The following observations are circulated for information upon the request of the Czechoslovak Delegation.

Observations of the Czechoslovak Delegation on the amendments of the U.S. Delegation concerning international investments.

(Art. 9 and 12 of the Draft Charter).

In the opinion of the Czechoslovak Delegation, the meaning of the U.S. amendments as they were explained by Mr. Wilcox is as follows:

(1) National treatment for the existing and future investors, i.e. equality with the citizens of the respective country.

(2) Most-favoured-nation treatment with regard to investment opportunities to be extended to all countries.

(3) Compensation for nationalized property to be paid promptly which may imply even more favourable treatment of the foreign country concerned than to own nationals.

The Czechoslovak Delegation recognizes that

(a) the movement of international public and private capital into productive investment is an important means of economic development and reconstruction

(b) the Members should not take any unreasonable action which might prove injurious to the interests of Members or their nationals who supply them with capital

(c) the foreign investor should receive just and equitable treatment, no less favourable than that accorded to the Member's own nationals.

There are many complicated problems involved in international investment which can be divided into two distinct categories:

(a) international governmental and private investment in the form of loans etc.

(b) direct investment in the form of participation in order to control in whole or in part foreign enterprise or indirect investment consisting of foreign holdings, stocks and bonds etc.
In the opinion of the Czechoslovak Delegation international investment mentioned sub (a) should be given first place due to the beneficial results which have already been seen from its application. It seems, however, doubtful whether m.f.n. treatment can be applied here. The difficulties are not those which are usually connected with the debtor and it can be claimed that m.f.n. treatment should apply at least to the same extent to the creditor as to the debtor. The Czechoslovak Delegation assumes that the provisions of Article 12 paragraph 1 and paragraph 2 in their present form cover this point clearly.

As to the second category of investment, it should be admitted that foreign investment may be as certain or uncertain as domestic investment and that the subjective feeling of uncertainty is generally compensated by the fact that foreign investment is usually made, because a higher return of capital is expected.

Foreign investment is usually considered by the creditor country as part of its national domain which means that the influence of the government concerned follows its citizens and capital abroad and that in the case of difficulties official intervention may be expected. There have been many instances in the past where diplomatic action has led to dangerous international friction, (e.g. German penetration-Mannesmann-into Morocco and the Agadir Crisis; German capital participation in the Balkans; Italian investment in Tripoli, when in 1911 the Banco di Roma pressed the Italian government into warlike action etc.)

Countries generally cannot accord m.f.n. treatment or national treatment to foreign investors of category (b) because if they do not admit uncontrolled immigration they cannot admit uncontrolled investment under any provision of the Charter which should have universal application.

At its First Session, the Preparatory Committee, when discussing General Commercial Policy (London Report, page 9, Chapter III, Section A, paragraph 1 d,ii), was of the opinion "that questions relating to the treatment of nationals etc. should be the subject of future agreements developed under the auspices of ITO as contemplated under paragraph 5 Article 61 of the Charter."

This provision was included into Article 61 (c) of the D.C. Charter.

As the question of investors participating directly in foreign enterprises falls, in the view of the Czechoslovak Delegation, under the above-mentioned provision and involves many delicate details which merit a close and careful study, the Czechoslovak Delegation suggests that no special new provisions should be incorporated into the Charter and that the existing provisions of Articles 9, 12 and 61 (c) should be considered as a satisfactory basis for future agreements.