

Message Text

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ACTION ARA-20

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-07 H-03 INR-11 L-03

NSAE-00 NSC-07 PA-04 RSC-01 PRS-01 SP-03 SS-20

USIA-15 AID-20 COME-00 EB-11 FRB-03 TRSE-00 XMB-07

OPIC-12 CIEP-03 LAB-06 SIL-01 OMB-01 DRC-01 /161 W

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R 122030Z AUG 74

FM AMEMBASSY LA PAZ

TO SECSTATE WASHDC 3880

INFO AMEMBASSY BOGOTA

AMEMBASSY CARACAS

AMEMBASSY LIMA

AMEMBASSY QUITO

AMEMBASSY SANTIAGO

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E.O. 11652: N/A

TAGS: EGEN, EFIN, BL

SUBJ: CHILEAN FOREIGN INVESTMENT STATUTE

REF: SANTIAG 4779

1. COL MIGUEL AYOROA, GOB MINISTER INUDSTRY, COMMERCE AND TOURISM AND LT GEN LUIS BARANDIARAN, GOP MINISTER OF COMMERCE, ISSUED JOINT DECLARATION ON AUGUST 8 FOLLOWING FIVE DAYS OF NEGOTIATIONS. DECLARATION IN ITS PARA 1 AND 2 CONTAIN GENERAL EXPRESSIONS OF ADHESION TO TREATIES OF MONTEVDEO AND CARTAGENA AND COMMITMENTS ASSUMED WITHIN FRAMEWORK OF THOSE TREATIES.

2. AS PUBLISHED IN PRESENCIA (DAILY) OF AUGUST 9, PARAGRAPH 14 OF JOINT DECLARATION STATES: "THEY RATIFY THE DISPOSITION OF THEIR GOVERNMENTS TO COMPLY WITH THE CARTAGENA AGREEMENT AND THE DECISIONS ISSUED BY THE COMMISSION OF THE SAME AND, ESPECIALLY, DECISION NO. 24 ON THE COMMON RULES OF TREATMENT OF FOREIGN CAPITAL LIMITED OFFICIAL USE

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AND ON TRADEMARKS, PATENTS, LICENSES AND ROYALTIES.

"AT THE SAME TIME, THEY EXPRESS THEIR CONCERN ABOUT PROVISIONS CONTAINED IN DECREE LAW NO 600 ISSUED BY THE CHILEAN GOVERNMENT WHICH CREATES IN THAT COUNTRY A FOREIGN INVESTMENT STATUTE WHICH THEY CONSIDER THREATENS (VULNURA) THE COMMITMENT ASSUMED BY THE MEMBER COUNTRIES OF THE CARTAGENA AGREEMENT UNDER DECISION NO. 24, WEAKENING THE JURIDICIAL STRUCTURE OF SAID AGREEMENT.

"THEY AGREE TO PROCEED BY COMMON AGREEMENT AND AS NECESSARY TO MAINTAIN THE SPIRIT AND THE LETTER OF THE COMMITMENTS ASSUMED IN THE MATTER."

3. PRESENCIA (AUGUST 9) SEPARATELY REPORTED THAT BARANDIARAN STATED THAT A) MATTER WOULD BE DEBATED BY ANDEAN COMMISSION WHICH WOULD MEET IN FIRST HALF OF SEPTEMBER, B) CHILEAN GOVERNMENT PRACTICALLY HAS IGNORED SIGNED COMMITMENT WITH SUBREGION, C) CHILE GUARANTEEING FOREIGN INVESTMENT RATHER THAN REQUIRING GRADUAL NATIONALIZATION AS PROVIDED BY DECISION 24, D) DECISION 24 NOW BEING ACCEPTED BY INTERNATIONAL CAPITAL AND BRAZIL HAD ADOPTED SIMILAR PROVISIONS AND E) CHILEAN ACTION CREATES RISKS THAT ANDEAN PACT MEMBER CAN TAKE UNILATERAL ACTIONS THAT MIGHT DAMAGE ANDEAN PACT AND THAT PACT MAY ENTER RUINOUS COMPETITION TO ATTRACT FOREIGN INVESTMENT.

4. PRESENCIA REPORTED THAT TECHNICAL SECRETARY FOR INTEGRATION JORGE GUTIERREZ REFUSED TO MAKE STATEMENT BUT THAT "SOURCES LINKED TO INTEGRATION ACTIVITY" BELIEVED ANDEAN PACT TO BE THREATENED BY ONE OF ITS MEMBERS FOR FIRST TIME IN FIVE YEARS, DEPLORED CHILEAN MEASURE AND THAT NON-ADHERENCE TO DECISION 24 WOULD REMOVE PROTECTION AGAINST ECONOMIC INFLUENCE OF POWERFUL INTERNATIONAL FINANCIAL ENTITIES SUCH AS MULTINATIONAL FIRMS. ROLANDO PEREIRA, INTEGRATION

EXPBRT OF CHAMBER OF INDUSTRY, CAUTIONED THAT CHILEAN LAW SHOULD BE "STUDIED CAREFULLY" BEFORE RAISING SUBJECT IN ANDIEAN COMMISSION.

5. AT DINNER PARTY GOB MINISTER INDUSTRY, COMMERCE & TOURISM AYAROA WITHOUT ELABORATION INDICATED THAT HE INDEED SUPPORTS ADHERENCE TO DECISION 24 AND CRITICIZES CHILEAN DECREE LAW 600. EX-GOB MINISTE OF INDUSTRY, COMMERCE & TOURISM HECTOR ORMACHEA ALSO PRESENT, SAID IN AYAROA'S PRESENCE THAT CLOSE ADHERENCE TO DECISION 24 WAS MISTAKE AND THAT WHEN HE WAS MINISTER HE HAD DRAFTED BOLIVIA'S EXISTING INDUSTRIAL

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INVESTMENT LAW THAT WAS AS LIBERAL AS CHILEAN MEASURE.

6. COMMENT. MISSION BELIEVES THAT GOB CONTINUES HAVE AMBIGUOUS POSITION ON DECISION 24. GOB, GENERALLY, WISHES APPEAR IN SUPPORT DECISION 24, MAINLY BECUASE IT IS SEEN AS QUID PRO/QUO FOR METAL MECHANIC

AND OTHER PROSPECTIVE INDUSTRY SECTOR ASSIGNMENTS THAT GOB BELIEVES ARE NECESSARY TO INDUCE SOME INDUSTRIAL INVESTMENT TO BOLIVIA WHICH

OTHERWISE MIGHT NOT RECEIVE IT DUE TO REMOTENESS AND CHECKERED HISTORY

OF NATIONALIZATIONS. APPARENTLY MANY ELEMENTS GOB ALSO SUPPORT DECISION

24 AS GUARD AGAINST POWERFUL FOREIGN FIRMS AND AS EXCELLENT BASEFOR NEGOTIATING TERMS OF ENTRY FOR FOREIGN INVESTMENT. ON OTHER HAND, OTHER GOB AND PRIVATE SECTOR ELEMENTS VIEW DECISION 24 AS TOO RESTRICTIVE FOR BOLIVIA.

7. GOB ADOPTED DECISION 24 AS DOMESTIC LAW IN JULY 1974 DURING TORRES REGIME. THAT ACT HAS NEVER BEEN GIVEN PRACTICAL EFFECT SINCE, DESPITE REQUENT EFFORTS BY TECHNICIANS TO DRAFT REGULATIONS, BANZER GOVERNMENT HAS NEVER BEEN ABLE TO RESOLVE OWN AMBIGUITY. WE UNDERSTAND THAT GO'S INVESTMENT INSTITUTE (INI) HAS BEEN WORKING ON REGULATION OF DECISION 24 AND MODIFICATION OF 1972 BOLIVIAN INVESTMENT LAW. INI OFFICIAL TOLD EMBOFF LAST WEEK THAT DRAFT REGULATIONS, WHICH WRITTEN IN SPIRIT OF DECISION 24 BUT BROADLY INTERPRETING CERTAIN SECTIONS, HAVE BEEN COMPLETED. HE ADDED THAT DRAFT NOT RPT NOT NOW BEING CIRCULATED BECAUSE OF UNCERTAINTIES CAUSED BY DEBATE OVER NEW CHILEAN INVESTMENT LAW.

8. RE ORMACHEA'S COMMENT (PARA 5 ABOVE) AND STATEMENT IN CHILEAN PRESS RE BOLIVIAN LAW (SANTIAGO 4779, GOB RECOGNIZES POSSIBLE CONFLICT BETWEEN ITS INVESTMENT LAW AND DECISION 24, BUT IN LAST YEAR AT LEAST HAS TAKEN CONSISTENT POSITION THAT FOREIGN INVESTORS MUST CONFORM WITH STRICTER ANDEAN CODE IF THEY WISH TO TAKE ADVANTAGE OF ANDEAN MARKET.
STEDMAN

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