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Hawson A. Ryan - Dep Ass't Sec, Inter-American  
Affairs

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Commerce-International Investment

Steve Lowe

THE WHITE HOUSE  
WASHINGTON

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## THE CASE OF

### COMPAÑIA SWIFT DE LA PLATA, S.A.F.

March 11, 1969

Deltec International Limited is created as a result of the merger of Deltec Panamerica, S. A., transnationally owned investment and merchant bankers for Latin America, and IPL inc., the Chicago based successor of Swift Internacional, S.A., an Argentine-incorporated holding company for the international operations of Swift & Company which was spun off from Swift in 1918. Following the merger, work was begun immediately to develop plans for obtaining local participation in the industrial subsidiaries acquired from IPL inc. By September 1973, the meat processing facilities in Australia, New Zealand, Brazil and the United Kingdom had been sold for cash to local groups.

Cía. Swift de La Plata (CSLP) in Argentina was the largest unit of the IPL group of companies. It was one of Argentina's largest industrial companies and employers of labor; its largest meatpacker, increasingly specialized in the export of sophisticated, highly industrialized products many of them developed in its own unique research laboratory; and the country's biggest single earner of foreign exchange. However, the company had been unprofitable for many years, a perpetual victim of Argentina's fluctuating policies with respect to the cattle industry, to meat exports and to exchange rates. CSLP had paid no dividends since 1962 and no interest on its debt to the parent company since 1967.

March 12, 1969

Deltec International begins advancing a further \$4,000,000 to CSLP, used principally for re-equipment to comply with various importing countries' sanitary standards and for working capital.

November 12, 1969

Dr. Adalbert Krieger Vasena, former Minister of Economy of Argentina, joins the Board of Deltec International and is assigned the specific mission of developing a program to "Argentinize" the management and ownership of CSLP. This association between Dr. Krieger Vasena and Deltec is later used by Argentine nationalists as a pretext to slander and harass both.

January 1970

Cattle prices begin a precipitous rise (they reached 0.82 pesos per kilo in March, up from 0.69 pesos in December). The then Minister of Economy Dr. Dagnino Pastore calls into his office the chief executives of the principal meat packers, including CSLP, and requests them to reduce their



purchases of cattle to stabilize prices. CSLP complies as to purchases in the Liniers auction market; nevertheless, CSLP's total kill during this period was only moderately reduced. On the basis of their purchasing restraint at the Minister's request, CSLP, its president and other meatpackers and some of their directors were subsequently indicted for violation of the Argentine anti-trust laws and placed in preventive detention (released on bail).

April 9, 1970

The management of CSLP is replaced by an all-Argentine team headed by Mr. Enrique A. D. Holmberg (previously managing director of Ingenio La Esperanza, a highly successful Argentine sugar plantation and mill in which Deltec Panamerica had had an investment since 1957). Under Mr. Holmberg's leadership, CSLP made a dramatic recovery. Through April, 1970, CSLP production of frozen cooked beef (the highest return Argentine export meat product) averaged about 2,000,000 pounds per month. The new management succeeded in increasing this production to 3,100,000 pounds in May, 3,900,000 pounds in June and 4,800,000 pounds in July. At the same time costs were reduced by the equivalent of some \$12 million per year, principally through the reduction of the work force, with the full cooperation of the labor union leadership, from over 18,000 to just over 10,000. Breakeven was reached in May and profits were generated in June, July and August, despite the continued rise in cattle prices which reached 1.16 pesos per kilo in September and 1.34 per kilo in October, 1970.

April 9, 1970

Deltec International arranges another \$4,000,000 credit from abroad to finance the new management's increased volume of production. Other Deltec subsidiaries prefinanced shipments and financed importation of tin plate to the extent of nearly \$2,000,000. Between March 1969 and November 1970, the net exposure of Deltec International in CSLP increased by nearly \$10,000,000.

May 10, 1970

As part of its continuing effort to "Argentinize" CSLP, Deltec International executes and delivers to Mr. Holmberg an option to form a group of Argentine investors to purchase control of CSLP. When Mr. Holmberg proved unable to form a group, Deltec International gave options successively to a prominent industrialist on October 8, 1970; to the company's executives on February 9, 1971; and to another outside group on May 22, 1971. Finally, Deltec International made a firm agreement to turn over 100% of the equity to CSLP's executives on October 14, 1971, subject only to court approval of the creditors agreement that had been adopted on October 5 (see below).

June 9, 1970

The military junta under the leadership of General Lanusse removes from the presidency of the Argentine Republic General Onganía, under whose three-year rule the country had enjoyed political stability and rapid economic recovery, and replaces him initially with another general and eventually with General Lanusse himself. There followed a succession of finance and economy ministers hostile to the stabilization philosophy of Dr. Krieger Vasena and increasingly nationalistic. Inflation soon reached galloping proportions.

September 30, 1970

Substantially the entire meat export industry in Argentina, including CSLP, closes down in the face of the increase of the cattle price to 1.30 pesos per kilo while the peso-dollar exchange rate remained unchanged, so that meat exports became totally uneconomic. Thereafter, the Argentine Government took a number of measures to improve the situation, including making credit available through official banking institutions. However, such credit was limited to companies more than 51% Argentine owned. The Government was at all times aware of Deltec's efforts to place the control of CSLP in Argentine hands, and indeed one reason these efforts were unsuccessful was the fact that the potential investors were never able to ascertain that, upon their purchase of control, CSLP would be treated as an "Argentine company" for all purposes. In this situation, the owners of a number of foreign owned plants settled their liabilities and one of them simply withdrew from the scene. For CSLP, the largest unit in the industry, this course of action was not possible and the only alternative that presented itself was insolvency proceedings.

December 18, 1970

CSLP applies to the competent court of the Argentine Republic for "convocatoria", a proceeding which contemplates (1) an immediate cessation of payment on all non-secured and non-preferential debts; (2) the continuation of the business under the company's own management; (3) the appointment by the court of a Referee to report on the business and the nature and amount of the assets and liabilities; (4) the proposal by the management of a "concordato", that is, a creditors agreement for the orderly repayment of the debts; (5) a meeting of creditors to accept or reject the proposal; and finally (6) the approval or disapproval of the agreement by the court. Rejection of the agreement by the creditors or the disapproval by the court results automatically in bankruptcy. The case was in due course assigned to Judge Salvador María Lozada of the National Commercial Court of Buenos Aires.



March 15, 1971 The CSLP management enters into a contract directly with Deltec's largest customer in the United States, pursuant to which the latter finances cattle purchases in exchange for the entire output of one of CSLP's plants. The resulting cash flow permits opening of the other plant with the result that by April operations are back to normal. During the period May through August 1971, CSLP exports about \$30,000,000 of product and earns an operating profit of 17,000,000 pesos, with the result that the loss for the eleven months ended August 31, 1971 amounts to only 1,170,000 pesos despite the six month shut-down of most operations, the absence of local credit and the continuing rise in cattle prices, which reached over 2.00 pesos per kilo in August.

June 23, 1971 Judge Lozada orders preparation of an evaluation of the assets and business of CSLP by the Universidad Tecnológica Nacional (the Argentine national institute of technology).

August 6, 1971 Drs. Carlos R. S. Alconada Aramburu and Federico Gabriel Polak, Buenos Aires attorneys acting in the name of José Raul Zurdo, a small general creditor of CSLP, files with the Judge a pleading requesting the disallowance of all claims of other Deltec group companies, alleging acts of fraud and deceit, seeking extension of liability to other Deltec group companies, and calling for a protective order against the transfer of Deltec's other investments in Argentina.

August 26, 1971 CSLP presents a routine request to the Junta Nacional de Carne (JNC — National Meat Board, the regulatory agency for the meat industry which must approve all export sales as to price and otherwise) to sell 477 tons of meat extract at a net price of \$3.234 per pound.

During the early part of 1971 the Argentine industry had made a contract with the European buying group to sell specified quantities of meat extract at a price between U.S. \$3.60 and \$3.80 per pound. By June, CSLP had completed its contract and found itself in the unique position of having produced additional quantities while other producers were still delivering against their original contracts. After several months of negotiations, of which the JNC was kept currently informed, CSLP succeeded in concluding a new contract with the buying group (not to or through Deltec) for 477 tons at a price of U.S. \$3.234 per pound. When the JNC refused to approve this price, the National Government, recognizing that CSLP did not have the financial capacity to carry the extract inventory, expropriated the first 100 tons which had been produced. On the same day that CSLP presented

its application to export the 477 tons at \$3.234 per pound, the JNC authorized another firm, Somaschini Abrante & Cia., to export 5,080 kilos of first quality meat extract to Genoa at a price of \$3.00 per pound, or \$.234 per pound lower than CSLP's sale. The \$3.234 price negotiated by CSLP was also higher than the \$3.21 per pound overall average price of all Argentine meat extract exports effected in the first half of 1971 and substantially higher than the \$2.49 per pound price at which exports were made during this period by CAP, the officially sponsored Argentine cattle growers cooperative. In his opinion rejecting the "concordato" (see November 8, 1971 below) Judge Lozada cited this incident as evidence of a "tendency to sell product to other Deltec companies at lower prices than to other buyers." The facts are clear, however, that the sales were not to Deltec and in any event were not at a price lower than the prevailing price range.

August 31, 1971 The Universidad Tecnológica Nacional presents its reports in which it values the fixed assets of CSLP at \$96,698,000 in presently equivalent U.S. dollars.

September 15, 1971 The Judge denies the Alconada-Polak demand for a protective order against the transfer of Deltec's other assets in Argentina, but, in a separate order, issues precisely the protective order called for by Alconada and Polak ostensibly on the basis of the report of the Referee related to the capitalization of reserves.

September 19, 1971 CSLP submits its "concordato" proposal. The proposed "concordato" provides for the repayment of 100% of the debts over four years (10% in the first, 20% in the second, 30% in the third and 40% in the fourth year), with interest on outstanding balances of 12% per annum on local currency and 4% per annum on foreign currency debts to be paid in the fifth and sixth years; and offers to submit the company's management to the supervision of a creditors committee.

The Referee files his report in which he places a value on the assets of CSLP (based on the Universidad Tecnológica Nacional valuation) of 556,223,360 new Argentine pesos and lists liabilities, including contingent liabilities, of only 143,480,787.75 new Argentine pesos. The report also, among other things, criticizes certain transactions of CSLP, characterizes the conduct of CSLP's management as "culpable" (as distinct from fraudulent on the one hand and innocent on the other) on a number of technical statutory grounds, and recommends the non-recognition of the "Deltec group claims" (including



current commercial receivables based on product advances and tin plate shipments) on the theory of "penetration of the corporate personality."

September 22, 1971

Based on a complaint by a marketing cooperative in the interior alleging improper solicitations of proxies for the creditors meeting by CSLP, the Judge summarily removes the Board of CSLP and replaces the Directors by a committee of his own appointees.

CSLP, Deltec International, Deltec Argentina and Argentaria file appeals against the protective orders.

October 4-5, 1971

Creditors meeting in the Teatro San Martín in Buenos Aires. Creditors holding admitted claims appear in person (including about 500 workers some of whose proxies had been impounded as allegedly improperly obtained) or by proxy. Creditors who had not previously filed their claims, including the foreign bank holders of CSLP notes issued to the order of Deltec Banking in 1967-68, submit their proofs of claim.

The Judge makes certain rulings related to the meeting. Among other things, he (1) confirms the disallowance of the "Deltec group claims"; (2) admits about half and, on the basis of technical questions, disallows the other half, of the noteholders' claims; and (3) converts all foreign currency claims into pesos at the day's rate of exchange, not only for the purpose of voting at the meeting (which is normal procedure) but also definitively for purpose of collection.

CSLP formally submits its "concordato" proposal and, after debate, consents to certain modifications to the composition of the creditors supervisory committee.

Deltec International's capitalization offer is read at the meeting.

The meeting proceeds to a vote on the concordato proposal, which is approved by an 86% majority, as a proportion both of the number of admitted creditors and of admitted claims. Voting in favor were all of the banks, including the official banks; all of the workers; most of the cattle suppliers; and most of the commercial creditors. The "Deltec group claims" were not counted in the total of admitted claims and were excluded from voting.

October 18, 1971

The cooperative files a challenge to the concordato, based principally on the alleged improper solicitation of proxies.

October 22, 1971

CSLP answers the challenge to the concordato.

November 8, 1971

The Judge issues his opinion in which he refuses to approve the concordato, decrees the bankruptcy of CSLP and designates the Federal Government as receiver-liquidator.

Within hours, the Federal Government designates Dr. Miguel Busquet Serra, an experienced meat industry executive, as receiver-liquidator and orders official banks to make credit available to CSLP.

CSLP files appeal against declaration of bankruptcy.

November 16, 1971

The Judge rules that the other Deltec group companies are contingently liable for the debts of CSLP that remain unpaid upon the latter's eventual liquidation.

The Judge awards attorneys fees to Alconada Aramburu and Polak equivalent to \$150,000 and \$25,000 respectively against the Deltec group companies.

December 20, 1971

The Judge permits the JNC to place in the record, without service of copies to CSLP's attorneys, a report (supplementing earlier reports dated October 20, 24 and 28, 1973) in which the JNC accuses CSLP of among other things selling products to Deltec owned distribution companies at lower prices than to others and making preferential payments to Deltec. These accusations, which are demonstrably false but which neither CSLP nor Deltec ever had an opportunity to controvert, are subsequently referred to in the Court of Appeals opinion.

June 6, 1972

The Court of Appeals (Panel C) confirms the bankruptcy of CSLP on the grounds that the Judge has the statutory authority to deny approval of a concordato as contrary to the "general interest", and that there were in the record sufficient "facts" (facts, including those alleged in the secret report of the JNC, that had never been proved and that none of the parties had ever had an opportunity to contest) to preclude a finding that the Judge had abused his discretion. The Panel specifically ruled that there was no evidence of impropriety in the solicitation of proxies.

The Court of Appeals also reversed the extension of liability to the other Deltec group companies on the grounds that such liability had not been adjudicated in a proper proceeding and that the affected parties had not been properly brought before the court.

On the same grounds, the Panel reversed the imposition on the Deltec group companies of costs and attorneys fees. Alconada Aramburu and Polak appeal this ruling.



- June 13, 1972 The full Court of Appeals censures and imposes the maximum statutory fine (about \$40) on Judge Lozada for improper conduct in publicly commenting on the case in press interviews, on television and at banquets in his honor.
- June 13, 1972 Frigoríficos Argentinos S.A. (FASA — the Wilson plant purchased several years previously by an Argentine group) files a petition for "convocatoria", after having been kept alive for over a year through massive injections of official credit.
- June 30, 1972 CSLP submits to the Court of Appeals a petition for a hearing *en banc* based on a conflict in the construction by Panel C of the statutory phrase "general interest" with the construction placed on the phrase by other Panels in other cases.
- CSLP also files for leave to appeal to the Supreme Court on constitutional grounds.
- August 31, 1972 Deltec Argentina, having arranged a sale of Argentaria, its investment banking affiliate, to an Argentine group at a price substantially in excess of book value, applies to the Central Bank for approval to carry out the sale. Under Argentine law, Central Bank approval is required for the transfer of control of any financial institution. It had been Deltec's intention, after receiving Central Bank approval, to apply to the court for permission to effect the transfer against a deposit in court of the proceeds of the sale. While the application was pending before the Central Bank, Judge Lozada on his own motion wrote to this regulatory agency a letter pointing out that the shares of Argentaria were not transferable in the light of his protective order, whereupon the Central Bank delayed consideration of the matter.
- September 5, 1972 The Court of Appeals *en banc* affirms the construction by Panel C of the phrase "general interest", in effect asserting that under the law of Argentina a lower court judge, including one that the same Court had censured for impropriety, has unlimited discretion in approving or disapproving a composition between a corporation and its creditors.
- September 6, 1972 The Court of Appeals, on the supposition that a proper proceeding might be initiated in the future, refuses to lift the protective order for the benefit of CSLP's creditors.

- September 21, 1972 Judge Lozada, temporarily assigned to the case of Editora Codex, an Argentine company whose "concordata", which included provisions for the payment of external claims in external currency, had been approved one year earlier by another judge, orders Codex to pay its first "concordata" installment in pesos at the previous year's rate of exchange, citing as precedent his own ruling in the CSLP case. This Codex order is subsequently reversed and the original agreement reinstated by another judge definitively assigned to the Codex case.
- September 27, 1972 A criminal lawyer acting on behalf of Mr. Zurdo files a complaint in the criminal court against the directors of CSLP and of "all other Deltec group companies", alleging deceit and fraudulent bankruptcy. The Judge assigned to the case orders an audit of the Deltec group companies in Argentina and impounds the workpapers of Price Waterhouse & Co.
- March 8, 1973 Two lawyers, one a candidate for the Senate and the other for the Chamber of Deputies representing a minority nationalist party, acting on behalf of a purchaser who had just recently acquired a small claim from a general creditor, bring before Judge Lozada a petition to extend the bankruptcy of CSLP to Deltec International, Deltec Banking and each company in Argentina in which Deltec or CSLP has any substantial interest, based on the theory that all these corporations form part of a single company.
- March 13, 1973 The FASA concordato, providing for the payment of debts over four years, including foreign currency debts in foreign currencies, is approved by another judge.
- March 20, 1973 The Judge purports to serve process on Deltec International and Deltec Banking in Nassau by telegram.
- April 6, 1973 By order of Judge Lozada, on this Friday afternoon the offices of La Esperanza, Argentaria and Johnson & Higgins, three Argentine companies in which Deltec has an interest, are invaded by Government tax inspectors accompanied by police. The agents made a thorough search of the files and took photo copies of various documents, concentrating on papers containing references to DIL or its directors. In the case of Argentaria, the Court of Appeals had already withdrawn the action from Lozada's jurisdiction. Because of the timing of the search, the companies were able only on the following Monday to seek relief from the Court of Appeals.
- August 9, 1973 The Court of Appeals dismisses the motion to extend the CSLP bankruptcy to the other Deltec group companies. According to the Court of Appeals,



a motion in the bankruptcy case of one company was not the proper proceeding in which to determine the bankruptcy of other companies, but rather separate new proceedings would need to be initiated against such other companies before such a finding could be made. The Court of Appeals also held that the foreign corporations had neither been properly served with process nor had voluntarily submitted themselves to the jurisdiction of the Argentine courts.

September 4, 1973

The Supreme Court of Argentina, all of whose members were appointed after the March, 1973 elections, renders its decision on the entire case. In a long and detailed opinion, the Court affirmed the decision of the Court of Appeals in upholding Judge Lozada's declaration of CSLP's bankruptcy. In addition, the Court, reversing the Court of Appeals, held responsible for the bankruptcy CSLP's parent, Deltec International, and Deltec Argentina S.A., the local holding company for most of Deltec's other investments in Argentina. The Court thus reinstated Judge Lozada's order of November 16, 1971 but expanded it by characterizing as joint and several rather than contingent the liability of the other Deltec group companies in Argentina for the debts of CSLP. The Court purported to find ample evidence in the record that the Deltec group companies constituted a single economic enterprise and that the enterprise had conducted itself in a manner damaging to the national interest, although the only "evidence" of such conduct to which the Court refers is the JNC report (see December 20, 1971) on pricing policy which was never the subject of an evidentiary hearing and which contains its own refutation. Having found the Deltec group companies to constitute a single economic enterprise, the Court of Appeals was held to be in error when it determined that the other Deltec units had not been properly made parties to the proceedings; since they constituted a single enterprise, they were necessarily parties to the proceeding and had had ample opportunity to litigate all issues, including the issue that they constituted a single enterprise, and could not be heard to complain if they had failed to avail themselves of the opportunity to do so. The Court therefore remanded the proceedings to the trial court with instructions that the latter, among other things, ascertain which entities and persons were included in the economic group thus held to be liable. Proceeding to a decision of peripheral issues, the Court reversed the Court of Appeals' reversal of the award of costs and attorneys fees to Mr. Zurdo and Drs. Alconada Aramburu and Polak, and its lifting of protective orders to secure the same.

September 6, 1973

Judge Lozada, without awaiting the return of the record from the Supreme Court and ignoring the Supreme Court's order that he first proceed to

ascertain which companies and persons were to be included in the Court's finding of responsibility, issued bankruptcy orders against thirteen companies which, according to him, were already shown in the record to constitute the Deltec group in Argentina.\* These companies included Deltec International, Deltec Banking, Deltec Argentina, two operating and one inactive subsidiary of CSLP, Argentaria, its mutual fund management and distribution companies, three inactive subsidiaries and Ingenio La Esperanza, a sugar company. Interventors in all of these companies were appointed and the Referee in the CSLP bankruptcy was instructed to prepare a consolidated statement of all the assets and liabilities of the entire group.

\* Values:

		<u>U.S.\$ equiv.</u>
La Esperanza .....	Book net worth	25,052,000
Argentaria .....	Arm's length offer (see August 31, 1972)	487,500
CSLP .....	Univ. Tec. Nac. valuation of fixed assets	96,698,000
		<u>122,237,500</u>
Locally owed peso debt of CSLP		<u>6,504,000</u>



MEMORANDUM

CIA. SWIFT DE LA PLATA

Status of Argentine Litigation

December 18, 1975

The purpose of this Memorandum is to bring up to date the chronologically arranged printed pamphlet entitled "The Case of Compañía Swift de La Plata, S.A.F." which ends with the confirmation by the Supreme Court of Justice of Argentina on September 4, 1973, of the bankruptcy of CSLP and the declaration by Judge Salvador María Lozada on September 6, 1973, of the bankruptcy of the other Deltec group companies. Copies of these two decisions, together with unofficial English translations, have been furnished to the Office of the General Counsel of the Treasury (Mr. Goodman) and to the Office of the Legal Adviser of the State Department (Mr. Gantz). A copy of the pamphlet in which these decisions, among other matters, are summarized is annexed hereto as Exhibit A and is referred to herein as the "Chronology."

For easier comprehension, the approach in this Memorandum will be topical rather than strictly chronological.

I. Sale of Argentaria

Lozada's September 6, 1973 bankruptcy order purported to include in its coverage Argentaria S.A. Compañía Financiera ("Argentaria"), an investment banking company substantially wholly owned by Deltec's Argentine intermediate holding company, Deltec Argentina S.A.F.M. The Central Bank was named as interventor-liquidator. Under the law,



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a regulated financial institution may not be declared bankrupt, and therefore Judge Lozada still during September, 1973 corrected his bankruptcy order to exclude Argentaria which, however, remained, and was after a suspension of a few days reopened, under Central Bank intervention. Lozada having been suspended (see below), a judge temporarily assigned to the case, Guillermo F. Tabanera, on October 26, 1973 ordered Argentaria to be sold at public auction as a going concern. Deltec expressly consented to the sale. The group to whom Deltec itself had arranged a sale (see Chronology entry of August 31, 1972) was permitted to bid, and did indeed bid the price at which Deltec had been willing to sell, but two substantially higher bids were entered by other groups, to one of which Argentaria was in due course adjudicated. The purchase price was paid into the court's CSLP liquidation account (see heading VII below).

## II. Removal and Replacement of Judge Lozada

As noted in the Chronology, the companies had made repeated efforts to obtain the disqualification of Judge Lozada for prejudice. Although the Court of Appeals had imposed sanctions on Lozada for improper conduct (see Chronology entry of June 13, 1972), it had declined (e.g., on February 13, 1973) to remove him from the case. After the bankruptcy order, however, the Court of Appeals suspended him from



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further participation in the CSLP matter. Subsequently, in the course of 1974, the Ministry of Justice offered Lozada a "promotion" to law officer of the Court of Commercial Appeals; Lozada declined and took early retirement.

After temporary assignment to Judge Tabanera and to another judge, Von Oertner, responsibility for the case was during the early part of 1974 definitively assigned to Judge Juan Carlos Nievas, whose previous experience was in the labor law field and who is thought to be a Peronist identified with the trade union leadership.

### III. The Criminal Proceeding

As mentioned in the Chronology (see entry of September 27, 1972), there was filed a private citizen's complaint alleging violations of the criminal law in connection with the CSLP bankruptcy by persons not specifically named in the complaint. The matter was assigned to an investigating magistrate (juez instructor) whose function in the Argentine legal system is analogous to that of the grand jury in the Anglo-Saxon system; that is to say, to determine the probable existence of crimes and identify the persons who probably committed them. The magistrate has complete control of the proceedings before him. The public prosecutor need not be, and in this case is not known to be, a party to these proceedings. As in the case of the grand jury proceedings,



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the proceedings before the magistrate are secret. He has the the power to subpoena records and to compel the attendance of witnesses. Witnesses summoned to appear before him may be accompanied by counsel; however, counsel for persons who are summoned but fail to appear are not entitled to be heard.

After about a year of relative inactivity the magistrate, Jose Maria Orgeira, appointed a panel of accountants, which included one member (the "Parties' Expert") suggested by the Deltec Group's Argentine counsel. Around September, 1973, the panel submitted a report, in the conclusion of which the Parties' Expert did not join, suggesting various violations of the penal code in connection with the insolvency of CSLP. The Parties' Expert submitted a dissenting report on November 9, 1973, which Magistrate Orgeira refused to include in the record.

In November, 1973 there appeared in the Buenos Aires press a report to the effect that the magistrate had summoned certain persons to appear before him as possibly implicated ("imputados") in possible criminal acts; such persons having failed to appear, he had issued warrants for their arrest; and, since they were not to be found in the country, he had requested their whereabouts to be ascertained through Interpol. The persons then named in the newspaper reports were A. Thomas Taylor, Chairman of the Board of Deltec International



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Limited; Clarence Dauphinot, President of Deltec International; David Beaty III, an Executive Vice President of Deltec International (resident in Brazil); Enrique A.D. Holmberg, the last President of CSLP and a Vice President of Deltec International (an Argentine citizen then and now working for Deltec in Coral Gables, Florida); and Raul N. del Sel, the last Vice President of CSLP (an Argentine citizen then and now working for Deltec in Madrid).

Subsequently, the extradition of del Sel was requested from the government of Spain, which referred the matter to the appropriate tribunal. A copy of the Spanish justice ministry's reference to the tribunal was obtained by del Sel's Spanish counsel and is analyzed in the letter dated August 9, 1974 from the undersigned to del Sel, a ~~of~~ copy of which is annexed heretoto as Exhibit B(1). On March 11, 1975 the Spanish tribunal refused extradition on the grounds set forth in an opinion a copy of which has been furnished to the State Department and which is summarized in the undersigned's transmitted letter dated June 13, 1975 to David A. Gantz, Esq., Assistant Legal Adviser (copy annexed hereto as Exhibit B(2)). In August, 1975 it was learned that a new extradition request, in which the previously ascertained procedural defect had been cured, had been filed in Spain. It is not known precisely what disposition has been made of this request, except that



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del Sel, who is still residing and working in Madrid, has not in fact been extradited.

In September, 1974 there appeared a further publication in the Argentine press to the effect that the magistrate had issued warrants for the arrest for, and was seeking the whereabouts of, a long list of other persons, including substantially all persons who appeared from Deltec International's published 1970 Annual Report to be members of the Executive Committee of its Board of Directors; a number of its officers who appeared to have been personally involved in matters related to the Argentine subsidiaries; and several local directors and officers of CSLP and of some, but not all, of the other subsidiaries (e.g., none from the board or management of La Esperanza were named).

It is understood that all persons now in Argentina who were summoned duly appeared and testified. So far as is known, all of them remain at liberty and no indictments have been returned against any of them.

None of the persons now physically outside of Argentina have chosen to appear. However, although not required to do so, Magistrate Orgeira in August, 1974 accepted for the record a detailed sworn deposition prepared by Mr. Holmberg in Florida and submitted through Holmberg's local counsel. In this deposition, Mr. Holmberg (a retired



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army colonel whose family was noted for distinguished public service during many generation and whose own public service career culminated in the early 1960's with a tour as Argentine military attache in Washington) sets forth at length not only his own but also his Deltec colleagues' exemplary conduct in the CSLP matter.

Apart from the extradition proceedings against del Sel, none of the persons apparently sought by the magistrate have to date been molested in any way. The principal impact of the pending proceedings is the impairment of communications between Deltec and either its own legal team or any responsible official in Argentina. In view of the practical impossibility for any senior Deltec officer with any background in Argentine matters actually to enter the country, all such communications have had for over a year to be conducted through correspondence or through meetings outside of Argentine.

Annexed hereto as Exhibit B(3) is a copy of a letter dated May 24, 1974 from the undersigned to Vincent A. Rodriguez, Esq., of counsel to, and a member of the Board and Executive Committee of, Deltec International. In this letter there are analyzed the accusations of criminal misconduct that appear to have been leveled against Deltec and its management. This summary was prepared from such available materials as the citizen's complaint and the accountants' panel



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report, both referred to above. It must be reemphasized that no indictment or other formal charges have ever been brought against any person and may never be brought.

It must be conceded that the criminal proceedings are now in a state of procedural impasse. Unless and until some person who admits to knowledge of the facts appears and testifies, the magistrate is no position either to move forward to an indictment or, realistically, to dismiss the charges. If the bankruptcy proceedings could be terminated through a payment of the creditors and due compensation for Deltec, and if thereafter appropriate arrangements could be made for the safety of our persons, either from arbitrary imprisonment or from terrorist violence, Mr. Holmberg and the undersigned, and possibly others, would not hesitate to appear and give the required testimony.

IV. The Receiver's Report; "Calificación de Conducta"; Date of Insolvency

On October 21, 1974 the Receiver of CSLP (the same official referred to in the Chronology as the Referee) submitted to the court a report of some 1,700 typewritten pages on all of the Argentine group companies other than CSLP and Argentaria. A zerox copy of the complete report has been delivered to David A. Gantz, Esq., Assistant Legal Adviser in the Department of State. A summary prepared by the under-



December 18, 1975

signed, copies of which have previously been furnished to the Departments of State and Treasury, is annexed hereto as Exhibit C.

It may be of interest to observe that the report places on La Esperanza, the sugar company, a value of 707,469,000 pesos (equivalent at the time to \$71,000,000 at the then official, and to over \$35,000,000 at the then black market, rate of exchange).

Counsel for all the companies other than the CSLP subsidiaries duly filed objections to this report.

Among the procedural steps called for by law in any insolvency proceeding is a characterization by the court of the conduct of the insolvent debtor and its management as either fraudulent, culpable or innocent ("calificación de conducta"). The Receiver makes certain recommendations in this regard which are summarized in Exhibit C. These recommendations are not, however, binding on the Judge, who is required to make his own determinations based on evidentiary hearings in each individual case. In these hearings the person whose conduct is to be judged may appear by counsel and need not appear personally. To date, no such hearings have been held. In these proceedings, when held, the issues to be litigated may overlap with the issues in the criminal proceedings, but in theory at least the two are entirely independent of one another.



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One of the issues currently being strenuously litigated is the "date of insolvency" (fecha de cesación de pagos) of the group companies other than CSLP. As to CSLP, such date had been found to be June 20, 1970, the date on which CSLP had failed, with the creditor's consent, to pay a maturity of a loan from the Export-Import Bank of the United States; this finding had been affirmed by the Supreme Court. As to the other group companies, the Receiver recommended a finding of the same date; the parties, while not conceding that they were ever insolvent in fact, contended for September 6, 1973, the date on which Judge Lozada declared them bankrupt. The date is significant because it is the debtor's conduct between this date and the initiation of insolvency proceedings that is relevant for the purpose of such conduct's characterization. The earlier the date, the larger the number of people involved in the characterization proceedings and of the issues that might be raised, with a correspondingly greater cost of legal representation. On June 9, 1975, Judge Nievas ruled in favor of the Receiver's contention for the June 20, 1970 date. An appeal was taken from this ruling and briefs on appeal were filed on July 18, 1975. The Court of Appeals has not yet acted on this appeal.



December 18, 1975

V. Extension of Bankruptcy; The "Orso Case"

Judge Lozada's September 6, 1973 decision to declare bankrupt certain named Deltec Group companies was appealed by all of such companies other than the CSLP subsidiaries (Provita, Ibri and Ganados - see Exhibit C), on the ground, among others, that such decision was a misapplication of the Supreme Court's September 4, 1973 mandate. On December 20, 1974 the Court of Appeals affirmed such decision, copies of which, together with the undersign's annotated translation (attached hereto as Exhibit D) have previously been furnished to the Departments of State and Treasury. An appeal from this affirmance was filed in the Supreme Court by, among others, La Esperanza in April 1975; the Supreme Court has not to date ruled whether it will hear the appeal, not to speak of ruling on the merits.

It will be recalled that a general creditor's assignee (Leopoldo Orso) had initiated a proceeding to extend CSLP's bankruptcy to the other group companies (see Chronology entry of March 8, 1973). This collateral proceeding was not before the Supreme Court by the time that it rendered its September 4, 1973 decision on the main case; but that decision together with Lozada's September 6, 1973 implementing decision, which reached the result sought by Orso, was thought to moot the Orso case. However, on March 11, 1975 Judge Nieves,



December 18, 1975

apparently gratuitously, rendered a decision in the Orso case that duplicated the Court of Appeal's December 20, 1974 decision in the main case. An appeal was taken to the Court of Appeals.<sup>\*</sup> ~~Thus the same issues are pending decision both in the Court of Appeals (which had already decided them) and in the Supreme Court.~~

On June 6, 1975 the Judge decided a number of other motions adversely to the Deltec companies.

#### VI. Administration of La Esperanza

The court's administration of La Esperanza, the only substantial Deltec asset in Argentina outside of CSLP, is the subject of a constant stream of motions filed by that company's counsel.

While the court originally retained the company's operating management, it superimposed thereon a court-appointed superstructure, at a cost on the order of \$500,000 a year, consisting of first one and then two coadministrators and a substantial staff. Under this burden the operating results, which appear still to show a profit, have suffered. Moreover, the company's assets and operations have become the subject of a three-way tug of war among the Governor of the Province of Jujuy, when La Esperanza's fields and mill are located, and the two co-administrators, one a Jujuy Communist first appointed by Judge

*\* which in March 1976 reversed and dismissed the collateral proceeding as duplicative.*



December 18, 1975

Lozada and the other a Peronist labor union official who is a protégé of Judge Nievas.

On May 30, 1975 Judge Nievas fired La Esperanza's operating general manager.

VII. Liquidation; "The Sola Motion"

Late in 1973 a general creditor, Guillermo de Sola SRL, filed a motion that the court suggest to CSLP's Administrator that he prepare a plan of liquidation. In a decision rendered on February 4, 1974, a translation of which is annexed as Exhibit E, the then sitting judge, Von Oertner, denied the motion, essentially on the ground that the wind-up of CSLP was a problem for the national government. This action by the Judge was affirmed by the Court of Appeals. However, de Sola recently renewed his motion, with the support of the Receiver; the currently sitting Judge, Nievas, again denied the motion and an appeal from this denial is pending.\*

Nevertheless, some action has been taken to liquidate some of CSLP's peripheral (non-packinghouse) assets:

On October 4, 1974 the legislature of the Province of Santa Cruz declared CSLP's sheep slaughtering plant in Rio Gallegos to be seized with the public interest. On July 3, 1975 the Santa Cruz legislature made the same finding as to the sheep slaughtering plant in Puerto

\* In March, 1976, the Court of Appeals reversed and ordered the liquidator-administrator to prepare a plan of liquidation. This official, a government appointee, has moved to appeal to the Supreme Court.



December 18, 1975

San Julian. Both plants, in the extreme south of the country, have been operating under lease to the Province. Expropriation (eminent domain) proceedings are in progress.

In June 1975 Judge Nievas ordered the sale at public auction of a 116,140 M2 tract of land in Isla Rio Santiago. The sale was effected for Arg. Ps. 1,290,000 cash.

Also in June 1975, the Judge ordered the receiver to arrange for a public sale as a going concern of the Provita-Ibri poultry and balanced feed business. The Universidad Tecnologica Nacional has been commissioned to make an appraisal for the purpose of setting the upset price.

No action has yet been taken with respect to the other peripheral assets, which include among others the country's second largest vegetable oil operation, a powdered milk factory and a golf course, all in Rosario; a sausage factory in Buenos Aires; a nation-wide grocery products distribution organization; etc. And, of course, no action has been taken with respect to the two large beef processing facilities in Rosario and Puerto La Plata, for which the only conceivable buyer is the national government or a government sponsored entity.

In September, 1975, the Judge ordered the credit balance in the Receiver's liquidation account, amounting at this time to Arg. Ps.



December 18, 1975

5,026,227, to be invested in readjustible government bonds. Up to this time, this account, a large part of the balance in which arose from the sale of Argentaria in 1973 when the peso-dollar exchange rate was under 10 to 1, had been maintained in a non-interest bearing peso bank account.

#### VIII. Attempted Negotiations

In December, 1973 there was hand-delivered in the Casa Rosada a letter dated November 5, 1973 from Deltec International's Chairman of the Board, Mr. A. Thomas Taylor, to then President Perón suggesting negotiations with a view to a settlement of the issues in the light of the Supreme Court's September 4 decision. To this letter there was received only a printed form letter response to the effect that the President was busy and that the matter had been referred to the Ministry of the Economy. The latter was never heard from.

During 1974, there took place two meetings between Deltec officers and the then Minister of Justice, Dr. Antonio Benítez, one in Rio de Janeiro in March and the other in Madrid in August. Both meetings, while cordial, were inconclusive.

It should be mentioned that at various times Deltec has been approached by various persons claiming to speak on behalf of persons in authority, including Dr. Benítez and Judge Nievas, and demanding what amounted to bribes, which Deltec consistently refused to pay.



December 18, 1975

Contact has also been maintained with the Argentine Embassy in Washington.

The State Department (Deputy Assistant Secretaries Bowdler and Ryan) and Ambassador Robert C. Hill were kept currently informed of each and every one of these meetings, approaches and contacts.

It is understood that the Deltec Group's lead counsel in Argentina has also established contact with several officials of the current government. Because of the communications difficulties previously referred to, Deltec has no concrete information as to these contacts; it is believed that counsel keeps the U.S. Embassy informed.

Max A. Stolper

MAS:sms



December 23, 1975

Honorable Albert Fishlow  
Deputy Assistant Secretary  
for Inter-American Affairs  
Department of State  
Washington, D. C. 20520

Dear Dr. Fishlow:

As a result of conversations with the officials in both State and Treasury who have occupied themselves with the Swift de La Plata problem in Argentina, it has become apparent that the question of the values involved is not clearly understood. Accordingly, I propose to set forth briefly herein some calculations showing Deltec's equity in the Argentine assets:

I. Cia. Swift de La Plata

<u>Net Assets</u>			<u>US\$ 1,000</u>
Fixed assets as per Universidad Tecnologica Nacional 8/31/71 valuation (Ps. 483,490,492 05)			96,698 (1)
		<u>US\$ 1,000</u>	
Foreign currency debt admitted		8,000	
" " " non-admitted		3,988 (2)	11,988 (3)
			<u>84,710</u>
		<u>Arg. Ps. 1,000</u>	
Current and other assets 8/3/71		72,733	
Local currency liabilities		69,100	
		<u>3,633 05</u>	727 (4)
			<u>85,437</u>
<u>Equity</u>			
Parent co. advances agreed to be capitalized			9,216 (5)
Equity			<u>76,221 (6)</u>
			<u>85,437</u>



Notes

(1) This purports to be going concern value, and probably approximates replacement cost. As a valuation of fixed assets, it is theoretically invariant against currency fluctuations. Actual going concern value as a function of profitability is problematical. Profitability in turn is a function of, on the one hand, efficiency of utilization and, on the other, governmental policies relating to raw material supply, wage and fringe benefit rates and employment levels, and exchange rates applied to export earnings. The UTN report emphasizes the high degree of utilization efficiency under the Deltec management. To the extent that governmental policies precluded profitable operations, these themselves could be argued to be a sub-rosa form of expropriation, apart from the government's actual intervention in and operation of these assets. At any rate, the value placed on these assets by an independent, technically competent Argentine institution under official sponsorship is an indication at least of what they should be worth.

(2) Includes:

\$1,972,000 claims of Eurodollar noteholders provisionally disallowed for technical reasons.

2,016,000 "Deltec group" commercial claims (product advances, tin plate, etc.) and miscellaneous.

\$3,988,000

(3) Under Argentine law, in the case of a bankruptcy these amounts are frozen in pesos at the date of declaration of bankruptcy (in the case, Arg. Ps. 6.80 to US\$ 1.00, the rate at November 8, 1971), whereas in the case of a creditor's agreement (concordato) all debts would have been payable in the currency in which they were denominated. Thus the gratuitous declaration of CSLP's bankruptcy itself amounted pro tanto to an expropriation of the foreign creditors. From the point of view of the equity, the reduction in value of the foreign currency payable theoretically results in a credit.

(4) This is the only element in this calculation that, theoretically, is exposed to depreciation in the external value of the Argentine currency. Theoretically, its virtual disappearance results in a credit to the equity.



Honorable Albert Fishlow  
December 23, 1975  
Page Three

- (5) This is the amount of Deltec's "financial advances" which Deltec, in its negotiations with prospective buyers and as part of the management's concordato proposal to the creditors, had agreed to capitalize.
- (6) The resultant of the calculation.

II. Ingenio La Esperanza, S.A.

Receiver's valuation of equity in October, 1974: Arg. Ps. 707,469,000. At the then official rate of Arg. Ps. 9.98 to US\$ 1.00, this places a value on the equity of

\$71,000,000 (approx.)

That this corresponds to fair market value in Argentina is shown by the following analysis, based on (1) latest available financial information on La Esperanza and (2) published information of amounts paid for other sugar properties sold and/or legally expropriated in 1964:

Mill at \$5,500 per ton/day of grinding capacity	\$29,000,000
Alcohol distillery	2,000,000
Transport system	3,000,000
Agricultural machinery	2,000,000
10,000 Hs. irrigated canefields @ \$250	25,000,000
60,000 Hs. other land @ \$50	3,000,000
Fixed assets	<u>64,000,000</u>
Net current assets (inc. refined sugar inventory)	6,000,000
Other assets	200,000
Non-current liabilities	<u>( 1,400,000)</u>
Net worth	<u>\$68,800,000</u>

III. Miscellaneous

Proceeds from sale of <sup>Arg. it</sup>Argentinian; investment in insurance brokerage and ranching companies; miscellaneous assets of Deltec Argentina: say

\$4,000,000

IV. Recapitulation

Equity in Cia. Swift de La Plata	\$ 85,400,000
Equity in Ingenio La Esperanza	68,800,000
Miscellaneous	4,000,000
	<u>\$158,200,000</u>

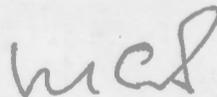


Honorable Albert Fishlow  
December 23, 1975  
Page Four

The purpose of this analysis is to give you an order of magnitude idea of the value of Deltec's claim. As has been indicated to you in conversation, Deltec is, realistically, prepared to settle for a great deal less. However, in the light of these magnitudes, Deltec is not prepared to give up.

My very best wishes for the New Year.

Very sincerely yours,



Max A. Stolper

cc: Hon. John A. Bushnell  
Acting Assistant Secretary of the Treasury

Hon. Stephen Low  
Executive Office of the President

bcc: Mr. A. Oakley Brooks

MAStolper:mtaylor



**MAX A. STOLPER**  
**ATTORNEY AT LAW**

**BERLINER, MALONEY, GIMER & MUIR**  
**(202) 293-1414**

**1100 CONNECTICUT AVENUE, N. W.**  
**WASHINGTON, D. C. 20036**

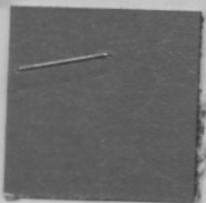
3:45 p.m.

Tuesday, April 20, 1976

Max Stolper called to leave the following name and address for you:

Mr. Daniel Arrill  
Director  
Investment Policy Division  
Office of International Finance  
and Investment  
Department of Commerce





Tuesday 4/20/76

Meeting  
4/20/76  
2:30 p.m.

1:10 Max Stolper called at Governor Connally's suggestion  
to request an appointment.

We have scheduled a meeting at 2:30 this afternoon  
(Tuesday 4/20).

Firm: Berliner, Maloney, Gimer and Muir  
(Mr. Stolper is representing Deltec International  
in the matter he wishes to discuss with you.)

293-1414

Mr. Schmitts:

4/27/76

Per our phone conversation  
today.

MAX A. STOLPER

ATTORNEY AT LAW

mas

BERLINER, MALONEY, GIMER & MUIR  
(202) 293-1414

1100 CONNECTICUT AVENUE, N. W.  
WASHINGTON, D. C. 20036

LAW OFFICES

**BERLINER, MALONEY, GIMER & MUIR**

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CABLE ADDRESS  
BERMAR

HENRY A. BERLINER, JR.  
BARRY C. MALONEY  
RICHARD H. GIMER  
J. DAPRAY MUIR  
MAX A. STOLPER  
THOMAS LUMBARD  
LAURENCE A. ELGIN  
A. THOMAS CARROCCIO  
EDWARD J. SMITH, JR.  
ERIC L. CUMMINGS  
JACKSON L. MORRIS  
PATRICK J. GRIFFIN, JR.  
OF COUNSEL

April 26, 1976

Hon. Richard G. Darman  
Assistant Secretary for Policy  
Department of Commerce, Room 5858  
Washington, D. C. 20230

Dear Mr. Darman:

It has been suggested to me that I call to your attention the situation of Deltec International Limited, a corporation with which I was associated for many years as an executive and which I now represent as counsel. This situation is particularly relevant to your work in connection with Secretary Richardson's new task force on improper corporate payments.

Deltec is an international financial and trading company which for many years has devoted itself principally to the development of the Latin American region. Its stockholders include a number of important European and Latin American investors; however, over 75% of its stock is owned beneficially by U. S. nationals, including some 8,000 public investors whose shares are listed on the New York Stock Exchange.

In 1969, Deltec acquired by merger with International Packers Limited (Organized in 1918 as a spin-off of the international activities of Swift & Company) the shares of, among other entities, Cia. Swift de La Plata (CSLP), the largest meatpacking company in Argentina. Because of discriminatory governmental policies and despite massive infusions of fresh cash from abroad, CSLP was forced toward the end of 1970 to apply to the Argentine courts for an arrangement with its creditors. The proceedings were turned, with the active encouragement of successive Argentine governments, into a mockery of justice, culminating in the seizure of all of Deltec's other properties in Argentina -- including one of the country's most efficient sugar producers -- and accusations of criminal misconduct against most of Deltec's directors and senior executives, who include a number of the most prominent leaders of America's industrial and financial community.

The details of this unhappy story, as well as Deltec's so far fruitless efforts to achieve a just settlement in the interests of its shareholders and CSLP's creditors, both Argentine and external, are in the files of your Department (Bureau of International Economic Policy and Research). Officials of the Departments of Treasury and State have also occupied themselves with this problem, so far to no avail.



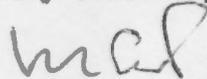
Hon. Richard G. Darman  
April 26, 1976  
Page Two

An aspect that should be of particular interest to you at this time is the fact that almost from the beginning of its involvement with CSLP, Deltec has been subjected to a continuous stream of extortion demands. During the recently concluded Peronist era, these included, but were not limited to, approaches from highly placed officials in the government and the judiciary. In each case, money was demanded, in amounts ranging from a few thousand to millions of dollars, in consideration of promised assistance toward a solution to which the company was by law entitled but which has so far eluded us. Without exception, these approaches were turned away.

The point has no doubt been made to you by others that the corporate morality which the United States properly demands from its nationals in their dealings abroad, and which is the concern of the Secretary's task force, should have as its counterpart our country's full backing of American investor-owned companies, such as Deltec, whose proper conduct is rewarded by physical violence, theft and extortion actively engaged or acquiesced in by officials of other countries.

I should very much like to discuss this subject with you further, and accordingly propose to give your office a call in the next few days.

Very sincerely yours,



Max A. Stolper



August 26, 1976

Dear Mr. Dauphinot:

Thank you for sending me a copy of your report "Chile - An Economic Review." I shall read this report with great interest and, as you indicated, it should give me a better insight into Chile's economic affairs.

With best regards.

Sincerely,

Edward C. Schmults  
Deputy Counsel to the President

Mr. Clarence Dauphinot  
Deltec International Limited  
Deltec House  
Cumberland & Marlborough Streets  
P. O. Box N-3229  
Nassau, Bahamas



# DELTEC INTERNATIONAL LIMITED

DELTEC HOUSE, CUMBERLAND & MARLBOROUGH STREETS  
P. O. BOX N3229, NASSAU, BAHAMAS

TELEPHONE: NASSAU 2-8733  
CABLES: INTERDELTEC NASSAUBAH  
TELEX: NS 101 INTERDELTEC

August 16, 1976

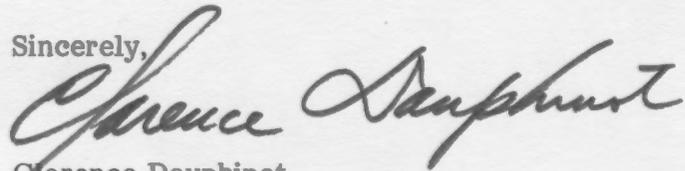
Hon. Edward C. Schmults  
Associate Counsel to the President  
The White House  
Washington, D. C. 20500

Dear Mr. Schmults:

We have spent a considerable amount of time and money researching the economic and financial situation in Chile and have made a report on the present economic condition of that country, the background that brought it to its present state and the possibilities of future progress. Our conclusions are definitely positive and we ourselves are going to extend considerable additional credit to Chile henceforth as a result of these conclusions.

I hope that this report will be interesting to you and will give you a deeper and objective insight into that country's economic affairs.

Sincerely,

  
Clarence Dauphinot

Enclosures





# Chile

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an  
economic  
review

JULY 1976

**THE DELTEC BANKING CORPORATION LIMITED**



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## Introduction

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Few countries in the world in recent years have been the object of as much international attention as the Republic of Chile. Much of this attention has focused on the events taking place from 1970 to the present. In September 1970, the Congress elected an avowed Marxist president of Chile although he had received only 36% of the popular votes cast. On September 11, 1973, the armed forces took control of the country and ended rule by civilian governments that had dated uninterruptedly from 1932.

The assumption of power by the military was in response to a series of events. The executive branch of the government was constantly at odds with the Congress and the courts, persistently flouted Congress' wishes and was cited for unconstitutional behavior by the Supreme Court. Attempts were made to dominate or eliminate dissenting opinions in the case of radio and television by state monopoly control of the supply of broadcasting equipment, and in the case of the press by intervention and harassment of newspapers and, finally, by control of newsprint supplies. These actions were undertaken to strengthen the hold of the minority on the constitutional process and took place in an economy which was fast disintegrating as a result of chaotic and counterproductive decisions taken in the public sector. By the time the military moved to assume power, the minority President was being openly supported by the international Marxist movement, whose support included the presence of several thousand non-Chilean personnel in Chile. Finally, the military, convinced that the country's democratic procedures faced total erosion under the Marxist President, moved to assume power.

Since the 1973 ascent of the military to power, Chile has been the object of much commentary, some of it critical. It is not, however, the purpose of this report to discuss present politics in Chile, to engage in value judgments or political analyses of past or current events, or to make any kind of judgment of a political nature.

The purpose of this report is to focus clearly on the current state and future prospects of the economy of Chile, where the remarkable progress achieved since 1973 has often been obscured in the rhetoric of political discussion. With respect to the Chilean economy, the figures speak for themselves in describing the disastrous effects of the economic policies undertaken between 1970 and 1973. They also indicate the difficulty of managing the economic situation between 1973 and 1975 as a result of these policies, and the substantial improvement registered since mid-1975. This improvement is notable not only with respect to the short-range problems caused by the prior administration, but also with respect to the correction of fundamental problems in the economy which date back to pre-1970 years.

This report is intended for use by those persons, particularly in the international financial community, interested in making an objective evaluation of the current state and future prospects of the Republic of Chile. It has been prepared by The Deltec Banking Corporation Limited, an international banking organization with long years of experience in Chile and throughout Latin America.



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## Background

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### The 1973 Situation

In order to examine the current economic situation in Chile and to measure the progress realized since 1973, it is useful to understand the exact state of the economy inherited at that time by the present government from the prior administration. By the end of 1973, the economy was in serious difficulty. Inflation, fed by massive government deficits and monetary expansion, totalled 508% for the year as measured by the official Consumer Price Index. By year-end consumer prices had increased some 35-40 times over 1969 and average real wages and salaries had fallen significantly below their 1969 levels by the middle of 1973. The combination of enormous inflationary pressures and the system of controls on public utility tariffs, interest rates, exchange rates and other prices had created serious distortions of relative prices and consequent supply shortages. The public sector deficit had risen from 3% to 17.5% of the Gross Domestic Product between 1969 and 1973 and was financed almost entirely through domestic money creation. The money supply had grown 37-fold during that period. Real output had fallen approximately 5% in 1973 after having stagnated in 1972. The decline in agricultural production was particularly sharp, output falling below the average levels of the mid-1960's. Rising food imports and falling copper production converted a foreign exchange surplus of \$343 million in 1970 to a deficit of \$725 million at the end of 1973. Chile had ceased to meet fully its external debt service obligations in 1971. More than 300 manufacturing enterprises, the entire financial sector, the major copper mines, and 6.4 million hectares or 32% of agricultural land had been expropriated or otherwise placed under government control over the three years ending in 1973, with ensuing problems of administration, structural adaptation, loss of investment and flight of technical-managerial expertise. Clearly the situation in 1973 had reached crisis proportions.

By the middle of 1975, the new government, despite the chaotic legacy described above and an unexpected downturn in world copper prices, had solidified its economic policies and begun to measure results. The available economic data from the years during the previous administration and up until mid-1975 has often been cited by Chile's critics as demonstrating that the new military administration has been a failure. It has been alleged that even with temporarily higher copper prices during part of the 1973-1975 period, Chile's international net reserves position continued to deteriorate; that the 1973-1975 recession in the Chilean economy contrasted sharply with the "prosperity" of the years from 1970-1973; and that the unemployment cost to Chile at present is at an unacceptable level.

An examination of the economic data for 1970-1973 could lead to an opinion that Chile was well off under the prior administration. A fair analysis of the figures will show more clearly, however, that despite the illusion of prosperity under that administration, what really was occurring was the systematic destruction of Chile's economic base. The figures for agricultural production in 1973 clearly show that output, in physical terms, for 11 of 14 key crops had fallen to the lowest level since 1969. Net international monetary reserves of \$343 million by the end of 1970 had been converted to a deficit of \$725 million by the end of 1973, for a swing of over \$1 billion. The illusion of prosperity created during the prior years by rapid increases in salaries, coupled with price controls at unrealistically low levels, left a "mortgage" to be paid in future years. The task of rebuilding Chile's agricultural sector, industrial sector and international reserves fell to the successor administration.

### The New Administration's Policies

The policies developed between 1973 and 1975, which are currently being implemented, represent a course of action designed to correct not only the specific problems inherited from the previous administration, but also to implement basic changes of long-term impact in the economy. A key element in the long-range program is the encouragement of exports of non-copper products as a means of reducing the traditional, almost total, dependence of Chile on copper as a primary source of export earnings. Other elements are to place both external and internal financing on a sound basis and to restore Chile as a country with access to international investment and lending sources. Yet another long-term goal is to effect wider distribution of income within Chile through an overhaul of the taxation system.

In order to achieve these goals, Chile has embarked on a program of economic policies whose chief feature is to free the economy from government controls and to allow prices and interest rates, responding to supply and demand, to play the key role in resource allocation. In addition to this rationalization of the internal sector of the economy, the government has embarked on a program of tariff reduction aimed at forcing the country's industry to become more competitive in international terms. This plan also contemplates filling up idle capacity with foreign orders, stimulated by placing exchange rates on a realistic basis to encourage foreign purchases.

Many of the above reforms have long been urged by economists within Chile, by international agencies and by banks and others concerned with the country's long-term progress. In undertaking these measures, it has been apparent from the beginning to Chilean and international planners that bitter economic "medicine", no matter how salutary in the long run, would involve short-term costs, principally of a social nature.

Specific actions taken by the government prior to June 1976 include the sale or return to the private sector of virtually all of the private companies nationalized by the previous administration. The consequent administration of these companies by private shareholders has generally been accompanied by lower employment levels. Other constrictive measures have included:

- A cut of 15%, in real terms, of all government expenditures.
- A total halt of new employment by the government.
- A 25% cut in all foreign currency expenditures.
- A 10% surcharge on all property and income taxes.
- The fixing of significant reserve requirements for banks.
- Increases in rates for all public utilities such as gas, electricity and telephone, in some cases by as much as 1,000%, to the point of covering the costs of providing these services.
- Tariff cuts of a widespread nature to the point where, for most products, the maximum tariff as of June 30 will be 35%.
- Establishment of a flexible system for the peso/dollar exchange rate which involves frequent mini-devaluations in order to keep the peso from becoming overvalued and hindering export efforts.



Although these measures have been frequently described as "Draconian" by outside observers, there really was no practical alternative to accepting their short-term cost in favor of long-term benefits. The large majority of the Chilean population appears willing to accept its share of the sacrifices needed to reestablish the country's economy.

### Summary of Results to Date

A sector-by-sector analysis of the Chilean economy follows as the body of this report. The main results of the new economic programs to date are summarized in the following paragraphs:

#### On the negative side:

- Unavoidable dislocations have occurred in the economy, particularly in the form of unemployment as a result of (a) constrictive policies in general, (b) the return to private hands of previously state owned enterprise, and (c) the placing of the remaining government activities on a self-supporting basis. As a result of these measures, unemployment in Santiago, which is the only area where complete statistics are available, reached 16% in September of 1975. It is doubtful that there has been substantial improvement since that date.

#### On the positive side:

- Copper production levels have been restored to former peaks, and the uncertainty surrounding African deliveries has resulted in Chilean production for 1976 being completely sold out.
- Total imports for 1975 were reduced by over US \$430 million from the 1974 figure, to the lowest level in real per capita terms since 1965.
- Non-copper exports have soared from US \$200 million in 1973 to over US \$650 million in 1975, and the figure for 1976 is expected to surpass 1975.
- Agricultural production between 1973 and 1975 increased 10%, with a corresponding savings in foreign exchange, through reduction in food imports, of US \$300 million.
- All debt service requirements are being met and projections by the Chilean Government, as well as by the World Bank, indicate that Chile's firmly stated policy of meeting all foreign debt without further renegotiation, will be successfully achieved.
- The current and forthcoming national budgets are balanced.
- Inflation, although still at high levels by world standards, has been reduced sharply, from the 508% experienced in 1973, to an average of 10.5% per month for the past six months.
- Contracts with foreign enterprises for investment in Chile, totalling US \$285 million, were entered into between October 1974 and December 1975. Of these 38% are in sectors other than mining. Approximately \$300 million in additional foreign investment has been agreed to in principle and awaits documentation, while a further US \$500 million, including significant investment in natural gas liquification, is under study.

The above statistics indicate that Chile has made significant progress toward recovery from the difficult economic situation existing in 1973. This progress has been possible through a series of austere measures designed to correct problems of long standing as well as those problems of recent origin existing in 1973. Such austerity programs are expected to continue until such time as Chile has rebuilt its economy and can relax the belt-tightening measures undertaken to date. Meanwhile, Chile's direction is both clear and firm and its national accounts reflect promising progress on the road to recovery. The impact of the progress to date and the promise of progress in the future stand out clearly in the figures in this report, but have too often recently been submerged in political discussion at the international level. The sector-by-sector analysis of the Chilean economy that follows gives clear objective evidence of this progress and discusses it in detail.

## The Chilean Economy

The government that assumed power in September of 1973 inherited an economy beset by falling production in many sectors, operating in isolation from international financial sources as a result of the erosion of Chile's reserve position and the lack of confidence of international financial institutions in Chile's stated policies. In addition, the country was painfully and violently wracked by political divisions.

Faced with an economy closer to ruin than at any other time in Chile's national experience, the government had to cope not only with internal problems but with problems derived from the international economy within which it must operate. Food imports necessitated by the productivity problems resulting from expropriation and nationalization of farms, and oil imports, on which Chile is dependent for 75% of its petroleum needs, cost significantly more than expected. The general negative fallout effects of a worldwide recession were compounded for Chile by lower copper prices and shipments. The effects of the downturn in Chile were intensified by the austerity measures imposed by the government as part of the program to reestablish the nation's financial integrity.

The depths of this recession, which in 1975 drove Chile's gross national product below 1968 levels, are illustrated by the following table:

TABLE I

### GROSS NATIONAL PRODUCT

(1965 Chilean pesos in thousands)

	1968	1969	1970	1971	1972	1973*	1974*	1975*
Consumer expenditure . . . . .	15,790	16,222	16,868	18,563	19,426	18,908	17,581	15,500
Gov't current expenditure . . . .	2,296	2,431	2,591	2,831	2,964	3,132	3,483	3,016
Gross domestic fixed assets formation . . . . .	3,166	3,313	3,407	3,446	2,837	2,946	3,302	2,278
Change in inventories . . . . .	204	417	467	300	171	336	845	—
Exports of goods and services . . . . .	2,875	3,055	3,040	2,982	2,536	2,420	3,339	3,215
Less: Imports of goods and services . . . . .	3,159	3,533	3,678	3,682	3,515	4,222	3,997	3,066
Gross National Product . . . . .	<b>21,172</b>	<b>21,905</b>	<b>22,695</b>	<b>24,440</b>	<b>24,419</b>	<b>23,520</b>	<b>24,553</b>	<b>20,943</b>

\* Provisional figures

Source: National Planning Office

The above table clearly illustrates some of the injurious trends that developed between 1970 and 1973. Government expenditures shot upwards, exports dropped, imports increased and domestic fixed asset formation fell dramatically.

The table also illustrates the effects of subsequent government policies in practically all accounts. Consumer expenditure has necessarily dropped as a result of deflationary policies, government current



expenditure has dropped, investment has dropped to reflect lower demand levels, imports have been slashed and exports substantially increased, in spite of lower copper prices in 1975.

These changes have stemmed from the austerity measures introduced by the government, the increased emphasis on non-copper exports, and new import policies.

At the same time, the government has attempted to brake inflation. As the following table shows, inflation continues at high levels by world standards, but has lessened considerably, particularly in the first quarter of 1976 as compared to the first quarters of 1974 and 1975.

Inflation, as measured by the official Consumer Price Index, has shown the following trends since 1973:

TABLE II

MONTHLY CHANGES IN THE CONSUMER PRICE INDEX

	1973	1974	1975	1976
January .....	—	14.0%	13.9%	10.5%
February .....	—	24.5	16.5	10.1
March .....	—	14.2	21.2	13.5
April .....	—	15.3	20.8	11.9
May .....	—	8.7	16.0	9.8
June .....	—	20.8	19.8	
July .....	—	11.5	9.3	
August .....	—	10.9	8.9	
September ...	16.8%	12.8	9.2	
October .....	87.6	18.9	8.4	
November ....	5.7	9.7	8.2	
December ....	4.8	6.5	7.1	

Source: National Institute of Statistics and Central Bank of Chile

The Consumer Price Index is the most closely watched indicator of inflation in Chile. Salaries are readjusted every three months by an across-the-board increase equivalent to the total inflation for the prior three months, as measured by the Index. The stated goal of the government is to reduce the monthly rate of inflation to 5% by the end of 1976 and to lower rates thereafter. In the Chilean context, inflation at normal rates by world standards may be difficult to achieve. Chileans have been accustomed to double digit inflation for many decades and expectations of such inflation and accompanying behavior patterns make it unlikely that inflation at low rates will be easily achieved. As long as indexing is flexible and exchange rates are not artificially set, the impact of any inflation on Chile's future progress is lessened.

The government intends to continue on its present course of austerity in economic policy. As a result of these measures and the gradual improvement they have produced, the government expects a slow and undramatic recovery, proceeding independently of world developments in most respects. The recovery would, of course, be enhanced by an upturn in the currently depressed world economy, particularly to the extent this upturn were to be reflected in higher copper prices.

Subsequent sections of this review show detailed figures on foreign debt service schedules - which the government is firmly committed to meet without further renegotiation - export development, and the long-term benefits accruing to Chile's net foreign reserve position. The government targets call for a real annual growth rate of 6.6% between 1976 and 1981, with expected growth for 1976 set at 5.8%. With the renegotiation of foreign debt already effected, copper prices holding firm at satisfactory levels and the great degree of national resolve shown by the acceptance of the sacrifices implicit in the national development plan, the outlook for Chile is one of cautious optimism. Chile's progress will require constant monitoring, but the improvement in both measurable terms and direction since the 1970-1973 era is clear.

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## Foreign Trade

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### The Export Sector

Faced with the dual short-term needs for foreign exchange and greater capacity utilization in depressed industries, in addition to a longer-term desire to diversify away from copper exports as the sole large-scale source of foreign exchange earnings, Chile has embarked on a program of encouraging non-copper exports. This program has been remarkably successful since 1973.

Traditional exports have always been considered to be copper, nitrates, iron ore, and to a lesser degree, wood and pulp products. Increased exports in the latter category, plus significant quantities of other non-copper products, have increased total non-copper exports to US \$694 million in 1975, compared to a total of US \$226 million in 1972. This increase has been achieved through a national drive emphasizing exports, the pegging of exchange rates at levels designed to encourage exports, and a variety of tax incentives to export. An unusual key feature in the government's export promotion program has been the deliberate lowering of tariff barriers in order to force Chilean producers to compete on non-protected terms with world industry and trade. By the end of June it is expected that the general maximum ad-valorem tariff on imports will be 35%, with only a small list of exceptions — most notably automobiles and other vehicles. This policy represents a radical departure from traditional economics in developing countries whose tariff policies usually are set to keep out foreign competitors and usually, as a consequence, foster local industry whose protection in the internal market has not compelled it to develop real efficiencies in production.



The table below illustrates the Chilean export panorama from 1972 through 1975.

TABLE III

CHILEAN EXPORTS 1972-1975				
(in thousands of U.S. dollars)				
	1972	1973	1974	1975
<b>Copper</b> .....	629,521 (73.6%)	978,148 (79.5%)	1,893,898 (76.4%)	967,118 (58.2%)
<b>Natural Resource</b>	(16.7%)	(11.1%)	(13.6%)	(17.2%)
Iron .....	56,012	55,555	132,444	88,885
Nitrate .....	20,553	24,113	37,030	43,784
Iodine .....	8,183	6,933	10,776	5,393
Molybdenum .....	13,625	6,728	12,764	26,907
Fishmeal .....	18,003	13,600	35,230	24,221
Cellulose .....	17,433	20,767	77,965	60,511
Paper .....	9,313	9,017	32,117	36,623
<b>Other Products</b> .....	82,807 (9.7%)	115,652 (9.4%)	248,250 (10.0%)	407,887 (24.6%)
	855,450	1,230,513	2,480,474	1,661,329
<b>Total Copper</b> .....	629,521 (73.6%)	978,148 (79.5%)	1,893,898 (76.4%)	967,118 (58.2%)
<b>Total Non-Copper</b> .....	225,929 (26.4%)	252,365 (20.5%)	586,576 (23.6%)	694,211 (41.8%)
	855,450	1,230,513	2,480,474	1,661,329

Source: Superintendency of Customs, which has indicated that product classifications and figures are tentative and subject to revision.

The impressive totals for non-copper products, in absolute terms, show the beneficial impact non-traditional exports can provide in a year such as 1975, when total copper exports were negatively affected by world price and demand levels.

#### The Natural Resource Sector

Although national policy calls for special stimulation of non-copper exports, this does not imply de-emphasis of the potential of the mineral sector.

Chile has an estimated one-fourth of all of the world's known copper reserves. The indispensability and strategic importance of these reserves is highlighted by a 1974 estimate that while 75% of world copper is consumed by non-Communist industrialized nations, 65% of reserves lie in Communist-bloc and Third World countries. Furthermore, the richness of Chilean ore bodies and their relatively short distance to sea transportation (no part of Chile is more than 300 km from the coast) offer competitive production cost advantages of significance. Chilean copper production is generally considered to break even at world price levels of slightly less than US \$0.50 per lb., a figure which is also believed to represent the lowest cost break-even point in world copper production.

Existing Chilean copper mines, owned by the government since the prior administration, will be retained under state ownership, although new ore bodies may be exploited by foreign investors under general foreign investment guidelines. Negotiations are at present in advanced stages concerning foreign participation in new ore bodies on a joint venture basis between foreign partners and the Chilean Government.

Copper prices are of vital importance to the Chilean Government in view of their impact on foreign exchange earnings. At current production levels, each change of US \$0.01 means a change in earnings

in foreign exchange of approximately US \$20 million. The average annual price, f.o.b. Chile, in recent years has been:

TABLE IV

#### COPPER PRICES FOR CHILE 1970-1975

(U.S. cents per lb.)					
1970	1971	1972	1973	1974	1975
57.4	45.5	46.1	70.9	85.4	52.6*

\*preliminary

It is interesting to note that Chile exported US \$967 million of copper in 1975, with copper at 52.6 cents, versus US \$978 million in 1973, the last year of the prior regime, when copper was at 70.9 cents. This occurred in spite of a cut-back in Chilean production in 1975 by about 100,000 tons, in a joint effort by copper-producing countries to stabilize prices at a higher than actual level. The effort failed and this year Chile will again produce at a normal level of 900,000 tons, all of which has been sold for future delivery at the then-prevailing price in world markets. Current prices for copper are in a range from US \$0.65 - \$0.75 per pound.

Chile, which will again in 1976 be the world's largest copper exporter, and third largest producer after the United States and the Soviet Union, belongs to Comité de Países Exportadores de Cobre, CIPEC, the fledgling OPEC-type copper cartel. It was under CIPEC auspices that Chile cut back production in 1975. In general CIPEC has not met with much success. This is a result of the relatively large demand elasticity for copper and the wide range of products which may be substituted, such as polyvinyl chloride in plumbing applications and aluminum in electrical installations. As the world's largest exporter, Chile is in the same position relative to CIPEC as Saudi Arabia is to OPEC, and may be expected to act relatively independently in accordance with its own foreign exchange needs. Moreover, CIPEC members, in view of their general status as developing nations, do not have large foreign reserves to fall back on in an extended period of production curtailment. A further factor which weakens CIPEC is that the USA and USSR are not only the world's largest consumers, but also the largest producers. Although CIPEC is expected to attempt to stabilize prices for copper at higher levels from time to time, Chile's role will not be an active one for the present, in view of its vital need for foreign exchange.

In addition to copper, Chile has traditionally been an exporter of iron ores and nitrates. Emphasis is expected to continue in these areas, as well as in molybdenum. The most promising non-extractive natural resources are wood, pulp, and cellulose products. In 1975, there were 82,594 hectares replanted and an additional 90,000 hectares are expected to be reforested during 1976. There are an estimated 4,000,000 hectares of forestable land, compared to planted areas totalling 450,000 hectares. Exports of forest-based products have risen from \$27 million in 1972 to \$97 million in 1975.

In addition, Chile is studying the feasibility of natural gas liquification, involving an investment of several hundred million dollars, to exploit large proven natural gas reserves in the southern part of the country.

#### Non-Natural Resource Exports

Non-natural resource exports have shown rapid growth and diversification. In 1975, Chile exported 69 different products, including elaborated metal products, with a value in excess of US \$1 million. These products were as diverse as frozen lobster, sewing machines, garlic, pears, tires, grapes, wine and raw sugar. Of these products, 13 were not exported at all in prior years. Taking all products into consideration, including those with an f.o.b. value of more than US \$100,000, 82 new products were exported in 1975



Chile exported to 70 different countries during 1975. The table below illustrates the pattern of its export trade:

TABLE V

**EXPORTS - 1975 BY MAJOR COUNTRY OF DESTINATION**

(in thousands of U.S. dollars)

Country	Copper	Non-Copper	Total
West Germany .....	179,454	59,696	239,150
Japan .....	92,173	94,463	186,636
Argentina .....	52,390	114,027	166,417
United States .....	67,368	79,103	146,471
United Kingdom .....	118,988	18,190	137,178
Brazil .....	55,741	42,257	97,998
Netherlands .....	63,094	27,646	90,740
Italy .....	70,480	9,667	80,147
France .....	63,155	7,155	70,310
Spain .....	56,701	11,037	67,738
Belgium-Luxembourg .....	44,767	11,378	56,145
Sweden .....	28,711	5,604	34,315
Colombia .....	169	24,865	25,034
Peru .....	—	24,971	24,971
Venezuela .....	13	23,893	23,906

Source: Superintendency of Customs

**Imports and the Balance of Trade**

Chile is highly dependent on imports in two areas. In the food sector, she relies heavily on imported grain. Increasing demand for imported food as a result of agricultural production problems caused by large-scale nationalization of land holdings by the prior regime, coupled with higher worldwide wheat prices, have had a sharp impact on food import requirements. In the energy sector, Chile's annual production of approximately 8 million barrels supplies only about 25% of petroleum needs. At the same time, although the industrial recession within Chile, as well as realistic internal price levels for energy, have held down demand, the bill for imported petroleum products has jumped sharply.

The ten most important exporters to Chile in 1973 and 1974, the latest years for which a complete breakdown is available, were as follows:

TABLE VI

**IMPORTS BY MAJOR COUNTRY OF ORIGIN (1973 and 1974)**

(in thousands of U.S. dollars)

	1973	1974
United States .....	179,060	415,694
Argentina .....	166,576	323,816
West Germany .....	112,792	151,446
Australia .....	47,381	98,048
Brazil .....	33,952	84,890
Ecuador .....	13,388	78,107
United Kingdom .....	64,030	68,909
France .....	36,382	54,426
Japan .....	35,187	48,574
Netherlands .....	31,404	48,394

Source: Superintendency of Customs

Chile expects to import up to 650,000 tons of wheat in 1976, which will make up the single largest import item. Due to both lower quantity requirements, because of better production, than in most recent years, and to lower world wheat prices in 1976, the negative impact on the balance of trade will be less than in prior years.

TABLE VII

**BALANCE OF TRADE 1970 - 1975**

(in millions of U.S. dollars)

	1970	1971	1972	1973*	1974*	1975*
<b>Exports of Goods</b> .....	1,118.9	996.8	847.4	1,346.9	2,043.0	1,530.0
Copper .....	839.8	701.2	618.2	1,102.6	1,557.0	875.0
Other Goods .....	279.1	295.6	229.2	244.3	486.0	655.0
<b>Imports of Goods</b> .....	956.0	1,014.9	1,102.6	1,607.7	2,239.0	1,804.0
Foodstuffs .....	135.5	192.2	338.4	594.9	472.0	337.0
Capital .....	276.2	248.0	165.1	285.0	338.0	295.0
Intermediate (non-foods) .....	445.0	485.2	460.2	663.8	1,358.5	1,102.0
Consumer Goods .....	99.3	89.5	138.9	64.0	70.4	70.0
<b>Balance of Trade</b> .....	162.9	- 18.1	-255.2	-260.8	-196.0	-274.0

\*Provisional

Source: Banco Central de Chile

**Future Balance of Trade**

As the table below shows, Chile does not expect to show a positive balance of trade until 1977. In keeping with the program to provide incentives to export non-copper products, significant increases are expected in manufactured goods, agriculture, seafood and forestry products.

TABLE VIII

**PROJECTED TRADE BALANCE 1976 - 1981**

(in millions of U.S. dollars)

	1976 <sup>(2)</sup>	1977	1978	1979	1980	1981
<b>EXPORTS (FOB)</b> .....	1,826.6	2,328.2	2,589.7	2,814.8	3,316.7	3,841.8
Minerals .....	1,320.6	1,626.0	1,783.3	1,911.0	2,270.9	2,585.0
(Copper) (1) .....	(1,113.0)	(1,333.1)	(1,437.2)	(1,643.0)	(1,842.7)	(2,121.6)
Agriculture and seafood .....	126.0	170.0	196.0	225.0	281.0	351.0
Industrial .....	380.0	532.2	610.4	678.8	764.8	905.8
<b>IMPORTS (CIF)</b> .....	1,830.6	2,184.0	2,436.0	2,722.0	2,951.0	3,241.0
Net Services .....	- 40.0	- 43.0	- 46.0	- 50.0	- 54.0	- 58.0
<b>TRADE BALANCE</b> ..	- 44.0	101.2	107.7	42.8	311.7	542.8

(1) For price projections used see page 16.

(2) Preliminary estimate.

Source: Banco Central de Chile



## The Domestic Economy

### Agriculture

About 8% of Chile's gross national product is derived from agricultural activities, although a far greater proportion of the country's population is dedicated to agricultural pursuits. Harvests, by principal crops, for the past six years have been as follows:

TABLE IX

#### AGRICULTURAL PRODUCTION 1970 - 1975

(thousands of cwt.)

Crop	1970	1971	1972	1973	1974	1975
Wheat .....	13,069	13,680	11,951	7,467	9,390	10,024
Oats .....	1,105	1,120	1,113	1,091	1,499	1,311
Barley .....	974	1,136	1,390	1,074	1,496	1,206
Rye .....	107	123	124	85	146	111
Rice .....	762	671	863	550	344	763
Corn .....	2,391	2,583	2,830	2,940	3,663	3,290
Beans .....	656	722	829	650	748	741
Lentils .....	112	120	107	98	128	121
Peas .....	74	85	107	88	125	63
Chickpeas .....	54	72	93	41	50	49
Potatoes .....	6,838	8,358	7,334	6,236	10,120	7,379
Sugarbeets .....	16,551	13,907	12,016	9,659	10,453	16,167
Marigolds .....	282	203	199	135	104	178
Turnips .....	699	821	780	140	368	614

Source: National Institute of Statistics

The impact of the past administration's policies can be seen in the 1973 agricultural production figures.

### Manufacturing

Chile has a widely diversified manufacturing industry. Since most of Chile's industry was established under the protection of high tariff barriers, it is generally considered not to be efficient on a world scale. This relative inefficiency has been compounded by a tendency towards oligopoly in basic product manufacturing. Gradual changes in the efficiency of Chilean industry are expected as a result of the modernization being forced upon the manufacturing sector through the relaxation of tariffs. The table following illustrates production levels of important manufacturing industries in Chile:

TABLE X

#### INDEX OF INDUSTRIAL PRODUCTION

(base 1969 = 100)

Year	General Index	Consumer Softgoods	Consumer Durables	Transport Materials	Intermediate Industrial	Intermediate Construction	Various Manufactures
1970	103.5	104.5	115.6	100.0	100.6	104.1	97.2
1971	114.7	117.8	141.2	91.4	111.1	113.2	105.9
1972	117.6	116.6	128.3	105.9	115.5	123.5	120.5
1973	109.9	110.0	111.2	71.6	113.8	117.8	114.4
1974	111.1	104.3	123.9	72.8	132.9	113.4	105.6
1975							
Jan.	93.4	86.0	95.5	78.5	122.0	88.4	72.0
Feb.	78.4	68.8	87.4	43.5	112.8	76.6	63.0
Mar.	100.2	96.3	120.0	58.4	126.0	91.3	83.7
Apr.	100.2	100.0	118.4	63.1	124.5	80.4	83.3
May	83.6	86.0	84.2	46.2	105.1	66.2	70.0
June	76.9	78.4	95.4	34.5	104.8	58.9	45.0
July	78.8	82.0	94.8	38.8	99.2	58.5	53.2
Aug.	77.0	75.3	90.7	44.5	108.3	58.3	48.0
Sept.	81.4	85.1	88.0	58.5	102.3	56.9	57.6
Oct.	92.8	99.3	91.7	62.2	113.7	66.6	66.9
Nov.	81.8	84.8	85.4	61.4	103.6	55.1	63.6
Dec.	93.0	94.7	84.8	59.2	128.0	63.9	74.1

Source: National Institute of Statistics

Chilean manufacturing production has risen and fallen in accordance with the state of the economy. When apparent incomes were increased through rapid increases in money supply in the 1970-1973 period, sales were substantial. Since the advent of austerity measures designed to dampen consumption as well as reduce the supply and velocity of money in the Chilean economy, manufacturing production has shown a drop-off. The table above illustrates the trends in of Chilean industry, and the trough in manufacturing activity encountered in August 1975 is indicated in the index of industrial activity for most manufacturing sectors, where a low point is registered, followed by increasing production.

## Foreign Investment

One of the chief elements of domestic policy of the previous administration was the nationalization of foreign investment in Chile. Through the use of legal and extra-legal devices, including price controls and administrative harrassment, Chile succeeded in nationalizing virtually the entire foreign investment sector between 1970 and 1973.



The present administration has recognized the vital need for foreign investment, both to rebuild the economy and to provide the tax revenues and foreign exchange for future progress. Its policy is one of encouragement of foreign investment, although some properties nationalized under the previous administration in certain sectors, such as mining, will be retained under state control. Otherwise, virtually all of the enterprises acquired by the state have been returned to private hands, including manufacturing industries, fisheries and banks.

In recognition of the changed attitude towards foreign investment, foreign investors have begun to make substantial new commitments in Chile. Current procedures call for investment contracts to be worked out between the commission regulating foreign investment and the interested foreign parties. Tax concessions, equity percentages and the entire range of investment conditions incidental to foreign investment are negotiated between the commission and the foreign investors.

Since the new administration assumed control in Chile, the emphasis on new foreign investment has shown impressive results. As stated before, between October of 1974 and December of 1975 contracts totalling US \$285 million have been entered into between Chile and foreign investors. Of these, 38% are in sectors other than mining. Approximately US \$300 million in additional investments has been agreed to in principle and awaits documentation, while another US \$500 million, including significant investment in natural gas liquification, is under study. As the world and Chilean economies continue to improve, even greater foreign investments are expected to make a greater and greater contribution to Chile's future economic growth.

### Chile and the Andean Bloc

Chile, along with Venezuela, Ecuador, Colombia, Peru and Bolivia, is a member of the Andean Bloc. This bloc of countries was formed in order to promote common policies of member countries with respect to foreign investment, tariffs and internal trade.

Some of the stated policies of the Andean Bloc are in direct conflict with present government policies. Specifically, Chile wishes to lower tariff barriers to external goods while the Andean Bloc in general wants to preserve tariff barriers behind which to build local industry. The other signers of the Andean Pact also intend to give preferential treatment in intraregional trade to companies owned or controlled by Andean Bloc nationals. These policies are at variance with Chile's desire to force Chilean industry to modernize through exposure to foreign competition, and to rebuild an industrial base in partnership with foreign investors.

The other members of the Andean Bloc have so far shown some flexibility in this respect, postponing the deadline for common tariff agreements to December 31, 1977, and agreeing to submit for restudy the question of preferential treatment for national investors.

Given the basic conflict between full adherence to Andean Bloc policies and the need to rebuild its economy through greater exposure to and participation in the world economy, Chile may be expected to adopt a cautious attitude in the future regarding Andean Bloc participation.

## International Monetary Reserves, Balance of Payments and Foreign Debt

### International Monetary Reserves

At the end of 1970, Chile had a net positive international reserve position amounting to US \$342 million. Between 1970 and 1973, as a result of economic policies of the government, net reserves shrank by over US \$1 billion, to a negative figure of US \$724 million. This figure continued to worsen throughout the recession, into 1975, as is shown by the table below.

TABLE XI

### INTERNATIONAL MONETARY RESERVES

(in millions of U.S. dollars)

	1970	1971	1972	1973	1974	1975	Apr. 30 1976
<b>Central Bank Total</b> .....	331.7	88.9	-261.9	-440.5	-564.6	-851.9	-637.7
<b>ASSETS</b> .....	434.0	213.9	151.8	258.4	263.9	195.0	393.7
Gold .....	45.7	47.1	51.5	58.1	60.7	54.8	55.9
SDR's .....	21.8	38.3	2.2	0.4	16.8	24.5	55.6
IMF Gold Tranche .....	39.5	—	—	—	—	—	—
Foreign Correspondents .....	310.3	120.9	96.7	134.9	37.7	31.4	179.5
Reciprocal Credit							
Agreement & other .....	16.7	7.6	1.4	65.0	148.7	84.3	102.7
<b>LIABILITIES</b> .....	102.3	125.0	413.7	698.9	828.5	1,046.9	1,031.4
Net Use of External Credit ...	102.2	104.6	243.1	427.8	509.1	835.7	828.5
Reciprocal Credit							
Agreement (ALALC) .....	0.1	20.4	18.2	85.3	130.8	53.0	46.3
External Debt							
Refinancing .....	—	—	152.4	185.8	188.6	158.2	156.6
<b>Commercial Banks and</b>							
<b>Banco Del Estado Totals</b> .	10.5	-54.4	-180.7	-283.4	-302.8	-227.5	-266.9
<b>ASSETS</b> .....	60.6	38.7	52.4	67.8	105.6	87.9	67.8
Gold .....	4.2	4.1	4.2	4.3	5.7	5.7	5.7
Foreign Correspondents .....	56.4	34.6	48.2	63.5	100.9	82.2	62.1
<b>LIABILITIES</b> .....	50.1	93.1	233.1	351.2	403.4	315.4	334.7
Due to Foreign Banks .....	46.5	87.5	228.8	337.7	405.6	311.5	330.9
Foreign Bank Deposits .....	3.6	5.6	4.3	13.5	2.8	3.9	3.8
Net International							
Monetary Reserves .....	342.2	34.5	-442.6	-723.9	-867.4	-1,079.4	-904.6

Source: Banco Central de Chile



Although the partial figures for 1976 show some signs of improvement, no dramatic improvement is expected until Chile's balance of trade begins to turn favorable in 1977 and greater foreign investor confidence speeds up flows of funds on capital account in Chile. The Central Bank has prepared a debt service schedule for the years 1976-1981. Although this schedule must be regarded as highly tentative and subject to frequent revision, it shows the net reserve position bottoming out in 1979. As a safeguard during this period, in which Chile expects to meet all existing and future foreign obligations without rescheduling, the government has recently negotiated with a group of private financial institutions, led by United States and Canadian commercial banks, standby facilities for balance of payments support that total US \$125 million.

TABLE XII

**PROJECTED EXTERNAL FINANCING 1976 - 1981**

	(in millions of U.S. dollars)					
	1976	1977	1978	1979	1980	1981
<b>Gross Financing Need</b>						
Balance of Trade .....	(44)	101	108	43	312	543
Debt Service .....	(762)	(772)	(795)	(771)	(794)	(850)
Profit Remittances .....	(43)	(39)	(58)	(77)	(96)	(115)
<b>Total</b> .....	<b>(849)</b>	<b>(710)</b>	<b>(745)</b>	<b>(805)</b>	<b>(578)</b>	<b>(422)</b>
<b>Sources of Financing</b>						
Foreign Investment .....	80	91	130	146	162	177
Public and Private						
Sector Loans .....	537	454	522	625	701	807
Net Reserve Variance .....	(232)	(165)	(93)	(34)	285	562

Source: National Planning Office

The key elements that will influence the meeting of the above schedule are the world copper price and the success of the non-traditional export program.

In making the above projections, the Chilean Government has assumed that non-mineral sector exports will increase slightly in 1976 over 1975 levels, then increase by 25% in 1977 and 15% per annum from 1978 on.

The government, in arriving at the above figures, also estimates that copper prices will rise from current levels at a rate of 6% per year due to worldwide inflation and a further 6% per year due to increases in world demand. The estimates of the f.o.b. Chile copper price per pound work out to:

1976	.....	US \$0.600	1978	.....	US \$0.758	1980	.....	US \$0.955
1977	.....	US \$0.674	1979	.....	US \$0.852	1981	.....	US \$1.074

Beyond 1976, should copper prices rise and expansion of non-copper exports continue, gross domestic product should grow by 5% in 1977, without loss of reserves, and at a somewhat higher rate, of the order of 6-7% per annum through the rest of the decade, while enjoying a balance of payments surplus and the gradual replenishment of international reserves. Should new projected oil drilling, soon to get underway in the Straits of Magellan, meet substantial success or copper prices rebound earlier or more strongly,

the prospects would, of course, be enhanced. This positive outlook must be predicated on continued fiscal and monetary restraint, good performance for non-copper exports and a positive response on the part of foreign private investors.

**Foreign Debt**

The largest element of Chile's foreign debt is that outstanding to the so-called Paris Club. This informal group has acted on an ad hoc basis to present a united front to Chile with respect to debt renegotiation and is principally influenced by European government lenders. Chile has not always enjoyed smooth relations with this group, especially with regard to questions of a political nature, although it must be assumed that relations will improve if Chile is able to adhere to the debt service schedule agreed to in 1975 without further requests for refinancing. This is Chile's firm intention, as reiterated on many occasions by the government's spokesmen.

TABLE XIII

**LONG AND MEDIUM-TERM EXTERNAL DEBT**

	at December 31					
	(in millions of U.S. dollars)					
	1970	1971	1972	1973	1974	1975*
<b>International</b>						
Organizations .....	308.0	342.0	336.4	354.0	386.6	386.3
Paris Club .....	2,067.0	2,060.5	2,298.2	2,507.2	3,091.5	3,195.0
Latin American						
Nations .....	21.0	18.4	65.5	94.9	266.1	377.0
Socialist Countries .....	14.0	6.6	65.5	103.7	148.3	137.0
IMF .....	41.0	39.5	128.7	143.0	195.1	372.0
<b>Total</b> .....	<b>2,451.0</b>	<b>2,467.0</b>	<b>2,894.3</b>	<b>3,202.8</b>	<b>4,087.6</b>	<b>4,467.3</b>
<b>Annual Service</b>						
Principal .....	194.0	252.0	106.0	126.0	194.0	307.0
Interest .....	96.0	79.0	51.0	51.0	103.0	164.0
<b>Total</b> .....	<b>290.0</b>	<b>331.0</b>	<b>157.0</b>	<b>177.0</b>	<b>297.0</b>	<b>471.0</b>
<b>Debt Service as a % of Exports</b> .....	25.9%	33.2%	18.5%	13.1%	14.5%	30.1%
	<b>1976</b>	<b>1977</b>	<b>1978</b>	<b>1979</b>	<b>1980</b>	<b>1981</b>
<b>Projected Debt Service as a % of Exports</b> ..	41.7%	33.2%	30.7%	27.4%	23.9%	22.1%

\* Preliminary figures

Source: National Planning Office

Much of the foreign debt shown above was incurred by Chile as a result of nationalization of foreign investment during the 1970-1973 era. At the end of 1974, the total foreign debt arising from recognition of nationalization amounted to approximately US \$500 million. The percentage of exports which Chile expects to have to devote to foreign debt service in the future is high by world standards. On the other hand, there are few instances of other countries with such high ratios that have shown the willingness to follow the austere policies Chile has implemented in order to reestablish its position in the world financial community.



## The Banking Sector

### General

During the prior administration, the government nationalized virtually the entire banking sector of Chile. For all practical purposes, this bank equity has been returned to the private sector by sale or other transfer. The sole government-owned bank at present is the Banco del Estado, whose assets make up about 45% of the total assets of Chile's commercial banking sector.

In general, the shareholdings in the private banks are widely distributed, due to a proviso in the resale to private hands of bank shares that limited purchases by individuals and corporations to 1.5% and 3%, respectively, of outstanding shares. Although individuals may pool their equity holdings in order to effect control of a private bank, the shares are considerably less concentrated in the hands of individuals or corporations than they were prior to the nationalization and subsequent resale.

The Table below shows the structure of the Chilean commercial banking system at April 30, 1976.

TABLE XIV

### CHILEAN COMMERCIAL BANKING SYSTEM

April 30, 1976  
(in thousands of U.S. dollars)

Bank	Equity	Total Assets	Net Earnings (1) (Year to 12/31/75)
Banco del Estado .....	131,892	1,066,221	3,248
Banco de Chile .....	58,494	375,521	5,628
Banco Osorno .....	21,019	126,794	1,000
Banco de Crédito e Inversiones .....	20,606	138,047	1,324
Banco Español Chile .....	13,338	75,666	1,827
Banco de Concepción .....	13,037	134,030	1,124
Banco Sudamericano .....	11,978	134,819	1,907
Banco O'Higgins .....	11,930	132,620	1,763
Banco Nacional de Trabajo .....	11,686	105,525	1,150
Banco Comercial de Curico .....	6,579	50,141	566
Banco Talca .....	6,496	89,619	683
Banco Continental .....	5,789	32,611	619
Banco Israelita .....	4,190	28,512	124
First National City Bank .....	3,310	15,663	—
Banco do Brasil .....	2,538	19,690	—
Banco Regional de Linares .....	374	1,054	def.
Banco de Constitución .....	183	549	def.
Banco Chileno Yugoslavo .....	87	1,871	10
<b>Total</b> .....	<b>323,526</b>	<b>2,528,953</b>	<b>20,973</b>

(1) Using year-end exchange rate pesos 8.5 = US \$1.00.

Source: Banco de Chile

Chilean banks may engage in a wide range of banking activities under the supervision of the Central Bank. In exercising its supervisory functions, the Central Bank fixes reserve requirements guidelines and regulations. Since 1974 the commercial banks have been complemented by finance companies, the largest of which in mid-1976 had a capital of only US \$1.5 million.

### Current Credit Conditions

Chilean credit conditions in general reflect the inflationary expectations of the economy. Rates are high for both loans and deposits, while terms for both are very short. In June 1976, deposit rates were from 12-14% per month for a maximum term of 45 days, while lending rates to prime customers were in a range from 14-17% per month. The table below illustrates average monthly rates paid by credit institutions for certificates of deposit of short term, usually 30 days.

TABLE XV

### MONTHLY RATES OF INTEREST

		BANKS		FINANCE COMPANIES	
		Deposits	Loans	Deposits	Loans
1975	Jan. ....	9.3%	9.6%	11.1%	13.9%
	Feb. ....	10.4	9.6	11.8	14.1
	Mar. ....	11.5	9.6	13.3	15.0
	Apr. ....	12.6	9.6	17.1	20.0
	May. ....	14.5	19.0	18.4	22.0
	June. ....	15.8	21.0	18.1	23.7
	July. ....	15.2	21.2	18.4	22.8
	Aug. ....	13.0	19.1	14.0	18.4
	Sept. ....	9.5	18.3	12.1	17.8
	Oct. ....	8.0	12.0	10.3	12.0
	Nov. ....	8.0	12.0	9.0	12.0
	Dec. ....	10.0	14.5	11.1	15.5
1976	Jan. ....	10.1	14.6	11.5	15.4
	Feb. ....	10.2	14.5	11.2	14.5
	Mar. ....	10.0	14.6	10.8	15.2
	Apr. ....	10.4	14.8	11.6	14.9

Source: Central Bank of Chile

Banks and finance companies are free to set rates at will, and rate changes are made on a daily basis. In view of the high internal rates of interest and the declining inflation rates, many bank clients have turned to foreign credits as a means of reducing true interest costs. Chilean domestic banks, which may hold dollar and other hard currency deposits themselves and may also denominate loans in dollars, are permitted by current Central Bank regulations to issue guarantees in an amount equalling their capital, reserves, and retained earnings. Many banks are now engaged in issuing guarantees for foreign obligations of Chilean companies contracted directly with foreign banks. Recently, these loans have been less expensive to the Chilean borrower and of longer term than the 45 days now granted by Chilean banks on internal credits.



### Foreign Banks

Since the return of the Chilean banks to the private sector, two foreign banks have opened branches in Chile. The first of these, which had been present in Chile for decades prior to nationalization, was Citicorp of New York. It reopened a branch in Santiago in December 1975. Citicorp was followed, in February 1976, by the Banco do Brasil. Current dispositions of Chilean law permit the establishment of foreign banks, as branches or subsidiaries, in Chile, provided government approval is granted. In addition to the two foreign banks operating in Chile, the following other foreign institutions have accredited representatives in Chile:

Inter-American Development Bank	Deutsche-Sudamericanische Bank AG
Bank of America	Dresdner Bank AG
European-American Banking Corp.	Ibero America Bank AG
European-American Bank and Trust Co.	Banco Francés e Italiano para la América del Sur
Banco de la Nación Argentina	Banco de Santander
Banco de Crédito Rural Argentina	Banco Popular Español
Deutsche Bank AG	Lloyds International Bank

Source: Central Bank of Chile

Foreign bank credits are expected to play an important role in Chile's progress over the next five years. At present foreign banks make lines of credit available to Chilean banks for the financing of international trade, usually for 180 days. Other foreign bank loans are made at present on the basis of Chilean bank guarantees at terms of 6 to 18 months. Most bankers expect that the terms of foreign bank loans will become progressively more favorable as Chile's economic progress becomes more evident. Greater foreign competition will result in increased terms, lower margins, and in some cases the elimination of the need for a bank guarantee. Several foreign banks are at present weighing the opening of representative offices in Chile as demand for foreign credits from credit-worthy borrowers begins to approach the pre 1970-1973 levels.

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## Summary

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### Political Situation

Chile, under firm military control, is unlikely to experience political divisiveness of the type which characterized the 1970-1973 period. The Chilean military may be expected to relinquish more and more of its functions by appointing civilians to government posts as a precursor to eventual elections. At present, most of the planning and ministerial functions dealing with the economy are carried out by civilians. In June 1976, the President named an 18-man advisory body, reporting directly to him, which will advise on matters of state policy. It is significant that this board is composed almost entirely of civilians, among whom are many of the leaders of Chile's former political parties.

As Chile's austerity programs produce the desired results and as the economy continues to cycle upwards from the deep recession of the past, the standard of living of the population should generally increase. This will bring not only increased economic benefits but also a more relaxed political atmosphere. Long-needed tax reforms have been implemented and should have the effect of more widespread income distribution as production increases and Chile's tax base widens.

### Domestic Economy

Economic indicators seem to point to a bottoming out of Chile's deep recession at about August of 1975. Unemployment levels of around 15% may be expected to improve in step with an improving world and Chilean economy. Domestic agriculture and industry will continue to encounter some difficulties in the unfamiliar experience of being subjected to a progressively greater number of efficient foreign competitors. From this competition, however, Chile's domestic economy should emerge in far stronger fundamental condition than that created during the 1970-1973 period when counter-productive government policies brought both industry and agriculture to the point of collapse.

Continued success may be expected in the fight to control inflation. However, the Chilean entrepreneur, consumer, and wage earner are long accustomed to double-digit inflation and these expectations may make it difficult to achieve a low level of inflation by world standards.

Growth levels in real terms on the order of 5-7% per year seem feasible, spurred by the utilization of idle capacity through greater foreign and domestic demand as the economy accelerates from its recent recession.

### External Payments

Chile's remarkable record of the past two years of structuring its system to encourage non-traditional exports augurs well for a continued increase in exports of non-copper products.

Copper products from Chile may be expected to produce substantially more revenue as the world economy continues to improve or if deliveries from other areas, especially Africa, become more uncertain. In view of the potential instability of African sources of copper, a greater awareness of the strategic value and indispensability of Chilean copper may be expected. This awareness, coupled with Chile's natural advantages in terms of richness of ore veins and ready access to ocean transport, would indicate a favorable future for her copper and other mineral production. During the critical period for Chile's international payments situation, however, constant monitoring of copper prices will be required in order to assess the country's progress towards its international payments goals.

Another key factor in Chile's recovery will be the continued cooperation of international public and private financing institutions. This cooperation will be indispensable in the next several years. The recent credits totalling over US \$125 million offered by the group of Canadian and American banks would seem to indicate that future support will continue to be forthcoming provided Chile continues, as expected, to observe sound principles of economic management in coping with its economic problems.



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October 8, 1976

Hon. Richard D. Erb  
Deputy Assistant Secretary for  
Developing Nations Finance  
Department of the Treasury  
Washington, D. C. 20020

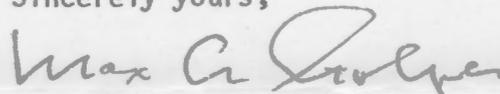
Dear Mr. Erb:

Enclosed for your information is a summary that I have prepared of a recent decision of the Argentine Supreme Court on one aspect of the Deltec problem. I have in the process of translation the complete text of the opinion, a copy of which I shall forward to you shortly.

This decision is considered by our friends in Argentina to be more important for what the Court said than for what it actually decided. By leaving no doubt regarding the Court's judgment as to the impropriety of earlier proceedings, it should facilitate politically the task of the economic team in working out a fair settlement for the assets of which Deltec has been deprived.

Regarding this latter aspect, there is also enclosed a brief report of Mr. Holmberg, Deltec's (exiled) Argentine Vice President, who has just returned from a prolonged visit to Montevideo.

Sincerely yours,



Max A. Stolper

Enclosures

cc:  
Hon. Hewson A. Ryan  
Deputy Assistant Secretary of  
Inter-American Affairs, State Dept.

Hon. Richard G. Darman  
Assistant Secretary for Policy  
Department of Commerce

Hon. Edward C. Schmultz  
Associate Counsel to the President  
The White House



**M E M O R A N D U M**  
**Cia. Swift de La Plata S. A. F.**  
**Decision of Argentine Supreme Court**  
**September 21, 1976**

On September 21, 1976, the Supreme Court of Argentina handed down a decision which signals a pronounced departure from the trend of the last six years in the treatment meted out to the Deltec interests by that country's judicial system in the litigation arising out of the insolvency of Cia. Swift de La Plata S. A. F. ("CSLP").

Procedurally, the Court has pending before it two distinct matters:

1. Appeal by Ingenio La Esperanza S. A. ("ILE", the Deltec-controlled sugar company) from the affirmance by the Court of Appeals of the declaration by the CSLP bankruptcy court on September 6, 1973, of the bankruptcy of ILE, following the Supreme Court's previous decision of September 4, 1973 (the "First Decision").
2. Petition by ILE and Deltec Argentina S. A. ("DASA", Deltec's Argentine intermediate holding company and ILE's immediate parent) that the Court annul the First Decision on jurisdictional grounds.

The Court chose to address itself to and resolve the first of these matters, and therefore considered it unnecessary to deal with the second "in this case".

In the First Decision, the Court had held, among other things: "I. That the dispossession of (CSLP) from its property must extend to the property of the companies constituting the so-called Deltec Group and, in particular, Deltec International Limited and (DASA)...; II. That in an appropriate proceeding there shall be ascertained which other persons or companies in fact belong to this group to the extent of amounting to an economic unity with the insolvent enterprise." Conducting no further proceedings of any kind, the bankruptcy court implemented the First Decision two days later by decreeing the bankruptcy of 13 companies, including Deltec International Limited and DASA, but also including ILE. Substantially all affected companies filed appeals, but only ILE's appeal was ripe for decision by the Supreme Court at this time.



Because the procedural context permitted the Court to focus exclusively on the case of ILE, a company not specifically mentioned in clause I of the First Decision, the Court was able to limit itself to examining the question of whether the lower courts had correctly applied its mandate in clause II.

Reversing the judgement of the courts below, the Supreme Court pointed out that clause II of the First Decision contained three elements: (1) it called for an appropriate proceeding; (2) it required that in such proceeding a company be shown by competent evidence to belong to the Deltec Group; and (3) it required a similar evidentiary showing that a company, belonging to the Deltec Group, did so to the extent of amounting to an economic unity with the insolvent enterprise.

On the first element, the Court came to the obvious conclusion that no proceeding could not be an appropriate proceeding. Here the Court took the opportunity to remind the lower courts of the elements of procedural due process: the necessity of notice to and hearing of the adverse party, of the presentation of competent evidence and opportunity for the adverse party to controvert such evidence. Among other things, the Court noted that the National Meat Board and Office of Tax Frauds staff memoranda, which the bankruptcy judge had placed in the record and cited in his decree, were not competent evidence.

On the substantive issue involved in the third element of the First Decision's clause II, the Court held that an affiliated company could not be saddled with responsibility for the debts of CSLP unless there were made, on the basis of competent evidence, findings of fact as to whether the company had acted in its own interest or in those of CSLP or Deltec; whether it had disposed of assets in fraud of creditors; and whether the conduct of its business had any direct or indirect impact on CSLP's insolvency. The Court declared flatly that improper conduct may not be presumed merely on the basis of the affiliation itself.



The Court thus remanded the ILE case to the Court of Appeals for further proceedings consistent with its opinion. There can be no doubt that the only possible outcome of these further proceedings, which may be expected in short order, is the removal of ILE from the CSLP bankruptcy proceedings.

It should be noted, however, that Deltec is not yet by any means free to dispose of the shares of ILE. These shares are the property of DASA, and DASA still stands "dispossessed" of its property as a result of the First Decision's clause I.

Since DASA had not, any more than ILE, been accorded due process of law in the earlier proceedings, it is the expectation of Argentine counsel that the Court's decision will be helpful in eventually establishing the complete separation of the DASA group of companies from the insolvency of CSLP. However, further litigation will be required to attain that end.

M. A. S.



## I. Report on Progress of CSLP Assets Sale

a) IBRI and PROVITA Finally after about 30 days' delay, the Receiver presented his program for the consideration of the other parties involved. The program differs from the one we considered the best but is acceptable. Judge Dassen should have the program for final approval on Friday, October 8. Upset prices are the same proposed by U.T.N. (\$2,500,000) and are in line with our appraisal (\$2,000,000).

b) Sausage Factory The program should be ready by Friday, October 8; once approved by us it will be submitted to Judge Dassen.

c) Formosa Ranch CSLP has requested a new appraisal from two realtors in order to put up the ranch for sale within 30 days.

It is estimated that programs a), b), and c) will be completed by December 15.

d) Rosario and La Plata meat-packing plants, trademarks and domestic distribution. Judge Dassen has ordered the CSLP administrator to file the program by October 20, 1976.

Our recommendation with respect to the sale of the assets mentioned in point d) is that the Rosario and La Plata plants, trademarks and the domestic distribution should be sold as a single group; however, well reasoned redommendations are being presented in Buenos Aires that the beef operation should be split in groups as follows: 1) La Plata plant, 2) Rosario plant, 3) domestic distribution, and 4) trademarks.

In our opinion the CSLP administration is making a remarkable effort to speed up the sale of CSLP assets but is facing some bureaucratic obstacles arising out of the intercrossing of assets, property titles, etc., between CSLP and subsidiaries (IBRI, Provita and Ganados).

For the ten months ended July 31, 1976, CSLP has shown a net profit of Arg\$2,488,000,000 (\$10,000,000). The working capital is theoretically \$9,752,000, but because of the large beef extract stock still unsold CSLP is facing a tight



financial situation. According to the administrator the extract inventory amounts to approximately \$8,000,000. While potential buyers are offering \$3.00/pound F.O.B. Baires, the National Meat Board is thus far not willing to allow the sale at less than \$4.70/pound.

II. La Esperanza S. A. At our request, Judge Dassen has dismissed the company's manager appointed by former Judge Nievas and replaced him with Alfredo Stewart, financial manager of La Esperanza under our administration. For the four months ended July 31, 1976, the company showed a profit of Arg\$336,700,000 (\$1,340,000), or 17.3% on sales.

The financial position is fairly good; for the first time in three years the company has "excess liquidity" invested in bonds totalling Arg\$611,400,000 (\$2,400,000). For more details, reference is made to the attached report on La Esperanza dated September 20, 1976.

### III. The Criminal Proceeding

The Examining Magistrate last month issued a decision definitively absolving from any criminal charges all but two of the local directors and officers of CSLP and "provisionally absolving" the other two. This decision is being appealed by the complainants' attorney (recently indicted for forgery) and by the public prosecutor. The recent Supreme Court decision, reminding the judiciary of the importance of evidence in both civil and criminal proceedings, should be helpful in the decision of this appeal.

