

ROUTING AND TRANSMITTAL SLIP

Date

Aug. 10

TO: (Name, office symbol, room number, building, Agency/Post)	Initials	Date
1. Elliott Abrams		
2. Gary Matthews		
3. Charles Fairbanks	<i>CF</i>	
4. George Lister		
5.		

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REMARKS

Tom Harkin on our Chile policy.

FL
Well done, Jense!
Fun
- This is fascinating
What are you hearing now - (especially, at San Jose) on Chile?

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post) G. Lister	Room No.—Bldg.
	Phone No.

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OPTIONAL FORM 41 (Rev. 7-76)
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August 10, 1983

To: Elliott Abrams

Subject: Harkin: Chile

You may recall the attached July 15 memorandum on my efforts to draw more domestic attention to our July 11 press briefing statement in favor of a transition to democracy in Chile. In that connection I drafted a proposed statement for Tom Harkin for insertion into the Congressional Record. I told my usual contact in his office that I would be bringing it up for his consideration, but when I arrived there she was off on an errand, and so I entrusted the statement to another staffer. However, the statement did not appear in the Record. Therefore, just before taking off for Australia, I called on Harkin to find out what had happened.

Tom seemed puzzled when I explained why I was there, and said he had assumed the statement had gone into the Record. He asked his staffer for an explanation. The latter then said that he had sought the opinions of Joe Aldridge and a member of Americas Watch, and both had voted against the idea. At that point I expressed the following views.

This operation is in the interests of Chilean democracy. There is widespread popular misunderstanding in Chile regarding our policy. The GOC wants to give the impression we are pro-Pinochet. Radio Moscow and the Chilean Communist Party say the same. Fortunately our July 11 statement was carried widely in the Chilean press. But it received little attention here. It would be of some help to put it into the Record. Those who shudder at the idea of saying anything good about the Department can console themselves with the certainty that there will be ample opportunities for criticizing us on other subjects in coming weeks. And Tom's applause for the Department will help to show that he is objective and not always critical of us.

Tom said he agreed completely and he requested the staffer to put the statement into the Record. That was done on July 29 (ref. attached), as originally drafted.

George Lister

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cc: Bob Snyder

STATE DEPARTMENT SUPPORTS
CHILEAN DEMOCRACY

HON. TOM HARKIN

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 29, 1983

● Mr. HARKIN. Mr. Speaker, I invite the attention of my colleagues to the State Department's July 11 press briefing comment concerning the current political crisis in Chile. I am happy to say that the Department has made clear its support for the cause of Chilean democracy. Specifically, the Department's spokesman referred to the need for "the transition to democracy sought by the vast majority of Chileans." He then added: "We firmly support that tradition, as defined by the Chileans themselves."

I welcome this forthright and timely statement. As my colleagues well know, I am a frequent critic of State Department policies and pronouncements, especially in the Latin American area. Therefore, I find this opportunity to applaud the Department's performance all the more gratifying. Unfortunately, this very significant policy statement has received almost no attention in our newspapers, although I am pleased to report that it has been published in full in the Chilean press. I am certain the Department's stand comes as very good news to the great majority of Chilean people in their hour of need.

I insert the following transcript of this important official statement into the RECORD, and I urge my colleagues to read it carefully:

Question. On Chile, do you have any reaction after the arrest of Mr. Gabriel Valdes?

Answer. Yes, I can give you some reaction. Former Foreign Minister Gabriel Valdes, former Senator Jorge Lavendero, and Jose de Gregorio were asked by a judge of the Santiago Court of Appeals to appear before him Saturday, July 9, in connection with his investigation of the earlier arrest of two men and a woman regarding the seizure of a large number of pamphlets calling for a peaceful anti-government protest on July 12. Following the hearing, he ordered them detained and held incommunicado.

The three persons arrested earlier had been turned over to the court on July 6 by the Ministry of Interior, which accused them and unidentified other persons of violating the 1958 law on internal security. Under general provisions of Chilean law, an investigating magistrate can order people detained for up to five days while he decides whether to indict or release them.

Appeals for the release of the political leaders detained on Saturday are expected to be heard today in the Court of Appeals.

In Chile, as elsewhere in the world, we support the right to peaceful dissent. The detention and solitary confinement of prominent democratic leaders such as Mr. Valdes can only be regarded as a regrettable manifestation of the serious tensions and divisions affecting Chile.

In previous comments we supported calls from various sectors of Chilean society in favor of dialogue to overcome those divisions. We viewed authorizations for the return of certain prominent political exiles as a positive development. Whatever the

legal basis and eventual disposition of these new arrests, such actions illustrate the need for moderate leaders on all sides to find ways to halt the trend toward confrontation and to establish the basic consensus needed for the transition to democracy sought by the vast majority of Chileans. We firmly support that transition, as defined by the Chileans themselves.

We have communicated our views and our concern about these arrests to senior government officials.●

H.R. 3657

HON. WILLIS D. GRADISON, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, July 29, 1983

● Mr. GRADISON. Mr. Speaker, Congressman DOWNEY and I recently introduced a bill, H.R. 3657, the purpose of which is to correct an inadvertent error in the Technical Corrections Act of 1982 ("TCA").

Section 338 of the Internal Revenue Code (the "Code"), which was enacted as part of the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA"), provides that a corporate purchaser of 80 percent or more of the stock in a target corporation may elect to treat the stock purchase for tax purposes as a purchase of the assets of the target corporation. Section 338 generally applies to stock purchases occurring after August 31, 1982, although a special rule permits a purchasing corporation to elect to have the provision apply to the purchase of stock in a target corporation if the acquisition occurs after August 31, 1980, and before September 1, 1982, provided that the target corporation was not liquidated before September 1, 1982.

After the enactment of TEFRA, it became apparent that inequities could result under the special rule if a purchasing corporation could elect to have the selling group of corporations pay a tax on section 338 income that was not contemplated by the parties at the time that they entered into the transaction. Accordingly, the TCA provides in general that section 338 income realized from a deemed sale of assets will be included in the final return of the target corporation, which, for this purpose, is not considered a part of the selling group of corporations. This provision has the effect of imposing upon the purchasing corporation and its affiliates the burden of paying the tax on any section 338 income realized from the deemed sale of assets.

However, a transition rule contained in the Technical Corrections Act of 1982 allows the tax on any income realized from a stock purchase transaction subject to section 338 to be incurred by the selling group of corporations filing a consolidated return, provided that a binding contract was entered into on or after "the date of enactment of the Tax Equity and Fiscal Responsibility Act of 1982 [September 3, 1982], and on or before the date of

enactment of" the TCA (January 12, 1983), if the purchasing corporation establishes by clear and convincing evidence that the contract was negotiated with the expectation that any income realized on the deemed sale of assets under section 338 would be paid for by the selling group of corporations filing a consolidated income tax return.

H.R. 3657 would modify this transitional rule so that it applies to binding contracts entered into on or after September 1, 1982, rather than the date of enactment of TEFRA (September 3, 1982), and on or before the date of enactment of the TCA (January 12, 1983). Taxpayers affected by H.R. 3657 would be entitled to file a section 338 election within 30 days after enactment of H.R. 3657.

This matter first came to my attention because, on September 1, 1982, a corporate seller and a corporate purchaser entered into a stock purchase agreement whereby all of the stock of a subsidiary of the seller was sold in a transaction subject to section 338. Under the terms of the agreement, the selling group of corporations filing a consolidated income tax return agreed to include in their return any income arising from the deemed purchase of assets under section 338. In so doing, the parties relied upon an understanding (drawn both from conversations with the staff of the Joint Tax Committee and from the House conference report) that TEFRA would impose on the selling corporation and its affiliates the burden of paying tax on income realized from a stock purchase subject to section 338 of the Code. (See, House Conference Report accompanying H.R. 4961, August 19, 1982, page 533 (the "Conference Report").)

Discussions with the staff of the Joint Tax Committee and the Office of Tax Legislative Counsel of the Treasury Department have disclosed that (i) the interpretation of section 338 by the parties to the transaction was consistent with Congress' intent in TEFRA, and (ii) the beginning date for applying the transitional rule in the TCA, i.e., September 3, 1982, was not intended to treat unfairly stock purchase transactions entered into prior to that date. The existence of the transitional rule to the TCA indicates recognition by Congress that transactions already binding in nature before enactment of the TCA could be adversely and inequitably affected if the TCA change were applied retroactively with no exceptions.

H.R. 3657 does not excuse the parties to the transaction from the payment of any tax arising from the section 338 income generated by the deemed asset sale; it merely shifts the burden of the tax from one taxpayer to another as permitted by the law and as intended by the parties on the date of the transaction, September 1, 1982.●

July 15, 1983

To: Elliott Abrams

Subject: USG: Chile

One of the best things that happened while you were away was the clear stand we took at our July 11 press briefing in favor of a transition to democracy in Chile (ref. attached). That was very well received by Edmundo Vargas, Sergio Bitar, Martin Poblete, etc. The statement has been published verbatim in the Chilean press. Great.

Unfortunately the statement has received little attention in our press, but today's Goshko article was a step in that direction. I have circulated the briefing transcript to Amnesty International, WOLA, Americas Watch, etc.

Charles and I met with Pedro Felipe Ramirez and Bitar last week. They were very pleased (ref. attached).

George Lister

cc: Bob Snyder

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