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15 April 1982

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CABINET
DEFENCE AND OVERSEA POLICY (OFFICIAL) COMMITTEE
SUB-COMMITTEE ON THE SOUTH ATLANTIC AND
THE FALKLAND ISLANDS

TRADING WITH THE ENEMY ACT 1939

Note by the Secretaries

The Note by the Foreign and Commonwealth Office Legal Adviser attached to ODO(SA)(82) 15 referred (answer (4) to Question 6) to trading with the enemy legislation. Attached is a note by the Department of Trade setting out the implications of the Trading with the Enemy Act 1939.

Signed C H O'D ALEXANDER
G R G MIDDLETON
S D SPIVEY

Cabinet Office
15 April 1982

ACTIVATION OF TRADING WITH THE ENEMY ACT 1939

Note by Department of Trade Officials

1. Department of Trade officials have been ordered to advise on -
 - i. the regulations which should be promulgated under the Trading with the Enemy Act 1939 (TWE) if it comes into force; and
 - ii. the policy implications

Scope of the Act

2. The Act comes automatically into effect on the declaration of war by either side or a declaration that a State of War exists.
3. The Act makes it an offence to have any commercial, financial or other intercourse or dealings with or for the benefit of an enemy and in particular applies to the supply of goods and money transactions. Exceptions are, however, permitted on the authority of a Secretary of State.

Need for economic measures against the Argentine

4. The Chancellor of the Exchequer has indicated that the most important financial measures have been taken and that he has no further financial measures to propose (OD(82) 21).
5. A paper by the Department of Trade (ODO(SA)(82) 11) has identified 5 areas (variation of contracts, seizure of aircraft and ships and banning the provision of services) where powers may need to be taken on a contingency basis if the TWE does not become operative. The TWE would more than provide the powers identified in the Department's paper.

Effect of the 1939 Act

6. The effect would be to bring to an immediate halt without any further action by the Government all financial and commercial dealings between the United Kingdom and Argentina. This would cover inter alia visible exports

and imports, payment of royalties, shipping and aviation, banking, consultancy and the provision of all other services.

7. The position of branches and subsidiaries of British companies operating in Argentina would be particularly difficult. The Act defines branches and subsidiaries as "enemies" for the purpose of the Act. This means that the Boards of the parent United Kingdom companies must cease to have any dealings with their subsidiaries or branches in Argentina. Guidance could undoubtedly be sought from the Government as to whether the United Kingdom parent has any responsibilities in relation to the operations of its Argentine offshoots.

Conclusions

8. Department of Trade officials consider that with the possible exception of a ban on civil exports the most important measures in the trade field have already been taken; and the Chancellor has taken a similar view on financial measures. The all-embracing provisions and automatic implementation of the TWE Act are inappropriate in that they go further than Ministers have so far agreed in ending economic links with Argentina. Our preference would therefore be to proceed by taking specific emergency powers in the proposed Home Office Emergency Bill to cover the gaps identified in the Department of Trade paper.

9. As a precaution, we would recommend that the opportunity should be taken in drafting the Home Office bill to include a provision by which the TWE would only become operative when activated by an Order-in-Council. In the event of a unilateral Declaration of War being made by Argentina prior to the Home Office Emergency Bill coming into effect, the Government would need to announce its intention of making the TWE Act non-applicable either by means of a one-clause bill or by adding a clause to the Home Office Bill.

Department of Trade

11 April 1982