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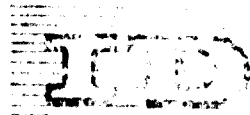
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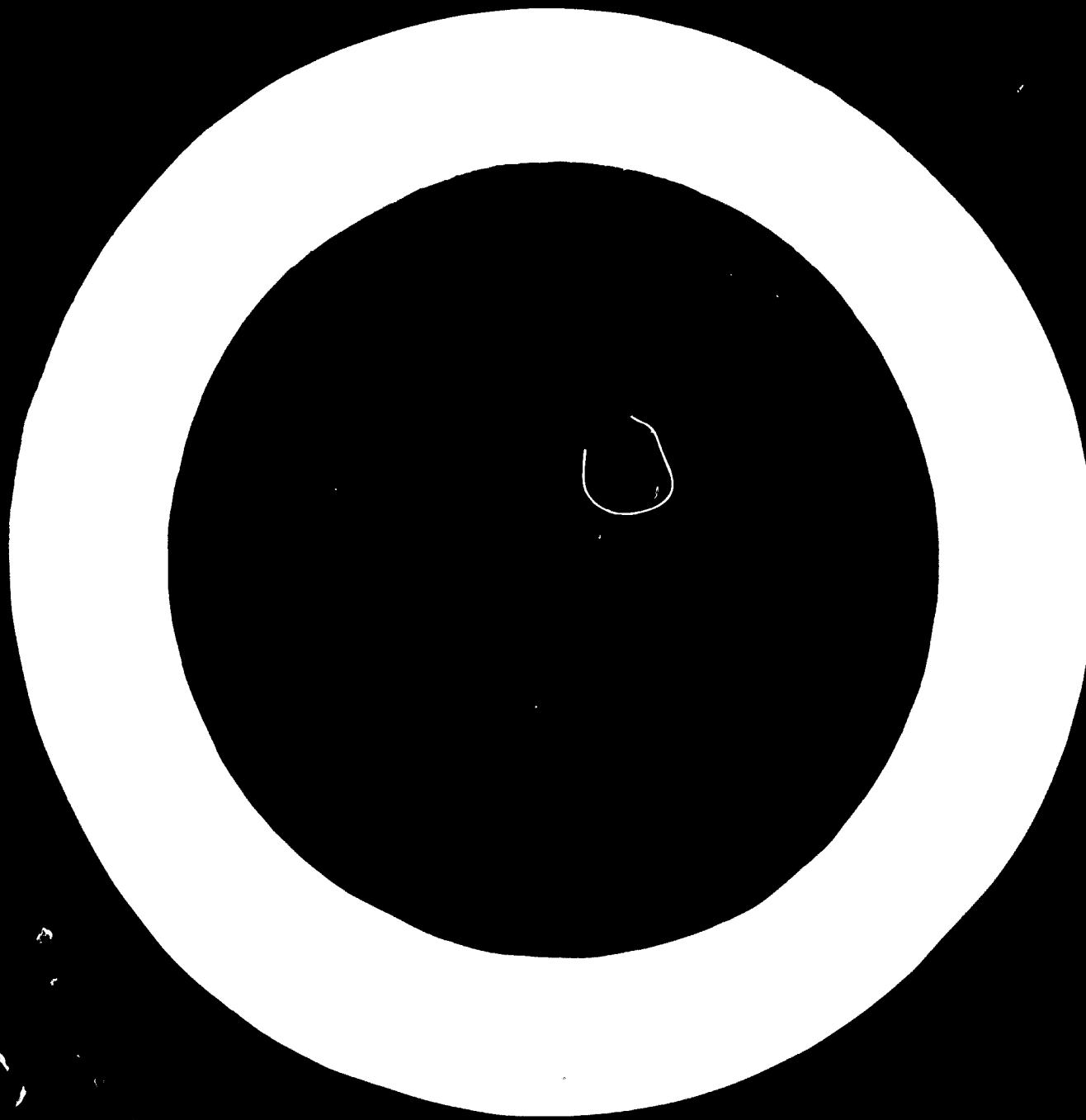
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MEASURES TO FACILITATE FOREIGN INVESTMENT^{1/}

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ANNEXURE TO THE REPORT OF THE COMMITTEE ON FOREIGN INVESTMENT

Factors for consideration

1. The Committee has considered the various factors which should be taken into account in the award of foreign economic information and the manner in which the Government should exercise its discretion in the award of such information.

2. The Committee has also considered the various factors which should be taken into account in the award of such information.

1. ECONOMIC INFORMATION

1. It is generally recognized that the high rate of economic growth in most developing countries is in order to level the playing field for a satisfactory rate of economic growth. International organizations are therefore needed to assist in the development of such countries. Most developing countries recognize the need in some instances for foreign investment in the form of technical and managerial assistance and managerial skills. Such assistance is a way of meeting such needs.

2. The purpose of this paper is to discuss the measures which a country will have to attract foreign investment and take steps to attract an inflow of foreign investment into an industrial program. It is these measures and the inter-related with the other measures of foreign investment considered in earlier Issue Papers. Their incentive effect depends on the extent to which they reduce the foreign investment and minimize the risks involved in the eyes of potential investors.

II. SUMMARY OF THE MAIN FINDINGS

3. A range of issues arise when a country is seeking to attract foreign investment. This review is intended to discuss the measures which can be taken to facilitate foreign investment. This review is intended as far as possible under the following headings:

A. What of foreign investment and the investment risk?

(1) See preface to this UNCTAD publication (United Nations Conference on Trade and Development, Secretariat, Geneva, 1978) and Social Affairs, 15 January, 1978.

10. What measures can be taken to facilitate
Foreign investment?

11. How often should influence the decision of
a local investor?

12. What different forms can foreign investment take?

12.1. The role of investment in the development of a developing
country in the framework of different forms:

- (i) Direct investment with foreign control of
the enterprise;
- (ii) A joint venture between local and foreign
partners;
- (iii) Portfolio investments in the form of equity
shares or loans;
- (iv) In addition international financial
institutions and Governments sometimes
channel funds for investment in industrial
projects through a local industrial financing
institution.

12.2. The advantages of the joint venture form or direct investment
with foreign control of the enterprise is that a foreign enter-
prise brings industrial experience, technology, and managerial skills
and is fully involved in the operations of the project. Fort-
nally investment and funds channelled through financial institu-
tions for on-lending to industrial projects usually only contribute
to a greater volume of financial resources available for industrial
investment. The issue arises: Which of these forms is the most
favourable for a developing country? A further point can be
considered at this point. The background figures show that some
developing countries have financed direct investments in which a
foreign element is granted a majority part of the investment. The issue
is: Can local financial forms be investors be improved by rapid
expansion of the market?

12.3. Many developing countries today face heavy external debt
situations. It is generally recognized that the cost of

servicing foreign investments in industrial projects over a period of years thus can be said to have the desired effect of encouraging investment in industrial projects. The participation of such funds in the industrial sector is an important feature of the industrial sector of developing countries and is a natural branch in the flow of foreign investment.

7. Measures to facilitate foreign investment can be taken in the form of:

7. Measures to facilitate foreign investment can be taken in the form of:

- (i) An adequate legal framework;
- (ii) Assurances and guarantees;
- (iii) A favourable policy in the repatriation of capital and dividends;
- (iv) Favourable treatment under international tax agreements;
- (v) Favourable labour employment of foreign workers;
- (i) An adequate legal framework

8. The existence and effective operation of a suitable legal framework can facilitate the operation of foreign investors in developing countries. There are two aspects to the legal framework. The first is the set of general laws and regulations under which both domestic and foreign investors must operate. The second is a special set of rules applicable to foreign investors.

9. In many developing countries, the second set of rules is enacted under a Foreign Investment Law which deals with the rights of foreign investors. Such laws usually indicate that foreign investors will be granted the same conditions and incentives as domestic investors. In addition, a number of the considerations listed below are included.

10. The issue arises: is the establishment of a suitable legal framework including a clear policy statement of incentives affecting foreign investors an essential pre-condition for attracting foreign investment?

14. Assurances and guarantees

The foreign investment laws of some developing countries provide assurances, either that the Government will not expropriate the investments or, if this is proved necessary in the case of national interest (or some similar phrase), adequate compensation on a fair and equitable basis (or some similar phrase) will be paid on the issue arises. 1. What minimum guarantee should be provided if expropriation or nationalization under a nationalizable host Government, the Government of the country through the foreign investor is required?

2. In what cases such guarantees have been given. Japan, the United States of America, and a number of European countries, have signed bilateral investment guarantee agreements with a number of developing countries. 3. Issue arises: do these treaties give effective added security to the foreign investor?

3. The assurance which some businessmen in the industrially advanced countries have attached to bilateral investment insurance schemes has led to the study of other multilateral schemes. Without going into details here, an issue of principle can be raised: 4. Is it desirable that further action in this field be conducted on a multilateral basis?

4. These investment guarantee treaties are frequently a pre-condition for the Government of an industrially advanced country offering to allow investments made by its own business enterprises in the relevant developing country. The oldest and largest of these multilateral schemes program is operated by the United States of America and Japan, the Federal Republic of Germany, and more recently Canada, Korea and Denmark offer similar programmes. The issue arises: 5. How can the assurance be provided in these programmes a minimum level of facilities for investment? If so, what action should be taken to ensure that such programmes apply to all territories?

5. The relevant background papers show that a majority of the 20 developing countries who have been studied are signatories of the 1965 United Nations Convention for the Settlement of Investment Disputes. 6. Issue arises therefore: is this a useful means of

creating a favourable condition for foreign investment

(iii) A favourable policy in the remittance of profits and dividends

16. The different types of incentive schemes developed in the Central and Eastern Europe all aim at increasing the net real profit margin of industrial projects. However, these incentives are only effective for a foreign investor if he is assured by law that that part of the profits which he wishes to transfer out of the developing country. It is also common practice for foreign companies to charge royalties or other fees for the technical know-how and management skills made available to the project. Freedom to remit these is also important. Generally, laws will place importance on freedom to remit capital in the event that they wish to liquidate their interest in the project.

17. The Foreign Investment Law of many developing countries includes policy statements designed to reassure potential foreign investors on these points. The law should not only state by themselves effective or does a foreign investor have a right of record of the country on this type of transaction as well as the general balance of payments position of

(iv) Favourable treatment under international tax agreements

18. The fact that the profits and other income of a foreign investor are in principle subject to the laws of both the host country and the developing country raises some special difficulties. The foreign investor must consider the combined effects of both systems when he calculates the effective tax income on a repatriated investment. It is in the interest of the Government of a developing country to take what action it can to overcome any deterring effects which may result. In particular, the Government needs to ensure that tax concessions provided at its own expense are not frustrated when the remitted income is taxed in the home country of the foreign investor.

genuine savings from earnings of foreign personnel in the country?

24. The Background Papers show that a number of developing countries grant employment permits for a relatively short period of time (e.g. one year) and require this to be renewed regularly thereafter. The issue arises: can such formalities be a discouraging factor to foreign investors?

25. What other factors influence the decision of a foreign investor?

25. A number of measures have been considered above which help to facilitate an inflow of foreign investment. Some of them are designed to ensure that the different types of incentive measure considered earlier in the Seminar can be fully effective for the decision of the foreign investor. The issue arises: have these measures by themselves taken care of all the factors which induce a foreign investor to invest in a country?

26. One point as yet to be made: that is that the mere enactment of liberal legislation will not be effective by itself. Its effectiveness will also depend on the way in which the rules are administered. The issue arises therefore: how much does the past record of fair, speedy and effective administration of the measures enacted influence the decision of potential investors?

27. Another general issue which arises is: to what is the only motivating force in the foreign investor's decision? It has been written on this subject. Experience suggests that many of the foreign foreign companies invest to gain a foothold in the country where they see a good potential market in the future and the danger of competing firms obtaining a large share. Can this process be accelerated by the introduction of higher tariffs or other measures to protect the local market from imports?

28. Foreign investors usually look at the role which the private sector plays in the Nation's industrial development and the Government's attitude towards private investment in general and foreign investment in particular. The issue arises therefore: is it sufficient for a Government to take policy initiatives favouring private sector investment, or does the investment record of the country? Can one event such as the nationalisation

...understand a serious determining factor whether or not
...is paid?

...also arises here: Does the possibility of adequate
protection of foreign investments and the possi-
bility of repatriation of profits and foreign exchange
constitute an important factor in their decision to invest
...for determining the
...to the Government
...investor alike?

III. SUGGESTED TOPICS FOR DISCUSSION

...range of issues have been raised in this paper. In
...the session devoted to this subject of maximum
...suggested that discussion might concentrate on the
...issues:

(1) The experience of countries represented at
...participants might indicate:

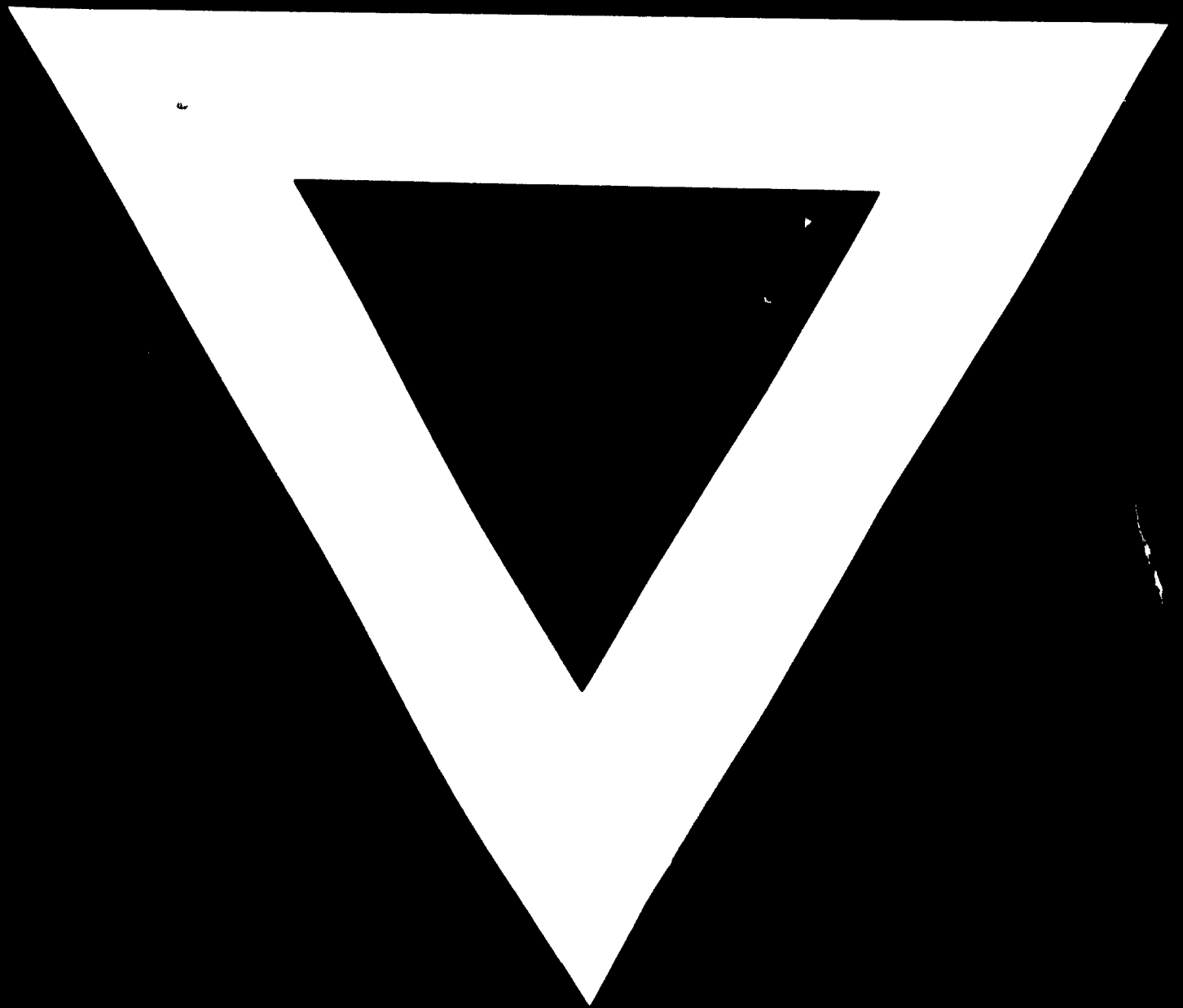
- (a) What volume of foreign investment has been
attracted to the industrial sector in the
last five years;
- (b) What foreign investment has taken;
- (c) What are the major measures taken by the
Government to attract foreign investment;
- (d) Whether their country has a sufficient net-
work of international tax agreements to make
tax incentives effective.

...of more general issues might be discussed,
including:

- (1) The incentive legislation of some countries
provided to substantial benefits to foreign
investors, without hampering the development
of local entrepreneurs?
- (2) Should the Government place any limit on the
availability of a foreign investment, and so, how
should it be calculated as a part of the
investment was financed with local funds?

- (g) Are there sound economic reasons for limiting foreign equity participation in most industrial projects to 50% or less? Are there sound business reasons for a foreign investor requiring a majority control of the equity of a local enterprise (i.e. greater than 50%)?
- (h) Are there any other issues in which the interests of the foreign investor and the receiving country may be in conflict? If so, how can they be harmonized?





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