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DRAFT REPORT OF THE TRADE AND DEVELOPMENT BOARD ON ITS FIFTY-SECOND SESSION

Held at the Palais des Nations
from 3 to 14 October 2005

Rapporteur: Mr. Levan Lomidze (Georgia)

Speakers:

Director of the Division of Management
Secretary-General of UNCTAD
Republic of the Congo for the Group of 77 and China
Indonesia for the Asian Group and China
United Kingdom for the European Union and the acceding countries Bulgaria and Romania
United States of America
Switzerland
Peru
China

Note for delegations

This draft report is a provisional text circulated for clearance by delegations.

Requests for amendments to statements by individual delegations should be communicated by **Tuesday, 18 October 2005** at the latest, to:
UNCTAD Editorial Section, Room E.8104, Fax No. 917 0056, Tel. No. 917 5655

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INVESTMENT POLICY REVIEW OF KENYA

(Agenda item 8(c))

1. For its consideration of this item, the Board had before it the following documentation:

"Investment Policy Review: Kenya" (UNCTAD/ITE/IPC/2005/8).

2. The President of the Board welcomed the high-level participation of the Government of Kenya, led by H. E. Mukhisa Kituyi, Minister of Trade and Industry. Ambassador H. E. Antonio March of Spain chaired the discussion.

3. Introducing the IPR, the representative of the secretariat acknowledged Kenya's long history of economic leadership in East Africa while noting that, based on its potential, the country could attract more investment. The IPR identified several instances where FDI had brought significant benefits to the economy (horticulture, airlines, mobile telecommunications). UNCTAD proposed a strategy to revitalize FDI in four areas by (a) pursuing regional opportunities in manufacturing; (b) establishing Kenya as a regional services hub; (c) reinforcing agri-business; and (d) diversifying investments in export processing zones, including by attracting efficiency-seeking investors in services. These strategies needed to be complemented with further efforts to improve the workings of the investment framework, revise or modernize a number of laws, and upgrade key infrastructure (transport, utilities, telecommunications). The IPR commended efforts by the Government to amend the Investment Promotion Act so as to remove minimum capital requirements for foreign investors. It underscored that Kenya could perform better if the low quality and high cost of infrastructure, unresolved problems of governance, and problems in translating a relatively sound investment framework on paper into efficient practice were addressed further.

4. The Minister expressed his Government's gratitude to UNCTAD for its technical assistance through the IPR, the East Africa Bluebooks and *An Investment Guide to Kenya* (published by UNCTAD and the International Chamber of Commerce). He welcomed the recommendations of the report and looked forward to the implementation of IPR action plan. Progress had already been achieved in a number of areas highlighted in the report. In particular, he stressed the recovery in FDI and the Government's shifting from regulation to facilitation. Amendments to the Investment Promotion Act had been sent to Parliament to remove the minimum capital requirement for foreign investors. He also stressed the facilitating role of the newly approved Investment Promotion Act and the incentives it provided, including through fast-tracking major projects, facilitating the issuance of business licences and providing one-stop shop services to investors. The Investment Promotion Centre had been turned into the Kenya Investment Authority on 3 October 2005 in order to strengthen its role in investment promotion and aftercare. The Minister underscored the need for domestic and foreign investment to reinforce each other and said that the Government, in association with private-sector institutions, had launched a benchmarking exercise to monitor Kenya's performance vis-à-vis its main competitors in a number of areas. He stressed his Government's efforts to improve infrastructure, reduce the cost of doing business, and achieve national development goals, including supporting women in business.

5. The lead discussants included representatives of Nigeria, the Netherlands and Ecuador. Other delegations included Benin, China, Japan, Senegal and Uganda. Two private-

sector representatives, Old Mutual and Flower Direct, gave their views on the investment climate in Kenya. Representatives from the private sector provided crucial feedback on the investment climate and an open and frank assessment of the challenges facing Kenya. The high quality of Kenya's human resources and the entrepreneurship of its people were highlighted as key assets. One representative said the IPR identified many of the issues that urgently needed to be addressed. Some of these had been known for some time, and there was a pressing need to take concrete actions and speed the pace of reforms. Kenya should benchmark its performance internationally and ensure that a clear system of accountability and responsibility was set up in Government. A representative of a medium-size foreign firm highlighted the complications involved in investing in Kenya that resulted from pervasive corruption. He also stressed concerns about personal safety and the need to provide effective support to SMEs in setting up their investments.

6. A number of delegations commended UNCTAD for its useful work in providing technical assistance in the investment area, but stressed the need to ensure that resources were available to implement the recommendations of IPRs. They said that UNCTAD's IPRs and the WTO's Trade Policy Reviews usefully complemented each other. One speaker highlighted Kenya's leading role in sustaining regional cooperation in East Africa. Kenya is a prime investment destination in East Africa, a manufacturing and services hub, and a source for investment in the sub-region and the enlarged COMESA market. Another speaker stressed that the Government of Kenya had made progress in playing a facilitating role for businesses and avoided overregulation and excessive intervention in key sectors. However, speakers agreed with the IPR assessment that the investment framework suffered from key weaknesses in implementation, in spite of the relative soundness of the laws themselves. They stressed the urgent need to take concrete steps to solve a number of well-known problems in this area.

7. A delegation indicated that its Government was working on a number of measures to promote investment in Kenya by its nationals. These included the establishment of a business centre in Nairobi and strengthening formal bilateral trade and investment ties. Another delegation underscored the strength of human resources in Kenya and the need to address issues of governance more forcefully. Delegations commended the frankness and openness of the debate and the valuable contribution from private-sector participants.

8. The Minister concluded the session by answering the questions raised by meeting participants. He stressed that Africa and Kenya had what it took to succeed in a competitive global environment, and that they should not seek to excuse failures, but rather work hard to get things done and adopt a "can do" attitude. He said he was committed to sustaining the momentum for change, speeding up the pace of reforms and introducing bold measures. He also underscored the Government of Kenya's commitment to building strong economic integration with East Africa.

FINANCING THE PARTICIPATION OF EXPERTS FROM DEVELOPING COUNTRIES AND COUNTRIES WITH ECONOMIES IN TRANSITION IN UNCTAD EXPERT MEETINGS

(Agenda item 9(d))

9. For its consideration of this item, the Board had before it the following documentation:

> "Financing the participation of experts from developing countries and countries with economies in transition in UNCTAD expert meetings: Note by the UNCTAD secretariat" (TD/B/52/CRP.3).

10. The **Director of the Division of Management** said that the question of financing of experts had first arisen at UNCTAD IX in 1996, at which time it had been the will of member States that funding should not come from the regular budget. Subsequently, the General Assembly had allocated $5.5 million dollars to UNCTAD from overall savings, and it had authorized the use of some of those funds to finance experts, while at the same time stipulating that it was not thereby setting a precedent. When those funds had run out, efforts had been made to secure alternative funding, namely through extrabudgetary contributions, but all funds had now been spent. Earlier in the year, when preparing the draft programme budget, the UNCTAD secretariat had included a provision for financing of experts, but Headquarters, in the absence of any mandate from the Board, had declined to accept the provision.

11. The **Secretary-General of UNCTAD** said that the problem of the financing of experts should not be insurmountable, and he made a plea to member States to take the matter seriously with a view to identifying a solution. Making the intergovernmental machinery work as efficiently as possible was of key importance. The machinery must produce results, it must give direction to the work of the organization, and it must give advice in the context of multilateral trade negotiations. The work of experts had a crucial role to play, and it was important to have the views of experts from all parts of the world. As a manager, he would not be able to achieve much if member States could not agree among themselves. If member States decided to rely on extrabudgetary resources, the secretariat would try to obtain contributions, but what was needed was a long-term and predictable solution. Half-hearted expert meetings were not worth having.

12. The representative of the **Republic of the Congo**, speaking on behalf of the **Group of 77 and China,** said that his Group was very disappointed with the lack of progress made on financing of experts, but it nevertheless remained optimistic. At the Mid-term Review in 2002, the members of the Board had agreed to find a long-term solution for the predictable financing of experts by the end of 2002, and the issue had been discussed many times since then, but success had not been forthcoming. The experimental approach based on extrabudgetary financing had not worked. It had become clear that an innovative solution was unlikely to be found, so the way forward lay in a conventional solution.

13. Expert meetings were an essential element of the intergovernmental machinery, but for the meetings to function properly, developing countries must be able to participate effectively. This would only be possible if adequate resources were provided to enable experts from a broad cross-section of developing countries to attend. The only way to ensure adequate funding on a predictable basis was to give a clear intergovernmental mandate for the use of regular budget resources for that purpose. If a consensus to that effect was not

possible, the future of UNCTAD's expert meetings would clearly be called into question, and the Mid-term Review in 2006 would be complicated by the need to re-examine UNCTAD's intergovernmental machinery and study alternatives to consensus building, including increased recourse to negotiated outcomes. The secretariat should present options on how to adjust the intergovernmental machinery to ensure the continued functioning of UNCTAD's consensus building pillar.

14. The representative of **Indonesia**, speaking on behalf of the **Asian Group and China**, said that the issue of financing of experts was inherently political. Unless experts from a broad cross-section of developing countries could participate effectively, the value of UNCTAD expert meetings would be called into question, with ramifications across the board. The issue was therefore of fundamental importance. Previous approaches had not worked, and it therefore appeared that UNCTAD must be given an intergovernmental mandate to use regular budget resources. If the Board was unable to move forward on the issue, the continuing feasibility of UNCTAD expert meetings could be called into question, and considerable energy might have to be devoted at the Mid-term Review to considering the intergovernmental machinery, to the detriment of other important issues.

15. The representative of the **United Kingdom**, speaking on behalf of the **European Union and the acceding countries Bulgaria and Romania**, said that he recognized the importance of financing of experts and was aware of the sensitivity of using regular budget resources for that purpose. However, the issue was not a political one, nor should it be used as a bargaining chip. What was important was to work towards a better functioning of the intergovernmental process. If the issue was to go to the Mid-term Review, the Secretary-General of UNCTAD could hold consultations with a view to finding middle ground. He asked that the legal advice received from Headquarters be made available to delegations.

16. The representative of the **United States of America** said that it was frustrating not to find a viable way forward, but there seemed to be no immediate solution, and further discussions would be necessary. The energy injected by the Secretary-General should help. The issue of financing of experts should not be linked to any other issue, including in the context of the Mid-term Review, and it might be premature to consider any major revisions to the intergovernmental machinery so soon after the entry on duty of the Secretary-General.

17. The representative of **Switzerland** said he shared the frustration of others. Member States had fallen short of implementing the mandate they had set themselves in 2002, and that was regrettable. Expert meetings had failed in terms of generating solid networks in different areas of work, and many of them had no long-term impact on UNCTAD's work. It would be important to strengthen the continuity of experts' work by working on themes and creating networks, and UNCTAD's two intergovernmental groups of experts could serve as models. The issue of financing of experts should therefore be discussed in a more holistic way at the Mid-term Review, with consideration being given to the impact of expert meetings.

18. The representative of **Peru** said that more time would be required to discuss the secretariat's proposals, and additional information would be required.

19. The representative of **China** said that the issue of financing of experts had been on the table for a very long time, but it was now the right time to generate the momentum necessary to reach a solution.

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