

*Energy*Foreign and Commonwealth Office
London SW1

16 January 1980

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I am grateful for the further clarifications in Hamish Gray's letter of 10 January. As I understand it, the position is now that clawback will definitely not be exercised so as to restrict supplies of UKCS crude to BP's affiliates in EEC countries. This would remove a major risk of challenge under Article 34 of the EEC Treaty. I note too that it may be possible to avoid applying to the Antwerp and Rotterdam refineries restrictions which, although perhaps less likely in practice to provoke legal challenge, might also fall foul of Article 34. If I am right in assuming that there are no other flows of UKCS crude from BP to EEC destinations likely to be affected by clawback, we may be able so to draft the agreement as to provide a significant degree of protection in the event of a leak, and to offer a much reduced target if it were subsequently decided that the agreement should be terminated.

I have in mind something on the following lines. First, it is I think common ground that the agreement should not refer to clawback as such, but merely make provision for termination in certain circumstances. Second, I take it from the recent correspondence that we could include in the agreement a provision to the effect that the right to terminate should be so exercised as not to affect the supply of UKCS crude to BP
/affiliates

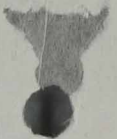
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affiliates in EEC countries; indeed, we might be able to dress this up in a formula which appeared to go somewhat further, such as:

'in the event of a termination, the parties shall/will seek to give priority to supplies to markets within the EEC, and shall/will in particular maintain the supply of UKCS crude to BP's affiliate companies in the Community.' (The phrase 'markets within the EEC' is assumed to include the UK market). Finally, it would be helpful if we could find a way to disassociate the final agreement from the revealingly explicit references to clawback in the draft Principles. I think, in the light of the above, that we would be justified in stating for the guidance of the negotiators that 'provisions in the draft Principles relating to clawback were unacceptable for EEC reasons and should not be reflected in the agreement.'

A solution on these lines would not exclude all legal risk if it were subsequently decided to exercise the right to terminate the agreement; and there would remain important political points to weigh in the balance. But I should be content to leave them for consultation between us before a decision were taken in a specific case if you felt able to go ahead on the basis I have suggested. If you agree, it would not seem necessary to have a further meeting of Ministers, though our legal advisers might usefully get together to consider any drafting points which may arise.

I am sending copies of this letter to the Prime Minister, members of OD(E), the Attorney General, the Lord Advocate and Sir Robert Armstrong.



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