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Report of the Commission on Investment, Technology and Related Financial Issues on its second session

held at the Palais des Nations, Geneva,
from 29 September to 3 October 1997

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Annexes

INTRODUCTION

1. The second session of the Commission on Investment, Technology and Related Financial Issues was held at the Palais des Nations, Geneva, from 29 September to 3 October 1997. In the course of the session, the Commission held seven plenary meetings (8th to 15th meetings) and a number of informal meetings.

2. Also in the course of the session, a debate and a panel discussion were held. The former was on the theme “Liberalization and competition policy”, during which the proposition “The more foreign direct investment policy is liberalized, the more important competition policy becomes” was debated, and the latter was on “Criteria to test the development friendliness of international investment agreements”.

Opening statements

3. The **Chairperson of the Commission at its first session** recalled the work undertaken by the Commission in its first year, stressing in particular the accomplishments of the first two Expert Meetings of the Commission - the Expert Meeting on Existing Agreements on Investment and their Development Dimension, and the Expert Meeting on Investment Promotion and Development Objectives. She noted that consensus had been reached on the status of the two Intergovernmental Groups of Experts - the Intergovernmental Group of Experts on Competition Law and Policy, and the Intergovernmental Group of Experts on International Standards of Accounting and Reporting - and she expressed her appreciation for the efforts undertaken by all parties concerned, particularly by the President and the Vice-President of the Trade and Development Board. In closing, she emphasized the important role of the Commission in the years to come, especially with regard to the ongoing and increasing process of globalization driven by increased foreign direct investment (FDI) and foreign portfolio equity investment flows.

4. The **Secretary-General of UNCTAD** said that the second session of the Commission provided an important forum and stepping stone with regard to UNCTAD’s first mid-term review after UNCTAD IX in Midrand. He pointed to the new format of deliberations for the debate on the interrelationship between FDI liberalization and competition policy, and encouraged member countries to participate actively in this debate, as well as in the discussion on criteria to test the development friendliness of investment agreements. With regard to the work initiated by UNCTAD in the area of a possible multilateral framework on investment, he recalled the Commission’s first Expert Meeting on bilateral investment, the regional symposium in Fez and UNCTAD’s participation in the WTO Working Group on the Relationship between Trade and Investment. He stressed that work had begun on a series of technical papers on issues of relevance to a possible multilateral framework on investment; that the secretariat would launch the training component of this work programme with a training seminar later in the year, hosted by the United Nations Staff College in Turin; and that a public sector-private sector dialogue on these issues had been initiated, to begin with a meeting organized jointly by UNCTAD and the European Roundtable of Industrialists in December 1997.

5. The **Chairperson** said that foreign direct investment had become the main mode for delivering goods and services to foreign markets, and one of the driving forces of the process of globalization. He pointed out that the number of discussions and negotiations on issues related to international investment had recently increased,

giving the discussions taking place in the Commission far-reaching implications well beyond the confines of UNCTAD. In this context, he stressed the Commission’s role as a universal discussion forum without the strain of negotiations. Introducing the agenda, he referred specifically to the forthcoming debate on the interrelationship between FDI liberalization and competition policy, and the panel discussion on criteria to test the development friendliness of investment agreements.

Chapter I

RECENT DEVELOPMENTS IN FOREIGN DIRECT INVESTMENT TRENDS AND POLICIES

(Agenda item 3)

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

> "Overview of the *World Investment Report 1997: Corporations, Market Structure and Competition Policy*" (UNCTAD/ITE/IIT/5 (Overview))

7. In his introductory remarks, the **Chief of the International Investment, Transnationals and Technology Flows Branch of the Division on Investment, Technology and Enterprise Development** drew upon the *World Investment Report 1997* to emphasize three key aspects of recent developments with respect to FDI trends and policies. The first was the magnitude and dynamism of the current boom in FDI. New records had been set as regards global FDI flows ($350 billion in 1996) and stocks ($3.2 trillion in 1995); global sales of foreign affiliates ($7 trillion in 1995, as compared with world exports of $6 trillion); the number of mergers and acquisitions (valued at nearly half of world FDI inflows in 1996); the number of transnational corporations (TNCs) (over 45,000 by the latest count); and the number of foreign affiliates (280,000) world-wide. He drew attention to the fact that according to a new exercise undertaken in the *World Investment Report 1997* to estimate the actual value of total investment in international production by foreign affiliates of TNCs, that value was $1.4 trillion, or four times greater than global FDI. He observed that, judging from a survey undertaken by UNCTAD together with Invest in France and Arthur Andersen, all the indications were that the FDI boom would continue.

8. The second aspect of recent developments underlined by the speaker was the growing importance of developing countries not only as locations for FDI but also as sources for outward FDI. There were a number of indicators of the growth of outward investment from developing countries: the share of developing countries in world outward FDI flows had increased from less than 5 per cent in the early 1980s to 15 per cent in 1996; 40 per cent of inward investment in countries of South, East and South-East Asia originated in other countries of the region; the foreign assets of the 50 largest developing-country-based TNCs had increased by 280 per cent - nearly 10 times faster than those of the 100 largest TNCs world-wide; and in 1995, for the first time, two firms from developing countries had appeared on the list of the world's 100 largest TNCs. At the same time, the importance of developing countries as locations for FDI had further increased, as reflected in the increase in their share of world FDI inflows from 30 per cent in 1995 to 37 per cent in 1996. All developing countries had experienced increases in inward FDI in 1996, although Latin America had performed better than South, East and South-East Asia - the largest host region - and Africa continued to attract a relatively small proportion of FDI flows to developing countries. Central and Eastern Europe was the one region where FDI flows had declined in 1996, partly because of completion of privatization programmes in some major host countries.

9. The third aspect emphasized was the importance of competition policy in the context of FDI liberalization. Much of the recent expansion of FDI had been due to the liberalization of policies related to FDI, mainly in the form of removing

restrictions on the entry of, and strengthening standards of treatment for, foreign investment. Data on policy changes indicated that the overwhelming majority of changes had been in the direction of liberalization. It was, however, important to ensure that public restraints were not replaced by private restraints such as cartels and restrictive or anti-competitive practices. Hence, the reduction of barriers to FDI and the strengthening of standards of treatment needed to go hand in hand with ensuring the proper functioning of markets. In this context, competition policy assumed pride of place, and there was a direct, necessary and growing relationship between FDI liberalization and competition policy. This relationship was an important issue, to which discussion under agenda item 3 would devote special attention in an informal debate and discussion, as well as in the plenary meetings.

10. The spokeswoman for the **Latin American and Caribbean Group** (Paraguay) emphasized the timeliness of the second meeting of the Commission on Investment, Technology and Related Financial Issues. As the *World Investment Report 1997* pointed out, countries were making more efforts than ever before to adopt the most appropriate measures to attract foreign direct investment. The Latin American and Caribbean region had received record FDI flows in 1996, attributable to, among other factors, long-term efforts aimed at liberalization, privatization and economic reform. What was even more important was the decrease in the geographical and sectoral concentration of FDI flows. In Latin America and the Caribbean, regional integration had played a crucial role in increasing FDI inflows, including intraregional flows (originating mostly from Argentina, Brazil, Chile, Mexico and Venezuela) that currently accounted for a significant part of total FDI in countries of the region. Moreover, there had been a healthy diversification of FDI target sectors. The situation as regards portfolio investments, however, was different. The major problem with these flows was volatility, and was characterized by heavy concentration on the most mature markets with a large stock-market capitalization and high levels of liquidity. This accounted for the interest of the Latin American and Caribbean Group in paying particular attention to work on this topic in UNCTAD. With respect to the relationship between FDI liberalization and competition policy, since the final aim of investment liberalization was economic development, it was important to prevent restrictive business practices from wiping out the benefits of liberalization. In protecting market efficiency and consumer interests, competition and innovation policies could play a key role. National and intraregional efforts were being undertaken by Latin American countries to analyse investment and competition policies, and to formulate recommendations in these areas. As for UNCTAD’s work, a logical sequence of action was recommended, by which the results of Expert Group Meetings served as raw material for the Commission. On this basis, the Latin American and Caribbean Group expected practical and realistic conclusions from the Commission, which would lead to concrete measures to strengthen investment, technology and competition policies in member countries.

11. The spokeswoman for the **Asian Group and China** (Philippines) stated that Asian countries had liberalized their FDI and trade regimes significantly, and had carried out substantial deregulation and privatization of industries, which had facilitated the entry of new foreign firms. Liberalization represented a means of promoting competition among firms in host country markets, but it could also create conditions with potentially adverse consequences for competition. It could result in concentrated market structures which could provide increased scope for private practices restricting competition. The prospects of this happening were greater in developing host counties, where domestic firms had yet to build competitive strengths in many industries. Thus, in order to benefit fully from FDI

liberalization, countries needed to ensure that statutory obstacles to the entry of firms (which had been reduced) were not replaced by anti-competitive practices of private firms, foreign or domestic. The efficient enforcement of a competition policy through legislation could strengthen the way in which FDI liberalization could enhance market efficiency and consumer welfare, and ultimately promote development. Several Asian countries already had such a policy in place. There might, however, be specific situations in which the adoption of a separate competition policy would be accorded a lower priority: in some economies, particularly small economies, competition from imports and from foreign firms might be sufficient to minimize the possibilities for restrictive business practices by private firms, while in other economies, lack of resources and human resources for effective implementation of competition law might limit the ability to adopt a competition policy, at least in the immediate future. With reference to such a policy, in certain circumstances intellectual property rights could also give rise to anti-competitive practices. This was relevant in the context of licensing agreement arrangements, including in connection with FDI. Asian countries shared an interest in ensuring that anti-competitive practices did not impede or negate the realization of benefits to their economies from more liberal frameworks for investment and trade. In this connection, UNCTAD’s work on the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices had been valuable, and Asian countries had participated actively in its development. Furthermore, given the increasingly global nature of the market for many goods and services, international cooperation to ensure competition was important, and it was necessary to give due consideration to competition issues in any international discussion on an investment framework.

12. The spokesman for the **African Group** (Morocco) drew attention to the absolute and relative importance of FDI in the present world economy and emphasized its resulting crucial role for development, whether through capital formation, transfer of technology or market access. Africa had received only a meagre proportion of foreign investment flows to developing countries, despite the efforts of countries in the region in terms of policy reform, including for structural adjustment and considerable FDI and trade liberalization and deregulation. With a few exceptions, the majority of countries on the African continent had been marginalized as regards FDI inflows. He suggested that one of the reasons for this situation was that, frequently, only the negative side of Africa had been emphasized and publications tended to portray the African continent as a dangerous region for investment. He called for a change in approach, showing, above all, the positive aspects and emphasizing the opportunities to be found in Africa. There were many positive aspects that should be better publicized, as the whole continent was embarked on the task of strengthening macroeconomic policies and major efforts were under way to put in place sound economic reforms. These efforts needed to be complemented by those of the international community, not only to assist Africa but also to make it a true partner in development. In that regard, UNCTAD could contribute by ensuring that the positive aspects of African economies were reflected in its publications and that facts were presented so as to encourage foreign investors to consider Africa as an investment location. In this connection, he suggested the publication of fact sheets on Africa and their widespread dissemination, and technical assistance in formulating investment policies and organizing meetings with investors.

13. The representative of **Belarus** stated that his country’s economic reform objective was to establish a market economy and ensure participation in the world trading system. The Government had elaborated a programme aimed at creating a

favourable climate for foreign direct investment. Establishment of a free trade zone, fiscal and monetary reforms, as well as budgetary reforms, were among the elements of this programme. There were numerous opportunities for foreign investors in his country, including in areas and industries such as petrochemicals, building materials, food processing, packaging and electronics.

14. The representative of **Mexico** stated that foreign direct investment played an important role in the process of economic development, particularly through transfer of technology and creation of employment opportunities. Foreign investment flows to Mexico had been quite dynamic. He noted that during 1994 and 1996, FDI represented 10 per cent of the total of all investment flows to developing countries, and 40 per cent of the total of foreign investments in Latin America and the Caribbean. The process of regional integration had played an important role not only in promoting FDI but also in creating export opportunities. Commenting on the *World Investment Report 1997*, he drew attention to the fact that in the section on Latin America and the Caribbean there were methodological deficiencies, selective use of statistical data, inconsistencies, omissions and inaccuracies which had resulted in differing treatment of the countries of the region and in a lack of objective assessment of the performance of, and prospects for, foreign investment in most Latin American and Caribbean countries.

15. The representative of **Bangladesh** drew attention to the fact that FDI in Bangladesh had decreased in 1996, despite liberalization and provision of a number of investment incentives by the Government. Bangladesh’s unique geographical location had made it the “bridge” between South and South-East Asia, and thus the country could serve as an attractive production place for these regions’ market of 2 billion people. He added that in an effort to connect the countries of South Asia with those of ASEAN , an economic bloc (BIMSTEC) had recently been created, involving India, Bangladesh, Sri Lanka and two South-East Asian countries, namely Thailand and Myanmar. Bangladesh had thus established an effective working relationship with ASEAN. He observed that the better performance of Cambodia, among the least developed countries, in attracting FDI in 1996 could have been due to its proximity and prospective membership of ASEAN. He suggested that UNCTAD study the uneven distribution of FDI among the least developed countries and make recommendations on how the situation could be improved.

16. The representative of **Luxembourg**, speaking on behalf of the **European Union**, congratulated UNCTAD on the quality of the *World Investment Report 1997* and observed that the Report had become a source of reference for FDI research. Particular interest attached to the analysis in the 1997 Report of the capital component of international transactions, estimated to be in the region of $1.4 trillion, which demonstrated how important TNCs’ long-term engagement in international production could be. She noted with satisfaction signs of an improvement in FDI flows to Africa and the least developed countries. She mentioned the positive contribution the Lomé Conventions had made with respect to FDI flows to Africa and the least developed countries. As regards competition policy, she said that it should go hand in hand with trade and investment liberalization. The adoption of an adequate legal framework for competition not only helped avoid anti-competitive practices by firms but also created healthy and fair conditions for all of them. Furthermore, competition legislation should go hand in hand with policies dealing with other, wider concerns such as social development, environmental protection and equitable distribution of the benefits of growth. In the opinion of the European Union, those concerns were part of UNCTAD’s mandate, and UNCTAD should continue its analysis of, and technical assistance for, investment and competition from the development angle. This would

contribute to the ongoing activities of the World Trade Organization in the field of investment and competition, which might lead to the adoption of important international instruments.

17. The representative of the **United States of America** underlined the importance of a stable and predictable legal environment for FDI, as highlighted in the *World Investment Report 1997*. She informed the Commission of the initiative taken by the President of the United States, at the Summit of the Eight in Denver, Colorado, on 26 September 1997, calling for a Partnership for Economic Growth that recognized the need for greater efforts to encourage investment in countries, including those in Africa and the Caribbean, that needed it most, as well as to enhance opportunities for countries that made the most progress with respect to economic reform.

18. The representative of **Norway** commended the secretariat for its organizational and preparatory work for the Commission’s session, including the pre-session consultations with member States and regional groups and the information document describing the planned format of the meeting, and expressed appreciation for the efforts made to use “debating tools” other than the traditional statements during the session. There were good reasons for the Commission to look more closely at national and international policy and capacity-building measures designed to increase the contribution of FDI to development. The increased role of investment in the world economy made it an important factor in the strategies adopted for development, and UNCTAD should look examine that issue more closely. It would be useful if UNCTAD continued its analytical work on investment-related issues, while at the same time trying to help interested countries in formulating policies and guidelines, and recommendations for their implementation, focusing on country-specific activities, including technical cooperation, and in cooperation with other relevant organizations such as the OECD, WTO, IMF and the World Bank. It was hoped that the Commission would be able to draw some conclusions and make recommendations that could constitute the basis for future work by UNCTAD in this area, in particular to create a better understanding of the complexities influencing investment decisions and related capital flows.

19. In his concluding remarks, the **Chief of the International Investment, Transnationals and Technology Flows Branch of the Division on Investment, Technology and Enterprise Development** stated that the secretariat had taken note of the various suggestions made during the formal and informal discussions on the agenda item, especially with respect to the policy relevance of the secretariat's work. He recalled that the debate on liberalization and competition policy was a device to set a policy discussion in motion, bringing a whole range of issues to the fore. It was indeed a challenge to make the Commission’s discussion as policy-oriented as possible and, beyond that, to reach policy makers at home. He expressed thanks, on behalf of the Director of the Division, for the complimentary remarks on the work of the Division, including the *World Investment Report 1997*. He welcomed comments to further improve the Report, and, expressing his appreciation for the cooperation of many individuals and institutions in its preparation, he acknowledged, in particular, financial support from Hong Kong, China; Norway and the Netherlands.

Chapter II

EXAMINING AND REVIEWING EXISTING AGREEMENTS ON INVESTMENT TO IDENTIFY THEIR IMPLICATIONS FOR DEVELOPMENT, AS CALLED FOR IN PARAGRAPH 89 (b) OF "A PARTNERSHIP FOR GROWTH AND DEVELOPMENT"

(Agenda item 4)

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

> "Report of the Expert Meeting on Existing Agreements on Investment and their Development Dimensions" (TD/B/COM.2/5-TD/B/COM.2/EM.1/3)

21. In his introductory remarks, the **Chief of the International Investment, Transnationals and Technology Flows Branch of the Division on Investment, Technology and Enterprise Development** noted that the liberalization of national frameworks for foreign investment continued to be the most outstanding trend in national policies. In response to this, and developments at the international level, UNCTAD IX had given a mandate to "identify and analyse implications for development of issues relevant to a possible multilateral framework on investment". In response to this mandate, both the intergovernmental machinery and the secretariat had initiated a number of activities, with a view to elucidating the development dimension. The panel discussion under this agenda item had been conceptualized with that objective in mind. The purpose was to begin a process of discussion on the development dimension. If the discussion could help to throw some light on this critical question, it would show that UNCTAD was indeed a forum in which all countries could freely explore policy issues and build consensus in an area of critical importance for international economic relations.

22. The **Chairperson of the Expert Meeting on Existing Agreements on Investment and their Development Dimensions** introduced the Expert Meeting's report to the Commission. He explained that although the main topic of the debate had been bilateral investment treaties (BITs), the discussions had not focused on BITs *per se*, but rather on their relevance to a possible multilateral framework on investment and the development dimension of international investment agreements. Participants had discussed five basic issues: reasons for concluding BITs; issues addressed by BITs; experience with the application of BITs; the role of BITs in the development of national law and standards of international law; and the development dimension. On the last point, he said that in his view the discussions had revealed serious concern about the failure of existing investment agreements to address development needs. He shared the view expressed in the agreed conclusions of the Expert Meeting, in which the participants stressed the need for further deliberations by the Commission on such questions as the type of provisions that contributed both to attracting FDI and to addressing development concerns; similar work should be undertaken in relation to existing regional and multilateral agreements. The international community would benefit from the Commission's further consideration of the development dimension in investment agreements.

23. The **Chairperson of the Commission**, before introducing the Panel on Criteria to Test the Development Friendliness of International Investment Agreements, noted the increasing interest in considering the development impact of international investment treaties, which he attributed to the

positive attitude of Governments towards inward and outward FDI. He then introduced the panellists - Mr. Samuel K.B. Asante, Mr. Arghyrios Fatouros, Mr. A.V. Ganesan and Mr. Patrick Robinson.

24. The **Secretary-General of UNCTAD** stressed the central importance of this agenda item. Indeed, discussions on foreign investment were gradually becoming one of the most important systemic issues in the world economy, with strong linkages to the current debate on the liberalization of financial markets and the issues these raised. UNCTAD was not the only international organization that tried to reflect in its work the full implications of these issues; other organizations, such as the WTO and the IMF, also tried to do so. He emphasized that FDI could not be analysed in isolation from other issues. In particular, he stressed its importance in contributing to the creation of sound national production systems. Recalling the lessons of economic history, he said that it was in the interest of the transnational corporations themselves to be seen as good corporate citizens, and to be the catalyst for development by way of transfer of technology, managerial skills and access to markets. This would be the best guarantee for the economic stability that transnational corporations sought.

25. The representative of **Venezuela** stressed his country's interest in participating in UNCTAD's discussions on international investment agreements and their development dimensions, stimulated by its efforts to gradually open up sectors closed to foreign investment. He shared the view that although bilateral investment agreements could contribute to attracting FDI, their impact was limited by the fact that they did not provide for active policies for the promotion of FDI or the transfer of technology. Moreover, he noted that weaker countries might be unable to influence a balance between the rights and obligations provided for in such agreements. He expressed concern that some countries were ready to sign these agreements at the cost of waiving some of their rights stipulated in other international treaties, for example in the area of intellectual property rights. Therefore, he agreed with the view that there was a need to harmonize the terms of the different international treaties. Venezuela sought advantages in the negotiation of a multilateral framework on investment, as this would increase the collective bargaining power of small countries and address their development concerns. In his view, one of the most interesting issues discussed at the Expert Meeting on Existing Agreements on Investment and their Development Dimensions (which was not reflected in its report) was the linkages between the obligations of the OECD countries emanating from the Multilateral Agreement on Investment and the commitments the same countries had undertaken in the WTO. In this regard, he noted with satisfaction that the benefits and privileges of the OECD instruments would be extended to third countries on a most-favoured-nation basis. He assured participants of his delegation's full and continued support for the work of the Commission and, in particular, for the idea of training courses for negotiators of international investment agreements, to be organized by UNCTAD in cooperation with other international organizations and with Governments.

26. The spokesman for the **African Group** (Morocco) noted that the globalization and liberalization of foreign investment had stimulated the interest of developing countries in negotiating international investment agreements, and participating in the WTO Working Group on the Relationship between Trade and Investment. Africa accounted for one-fifth of the bilateral investment treaties signed so far by all countries. African countries participated in subregional, regional and interregional initiatives. He deplored the lack of an all-African investment instrument or investment forum, where a common position could be formulated. This was why, as the participants in the UNCTAD regional investment symposium in Fez in

June 1997 had stated, it was so important to organize regional meetings in order to continue to analyse the development dimension of international investment treaties. At the Fez symposium, UNCTAD had been encouraged to explore the possibility of organizing a conference to focus on the needs of the least developed countries. In his view, UNCTAD should help developing countries to achieve full and effective participation in international negotiations. He underlined the usefulness of the technical paper series on issues relevant to international investment agreements, which was being prepared by the UNCTAD secretariat. He asked the secretariat to organize training courses on international investment instruments, and seminars to follow up the successful Divonne seminars of 1996.

27. The representative of **Switzerland** noted that it had become quite common to stress the importance of international investment for development, and the dense network of bilateral investment treaties had been built on this basis. He believed that international cooperation efforts currently under way would enrich, fine-tune and harmonize the knowledge and experience accumulated in the BIT network. These efforts should aim at extending and applying this knowledge and experience to all potential beneficiaries. In his opinion, UNCTAD was the best forum for transmitting such know-how to developing countries. He stressed that the discussions in UNCTAD on a potential multilateral framework on investment should encompass all competences, including those relating to investment risks. He offered his country's continued and firm support for these UNCTAD activities, which would certainly prove to be difficult but which were a necessary condition for the full sharing of the benefits of FDI by all countries.

28. The representative of **Japan** supported the idea of building the capacity of developing countries in the area of international investment, which in his opinion would yield results even in the short run. As regards the international investment agreements themselves, he shared the view that their development friendliness should be consistent with the trend towards liberalization. Furthermore, he endorsed the view that investment rules should encourage FDI flows to developing countries, and shared the concern that biased, restrictive provisions would be an obstacle to those flows. He saw a major role for international investment agreements in creating stability and predictability, and agreed that there was no real contradiction between investor protection and development objectives. He noted that social responsibility and ethical conduct were now part of the corporate culture of most TNCs. He stressed the importance of creating competitive markets in strengthening the competitiveness of enterprises in host economies, and in ensuring maximum efficiency and consumer welfare. For this reason, he advocated non-discriminatory treatment for foreign investors. Initiatives to invest should come from the private sector, and in turn could be promoted by Governments. A desirable multilateral investment agreement could play a significant role in supporting such initiatives.

29. The representative of **Luxembourg**, speaking on behalf of the **European Union**, said that she shared the interest of many delegations in the topic under discussion, which had stimulated a rich exchange of views. As work progressed, it was becoming increasingly clear that there was a desire by both developed and developing countries to continue to follow these discussions on investment very closely in international forums and, most particularly, in UNCTAD. She noted a number of concrete questions that emerged from consideration of the impact of existing agreements on the development process, namely the possibility of having specific provisions for foreign investors that compelled them to conform their investments to the development objectives of their host countries; the possibility of opening only certain sectors to foreign investment; and the possibility of not

dealing with questions of market access but only with issues of protection after entry. To the extent that international agreements focused on the protection of investment after entry, they could create a stable climate that could encourage further flows of investment beneficial for development. For example, effective protection as regards expropriation was a necessary element consistent with any development objective. Measures regarding performance requirements were more problematic. The European Union did not find them effective for the development process. Regarding the prescribing of market access in development-friendly agreements, this was indeed a very delicate question. She recognized that even in countries with very liberal policies on FDI a number of industries remained closed to the latter. However, some commitments in future international investment agreements on market access could send a positive signal regarding the seriousness of countries' policies on liberalization.

30. The representative of **Brazil** noted that his country, being a major developing host country for large flows of foreign direct investment, was very interested in the topic under discussion. It had signed some 20 bilateral investment treaties and was party to an increasing number of regional agreements dealing with investment. It had co-sponsored the two UNCTAD seminars held in Divonne and an OECD meeting in Brazil for the Latin American countries. His delegation thought that the Midrand mandate was being carried out very well by UNCTAD; in particular, the Expert Meeting on Existing Agreements on Investment and their Development Dimensions, and the Expert Meeting on Investment Promotion and Development Objectives, had been very useful. He looked forward to the activities and publications of the secretariat, especially the *World Investment Report* and the technical paper series on issues relevant to a possible multilateral investment framework. He emphasized the important role of UNCTAD in promoting the exchange of ideas and improving the understanding of the issues involved in international investment agreements.

31. The representative of **Norway** stressed the importance of the analytical role played by UNCTAD, as demonstrated by the very useful discussions that had taken place under this agenda item. He also emphasized the importance of coordinating the work being carried out in this area in various multilateral forums, which should be done in a complementary manner.

32. The representative of **India** emphasized that the discussion under this item was the beginning of a process. The Commission had made a good start, and work needed to continue to look more deeply into the issue of investment and development. This issue had so far been sidetracked in debates in other forums. He requested an inventory of the criteria mentioned in the discussions, to be made available so that they could be examined in member countries. India looked forward to hosting the regional seminar on international investment agreements early in 1998.

33. In his concluding remarks, the **Chief of the International Investment, Transnationals and Technology Flows Branch of the Division on Investment, Technology and Enterprise Development** said that the meeting was an encouraging beginning of a process of discussion that needed to be followed by more in-depth work. Noting that the traditional definition of foreign direct investment had been broadened in bilateral investment treaties, he stressed the need to consider the implications of a broader definition. Finally, he said that the secretariat was encouraged by the expressions of appreciation and support from delegations.

Chapter III

REPORTS OF THE SUBSIDIARY BODIES OF THE COMMISSION

(Agenda item 5)

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

"Agreed conclusions of the Expert Meeting on Investment Promotion and Development Objectives" (TD/B/COM.2/EM.2/L.1)

35. The **Chairperson of the Expert Meeting on Investment Promotion and Development Objectives**, which had been held from 24 to 26 September 1997, presenting the agreed conclusions of the Expert Meeting, said that three main issues had been discussed, namely inward FDI promotion, outward FDI promotion and investment incentives. More than 100 participants from 88 countries had taken part in the Meeting, including experts from the private sector representing a wide range of economic concerns. The agreed conclusions of the Meeting were addressed not only to countries but also to the UNCTAD secretariat.

36. With regard to the promotion of inward FDI, countries needed to elaborate a promotion strategy targeting investors and to identify the comparative advantages they could offer the latter, as well as impediments to investment. Concerning the promotion of outward FDI, a number of international bodies engaged in such activities had been identified, and it would be useful to bring them into contact with agencies promoting inward FDI. As regards investment incentives, it was only when countries had met a certain number of basic criteria in terms of a healthy economic environment and an adequate legal investment framework and infrastructure that they could attract increased FDI, and incentives alone were not sufficient.

37. UNCTAD should provide technical assistance, particularly advisory services and training, in the following areas: identification of impediments to inward investment; elaboration and formulation of investment promotion strategies; investor targeting; establishment and development of industrial zones and sites; and establishment of information systems for investment promotion. On the last point, the classification of investment recipient countries should be based not only on the size of the investment received but also on other criteria such as the number of jobs generated by investments, the increase in value-added production and increased exports. With regard to investment statistics, greater harmonization and standardization were needed.

38. The **representative of the UNCTAD secretariat** said that the Expert Meeting had been enriched by the participation of a large number of practitioners from investment promotion agencies, as well as company representatives who had provided their perspectives on the locational decisions of investors. The Meeting had provided useful guidance for the work of the UNCTAD secretariat and had agreed that UNCTAD's Advisory Services on Investment and Technology could provide technical assistance in specific areas of investment promotion, as well as collaborating with UNIDO and the Multilateral Investment Guarantee Agency (MIGA). He thanked donors and UNDP for providing the extrabudgetary funds which had enabled UNCTAD to furnish technical assistance in these areas for the past 20 years, and also the Swiss Government for its recent contribution to UNCTAD's Trust Fund through a newly

established quick response window for technical cooperation projects. He called for the continuation of financial assistance from donor countries and UNDP. UNCTAD was ready to provide assistance to host countries in evaluating the costs and benefits of their incentive schemes. Finally, the discussion on outward investment promotion had shown that it would be useful to have another meeting on cooperation between inward and outward investment agencies, with more active participation by outward investment agencies.

39. The representative of **Kenya** said that the recommendations of the Expert Meeting would have to be adopted, applied and followed up by both Governments and the private sector. The less developed countries and their partners from the developed countries had a joint responsibility as key players in the development process. Concerning the World Association of Investment Promotion Agencies (WAIPA), he congratulated UNCTAD on the support it had given by serving as the interim secretariat for WAIPA, and he encouraged it to continue that support. He requested UNCTAD's assistance in creating the capability to establish an investor tracking system in Kenya's investment promotion agency. The Government of Kenya had decided that the Kenyan Investment Promotion Centre would be restructured, upgraded and strengthened to fall into line with international standards. With regard to the experience of the member States of ASEAN and China in investment promotion, he proposed that efforts be made to identify impediments to investment flows to Africa, taking into account this experience.

40. The spokesman for the **African Group** (Morocco) said that his Group supported the recommendations of the Expert Meeting, as they represented elements of a package which would help improve the environment for attracting increased FDI. That was particularly important in Africa, which had the lowest rate of FDI. The Expert Meeting had recommended that UNCTAD adopt a new system of classification of FDI recipient countries, and that classification could be useful not only in UNCTAD's analytical work (the *World Investment Report*) but also in its technical assistance activities. Particular attention should be given to the least developed countries with regard to that classification, as well as with regard to technical assistance. Finally, he supported the request of Kenya concerning the identification of impediments to investment flows to Africa.

41. The representative of **Brazil** said that the Expert Meeting had been very informative, especially on the issue of investment policies and how the private sector took decisions regarding investment locations. The recommendations in paragraph 9 of the Expert Meeting's agreed conclusions should be reflected in the Commission's report.

42. The representative of **Paraguay** said that no expert from his country had been able to attend the Expert Meeting because of lack of funding, and he requested that assistance be given to experts to enable them to attend such meetings. He noted from the Meeting's agreed conclusions that some countries were more successful in attracting FDI than others, and that FDI inflows were concentrated on a small group of countries. More and more countries in Latin America were receiving significant FDI inflows as the region's markets became more integrated. It was important to seek programmes and projects which promoted diversification of exports and investment in natural resources and infrastructure in order to increase investment possibilities. As regards incentives, the topic remained controversial. Incentives were almost compulsory in attracting FDI, although other elements were undoubtedly important, such as size of market and a stable economic and political environment, but the parameters differed among countries. He requested the UNCTAD secretariat to conduct work on the varying impact of incentives on countries. He

supported the agreed conclusions of the Expert Meeting and said that, with UNCTAD's support on investment promotion, countries could increase inward investment.

43. The representative of **Zambia** supported the statement made by the representative of Kenya, and emphasized the importance of taking advantage of the investment experiences of Asia and those of China, including Hong Kong.

44. The **representative of the UNCTAD secretariat** said that due note had been taken of the various suggestions relating to UNCTAD's work, both analytical work and technical cooperation. He hoped that funds would be forthcoming to allow UNCTAD to respond to requests for assistance. In this regard, the attendance at the Expert Meeting of 18 experts from the least developed countries and other developing countries had been made possible thanks to funds provided by the Netherlands, UNDP and the European Union.

45. The **Chairperson of the Expert Meeting on Investment Promotion and Development Objectives**, referring to the issue of classification of investment recipient countries, said that in its agreed conclusions the Expert Meeting had sought not to make any distinction between countries in order to achieve the broadest consensus possible. Countries should be aware of their own wealth and could, if they used their own resources correctly, attract increased FDI.

Action by the Commission

46. At its plenary meeting on 2 October 1997, the Commission on Investment, Technology and Related Financial Issues endorsed the agreed conclusions of the Expert Meeting on Investment Promotion and Development Objectives, as contained in document TD/B/COM.2/EM.2/L.1.

Chapter IV

OTHER BUSINESS

Report by the Vice-President of the World Association of Investment Promotion Agencies

(Agenda item 7)

47. The **Vice-President of the World Association of Investment Promotion Agencies (WAIPA)** reported on the Second Annual Conference of WAIPA, which had been held in Geneva from 23 to 27 September 1997. WAIPA now had a membership of 95 investment promotion agencies (IPAs), 67 of which had been represented at the Conference. Also present were representatives of CARICOM, MIGA, UNCTAD, UNDP, UNIDO and the private sector. The Conference had held joint meetings with the Expert Meeting on Investment Promotion and Development Objectives. Discussions had been held on issues such as a possible multilateral framework on investment and its development dimension, export processing zones, targeting investors, locational decisions of investors, outward investment promotion measures and investment incentives. A field trip had been organized to a technology park in Geneva. During the Conference the General Assembly of WAIPA had adopted several amendments to the WAIPA Statute, particularly concerning membership, regional chapters and financing. These amendments permitted the full integration of AFRIPA as the African chapter of WAIPA, as well as the establishment of an independent WAIPA secretariat in 1998. Until then, UNCTAD would continue to act as WAIPA’s secretariat. The work programme adopted detailed WAIPA activities for the next year. UNCTAD, UNIDO and MIGA had pledged to support WAIPA in the execution of key elements of the work programme. It had been decided to hold the next Annual Conference of WAIPA from 14 to 18 September 1998.

Chapter V

ACTION BY THE COMMISSION AND PROCEEDINGS OF THE CLOSING PLENARY

Action by the Commission

48. At its 15th (closing) plenary meeting on 3 October 1997, the Commission adopted its draft agreed recommendations on agenda items 3 and 4. (For the text of the agreed recommendations, see annex I.)

49. It took note of the "Summary by the Chairperson of the informal discussions on 'Liberalization and competition policy'" under agenda item 3 (TD/B/COM.2/L.5), and agreed to incorporate it into its report. (For the text of the summary, see annex II.)

50. It also took note of the "Chairperson's summary of informal discussions under agenda item 4", and agreed to incorporate it into its report. (For the text of the summary, see annex III.)

51. In addition, the Commission recommended to the Trade and Development Board that the following meetings at the expert level be held:

(i) Examination and review of existing regional and multilateral investment agreements and their development dimensions in pursuance of the mandate of paragraph 89 (b) of "A Partnership for Growth and Development";

(ii) Environmental accounting: examination of national standards and regulations for environmental financial accounting, and identification of key environmental performance indicators and their relation to financial performance (Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting);

(iii) Competition law and policy (Intergovernmental Group of Experts on Restrictive Business Practices);1/

(iv) The growth of domestic capital markets, particularly in developing countries, and its relationship with foreign portfolio investment.

Closing statement

52. The **Vice-Chairperson** said that there had been some very interesting exchanges in the Commission on FDI liberalization and competition policy, as well as on the criteria for the development friendliness of investment decisions. The proceedings of the session had been enhanced by the format of the deliberations - the debate and the panel discussion - and by the participation of experts and representatives of civil society. They had been both informative and insightful.

1/ The specific topic for this Meeting will be recommended in November 1997.

53. During the Bureau meetings, including the extended open-ended ones, member States had expressed the desire to reflect on the Commission's working methods. In this connection, he planned to hold informal consultations with the Bureau immediately after the substantive session of the Trade and Development Board in order to look at this matter. Furthermore, he would report on the outcome of the present session of the Commission and on all related matters during the consultations with the President of the Board in November.

Chapter VI

ORGANIZATIONAL MATTERS

A. Opening of the session

54. The second session of the Commission on Investment, Technology and Related Financial Issues was opened on 29 September 1997 by Ms. Lilia Bautista, Chairperson of the first session of the Commission.

B. Election of officers

(Agenda item 1)

55. At its 1st plenary meeting, on 29 September 1997, the Commission elected its Bureau as follows:

Chairperson:	Mr. Jaroslaw Pietras	(Poland)
Vice-Chairpersons:	Mr. Patrick Métral	(Switzerland)
	Mr. Juan Francisco Misle Girand	(Venezuela)
	Mr. Terry Noade	(United Kingdom of Great Britain and Northern Ireland)
	Mr. André Oberholzer	(South Africa)
	Mr. Behzad Alipour Tehrani	(Islamic Republic of Iran)
Rapporteur:	Mr. Sek Wannamethee	(Thailand)

C. Adoption of the agenda and organization of work

(Agenda item 2)

56. At the same meeting, the Commission adopted the provisional agenda circulated in document TD/B/COM.2/6. Accordingly, the agenda for the second session was as follows:

1. Election of officers
2. Adoption of the agenda and organization of work
3. Recent developments in foreign direct investment trends and policies
4. Examining and reviewing existing agreements on investment to identify their implications for development, as called for in paragraph 89 (b) of “A Partnership for Growth and Development”

5. Reports of the subsidiary bodies of the Commission

6. Provisional agenda for the third session of the Commission

7. Other business

8. Adoption of the report

D. Provisional agenda for the third session of the Commission

(Agenda item 6)

57. At its 15th (closing) plenary meeting, on 3 October 1997, the Commission approved the draft provisional agenda for its third session, taking into account the Bureau's decision to interact further on the issues of sequencing and the detailed content of certain items. (For the provisional agenda, see annex IV.)

E. Adoption of the report of the Commission

(Agenda item 8)

58. At its 15th (closing) plenary meeting, on 3 October 1997, the Commission adopted the draft report on its second session (TD/B/COM.2/L.4 and Add.1), subject to amendments by member States to the summaries of their statements, and authorized the Rapporteur to complete the text of the report in the light of the proceedings of the closing plenary.

ANNEXES

Annex I

AGREED RECOMMENDATIONS

Agenda item 3 - Recent developments in foreign direct investment trends and policies

1. The Commission underlines the increasing importance of FDI in the world economy and its crucial role in developing countries and economies in transition with respect to capital formation, acquisition of technology and skills, organizational and managerial practices, and access to markets. This confirms the importance of policy-oriented research and analysis on investment-related issues, including on the determinants of FDI in today's liberalizing and globalizing world economy.

2. The Commission recognizes that many countries have undertaken a range of measures to attract FDI through liberalization and promotion of investment. The Commission encourages countries to continue to pursue coherent and coordinated policies, including the creation of a possible domestic legal framework and a stable economic environment, to attract foreign direct investment in order to benefit from its contribution to development.

3. The Commission recognizes the specific needs of the least developed countries, as well as Africa. It is encouraging to note that the flows of FDI to some LDCs have slightly improved. The Commission calls for greater acknowledgement of the positive developments in Africa, including signs of improved investment performance and the unexploited opportunities available. The secretariat should analyse the experiences of selected LDCs and developing countries in Africa which have begun to attract increased flows of FDI, with a view to drawing conclusions which might be of assistance to the efforts of LDCs and other developing countries to attract such investments. The Commission recommends that the 1998 *World Investment Report* reflect this analysis. The Commission also recommends that the secretariat explore ways of disseminating this information in the form of fact sheets on the Internet in order to make it widely available to potential investors. The Commission recommends the undertaking of further technical assistance activities, including an evaluation of Africa Connect with recommendations for future action and appropriate follow-up, Investment Policy Reviews, and Science and Technology and Innovation Policy Reviews.

4. The Commission notes that FDI liberalization and the strengthening of competition policy are complementary so that countries can guard against restrictive business practices and anti-competitive practices of firms and thereby maximize the benefits that can arise from liberalization. The principal objective of competition policy should be to maintain and encourage economic efficiency and welfare. Countries need to develop a thorough understanding of competition policy and its implications, the content of competition law and the appropriate institutional arrangements, which would need to be defined in the context of the specific circumstances of countries, including developmental concerns. International cooperation on competition issues should be encouraged.

5. The Commission calls for work to elucidate the elements of appropriate competition policy and the benefits that can be gained from it, and on how to achieve coherence between FDI liberalization, trade policy and competition policy. Furthermore, the Commission calls for reports on the experiences gained so far with international cooperation on competition policy issues and the mechanisms used; and the impact of competition policy on the inflows of FDI and on the overall growth of the domestic economy. Another important area is the need to increase the understanding of the interrelationship between FDI liberalization and competition policy, in cooperation with the WTO. Technical cooperation by UNCTAD is needed, aimed at helping countries to develop competition law and policies and, where appropriate, to improve the content and structure of competition policy and the institutional arrangements.

Agenda item 4 - Examining and reviewing existing agreements on investment to identify their implications for development, as called for in paragraph 89 (b) of "A Partnership for Growth and Development"

6. The Commission takes note of the report of the Expert Meeting on Existing Agreements on Investment and their Development Dimensions, which focused on bilateral investment treaties. Building on the results of the Expert Meeting and advancing the discussions to the policy level, the Commission had an exchange of views on criteria to test the development friendliness of international investment agreements.

7. The Commission considers it important to address further and continue work on the development dimension of international investment arrangements in the future.

8. The Commission notes UNCTAD's work programme on a possible multilateral framework on investment, which is aimed at building capacity in developing countries (and economies in transition), through training and advice, and with a view towards helping these countries to participate as effectively as possible in discussions on international investment arrangements. This involves, among other things, exploring individual key aspects of FDI in as much depth as possible, exploring the range of issues that needs to be considered, helping countries to identify their interests and, in particular, ensuring that the development dimension is addressed. The importance of training was particularly noted. In carrying out these tasks, UNCTAD should pay special attention to the needs and requirements of least developed countries, as well as African countries. The Commission notes the importance of regional seminars and symposia and recommends that these should continue. It notes with appreciation the contribution made by UNCTAD to the WTO Working Group on the Relationship between Trade and Investment and encourages further cooperation in this field.

9. UNCTAD should continue its valuable work on analytical research and policy analysis for determining and assessing the developmental implications of issues related to a possible multilateral framework on investment in accordance with paragraph 89(b) of the Midrand Declaration. This will enable UNCTAD not only to help deepen the understanding of the issues involved, but also to provide practical recommendations to Governments and technical assistance in this area.

Annex II

SUMMARY BY THE CHAIRPERSON OF THE INFORMAL DISCUSSIONS ON "LIBERALIZATION AND COMPETITION POLICY"

(Agenda item 3)

1. Discussion on agenda item 3 began with an informal discussion on FDI liberalization and competition policy, which started off with a debate by a group of invited experts on the proposition "The more foreign direct investment policy is liberalized, the more important competition policy becomes".

2. Several arguments were put forward in favour of the proposition, supporting the view that FDI liberalization and competition policy were complementary or closely linked to each other and that competition policy was essential for reaping the benefits of liberalization for growth and welfare. The most important arguments included the following: first, the immediate objective of liberalization, namely encouraging FDI, could itself be thwarted by private cartels in which firms in different countries agreed to keep out of each other's markets. Similarly, firms in a given country could keep FDI out by acquiring essential inputs and making it impossible for new competitors to enter production. Another kind of restrictive business practice hindering FDI involved joint ventures, which, while being unobjectionable in themselves, could involve ancillary restraints such as exclusive technology-sharing arrangements that prevented the entry of other firms into the industry or market. Competition law and its application could prevent such agreements and arrangements among private firms.

3. Furthermore, more than half of FDI entered countries (especially developed countries) through mergers and acquisitions, which could lead to concentrated markets and create scope for anti-competitive practices by firms. Competition law that reviewed and controlled mergers when considered necessary could reduce this possibility and could, moreover, deal with situations where privatization, deregulation or the provision of incentives and market protection to foreign investors had the potential to create market power and stifle competition. Moreover, it was emphasized that as countries liberalized their FDI policies and moved towards regional or other integration arrangements, the adoption of comparable competition policies was being seen, increasingly, as a way of creating a level playing field and as a condition for participating in these arrangements.

4. It was also argued that the rapid increase in FDI in recent years, reflecting the success of liberalization policies, was closely related to the pursuit of competition and the adoption of competition policy. In fact, competition policy could be considered an integral part of liberalization, which could not occur to any substantial extent and would not be effective unless there was constant competition advocacy and concern with competition.

5. With respect to the resources required for establishing the institutional infrastructure and designing and implementing a set of rules and regulations, it was emphasized that the costs involved should not be overestimated. The costs of implementing competition policy could be geared to the size of a market and the adaptation of policy to the needs of that market, and it was possible to exercise economy in various ways. In small economies, for example, costs could sometimes be lowered by relying on regional competition policy rather than on separate national policy. Costs of implementation of national competition policy could be

minimized by recognizing that, in small markets, concentration might not be as important as ensuring the contestability of markets. Costs of implementation could also be lowered by setting thresholds for merger review and relying on private resources for studies of particular industries (e.g. by relying on trade associations). Competition advocacy could be entrusted not just to competition agencies but to other institutions and groups in society, especially universities, technical institutions and international organizations, thereby reducing costs related to this important activity. All this suggested that competition policy need not be overly costly, and that the benefits of a competition policy would be well worth the cost.

6. Several arguments were also made against the proposition, supporting the view that whether competition policy in itself was important or not, liberalization (or increasing liberalization) of FDI policy need not be linked to a greater need for competition policy. It was argued that from a common-sense point of view, linking competition policy to liberalization by emphasizing the importance of monitoring and restraining foreign investors, e.g. when they entered through mergers or acquisitions, was not sound, since the whole purpose of liberalization was to encourage investment and not to protect incumbent firms. The important thing was to encourage production rather than to ensure competition. The fact that FDI had taken place in increasing amounts in countries with no competition policy and laws suggested, moreover, that competition policy was not an important factor for investors.

7. From an economic point of view, it was argued that directing resources to the building up of the infrastructure and skills base for designing and implementing competition policy was not a sound proposition for developing countries. Establishing and applying an effective competition regime comparable to those that existed in developed countries such as the United States or the European Union required substantial resources, financial and human. For developing countries, it was more important at the present stage to establish - through FDI liberalization, reduction of tariff and non-tariff barriers to trade, and domestic deregulation - market structures that worked.

8. It was argued, moreover, that since for many developing countries, recent steps in liberalization, privatization and deregulation represented a dramatic increase in the openness of industries and markets to the entry of new suppliers, they would go a long way towards increasing competition in markets. Competition law and competition authority could be introduced in due course.

9. While the format of the debate was designed to bring different positions into relief and marshal all the arguments related to the interface between FDI liberalization and competition policy, the open discussion that followed the debate led to a convergence of views on the relationship between investment policies and competition policy within the broader framework of liberalization, privatization and deregulation currently under way in many countries. Speakers drew upon their experiences in developing countries and economies in transition, as well as developed countries. There was general agreement about the importance of competition for development and growth. There was also agreement regarding the role that trade liberalization and open investment policies could play in creating contestable markets conducive to competition. With respect to privatization, which was an important source of FDI for some countries, some participants drew attention to the conflict between fiscal and efficiency objectives that arose when Governments wished to maximize revenues from the sale of former state monopolies in one piece.

10. There was agreement that within the broader framework of liberalization and other policy changes under way, competition policy was necessary and useful. Views also converged to the effect that good competition laws and enforcement agencies gave a positive signal to foreign investors. Competition authorities could also enhance the entry of foreign investment by advocating the dismantling of government-sanctioned domestic cartels and by advocating trade liberalization. For this to occur, competition agencies needed to protect competition rather than competitors and should be given considerable autonomy.

11. At the end of the day, the only difference in opinion that remained related to the precise timing of or the urgency to be attached to the adoption of competition law and the establishment of the necessary institutions for its implementation. Some participants felt that tackling broader issues related to market structure through liberalization, privatization and deregulation should be given priority. They held that if the institutional background and skills were weak, a toothless competition agency might result; and if the broader issues related to market structures were not adequately tackled, it would operate inefficiently. Others, however, asserted that the costs and complexities of competition policy and its enforcement were overstated. They pointed to the historical adaptability of competition policies, and argued that competition advocacy would be difficult to conceive in the absence of an autonomous competition agency. They also argued that the fruits of trade and investment liberalization would not be achieved fully if adequate competition policies were not put in place in advance and that the establishment of such policies could send the right signal to foreign investors by indicating the commitment of Governments to follow a transparent and market-oriented path.

12. The debate and discussion also raised questions about competition policy in the context of the regionalization and globalization of markets. Some participants drew attention to the increased concentration of global markets for some products at the same time as national markets were attracting more players. It was suggested that the definition of relevant markets should take into account the emergence of regional markets such as those in Europe and Latin America. In this context, countries might need to understand better the modalities of international cooperation between national competition agencies. This could help avoid conflicting decisions among different competition authorities, and allow, where appropriate, a degree of joint enforcement of rules.

Annex III

CHAIRPERSON'S SUMMARY OF INFORMAL DISCUSSIONS UNDER AGENDA ITEM 4

1. This item was introduced by the secretariat and with a presentation by the Chairman of the Expert Meeting on Existing Agreements on Investment and their Development Dimensions, followed by an informal panel discussion organized by the secretariat on "Criteria to test the development friendliness of international investment agreements". Building on the results of the Expert Meeting, the panellists considered a number of specific criteria which, in their respective views, could be used as elements by which to judge whether international investment agreements of a bilateral, regional or international character would be conducive to development.

2. The discussions on this important subject should be seen as the beginning of a process of exchanging views on developmental principles and components of international frameworks for foreign direct investment. The discussions underlined a number of criteria, including: the creation of a stable, predictable and transparent framework to encourage and protect FDI flows; mutuality of benefits; and enhancement of the ability to pursue growth and development. The development friendliness of investment agreements needs to be seen in the broader context of the types of policy that countries pursue in order to promote growth and development and the other determinants that influence the location of economic activities.

3. With regard to the different criteria for determining the development friendliness of international agreements, it was considered useful for the secretariat to prepare a catalogue of the criteria suggested and make it available to interested delegations.

Annex IV

LIST OF SPEAKERS AND PANELLISTS

Agenda item 3

Debate: "Liberalization and competition policy"

Proposition: "The more foreign direct investment policy is liberalized, the more important competition policy becomes"

Chairperson: Frédéric Jenny
Chairperson, Competition Law and Policy Committee, OECD
Chairperson, Working Group on the Interaction between Trade and Competition Policy, WTO
Vice-Président, Conseil de la Concurrence, France

Speakers: Joel Davidow
Attorney-at-Law, Senior Partner, Ablondi, Foster, Sobin and Davidow, p.c., United States of America

Gesner José Oliveira Filho
President, Administrative Council on Economic Defense, Ministry of Justice, Brazil

Donald J. Lecraw
Professor, Richard Ivey School of Business, University of Western Ontario, Canada

Ricardo Paredes
Professor, Department of Economics, University of Chile
Former President, Chilean Antitrust Commission

Agenda item 4

Panel discussion: "Criteria to test the development friendliness of international investment agreements"

Panellists: S.K.B. Asante
President, International Legal and Investment Consultants Limited, Ghana
Chairman, Ghana Arbitration Centre

Arghyrios Fatouros
Professor of International Law
University of Athens, Greece

A.V. Ganesan
Former Commerce Secretary, Government of India
Chairman, Expert Group to Study Issues Related to a Multilateral Agreement on Investment, Government of India

Patrick Robinson
Deputy Solicitor-General of Jamaica

Annex V

PROVISIONAL AGENDA FOR THE THIRD SESSION OF THE COMMISSION

1. Election of officers

2. Adoption of agenda and organization of work

3. Recent developments in foreign direct investment trends and policies

4. Examining and reviewing existing agreements on investment to identify their implications for development, as called for in paragraph 89 (b) of “A Partnership for Growth and Development”

5. Reports of the subsidiary bodies of the Commission

6. Provisional agenda for the fourth session of the Commission

7. Other business

8. Adoption of the report

Annex VI

ATTENDANCE */

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

Algeria
Andorra
Argentina
Austria
Bahrain
Bangladesh
Belarus
Benin
Bolivia
Brazil
Bulgaria
Chile
China
Colombia
Costa Rica
Croatia
Cuba
Czech Republic
Democratic People's Republic of Korea
Denmark
Dominican Republic
Ecuador
Egypt
Ethiopia
Finland
France
Gambia
Germany
Ghana
Greece
Haiti
Honduras
India
Indonesia
Iran (Islamic Republic of)
Ireland
Israel
Italy
Jamaica
Japan
Jordan
Kazakstan
Kenya
Luxembourg
Madagascar
Malaysia
Malta
Mauritius
Mexico
Morocco
Myanmar
Nepal
Netherlands
Nigeria
Norway
Pakistan
Panama
Paraguay
Philippines
Poland
Portugal
Republic of Korea
Romania
Russian Federation
Saudi Arabia
Senegal
South Africa
Spain
Sri Lanka
Sudan
Sweden
Switzerland
Syrian Arab Republic
Thailand
The Former Yugoslav Republic of Macedonia
Trinidad and Tobago
Tunisia
Turkey
Uganda
United Kingdom of Great Britain and Northern Ireland
United Republic of Tanzania
United States of America
Uruguay
Venezuela
Viet Nam
Yemen
Zambia

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

2. The United Nations Environment Programme was represented at the session.

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

International Monetary Fund
United Nations Industrial Development Organization

The World Trade Organization was also represented at the session.

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

Arab Labour Organization
Commonwealth Secretariat
European Community
Islamic Development Bank
Organization of African Unity
Organisation for Economic Co-operation and Development

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

General Category

International Confederation of Free Trade Unions
International Federation of Business and Professional Women
Lutheran World Federation
World Federation of United Nations Associations

6. The following organization, specially invited by the secretariat, attended the session:

Foundation Hernandiana
