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

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from 12 to 16 February 2001

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CONTENTS

Chapter		**Page**
I.	Agreed recommendations adopted by the Commission at its fifth session: Impact of international investment flows on development: Mergers and acquisitions – policies aimed at maximizing the positive and minimizing the possible negative impact of international investment; International policy issues: Home country measures	4
II.	Opening statement	8
III.	Impact of international investment flows on development: Mergers and acquisitions – policies aimed at maximizing the positive and minimizing the possible negative impact of international investment (agenda item 3)	10
IV.	International policy issues: Home country measures (agenda item 4)	17
V.	Investment policy reviews: Exchange of national experience (agenda item 5)	23
VI.	Reports of the subsidiary bodies of the Commission (agenda item 6)	30
VII.	Other business (agenda item 7)	31
VIII.	Action by the Commission and closing statements	33
IX.	Organizational matters	34

Annexes

I.	Provisional agenda for the sixth session of the Commission	36
II.	Attendance	37

Chapter I

AGREED RECOMMUNDATIONS ADOPTED BY THE COMMISSION AT ITS FIFTH SESSION

Impact of international investment flows on development: Mergers and acquisitions — policies aimed at maximizing the positive and minimizing the possible negative impact of international investment

1. In its deliberations on the impact of mergers and acquisitions (M&As), the Commission took note of the secretariat documents entitled "Impact of international investment flows on development: Outcome of the Expert Meeting on Mergers and Acquisitions" (TD/B/COM.2/29), "Impact of cross-border mergers and acquisitions on development and policy issues for consideration" (TD/B/COM.2/EM.7/2) and "Report of the Expert Meeting on Mergers and Acquisitions: Policies Aimed at Maximizing the Positive and Minimizing the Possible Negative Impact of International Investment" (TD/B/COM.2/26).

2. The Commission noted that, in recent years, transnational coporations have made considerable use of M&As to invest in developed countries and countries with transition economies, and increasingly in developing countries as well. Cross-border M&As can have positive and negative effects in a host country economy, depending on many factors, notably the country's level of development, the regulatory framework in place, and the circumstances under which cross-border M&As take place. In any event, the effects of cross-border M&As on development depend on the specific transaction and the concrete circumstances that exist in individual host countries, including the national legal framework and the prevailing external environment.

3. The Commission accordingly called on member countries to put in place appropriate, transparent and predictable policy frameworks, notably to encourage the positive contribution of cross-border M&As to development and minimize any negative effects of such transactions with a view to advancing the mutual interests of host countries and transnational corporations. In this respect, the Commission made the recommendations set out below.

Governments

4. Policies or guidelines on M&As should reflect a long-term developmental perspective, taking into account the circumstances under which M&As are undertaken and the level of development of host countries, as well as the impact on domestic enterprise development, and the interests of workers as expressed by their representatives.

5. Measures should be considered to maximize the benefits and minimize the social cost of M&As. These measures may include social safety nets and responses to employment effects of M&As, including support for the training and retraining of workers who may be laid off.

6. Attention needs to be paid to the adoption and implementation of competition laws. To that end, cooperation among competition authorities could be useful. In addition, special

attention to the relevant market definitions, market performance and market structure is warranted.

International community

7. Apart from national merger reviews, international cooperation should be strengthened in the area of competition policies at the bilateral, regional and multilateral levels. Cooperation could include the exchange of information, joint review mechanisms, coordination of time limits and collaboration among competition authorities.

8. Consideration should be given to assisting developing countries, in particular the least developed countries (LDCs), in developing and implementing national and regional competition policies, including through support for technical assistance.

9. Consideration should also be given to assisting developing countries, and in particular LDCs, in formulating policies and measures concerning cross-border M&As, including in dealing with their impact on employment and enhancing the ability to attract appropriate technology with a view to increasing the level of technology transfer.

10. In this respect, cooperation among developing countries in the exchange of national experiences, for example on competition policy and measures to attract investment flows, should also be encouraged.

UNCTAD

11. Bearing in mind the work programme set out by the Fourth United Nations Review Conference for the Control of Restrictive Business Practices and the mandate from UNCTAD X, UNCTAD should continue to report on, and analyse, trends in cross-border M&As and their share in foreign direct investment flows and related policy responses and their impact on development. In this regard, factors related to the competitiveness of the domestic enterprise sector, including small and medium-sized enterprises, in the face of the internationalization of production also need to be studied.

12. UNCTAD should undertake analytical work and, in the case of privatizations, elaborate guidelines, with a view to providing recommendations to deal, at the national and international levels, with the challenges posed by the impact of cross-border M&As on national market structures, level of employment and competition policy.

International policy issues: Home country measures

13. The Commission took note of the secretariat documents entitled “Home country measures” (TD/B/COM.2/30) and the “Report of the Expert Meeting on Home Country Measures” (TD/B/COM.2/27), which served as background for the policy dialogue during the session.

14. A foreign-direct-investment (FDI) transaction is a triangular relationship involving three main actors: a transnational corporation (TNC) — large or small — investing its assets, the capital-importing host country and the capital-exporting home country. Therefore, the

Commission noted that home country measures (HCMs), i.e. measures aimed at promoting outward investment and technology transfer, when matched with an enabling environment in host countries, play an important role in increasing FDI flows to developing countries.

15. Although developed countries are still the principal sources of such flows, the share of FDI flows which originates in developing countries, including emerging economies, is increasing. The Commission noted that an increasing number of developing countries are now actively pursuing HCMs. HCMs are applied for a number of reasons, and, therefore, because of the variety of objectives, their design and application need to be adaptable and flexible. The Commission took note of a number of best practices in the area of HCMs that could be emulated, where appropriate, and applied in a cooperative spirit. International arrangements can, and in some areas already do, provide a framework. In this context, the Commission noted that the fact that a number of HCMs can be found in international agreements suggests that other HCMs may lend themselves to such agreements if all parties so desire.

16. In the light of these considerations, the Commission makes the recommendations set out below.

Governments

17. Best practices in the area of HCMs should be emulated, where appropriate, and applied in a cooperative spirit.

18. Home countries, in particular developed countries, should further develop their efforts to encourage FDI flows, particularly to and between developing countries, and especially to the least developed countries (LDCs). In this context, the Commission noted the important role that private sector initiatives play.

19. Host countries, according to their priorities, should take advantage of the opportunities arising from HCMs and seek actively to develop linkages between their own investment promotion efforts and HCMs offered by home countries. The Commission acknowledges in this context the important role of the World Association of Investment Promotion Agencies (WAIPA) in facilitating investment flows.

20. With a view to the forthcoming Third United Nations Conference on the Least Developed Countries, home countries should refine and devise special measures designed to encourage FDI and technology flows to LDCs.

International community

21. There should be further examinations of what measures Governments have taken to implement the provisions of international agreements on transfer of technology, bearing in mind the importance of the effective implementation of international commitments relating to technology and its transfer, including the Agreement on Trade-related Aspects of Intellectual Property Rights (the TRIPS Agreement), by host and home countries.

22. International support measures can be useful in facilitating FDI flows to developing countries, including through the improvement of the enabling environment.

UNCTAD

23. Within the mandate from UNCTAD X, UNCTAD should:

(a) Analyse all aspects of existing international agreements relevant to transfer of technology;

(b) Design technical cooperation activities to assist countries in making more effective use of available HCMs. In this context, the Commission noted with appreciation the introduction of a “signposting” service with regard to relevant home country reference sources on outward investment promotion.

Chapter II

OPENING STATEMENT

24. The **Secretary-General of UNCTAD** set out the major points of the Commission's session. He noted that despite the sustained growth of FDI flows, these remained highly concentrated in a few regions and economies, with most foreign direct investment (FDI) occurring among the already advanced economies, and the flows to the developing world concentrated in roughly 10 developing countries in Asia and Latin America. Secondly, the surge in FDI was based on a wave of cross-border mergers and acquisitions, a factor which appeared to lessen the benefits conventionally associated with foreign investment. These two factors suggested that the overwhelming majority of the countries of the developing world, especially African countries and the least developed countries (LDCs), were not benefiting from the possible contribution of FDI in coping with the challenges of globalization. UNCTAD was therefore proposing practical ideas so that FDI would be distributed more evenly. This was in accordance with the Bangkok Plan of Action, which had entrusted the secretariat with the task of providing insight and assistance to member countries in coming to grips with the challenges of international capital flows.

25. Regarding the secretariat's activities since UNCTAD X, he highlighted the work on competition policy, notably the Fourth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Principles and Rules for the Control of Restrictive Business Practices, held in September 2000, and the work on the issue of cross-border mergers and acquisitions. In connection with the latter, the secretariat had examined the differences between greenfield FDI and cross-border mergers and acquisitions at an Expert Meeting, which would be reviewed under agenda item 3, and in the *World Investment Report 2000.* To shed further light on the role of home country measures in promoting FDI flows to developing countries, the secretariat had organized an Expert Meeting, which would be reviewed under agenda item 4.

26. He noted in particular the practical initiatives undertaken by the secretariat to overcome the excessive concentration of FDI. These included the production of investment guides to the LDCs and assisting LDCs in negotiating bilateral investment agreements. A recent round of negotiations, involving francophone countries and other countries as partners, had concluded 41 agreements. This was a tangible and useful initiative in terms of familiarizing LDCs with different legal traditions.

27. Turning to the major implications of the Bangkok Plan of Action for the Commission on Investment, Technology and Related Financial Issues, he emphasized that the issue of international investment flows and their development impact was firmly established as one of the main pillars of UNCTAD's work programme. He reiterated that the Commission's deliberations would be crucial to the preparatory process for the Third United Nations Conference on the Least Developed Countries, to be held in Brussels in May 2001, and that two of the Commission's agenda items – home country measures and investment policy reviews – were of special relevance to LDCs. He urged Governments in a position to do so to support the concrete and practical projects that UNCTAD was proposing for the Brussels conference, noting that a list of such projects was available from the secretariat.

28. In closing, he said that the issues addressed by the Commission were essential in enabling countries to cope with the challenge of competitiveness. This referred not only to preparations for global negotiations on trade or investment issues, but also to their practical and integrated implementation. In essence, the challenge was to develop the productive capacity to take advantage of concessions and agreements negotiated in various trade agreements. Building productive capacity necessitated both domestic and foreign direct investment; and it required links between large companies with distribution channels of a globalized nature and small and medium-sized domestic enterprises, the development of entrepreneurship in countries, and the capacity to absorb technology, including managerial capacity. This would call for great efforts and the results would vary, depending both on the degree of commitment of the developing countries and on the response by the international community.

Chapter III

IMPACT OF INTERNATIONAL INESTMENT FLOWS ON DEVELOPMENT: MERGERS AND ACQUISITIONS – POLICIES AIMED AT MAXIMIZING THE POSITIVE AND MINIMIZING THE POSSIBLE NEGATIVE IMPACT OF INTERNATIONAL INVESTMENT

(Agenda item 3)

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

> "Impact of international investment flows on development: Outcome of the Expert Meeting on Mergers and Acquisitions" (TD/B/COM.2/29)
>
> "Impact of cross-border mergers and acquisitions on development and policy issues for consideration" (TD/B/COM.2/EM.7/2)
>
> "Report of the Expert Meeting on Mergers and Acquisitions: Policies Aimed at Maximizing the Positive and Minimizing the Possible Negative Impact of International Investment" (TD/B/COM.2/26 – TD/B/COM.2/EM.7/3)
>
> "World Investment Report 2000: Cross-border mergers and acquisitions and development, Overview" (UNCTAD/WIR/2000)
>
> "Resolution of the Fourth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Principles and Rules for the Control of Restrictive Business Practices" (TD/RBP/CONF.5/15)

30. The representative of the **UNCTAD secretariat** noted that the continued high growth of FDI inflows, which had reached $1.2 trillion in 2000, was sustained by the dynamic evolution of cross-border mergers and acquisitions (M&As) – which mainly involved developed countries – while the share of greenfield FDI had been declining in recent years. This raised concerns about whether cross-border M&As played a role similar to that of greenfield FDI in the development process, since M&As, in contrast to greenfield investment, would not add to the productive capacity of the host countries but simply involve a transfer of ownership and control from domestic to foreign hands.

31. While the liberalization of FDI policies had greatly facilitated cross-border M&As, a number of host countries, including developing countries, had introduced various policy instruments to deal with cross-border M&As, and competition law and merger review systems that often worked on a case-by-case basis. At the regional and international levels, the number of bilateral investment treaties (BITs) concluded, which had totalled 1,857 by the end of 1999, had continued to increase in 2000, partly as a result of UNCTAD's work in facilitating BIT negotiations, especially among developing countries. In this respect, he drew attention to the fact that a BIT negotiation round recently organized in Geneva for francophone LDCs had resulted in the signing of 41 BITs.

32. He noted that the significance of cross-border M&As for host economies still needed to be assessed, particularly in the light of concerns expressed by Governments and civil society about their impact on economic and social development. For this reason, the UNCTAD *World Investment Report 2000* dealt with the special topic of cross-border M&As and their impact on development, and an Expert Meeting had been convened on the same topic. He called upon the Commission to formulate agreed policy recommendations on the basis of the findings of the Expert Meeting and stressed that the policy dialogue during the Commission would provide an input into the preparatory process for the Third United Nations Conference on the Least Developed Countries (LDC III).

33. Home country measures (HCMs) to promote outward FDI flows and the transfer of technology were the second issue on the Commission's agenda. This was a nascent area of international cooperation and policy formulation that required the establishment of a broad understanding and consensus on the definitions, rationale, best practices and international dimension underlying such HCMs. The outcome of the policy dialogue on this issue would also represent an input into the preparatory process for LDC III.

34. Finally, he was pleased to welcome the members of the World Association of Investment Promotion Agencies (WAIPA), whose sixth annual conference, which was taking place simultaneously with the Commission's session, would consider the issue of HCMs from a practical point of view. Also, he invited the Commission to consider investment policy reviews (IPRs) on Ecuador, Ethiopia, Mauritius and Peru in a high-level, focused and detailed exchange of experience on specific country investment issues. In addition, the Commission was invited to look at the work of its subsidiary bodies and the Division's activities since its last session. This would include the report of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting and the work of the Commission on Science and Technology for Development.

35. The representative of the **UNCTAD secretariat,** introducing agenda item 3 – "Impact of international investment flows on development: Mergers and acquisitions – Policies aimed at maximizing the positive and minimizing the possible negative impact of international investment" – referred to the note prepared by the secretariat on the outcome of the Expert Meeting (TD/B/COM.2/29), a document which had been prepared in response to guidelines established at UNCTAD X.

36. She said that the Expert Meeting had been timely, as it had examined the challenges arising from the wave of cross-border M&A sales after the financial crisis in Asia. The overall trend towards increasing cross-border M&As had continued since the Expert Meeting, held in June 2000, with most deals taking place among developed countries. Commenting on the findings of the Meeting, she noted that the impact of cross-border M&As on host economies had to be assessed from a long-term perspective, taking into account the different levels of development. Policy responses, therefore, would depend on the special circumstances of the countries as well as the context in which such M&As took place. In sum, policy considerations identified at the Meeting included the adoption and implementation of an appropriate regulatory framework and a competition policy; identification of "correct" price levels of assets to be sold; introduction of safety nets and programmes to train and retrain workers in cases of lay-offs; and establishment of corporate

governance rules. Moreover, competition laws and cooperation between competition authorities had been found to be extremely important. The Meeting had emphasized the need to strengthen international cooperation among competition authorities, at the bilateral, regional and multilateral levels. In addition, it had identified areas requiring further research and technical assistance. She reminded the Commission that the recently concluded Fourth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices had similarly recommended the periodic publishing of information on M&As, and cooperation regarding merger control, including in the process of privatization.

37. The **Chairperson of the Expert Meeting on Mergers and Acquisitions** presented the report on its discussions. It had observed that cross-border M&As had positive effects, as well as risks and challenges, for the host economy. The consensus was that the effects of such M&As depended on the host country's level of development and its policy framework, as well as on the business motivations of companies. The experts had pointed out that "appropriate" policies might vary among countries. Hence, policies or guidelines on M&As needed to be attuned to each country's long-term development objectives, and at the same time to the circumstances under which these M&As were undertaken. With respect to employment effects, provisions had to be made to cushion the impact of M&As in general and that of cross-border M&As in particular, including through the creation of more employment opportunities and support for the training and retraining of workers who might be laid off.

38. He said that it was vital to adopt and implement competition laws where these were not yet in place or were weak. Noting that many developing countries lacked a competition culture as well as the necessary human and material resources to enforce anti-trust and regulatory legislation, he stressed the need to help developing countries, in particular the least developed countries, to develop and implement national competition policies, as well as to formulate policies and measures concerning cross-border M&As. There was also a need to have a common approach to cross-border M&As in the context of regional trade and investment agreements. Furthermore, in addition to national merger reviews, he called for international cooperation among competition authorities. Such cooperation could take the form of an exchange of information among competition authorities, ideally before any M&A deal, joint review mechanisms and standardization of the time limits for notification. Lastly, he said that research on the impact of cross-border M&As in developing countries and economies in transition ought to be pursued further.

39. The representative of **South Africa,** speaking on behalf of the **African Group,** noted the uneven impact of cross-border M&As, particularly in developing countries. They had the potential to offer benefits in the form of a transfer of skills and expertise, the facilitation of enterprise linkages with global markets and an immediate injection of capital; but they could create problems related to employment reduction following the restructuring of enterprises, as well as problems arising from the anti-competitive behaviour of foreign firms, the crowding out of domestic enterprises and market concentration in a number of sectors.

40. With respect to Africa's performance in attracting FDI, he noted that Africa continued to receive a marginal share of global flows, despite improvements in the regulatory

framework and the business environment. In Africa, cross-border M&As had accounted for 40 per cent of FDI inflows between 1997 and 1999, reflecting the limited share of the region in privatizations, as well as the small number of domestic enterprises with strategic assets or attractive markets which could make them a target for takeovers by foreign firms. Given the importance of competition policy and merger reviews in dealing with the consequences of cross-border M&As, he stressed that the international community needed to continue its support and technical assistance to African developing countries in establishing, strengthening and implementing competition laws. He encouraged the UNCTAD secretariat to continue its research and technical assistance in the field of cross-border M&As. In connection with the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, he recalled that the Fourth United Nations Review Conference had recommended that cooperation regarding merger control, including in the process of privatization, be studied. He added that African countries would greatly benefit from information exchanges among countries in relation to mergers which took place in third countries, but indirectly affected countries of the region. Finally, he urged support from the international community to deal with worker lay-offs resulting from cross-border M&As, given the small government budgets and the lack of social security in most African countries.

41. The representative of **Cuba,** speaking on behalf of the **Group of 77 and China,** noted that the Expert Meeting on Mergers and Acquisitions had been both timely and pertinent, since FDI was increasingly taking the form of M&As. This raised the pressing question of the impact on development of cross-border M&As, as opposed to that of greenfield investment. He set out the policy recommendations of the Group of 77 and China to the Commission. First, since cross-border M&As could have positive or negative effects, there was a need for developing countries to have in place a mechanism to analyse their impact, with full recognition of their long-term developmental objectives. Secondly, competition policy deserved particular attention and developing countries would need support in this area in the form of consultation and cooperation among competition authorities. The Group of 77 and China encouraged some forms of *ex-ante* exchange of information among countries affected by cross-border M&As, and perhaps also joint review mechanisms. Thirdly, the UNCTAD secretariat was urged to continue analysing both the trends and the impact of cross-border M&As on the domestic enterprise sector and on market structure in developing countries. Finally, he invited the international community and the private sector to support developing countries in putting in place effective social security systems to assist workers affected by closures and lay-offs.

42. The representative of **Mexico**, speaking on behalf of the **Latin American and Caribbean Group**, indicated that the current wave of cross-border M&As had to be evaluated from a long-term perspective, with due consideration paid to differences in the levels of development. He noted that M&As involving competitors would pose immediate competition problems. Therefore, it was necessary that UNCTAD's analytical work on cross-border M&As continue, focusing on the challenges which they posed for competition policy. These challenges included the impact of M&As on market structure, especially in infrastructure industries, and the need for regional cooperation in taxing those transactions. He stressed that it would be useful to develop information exchange among countries and joint reviews of cross-border M&As. Also, it would be necessary to assist developing countries in the area of asset valuations, in reducing the cost of dispute settlements, in

developing the competitiveness of domestic small and medium-sized enterprises, and in retraining employees affected by restructuring. In closing, he expressed the expectation of the Latin American and Caribbean Group that the Commission would encourage prompt application of the recommendations of the Expert Meeting.

43. The representative of **Singapore,** speaking on behalf of the **Asian Group and China,** expressed the appreciation of the Asian Group and China for the Expert Meeting on Mergers and Acquisitions. She noted that Asia had been the scene of a large number of cross-border M&As since countries had been opening up to FDI and adopting more liberal policies towards it. She highlighted the policy concerns of the Asian Group and China with respect to M&As. It was their conviction that the effects of an incoming merger or acquisition largely depended on the policies pursued by the host country. In this regard, she noted the usefulness of sectoral reservations, ownership regulations, size criteria, screening, incentives and other special measures. With regard to cross-border M&As taking place under special circumstances, for example the recent Asian financial crisis, she invited the UNCTAD secretariat to continue evaluating the experience of policy responses in the countries affected by the crisis, notably measures taken to alleviate the negative impact of cross-border M&As.

44. One of the concerns of the Asian Group and China was the impact of cross-border M&As on the domestic enterprise sector in general, and on small and medium-sized enterprises in particular. Another concern to be addressed by Governments was that of lay-offs, at least in the short run, which might call for policy measures to promote the creation of employment elsewhere. As for competition laws and authorities, the Asian Group and China considered maintaining the contestability of markets and ensuring a culture of competition to be the linchpin of both domestic and cross-border merger policies. They therefore called for special attention to be paid to the establishment and strengthening of competition authorities. In this regard, developing countries in general, and the least developed countries in particular, required international assistance.

45. The representative of **China** supported the statements made by the Group of 77 and the Asian Group. She commended the high quality of the *World Investment Report 2000* and of the UNCTAD Expert Meeting on Mergers and Acquisitions, held in June 2000. She invited UNCTAD to continue studying this issue, particularly in developing countries and economies in transition. Cross-border M&As were becoming increasingly important in many developing countries as a mode of entry for FDI, and could have both positive and negative impacts. Therefore, it was crucial that Governments establish an appropriate policy framework so as to formulate competition and other policies. Referring to her country’s experience with market reforms over the past 20 years, she expressed concerns about the ability of the enterprise sector in China, both of some of the large strategic enterprises and also of dispersed small and medium-sized enterprises, to face the challenge of competition by large transnational corporations. Many firms in China needed to be revitalized, and some were using mergers to increase their size and efficiency. In this context, analysis of the M&A experiences of developed countries and of transnational corporations would be of great value.

46. The representative of the **United States of America** noted the role of FDI in development and said that the effects of cross-border M&As did not generally differ from those of greenfield investments. He nevertheless recognized that M&As within the domestic

economy or across the borders of different economies gave rise to specific issues regarding their impact on competition and market concentration. Such issues were common to developed and developing countries and economies in transition. In dealing with them, technical assistance was useful for developing countries. But most important, the host countries should put in place a stable, predictable and transparent policy environment, providing for the protection of property rights, the removal of restrictions, strong legal systems for mediation of disputes, and the elimination of corruption. UNCTAD X had given UNCTAD a major role in the investment area. The Third United Nations Conference on the Least Developed Countries and the Preparatory Committee for the United Nations High-level Meeting on Financing for Development would also deal with these issues. He emphasized the need for UNCTAD to cooperate with other institutions, such as the Organisation for Economic Co-operation and Development (OECD).

47. The representative of **Sweden**, speaking on behalf of the **European Union** (EU), urged the Commission to adopt short and action-oriented recommendations. On the issue of cross-border M&As, she said that these did not yield fewer benefits than greenfield FDI in terms of creation of new jobs, quality of employment and transfer of technology . As stated in the report of the Expert Meeting, the extent of benefits derived from inward FDI, including in the form of cross-border M&As, depended on “having the right economic policies, the right level of government activity, a regulatory framework and a competition policy”. Investment agreements could serve to create an enabling investment climate through transparency and predictability, and in this regard, she emphasized the contribution that a plurilateral or multilateral investment agreement could make in “locking in” domestic reforms that were implemented by most developed and developing countries. The increase in cross-border M&As gave rise to the risk of firms acquiring dominant market positions and pursuing anti-competitive practices beyond national borders. Accordingly, a vigorous domestic competition policy was necessary, as well as increased international cooperation in this area. The EU was of the view that a multilateral framework agreement on competition policy would ensure that balanced consideration was given to all forms of anti-competitive practices with an international dimension.

48. The representative of **Chile** supported the statement by the representative of the Group of 77 and China. He said that the question of a multilateral framework on competition policy needed to be given further thought. He noted, however, that there was a general consensus on the questions of transparency and predictability of regulatory frameworks.

49. The representative of the **International Confederation of Free Trade Unions** emphasized that policy measures in the areas of international investment and competition needed to encompass the core labour standards. Special measures were necessary to deal with the negative impact of cross-border M&As on workers, notably lay-offs and the deterioration of working conditions. Standards could serve to discourage "social dumping" as a means of gaining unfair competitive advantages, and were indispensable in maintaining social and economic stability.

50. The representative of **Japan** stressed the importance of assistance to developing countries by the international community in formulating and implementing regulatory

frameworks and competition laws. He added that the Government of Japan attached priority to technical cooperation in the formulation of laws.

51. The **Chairperson of the Expert Meeting on Mergers and Acquisitions** stressed the importance of transparency in procedures related to the implementation of competition policy. This was with respect both to the terms of such legislation and to the decisions taken. He said that it was crucial, particularly in countries which lacked a competition culture, that the private sector understand government decisions in this area, and that decision-making procedures be transparent.

52. The representative of the **Republic of South Africa,** speaking on behalf of the **African Group,** stressed the need to strengthen regulatory frameworks at the national level. It was necessary that the international community assist African developing countries in establishing regulatory frameworks for competition law and policy. Only 28 African countries had so far implemented regulations relating to competition law and policy, and it was premature to consider initiatives regarding multilateral frameworks. He called on UNCTAD to continue its analytical as well as its advisory work in this area.

Chapter IV

INTERNATIONAL POLICY ISSUES: HOME COUNTRY MEASURES

(Agenda item 4)

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

"Home country measures: Note by the secretariat" (TD/B/COM.2/30)

"Home country measures: Note by the UNCTAD secretariat" (TD/B/COM.2/EM.8/2)

"Report of the Expert Meeting on Home Country Measures" (TD/B/COM.2/27 - TD/B/COM.2/EM.8/3)

54. The representative of the **UNCTAD secretariat** introduced the fourth item on the Commission s agenda, entitled International policy issues: home country measures . He began by stating that home country measures (HCMs) were policy measures taken by countries to encourage their enterprises to invest abroad, and that home countries included all developed countries. He then noted that in recent years a number of developing countries, and economies in transition, had also become home countries for transnational enterprises. As far as HCMs were concerned, a number of these countries had also begun to actively promote their enterprises' outward investment. He then referred to the Bangkok Plan of Action, which had requested UNCTAD to shed further light on what home countries could do to promote FDI flows and technology transfer to developing countries (paragraphs 118 and 123). UNCTAD s Expert Meeting on Home Country Measures had been a response to that request.

55. For the Meeting the UNCTAD secretariat had prepared an issues note that identified and described six broad areas of HCMs: information provision and technical assistance; financial support; fiscal incentives; investment insurance; investment-related trade measures influencing the volume, sectoral composition and geographical distribution of FDI in host countries through market access preferences and export promotion devices; and measures geared specifically to the facilitation of transfer of technology. The note also discussed the international dimension, and identified a number of HCMs that could be found in international agreements, suggesting that they lend themselves to international arrangements if all parties so desired.

56. The Expert Meeting had addressed these issues and identified new ones. It had helped to provide a common definition and rationale for HCMs. Furthermore, it had reviewed best practices and acknowledged the importance of effective implementation of international commitments relating to technology transfer by both host and home countries. There had also been various suggestions regarding possible future areas of work for UNCTAD. The key issues and policy proposals by experts were summarized in a note (TD/B/COM.2/30) that was before the Commission.

57. Finally, he said that the Expert Meeting had asked UNCTAD to develop an Internet-based signposting service with regard to relevant home country reference sources on outward investment promotion measures, and announced that a pilot for such a service had been developed as a sub-site to the Web pages of the World Association of Investment Promotion Agencies (WAIPA). He thanked the WAIPA secretariat for its support in this connection, and the member States that had made information available for the service.

58. The **Chairperson of the Expert Meeting on Home Country Measures** introduced the report of the Meeting and presented its main findings and outcome. She said that it had been charged with exchanging views on national experiences and best practices in existing home country measures, focusing on stocktaking, rationale, effectiveness and impact, and improvements, and with considering the international dimension. Specifically, with regard to stocktaking, experts had been asked to shed further light on the different kinds of HCMs, their spread and their scope, and to expand or update the information provided in the secretariat's issues note. As to rationale, experts had been asked to analyse and examine why home countries took these measures and whether, and why, they formed an important part of a "modern" economic regulatory environment. They had also been asked to benchmark HCMs' effectiveness and impact on development and to identify best practices, so as to provide home countries with workable examples to help them develop their efforts in this area. Furthermore, they had been tasked with drawing lessons from what could be learned about the effect and impact of HCMs on promoting FDI in developing countries in particular, and on the development of developing countries more generally, with a view to providing possible improvements and yardsticks for the road ahead. Finally, regarding the international dimension, experts had been requested to shed further light on the operation of existing HCMs at the international level.

59. She then summarized the key issues and policy proposals by the experts for consideration by the Commission. First, HCMs were applied for a number of reasons, including home and host country objectives. The variety of their objectives required that their design and application be adaptable and flexible, since "no one size fits all". Second, a number of best practices in the application of HCMs that would increase their effectiveness could be identified. Examples included providing accurate, up-to-date and high-quality information; instituting regular home–host country exchanges; promoting creative mechanisms to overcome cultural and linguistic gaps; using interregional exchange forums; providing financial assistance and investment insurance; and agreements on investment protection and double taxation, market access and technology transfer. International arrangements also could, and did, play a role in increasing the efficiency of some HCMs by providing a framework for their cooperative implementation. Third, home country Governments needed to take into account best practices and possible improvements in the area of HCMs when introducing, designing and/or redesigning their HCMs. Fourth, best practices and possible improvements in the area of HCMs also applied to their indirect beneficiaries, i.e. host countries and their private sector. Thus, experts recommended that host country FDI promotion institutions work closely with the home country institutions administering HCMs, and noted the valuable role of the World Association of Investment Promotion Agencies in this context. Finally, the issue of technology transfer was an area of particular interest that warranted further research and intergovernmental deliberations.

Making those provisions in international agreements designed to encourage the transfer of technology more effective than had been done so far was a key factor in such deliberations.

60. The representative of **Cuba,** speaking on behalf of the **Group of 77,** said that host countries welcomed HCMs as a complement to their own actions to attract FDI in the interest of promoting their development. Thus, it was recognized that HCMs were one element, although an important one, that played a role in increasing the attractiveness of developing host country investment locations. HCMs could also enhance the quality of the FDI that developing countries received. One issue was how to improve the development benefits that could be derived from these measures. The other issue was how to improve the effectiveness of HCMs and make them more stable, transparent and predictable. In this regard, referring to the recommendations of the Expert Meeting, he highlighted the following: coordination of each home country’s efforts, especially for the benefit of its small and medium-sized enterprises (SMEs), so as to increase awareness of investment opportunities, particularly in developing countries; collaboration between home and host country institutions, such as investment promotion agencies and industry associations, including cooperative training; supporting the establishment of industrial infrastructure in host countries (for example, the establishment of consortia involving firms from several home countries to invest in major infrastructure projects in developing countries); a facilitating role played by home country Governments to build capacity in host countries to receive and benefit from investment; ensuring that HCMs and national, regional and international financial assistance programmes (official development assistance) were mutually supportive; and implementation of international commitments relating to technology and its transfer by host and home countries. Finally, he pointed out that for developing countries to take full advantage of such efforts, it would be useful to know what measures home countries were taking to encourage FDI and technology, including, in particular, information on what measures Governments were taking to implement the provisions of international agreements on the transfer of technology. This information should be provided to the secretariat and presented to the Commission.

61. The representative of **Nigeria,** speaking on behalf of the **African Group,** noted that HCMs with regard to investment locations in Africa required some measures of retooling or re-articulation. The effectiveness of these measures could be enhanced through tailor-made approaches and regional and country targeting with a degree of predictability. Referring to the recommendations of the Expert Meeting, he stated that these would require collaboration between home and host country institutions, such as investment promotion agencies and industry associations, including cooperative training and support for the establishment of industrial infrastructure in host countries, as well as a facilitating role for home country Governments in building capacity in host countries to receive and benefit from investment, all of which could greatly contribute to the effectiveness of HCMs. In calling for a collaborative effort by home and host countries in the delivery of the benefits of HCMs, his Group recalled that although potential FDI recipients might offer suggestions regarding how such policies and programmes could aid their development, it was the home countries alone that fully controlled the formulation of goals, procedures and implementation. The African Group thought that this practice had the potential for generating the unintended result of securing FDI benefits, by and large, within the borders of the home country. It invited home country Governments to take into account the outline of best practices in the report of the Expert Meeting when applying, designing and/or redesigning HCMs.

62. There was no doubt that an element of the issue in question was how existing provisions in international agreements intended to encourage outward investment, including transfer of technology, could be made operational more effectively. If practical outcomes, particularly in Africa, were to increase in number, it was imperative that the general statements of policy in the various forms of HCMs existing at the international level be followed by provisions containing a more detailed list of measures or a specific implementation process that would translate policy into practice. The Expert Meeting had referred specifically to the effective implementation of international commitments relating to technology and its transfer, including the Agreement on Trade-related Aspects of Intellectual Property Rights (the TRIPS Agreement), by host and home countries as a possible improvement in the application of HCMs. His Group agreed with that assessment.

63. The representative of **Singapore,** speaking on behalf of the **Asian Group and China,** said that HCMs could complement host countries' own actions to attract FDI and technology within their overall development promotion objectives. She supported the recommendations of the Expert Meeting that identified factors that could contribute to increased effectiveness of these measures and highlighted the following measures: effective coordination of all aspects of each home country's efforts, especially for the benefit of its SMEs, so as to increase awareness of investment opportunities, particularly in developing countries; collaboration, both bilaterally and multilaterally, between home and host country institutions, such as investment promotion agencies and industry associations, including cooperative training; supporting the establishment of industrial infrastructure in host countries through, for example, the establishment of consortia involving firms from several home countries to invest in major infrastructure projects in developing countries; and effective implementation of international commitments relating to technology and its transfer by host and home countries.

64. The representative of **Mexico,** speaking on behalf of **the Latin American and Caribbean Group,** highlighted the need to identify and take into consideration the efforts of developing countries to attract FDI, and also to identify and disseminate information about the measures adopted in home countries to foster the transfer of technology to developing countries. In addition, he noted that cooperation was required between host and home country Governments and private sector institutions in order to increase the effectiveness of HCMs. Finally, he emphasized the study recommended by the Expert Meeting on effective implementation by host and home countries of international commitments relating to technology and its transfer.

65. The representative of **Sweden,** speaking on behalf of the **European Union** (EU), recognized the value of the Expert Meeting and the importance of the discussion but noted that HCMs only had effects at the margin. FDI took place when there was an enabling environment. Measures that contributed to that environment included, but were not limited to, reducing political and investment insurance, ensuring legal security through agreements on investment protection, and ensuring predictability through double taxation agreements. The legal protection of intellectual property would facilitate technology transfer. The implementation of this general approach to HCMs was a matter for the individual members of the EU, all of which had their own policy approaches. Of the points on the best practice list, she highlighted a number of factors that contributed to the increased effectiveness of HCMs,

namely transparency and minimization of bureaucracy, capacity-building in host countries, and implementation of international commitments. HCMs would, however, have a limited effect without an enabling environment in the host country. The main element for attracting FDI remained domestic policies. At the national level these pertained to a regulatory framework, legal security, combating corruption, political and macroeconomic stability, market size (through regional economic cooperation), growth potential and the availability of infrastructure and human resources. At the international level they pertained to negotiating bilateral investment treaties and negotiating broader investment agreements. She emphasized that the focus should primarily be on fundamentals in host countries and the first objective had to be to improve the basic conditions.

66. The representative of **Jamaica,** speaking on behalf of **the World Association of Investment Promotion Agencies** (WAIPA), supported the recommendations of the Expert Meeting and informed the Commission about WAIPA's main activities in providing facilities to promote investment in developing countries. She also expressed her support for the introduction of UNCTAD's signposting service on the WAIPA website, which provided links to relevant home country reference sources on outward investment measures.

67. The representative of **Japan** said that HCMs had little effect on promoting FDI inflows without an enabling environment in developing host countries. Official development assistance had a great role to play in improving the investment climate with regard to infrastructure, institutional and human capacity-building, and providing information on investment opportunities in developing host countries. He emphasized the importance of collaboration between developing countries through initiatives such as the Asia–Africa Investment and Technology Promotion Center, which was an example of follow-up measures to the Second Tokyo International Conference on African Development (TICAD II).

68. The representative of **Zambia** said that HCMs in international arrangements provided a framework for cooperation between home and host countries. He referred to Article 66.2 of the TRIPS Agreement, which dealt with the special needs of the LDCs in order to enable them to create a sound and viable technological base.

69. The representative of **Switzerland** highlighted current measures by the Swiss Government to promote investment and technology transfer to developing countries. He noted that the investment regime in host countries was very important in attracting FDI.

70. The representative of the **United States of America** said that a liberalized investment policy was crucial in attracting investment and that home Governments should not attempt to direct private investment decisions. Apart from insurance and loan assistance, he did not regard financial incentives to encourage FDI as best practice, because of the allocative distortions they would produce. Furthermore, government interventions in investment decisions and other performance requirements were likely to be more of a deterrent than an inducement to FDI. He concluded by re-emphasizing that a host country's sound investment policy that established an enabling environment for investment was of far greater importance to investors.

71. The representative of **China** said that HCMs covered a variety of measures. Positive HCMs could contribute to collaboration between home and host country institutions,

establishment of industrial infrastructure in host countries, coordination of home countries' efforts, building capacity in host countries, and transfer of technology.

72. The representative of **Morocco** suggested that joint ventures were the most effective way to encourage FDI and diffuse technology. In this regard, UNCTAD should promote the establishment of "investment points" with a view to disseminating information on opportunities in host developing countries.

73. The representative of **Uganda,** supporting the recommendations of the Expert Meeting, said that the help of Governments of home countries was crucial in disseminating information about investment opportunities in host developing countries.

74. The representative of the **United Kingdom** noted that good governance was among factors that contributed to attracting investment. She added that HCMs played a minor role in encouraging foreign investment in relation to the investment regime in host countries.

75. The representative of **Chile,** referring to the experience of his country, said that cooperation between developing countries in attracting FDI was also important and should be underlined.

Chapter V

INVESTMENT POLICY REVIEWS: EXCHANGE OF NATIONAL EXPERIENCE

(Agenda item 5)

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

"Investment and Innovation Policy Review of Ethiopia" (UNCTAD/ITE/IPC/Misc.4)
"Investment Policy Review of Ecuador" (UNCTAD/ITE/IPC/Misc.2)
"Investment Policy Review of Mauritius" (UNCTAD/ITE/IPC/Misc.1)
"Investment Policy Review of Peru" (UNCTAD/ITE/IPC/Misc.19)

77. The representative of the **UNCTAD secretariat** introduced the Investment Policy Reviews (IPRs) programme, its objectives, the process involved and follow-up work. Although IPRs were adapted to individual countries' needs, they had a common format and methodology. As mandated by UNCTAD X in Bangkok, they were intended to enrich international discussions with the experiences of countries and regions. Two IPRs had been presented at the fourth session of the Commission and four more would be presented at the current session. In addition, 11 requests for IPRs had been received.

Investment Policy Review of Mauritius

78. The representative of the **UNCTAD secretariat**, introducing the IPR of Mauritius, said that the latter's FDI performance, which had been good in the 1980s and early 1990s, was declining. It faced the problems of a middle-income country, and the main challenges would be to upgrade and move into higher-value sectors and to enhance outward investment to the region. The IPR recommended that, in order to move to higher-growth FDI, Mauritius build on its various strengths and undertake policy measures. These measures included, in particular, improving the policy and operational framework for FDI, so as to put it on a par with best practice; rationalizing fiscal incentives; setting up a super agency to promote and facilitate investment; fast-tracking privatization; and implementing strategies for upgrading the human capital base. It was noted that Mauritius had very recently taken steps to liberalize the telecommunications sector and to set up a Board of Investment.

79. The representative of **Mauritius** thanked UNCTAD and its staff for the work done on the IPR, and acknowledged UNCTAD's comparative advantage in analytical work for developing countries. He underscored his Government's commitment to create a better and more conducive environment for investment. Mauritius's development policies had been consistent and based on consensus. Foreign direct investment in the 1980s and early 1990s had been generated by Mauritius's preferential market access to Europe and the United States. The Government considered the IPR timely. Its policy recommendations on the regulatory framework, information technology, the marine sector and regional financial services were in line with the Government's new strategies on industrial development. Considerable efforts had recently been made at the highest level to boost these sectors, including the strengthening of small and medium-sized enterprises and the setting up of the Board of Investment. He stressed that notwithstanding the challenges posed by its geography,

market size and resource constraints, Mauritius would continue to take up new challenges. He highlighted the priority attached to human resource development, noting that the Government had recently set up a Ministry for this purpose. The Government remained committed to regional cooperation and integration and to tapping opportunities provided by the United States–Africa Growth and Opportunity Act. He called for greater cooperation with and support from the international and business communities. In conclusion, he stated that he had sought UNCTAD's assistance in rationalizing the fiscal incentives structure in line with the overall policy framework.

80. Participants commended Mauritius for its remarkable achievements and continuing efforts in adapting to the changing world environment. The representative of Singapore drew a parallel between Singapore and Mauritius as regards the limits of growth for small economies. For such economies FDI would be the most efficient means for leapfrogging the scale of development. The representatives of Trinidad and Tobago and Jamaica said that the constraints facing their countries and Mauritius, as small island developing economies, were similar and urged that the international community be sensitive to the challenges with which they would be confronted in a globalized world. Another representative regarded competitiveness as an important factor for small economies in sustaining flows of FDI. Thus, recommendations in the IPR that the investment policy framework achieve best practice and policies on FDI which could help to meet strategic objectives deserved support.

81. To promote Mauritius as a regional hub for financial and business services, participants called for policies that focused on creating capacity for rapid response – in particular, accelerating the privatization programme, removing red tape, and keeping business and telecommunications costs down, as well as strengthening small and medium-sized enterprises (SMEs) by increasing quality and innovation for a quick turnaround in value-added activities. On the latter point, the use of the Internet and B2B portals was deemed important. In addition, it was indicated that to make a mark in the financial markets, Mauritius should target foreign banks with a view to their subcontracting services to it; this would enable the country to benefit from a transfer of expertise. Furthermore, Mauritius should be more visible in international capital markets, which would put its good credit rating to the test. Currently, foreign investors borrowed locally, since the effective rate of interest was lower because of the overvaluation of the Mauritian rupee.

Investment and Innovation Policy Review of Ethiopia

82. The representative of the **UNCTAD secretariat,** introducing the Ethiopian Review, reminded the Commission that, at the request of the Government of Ethiopia, this review combined in an integrated manner the elements of an Investment Policy Review with those of a Science, Technology and Innovation Policy (STIP) Review. He said that since 1992 there had been a remarkable improvement in Ethiopia's investment policy framework. Entry procedures had been streamlined, most sectors were now open to FDI and attractive guarantee and incentive schemes were in place. The investment regime had improved greatly and was conducive to FDI. However, unlike in many other countries, the policy efforts in Ethiopia had so far been of a catch-up nature. There was need to continue to revise the investment framework and to give priority to investment in physical, technological and

educational infrastructure. The challenges included intensifying privatization, better coordination in promoting investment and developing an investment-targeting capability.

83. The representative of **Ethiopia** expressed his Government's appreciation of the IPR and said that it was timely and useful, particularly since the Government was once again turning its attention to economic growth. He stressed that his country's major challenges were poverty and backwardness. As it was aware of the key role played by investment in tackling those problems, the Government had created a liberal policy environment conducive to both domestic and foreign investment. Most of the recommendations in the IPR were in line with the Government's overall policy objectives, and he called on bilateral and multilateral development partners to assist Ethiopia in implementing the recommendations.

84. Participants welcomed the combining of an Investment Policy Review with a Science, Technology and Innovation Policy Review, which was an innovation since it helped to show the direct linkage between both elements in the process of strengthening economic performance through improved competitiveness. More importantly, this Review, like the Jamaican Review undertaken earlier, drew attention to the broad applicability of innovation to development and showed the existence of innovation across a range of enterprises. In this respect, it made a significant contribution to the demystification of the process of technological development. Moreover, a clear lesson that emerged was that poor countries were not a desert as far as innovation was concerned, and that Governments needed to pay special attention to the innovation actually taking place in domestic enterprises. This would require the designing of policies to foster and strengthen a culture of innovation.

85. The Ethiopian Government's efforts to create an investment-friendly policy environment were praised. It was stressed, however, that in order to ensure positive responses by investors, constraints on infrastructure and technical skills must be dealt with without delay. As indicated in the Review, easing those constraints was a prerequisite for enhancing supply capacity and attracting additional FDI. Discussants noted that official development assistance could play a complementary role as a source of additional finance aimed at targeted constraints, especially in transport, energy, institution-building and the development of communications infrastructure. One discussant, referring to SME development in northern Italy, highlighted the lessons for Ethiopian SMEs, especially the need for policy coordination at the central and regional levels of government and the important role of supporting institutions.

86. It was noted that in attracting foreign investment the important elements were political stability, skills and well-developed infrastructure. Participants supported key aspects of the investment promotion strategy mentioned in the Review, namely the need for horizontal and vertical information flows, a coordinated and well-focused investment strategy, inter-firm partnerships, and linkages in the supply chain.

87. The representative of **Kenya** thanked the UNCTAD secretariat for assisting Ethiopia through the IPR mechanism. As a neighbouring country, Kenya had a direct interest in seeing economic development in Ethiopia and was willing to support it, including by providing access to the sea.

Investment Policy Review of Peru

88. The representative of the **UNCTAD secretariat**, presenting the highlights of the IPR of Peru, noted that the Government of Peru offered investors a sound economic and business environment, and a state-of-the-art investment framework, essential foundations that must be maintained if Peru was to continue to be an attractive destination for FDI. In order to sustain the competitiveness of FDI in the industries attracting FDI, linkages between suppliers and related industries should be strengthened. Peru's potential for new FDI could be developed by longer-term policies to enhance innovation in the productive sector. The IPR's recommendations included policy measures for improving infrastructure, technology and innovation, as well as the quality of suppliers and education. Bolder investment promotion initiatives should be envisaged in order to go beyond the successes achieved so far with privatization and concession of public assets and services. A single investment promotion centre would facilitate this endeavour.

89. The representative of **Peru** endorsed the secretariat's recommendations contained in the IPR. He stressed that the privatization programme already completed would generate new foreign direct investment, and that the Government would introduce after-care services for investors. In the area of infrastructure, the Government intended to continue the concession programmes to improve the services provided by ports and airports, and would extend the programmes to areas such as electricity and irrigation. In addition, it recognized that Peru's resource endowments had not been fully exploited. It also recognized the need to strengthen science, technology and innovation policies and requested UNCTAD's assistance in their formulation through a Science, Technology and Innovation Policy Review. In future, Peru's investment promotion policies would focus on cluster development, particularly in the areas of mining, agriculture, fishing and tourism. To further ease the investment process, the Government would consider the establishment of a "one-stop shop". In addition, it would endeavour to strengthen Peru's integration into the world economy and would continue to play an active role in the regional integration process.

90. The lessons learned from the successful privatization programme carried out by Peru were considered with interest. Before privatization, the Government had set up regulatory agencies that ensured that public monopoly was not replaced by a private one. It was encouraged to make additional efforts to secure a stable, secure and predictable investment environment. When introducing competition in a sector, it was important not to stop the privatization process so as to avoid altering the regulatory environment for investors. Regulatory agencies should have clear functions and rules, particularly when there were public and private enterprises operating in the same sector. Another area for improvement was the streamlining of legal stability agreements, which were considered an important element for guaranteeing legal and juridical stability to investors. It was suggested that such agreements should maintain their validity when companies were merging or changing their operational structure.

91. To tap investment potential, the Government was encouraged to promote new areas, such bio-trade, electronic commerce and eco-tourism. The establishment of a single tourism authority would facilitate the promotion of investment in diversified tourism products and heritage conservation. Also, the Government should consider measures to attract more

investment by SMEs and to strengthen their linkages with large firms. Finally, in addition to fine-tuning the investment framework, Peru should maintain the strong linkage already established between open trade and investment policies. It should also ensure the continuity of investment policies and strengthen the rule of law.

Investment Policy Review of Ecuador

92. The representative of the **UNCTAD secretariat** presented the highlights of the IPR of Ecuador. He said that UNCTAD’s recommendations underscored the importance for Ecuador of restoring stability and resuming growth. Political stability was one of the fundamental conditions for improving the business environment. Equally important were the stability and transparency of economic laws and regulations, including those on tax, labour, and property. Building social consensus around reforms was another critical area. With regard to the investment framework, the Constitution had improved treatment and provided new guarantees to investors, but enforcement remained problematic. A case in point was the enforcement of property rights, where there was uncertainty in areas such as mining, petroleum exploration and the exploitation of biological resources. The Government should implement a viable privatization programme, which was the key programme for the immediate realization of FDI potential in a still large state-owned sector. The Government should also design policies aimed at increasing the long-term benefits from FDI. Four policy areas in particular were crucial, namely human resource development, science and technology, competition, and policies aimed at improving competitiveness, including the creation and strengthening of linkages between foreign and local enterprises. UNCTAD's recommendations included the establishment and launch of an investment promotion programme and the setting up of an investment promotion unit.

93. The representative of **Ecuador** expressed his country’s appreciation for the work carried out by the secretariat. The IPR would constitute an important basis for Ecuador to work in an organized and coordinated manner on investment promotion, and would assist the Trade and Investment Corporation (CORPEI) in attracting FDI to export industries. The Government had already undertaken a number of policy reforms to restructure foreign debt, strengthen the banking system and rationalize the complex tax system. CORPEI, following UNCTAD’s recommendations, would work closely with CONAM, the agency in charge of privatization. The Government was fully aware that dollarization should be accompanied by measures to improve enterprise competitiveness. It intended to establish a council on competitiveness and devise a special programme to support private sector development. CORPEI endorsed UNCTAD's recommendations on investment promotion, and considered that now was the right time to start investment promotion activities in conjunction with export promotion. It would draw up an investment promotion strategy and establish an investment promotion unit. However, since it did not have experience in investment promotion, further assistance from UNCTAD in this area would be welcome.

94. The efforts by the Government of Ecuador to reorient its economy in the right direction were encouraged. The establishment of the Solidarity Fund to manage funds from privatization was considered a good and novel tool to support social development and achieve social consensus on reforms. Representatives of developing countries expressed interest in Ecuador's experience with dollarization and its significance for development and

possible negative effects. After the introduction of the euro, developing countries in Africa might face a challenge similar to that faced by countries in the process of dollarization in Latin America.

95. It was noted that Ecuador's investment climate had deteriorated. Some deficiencies were structural, and much had to be done to restore investors' confidence. Areas for improvement were financial regulations, the banking system and basic infrastructure services. Furthermore, dollarization forced enterprises operating in Ecuador to convert their balance sheets into dollars and to re-evaluate assets, and readjustments in the fiscal area might be necessary. Overall, the country needed to improve the enabling environment and the rule of law, and to strengthen its institutions. It was encouraged to introduce a viable privatization programme and to learn from the experience of Bolivia, which had adopted a capitalization scheme when privatizing public enterprises. The role of investment banks, lending institutions and financial intermediaries should be re-examined. Finally, Ecuador should pursue an aggressive investment promotion plan, particularly in oil.

Follow-up to earlier Investment Policy Reviews

96. The representative of **Uganda,** whose investment policies had been reviewed at the fourth session of the Commission in 1999, reported that during the past year it had implemented many of the recommendations in the IPR, with support from UNCTAD, the United Nations Development Programme and the Swiss Government. The number of FDI projects registered in 2000 was twice that in the previous year. The IPRs made it possible to mobilize the countries' policy makers to take action on problems of which they were already aware. In Uganda's case, the President had taken responsibility for the implementation of the recommendations contained in the IPR.

General discussion on Investment Policy Reviews

97. The representative of the **United States of America** said that his delegation had been unable to participate fully in the discussion on the IPRs. This was because the relevant documents had been not received sufficiently far in advance to enable reactions to be received from his country's authorities. He therefore requested that the documents for the IPRs at the sixth session of the Commission be made available at least six weeks in advance.

98. The representative of **Sweden**, speaking on behalf of the **European Union**, said that the IPRs and the ensuing discussion had been most useful. However, the amount of time allocated for each review and discussion – one and a half hours – was insufficient, particularly in view of the participation of high-level representatives. She suggested that, on the basis of informal consultations with member States, the secretariat draw up a proposal to revise the format for this agenda item. It should be aimed at ensuring not only that more time was allocated for discussion in the Commission but also that IPR documents were made available between four and six weeks before the Commission's session so as to allow member States adequate time to study them and thus to participate fully in the discussions. The item could be taken up either at the beginning or the end of the session. It would be useful if the secretariat's proposal could be tabled at the forthcoming meeting to review the functioning of the intergovernmental machinery.

99. The representative of **South Africa**, speaking on behalf of the **African Group**, expressed his appreciation for the IPRs, which played a useful role in helping developing countries to attract foreign direct investment. His Group looked forward to more IPRs for African countries, but they should not place an undue burden on the countries concerned. While welcoming inclusion of an item on IPRs in the agenda for the Commission’s sixth session, he said that discussion of IPRs required more time than was currently allocated. Consequently, he supported the previous speaker’s request that the secretariat draw up a proposal in this connection.

100. The representative of **Mexico**, speaking on behalf of **the Latin American and Caribbean Group**, said that the IPR documents should be circulated well in advance of the Commission’s session so that they could be given proper attention. More time was also needed for discussion of them in the Commission.

101. The representative of the **UNCTAD secretariat** agreed that the IPR documents should be made available earlier, and said that the secretariat would endeavour to ensure that this was done in future. To enable participants to discuss the Reviews in grater detail more time would indeed be necessary. This question needed to be studied, and he noted the suggestion made by the representative of Sweden in this connection.

Chapter VI

REPORTS OF THE SUBSIDIARY BODIES OF THE COMMISSION

(Agenda item 6)

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

> "Report of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting on its Seventeenth Session" (TD/B/COM.2/25 - TD/B/COM.2/ISAR/10)

103. The **Chairperson of the Intergovernmental Working Group of Experts** presented the report on the Group's seventeenth session. He said that it had been attended by 93 experts from 53 countries, 10 national and regional professional associations and three regional and international organization. The main topic discussed had been the accounting needs of small and medium-sized enterprises (SMEs). The Group had identified several obstacles faced by SMEs in maintaining accurate records and generating meaningful financial reports, and had agreed on certain characteristics that a system of financial accounting and reporting for SMEs needed to have. It had then decided to hold ad hoc expert consultations during the inter-sessional period and work towards identifying an accounting and reporting framework for different types of SMEs that incorporated those characteristics. The results of the consultations would be considered by the Group at its eighteenth session.

104. He then briefly described the follow-up work on the Group's fifteenth and sixteenth sessions – namely, the work on environmental performance indicators and the assessment of professional qualification requirements, respectively. Lastly, he reported on the Group's publications, technical cooperation, and liaison with the other international bodies and civil society.

105. The representative of **Sweden**, speaking on behalf of the **European Union**, said it would be desirable, in future, to have more detailed information about the reports of the subsidiary bodies at an early date.

Action by the Commission on agenda item 6

106. The Commission endorsed the report of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting, as contained in document TD/B/COM.2/25 - T/D/B/COM.2/ISAR/10, and approved the provisional agenda for its eighteenth session contained therein.

Chapter VII

OTHER BUSINESS

(Agenda item 7)

Activities of the Division of Investment, Technology and Enterprise Development

107. The representative of the **UNCTAD secretariat** presented the activities of the Division on Investment, Technology and Enterprise Development (DITE) in the period between the two sessions of the Commission He said that at UNCTAD X, DITE had been entrusted with the implementation of paragraphs 113–128 and 154–155 of the Bangkok Plan of Action, which entailed additional mandates in its traditional areas of work and the redeployment of some activities (portfolio investment, banking and insurance, and microfinance) from other Divisions. In that context, DITE had been restructured. DITE was responsible for servicing one and a half of UNCTAD's three main Commissions, plus the Commission on Science and Technology for Development, as well as relevant agenda items considered at the United Nations General Assembly, the Economic and Social Council, and the Trade and Development Board. Also, it produced one of the three UNCTAD flagship publications, i.e. the *World Investment Report*. During the reporting year DITE had organized and serviced over 70 (more than one a week) conferences, symposia, meetings and workshops, including 22 training activities; undertaken a number of advisory missions; produced over 50 publications (including electronic versions on the Web), such as books, manuals, reviews, reports, issues papers and booklets; and issued 39 press releases or notes. Currently, it maintained four specialized databases and managed 20 projects and programmes. It gratefully acknowledged the financial contributions and the contributions in kind from a number of donor countries and international organizations.

108. The representative of **South Africa,** speaking on behalf of the **African Group,** praised the report on DITE's activities and expressed his appreciation for the support provided by donors.

109. The representative of the **United Kingdom** asked whether the databases were available on the Internet.

110. The representative of the **UNCTAD secretariat** said that part of the information contained in those databases could be made available to the public.

Commission on Science and Technology for Development

111. The representative of the **UNCTAD secretariat** briefed delegates on the work of the Commission on Science and Technology for Development. The Commission, which was a subsidiary of the Economic and Social Council (ECOSOC) and was serviced by the UNCTAD secretariat, had been established in 1992 as a result of the restructuring of the United Nations in the economic, social and related fields. Its purpose was to provide the General Assembly and ECOSOC with advice on relevant science and technology issues through analysis and appropriate policy recommendations. It was composed of 33 member States elected by ECOSOC for a term of four years, and had met for the first time in 1993. So

far, it had held four regular sessions, at which it had determined the priorities and substantive themes to be considered by its members and the support to be provided by the secretariat during the inter-sessional period. Its Bureau, elected at each session, set up ad hoc panels to work on the themes chosen. They were responsible for the reports on those themes, normally prepared by the UNCTAD secretariat, to be presented to the Commission at its regular session. At its most recent session, held in May 1999, the Commission had selected “National capacity-building in biotechnology” as its substantive theme for the inter-sessional period 1999–2001. The focus of that theme was on capacity-building for biotechnology applications, with particular attention to agriculture and the agro-industry, health and the environment. In this connection, three panels had been established – on capacity-building in biotechnology, legal and regulatory issues in biotechnology, and public awareness and participation in science policy-making in biotechnology – and each had held a meeting in 2000. Their findings and recommendations would be considered by the Commission at its fifth regular session, scheduled to take place in Geneva from 28 May to 1 June 2001.

Action by the Commission on agenda item 7

112. The Commission took note of the reports on the activities of the Division on Investment, Technology and Enterprise Development and the Commission on Science and Technology for Development.

Chapter VIII

ACTION BY THE COMMISSION AND CLOSING STATEMENTS

Action by the Commission

113. At its 32nd (closing) meeting, on 16 February 2001, the Commission adopted its agreed recommendations on agenda items 3 and 4 (see chapter I). It also adopted the draft provisional agenda for its sixth session (see annex I).

Closing statements

114. The representative of the **UNCTAD secretariat** said that the Commission had had very useful and substantive discussions and that the recommendations adopted were relevant to the work of individual countries. The IPRs had demonstrated their value, with the high-level representation reflecting the importance which countries attached to them. As suggested, the secretariat would produce a proposal to improve the general format for this agenda item, with particular regard to the early circulation of documents and the amount of time allotted for discussions.

115. The **Chairperson** said that the Commission had had a fruitful session, conducted in a spirit of efficient cooperation which was particularly noteworthy in view of the complex issues discussed. The allocation of more time to the discussion of IPRs would help ensure that they were profitable both for the countries concerned and for investors.

116. The representative of **Mexico**, speaking on behalf of **the Latin American and Caribbean Group**, said that UNCTAD had a key role to play in its various fields of activity and that the work of the Commission was on the right path.

117. The representative of **Sweden**, speaking on behalf of the **European Union**, said that the Commission had held useful discussions on a number of complex issues, and she welcomed the secretariat’s willingness to submit a proposal to improve the format of the agenda item on IPRs. The European Union looked forward to participating in the forthcoming review of the functioning of the intergovernmental machinery, at which it hoped the secretariat’s proposal would be tabled.

118. The representative of the **United States of America** said that an important dialogue had been held thanks to the efforts of the secretariat. His delegation attached particular importance to the Investment Policy Reviews.

Chapter IX

ORGANIZATIONAL MATTERS

A. Opening of the session

119. The fifth session of the Commission on Investment, Technology and Related Issues was held at the Palais des Nations, Geneva, from 12 to 16 February 2001. In the course of the session, the Commission held seven plenary meetings (the 26th to 32nd meetings) and five informal meetings. The session was opened on 12 February 2001 by Mr. Rubens Ricupero, Secretary-General of UNCTAD.

B. Election of officers

120. At 26th plenary meeting, on 12 February 2001, the Commission elected its Bureau as follows:

Chairperson:	Mr. Jean-Luc Le Bideau (France)
Vice-Chairpersons:	Ms. Irina Ananich (Belarus) Mr. Rafael Parades Proaño (Ecuador) Mr. Sherif Kamel (Egypt) Ms. Margaret Liang (Singapore) Ms. Eleanor Fuller (United Kingdom)
Rapporteur:	Mr. Younes Tijani (Morocco)

C. Adoption of the agenda and organization of work

(Agenda item 2)

121. At the same meeting, the Commission adopted the provisional agenda circulated in document TD/B/COM.2/28. Accordingly, the agenda for the fifth session was as follows:

1. Election of officers
2. Adoption of the agenda and organization of work
3. Impact of international investment flows on development: Mergers and acquisitions – policies aimed at maximizing the positive and minimizing the possible negative impact of international investment
4. International policy issues: Home country measures
5. Investment policy reviews: Exchange of national experience
6. Reports of the subsidiary bodies of the Commission
7. Other business
8. Adoption of the report

D. Adoption of the report

(Agenda item 8)

122. At its closing plenary meeting, the Commission adopted its draft report (TD/B/COM.2/L.11 and L.11/Add.1), subject to any amendments to the summaries of the statements, and authorized the Rapporteur to finalize the report in the light of the proceedings of the closing plenary meeting.

Annex I

PROVISIONAL AGENDA FOR THE SIXTH SESSION OF THE COMMISSION

1. Election of officers
2. Adoption of the agenda and organization of work
3. Impact of international investment flows on development: The impact of FDI policies on industrialization, local entrepreneurship and the development of supply capacity of developing countries, in particular the least developed countries
4. International policy issues: International arrangements for transfer of technology: Best practices for access to and measures to encourage transfer of technology with a view to capacity building in developing countries, especially in least developed countries
5. Investment policy reviews: Exchange of national experience
6. Reports of the subsidiary bodies of the Commission
7. Progress report on the implementation of agreed conclusions and recommendations of the Commission
8. Other business
9. Adoption of the report

Annex II

ATTENDANCE *

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

Albania
Angola
Belarus
Belgium
Benin
Bhutan
Brazil
Bulgaria
Chile
China
Colombia
Congo
Costa Rica
Croatia
Democratic People's Republic of Korea
Ecuador
Egypt
Ethiopia
Finland
France
Germany
Guatemala
Honduras
India
Indonesia
Iran (Islamic Republic of)
Iraq
Italy
Jamaica
Japan
Kenya
Lebanon
Lesotho
Malawi
Mali
Malta
Mauritius
Mexico
Morocco
Netherlands
Nicaragua
Nigeria
Norway
Panama
Peru
Philippines
Poland
Portugal
Romania
Russian Federation
Saudi Arabia
Singapore
Slovakia
South Africa
Spain
Sri Lanka
Sweden
Switzerland
Thailand
Tunisia
Turkey
Uganda
United Kingdom of Great Britain and Northern Ireland
United Republic of Tanzania
United States of America
Uruguay
Venezuela
Viet Nam
Yemen
Yugoslavia
Zambia
Zimbabwe

* For the list of participants, see TD/B/COM.2/INF.5.

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

Arab Labour Organization
Commonwealth Secretariat
European Community
Organisation for Economic Co-operation and Development
Organization of the Islamic Conference

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

International Monetary Fund
United Nations Industrial Development Organization
World Trade Organization

4. The International Trade Centre UNCTAD/WTO was represented at the session.

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

General Category

Engineers of the World
International Confederation of Free Trade Unions
World Federation of United Nations Associations

6. The following special invitee attended the session:

Mr. Gesner Oliveira, Chairperson of the Expert Meeting on Mergers and Acquisitions