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Agenda item 8

**DRAFT REPORT OF THE COMMISSION ON INVESTMENT, TECHNOLOGY  
AND RELATED FINANCIAL ISSUES ON ITS SECOND SESSION  
(29 September - 3 October 1997)**

Rapporteur: Mr. Sek Wannamethee (Thailand)

Speakers:

|  |  |
|--|--|
| Chief, Investment Branch, ITED<br>(paras.2&14) | Luxembourg (for European Community)              |
| Chairperson Expert Meeting 1                   | Brazil (paras.11&22)                             |
| Chairperson                                    | Norway   |
| Secretary-General of UNCTAD                    | India  |
| Venezuela                                      | Chairperson Expert Meeting 2<br>(paras.16-18&26) |
| Morocco (for African Group)<br>(paras.7&21)    | Secretariat (paras.19&25)                        |
| Switzerland                                    | Kenya  |
| Japan  | Paraguay   |
|  | Zambia   |
|  | WAIPA  |

**Note for Delegations**

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

Requests for amendments to statements of individual delegations - to be submitted in English or French - should be communicated by Friday, 10 October 1997, at the latest to:

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Chapter III

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

(Agenda item 4)

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

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

General statements

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

3. The Chairperson of the Expert Meeting on Existing Agreements on Investment and their Development Dimensions introduced the Expert Meeting's report to the Commission. He explained that although the main topic of the debate had been bilateral investment treaties, the discussions had not focused on BITs *per se*, but rather on their relevance to a possible multilateral framework on investment and the development dimension of international investment agreements. Participants had discussed five basic issues: reasons for concluding BITs; issues addressed by BITs; experience with the application of BITs; the role of BITs in the development of national law and standards of international law; and the

development dimension. On the last point, he said that, in his view, the discussion had revealed serious concern about the failure of existing investment agreements to address development needs. He shared the view expressed in the Agreed Conclusions of the Expert Meeting, in which the participants stressed the need for further deliberations by the Commission on such questions as the type of provisions that contributed both to attracting FDI and to addressing development concerns; similar work should be undertaken in relation to existing regional and multilateral agreements. The international community would benefit from the Commission's further consideration of the development dimension in investment agreements.

4. The Chairperson of the Commission, introducing the Panel on Criteria to Test the Development Friendliness of International Investment Agreements, noted the increasing interest in considering the development impact of international investment treaties, which he attributed to the positive attitude of Governments towards inward and outward FDI. He introduced the panellists - Mr. Samuel K.B. Asante, Mr. Arghyrios Fatouros, Mr. A.V. Ganesan and Mr. Patrick Robinson.

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

6. The representative of Venezuela stressed his country's interest in participating in UNCTAD's discussions on international investment agreements and their development dimensions, stimulated by its efforts to gradually open up sectors closed to foreign investment. He shared the view that although bilateral investment agreements could contribute to attracting FDI, their impact was limited by the fact that they did not provide for active policies for the promotion of FDI or the transfer of technology. Moreover, he noted that weaker countries might be unable to influence a balance between the rights and

obligations provided for in such agreements. He expressed concern that some countries were ready to sign these agreements at the cost of waiving some their rights stipulated in other international treaties, for example in the area of intellectual property rights. Therefore, he agreed with the view that there was a need to harmonize the terms of the different international treaties. Venezuela sought advantages in the negotiation of a multilateral framework on investment, as this would increase the collective bargaining power of small countries and address their development concerns. In his view, one of the most interesting issues discussed at the Expert Meeting on Existing Agreements on Investment and their Development Dimensions (which was not reflected in the report) was the linkages between the obligations of the OECD countries emanating from the Multilateral Agreement on Investment and the commitments the same countries had undertaken in the WTO. In this regard, he noted with satisfaction that the benefits and privileges of the OECD instruments would be extended to third countries on an most-favoured-nation basis. He assured participants of his delegation's full and continued support for the work of the Commission and, in particular, for the idea of training courses for negotiators of international investment agreements, to be organized by UNCTAD in cooperation with other international organizations and with Governments.

7. The spokesman for the African Group (Morocco) noted that the globalization and liberalization of foreign investment had stimulated the interest of developing countries in negotiating international investment agreements, and participating in the WTO Working Group on the Relationship between Trade and Investment. Africa itself accounted for one-fifth of the bilateral investment treaties signed so far by developing countries. African countries participated in subregional, regional and interregional initiatives. He deplored the lack of an all-African investment instrument or investment forum, where a common position could be formulated. This was why, as the participants in the UNCTAD regional investment symposium in Fez in May 1997 had stated, it was so important to organize regional meetings in order to continue to analyse the development dimension of international investment treaties. At the Fez symposium, UNCTAD had been encouraged to explore the possibility of organizing a conference to focus on the needs of the least developed countries. In his view, UNCTAD should help developing countries to achieve full and effective participation in international negotiations. He underlined the usefulness of the technical paper series on issues relevant to international investment agreements, which was being prepared by the UNCTAD secretariat. He asked the secretariat to organize training courses on international investment instruments and seminars to follow up the successful Divonne seminars of 1996.

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

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

10. The representative of Luxembourg, speaking on behalf of the European Community, said that she shared the interest of many delegations in the topic under discussion, which had stimulated a rich exchange of views. As work progressed, it was becoming increasingly clear that there was desire by both developed and developing countries to continue to follow these discussions on investment very closely in international forums and, most particularly, in UNCTAD. She noted a number of concrete questions that emerged from consideration of the impact of existing agreements on the development process, namely the possibility of having specific provisions for foreign investors that compelled

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

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

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

13. The representative of India emphasized that the discussion under this item was the beginning of a process. The Commission had made a good start, and work needed to continue to look more deeply into the issue of investment and development. This issue had so far been sidetracked in debates in other forums.

He requested an inventory of the criteria mentioned in the discussions, to be made available so that they could be examined in member countries. India looked forward to hosting the regional seminar on international investment agreements early in 1998.

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

Chapter IV

**REPORTS OF THE SUBSIDIARY BODIES OF THE COMMISSION**

(Agenda item 5)

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

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

General statements

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

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

18. With regard to UNCTAD, it should provide technical assistance, particularly advisory services and training, in the following areas: identification of impediments to inward investment; elaboration and formulation of investment promotion strategies; investor targeting; establishment and development of industrial zones and sites; and establishment of information systems for investment promotion. On the last point, the classification of investment recipient countries should be based not only on the size of the investment received but also on other criteria such as the number of jobs generated by



investments, the increase in value-added production and increased exports. On investment statistics, greater harmonization and standardization were needed.

19. The representative of the UNCTAD secretariat said that the Expert Meeting had been enriched by the participation of a large number of practitioners from investment promotion agencies, as well as company representatives who had provided their perspectives on the locational decisions of investors. The Meeting had provided useful guidance for the work of the UNCTAD secretariat and had agreed that UNCTAD's Advisory Services on Investment and Technology could provide technical assistance in specific areas of investment promotion, as well as collaborating with UNIDO and MIGA. He thanked donors and UNDP for providing the extrabudgetary funds which had enabled UNCTAD to provide technical assistance in these areas for the past 20 years, and also the Swiss Government for its recent contribution to UNCTAD's Trust Fund through a newly established quick response window for technical co-operation projects. He called for the continuation of financial assistance from donor countries and UNDP. UNCTAD was ready to provide assistance to host countries in evaluating the costs and benefits of their incentive schemes. Finally, the discussion on outward investment promotion had shown that it would be useful to have another meeting on cooperation between inward and outward investment agencies, with more active participation by outward investment agencies.

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

21. The spokesman for the African Group (Morocco) said that his Group supported the recommendations of the Expert Meeting, as they represented elements of a package which would help improve the environment for attracting increased FDI. That was particularly important in Africa, which had the lowest rate of FDI. The Expert Meeting had recommended that UNCTAD adopt a new system of classification of FDI recipient countries, and that classification could be

useful not only in UNCTAD's analytical work (World Investment Report) but also in its technical assistance activities. Particular attention should be given to the least developed countries with regard to that classification, as well as for technical assistance. Finally, he supported the request of Kenya with regard to the identification of impediments to investment flows to Africa.

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

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

24. The representative of Zambia supported the statement of Kenya and emphasized the importance of taking advantage of the investment experiences of Asia and China, including Hong Kong.

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

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

Action by the Commission

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

Chapter V

**OTHER BUSINESS**

(Agenda item 7)

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