

SECOND COMMITTEE: ECONOMIC DEVELOPMENT

SUB-COMMITTEE B ON ARTICLE 12 - INTERNATIONAL INVESTMENT FOR
ECONOMIC DEVELOPMENT

Report of the Working Party on Article 12

1. At its Fifth Meeting the Sub-Committee appointed a Working Party consisting of the delegates of Australia, India, Mexico, the Netherlands and the United States of America with the following terms of reference:

"To prepare an agreed text of Article 12 on the basis of the Australian redraft, taking into account the proposed amendments to this redraft and other relevant amendments proposed to Article 12."

(The Australian redraft appears in document C.2/B/W.7/Corr.1.)

2. The Working Party has agreed unanimously on the text of Article 12 which appears at the end of this report.

The Working Party took into account the fact that acceptance of the Australian redraft of Article 12 as a basis of discussion had been regarded by certain Members of the Sub-Committee as disposing of their proposed amendments to Article 12, and it considered that other amendments to paragraphs 1 and 2 of Article 12 not so disposed of were taken into account or disposed of by the text of Article 12 which appears below.

In the course of its deliberations the Working Party also took into consideration the amendments of Peru (document C.2/9/Add.5) and Chile (document C.2/9/p.19) which refer in part to aspects of foreign investment not directly covered by the Australian redraft of Article 12. It was agreed that the provisions of these amendments were in part covered by the provisions of Article 11 and for the rest generally covered by the text which appears below.

The Working Party did not consider paragraph 3 of the Geneva text, as it was agreed in the Sub-Committee to retain this paragraph as it appears in the Geneva Draft (see notes of Fifth Meeting of Sub-Committee B, document C.2/B/W.10).

3. The Working Party agreed that the following interpretation should be given to paragraph 1 sub-paragraph (c) (iv) of Article 12.

/"The requirements

"The requirements referred to in paragraph 1 sub-paragraph (c) (iv) may, provided they are reasonable, relate either to foreign investments only or to investments generally."

4. The Working Party also agreed that the language of paragraph 1 sub-paragraph (c) (ii) means that a country has the right completely to exclude future foreign investments.
5. The Indian delegation reserved its position on paragraph 2 of the text, pending instructions from its Government.
6. The text of Article 12 as agreed by the Working Party and including paragraph 3 of the Geneva text is as follows:

"ARTICLE 12

INTERNATIONAL INVESTMENT FOR ECONOMIC DEVELOPMENT

1. The Members recognize:
 - (a) that international investment, both public and private, can be of great value in promoting economic development and consequent social progress;
 - (b) that the international flow of capital will be stimulated to the extent that Members afford nationals of other countries opportunities for investment and security for existing and future investments;
 - (c) that, without prejudice to existing international agreements to which Members are parties, a Member has the right
 - (i) to take any appropriate safeguards necessary to ensure that foreign investment is not used as a basis for interference in its internal affairs or national policies;
 - (ii) to determine to what extent and upon what terms it will allow future foreign investment;
 - (iii) to prescribe and give effect on just terms to requirements as to the ownership of existing or future investments;
 - (iv) to prescribe and give effect to other reasonable requirements with respect to existing and future investments
 - (d) that the interests of Members whose nationals are in a position to provide capital for international investment and of Members who desire to obtain the use of such capital to promote their economic development may be promoted if such Members enter into bilateral or multilateral agreements relating to the opportunities and security for investment which the Members are prepared to offer and any limitations which they are prepared to accept of the rights referred to in sub-paragraph (c) of this paragraph.
2. Members therefore undertake:
 - (a) Subject to paragraph 1 sub-paragraph (c) of this Article and any agreements entered into under paragraph 1 sub-paragraph (d)
/to provide

to provide reasonable opportunities for investments and adequate security for existing and future investments and, as far as possible, to avoid discrimination as between foreign investments;

(b) Without prejudice to existing international agreements to which Members are parties upon the request of any Member to enter into consultation or to participate in negotiations directed toward the conclusion, if mutually acceptable, of an agreement of the kind referred to in paragraph 1 sub-paragraph (d) of this Article.

3. Members shall promote co-operation between national and foreign enterprises or investors for the purpose of fostering economic development in cases where such co-operation appears to the Members concerned to be appropriate.
