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Commission on Investment, Technology and Related Financial Issues
Twelfth session
Geneva, 12–13 February 2008

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

I. Chair's summary

A. Opening statements

1. An opening statement was made by the UNCTAD Secretary-General, Dr. Supachai Panitchpakdi. The representative of Honduras made a statement on behalf of the Group of 77 and China. The representative of Argentina made a statement on behalf of the Group of Latin America and Caribbean Countries (GRULAC). The representative of Slovenia made a statement on behalf of the European Union. The representative of Bangladesh made a statement on behalf of the Least Developed Countries (LDC) Group. The representative of the Philippines made a statement on behalf of the Asian Group. The representative of Chad made a statement on behalf of the African Group. The representative of the Russian Federation made a statement on behalf of Group D. General statements were made by representatives of China, Iraq and Peru.

B. Foreign direct investment and financing for development

(Agenda item 3)

2. The Head of the Investment Issues Analysis Branch of the Division on Investment, Technology and Enterprise Development (DITE) introduced agenda item 3, presenting the issues to be discussed in the two panels on trends and on financing infrastructure. In her introductory statement, she highlighted the policy challenges related to the maximization of benefits that countries can achieve from foreign direct investment (FDI) and the need to explore the potential synergies between official development assistance (ODA) and FDI in the context of the development of infrastructure industries.

1. Trends: potential roles and prospects of alternative forms of finance

3. She said that infrastructure was essential to economic development and to the achievement of the Millennium Development Goals. The development of export-

related infrastructure in Asia had been an important driver of growth and development. In a similar vein, improvement of the poor and deficient infrastructure in Africa would remove a serious obstacle to the region's economic and social progress. Africa needed infrastructure to be able to trade and to move from a resource-based to an industry-based mode of development.

4. Infrastructure investment needs were immense and increasing. Panel experts reported on this issue with examples from Asia and Africa. These growing global infrastructures needs raised the question of the resources required to finance such investments, and of the potential roles and prospects of alternative forms of finance (fiscal policy, public-private partnerships (PPPs) and FDI). Although the private sector had been more involved in infrastructure projects since the 1980s, the public sector still played the most important role in infrastructure, and this role had increased in some respects since the early 2000s.

5. Many obstacles to the development of infrastructure in developing countries had been identified, the most important among them being (a) the inadequate level of long-term financing; (b) the inadequate public capacity to manage private participation and PPP transactions; (c) the inadequate capacity of the domestic private sector to manage very large projects over a long period of time; and (d) social resistance to private sector participation based on the general belief that it would lead to price increases. Experts also showed that, although financial engineering was important, it was no substitute for sound project design.

6. Capacity-building at the governmental level had been identified as a key element to secure the sustainability of infrastructure projects, especially those with private participation. This included (a) the capacity to negotiate PPP arrangements with transnational corporations (TNCs) in a way that protected the interest of taxpayers and users; (b) the capacity to establish a clear legal and regulatory framework; and (c) the capacity to identify adequate and relevant foreign companies and institutions that provided financing and insurance, and conducted feasibility studies. In particular, it was suggested that a guide on how to overcome information needs for financing was of crucial importance for meeting countries' infrastructure development.

2. Financing infrastructure: how to maximize the viability and effectiveness of FDI, ODA and other channels

7. The Head of the Investment Issues Analysis Branch further said that financing for infrastructure development could support the virtuous cycle leading ultimately to economic growth and poverty reduction. The dichotomy of public financing or private financing might have been meaningless considering the huge infrastructure needs in developing countries, and the role of public financing as catalyst was very important. One expert assessed the main challenges for financing infrastructure projects in developing countries, especially in LDCs, and measures to address these challenges. She mentioned that the slow pace of regulatory reform and possible government interventions might deter potential private investors. Furthermore, the introduction of a legal framework and the establishment of a regulatory authority were inadequate, due to weak governance, insufficient staff and weak institutional capability. She emphasized that, in the longer term, the creation of an enabling environment was crucial for mobilizing resources for infrastructure development.

8. Some experts from the private sector presented their views on how to maximize the viability and effectiveness of FDI, ODA and other sources for financing infrastructure. Using concrete examples, they emphasized that the Equator Principles had promoted cooperation and competition among commercial banks, which contributed to sustainable development, and had functioned as a framework for discussions between commercial banks and environmental non-governmental organizations (NGOs). During the debate, it was generally agreed that public and

private investments – including FDI – were not exclusive, but supportive of each other. This was especially the case in infrastructure, because all parties had an interest in the viability of projects, in which they had mutually reinforcing stakes, on a very long-term basis.

C. Reports of expert meetings and of intergovernmental groups of experts

(Agenda item 4)

1. Expert meeting on development implications of international investment rule making

9. Mr. Pedro Dolcero, Chair of the expert meeting held on 28 and 29 June 2007, presented his report. It highlighted three challenges facing developing countries when negotiating international investment agreements (IIAs). Firstly, countries needed to ensure policy coherence between their various IIAs and their domestic economic and development policies. Secondly, there was the challenge of balancing public and private interests in IIAs. The use of general treaty exceptions was mentioned as a possible way of strengthening the capacity of States to retain policy flexibility. Thirdly, there was the issue of how to strengthen the development dimension of IIAs. The question of corporate social responsibility and whether IIAs should include binding obligations on investors was raised.

10. The report called on UNCTAD to strengthen its technical assistance and capacity-building programmes. It was suggested that UNCTAD develop a model bilateral investment treaty to assist developing countries in their negotiations, or other non-binding instruments, such as guidelines, best practices or a matrix of FDI-related policies of different countries. There was a broadly shared view that UNCTAD would be the appropriate forum for providing more extensive knowledge and discussing newly emerging problems. Some delegates raised concerns related to increased FDI restrictions in developed countries and the overlap between bilateral and multilateral investment agreements.

2. Expert meeting on comparing best practices for creating an environment conducive to maximizing development benefits, economic growth and investment in developing countries and countries with economies in transition

11. Mr. Emmanuel Farcot, Vice-Chair and Rapporteur, presented the report of the expert meeting held on 24 and 25 September 2007. His report commenced with an outline of five strategic FDI challenges that had emerged from UNCTAD's investment policy reviews and other work. It was suggested that UNCTAD further contribute to increasing policymakers' capacity to devise policies that created the conditions for making foreign investment suit country-specific development needs and strategies.

12. Firstly, the report endorsed the secretariat's proposed case study methodology, the list of topics in the background paper, and additional themes and issues anticipated by experts to improve knowledge of good practices in attracting and benefiting from FDI. Secondly, it was suggested that UNCTAD disseminate an advisory series on best practices in investment for development that would fill a research gap and serve as the basis for future technical assistance and capacity-building activities. As a third component, the report recognized UNCTAD as the appropriate forum for providing extensive knowledge to carry out this work. It also said that UNCTAD was the appropriate forum for discussing emerging issues as well as lessons and experiences learnt in a continued dialogue at national and international policy levels, in cooperation with international organizations such as the Organization for Economic Cooperation and Development (OECD) and Asia-Pacific Economic Cooperation (APEC).

3. Intergovernmental Group of Experts on Competition Law and Policy, eighth session

13. The officer-in-charge of UNCTAD's Competition Law and Policy programme presented to the Commission a report on the eighth session of the group of experts that took place in Geneva from 17 to 19 July 2007. The report gave an assessment of the outcome of the substantive discussions which took place during the round tables and the voluntary peer review on competition rules of the West African Monetary Union. The Commission was informed about the round tables which discussed (a) competition at the national and international levels in energy markets; (b) criteria for evaluating the effectiveness of competition authorities; (c) competition policy and the exercise of intellectual property rights; and (d) capacity-building for effective enforcement of competition law and policy. Furthermore, the officer-in-charge discussed new areas of cooperation between UNCTAD and the International Competition Network. The report that was presented to the Commission contained a provisional agenda the international group of experts proposed for its ninth session.

4. Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting, twenty-fourth session

14. The Deputy Permanent Representative of the Mission of Ghana presented to the Commission a report on the twenty-fourth session of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting (ISAR). She also highlighted a number of activities which the UNCTAD secretariat undertook during the intersession period of the Commission to disseminate the output of ISAR. With respect to the twenty-fourth session of ISAR, it was noted that the session brought together a record number of participants. The main agenda item of the session was a review of practical implementation issues of International Financial Reporting Standards (IFRS). Also discussed under the "other business" segment of the agenda were corporate responsibility indicators in corporate annual reports and corporate governance disclosure.

15. With respect to other activities which the UNCTAD secretariat undertook to promote the work of ISAR, the following were highlighted: (a) a technical workshop on financial reporting and transparency in extractive industries that took place in Geneva on 29 October 2007; (b) a conference on investment and good practices in corporate governance disclosure that took place in Cairo, Egypt, 18 and 19 June 2007; (c) an international symposium on convergence of accounting in emerging and transition economies that took place in Beijing in July 2007; (d) a regional conference on implementation of IFRS in countries with economies in transition that took place in Almaty, Kazakhstan, in October 2007; (e) a public-private sector dialogue on promoting responsible investment in emerging markets that took place in Geneva on 6 February 2007; (f) various publications and newsletters; and (g) liaison activities with major international organizations and cooperation with the private sector and civil society.

D. Implementation of the recommendations of the Commission, including an assessment of the work of the Commission, since UNCTAD XI

(Agenda item 5)

16. In his report to the Commission on agenda item 5, the officer-in-charge of the division presented the secretariat note entitled "Progress report on the implementation of the recommendations adopted by the Commission at its eleventh session and on the work of the Commission since UNCTAD XI" (TD/B/COM.2/81) and its annexes. He also drew attention to the forthcoming activities report by the division entitled "From São Paulo to Accra".

17. Drawing on the various mandates of the division emanating from the São Paulo Consensus, General Assembly and United Nations Economic and Social Council resolutions, as well as the Millennium Declaration, the officer-in-charge stressed that the overall goal of the work of the division was to make “investment work for development” through interventions in two dimensions (national and international policies) and three work areas (research and policy analysis, consensus-building through intergovernmental bodies and technical assistance). Emphasizing that the division’s interventions were based on four criteria (competence, catalytic, ahead of the curve and demand-driven) and five core values (relevance, quality, efficiency, effectiveness and impact), he introduced the six flagship products (*World Investment Report*, FDI statistics, investment policy reviews, IIAs, investment facilitation and ISAR), and reviewed the division’s accomplishments in terms of both outputs produced and impacts achieved. Summarizing the division’s activities in 2007 (with over 50 publications, including books, manuals, reviews, issues papers and Internet publications; 35 conferences, symposia, meetings and workshops; some 90 training sessions, totalling 225 days of training for the benefit of over 3,000 individuals; 20 websites, together with six databases and networks of experts; and nearly 140 countries, including 34 LDCs, having benefited from DITE’s technical assistance in 2007), he pointed to the positive external evaluations, the appreciation for the division’s work during intergovernmental meetings such as the Commissions, the feedback received from Senior Officials from beneficiary countries and policymakers in general, and overwhelmingly positive media feedback as indicators of impact. In closing, he stressed the partnerships of the division within UNCTAD, the United Nations and beyond, and thanked donor countries for their contributions, as well as member countries for their guidance of the division’s work.

18. In the ensuing discussion, several delegates expressed their appreciation for the documents and the presentation made by the secretariat. Commenting on the results achieved, delegates called upon UNCTAD to (a) examine the discrepancy between investment images of developing countries and countries with economies in transition abroad and their actual investment climate; (b) study public–private partnerships and particularly the identification of related investment policy tools; (c) examine member countries’ legislation related to restrictions of FDI due to national security protection considerations, with the view to contribute to an increase in transparency and predictability in the field; (d) further analyze the issue reciprocity in investment treaties; and (e) analyze the correlation between the bilateral and multilateral levels of FDI regulation, in particular the issue of overlap between the General Agreement on Trade in Services, OECD codes and bilateral investment treaties. They also called upon UNCTAD to produce guidelines to raise the awareness of countries concerning this problem. Policy coherence was also pointed out in the relationship between national laws and multilateral commitments.

II. Organizational matters

A. Opening of the session

19. The twelfth session of the Commission on Investment, Technology and Related Financial Issues was opened at the Palais des Nations, Geneva, on 12 February 2008, by Ambassador Mr. I. Gusti Agung Wesaka Puja (Indonesia), on behalf of Ambassador Mr. Makarim Wibinosa (Indonesia), Chair of the Commission at its eleventh session.

B. Election of officers

20. At its first plenary meeting, on 12 February 2008, the Commission elected the following officers to serve on its Bureau:

Chair: Mr. Yury Afanassiev* (Russian Federation)
Vice-chairs: Ms. Dinar Henrika Sinurat (Indonesia)
Mr. Abdallah Ould Ishaq (Mauritania)
Ms. Dulce María Valle (Mexico)
Mr. Fredrik Arthur* (Norway)
Mr. Edward Brown (United Kingdom)

Rapporteur: Ms. Supavadee Chotikajan (Thailand)

*Mr. Afanassiev was unable to fulfil his duties as Chair, and was replaced at the meeting by Mr. Arthur.

C. Adoption of the agenda and organization of work

(Agenda item 2)

21. At the same meeting, the Commission adopted the provisional agenda circulated in document TD/B/COM.2/79. Accordingly, the agenda for the twelfth session was as follows:

1. Election of officers
2. Adoption of the agenda and organization of work
3. Foreign direct investment and financing for development
4. Reports of expert meetings and of intergovernmental groups of experts:
 - (a) Expert meeting on development implications of international investment rule making
 - (b) Expert meeting on comparing best practices for creating an environment conducive to maximizing development benefits, economic growth and investment in developing countries and countries with economies in transition
 - (c) Intergovernmental Group of Experts on Competition Law and Policy, eighth session
 - (d) Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting, twenty-fourth session
5. Implementation of the recommendations of the Commission, including an assessment of the work of the Commission, since UNCTAD XI
6. Other business
7. Adoption of the report of the Commission to the Trade and Development Board

D. Adoption of the report of the Commission to the Trade and Development Board

(Agenda item 7)

22. At its closing plenary meeting, on 13 February 2008, the Commission authorized the Rapporteur to prepare a report of the meeting, with the Chair's summary on the substantive agenda items, for the Trade and Development Board.

Annex

Attendance

1. Representatives from the following States members of UNCTAD attended the Commission:

Albania	Indonesia
Algeria	Iran (Islamic Republic of)
Angola	Iraq
Argentina	Israel
Bangladesh	Italy
Belarus	Japan
Benin	Lao People's Democratic Republic
Bosnia and Herzegovina	Madagascar
Botswana	Mali
Brazil	Mexico
Bulgaria	Nigeria
Cameroon	Norway
Canada	Oman
Chad	Pakistan
China	Paraguay
Congo	Peru
Côte d'Ivoire	Philippines
Cuba	Russian Federation
Czech Republic	Saudi Arabia
Ecuador	Serbia
Egypt	South Africa
El Salvador	Spain
Finland	Sudan
France	Thailand
Germany	Trinidad and Tobago
Ghana	Uganda
Greece	United Arab Emirates
Haiti	United Republic of Tanzania
Honduras	United States of America
India	Yemen
	Zimbabwe

2. The following observer State was represented at the Commission:

Holy See

3. The following intergovernmental organizations were represented at the Commission:

African Union
 European Community
 Organization for Economic Cooperation and Development
 Organisation internationale de la Francophonie

4. The following specialized agencies were represented at the Commission:

International Organization for Migration
 United Nations Industrial Development Organization

5. The following panellists participated in the session:

12 February 2008

Item 3: Foreign direct investment and financing for development

Part I: Trends: potential roles and prospects of alternative forms of finance

Mr. Semakula Kiwanuka, Minister of State for Finance, Planning and Economic Development, Uganda

Mr. Arvind Mayaram, Joint Secretary, Ministry of Finance, India

Mr. Michael Likosky, School of Oriental and African Studies, United Kingdom

Part 2: Financing infrastructure: how to maximize the viability and effectiveness of FDI, ODA and other channels

Ms. El Iza Mohamedou, Africa Forum for Utility Development, South Africa

Mr. Doug Brooks, Principal Economist, Asian Development Bank Institute

Mr. Osamu Odawara, Head, Sustainable Development Department, Mizuho Corporate Bank

Mr. Shigeru Kiyama, Resident Executive Director for Africa, JBIC, Japan

Mr. Nicolas Dutreix, Veolia Eau, France

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Item 4: Reports of expert meetings and of intergovernmental groups of experts

Expert meeting on development implications of international investment rule making

Mr. Pedro Luiz Dalcerro, Permanent Mission of Brazil

Expert meeting on comparing best practices for creating an environment conducive to maximizing development benefits, economic growth and investment in developing countries and countries with economies in transition

Mr. Emmanuel Farcot, Permanent Mission of France

6. The following experts participated in the session:

Mr. Glen Robbins, Advisor to UNCTAD Enterprise Division, University of Kwazulu-Natal, South Africa

Ms. Nan Hu, Mizuho Corporate Bank, Assistant Vice President, Tokyo