UNITED
NATIONS

TD

United Nations
Conference
on Trade and
Development

Distr.
GENERAL

TD/B/COM.2/71
24 March 2006

Original: ENGLISH

TRADE AND DEVELOPMENT BOARD
Commission on Investment, Technology
and Related Financial Issues
Tenth session
Geneva, 6–10 March 2006

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

Held at the Palais des Nations, Geneva,
from 6 to 10 March 2006

GE.06-

CONTENTS

Chapter I

AGREED RECOMMENDATIONS

1. The Commission commends the secretariat's implementation of the recommendations of the ninth session and welcomes the information provided in the DITE Activities Report 2005, which it would like to see continued as a regular feature.

2. The Commission appreciates UNCTAD's contribution in research and policy analysis, consensus-building and technical assistance, including its advisory services and capacity-building activities, and invites donors and others in a position to do so to continue support those activities.

3. The Commission notes and encourages the efforts made by the secretariat in ensuring cooperation with other international organizations to carry out its work and in complementing UNCTAD's comparative advantage with that of other development actors and institutions through partnerships.

Policy issues related to investment and development
(Agenda item 3)

4. As a focal point in the United Nations system for investment, UNCTAD should continue to further understanding on FDI and development as part of its research and analysis on productive, beneficial and effective FDI. In the light of the discussions at the current session, UNCTAD should continue its statistical and analytical work on trends, development impact on developing countries and countries with economies in transition, and policy options, including OFDI from developing countries, internationalization of SMEs and FDI in natural resources. In this area of work, particular consideration should be given to the needs of LDCs. The Commission notes with appreciation the analysis and information provided in the *World Investment Report*, and requests that the findings of the report be widely disseminated as a contribution to policy formulation and capacity-building in developing countries, including through policy briefs and regional seminars, inter alia in cooperation with regional organizations, involving policymakers and other stakeholders. In this regard, it asked the secretariat to enhance its research work on FDI, from the angle of productivity, on how it could contribute to the enhancement of the economy and to long-term development, by alleviating resource constraints, and helping to avoid further indebtedness, create jobs, acquire new technologies, build linkages with the rest of the economy, crowd in domestic investment, stimulate new export opportunities, and reduce poverty. The Commission notes paragraphs 88 and 89 of the Doha Plan of Action, which request UNCTAD, the Chairman of the Group of 77 and China, and the Special Unit for South–South Cooperation to organize periodically a forum on investment among the countries of the South.

5. Mindful of the need for capacity-building in developing countries in the area of FDI statistics, the Commission requests the UNCTAD secretariat**,** in cooperation with other relevant organizations, and through development partners' support, to intensify technical cooperation in this field, including assisting developing countries in strengthening regional cooperation among relevant institutions; organizing meetings on FDI statistics and policy formulation on a regular basis; and assessing FDI impact on development, and consider ways and means, including capacity-building, through which the transmission of data on FDI and on activities of TNCs to the secretariat could be facilitated.

6. The Commission took note of the report of the Expert Meeting on Positive Corporate Contributions to the Economic and Social Development of Host Developing Countries. It agrees that UNCTAD should provide a forum for constructive dialogue between Governments, business and other development stakeholders to develop a common understanding of the role of corporate actors in stimulating the economic development of host countries and the competitiveness of local enterprises, and to establish a common vision on how such a role can be enhanced. UNCTAD should also take stock of best corporate practices and national (host and home country) policy measures, and assess their effectiveness and impact, and provide assistance to countries in addressing issues related to the link between corporate contributions and development needs.

7. The Commission invites UNCTAD, especially in collaboration with the subprogramme on Africa, to explore possibilities to support NEPAD initiatives in the area of investment policy.

Issues related to investment arrangements
(Agenda item 4)

8. The Commission, in recognition of the further proliferation of international investment agreements and the resultant complexity for developing countries and countries with economies in transition of investment policymaking and implementation at various levels, agrees that UNCTAD should serve as the key focal point in the United Nations system for dealing with matters related to international investment agreements, and continue to provide the forum to advance the understanding of issues related to international investment agreements and their development dimension, including with reference to investor–State dispute resolution, involving all relevant stakeholders. In this area of work, particular consideration should be given to the needs of LDCs. The Commission requested UNCTAD to intensify its efforts in capacity-building in developing countries with a view to maximizing the contribution of international investment agreements to development.

9. The Commission welcomes the in-depth impact evaluation of the work programme on international investment agreements and notes with appreciation the encouraging findings with regard to its effectiveness and impact. It calls for intensified efforts and support to technical assistance and capacity-building, bearing in mind the recommendations of the evaluation report.

Investment policy reviews: Exchange of national experiences
(Agenda item 5)

10. The Commission commends the programme of investment policy reviews and asks the secretariat to strengthen its efforts to ensure that the development needs and priorities of countries under review form an integral part of the IPR and its follow-up mechanism. It urges its strengthening to ensure a timely response to requests of interested countries, as well as expanded technical assistance to developing countries in the follow-up policy advice and capacity-building projects. Conscious that the effectiveness of the reviews hinges upon the implementation of recommendations, the Commission requests UNCTAD to continue to provide technical assistance and capacity-building support commensurate with the needs of developing countries and to evaluate progress regularly.

11. The Commission invites UNCTAD to review the report entitled “Strengthening the Development Impact of UNCTAD's Investment Policy Reviews” and report back to the

Commission at its eleventh session on areas of implementation in consonance with paragraph 7 of these agreed recommendations and areas which may merit implementation.

Report of the subsidiary bodies of the Commission
(Agenda item 6)

12. The Commission notes with appreciation the guidance on corporate governance disclosure prepared by the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting, and recommends wide dissemination of the guidance as a useful voluntary tool to improve corporate governance disclosures in order to facilitate investment and enhance the transparency and stability of the investment environment.

Chapter II

OPENING STATEMENTS

13. In his introductory remarks, the **Secretary-General of UNCTAD** highlighted the important role of the Commission on Investment as a forum for policy discussions related to foreign direct investment (FDI) and development. He noted that transnational corporations were at the heart of the globalization process, and that their investments influenced the allocation of productive resources. A number of trends had been identified as particularly relevant for the Commission to consider. First, the current upswing in FDI flows was fuelled by an increase in the number of mergers and acquisitions, which more than before also involved firms from developing countries. This had triggered strong policy responses in a number of countries. Second, increased FDI from developing countries provided important opportunities for South–South economic activity, and there was a need to consider ways of leveraging this process for development. Third, the scope of activities affected by the globalization process was expanding, now involving increasingly varied service functions – from call centres to research and development. Fourth, rising commodity prices had contributed to record inflows of FDI into countries rich in natural resources, thus raising questions about how policies could help ensure long-term benefits for the recipient countries. The Secretary-General noted that these trends had implications for both economic development and international relations. It was important that the Commission consider what policy approaches at national and international levels were needed in order to address both expectations and fears.

14. He also stressed that among the most important global policy trends in recent years would be the increasing number and complexity of international investment agreements (IIAs), which would give rise to a number of challenges for countries and investors. He noted the increase in the number of investor–State disputes, and the lack of capacity in developing countries to cope with it. Also, the development dimension needed to be adequately addressed in IIAs, reflecting a proper balance of rights and obligations between States and investors. Noting that the burden of addressing these challenges was likely to weigh disproportionately on developing countries, he underlined the importance of capacity-building. In this context, he called for a review of the past decades of international rule making in the investment area and its implications for the development process.

15. With regard to positive corporate contributions to the economic development of host developing countries – the so-called economic dimension of corporate responsibility – he reiterated that companies could maximize their contributions through a variety of means, and that to realize the full potential of these contributions, Governments had a role to play too. The latter needed to design and set up appropriate regulatory mechanisms and incentive schemes to encourage firms to do their share, an undertaking in which UNCTAD could help.

16. The representative of **Pakistan**, speaking on behalf of the **Group of 77 and China**, noted that attracting FDI had assumed a prominent place with regard to development strategies. He observed that the need for a more cautious approach with regard to premature liberalization must be inferred from the Asian crises. He called for a rethinking of the conventional wisdom on the one-sided emphasis on FDI and its replacement with a more balanced and strategic approach tailored to specific economic conditions and challenges. Referring to the Expert Meeting on FDI statistics, he expressed his Group's great interest in the subject and requested UNCTAD to implement the recommendations made during that

meeting, with particular reference to the collection, dissemination and exchange of information and experience on a regular basis.

17. Regarding IIAs, the speaker observed that those that had been concluded created logistical problems for developing countries. He stressed the importance of policy coherence and noted that the new generation of IIAs included interrelated and complex issues that touched upon a whole range of domestic concerns. He emphasized two main concerns for developing countries. First, IIAs needed to strike a proper balance, creating a favourable environment for foreign investment and retaining sufficient regulatory power and discretion for host country Governments. Second, in order to advance development objectives, IIAs should put more emphasis on the responsibilities of foreign investors in the host country. His Group was of the view that translating treaty obligations into domestic legislation was difficult and might require major adaptations of the relevant laws and regulations. It therefore called on UNCTAD to intensify its work in the area of policy coherence and its technical assistance activities relating to IIA negotiations and implementation.

18. The Group of 77 and China expressed their appreciation for the Investment Policy Review (IPR) programme. The exchange of experience had contributed to raising awareness of a favourable investment environment. The Group stressed the importance of the follow-up to the implementation activities of the IPR programme and encouraged donor countries to support these activities through their development assistance mechanisms. The Group also appreciated UNCTAD's efforts aimed at strengthening developing countries' capacity to better attract FDI and benefit from it. It recommended that UNCTAD continue to work closely with the World Association of Investment Promotion Agencies, as indicated in the São Paulo Consensus.

19. The representative of **Sri Lanka**, speaking on behalf of the **Asian Group and China**, highlighted a number of issues that were of particular interest to the Asian Group and China. She stressed that the Commission should monitor the growing investment among developing countries in order to understand which policy measures and institutional factors could play a key role in promoting greater South–South cooperation. The Asian Group welcomed the recommendations made at the Expert Meeting on FDI statistics, particularly those contained in paragraphs 41 and 42 of the report, and emphasized the need for accurate and timely data to support policy analysis and formulation. She pointed out that the data collecting and reporting systems of many Asian developing countries, particularly LDCs, were still weak. The Asian Group supported the Commission in its examination of what could be done to improve this situation and help those countries enhance their capacity in the area of FDI and TNC statistics.

20. She stressed that the debate on issues related to IIAs came at the right time. Asian countries were among the most active not only in the conclusion of IIAs but also in regional economic agreements containing specific investment provisions. She drew the attention of the Commission to the consistency and compatibility of IIAs and the protection of Asian investments abroad. She also pointed out emerging problems in IIAs and in particular the increase in the number of investor-to-State disputes. She therefore called for UNCTAD to become the focal point for all information related to international investment rule making, the need for further research and technical assistance in the area of investment dispute settlement, and emphasis on the development dimension of IIAs, in particular in the area of technological progress.

21. The Group congratulated the secretariat on the publication of the *World Investment Report* and welcomed the forthcoming publication of *Asian FDI in Africa*. In conclusion, she noted with satisfaction the efforts of the secretariat to assist Governments and regional groupings in strengthening their research and policy analysis on FDI.

22. The representative of **Guatemala**, speaking on behalf of the **Latin American and Caribbean Group (GRULAC)**, said that the *World Investment Report 2005* had proved to be a useful tool for discussion of FDI trends. The seminar in Latin America in January 2006, organized jointly with the Economic Commission for Latin America and the Caribbean, had facilitated discussion and improved investment experts' understanding, and should be continued. With regard to outward FDI from developing countries, the trends, impact and policy issues were of great interest to the region, it being the second largest developing-region outward investor.

23. She noted that international investment agreements were of particular significance for the region, and analysis by UNCTAD of how to maximize their benefits was needed. In particular, given the large number of investment disputes that had arisen in the region, research, analysis, training and capacity-building were required on this issue. UNCTAD's work in this area should be strengthened.

24. She expressed GRULAC's appreciation for the Investment Policy Review of Colombia, which was the kind of analysis needed for other countries in the region. GRULAC therefore called on UNCTAD to continue its work in collaboration with other international organizations in this area.

25. The representative of **Zimbabwe**, speaking on behalf of the **African Group**, observed that although FDI inflows were increasing, the bulk of them went into the oil and other natural resource industries. His Group called on the Commission to deliberate on what could be done to position more African countries as attractive destinations for FDI. Although a few countries might have been able to attract some reasonable manufacturing investments, especially in the textiles industry, they had not achieved the level of competitiveness that they needed in order to remain global players in that industry. He said that Africa placed South–South trade at the centre of development efforts; in this regard, the emergence of TNCs based in developing countries was a welcome development and UNCTAD should therefore address itself to this phenomenon. He also drew attention to the Trade and Development Board's request to UNCTAD that it organize periodically a forum on investments by the countries of the South. He hoped that the findings and conclusions of the report entitled *Economic Development in Africa: Rethinking the Role of FDI* would be reflected in the deliberations of the Commission.

26. He noted that bilateral investment treaties and regional cooperation arrangements with investment provisions had increased in the region. However, African countries lacked the technical capacity and expertise to participate effectively in international negotiations on investment treaties as well as in the implementation of those treaties. His Group therefore called for assistance in negotiating future IIAs, as well as for the provision of expertise in analysing existing arrangements in order to identify possible overlaps and inconsistencies. He called for the continuation of UNCTAD's assistance to African countries, including within the context of the COMESA negotiations on a Common Investment Area. The large number of investor–State disputes caused his Group great concern, and UNCTAD needed to carry out comprehensive research and analysis on IIAs, particularly as they related to development objectives.

27. The Group acknowledged the value of IPRs in enhancing FDI flows to developing countries, enhancing domestic capacities, encouraging private sector development and improving developing countries' export capacities. However, FDI had not flowed in sufficient quantities to enable African countries to integrate into the global economy despite the enhanced investment climate following UNCTAD-recommended policy reforms. The Group therefore requested an examination of what more needed to be done to increase African countries' attractiveness with regard to FDI, in addition to the useful IPR processes. The speaker welcomed all efforts aimed at investment promotion, including the various activities of the World Association of Investment Promotion Agencies. Referring to the Expert Meeting on FDI statistics held in December 2005, he said that it had been greatly appreciated by his Group; it was a crucial activity, and the secretariat should continue this work. The Group remained concerned that the UNCTAD insurance programme had not fully addressed the building of national supply capacities in the African region. It believed that the African Insurance Organization and UNCTAD needed to strengthen their cooperative and collaborative partnership. In conclusion, he said that it was a matter of some regret for his Group that donors were increasingly assuming the funding of the technical assistance programme, and that this was an area that deserved serious discussion in the Commission.

28. The representative of **Benin**, speaking on behalf of the **least developed countries (LDCs**), pointed out that although the LDCs had implemented various policies to provide attractive conditions for FDI, actual inflows remained relatively small, poverty had increased and economic growth was disappointing. The international community must intensify its efforts to help address the long list of difficulties faced by LDCs as regards infrastructure, productive capacity, financing, trade protectionism, unstable commodity prices, limited foreign aid, low domestic investment and heavy external debt. The dearth of domestic resources and heavy external debt made increased FDI and ODA and further debt relief especially critical for enabling the financing of long-term development in the LDCs. Investment was required in particular to finance the basic physical infrastructure necessary for supporting development. LDCs could also benefit from FDI in the services sector.

29. The speaker thanked UNCTAD for its support as regards IPRs and the negotiation of bilateral investment treaties and investment promotion, and called for continued and intensified efforts in this regard. His Group welcomed UNCTAD's work on FDI promotion in services; continued collaboration by UNCTAD with the World Association of Investment Promotion Agencies should be strengthened; and more countries should benefit from the Blue Book programme on investment promotion in cooperation with the Japan Bank for International Cooperation. UNCTAD and other LDC partners must continue to provide the assistance needed to ensure the implementation of the Millennium Declaration and the third Programme of Action in favour of the LDCs.

30. The representative of **Austria**, speaking on behalf of the **European Union (EU) and the acceding countries of Bulgaria and Romania**, stressed that UNCTAD, as a focal point in the United Nations system for investment and technology, should continue to contribute to the understanding of the complex interrelationships between globalization issues. The *World Investment Report 2005* provided a wealth of information and analysis on the present situation, with a useful focus on the internationalization of research and development, and highlighted the implications for both host and home countries, as well as the need for appropriate policy responses. She addressed the key elements of what constituted a “conducive investment climate” and suggested that the Monterrey Consensus had assigned to the international community the duty to support partner countries' efforts in creating a

"conducive environment". In this regard, UNCTAD had its role to play together with other organizations.

31. She referred to the new EU strategy for Africa, which provided for the establishment of the EU–Africa Business Forum, with a sub-Saharan emphasis, which would bring together entrepreneurs and public and private investors from both Europe and Africa. It was important to ensure that the development dimension was adequately addressed in international investment law, and that international investment agreements enabled countries to attract and benefit from FDI. The EU appreciated the work of UNCTAD in the field of corporate contributions to help partner countries attract and benefit from FDI. She called for UNCTAD to provide a forum for constructive dialogue between Governments, business and other development stakeholders, with a view to taking stock of best practices and ensuring their scalability, sustainability and replication. In conclusion, she said that the EU appreciated the work of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting.

32. The representative of the **Russian Federation** said that the *World Investment Report* was important with regard to providing countries with an update on trends in FDI. He hoped that the countries of the Commonwealth of Independent States (CIS) would receive due attention in future reports. Regarding the debt problems of developing countries, the CIS countries together with the G-8 countries were working to alleviate the debt burden of the developing countries. The speaker also noted the usefulness of UNCTAD's database on IIAs.

33. The representative of **Thailand** said that his country had a programme to encourage outward FDI, regarding which UNCTAD might be able to provide assistance. He supported the recommendations of the Expert Meeting on FDI statistics and reiterated the need for capacity-building in this area. He also said that UNCTAD's database on international investment agreements was useful for policymakers in developing countries.

34. The representative of **Peru** noted that although FDI in Latin America had increased, it was mostly in the area of natural resources. Furthermore, despite the fact that research and development was becoming more international, it affected only a few developing countries. It was suggested that UNCTAD could help by providing analysis on technology transfer via FDI and develop its work on Science, Technology and Innovation Policy Reviews. In its work programmes, the Commission should be more closely linked with the work on science, technology and innovation. She stressed the need to strengthen UNCTAD's follow-up work on Investment Policy Reviews. UNCTAD should also give its attention to the increase in the number of investor–State disputes arising from investment treaties.

35. The representative of **India** said that changes in world demography were effecting changes in the world economy. Investment was increasingly based on production in the lowest-cost locations. Referring to the expansion of FDI from developing countries, he mentioned some examples of Indian programmes in this area. India was increasingly liberalizing its investment framework through both national measures and international agreements.

36. The representative of **Cuba** noted that countries continued to require adequate policy space in making decisions concerning the types of FDI that they considered to be either desirable or undesirable. With regard to international investment agreements, the issue of balance in the rights and obligations of investors versus those of host countries was paramount, and additional research was needed. This should include the area of positive

corporate contributions. Research on developing country participation in outward FDI would also be beneficial.

Chapter III

POLICY ISSUES RELATED TO INVESTMENT AND DEVELOPMENT

(Agenda item 3)

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

> *World Investment Report 2005: Transnational Corporations and the Internationalization of R&D* (UNCTAD/WIR/2005 and overview);
>
> "Report of the Expert Meeting on Positive Corporate Contributions to the Economic and Social Development of Host Developing Countries" (TD/B/COM.2/EM.17/3);
>
> "Report of the Expert Meeting on Capacity Building in the Area of FDI: Data Compilation and Policy Formulation in Developing Countries" (TD/B/COM.2/EM.18/3).

Chairperson's summary

38. The Head of the Investment Issues Analysis Branch of the Division on Investment, Technology and Enterprise Development (DITE), introducing item 3, entitled "Policy issues related to investment and development", highlighted the recent trends in global FDI flows, namely a marked increase in world FDI flows, which in turn reflected a substantial increase in flows to developed countries and the maintenance of high levels of flows to developing countries. She stressed that changes in the latter were of a quantitative as well as a qualitative nature. Indeed, major changes had taken place in the way in which transnational corporations (TNCs) organized their activities, contributing to a shift towards services in global FDI flows and affecting the location of even highly knowledge-intensive activities. An illustration of this was the expansion of FDI in research and development (R&D) in developing countries, the topic addressed in the *World Investment Report 2005*. The report highlighted the faster pace of internationalization of R&D in recent years and its spread to developing countries. It also examined the causes of this phenomenon, as well as its impact on development and its policy implications. A joint UNCTAD–ECLAC conference had been held in Santiago in January 2006, with a view to raising the awareness of policymakers in the Latin American and Caribbean region about current developments, as well as to discussing various policy approaches to make that region more attractive to R&D by TNCs. The secretariat intended to organize similar activities to disseminate the analysis and conclusions of the *World Investment Report* to policymakers in other regions.

39. She highlighted two other major recent trends in FDI: the expansion of outward FDI from developing countries and increased FDI in natural resources. From a development perspective, it was imperative to understand the determinants of outward FDI from developing countries and to examine its potential impacts on both home and host economies, as well as its contribution to South–South cooperation. She added that the process involved opportunities and risks, which required adequate policy responses, and stressed that the cost-benefit balance was of significant concern to policymakers in home developing countries. This phenomenon could have wider implications for international relations. With regard to FDI in natural resources, the soaring prices of oil and primary commodities in the past few years had influenced the pattern of global FDI. In conclusion, she said that these trends raised

a number of important policy issues and concerns that might be of particular interest to the Commission.

40. The Chairperson of the Expert Meeting on Positive Corporate Contributions to the Economic and Social Development of Host Developing Countries, which had taken place from 31 October to 2 November 2005, said that the meeting's discussions had been broad and constructive. The debate had centred on the following main points: (a) the importance of finding a common language concerning the delineation of the subject matter; (b) the need to align positive corporate contributions with national development strategies and the role of public–private sector partnerships; (c) the scalability, sustainability and replication of best practices, and the role of related national and international efforts; and (d) the need for a multi-pronged strategy to balance voluntary and regulatory approaches. The areas of work that the experts said UNCTAD should consider were as follows: (a) provision of a forum for constructive dialogue between Governments, business and other development stakeholders; (b) taking stock of best corporate practices and national policy measures, and assessing their effectiveness and impact; (c) provision of assistance to countries in addressing issues related to the link between corporate contributions and development needs, and, in that connection, raising awareness in developing countries; and (d) continuation of work on corporate governance in the context of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting (ISAR).

41. The representative of the United States of America reported on the Expert Meeting on Capacity Building in the Area of FDI: Data Compilation and Policy Formulation in Developing Countries, which had taken place from 12 to 14 December 2005, on behalf of its Chairperson. The meeting had examined problems faced by developing countries, particularly the least developed countries (LDCs), in providing policymakers with timely and accurate data on FDI and the activities of TNCs that would enable policymakers to make informed decisions and design appropriate policies. Also, the meeting had addressed questions regarding general FDI data issues and collection methods and their applicability in a developing country context, and the importance of data on the activities of TNCs to complement balance-of-payments data on FDI. The experts had stressed the need to collect reliable, accurate, timely and comparable statistics on FDI and TNCs' activities, but had recognized that in many developing countries, especially LDCs, the data collecting and reporting systems could not provide such statistics to policymakers. The experts had concluded that there was a need to consider what could be done by UNCTAD to improve this situation, including through international and regional cooperation. In concluding, she said that the meeting's substantive and fruitful discussions had demonstrated that there was a strong interest in both developed and developing countries in better quantifying the FDI phenomenon, and that the discussions had led to a number of recommendations in the report of the meeting.

42. Commenting on the Expert Meeting on Capacity Building in the Area of FDI, a number of delegates reaffirmed the importance of this topic for developing countries. The Expert Meeting had permitted effective exchanges between experts, and the delegates expressed their appreciation of UNCTAD's work in this area, emphasizing the importance of furthering technical assistance on capacity-building in this field. They hoped that the Commission would give its full attention to the recommendations of the Expert Meeting, with a view to facilitating their implementation. Particular reference was made by one delegate to paragraphs 41 and 42 of the meeting's report. Another delegate referred to the joint seminars organized by UNCTAD and the Economic and Social Commission for Western Asia

(ESCWA) to assist countries in the latter region in strengthening the compilation of statistics on FDI and the activities of TNCs.

43. A delegate recognized the value of the Expert Meeting on Capacity Building in the Area of FDI. He mentioned the work of the Organisation for Economic Co-operation and Development (OECD) in this field, and suggested that UNCTAD collaborate. Another delegate requested more information on the role of UNCTAD as regards FDI statistics; how UNCTAD could help developing countries; the impact of the work of the secretariat; and the relationship between the work on FDI statistics and other statistical work in the secretariat.

44. Commenting on the Expert Meeting on Positive Corporate Contributions to the Economic and Social Development of Host Countries, a delegate reaffirmed the importance of the secretariat's work on this topic.

45. The Head of the Investment Issues Analysis Branch, in response to comments made, said that UNCTAD was the focal point in the UN system for FDI issues, including FDI statistics. Its unique role in that area was due to its focus on developing countries, and this was where it was uniquely placed to fill a gap. UNCTAD was ready to organize and participate in capacity-building activities to help developing countries, particularly LDCs, compile FDI statistics on the basis of international standards and analyse them for better policy formulation, through for instance seminars, training workshops and information sharing. She added that this would require extrabudgetary resources, and in that connection appealed to potential donors. UNCTAD was collaborating with other international organizations, such as the IMF and the OECD, on issues related to FDI statistics, as well as with other parts of the secretariat working on statistics (on trade and other areas), for example the Unit on Statistics.

46. A delegate stressed the crucial needs of LDCs for technical support related to FDI data compilation and called for UNCTAD's assistance in this respect.

47. During the presentation of the *World Investment Report 2005* the Head of the Investment Issues Analysis Branch focused on the growing role played by foreign affiliates of TNCs in global R&D. She said that developing countries had become a more popular destination for R&D activities of TNCs, as revealed in a survey conducted by UNCTAD. This reflected the fact that R&D internationalization to developing countries was driven by a complex interaction of a number of factors: push factors (growing competition and skill shortages in the home country), pull factors (expanding markets and production bases, increasing availability of talent with tertiary qualifications and lower costs in the host country) and policy factors (improved innovation systems, targeted incentives, greater protection of intellectual property rights and liberalization in host countries). However, only a limited number of developing countries had so far attracted FDI in R&D. She described the development implications for both host and home countries, and emphasized the need to design and implement investment and innovation policies as part of a coherent development strategy.

48. In response to a request by the Commission at its eighth session in 2004, delegates discussed, under agenda item 3, four case studies on country experiences with trade-related investment measures (TRIMs) and their elimination, which had been presented during a panel discussion. The cases covered two developing countries (Mexico and the Philippines) that had already abolished their TRIMs after being granted an extension of the original transition period as stipulated by the WTO's TRIMs Agreement; and two WTO accession countries

(Ethiopia and Viet Nam). In most instances, TRIMs such as local content and trade-balancing requirements had been applied to the automotive, auto parts, and food and drink industries. During the discussion it was stressed that the incidence of TRIMs had declined as a result of international commitments (in the WTO, and also in various bilateral and regional agreements) and also as a result of increased competition for FDI.

49. It was noted that performance requirements, by their very nature, were industry-specific, and that this made generalizations difficult. For instance, in the case of Mexico, trade-balancing requirements had contributed to decisions by TNCs to use that country as an export platform, whereas local content requirements had not been effective. In Viet Nam, similar measures had been more effective in promoting local sourcing in motorcycle production than in car production. In the case of Ethiopia, the main concern regarding the possible removal of TRIMs as a result of WTO accession related to export restrictions on raw hides.

50. The opinions of delegates as well as invited experts diverged about the relevance of performance requirements and the impact of the WTO's TRIMs Agreement. Some saw TRIMs as an outdated policy tool to promote industrialization. They argued that while some performance requirements had been a useful tool in the context of import substitution industrialization policies, such measures were difficult to apply in today’s globalizing economy. Others stressed that the evidence regarding their effectiveness was inconclusive and that the LDCs in particular should be allowed appropriate flexibility in respect of their ability to apply them. Although it was difficult to do anything about the process of globalization, careful sequencing of the liberalization process was important for managing the adjustment process. Some delegates welcomed the decision, taken at the WTO's Ministerial Conference held in Hong Kong (China), to allow LDCs to maintain on a temporary basis existing measures that deviated from their obligations under the TRIMs Agreement. One delegation suggested in this respect that LDCs that were already members of the WTO and LDCs that were currently negotiating their accession should be treated equally with regard to the use of TRIMs.

51. Several experts underlined the need to explore policy measures other than TRIMs to promote the beneficial impact of FDI. In designing related policies, countries had to take into consideration the evolving corporate strategies of TNCs. Particular emphasis was placed on the need to strengthen domestic capabilities by supporting local firms in their efforts to upgrade, learn and interact with foreign affiliates.

(a) Interaction with WAIPA

(Agenda item 3(a))

What tomorrow brings: More competition! More benefits?

52. The joint high-level session of the World Association of Investment Promotion Agencies (WAIPA) and the UNCTAD Commission on Investment, Technology and Related Financial Issues focused on the challenges and potential benefits of market globalization, the increasingly fierce international competition at the firm and country levels, and its implications in terms of investment policies and promotion. The increased participation of developing countries in trade and outward FDI was very much in the forefront of the discussions. The Secretary-General of UNCTAD pointed out that countries from the South had an increasing share of global trade and that manufactured goods and services represented an important segment of this trade. In his reply to a question by a delegate about how poorer

countries in Africa could be more successful in attracting FDI, the Secretary-General indicated that, besides continuous improvement of the investment climate, mobilization of domestic resources was important. Another delegate said that domestic investors could play a critical role if the Government recognized their needs and problems. He also said that reform of the entire framework for investment was a better long-term solution than relying on shortcuts in the servicing of individual investors.

53. A panellist said that besides a sizeable market, political stability, transparency, predictability and a good infrastructure were important factors in deciding on investment locations. Another panellist agreed, but added that in this connection his country had gained since the decision to open up its economy to trade and investment had been taken at the highest levels of government. Linking up foreign investors with local entrepreneurs through special programmes could increase the benefits of FDI. A delegate said that regionalization in terms of infrastructure and energy generation could also help African countries in attracting more investments.

54. Responding to a question about how to interest Japanese companies in investments, a panellist said that it was important to develop a relationship of trust. Investment promotion agencies (IPAs) should put great effort into facilitating the investment process. Regarding the role of IPAs, another panellist elaborated on the importance of pointing out the competitive advantages of locations. In addition to developing a brand name, IPAs should make good first impressions, keep their promises, and if the investment went well, use the investor as an ambassador for their location.

55. In response to a question about occasional hostility by host countries to mergers and acquisitions of utility companies and companies in other sensitive areas, a panellist said that once a Government had decided to privatize a company, it should not intervene in the takeover process. He stressed the role of regulatory oversight bodies in checking whether such companies conducted their operations in accordance with the letter and spirit of host country laws and regulations.

56. Representatives from IPAs also raised a number of issues. One asked why it was so difficult to attract FDI in R&D. The Secretary-General of UNCTAD replied by saying that targeted investment policies, addressing a wide range of issues, including specific needs in the national education system, were critical in preparing the ground for R&D investments. He cited Malaysia as a country that had successfully managed to attract R&D through a targeted approach.

57. A delegate referred to the increased competition for FDI and asked what could be done to please all the new players in this field. The panellists agreed that competition would increase and that there would be winners and losers. Also, there would be a redistribution of FDI and the total flow of FDI was expected to increase.

58. The Chairperson concluded the session by saying that international organizations such as UNCTAD, WTO and UNDP had an important role to play in supporting countries that had not yet managed to attract and benefit from significant amounts of FDI. Governments should conduct an open dialogue with international and domestic investors on how to improve the investment climate and should have the courage to tackle problems that hindered investments in their respective countries.

Chapter IV

ISSUES RELATED TO INVESTMENT ARRANGEMENTS
(Agenda item 4)

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

"International investment rule-setting: Trends, emerging issues and implications" (TD/B/COM.2/68);

"IIA evaluation report" (UNCTAD/ITE/IIT/2005/6).

Chairperson's summary

60. Introducing item 4, the Chief of the International Arrangements Section of DITE presented recent trends in international investment rule-making, most notably the proliferation of international investment agreements (IIAs) at the bilateral, regional and interregional levels; the increasing formulation of investment rules in agreements encompassing a broader range of issues, including trade in goods and services; the growing number of South–South IIAs; the increasing sophistication and scope of international investment rules; and the increase in the number of investor–State disputes. As a result of these developments, countries – and companies – would have to operate within an increasingly intricate framework of multilayered and multifaceted investment rules that were often overlapping and even inconsistent in terms of obligations. This would have important policy implications, particularly as regards the issue of policy coherence between IIAs and between IIAs and development policies. He stressed that IIAs were intended to contribute to creating a stable, predictable and transparent regulatory framework for international investment relations between the various actors, namely foreign investors, host countries, home countries, domestic investors and other development stakeholders. A key challenge for policymakers would be to ensure that IIAs could continue to play this role as the complexity of the international investment rule system increased. For developing countries, establishing and maintaining policy coherence had become more challenging because of their increasingly dual perspective on IIAs as both home and host countries, and also because of the sheer number and complexity of the agreements. As a result, developing countries would need to ascertain how best to integrate IIAs into their economic development policy; retain sufficient flexibility to promote economic development without undermining the effectiveness of the agreements; create a coherent national development policy; build sufficient capacity to analyse the scope and content of IIA obligations; and develop capacity to make good use of IIAs that they had entered into for the purpose of attracting and benefiting from FDI. These challenges would underline the importance of capacity-building technical cooperation and the role of international organizations in this respect.

61. In the subsequent discussion, several panellists shed further light on these developments and their implications for developing countries and the work of the secretariat.

62. The first panellist identified major trends and patterns in investment rule-making over the last decade, the emerging sophistication and complexity of IIA provisions and the challenges ahead. Although they addressed similar elements, IIAs varied with regard to the scope and depth of their obligations and the level of protection that they provided for foreign investment. Innovations in this regard would tend to be more frequent and sophisticated in

the context of North–South negotiations. Major trends would be the gradual movement from the traditional approach focused on investment protection towards liberalization; greater precision in the definition of "investment"; clarification of the content of certain key substantive provisions on investment protection, such as "fair and equitable treatment" and expropriation; promotion of transparency obligations; and innovations regarding investor–State dispute settlement. From a qualitative point of view, these innovations would constitute a significant development in investment rule-making. Developing countries would need to keep up with these ongoing developments in pursuing their investment-related development policies.

63. The second panellist focused on the issues related to how investment agreements dealt with the interaction among provisions, among chapters and among different IIAs. He stressed that two elements should be considered, namely that IIA provisions should be consistent with underlying policies (such as a country's economic development policy) and that IIA provisions should be consistent with each other. Related interactions could occur at three levels: within State–State agreements, between different State–State agreements, and between State–State and investor–State agreements. He suggested that interaction of IIA provisions could be divided into five categories – explication, reinforcement, amplification, cumulation and contradiction – pointing to some techniques that could be used to bring policy coherence to inconsistent provisions. The solutions that could be used were as follows: the scope solution (narrowing the scope), the definition solution (defining the terms of the agreement), the hierarchy solution (specifying that one agreement prevails over the other), the election solution (providing the parties with the right to choose) and the agreement solution (consulting). New-generation agreements would provide interesting innovations that would point towards how to deal more effectively with the problems and gaps (and inconsistencies) associated with the current IIA universe.

64. The third panellist addressed the issue of policy coherence from the perspective of a regional integration organization, namely the European Union. He stressed that in terms of the normative intensity and sophistication of its IIAs, the EU had gone from being a front runner (in the 1980s and 1990s) to a laggard (in more recent times). This was due to its supranational status and the resultant high threshold for new obligations; the deepening of its integration, for example in the area of monetary union; and the fact that competence in the investment area was shared between the Commission (responsible for pre-establishment issues and capital movements) and the member States (responsible for post-establishment treatment and protection). This had contributed to the EU favouring, overall, multilateral approaches to investment rule-making that was based on extending the GATS mode III formula to non-services sectors, at the expense of pursuing new-generation regional and bilateral approaches. This was reflected in the importance attached to establishing and maintaining policy coherence within the Community and its external relations. Among other things, the accession of new member countries in 2004 had resulted in several renegotiations and adaptations of investment frameworks to Community standards. However, establishing and maintaining policy coherence would remain a moving target in the light of the increasing and developing IIA universe. The EU had established an expert body on investment issues to discuss and clarify an investment policy strategy in consultation with investors. Keeping abreast of these developments would be a major ingredient in achieving coherence, as would be sound research and analysis to help unlock the potential of meaningful IIAs to attract and benefit from FDI. He concluded by stressing the important role that organizations such as UNCTAD and the OECD played in this regard.

65. The fourth panellist focused on the policy coherence implications of the expanding IIA universe from the point of view of developing countries. He stressed that a number of issues would need to be considered in this context. First, the definition provisions in IIAs would be crucial in determining the scope of application of a treaty and hence play an important role in terms of establishing international investment policy coherence. Second, the increasing use of combined trade and investment agreements would complicate this task for developing country negotiators. Third, the translation of international investment commitments into national frameworks would often be made more difficult owing to the absence of clear, defined national development strategies. This would be further complicated by the emergence of developing countries as outward investors. Fourth, there would often be an information gap concerning national requirements in international investment discussions and/or negotiations. A much higher level of preparation and research into the underlying issues would be required by developing countries. Fifth, the impact of the increase in investor–State dispute settlement cases would be alarming, and could be worsened by inefficient national judicial systems, poor preparation, lack of professional skills and procedural weaknesses. All of these aspects pointed to the crucial role that international organizations such as UNCTAD played in helping developing countries to resolve policy coherence issues and establish a review process for their IIAs.

66. The ensuing discussion focused on the implications of the further proliferation of IIAs and the resultant complexity for developing countries of investment policymaking at various levels. Several delegations stressed that the emergence of a multilayered and multifaceted system of IIAs would create new challenges for developing countries, which would need to be dealt with through intensified capacity-building efforts and ongoing research and information concerning the latest developments in this area. Although new-generation IIAs had improved the overall quality of treaty provisions and could contribute to upgrading standards in this regard, including with regard to domestic legal systems, the ever-increasing complexity of the IIA universe as a whole would pose considerable challenges for all parties, particularly developing countries. The most-favoured-nation (MFN) principle – a standard found in most treaties – would have been rendered inapplicable. The systemic challenges posed by this situation would be increased by the unclear and, at times, contradictory jurisprudence emanating from arbitral awards. However, sophisticated reformulations of treaty provisions (such as those dealing with fair and equitable treatment, and indirect expropriations) in modern agreements and some recent awards pointed towards the emergence of a harmonized interpretation of these provisions in treaty practice. The dramatically increased number of investor–State dispute settlement cases over the past five years, triggered by a number of well-publicized NAFTA cases, had contributed to the development of international investment law and would probably continue to do so. Coherence in this regard would benefit from continued harmonization efforts concerning investment law in regional and intraregional settings, as well as the need to establish legal security and clarity, and to preserve the right to regulate.

67. A number of delegations pointed to the need to consider multilateral solutions in the pursuit of international investment policy coherence. This would be reinforced by the emergence of truly multinational TNCs, and the increasing probability of the burdensome functioning of the IIA universe, as evidenced by the complexity and inapplicability of the MFN principle. Multilateral solutions would, however, require that the existing frameworks be carefully considered, and that there be harmonization in terms of both approaches and standards. This would be a question not only of convergence and aggregation, but also of

establishing a comfort level that would permit this matter to be pursued internationally, taking into consideration various development concerns.

68. The discussion also focused on the role of UNCTAD in helping developing countries in the area of international investment rule-making. Several delegations stressed the continued and intensified need for targeted capacity-building and technical assistance in this area, the provision of accurate information and data, and policy-oriented research on IIAs, their development impact and ways and means of improving their development dimension, from the point of view both of reconciling the different needs of home and host countries, and of making the best use of IIAs to attract and benefit from FDI. Work in this area would need to focus on all aspects of international investment treaty making and treaty implementation, including insofar as investor–State disputes and advice in the pre-arbitration phase were concerned. Finally, a focal point would be required that could serve as the main reference for all matters related to IIAs and as the forum to advance the understanding of issues related to IIAs and their development dimension. UNCTAD would be well suited to playing this role.

69. Consideration of item 4 concluded with a presentation, by the lead evaluator, of the external in-depth evaluation report on the UNCTAD work programme on capacity-building in developing countries on issues in IIAs. He stressed that the evaluation had shown that the IIA work programme had had a strong, positive and sustained impact on the capacity of developing countries to engage themselves efficiently and effectively in international discussions on, and negotiation of, IIAs, as witnessed by the overwhelmingly positive feedback from direct beneficiaries and the assessment by indirect beneficiaries. The IIA work programme had been undertaken in a cost-effective manner, as compared with other programmes of this kind. He concluded by stressing the recommendations in the evaluation report that would call for intensified continuation and improved dissemination of this work, taking into account the increased sophistication of the IIA universe and the implementation problems faced by developing countries. In closing, the secretariat welcomed the evaluation findings and pointed to the action already undertaken to fully implement its recommendations.

Chapter V

INVESTMENT POLICY REVIEWS: EXCHANGE OF NATIONAL EXPERIENCES

(Agenda item 5)

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

Investment Policy Review of Colombia (UNCTAD/ITE/IPC/MISC/2005/11);

"Summary of deliberations of the Science and Technology and Innovation Policy Review of the Islamic Republic of Iran" (TD/B/COM.2/69).

Chairperson's summary

71. The secretariat presented the Investment Policy Review (IPR) programme. It noted that 17 IPRs had been completed and 6 were in the pipeline, and that 23 new requests had been received. Fifteen IPRs had had their recommendations endorsed. In 13 cases requests for follow-up activities had been received, and technical assistance had been provided by UNCTAD. The secretariat highlighted the importance of embedding FDI strategies in the development plan and the need to raise the government profile for investment. It praised the setting up by the Government of Egypt of the Ministry of Investment, which had achieved good results, as noted by the recently published implementation report on the Egypt IPR.

72. With 17 IPRs having been carried out, it was noted that FDI-specific measures rarely impeded FDI attraction, since most countries under review had adopted open investment regimes. The general measures (taxation, labour, arbitration, entry of foreign workers) were in most cases greater impediments. IPR follow-up technical assistance concentrated on the legal regime, business regulations, investment strategy, institutional improvement and investment promotion plans. Governments' requests for technical assistance focused on attracting better-quality investors, promoting national investment and innovation, and investing in poorer areas and new areas such as information and communication technologies (ICTs) and utilities. The secretariat had recently made improvements to the IPRs, including better integration of FDI into national development strategies and trade policies, better assessment of infrastructure needs, integrating IPR follow-up from the outset, and more implementation reviews and Blue Books. Finally, the secretariat wished to develop relationships with development partners.

73. Some delegations reported progress in the implementation of the IPR recommendations.

Follow-up to the IPR of Lesotho

74. It was noted that in Lesotho the IPR was an invaluable input into the Integrated Framework (IF) diagnostic trade integration study. FDI was acknowledged to be an important catalyst for the growth of Lesotho's economy. The IPR had helped the country to change the investment regime. The Government had endorsed most of the IPR's recommendations. Measures taken included changes to the tax regime and granting of the right to hold foreign exchange accounts. Measures in preparation included the granting of land rights for foreign nationals, better treatment for foreign investors, streamlining of licensing requirements and

the preparation of FDI legislation with the support of UNCTAD. Also with the support of UNCTAD, Lesotho was carrying out a review of the work and residence permit schemes, and of competition legislation. Some recommendations required funding. These included training in investor promotion and investor targeting, preparation of an investment guide and a study on the relative competitiveness of the garment industry and other industries, with a view to diversification.

Follow-up to the IPR of Ghana

75. Following the IPR, a number of measures had been undertaken. Ghana had launched a programme to reinvigorate foreign and domestic investment. The land laws were being reformed, ownership levels in certain sectors were being reviewed and the establishment of companies was being made easier. With UNCTAD’s help, Ghana had signed more bilateral investment treaties (BITs). Electronic communication within government was replacing paper. The Ghana Investment Promotion Centre had established a one-stop shop in 2005. A review was under way with private sector input, and the Trade and Investment Promotion Agency (TIPA) coordinating group had been set up. The IPR had helped drive most of these reforms. It was noted, however, that the most deprived areas of the country still lacked FDI, and special support was requested in this respect. Further training and funding were requested for operating one-stop shops and promoting investment.

Follow-up to the IPR of Peru

76. The IPR carried out in 2001 had led to the designing of the first nationwide investment policy in Peru, which included the establishment of a single agency, Proinversión. Although full one-stop-shop facilities were not in place, Proinversión provided investment facilitation and after-care services. In addition to promoting investment in infrastructure through concessions and public–private partnerships, Proinversión was working with regional governments to identify administrative barriers to investment and local needs for the strengthening of investment promotion capacities, as recommended by UNCTAD. Under the Strengthening Investment Promotion in Peru project, UNCTAD provided technical assistance to further implement the recommendations of the IPR. At present the work focused on attracting quality FDI in agribusiness and facilitating investment in the regions. Concrete results included a technical report on investment promotion in the regions; capacity-building to target investors in agribusiness, including the elaboration of multimedia information material; participation in specialized international fairs, with technical on-the-job-training; and identification of potential investors. A methodology handbook was also being developed. Further funding was needed for the implementation of the reforms.

Follow-up to the IPR of Mauritius

77. It was reported that in Mauritius the IPR had helped redefine the investment strategy so as to best respond to present and future economic needs. The Government had fully endorsed the recommendations of the IPR, which had helped to raise awareness of the contribution of FDI to economic growth and had identified new sectors for investor targeting. Mauritius now had a more open stance regarding investors, with the Board of Investment acting as a lead agency and one-stop shop. With UNCTAD’s support, Mauritius had reviewed its taxation regime. The Government now allowed the free repatriation of profits, dividends and capital.

Follow-up to the IPR of Benin

78. The IPR had helped improve the investment regime. The Government had put in place those recommendations in the IPR for which it had the relevant expertise. In order to implement the remaining recommendations, further funding was requested.

79. Some delegations stressed that IPRs should focus more on the poorest countries. Investment guarantee agencies were urged to help attract investment in addition to guaranteeing existing investment. More attention should be paid to investment measures in home countries rather than host countries. In line with the appeal by the African Group, UNCTAD was requested to examine why developing countries were not attracting higher levels of FDI despite their having reformed their investment regimes.

80. Given its IPR experience, UNCTAD was now in a position to shed light on what worked and what did not work in investment promotion. Investment strategy should be incorporated into national development policies. It was stressed that IPRs were one of UNCTAD's flagship products. The China–Africa Business Council was working with the IPR programme to increase investment in the African continent.

81. A participant presented the results of a report entitled "Strengthening the development impact of UNCTAD's investment policy reviews", which had been prepared by the Hamburg Institute of International Economics in 2005. It was recommended that the IPRs be strengthened in the following ways:

- They should pay greater attention to the link between FDI and development.
- UNCTAD should have a greater say in the selection of countries, based on the need for an IPR and the country's ability to benefit from it. The IPR should be more adaptable to country needs.
- IPRs should assess policy coherence. More attention should be paid to associated policies, such as trade.
- IPRs should work more closely with other institutions such as the OECD, WTO and the Integrated Framework. Trade Policy Reviews were also mentioned.
- UNCTAD should pay greater attention to the regional perspective.
- Follow-up activities should be budgeted for before the start of the IPR process.

82. The secretariat acknowledged that IPRs must continue adapting to the national context. It was stressed that they contributed to the three pillars of UNCTAD's mandate: analysis, technical assistance and intergovernmental work. UNCTAD had started working at the regional level, initially on FDI in East Africa, especially tourism. While work had been carried out at the subregional level, further work depended on funding and capacity. Lack of field presence required that UNCTAD work more closely with other organizations.

Investment Policy Review of Colombia

83. The Investment Policy Review of Colombia, the seventeenth in the series of country IPRs, was presented. The dialogue in the review process, and comments and viewpoints shared, had provided valuable feedback for the Government to address issues regarding the

improvement of the country's investment environment, and highlighted the Government's vision for a development strategy based on integrating into the global economy.

84. UNCTAD noted Colombia's strong economic growth and FDI inflows, which had come on the back of a liberalization and privatization programme, the democratic security policy, government reform and various improvements in the investment framework. Although FDI remained below the regional average, it had made a positive contribution to the economy and had led to higher-value-added production. Colombia could be a regional platform for FDI. UNCTAD had noted that there were few restrictions on FDI. However, transparency and legal protection should be improved. The role of CONPES (the National Economic and Social Policy Council) should be clarified and the bodies of investment norms should be consolidated in a compendium to increase transparency. With regard to legal stability contracts, it was noted that recourse to international arbitration was not automatic and that the laws covered should be chosen according to a positive list approach.

85. The IPR had noted problems with local and international arbitration. Automatic recourse to international arbitration was possible but should be more widespread. This was because, where it was not possible to have access to arbitration by the International Centre for Settlement of Investment Disputes (ICSID), an *exequatur* was required from the national courts, and this involved a costly and time-consuming procedure. Colombia should extend its network of bilateral investment treaties (BITs) and double taxation treaties (DTTs). Conflicting fiscal measures needed to be harmonized and the tax system simplified. In addition, the review suggested that Colombia prioritize the following policies: further improving the labour laws; enhancing corporate governance; harmonizing the civil and commercial codes; and strengthening the justice and arbitration system. In order to attract more investment in research and development, and higher-value-adding sectors, policies should focus on improving human resources development and science and technology capacities. Colombia should maintain its focus on the EU and US markets and could consolidate its regional presence through outward investment. Investment policies should complement Colombia's competitiveness policy, known as the *agenda interna*, by targeting foreign investors who would develop local supply capacity, attracting investors capable of increasing competition in domestic markets, promoting Colombia's brands abroad and improving the country's image. This would need to be done in collaboration with the provinces and regions.

86. The representative of Colombia agreed that foreign investment was an engine for growth and development as well as poverty reduction. Investment could improve social conditions and develop Colombia's production structure. He outlined four pillars of general investment policy: the democratic security policy, macroeconomic stability, strengthening of institutions and international integration. It was the Government's long-term policy to strengthen the rule of law and to protect civil rights throughout the country. The investment promotion agency had been re-established as a vice-presidency within the export promotion agency. This had been done in order to secure stronger political support, increase the global strength of the agency, expand the network of contacts and make use of the export promotion agency’s larger budget. The Government stressed that the role of CONPES was to support and facilitate investment, and had agreed to create a compendium of all investment measures, as recommended in the IPR, as well as to issue a policy statement on investment.

87. The Government of Colombia was working to negotiate trade agreements and improve market access in neighbouring countries and large international markets. It intended

to expand its network of BITs and DTTs. A BIT with Spain had recently been signed. A free trade agreement, which included a chapter on investment, had also recently been signed with the United States. In response to suggestions by UNCTAD, the Government had pledged to improve the dispute resolution mechanism, and to address human resource and innovation policy issues. It emphasized that investment promotion in Colombia was a recent endeavour and that particular efforts were needed to build awareness among local governments. The speaker reaffirmed the need to further improve local institutions, particularly municipalities. The Government also stated, inter alia, that legal stability agreements were recent, and that government officials had so far had little experience in implementing them.

88. Participants considered that the IPR accurately reflected the situation faced by investors. It was noted that Colombia had recently become a major exporter of capital to the region, which was appreciated, as well as a capital importer. Participants acknowledged government efforts to improve security and labour laws, reduce the fiscal deficit and tackle inflation. Government efforts to reform the investment environment were also appreciated. BITs and DTTs were considered essential for attracting investment. It was recommended that legal stability contracts include arbitration clauses. Furthermore, it was noted that adequate dispute resolution mechanisms would always be necessary, given the worldwide increase in investor–State disputes. In that connection, Colombia needed to improve access to international arbitration. One delegation noted with appreciation the Government's efforts to improve security, modernize the State, and strengthen institutions and social policies. Also, the Government's efforts to improve the regulatory framework governing concessions were commended. The importance of BITs and DTTs recently signed by Colombia was stressed as a measure for further developing investment.

89. A number of delegates noted the value of a single investment agency. They added that new investments could come from small and medium-sized enterprises as well as major companies. It was noted that FDI could be used to improve infrastructure, which itself could attract more FDI.

90. The following points were made by one delegation:

- Countries could learn a great deal from the principles adopted by Colombia on investment liberalization and legal stability. However, although the central Government had achieved legal stability, did the same apply to local governments?
- The negative list of legal stability contracts was still wide in its scope. Public utility prices remained affected by this. Comments were requested from the Government in this connection.
- The liberalization and privatization carried out by Colombia had been successful, and it would be interesting to point out the most positive cases.
- The IPR should have addressed the issue of national arbitration in more depth. The system could be improved by making the outcome of national arbitration binding.
- The IPR should have examined in depth the dispute between a group of private investors and the State-owned telecommunications company, as lessons could be learned from it.

- Improvements in infrastructure, which were crucial for attracting FDI, should be further discussed.

- The IPR should have analysed in depth the limited capacity of local government.

91. The delegation concluded that Colombia had recently been very proactive in improving security, and due attention had been given to foreign investors.

92. The private sector voiced its appreciation of the Government's efforts to improve the economy through a strong independent central bank and sound economic institutions. It also noted the positive investment environment. Nevertheless, legal stability contracts needed to be improved and greater transparency was required. Private sector representatives also noted that companies had increased employment in Colombia and increased exports, and had adopted corporate responsibility. This had been helped by the growing size of the Colombian market and its favourable geographical position. The country benefited from having a qualified labour force. An indicator of this was the fact that some private companies were committed to investing more in R&D. However, it was noted that Colombia still had an image problem, and the flow of imports and exports was burdened by various hurdles and restrictions. The private sector called for an improvement in customs and further trade facilitation measures.

93. The representative of Colombia said that his Government appreciated the review process and fully supported the major thrust of the recommendations in the IPR. The latter had been extremely timely in guiding reforms currently under way and providing an opportunity to exchange views on the way ahead. He addressed the questions by delegations, acknowledging that efforts were still required in order to improve the efficiency of local institutions, and he reiterated the Government's commitment to decentralization. He also explained that utilities prices in Colombia were market-based and that the Government did not regulate prices in that area. Municipalities and local institutions also had a key role to play in utilities and infrastructure development. Furthermore, he stated the Government's commitment to strengthen investment promotion. In conclusion, he confirmed the Government's interest in the launching of negotiations with interested countries on bilateral treaties to improve investment protection and guarantees.

Chapter VI

REPORTS OF THE SUBSIDIARY BODIES OF THE COMMISSION
(Agenda item 6)

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

> "Report of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting on its Twenty-second Session" (TD/B/COM.2/ISAR/31).

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

Chairperson's summary

95. The Chairperson of the twenty-second session of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting (ISAR) presented the Group's report on that session, in which 217 experts from 72 member States had participated.

96. The Chairperson said that the session had dealt with two main agenda items: review of practical implementation issues regarding International Financial Reporting Standards (IFRS), and comparability and relevance of existing indicators on corporate responsibility. With respect to the first item, he reported that participants had reiterated the importance of a common set of principles-based and high-quality financial reporting standards to support the coherence and consistency of the international financial system for mobilizing efficient allocation of financial resources and facilitating investment for development. In its deliberations on the practical implementation of IFRS, the Group of Experts had underscored a variety of challenges that developing countries and countries with economies in transition faced in their efforts to meet international requirements on corporate reporting. It had found that a number of steps were required in order to build an institutional and regulatory framework as well as technical expertise in those countries, and had agreed to continue its deliberations on this issue with a view to developing guidance on good practices for implementing IFRS.

97. On the second main agenda item, the Chairperson reported that the Group of Experts had addressed issues such as users of corporate responsibility reporting, criteria for selecting relevant information that would meet the common needs of those users, and a limited number of core indicators to ensure comparability. In concluding its deliberations on this agenda item, the Group of Experts had proposed that it conduct a review of enterprise corporate responsibility reporting practices based on selected indicators, and develop a measurement methodology for those core indicators to ensure consistency. The Chairperson also reported on other items addressed by the session. In particular, he noted that it had discussed "Guidance on good practices in corporate disclosure" (TD/B/COM.2/ISAR/30) and had agreed that this guidance could be a useful voluntary tool for promoting increased transparency and improved corporate governance. The UNCTAD secretariat had been requested to prepare the guidance for publication and disseminate it as widely as possible.

98. The report on the twenty-second session was followed by a panel discussion aimed at highlighting the role of corporate governance disclosure, and the ISAR document on good practices in this area, in facilitating investment for development. A participant commended the document and stressed that it should be actively promoted in order to assist enterprises and regulators in promoting improved corporate governance disclosure. He referred to recent studies that had highlighted the existence of a strong link between good disclosure and the better performance of enterprises, and of a premium in the value of enterprise capitalization for good corporate governance disclosure.

99. Another participant illustrated the usefulness of guidance on corporate governance disclosure with the example of recent reforms in Egypt's stock exchange listing requirements. Basing its corporate governance rules on international standards of corporate governance, the Cairo and Alexandria Stock Exchanges (CASE) had significantly increased its listing requirements, and this had ultimately led to the delisting of approximately 50 per cent of the firms listed on the CASE. These reforms had the effect of creating a much more transparent and accountable corporate sector, which had subsequently succeeded in attracting significant foreign investments. As more foreign investors entered the Egyptian securities market, they were transferring additional knowledge and skills regarding corporate governance disclosure.

100. During the interactive debate a number of delegates commented on the usefulness of ISAR guidance on good practices in corporate governance disclosure and expressed support for further work by UNCTAD and ISAR in the area of corporate transparency and reporting. One of the delegates noted that corporate governance disclosure was an ongoing area of development, and said that it was necessary to keep abreast of new issues and practices in this area. Discussions also addressed the relationship between voluntary and mandatory requirements and corporate governance disclosure. The panel stressed complementarity between the two approaches and emphasized that the capital markets themselves played a considerable role in rewarding good governance disclosure. Therefore, the question was not so much about voluntary versus mandatory rules, as about what mixture of rules and guidance could best position companies to attract investment and provide economic benefits to the economies in which they operated.

Chapter VII

IMPLEMENTATION OF AGREED CONCLUSIONS AND RECOMMENDATIONS OF THE COMMISSION

(Agenda item 7)

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

> "Progress report on the implementation of recommendations for the UNCTAD secretariat" (TD/B/COM.2/63).

Chairperson's summary

102. The Officer-in-Charge of the Division on Investment, Technology and Enterprise Development (DITE) presented the report on the implementation of the recommendations of the Commission at its ninth session. He provided a brief overview of the overall performance of the Division in 2005. He emphasized the important role played by donor countries in facilitating the work of the Division and recognized the continued support provided by DITE's partner institutions. He then outlined some of its specific activities, particularly in the area of research and development, capacity-building and policy analysis, in more detail. In particular, he emphasized the work undertaken in the context of the Investment Policy Reviews and follow-ups, as well as research undertaken on international investment agreements. Also, special attention was given to partnership for development, a concept that DITE had embodied through its numerous partnerships with other organizations in the implementation of its programme. The speaker referred to the *DITE Activities Report 2005*, which provided 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, he provided 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, and that this was evidence of the Division's efforts to provide assistance in an integrated manner.

103. Representatives of DITE partner institutions then took the floor and made short presentations of their joint activities with the secretariat, focusing on the impact of these initiatives for developing countries. Statements on the development impact of the Blue Books on Investment were made by the Senior Executive Director of the Japan Bank for International Cooperation (JBIC), the representative of the Ghana Investment Promotion Centre and the representative from the Permanent Mission of the United Republic of Tanzania. A representative of the China–Africa Business Council (CABC) described the partnership between the CABC and UNCTAD, and explained how it was facilitating the strengthening of business ties between China and Africa. Also, the Commonwealth Business Council referred to SME development for Africa and the promotion of South–South investment as possible areas for collaboration with DITE. A number of donor countries, as well as aid recipients, also took the floor to make brief statements and to comment on the presentation by the Officer-in-Charge.

104. A number of delegates expressed their appreciation for the work of the secretariat in the area of investment, in particular for the work undertaken in the context of investment policy review, investment promotion and international investment agreements. Several delegates expressed the wish that some areas of work, such as the capacity-building programmes in the area of FDI statistics and technology transfer, be further expanded,

provided that funding was available. A number of other delegates stressed the importance of continuing to maintain policy coherence in the delivery of programmes.

Chapter VIII

OTHER BUSINESS
(Agenda item 9)

Chairperson's summary

105. In the framework of this item representatives of other international organizations presented their work on investment-related issues. Representatives from the Foreign Investment Advisory Service, the Multilateral Investment Guarantee Agency, the United Nations Industrial Development Organization, the International Trade Centre and the Organisation for Economic Co-operation and Development made brief presentations during which they highlighted areas of cooperation with the secretariat. In particular, FIAS and MIGA explicitly mentioned their collaboration with UNCTAD in the areas of FDI information gathering through IPRs and outward FDI promotion. The representatives of the OECD and ITC also made short statements on their work in this area, with the latter highlighting its activities in the “investment map” in cooperation with UNCTAD, a programme that was available online.

Chapter IX

ACTION BY THE COMMISSION

Action by the Commission

106. At its closing plenary, on 10 March 2006, the Commission adopted its agreed recommendations (see chapter I).

107. It took note of the report of the Expert Meeting on Positive Corporate Contributions to the Economic and Social Development of Host Developing Countries (TD/B/COM.2/EM.17/3) and the report of the Expert Meeting on Capacity Building in the Area of FDI: Data Compilation and Policy Formulation in Developing Countries (TD/B/COM.2/EM.18/3).

108. It took note of the secretariat’s progress report on the implementation of agreed conclusions and recommendations of the Commission (TD/B/COM.2/70).

109. It took note of the report of the Intergovernmental Working Group on International Standards of Accounting and Reporting (TD/B/COM.2/ISAR/31), endorsed the agreed conclusions contained therein and approved the provisional agenda for the twenty-third session of that body.

110. It approved the provisional agenda for its eleventh session (annex I) and the topics for the two Expert Meetings and the topic for the Ad Hoc Expert Meeting for 2006 (annex II).

Chapter X

ORGANIZATIONAL MATTERS

A. Opening of the session

111. The tenth session of the Commission on Investment, Technology and Related Financial Issues was opened at the Palais des Nations, Geneva, on 6 March 2006, by H.E. Mr. Love Mtesa (Zambia), Chairperson of the Commission at its ninth session.

B. Election of officers
(Agenda item 1)

112. At its plenary meeting, on 6 March 2006, the Commission elected the following officers to serve on its Bureau:

Chairperson:	H.E. Mr. Ian De Jong (Netherlands)
Vice-Presidents:	H.E. Mr. Luis Alfonso de Alba (Mexico) Mrs. Carmen Elena Castillo-Gallandat (El Salvador) Mr. Mohammad Ali Zarie Zare (Islamic Republic of Iran) Mr. Dmitri Fomchenko (Belarus) Mr. Kiminori Iwama (Japan)
Rapporteur:	Johan Van Wyk (South Africa)

C. Adoption of the agenda and organization of work
(Agenda item 2)

113. At the same meeting, the Commission adopted the provisional agenda circulated in document TD/B/COM.2/67. Accordingly, the agenda for the tenth 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

   (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

D. Adoption of the report of the Commission

114. At its closing plenary meeting, on 10 March 2006, the Commission adopted its draft report (TD/B/COM.2/L.23), subject to any amendments to the summaries of the statements; decided to include in its report the Chairperson's summaries on the substantive agenda items; and authorized the Rapporteur to finalize the report, taking into account the proceedings of the final plenary.

Annex I

PROVISIONAL AGENDA FOR THE ELEVENTH 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. International investment agreements and their development dimension
5. Investment policy reviews: Exchange of national experiences
6. Reports of the subsidiary bodies of the Commission
7. Implementation of recommendations of the Commission
   (a) Interaction with international and regional organizations on their work in the area of investment
8. Provisional agenda for the twelfth 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 2006

Proposed topics for Expert Meetings for 2006

1. FDI in natural resources

Foreign direct investment in natural resources has increased rapidly in recent years, partly fuelled by rising commodity prices. FDI in natural resources plays a particularly significant role in some developing countries, including least developed countries, and emerging economies. There is also an important South–South dimension to recent developments, as more and more developing country firms are venturing abroad, often to access natural resources. Reaping maximum development gains from such investment, including through backward and forward linkages, remains a challenge. Some Governments are currently revising their policies in this area. The Expert Meeting on FDI in natural resources should review current trends and ascertain their implications for developing countries, especially least developed countries, with a view to exploring policy options for ensuring tangible and long-term development gains.

2. Building productive capacities

The Expert Meeting will explore successful policies and approaches to building productive capacity and international competitiveness in developing countries, including programmes of assistance. This includes policies to attract foreign direct investment, and complementary technology and innovation policies, including enterprise development policies, to enhance the benefits of FDI. The Expert Meeting will emphasize an integrated treatment of policy areas and policy coherence, with a view to promoting broad-based development and contributing to the attainment of the MDGs. UNCTAD should distil its experience from the investment policy reviews, “Invest in Peace” and other related investment policy advice.

3. Ad Hoc Expert Meeting on Advocacy for Investment Policies with Particular Reference to the Development Dimension

Paragraph 53 of the São Paulo Consensus, adopted at UNCTAD XI (TD/B/410), states that UNCTAD should support efforts of developing countries and economies in transition to attract and benefit more from FDI, including by helping them to formulate and implement investment policies and by assisting with relevant legislation and regulations in line with their development strategies. For Governments to be able to effectively implement investment policies requires a combination of, inter alia, political will and numerous strategic decisions to ensure that a given policy initiative will be supported, adopted and brought to fruition. What issues are unique to advocacy for investment policies? What skills and tools will those who are responsible for implementing investment policies need in order to build consensus for their adoption and implementation? This Expert Meeting will address these on the basis of best practices and lessons learned from UNCTAD technical cooperation activities.

Annex III

ATTENDANCE*

1. Representatives from the following States members of UNCTAD attended the session of the Commission:

Afghanistan
Algeria
Angola
Argentina
Austria
Bangladesh
Barbados
Belarus
Belgium
Benin
Bulgaria
Chile
China
Colombia
Cuba
Democratic Republic of the Congo
Ecuador
Egypt
El Salvador
France
Germany
Ghana
Greece
Guatemala
Haiti
Honduras
India
Indonesia
Iran (Islamic Republic of)
Israel
Italy
Jamaica
Japan
Jordan
Kenya
Lithuania
Madagascar
Malaysia
Mauritius
Mexico
Morocco
Netherlands
Nicaragua
Pakistan
Peru
Philippines
Poland
Portugal
Russian Federation
Saudi Arabia
South Africa
Spain
Sudan
Switzerland
Syrian Arab Republic
Thailand
Trinidad and Tobago
Tunisia
Uruguay
United Kingdom of Great Britain and Northern Ireland
United States of America
Zambia
Zimbabwe
Yemen

2. The following observer was represented at the Commission:

Palestine

* For the list of participants, see TD/B/COM.2/INF.12.

3. The following intergovernmental organizations were represented at the Commission:

African Union
European Commission
Organisation for Economic Co-operation and Development
Organization of the Islamic Conference

4. The following specialized agency was represented at the Commission:

United Nations Industrial Development Organization

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

General Category

BPW International
International Confederation of Free Trade Unions
World Federation of Trade Unions

6. The following panellists were present at the Commission:

Country Experiences with TRIMs

Mr. David Romo Murillo, Director, Program in Science and Technology, Center of Research and Teaching in Economics, Mexico DF
Mr. Rene E. Ofreneo, Professor, University of the Philippines, Quezon City
Mr. Mamo Mihretu, Senior Attorney, Ministry of Trade and Industry, Addis Ababa, Ethiopia
Mr. Le Thuc Duc, Chief of Division for Economic Forecast, Centre for Analysis and Forecast, Hanoi, Viet Nam

Investment Policy Reviews and Follow-up Experiences

Mr. David Rantekoa, Principal Secretary, Ministry of Industry and Trade, Cooperatives and Marketing, Lesotho
H.E. Ms. Amina Mohamed, Ambassador and Permanent Representative of Kenya
Ms. Ruth Nyakotey, Acting Chief Executive, Ghana Investment Promotion Centre
Mr. René Cornejo, President, Proinversión, Peru
Mr. Hamoud Benhamdine, Directeur Général, Ministère des Participations et de la Promotion des Investissements, Algeria
Ms. Evita Schmieg, Head, Federal Ministry for Economic Cooperation and Development, Germany

Investment Policy Review of Colombia

Mr. Eduardo Muñoz, Vice-Minister of Trade, Industry and Tourism of Colombia
S.E. Sr. Antonio March, Embajador, Representante Permanente de España, Ginebra
S.E. Sr. Carlos Chocano, Embajador, Representante Permanente de Perú, Ginebra
Sr. Gregorio Canales Ramírez, Director General, Inversiones Extranjeras, Mexico

Mr. Rodrigo Arias, Vice-President, Proexport, Colombia
Mr. Daniel Fernandez, Siemens
Mr. Eduardo Portella, Antares Consulting, Informatica Gesfor

International Investment Rule-setting: Trends, Emerging Issues and Implications

Mr. Roberto Echandi, Professor of International Trade and Investment Law, Diplomatic Institute, Costa Rica
Mr. Kenneth Vandevelde, Professor of Law, Former Dean, Thomas Jefferson School of Law, United States
Mr. Manfred Schekulin, Director, Federal Ministry of Economics and Labour, Austria

Flexibility for Development

Mr. Olof Karsegard, Independent Lead Evaluator

7. The following special invitees were present at the Commission:

Mr. Aziz Dieye, Cabinet Dieye, Dakar, Senegal
Mr. Ge Kaiyong, Member, China-Africa Business Council, Beijing
Mr. Luis Kasekende, Deputy Governor, Central Bank of Uganda, Kampala
Mr. Karl P. Sauvant, Researcher, University of Columbia, New York

* * * * * * * *