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Telegram From the Department of State to the Embassy in Chile

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139331. Subject: Copper Negotiations.

1. We are considering best means of bringing US influence to bear on GOC negotiations with companies now that copper bill is law. It is clear that Allende has authority to set period of payment, form of payment and interest rates as well as alleged excess profits to be deducted from compensation. Contraloria General is charged with determining the book value of the companies as of December 30, 1970 less revaluations after December 31, 1964. It is also his responsibility to determine the other offsets provided by the constitutional amendment. His decisions are subject to appeal by the state or the companies to the Special Tribunal established by the amendment.

2. It is not clear whether companies can negotiate with GOC Ministers to any meaningful extent on issues within jurisdiction of Contraloria—e.g., valuation, deductions, and related accounting matters. Another question is to what extent companies may be able to make direct presentation to Contraloria on such matters as theories relating to book value or interpretations of other provisions of the law. (For example, Kennecott might possibly wish to argue that the provisions of the copper bill disallowing revaluations does not apply to its case, or even if it applies to the specific revaluation accepted by the Frei Government, that it does not preclude some revision of historic book value more consistent with real value.) We hope that GOC replies to questions recently put by Anaconda will shed some light on procedures Contraloria will follow.

3. There is a further question, however, as to the strategy the United States should adopt concerning the relationship between the Allende government and the Contraloria. If it should appear, for example, that the GOC can and will control the Contraloria, it would probably be in our interest to encourage the GOC to influence the Contraloria to implement agreements negotiated between the GOC and the companies. On the other hand, if, as seems to be the case, the Contraloria is an independent office, it may be in our interest to avoid any action that would subvert his independence. The problem may be that even if the Contraloria remains independent and proceeds objectively and impartially, the copper bill may not allow enough discretion to permit him to set compensation at an amount that would be acceptable to the companies—particularly Kennecott. This remains to be seen.

4. We would appreciate your comments on the foregoing and your continuing reporting on the character and operations of the Contraloria, the constitutional court and the special tribunal once it is constituted.