

SECOND COMMITTEE: ECONOMIC DEVELOPMENT

ARTICLE 12 - INTERNATIONAL INVESTMENT FOR ECONOMIC DEVELOPMENT

Informal Analysis of Amendments Prepared by Secretariat

Analysis of Amendments Submitted to Article 12

The most far reaching amendments are those proposed by India (page 24)* and Burma (page 24) for deletion of the entire Article.

The United States has proposed a redraft of the entire Article which attempts to meet many of the points raised by the other delegations. The text and explanatory notes thereto are given in document E/CONF.2/C.2/B/W.5. Fundamental proposals on paragraph 2 have been made by Ceylon, Venezuela and Uruguay (page 16). It is suggested that the United States redraft be used as a basis for discussion in the Sub-Committee as many delegations may wish, in the light of the redraft, to take up different positions from those so far adopted. Further procedure would then depend on the Sub-Committee's decision on the redraft although it is in no way intended that the redraft shall prejudice any amendments which have as yet not been discussed.

Paragraph 1

1. Uruguay (page 14) has proposed to retain only the first part of the first sentence and to delete the remainder of paragraph 1.
2. Pakistan (page 13) has proposed to introduce a principle of safeguarding countries receiving foreign investments against "economic exploitation".
3. Peru (E/CONF.2/C.2/9/Add.5 and Add.5/Corr.1) has proposed the insertion of a new sentence setting forth some additional conditions under which foreign investment should be made.
4. Norway (page 13) has proposed a drafting amendment to the second sentence of paragraph 1.
5. There is a group of amendments, all of which affect the last sentence of paragraph 1:
 - (a) Czechoslovakia and Venezuela (page 15) propose to delete the last sentence.
 - (b) Mexico (page 21, paragraph 1), proposes to amend the last sentence

* This and subsequent page references are to E/CONF.2/C.2/9, unless otherwise stated.

/to include

to include the phrase "consistent with the limitations of their legislation".

(c) Pakistan (page 14) proposes to change "widest" and "greatest" to "reasonable" and "adequate".

(d) Argentina (page 15) proposes to qualify the last sentence by the phrase "so far as is possible".

6. Amendments affecting the principle of the last sentence of paragraph 1 have been proposed by Ceylon (page 13) and New Zealand (page 16). These two amendments would stress that the provisions of Article 12 in no way limit the rights of governments receiving foreign investment to require the obtaining of their approval or consent for investments which may be made in their territories.

7. Afghanistan (page 16) proposes an amendment which is intended to be an amendment to the United States proposal for the deletion of the present paragraph 2. If paragraph 2 were deleted, Afghanistan proposes to shift the substance of sub-paragraph (iii) of paragraph 2 to the end of paragraph 1. Consideration of this amendment should be deferred until the conclusion of the discussion on paragraph 2.

8. The United States amendment (page 14), to paragraph 1, is a minor drafting change which would be consequential on the adoption of the United States amendment to paragraph 2, and should be considered after the discussion of paragraph 2. Both this and the following amendment would be superfluous if the United States redraft of the whole Article were adopted.

Paragraph 2

The original United States amendment (page 17) proposed the deletion of paragraph 2 and the substitution of an obligation of Members to enter into negotiations for bilateral agreements to give effect to the principles of paragraph 1.

The delegations of Ceylon, Venezuela and Uruguay (page 16) propose to delete the paragraph. The proposed Mexican amendment to Article 12 (page 21) also involves the deletion of paragraph 2.

If any of the above-mentioned amendments is adopted the Argentine amendments to paragraph 2 (page 17, 18 and 19), as well as the amendments of Sweden (page 18) and Denmark (page 19) and Pakistan (E/CONF.2/C.2/9/Add.4/Corr.3 page 2) would no longer be required.

Note should also be taken of the proposal of the International Chamber of Commerce recommending the deletion of paragraphs (i)-(iv) inclusive, which limit the principle of national and most-favoured-nation treatment for foreign investments. (See document E/CONF.2/14).

Paragraph 3

Four alternative amendments have been proposed:

/(a) Uruguay

- (a) Uruguay (page 20) proposed to delete the paragraph.
- (b) Chile (page 20) proposes to amend the paragraph by strengthening the support for participation of local capital in enterprises financed partially by foreign capital.
- (c) Paragraph 4 of the proposed Mexican amendment (page 23) is in effect an amendment to paragraph 3 of Article 12.
- (d) The Mexican amendment to Article 11 (page 9) also should be taken up in connection with paragraph 3, if it has not previously been disposed of, since it also deals with the organization of joint enterprises.

Proposed Additions to Article 12

Mexico (page 21) has proposed four paragraphs to replace Article 12. Paragraph 1 of the Mexican amendment has been considered in connection with paragraph 1 of Article 12. Similarly, paragraph 4 of the Mexican amendment has been considered in connection with paragraph 3 of Article 12.

Paragraphs 2 and 3 of the Mexican amendment cover new subjects not now dealt with in Article 12, relating respectively to the legal status and diplomatic protection of foreign investments and to the transfer of income from foreign investments.

Chile (page 19) has proposed an amendment to facilitate undeveloped countries to obtain loans from Members with favourable balance of payments.

Chile (page 20, bottom) has also proposed that the ITO should establish organs "to effect contact between capitalists...and enterprises requiring capital. This amendment and the additional paragraph on taxation proposed by Costa Rica (page 21) have been referred to the Joint Sub-Committee of Committees II and VI.

Proposed Deletion of Article 12

See the amendments of India and Burma (page 24), referred to above.

The delegation of Brazil have stated that they would favour the adoption of a set of principles regulating foreign investment. They would, however, also support the United States amendment to paragraph 2 if the word "may" were substituted for the word "shall" with a consequential change in the wording of paragraph 1.
