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MEMORANDUM FOR THE PRESIDENT

Subject: Peru and the IPC Case

Peruvian expropriation of IPC assets last October brought into play provisions of US law (the Hickenlooper amendments) that may require a cut-off of aid and suspension of Peru's sugar quota. The law provides that these sanctions shall be applied if the expropriating government fails within six months to take "appropriate steps...to discharge its obligations under international law toward such citizen or entity, including speedy compensation for such property...". Decisions whether to apply these sanctions must be made by April 9 when the six-month period will expire.

Because application of the Hickenlooper sanctions would have very serious consequences not only in terms of our relations with Peru but with all of Latin America, it was decided to make every effort to avoid the necessity of having to invoke the amendments. Thus, you approved in early March the despatch to Peru of Ambassador John Irwin as your personal emissary to discuss these and other problems with the Peruvian Government. Our objective was not to evade the law, but to make a sincere effort to create conditions that would eliminate the need for the sanctions. The terms of reference of Ambassador Irwin's mission were to "develop sufficiently reasonable promise of permanently resolving the IPC compensation issues..so that it will not be necessary to invoke the Hickenlooper sanctions...With respect to IPC, he Irwin is to explore every possibility, ranging from adequate internal Peruvian judicial processes through some form of international mediation to possibly some operational settlement or 'buy-out' of IPC properties. The objective is to seek some process which could lead to appropriate compensation to IPC...".

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The dilemma with regard to Hickenlooper is acute. If we defer or refuse to apply sanctions without credible reasons for doing so, we risk destroying the deterrent effect of our admonitions; appearing to be "weak" or "backing down"; encouraging nationalistic and anti-US elements; and eroding the image of US power and authority. The US Congress would also react adversely, and the US business community might interpret the decisions as a weakening of US protection of their investments abroad.

Applying the sanctions, on the other hand, would have profound political and economic consequences throughout most of Latin America. Peru's economy will be severely damaged and we will provoke sharply anti-US sentiments in that country which could alienate it from us for many years. Retaliation against other US investments and stimulation of anti-US and "Nasserist-like" policies by Peru would be likely. Serious criticism of the US would also be precipitated in the rest of Latin America. Old suspicions and latent resentments would be stimulated. Other governments, already concerned about US aid and trade policies, would be disturbed. Most are likely to become increasingly alarmed about the general concept of US sanctions, invoked against a friendly Latin American country for the first time, and are likely to take this as indicating a harsh policy by your Administration. The atmosphere and setting for Governor Rockefeller's mission would be adversely affected.

Options for Deferring Application of Hickenlooper

As noted, our objective has been not to find a pretext for evasion of the law but to try sincerely to establish conditions that will make the law inapplicable.

There are a variety of procedures that could be considered "appropriate steps" within the meaning of the Hickenlooper amendments. The important point is the substance embodied in the process, not its form. To toll Hickenlooper

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the process does not have to be completed nor compensation paid or definitively determined by April 9.

The clearest situations that would constitute "appropriate steps" are international procedures to determine the issues and arrive at appropriate compensation:

- arbitration;
- mediation or conciliation;
- adjudication by the World Court.

Unfortunately, Peru has rejected recourse to any of these measures.

There are several other situations, however, that would be considered "appropriate steps":

- Local judicial remedies if impartial and effective;
- Administrative proceedings which in effect constitutes a good faith negotiation on satisfactory compensation to the company;
- Direct negotiation by the Peruvian Government with the US Government (or the company) on compensation;
- Arrangements involving operation of the IPC properties by the GOP or third party, out of which compensation or reimbursement for IPC's claim to compensation would be made by the operating party.
- Any combination of the above procedures or any other arrangement that consists of a Peruvian commitment to negotiate or pay net compensation to the company.

Ambassador Irwin's Mission

Ambassador Irwin is now engaged in a series of substan-

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tive discussions with President Velasco and his principal cabinet officers on compensation for IPC and methods for obtaining it. Irwin is specifically exploring the following possible avenues:

- Working within Peruvian administrative procedures towards a negotiated settlement;
- A service contract arrangement with Occidental Oil Company (or a consortium), with a side agreement to pay IPC over time out of Occidental's profits;
- A possible combination of these two procedures to arrive at an effective compensation.

Another possibility could be straightforward direct negotiations between the two governments, although this avenue has not yet been discussed in any detail in Irwin's talks.

There are, thus, two possible facets to the Irwin-Peruvian discussions: a) establishment of a procedure in which the compensation issues might be resolved, and b) actual negotiations on the substance of a settlement. If, by April 9 the Irwin mission or others have started negotiations on the actual substance of a solution, "appropriate steps" will be underway, and sanctions can be deferred. If the discussions are still centering on the establishment of an adequate procedure to handle compensation, then a reasonable promise of their success would be needed to warrant a temporary deferral of sanctions so as not prematurely to close out any promise of a solution. Such a deferral would be limited, e.g., two or three weeks, but should give the discussions a fair chance depending upon what the circumstances promise.

Given the fact that Irwin's discussions are still in progress, we will probably not be in a position to judge whether valid circumstances have been established for deferring Hickenlooper (and if so for how long) until just prior to the deadline.

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A decision to defer application of Hickenlooper is not necessarily a definitive decision. The sanctions would have to be applied subsequently if the "appropriate steps" that are in train should fail. Similarly, if sanctions are applied, they can be lifted thereafter if appropriate steps are subsequently taken. Thus, there would be reason for continued discussions and negotiation even after application of Hickenlooper if the Peruvians were receptive.

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