- 0,3
Totally:		46,8	52,3	- 5,5

Source: Inquiries of manufacturers.

### III. Review of Industrial Cooperation Agreements and Their Practical Application so Far

All developing countries, including Yugoslavia, in the course of the intensive building of their own industry, face the alternative:

- a) either to rely in construction, especially in speedy mastering modern, qualitative products, on their own forces (their own constructions, their own technical solutions) or
- b) to accept the solutions of the developed countries, by buying licences and technical documentation.

The both ways have both advantages and shortcomings, as well as their adherents or opponents.

If we accepted the elements of modern marketing and those of a rational economic computation, leaving aside the non-economic factors, we could clearly see that backing on foreign licences and technical documentation shortens, averagely, the process of mastering complex products by 2-5 years. Simultaneously, savings on mastering expenses on a new product (construction, tools, designing of prototype, testing, laboratory, etc) lessen by 2-4 times averagely. This data undoubtedly show that course toward the achieved level of development and technical solutions of the developed countries is better.

Next are other advantages due to industrial cooperation with developed foreign partners:

- a) relatively high quality of a product;
- b) lower manufacturing expenses and herefrom a possibility of being competitive with respect to prices;
- c) keeping up with the most modern technico-technological achievements in a given technical domain;
- d) possibility of enlarging sales in home and foreign market;
- e) better economic effects due to a more modern organization of work (greater profit).

Objections to the exclusive or predominant backing on foreign development are as follows:

- constant or long-term dependence upon the foreign partner;

- permanent lagging behind the foreign partner's development from 3 to 5 years;
- neglecting proper technical and personnel development;
- comparatively costly way of development, that requires permanent foreign exchange expenditures for import of certain parts and assemblies;
- licence and other production based on foreign solutions makes an export expansion impossible (this is due to the fact that the licensor most often limits the markets on which the licensee may appear).

Meanwhile, Yugoslav practice in most examples of licence and other forms of production cooperation shows that though some of the objections made are partly justified, total economic effects, evaluated by time and expenditures necessary to master the production, and especially by the factor of product quality, completely justify development based on buying most modern licences and technical documentation. To insure themselves against possible purchase of outmoded technical solution, domestic enterprises should:

- a) keep up with the newest achievements in a given domain of technics and technology;
- b) be familiar with various ways of development of a certain technology;
- c) be aware of the prices and other terms under which competitive firms offer licences or technical documentation;
- d) be in possession of such technical and economic personnel and standard organization of work, that would facilitate mastering of the new product relatively speedy subject to some adaptation and bettering, as well as its timely marketing.

The past practice indicates that the application of the agreements on industrial cooperation between the Yugoslav enterprises and foreign firms, despite all the shortcomings, turned out to be fruitful home enterprises established and intensified their relations with foreign partners and in such a way realized definite economic and technological progress.

Though it cannot be argued that in all the examples of production cooperation of Yugoslav practice all the quoted factors, were present,

it is necessary to lay stress on the demonstrated capability of mastering and adapting certain products (e.g. mastering of "Perkins" motor, "Ferguson" tractor, Massey-Ferguson" combine motor-cars "Fiat", "Citroen" and NSU spare parts etc).

Thanks to the established cooperative relations, home enterprises have, first of all, achieved modern technology. The application of foreign formulae of the modern technological process enabled them to start the modern production of the up-to-date and competitive products. In this way home enterprises began also to realize wider assortment of products, destined both for home market and for export. Besides, due to this cooperation and in the course of application of the agreements made, service became better as well. Cooperatively manufactured products (for instance, "Braun-Iskra" electric razors) are longer lasting, since they can be regularly maintained (spare parts are provided and there is a service as well).

These results are also due to the legislation, e.g. the Decision On Production Cooperation Which is Considered a Long-Term One. As stated, the Decision has opened the way to foreign exchange self-financing, which in its turn contributed to the production in big series. This does not imply that the existing foreign exchange and foreign trade regime needs any further improvement. To achieve the aims of the general economic reform, further liberalization of this regime is necessary. In this respect, it is primarily to increase sources of funds that would stimulate various forms of industrial cooperation and eliminate other practical drawbacks that block the way to its extending. The inquired Yugoslav business people enumerated the following drawbacks as the main ones:

1. relatively high customs duties for parts, assemblies and sub-assemblies as well as manufactures, the import of which is effected on the basis of established industrial cooperation; it is considered that such import should be freed from customs payment, under the reciprocity principle;
2. lack of the developed partner's interest to more widely credit or to lastingly invest for the purpose of constant keeping up of the competitiveness of the partner licensor or beneficiary of technical documentation; it is marked, that a great deal of the problems could be solved by means of joint capital investments;

3. insufficient engagement of the both partners for the purpose of joint appearance on the third markets; closer business relations between the interested partners are considered necessary in this case.

In connection with these drawbacks there turned up other questions of principle requiring adequate solutions on the occasion of concluding new agreements on industrial cooperation. The first question concerns equal division of work in programming joint cooperation. It happens most often, that the Yugoslav partner is assigned with the production of those parts which requires more material and less work. This division is probably due to the differences existing in technical and technological equipment. But the fact is that such a division stabilizes the existing difference instead of wiping it gradually off. Therefore all the agreements on programming of production should envisage cooperation in phases to the effect that in the initial phase one should count on the differences existing in the levels of technical and technological development while in the next phase more important business should be entrusted to the home partner.

Another question relates to the disparity of prices of the products that are made in cooperation. Labour being cheaper in Yugoslavia, joint cooperation with the foreign partners from the developed countries cannot, as a rule, flow against the world prices. Therefore, home partner will have to charge supplies of his product to the foreign partner at the prices that are lower than the world ones. However, he will have to pay the supplies of his foreign partner's products at the prices which are higher as compared to the world ones; this is due to the fact that he buys them in smaller quantities and because of high import customs. Differences that take place in the both cases will have to be compensated in such a way that the respective products will be sold at lower price in the home market. Therefore, it is worthwhile to find some way to neutralize the quoted disparity in prices in the frames of the Yugoslav economic mechanism.

Besides, it should also be kept in view, that the use of technical and technological innovations that are made feasible to the domestic partner through the agreements on industrial cooperation with foreign countries, influences greatly further economic development of Yugoslavia.

Economic foundation of socialism cannot be built in an industrially underdeveloped country. Hence, it is necessary that the society and the state pursue an organized policy of support to all the efforts aiming at technical and technological linking of Yugoslav economy with the developed economies of other countries.

## JOINT INVESTMENT AGREEMENTS BETWEEN DOMESTIC AND FOREIGN ENTERPRISES IN THE LIGHT OF NEW YUGOSLAV REGULATIONS

### I. General points

New Yugoslav investment regulations that came into force on July 27, 1967, facilitate joining of foreign and domestic funds by way of an agreement. This agreement is concluded for sake of achieving common and lasting business aims, providing for risks and profits to be jointly divided. It is quite clear that by this a contractual non-equity joint venture investment is meant. The subject of these agreements comes to joint investment through production-financial cooperation. Taken as such, this agreement represents, on the one hand, specific combined investment of capital and, on the other hand, a legal transaction of international partnership.

Foreign financial investment is combined, because it is neither direct or indirect, i.e. it combines the elements of the both. It is not direct, because according to the new regulations, the foreigner cannot either independently or together with the Yugoslav partner start an enterprise or a branch in Yugoslavia which he would invest. Neither can he join his capital with the foreign one in the form of equity joint venture. The only thing he can do is to invest in the existing Yugoslav enterprise, or in the enterprise which is still to be established by the Yugoslavs for the purpose of production financial cooperation. But the rent he gets in the form of profit sharing against his investment in the Yugoslav enterprise, may be only variable, that reminds of the direct investments. Taking risk in common with his



Yugoslav partner the foreigner may suffer a loss and get nothing at all. On the other hand, foreigner's financial investment is not indirect, because import of technology and equipment which is expected from him, could not be considered as giving credits in finance in kind with a fixed rent due to his partner's relation with home enterprise. Consequently, according to the philosophy of new legislation and the subject-matter of the first joint investments agreements between home and foreign firms, the concluded so far, envisaged investment simultaneously contains elements of direct and indirect, financial and technical investment. Therefore it is termed combined here.

Joint investment through production-financial cooperation, envisaged by the new Yugoslav regulations, is a legal transaction embodied in an agreement on international partnership. It matters here just such an agreement since all the three required elements of international partnership are present a community of interest that supposes doing business in common; joint division of income and losses; lasting cooperation.

In such a specific regime of foreign investments, partners also found in their agreements specific solutions to all the important questions of mutual production-financial cooperation: properly, form of business organization, management, etc. Analysis of these solutions will be effected on one of the concrete cases taken from practice. The agreement in question is that between Belgrade Graphic Works, of Belgrade, and Printing Developments International, of New York, Center for Europe, of London, signed on May 17th, 1968. The agreement is entered on a special register on the basis of the decision of Federal Secretariat for Economy No. 107/2 of May 21st, 1968. According to its Article 15, the agreement entered into force on the day of its registration.

## II. Joint Investment Agreement Between Belgrade Graphic Works and Printing Development International

### 1. Purpose of the Agreement

The purpose of the agreement is for the Belgrade Graphic Works to master modern electronic technique, technology and work organization and also to increase productivity of labour and export so as

to divide increased profit, earned in such a way, between the both partners proportionally to their investments. In other words, providing for maximal profits is the purpose of the agreement. Instruments for such maximizing of profit are: modern electronic technique, special technology and modern organization of work.

### 2. Subject-Matter of the Agreement

The subject matter of the agreement consists in joint financial investment with the view of starting a joint business unit in the frames of the Belgrade Graphic Works and that under the name of "Studio PDI-BGZ". This provision is to be understood in such a way that the Yugoslav partner, within his business organization, sets up, by joint funds, a branch that will be run together by him and his English partner. Hence, "Studio" is a "common" unit, in so far as in it, under joint management and direction of the both partners, one part of operation, singled out of the whole business of the Belgrade enterprise will take place. "Studio" is not a "common" unit in so far as its setting up is concerned: it has not been set up by both partners, but only by one of them (the Yugoslav). The unit is not common; it is used for jointly transacting business with the view to jointly invested funds.

Organizing "Studio", the partners jointly organize the process of photo preparation for the needs of graphic industry. Therefore, jointly invested funds will serve operation of "Studio", that mainly comes to electronic selection of paints from colour original; working out colour duplicates and photo assembling of colours.

For enabling "Studio" to do the assigned business, the partners, agreed to take on lease for three years "Skaner PDI" machine from the American Printing Developments International, of New York. The machine will be placed in Belgrade "Studio". Therefore, joint investment here, if looked practically at, means sharing in paying the rent for the mentioned machine.

Use of "Skaner", which represents the highest achievement in this field of technique, makes it possible:

- a) to work out high quality colour duplicates and assembling of photo colour;

- b) to considerably increase labour productivity and to lessen production expenses as compared to the treatments that were applied before;
- c) to increase sale of colour duplicates and assembling of photo-colour on the home market as well as on the foreign market;
- d) to increase proceeds and profits of "Studio".

### 3. Investments

Partner's investments range within the amount envisaged by the law, that is: English firm 49% and Yugoslav enterprise - 51%. The structure of investments is foreseen to be stated by a special arrangement. That special arrangement will be concluded, with reference to the main agreement, by the "Studio PDI-BGZ" on the one hand and two partners - on the other hand.

### 4. Foreign Partner's Obligations

The agreement does not provide a closer definition of the foreign partner's obligations, which as well as the home ones are turned into elaboration on the subject-matter of the agreement (for instance, obligation to deposit financial investment, transfer of the right of using licence and know-how to the home partner; supply of equipment, training of personnel, etc). Some of these obligations in the case at stake are already fulfilled by the foreign partner pursuant to special arrangements.

The agreement also reiterates legal provision on the transfer of rights and obligations. In other words, in case PDI wishes to transfer its rights and obligations to another juristic or natural person, it should respect the priority principle in favour of the Belgrade Graphic Works. That means, that the English partner is bound first to offer the Works to take over his rights and obligations. The Works is expected to respond to such an offer within 60 days. An exception is made to this stipulation in case the English partner wishes to transfer his rights and obligations to some company-member of the PDI group. Namely, if "another juristic person" is one of the members of PDI

concern, the English partner, in this case, may transfer his rights and obligations, neglecting the priority principle. As a result of such a transfer, the new PDI company will undertake rights and obligations of the English firm and become, instead of it, a partner of the Belgrade Graphic Works in venture under this agreement.

### 5. Home Partner's Obligations

Home partner's obligations are not defined by the agreement more precisely either. Although by interpreting its provisions it may be concluded, that the home partner is the bearer of production through "Studio" and he is obliged to secure working assets, premises and sale of jointly manufactured products.

"Studio" being a singled unit, within the frames of the Belgrade Graphic Works, the agreement foresees keeping special accountancy "according to the regulations in force in SFRJ". In this same way there will be organized running financial business of "Studio" provided however that everything should be completely acceptable for the English partner as well. This provision corresponds to that of Article 64d, p. 2. of the Law amending the Law on the Resources of Economic Organizations, according to which "contracting parties have the right of inspecting the books where the evidence of joint business income is given".

### 6. Property and Financial Relations of the Partners

#### a. Property

This question is not explicitly regulated by the agreement, which would generally be rather difficult with the view to the unprecise language of the Law amending the Law on the Resources of Economic Organizations. But due to the specificity of the agreement under consideration, the following conclusions can be reached. Everything is managed according to the principle of lease, so that application of the *pactum reservati domini* rule is excluded, since it is not the English partner who appears as lessor, but the third foreign person (New York firm). Lessee is "Studio". Therefore, in relation to the lease of "Skaner" from the New York firm,

the partners pay rent according to the obligations the "Studio" took over under his agreement with the lessor. None of them gains the title, because it is retained by the New York lessor. With reference to this, it is worth reminding that in case of cessation of the agreement the Belgrade Graphic Works has the right to enter into a lease agreement at the same rent that "Studio" would pay for the period of the next three years.

As for premises in which the "Studio" will operate and the equipment it will use, there will be also concluded an lease agreement. This time as well "Studio" appears as lessee while the Belgrade Graphic Works appears as lessor. According to this agreement, property relations do not change either: premises and other equipment continue to be socially owned while the right of using them retains the Belgrade Graphic Works, as it was before. Neither "Studio", nor the English partner take over the rights of the Works.

#### b. Calculation System of Joint Venture

The basic agreement does not explain the way of fixing profits, amortization, etc. Those questions will probably be the subject of special annexes. With reference to this, it is worthwhile to remind that the necessary elements for stating production economy and business profitability can be found out, at this stage of execution of the agreement, only on the basis of preliminary calculation for one product-representative.

Such calculation is lacking. Nevertheless, it would be necessary to work out, in supplement to the basic agreement, a preliminary calculation for one product-representative. The following elements should be seen out of this calculation:

- product and annual sale of this product;
- direct production expenses (material for manufacturing),
- personal incomes (connected with the manufacture),
- rent (depreciation)
- plant expenses
- overhead expenses,
- production price,
- profit,
- sale price.

It is quite obvious that in this case calculations should be made—~~either~~ preliminary or settling—according to the wellknown classical scheme reflecting the structure of the sale price of a product in trade economy.

The reasons are as follows:

1. calculation has to be clear to the foreign partner;
2. elementary calculation of one product-representative is in question.

As for *profit division* itself, the agreement only envisages, that the profit gained by "Studio" work will be divided proportionally to the invested funds.

The English partner has the right to *transfer* his part of profit according to the valid Yugoslav regulations. On the funds earned thanks to his share in joint business income PDI pays tax assessed under Yugoslav legislation. These contractual provisions practically mean that the partners will, first of all, find out the profit of running business jointly. The foreign partner is entitled to a part of the fixed profit, which is proportional to his investment. That part of his is charged then by the amount of the tax assessed (35%). At last, the foreign partner is obliged to leave in Yugoslavia 20% of such net profit of him (through re-investment or deposit with a bank). As for the rest of the profit, the foreign partner is free to transfer it.

The foreign partner exercises his right of transfer in the frames of the valid Yugoslav foreign exchange system. As it is known, under that system the transfer may be effected only at the expense of the foreign exchange the Yugoslav partner disposes of in his retention quota and also of the expense of the foreign exchange depreciation funds (10% of depreciation according to the determined quotas). On the basis of the practice so far, it is estimated that such resources of funds are insufficient for an efficient transfer. Therefore, the existing legislation is expected to be amended in terms of increasing resources serving the realization of transfer of the foreign partner's part of profit (net foreign exchange influx, etc). In this connection, the partners should have in view, that it is only successful running of joint business in convertible areas that fills the resources of funds out of which the foreign partner's share of profit is transferred.

### c. Suffering risk

As with regard to profit so also with regard to business risk, the agreement provided that the latter will be divided by the two partners proportionally to their investments.

## 7. Joint Obligations of the two Partners

Out of those obligations there is one concerning third party liability. The partners are responsible for the obligations of "Studio" to third party but only within the value of the investments. This provision is characteristic of some joint investment agreements made so far. Being a singled business unit, in the frames of the Belgrade Graphic Works, "Studio" will enjoy property autonomy (it will have separate book-keeping, etc). In view of this, the question of responsibility of "Studio" for the obligations of the entire enterprise will be solved out of the general regime, since the partners did not otherwise agree. In other words, whereas it was not arranged that "Studio" would be responsible for the obligations of the whole Belgrade Graphic Works, it is quite normal to suppose, that the partners' intention was to make this separate unit cover its own obligations only.

On the other hand, it is expressly envisaged that the partners are not responsible by their whole property, but by the property of the unit only, i.e. within the limits of their shares. A part is not responsible for the whole; the whole is responsible for the part only by the property of that part, which means, that the part is responsible for itself. Such a solution on limited responsibility paves way to limited bankruptcy that is bankruptcy of a singled organizational unite in the frames of one and the same juridical person, which was not the case till now. Needless to emphasize how useful and practical that solution is for the regulation of mutual relations of home and foreign partners in the field of production-financial cooperation.

## 8. Management

Like other arrangements of this kind the agreement under consideration envisages that the business unit, i.e. specified activity which is subject of cooperation, will be managed by a *Operating board*.

However, this agreement differs from other agreements in the respect of the composition of operating board. Notably, in this concrete case the operating board consists of three members of which one is nominated by the Works, another by PDI, while the third is elected by the agreement of the parties. With the view to the odd number, it will be easier to pass decisions in the board of such a structure, than in the one whose total number is even.

As for the *procedure*, the operating board passes decisions by a majority vote which is the only way corresponding to its structure. Interesting is the regulation according to which the representatives of the Works and those of PDI have the veto right in the operating board. Thence, negative vote of one of the two partners frustrates the adaption of a decision which the second partner and the third member declared for. Strict and unpopular, the provision on the veto right in this agreement, still represents the last protection of the partner that considers his vital interests threatened. It is worth hoping that the partners, in their fruitful cooperation based on principles of good faith mutual confidence and common interest, will have to make use of this right very seldom.

The question of *competences* of operating board is not elaborated in details in the agreement. It looks as if it were let to practice to demonstrate which share of their competences the self-managing organs transferred to the operating board. The agreement only states that the operating board's *assignment* lies in managing and directing business unit. The notion "managing" is wider than "directing". "Managing" is that, which is in Anglo-Saxon, doctrine called "policy making". And that lies in worker's concil's competence. Directing is the competence of the managing organs (directing board and the director) some aspects of which may be transferred to the operating board. Future practice will probably manifest that the partners take it into account. Generally, it is rather difficult to draw the difference between managing and directing. Therefore, it is difficult to differentiate between the competence of managing organs from that of operating board. By cited provisions managing organs of the Works transferred a part of their competence to the operating board. The agreement does not enumerate the transferred powers, but names those which are not transferred. Namely, it is stated that the workers of "Studio" have all the rights

and obligations envisaged by the positive Yugoslav regulations. This generalized provision still orients that the managing organs of the Works retain the right of hire and fire; the workers of the unit will elect their own managing organs, etc.

At last, it is envisaged that operating board may transfer some part of his competence to some of its members or to the third person by a unanimous decision. Probably, it will be the representative of the home partner in the operating board who might avail himself of this possibility being domiciled in the location of the seat of the business unit ("Studio"). The transferred part of competence will most often concern transaction of concrete business, conclusion of agreements or similar operations of current operation and in the spirit of general decisions made by the operating board.

#### 9. Settlement of Disputes

The agreement envisages that all the disputes arising out of its implementation or interpretation will be settled by an arbitral tribunal consisting of three members. One member is nominated by the Works, another by PDI. Arbitrators nominated in such a way elect the third member. However if the two nominated arbitrators fail to agree in view of electing the third member within thirty days from the day of nomination of one of them, the dispute will be submitted to the Arbitration of the International Chamber of Commerce in Paris for settlement. Arbitration of the International Chamber of Commerce in Paris will also be competent in case the formed arbitration will prove to be unable to pass an award within 30 days from the date of nominating the first arbitrator.

As it is seen out of a number of ways of the settlement of disputes, offered by the Law, the contracting parties have chosen only two and those in combination: special arbitration and foreign arbitration. Hence, they will not apply either with economic courts in Yugoslavia or arbitral tribunals at the Chambers.

The parties did not envisage the material law, under which the arbitrators are supposed to adjudicate their disputes. This question remains therefore, to be negotiated from case in the arbitration com-

promise when nominating arbitrators, respectively when submitting the dispute to the International Chamber of Commerce in Paris.

#### 10. Final Provisions

##### a. Duration

The agreement between the Belgrade Graphic Works and PDI is concluded for 3 years. Duration is counted from the date of the entry into force of special agreements on the lease of "Skaner" PDI and of premises. If none of the parties cancels the agreement 6 months before the expiration of the 3-years period, the agreement is automatically extended for the next 3-years period.

##### b. Entry into force

As a matter of law, the entry of the agreement into force could not be solved in an orderly way due to the vagueness one may come across in the Law amending the Law on Assets of Economic Organizations. In other words, according to Article 63, para 4, referring to joining of funds of the home economic enterprises, the agreement is valid when approved by the worker's councils, or other managing organs. Yet, under Article 64, provision on joining of funds of home economic enterprises are also applied to the agreements on long-term investments by foreign persons into a domestic organization, unless, otherwise provided by the federal law. Finally, according Article 64j says that a long-term investment agreement between the domestic and the foreign enterprises is valid beginning with the date of the entry of its conclusion into a special register which is kept for such kind of agreements with the Federal Secretariat for Economy. At first glance the agreement seems to enter into force twice, or to be subject to two ratifications (that of worker's council and that of Federal Secretariat for Economy) which is illogical.

These provisions could be interpreted in two ways. According to the first way, the provision from Article 64j means that same Law, with reference to its Article 64z, has itself otherwise solved the problem of sanctioning the agreement on long-term investment between

home and foreign partner to the effect that the decision on registering is substituted for the worker's council approval. Herefrom, according to this interpretation, the worker's council approval were not necessary for the agreements with the foreign partner, the decision of the Federal Secretariat itself, being, ratification of a constitutional character. This would mean, that the legislator wished to condition entry into force of the agreement on a long term investment by the approval of the workers' council in that case only, when the both partners are home enterprises. But is the conclusion of such agreements with foreigners less important than that whose negotiators are all home enterprises, so that the worker's council sanction would be unnecessary? Undoubtedly, not. On the other hand, in case this hypothesis were founded in spite of all the arguments put above, then there would arise the question of the exact time of entry that agreement into force. That is, whether it enters into force on the day of passing the decision on registering it; or on the day when it is really registered; or on that day when the favourable decision is communicated to the parties. Those are all different dates.

According to the second, more acceptable way, the provision of Article 64j should not be interpreted in such a way, as if the question of sanctioning a long-term investment agreement is solved by the Law in a different way in case when one of the parties to the agreement is a foreign firm. Therefore, provision of the Article 63 para. 4 would relate both for the agreements on joining the funds between home enterprises as well as for such agreements concluded between a foreign and a domestic enterprise. Consequently, under Article 64ž, the provision of Article 63 para. 4 stating that the agreement signed is valid only upon approval of the worker's council of the home partner, would analogously be applied to the agreements with foreign partners. In context of such an interpretation, the decision allowing registration of the agreement on joint investment between the home and the foreign partner, would not have a constructive character. If so, it could be said that the agreement enters into force when approved by the competent organs of the two parties is brought into life on the date of registration. The competent organ for the Yugoslav enterprise is the worker's council; for the foreign capitalist one the direction; for the foreign socialist one a state organ is (usually Foreign Trade Ministry). With reference to this, it could be accepted that the agreement enters into force on the day of approval on the part of the competent organs of the parties under the

condition that the Federal Secretariat for Economy will pass a decision allowing the registration. As a future, uncertain incident the Secretariat's decision may be taken as a resolute or as a suspensory condition. In the first case if the subsequent passing a decision meant that entry of the agreement into force was dependant upon a resolute condition, the following situation would arise: the Secretariat passes a decision on the entry into the register, the operation of the agreement will be continued. In case the Secretariat rejects the application for registration, the sought condition will not occur. Notification on refusal of the registration would represent legal denunciation of the agreement *ex nunc*. The agreement had produced legal effects beginning with the approval of the workers' council and up to the time of notifying the partners of the rejecting decision. In another case, if subsequent decision meant that entry into force was subject to a suspensory condition the situation would differ. In the span of time beginning with signing the agreement and approving it on the part of the worker's council and up to passing a decision, it would be considered that the agreement made has no legal effects its application is suspended till the passing a decision. In case of a positive decision, the agreement starts to produce legal effects from that very moment. In case of a negative decision, the agreement will be qualified as being not concluded at all.

If to compare these elaborations with the solutions in the agreement under consideration, the following can be stated: the agreement is not conditioned by the approval of the worker's council at all, but only by the direction of PDI; it is stated that the agreement "enters into force and becomes valid on the date of registration". This could imply that the parties tended to the first interpretation of the law. But it should also be kept in view, that the worker's council of the Works has really given its consent to the agreement, though it is not stated in the text itself. Also the fact is that the date of actual registering is unknown; what is known is only May 21, 1968 as the date of the decision allowing the agreement to be entered into the register. Therefore, it seems that the agreement is subject to the approval of the worker's council of the Works and PDI direction, and it becomes valid on the date of its entry in the register kept with the Federal Secretariat for Economy. Nobody can be blamed for the unsuitable language of the

agreement and the gaps of the Law. Still until the legislation is amended, it remains disputable whether the agreement has conditionally entered into force on the date of the approval by the partners' competent organs or the agreement has entered into force only on May 21, 1968 when the Federal Secretariat passed a positive decision on its registration.

### III. Final Remarks

Out of the made account it may be concluded that the main difference between such an agreement on joining of funds and that on industrial cooperation, which does not include joint investment, comes to absence of credit arrangement. In other words, the agreements on long-term investment of funds of the foreigners into a domestic economic organization for the sake of achieving joint business aims subject to risk jointly divided, do not include credit relations. The partners do business as partners, dividing profits and suffering losses together.

On the other hand, it is impossible now to appraise the achieved results, that is to the practical implementation of the agreement under consideration, since the whole cooperation is still in the stage of preparation. "Skaner PDI" machine has not arrived yet. Therefore, the "Studio" has not started its work yet. Hence, there are no results for appraisal. The same is true for other agreements on joint investment. Irrespectively of that, it is logical that the economic purposefulness of the existing agreement should be estimated from the point of view of major trading factors in the frames of modern marketing. In the concrete case the following factors are meant:

1. product, its quality, level of keeping with modern technology and its development;
2. home and foreign consumers and their development;
3. consumption (the achieved level of consumption its future level);
4. product prices (from the point of view of competitiveness and profitability);
5. competition (quantitative and qualitative);

6. possibility of importing the product under the influence of foreign competition;
7. export of goods, from the aspect of quantity, export prices and import areas;
8. effects (profits) from the increased sale of products in the country and abroad in the period of 3 years.

#### 1. Product

Application of modern electronic equipment "Skaner PDI" keeping to the standard technological treatment, secures high quality of the following products:

- colour duplicates;
- assembly of colour duplicates.

The applied technique considerably increases labour productivity and makes it possible to lessen production expenses relative to the existing treatments.

In such a way, two main factors: quality and price of the product provide conditions for an increased sale of these products.

As for the problem of the product and its possible development and improvements, the agreement does not envisage whether some bettering and improvement of "Skaner" machine taking place in the lifetime of the agreement at the American mother-firm or at the competitive firms, will be applied also in the formed "Studio", so that the latter is constantly supplied by the newest technological achievements and in such a way as to keep competitiveness in the market. That could be regulated by a subsequent supplement to the agreement.

#### 2. Consumers

Though the matter is of specific products from the graphic industry, it is desirable that the agreement contains on abstract from the study on the inquiry of colour duplicates market and the assembly of photo colour. Such an abstract would provide a global idea of who is the consumer of these products in the country and abroad; of how many of them are there and of the way of their development.



### 3. Consumption

For a successful execution of the agreement it is most important to assess the past consumption, present level of consumption and future one of the jointly manufactured products. With reference to this, there arises a question whether the care of effecting the sale (consumption) is left to the Yugoslav partner only or whether it is joint action. It is not clear from the agreement whether part of consumption (in export) will be secured by the English partner, in which countries and in what way. Notably, in modern circumstances in such cases, especially when high productivity equipment is in question, practice shows that the most effective way is to have the sale against supply (production) provided by the foreign partner abroad. This method is especially actual for the cases when supply (real possibilities of production) exceeds absorption possibilities of home demand.

### 4. Price of the Product

It was said above that the agreement should be provided with a preliminary calculation for one product—representative. This calculation made according to the scheme of classical price structure, enables to see all the elements of price structure, i.e. economy and profitability of manufacturing a certain product—representative. Especially, market price, whether in the country abroad, makes it possible to state by means of comparison; the degree of product competitiveness, considered from the aspect of price.

### 5. Competition

In the lifetime of the agreement, competition is supposed to operate quantitatively in two ways:

- a. home competition, on the basis of the old, previously applied technique or possibly on the basis of the same, modern technique;
- b. foreign competition on the basis of the same modern technique.

There arises a question whether the American mother-firm may compete in the Yugoslav market and to make it possible for the "Studio" to be her competitor in some markets; if so which products could be involved and under what conditions.

### 6. Import

There is a possibility of importing the same products, on the basis of the same or possibly better technique in the course of 3 years, the lifetime of the agreement. In that way the import would appear as a limiting factor for the products of "Studio" in the Yugoslav market.

There may appear a competitive import, either urged by damping prices or in another way (higher labour productivity lower prices, high export premiums.) Such a case may occur from Italy, for instance. What measures will the partners take up to resist such an import? That is the question to which the partners ought to have a ready answer.

### 7. Export

Successful realization of the agreement depends to a great deal upon the export of a great part of joint production. This is in the first place due to the narrowness of the home market relative to the capacity of the scanner-machine, and to the necessity of increasing turnover and getting foreign exchange, for providing bigger profits and making earnings for the transfer of profit share. Will such an export programme be let to the operating board or should the partners have inserted it into the agreement for? The English partner with greater capital and more experience in the field of foreign market, could guarantee sale of one part of the manufactured products for export.

### 8. Effects (Profits)

The agreement is not clear as to what tentative annual profits might be. Therefore, a further addendum could produce the whole



account of profit, consisting of two profit accouts:

- a. profit out of home sale (in Yugoslav market);
- b. profit gained in foreign market (in export).