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UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

**Report of the Commission on Investment, Technology and
Related Financial Issues
on its seventh session**

held at the Palais des Nations, Geneva,
from 20 to 24 January 2003



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Chapter I

AGREED RECOMMENDATIONS ADOPTED BY THE COMMISSION AT ITS SEVENTH SESSION

1. The Commission took note of the secretariat documents and the “DITE Activities Report 2002”. It recognized and commended the contributions of the secretariat in research and policy analysis, as well as capacity-building, particularly in the follow-up to the Doha work programme in the area of investment and technology, including the successful cooperation with the World Trade Organization (WTO) secretariat in implementing UNCTAD’s technical assistance programme.
2. The Commission accordingly made the following recommendations.
3. The secretariat, in line with paragraph 21 of the Doha Declaration, should continue its post-Doha technical assistance and capacity-building work in the areas of policy analysis and development, human resource capacity-building and institutional capacity-building, including in cooperation with other international organizations. Furthermore, the secretariat should facilitate an ongoing exchange of information and experiences among investment negotiators. The secretariat should also continue its in-depth analysis of which policies and measures can help developing countries attract and benefit more from foreign direct investment (FDI) as a means for development, including through investment policy reviews, the *World Investment Report* and related work. The secretariat should also complement its analytical work in this area with the provision of technical and capacity-building assistance, which should include helping countries, upon request, to modernize relevant laws when applicable. Furthermore, the Commission encourages the secretariat to pursue its efforts to assist in the development of inter-enterprise relations.
4. The Commission welcomes the interface between policy makers and investment promotion practitioners in the format of a joint session with the World Association of Investment Promotion Agencies (WAIPA). It invites WAIPA to contribute to the preparatory process for UNCTAD XI.
5. In view of the importance of the investment policy reviews covering member States, the Commission encourages the secretariat to devote sufficient time to this exercise, where appropriate, during the session to enable presentation of the above reviews and the exchange of national experiences.
6. The Commission welcomes closer cooperation and joint programmes, where appropriate, with other international and regional organizations active in the field of investment and encourages the Regional Commissions to participate in the work of the Commission as well, thereby enhancing the Commission’s role as a forum for exchange among member States and intergovernmental agencies on issues related to investment.

Chapter II

OPENING STATEMENTS

1. The **Deputy Secretary-General of UNCTAD**, in his opening statement on behalf of the Secretary-General of UNCTAD, welcomed the delegates to the seventh session of the Commission on Investment, Technology and Related Financial Issues. This session was taking place at an important and challenging time for the world economy, which required organizations such as UNCTAD to formulate adequate policy responses.

2. The state of the global economy in 2002 had contributed to a decline in foreign direct investment (FDI) flows worldwide. Even though developing countries on the whole were less affected by the decrease than developed countries, the decline had intensified the competition for FDI between countries, while at the same time forcing policy makers to think even harder about appropriate policy responses designed to maximize FDI's positive contributions to development. He referred to UNCTAD's recent activities in this area, including the *World Investment Report 2002 (WIR 2002)*, which focused on the interface between FDI and export competitiveness as an area where FDI could make substantial contributions to a country's competitiveness and trade balance. This publication would also be a useful basis for discussion at the special event on the future of export processing zones that was taking place in Geneva later in the week under the joint auspices of the World Association of Investment Promotion Agencies (WAIPA) and the Commission. Another important example of relevant activity in this area by UNCTAD was the Expert Meeting on the Development Dimension of FDI: Policies to Enhance the Role of FDI in Support of the Competitiveness of the Enterprise Sector and the Economic Performance of the Host Economies, Taking into Account the Trade/Investment Interface, in the National and International Context, which had concentrated on key policy areas, including incentives, performance requirements, home-country measures, corporate social responsibility, the right to regulate, and safeguards. Delegates would surely find it useful to continue the debate on many of these issues under agenda items 3 and 4.

3. He also drew delegates' attention to recent Expert Meetings on International Standards of Accounting and Reporting (ISAR) and on Competition Law and Policy, both areas deserving the careful consideration of policy makers.

4. Returning to the issue of increased challenges facing policy makers in the area of FDI, he stressed the importance of the secretariat's extensive technical assistance and advisory activities to support countries in their efforts to attract and benefit fully from FDI. He mentioned the investment policy reviews as one example of the many activities by the secretariat in this area that would be specifically dealt with by the Commission under a separate agenda item.

5. UNCTAD's closer cooperation with other international agencies active in the field of trade and investment – such as the WTO, the United Nations Industrial Development Organization, the Organisation for Economic Co-operation and Development (OECD), the Multilateral Investment Guarantee Agency and the International Finance Corporation – was continuing. These organizations would participate in the work of the Commission, thereby

enhancing its role as a forum for exchange among member States and intergovernmental agencies.

6. With reference to the upcoming WTO Ministerial Meeting in Cancún and the economic difficulties being experienced by many developed and developing countries, he emphasized the importance of a productive exchange of views on appropriate economic policy responses.

7. The representative of **Thailand**, speaking on behalf of the **Group of 77** and **China**, mentioned the prevailing uncertainty regarding the global economy and its impact on general economic conditions and FDI trends in developing countries. For many developing countries, FDI was the largest component of external resources; thus, smaller FDI inflows implied fewer resources to finance development. He expressed concern regarding the intensifying competition to attract FDI among host countries.

8. At this session of the Commission, the Group of 77 wished to assess the policy implications of the global economic downturn and to discuss policy challenges, taking into account the new dimension of the post-Doha work programme. It was important to identify national policies that were key to increasing benefits from FDI in both host and home countries, given that the room for manoeuvring to align national policies with development objectives was becoming more restricted.

9. The Group endorsed UNCTAD's programme of investment policy reviews and requested stronger support for the programme, in particular financial support to help countries implement the follow-up recommendations. These recommendations were important guidelines for improving the investment environment and generating further discussion of investment policies not only in countries already reviewed but also in other host countries.

10. The Group hoped that the deliberations during the session would result in the identification of a concrete work programme in support of UNCTAD's efforts to integrate FDI as an important tool for the development strategies of Group member countries.

11. The representative of **India**, speaking on behalf of the **Asian Group** and **China**, expressed concern regarding the recent global downturn, which was a major challenge to the achievement of Group members' development objectives. Efforts to revive economic strength and speed recovery needed to be supported by steady flows of external financing, primarily FDI, rather than by short-term and speculative financial flows.

12. The Group recognized the increasing challenge and importance of the design and implementation of effective FDI-related policies to ensure that all countries enjoyed the benefits of globalization. If investment was to be beneficial to developing countries, the issue needed to be considered in a balanced and sober manner. The Group hoped that the Commission's discussions would assess the impact and effectiveness of policies and measures to enhance the benefits and minimize the negative effects of FDI, in line with the development objectives of host countries.

13. The Group stressed that identification of development priorities should be left to host countries and that developing countries should be allowed to determine the types of investment as well as the manner, terms and conditions of attracting it.

14. Given the constraints resulting from international investment rule-making, the Group hoped, through the discussions of this session, to deepen its understanding of the policies and policy tools that were most important from a development perspective and their potential impact. International agreements should not limit the ability of Governments to regulate, including economic, social, environmental and administrative regulation, and issues related to the safeguarding of national policy space were of the utmost importance to Group members' economies. The Group was interested in identifying how commitments by home countries and transnational corporations (TNCs) could best be directed to support the development objectives of host economies.

15. The Group appreciated and supported UNCTAD's work in the area of FDI in the pursuit of the Group's policy objectives. It hoped that the discussions at this session would identify the policy issues that were of future importance for Group members' economies.

16. The representative from **Benin**, speaking on behalf of the **Least Developed Countries** (LDCs), stressed the role of states in improving the investment climate and the promotion of development in general. Recent experience had shown that attention had to be paid to improving the legislative and regulative framework and infrastructure facilities. The current decrease in global FDI flows called for responses at the national, bilateral, regional and multilateral levels. It also called for closer cooperation between home and host countries for FDI in order to stimulate further FDI into developing countries, particularly LDCs.

17. The LDCs had already made considerable efforts to this effect as they pursued a closer integration into the global economy based on policies that were strongly directed towards promotion of the private sector, including FDI. This had been done with the understanding that FDI could play a complementary and catalytic role in building domestic supply capacity.

18. The LDCs were continuing to create an economic, judicial and political environment favourable to investment. They invested in improvement of their trade policies, their educational systems and their labour laws, as well as in strengthening of their domestic enterprises. The investment promotion agencies had been created to support these efforts. Also, many agreements to promote and protect investments at the bilateral, regional and interregional levels had been concluded.

19. However, to achieve their objectives, these measures had to be matched by actions on the part of bilateral or regional partners. These included support for human resources and capacity-building measures; the abolishing of measures restricting investments; better market access and the facilitation of exports by LDCs to developed-country markets; the organization of investment and business forums; investment guarantees and insurance; the provision of risk capital; support for enterprise linkage programmes; technology transfer; and implementation of commitments provided for in bilateral, regional and interregional agreements concerning the promotion of FDI.

20. The LDCs welcomed UNCTAD's activities supporting LDCs in negotiation of bilateral agreements and in promoting FDI in the form of advice, the facilitation of the exchange of experiences between developed countries and LDCs, and the creation of a forum enabling such exchanges at the enterprise level. The LDCs hoped that, in order to consolidate and improve on the progress already made by LDCs, the partner countries of LDCs would increase their resource contributions, including to UNCTAD, so as to realize the goals expressed in the Millennium Declaration and in the Programme of Action of the Third UN Conference on LDCs.

21. The representative of **Morocco**, speaking on behalf of the **African Group**, stated that his region, including South Africa, continued to attract the smallest FDI inflows of any region (as reported in *WIR 2002*). Although FDI inflows to the region had increased in 2001, they had declined by about 65 per cent in 2002, increasing the Group's concerns regarding FDI-led development strategies. This weak performance was consistent with global FDI downturns and resulted mainly from the following three factors: the inflated FDI figure recorded in 2001 as a result of two large one-off transactions in Morocco and South Africa; the loss of confidence following recent financial scandals that had affected the corporate earnings outlook and investment plans in Africa; and the political uncertainty in certain African countries. Differing FDI patterns among African countries called for assessing opportunities and needs on a country-by-country basis. Equally important to the region were policies to increase capacity not only to attract FDI but also to benefit from it as part of regional development goals.

22. African representatives had benefited from participating in UNCTAD expert meetings and sharing experiences with developing countries from other regions. Investment policy reviews carried out in seven countries of the region and investment guides had also been helpful in assessing the region's strengths and weaknesses. Investment policy reviews were a valuable instrument for analysing and evaluating policies in countries that saw FDI as a vehicle for development in surmounting scarcity of resources, creating employment, stimulating industrial development through backward and forward linkages, upgrading technical and management skills, and accessing international markets. Institutional capacity-building and the design of appropriate policies and regulations were crucial for promoting FDI. It was also important to be able to benefit from international cooperation for strengthening the negotiating capacity of African countries. In this respect, the UNCTAD-WTO training programme had been very useful. The Group expected that offerings of intensive courses as well as national seminars would be increased in the region.

23. International cooperation with the support of international agreements should reinforce national policies aimed at attracting FDI and benefiting from it. The question was how to strengthen home countries' role in helping developing countries to attract investments, upgrade technology and enhance competition.

24. The representative of **Greece**, speaking on behalf of the **European Union** and the **Central and Eastern European states associated with the EU, as well as Cyprus, Malta and Turkey**, thanked the UNCTAD secretariat for including a wide range of issues on the agenda and combining the session with the annual WAIPA conference so as to allow

exchanges with WAIPA representatives on current affairs and important issues. The *World Investment Report* was UNCTAD's best-known flagship report and a leading source of information on FDI research and statistics, and the 2002 edition provided valuable information on TNCs and their contribution to development. The European Union agreed with the report regarding the main forces that would drive the expansion of TNC-led international production systems. These were policy liberalization and the opening of national markets, technological change and increased competition. From the European Union's point of view, the contribution of TNCs in upgrading and increasing exports from developing countries by making production in these countries more competitive was of particular importance. At the same time, WTO rules and agreements such as that of Doha would also contribute to that process. FDI could play a key role in the economic growth and development of host countries. The importance of FDI for development had increased dramatically in recent years because of its role as a major source of long-term capital and the fact that it came with a package of assets, including not only capital but also technology, managerial capacities and skills, and access to foreign markets, which would help countries in their development and the integration of their supply capacity into the world economy. In this context, the stimulating effects of FDI on technological capacity-building and the development of domestic entrepreneurs through catalysing of backward and forward linkages deserved mention.

25. FDI usually represented a long-term commitment to the host country and contributed significantly to gross fixed capital formation in developing countries. FDI had several advantages over other types of capital flows, in particular its greater stability and the fact that it would not create obligations for the host country, as had been observed in the context of the financial crisis of the past few years.

26. She emphasized the role of an enabling environment for FDI as a key factor in attracting and maintaining investors. Such an environment would consist, among other things, of a legal framework maximizing a country's potential for attracting FDI; adequate infrastructure; good governance; an effective judicial system; and respect for the rule of law. The benefits of such an environment would be widespread: they would increase a country's attractiveness for FDI, contribute to better absorbing FDI, and help reduce capital flight and encourage domestic investment. For all these reasons, the European Commission was a major provider of funds for capacity-building and technical assistance. Finally, the conclusions and recommendations of the Commission should be short and action-oriented.

27. The representative of **Bangladesh** noted that most developing countries were starting to look to FDI as a source of capital when flows of official development assistance (ODA) declined sharply in the 1990s. However, FDI flows to most developing countries had remained small, even though they had liberalized their investment regimes and concluded numerous bilateral investment treaties. While one should expect the bulk of FDI flows to be North-South, in reality FDI remained concentrated among developed countries. LDCs accounted for only 0.5 per cent of global FDI flows, and even within this group FDI was highly concentrated, with five major oil-exporting countries accounting for more than half of the flows going into LDCs. For countries at Bangladesh's stage of development, the question of whether FDI would promote development was secondary, as FDI was seen as a catalyst of

growth rather than an initiator. The East Asian experience revealed that, for these countries, the direction of causality was from economic growth to FDI and not vice versa, since the behaviour of TNCs and their investment decisions would not necessarily be aligned with the development objectives of host countries. Investors were influenced by three broad groups of factors: the expected profitability of projects, the ease with which subsidiary operations could be integrated into a TNC's global strategy, and the overall quality of the host country's environment. The second and third factors favoured developed countries, explaining why most FDI was concentrated there. As for the first issue, most factors influencing the profitability of investments would be outside the influence of policy makers, leaving them with little leverage to influence investment decisions by TNCs. UNCTAD should further intensify its analysis in six areas:

28. Since opening up to FDI did not by itself guarantee inflows, other measures such as privatization might be needed to attract FDI. The implications of such measures, however, would need careful consideration, as privatization, for instance, could prove counterproductive if not accompanied by appropriate trade liberalization and competition policies.

29. FDI had to complement domestic investment, and investment incentives should not discriminate against domestic investors. The net benefits of discretionary policies needed examination.

30. Since capital formation continued to be a national phenomenon, the nexus between FDI and growth needed further scrutiny.

31. Achieving stable macroeconomic policies was easier said than done, and there was no universal set of policies appropriate to all countries.

32. Trade barriers in OECD countries, in particular for agricultural products from developing countries, were having a negative effect on FDI. The UNCTAD secretariat should study the relationship between high tariffs in developed countries and the flow of FDI into developing countries.

33. The huge increase of FDI flows that had occurred until very recently in the absence of a multilateral investment agreement raised the question of whether such an agreement was needed. UNCTAD should study the impact such an agreement would have on the allocative efficiency of FDI and the flows to developing countries.

34. ODA to LDCs targeting physical infrastructure and improving human capital could enable these countries to attract more FDI, since it might create a virtuous circle of saving and investment.

35. The representative of **Switzerland** commended the UNCTAD secretariat on its high-quality and efficient work in this area. He referred particularly to activities in the area of international investment agreements, the investment policy reviews and the *World Investment Report*. He also mentioned the high quality of the expert meetings organized by the Commission, in particular those on experiences with bilateral and regional approaches to

multilateral cooperation and the one dealing with the development dimension of FDI. From his country's viewpoint, UNCTAD – in the absence of a multilateral agreement on FDI – had a clear comparative advantage for multilateral cooperation in this area. Regarding the coordination of UNCTAD and WTO activities in this area, it was preferable to apply a back-to-back approach, whenever possible, to the timing of UNCTAD's Expert Meetings and the work of the relevant WTO working groups. (Such an approach was already practised in the area of competition policy and trade.) The African Group's proposal concerning follow-up to the investment policy reviews deserved careful attention. He stressed the positive experiences with the Quick Response Window approach as an instrument that would ensure the flexible and non-bureaucratic disbursement of resources in response to technical cooperation requests. Finally, for the areas in question, UNCTAD should focus its work on international investment agreements, the investment policy reviews and the *World Investment Report* in order to avoid dispersion of activities.

36. The representative of **Venezuela**, speaking on behalf of the **Group of Latin American and Caribbean Countries** (GRULAC), pointed out that FDI to the region had fallen by almost 30 per cent from the previous year, owing to the economic slowdown and to economic and political uncertainties in some countries in the region. According to *WIR 2002*, it was highly unlikely that the region would, in the near future, recover the level of FDI inflows seen in 1999. However, despite economic difficulties both inside and outside the region, some sectors and activities were still attracting almost as much FDI as in the past, notably the manufacturing sector.

37. She stressed the importance of improving domestic capacities and investment-friendly infrastructures and environments in order to attract FDI that was beneficial for regional development objectives. She also emphasized the importance of selecting and targeting the type of FDI that could best contribute to a country's development objectives in the framework of a coherent and integrated investment promotion strategy. In this respect, the investment policy reviews were invaluable analytical and evaluation tools for countries seeking to improve their enabling environment for investment. Solid support had been given to the work on the investment policy reviews, and similar support should be given to activities implementing their recommendations.

38. Commenting on UNCTAD's activities in the area of international investment agreements, she mentioned joint activities in the region by UNCTAD and the WTO (including a training course in Peru and regional seminars in Peru and Costa Rica) as well as workshops for Geneva delegates. Countries were facing the challenge of balancing the aim of ensuring a stable, reliable and transparent political framework with the need to preserve enough policy space to pursue particular development objectives. UNCTAD's work permitted identification of the obligations of host countries, investors and home countries in promoting outward FDI, including transfer of technology. She proposed that the Commission discuss how to make more effective the role of home countries in supporting developing countries' efforts to attract FDI, enhance technology and promote competition.

39. Finally, UNCTAD needed to be fully involved in implementing the Doha mandate in the area of investment, since the mandate emphasized development and its implementation through human resources development and institutional capacity-building.

40. The **Director of UNCTAD's Division of Investment, Technology and Enterprise Development**, commenting on some of the group statements made under agenda items 1 and 2, referred particularly to the link between FDI and growth. It was undisputed that investment in general was a key stimulus for economic growth. Since this was true regardless of whether the investment was foreign or domestic in origin, it was clear that FDI was not only following growth but also inspiring it.

Chapter III

POLICY ISSUES RELATED TO INVESTMENT AND DEVELOPMENT

(Agenda item 3)

41. For its consideration of this item, the Commission had before it the following documentation:

“Policy issues related to investment and development: Note by the UNCTAD secretariat” (TD/B/COM.2/44)

“Report of the Expert Meeting on the development dimension of FDI: Policies to enhance the role of FDI in support of the competitiveness of the enterprise sector and the economic performance of host economies, taking into account the trade/investment interface, in the national and international context” (TD/B/COM.2/48 - TD/B/COM.2/EM.12/3)

“The development dimension of foreign direct investment: Policies to enhance the role of FDI in the national and international context – policy issues to consider: Note by the UNCTAD secretariat” (TD/B/COM.2/EM.12/2)

Chairperson’s Summary

42. The Head of the Investment Issues Analysis Branch of DITE introduced the item. The Chairperson of the Expert Meeting on the Development Dimension of FDI, held in November 2002, presented the report of that meeting.

43. It was noted that, with the significant decline in FDI, national policies to attract FDI and benefit from it were becoming increasingly important for achieving the ultimate goal of maximizing the effect of FDI on growth and development. Countries needed to pay more attention not only to the volume of FDI but also to its quality. National policies also had a key role in addressing the potential negative impacts of FDI. (Some delegates mentioned concerns related to balance of payments, crowding out of domestic companies and restrictive business practices.)

44. Host-country policies included a wide range of areas and measures, and it was important that FDI-related policy efforts be coherent and that they be well integrated with countries’ overall development strategies. Given the scarcity of resources, careful analysis of which policies were most effective was called for.

45. Among the various policies mentioned in this context, this summary covers only those referred to by the delegates. In many instances, the discussion echoed that of the Expert Meeting in November 2002.

46. Among broader policy efforts, special reference was made to the creation of a stable macro-economic framework, a conducive investment climate based on predictable, clear and

transparent rules to reduce the risk involved. An adequate competition policy framework was also highlighted as very important by several delegates.

47. Domestic capacity-building was key to enhancing the ability to attract high-quality FDI and benefit from inward FDI. Specific measures were also needed to ensure a beneficial synergy between FDI and the domestic economy, and to encourage transfer of technology. The promotion of linkages between foreign affiliates and local firms could contribute to the transfer of knowledge and technology, help upgrade domestic capabilities, and make foreign affiliates less footloose.

48. The role of proactive investment promotion was noted. Increased competition for FDI had led many countries to adopt a more targeted approach to investment promotion. In this context, existing foreign affiliates represented one important group of investors to consider. While targeting could allow countries to focus their efforts more narrowly to bridge information gaps, countries needed to be aware of the associated risks and costs. In some countries, the investment promotion agency was actively involved in policy advocacy work.

49. A significant part of the discussion revolved around the issues of incentives and performance requirements. Attention was given to the risks involved in an incentives-based race to the top, and the need for international cooperation in this regard was noted. Delegates did not reach consensus regarding the effectiveness of performance requirements. While some referred to empirical evidence of the counterproductive impact of performance requirements, others cited examples of positive experiences with them. UNCTAD's ongoing work to review experiences with performance requirements in selected developing and developed countries was also discussed.

50. Many delegates stressed that policies needed to reflect the special circumstances prevailing in a country and that they should evolve over time. In this context, many delegates underscored the need to ensure sufficient policy space for the pursuit of national policy objectives and the importance of the right to regulate. Specific reference was made to the LDCs' need of special and differential treatment in the context of various international agreements.

51. Some delegates noted that host-country policies could be complemented by efforts by home countries and in the area of investor obligations. Inflows of private capital flows (notably FDI) needed to be complemented by official development assistance for the development of infrastructure, human resources and institutional capacity-building. Several delegates saw a need to explore the potential role of home-country measures in the context of international investment agreements. Some delegates also mentioned the question of corporate social responsibility in the context of the balance between investors' rights and obligations in international investment.

52. A number of issues related to linkages between national policies and international investment agreements were touched on, such as the importance of investment protection (including protection against expropriations and dispute settlement); definition of investment; transparency; and flexibility of agreements. Discussion of these issues was, however, referred to agenda item 4.

Chapter IV

ISSUES RELATED TO INVESTMENT ARRANGEMENTS

(Agenda item 4)

53. For its consideration of this item, the Commission had before it the following documentation:

“Issues related to international arrangements: Note by the UNCTAD secretariat”
(TD/B/COM.2/45)

“Report of the Expert Meeting on Experiences with Bilateral and Regional Approaches to Multilateral Cooperation in the Area of Long-Term Cross-Border Investment, Particularly Foreign Direct Investment” (TD/B/COM.2/41 – TD/B/COM.2/EM.11/3)

“Experiences with bilateral and regional approaches to multilateral cooperation in the area of long-term cross-border investment, particularly foreign direct investment: Note by the UNCTAD secretariat” (TD/B/COM.2/EM.11/2)

Chairperson’s Summary

54. In introducing the item, the Head of the Policy and Capacity-Building Branch of DITE referred to the secretariat’s note and the report of the Expert Meeting on Experiences with Bilateral and Regional Approaches to Multilateral Cooperation in the Area of Long-Term Cross-Border Investment, Particularly Foreign Direct Investment. Against the vastness of today’s universe of international investment agreements (IIAs), the expert discussion provided a structured overview of these instruments’ common elements and differences. Having outlined the experts’ findings concerning the development dimension and how it could be effectively addressed in IIAs, he remarked that the Expert Meeting had yielded a kind of checklist that could be taken into account when discussing international investment rules.

55. In the ensuing discussion, delegates stressed that international treaty-making in the area of investment (at the bilateral, regional and interregional levels) was important for enhancing the attractiveness of countries as FDI locations. At the same time, it remained important to maintain sufficient national policy space to pursue development objectives.

56. IIAs and their standards and provisions could help to bridge this gap in a number of ways. These included provisions for flexibility in treaty structure (a GATS-type positive-list approach was mentioned as a useful model), treaty provisions (particularly limitations in scope and exceptions, derogations and waivers) and treaty application (special and differential treatment of developing countries, including asymmetrical levels of commitments and transitional phases of implementation). At the same time, the level of commitment

determined the value added that each country could derive from an IIA. Transparency was mentioned by some delegates as an important element of national policies and measures.

57. The right to regulate was relevant in this context, in particular the recognition of the public interest to pursue objectives related to security, health, morals, and so forth. Exceptions were also important, especially those related to balance-of-payments safeguards.

58. Investment promotion and proactive support means (through technical assistance and home-country measures) could also play a role in this regard. In particular, technical assistance during the pre-negotiation, negotiation and implementation phases of the agreements could be important. Such assistance could aim at improving transparency and know-how regarding investment promotion as well as strengthening and upgrading national capacity. The usefulness of investment promotion agencies for proactive advocacy was highlighted. Reference was also made to the need for special facilities to support developing countries in dispute settlement cases.

59. Home-country measures, both direct investment-related ones (e.g. investment insurance and direct financial support) and indirect trade-related ones (e.g. those related to market access) could be important. Measures related to maximizing FDI's positive effects and minimizing its negative ones could also be considered in this context. The transparency, stability and predictability of home-country measures could be enhanced through IIAs.

60. The role of corporate social responsibility was also highlighted. The OECD guidelines were mentioned in this context, as was the importance of domestic regulation.

61. Finally, the involvement of all stakeholders in the IIA process could ensure a win-win outcome for all involved and a balance of rights and obligations.

62. The discussion yielded a number of issues that the Commission felt the secretariat should address in its future work. The secretariat also briefed the Commission on its work on a "second generation" of papers on issues of interest to developing countries in post-Doha investment discussions.

Chapter V

INVESTMENT POLICY REVIEWS: EXCHANGE OF NATIONAL EXPERIENCES

(Agenda item 5)

63. For its consideration of this item, the Commission had before it the following documentation:

“Summary of the deliberations of the Investment Policy Review of Botswana and Ghana” (TD/B/COM.2/49)

Chairperson’s Summary

64. The UNCTAD secretariat updated the Commission on its work on the investment policy reviews (IPRs). To date, UNCTAD has carried out 10 IPRs and undertaken follow-up work for four countries – Botswana, Ecuador, Mauritius and Uganda. In 2003 six new IPRs would be launched; plans for new IPRs also included 10 additional countries for which funding was not yet in place. In addition, UNCTAD hoped to respond to requests for follow-up assistance in implementing IPR recommendations. In order to facilitate reporting of the implementation of the recommendations, a monitoring system called the IPR Scorecard would be introduced in the future. UNCTAD had also implemented a web-based tool to help policy makers compare specific countries’ FDI policies to those of other countries. An IPR of Lesotho would be held on 24 April 2003, back-to-back with the Trade Policy Review of the Southern African Customs Union at the WTO. A Science, Technology and Innovation Policy Review of Iran was also expected to be launched this year.

65. Five countries (Uganda, Botswana, Ecuador, Ghana and Ethiopia) reported on the status of the implementation of the IPRs. Actions taken included the formulation of FDI strategy in a national development plan endorsed by the president of the country; drafting of more investor-friendly investment laws; and institutional and administrative reforms such as creating a Clients’ Charter to clearly delineate the time frame for service delivery by agencies dealing with investors, establishing facilities such as multi-facility zones and inland ports to help investors, reconfiguring the investment promotion agency into a one-stop centre, and establishing advisory councils/committees with representatives from the public and private sectors. It was also stressed that IPRs were interfaced with other agencies’ work to ensure consistency. Two countries that still had not found funding for their follow-up activities said that they had already started to draft an investment code. One of them had programmed capacity-building activities for the investment promotion agency over a two-year period, and donor support was sought. One country reported that results had shown substantial inflows of FDI into new licensed projects, and the country had seen a visible decline in its poverty levels. Another country reported that it had technical expertise from UNCTAD to develop an electronic investment promotion system providing investors with comprehensive information on investment opportunities, including selected projects.

66. Other delegates expressed their appreciation for the work on IPRs, which they stressed was an important tool for countries seeking to improve their investment policies, especially to increase flows of FDI and help in poverty reduction. It was noted that the exchanges of experiences from the review process were of benefit to countries. The secretariat was requested to continue to seek funding for the numerous unanswered requests. It was also stressed that support to follow up on the recommendations and technical assistance to countries was very important. One country that had started follow-up on the IPR a few years ago recommended revisiting IPRs to take stock of what had been done and to identify further changes needed to give impetus to the new strategies put in place.

67. In concluding the discussion, the Chairman noted that the work programme on IPRs was now well established and was appreciated, but that the problem of funding should be addressed to meet the increased requests for IPRs and also requests for follow-up work. The suggestion by UNCTAD to institute a system for monitoring the implementation of IPR recommendations was also welcomed.

68. The Commission took note of the presentations of the IPRs for Botswana and Ghana (document TD/B/COM.2/49).

Chapter VI

REPORTS OF THE SUBSIDIARY BODIES OF THE COMMISSION

(Agenda item 6)

69. For its consideration of this item, the Commission had before it the following documentation:

“Report of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting on its nineteenth session” (TD/B/COM.2/47 - TD/B/COM.2/ISAR/17)

“Report of the Intergovernmental Group of Experts on Competition Law and Policy on its fourth session” (TD/B/COM.2/42 - TD/B/COM.2/CLP/32)

Chairperson’s Summary

Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting

70. The Chairperson of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting (ISAR) presented the report of ISAR’s nineteenth session. He said that it had been attended by more than 180 participants from 52 member States, a figure 15 per cent higher than the record attendance of the eighteenth session. Participants had included financial accounting and reporting regulators and standard-setters as well as representatives of national, regional and international accountancy bodies, accounting firms, academia and the private sector. The session had considered two main agenda items: (a) transparency and disclosure in corporate governance, and (b) accounting by small and medium-sized enterprises (SMEs).

71. ISAR had addressed the issue of corporate governance in response to a request from member States at UNCTAD’s tenth quadrennial conference in Bangkok in February 2000. In light of recent corporate failures, which had led to the collapse of investor confidence, the nineteenth session had been preceded by a roundtable discussion on “Corporate transparency and disclosure: Restoring investor confidence”. The goal of this discussion had been to give the ISAR experts an opportunity to examine recent events and respond to them in the context of their work. The discussion had been organized by DITE in cooperation with the Global Corporate Governance Forum and the Department for International Development of the United Kingdom and had been attended by about 80 participants.

72. Regarding the first main agenda item, the Chairperson said that ISAR had deliberated on a report on transparency and disclosure in corporate governance prepared by the UNCTAD secretariat on the basis of the discussions of an informal consultative group. After discussing the report and what could be disclosed regarding corporate governance, the experts had suggested that the report be further reviewed with capital providers. They had

welcomed the report's objective of helping developing countries and countries with economies in transition to develop their own guidelines for applying global principles of corporate governance. They had agreed that the report provided a valuable illustration of the convergence of opinion on the content of corporate governance disclosures. Furthermore, they had agreed on the need for further work in the area of transparency and disclosure requirements regarding corporate governance. They had recognized the need to cooperate closely with other multilateral and regional initiatives in this area, particularly the Global Corporate Governance Forum.

73. Reporting on the second main agenda item (accounting by SMEs), the Chairperson said that the session had considered and approved enhanced guidelines developed by the ad hoc consultative group based on the deliberations of ISAR's seventeenth and eighteenth sessions. The guidelines were meant to provide SMEs at different stages of growth with accounting and reporting systems that were both consistent with their needs and consistent with the financial reporting standards developed by the International Accounting Standards Board. The document was about to be circulated for comments from interested parties; once the results of this round of comments had been incorporated by the ad hoc consultative group, the guidelines would be issued later in the year as a final document under the authority of ISAR's Chairperson.

74. The Chairperson then presented the follow-up work on the Group's fifteenth session (on environmental accounting) and its sixteenth session (on strengthening accounting education and professional qualifications). He also reported on the Group's other activities, such as publication and dissemination of information and liaison with other international and regional organizations in the private and public sectors.

75. A number of delegates said that their Governments supported ISAR's work and welcomed its recent initiative on corporate governance and transparency. One of the delegates stressed the importance of ISAR's work considering the lack of professional knowledge in developing countries and especially in the LDCs. Another participant commented on the importance of developing case studies on transparency in corporate governance. He also emphasized the need to coordinate ISAR's activities with those of other international organizations. Another delegate commended the depth and usefulness of the Group's work and mentioned the importance of the guidance for accounting by SMEs and of further wide dissemination of the results of ISAR's projects. It was also stated during the discussions that ISAR should continue its work and that adequate resources should be provided to support its activities.

Action by the Commission

76. The Commission took note of the report of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting, as contained in document TD/B/COM.2/47 - TD/B/COM.2/ISAR/17, endorsed its agreed conclusions as contained in Chapter I of that document, and approved the provisional agenda for ISAR's twentieth session contained therein.

Intergovernmental Group of Experts on Competition Law and Policy

77. The representative of the UNCTAD secretariat introduced the report of the Intergovernmental Group of Experts (IGE) on Competition Law and Policy and provided background information on UNCTAD's work in the area of competition law and policy. He said that UNCTAD's capacity-building activities on competition had two main objectives: (a) the long-term objective of creating a competition culture worldwide, including by helping individual developing countries, LDCs, and economies in transition, as well as regional and subregional groupings of States, to introduce and enforce competition legislation; and (b) the shorter-term objective of helping these countries, particularly LDCs, to participate effectively in the WTO process, as mentioned in paragraphs 23–25 of the Doha Declaration. He also gave an overview of assistance provided by UNCTAD in 2002.

78. The fourth session of the IGE on Competition Law and Policy had, in addition to monitoring UNCTAD's technical cooperation activities, examined the interface between competition policy, competitiveness and competition, and had held in-depth discussions on (a) the balance between control of mergers and concentrations, on the one hand, and the ability of domestic firms to compete on world markets, on the other; and (b) the interface between competition authorities and the regulatory sector, including natural monopolies and privatized utilities. In concluding its work, the Group had adopted the provisional agenda for its fifth session and agreed conclusions recommending the continuation and strengthening of UNCTAD's work in this area; had taken note with appreciation of the consolidated report of the four post-Doha regional seminars and invited the secretariat to continue its efforts related to the implementation of the Doha Declaration; and had requested the secretariat to prepare a report on ways in which possible international agreements on competition might apply to developing countries, including through preferential or differential treatment, with a view to enabling them to introduce and enforce competition law and policy, as well as a study of the roles of possible dispute mediation mechanisms and alternative arrangements, including voluntary peer reviews, in competition law and policy. In addition, the IGE had requested the secretariat to prepare a fully revised and updated version of the UN Model Law on Competition on the basis of submissions from member States. The representative of the UNCTAD secretariat reported that the secretariat was in the process of preparing the fifth session of the IGE, including the organization of an ad hoc expert meeting to review the Model Law on Competition scheduled to take place in Geneva on 19 February 2003.

Action by the Commission

79. The Commission took note of the report of the Intergovernmental Group of Experts on Competition Law and Policy, as contained in document TD/B/COM.2/42 - TD/B/COM.2/CLP/32, endorsed its agreed conclusions as contained in Chapter I of that document, and approved the provisional agenda for the IGE's fifth session contained therein.

Chapter VII

IMPLEMENTATION OF AGREED CONCLUSIONS AND RECOMMENDATIONS OF THE COMMISSION, INCLUDING POST-DOHA FOLLOW-UP

(Agenda item 7)

80. For its consideration of this item, the Commission had before it the following documentation:

“Implementation of agreed conclusions and recommendations of the Commission, including post-Doha follow-up” (TD/B/COM.2/46)

“DITE Activities Report” (DITE/OD/DOC/03/01)

Chairperson’s Summary

81. The Director of DITE gave an overview of the implementation of agreed conclusions and recommendations of the Commission and the activities of the Division in 2002. He outlined the major directions of the secretariat’s work in the area of investment, as a core activity of UNCTAD, as well as in the field of technology and enterprise development. He highlighted technical cooperation work undertaken by UNCTAD in the area of international investment agreements (IIAs) in 2002, including in pursuit of the Doha-mandated work on trade and investment. This technical cooperation work was implemented in close cooperation with the WTO and other organizations.

82. The representative of the WTO secretariat made a presentation on the joint WTO/UNCTAD post-Doha technical cooperation activities planned for 2003. Referring to the document “Technical assistance activities in 2002 pursuant to paragraph 21 of the Doha Ministerial Declaration” (WT/WGTI/W/151), he stressed that cooperation between UNCTAD and the WTO had contributed to the success of these projects.

83. An independent evaluator presented results of the mid-term evaluation of UNCTAD’s IIA work programme. The assessment revealed a high level of implementation quality and achievement of objectives with a positive and measurable impact. It had been found that member countries of UNCTAD and the WTO, in particular developing countries, had benefited from this work and were looking forward to its strengthened continuation. It was recommended that the programme’s human resource base and financial support from both regular budget and extra-budgetary sources be strengthened so as to ensure further successful implementation of this work. It was emphasized that UNCTAD’s work should not be limited to WTO issues but should focus on long-term IIA-related issues at all levels.

84. In the following discussion, many delegates commended the work of the Division, referring in a positive light to various publications prepared by the Division in 2002, as well as various technical cooperation programmes, particularly those undertaken as a result of the Doha Ministerial Declaration. Many developing countries had benefited from these activities.

85. Some delegations said that the Doha Declaration paragraphs dealing with investment were of particular interest and relevance to developing countries and that, therefore, further capacity-building work would be useful, particularly in the areas of institution-building and the strengthening of the capacity of developing countries, in particular LDCs, at the national and international levels.

86. It was stressed that further light needed to be shed on the relationship between trade and investment and how this could be strengthened – in the national and international context – with a view to developing export capacity and furthering the integration of developing countries into the world economy.

Chapter VIII

ACTION BY THE COMMISSION AND CLOSING STATEMENTS

Action by the Commission

87. At its closing plenary meeting, on 24 January 2003 the Commission adopted its agreed recommendations (see chapter I).

Closing statements

88. The representative of **Thailand**, speaking on behalf of the **Group of 77 and China**, said that the presence of resource persons at the meeting had enlivened the debate.

89. The representative of **Venezuela**, speaking on behalf of the **Group of Latin American and Caribbean Countries** (GRULAC), renewed his group's commitment to the Commission's work.

90. The representative of **Benin** said that the Government of his country was convinced of FDI's positive effect on development. Speaking on behalf of the **Least Developed Countries** (LDCs), he said that the LDCs exhorted their bilateral and multilateral partners to provide assistance to meet challenges in this area.

91. The representative of **Switzerland** said that the Commission's work had clearly been of high quality and that Switzerland gave investment issues a high priority. While the discussions involved in preparing the chairperson's summary had diverged somewhat from the established procedure, this could be attributed to the novelty of this exercise at the Commission level. The Commission's deliberations had focused on substantive issues and had produced concrete results with a minimum of effort, and should serve as a model for the other Commissions. His country particularly appreciated the secretariat's actions on the recommendations made by the Commission in 2002, and the Investment Policy Reviews.

92. On the negative side, the interactive debate could have been more interactive, especially between delegates, and between delegates and resource persons. The format needed to be reviewed. Also, the objective established at the Bangkok meeting that, "whenever possible, Commission meetings should not exceed five days," had not really been met, since on any given day the meeting had not used the full allotted six hours. The programme needed to be flexible enough to permit moving to the next agenda item if the current one was covered ahead of schedule.

93. The representative of **Greece**, speaking on behalf of the **European Union and the Central and Eastern European states associated with the EU, as well as Cyprus, Malta and Turkey**, said that work to improve the intergovernmental machinery should continue, and that the Commission's meetings should be limited to three days.

94. The representative of **China** expressed appreciation for a successful and productive meeting.

95. The representative of **Bangladesh** said that future meetings should consider alternatives to the chairperson's summary as an outcome.

96. The **Director of UNCTAD's Division of Investment, Technology and Enterprise Development** pointed out that this was UNCTAD's first Commission meeting since the Mid-term Review in Bangkok in 2002, and one could hope that the procedural lessons learned during the week would be applied to the meetings of the other Commissions in February. It was worth mentioning that some of the subject matter covered in this meeting was technically difficult and politically sensitive. Hearing about the work and experiences of other international organizations had been useful, as had the joint session with WAIPA. Perhaps future meetings could also involve representatives of the private sector.

Chapter IX

ORGANIZATIONAL MATTERS

A. Opening of the session

97. The seventh session of the Commission on Investment, Technology and Related Financial Issues was held at the Palais des Nations, Geneva, from 20 to 24 January 2003. In the course of the session, the Commission held two plenary meetings and eight informal meetings. The session was opened on 20 January 2003 by Mr. Karl Sauvant, Director of the Division on Investment, Technology and Enterprise Development.

B. Election of officers

(Agenda item 1)

98. At its plenary meeting, on 20 January 2003, the Commission elected its Bureau as follows:

President:	Mr. Vladimir Malevich (Belarus)
Vice-Presidents:	Mr. Arthayudh Srisamoot (Thailand) Mr. Rafael Paredes (Ecuador) Mr. Hossam Hussein (Egypt) Mr. Douglas Griffith (United States) Mr. Jean-Luc Le Bideau (France)
Rapporteur:	Ms. Visitacion Asiddao (Philippines)

C. Adoption of the agenda and organization of work

(Agenda item 2)

99. At the same meeting, the Commission adopted the provisional agenda circulated in document TD/B/COM.2/43. Accordingly, the agenda for the seventh session was as follows:

1. Election of officers
2. Adoption of the agenda and organization of work
3. Policy issues related to investment and development
4. Issues related to investment arrangements
5. Investment policy reviews: exchange of national experiences
6. Reports of the subsidiary bodies of the Commission
7. Implementation of agreed conclusions and recommendations of the Commission, including post-Doha follow-up
8. Provisional agenda for the eighth session of the Commission
9. Other business
10. Adoption of the report of the Commission

D. Provisional agenda for the eighth session of the Commission

(Agenda item 8)

100. At its closing plenary meeting, on 24 January 2003, the Commission approved the draft provisional agenda for its eighth session (see annex I) and the topics for Expert Meetings for 2003 (see annex II).

E. Adoption of the report

(Agenda item 10)

101. At its closing plenary meeting, the Commission adopted its draft report (TD/B/COM.2/L.18), subject to any amendments to the summaries of the statements, and authorized the Rapporteur to finalize the report in light of the proceedings of the closing plenary meeting.

Annex I

PROVISIONAL AGENDA FOR THE EIGHTH SESSION OF THE COMMISSION

1. Election of officers
2. Adoption of the agenda and organization of work
3. Policy issues related to investment and development
4. Issues related to investment arrangements
5. Investment policy reviews: exchange of national experiences
6. Reports of the subsidiary bodies of the Commission
7. Implementation of agreed conclusions and recommendations of the Commission, including post-Doha follow-up
8. Provisional agenda for the ninth session of the Commission
9. Other business
10. Adoption of the report of the Commission

Annex II

TOPICS FOR EXPERT MEETINGS FOR 2003

Expert Meeting on the effectiveness of FDI policy measures

1. UNCTAD has conducted 10 investment policy reviews. Building on this experience, the Expert Meeting could, for countries that have participated in such a review, identify the policy recommendations that have been adopted to increase competitiveness and could monitor their application through the presentation of case studies. The private sector would be invited to participate in order to assess the effectiveness of such policy measures in attracting and benefiting from FDI.

Expert Meeting on FDI and development

2. Host countries seek to attract FDI for many reasons in order to foster long-term development. Underlying their efforts is a desire to increase their competitiveness. The issues that require attention in this context are varied and include, in particular, the type of FDI that host countries attract (more than half is in the services sector) as well as the various rules and regulations that affect competitiveness, bearing in mind the need to enhance the development dimension of FDI.

Annex III

ATTENDANCE

1. The following States members of UNCTAD were represented at the session:

Angola	Mauritania
Argentina	Mauritius
Austria	Mexico
Bangladesh	Morocco
Benin	Nepal
Bulgaria	Netherlands
Canada	Nicaragua
China	Pakistan
Colombia	Paraguay
Costa Rica	Philippines
Democratic Republic of the Congo	Poland
Dominican Republic	Portugal
Ecuador	Republic of Moldova
Egypt	Russian Federation
Ethiopia	Saudi Arabia
Finland	Senegal
France	Spain
Germany	Sri Lanka
Greece	Sweden
India	Switzerland
Indonesia	Syria
Iran (Islamic Republic of)	Thailand
Iraq	Tunisia
Italy	Turkey
Japan	United Kingdom of Great Britain and Northern Ireland
Jordan	United States of America
Kenya	Venezuela
Lesotho	Yugoslavia
Libyan Arab Jamahiriya	Zambia
Macedonia	Zimbabwe
Malaysia	
Malta	

2. The following intergovernmental organizations were represented at the session:

African, Caribbean and Pacific Group of States
European Community
League of Arab States
Organization of African Unity

3. The following specialized agencies and related organizations were represented at the session:

United Nations Industrial Development Organization
World Trade Organization

4. The following non-governmental organizations were represented at the session:

General Category

International Confederation of Free Trade Unions
Third World Network
World Association of Small and Medium Enterprises
