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Item 7(a) of the provisional agenda

TRADE AND INVESTMENT PROMOTION

INTERNATIONAL CONTRACT PRACTICES IN INDUSTRY (WP.5)

Note by the secretariat

1. The purpose of this paper is to highlight the progress of the Working Party on International Contract Practices in Industry (WP.5) and the activities of its various sub-groups in meeting its objectives as set out in the programme of work, which was approved by the Committee for Trade, Industry and Enterprise Development at its forty-seventh session. It will be recalled that at its last session the Committee confirmed that the following activities would fall under the jurisdiction of WP.5: (a) the holding of a Forum during the first day of its session on a topical issue related to the legal and regulatory environment governing trade and industry; (b) preparation of guides and briefing papers on trade and finance issues; (c) the advisory work of the BOT (Build-Operate-Transfer) Group; (d) the advisory work of the Real Estate Advisory Group (REAG); and (e) activities related to the revision of the European Convention on International Commercial Arbitration of 1961. In addition, the Committee also recommended that WP.5 should continue to work closely with the business community.

2. This note summarizes the developments related to these points since the last session of the Committee.

A. Forum on the Protection of Intellectual Property Rights in the Countries of Central and Eastern Europe and the CIS, Palais des Nations, Geneva, 26-27 October 1998

3. Over 250 participants, many of whom were from the business sector, attended the Forum. The Forum identified the weak implementation of intellectual property laws as a major barrier to investments in innovative, creative and knowledge-based industries, particularly in the transition economies. The Forum was held with the participation of the World Intellectual Property Organization (WIPO), the World Trade Organization (WTO) and the European Union (EU). The participants proposed that plans should be made to follow up the Forum by concrete action in the transition economies. Document TRADE/1999/5 provides the Committee with background information on the importance for investment of adequate intellectual property rights protection. As recommended by the Forum, document TRADE/1999/19 requests that an advisory group on intellectual property rights for promoting investment be established and sets forth a draft mandate and work programme for approval.

4. The Working Party has proposed to hold its next Forum on the "Practical Implications on Business of Competition Law, including questions of State aid, in the transition economies" and further proposed, subject to the secretariat's gaining approval from the relevant partners, that it should be held in a central European country, in cooperation with the EU PHARE programme. This Forum would constitute the first day of the WP.5 session. To date the secretariat has made progress in finding partners for this meeting but has still to find a country that would host this event.

B. Guides and briefing papers

5. The secretariat, at the request of the Working Party, will publish, in consultation with other participating international organizations, an extended version of the proceedings of its October 1998 Forum. Currently the Working Party is reviewing two documents: "Using Land as Security for a Loan" and "Leasing: Legal and Regulatory Aspects of Leasing Operations with a View to the transition economies". These, it is planned, will be published as briefing papers and will take account of recent trends in financing. REAG has prepared the Guide on the adaptation of real estate laws and it is currently being prepared for publication. The secretariat has almost completed the publication on the Guide on investment promotion techniques, which incorporates the materials presented to the Forum on the Prospects for Promoting Foreign Direct Investment in the transition economies.

C. BOT Group

6. Since the last meeting of the Committee for Trade, Industry and Enterprise Development, the BOT Group has held a "Conference on Public-Private Partnerships for Infrastructure Development" at the Bulgarian Investment Forum in Sofia with the Ministry of Foreign Affairs and the Bulgarian Foreign Investment Promotion Agency. The report of this meeting provided information to BOT Group members of Bulgaria's progress in establishing public-private partnerships in infrastructure projects. Part I of the BOT Group's Guidelines has been published and this has been distributed widely at conferences and seminars. Its next

meeting to discuss the finalization of Part II of its Guidelines and proposals from member Governments is scheduled to take place at the headquarters of EDISON in Milan, Italy, on 23 March 1999. With regard to requests from member Governments for consultations and training, the Government of Belarus has taken a decision to create an inter-ministerial group of experts to consider, with the cooperation of the BOT group of experts, the feasibility of BOT projects and public-private partnerships in Belarus.

7. The BOT Group, many of whose experts come from top companies in the field, has informed the secretariat that it would be pleased to receive additional invitations from member Governments to visit the country as a group and to see first hand the environment for BOT projects. With this in mind, the secretariat invites contacts by interested host ECE Governments. Such study tour activities do not always need to take place in transition countries and some Governments who have been in advance in encouraging private finance in infrastructure may wish to host study tours themselves for invitees from the transition economies. Alternatively, some of the Foreign Investment Agencies in transition countries may consider hosting such study tours/visits in the future. In this regard it should be noted that the Government of Bangladesh had requested the Economic and Social Commission for Asia and the Pacific to cooperate with ECE in organizing a visit of the BOT Group to that country to advise on BOT and public-private partnership projects.

8. Notwithstanding such activity, the overall progress of implementing successful public-private partnerships in infrastructure is slow in most countries. Related financing and legal issues are particularly difficult to resolve. One Government, moreover, has approached the BOT Group for training in negotiating concession contracts as their country has limited experience in dealing with such contracts.

D. Real Estate Advisory Group

9. It should be recalled that the mission of REAG is to organize meetings in countries, at their request, in order to provide advice on how to promote real estate activity more effectively and how to remove unnecessary regulatory mechanisms that impede private investment. Real estate activities are critical for developing financial services and improving sites for commercial and residential properties. The targets of advice are both national and local authorities as well as financial institutions. Particular focus is on "institution building". Governments have a critical need for institution building in order to create national mortgage markets while local Governments must build capacity in land management techniques, including the respect for environmental and social standards, in their own localities.

10. Because REAG missions take place over a period of 7 to 10 days, funding for this activity is required. This has been organized by the setting up of the Terre Initiative, launched in London on July 17 1999 by the Executive Secretary of the Economic Commission for Europe, Mr. Yves Berthelot, and Mr. Antonio Costa, Secretary General of the European Bank for Reconstruction and Development (EBRD).

11. With the cooperation of UN/ECE and EBRD and representatives of the Czech Government, the Terre Initiative will hold a Conference on "Economic Opportunities through Developing Real Estate Markets in central and eastern Europe and the CIS" in Prague, on 14-15 April 1999. (See the Information Bulletin describing the programme: TRADE/WP.5/1999/2). To date the Terre Initiative has paid a preliminary visit to Lithuania to undertake an assessment of the real estate market as a prelude to the full REAG mission, which will take place at the end of the year.

12. REAG also hosted a round table discussion on "stimulating viable real estate markets in the transition economies" in Cannes, France, at the annual MIPIM Trade Fair of professionals involved in the real estate business on 14 March 1999. Speakers include Mr. Vlademir Ressine, Vice Prime Minister, Moscow City Government; Mr. Gerald D. Hines, Hines, UAS; Mr. Robert Hall, Chairman of the REAG Group; and Mr. Geoffrey Hamilton, Regional Adviser, UN/ECE. The UN/ECE roundtable debate was attended by 240 people. In addition, the debate was televised live to the participants of MIPIM which had around 10,000 participants. REAG has been invited to organize an enlarged event, involving the countries of central Europe, at next year's MIPIM.

E. Proposals to revise the European Convention on International Commercial Convention on International Commercial Arbitration of 1961, Prague, Czech Republic, 26 September 1998

13. A meeting was held at the invitation of the Czech Government to discuss a proposal to revise the European Convention. A separate paper has been prepared to discuss the arbitration activities proposed as a follow-up to this meeting.

F. Mandate of the Working party

14. In recognition of the constant need to keep up to date in its work and in its approach, and in recognition of the growing importance of the high quality advice being offered by its various advisory groups, and the increasing role of the business community in its work, the Chairman proposed that the Working Party draft new terms of reference for approval by the Committee. These new terms of reference are found as an annex to the report of the Working Party (TRADE/WP.5/1998/11). In addition the Chairman proposed that the Working Party should change its name to: the Working Party on International Legal and Commercial Practice.
