



Economic and Social Council

Distr.
GENERAL

TRADE/1999/6
26 March 1999

ORIGINAL: ENGLISH

ECONOMIC COMMISSION FOR EUROPE

COMMITTEE FOR TRADE, INDUSTRY AND
ENTERPRISE DEVELOPMENT

Third session, 8-10 June 1999

Item 7(a) of the provisional agenda

TRADE AND INVESTMENT PROMOTION

INTERNATIONAL CONTRACT PRACTICES IN INDUSTRY

Developing Partnerships between Governments and Enterprises for the Use of Intellectual Property Rights to Increase Investment

Note by the secretariat

1. At the UN/ECE Forum on the "Protection and Implementation of Intellectual Property Rights in the countries of central and eastern Europe and the CIS", held at the Palais des Nations, Geneva, 26-27 October 1998, ^{1/} the participants recommended that an advisory group of experts be established to implement the conclusions of the Forum in the countries concerned. Following the Forum, the Working Party on International Contract Practices in Industry (WP.5), at its

^{1/} The UN/ECE Forum on the Enforcement of Intellectual Property Rights for example, attracted over 250 participants, including well over 150 companies and business associations and many ECE member Governments, including virtually every government from the 26 transition economies.

forty-seventh session, discussed this proposal to establish an advisory group and agreed to recommend to the Committee for Trade, Industry and Enterprise Development, that an advisory body be created using the same format as two other groups which already had been created under its auspices. The secretariat has prepared this document to draw particular attention to the concept of partnership between the public and private sectors as it would be implemented within the proposed advisory group on intellectual property and how this is based on the approach of existing advisory groups.

Avant propos

2. One of the highest priorities of the UN/ECE Committee for Trade, Industry and Enterprise Development (CTIED) is to promote an environment conducive to investment and trade. This is especially relevant for the knowledge-based, skill and technology intensive industries in central and eastern Europe and the CIS. The purpose of this paper is to examine how partnerships between public and private sectors can promote, in practical ways, trade and investment in these industries.

Context

3. Many countries are giving increasing importance to developing competitive advantages in the knowledge, skill and technology intensive industries. Comparative advantages in these industries are not created by raw materials, land or access to low cost labour. Rather, they are created by the knowledge, skills and creativity which are required to develop high productivity business processes and high value goods and services. These industries include a wide spectrum of activities, not just high technology, and include: computers, electronics, software, and pharmaceuticals, design, media and publishing. In addition, these industries tend to be the fastest growing even in recessions; they generate huge revenues to companies that possess the intellectual property in copyrights, trademarks and patents; and their overall significance within economies is growing. ^{2/} The transition economies are particularly interested in building capacities in these industries to help restructure their economies away from the slower growing, more technologically mature industries.

4. To build such capacity however, requires new investment. At the UN/ECE Forum on the Implementation and Protection of Intellectual Property Rights (Palais des Nations, 26-27 October 1998) participants identified the lack of adequate implementation of intellectual property rights as a major barrier to new investment in these industries. Without clear and secure property rights, many representatives of private enterprises argued, their companies, whether local or foreign, had neither the incentive to invest nor the ability to obtain funding based upon their intellectual property.

5. This is a problem which can be overcome. Many transition economies have, over a remarkably short period of time, enacted new commercial laws. With support

^{2/} As an example of governments increasing interest in this area: See "Our Competitive Future: Building the Knowledge Driven Economy", White Paper, UK Government, December 1998.

from domestic and foreign-based companies and from international institutions such as WIPO, WTO and the EU, many governments are making progress in enforcing intellectual property rights and the fight against piracy and counterfeiting. However, others are not adopting the comprehensive and effective policies required to support intellectual property rights and consequently are not attracting sufficient foreign direct investment in the manufacture of higher value products. Their economies also are suffering from the exodus of trained and skilled scientists and technicians to countries where the rewards for the intellectual property that they create are both more secure and attractive.

Facilitating Partnerships for Success : The Role of UN/ECE

6. In many transition economies, government policy has been directed to improving the overall investment climate by enacting new laws and developing new institutions. Their investment regimes have become some of the most attractive and open in the world. This approach was an encouraging start. The priority now in the knowledge, skill and technology intensive industries should be to consolidate these gains and strengthen the capacity of governments to implement intellectual property rights.

7. Further success requires a joint effort between governments and business. The advice and support of the business community is vital to enhance the role of intellectual property within economies, generate new investment and trade, help governments to identify priorities in policies, and to provide resources for training and education.

8. The need for this partnership is found everywhere but it is even more pressing for the transition economies in the area of intellectual property. First, many face the challenge of accession to the EU, to various WIPO conventions, and to the TRIPS agreements of WTO. Second, in many western economies the establishment of regimes for intellectual property enforcement has been the result of a very effective policy dialogue in a multitude of special committees, and think-tanks, involving both government and business experts. This dialogue is ongoing given the fast pace of change in new information and communications technologies. In contrast, in the transition economies, this policy dialogue between the public and private sectors is still relatively undeveloped. Finally, the satisfactory implementation of intellectual property rights requires the allocation of sufficient resources to the police, customs, judicial authorities, patent offices, etc. Governments, however, do not have the resources required. There is thus a need for the private sector, in always partnership with governments, to ensure that sufficient resources are allocated to the implementation of intellectual property rights.

9. UN/ECE fosters partnerships in investment and trade related areas in several other domains: under the auspices of the Working Party on International Legal and Commercial Practice (WP.5), it has promoted private investment for infrastructure, by the establishment of a group of experts - the BOT Group - drawn from the private and public sectors. In a pragmatic and informal way this group has held discussions with governments on the legal and regulatory framework required for public-private partnerships (PPPs) in projects in the energy, telecommunications, water and transport sectors. Similarly, ECE member governments established the

Real Estate Advisory Group (REAG) composed of experts from the public and private sectors, to identify the economic opportunities that can emerge from more viable real estate markets and, in consultation with local and national governments, to develop the appropriate legal and regulatory environment for exploiting these opportunities. WP.5 also decided to recommend this type of partnership to enforce intellectual property rights, given the success of these other initiatives, their popularity with member governments, and their focus on legal and regulatory issues.

Structuring the Policy Dialogue

10. The final structure and programme of work for this activity will be decided by the CTIED at its next meeting in June 1999. Initial discussions indicate that the principal instruments for fostering dialogue and partnership should be: (i) the creation of an advisory group, and (ii) the holding of consultative meetings with host governments:

(i) Experts from the public and private sectors can both offer valuable inputs to this dialogue. Therefore, an advisory group should be neither all public nor all private but should reflect a balance between representatives from both sectors. A network of experts on specific topics, co-operating informally and formally, would be ideal for resolving some of the practical problems.

(ii) Consultative meetings, under the auspices of the advisory group, should be organised at the invitation of a host government, and with the joint participation of government and advisory group experts. These meetings would focus on economic opportunities and implementation issues in intellectual property areas. The host government, in co-operation with experts from the Group would jointly prepare reports to be the basis of discussion at these meetings. Local private companies and banks should also be involved in these informal consultations. The government and the group should jointly prepare the agenda and speakers for these meetings.

11. The consultative meeting procedure could be complemented by other important support activities:

Education and training in the form of training modules and train the trainer programmes for enforcement officials, lawyers and judges;

Improved access via support for the access of domestic companies to IPRs through raising awareness of the use of brands, the development of IP institutions and of IP services to local business operators;

Development of partnerships for the enforcement of IPRs between business and officials from the customs, standards setting and certification agencies, and investment promotion agencies;

Communication and information to governments, politicians, businesses and consumers and through databases and websites.

12. To undertake specific tasks required for the success of the above supporting activities (such as the development of training or information material) it may be useful to establish sub-groups. A steering group could then ensure coordination as well as the management of activities between meetings (thus relieving the UN secretariat of these responsibilities).

Cooperation in the Support of Real Results

13. The fundamental concept underlying this initiative is cooperation. Sometimes, in other fora, there is a tendency for Private or Public sectors or - West or East - to preach to one another. This is not the purpose here, rather it is to generate concrete, real and mutually beneficial results, something which is possible only in an atmosphere of trust and mutual respect. As a result of this initiative, companies should learn of the constraints which governments are under in enforcing intellectual property rights. Likewise, governments should learn the problems that companies face when trying to effectively protect their intellectual property against, for example, organised crime,

14. Real benefits can accrue to both sides. Governments can use these meetings as an opportunity to promote further investment and trade by identifying business opportunities in knowledge-based industries and concrete steps for improving their country's environment for these industries. Companies will be able to contribute to improving the legal and regulatory IP environment in a country so that it becomes propitious to new trade and investment. Joint strategies could include building links between businesses and universities and improving services related to innovative and creative industries in the local economy. Underlying everything should be the conviction that increased access to intellectual property rights and a more secure environment for them will encourage enterprises to undertake more ambitious investment in the region as well as to develop local enterprises in high-tech and knowledge-based industries.

15. In addition, by fighting piracy and counterfeiting, Governments can demonstrate to their citizens their commitment to ensuring the quality and safety of products.

Support to other International Organisations

16. The UN/ECE's consultative and cooperative approach is unique and, because it is very open, can easily be used to support the work of other international organisations. Some of these organisations already involve the private sector in conferences and seminars, but the ECE's partnership approach goes further and so far has proved popular. By demonstrating that investment and trade can be generated by the improved enforcement of intellectual property rights, this activity could assist international bodies such as WIPO, WTO and the EU in promoting compliance with and respect for intellectual property rights. Indeed, the timetable for implementing the WTO's TRIPS agreement is approaching for many countries and it is hoped that this initiative will provide concrete assistance, as well as examples of how the private sector could cooperate with governments in the area of enforcement. Thus, this initiative is a timely one.

17. WIPO remains, *par excellence*, the standard setting body in intellectual property rights and any activities by UN/ECE regarding intellectual property must be coordinated with it and undertaken with its cooperation. In discussions at the end of 1997 on the organisation of the Forum, WIPO encouraged the UN/ECE secretariat to hold its Forum on this topic because of UN/ECE's contacts and its ability to attract representatives from the business community. In addition, WIPO was also interested in the role of UN/ECE in widening the knowledge about the role of intellectual property rights to other government departments, particularly those of trade and industry with which UN/ECE has special ties throughout the region. The WTO secretariat and the European Commission have also indicated their interest in participating in such a group.

18. Thus such an initiative, if successful, could strengthen the work of other international organisations. It does not duplicate as the subject of intellectual property is so vast and the approach of this group - partnership with a focus on trade and investment is original. It will not develop new guidelines or new standards but rather help in implementing and disseminating information on existing ones. Over time and if successful, WIPO may find it useful as a model for developing its own links with the private sector.

Next Steps

19. To establish the partnership between governments and business described above, a number of steps are required:

Development of a draft Work Programme: A series of meetings have been planned to permit interested experts an opportunity to develop a work programme for such a proposed group. Proposals will be put to the Committee for Trade, Industry and Enterprise Development (CTIED) in June 1999.

Host country visits: The need to plan events within countries will be examined. Some interested governments have already offered to host meetings of the Group if the CTIED confirms this activity.

Funding: Discussion on funding will take place at the first meeting of the steering committee of the proposed group. Funding questions related to travel and subsistence costs are critical if the representatives of the transition economies are to play a full part in the activities of the group. The secretariat will prepare a paper outlining the options. Funding of events related to the consultative meetings should be obtained from local sponsorship and other sources, not from host governments.

Consideration by the CTIED: At its third session (8-10 June 1999) the Committee will consider the proposed programme of work regarding intellectual property and, if work is to continue, will need to decide to establish the proposed advisory group under the supervision of WP.5.
