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Foreign and Commonwealth Office

London SW1A 2AH

12 March 1985

I do not see why an FFAO agreement should not allow the country only what is needed. There would be nothing unusual about that.

Prime Minister:

Do you agree that Falklands Fisheries to Mr Needham as proposed

The Foreign Secretary minuted the Prime Minister on 10 January about the draft Agreement between the Coalite/Taiyo Joint Venture (CTC) and the Falkland Islands Government. The Prime Minister subsequently wrote to Mr Needham of Coalite on 11 January, confirming that the Government would be able to approve the draft Agreement subject to certain amendments which were communicated to him by FCO officials on the same day. I enclose the draft Agreement (before amendment) and the two letters to Mr Needham of 11 January.

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Mr Needham has now written to us (copy enclosed) describing the anxieties of his Japanese partners on one particular count. Their concern relates to the heading of the Third Schedule to the Agreement, which sets out the preferential terms on which CTC would be granted a licence within any Exclusive Fisheries Zone (EFZ). As amended, the heading reads as follows:

"The Falkland Islands Government shall grant CTC a licence to fish in any Exclusive Fisheries Zone, subject to the provisions of any fisheries conservation regime which may be established, containing the following provisions."

As Sir Geoffrey Howe explained in paragraph 4 of his minute of 10 January, our concern in proposing this amendment was to ensure that there would not be any fundamental incompatibility between the CTC licence and whatever licensing or quota arrangements which might be negotiated in the context of a multilateral fisheries regime.

Mr Needham has pointed out to us that Taiyo will be carrying out their side of the Agreement (allowing observers nominated by the Falkland Islands Government access to the results of exploratory fishing) whether or not there is any quid pro quo. Taiyo will benefit from the preferential licensing scheme described in the Third Schedule only if and when an EFZ is established. But to his mind the heading to the Schedule, as amended, would allow HMG to avoid any obligation whatsoever to Taiyo, simply by claiming that the

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preferential licensing arrangements in the Schedule could not be accommodated within a multilateral regime.

It is of importance to the Falkland Islands Government that the Agreement should go ahead, and we need to consider carefully whether something further could not be done to facilitate this. But we must of course also be careful not to enter into a commitment which we cannot fulfil or which ties our hands to an undesirable degree.

Ministers agreed at OD on 26 February to explore whether some form of multilateral fisheries management system might be established with the assistance of the FAO. (My letter of 7 March reported the outcome of our approach to the FAO Secretariat.) In his minute of 16 January, however, Sir Geoffrey Howe warned that the terms of the CTC Agreement "would be likely to be incompatible with whatever licensing or quota arrangements might be negotiated under FAO auspices: these would almost certainly have to be non-discriminatory". There is thus a risk that undertakings given now to CTC could prove an obstacle to achieving a multilateral arrangement. But, equally, it is not impossible that we could reach a solution compatible with maintaining the advantages for CTC, and we would want to try our best to achieve this provided that to do so would not result in the collapse of the initiative. It is, however, self-evident that the "best endeavours" formulation which we offer to Mr Needham should not be capable of being taken to amount to a legal obligation. It would also be unwise to give Mr Needham the clear assurance he seeks that "in the event of a unilateral declaration of an EFZ (however improbable that may be) the licence concessions as originally agreed would stand." We cannot predict exactly how a unilaterally-declared EFZ would come about, or how it could evolve. An element of negotiation with the countries could be involved. In such circumstances, full implementation of the terms of the Agreement could tie our hands.

I enclose a draft of a letter which, if you are content, we would send to Mr Needham. The line it contains has been agreed with the Law Officers. It is of course possible that Mr Needham will not find the somewhat qualified terms of the assurances given in the draft sufficiently attractive to be acceptable. But it is a risk we must take; the long-term interests of the Falkland Islands would not be served if we were more tightly bound by the Agreement and supplementary assurances.

I am copying this letter to Henry Steel (Attorney General's Chambers) and Richard Hatfield (Cabinet Office).

Yours ever,

John Ricketts

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ARGENTINA: Relations: A-39

