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on its eighth session**

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Chapter I

Recommendations for the UNCTAD secretariat

1. The Commission notes with appreciation the secretariat's implementation of the recommendations of the seventh session, the recommendations of the Third United Nations Conference on LDCs, and the activities mandated in the Bangkok Plan of Action, which were documented in the "DITE Activities Report 2003". It commends the contributions in research and policy analysis and in capacity building, particularly in the area of international agreements and the effective use of information technology in this regard.
2. The Commission appreciates the input into its work of experts, resource persons and participants from the private sector and civil society and recommends that this input be extended to expert meetings.
3. The Commission welcomes the interaction with the World Association of Investment Promotion Agencies (WAIPA) and encourages the secretariat to enhance this partnership with a view to encouraging an exchange of experiences and best practices and the wide dissemination of UNCTAD's analytical work and policy advice. It also encourages a pro-active relation between UNCTAD and the Commission on Science and Technology for Development (CSTD), taking into account the role that CSTD can play in shedding expert light on the issue of technology transfer and know-how.
4. As developing countries and economies in transition seek to integrate fully into the world economy, FDI, as well as technology and enterprise development, can play an essential role in building national productive capacity and international competitiveness. UNCTAD has internationally recognized expertise in the area of investment, which needs to be recognized in the formulation of its future work by UNCTAD XI and beyond, taking into account particularly the needs of LDCs.
5. In light of the discussions at the current session, UNCTAD should continue its work on investment, technology and enterprise development through research and policy analysis, technical assistance and capacity and consensus building. In particular, UNCTAD should:
 - Continue to examine the impact of FDI on development with a view to helping developing countries attract FDI, benefit from it and maximize its positive effects and face challenges derived from it. Particular attention should be paid to FDI in services, given the increasing importance of this sector in the world economy. Attention should also be paid to how to foster FDI at the regional level and the need to strengthen human and institutional capacity building efforts at the subnational level to help developing countries attract FDI. The secretariat should also follow up on the work it has undertaken in the *World Investment Report 2003*, especially on issues of special interest to developing countries;
 - Continue to analyse host and home country measures related to FDI, as well as issues related to good public and corporate governance in the FDI area, so as to identify best practices with regard to ways and means to enhance the developmental impact of TNCs' activities. It should also disseminate information on country experiences related to FDI policies and the interaction between foreign and domestic investment;
 - Given the importance of reliable data for policy formulation, strengthen, in cooperation with relevant government agencies, data collection efforts and technical cooperation in improving and harmonizing FDI statistics;

- Continue the preparation of IPRs and strengthen the process for the implementation of the recommendations. Analytical work, particularly in the context of IPRs, should be complemented with the provision of technical assistance and capacity building. Linkages between foreign and local firms should be encouraged;
- Continue its work on international arrangements, with emphasis on the bilateral and regional dimensions, including in the context of North-South and especially South-South cooperation, and the needs of member countries in this regard. Furthermore, the secretariat should continue to facilitate an ongoing exchange of information and experiences in this area, including at the intergovernmental level.

Chapter II

Opening statements

1. The **Secretary-General of UNCTAD** emphasized that the Commission's session was taking place at the height of preparations for UNCTAD XI, at which building productive supply capacity and international competitiveness would be one of the key themes. The importance attached to international trade negotiations should not detract attention from the paramount importance of enhancing productive capacities in developing countries and the role of domestic investment, as well as FDI, in that context. UNCTAD XI would focus on the interaction between national development strategies and developments at the various international levels. Delegates were encouraged to use the Commission session as an opportunity to prepare for UNCTAD XI.
2. Referring to the downturn in the global economy, which had resulted in the contraction of FDI inflows to developing economies, he expressed concern about the increased competition to attract FDI. He also noted the growing interest in service trade negotiations among developing countries. In that connection, he stressed that the issue of outsourcing services, which could potentially involve sophisticated activities, might create not only opportunities but also challenges for developing countries. The role of policy making was therefore becoming more important.
3. The representative of **Brazil**, speaking on behalf of the **Group of 77 and China**, highlighted the problems of the sustainability of the global economic recovery and its effects on FDI flows worldwide, especially flows to developing countries. Excepting China, global FDI inflows to developing countries were estimated to have declined from \$162 billion in 2002 to \$156 billion in 2003. This situation posed serious challenges to most G77 members, particularly the LDCs, as they had less external resources to finance development goals. He noted the outcome of the Expert Meeting on the Effectiveness of FDI Policy Measures (June 2003), in which experts had stressed the importance of proactive measures in developing countries to attract and benefit from FDI, as well as the need to ensure sufficient policy space for development policies. He insisted that WTO negotiations and agreements on subsidies and TRIMs be reviewed with a view to strengthening their development dimensions.
4. He urged the Commission to provide renewed inputs to the discussions in the Preparatory Committee for UNCTAD XI on the theme of building productive capacities and international competitiveness. As developing countries sought to integrate fully into the world economy, FDI could play an essential role in harnessing national productive capacity and enhancing international competitiveness. TNCs were increasingly important in this respect, and UNCTAD should explore further their role in complementing actions by host and home countries to enhance development benefits from FDI. He noted in that connection that developing countries were increasingly becoming a source of FDI.
5. Developing countries and regions should receive intensified technical assistance from UNCTAD in the area of FDI data collection and reporting systems. UNCTAD's policy and analytical work on international investment rule-making at the bilateral and regional levels should also be strengthened. The Group of 77 and China welcomed the investment policy review programme, stressing its participatory approach and contribution to enhanced policy dialogue among stakeholders at both the national and the intergovernmental level. The programme had resulted in a fruitful public/private sector dialogue and triggered investment policy debate and changes. He also noted that UNCTAD could make a valuable contribution in the area of FDI in services, the importance of which had not been adequately reflected in research and policy analysis.

6. The representative of **Ireland**, speaking on behalf of the **European Union, the acceding countries (Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia) and the candidate countries (Bulgaria, Romania and Turkey)**, said that, at a time of increased competition for FDI, developed and developing country Governments shared a common interest in working together to minimize distortional FDI approaches. In particular, there was a need to assess which policy options were effective, counterproductive or detrimental to countries trying to incorporate FDI into their development strategies.

7. With regard to policy issues related to investment and development, the European Union fully agreed that general and non-discriminatory policy measures were assuming greater practical importance than overly specific FDI-enabling policies. Foreign investors in protected markets with mandatory joint ventures and domestic content requirement tended to use older technology and produce weaker backward linkages with the local economy. As market size was an important FDI determinant, the EU actively supported regional economic integration among developing countries, as illustrated by the EU-ACP Cotonou Agreement.

8. The European Union welcomed the focus on FDI in services. The sector had a huge untapped potential for international division of labour, since only 10 per cent of services were traded internationally. Countries like India stood to make considerable gains, particularly from IT and IT-enabled services. At the same time, the relocation of services had been shown to be unevenly spread, particularly in regional terms. The EU continued to focus on the poorest countries, the LDCs and Africa in supporting efforts to redress that imbalance. It fully supported the recommendations of the Johannesburg World Summit on Sustainable Development, which aimed to enhance corporate environmental and social responsibility through voluntary initiatives. It was actively promoting the *OECD Guidelines for Multinational Enterprises* and supported the *Global Reporting Initiative* guidelines.

9. The EU also noted that developing countries had concluded more bilateral investment treaties than developed countries. This reflected a general appreciation of the value and effectiveness of internationally applied rules on investment. It provided a positive basis upon which those already party to bilateral or regional agreements could pursue their interests further through wider multilateral investment arrangements. She hoped that UNCTAD's review of recent trends in international investment agreements would deepen the understanding of the continued potential and value of this to developing countries, even though not all countries would necessarily wish to be bound by this form of investment framework. She concluded by commending the work of UNCTAD on the promotion of international agreements protecting investment and in carrying out the investment policy reviews.

10. The representative of the **Islamic Republic of Iran**, speaking on behalf of the **Asian Group and China**, expressed concern about the marginal recovery of FDI inflows to his region in 2003, even though the outlook was promising. He emphasized that not all Asian countries had benefited from the more positive tendency, and attracting quality FDI remained a challenge. More Asian countries had become a source of outward FDI, but their global share was still small. He underlined the imperative of accurate and timely data to support policy analysis and formulation, and he endorsed the recommendation to strengthen UNCTAD's technical cooperation to support countries in their efforts in that connection. The Expert Meeting on FDI and Development, with its focus on FDI in services, had offered a useful forum for discussion. Services accounted for a large share of the Asian economies and were vital to their competitiveness. Indeed, while advances in ICT had created new opportunities for Asian economies to attract export-related FDI in services, there were worrying signs of protectionism in some developed economies. A proactive relation between UNCTAD and the

Commission on Science and Technology for Development to operationalize the transfer of technology and know-how was to be encouraged.

11. With regard to international policy making, his Group had been paying increasing attention to regional cooperation in the investment area, both in a South-South context and with more developed countries such as Japan and the Republic of Korea. The number of bilateral investment treaties and double taxation treaties had increased in the region, but the diversity of countries in terms of economic development made it difficult to find consensus in that area. The Commission should keep abreast of these developments. Investment policy reviews (IPRs) provided Governments with a tool to assess their investment environment according to stated national development goals. He noted with appreciation the work on the IPRs for Nepal and Sri Lanka. He concluded with a request for greater technical assistance and capacity building in the area of rule-setting and rule implementation.

12. The representative of **Senegal**, speaking on behalf of the **African Group**, welcomed the fact that FDI inflows into Africa had recovered. The issue of productive capacity was crucial for the African countries in attracting FDI and matching it with development goals. FDI, particularly in the manufacturing sector, could help increase the level of technology transfer in these countries. The key question was not just attracting FDI but benefiting more from it. A large number of African countries had adopted measures to improve their investment policies, including in the context of IPRs conducted by UNCTAD. It was expected that IPRs would be followed by concrete actions in terms of institutional reform and human capacity building. On international investment agreements, he called on UNCTAD to help African countries understand and deal better with these agreements. BITs constituted entry points into such agreements. He underscored that UNCTAD's assistance for regional initiatives, especially the Common Market for Eastern and Southern Africa (COMESA), was very valuable. He concluded by emphasizing the importance of good governance as a key instruments linking FDI to development.

13. The representative of **Bangladesh** said that, global FDI had declined in 2002, and developed countries and a few developing countries remained the prime destinations. The countries that had witnessed a surge in FDI in manufacturing were also among the main beneficiaries of service-based FDI. This suggested that more countries would need to develop and adapt their capabilities to attract FDI. On the relationship between FDI and investment protection laws, he pointed to evidence that weak laws concerning treatment and protection of FDI and investors' rights did not always hinder FDI, suggesting that there was no guarantee that investment agreements would lead to a more equitable distribution of FDI flows.

14. The representative of **Benin**, speaking on behalf of the **least developed countries**, pointed out that the LDCs were in the process of enhancing their economic potential through new investment, promotion of trade, reducing costs and adapting technologies to their needs. They had also reformed their legal environment and economic policies and institutions to make them more attractive to FDI. In spite of this, LDCs continued to receive small quantities of FDI. In this context, the LDCs expressed appreciation for UNCTAD's support for their Governments in concluding bilateral investment treaties, as well as in respect of investment promotion and providing opportunities for exchange of experiences, although there was a need to intensify such efforts. It was noted that UNCTAD had operationalized a programme on good governance and other activities adopted at the Third UN Conference on LDCs. He hoped that the projects could move beyond the five-country pilot stage into a full programme.

15. The meeting of the Consultative Council for Promotion of FDI, which was supported by the Japan Bank for International Cooperation (JBIC) and placed emphasis on LDCs in Asia, was noted

with appreciation. The interest of the LDCs in attracting more FDI was furthermore manifested by the strong participation in the meeting of WAIPA being held in parallel with the Commission. The effort to examine FDI in the services sector was also welcome. He concluded by calling on the partners of the LDCs and UNCTAD to increase their assistance to help them achieve the Millennium Development Goals and the goals of the Third UN Conference on LDCs.

16. The representative of **Japan** highlighted the need to build national supply capabilities to attain sustainable development. Accelerating the inflow of FDI to developing countries required efforts by host as well as home countries to create an investment-friendly environment. In November 2003, UNCTAD, the Japan Bank for International Cooperation and the International Chamber of Commerce had held a seminar in Tokyo for Asian investors and Asian developing countries to promote mutual understanding of investment measures and concrete matchmaking in the region. Japan had promised to strengthen such support. Japan had also expressed its willingness to assist developing countries in building appropriate capacity in the area of FDI, in addition to its efforts in the area of rule-making at both the bilateral and the multilateral level.

17. The representative of **Algeria** pointed to the importance of FDI in Algeria's development. He noted, however, that FDI inflows had not gone primarily to countries that had implemented policy reforms. Algeria, for example, had reformed its policies but with little impact on FDI. In spite of an abundance of petroleum and its proximity to European markets, the country had not met its potential for FDI. This suggested that there was no simple way for developing countries to become attractive to FDI.

18. The representative of **Jamaica** stressed the need for national policy space for developing countries to be able to address their development concerns, especially in the process of negotiating international frameworks. No one single solution would work for all developing countries; while some countries might need a general solution, others might need more targeted solutions. It was important for home country measures to be made more transparent to encourage FDI inflows to developing countries.

19. The representative of **Ecuador**, speaking on behalf of the **Latin American and Caribbean Group**, said that countries in the Latin American and Caribbean region had opened up significantly to trade and FDI in order to increase their competitiveness and attract investment. In the process of integrating into the world economy, it was essential for countries to maintain sufficient policy space to achieve aims of national social and economic development. The new round of bilateral and regional trade negotiations was adding to competition for FDI among countries. The unprecedented demands by foreign investors for additional regulatory changes often did not take account of the development dimension of such measures and could imperil the ongoing recovery in the region, as well as alienating local populations. They also restricted the ability of Governments to protect public welfare and the environment. The UNCTAD secretariat was urged to pay special attention to issues related to trade agreements, which encompassed regional and bilateral investment. Technical cooperation and capacity building were key areas of assistance. It was hoped that UNCTAD XI would provide positive impetus for the region.

Chapter III

Policy issues related to investment and development

(Agenda item 3)

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

“Effectiveness of FDI policy measures: Note by the UNCTAD secretariat”
(TD/B/COM.2/EM.13/2);

“Report of the Expert Meeting on the Effectiveness of FDI Policy Measures”
(TD/B/COM.2/51);

“FDI and development: The case of privatization-related services FDI; Trends, impact and policy issues: Note by the UNCTAD secretariat” (TD/B/COM.2/EM.14/2);

“Report of the Expert Meeting on FDI and Development” (TD/B/COM.2/57);

“FDI and development: Policy issues related to the growth of FDI in services. Note by the UNCTAD secretariat” (TD/B/COM.2/55);

“World Investment Report 2003: FDI Policies for Development: National and International Perspectives” (UNCTAD/WIR/2003).

Chairperson’s summary

21. The Head of the Investment Issues Analysis Branch of the Division on Investment, Technology and Enterprise Development (DITE) introduced the item. The Chairpersons of the Expert Meetings on the Effectiveness of FDI Policy Measures (June 2003) and on FDI and Development (October 2003) reported on their respective meetings.

22. The bulk of the discussion revolved around the increased tradability of services and its development implications. As regards efforts to promote their export competitiveness through FDI, developing countries and economies in transition had focused mainly on the role of TNCs in the export of goods, and had paid less attention to cross-border exports of services. With the advances in information and communication technology (ICT) and the increasing tradability of information-related services, the relocation of services to developing countries and transition economies implied a significant potential in terms of new jobs, FDI and exports, coupled with risks of job losses in developed countries. To review these issues, a panel discussion was organized under item 3.

23. The session revealed that services trade was now growing faster than trade in manufactures and that FDI was playing a crucial role in this development. Services mattered for the competitiveness of developing countries, as they represented key inputs to all types of products. Thanks to developments in the field of ICT, services were also becoming increasingly tradable, making it possible to divide the value chain into discrete activities and relocate certain activities to new locations. While the emphasis of the discussion was on export-oriented services, it was underlined that the link between tradable and non-tradable services was very strong. Without a competitive supply of basic infrastructure services, it was difficult for countries to attract and benefit from FDI in export-oriented services. It was also difficult to generate widespread development benefits for larger parts of the population. The globalization of services offered considerable opportunities but was not

free from controversy. Whereas estimates of the magnitude of the phenomenon tended to vary, it was clear that the potential for relocating the production of services to lower-cost locations was large. For a number of developing countries, this implied real growth opportunities. Some experts warned, however, about the risk of raising too many expectations related to a single activity (such as call centres or shared services). Some also cautioned against widening income differentials if most of the export-oriented jobs were provided only to the best educated segments of the workforce in developing countries, although it was also mentioned that some export-oriented services did not require highly skilled labour.

24. The globalization of services offered considerable opportunities but was not free from controversy. Whereas estimates of the magnitude of the phenomenon tended to vary, it was clear that the potential for relocating the production of services to lower-cost locations was large. For a number of developing countries, this implied real growth opportunities. Some experts warned, however, about the risk of raising too many expectations related to a single activity (such as call centres or shared services). Some also cautioned against widening income differentials if most of the export-oriented jobs were provided only to the best educated segments of the workforce in developing countries, although it was also mentioned that some export-oriented services did not require highly skilled labour.

25. Some speakers concluded that the growth potential from increased investment in IT and software services in developing countries was even greater than in developed countries. Three infrastructure elements (distribution, telecommunications and finance) were identified as important for countries in achieving better prices and performance in the service sector as a whole, which, in turn, could also be key areas for Governments' actions to attract FDI. It was stressed that exports of services were no development panacea, but could be seen as an important catalyst for promoting other regulatory and infrastructure improvements in the services area.

26. The risk of protectionist measures in developed economies was also noted. Such measures were interpreted as being against the principles of free trade. Empirical evidence furthermore suggested that the risk of job losses in developed countries might have been exaggerated, as they represented only part of the picture. In fact, recent research had shown that offshoring services offered many other benefits to developed countries, such as lower prices and greater investment in IT systems, faster productivity growth and, more importantly, greater demand for even higher skills. Nevertheless, there was a need for adjustments in the labour market to mitigate the risk of a political backlash against globalization of services in developed countries. The importance of adequate resources for retraining of labour was especially recognized.

27. In order to reap benefits from this new and rapidly developing area of globalization, policymakers needed to improve their understanding of the factors driving the process, including which industries and types of services were affected most. Experts noted that the globalization of services resembled that of the manufacturing sector in some regards, but that there were also important differences. In particular, policymakers should bear in mind the greater speed of change, the large share of the skilled labour force that was potentially affected, and the human capital intensity of many services.

28. A number of developing countries, with India at the forefront, had already attracted FDI into export-oriented services. The experience of South Africa showed that close collaboration between the Government and the private sector in the development of call centres was essential in attracting TNCs. Other key factors included competitive telecommunications and IT infrastructure, a stable electricity supply, an educated, English-speaking work force and active marketing of existing

opportunities. In South Africa's case, new outsourcing opportunities were being explored with certain developing countries, e.g. India, Jamaica and the Philippines. With regard to efforts aimed at upgrading existing call centre activities, constant contacts with existing clients and training activities were seen as especially important.

29. Indeed, many speakers emphasized the importance of human capital development. This was particularly important in the area of services, which were highly skill-intensive. In view of rising job losses in both developed and developing countries, and to mitigate the risk of a "race to the bottom" in the area of labour standards, one expert suggested the establishment of global labour standards. Some cautioned about the opportunities created by IT development, drawing attention to the limited pool of workers with high levels of education in many developing countries (i.e. a highly educated workforce, including engineers, was needed for IT-related jobs, as opposed to a workforce without university education). Another noted the diversity of IT services, generating employment opportunities ranging from high-skilled to not-so-highly skilled. Others emphasized the role of general education policies for all levels of education, which should identify timeframes and priorities of individual countries. How to increase value-added activities and ensure spillover effects as widely as possible were key concerns for developing countries that had already attracted FDI in services.

Chapter IV

Issues related to investment arrangements

(Agenda item 4)

30. 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.2/54);

“Progress report: Implementation of post-Doha technical assistance work in the area of investment: Report by the UNCTAD secretariat” (UNCTAD/ITE/IIT/2003/3).

Chairperson’s summary

31. The item was introduced by the Head of the Policies and Capacity Building Branch, DITE. He stressed that, despite the difficulty of arriving at an explicit consensus on the Singapore Issues in Cancún, the negotiation and conclusion of bilateral and regional investment agreements continued at significant levels. This emphasized that international investment rule making remained an important issue, and that UNCTAD could assist in its development aspects.

32. The moderator of the subsequent panel stressed UNCTAD's expertise on the understanding of issues related to international investment agreements (IIAs) and highlighted the new challenges and trends emerging in recent negotiations of IIAs and in the implementation of such agreements. These challenges and trends included the broader scope of today's IIAs, clearer rules for the protection of investors and investments, and asymmetry in bilateral contexts. The moderator also noted the potential of regional agreements to enhance the scope of BITs in providing better conditions for attracting FDI.

33. Four expert panellists reported their experiences in negotiating regional and bilateral investment frameworks. The presentations covered, in particular, the experiences of the ASEAN Investment Area Framework Agreement, the FTAA negotiations, the proposed COMESA Common Investment Area, the Andean Community's foreign investment policy, and selected BITs. Each expert provided a stocktaking of the particular negotiating or implementation process concerned, as well as an analysis of the most distinctive technical aspects of the arrangement concerned. The presentations also covered recent interregional negotiating initiatives across regional arrangements/countries, such as "ASEAN plus activities" or the negotiation of economic partnership agreements. The moderator added a reference to the proposed APEC best practices for negotiating regional trade agreements (RTAs).

34. In addition, the panellists referred to the reasons for negotiating IIAs, which included attracting investment (including new resources in strategic sectors), fostering legal conditions for doing business, creating new and better jobs, and ultimately achieving development.

35. The presentations by specialists allowed for an identification of certain common emerging trends and challenges in the negotiation of regional and bilateral IIAs. Central amongst these common challenges and trends was the increasing complexity of IIA negotiations.

36. This increasing complexity was due in particular to the trend towards negotiating investment chapters in FTAs. This established a direct link between trade and investment issues. In this context,

reference was made to issues such as intellectual property rights and services, and several delegations pointed to the new features of their most recent or currently negotiated IIAs. These included transparency obligations, national treatment in the pre-entry stage, provisions on performance requirements, and, for those arrangements taking a very comprehensive approach, provisions on anti-competitive behaviour, consumer protection or sanitary or phytosanitary (SPS) measures. Given the growing number of regional arrangements and issues emerging therefrom, there was a need for in-depth analysis of the impact of these arrangements on FDI flows and development. In this regard, one panellist informed the session about new initiatives taken in her region to harmonize FDI statistical standards so as to facilitate regional cooperation in IIAs.

37. An additional challenge arose from the increasing number of IIAs and FTAs, which could result in overlaps and interlinkages between existing and future agreements. One delegate, for example, explained the challenge of negotiating IIAs with different negotiating partners, who adopted different models and structures for such negotiations and agreements. In the view of the moderator, regional initiatives could assist in resolving the issue.

38. The difficulties associated with increasing complexity were compounded by a lack of adequate resources and skills to address these challenges, especially on the part of developing country negotiating partners.

39. In the course of the discussion, certain common views were expressed as to how best to address these challenges. In particular, attention was drawn to the need for additional capacity building for developing country negotiators, improving the understanding and analysis of technical issues, and sharing experiences amongst negotiators.

40. Sharing of experiences and additional analysis of technical issues were of particular importance given the need to analyse more systematically the challenges that revolved around FDI in various regional and bilateral fora. In this connection, one delegate noted how the EU was assisting in the evolution of regional integration initiatives among developing country partners through the conclusion of economic partnership agreements with regional groups of developing countries. Further added value was perceived in identifying the similarities and differences that regional approaches adopted towards key aspects of investment rule making. In that context, one delegate suggested a database containing the characteristic (investment-related) provisions of FTAs and BITs. By way of response, one participant identified the need to increase understanding of international issues, in that they operated as an important framework for bilateral and regional negotiations. In that context, increasing focus could also be placed on RTAs. UNCTAD's engagement in these issues would allow negotiators to benefit from the possibilities of cross-fertilization amongst regional approaches.

41. In addition, future assistance could also include the strengthening of institutional capacity in developing countries. Given the breadth of impacts that international rule making in investment might have, it was vital to improve the coordination of policies and negotiating methods adopted by affected ministries, as well as amongst affected levels of government (not only national, but also subnational and municipal), and to ensure involvement of affected stakeholders. During the discussion, participants shared experiences as to how consultation processes could take place.

42. The need to strike the right balance between the right to regulate and the commitment to establish a predictable and reliable framework for investment was stressed. Here, delegates and other participants referred to the long-term goal of international rule making. The development dimension was identified as a major reason for engaging in international rule making. In that connection, the concept of flexibility for development in IIAs was suggested as an issue to be pursued in the context of UNCTAD XI.

43. Throughout the discussion, panellists and delegates pointed to the valuable role UNCTAD had played in these areas to date and to the positive spill-over effects that UNCTAD's work had generated at the regional and national levels. Furthermore, the panellists and some delegates expressed their hope that developing countries would continue to benefit from that assistance and identified three main areas where UNCTAD could be of particular assistance, namely systematic analysis of issues related to IIAs and development, fostering developing country negotiating capacity, and strengthening developing countries' internal institutional capacity.

Chapter V

Investment policy reviews: Exchange of national experiences

(Agenda item 5)

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

“Investment Policy Review of Algeria” (UNCTAD/ITE/IPC/2003/9);

“Summary of deliberations of the Investment Policy Reviews of Lesotho and Nepal” (TD/B/COM.2/59).

Chairperson’s summary

45. Introducing the Investment Policy Review of Algeria, the representative of the UNCTAD secretariat underlined that Algeria had made considerable efforts in liberalizing the investment framework by implementing a programme of economic reforms initiated in the early 1990s, complemented by the "ordonnance 2001". The privatization of key economic sectors had been initiated and had led to the attraction of considerable FDI in several sectors. As a result, in 2002, Algeria had been ranked third in Africa – and first in the Maghreb region – in terms of FDI inflows. The United States was the largest investor, and Egypt ranked as the second largest, representing a positive example of South-South partnership. Investors from the European Union, especially Spain, Italy and France, were increasingly present.

46. Despite the significant increase in recent years, FDI inflows remained concentrated in a few specific sectors. Moreover, they seemed not to have a significant impact on the national economy in terms of job creation, access to markets and technology transfer. In addition, several legal and administrative obstacles to foreign investors still existed, inhibiting the country's FDI potential. In order to increase FDI inflows and better benefit from it, there was a need to further modernize the country's investment framework, implement a more proactive investment strategy, reinforce the local private sector and develop human resources.

47. The Director General of the Investment Division, Ministry of Participation and Investment Promotion of Algeria, highlighted the positive results achieved by the country in a relatively short period of time in terms of economic liberalization and macroeconomic stabilization and the objectives of his Government with regard to FDI. He reaffirmed the commitment of his Government to reinforcing investors' confidence in the country. Several reforms had already been implemented and would be pursued. He stressed the importance of follow-up in the implementation of the policy recommendations of the report.

48. Many participants took note of the remarkable progress achieved by Algeria in recent years as a result of the courageous process of economic liberalization. The need was stressed to monitor the application of existing rules rather than enacting further legislation. Supporting the local private sector and pursuing international and regional economic integration were considered the most appropriate policy measures, along with the dissemination of success stories of businesses established in the country. This could help improve the country's image and facilitate linkages between foreign companies and dynamic Algerian small and medium-size enterprises (SMEs). Furthermore, European SMEs could play an important role in terms of both know-how and direct investment.

49. Some participants mentioned the importance of modernizing Algeria's investment environment and making it more accessible to English-speaking investors. Reforms in the banking sector and improvements in infrastructure (especially telecommunications) were considered crucial. Arrangements for the repatriation of profits and dividends, perceived as one of the main obstacle by foreign investors, should be simplified.

50. Another participant reaffirmed the strategic role played by Algeria in the Mediterranean region. He stressed that development cooperation and partnership were pivotal in ensuring that economic liberalization translated into benefits. One delegation emphasized the strategic value of improving African countries' image and invited the international community to help African countries in their economic modernization efforts by recognising their achievements.

51. Private sector representatives emphasized the positive impact produced by economic reforms on private investors' perception of the country, as a result of which several partnership agreements had recently been established between foreign companies and the local private sector. However, they noted problems still faced by private investors in the country, such as the ambiguities of the Algerian investment code, which hindered the rule of law, time-consuming administrative procedures and a lack of knowledge of and confidence in alternative dispute resolution mechanisms, especially arbitration. Land access and profit repatriation remained two of the most urgent problems in Algeria. They also noted that the creation of a national agency dealing exclusively with FDI should be a priority for national authorities. In this regard, the role of one-stop shops should be clarified, and their role as facilitators of foreign investment throughout all the phases of an investment project should be improved.

52. The peer review on Algeria was considered very productive and constructive. The session successfully engaged the Government of Algeria in a policy dialogue with the international community and the private sector. The review process was endorsed as a useful mechanism in experience sharing. The representative of Algeria was appreciative of the open and constructive views given by delegates and private sector representatives; he reiterated the importance of continuing the dialogue on these issues and affirmed that implementation should be the next stage. UNDP called upon the development partners to support the follow-up programme of technical assistance. The representative of the UNCTAD secretariat took note of the request for follow up.

Exchange of national experiences and follow-up on the recommendations of IPRs

53. The UNCTAD secretariat provided an update on the work on IPRs and their follow-up. Follow-up was highlighted as the essential link in ensuring that IPR recommendations were implemented. There was a need for more follow-up funding. Follow-up was carried out in collaboration with partner agencies and sometimes with the funding of national Governments. Main areas of follow-up included regulatory and administrative reforms, formulation of investment strategies, capacity-building for IPAs, institutional change, drafting of new legislation, and amendment of existing legislation. The key findings on what constituted effective areas of FDI policy, as reported in the Expert Meeting on the Effectiveness of FDI Policy Measures, were reiterated.

54. Representatives of Botswana, Egypt, Ghana, Lesotho, Peru and Uganda spoke on the implementation of recommendations of the IPRs in their countries. The representatives of Morocco and the International Trade Centre (ITC) also participated in the deliberations. They all appreciated the IPRs for providing a strategic perspective of FDI in development. One common message was that IPRs were the beginning of a process and should be followed up, with timely implementation of the

recommendations, and countries should be assisted in this process by their development partners. Addressing FDI promotion involved cross-cutting issues, and resources and implementation timetables were important. Countries underlined that various measures recommended in the IPRs had been addressed, some by themselves and some with the help of UNCTAD. These measures related to the investment and regulatory framework, such as investment laws and taxation regimes, and institutional and administrative improvements, including creating one-stop shops, facilitating immigration and work permits, promoting good governance and accelerating regional integration. It was also emphasized that, while countries had taken broad-based actions, in the case of systematic investment promotion on a sectoral basis, further assistance was needed to identify investment projects and their profiles. The representative of Ghana highlighted the fact that his country had requested a follow-up programme after the completion of its IPR but that it had not been able to implement the programme fully because of lack of funding. He called for funds for follow-up work be put in place.

Chapter VI

Report of the subsidiary bodies of the Commission

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

“Report of the Intergovernmental Group of Experts on Competition Law and Policy on its fifth session” (TD/B/COM.2/52 – TD/B/COM.2/CLP/39);

“Report of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting on its twentieth session” (TD/B/COM.2/58–TD/B/COM.2/ISAR/22).

Report of the Intergovernmental Group of Experts Competition Law and Policy

56. A representative of the secretariat introduced the report of the Intergovernmental Group of Experts on Competition Law and Policy. The objective of the Group was to monitor UNCTAD's activities related to competition law and policy and to give guidance to States on issues related to the implementation of the UN Set of Principles and Rules on Competition. The main activities under this programme included analytical research on anti-competitive practices in domestic as well as international markets, exchange of information, technical assistance and capacity-building for developing countries, including LDCs, and for economies in transition, as decided in various mandates emanating from the UN Set of Principles and Rules on Competition (1980), the Bangkok Plan of Action (2000), the Fourth UN Conference to Review All Aspects of the Set (2000) and the Group of Experts itself in the agreed conclusions adopted at its previous sessions. In addition, paragraph 24 of the Doha Declaration called upon UNCTAD to help developing and least developed countries "so that they may better evaluate the implication of closer multilateral cooperation in this field for their development policies".

57. In presenting the report, he drew attention to the important issues discussed in the consultations held on (a) the interface between competition policy and industrial policy; and (b) the optimal design and implementation of competition law in developing countries, including the desirability of a phased approach. He then highlighted the main agreed conclusions adopted by the meeting.

58. In the ensuing discussions, the secretariat was asked to specify the origin of the competencies of the Group and the status of its agreed conclusions. The issue of the need for a step-by-step, gradual approach to competition law and policy for developing countries was also discussed, as was the need for optimal structures in developing countries in respect of competition law and policy, especially in deciding the appropriate competencies of the competition authority in relation to those of utility regulators. Finally, it was understood that the technical assistance programmes mentioned by the Expert Group were in line with the technical cooperation strategy subsequently adopted by UNCTAD.

Report of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting (ISAR)

59. The Chairperson of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting (ISAR) presented the report of the Group of Experts on its twentieth session. That session had taken place 30 years after the United Nations had become

involved in efforts to improve the transparency and accountability of transnational corporations. The participation of 200 experts from 65 member States in the twentieth anniversary session of ISAR reflected a steady increase in the number of participants over the last several years. A special panel, commemorating the anniversary, had reflected on achievements so far and pointed to the challenges ahead in improving corporate transparency and disclosure. The panel had highlighted the fact that, while significant progress had been made over the last three decades, the series of corporate failures that had occurred over the last couple of years signalled the need for further work.

60. The main agenda item of the twentieth session of ISAR had been a review of case studies on transparency and disclosure on corporate governance. During the intersessional period, case studies had been conducted on Brazil, France, Kenya, the Russian Federation and the United States of America. In concluding their deliberations on the main agenda item, the experts had requested UNCTAD to publish and disseminate as widely as possible the Group's paper on transparency and disclosure requirements on corporate governance. The Chairperson also reported on two items that had been discussed under "Other business", namely a paper on disclosure of the impact of corporations on society, prepared by the secretariat, and a revised model curriculum. The Chairperson further reported on follow-up work on previous sessions that the Group had conducted during the reporting period, in particular work on environmental accounting, which had been discussed at the fifteenth session of ISAR, and accounting by small and medium-sized enterprises, which had been discussed at the nineteenth session of ISAR. The Chairperson also reported on other activities that ISAR had undertaken during the reporting period, such as workshops, publications, and liaison with other international organizations, the private sector and civil society.

61. A delegate from a developing country asked the Chairperson of the twentieth session of ISAR whether there were particular rules that should be followed in order to avoid corporate scandals and failures in auditing and controls. The Chairperson of ISAR responded that disclosure drove behaviour and that better transparency and disclosure by corporations contributed to avoiding corporate collapses. He also mentioned that ethics were an important element in efforts to avoid corporate failures.

Chapter VII

Implementation of agreed conclusion and recommendations of the Commission, including post-Doha follow-up

62. For its consideration of this item, the Commission had before it two documents prepared by the UNCTAD secretariat:

“Implementation of agreed conclusions and recommendations of the Commission, including post-Doha follow-up” (TD/B/COM.2/56);

“DITE Activities Report” (UNCTAD/ITE/MISC/2004/1).

Chairperson’s summary

63. The Director of DITE presented a report on the implementation of the agreed conclusions and recommendations of the Commission at its seventh session. He began by presenting the overall performance of the Division on Investment, Technology and Enterprise Development in 2003 and highlighted the importance of the Internet in reaching the target audience. In 2003, the publications of the Division had been downloaded over 3 million times. He then outlined, in more detail, some of the specific activities undertaken by the Division to implement each of the recommendations set out by the Commission at its seventh session, including Post-Doha and other technical assistance, capacity building and policy analysis, particularly in cooperation with international and regional organizations. He concluded by emphasizing the important role that extrabudgetary resources had played in facilitating the work of the Division.

Chapter VIII

Other business

Chairperson's summary

Presentations by international organizations on their activities in 2003

64. The representative of the Organization for Economic Cooperation and Development (OECD) elaborated on the ongoing work of the Committee on International Investment and Multinational Enterprises (CIME), including the work on synergies between ODA and FDI. He also briefed delegates on the recent developments concerning the OECD initiative on investment for development, which had been launched in Johannesburg and aimed at strengthening cooperation among member and non-member countries.

65. The representative of the Multilateral Investment Guarantee Agency (MIGA) focused on the FDI promotion centre as a new tool for investment practitioners. The representative of the United Nations Industrial Development Organization (UNIDO) gave a general account of UNIDO's activities in the FDI area, including regional programmes in the areas of needs assessment and targeting, as well as training activities, various databases and promotion activities, work in the area of African IPA cooperation, FDI surveys and special sectoral initiatives for selected African countries.

66. The representative of the International Monetary Fund (IMF) said that the Fund's FDI-related activities could be classified into three categories: surveillance, technical assistance and research. The Fund routinely looked into the policies of its member countries, including policies on privatization, taxation and trade. Since investors sought predictability and efficiency rather than incentives, technical assistance had focused on fiscal reform. Research had been expanded to cover the cyclical nature of FDI, as well as its role in local and international financial markets.

67. The representative of the Association of South-East Asian Nations (ASEAN) spoke of investment cooperation schemes and other initiatives launched to strengthen the investment network in the region, including capacity-building measures for emerging countries.

68. The president of the World Association of Investment Promotion Agencies (WAIPA) described new initiatives finalized at its current meeting, including its MOU with four partner agencies (UNCTAD, MIGA, OECD and UNIDO). She noted that WAIPA membership now numbered 161 IPAs from 139 countries.

69. The secretariat of the UN Commission on Science and Technology for Development described Commission activities relating to promoting the use of science and technology to meet the Millennium Development Goals. The Commission's earlier work, notably on biotechnology and ICT, had become the basis for several initiatives and had been made available to the UN ICT Task Force, the World Summit on the Information Society (WSIS) and the International Telecommunication Union (ITU), among others.

70. In addition to the presentations made during the session, a note was also circulated by the Energy Charter Secretariat. It included a summary of the activities of the Investment Group, which meets regularly in Brussels to discuss energy-related investment policies of member States.

Chapter IX

Action by the Commission and closing statements

71. At its closing plenary, on 29 January 2004, the Commission took note of the report of the Expert Meeting on the Effectiveness of FDI Policy Measures (TD/B/COM.2/51) and the report of the Expert Meeting on FDI and Development (TD/B/COM.2/57).
72. It took note of the report of the Intergovernmental Group of Experts on Competition Law and Policy on its fifth session (TD/B/COM.2/52) and the report of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting on its twentieth session (TD/B/COM.2/58), it endorsed the agreed conclusions contained therein, and it approved the provisional agendas for the Groups' next sessions.
73. It took note of the secretariat's progress report on the implementation of agreed conclusions and recommendations of the Commission (TD/B/COM.2/56).
74. It adopted recommendations for the UNCTAD secretariat (see chapter I above), it approved the provisional agenda for its ninth session (see annex I below), and it approved the topics for its expert meetings in 2004 (see annex II below).
75. It approved its draft report (TD/B/COM.2/L.20), subject to any amendments by delegations to summaries of statements, it decided to incorporate the Chairperson's summaries into its report, and it authorized the Rapporteur to complete the report in the light of the proceedings of the closing plenary.

Chapter X

Organizational matters

Opening of the session

76. The eighth session of the Commission was held at the Palais des Nations, Geneva, from 26 to 29 January 2004. The session was opened on 26 January by Mr. Vladimir Malevich (Belarus), President of the commission at its seventh session.

Election of officers

77. At its plenary meeting, on 26 January 2004, the Commission elected its Bureau as follows:

Chairperson:	Mr. Trevor Clarke (Barbados)
Vice-Chairpersons:	Mr. Rafael Paredes (Ecuador)
	Mr. Jean-Luc Lebideau (France)
	Mr. Andreas Pfaffernoschke (Germany)
	Mrs. Preeti Saran (India)
	Mr. Nathan Irumba (Uganda)
Rapporteur:	Mr. Dmitry Godunov (Russian Federation)

Adoption of the agenda and organization of work

78. At the same meeting, the Commission adopted the provisional agenda circulated in document TD/B/COM.2/53. Accordingly, the agenda for the eighth 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 ninth session of the Commission
9. Other business
10. Adoption of the report of the Commission

Provisional agenda for the ninth session of the Commission

79. At its closing plenary meeting, on 29 January, the Commission approved the draft provisional agenda for its ninth session (see annex I) and the topics for Expert Meetings for 2004 (see annex II).

Adoption of the report of the Commission to the Trade and Development Board

80. At its closing plenary meeting, on 29 January, the Commission adopted its draft report (TD/B/COM.2/L.20), and authorized the Rapporteur to finalize the report in light of the proceedings of the closing plenary meeting.

Annex I

Provisional agenda for the ninth 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 tenth session of the Commission
9. Other business
10. Adoption of the report of the Commission

Annex II

Topics for Expert Meetings for 2004

Expert Meeting on Good Governance in Investment Promotion

The UNCTAD Expert Meeting on Effectiveness of Foreign Direct Investment Policy Measures, which was held from 25 to 27 June 2003, recommended follow-up discussions on country experience on good governance in investment promotion. These discussions should include efforts that countries are making to increase transparency and accountability in the public sector and apply high standards of corporate governance. The role of the different stakeholders, including business groups, in the process of improving the investment environment should be given special attention.

The Meeting will identify policies and practices that enhance good governance in investment promotion based on national examples, the experiences gained through UNCTAD programmes and inputs of Meeting participants. The Meeting will also identify complementary home country measures and relevant corporate standards.

To facilitate the discussions, the UNCTAD secretariat will prepare an issues paper drawing on the experiences gained by the secretariat through its programme on Good Governance in Investment Promotion (GGIP), as well as selected experiences of other organizations in promoting good governance of institutions involved in the investment process.

Expert Meeting on the Impact of FDI on Development

The discussions in the Commission have shown that there are a number of issues relating to attracting FDI and benefiting more from it that require attention. This applies to all developing countries and especially the LDCs. A better understanding of such issues is important in order for governments to be in a better position to formulate appropriate policies. In the light of this, the Expert Meeting should focus on issues related to the impact of FDI on development and its role in integrating developing countries in the world economy.

Annex III

Attendance *

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

Algeria	Kenya
Angola	Lebanon
Bangladesh	Lesotho
Barbados	Madagascar
Bolivia	Mauritius
Botswana	Mexico
Brazil	Morocco
Canada	Peru
Chile	Philippines
China	Republic of Moldova
Colombia	Russian Federation
Congo	Rwanda
Cuba	Senegal
Czech Republic	Slovakia
Dominican Republic	Spain
Ecuador	Sri Lanka
Egypt	Sudan
Ethiopia	Sweden
Finland	Switzerland
France	Syrian Arab Republic
Germany	Thailand
Ghana	Tunisia
Guatemala	Turkey
India	Uganda
Indonesia	Ukraine
Iran (Islamic Republic of)	United Kingdom of Great Britain and Northern Ireland
Iraq	United States of America
Italy	Venezuela
Jamaica	
Japan	
Jordan	

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

African, Caribbean and Pacific Group of States
Arab Labour Organization
Common Market for Eastern and Southern Africa
European Community
Organization for Economic Cooperation and Development

* For the list of participants, see TD/B/COM.2/INF.8.

3. The following United Nations agencies were represented at the session:

International Trade Centre
United Nations Development Programme

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

United Nations Industrial Development Organization
World Intellectual Property Organization
World Trade Organization

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

General Category

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

6. The following Resource Persons were invited to the session:

Mr. Adel Bensaci, General Manager, Société maghrébine de mécanique de précision et de maintenance industrielle, SARL, Hydra, Algeria
Mr. Nelson Carvalho, Professor, São Paulo University, Brazil
Mr. Roberto Echandi, Director, OECD Caribbean Basin Investment Initiative Project, San José, Costa Rica
Ms. Patricia Francis, President, Jamaica Promotions Corporations, Kingston, Jamaica
Mr. Gonzalo Gutierrez, Executive Director, Office of Economic Promotion, Lima, Peru
Ms. Grazia Ietto-Gillies, Professor, Applied Economics, Centre for International Business Studies, London, United Kingdom
Mr. Claude Haegi, President, Swiss-Algerian Chamber of Commerce
Mr. Ferhat Horchani, Professeur, Faculty of Law and Science, El Menah, Tunisia
Ms. D. Kaziah Kadir, Deputy Director General, MIDA, Kuala Lumpur, Malaysia
Mr. Philip J. Jennings, General Secretary, Union Network International, Nyon, Switzerland
Mr. Charles Jonker, Chief Executive Officer, Gauteng Economic Development Agency, Marshalltown, South Africa
Mr. De Laage De Meux, President, Chamber of Commerce and Industry of France, Paris, France
Mr. Robert Lipsey, Director, National Bureau of Economic, New York, United States of America
Mr. Henry Loewendahl, Director, OCO Consulting, Brussels, Belgium
Ms. Padma Mallampally, Consultant, Houston, United States of America
Ms. Catherine L. Mann, Senior Fellow, Institute for International Economics, Washington DC, United States of America
Mr. Francis Moloi, Director Trade Negotiations with WTO, Pretoria, South Africa
Mr. Peter Muchlinski, Professor, University of Kent, United Kingdom
Mr. Victor Murinde, Birmingham Business School, Birmingham, United Kingdom
Ms. Eva Palocz, Deputy General Manager, KOPINT-DATORG, Budapest, Hungary
Mr. Karim Zoubir, Manager, Development and Investment, Trust Algeria Investment Co., Algiers, Algeria

7. The following organizations and their representatives were invited to the session:

Mr. Falou Samb, Programme Officer, International Trade Cooperation and Information Agency, Geneva, Switzerland

Mr. A. Taleb, General Manager, AJETEC, Geneva, Switzerland

Mr. Clive Vokes, General Manager, Clive Vokes Associates, Algiers, Algeria

Mr. Vic Del Fierro, President, Coalition for Consumers, Parañaque City, Philippines