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**ISSUES RELATED TO INTERNATIONAL ARRANGEMENTS**

Note by the UNCTAD secretariat

**Executive summary**

This note sets out a number of policy questions that emerged from the Expert Meeting on Experiences with Bilateral and Regional Approaches to Multilateral Cooperation in the Area of Long-term Cross-border Investment, Particularly Foreign Direct Investment, held from 12 to 14 June 2002, and the Expert Meeting on the Development Dimension of FDI: Policies to Enhance the Role of FDI in Support of the Competitiveness of the Enterprise Sector and the Economic Performance of Host Economies, Taking into Account the Trade/Investment Interface, in the National and International Context”, held from 6 to 8 November 2002.

## INTRODUCTION

1. In accordance with the decision by the Trade and Development Board at its Nineteenth Special Session (Bangkok, 29 April – 2 May 2002) and the decision by the Commission on Investment, Technology and Related Financial Issues at its sixth session, (Geneva, 21–25 January 2002), the secretariat has prepared this note as an input to the discussions of the seventh session of the Commission on Investment, Technology and Related Financial Issues. It is based on the policy considerations raised by experts at the Expert Meeting on Experiences with Bilateral and Regional Approaches to Multilateral Cooperation in the Area of Long-term Cross-border Investment, Particularly Foreign Direct Investment”, held from 12 to 14 June 2002,<sup>1</sup> and the Expert Meeting on the Development Dimension of FDI: Policies to Enhance the Role of FDI in Support of the Competitiveness of the Enterprise Sector and the Economic Performance of Host Economies, Taking into Account the Trade/Investment Interface, in the National and International Context, held from 6 to 8 November 2002,<sup>2</sup> as set out in the summaries of those meetings. The purpose of this note is to set out a number of policy questions related to which are key policies to attract FDI and benefit from it, the extent to which these policies are hindered or enhanced by international investment agreements (IIAs) and how, in particular, the development dimension can be taken into account, for consideration by the Commission on Investment, Technology and Related Financial Issues at its seventh session.

2. The two Expert Meetings identified various elements bearing on international investment as contained in IIAs. Together, the provisions concerning the issues contained in IIAs constitute the *international* framework within which *national* policies and measures to attract foreign direct investment (FDI) and benefit from it are situated.

3. This raises three sets of issues that the Commission may wish to consider in the light of the deliberations of the Expert Meetings:

- Which are the most important national FDI policies?
- How are these constrained and/or enhanced by IIAs?
- How can they be supported by IIAs?

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<sup>1</sup> See “Report of the Expert Meeting on Experiences with Bilateral and Regional Approaches and to Multilateral Cooperation in the Area of Long-term Cross-border Investment, Particularly Foreign Direct Investment”, 9 July 2002, document TD/B/COM.2/41; TD/B/COM.2/EM.11/3.

<sup>2</sup> See “Report of the Expert Meeting on the Development Dimension of FDI: Policies to Enhance the Role of FDI in Support of the Competitiveness of the Enterprise Sector and the Economic Performance of Host Economies, Taking into Account the Trade/Investment Interface, in the National and International Context” (forthcoming).

## NATIONAL FDI POLICIES

4. While the range of national FDI policies and measures is broad<sup>3</sup>, not all are equally important for attracting FDI and benefiting from it. Hence the question arises: which are the most important policies and measures in terms of their effectiveness for achieving those objectives?

5. To facilitate the discussion, it may be useful to distinguish policies and measures designed primarily to *attract* FDI from those designed primarily to enable recipients to *benefit* from it. Moreover, policies to benefit from FDI are aimed at both increasing the positive effects and decreasing the negative effects of FDI.

### Attracting FDI

6. Attracting FDI involves the reduction of obstacles to such investment (and this raises immediately the question of how “investment” is defined and admitted in a host country), a strengthening of standards of treatment of foreign affiliates (a good part of which revolves around the issue of national treatment, but also involves the protection of foreign affiliates), a range of active measures to attract FDI (e.g. through the use of incentives) and the question of how disputes should be settled if and when they arise.

7. The discussions at the Expert Meetings in June and November and in the WTO Working Group on the Relationship between Trade and Investment, and/or general discussions on IIAs suggest that the key policies in the area of attracting FDI relate indeed to the definition of investment, the admission of investment, national treatment, nationalization and expropriation, and incentives.

8. The Commission may wish to discuss whether the key policies identified in paragraph 7 are central to attracting FDI, and what the experience of countries with them has been.

### Benefiting from FDI

9. Measures aimed at attracting FDI are not always sufficient to ensure the greatest possible benefits that countries expect from FDI, such as technology transfer to foreign affiliates and domestic firms, deeper and more linkages with local enterprises, higher exports, higher employment and upgraded skills. At the same time, host countries seek to reduce any negative effects related to foreign investment, such as financial volatility, anti-competitive practices, abusive transfer prices, the crowding out of domestic firms and, more generally, too much dependence on foreign ownership. In brief, for host countries the central concern is to maximize the positive effects of FDI and to minimize its negative effects.

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<sup>3</sup> These policies and measures are typically embedded in broader policies and measures aimed at, for example improving the macroeconomic framework, improving skills, strengthening infrastructure and promoting enterprise development. All these are very important for attracting FDI and benefiting from it, but here the focus is much more narrow – on FDI policies proper.

10. Which policies and measures related to maximizing the positive and minimizing the negative effects of FDI are the most important ones from the point of view of host developing countries and economies in transition? The literature suggests that these are policies and measures related to transfer of technology, the promotion of linkages (including performance requirements), anti-competitive practices and (again) incentives.

11. The policies aimed at increasing the benefits of FDI for host countries have been discussed by delegates to the seventh session of the Commission under agenda item 3; there may therefore be no need to discuss this matter further here.

### **THE ROLE OF EXISTING IIAS**

12. As the discussions at the Expert Meetings showed, existing IIAs bear in various ways on key policies and measures used by host countries to attract FDI and benefit from it.

13. Delegates may wish to address how existing IIAs affect these policies and measures (taking into account that this matter has already been discussed under agenda item 3 as far as benefiting from FDI is concerned). In particular, to what extent do they constrain or enhance them, and what has been the experience in this respect?

### **ENHANCING THE DEVELOPMENT DIMENSION OF IIAS**

14. The Expert Meeting held in June 2002 identified a number of development-related considerations that could be borne in mind when formulating IIAs. Generally, the latter are designed to enhance key national policies to attract FDI and benefit from it. What is common to them is that they seek to preserve a national policy space to allow countries, within the parameters of their international obligations, to pursue policies that advance their development. The right to regulate is a notion that deserves attention in this context – a topic discussed at the Expert Meeting held in November.

15. At a more concrete level, the question arises how and to what extent IIAs can be constructed to allow for an appropriate policy space in the interest of development. This is a challenge that deserves special attention in relation to key policies of host countries to attract FDI and benefit from it.

16. But the challenge goes beyond host country policies. Delegates may also want to discuss to what extent home countries can help developing countries and economies in transition in their efforts to attract FDI and benefit from it. It should be noted that transnational corporations, in the framework of corporate social responsibility, also have a role to play in this respect.

17. On the basis of the discussions of the Expert Meeting held in November 2002,

delegates may wish to discuss what home country measures and which corporate social responsibility considerations are particularly relevant in helping developing countries and economies in transition to attract FDI and benefit from it, and what has been the experience in this respect. These considerations are particularly relevant for the purpose of reflecting in a balanced manner the interests of home and host countries in this area.

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