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Telegram From the Department of State to the Embassy in Chile

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4069. Subject: Chile Copper/Debt Rescheduling. Ref: State 1716.

1. After Jan. 5 meeting at which Ambassador Letelier was advised of USG decision to participate in multilateral debt renegotiation (reftel), Letelier was told informally by DeptOff that USG decision to participate was taken before announcement of GOC action suspending payment on OPIC-insured Braden notes; that this was fortunate since GOC action had caused strong reaction in Washington.

2. You are requested to seek an appointment with Allende ASAP to express USG concern over recent actions taken by GOC on the copper front. You may cite USG decision to participate in Paris talks as concrete evidence of continuing US interest in maintaining normal relations between our two governments and reiterate our desire to find a pragmatic basis for living with the serious problems that divide us consistent with the interests of each side. Allende is well aware of the USG's disappointment over his excess profits determination, as reflected in the statement made by the Secretary of State. However, we recognize that the GOC compensation process is not completed and that a reasonable solution might yet be found. Further, we had taken note of the repeated public statements by the President that Chile will honor the obligations of the mixed mining companies assumed by the state by virtue of the nationalization. We had also noted with interest the President's private statement to Ambassador Korry indicating that payment of the Codelco notes to Anaconda, might be accomplished through litigation brought in foreign courts, (Santiago 5189) and we understand that the President had led the executives of Kennecott to believe that the El Teniente notes to Braden would be paid. (State 196895)

3. The USG however is concerned that the recent actions taken by the GOC suspending payment of both the Anaconda and Braden notes represent a further movement away from a reasonable settlement. There appears to us a great risk that these recent actions will further tie the President's hands in working out an understanding with the US on the copper question, if that is his objective. The US position, which has been expressed to the GOC numerous times, has not changed. We cannot accept the repudiation of solemn international financial commitments. The Anaconda notes are a direct obligation of a GOC agency, and the Braden notes are unconditionally guaranteed by the Republic of Chile.

4. You should ask the President the following questions:

(a) Recognizing that the constitutional amendment does not require that any debt of the mixed mining companies be repudiated, what is the President's intention with respect to the Braden notes? Has he changed his mind concerning their payment? In this connection, you should note that the views of Codelco on the expansion program at El Teniente are a matter of public record, as is the fact that the Contraloria took a more objective view of these matters. You should also

make it clear to him that international law would not support, and the US cannot accept, the repudiation of international obligations incurred by a state on the basis of a subsequent unilateral judgment by the debtor state that the funds received from foreign creditors were not usefully invested. In the case of El Teniente, this contention is particularly hollow inasmuch as the loans were made to a mixed mining company 51% owned by the GOC and the investments were approved by the Board of Directors including its Chilean majority.

(b) How does the GOC justify suspending payments to Braden while it continues to permit payment to other creditors who made funds available for the expansion of El Teniente? Isn't this action discriminatory?

(c) Para 7 of Decree 124 appears to question the payment of the other creditors of the mixed mining companies. It had been our understanding based on numerous statements by the GOC in Santiago and Washington that these debts had been assumed by the GOC by virtue of the nationalization amendment and would be paid. For example, MinFin Zorillas in August 4 letter to Exim Pres. Kearns stated GOC intended fulfill Exim copper expansion loan obligations and obligations to "all sources of international financing." Does this decree mean that the creditors will have to await a formal determination by the President in order to be sure that these debts will be respected? If so, when would the President expect to make these determinations?

(d) The GOC has asked the Tribunal to declare void the provision of the Codelco notes to Anaconda providing for application of New York law. Does this mean that the President has reconsidered his thoughts previously expressed to Ambassador Korry in this regard?

5. In the course of this discussion you should reiterate to Allende the desirability of retaining maximum flexibility for reaching a solution to this problem and invite him to consider with us the possibilities for a pragmatic solution. You should also point out, unless the course of conversation makes it clearly inappropriate, that the US looks forward to constructive discussion of these debt questions with the GOC during the process of debt renegotiation soon to begin in Paris.