

PRELIMINARY REPORT
to the
GOVERNMENT OF BOLIVIA
and the
U. S. AID MISSION, BOLIVIA

FACTORS AFFECTING PREPARATION
OF THE PROPOSED NEW
INVESTMENT INCENTIVE LAW OF BOLIVIA

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by

Frank E. Nattier

PRELIMINARY RECOMMENDATIONS

On Obstacles to Investment in Bolivia

1. The first and most imperative objective in bringing about an increase in national and foreign investment should be to achieve at least a minimum level of the climate of confidence which will stimulate investors. (Page 1)

2. A strong and continuing campaign should be conducted from the highest levels of Government to emphasize the great need for industrial growth and development; the country's primary reliance on the private sector to achieve this growth; and the Government's support, at all levels, of the private sector. The effectiveness of this campaign should be measured by the degree to which it persuades all officials of the Government, and the population of the country as a whole (even outside the cities) of the propositions above; and by the degree to which this persuasion is evidenced in routine contacts between the public and private sectors. (Pages 8-12)

3. Care should be exercised throughout the Government, as a matter of firm policy, to avoid competition by Government entities with the private sector, except perhaps in those activities which only the Government can carry out

effectively. (Page 11)

4. If the Government assumes the role exclusively of the champion of labor against employers, the situation would not be conducive to attracting investments. Firm efforts should be continued to assure that both the rights and the obligations of both labor and employers will be firmly and fairly applied in accordance with the general law. (Pages 13-17)

5. Greater efforts should be made by both Government and the private sector to demonstrate to labor groups that they have a real interest in the development of the industries and enterprises which employ them; and that this interest, in at least some cases, can outweigh short-term advantages. Some unions now approach labor-management questions in these terms. This should be encouraged. (Pages 13-17; 66-68)

6. A comprehensive codification and simplification should be made of tax laws and regulations. The obligations and the rights of taxpayers should be clearly set forth, so that they can be both firmly enforced and scrupulously respected. More efficient collection procedures should be adopted. The tax law should reflect and give effect to Government policy, consistently and systematically. Incent-

ives consistent with the public sector's need for revenue should encourage investment in productive enterprises; voluntary reinvestment of the earnings of such enterprises; and savings by the public at large, as well as public investment in productive enterprises. (Pages 13-23; 70,71)

7. A statute of limitations (prescripción extintiva) should be adopted in tax matters to bar reopening of tax returns after a period; say, five years. Studies should be undertaken to determine whether other changes are needed to make the tax laws more equitable. (Page 20)

8. A systematic and continuing effort, through disciplinary measures within the Executive Department, to limit and restrain arbitrary actions and over-reaching by government officials in their dealings with the public will also contribute greatly to the climate of confidence mentioned above. (Pages 14-17; 21-23)

9. Efforts to control contraband imports should continue. Major emphasis, however, should be directed toward establishing the conditions under which Bolivian industry can produce competitively. (Pages 24-25)

10. A review should be made of the tariff structure and needed changes, if any, introduced to assure that articles manufactured in Bolivia are not subject to heavier

tax than similar imported articles. (Page 24)

11. To bolster the likelihood that a new investment incentive law will be put into effect by all appropriate agencies of the Government, it should represent a broad consensus of Government, business and labor views; and should take careful consideration of the revenue needs of the public sector. (Pages 26-31)

12. The need for reasonable certainty, predictability and fairness in the application of the laws to everyone should be recognized as the most vital ingredient of the climate of confidence. (Pages 32-36)

13. A strong, independent and conscientious judiciary can have no substitute in a free society. Without it, the tranquility essential to a climate of confidence cannot truly exist. (Pages 34-36)

14. A new investment incentive law, applying to both national and foreign investments, should completely and specifically repeal all prior laws on the subject, incorporating those features which are desirable in the new law along with needed new provisions. (Pages 39-46)

15. After a comprehensive investment law has been adopted, great effort should be made to avoid amendments

by new laws or regulations which would weaken its provisions or the administration of the law. (Pages 46, 48)

16. In the preparation of the investment law and on other questions affecting investment and development, efforts should be made to encourage and foster broad and continuing communication and exchanges of views among responsible representatives of Government, business and labor groups. (Pages 49, 50)

17. Services to investors and prospective investors are important and help to stimulate investments. The extent of such services should be proportioned to the conditions and budgetary possibilities. The first step should be to prepare and distribute current, comprehensive statistical data to serve as the basis for market and related studies. Subsequently, a program to disseminate information on investment opportunities, requirements and conditions, could be useful. A service to guide and assist investors in obtaining information, preparing proposals and dealing with Government and business representatives could also be of value. (Pages 51-55)

18. Careful consideration of and an early decision on proposed membership in the ALALC are recommended. (Page 57)

19. Measures should be sought to improve the effectiveness of professional groups such as the Cámaras de la Industria, et al., labor unions, and others. Among the objectives should be to raise the level of effectiveness of the respective members and to promote a sense of cooperation and interdependence. (Pages 60-68)

20. Existing laws and practices should be reviewed, and revised as needed, to strengthen the incentives to induce trained Bolivians to return and work in Bolivia and foreign technicians to seek employment in appropriate cases. (Pages 72-73)

21. Finally, while the principal emphasis in the new law should be to stimulate national and foreign investment in industrial enterprises, it should not neglect the agricultural and mining sectors.

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**FACTORS AFFECTING PREPARATION
OF THE PROPOSED NEW
INVESTMENT INCENTIVE LAW OF BOLIVIA**

I made my first visit to Bolivia between 1 and 12 April 1964, pursuant to my assignment as consultant to the Bolivian Government and the USAID Mission at La Paz on the proposed new investment incentive law.

I. INTRODUCTION

During the course of this first, preparatory visit, I had frequent occasion to express a conviction gained during some twenty years of working with United States and other companies and individuals as investors or potential investors in Latin America. This conviction is that the most important factor in stimulating investments, whether domestic or foreign, is the existence of a climate of confidence which will give entrepreneurs the belief that they can commit their savings (or stockholders' funds) and energies to a project with assurance of reasonable managerial freedom; security against unjust confiscation or expropriation, whether direct or indirect; and a good prospect that the enterprise will be able to produce an attractive profit. Inducements of other kinds are subordinate to, and largely ineffective without, this basic pre-condition.

On this premise, the first task of the preliminary visit was to discover, from as broad a cross-section of information

I. INTRODUCTION (Cont'd)

and opinion as possible, the problems which will be met in attempting to achieve the aims of the proposed new investment legislation. Stated another way, a first object was to learn what are the existing barriers to investment which must be overcome, as well as factors which will encourage investment.

In the course of my first meeting with him on 2 April 1964, Mr. Nathaniel Rafler, Chief, Urban and Industrial Development Division, made the suggestion that a new investment law might usefully include provisions to overcome some of the specific barriers identified, in addition to provisions aimed generally at stimulating investment. He suggested that an initial report be prepared detailing the barriers to investment which might come to my attention in the course of the inquiry.

During my short visit in La Paz, I had an opportunity to speak with members of the staff of the AID Mission and the Embassy, numerous representatives of the Bolivian Government and of Bolivian business, industrial and professional groups, plus several members of the foreign business community. I have also reviewed several prior studies of more or less related problems.

What follows is a catalog of the various problems which were mentioned by one or more of these sources as constituting present impediments to increased investments in

I. INTRODUCTION (Cont'd)

Bolivia, or steps needed to encourage investment. Some of them undoubtedly have a substantial subjective coloring; some may be of doubtful factual validity; indeed, there were several items as to which statements by some individuals to some extent contradicted those of others. All are set down, without a detailed attempt at this time to evaluate them as to weight or accuracy. Each has the merit, at the minimum, of representing the views of at least one responsible member of one of the several groups which together must carry forward any meaningful program of increased investment.

II. BASIC FACTORS

No consideration of the problems encountered in stimulating increased private investments in Bolivia (and hence in devising a law for that purpose) could be complete without first taking at least cursory note of the basic factors which have an important influence on the investment situation. No investment law is likely to be able to do much about them; but they unquestionably are a factor in the complex to which such a law will be addressed, and will have a substantial bearing on its results.

A. Geographical Factors. The geographical factors of topography and climate unquestionably exert a restraining, or negative, influence on investment, beginning with the psychological effects which they have, especially on foreigners. The resulting shortages of transportation, communications and power present more direct difficulties and discouragement to many forms of development and investment. The visitor receives an impression that the relative geographic isolation of the country, continued over centuries, has produced limitations which assert themselves in many ways, all across the economic, social and political fabric, and in many facets of the society as a whole. It is evident that many important and significant measures have been and are being undertaken to overcome these problems; and that these measures have strengthened the infrastructure which expanded investment needs. It seems probable, nevertheless, that for some time to come the geographical factors mentioned must be reckoned a limit-

ing influence on the potential for development and investment.

B. The Market. Bolivia's population of about 4 million is small, from the viewpoint of industrial expansion. Responsible sources indicate that not more than one-third of the total, perhaps 1.3 million, constitute potential consumers within the money economy, many of these on a very reduced level. A fairly recent report by Continental-Allied Co., Inc., of Washington, on "Credit for Bolivia's Private Sector", stated that only 500,000 to 600,000 are "actively part of the commercial or monetary economy." (p. 8) Difficulties of transportation impose a further limitation. There are indications that the market which remains is further fragmented by local tax practices which impede commerce between regions of the country. Exports of processed goods have not made a significant addition to the market, although the Latin American Free Trade Area may provide some stimulus if Bolivia elects to join. As a result, the market factor severely limits the kind and size of the present potential for industrial development and investment.

C. Political Stability. There is no doubt that present and prospective conditions of political stability and tranquility are among the most potent factors in stimulating or discouraging investment. This is true of national investors, and applies even more acutely to foreign investors. It is difficult for a visitor to assess the situation accurately, and information received varies widely. However, some responsible

Bolivians expressed serious misgivings on this score. The existence of such a feeling, even if not wholly justified, exercises a restraint upon national, and still more upon foreign, investment.

It should be added that the impression outside Bolivia on the subject of Bolivian political conditions is gained largely from newspaper reports. For some time, these reports, accurately or otherwise, have tended to give a negative, rather than a reassuring, image.

D. Monetary Stability. The view held by potential investors as to present and prospective conditions of monetary stability is also a factor of major importance in the decision to undertake or refrain from an investment. This factor concerns both the value of the currency in relation to foreign money (i.e., the rate of foreign exchange), and its internal value as expressed in the price structure.

The fact that the external value of the Bolivian currency has been stable since adoption of the Stabilization Plan in 1956, and the absence of exchange restrictions and controls, are important elements of positive encouragement to both national and foreign investment. Unfortunately, these facts are far too little known outside Bolivia.

The further fact that the budgetary equilibrium which makes such stability possible has relied on substantial external assistance, however, tends to introduce an element of uncertainty as to the future. Under present conditions,

every gain the Government can make toward budgetary self-sufficiency will strengthen this factor, which is the most important positive factor now working in favor of increased investment.

III. GOVERNMENTAL FACTORS

Among the numerous, more specific factors mentioned to me as constituting obstacles to investment were several which are related primarily to alleged acts, attitudes or omissions on the part of one or more departments or officials of the Government.

Three observations should be made in this connection.

First, Bolivia's Economic Development Plan, prepared by the Junta Nacional de Planeamiento and approved by the Government in July, 1961, fixes a goal of an increase of 190% in industrial production for the period 1958 - 1971 (Planeamiento, La Paz, September 1961, Table 52, facing page 194). It is reported that the current ten-year plan (1962-1971) calls for an increase of 240%. These targets for industry form an integral part of the overall development program aimed at achieving minimum living standards in Bolivia, which the Government has found to be necessary. The Planning Board has declared, and there appears to be no question in the mind of anyone with whom I have talked, that a large part of the capital necessary to achieve these goals for industry can come only from greatly increased private investments, both national and foreign.

Second, I met in La Paz with the Minister of Economy, advisers to the Investment Committee and the active members of that Committee. All of them are highly capable men, who evidenced an objective understanding of the development goals, their importance and the indispensable need for increased investment by the private sector to achieve those goals.

Third, Bolivia experienced a social upheaval in the Revolution of 1952, which is described by students as the most far-reaching which the Western Hemisphere had seen up to that time since the independence era, except possibly the Mexican Revolution. While a considerable degree of settling has occurred, the forces of change and adjustment are evidently still moving, some of them reportedly at flood level. One of the basic questions which must be considered in attempting to devise a development plan or a program to encourage and attract increased investment is simply this: Is it yet politically feasible to attempt to establish a minimum percentage of those social and economic factors which are essential to create a "climate of confidence" in which investment will be encouraged and stimulated?

If it is not yet feasible, then will it be useful to work toward obtaining some of those factors, even though less than that minimum percentage?

The comments and information received with respect to governmental factors can be considered under several heads.

A. The Government's Attitude Toward Private Investment and the Private Sector.

1. On one side, the National Planning Board in its Plan for Economic and Social Development, 1962-1971, specifically places primary reliance on the private sector to achieve the stated goals of industrial growth. It calls for a broad development policy to include provision for credit, protection against

legal and illegal imports, technical services and assistance, a tax system which will encourage reinvestment and simplify compliance, and a simplification of administrative requirements for setting up and operating businesses. (Plancamiento, September 1961, pp. 194, 195).

2. At the other extreme, statements were heard that the Government, or at least important segments of it, is hostile to the private sector and to the growth of private enterprise, whether national or foreign. This view holds that the Planning Board's statement above is only "window dressing" and does not reflect the real attitude of the controlling elements of the Government. A source in a responsible position stated that the Government is using the subject of investment as a political "football." Some informants suggest that influential sectors of the Government believe that, with external governmental assistance, the Government itself can and should have the major role in industrial expansion.

3. Between these two extremes were other comments which, while less sharply critical, tend to indicate something less than the required confidence on the part of the business community as to the attitude of the Government toward private enterprise. Several of these comments were accompanied by references to the continuing effects of the 1952 Revolution.

a. It was suggested that the Government does not show real trust toward the private sector; perhaps because many members of the latter are not adherents of the MNR.

b. It was stated that segments of the Government appear to act on the premise that the role of private enterprise is mainly to support and advance the Government's development plans, rather than vice versa.

c. Some businessmen say fear of competition from the Government deters investment, pointing to areas (such as a sugar mill, rice mill, milk pasteurization plant and saw-mill) in which the Government is engaged. Reference was made to the case of an industrialist who, after disclosing his plans to the Government, found that it had taken over his project, on a substantially larger scale. Government representatives say that such action occurs only when private capital or initiative is inadequate. However, some Government people are reported to feel that if the Government makes technical and economic studies, then the Government, rather than private enterprise, should develop the resulting industry. Some damage to confidence appears to have resulted.

d. Statements were heard to the effect that lower (and sometimes upper) echelon Government employees are sometimes uncooperative in dealings which private business must have with the Government. Sometimes obstacles are created, either for the purpose of extorting payments of money or for some other purpose. Other informants, however, stated that they have had no problems of this type.

e. A list of potential industrial undertakings published by the Banco Industrial was reported to have met with no response from the business community, even though the Govern-

ment indicated its interest in seeing the projects developed by private enterprise. An insufficient climate of confidence, based in part upon the private sector's estimate of the Government's attitude toward it, was cited in explanation.

f. References were heard to a lack of uniformity or control in the Government attitude. Some sources indicated that President Paz is unquestionably favorable to private enterprise, but that on the operational level individual Ministers and officials often act according to their own policy views and interests.

g. Criticism was heard from the private sector that the Government does not consult and exchange views sufficiently with the private sector in developing policies affecting private enterprise.

4. It must be noted that a number of sources expressed more positive views regarding the Government's attitude toward the private sector. Some emphasized that hostility cannot be said to characterize the Government as a whole. Several noted that conditions have improved substantially since 1956. Recent approval by the Government of the estatutos of the Confederación Patronal de Empresarios Privados was cited as one indication. Suggestions that some of the responsibility for existing attitudinal problems is attributed to the private sector came from some of the latter's representatives.

5. To achieve the climate of confidence which is the sine qua non of increased investment on a scale sufficient to make a significant contribution to development, more is needed than an absence of Government hostility toward the private sector.

B. Problems in Labor Matters.

1. It is recognized, of course, that in every free economy the managerial group complains about labor and about government policies with respect to labor, not always with complete objectivity. A number of the informants themselves mentioned the problem of unemployment in Bolivia and the difficult social and political effects of that problem. However, several situations were cited as barriers to investment in terms sufficiently specific to warrant considering them as factors affecting the climate of confidence.

2. Described as one of the most serious discouragements to investment in Bolivia is the great difficulty of adjusting the labor force to the requirements of the enterprise. Workers and employees must be given notice of termination ranging from one week to 30 days. If they are dismissed with just cause, they are additionally entitled to termination pay of approximately one month's compensation for each year worked, fractions of years being compensated in proportion. Since training periods of at least some weeks' length are required in many industries to determine the capability of a worker, several informants say that management is faced with the serious dilemma of either keeping unsatisfactory (and therefore unproductive) employees or paying excessive dismissal compensation, either of which is prejudicial to the enter-

prise. After eight years an employee or worker is entitled to severance pay as described, even if he leaves voluntarily. A reorganization of an industry to achieve vital efficiency can be prohibitively expensive.

While some say the provisions of the labor laws in this respect are too severe, other sources say that is not the most serious problem. The law excuses the employer from paying the indemnity if the worker or employee is dismissed for any of a number of kinds of misconduct. It was reported, however, that attempts to dismiss on these grounds frequently result in administrative proceedings, which almost invariably rule that the dismissal was unjustified, regardless of the circumstances. The effect on discipline, costs and morale was cited as a major negative factor in the climate of confidence.

3. It was reported that companies which have been unable to operate economically have been prevented by the Government from shutting down. Instead they are said to have been forced by the authorities to retain their employees and keep their plants open. Such a practice is a serious barrier to potential investors, who will fear that if a proposed enterprise is unsuccessful they may be unable to cease the operation in order to avoid complete dissipation of their capital and credit.

4. It was stated that a practice has arisen under which the Government requires enterprises to con-

tinue paying wages to excessive numbers of sindicato leaders who are absent to attend Congresses or other sindicato affairs, or who no longer work for the company but instead hold positions in State or other entities, sometimes for periods of as long as five years. Instances were cited in which small industries employing a total of 15 to 20 workers have been required to pay such wages to as many as 3 or 4 absent workers. Another source reported that this practice may be in course of correction under a ruling of the present Minister of Labor, Dr. Aguilar Peñarrieta, that workers are not entitled to wages when they are absent from their duties.

5. A related practice mentioned was that of permitting sindicato leaders or shop stewards in numbers out of proportion to the workers they represent. One case was cited of a factory having 20 workers, of whom 11 were sindicato leaders or shop stewards; in another the proportion was 14 out of 45. It is further reported that all these sindicato officials frequently absent themselves from their work without notice, to attend to union matters, causing severe prejudice to production and economic operations.

6. It was complained that Government authorities do not act to curtail violations by unions of the laws governing labor disputes. Instances were cited in

which company managers were held prisoner and other provisions of law were violated by sindicatos, without measures on the part of the authorities to curtail the abuses.

7. Several informants spoke of the adverse effects which result from the constant possibility, in the field of labor relations as in others, of a Resolución Suprema at any time. It was said that such a Resolución frequently resolves a pending question in an arbitrary manner, often contrary to the general rule which should apply to the situation. The existence of such a possibility deprives a company of the certainty which is vital to orderly planning and operation. It prejudices efforts to increase productivity, which is the only means by which industry can improve quality, lower price, enlarge output, and thereby expand employment and contribute to achieving the development goals. To the extent that such a possibility exists, it is a serious impediment to investment and development.

8. The sources stated that the conditions described above result from action taken by Government officials for near-term political reasons, without regard to economic consequences and goals. Some added that these actions result from a lack of authority or control within the governmental structure. Some also pointed out that conditions have improved considerably over the past few years.

However, the drafters of both Law 48 of December 1960 and the proposals of the Comité Nacional de Inversiones apparently felt it necessary to stipulate as guarantees, in the former, that enterprises organized under it would have the benefit of the guarantees set forth in the General Labor Law; and in the latter, that labor-management relations will be governed by that law and other legal provisions in effect.

9. To the extent that arbitrary practices such as those described do exist or continue, they puncture the feeling of social tranquility on which investment depends, and offend the sense of justice of potential enterprisers. It is of course an important responsibility of Government to protect the interests of workers as well as those of employers. It is important to both groups that the rules be known to all, and that they be applied equally to both with a high degree of predictability, fairness and sense of reality. Any other course will damage severely the vital "climate of confidence."

C. Tax Laws and Practices.

1. Several informants spoke of the multiplicity and confusion of tax laws as an important handicap to investment. It was stated that the basic laws establishing taxes have been amended and supplemented by frequent regulations, resolutions and rulings, most of which have reportedly been issued in connection with specific situations rather than as part of an overall system of taxation. It was stated that many taxpayers and probably the tax authorities themselves are confused, and that less than efficient compliance results. The recommendations of the National Planning Board for Industrial Development include a call for a tax system which will simplify compliance. This characteristic of the tax legislation also seems to have operated against the desirable objective that tax laws should operate to foster investment and developmental policy. The absence of a comprehensive and readily understandable code of tax legislation setting forth clearly the rights and obligations of both the State and the taxpayers was emphasized as a burden upon existing businesses and a deterrent to new investment.

2. The burden of the costs of social legislation, coupled with the ineffectiveness of some of the social agencies to provide their prescribed services, was also mentioned as a deterrent to investment and development.

The required contribution of employers for social security under the law is 30% of the payroll. Various other direct payments are also required of employers, and some informants estimate the total burden of these costs at about 50% of payroll. The major complaints, however, referred less to the amount of these payments than to the inadequacy of the Caja Nacional and other social organs in providing the services for which these contributions are supposed to pay. It was stated, for example, that these agencies are frequently unable to provide the medical and hospital care to workers which the law requires. The result is that the employer is obliged to provide such services directly, thus incurring a double expense. It was said that employers are thus deprived of resources which could be used to increase wages or to improve their productive facilities. Several employers indicated that both they and their workers would prefer a system under which employers were required to provide such services directly to workers without State intervention. The report of the National Investment Committee refers to the large social charges upon industry as a deterrent to investment. While instances were cited in which arrangements were made by special agreement with the Government for an employer to provide medical and other services directly to its workers in exchange for a reduced rate of contribution, such arrangements apparently are only available when the operations

of the enterprise are in a location where the State agencies cannot operate.

3. It was suggested that the global supplementary tax on dividends paid by a Bolivian subsidiary to its foreign corporate stockholders is heavy and so complex as to constitute a barrier to investment in Bolivia by foreign enterprises. The indications were that it may be possible in some cases to alleviate the problem through agreement with the tax authorities. If such alleviation is needed, however, providing it in a law of general application would be more effective as an encouragement to investment.

4. Some sources suggested that the progressive surtax on the income of individuals from personal services is excessively high. It was said that the total income tax on the bracket equivalent to US\$3,000 to \$4,000 is about 40% and that it goes up to approximately 54% on incomes equivalent to US\$7,000 and over.

5. Cited as a major source of hardship and barrier to investment was the fact that Bolivia has no law prescribing a statute of limitations (prescripción extintiva) on claims of the Government against its citizens, including claims for taxes. It was reported that even though the tax authorities have reviewed a taxpayer's return for a given year, have issued an assessment and taxes have been paid in full on that assessment, the matter is indefinite-

ly subject to reopening and review. It was said that this is done not infrequently and that returns are reopened going back six, eight or even ten years. By that time, records of the period are frequently not available and the taxpayer's recollection of events is dim. Some deficiency is almost invariably found, it was said. The deficiency plus a fine and interest at the rate of 18% per annum can amount to a heavy, unexpected obligation on the taxpayer. While there is a theoretical right of appeal, it was said that the taxpayer can never win because the Appeal Board and the tax inspector who discovered the deficiency share in the collections and need the money. One suggestion was that adoption of a reasonable statute of limitations would relieve this constant threat against taxpayers and would help alleviate a serious barrier to investments.

6. A number of reports were heard of arbitrary procedures on the part of tax authorities which, if true, are seriously damaging to the climate of confidence which is indispensable to increased investment. In the area of taxation, perhaps above all others, it is vital that taxpayers have a clear knowledge of their rights and obligations and a knowledge that they will be held, on a basis of equality with all other taxpayers, to compliance with their obligations, and that their rights as stipulated by law will be preserved. The report described in the

preceding paragraph is as significant with respect to the alleged deficiencies of administration as it is in pointing out the need for a statute of limitations. Other sources stated that the tax burden in reality is much higher than it appears in the law because tax inspectors frequently make unfounded assessments of additional taxes which are almost invariably upheld on administrative appeal. It was said that the Appeal Commission and the inspector share in the deficiencies and fines collected. The Constitution provides that no tax is obligatory unless it has been imposed in accordance with Constitutional requirements. Taxpayers have a right to appeal unjust assessments to the courts. It was stated, however, that court proceedings in tax matters usually provide no relief to the taxpayer because prior deposit of the disputed tax is required, and after very lengthy delay the court will almost surely uphold the Government's claim. The system by which administrative board members and tax inspectors share in deficiencies and fines assessed against taxpayers was cited as an important cause of arbitrary procedures against taxpayers.

7. As another indication of arbitrary procedures in tax matters, a report was heard that during the pendency of contested tax claims the taxpayer may be arrested or his property may be illegally embargoed, or he may be subjected to other forms of harassment.

8. On a more positive note, it was reported that the Ministry of Finance has instituted a special Tax Court of ten members to hear and adjudicate appeals of taxpayers. It was said that the proceedings of this court are very informal. It was reported that the court has shown a disposition to listen to the taxpayer, as well as to the Government, and to decide cases fairly. It was described as a hopeful development.

9. Tax legislation can play an important role in furthering developmental policy by encouraging reinvestment and savings and by promoting other desired developmental objectives. A comprehensive tax code which would establish a rational and simplified system of taxation, set forth clearly the rights and obligations of the Government and taxpayers, strengthen collection procedures, assure the fairness of administrative proceedings, and orient the tax system toward economic objectives, would make a major contribution toward fostering the climate of confidence required for increased investment and development.

D. Customs and Tariff Questions.

1. A statement was heard that Bolivia's tariff policy is unfavorable to domestic manufacturing, and puts it at a competitive disadvantage with imported articles. It was said that imports of raw materials by domestic manufacturers pay relatively higher duties than do finished products. It was stated that this situation applies with particular severity to the textile industry, by reason of the high duty on yarn and other raw materials.

Another source, however, stated that this report is true only with respect to a few industries and products; that it is the exception rather than the rule.

The matter would appear to warrant further inquiry. If it is true even on a limited scale, the condition would to that extent serve as a barrier to investment and industrial development.

2. One of the most critical impediments to industrial growth in Bolivia is the problem of widespread smuggling. It is reported that competition from smuggled merchandise has caused the failure of a number of industrial enterprises. As long as the problem continues, it reduces the effectiveness of even reasonable tariff protection which many new industries require to survive.

Reports were received of the steps the Government is taking to improve customs procedures and surveillance to control the problem. Knowledgeable informants

have pointed out, however, that important as these measures are, they attack the symptoms rather than the cause. When Bolivian industries are able to install modern and efficient machinery and rational procedures to enable them to improve quality and lower costs, they will be able to compete in the market with goods from abroad, whether imported legally or illegally. It is suggested that nothing short of this solution will deal adequately with the problem; and that this solution in turn is dependent upon the alleviation of the impediments discussed elsewhere in this memorandum, which have served to make difficult or impossible the steps necessary to improve quality and lower prices.

One informant stated that he had talked personally with a number of individuals who have been engaged in smuggling into Bolivia products which he was interested in manufacturing. He said he was told by the smugglers that they would prefer to work as distributors of Bolivian-made products, even though their profit was only 50% of what they make on smuggled merchandise. While the evidence is limited, it would suggest that the problem is not impossible of solution. For so long as it subsists, however, it is a serious barrier to industrial growth.

E. Official Resistance to Incentives.

1. Mentioned prominently by virtually every source as the most formidable single impediment to investment and development was the hostility of the Minister of Finance who reportedly has succeeded in nullifying the incentives granted to industrial investment by Law 48 of 16 December 1960 and by other laws. It was reported that there have been repeated instances in which an applicant has filed all the required information with the Ministry of Economy, the project has been studied and approval duly given to incentive exemptions in accordance with Law 48. Having normally devoted a great deal of effort and expense to preparation of the application, the applicant is pleased by the action of the Ministry. He feels that he is entitled to the benefits which have been granted, and in fact he is. Then the papers go to the Ministry of Hacienda, where they frequently meet with great delay, and sometimes with substantial changes in the exemptions granted, or outright refusal. Many applicants have been understandably distressed. It is said that some have withdrawn useful projects in disgust. There can be no question that knowledge of this situation, which is widespread, has the most adverse effect possible on prospective investors, both national and foreign.

2. A number of examples of this type of action were heard, which are reported even though there has been no opportunity to verify their accuracy.

a. A project was approved by the Minister of Economy under Law 48, as described above. When the approved papers were submitted to the Ministry of Hacienda, it took the position that the project was not useful for the country, despite the formal approval by the Ministry of Economy. Hacienda refused to approve the concessions authorized by Law 48, thus nullifying the other Ministry's action.

b. Another project under Law 48 was similarly approved by the Ministry of Economy and forwarded to the Ministry of Hacienda for implementation of the incentive benefits granted. After several months, no action had been taken by the latter at the time of the interview. The project by its nature will require a series of importations. With respect to each one of them, a separate application will have to be made to the Ministry of Hacienda to obtain the benefits under Law 48 already approved by the Ministry of Economy.

c. A third project was approved by a special law of Congress, which granted broad exemptions from customs duties on equipment and supplies for a mining operation in a remote area. After considerable delay, the Ministry of Hacienda approved customs exemption under the law for equipment to be used directly in mining, but refused exemptions for jeeps, office equipment and other items which the applicant regarded as also necessary to the operation.

d. In a project approved under the Petroleum Code, exemptions granted thereunder were reportedly nullified by the Ministry of Hacienda.

e. An agreement between Bolivia and the United Nations granted exemption from duties on plows to be imported to improve agricultural methods. The Ministry of Hacienda refused to permit the exemptions.

f. A Bolivian manufacturing company made two importations of equipment needed to improve its plant. It made application for customs exemptions to which it was entitled under a law to encourage domestic industry, perhaps the Law of 11 December 1957 or D.S. 5433 of 17 March 1960. Exemption was granted by the Ministry of Hacienda for one importation; on the second, it has simply failed to act on the application.

g. A national company applied to the Ministry of Hacienda for the exemption authorized by Decretos Supremos 5099 of 27 November 1958, and 5641 of 19 November 1960, from taxes on earnings reinvested in plant. Such approval must be obtained before the deduction can be taken on the tax return. The Ministry failed to act, thus defeating the purpose of the legislation. It is reported that even when action is taken on such applications, it usually is delayed two or three years, during which period the exemption cannot be taken.

Several sources strongly suggested that

instances such as these evidence a lack of firm policy and control within the Government.

It is certain that such practices, if the above reports are accurate, contribute nothing to attracting the increased investments by national and foreign investors which the Development Plan describes as essential.

3. The apparent lack of enthusiasm on the part of the Ministry of Hacienda with the incentive objectives of the several laws just mentioned was unquestionably an important factor in the unfortunate situations described. However, to attribute the entire responsibility to that factor may be to oversimplify.

D.S. 5099 of 27 November 1958 exempted income reinvested by private industry from national, departmental and municipal taxes and other impositions. The exemption was made conditional upon express approval in advance in each case by the Ministry of Hacienda. D.S. 5041 of 19 November 1960 imposed new and severe limitations on the exemption, and had the effect of making it virtually inoperative.

The Law of 10 September 1958, to stimulate investments in construction of buildings, granted exemption from customs and consular taxes for ten years on imports of construction materials not produced in the country, and exemption from tax on the builder's profit when the building was sold. D.S. 5080 of 6 November 1958 specified the articles to which the exemption applied. D.S. 5434 of

of 17 March 1960 reduced the list of articles which could be imported with benefit of the exemption.

Law 48 of 16 December 1960 provided incentives to investments from abroad. Article 5 of that Law authorized national and foreign companies to revalue fixed assets and take depreciation on the basis of the new value. D.S. 5717 of 3 March 1961 ordered that this benefit would apply only to the period between publication of the Law (about 16 December 1960) and the end of the 1960 fiscal year, thus effectively nullifying it.

Also, Article 6 of Law 48 authorized complete exemption from customs duties for imports of a variety of equipment and supplies by qualifying industries. D.S. 5789 of 8 May 1961, couched in restrictive terms, stressed that customs exemptions on imports for industry are confined to those specified in contracts with the State and in special provisions of law.

It was stated that, even after investigation and approval by the Ministry of Economy under Law 48, each exemption from customs duties is required by law to be the subject of a special proceeding in the Ministry of Hacienda, which in practice involves a redetermination of matters already decided by the Ministry of Economy; and, in addition, that each importation under the exemption again requires such a special proceeding, which in practice has given rise to excessive administrative obstruction and delay.

In each of these instances, an investment incentive was first granted by law and, within a short time thereafter, either withdrawn or restricted by new legal provisions.

Such a procedure is not calculated to build confidence in what an investor can expect. It raises a question as to whether a new investment incentive law can be counted on to remain in effect for a sufficient time to make a useful contribution to the policy objectives it is supposed to serve.

This brief history further suggests the wisdom, first, of taking budgetary needs fully into account in designing investment incentives; and second, of obtaining as broad a consensus as possible among all affected segments of the Government and the community (including responsible spokesmen for labor), not only in elaborating the substance of the law, but also in obtaining recognition of the need for a period of stability during which the law can function without restrictive changes.

F. Legal Certainty and the Judiciary.

1. Of all the barriers to investment and development, one of the most frequently mentioned, and among the most serious, was the absence of a minimum of certainty and predictability respecting the laws and their application. There can be no doubt or question, I think, that the confidence which is essential to investment depends above all else on a reasonable sense of certainty and stability as to the rules which will govern the enterprise and the manner in which those rules will be applied. Only in a climate of reasonable certainty and predictability as to these matters can an investor or potential investor plan his operations, his costs, his purchases and his profit - and then carry forward the project with a degree of security. Commercial and financial factors are variable by their nature. Therefore, such legal certainty is critically important to provide a dependable base from which to cope with the unexpected.

2. The problem was stated in various ways. Several sources said generally, in substance, "Uncertainty as to the laws and their administration is the greatest problem facing business and investment." Another said, "The climate of confidence necessary to investment requires above all juridical stability and consistent observance of the laws. Even a 10-boliviano fine collected unjustly or an exemption withheld unjustly creates resentment and damages confidence."

3. A number of informants described specific situations which reflect lack of certainty, some of which have been mentioned in other connections.

a. Allegations were heard of arbitrary decisions and actions by Government officials in labor questions; and reports of Resoluciones Supremas which have imposed solutions in specific labor disagreements in a manner at variance with the provisions of law. (Supra, page 16). Also, reports were heard of imprisonment of managers by labor unions as a pressure tactic in labor disputes, and refusal by Government officials to enforce the law. (Supra, page 15)

b. Allegations were made that public authorities have required unprofitable enterprises to continue operations. (Supra, page 14)

c. Allegations were heard of arbitrary procedures in tax matters; such as reopening old returns, unfounded charges on audit, etc. (Supra, page 21)

d. Allegations of police harassment in connection with claims of tax deficiencies. (Supra, p. 22)

e. Reports of withholding by the Ministry of Hacienda of tax benefits granted to taxpayers by law, even in cases in which the Minister of Economy, pursuant to law, had made a prior determination of eligibility. (Supra, p. 26)

It is very possible, as some say, that the problems result in part from obstructive provisions in the laws. It also seems clear that there have been arbitrary abuses through failure to carry out laws as written.

4. Virtually everyone interviewed referred to at least some aspect of this problem and the urgent need to find solutions. Several suggested approaches were heard, among them:

a. Efforts to obtain a ruling of a Minister to correct alleged abuses.

b. Efforts to obtain a directive from the President of the Republic.

While such steps as these may be necessary as near-term measures, in fact they are merely palliatives aimed at symptoms, rather than cures of the causes of the problem.

5. What all who complain about arbitrary practices and non-observance of the laws seem really to be saying is that the country needs a stronger, more independent court system.

A number of informants expressed the view that proceedings in the courts are not a satisfactory means of obtaining justice against arbitrary acts of Government officials. A responsible official was describing the great harm caused by the Minister of Hacienda's refusal to give effect to existing investment incentive laws. Asked

whether a court action could correct the problem, he expressed surprise at the question and answered, "That would be of no help at all."

In theory, appeals can be taken to the courts from administrative rulings by either tax officials or labor officials, or others. It was reported that in practice such appeals are rare because they are almost uniformly unsuccessful and therefore useless. Examination of the index of a collection of rather recent decisions of the Bolivian Supreme Court revealed no decisions on questions of taxation. One conclusion could be that taxpayers do not believe that such appeals have sufficient chance of success to warrant the trouble and expense of bringing them.

A lack of independence on the part of judges of the lower courts, and even of the Supreme Court, was cited by several sources. It was said that judges of the Supreme Court are appointed by the Executive for terms of ten years; that theoretically they are not removable within that period except for good cause; but that in fact they are rather easily removable. Another weakness reported was that judges are poorly paid, which tends to encourage bribery and lowers public confidence in the judiciary. One informant described cases in which appeals were taken to court from administrative rulings. He said that after the decisions, some of the judges stated that they had to decide

the cases as they did because the Government had ordered it, and they could not afford to lose their appointments.

It is surely unnecessary, human nature being what it is, to demonstrate that the only reliable protection a citizen has against arbitrary acts of Government officials, in any country, is a system of laws known to all, firmly and impartially enforced by a strong, independent judiciary.

The extent that this critical element is deficient in any society is a prime measure of the degree to which the climate of certainty and confidence essential to investment and development will be wanting.

G. Regionalism.

Reports were heard that some departments and municipalities impose local taxes on merchandise moving in domestic commerce. Ultima Hora, issue of 8 April 1964, published excerpts of a report of the Camara Nacional de Industrias which indicated that the city of La Paz imposes a tax on the storage, removal and transit of goods.

To the extent that taxes such as these have the effect of impeding the flow of commerce from one part of the country to another, they limit an already small market and thus discourage industrial development.

It is reported that no department or municipality may legally enact any protective or prohibitive tax or other measure which affects other sections of the country, or which favors the inhabitants of one department at the expense of those of others. Indeed, it is stated that under the Constitution municipal authorities can neither impose nor abolish taxes without the prior approval of the National Senate. Great and continuing care should be exercised to assure that no local taxes or other restrictions are adopted which would impose impediments upon the free movement of any goods, including the products of Bolivian industry, to all parts of the country.

It was suggested that such measures might represent in part an effort by particular localities to foster local areas of protection in order to stimulate their own industrial development. It was further suggested that some areas of the country,

particularly Cochabamba, Sucre and Tarija, have indicated a feeling that the industrial development program is being carried out in a manner which favors other parts of the country to the detriment of those areas.

While the information received is insufficient to warrant a firm conclusion, the subject has sufficient potential importance as a possible impediment to investment and development to warrant investigation and corrective steps if they are indicated.

H. Multiplicity of Laws Affecting Incentives and Development. There are many laws affecting incentives to both national and foreign investment. It is reported that these various laws were adopted without reference to any consistent plan, method or objective of development, and examination of summaries of the legislation substantiates the report. The provisions of many of these laws are inconsistent and, in some cases, contradictory. As has been noted, some of them have shackled, and even nullified, incentives previously granted. While some of these laws, or portions of them, may have been partially abrogated by subsequent enactments, the continuing effectiveness of any given law or regulation is not clear. The result is considerable confusion and only sporadic application. This situation fosters administrative uncertainty and acts as a deterrent to investment and development.

According to summaries published in the May, 1963, Report of the National Investment Committee and the Pan-American Union's Statement of the Laws of Bolivia, 1962 edition, the principal examples of these laws and regulations, are:

Law of 14 December 1942- Granted exemption from all national, departmental and municipal taxes, except real property taxes, for a period of five years to new enterprises having a capital of not less than Bs. 500,000, whose purpose is to industrialize agriculture, stock raising and the products thereof. Also granted exemption from customs duties on imports of machinery by such enterprises.

Law of 16 October 1945 - Granted five-year exemption from

national, departmental and municipal taxes, except personal income taxes, to new manufacturing industries established in the Department of Oruro, having a capital greater than Bs. 250,000; and also exemptions from customs duties on importation of machinery. Granted a three-year exemption from taxes on buildings and construction of such industries.

D.S. of 5 September 1947 - Regulated the Law of 16 October 1945 just described and specified that the exemptions from taxes did not apply to raw materials or other merchandise.

Law of 17 October 1945 - Adopted to attract and stimulate investments of foreign capital; it assured remittance of earnings of up to 15% of invested capital and repatriation of capital to certain types of investments.

Law of 4 December 1947 - Granted five- and three-year tax exemptions (similar to those granted by the Law of 16 October 1945 to Oruro industries) to new industries established in the Department of Santa Cruz, having a capital greater than Bs. 100,000.

B.S. No. 1011 of 7 January 1948 - Provided graduated incentives and protection (by categories) for public utilities, industrial enterprises and production of raw materials.

D.S. No. 2015 of 27 April 1950 - Specified the taxes to which the exemptions stipulated in the Law of 4 December 1947 (for new industries established in the Department of Santa Cruz) apply; also granted exemptions on imports of machinery and materials for new construction and provided penalties to punish

fraudulent claims for tax benefits; declared that such benefits were granted only to new industries.

D.S. No. 2451 of - Revoked the first part of D.S. No. 2015 of 27 April 1950 (referring to new industries established in the Department of Santa Cruz) and restricted tax exemptions to industries using more than 70% of national raw materials.

D.S. No. 3812 of 19 August 1954 - Provided that the benefits set forth in the Laws of 14 December 1942, 16 October 1945 and 4 December 1947 apply to "new industries recently established in Bolivia and those which may be established in the Departments of Oruro and Santa Cruz, whose capital is not less than Bs. 5,000,000."

D.S. No. 3972 of 3 March 1955 - Provided tax exemptions for investments of foreign capital in the hotel industry.

D.S. No. 4149 of 25 August 1955 - Directed that companies having contracts with the Bolivian Development Corp. or other agencies of the Government calling for exemptions from taxes and/or import duties must apply in each case to the Ministry of Hacienda, which will decide whether or not the exemptions are to be allowed.

Decree-Law No. 4210 of 26 October 1955 (the Petroleum Code) and D.S. No. 4298 of 24 January 1956 (the regulations thereunder) - Provided at Art. 132 and Arts. 154, et seq., respectively, exemptions from import duties during the life of the concession on machinery, equipment, tools, materials, etc., to be used in

prospecting, drilling, producing, refining, storing and transporting hydrocarbons; and from taxes on buildings erected and installations made to comply with social legislation. Machinery, tools and materials imported for the latter purpose are also exempt from import duties.

D.S. No. 4539 (Art.7) of 15 December 1956 - Canceled all exemptions from customs duties and taxes on imports, except those stipulated in contracts with the Government or granted by the Petroleum Code.

D.S. No. 4606 of 14 May 1957- Exempted national and foreign technicians contracted by the State or by private industrial enterprises from payment of the global supplementary tax. The exemption was extended to petroleum technicians by D.S. No. 5508 of 8 July 1960.

Law of 11 December 1957 - Exempted from import duties and consular fees imports of machinery for the establishment of industries which will use at least 80 per cent domestic raw materials, or will make agricultural or live stock products for domestic consumption or export.

Law of 10 September 1958 - Exempted from customs duties and consular fees imports of construction materials not produced in Bolivia, the items to be specified by the Ministry of Hacienda, and provided exemption for ten years after the date of the Law from national and municipal land and income taxes, as well as from tax on the gain realized by the builder upon the sale of a building.

D.S. No. 5080 of 6 November 1958 - Set out the regulations

under the Law of 10 September 1958 and specified the customs designations of the items (construction materials) covered by the Law; also stipulated that the exemption does not apply to taxes for "services rendered" and sales taxes.

D.S. No. 5099 of 27 November 1958 - Authorized exemption of earnings which are re-invested from national, departmental, municipal and other taxes, the exemption to be granted by a Resolution Suprema.

Circular No. 93, issued by the Ministry of Hacienda on 27 May 1959, summarized the laws and regulations on the subject as of that time.

D.S. No. 5433 of 17 March 1960 - Authorized exemption of customs duties and sales tax imports of machinery for conversion industries and mining. Each exemption must be obtained by a Resolución of the Government based on a recommendation of the Minister of Economy.

D.S. No. 5434 of 17 March 1960 - Reduced the number of items of construction materials which can be imported without payment of customs duties and consular fees under the Law of 10 September 1958.

D.S. No. 5588 of 30 September 1960 - Exempted certain items imported for mining activities from customs duties and taxes, including the sales tax but excluding the tax for "services rendered".

D.S. No. 5636 of 18 November 1960 - To stimulate exports and economic development authorized the Ministries of Economy and Hacienda to exempt from export taxes and fees exports of

Bolivian merchandise provided the exporter shows that the domestic market has been supplied.

D.S. No. 5641 of 19 November 1960 - Directs that the exemption of re-invested earnings from national, departmental and municipal taxes applies only to earnings arising out of the industry involved, and further is contingent upon express authorization of the Ministry of Hacienda and upon the reinvestment being made in capital goods classified as plant and/or equipment. The effect was to make D.S. No. 5099 of 27 November 1958 virtually inoperative.

Law No. 48 of 16 December 1960 (the Investment Law) - Provides guarantees and certain tax exemptions for investments of capital from abroad; and in the case of such investments employed in the production of goods for export, in industries using 60 per cent or more of domestic raw materials and those producing goods which replace imports, authorizes the granting of some or all of additional incentives, including exemption from customs duties on imports of materials, spare parts, fuels, etc., exemption from export taxes, reduction of real property taxes, special depreciation arrangements, etc., on certification of the National Investment Committee to the appropriate Ministries.

Resolución No. 9 of 1961 of the Ministry of Hacienda reduced still further the items of construction materials which can be imported without payment of customs duties and consular fees under the Law of 10 September 1958 and D.S. No. 5434 of 17 March 1960.

D. S. No. 5717 of 3 March 1961-Directs that the right of industries organized prior to 16 December 1960 to take depreciation on the basis of re-valued fixed assets under Art. 5 of Law No.48 of 16 December 1960 applies only to the period between the date of publication of that Law and the end of the 1960 fiscal year.

D S. No. 5726 of 7 March 1961-Exempts from customs duties and taxes, including the sales tax but excluding the tax for "services rendered", imports of fuel oil for use by the mining industry, and directs that such exemptions do not require prior authorization by the Executive.

D.S. No. 5789 of 9 May 1961 - Extends the same exemptions and waiver of prior authorization to imports of diesel oil for use by the mining industry.

D.S. No. 5939 of 8 December 1961 - To stimulate national and foreign investments in the construction of first-class hotels, directs that they shall enjoy exemption from all direct national, departmental, municipal and university taxes for ten years; and that such investments shall not be the subject of expropriation, shall receive special cooperation and encouragement, and shall be governed by the appropriate provisions of Law No. 48 of 16 December 1960 (the Investment Law).

D.S. No. 6082 of 27 April 1962 exempts from customs duties, consular fees and customs taxes on sales, imports of machinery and spare parts not produced in Bolivia.

* * * *

It will undoubtedly be desirable for the new legislation to abrogate specifically all the legislation and regulations described above (except probably the provisions of the Petroleum Code and its regulations) and all other laws and regulations on the subject which may exist.

A careful study should be made of the complete texts of each of the laws and regulations mentioned, in order to be sure that all provisions which it is desirable to retain are incorporated in the new law. Care should also be taken to discover any other similar items which may have been omitted from the foregoing summary.

The new Law should contain in one comprehensive enactment all the provisions granting incentives and setting forth regulations for investments in agriculture, mining and industry. Every effort should be made to demonstrate to all concerned the wisdom of avoiding thereafter ad hoc or "spot" changes in the new Law as approved.

I. Number of Agencies and Need for Unified Authority.

Several sources suggested that an impediment to investment and development is the excessive number of governmental agencies which have to do with the subject. Reference was made to the Dirección General de Industrias of the Ministry of Economy; the National Investment Committee; the Bolivian Development Corporation; the National Planning Board; the Ministries of Hacienda, Labor and other Ministries; the Banco Industrial and others. It was also noted that there have been proposals to create still other agencies in the area.

These sources pointed to overlapping of functions; dispersion of necessary skills which are in short supply; lack of helpfulness to applicants; excessive delays in processing applications; lack of coordination among the agencies; and an absence of a definite and final authority, as the main problems resulting from the administrative multiplicity.

Two comments were heard most frequently and seem to synthesize the problem. The first: "There is insufficient authority and discipline in the Government." And the second: "The goal should be a procedure under which the decisions ultimately are made in one place, and then are final."

There can be no question that problems such as those described are an impediment to investment.

Each of the several agencies mentioned above has in its own right a useful and constructive role in economic development. The evidence available during a short stay indicated

that the need for coordination among them is recognized, and that procedures for that purpose are in use.

It would seem unnecessary to create additional agencies or commissions at this time. The policy-making participants would probably be the same men who already function in the existing bodies, and the demands upon the time and energies of these men already seem to exceed levels conducive to maximum effectiveness.

At bottom, the complaints on this head seem to come down the problem of implementing the determinations of the Investment Committee and the Ministry of Economy, especially the resistance on the part of the Minister of Hacienda. Law No. 48 of 1960 is deficient in this respect, since it contains no directives as to how such determinations are to be carried out. Other incentive laws have been vitiated by the fact that the requirement that each use of an exemption from tax or duties be approved by a Ministry has been distorted to mean a full review of matters previously settled according to law; or have been hobbled by subsequent regulations, as noted above.

The Report of the National Investment Committee contains proposals for procedural provisions which should be helpful in overcoming at least some of the problems. To improve prospects for the necessary stability and help obviate the danger of subsequent crippling changes, however, the final proposal should represent the broadest possible consensus, with the participation not only of the Government agencies affected, but also of

representatives of the main areas of the private sector and of labor groups as well.

J. Communication among the various sectors. The mention of the importance of consensus made just above brings to mind a related suggestion which was heard; namely, that the Government officials work too much among themselves in the area of economic development and that there is insufficient communication among them and the various interested segments of the private sector, such as industry, banking, agriculture, mining, labor, etc.

This view suggests that representatives of responsible private sector organizations (such as the various Cámaras and representative labor organizations) should participate on a regular basis in the discussions of the need for development, the goals to be sought and the means to achieve them. In this way, it was thought each group would be heard and the result could in some degree take account of each group's interests. Perhaps most important, each group, through its representatives, might gain a somewhat better understanding of the objectives and the rationale of the solutions adopted or recommended.

Several comments were heard from both the Government and the private sectors, suggesting that the views of the other side were not conducive to such collaboration. It was evident from the substance of the views expressed by both sectors, however, that the divergences between them are much less than is apparently supposed; and that the bases for productive col-

laboration are not being used as fully as they might be.

At least once from each sector, an intention was heard to press a particular proposal for approval by a Minister and then to take it to the President, without full consultation with the interested leaders in the other sector. It would seem that even if presidential approval should be obtained in this way, the result would lack the broad support which is needed for real success.

Suggestions have been made that the Commission to discuss and elaborate the draft of the new Investment law should include, in addition to the present Government participants, representatives of the Cámaras de Industria, Comercio, Minería and Constructores; the Industrial Bank; the Federación Rural; and some labor groups.

These representatives should participate with those of the Government, make their views and group interests heard and, in turn, hear those of the others. The result would be to strengthen the base of support for the new law and improve the climate of confidence in the country.

K. Need for Statistical Data. The lack of reliable, up-to-date statistical information was cited by several sources as an impediment to investment. Such information has an important function in the process leading to investment decisions, since it serves as the basis of studies of the market and other aspects of the project. It is also, of course, highly useful to the Government itself.

Reports were heard that import statistics are published only after long delay and that other statistical data is both slow and frequently unreliable. The preparation and publication of statistics is appropriately a function of the Government. Improvement and strengthening of this service would be of direct benefit and use to existing enterprises and would serve to encourage new investment and development.

L. Information on Opportunities. A possible impediment to new investments in Bolivia, especially those from abroad, is the scarcity of information on the opportunities, facilities and requirements. While this need is related to the lack of statistical data just discussed, it is considerably broader in scope.

It is recognized that some attention has been given to the problem. Reference was heard to a publication of the Banco Industrial listing industrial activities offering possibilities in Bolivia. The booklet, "Fomento a las Inversiones",

published in 1962 by the National Investment Committee in five languages, is very useful.

However, neither of these publications is readily available in New York, and it is assumed that their availability is not substantially greater elsewhere outside Bolivia. Inquiries addressed to the Bolivian Consulate in New York reveal that that office does not have information on investment opportunities for distribution.

A useful function of the agency which will administer the development program could be to prepare and publish informative, accurate and up-to-date materials on investment opportunities, economic conditions, incentives and requirements. This material should be widely distributed within Bolivia and at least some part of it should be made available to diplomatic and consular missions abroad in sufficient quantities so that they will be in a position at all times to supply such information in response to inquiries.

Several countries maintain promotional offices in New York and other foreign centers to publicize these matters more actively. This is a costly undertaking, which might be premature, at least until a number of the more basic steps have been taken effectively.

M. Services to Assist Investors. It was stated that the development of investments is impeded by the absence of organized facilities to assist in the formulation and realization of investment projects.

The agency charged with central responsibility could have as one of its important duties a positive program to furnish assistance to investors, both national and foreign.

Such assistance could take the form of preparing technical studies, utilizing the agency's own resources and those of other agencies of the Government, as well as of private sources. The objective would be to make available as much helpful information as possible to prospective investors on technical, marketing, financial and other aspects, especially as to those activities which are of particular importance to economic development and achievement of the planning goals. The cooperation of private entities, such as the Industrial Bank, the various Cámaras, and others, should be both proffered and utilized in appropriate cases to assemble the requested information. The purpose would be to obtain the widest possible publicity and distribution of such studies. Such studies should not be confined to industrial projects alone, but might extend as well to investment opportunities in agriculture, stock raising, mining, and manufacturing activities related to them.

The agency should be prepared and staffed to answer all inquiries from prospective investors with accurate information.

and affirmative helpfulness. The objective in this respect would be to aid and assist investors in developing and carrying forward their proposed projects.

As projects develop further, this same unit could assist investors in their required contacts and dealings with other departments and agencies of the Government. This could include furnishing information as to the interests and requirements of such other departments; providing introductions to appropriate officials; preparing the way for the meetings; and generally facilitating the communications and negotiations.

It was suggested by some that this agency should have a further coordinating function with respect to investment projects. They proposed to give the agency authority to intervene when problems are encountered with other agencies; and if solutions to such problems cannot be obtained in that manner, to report thereon to the Commission on Investments or other indicated authority for the purpose of obtaining a binding decision to overcome the problem or obstacle.

A different kind of assistance to investors, particularly in the manufacturing sector, was the subject of a number of suggestions. They recommended adoption of a firm rule requiring that all Governmental entities purchase items of Bolivian manufacture whenever they are available. The factors of price and quality would, of course, have to be satisfactory. This aspect is sometimes resolved by

providing that items of domestic manufacture enjoy a prescribed price advantage; for example, a bid offering domestically manufactured merchandise is deemed the "lowest bid" provided the real price (taking quality into account) is not more than 10% or 15% above the price of an imported article. Several informants referred to specific instances in which Governmental entities have purchased foreign goods when comparable locally-produced items were available.

Other countries have developed various other types of assistance to investors, some of them quite elaborate. In Puerto Rico and in Ireland, for example, such assistance extends to erecting buildings to investors' specifications, which are then leased to the investors on favorable terms. Desirable as these forms of assistance undoubtedly are, they are usually financially onerous to the Government. For the present, it is believed that the more elementary types of assistance described above would be helpful without incurring such heavy cost.

This phase of the development program should be kept under constant review. Services and assistance to investors can be expanded as circumstances and possibilities warrant. It is far more desirable, psychologically, to begin somewhat modestly and later expand the services than to undertake an overly ambitious program which cannot fulfill the announced purposes, or which must later be cut back for lack of sufficient

resources. The latter result would constitute a greater discouragement to investment than would the establishment of an insufficient program of services.

N. Decision on Membership in ALALC. While it probably cannot be classified as an impediment, a decision by the Bolivian Government on the proposal that it join the Latin-American Free Trade Area might furnish a useful impetus to investment, especially to those types of investment which can produce articles which might be exported to other members of the Area.

I had the opportunity of hearing several very interesting discussions of this subject while I was in Bolivia. The decision, of course, should depend only on what will be most advantageous to the Bolivian economy as a whole. It is not proposed to suggest what that decision should be.

Nevertheless, since one of the major impediments to industrial development in Bolivia is the small size of the domestic market; and since, conceivably, membership in the ALALC might serve the purpose of expanding the market for goods manufactured in Bolivia, the subject is one which deserves the most careful study and analysis on the part of those charged with the responsibility.

As the National and General Lists continue to expand, the adjustment of joining the program becomes greater with the passage of time. Hence, it is to be recommended that the subject receive the necessary consideration so that the appropriate decision can be made as soon as possible.

O. Corruption. This subject is surrounded with unusual difficulty and delicacy, which would suggest that the more expedient procedure would be to omit reference to it altogether. However, it is a subject which has an important impact on investment, both national and foreign. Some comment, therefore, appears to be unavoidable.

In various ways, the comment was made that officials and employees of the Government are grossly underpaid; and that, by tradition and general acceptance, it is assumed that a prerogative of office in most cases is and must be, to find sources of income in addition to the legally stipulated salary and allowances. I was told that these descriptions are accurate, and that it would be unrealistic to suggest that the practice ought to be abandoned. It was suggested further that some segments of the private sector itself would argue that the system works well from their point of view.

Nevertheless, it does give rise to problems, sometimes serious problems, which in many cases can constitute obstacles to both national and foreign investment. It has been suggested that a number of the obstacles which have been previously discussed in this examination are connected, at least in part, with these problems. Other observers have noted that the practice creates artificial distortions in the relationships among Government, labor and management which sometimes make it much more difficult to reach workable adjustments.

Perhaps the most insistent criticism which was heard of the practice was that it seems to be insufficiently disciplined.

For example, cases were cited in which the amount of payment for a given result was agreed upon; but thereafter representatives of one or more other agencies presented demands for additional payments for the same result. Not infrequently the total of the demands exceeds considerably the value of the result to the investor or taxpayer. The correction suggested by several for this problem was that the Governmental organism should be sufficiently disciplined so that a single payment can be required of the investor, which will then be distributed among those affected in accordance with such arrangements as they deem satisfactory, and the investor would have nothing to do with such distribution. Only in this way, they said, is the investor enabled to calculate whether the potential returns from the proposed project are sufficient to warrant the additional expense, which might be viewed as an additional tax. I was told that care is needed in this area, so as not (in the words of the old proverb) † "kill the goose that lays the eggs."

An investor who is unable to foresee and compute the extent of this requirement will tend to desist from his project. This is particularly true of foreign investors, who may decide to seek a country in which such requirements are more definitely foreseeable.

All the foregoing comments, of course, assume the accuracy of the statements made to me that the abolition of the system at this time is wholly impossible; and that such an approach to the problems here discussed would make of this work merely an academic exercise.

IV. BARRIERS IN THE PRIVATE SECTOR

A. Management.

1. Several informants pointed out, as an impediment to investment, that the Cámara Nacional de Industrias falls considerably short of realizing its potential role, and the results which are needed of it. The criticisms heard were that (1) the Cámara takes a narrowly parochial view of its role and limits itself too much to a posture merely of opposition to labor and government; (2) it does not show enough interest in programs to develop the managerial skills of its members, or in teaching members the role and responsibilities of business leaders in the community; (3) its actions in behalf of members too often aid only a favored few "insiders"; (4) it lacks vigor in voicing its positions. Some said that for these reasons the Cámara is losing influence and effectiveness; and that a number of members are considering leaving it.

Others remarked that too many members of the Cámara attempt to solve their own problems individually, instead of through the organization. Whether this was cause or effect was not established.

Related to these criticisms was another; namely, that businessmen and industrialists in Bolivia, it was said, take virtually no active part in politics. The suggestion was that they should, and that, in part, the difficulties of the private sector may be due to this neglect.

A basic strengthening of the Cámara de Industrias was cited as an urgent need.

2. Frequently cited as an important reason that industry has not developed more satisfactorily is the inadequacy of ordinary management skills and practices on the part of too many industrialists. The large majority of industrial operations are family-owned. Often management is in the hands of the individual who makes the largest capital contribution, though he may be wholly unprepared and even, in the words of one observer, "though he may not be able to read". That disastrous errors result from such management is not surprising.

While such extreme situations may not be representative, other more general shortcomings of management were reported which can affect adversely the position of industry as a whole. It was said that Bolivian industry is particularly weak in the area of accounting. Results ascribed to this deficiency included cases in which a company whose records were not kept currently needed a loan on short notice. Unable because of lack of accounting data to obtain the loan from the bank, the company was forced to have recourse to much more costly usurious lenders.

Another situation described as quite general arises out of the requirement that payroll records must be filed monthly with the Caja Nacional de S. and with the Ministry of Labor. Penalties for late filing are heavy. It was said that many companies are repeatedly late in filing and hence pay repeated heavy and unnecessary fines, to the evident prejudice of the enterprises.

It was also reported that management in many companies fails to obtain and make use of economic information which is available to achieve more effective planning and improved operations; and similarly fails to make use of available legal information and advice.

Criticism was made that many companies do not make adequate provisions for depreciation, with the result that they understate their costs and steadily de-capitalized. A related criticism was the lack of adequate insurance coverage on fixed assets in many cases. Some suggestions were heard that insurance coverage should be made obligatory by law.

In curious contrast to the foregoing criticisms, statements were heard from sources connected with education that the universities are training graduates in business administration; but that in too many cases such graduates either turn to other fields of work or go abroad because they are unable to obtain employment at home in business administration.

3. Instances were reported of what seemed to be extreme measures by management against labor. Some took the form of attempting to exclude a sindicate entirely when the operation was one in which that might be possible. In other cases, companies reportedly contract with labor gang bosses for a given amount of work to be done at a fixed figure, which produces less return to the workers. Management customarily says that steps such as these are made necessary by the excesses of the unions. It is evident, nevertheless, that such practices, even if there is some justification for them, produce resentments and tensions. Relations between management and labor will

never be free of friction and occasional struggles in a free society. Most of the management representatives interviewed, however, indicated a higher degree of recognition of the social responsibilities of management than is seen in the excesses just described.

4. Low productivity of industry, in general, is cited as an obstacle to investment and development. The condition is ascribed mainly to a lack of trained workers and technicians, and to obsolete equipment. One observer described the problem as a vicious circle: For lack of trained people, Bolivia cannot raise her production; for lack of increased production, she cannot raise salaries to attract her expatriate or foreign technicians. It is recognized that a program of productivity centers is now being developed which should be of substantial assistance to this aspect of the problem.

A related problem is the high cost of production resulting from the same factors of inadequately skilled technicians and workers and obsolete equipment. Nevertheless, it is reported that there are within Bolivia several units of modern machinery which have not yet been installed, whether for lack of capital or for other reasons. It was said that a glass factory has modern equipment it is not using, and which it has not been able to install due to opposition of the labor union, which has been supported by the Government, allegedly for political reasons and without regard to the importance of raising productivity as a goal of national importance.

5. Sometimes fear, on the part of local industrialists, of competition has been an obstacle to investment, particularly

to foreign investment. A case was described in which a local businessman, despite approval of a new project by the authorities opposed the new venture so vigorously that he publicly accused the Bolivian officials of "selling out to foreigners". This tactic was the cause of great concern and dismay both to the officials concerned and to the proposed investor. Private entrepreneurs must be expected to defend themselves vigorously and occasionally to become more aroused than the circumstances seem to warrant. Foreign investors particularly, however, tend to be sensitive to this kind of reaction. If it should become widespread to any degree, that certainly would effectively deter potential investors.

6. Some of the obstacles can be caused primarily by the foreign investors. One Bolivian observer has stated that with very few exceptions, the only interest from abroad which has been shown in the manufacturing field has been on the part of "international swindlers". The judgment may, or may not, be too severe.

While it is difficult to control this kind of problem, an investigation through normal credit channels of prospective investors from abroad might be of assistance in eliminating at least some undesirables at an early stage.

7. Some new organizations have been formed in the private enterprise area which may help to inculcate a higher degree of social consciousness and responsibility among the managerial group. One of these is the Confederación Patronal de Empresarios Privados, whose organization papers were recently

approved by the Government. Another organization in the field is the Comité Boliviana de la Empresa Privada. Both these organizations are described as having for their purpose to make the role of private enterprise more effective in the economic development of the country, and to make more effective use of outside financing, whether national or foreign. It was not suggested that either of these organizations duplicates or could in any way replace the Cámara Nacional de Industrias. Rather the suggestions were numerous that steps to strengthen the Cámara are urgently needed.

B. Labor.

Reference has been made, regarding problems with Government in the labor sector, to some tendencies of labor unions and leaders to follow courses of action which are abusive of their prerogatives and sometimes actually contrary to the law; and which have the effect of disrupting production schedules and increasing the costs of the business enterprise. It is stated that frequently the burden of these improper costs is so great as to prevent the growth and development of the enterprise, which otherwise would be possible.

The exaggerated number of shop stewards is such a practice. It was noted that one factory had a total of 20 workers, of whom 11 were shop stewards. Another factory had 45 workers, of whom 14 were shop stewards. It was also reported that shop stewards not infrequently absented themselves from their work to attend to union matters. The results of such practices in the numbers described, obviously could be serious, not merely in cost but even more in interference with production.

Labor unions have reportedly created difficulties regarding, and sometimes have prevented, the adjustment of the work force of a company to permit it to operate efficiently. "Adjustment" here usually means reduction of the work force, which always gives problems to unions. However, it is sometimes the only means by which an enterprise can

bring its costs into balance in order to realize a profit and thereby be enabled to survive. An unduly negative position can injure the workers' interests.

The reported indiscriminate support by labor unions of their members, even when the latter have committed flagrant violations of work rules and the law, creates problems both for management and for the unions themselves, especially for those union members who customarily observe the work rules and the laws.

Instances have been cited in which the unions have made demands for benefits in particular instances beyond what the law provides. Even though they may have succeeded in the demands, it is said that they have often injured their own longer term position because of the prejudice to the business.

The practice of requiring employers to continue the wages of workers who are absent from their jobs, sometimes for long periods, was strongly criticized as a serious and unwarranted drain on the resources of companies. It was reported, however, that a recent ruling of the Ministry of Labor corrected this practice, at least to some degree.

Finally, the tendency of labor unions to seek support of government officials in their quarrels with management is described as highly exaggerated. It is, of course, a natural tendency; and in matters of serious disagreement, the government has an unavoidable role as referee and peace-

maker. Nevertheless, the objective should be to foster a sense of social and economic responsibility on the part of both workers and employers. This will be promoted to the degree that both labor and management groups can be encouraged to resolve their differences directly between them.

It should be noted that several of the sources who spoke of the matters just referred to added that the situation is much improved as compared with conditions of a few years ago. Others noted improvements which have occurred in the attitude, quality of work and organizational support of the important officials known as "work inspectors".

An event which seems especially significant was the Joint Memorandum signed about 1962 by the National Chamber of Industries, the Bolivian General Confederation of Factory Workers and the La Paz Federation of Factory Workers. Recognizing the stake both capital and labor have in industrial development, it called for measures of interest to both, and pledged mutual cooperation among employers and workers to improve productivity, quality and prices — and thereby the prosperity of all.

In short, every effort which will have the effect of developing and strengthening, within the leadership and the members of the labor unions, a sense of their responsibility to the community, to leave their natural drive for immediate advantage, will greatly assist in reducing an important obstacle to investment and development.

C. Need for Capital and Credit. The problem of capital and credit has been extensively examined in other connections. Besides all the other reasons for their importance, the need for capital and credit constitutes an evident obstacle to investment, both national and foreign.

Under the best of conditions, capital from foreign sources can do no more than supply a small (but hopefully catalytic) supplement to domestic capital. As has been stated often, only as foreign investors see ample evidence of confidence and prosperity on the part of local investors will they be likely to feel an attraction to bring investments in.

It is reported that national resources of capital were depleted by substantial flights of capital to other countries following the 1952 revolution, and especially during the period of severe inflation up to 1957. Data indicate that domestic capital formation since that time has been slow. The gross national product appears to be not much above US\$100 per capita, and a high percentage of it is consumed, leaving only a small amount as savings available for new investments, perhaps about 1% of GNP.

The need for external capital and credit resources has been covered fully by others and will not require further consideration here. Indeed, the problems of banking structure and procedures, need for new credit institutions and facilities, means of encouraging savings, credit cooperatives, etc., also have been, and are, under separate study.

President Adolfo Linares of the Corporación Boliviano of Fomento has made the interesting proposal that a small securities exchange (bolsa de valores) be established to facilitate buying and selling corporate and government securities, and hence to stimulate investments in them.

For purposes of this study, two points should be made in particular.

First, as the climate of confidence discussed above is achieved in a degree sufficient to stimulate investments internally and attract them from outside, it will also serve directly to encourage the return to Bolivia of capital which fled previously.

Second, as one of the measures taken to encourage domestic capital formation, the new investment incentive law could usefully include provisions to encourage both savings and investments by the public, as well as to stimulate re-investment by companies of their earnings in productive facilities and working capital.

One problem appears to be to encourage wider use of banks as depositaries. The tax on interest received by depositors from banks could be reduced or eliminated.

Stamp taxes and other taxes on the issue and transfer of stock certificates, bonds and other corporate securities might be reduced or eliminated, either generally or selectively.

Dividends and interest received on corporate securities

might be wholly or partially exempted from tax for a period of time.

Many variations on these incentives, as well as other types, can be considered. As with all other kinds, these incentives will only achieve their goals to the extent that they are buoyed up by general confidence.

D. Expatriation of Trained Bolivians. One of the most serious obstacles confronting industrial development in Bolivia is the shortage of technicians, entrepreneurs, managers and other skilled people. It is reported that the astonishing number of 52,000 trained Bolivians, which is 1-1/2% of the total population, are living and working outside Bolivia. This is a more serious problem even than the flight of capital.

Many of these people are said to have left for political reasons. Perhaps some of them are not yet politically acceptable to the authorities. It seems unlikely that such objections could apply to more than relatively a few of the 52,000.

Indeed, efforts have been made by the Government to give incentives for the return of these expatriates. D.S. No. 4606 of 14 May 1957 exempted national or foreign technicians employed under contract by private or state industrial enterprises from payment of the global supplementary tax. However, an express ruling by the Ministry of Hacienda is required in each case of exemption. The application of the exemption to petroleum technicians is regulated by D.S. No. 5508 of 8 July 1960. No reports have been seen of the effectiveness of these provisions.

One informant, at least, was apparently unaware of these provisions. He suggested, as a useful provision for inclusion in the new investment incentive act, that both national and foreign technicians should be exempt from Bolivian income tax for two years and that they should also receive exemption from import duties on their clothing, household equipment, furnishings

and appliances (except automobiles). He noted that many Bolivian technicians now benefit from similar exemptions in surrounding countries and thought such incentives could serve to encourage Bolivian expatriates to return.

Perhaps, however, as some have suggested, the real problem is not lack of incentives but lack of opportunity. The observation was expressed above that the existing low level of productivity of industry in Bolivia makes it very difficult to offer compensation sufficiently attractive to bring Bolivian expatriate technicians back home. In this same connection, it is somewhat paradoxical to hear, in the face of such shortage, that new graduates of Bolivian universities trained in business management find difficulty in obtaining employment in this field.

There is surely no problem or obstacle facing development in Bolivia more urgently important than the problem of human resources.

E. The Problem of Envy. Several informants described, as a real obstacle to development, a situation which they called the "problem of envy". As it was stated, this refers to a supposed tendency, which apparently is thought to be widespread, to create difficulties and obstacles for persons and companies whose achievements are greater than the average. It is understood that this tendency applies not only to business and industrial enterprises; but that it is of considerably broader occurrence.

I do not feel that I have a sufficient understanding of the phenomenon to be able to make any comments or suggestions regarding it. Enough was heard about it, however, to warrant brief mention as a possible obstacle which perhaps should receive attention.

It might not be amiss to recall a recent comment of a sympathetic observer who wrote, "Bolivian labor earns miserably low wages because it produces miserably little. That is (not) the fault of labor alone***. Whoever may be to blame, however, neither capital nor labor can do much to increase productivity without cooperation from the others."

From many points of view, one could also include the Government in the equation.

The way in which this self-evident quotation is applied can be significant. For example, any one of the three could say, "My cooperation in this situation is essential. Now, what

distribution of the benefits will be fair to me"?

Or, on the other hand, it could be said, "The cooperation of the others in this situation is essential. Now, what distribution of the benefits will be fair to everybody?"

The alternatives are clear. The climate for investments will largely depend on the choice which is made.

Respectfully submitted,

Frank E. Nattier