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Memorandum From the Deputy Under Secretary of State for Economic Affairs (Samuels) to President Nixon

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Nota de Archivo: *Washington. Source: Nixon Presidential Materials, NSC Files, Box 776, Country Files, Latin America, Chile, Vol. VI. Confidential. Drafted by Fisher and cleared by Crimmins. Typed at the top of the page is "Approved by President with changes per Memorandum from Gen. Haig to Mr. Eliot dated 10/13/71." The changes to the attached draft statement were the addition of a penultimate paragraph which reads as follows: "Should Chile fail to meet its international obligations, it could jeopardize flows of private funds and erode the base of support for foreign assistance, with possible adverse effects on other developing countries. The course of action the Chilean Government appears to have chosen, therefore, could have an adverse effect on the international development process."*

Statement on Chile

The Inter-Agency Expropriations Group in a meeting today on the Chile expropriation situation unanimously recommended that the United States Government make a statement tomorrow expressing its deep disappointment at the determinations which have been made on compensation for expropriated U.S. investments in Chile. The Group agreed that the statement should underline the violations of international law which the Allende government has committed in taking its position. The Group also agreed that we should stop short of announcing or giving warning of retaliatory measures by the United States.

We take this view for tactical reasons. Fundamentally, we want to concentrate public attention on Allende's wrongs rather than our reaction. We will be free to take further steps at the time most suitable to our own interest. These may include suspension of U.S. assistance programs for economic development (about $20 million), military assistance ($5 million in FMS), Eximbank disbursements on outstanding credits (about $30 million), and pressure on multilateral and third country lending agencies. Another important consideration arguing against retaliatory measures at this time is that there remains an appeals process to a special tribunal, the utility of which we must yet evaluate in consultation with the companies. To react with specific actions before the appeals procedure is completed or demonstrated to be inadequate would give Allende the opportunity to accuse the United States of prejudging the legal process and of attempting to coerce Chile, thus providing him an effective rallying point for consolidating his position in Chile and elsewhere.

An additional short-range tactical consideration is our desire not to prejudice the position of ITT, which has yet to complete negotiations with the GOC on a possible buy-out of its properties which it values at $153 million.

The proposed statement continues to serve the purpose set forth early in our dealings with the Allende regime of insuring that he and not the United States bear the onus for his own decisions and for his failures. It also expresses unmistakably our dissatisfaction with Chilean actions thus far on compensation, and provides a basis for taking whatever actions we find advantageous in the coming weeks.

It was the consensus of the Inter-Agency Expropriations Group that you should not make a statement at this time. If you agree, the Secretary would propose to issue a statement tomorrow along the lines of the attached draft.

If you approve this approach, you may wish, in view of impending Congressional action on the replenishment of the international lending institutions, to consult now with key members of the Congress to explain the tactical nature of the proposed statement.

The attached draft statement reflects the views of the Inter-Agency Expropriations Group, with the Treasury representative reserving his position pending the return of Secretary Connally tomorrow.

Proposed Statement by the Secretary of State

The Controller General of Chile announced his findings on October 11 that no compensation would be paid for the U.S. copper mining investments expropriated on July 16 except for modest amounts in the cases of two smaller properties.

The United States Government is deeply disappointed and disturbed at this departure from accepted standards of international law. Under established principles of international law, the expropriation must be accompanied by reasonable provision for payment of just compensation. The United States had made clear to the GOC its hope that a solution could be found on a reasonable and pragmatic basis consistent with international law.

It appears that the major factor in the Controller General's decision with respect to the larger producers was the determination on September 28 of alleged "excess profits". The unprecedented retroactive application of the excess profits concept, which was not obligatory under the expropriation legislation adopted by the Chilean Congress, is particularly disquieting. The U.S. companies which are affected by this determination of the Chilean Government earned their profits in Chile in accordance with Chilean law and under specific contractual agreements made directly with the Government of Chile. The excess profits deductions punish the companies today for acts that were legal and approved by the Government of Chile at the time. No claim is being made that these excess profits deductions are based on violations of Chilean law. This retroactive determination has serious implications for the rule of law.

The United States hopes that the GOC, in accordance with its obligations under international law, will give further careful consideration to this matter.