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TRADE AND DEVELOPMENT BOARD

Commission on Investment, Technology
and Related Financial Issues

Expert Meeting on International Investment Agreements:

Concepts Allowing for a Certain Flexibility in the
Interest of Promoting Growth and Development

Geneva, 24 - 26 March 1999

Agenda item 3

**CONCEPTS - SUCH AS EXCEPTIONS AND OTHER MECHANISMS - ALLOWING FOR A CERTAIN
FLEXIBILITY, INCLUDING IN THE FIELD OF TECHNOLOGICAL CAPACITY BUILDING,
IN THE INTEREST OF PROMOTING GROWTH AND DEVELOPMENT - TO ALLOW
COUNTRIES IN DIFFERENT STAGES OF DEVELOPMENT TO BENEFIT FROM
INTERNATIONAL INVESTMENT AGREEMENTS**

Agreed conclusions

1. The Expert Meeting reviewed the ways and means by which existing international investment agreements (IIAs) provide for flexibility for the purpose of promoting growth and development and discussed pertinent experiences, including various concepts applied at different levels of IIAs. It noted that flexibility, including with regard to a Government's normal ability to regulate, can be reflected, *inter-alia*, in the objectives, content, implementation and structure of IIAs. It also noted that a key issue involves finding the proper balance between flexibility on the one hand and predictability and security on the other. The Expert Meeting noted the role that IIAs can play as one of the factors contributing to confidence-building in investment relations.

2. The Expert Meeting observed in this connection that the three expert meetings convened by the Commission on the development dimension of IIAs have assisted in clarifying some of the concepts and mechanisms available for IIAs so as to be

responsive to development concerns, first by looking at bilateral investment agreements and their development dimension and implications for a possible multilateral framework on investment,¹ then by examining regional and multilateral investment agreements from the same perspective,² and finally -- building on the work of the preceding expert meetings -- by discussing ways in which flexibility with respect to development concerns can be given effect in IIAs.

3. The Expert Meeting also observed that, given the complex issue of flexibility in IIAs, there is a need for more work to shed further light on the interrelationships between IIAs and the promotion of growth and development.

4. In this context, the Expert Meeting noted favourably the work carried out by UNCTAD in the framework of its programme on a possible multilateral framework on investment, in particular as regards capacity-building, including through training, seminars and the like. It welcomed the integrated nature of this programme, as it combines policy analysis (as exemplified in the *IIA Issues Papers*³), technical cooperation and consensus-building. It also recognized the usefulness of informal discussions aimed at dialogue and consensus-building on matters concerning IIAs and their development dimension.

5. The Expert Meeting recommended that the report⁴ submitted by the secretariat should be revised in light of the discussions during the Expert Meeting. The revised paper should be submitted to the next session of the Commission, with a view to informing it about the issues involved and policy options.

¹ See "Report of the Expert Meeting on Bilateral Investment Agreements and their Development Dimension", TD/B/COM.2/5-TD/B/COM.2/EM.1/3.

² See "Report of the Expert Meeting on Existing Regional and Multilateral Investment Agreements and their Development Dimension" TD/B/COM.2/11-TD/B/COM.2/EM.3./3.

³ *Foreign direct investment and development* (Sales No. E.98.II.D.15); *Scope and definition* (Sales No. E.99.II.D.9); *Admission and establishment* (Sales No. E.99.II.D.10); *Investment-related trade measures (IRTMs)* (Sales No. E.99.II.D.12); *Most-favoured-nation treatment* (Sales no. E.99.II.D.11); and *Transfer pricing* (Sales No. E.99.II.D.8).

⁴ See "International investment agreements and concepts allowing for flexibility in the interest of promoting growth and development", TD/B/COM.2/EM.5/2.