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First session
Geneva, 28–30 January 2013

Report of the Multi-year Expert Meeting on Investment, Innovation and Entrepreneurship for Productive Capacity-building and Sustainable Development on its first session

Held at the Palais des Nations, Geneva, from 28 to 30 January 2013

Contents

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I. Chair's summary

1. The Trade and Development Board, at its fifty-sixth executive session, decided that the Investment, Enterprise and Development Commission should convoke a multi-year expert meeting on investment, innovation and entrepreneurship for productive capacity-building and sustainable development. The first session of this multi-year expert meeting, which was held from 28 to 30 January 2013, addressed the issue of regional integration and foreign direct investment (FDI). In line with the Trade and Development Board's mandate, the session aimed at analysing the impact of regional integration, including subregional, regional and interregional initiatives, on investment flows and the integrating effects of regional investment clusters. Another objective of the meeting was to draw best practice policy lessons, including with regard to regional investment agreements, regional investment promotion and related implications for sustainable development.

2. The meeting brought together 155 experts, practitioners and delegates from 72 member States, 12 international organizations, 5 non-governmental organizations, the private sector and academia. It provided opportunities for officials and experts from the public and private sectors to explore different development-related facets of regional investment policies in an open debate at the multilateral level. Experts commended the UNCTAD secretariat for the background document (TD/B/C.II/MEM.4/2) and for the comprehensive, development-oriented and highly interactive approach of the meeting. Through its innovative format of deliberations, the meeting allowed participants to directly exchange experiences and views on key and emerging issues and best practices, guided by questions in five topic areas. Using this approach, the meeting achieved a type of interaction that could be labelled "collective advisory services".

A. Opening statement

3. On behalf of the Secretary-General of UNCTAD, the Director of the Division on Investment and Enterprise in his opening remarks presented the latest trends in global and regional foreign direct investment (FDI) flows. Some salient issues were also highlighted regarding the relationship between regional integration and FDI, including the investment-trade nexus.

4. FDI recovery was expected to take a longer time than previously expected, as global inflows declined by 18 per cent in 2012 to an estimated $1.3 trillion. After two years of recovery, FDI took a second dip in 2012, and was expected to recover only slowly in 2013 and 2014. Macroeconomic fragility and policy uncertainty following from a weakening macroeconomic environment and a number of perceived risk factors in the policy environment related to the Eurozone crisis, the fiscal cliff in the United States of America and changes of Government in a number of major economies contributed to the decline. FDI flows to developing economies, however, remained resilient, declining by only 3 per cent as compared with a decline of 32 per cent in developed countries. For the first time in history, FDI flows to developing countries exceeded those to developed countries (by $130 billion).

5. International investment policies faced a number of challenges. These included the notable absence of a multilateral investment system; the existence of a highly complex, multilayered and multifaceted international investment regime; inconsistencies between investment treaties; a lack of coherence between trade and investment policy; and a shift in the development paradigm which called for a model of investment for sustainable development. Many efforts towards regional and interregional economic integration were under way across the globe. While regionalization efforts could lead to increased cross-

border investment, there was still a need for a better understanding of the development impact of regional integration on FDI, and vice versa.

B. Informal discussions

6. The discussions of the expert meeting then, in an informal setting, focused on the relationship between regional integration and FDI and how it could contribute to sustainable development. The meeting addressed five themes in this regard.

C. Regional integration and foreign direct investment

(Item 3)

Theme 1
Regional integration and foreign direct investment: the trade and investment nexus

7. Experts discussed the relationship between regional integration and FDI, drawing on the experiences of economic regional integration in Africa, Asia, continental America and Europe, including the interregional integration dimension. It was noted that the lack of progress in multilateral rule-making in trade and investment had led to a renewed emphasis on regional economic integration in many parts of the world. Recent years had witnessed a growing number of investment agreements and free trade agreements, with investment chapters concluded at regional and interregional levels, including South–South and North–South agreements.

8. Some of these regional integration initiatives were more advanced, deeper and wider than others, and their experience in attracting FDI varied. Depending on the intensity, scope and strength of the arrangements, regional and interregional integration could have an impact on attracting FDI and on transnational corporation strategies, but regional integration did not necessarily result in more FDI. There was no clear causal link between regional integration and more FDI flows because many other factors also played a role as determinants of FDI. However, regional integration on the whole increased the attractiveness and competitiveness of a region for trade, investment and production. This was because regional integration, for example, increased the market size for investors, encouraged harmonization efforts, eliminated trade barriers and could improve infrastructure development within the region, including through the convergence of regulatory systems, thereby resulting in economies of scale and a reduction in transaction costs.

9. Participants acknowledged that there was a distinction between the effects of regional integration on extraregional FDI flows and its effects on intraregional FDI flows. Regional integration tended to promote primarily FDI flows into a region, thereby providing foreign investors with larger, more attractive markets. This was the case particularly in services and in some areas of manufacturing such as the automotive and electronics industries. Regional integration could also bring about a consolidation effect on FDI flows or the rationalization of the operations of transnational corporations (TNCs) within a region. Evidence of more FDI as a result of regional integration was more mixed as far as intraregional FDI flows were concerned. Regional integration did not necessarily provide an incentive for established firms (domestic or foreign) to move to other members of a region because the regional market could be served from existing locations.

10. Experts agreed that policy mattered in increasing the effectiveness of regional integration and promoting FDI. Promoting intraregional and extraregional FDI flows required a minimum level of harmonization of the regulatory framework for FDI between members of regions, including possibly with regard to competition policies. This needed to

be backed by effective monitoring mechanisms to ensure the implementation of integration commitments by member countries. There was also a need to pay attention to increased competition between members of a region to attract FDI and there could be demands to compensate the "loser countries" in a region that did not equally benefit from FDI inflows. Another concern was related to in which policy areas and to what degree regional integration should be deepened. The deeper the integration, the greater were the likely effects on FDI inflows. This was confirmed by the fact that foreign investors preferred investment projects with a regional link.

11. Policymakers also needed to consider industry and sector dynamics in their regional approach to FDI. Different industries provided different opportunities and challenges for integration efforts. Close attention needed to be paid to encouraging industrial upgrading in industries where countries had competitive advantages. One challenge in this regard was fostering linkages between regional FDI and local companies, for instance, through cluster programmes. There was also a need to be aware of the potential double role of TNCs in regional integration, as they could be both a promoter and a stumbling block in this regard.

12. Several delegations called for a deeper analysis of the relationship between regional integration and FDI. Informed policymaking benefited from a solid analytical framework, systematic assessment with reliable indicators and a set of best practices to analyse the implications of regional integration for FDI, and vice versa.

Theme 2
Regional value chains for productive capacity-building

13. Experts discussed how regional integration policies influenced transnational corporation strategies with regard to regional value chains. Regional integration encouraged TNCs to adopt a strategy of regional production networks rather than a single country model, based on differences in cost and resource endowments, facilitated by tariff reduction within a region. Aside from an increase in FDI flows per se, regional integration had an impact on how TNCs operated in a region and how they linked their local operations to their international value chains. TNCs could use regional production networks to specialize their various plants in the production of a particular segment of a value chain through integrated and coordinated multi-plant operations. Regional production networks were particularly prevalent in areas such as the automotive industry, banking, computer hard disks, consumer electronics, creative software, garments, semiconductors, agriculture and agribusiness.

14. Promoting regional value chain development could require domestic trade reform as well as regional trade and investment liberalization and facilitation, including through an enabling regional institutional environment. Related issues in this regard included subregional cooperation – e.g. through transboundary trade and investment zones – and the promotion of joint ventures, mergers and acquisitions, business linkages and technology transfer. A special focus should be given to the integration of small and medium-sized enterprises (SMEs) into value chains through productive capacity-building and upgrading. Many SMEs did not have the expertise to internationalize through global value chains. Thus, they could opt for regional integration as a means to internationalize and seek to take advantage of cross-border movements and cheaper costs.

15. Trade liberalization agreements should not only focus on customs and duty issues, but should also cover more comprehensive reforms that sought the effective integration of markets in order to promote value chains (e.g. trade facilitation, customs reform, legal security and combatting corruption). One expert reported on country strategies in the context of the Pacific Alliance which identified promising industries for value adding in value chains and aimed at public–private cooperation in developing such industries. One

goal of this cooperation was to identify and develop complementary industries in partner countries for value chain clustering.

16. Experts agreed that there was a need for regions to develop strategies and programmes to help local subsidiaries deepen their integration into industry-specific value chains or clusters. This required proactive promotion programmes, including through regional development banks. Policies included the availability of financing options to support companies within a region to move towards a regional focus. There was also a need for countries to focus more on local conditions and look at the two ends of value chains when developing value chain strategies. The intention should be to reap benefits through a strategy that started from lower levels and moved to higher levels of the value chain, while at the same time being conscious of the need to make choices to target specific sectors and avoid others (e.g. pollution-intensive activities).

17. Regional value chain integration meant that the export success of some members of a regional grouping could rely on imports from other members within the same region (e.g. in the automotive and high-tech industries). Trade policies mattered deeply in developing internal value chains, but also in attracting major TNCs from outside a region into the region. Thus, there was a need to promote open trade beyond the region, as value chain integration often had an interregional or global dimension (e.g. regional brands could later be used to penetrate into global value chains).

Theme 3
Regional integration and policy coherence

18. Participants concurred that achieving policy coherence in regional integration processes posed formidable challenges. First, there was ample room for incoherent policies among members of a region and even within individual countries. Unlike in trade, there was no common anchor for investment policies since they fell outside of the scope of the framework of the World Trade Organization (WTO) and there was no multilateral investment instrument. Coherence problems could exist at various levels, including the local, national and regional levels.

19. At the domestic level, a lack of coordination between national and local authorities was a key problem. At the regional level, common programmes might not be effectively implemented and monitored, and coherence could be in conflict with particular national interests. There was also the problem of establishing coherence between international agreements, for example, international investment agreements. In addition, coherence could also be an issue for interregional cooperation.

20. A second policy challenge referred to the need to identify, from a national point of view, where more coherence and coordination was desired or needed. Coherence was not a goal in itself, but rather a means to an end. Complete coherence could be neither needed nor desirable, as it could impede healthy competition among different countries in the region. There was, however, a need to ascertain how States within the same region differed in terms of economic development. Some experts observed that variations within countries in a region risked aggravating the potential for uneven development at the country level. Equally important, the move towards more policy coherence should not unduly restrain the policy space for members of the region to pursue their individual development agendas, for instance, by way of country-specific reservations in international investment agreements. This called for a careful ex ante risk assessment of integration policies and underlined the importance of technical assistance and capacity-building for policymakers of developing countries in this respect.

21. Several experts emphasized that the coordination of investment policies was a starting point, but there were many more policy areas in which more coordination between

the members of a region could be envisaged. Examples included competition policies, industrial policies, infrastructure development, corporate law, intellectual property, labour and environmental regulations.

22. Many participants agreed that identifying possible policy areas where more coherence was wanted required a comprehensive policy and strategy review with coordination between all relevant government entities. At the regional level, the development of a shared vision at the pan-African level was an encouraging example. The involvement of the private sector, as well as other stakeholders, was critical, although it could also give rise to calls for protectionism.

23. Policy coordination should not be limited to traditional investment promotion and protection, but also included strategic policy tools, such as the upgrading of productive activities in the host countries, the attraction of quality investment through common impact assessments and the transfer of skills. It was also suggested that a sectoral approach could be taken, as different industries could have different coherence needs, such as education and skills development for services and infrastructure development for agriculture.

24. A third challenge discussed during the meeting referred to the steps to be taken concerning the depth and breadth of policy harmonization. It was critical that a given region had a clear perception of how it wanted to design the relationship between national and regional policy frameworks; it was also essential that members of a region were truly committed to integration. Solid common institutions with well-defined competences were crucial as engines of integration. Regional investment policies generally did not provide for the full harmonization of national investment policies in the sense that investors would find equal investment conditions in each member country of a region. In numerous regional integration initiatives, such as the Andean Community, coherence was actually comparatively low. In others, such as the South Asian Association for Regional Cooperation, it had advanced considerably in trade in services. In the case of the Southern Common Market, consistent and coherent national policies could make the need for regional harmonization less urgent. Other regions either had no common rules or these were not always well developed and could lack enforceability. However, the absence of a common regulatory framework could at least be partially compensated by a common investment strategy for the region. The most advanced region with regard to policy coherence was the European Union. As a result of the European Union’s supranational character, its rules prevailed over conflicting national provisions, thereby effectively establishing policy coherence in policy areas falling under the European Union’s competence.

25. Several experts pointed out that achieving more policy coherence was a gradual and sequential process. Legal and institutional changes took time to materialize and there was a need for Governments to communicate the benefits of more coherence to the public in order to secure its ongoing support. The development of model agreements, such as the Southern African Development Cooperation (SADC) model, could provide important guidance in this process. Other regions, however, had not yet succeeded in creating model agreements. For instance, the Common Market for Eastern and Southern Africa lacked a model treaty and relied on a regional framework to negotiate with third countries. Speakers referred to the UNCTAD investment policy framework for sustainable development (IPFSD) as a useful tool for the development of model treaties and model investment chapters in regional trade agreements.

Theme 4
Regional integration and sustainable development

26. Participants broadly shared the view that more prominence should be given to sustainable development in regional development strategies. Currently, sustainable

development was primarily an issue for domestic policymakers. However, there was also considerable room for more regional cooperation in this policy area.

27. At the domestic level, sustainable development could be fostered in numerous ways. Some examples of how to foster sustainable development were by promoting sustainable and energy-efficient FDI; establishing mechanisms for sustainable development impact assessments and pre-investment screening mechanisms; strengthening the general regulatory framework with regard to environmental and social protection; and vigorously enforcing respect for human rights. Long-term thinking as well as a constructive dialogue with civil society needed to be actively promoted.

28. Some experts emphasized that there was a case for promoting sustainable development in value chains and for helping developing country SMEs to comply with corporate social responsibility and consumer standards in developed countries. Emphasis should also be put on the sustainable development aspects of promoting outward investment, for instance through policies on joint ventures and related knowledge transfer. Furthermore, there was a need to improve the tools of domestic authorities to assess the effectiveness of existing investment promotion programmes aimed at sustainable development and related public expenses.

29. Overall, there was a shared view that countries needed policies with a stronger focus on the quality of investments rather than only looking at quantitative aspects. At the same time, developing countries needed to pay attention so that they remained attractive to foreign investment and there was no intraregional competition for FDI by lowering environmental or core labour standards.

30. Participants agreed that there was room at the regional level for cooperation to supplement and reinforce national efforts to strengthen the sustainable development dimension of investment. Potential policy areas for such cooperation included climate change and clean energy, sustainable transport, sustainable production, the conservation and management of natural resources such as land and water, public health, social inclusion and poverty reduction. To this end, it was important that authorities promoted the integration of economic, social and environmental considerations into the investment policies of members of a region, promoted education, research and public finance as important instruments for a transition to a more sustainable development path and enhanced corporate social responsibility initiatives and public–private partnerships.

31. Cross-border environmental pollution was one situation that required a regional response. There was also significant potential for regional cooperation in the exploitation of natural resources. An example referred to was cooperation in hydropower generation between Bhutan and India, and possibly Bangladesh. Other countries in the Himalayan region cooperated with regard to improving food security. The Common Market for Eastern and Southern Africa had a ministerial coordination programme on agriculture, environment and natural resources. Sustainable development was also a topic in the Euro-Mediterranean Partnership. Another suggestion was to establish common transboundary zones for sustainable development purposes.

32. Many experts proposed that more weight should be given to sustainable development in international investment agreements. This included, for example, more promotion of sustainable investment and a greater emphasis on social and environmental concerns in relation to FDI. It was particularly important that international investment agreements did not unduly limit the policy space for members of a region, thereby potentially constraining national efforts to foster sustainable development. There were several examples from international investment arbitration practice where foreign investors had sued the host country because they considered that policy measures aimed at sustainable development violated obligations under international investment agreements

(such as the fair and equitable treatment standard or the expropriation clause). These problems demonstrated the importance of drafting international investment agreement provisions carefully so that they did not overly constrain the regulatory space for host countries.

33. Many participants suggested establishing a model investment treaty for developing countries that specifically focused on the needs of capital-importing countries, maximized development benefits and had a sustainable development dimension. The UNCTAD IPFSD and the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework were referred to as useful platforms to enhance the international discussion on how to promote sustainable development. The SADC model treaty was referred to as another example, as well as several side accords of the North American Free Trade Agreement that focused on the environmental and social aspects of investment. A crucial distinction was made between legally binding and non-binding regional investment instruments, as the latter type of agreement gave members of a region more flexibility and time to achieve regional standards.

34. Finally, several speakers pointed out that regional cooperation for sustainable development required some type of institutional mechanism. Such a mechanism was needed as a discussion forum to set up and implement regional strategies and programmes and to monitor and follow up integration activities. In this respect, regional cooperation could range from relatively loose forms of coordination focusing on a mere consultative function, to strongly formalized cooperation with the decision-making powers of an institution.

Theme 5
The way forward

35. There was consensus that it was more important than ever to review the relationship between regional integration and FDI and set the two on a positive course towards sustainable development and inclusive growth. Delegates concurred that regional integration could serve as an important building block for international cooperation. There was a need to work with each other and gatherings such as the multi-year expert meeting provided a good example of such collaboration, including through the sharing of experiences and best practices and by providing impetus for thinking about further work in this area. Supported by further research, such processes could help foster the role of "hubs and spokes", increase the investment-creation effect and decrease the investment-diversion effect of regionalism and bring larger regional integration organizations together, ultimately jump-starting multilateral processes (including the WTO Doha Round).

36. Many experts referred to the UNCTAD IPFSD as offering a ready-made checklist of best practices for investment policymaking at all levels. While the IPFSD gave concrete guidance on national and international policies, many of these elements were also of direct relevance to regional investment policymaking. The IPFSD's eleven core principles, which outlined key areas of policy action, were considered useful in this regard. With respect to international investment agreements, experiences such as those from the SADC region could provide useful guidance. Experts felt encouraged to consider the IPFSD in the design of their future investment policy initiatives. The models for international agreements of countries and regions should remain flexible, so as to take into account the most recent developments.

37. Participants agreed that regular reviews of the economic, policy and legal developments in investment regionalism could help ensure informed policymaking. It was suggested that this could be based on regular reporting by regional integration initiatives. If undertaken in the context of UNCTAD, this could help identify gaps, overlaps and inconsistencies. In this context, experts encouraged UNCTAD to carry out research on the

conditions that led to balanced and sustainable development outcomes based on a review of different groupings and experiences. South Asia and Latin America (e.g. the Andean Community and the Southern Common Market) were suggested as areas of study, including for the identification of the factors that led to cooperation, synchronization and subsequent increased FDI flows or the absence thereof. A mapping of regional investment initiatives, building on UNCTAD's regular reporting on investment policies, could also be a useful starting point and platform for engagement with member States. The experience of the Pacific Alliance, for example, could likewise offer important insights for non-member countries.

38. Developing tools for assessing investment policy effectiveness was crucial. These tools would have to address complex issues such as the impact of regional integration on foreign investment that enhanced sustainable development. Similarly, research could look at the impact of firm activities, including large-scale projects and those in sensitive areas such as mining and agriculture.

39. In this context, experts called for further work on the conceptual framework and improved data collection on foreign investment, including at the subsidiary level and by firms in developing countries, to fill information gaps. This would help to create an understanding of the development impact of value chains and the relationship between different levels of policymaking and sustainable development. South–South investment, the role of developing country outward investment and the impact of outward investment on home countries were mentioned as areas for further research. There was a call for looking at the institutional development of host countries, including regional platforms. Conflict zones, as they could affect FDI flows, offered specific challenges in this regard.

40. Cooperation between international agencies, including between UNCTAD and the International Trade Centre, on such issues as research on practical tools for firms to increase their trade-investment synergies could help boost the capacities of host countries for value creation and value retention. Other suggestions made by experts for further work by UNCTAD included the issues of taxation and transfer pricing. For instance, double taxation treaties were important for regional and multilateral processes as they could contribute to the efficiencies of value chains. The expansion of these bilateral treaties to trilateral or even multilateral taxation treaties was an important consideration not only in the context of value chains, but also in regard to the interaction between bilateral, regional and multilateral processes. Another issue in this regard was transfer pricing, where adequate regulations were needed in order to ensure that developing countries received a fair share of the economic rent from FDI activities. More research by UNCTAD in these areas was needed, including through building on synergies with other international organizations that have addressed these topics (e.g. the Organization for Economic Cooperation and Development). Finally, experts approved the idea of preparing a list of "dos and don'ts" in regional investment policymaking that reflected best practices and lessons learned.

41. Participants appreciated the rich discussions, as well as the open dialogue among member States, experts and civil society, which they considered as evidence of the importance and timeliness of the meeting.

II. Organizational matters

A. Election of officers

42. At its opening plenary meeting, the multi-year expert meeting elected the following officers:

Chair:	Mrs. Jolaade Adekola Orimoloye (Nigeria)
Vice-Chair-cum-Rapporteur:	Ms. Mihoko Saito (Japan)

B. Adoption of the agenda and organization of work

43. At its opening plenary, the multi-year expert meeting adopted the provisional agenda for the session (contained in TD/B/C.II/MEM.4/1). The agenda was thus as follows:

1. Election of officers
2. Adoption of the agenda and organization of work
3. Regional integration and foreign direct investment in developing and transition economies
4. Adoption of the report of the meeting

C. Outcome of the session

44. At its closing plenary meeting on Wednesday, 30 January 2013, the multi-year expert meeting agreed that the Chair should summarize the discussions (see chapter I).

D. Adoption of the report

45. Also at its closing plenary meeting, the multi-year expert meeting authorized the Vice-Chair-cum-Rapporteur, under the authority of the Chair, to finalize the report after the conclusion of the meeting.

Annex

Attendance*

1. Representatives of the following States members of UNCTAD attended the session:

Algeria
Angola
Austria
Bangladesh
Barbados
Belarus
Belgium
Benin
Bhutan
Brazil
Burkina Faso
Cambodia
Canada
Chad
China
Colombia
Comoros
Côte d'Ivoire
Democratic Republic of the Congo
Djibouti
Dominican Republic
Ecuador
Egypt
Ethiopia
Germany
Haiti
Honduras
Hungary
Indonesia
Iran (Islamic Republic of)
Ireland
Italy
Jamaica
Japan
Jordan
Kenya
Lithuania
Malaysia
Maldives
Mali
Mauritius
Mexico
Morocco
Mozambique
Myanmar
Namibia
Nepal
Netherlands
Nigeria
Pakistan
Panama
Peru
Poland
Republic of Moldova
Romania
Russian Federation
Saudi Arabia
Seychelles
Singapore
South Africa
South Sudan
Spain
Switzerland
United Arab Emirates
United Kingdom of Great Britain and Northern Ireland
United States of America
Uruguay
Viet Nam
Zambia
Zimbabwe

2. The following observer attended the session:

Holy See

* This attendance list contains registered participants. For the list of participants, see TD/B/C.II/MEM.2/Inf.1.

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

African, Caribbean and Pacific Group of States
African Union
Common Market for Eastern and Southern Africa
European Union
Organisation internationale de la Francophonie
Organization of Islamic Cooperation

4. The following United Nations organs, bodies or programmes were represented at the session:

Economic Commission for Europe
Economic and Social Commission for Asia and the Pacific
International Trade Centre
Office of the United Nations High Commissioner for Refugees

5. The following specialized agencies and related organizations were represented at the session:

World Health Organization
World Trade Organization

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

General category

Arab Non-Governmental Organization Network on Development
International Institute for Sustainable Development
International Organization of Employers
Organisation pour la Communication en Afrique et de Promotion de la Coopération Économique Internationale
Third World Network

Special category

World Association of Investment Promotion Agencies