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UNITED NATIONS COMMISSION ON  
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CURRENT ACTIVITIES OF INTERNATIONAL ORGANIZATIONS  
RELATED TO THE HARMONIZATION AND UNIFICATION OF  
INTERNATIONAL TRADE LAW

Report of the Secretary-General

(continued)

This addendum contains additional information which is to be incorporated into the relevant parts of A/CN.9/237/Add. 1 and 2.

VI. INDUSTRIAL AND INTELLECTUAL PROPERTY LAW <sup>1/</sup>

Trade marks

1. The proposal of the Commission of the European Communities (CEC) for a first CEC Council Directive to approximate the law of the Member States relating to trade marks aims to create a common market in trade marked goods, removing the barriers to the free movement of trade marked goods and services by instituting arrangements which ensure that competition within the common market is not distorted and by creating legal conditions under which firms can adapt their activities to the scale of the Community. It creates Community arrangements for trade marks whereby undertakings can by means of one system of procedure obtain Community trade marks to which uniform protection is given and which produce their effects throughout the entire area of the Community. The proposal has since June 1981 been the subject of discussions in the Council by a group of government experts.

2. CEC's proposal for a Council regulation on Community trade marks seeks to remove disparities in the trade mark laws of Member States which may impede the free movement of goods and freedom to provide services, or may distort competition within the common market and may therefore directly affect the establishment and functioning of the market. It harmonizes those provisions of trade mark law which at present have the strongest and most direct influence of the establishment and functioning of the common market in trade marked goods, particularly the rules governing the scope of the protection afforded to trade marks, use of trade marks, amicable settlement of conflicts and the relative and absolute grounds for the refusal of registration or invalidation of trade marks. The proposal has since June 1981 been the subject of discussions in the Council by a group of government experts.

XI. PRIVATE INTERNATIONAL LAW <sup>2/</sup>

3. The CEC convention on the law applicable to contractual obligations was signed in 1980. It is a complement to the Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters, 1968, and is designed to facilitate the determination of the law applicable and to ensure that all the courts of the Member States apply the same law to identical cases between the same parties.

XII. OTHER TOPICS OF INTERNATIONAL TRADE LAW

Agency <sup>3/</sup>

4. CEC has proposed a Council Directive to co-ordinate the laws of the CEC Member States relating to commercial agents. The aim of this proposal is to harmonize the laws of the Member States governing relations between traders and their (self-employed) commercial agents, thereby removing the cost differences

<sup>1/</sup> See also A/CN.9/237/Add. 1, VI. INDUSTRIAL AND INTELLECTUAL PROPERTY LAW.

<sup>2/</sup> See also A/CN.9/237/Add. 2, XI. PRIVATE INTERNATIONAL LAW.

<sup>3/</sup> See also A/CN.9/237/Add. 2, XII. OTHER TOPICS OF INTERNATIONAL TRADE LAW (A. Agency).

between the prices that traders have to pay. In some Member States agents already enjoy protection; in others this protection is much less advanced. As a result the cost of employing agents varies from one Member State to another.

Consumer Protection <sup>4/</sup>

5. CEC's proposal for a Directive concerning liability for defective products aims to remove distortions of competition resulting from differences in national rules, as the resale prices of products are higher in those countries where the rules are stricter. It also seeks to eliminate certain barriers to the free movement of goods and to reinforce consumer protection. The proposal has, since January 1980, been the subject of discussions in the Council by a group of government experts.

Companies

6. CEC issued a third Council Directive (78/855/EEC) concerning mergers of public limited liability companies which was implemented on 12 October 1981. (This Directive has been implemented in some member States and remains to be implemented in others.) The Directive contains specific provisions to safeguard the interests of shareholders of merging companies those of employees and creditors in general, including debenture holders, and persons having other claims on the merging companies. Safeguards include, notably, supplementary disclosure requirements and the ipso jure transfer to the acquiring company of all assets and liabilities of the company being acquired, which ceases to exist. Similar safeguards are included in a supplementary directive on "scissions" or divisions of public companies governed by the law of the same Member State. Division can be described as an operation in which the assets and liabilities of a company are divided between more than one successor company.

7. CEC issued a fourth Council Directive (78/660/EEC) on the annual accounts of certain types of companies which was implemented on 31 July 1980. (This Directive has been implemented in some Member States and remains to be implemented in others.) This Directive, which has as its aim the protection of creditor, regulates in detail the form and content of the annual accounts of individual companies.

8. CEC proposed a fifth Directive on the structure of public limited liability companies and the powers and obligations of their organs. This proposal concerns the board structure of public companies and the issue of employee participation in that structure.

9. CEC issued the sixth Council Directive (82/891/EEC) concerning divisions of public limited liability companies which was adopted on 17 December 1982 and will be implemented on 1 January 1986. As in the third Directive, its aim is also to safeguard the interests of shareholders, employees and creditors.

10. An amended proposal (proposed seventh Directive) on group accounts is being discussed in the Council and could be adopted during 1983. It is intended to regulate the form and content of consolidated accounts.

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<sup>4/</sup> See also A/CN.9/237/Add. 2, XII. OTHER TOPICS OF INTERNATIONAL TRADE LAW (H. Consumer protection).

11. CEC's proposal for a Council regulation on the statute for European companies seeks to establish a legal structure, available throughout the Community, which would permit undertakings to establish themselves or reorganize their businesses at a European level (by merger, creation of holding companies or joint subsidiaries) rather than to continue to rely on different national systems operating side by side. The first reading of the proposal has nearly been completed by an ad hoc group in Council. Only Titles V (Employee Representation), VI (Annual Accounts) and VII (Groups) still remain to be examined.

12. The CEC draft convention on the international mergers of public limited liability companies aims to make mergers between companies established under the laws of different states possible.