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REPORT OF THE COMMISSION ON INVESTMENT, TECHNOLOGY AND RELATED FINANCIAL ISSUES ON ITS NINTH SESSION

Held at the Palais des Nations, Geneva,

from 7 to 11 March 2005

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Chapter I

AGREED RECOMMENDATIONS

1. The Commission commends the secretariat's implementation of the recommendations of the eighth session and appreciates its contributions in research and policy analysis, technical assistance, and capacity- and consensus-building.

2. The Commission welcomes the information provided in the *DITE Activities Report 2004* and would like to see it continued as a regular feature.

3. In the light of the discussions at the current session, UNCTAD should continue its analytical work on foreign direct investment (FDI) and transnational corporations (TNCs) and their impact on development, especially its in-depth analysis of the policies and measures that can help developing countries in all regions attract FDI and harness it to the pursuit of their development goals. The Commission notes with appreciation the work undertaken by the secretariat to analyse emerging global and regional trends in FDI, including for instance the globalization/internationalization of research and development by TNCs, and outward FDI from developing countries. It encourages the secretariat to further its analyses of such trends and their policy implications, especially in the context of South–South cooperation. The secretariat should also follow up on the work undertaken on FDI in services (e.g. by looking at the tourism industry, which is of special interest to developing countries), as most recently presented in the *World Investment Report 2004*.

4. Noting the crucial need of a number of developing countries, especially least developed countries (LDCs), to enhance their capacity in FDI data collection and analysis, the Commission requests the secretariat to intensify its support, in cooperation with other relevant international agencies, of developing countries' efforts in this area.

5. In the light of the discussion at the current session, the Commission requests the secretariat to continue its work on international investment and technology transfer arrangements, with emphasis on bilateral and regional dimensions and an exchange of experiences in implementing international commitments in this regard. Particular attention should be paid to monitoring emerging issues and developments, including in the field of investor–State dispute settlement, and related analytical and technical assistance work in this area.

6. The Commission took note of the report of the Expert Meeting on Good Governance in Investment Promotion and the suggestions contained therein. It recommends that the secretariat further strengthen its programme on Good Governance in Investment Promotion (GGIP) and extend its assistance to more interested developing countries, in particular LDCs, in implementing measures to improve good governance in investment promotion. Among other things, the secretariat should continue to support host country Governments, including through policy advocacy and capacity-building in investment promotion agencies, and further work on corporate governance, including that of ISAR. In carrying out these functions, the secretariat should ensure synergies between its GGIP programme and other related activities of the Division and its work on investment policies, especially the investment policy reviews, which will help to ensure that the impact of such programmes is sustainable.

7. The Commission commends the assistance provided to developing countries through investment policy reviews and the follow-up process in the implementation of recommendations contained therein. Further support is needed to ensure that other interested countries also benefit from evaluations and improvement in their investment policy framework. The effectiveness of investment policy reviews is measured by the extent to which key recommendations are implemented and their impact is maximized. To that end, concerted efforts are needed by development partners, the secretariat and other international organizations to support the implementation of relevant recommendations through follow-up projects. The Commission welcomes the implementation report on the Investment Policy Review of Egypt, and recommends that UNCTAD continue this series of reports for other interested countries, so as to evaluate progress in the implementation of recommendations and identify further measures that need to be taken to bring about effective implementation. The Commission also welcomes the Blue Books on Best Practice in Investment Promotion and Facilitation as an additional device to encourage timely implementation of recommendations. Efforts should also be made to disseminate, as widely as possible, specific lessons arising from investment policy reviews and follow-up activities carried out by UNCTAD. This could be achieved through UNCTAD's existing intergovernmental forum and by preparing short investment policy briefs aimed at policy makers and investment promotion agencies.

8. The Commission welcomes the interaction with the World Association of Investment Promotion Agencies (WAIPA) in support of the efforts of developing countries to attract beneficial FDI and requests that the practice of joint sessions be continued. It encourages the secretariat to further enhance this cooperation, including particularly in the context of the Investment for Development Partnership and with a view to strengthening the exchange of experiences and best practices and the dissemination of UNCTAD's analytical work and policy advice.

9. The Commission underlines the important contribution that investment, technology and enterprise competitiveness can make in achieving the international development goals, including those contained in the Millennium Declaration. In the light of the discussions at the current session, UNCTAD should:

(a) Support country-level processes of policy formulation and implementation, with a view to assisting countries in maximizing the benefits that FDI can bring to achieving the international development goals, including through the UNCTAD programmes of investment policy reviews, investment guides, enterprise linkage development and related advisory services and capacity-building;

(b) Assist Governments of developing countries in their efforts to create an enabling regulatory environment for public–private partnerships and investment in enterprises and projects providing basic services to the poor;

(c) Within its work programme on investment, technology transfer and intellectual property, assess ways in which developing countries can develop their domestic productive capability in the supply of essential drugs in cooperation with pharmaceutical companies;

(d) Assist Governments of developing countries in promoting the application of science and technology in achieving the international development goals, including those contained in the Millennium Declaration, in particular through the UNCTAD science, technology and innovation policy reviews and the work of the Commission on Science and Technology for Development (CSTD). The Commission welcomes the partnership between UNCTAD and the Geneva Centre for Information Technologies to provide training to engineers and information professionals from developing countries and LDCs;

(e) Continue analytical work and the exchange of information and experiences in the area of positive corporate contributions to the social and economic development of host developing countries, as foreseen by the São Paulo Consensus, including in paragraph 45;

(f) Engage stakeholders in action-oriented policy dialogue, including through the UNCTAD/ICC Investment Advisory Council.

10. The Commission notes with appreciation the efforts made by the secretariat in ensuring cooperation with other international organizations in carrying out its work.

Chapter II

OPENING STATEMENTS

1. The **Officer-in-Charge of UNCTAD**, referring to the São Paulo Consensus, said that an enabling international environment was essential for building greater productive capabilities so that countries could benefit from and participate in a globalizing world economy. Investment, including foreign direct investment (FDI), played a central role in this connection, since it provided a crucial link between creation of productive capacity and international competitiveness. It could transfer not only financial resources but also knowledge and technology, provide access to new markets and supply, and stimulate the upgrading of the enterprise sector. However, it required an appropriate policy response from all the actors involved: host countries, home countries, the international community as a whole and investors.

2. The recent trends in FDI, which gave rise to optimism and to concern, needed to be seen in the context of both domestic policies and international investment agreements. He stressed the importance of examining the actual and potential effects of South–South cooperation from the perspective of developing countries as recipients as well as sources of FDI, and noted the need to identify the links between investment cooperation and trade. He also expressed concern about recent developments, which illustrated the need to clarify key issues and to review experiences as regards meeting international commitments. In this context, investor–State arbitration was a critical issue in view of the increase in the number of disputes since the mid-1990s.

3. In conclusion, he informed the Commission about several interesting events that were due to take place during its session. One of these was the panel discussion on the Millennium Development Goals, which would be of particular interest to the Commission.

4. The representative of the **Democratic Republic of the Congo,** speaking on behalf of the **Group of 77 and China,** noted the substantial increase in FDI flows in 2004 and in the share received by developing countries. This share, however, remained concentrated in a handful of countries, with many others attracting only small amounts. This situation, combined with marginal bank lending and low levels of official development assistance, undermined the efforts to meet the Millennium Development Goals.

5. Since some developing countries had recently emerged as significant sources of FDI, the G77 and China were interested in more analysis of issues such as the role of developing countries' transnational corporations in furthering competitiveness, regional integration among developing countries, South–South cooperation and the impact of FDI on host economies. In that connection, UNCTAD's assistance with data collection and reporting remained vital.

6. The G77 and China were concerned about the impact of investment disputes. These increasingly involved developing countries, which were frequently ill equipped to deal with such matters and were often faced with the prospect of high costs. The present meeting and further work in this area were thus welcome. Technical assistance and capacity building remained necessary in this connection. The G77 and China attached great importance to the Investment Policy Reviews and support for the implementation of their recommendations.

The support of the United Nations Development Programme and a number of donor countries was noted with appreciation, and should continue. The work of the World Association of Investment Promotion Agencies (WAIPA) was important in assisting developing countries in the definition of their investment promotion policies and in the creation of related agencies. Further collaboration between UNCTAD and WAIPA was called for.

7. The representative of the **Philippines,** speaking on behalf of the **Asian Group,** stressed the importance of fully exploring how developing countries could benefit from the new trends in FDI, such as FDI based on research and development (R&D). Although globalization of R&D had provided new opportunities for Asian economies, there were worrying signs that not all countries were benefiting because of the selective approach of transnational corporations, a limited technology base and a shortage of skilled human resources. The Asian Group called for further work in this area, as well as — more generally ? work on how to increase the attractiveness of those countries in the region that had so far been marginalized in the overall distribution of FDI flows. The need to improve the collection of FDI data was emphasized, a successful example of this work being that carried out by UNCTAD in collaboration with the secretariat of the Association of South-East Asian Nations. His Group called on UNCTAD to intensify its technical cooperation in this area. It also stressed its interest in the work on investor–State dispute settlement and the activities of WAIPA and UNCTAD in the area of investment promotion.

8. The representative of **Egypt,** speaking on behalf of the **African Group,** expressed appreciation for the 2004 Activities Report of the Division on Investment, Technology and Enterprise Development, which referred to projects implemented in 46 African countries, and thanked UNCTAD for the quality of its work and the results achieved. He noted that even though FDI inflows into Africa had increased in 2003 and 2004, most of this increase was accounted for by investment in natural resources exploitation. His Group requested UNCTAD to continue to review FDI trends and policy issues related to the impact on home and host countries of outward FDI from developing countries, particularly in the South–South context. He highlighted the importance of accurate and timely data for policy makers, and said that UNCTAD should increase its technical assistance to the African countries in respect of FDI data collection and reporting systems, so as to enable them to improve the quality of the data. The Group welcomed the proposal to establish a regional network of FDI data compilers and statisticians, which had been made at the Workshop on Capacity Building for Promoting FDI in Africa, organized jointly by UNCTAD, the Economic Commission for Africa and InWEnt Capacity Building International of Germany in Addis Ababa (Ethiopia) in November 2004.

9. African countries, particularly the least developed ones, would continue to need a significant amount of help with issues related to international investment arrangements and capacity building. In general, those countries lacked the technical capacity and expertise to participate effectively in international negotiations on investment treaties and to implement the latter. The Group therefore called on the UNCTAD secretariat to explore ways and means of helping African countries to address this problem. The investment policy reviews and investment guides produced by UNCTAD had been valuable in improving the investment policy environment in those countries. The Group was equally appreciative of UNCTAD's initiatives under the Programme on Good Governance and Investment Promotion; the Programme on Insurance; the new Kenya–UNCTAD–UNDAF project; the work of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting; and training activities organized by WAIPA. On behalf of the African Group, the

speaker called on UNCTAD to continue assisting African countries with capacity building, and to expand its analysis of the interrelationship between trade and investment.

10. The representative of **Costa Rica,** speaking on behalf of the **Latin American and Caribbean Group (GRULAC)**, said that experience had shown that policies aimed at the creation of a favourable climate for attracting FDI, as well as at the promotion of free competition, had been useful steps to promote job creation, economic growth and modernization of economies. However, they had been insufficient for the expansion and transfer of technology, as well as for the creation of capacities for national innovation. The UNCTAD secretariat was requested to strengthen technical cooperation in this field, in conjunction with the Commission on Science and Technology for Development, in order to support developing countries in the incorporation of science and technology into their development strategy.

11. He stressed the importance of a deeper analysis to establish how regional and South–South cooperation might contribute to maximizing the benefits for development of such investments. The analytical work of UNCTAD and the Commission relied on the quality of information on FDI released by countries, and this still needed to be improved. The UNCTAD secretariat was requested to increase its technical assistance to developing countries in order to support them in improving their FDI information systems.

12. The speaker also expressed concern about the increase in the number of international investment disputes arising from investment agreements, and said that further analysis of this phenomenon and its implications for development was needed. The UNCTAD secretariat was encouraged to play an active role in this field, including in respect of technical cooperation activities.

13. Finally, the speaker stressed the importance of the value added by UNCTAD in its analysis of investment policies. He also emphasized GRULAC's support for the cooperation between UNCTAD and WAIPA.

14. The representative of **Benin,** speaking on behalf of the **least developed countries (LDCs),** drew attention to the importance of government policies, the macroeconomic environment and the regulatory framework for attracting FDI. Specific promotion policies were also necessary in both home and host countries, particularly LDCs. These countries had embarked on promotion activities in recent years, as they were aware of FDI's potential role as a catalyst in boosting their supply capacities. In particular, many LDCs had recently established investment promotion agencies and were entering into bilateral, regional and interregional agreements for the protection and promotion of investment. For their part, developed countries should *inter alia* support human and institutional capacity-building activities; improve market access for developing countries' products; organize investment events; offer investment insurance guarantees; and support the transfer of technology and business linkages.

15. The representative of **Luxembourg,** speaking on behalf of the **European Union (EU),** with the support of **Bulgaria, Croatia, Romania and Turkey**, referred to the role of UNCTAD in disseminating knowledge regarding good practices necessary for establishing an enabling regulatory environment for firms' operation abroad. He stressed that it was the responsibility of Governments to define good governance norms. The EU emphasized the importance of studying further the policies and regional agreements that could foster South–

South investment flows. The involvement of the private sector, as well as the collaboration with WAIPA, was noted with appreciation. In addition, the EU stressed the interest it attached to the peer review approach adopted in the Investment Policy Reviews.

16. The representative of **Cuba** drew attention to the importance of safeguarding national policy space, which could allow developing countries to steer FDI in the direction best suited to meeting their development needs. The commitment of developed countries in this area, the making available of the resources needed to pursue technical assistance and capacity building, and the requisite social responsibility of individual firms were also stressed.

17. The representative of **Thailand** emphasized his delegation’s interest in the work related to R&D-based FDI and in the activities related to data collection. He said that Thailand was currently engaged in a number of trade negotiations involving investment issues. UNCTAD support in defining the development aspects of such negotiations was required.

Chapter III

POLICY ISSUES RELATED TO INVESTMENT AND DEVELOPMENT

(Agenda item 3)

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

> "Policy issues related to investment and development: Emerging FDI from developing countries" (TD/B/COM.2/64);
>
> "Report of the Expert Meeting on Good Governance in Investment Promotion" (TD/B/COM.2/EM.15/3);
>
> "Report of the Expert Meeting on the Impact of FDI on Development" (TD/B/COM.2/EM.16/3);
>
> *World Investment Report: The Shift towards Services* (UNCTAD/WIR/2004).

Chairperson's summary

19. The Head of the Investment Issues Analysis Branch of the Division on Investment, Technology and Enterprise Development (DITE), in introducing item 3, entitled "Policy issues related to investment and development", said that UNCTAD had continued during 2004 to analyse new trends, paying special attention to those emerging trends that had potential consequences for developing countries. She referred in that connection to the emerging globalization of research and development (R&D) by transnational corporations (TNCs), on which an Expert Meeting had been held in January 2005.

20. She also referred to the increasing outward investments from developing countries and said that although 90 per cent of foreign direct investment (FDI) in the world still originated in developed countries, some developing countries had emerged as significant investors. For a number of developing countries, in Africa and in Asia for instance, FDI from developing countries was particularly important as it accounted for a substantial share of their total FDI. The trend towards developing countries becoming increasingly active outward direct investors, and particularly the South–South aspect of that phenomenon, should be of interest to the Commission, but relatively little research had been done on it. In that regard, statistical limitations currently made accurate measurement of the phenomenon a challenge in itself. She highlighted some of the questions to which this emerging trend gave rise. Would the trend become more pronounced in the future? What were the factors driving the process? What was the potential impact on the home and host economies involved? Were there fundamental differences between outward FDI from developing countries and outward FDI from developed countries in terms of the FDI's nature, the issues surrounding it or its impact? Should South–South cooperation in FDI flows be encouraged, and if so, how?

21. Finally, she emphasized the secretariat's commitment to continuing its dialogue with the members of the Commission on issues related to FDI and its impact on development, so as to meet the needs and expectations of the developing countries in this area.

22. The Chairperson of the Expert Meeting on Good Governance in Investment Promotion reported on that meeting, which had taken place from 1 to 3 November 2004. She summarized the subject of the meeting and the issues discussed. The meeting had been interactive and productive, with a good exchange of new ideas on how to improve good governance. It had been recommended that UNCTAD support FDI host country Governments in implementing measures to improve good governance in investment promotion and that these efforts include more developing countries, particularly least developed countries. Experts had agreed that Governments should be encouraged to strengthen the mandate of investment promotion agencies in the field of policy advocacy and that UNCTAD should further develop its programme for building the capacities of such agencies to perform that function. Experts underscored the significance of information technology for improving governance in investment promotion and the need to provide support to developing countries through programmes such as the UNCTAD Investment Gateway.

23. The Chairperson of the Expert Meeting on the Impact of FDI on Development reported on that meeting, which had taken place from 24 to 26 January 2005. It had focused on the globalization of R&D by TNCs and its implications for developing countries. It had concentrated on two essential issues: the extent to which this new trend would be consolidated and spread to more countries; and what policies developing countries could adopt to participate more actively in R&D activities and what they could do to harness the TNCs' activities to their own development objectives. Many factors were of importance, including the size of the host economy, the existence of skilled human resources, good infrastructure and an effective national innovation system. Furthermore, proactive science and technology policies and a coherent FDI policy approach could play a catalytic role in increasing R&D FDI in developing countries. The quality and intensity of the discussions indicated that there was a need for further understanding of the globalization of R&D and its implications for developing countries.

24. A panel of experts on FDI presented data related to the growth of FDI outflows from developing countries, this growth being fastest in the Asia-Pacific region, which now accounted for nearly three quarters of developing country outward FDI stock. Most FDI from that region originated from East, South and South-East Asia. However, it was stated that attention should also be paid to outward investment from other developing regions such as West Asia. Experts also noted that the share of host developing countries had increased significantly during the 1990s, and had been estimated to represent half of the outward FDI stock of developing countries in 2002. They analysed the specific cases of emerging outward investor countries such as Brazil, South Africa, Malaysia, Thailand and China.

25. The discussants emphasized that recent developments had revealed a more diversified geographical distribution of outward FDI from developing countries. They cited the example of Chinese overseas investments in recent years, which had been increasingly directed to regions such as Latin America, Africa, the United States and Europe. The speakers also raised the question of whether concentration in the service sector had been caused by the strength of developing countries in that sector or by their weakness in the manufacturing sector. A number of possible explanations were provided. First, trading services and finance represented the greatest proportion of investments and were complementary to export activities. Second, the world economy was becoming increasingly a service economy. Third, in service sectors such as construction and tourism, developing countries had some competitive advantages. Fourth, some developing countries were rapidly building up their capacities in ICT-related services.

26. The panel indicated that outward FDI from developing countries had broadly the same motivations as that from developed countries, namely strengthening competitiveness and improving profits. The driving forces had been identified as the search for markets, resources, efficiency and strategic assets. Speakers analysed the factors that push away investments from the home economy (push factors) and those that pull investors towards host economies (pull factors). The main push factors included the following: increased competition at home and abroad for developing countries' enterprises; higher local production costs; the growth of significant domestic players (national champions); and outward FDI liberalization policies. Pull factors were a pro-business environment and attractive government incentives in host countries, adequate infrastructure, competitive labour costs, availability of natural resources, and availability of strategic assets (technology, R&D activities). For example, Brazil had grown recently as an outward investor, as a consequence of the opening and deregulation of its economy, which had led to greater competition at home and abroad, pushing firms to internationalize their production in order to survive.

27. Some experts stressed that policies had been traditionally oriented to attract FDI and were not really defined as promoting outward FDI. Moreover, capital-importing developing countries faced a dilemma owing to macroeconomic constraints, especially balance-of-payments difficulties. It was argued that the contribution of outward FDI to the competitiveness of the home economy in a medium- and long-term perspective more than compensated for the immediate balance-of-payments negative effects. To remain viable in the light of globalization and liberalization, domestic companies might have to export but also to invest abroad, and they would be greatly handicapped if they were not allowed to do so. Some discussants referred to the obstacles in the North to outward FDI from developing countries, and emphasized the role of investment rules at both bilateral and multilateral levels in this regard.

28. Experts agreed that outward FDI from developing countries was acquiring a strategic importance for home countries, and that there was a need to address the question of how developing countries could elaborate policies to allow national companies to go abroad, and to help them become global players. On the basis of the experience of countries such as Thailand, experts mentioned the need for a targeted programme, sufficient administrative capacity and coordinated promotion efforts, including with host countries. The experience of Malaysia showed the particular role of specific organizations, such as MASSA and MASSCORP, which had been established to promote private sector collaboration in acquiring knowledge about host developing countries, to facilitate cooperation between the private sector and the Government, and to enhance trade and investment relations with other developing countries.

Chapter IV

ISSUES RELATED TO INVESTMENT ARRANGEMENTS

(Agenda item 4)

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

> "Issues related to international arrangements: Investor–State disputes and policy implications. Note by the UNCTAD secretariat" (TD/B/COM.2/62);
>
> *Investor–State Dispute Settlement.* UNCTAD Series on Issues in International Investment Agreements (United Nations publication, sales no. E.00.II);
>
> "Work undertaken within UNCTAD's work programme on international investment agreements in 2004: Report by the UNCTAD secretariat" (UNCTAD/ITE/IIT/2004/Misc.15/Rev.1).

Chairperson's summary

30. In introducing item 4, the Chief of the International Arrangements Section, DITE, said that the number of international disputes arising from investment agreements had increased dramatically over the past five years, and that this development would pose a particular challenge for developing countries. This was due to the relative scarcity of technical expertise and financial resources in developing countries faced with arbitration proceedings, which were costly and could lead to enormous penalties payable by the State losing an arbitration. He pointed to several procedural and substantive problems that threatened to undermine the usefulness and legitimacy of the investor–State dispute settlement system. In conclusion, he emphasized the need for the international community to address this issue speedily and effectively, and said that UNCTAD could assist in promoting the development dimension in this context.

31. In the subsequent policy dialogue, experts, practitioners and delegates elaborated on (a) the substantive treaty provisions — in particular as regards scope and definition, non-discrimination, taking of property and dispute settlement — that had given rise to investor–State dispute settlement claims; (b) a number of procedural issues in investor–State dispute settlement that had given rise to concerns regarding the proper functioning of the procedures (particularly insofar as mediation, entitlement to use of investor–State dispute settlement provisions, multiplicity of forums, treaty shopping, the internationalization of domestic dispute settlement choices, selection of arbitrators and transparency were concerned); (c) the implication of those developments for developing countries; and (d) possible ways and means of addressing some of the problems identified.

Key substantive issues

32. With regard to substantive issues, discussants indicated that provisions related to, for example, scope and definition, national treatment, most-favoured-nation treatment, fair and equitable treatment, and expropriation might appear to be straightforward in their formulation, but that difficulties and problems would arise from their application. A prime

example here would be the question of expropriation, which as a matter of treaty provision was usually not defined insofar as indirect expropriation was concerned. This interpretative uncertainty with regard to the exact meaning of this as well as other important substantive provisions would further increase the need to carefully monitor developments in the investor–State dispute settlement area, especially since the great majority of cases still awaited decision. This would require a further refinement and careful prescription of the meaning of those provisions in future treaties, and the provision of interpretation guidance to existing treaty provisions beyond what could be gained from the developing case law on the matters in question.

Key procedural issues

33. There are a variety of procedural problems with regard to the existing investor–State dispute settlement system. Among others, the multiplication of proceedings made possible by the freedom of choice of arbitration forum, the possibility for different investment stakeholders to launch several claims on the same facts and circumstances, including simultaneous international and domestic proceedings, and so-called home country of convenience shopping on the basis of exploiting most-favoured-nation advantages would appear to tip the balance in favour of the investor. The importance of the choice of arbitrators and their code of conduct was also raised in this context, as was the lack of overall transparency and accountability in the process. Among the remedies mentioned were the strengthening of capacity building in this connection, improving the selection of arbitrators and promoting transparency in the arbitration process.

Implications for developing countries and the way forward

34. In the subsequent discussion, delegates made a point of emphasizing that the matter under discussion was not necessarily a North versus South issue. Many developed countries and a number of developing countries were both capital-exporting and capital-importing countries. The growing trend towards South–South investment flows would also lead to an increase in South–South investment disputes. On many occasions, developed country Governments were the defendants. Therefore, Governments would increasingly have to defend their investors' interests abroad while protecting themselves against claims filed by foreign investors domestically. The issues involved were significant and required careful consideration as regards their technical and their political dimensions. In this context, it was noted that some countries had learned from experience and had eliminated pitfalls by drafting new model bilateral investment treaties (BITs), taking into account the technical difficulties of the past.

35. While it was pointed out that there was no causal connection between international investment agreements (IIAs) and attracting FDI, it was nevertheless emphasized that the protection of investors would encourage the flow of investments. Investment protection depended on a functioning international arbitration system that would be perceived as fair and equitable. Some developing countries may sign IIAs without fully thinking through the implications of the substantive provisions and without fully backstopping their implementation. This could result in multi-million dollar claims against them. It was pointed out that developing countries had many logistical problems and no appropriate infrastructure for dealing with the situation, and that it was therefore important to train negotiators of IIAs in key substantive issues, so as to create a level playing field. Moreover, there ought to be more coordination between national investment policies and IIA negotiations. Overall, there

was a need for precise and accepted rules and a spirit of cooperation to demystify the system of dispute settlement. The importance of this issue would become even greater in the light of the proliferation of IIAs and the consequent increase in the complexity of international investment law.

36. It was indicated that there were remedies and techniques that developing countries could use to avoid investment disputes, with the need for definitions of investments in BITs being stressed as an important factor. Mention was made of South-East Asian treaty practice, which allowed host States to regulate appropriate forms of foreign investment. China, for example, had signed many BITs, but no investment cases had been brought against it. Other techniques included the exclusion of protectorate territories, which were often locations for avoiding the scope of application of BITs as far as tax was concerned. Other precautionary measures were the exhaustion of local remedies and giving the opportunity to domestic courts to identify the issues involved. Experts concluded by emphasizing the need to ensure that developing countries had the capacity to meet the challenges posed by the system.

37. Some participants stressed that there was a growing recognition that developing countries needed more policy space in IIAs in order to meet the requirements of their development agenda. In this context, the importance of the notion of reciprocity in IIAs and the urgent need to build capacity and technical expertise were emphasized. The valuable role of UNCTAD in these areas was recognized, and it was suggested that UNCTAD could explore ways of enhancing amicable settlement clauses in IIAs. In addition, it was indicated that UNCTAD should continue its IIA workshops and programmes, and expand them to include the training of lawyers and arbitrators in investment dispute management issues, and also continue the promotion of networking between IIA experts and negotiators.

38. Delegates emphasized the need to promote a better understanding of international arbitration mechanisms and encourage interactions and the exchange of experiences between and among various institutions dealing with the same topic (OECD, UNCTAD, World Bank). All delegates and panellists appreciated the work done by UNCTAD in the area of technical assistance and capacity building, and reiterated their support for such initiatives, particularly insofar as a possible broadening and deepening of these activities were intended to take into account training and capacity-building needs with regard to the management of investment disputes.

Chapter V

INVESTMENT POLICY REVIEWS: EXCHANGE OF NATIONAL EXPERIENCES

(Agenda item 5)

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

> "Summary of deliberations of the Investment Policy Reviews of Algeria, Benin and Sri Lanka" (TD/B/COM.2/65).

Chairperson's summary

40. The UNCTAD secretariat provided an overview of the Investment Policy Reviews (IPRs) programme and follow-up activities in terms of work done and future plans. Since the start of the programme 10 years ago, 15 IPRs had been finalized, five were ongoing and another 21 were in the pipeline. The secretariat emphasized the need to further strengthen the follow-up to the IPRs' recommendations. Also, it pointed out that the provision of additional funds was indispensable for the success of the programme, while thanking the donor countries that had already made a financial contribution to the IPRs.

Follow-up to the IPR of Algeria

41. It was reported that the new Government of Algeria, which had been in place since 2004, had endorsed and begun implementing all the recommendations of the IPR. Key areas of reform included the fiscal and banking sector, the establishment of regional one-stop shops, a strategy to improve infrastructure facilities for the period 2005–2010, with a budget of $50 billion, the acceleration of screening processes as regards new investment projects, the conclusion of additional international investment agreements and the provision of training to staff involved in investment promotion.

42. Among fiscal measures, the reduction of taxes and the granting of tax breaks in selected areas such as venture capital financing were of particular importance. The National Investment Council was now meeting much more frequently than in the past and had reduced the approval time for new investment projects. In addition, the Investor Tracking System, a computer-based database, had been put in place with UNCTAD's assistance. It was also reported that UNCTAD had carried out an assessment of the investment promotion capacity of the national investment promotion agency (Agence Nationale de Développement de l'Investissement). There were, however, some areas where more action was needed. These included the provision of more detailed statistics on FDI, in particular by industries, the foreign exchange regime and the competition issues related to the country's informal sector.

Follow-up to the IPR of Ethiopia

43. UNCTAD's support to Ethiopia through the Good Governance in Investment Promotion (GGIP) programme was acknowledged, including the preparation of an Advisory Report on Good Governance in Investment Promotion in 2002 and a project proposal to implement the main recommendations of the report, which had secured donor support, with the starting date set for later in 2005. Other activities carried out in Ethiopia included the

organization of a national workshop in Addis Ababa in 2002 to discuss ways of improving governance in investment promotion, the development of a Client Charter for the Ethiopian Investment Commission in 2003 and training of the Commission's staff in customer services.

Follow-up to the IPR of Peru

44. The importance of the creation of the "Proinversión" agency in 2002 was stressed. This agency acts as a one-stop shop and as the focal point for investment promotion activities. In addition, a number of supply-side and demand-side measures have been undertaken in accordance with the IPR's recommendations. The former include the decentralization of FDI promotion, the development of training programmes for staff involved in investment promotion, and initiatives to educate civil society about FDI and its development impact. The demand-side measures focused on the removal of a number of specific barriers to investment, as well as on the improvement of the information provided to investors.

Follow-up to the IPR of Ghana

45. The measures suggested by the IPR have been incorporated into the five-year strategic plan of the Ghana Investment Promotion Centre (GIPC), and many of them have already been implemented. These include the establishment of a one-stop shop, specialized training for the staff of GIPC, the transformation of the existing free-zone enclaves into industrial parks and a linkages programme helping local companies to become regular suppliers to the affiliates of foreign transnational corporations.

Follow-up to the IPR of Sri Lanka

46. It was noted that the Government of Sri Lanka was currently working — in collaboration with UNCTAD — on follow-up activities, deriving from the IPR recommendations, which focused on business taxation, labour regulations, reform of the Board of Investment and review of the FDI negative list. The "Invest in Peace" approach pursued in Sri Lanka may be a useful example for IPRs in other post-conflict countries. It was stressed that the Invest in Peace programme should be extended to other such countries, with the assistance of UNCTAD’s IPR programme.

General comments on the IPR programme

47. With regard to methodology, it was noted that there should be greater participation in the process by the private sector. Furthermore, it was stressed that the UNCTAD secretariat should increase its efforts to monitor the implementation of the IPR recommendations. In this regard, comments were made about the support of donor countries, which should focus not only on the reports but also on assisting countries in the implementation of the IPRs' recommendations. All these suggestions would help to further strengthen an already successful product.

48. The UNCTAD secretariat concluded the discussions by stressing that it would follow up on all the proposals made regarding the improvement of the IPR programme. This action would include a more resolute approach to monitoring the follow-up implementation process, building on the scorecard system developed for the implementation report on the IPR of Egypt. The secretariat informed the Commission that the IPR programme was undergoing an evaluation by a donor country, for the purpose of improving its impact and methodology. A

positive result with respect to the IPR methodology was reflected in the time needed to prepare an IPR, which had been reduced from more than two years for the first reports to an average of six to eight months. At the same time, UNCTAD was further expanding the range of by-products it offered countries in the follow-up phase. The Good Governance in Investment Promotion programme, the linkages programme, the Invest in Peace initiatives and the Blue Books were all designed to help countries in their efforts to implement the IPRs' recommendations.

Exchange of national experiences ? Egypt

49. The first Implementation Review of the Investment Policy Review of Egypt, published in 1999, was conducted. The Government of Egypt had invited UNCTAD to assess the extent to which it had implemented the recommendations of the IPR. UNCTAD's assessment was that with regard to the investment framework, the majority of the recommendations had been fully implemented and in some areas had even surpassed expectations. A Ministry of Investment had created within the new Government, which was injecting additional dynamism into investment-related policies and institutions. A new management team had been appointed for the General Authority for Investment and Free Zones (GAFI). GAFI now performs the registration procedure for both Law 159 (non-incentive) and Law 8 (incentive) companies. In January 2005, it opened a one-stop shop to facilitate establishment procedures, as recommended in the IPR. The number of procedural steps has been reduced, the system is computerized and in some instances regulation has been eased to enable a company to begin operating pending security clearance. The average time taken to register a company over the last four weeks was reported to be three days. In 1998 the procedure could take from one to six months.

50. Other improvements include a major overhaul of the customs administration. The operation of the drawback scheme has been improved. Tariff rates have been reduced from a weighted average of 14 per cent to 9 per cent and the plethora of tariff bands have been reduced to six; this will simplify assessments by customs. The requirement for exporters to surrender 75 per cent of foreign currency proceeds was lifted in December 2004, and in January 2005 Egypt accepted the IMF Article VIII obligation to maintain current account convertibility. Egypt has also concluded a number of trade agreements (EU Partnership, GAFTA, QIZ), enlarging market access and creating new opportunities for regional integration and the peace process. Other reforms have been partially implemented in areas such as taxation and accounting, privatization, competition policy and intellectual property rights. With regard to investment promotion, Egypt has adopted UNCTAD's recommendation that GAFI be transformed from a control authority into an investment promoter and facilitator. Efforts are also under way to improve FDI statistics, and reliable figures should be available before June 2005. Currently, new investors' interest is picking up, and some investors established before 1998 have dramatically increased capacity. Overall, UNCTAD believes that the Government of Egypt has an impressive agenda, and the country's leadership is now working to enhance the flow and benefits of FDI. The review generated an open and interactive discussion among participants.

51. The Minister of Investment of Egypt set out the Government's objectives and policies with regard to attracting foreign direct investment. He highlighted the bold measures that the Government had taken not just to increase the amount of investment but also to create job opportunities, reduce inequalities and improve the democratic process in the country.

52. Comments from the private sector highlighted Egypt's great potential to become an export hub, and the dramatic improvements that had taken place in the trade and customs areas. The private sector believed that the introduction by the Egyptian Government of intellectual property rights and anti-trust laws would make the investment environment in Egypt much more attractive.

Joint high-level session with WAIPA: Attracting FDI in service clusters

53. The joint high-level session of the World Association of Investment Promotion Agencies (WAIPA) with UNCTAD’s Commission on Investment, Technology and Related Financial Issues focused on attracting FDI in service clusters. Specifically, it examined the determinants of FDI in the services sector and why some locations had succeeded in attracting FDI to service clusters while others had not. Panellists stressed that while there were variations between services, the key factors affecting the decision of investors to move their services into a cluster in a foreign country included having the appropriate infrastructure, in particular information technology and Internet connectivity; the existence of a market for the service; having a pool of local talent; the regulatory framework (especially for financial services); and linguistic ties to the home country. Panellists debated the impact of incentives on the decision by transnational corporations to move services abroad. While, as in the case of CNBC’s decision to locate in Dubai Media City, this was an important consideration, many panellists also emphasized that incentives formed only a part of the overall business case for a given location.

54. In a discussion on trying to attract FDI to a service cluster in areas in which the country had traditionally not been emphasized, the panellists commented that each country had to determine whether it had the potential to be competitive. The case of Mexicali, in Mexico, which was diversifying into attracting FDI in research and development activities clustered around its core base of investors in manufacturing, was highlighted. It was mentioned by a panellist, however, that countries should not rely on a single model of service cluster. Not every country could be a Dubai, China or India, and therefore a broader vision was needed.

55. When a decision was taken by a country to target FDI in service clusters, the investment promotion agency would often take on the role of policy advocate for securing the reforms needed to compete successfully, as had been done in the case of Invest in France and Paris-Europlace. On the other hand, companies might face domestic opposition when they decided to move certain services abroad. In this regard, a panellist commented that as jobs were moved overseas, new jobs were created in the home country further up the value chain.

Chapter VI

REPORTS OF THE SUBSIDIARY BODIES OF THE COMMISSION

(Agenda item 6)

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

> “Report of the Intergovernmental Group of Experts on Competition Law and Policy on its sixth session” (TD/B/COM.2/CLP/48);
>
> “Report of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting on its twenty-first session” (TD/B/COM.2/ISAR/26).

Report of the Intergovernmental Group of Experts on Competition Law and Policy

57. The representative of the secretariat (Head of the Competition and Consumer Policies Branch, Division of International Trade in Goods and Services, and Commodities) noted that the sixth session of the Intergovernmental Group of Experts on Competition Law and Policy, held in Geneva from 8 to 10 November 2004, had taken place at a crucial time, after the UNCTAD XI Conference, which had strengthened UNCTAD's mandate on competition policy for development, and in preparation for the Fifth UN Conference to Review all Aspects of the UN Set of Principles and Rules on Restrictive Business Practices, scheduled to take place on from 14 to 18 November 2005 in Antalya, Turkey.

58. UNCTAD XI, in the São Paulo Consensus, had called upon UNCTAD "to further strengthen analytical work and capacity building activities to assist developing countries on issues related to competition law and policies", in order to "help ensure that anti-competitive practices do not impede or negate the realization of the benefits that should arise from liberalization in globalized markets, in particular for developing countries and LDCs".

59. On that basis, the IGE on Competition Law and Policy had held in-depth discussions on four main issues, namely (a) the strengths and weaknesses of peer reviews related to competition policy taking place in various forums; (b) cooperation and dispute mediation mechanisms in regional integration agreements related to competition law and policy; (c) evidence gathering and cooperation in hardcore cartel investigations; and (d) advocacy in promoting awareness of competition policy in developing countries. On each of these subjects, keynote presentations had been followed by in-depth panel discussion and exchange of experiences. The IGE had also reviewed and monitored UNCTAD's activities in this field, in particular the studies and reports prepared for the sixth session of the IGE, which included (a) a preliminary assessment of the implementation of the UN Set of Principles and Rules on Competition; (b) a report on ways in which possible international agreements on competition might apply to developing countries, including through preferential or differential treatment; and (c) best practices for defining competencies and settling cases which involve joint actions of competition authorities and regulatory bodies, and the capacity building and technical assistance undertaken since the previous IGE session, as contained in an updated review of capacity building and technical assistance submitted by the secretariat. These and other reports of the secretariat are available at UNCTAD's website on competition: www.unctad.org/competition.

60. At its concluding session, the IGE on Competition Law and Policy, which acted also as the preparatory meeting for the forthcoming Fifth Review Conference, adopted its agreed conclusions and the provisional agenda for the Fifth Review Conference. In its agreed conclusions, the IGE reciprocated the São Paulo Consensus call for the strengthening of UNCTAD's work on competition law and policy, and decided to recommend that the Fifth Review Conference hold a first voluntary peer review on competition law and policy. It also recommended further issues for review and in-depth consultations by the Review Conference, namely on (a) techniques for gathering evidence on cartels; (b) the role of economic analysis in competition law enforcement; (c) the role of the judiciary in such enforcement; (d) application of competition law and policy to the informal sector; and (e) how to operationalize special and differential treatment for developing countries in competition law and policy. Further, it requested UNCTAD to prepare a number of studies and reports, including (a) a final assessment of the application and implementation of the UN Set; (b) a presentation of types of common provisions to be found in international, particularly bilateral and regional, cooperation agreements on competition and their application; and (c) a synthesis of recent cartel investigations that are publicly available.

61. In conclusion, the representative of the secretariat thanked the Turkish Government, and in particular the Turkish Competition Board, for its generous offer to hold the Fifth Review Conference in Turkey.

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

62. The chairperson of the twenty-first session 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 twenty-first session. He said that 190 experts from 57 member States had participated in that session.

63. The chairperson stated that the twenty-first session of ISAR had had two main agenda items. These were a review of the comparability and relevance of existing indicators on corporate social responsibility, and a review of the implementation status of corporate governance disclosures and the role of such disclosures in adding sustainable value. With respect to the first of those items, the chairperson reported that during the intersessional period a review of existing indicators of corporate social responsibility had been undertaken with a special focus on their comparability and relevance. After deliberating on various aspects of corporate responsibility reporting, the Group of Experts had agreed to continue its work in that area with a view to developing guidance on voluntary disclosures. On the second main agenda item, the chairperson reported that the Group of Experts had deliberated on recent trends and the implementation status of corporate governance disclosures, the role of corporate disclosures in adding sustainable value and the results of a survey of corporate governance disclosures. The Group of Experts had noted that in view of new developments in corporate governance disclosures, there might be a need to update the secretariat’s report entitled "Transparency and disclosure requirements for corporate governance", which had first been discussed at the nineteenth session of ISAR.

64. The chairperson also reported on various topics discussed under the "other business" segment of the agenda of the twenty-first session. These topics pertained to environmental accounting, the ISAR Model Curriculum and the accounting and financial reporting needs of small and medium-sized enterprises. The chairperson further reported on round tables,

workshops, publications and liaison work that the secretariat had undertaken during the reporting period, including the secretariat's participation in recent and forthcoming regional and international events dealing with financial reporting, corporate governance and transparency matters.

Chapter VII

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

(Agenda item 7)

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

> "Progress report on the implementation of the recommendations for the UNCTAD secretariat" (TD/B/COM.2/63);
>
> *DITE Activities Report 2004* (UNCTAD/ITE/2005/1).

Chairperson's summary

66. The Director of the Division on Investment, Technology and Enterprise Development (DITE) presented a report on the implementation of the recommendations of the Commission at its eighth session.

67. As in previous years, he also introduced the *DITE Activities Report 2004*, which provides an overview of the Division's activities, with an attempt to give indications of results and impact where possible. On the basis of the analysis contained in the report, the Director presented an overview of DITE's activities by geographical region. He noted that an increased number of countries were benefiting from more than one of DITE's programmes, which was evidence of the Division's efforts to provide assistance in an integrated manner. He concluded by emphasizing the important role that extrabudgetary resources had played in facilitating the work of the Division, and acknowledged the continued support from donor Governments.

Chapter VIII

OTHER BUSINESS

(Agenda item 9)

Chairperson's summary

Presentation and discussion by representatives of international and regional organizations: "Benefiting from FDI"

68. The representative of the Multilateral Investment Guarantee Agency (MIGA) outlined its primary activities, which included the provision of guarantees (risk mitigation products) and reducing transaction costs associated with FDI site-selection decisions. Its asset coverage was estimated to be $1.4 billion a year and was expected to grow after a slow year of FDI flows to developing countries. MIGA’s activities were primarily in Eastern Europe and Central Asia, although it planned to increase its operations in the Middle East and North Africa in the coming years. Three of MIGA’s focus areas were the facilitation of infrastructure expansion, concentration on conflict-afflicted countries in need of post-crisis reconstruction through private investment, and frontier markets that were underperforming in terms of attracting FDI.

69. The representative of the World Association of Investment Promotion Agencies (WAIPA) expressed its appreciation for the format of simultaneous meetings of the Commission and the annual WAIPA conferences, and said that the interaction between policy makers and investment promotion practitioners created useful synergies for both events. A total of 233 representatives from 91 IPAs were attending this week's WAIPA conference. WAIPA hoped that UNCTAD would remain its primary partner in investment and development, focusing on ongoing joint activities such as e-government tools and the exchange of best practices related to IPAs.

70. The representative of the Organisation for Economic Co-operation and Development (OECD) explained why the attempts in recent years at both the WTO and OECD to conclude a Multilateral Agreement on Investment had been unsuccessful. Currently, the OECD was trying to establish a policy framework for investment, one that would be non-prescriptive and non-binding, would consist of a checklist of policies in support of an attractive investment environment and could be used voluntarily with a strong focus on policy coherence. The various themes of the framework included trade policy, competition policy, investment policy, tax policy, corporate governance, public governance, infrastructure development and human resources development. The policy framework for investment could be used as a self-evaluation and benchmarking tool and as a coherent framework for investment-related policy reviews. It could also function as a reference point for donors, promotion agencies and other international agencies in their dialogue with Governments.

71. In response to a delegation's query about the possible overlap or complementarity of OECD's and UNCTAD's work, it was pointed out that OECD utilized a broader perspective in focusing on investment policy, whereas UNCTAD focused more specifically on FDI. It was explained that UNCTAD interacted and cooperated with OECD at different levels. There was a regular exchange of studies and publications for peer review. UNCTAD had been

granted observer status in OECD's Investment Committee. It was looking forward to working with the OECD on dispute settlement.

72. The representative of the International Trade Centre (ITC) said that its mandate was primarily trade promotion and business development. However, the ITC was also interested in analysing FDI for export/trade purposes. It had developed a number of tools for investors and Governments aimed at helping trade promotion. For example, the Trade Map analysed present export markets and provided market-specific information on, for instance, tariffs and non-tariff barriers. It was currently being used in 70 countries. Another tool was the Market Access Map, a database on market access barriers, developed to enhance transparency and to support international marketing and trade promotion. Currently, UNCTAD and ITC were working together to develop an investment map, which would combine statistics on FDI, international trade and market access.

73. The representative of the International Monetary Fund (IMF) focused on the investment climate and the creation of an environment conducive to FDI. A country's domestic growth prospects played a significant role in FDI site-selection. Microeconomic factors for investment site-selection included the corporate tax structure, trade and customs regimes, the labour market situation and financial infrastructure. Structural factors included the governance and political stability within the country, the regulatory framework, the legal framework with respect to transparency, and clear enforcement of property rights and contract law. The IMF was in the process of creating Investor Advisory Councils for African countries (currently in Ghana, Senegal and the United Republic of Tanzania) to identify and assess obstacles to FDI.

74. The representative of the United Nations Industrial Development Organization (UNIDO) described the organization's contribution as linking FDI to strengthening the innovative capacity of a country's domestic enterprises as well channelling FDI to appropriate sub-sectors. Currently, UNIDO was involved in strengthening the cotton/textiles and leather value chains, and in food processing, and was also devoting its attention to country-/region-specific programmes, for example in Nigeria. Furthermore, it had been working on a 2005 survey of the impact of different kinds of FDI on economies as a follow-up to its 2003 survey.

75. The representative of the United Nations Commission on Science and Technology for Development (CSTD) outlined the focus of its work in the inter-sessional period 2003–2005 as the promotion of the application of science and technology to meet the Millennium Development Goals (MDGs) contained in the Millennium Declaration. One of the major findings of the CSTD was that the application of science and technology was central in facilitating the achievement of all MDGs, and especially such goals as eradicating poverty, achieving universal primary education and combating diseases. As a result, the CSTD's main recommendations were to establish initiatives that would involve important development partners, contribute to the implementation of the Plan of Action of the first phase of the World Summit on the Information Society (WSIS), ensure participation in the preparation of the second phase of the WSIS and provide, in the framework of the Science and Technology for Development Gateway (STDev), a forum for developing countries in which to share success stories and lessons learned in their respective national efforts.

76. During the discussion several delegations commended UNCTAD for organizing this meeting and the efforts to identify areas of cooperation with other organizations. The

representatives of France, Canada and the United States stressed the need for cooperation among all international organizations working in the area of FDI. In particular, they indicated that the OECD and UNCTAD should continue to maximize their efforts to cooperate and take advantage of mutual synergies in their work.

Achieving the Millennium Development Goals: Panel discussion

Investing in development

77. In a video link with New York, the author of the report of the United Nations Millennium Project Task Force, entitled *Investing in Development*, presented a summary of its main findings and recommendations. The report argues that massive new investments, both public and private, are essential for poor countries in order that they may achieve the MDGs. The process should start with an increase in public investment to meet critical needs, and to trigger an increase in private investment, which is impeded by the lack of basic infrastructure, and of a healthy and skilled labour force. The poorest countries, especially those in sub-Saharan Africa, need to move from subsistence to commercial agriculture, and from dependence on primary commodities to internationally competitive industries and services. These would require *inter alia* improved soil health, agro-forestry, water management, rural infrastructure services such as roads and means of transport, modern energy services and basic communication technologies. A massive increase in inputs is needed to jump-start this process. The report calls for co-financing of MDG-based investment, and concludes that aid-financed infrastructure development and human capital investments can make a vast difference in promoting investments, especially FDI.

78. The panellist commended the work done by UNCTAD in the area of investment, and encouraged it to continue its policy work, especially with regard to WTO-based rules, such as those on trade-related aspects of intellectual property rights and trade-related investment measures, to ensure that the tools needed by developing countries to gain a foothold in non-traditional export sectors are not removed. The subsequent discussion emphasized the importance for donor countries of meeting their commitment to allocate 0.7 per cent of their gross domestic product to official development assistance, made at the International Conference on Financing for Development, held in Monterrey, with monitorable time tables, and stressed the need for developing countries to identify the investment needed for achieving their goals, and determine how much assistance is required before they become self-sustaining.

Global Partnership for Development

79. Panellists described national efforts to achieve the MDGs, and the experience gained. Uganda, for example, has adopted a wide range of measures to improve the investment climate, including the setting up of the Ugandan Investment Authority, a one-stop facilitator for investors, whose aim is to attract, promote and facilitate investment. The Government has identified a number of key areas for investment, including education, health, road infrastructure and telecommunications.

80. The National Solidarity Fund of Tunisia is a public-sector-driven fund designed to lift the population in "shadow areas" out of poverty. Its financial resources are generated by voluntary contributions from Tunisian individuals, the private sector and the State. The Fund, which finances small-scale projects for basic infrastructure, such as electricity, roads, schools and health care, has helped one tenth of the Tunisian population, and has brought about a

dramatic fall in the poverty rate, from 8 per cent of the population in 1985 to less than 4 per cent today.

81. Panellists also discussed the importance of micro-finance for entrepreneurs in developing countries and listened to the presentation by Blue Orchard Finance, a Geneva-based specialized asset manager, the creation of which was initiated by UNCTAD in 2001. Some of the main bottlenecks for faster growth of micro-financing institutions (MFIs) include restrictive regulations and market constraints such as the lack of centralized, aggregate and coherent market data. UNCTAD was called on to encourage work on the collecting of such data.

82. Panellists highlighted the importance of public–private partnerships as an effective solution to the health problems of poor countries, especially the LDCs, where over 50 per cent of the population lack regular access to essential medicine. A number of public–private partnerships have been established in the last decade to address the health needs of the poor. For example, since 2000, seven companies and five UN organizations have worked together in the Accelerating Access Initiative (AAI) to increase access to anti-retroviral drugs (ARVs) in developing countries. Thanks to the significant price discounts offered by participating companies and important political commitment, more than 50 per cent of all ARVs in developing countries are delivered through the AAI. In 1999, the Global Alliance for Vaccines and Immunization was established; it brings together major vaccine companies, donors, foundations, multilateral organizations and non-governmental organizations to improve the immunization of children in developing countries.

83. As the subsequent discussion indicated, MDGs cover a large part of the global agenda. To contribute effectively to meeting them, UNCTAD needs to focus on its own areas of competence, where it can make concrete contributions. It should, for example, continue its work on global policy analysis, especially through its work on the *World Investment Report*. It should continue to analyse the effectiveness of incentives, targeting and other policy tools. The implementation of global goals depends on action at the national level. In this regard, UNCTAD should continue to support country-level processes in policy implementation through its programmes on investment policy reviews, investment guides and the linkage programme. It should also assist government on request in creating an enabling environment for public–private partnership, as well as in building domestic capabilities in areas where global public funding is available. With regard to intellectual property rights and technology transfer, especially in the context of essential drugs, UNCTAD should help developing countries build up their productive capacity in partnership with the pharmaceutical companies. Given UNCTAD's new mandate in the area of corporate responsibility, it was proposed that it engage stakeholders in action-oriented policy dialogue through the UNCTAD/ICC Investment Advisory Council.

84. On the issue of science and technology, UNCTAD should continue to work closely with the Commission on Science and Technology for Development, which since 2003 has been examining the importance of science and technology for achieving the MDGs. In addition, UNCTAD should continue its work on science, technology and innovation policy reviews (STIPs) to ensure that they contribute effectively to development, and especially in meeting the MDGs. In addition to carrying out policy analysis, UNCTAD was called on to adopt pragmatic programmes that help developing countries in improving access to and use of ICTs. In this context, delegates welcomed the recently established partnership between UNCTAD and the Geneva Centre for Information Technologies, which is designed to help

developing countries, especially the LDCs, in building up a base of skilled human resources in the area of ICTs.

Chapter IX

ACTION BY THE COMMISSION AND CLOSING STATEMENTS

Action by the Commission

85. At its closing plenary, on 11 March 2005, the Commission adopted its agreed recommendations (see chapter I).

86. It took note of the report of the Expert Meeting on Good Governance in Investment Promotion (TD/B/COM.2/EM.15/3) and the report of the Expert Meeting on the Impact of FDI on Development (TD/B/COM.2/EM.16/3).

87. It took note of the secretariat's progress report on the implementation of agreed conclusions and recommendations of the Commission (TD/B/COM.2/63).

88. It took note of the report of the Intergovernmental Group of Experts on Competition Law and Policy on its sixth session (TD/B/COM.2/CLP/48) and the report of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting on its twenty-first session (TD/B/COM.2/ISAR/26), endorsed the conclusions contained therein, and approved the provisional agenda for the twenty-second session of the latter body.

89. It approved the provisional agenda for its tenth session (see annex I) and the topics for its Expert Meetings in 2005.

Closing statements

90. The representative of the **Democratic Republic of the Congo**, speaking on behalf of the **Group of 77 and China**, expressed the hope that the recommendations just adopted would be implemented. The exchange of national experiences during the session had been most satisfactory, and also very beneficial. He underlined the link between investment and development in UNCTAD's cooperation with WAIPA.

91. The representative of **Oman** expressed regret that certain documentation was not available in Arabic for the Commission's session, while available in other languages. It was essential that full documentation be available in all official languages in order to facilitate delegations' consultations with their capitals.

Chapter X

ORGANIZATIONAL MATTERS

Opening of the session

92. The ninth session of the Commission on Investment, Technology and Related Financial Issues was held at the Palais des Nations, Geneva, from 7 to 11 March 2005. In the course of the session, the Commission held two plenary meetings and nine informal meetings. The session was opened on 7 March 2005 by Mr. Andreas Pfaffernoschke (Germany), Vice-Chairperson.

Election of officers

93. At its plenary meeting, on 7 March 2005, the Commission elected its Bureau as follows:

Chairperson:	H.E. Mr. Love Mtesa (Zambia)
Vice-Chairpersons:	Mr. Frederik Artur (Norway)
	Mr. Mehdi Fakheri (Islamic Republic of Iran)
	Ms. Crista Gonzalez (Mexico)
	Mr. Ivan Gospodinov (Bulgaria)
	Mr. Andreas Pfaffernoschke (Germany)
Rapporteur:	Mr. Ricardo Cisneros (El Salvador)

Adoption of the agenda and organization of work

94. The representative of **Brazil**, referring to item 5, entitled “Investment Policy Reviews: Exchange of national experiences”, said that his Government greatly appreciated UNCTAD’s work on the Investment Policy Reviews. Brazil was actively involved in that work and found the exchange of views and sharing of experience particularly enriching. As one of the main recipients of foreign direct investment his country was aware of the need for effective investment policies in order to promote economic growth, generate employment, enhance domestic capabilities and expand export capacity. Such policies contributed to improving developing countries' competitiveness in the global market and sustainable development. In view of the importance that Brazil attached to the activities carried out under the Investment Policy Review programme, and the interest shown in the Investment Policy Review of Brazil, he requested that its presentation be postponed until the second half of 2005. This would allow further inter-ministerial consultations to be held and thus enhance Brazil’s contribution to the discussions of the Review.

95. At the same meeting, the Commission adopted the provisional agenda circulated in document TD/B/COM.2/61. Accordingly, the agenda for the ninth 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 tenth session of the Commission
9. Other business
10. Adoption of the report of the Commission

Adoption of the report of the Commission

96. At its closing plenary meeting, on 11 March 2005, the Commission adopted its draft report (TD/B/COM.2/L.21), subject to any amendments to the summaries of statements; decided to include in its report the Chairperson's summaries on the substantive items; and authorized the Rapporteur to finalize the report in the light of the proceedings of the closing plenary meeting.

Annex I

PROVISIONAL AGENDA FOR THE TENTH 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
    (a) Interaction with WAIPA
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
8. Provisional agenda for the eleventh session of the Commission
9. Other business
10. Adoption of the report of the Commission to the Trade and Development Board

Annex II

TOPICS FOR EXPERT MEETINGS FOR 2005

Expert Meeting on Positive Corporate Contributions to the Economic and Social Development of Host Developing Countries

1. The São Paulo Consensus requested UNCTAD to carry out analytical work with a view to facilitating and enhancing positive corporate contributions to the economic and social development of host developing countries. UNCTAD should consult with all interested parties as appropriate, including in particular UNCTAD's private sector business partners, in carrying out this work. Taking into account existing international initiatives in this area, UNCTAD should draw lessons as far as the trade and development dimension is concerned and make the outcome of such work available to those parties that are interested or seeking guidance on this matter.

2. The Expert Meeting will identify policies and practices that enhance positive corporate contributions to the economic and social development of host developing countries, on the basis of an exchange of views involving multiple stakeholders, including representatives from other international organizations working in this field, civil society and the private sector. The meeting will thus contribute to further defining the issue in question, and initiating an exchange of best practices, information dissemination and consensus building.

3. To facilitate the discussions, the UNCTAD secretariat will prepare an issues note drawing on selected experiences of positive corporate contributions to the economic and social development of host developing countries, and providing elements for an analytical framework for future work in this area.

Expert Meeting on Capacity Building in the Area of FDI: Data Compilation and Policy Formulation in Developing Countries

1. As stressed by UNCTAD in various issues of the *World Investment Report*, policies matter not only for attracting FDI but also for benefiting from it. However, the formulation of effective policy has to be based on accurate and timely data. Although progress has been achieved in this respect in recent years, the scope and quality of FDI data in a number of developing countries, especially least developed countries, are still not adequate for the purposes of policy analysis and formulation. In its previous discussions, the Commission recognized the relative weakness of the collection of data on FDI and FDI statistics for supporting the formulation of appropriate policies, especially in LDCs, and stressed the imperative need for high-quality technical assistance to help countries enhance their capacities in this area.

2. To that end, it is proposed that an Expert Meeting on Capacity Building in the Area of FDI: Data Compilation and Policy Formulation in Developing Countries focus on the issue of FDI data compilation and analysis and policy formulation in developing countries. It will raise the awareness of member States regarding internationally accepted standards with respect to FDI data collection and reporting systems, including with respect to the activities of foreign affiliates in host countries. The Expert Meeting will discuss problems facing

developing countries, particularly LDCs, in providing policy makers with timely and accurate FDI and TNC data to enable them to make informed decisions, and to design appropriate policies, share the expertise and experience of various national and regional agencies in that respect, and deal with ways and means of addressing those problems.

Annex III
(English only)

ATTENDANCE [*]

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

Afghanistan
Algeria
Argentina
Austria
Bahrain
Bangladesh
Belarus
Benin
Bhutan
Brazil
Brunei Darussalam
Bulgaria
Canada
China
Colombia
Costa Rica
Cuba
Czech Republic
Denmark
Democratic Republic of the Congo
Dominican Republic
Egypt
El Salvador
Eritrea
Ethiopia
Finland
France
Germany
Greece
Honduras
India
Indonesia
Iran (Islamic Republic of)
Ireland
Israel
Italy
Jamaica
Japan
Jordan
Libyan Arab Jamahiriya
Luxembourg
Madagascar
Mali
Mauritius
Mexico
Morocco
Nepal
Netherlands
Nicaragua
Nigeria
Norway
Oman
Peru
Philippines
Poland
Portugal
Republic of Moldova
Russian Federation
Senegal
Serbia and Montenegro
Slovakia
Spain
Sri Lanka
Switzerland
Syrian Arab Republic
Thailand
Tunisia
Uganda
Ukraine
United Kingdom of Great Britain and Northern Ireland
United States of America
Viet Nam
Yemen
Zambia
Zimbabwe

[*] For the list of participants, see TD/B/COM.2 /INF.9.

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

African, Caribbean and Pacific Group of States
European Community
Organization for Economic Co-operation and Development
Organisation Internationale de la Francophonie

3. The following specialized agency and related organization were represented at the session:

International Monetary Fund
United Nations Industrial Development Organization

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

General Category

Engineers of the World
Global Foundation for Democracy and Development
International Confederation of Free Trade Unions
World Confederation of Labour
World Federation of Trade Unions

6. The following special invitees attended the session:

Mr. Jan Atteslander, Member of Executive Committee, Federation of Swiss Industrial Holding Companies, Bern, Switzerland
Mr. Ricardo Beltramino, Professor, University of Rosario, Buenos Aires, Argentina
Mr. Jean Luc Le Bideau, Professor, University of Paris, France
Mr. Dimitrios Zantzas, Student, Graduate Institute Of International Studies, Geneva, Switzerland
Mr. Daniel Dumitrescu, Legal Counsellor, Export Import Bank, Bucharest, Romania
Mr. Ximena Zavala, Proinversión, Lima, Peru

7. The following resource persons attended the session:

Mr. Peter Brimble, President, Asia Policy Research Ltd, Thailand
Mr. Melchior de Muralt, CEO, Blue Orchard Finance, Tunisia
Ms. Ng Su Fun, General Manager, MASSCORP, Malaysia
Mr. Maciej Gajewski, International Federation of Pharmaceutical Manufacturers Associations
Mr. Alain Gargour, Deputy Chairperson, Lecico
Mr. Andrea Goldstein, OECD, Development Centre, Paris
Mr. Ferhat Horchani, Professor, University of Tunis, Tunisia
Mr. Robert Jacobson, Senior Vice President Finance, UNILEVER
Mr. Makhdoom Ali Khan, Attorney General, Office of the Attorney General, Pakistan
Mr. Jean-Marie Leclerc, Director-General, Geneva Centre for Information Technology
Mr. Bart Legum, Counsel, Debevoise & Plimpton, France

Ms. Padma Mallampally, Consultant, United States of America
Mr. Howard Mann, International Lawyer and Senior International Law Advisor, International Institute for Sustainable Development, Canada
Mr. Ricardo Martinez, President, Industrial Development Commission of Mexicali
Ms. Ruth Nyakotey, Deputy Chief Executive, Investment Promotion Center, Ghana
Mr. Dan O'Brien, Senior Editor, Economist Intelligence Unit
Professor Jeffrey Sachs, Special Advisor to the United Nations Secretary-General on MDGs (via videoconference)
Mr. Zafar Siddiqi, Chairperson and CEO of CNBC Arabia, Dubai
Mr. Sirjiwan Singh, Managing Director, Wockhardt UK Limited
Mr. Muthucumaraswamy Sornarajah, Professor, National University of Singapore, Faculty of Law, Singapore
Mr. Raúl Viuesa, Arbitrator, Professor, University of Buenos Aires, Argentina
Mr. Björn-Erik Willoch, Vice President, Capgemini, and Director of Global Consulting Services