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CABINET
DEFENCE AND OVERSEA POLICY COMMITTEE

CEGB URANIUM ENRICHMENT CONTRACT WITH THE SOVIET UNION

Note by Secretary of State for Energy

1. The CEGB have a contract, concluded in 1974-75, with the Soviet Union for uranium enrichment. The Contract calls for the supply to the CEGB over ten years, beginning this year, of 1000 tonnes of separative work. The complete contract is worth some £50m to the Russians. Uranium hexafluoride would be shipped from here to Russia and returned as enriched uranium, about 90-100 tonnes at a time. The uranium is intended for use in AGR nuclear power stations, and would account for about 20% of the CEGB's annual supplies for these stations.
2. The main reason for entering into the contract, apart from diversifying the sources of supply, was a price advantage which could, depending on the alternative supplier, amount to £60m over the life of the contract. Other Western countries, notably Federal Germany, have contracts with the Soviet Union for the supply of enriched uranium.
3. I wrote to the Foreign Secretary on 21 January 1980 asking for his view on whether cancellation of the contract should be considered in the context of sanctions against Russia in response to the invasion of Afghanistan. If so, there would need to be detailed discussions with the UK parties. The Foreign Secretary replied that he favoured cancellation; he referred to the fact that the overall commercial advantage to the UK appeared to favour this.
4. Discussions of the details took place with the CEGB and BNFL. These showed that there would be considerable difficulty in effectively

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cancelling the contract without penalty and that there could be substantial trading disadvantages for BNFL and possible repercussions on other Anglo-Soviet trade if the work were taken away from the Soviet Union. The attached letter sets out these problems in more detail and suggests that I for my part accept that in all the circumstances the Contract should be allowed to continue.

5. A decision is needed urgently because the first shipment of uranium hexafluoride may need to leave this country this month to fulfil the contractual obligation to deliver in the Soviet Union in March.

D.A.R.H.

Department of Energy
14 February 1980

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SECRETARIAT OF STATE FOR DEFENCE
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The Rt Hon The Lord Carrington KCMG MC
Foreign and Commonwealth Secretary
Downing Street
London SW1A 2AL

6 February 1980

Dear Peter

CEGB URANIUM ENRICHMENT CONTRACT WITH THE SOVIET UNION

Following your minute of 25 January and letters from the offices of George Younger and Cecil Parkinson, my officials have discussed this matter with the CEGB and with BNFL.

Briefly, achieving effective cancellation of the contract without penalty could well be impossible, and the benefits to BNFL of getting the work from the CEGB either directly or through Urenco could well be outweighed by disadvantages to them in losing other business for the conversion of uranium hexafluoride (UF₆) and its onward transport to the USSR.

The contract between the CEGB (contracting on their own behalf and on behalf of the SSEB) and Technabexport makes no provision for cancellation on notice. The contract can therefore only be lawfully cancelled, without giving rise to a possible claim for damages for its breach, under its force majeure clause. This provides that if circumstances beyond the control of the parties make it impossible for either party to perform its obligations under the contract, the time for performance shall be extended while the parties try to find a solution which will make fulfilment of their obligations possible. If however the circumstances continue for more than 12 months, the contract may be cancelled without liability to pay compensation. Import and export prohibitions are included as examples of force majeure.

The export of UF₆ is subject to export licence. If the Government were to refuse an export licence for shipments for the purpose of fulfilling this contract, it would be open to the Russians under the clause described above to ask the CEGB to divert one of their incoming shipments of natural uranium to the USSR for conversion and enrichment there or, less likely, to offer to provide UF₆ from their own resources for the purpose of fulfilling the contract. If they did either of these things, there would be no basis for cancellation of the contract.

The import of enriched uranium is subject to import licence. But, the CEGB are contractually obliged to pay for enriched uranium as soon as it is loaded on to a ship in a Soviet port. Refusal of an import licence would not frustrate the contract.

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Thought has been given to the possibility of using exchange control legislation (even though presently dormant) in this case, to prevent the CEGB making payment, but there is legal advice to the effect that there is considerable doubt whether a Court would regard this as constituting force majeure for breach of contract.

It therefore seems that it may well be impossible for the Government to bring about a clear event of force majeure. It is understood that the contract, though providing for arbitration in Sweden, is written under Soviet law, so that if force majeure were not clearly established, the CEGB could be sued for damages in the Soviet Courts.

If a way could be found of cancelling the contract lawfully, we would expect the CEGB to look to BNFL or Urenco for replacement quantities of separative work.

BNFL could only do it for more than twice the Soviet price. If the work went to Urenco, BNFL would only get a third of the benefit. Urenco's price for doing the work would, even on the basis of some element of discount, be likely to be at least \$25 per swu more than the Soviet price. This would mean an extra cost to the Boards of about £10m over the life of the contract. It is relevant that BNFL engage in conversion of uranium oxide to UF₆ on behalf of European utilities and then ship it to the USSR for enrichment. They are at present negotiating further contracts for work of this nature worth some £20m. The cancellation of the CEGB contract, in which they are involved through their responsibilities for converting the uranium oxide into UF₆, could well cause the Russians to refuse to undertake further business involving BNFL in this capacity. BNFL believe that the benefit foregone in this way would more than offset what they would expect to gain if the CEGB has to come to Urenco for replacement quantities. Because of the wide price differential, they would not expect the CEGB to come to them, or, if they did, for the full amount. The benefit to BNFL is hence small (through Urenco) or speculative (on their own). There would also be long term effects on BNFL's reputation as a reliable supplier.

It is my officials' impression that the CEGB would not resist any Government action to terminate the contract, provided that a clear event of force majeure could be brought about and that there was no possibility of their having damages awarded against them. They have said however that in the event of cancellation they would want to be free to seek the most advantageous terms available elsewhere, including France and the US. Although we would wish to prevent their doing this, it throws further doubt on the benefit to BNFL of cancelling the Soviet contract. The Boards might seek compensation from the Government.

It is for you and John Nott to form a view about the effects on Anglo-Soviet trade and on Anglo-Soviet relations of trying to break this contract. From my officials' talks with those involved, it seems that the difficulties of doing so are great, the benefits so far as trade in nuclear materials is concerned are dubious and the likelihood of a

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frustrated legal wrangle in which the Generating Boards might suffer financially through a Soviet court decision is considerable. So far as my own responsibilities are concerned, I now tend to think that the contract should be allowed to continue, but I should be glad to know urgently whether you agree. The urgency arises from the fact that the first shipment of UF6 under the contract could be required to leave the UK before the end of this month, and would have to leave BNFL's Springfield works several days before the planned departure of the ship.

I am copying this letter to the Prime Minister, to John Nott, George Younger and Sir Robert Armstrong.

Yours ever
David
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D A R Howell