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Memorandum From the President's Assistant for National Security Affairs (Kissinger) to President Nixon

Identificador Archival:	frus:frus1969-76v21/d17
Agencia Emisora:	NSC / Casa Blanca
Fecha del Documento:	1969-07-11
Colección / Serie:	FRUS 1969–1976, vol. XXI: Chile, 1969–1973

Nota de Archivo: *Washington. Source: National Archives, Nixon Presidential Materials, NSC Files, Box 773, Country Files, Latin America, Chile, Vol. I. Confidential. Sent for information. A stamped notation on the memorandum indicates the President saw it.*

Chile–Anaconda Copper Agreement

On June 26, President Frei announced that the Government of Chile and the Anaconda Corporation had reached agreement on a "negotiated nationalization" of Anaconda's copper holdings. The agreement climaxed several weeks of negotiations and of steadily rising political pressures, and has significance as a possible model for future foreign investment problems in Latin America.

Background

Chile is the world's third largest copper producer. Copper earnings provide about 75% of Chile's foreign exchange receipts and about 10–15% of its revenues. Expansion plans now underway will sharply increase those earnings in the next two or three years.

Subsidiaries of Anaconda and Kennecott have produced three-fourths of Chile's copper output. Cooperation between Chile and the U.S. on copper arrangements has been effective since World War II. However, a rising tide of sentiment in Chile for greater national control and even outright nationalization made copper a key campaign issue in the 1964 presidential campaign. Frei and the Christian Democrats espoused "Chileanization" to counter the Marxists' support of nationalization.

Frei's victory led to the "Chileanization" agreements of December 1964 in which Chile acquired 51% of Kennecott's Braden subsidiary, 25% of a new Anaconda (Exotica) mine, and 25% of the mines to be developed by Cerro and Continental Copper. The copper companies agreed to increase and improve their refining capacities with a total investment of at least $750 million, of which Export-Import Bank agreed to provide $225 million. Virtually confiscatory taxes were reduced and the companies were guaranteed 20-years non-discriminatory tax treatment. A.I.D. issued investment guarantee insurance for the investments. (Ironically, Anaconda chose to give up its expropriation guarantee during 1969 in order to save the insurance fees; thus, regardless of the outcome of the negotiations, Anaconda would not have been eligible to make a claim for expropriation based on Chilean action in 1969.)

However, several factors developed which led to the Chilean decision to proceed against the copper companies in May 1969, only two years after the earlier agreements had come into effect:

—The Christian Democrats (PDC) lost badly in the March Congressional elections and faced a Presidential election in September 1970 divided into quarreling factions and aware that nationalization would again be an important Marxist issue.

—Anaconda aroused the Government and public opinion by feuding over customs duties on capital imports, suing against Government-established sales prices to domestic processors, and staking out extensive non-copper mineral claims while failing to establish an earlier agreed-upon joint exploration company. These acts led on April 30 to unprecedented, unanimous and rapid Congressional action depriving Anaconda of its new claims.

—Copper prices have risen steadily since 1964 and have been at extraordinarily high levels for the third year in a row, averaging over 60¢ a pound this year. Chile believed it had provided the American companies with windfall profits and cheated itself of its proper share in the Chileanization program by agreeing to lower taxes guaranteed for twenty years with no escalation clause pegged to copper prices.

—Peru's expropriation of IPC, although not a major factor, probably contributed to pressures against Anaconda.

The Negotiations

You may recall that President Frei sent a letter to you on May 4, assuring you that he wished to maintain good relations and would abide by international norms in obtaining greater tax revenue and Chilean participation in the American companies. Anaconda and Kennecott were approached on May 9, primarily on the tax issue. Anaconda was forthcoming on taxes but balked at allowing more than 25% participation in its wholly owned subsidiaries. Kennecott was intransigent, citing its earlier sale of 51% equity. Frei's State of the Nation speech on May 21 publicly stated the goals previously set forth to the companies and the U.S. His proposals for a negotiated settlement, rather than outright nationalization, and his defense of Chileanization were received coldly in Congress. By early June, even the PDC had formally called for full recovery of minerals from Anaconda's subsidiaries.

Serious high-level negotiations with Anaconda began on June 2. They continued virtually uninterrupted until agreement was reached on all major issues on June 26. Ambassador Korry played a brilliant, imaginative and essential role throughout as a behind-the-scenes go-between. His contribution was highly praised by both sides. He achieved the essential U.S. objective: a negotiated, mutually acceptable settlement, without any public attacks on the United States or any indication of the U.S. role.

Main Points of Agreement

Although no documents are available, Chilean and Anaconda sources indicate the following points of agreement:

—Chile acquires 51% interest in two new Chilean companies which will receive the assets and liabilities of Anaconda's Chile Exploration and Andes Copper companies on January 1, 1970. Chile will start receiving substantially higher taxes beginning June 1, 1969, and preferential dividends after September 1.

—The purchase price of $197 million will be based on book value.

—Anaconda will receive 6% tax-free dollar denominated Chilean Government agency bonds payable in 24 equal semi-annual installments. The agency, CORFO, has a good international financial reputation and was preferred by Anaconda as the issuer.

—Chile will purchase the remaining shares of the new companies after it has completed payment for at least 60% of the first 51%, not before January 1973 but not later than December 31, 1981. The purchase price will be determined by multiplying the average annual net earnings from January 1, 1970, to the date of purchase by a varying multiplier which declines from eight for 1973 to six for 1977 and thereafter. The value of the 49% will be approximately twice that of the

initial 51%, or about $400 million.

—The administration, sales and management of the new companies will be in accordance with policy determined by the Boards of Directors, on which Chile will have majorities. Anaconda will have an “assistance contract” for a minimum of three years for which it will receive 1% of gross sales, or about $5 million annually.

—Higher Chilean taxes up to an effective rate of about 80% on profits from Anaconda’s retained interest will be calculated on a complicated sliding scale based on copper prices over 40¢ a pound.

—Similar taxes must be applied to other large copper companies by the end of 1970 or Anaconda’s paid-in taxes will be refunded over time.

—Present investment programs will be completed and existing, Chilean-approved copper sales agreements will be honored.

Significance of The Agreement

The achievement of a negotiated agreement has removed the immediate threat of outright expropriation and the possibility of a U.S.–Chile confrontation à la IPC. The Marxist parties will continue to press for nationalization, but Frei now has them on the defensive.

If the agreement holds, Frei will have deprived the leftist opposition of an important election issue in the 1970 Presidential elections. The agreement has also done much to strengthen and unify the fragmented Christian Democratic Party, which now has a platform around which it can rally.

From a psychological point of view, the agreement removes the abrasive historical legacy of Anaconda’s dominant position in Chile’s economic life. Anaconda has symbolized to Chileans their inferiority and dependence on the United States. For the Chileans, the agreement ends the pervasive influence in their affairs of a “foreign state within a state.”

The significance of the agreement over the longer term is uncertain. However, it is clear that this kind of negotiated settlement is preferable to outright nationalization. Although Anaconda obviously would have preferred a more favorable arrangement, the agreement was acceptable to its Board of Directors. It is also significant that while the U.S. Government played an essential part through Ambassador Korry in achieving agreement, there has been no public awareness of U.S. involvement. Thus, the issue has remained one between Chile and a U.S. private company, not between the two governments.