



From the
Parliamentary Under Secretary of State

Soviet Union

DEPARTMENT OF TRADE
1 VICTORIA STREET
LONDON SW1H 0ET

TELEPHONE DIRECT LINE 01 215 3781
SWITCHBOARD 01 215 7877

CONFIDENTIAL

Peter Rees Esq
Minister of State
HM Treasury
Treasury Chambers
Parliament Street
London SW1P

MBPA yet.

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3 March 1981

Dear Peter,

ANGLO SOVIET JOINT MARITIME COMMISSION

I indicated when I wrote to you on 28 January that following your and Peter Blaker's letters to me I had asked my Department to draw up a paper outlining possible options for counter-measures should our consultations with the Soviet Union fail to ensure an increase in the UK's share of the bilateral general cargo market.

I am now enclosing this paper which, you will see, takes account of the points which you and Peter Blaker made in advance. The paper indicates a preferred option based on control of Soviet sailings in the bilateral trade but suggests further consultation with the Foreign Office on any wider political concerns, with Customs and Excise on the enforcement aspects, and with the Ministry of Defence in case any security advantages arise. I suggest that our officials should meet as soon as possible to discuss the proposals in the paper in more detail and to report back to us. I have asked my Department to arrange an appropriate meeting.

I am sending copies of this letter and the attached paper to the Prime Minister, members of MISC 19 and Sir Robert Armstrong.

Yours,

David

LORD TREFGARNE

USSR BILATERAL GENERAL CARGO TRADE: COUNTERMEASURES TO ENSURE EQUITABLE PARTICIPATION BY BRITISH VESSELS.

Purpose of Paper

1 The purpose of this paper is to develop measures on a contingency basis should these prove necessary if the current consultations with the USSR fail to secure an equitable share of the bilateral general cargo trade for UK flag vessels.

The paper concludes:-

- a) that HMG has the legal powers to take countermeasures, and would be justified should the consultations with the Russians fail;
- b) that any measures have both advantages and disadvantages but the preferable option is one involving a control over the tonnage operated in the bilateral general cargo trade (para 7B);
- c) further consultation will however be needed with other departments concerned, particularly Customs and Excise to ensure the maximum economy in cost and staff, with the Foreign Office on any wider political aspects, and with the Ministry of Defence in case any security advantages arise.

Background

2 The shipping of Anglo-Soviet bilateral trade is entirely controlled for the Russian side, both as to allocation and as to freight rates, as a result of the Soviet practice of exporting CIF and importing FOB. Shipping relations between the 2 countries are the subject of inter-governmental agreements, including an undertaking made by the Soviets in 1977 to move towards parity of carryings between the 2 flags. This undertaking has not been kept, and in 1979 the UK share of the bilateral general cargo trade was only 12.3% (in weight terms) compared with 78.5% for the Soviets. During 1980, even this share of the trade came under threat, because Soviet refusal to allow the UK company in the trade, United Baltic Corporation (UBC), a freight rate increase for its conventional vessel meant that the company was making a loss on the vessel, and indicated that it would have to withdraw it unless its profitability improved. The withdrawal of the vessel would reduce the UK share to 6.5% in weight terms.

3 At the Anglo-Soviet Joint Maritime Commission in Moscow in December 1980, the Department of Trade with Ministerial approval, told the Soviets that HMG had been considering whether to introduce national measures to raise the UK's share, and the Soviet team proposed a Working Party to consider how the carryings could be made more equitable. The question of counter measures is therefore in abeyance for the time being but, Department of Trade Ministers have decided that contingency plans must still be carried forward in case these negotiations fail. The Working Party is due to meet in London from 3-6 March and the UK has already put proposals to the Soviets for increasing its share of the trade. These are as follows:-

- a) the carryings to be equalised include all the bilateral general cargo trade and not just those currently carried by the joint liner service (see paragraph 4 below).
- b) The Soviets should accept progressive target for increasing the UK's share of the trade and instruct their shipping agencies in London and the USSR to allocate cargoes accordingly.

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c) The target would be:-

- i) an increase in the UK flag liftings of general cargo to 40% by the end of 1981.
- ii) Thereafter, an annual growth in UK flag liftings sufficient to ensure parity by the end of 1983.

(The targets have been expressed in this way to make it clear that the UK is not aiming at excluding or limiting participation in the trade by third flag vessels operated on a commercial basis.)

CHARACTERISTICS OF THE TRADE

4 The general cargo trade between the UK and the USSR amounted to 619,000 tonnes in 1979, of which just over half was carried by vessels operating in the joint liner service, less than 10% by third flag carriers, and the remainder by other Soviet ships outside the joint liner service. These may call at UK ports primarily in a cross-trading role. There are currently no restrictions on Soviet calls at UK ports, or on the cargoes Soviet ships can carry.

LEGAL CONSIDERATIONS, RAISED BY COUNTERMEASURES

5 There are two of these:-

a) Merchant Shipping Act 1974 and 1979

Section 14 of the Merchant Shipping Act 1974 (as amended) sets out countermeasures the Secretary of State may take by Order if a foreign government or its agency adopts measures which are damaging to UK shipping interests. The text of the amended section is at Annex A, and Annex B lists the countermeasures available and shows that the preconditions for operating them are met. Before the Secretary of State issues an order he is required to consult the appropriate shipping or trading interests.

b) UK/USSR Treaty on Merchant Navigation 1968

Any countermeasures must either be compatible with this treaty or else justified by a prior Soviet breach. Annex C discusses the relevant articles of the treaty and comes to the conclusion that countermeasures would be justified in certain circumstances. The Foreign Office may wish to advise further on this aspect.

OBJECTIVES OF COUNTERMEASURES.

6 In deciding what countermeasures to take, it is important to define clearly what our objectives are and the likely ramifications. There are also a number of different considerations which will have to be weighed against each other. The prime considerations would seem to be as follows:-

- a) Our primary aim is to increase the UK's share in the bilateral trade at remunerative freight rates
- b) If the Working Group fail to increase the UK's share by consultation, we shall have to recognise that the Soviets are unlikely to give us such a share in response to our retaliation. Countermeasures should therefore be designed so that they themselves effect the remedy we are seeking.

- c) Countermeasures will have to be considered in relation to any wider Soviet political reactions. These could be against UK shipping, trade or other interests. On shipping, the Soviets would be unlikely to jeopardize the substantial benefits they get by calling as cross traders at UK ports. On trade, it is difficult to gauge the Soviet reaction. The more severe the countermeasures, the more likely it is that the Soviet reaction will spill over into the general trade field. Many materials and products currently shipped on Soviet vessels could be bought from or sold to other countries with little difficulty. The FCO will wish to advise on the likelihood of any wider response. If measures are remedial rather than retaliatory and are confined to the bilateral trade, there is clearly more likelihood of containing any Soviet reaction.
- d) The measures will obviously have to be sensitive to the cost and staffing implications. Consultations with Customs and Excise are thus imperative to ensure that costs are minimised.
- e) It may be that any countermeasures involving regulation of port calls could also serve a security purpose. The Ministry of Defence may like to advise on this.

7 Annex D indicates the main advantages and disadvantages of the various options available under Section 14. It will be seen from the Annex that there is considerable overlap between the various options and most have advantages as well as disadvantages. Drawing on this Annex, the Department of Trade would recommend the following options for further consideration:-

A LICENSING SYSTEM FOR BILATERAL CARGOES

This would involve Customs and Excise in monitoring the bilateral trade and refusing to allow the Soviets to carry any further exports or imports once they had reached a certain quota, expressed in tonnage terms based on the previous years trade figures and designed to give them eg 40% of the trade.

ADVANTAGES

- i) This system may be easier to administer than some of the other options in Annex D because Customs and Excise already collects statistics on carryings in the trade. Moreover, the system would be based on the same principle as other industries where quotas are imposed eg textiles. It would however have to cover exports as well as imports.

DISADVANTAGES

- i) The major problem would be that of evasion through trans shipment in continental ports, or through false declaration of the origin/destination of shipments in Customs documentation.
- ii) This system would not necessarily result in any redirection of cargo to British vessels unless it was also coupled with a system of control over cargo allocation. This would inevitably make the measure more complicated to administer.
- iii) Once the Soviets had reached their quota, they could retaliate by seeking other markets for their UK imports and exports.

REGULATION OF SOVIET TONNAGE IN THE BILATERAL TRADE

This option would effectively be a licensing system based on sailings. It would involve the issue of vouchers which Soviet vessels would have to present before they loaded or

landed bilateral general cargo. The vouchers would be equated to some measure of vessel capacity eg gross registered tonnage, dead weight or teus. The number issued would represent a certain proportion eg 40% in weight terms of the carryings in the bilateral trade. At the moment the Soviet Union has considerably more carrying capacity in the bilateral trade than does the UK. One of the purposes of issuing vouchers would therefore be to rectify this imbalance.

As mentioned in paragraph 4 above, many Soviet ships in the bilateral trade are primarily engaged in cross trading activities out of the UK. They may therefore only be carrying a small proportion of cargo for the UK. This option would not propose to prevent this practice but it would make clear to the Soviets that if a ship was carrying any bilateral cargo, the whole of that vessel's tonnage would count against the Soviet allowance under the voucher system.

ADVANTAGES

- i) it should be easier to administer a system based on control of sailings as opposed to control of cargoes (see the option at paragraph 7B above). A control system recording Soviet use of vouchers in any UK port would however be needed.
- ii) there is already a risk of evasion through transshipment or false declaration. Hopefully, however, once the Soviets understood that we meant to enforce the system, the need for controls would diminish or even disappear.
- iii) The emphasis would be on remedy not retaliation.
- iv) The system would allow the Soviet flexibility as to which ships they utilized in the bilateral trade and would probably not therefore be considered too intrusive by them.

DISADVANTAGES

These would be the same as at the option in paragraph 7a above.

Conclusion

8 The Department of Trade considers that the option at paragraph 7b is the preferable approach on administrative grounds and merits further consideration in conjunction with Customs and Excise, the Foreign Office and the Ministry of Defence. It suggests that a meeting should be set up for this purpose as soon as possible.

SP3A

25 February 1981

MERCHANT SHIPPING ACT 1974 (AS AMENDED BY
MERCHANT SHIPPING ACT 1979)

Part III

Foreign
action

PROTECTION OF SHIPPING AND TRADING INTERESTS

affecting
shipping.

14 - (1) The Secretary of State may exercise the powers conferred by this section if he is satisfied that a foreign government, or any agency or authority of a foreign government, have adopted, or propose to adopt, measures or practices concerning or affecting the carriage of goods by sea which -

- (a) are damaging or threaten to damage the shipping or trading interests of the United Kingdom, or
- (b) are damaging or threaten to damage the shipping or trading interests of another country, and the Secretary of State is satisfied that action under this section would be in fulfilment of the international obligations of Her Majesty's Government to that other country.

(2) The Secretary of State may by order make provision for requiring persons in the United Kingdom carrying on any trade or business to provide the Secretary of State with all such information as he may require for the purpose of enabling him -

- (a) to determine what further action to take under this section, and
- (b) to ensure compliance with any orders or directions made or given under this section.

(3) The Secretary of State may by order provide for -

- (a) regulating the carriage of goods in ships and the rates which may or must be charged for carrying them;
- (b) regulating the admission and departure of ships to and from United Kingdom ports, the cargoes they may carry, and the loading or unloading of cargoes;
- (c) regulating the making and implementation of agreements (including charter-parties) whose subject matter relates directly or indirectly to the carriage of goods by sea, and requiring such agreements to be subject to the Secretary of State's approval in such cases as he may specify;

(d) imposing charges in respect of ships which enter United Kingdom ports to load or unload cargo, and in this subsection "regulating" except in relation to the rates which may or must be charged for carrying goods, includes imposing a prohibition.

(4) In a case falling within subsection (1)(a) above, an order under subsection (3) above shall specify the measures or practices which in the opinion of the Secretary of State are damaging or threaten to damage shipping or trading interests of the United Kingdom.

(5) An order under this section may authorise the Secretary of State to give directions to any person for the purposes of the order:

Provided that this subsection shall not apply for the purpose of recovering charges imposed under subsection (3)(d) above.

(6) Any order or direction made or given under this section -

(a) may be either general or special, and may be subject to such conditions or exceptions as the Secretary of State specifies (including conditions and exceptions operating by reference to the giving or withholding of his approval for any course of action);

(b) may be in terms that require compliance either generally or only in specified cases;

(c) may be varied or revoked by a subsequent order, or as the case may be, a subsequent direction, so made or given,

and an order made pursuant to this section shall be contained in a statutory instrument.

(7) Before the Secretary of State makes an order under this section he shall consult such representatives of the shipping or trading interests of the United Kingdom, and such other persons, as appear to him appropriate.

(8) If a person discloses any information which has been furnished to or obtained by him under this section, or in connection with the execution of this section, he shall, unless the disclosure is made -

(a) with the consent of the person from whom the information was obtained, or

(b) in connection with the execution of this section, or

(c) for the purposes of any legal proceedings arising out of this section or of any report of such proceedings, or

(d) in pursuance of a Community obligation to a community institution,

be liable on summary conviction to a fine not exceeding £1,000

(9) A person who -

(a) refuses or wilfully neglects to furnish any information which he is required to furnish under this section, or

(b) in furnishing any such information makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular,

shall be liable on summary conviction to a fine not exceeding £500 in the case of an offence under paragraph (a) of this subsection and not exceeding £1,000 in the case of an offence under paragraph (b) of this subsection.

(10) A person who wilfully contravenes or fails to comply with any provision of an order or direction made or given pursuant to this section, other than a provision requiring him to give any information, shall be liable -

(a) on summary conviction to a fine of not more than £5,000;

(b) on conviction on indictment to a fine;
and where the order or direction requires anything to be done, or not to be done, by, to or on a ship, and the requirement is not complied with, the owner and master of the ship are each to be regarded as wilfully failing to comply, without prejudice to the liability of anyone else.

(11) In this section "foreign government" means the government of any country outside the United Kingdom and "agency or authority of a foreign government" includes any undertaking appearing to the Secretary of State to be, or to be acting on behalf of, an undertaking which is in effect owned or controlled (directly or indirectly) by a State other than the United Kingdom; and references to ships are to ships of any registration.

(11A) A recital in an order under this section that the persons who have adopted, or propose to adopt, the measures or practices in question are a foreign government, or an agency or authority of a foreign government, shall be conclusive.

(12) Schedule 4 to this Act shall have effect for supplementing this section, which in that Schedule is called "the principal section".

Parliamentary
control of
orders under
Part III.

15 - (1) No order shall be made in exercise of the powers conferred by subsection (3) of the last preceding section unless -

(a) a draft has been approved by resolution of each House of Parliament, or

(b) it is declared in the order that it appears to the Secretary of State that by reason of urgency it is necessary to make the order without a draft having been so approved.

(2) An order made in exercise of the powers conferred by the said subsection (3) without a draft having been approved by resolution of each House of Parliament shall cease to have effect at the expiration of a period of 28 days beginning with the date on which it was made unless before the expiration of that period it has been approved by resolution of each House of Parliament, but without prejudice to anything previously done, or to the making of a new order.

In reckoning for the purposes of this subsection any period of 28 days, no account shall be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

(3) An order under the last preceding section which is not made in exercise of the powers conferred by subsection (3) of that section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(4) If an order under that section recites that it is not made in exercise of the powers conferred by the said subsection (3), the recital shall be conclusive.

These provisions shall have power to make orders in relation to the said or subject.

(5) Sections 53 of the Customs and Excise Act 1952 (power to make orders for control clearance of ships or aircraft) shall apply to the principal section and this Schedule were amended to that effect.

Orders imposing charges

1. In order under subsection (3) of section 53 of the Customs and Excise Act 1952 (power to make orders for control clearance of ships or aircraft) shall apply to the principal section and this Schedule were amended to that effect.

(a) may apply to ships of any description and to the cargo of such ships, and may also apply to aircraft of any description and to the cargo of such aircraft, or to ships carrying specified goods or cargo, and

(b) may contain such provisions as appear to the Minister to be necessary or expedient to enable the duties imposed by the order to be collected and to collect any charge imposed by the order, and

(c) may apply any of the provisions of the Customs and Excise Act 1952 or any other Act, or any regulations made under any of those Acts, or any exceptions specified in the order.

(6) The duties and charges payable by the persons liable to pay them shall be payable to the Treasury.

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(8) The duties and charges payable by the persons liable to pay them shall be payable to the Treasury.

(9) The duties and charges payable by the persons liable to pay them shall be payable to the Treasury.

(10) The duties and charges payable by the persons liable to pay them shall be payable to the Treasury.

PROTECTION OF SHIPPING AND TRADING INTERESTS

Customs powers

1 - (1) An order made under the principal section with the consent of the Commissioners of Customs and Excise may provide for the enforcement and execution of any order or direction under the principal section by officers of customs and excise.

(2) Officers of customs and excise acting under any provision made under sub-paragraph (1) above shall have power to enter any premises or vessel.

1952 c.44

(3) Section 53 of the Customs and Excise Act 1952 (power to refuse or cancel clearance of ship or aircraft) shall apply as if the principal section and this Schedule were contained in that Act.

Orders imposing charges

2 - (1) An order under subsection (3)(d) of the principal section -

(a) may apply to ships of any description specified in the order, and may apply in particular to ships registered in a specified country, or ships carrying specified goods or cargoes, and

(b) may contain such provisions as appear to the Secretary of State expedient to enable the Commissioners of Customs and Excise to collect any charge imposed by the order, and

(c) may apply any of the provisions of the customs Acts which relate to duties of customs, subject to any modifications or exceptions specified in the order.

(2) The charge so imposed may be a fixed amount, or may be an amount depending on the tonnage of the ship.

(3) Any such charge shall be payable to the Secretary of State.

(4) Nothing in this paragraph prejudices subsection (e) of the principal section.

Criminal proceedings

3 A person shall not be guilty of an offence against any provision contained in or having effect under the principal section or this Schedule by reason only of something done by that person wholly outside the area of the United Kingdom unless that person is a British subject or a company incorporated under the law of any part of the United Kingdom.

landed bilateral general cargo. The vouchers would be equated to some measure of vessel capacity eg gross registered tonnage, dead weight or teus. The number issued would represent a certain proportion eg 40% in weight terms of the carryings in the bilateral trade. At the moment the Soviet Union has considerably more carrying capacity in the bilateral trade than does the UK. One of the purposes of issuing vouchers would therefore be to rectify this imbalance.

As mentioned in paragraph 4 above, many Soviet ships in the bilateral trade are primarily engaged in cross trading activities out of the UK. They may therefore only be carrying a small proportion of cargo for the UK. This option would not propose to prevent this practice but it would make clear to the Soviets that if a ship was carrying any bilateral cargo, the whole of that vessel's tonnage would count against the Soviet allowance under the voucher system.

ADVANTAGES

- i) it should be easier to administer a system based on control of sailings as opposed to control of cargoes (see the option at paragraph 7B above). A control system recording Soviet use of vouchers in any UK port would however be needed.
- ii) there is already a risk of evasion through transshipment or false declaration. Hopefully, however, once the Soviets understood that we meant to enforce the system, the need for controls would diminish or even disappear.
- iii) The emphasis would be on remedy not retaliation.
- iv) The system would allow the Soviet flexibility as to which ships they utilized in the bilateral trade and would probably not therefore be considered too intrusive by them.

DISADVANTAGES

These would be the same as at the option in paragraph 7a above.

Conclusion

8 The Department of Trade considers that the option at paragraph 7b is the preferable approach on administrative grounds and merits further consideration in conjunction with Customs and Excise, the Foreign Office and the Ministry of Defence. It suggests that a meeting should be set up for this purpose as soon as possible.

SP3A

25 February 1981

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action
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PROTECTION OF SHIPPING AND TRADING INTERESTS

14 - (1) The Secretary of State may exercise the powers conferred by this section if he is satisfied that a foreign government, or any agency or authority of a foreign government, have adopted, or propose to adopt, measures or practices concerning or affecting the carriage of goods by sea which -

- (a) are damaging or threaten to damage the shipping or trading interests of the United Kingdom, or
- (b) are damaging or threaten to damage the shipping or trading interests of another country, and the Secretary of State is satisfied that action under this section would be in fulfilment of the international obligations of Her Majesty's Government to that other country.

(2) The Secretary of State may by order make provision for requiring persons in the United Kingdom carrying on any trade or business to provide the Secretary of State with all such information as he may require for the purpose of enabling him -

- (a) to determine what further action to take under this section, and
- (b) to ensure compliance with any orders or directions made or given under this section.

(3) The Secretary of State may by order provide for -

- (a) regulating the carriage of goods in ships and the rates which may or must be charged for carrying them;
- (b) regulating the admission and departure of ships to and from United Kingdom ports, the cargoes they may carry, and the loading or unloading of cargoes;
- (c) regulating the making and implementation of agreements (including charter-parties) whose subject matter relates directly or indirectly to the carriage of goods by sea, and requiring such agreements to be subject to the Secretary of State's approval in such cases as he may specify;

(d) imposing charges in respect of ships which enter United Kingdom ports to load or unload cargo, and in this subsection "regulating", except in relation to the rates which may or must be charged for carrying goods, includes imposing a prohibition.

(4) In a case falling within subsection (1)(a) above, an order under subsection (3) above shall specify the measures or practices which in the opinion of the Secretary of State are damaging or threaten to damage shipping or trading interests of the United Kingdom.

(5) An order under this section may authorise the Secretary of State to give directions to any person for the purposes of the order:

Provided that this subsection shall not apply for the purpose of recovering charges imposed under subsection (3)(d) above.

(6) Any order or direction made or given under this section -

(a) may be either general or special, and may be subject to such conditions or exceptions as the Secretary of State specifies (including conditions and exceptions operating by reference to the giving or withholding of his approval for any course of action);

(b) may be in terms that require compliance either generally or only in specified cases;

(c) may be varied or revoked by a subsequent order, or as the case may be, a subsequent direction, so made or given,

and an order made pursuant to this section shall be contained in a statutory instrument.

(7) Before the Secretary of State makes an order under this section he shall consult such representatives of the shipping or trading interests of the United Kingdom, and such other persons, as appear to him appropriate.

(8) If a person discloses any information which has been furnished to or obtained by him under this section, or in connection with the execution of this section, he shall, unless the disclosure is made -

(a) with the consent of the person from whom the information was obtained, or

(b) in connection with the execution of this section, or

(c) for the purposes of any legal proceedings arising out of this section or of any report of such proceedings, or

(d) in pursuance of a Community obligation to a community institution,

be liable on summary conviction to a fine not exceeding £1,000

(9) A person who -

(a) refuses or wilfully neglects to furnish any information which he is required to furnish under this section, or

(b) in furnishing any such information makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular,

shall be liable on summary conviction to a fine not exceeding £500 in the case of an offence under paragraph (a) of this subsection and not exceeding £1,000 in the case of an offence under paragraph (b) of this subsection.

(10) A person who wilfully contravenes or fails to comply with any provision of an order or direction made or given pursuant to this section, other than a provision requiring him to give any information, shall be liable -

(a) on summary conviction to a fine of not more than £5,000;

(b) on conviction on indictment to a fine;
and where the order or direction requires anything to be done, or not to be done, by, to or on a ship, and the requirement is not complied with, the owner and master of the ship are each to be regarded as wilfully failing to comply, without prejudice to the liability of anyone else.

(11) In this section "foreign government" means the government of any country outside the United Kingdom and "agency or authority of a foreign government" includes any undertaking appearing to the Secretary of State to be, or to be acting on behalf of, an undertaking which is in effect owned or controlled (directly or indirectly) by a State other than the United Kingdom; and references to ships are to ships of any registration.

(11A) A recital in an order under this section that the persons who have adopted, or propose to adopt, the measures or practices in question are a foreign government, or an agency or authority of a foreign government, shall be conclusive.

(12) Schedule 4 to this Act shall have effect for supplementing this section, which in that Schedule is called "the principal section".

Parliamentary
control of
orders under
Part III.

15 - (1) No order shall be made in exercise of the powers conferred by subsection (3) of the last preceding section unless -

(a) a draft has been approved by resolution of each House of Parliament, or

(b) it is declared in the order that it appears to the Secretary of State that by reason of urgency it is necessary to make the order without a draft having been so approved.

(2) An order made in exercise of the powers conferred by the said subsection (3) without a draft having been approved by resolution of each House of Parliament shall cease to have effect at the expiration of a period of 28 days beginning with the date on which it was made unless before the expiration of that period it has been approved by resolution of each House of Parliament, but without prejudice to anything previously done, or to the making of a new order.

In reckoning for the purposes of this subsection any period of 28 days, no account shall be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

(3) An order under the last preceding section which is not made in exercise of the powers conferred by subsection (3) of that section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(4) If an order under that section recites that it is not made in exercise of the powers conferred by the said subsection (3), the recital shall be conclusive.

These provisions shall have power to enter into any contract or contract.

(5) Sections 93 of the Customs and Excise Act 1952 (power to make orders for clearance of mail or aircraft) shall apply to the principal section and this section as if they were contained therein.

Orders imposing charges

Section 93 of the Customs and Excise Act 1952 shall apply to this section as if it were contained therein.

(a) may relate to any of the matters mentioned in section 93 of the Customs and Excise Act 1952 (power to make orders for clearance of mail or aircraft) and may be made in relation to a specified country, or to any class of goods or persons, and

(b) may contain such provisions as appear to the Secretary of State to be necessary to enable the duties and charges payable in respect of any goods or persons to be collected in any country or territory.

(c) may apply any of the provisions of the Customs and Excise Act 1952 or any other Act in relation to the duties and charges payable in respect of any goods or persons or exceptions specified in the order.

(d) The duties and charges payable in respect of any goods or persons shall be payable to the Secretary of State.

(e) The Secretary of State may make such orders as he thinks fit for giving effect to the provisions of this section.

(f) The Secretary of State may make such orders as he thinks fit for giving effect to the provisions of this section.

(g) The Secretary of State may make such orders as he thinks fit for giving effect to the provisions of this section.

(h) The Secretary of State may make such orders as he thinks fit for giving effect to the provisions of this section.

(i) The Secretary of State may make such orders as he thinks fit for giving effect to the provisions of this section.

- b) Have they adopted or do they propose to adopt measures or practices concerning or affecting the carriage of goods by sea?

The Soviet Ministry of Foreign Trade adopts the practice of requiring all Soviet exporters and importers to insist that goods are always shipped to and from the UK on terms which permit the choice of ship to be made by the Soviet shippers. The Ministry of Foreign Trade also requires the decisions as to the choice of ships to be delegated to the Soviet shipping agencies referred to in a) above. The Soviet shipping agencies adopt the practice of placing most of the cargoes on Soviet ships. The Soviet Ministry of Foreign Trade's recent refusal of a price increase for UBC's conventional vessel can also be cited as a measure affecting the carriage of goods by sea.

- c) Do the measures damage or threaten to damage the shipping or trading interests of the UK?

The Soviets control over the allocation of cargoes together with the threat to the viability of UBC's operation as a result of Soviet refusal to allow a price increase clearly damages the UK's interest in the bilateral trade.

UK/USSR Treaty on Merchant Navigation 1968

1 The UK/USSR Treaty on Merchant Navigation 1968 effectively binds us to give Soviet vessels in our ports the same treatment as we would give UK vessels. The relevant articles in considering the scope for counter-measures are as follows:-

Article 5

The High Contracting Parties agree to follow in international shipping principles of free and fair competition. In particular, each High Contracting Party shall abstain from taking measures which may limit the opportunities for vessels of the other High Contracting Party to compete in relation to trade between its own ports and ports of the other High Contracting Party on equal commercial conditions.

Article 6

Each High Contracting Party shall afford to vessels of the other High Contracting Party the same treatment as it affords its own vessels engaged on international voyages in respect of free access to ports, use of ports for loading and unloading of cargoes and for embarking and disembarking passengers, and normal commercial operations connected with the above; and also in respect of the payment of port dues and port taxes.

Article 7

The High Contracting Parties shall adopt, within the limits of their law and port regulations, all appropriate measures to facilitate and expedite maritime traffic, to prevent unnecessary delays to vessels ...

2 Given the terms of the 1968 Treaty, counter-measures can only be justified without abrogating the Treaty if a prior Soviet breach can be pointed to. It would be possible to argue that the Soviets had already breached Article 5 by their unfair allocation of cargoes resulting from their control of the trade, together with their recent refusal to increase the joint liner service rates for UBC's conventional vessel. It could also be argued that the Soviets were in breach of Article 7 because of the considerable berthing delays experienced by UBC at Leningrad which the Soviets have refused to alleviate either by allowing the payment of demurrage or by permitting UBC to increase its rates.

3 Whether or not we found ourselves in breach of Article 6 would depend upon the measures contemplated vis-a-vis Soviet access to UK ports. Measures restricting Soviet access to UK ports might not however be in breach of the Treaty if they could be shown to be proportionate to any prior Soviet breaches of the Treaty. Thus, the Soviets probably could not object to the imposition of charges on ships in the bilateral trade nor the exclusion of some of their ships from the bilateral trade (we would not be preventing the ships from engaging in cross-trade operations out of UK ports). They could however protest at the denial of all access of one of their ships to UK ports and would be likely to see the imposition of charges on all Soviet vessels as discriminatory.

4 As a general principle, if counter-measures are restricted to remedial action, it would clearly be more difficult for the Soviets to claim that we were unjustifiably in breach of the 1968 Treaty

OPTIONS FOR MEASURES UNDER THE MERCHANT SHIPPING ACT 1979

A Regulation of Cargoes

There are a wide range of options available here but the following discusses two possible measures -

Allocation of cargoes by the introduction of a licensing system for all exports and imports in the bilateral tradeAdvantages

- (i) The measure would concentrate on the fundamental cause of the current imbalance in the trade, ie the Soviet control and allocation of cargoes.
- (ii) It should achieve a major objective of the exercise, ie an increased share of the trade for UBC, particularly if the system was sophisticated enough to take account of differential freight rates.

Disadvantages

- (i) It would be fiendishly difficult to administer, requiring not only machinery to check the amount of cargo carried by both sides, but also machinery to reallocate cargoes to UBC.
- (ii) There could be a serious problems of payment for UBC given that the Soviet Ministry of Foreign Trade is effectively the paymaster under the current terms of trade.
- (iii) The scope for evasion via transshipment would be considerable.

Alteration of the terms of trade so that exports from both countries were shipped on a cif basisAdvantages

- (i) The measure would be aimed at Soviet control of the trade and could be justified on the basis that it is the normal commercial practice in other trades.

Disadvantages

- (i) Alteration of the terms of trade does not determine the flag of shipment. UBC would not therefore necessarily increase its share of the trade by this approach unless the system also provided for a redirection of trade to UBC.
- (ii) Administrative back up would have to be provided to ensure all UK exports went cif. The small shipper, who was unaware of the measure, might find himself breaking the law unwittingly.

B Regulation of freight rates

There are three possible options here as follows -

An increase in Soviet rates

Disadvantages

- (i) It would harm the UK exporter or importer who was forced for whatever reason, to use a Soviet ship.
- (ii) It would be administratively almost impossible to police because it would involve checking all Soviet cargoes in the bilateral trade to ensure that they were charging the prescribed rates.
- (iii) Given the Soviets are currently the paymasters, payment at the new rates would probably be difficult to enforce.

An increase in UBC's ratesDisadvantages

- (i) The company would be priced out of the market.

Increase in both parties ratesDisadvantages

- (i) Although it might give UBC a better rate of return it would not bring about any increase in their share of the trade.
- (ii) The Soviets could well refuse the extra payments in practice.

C Charges on Soviet Ships

Charges could be imposed either just on ships involved in the bilateral trade or on all Soviet ships using UK ports. [There were 1606 port calls by Soviet ships in 1979 of which 400 are estimated to be by ships in the bilateral trade.]

Disadvantages

- (i) The Soviets might claim such measures were in breach of Article 6 of the 1968 treaty particularly if taxes were imposed on ships outside the bilateral trade. (Also see Annex QC paragraph 3 which argues that a proportionate breach of Article 6 could be justified).
- (ii) The measure would only help UBC if the charges were used to compensate the company for their inability to make sufficient returns in the trade. This might be politically unattractive. Moreover, it would not increase UBC's share of the trade.
- (iii) If the charges were too high (and even if restricted to the bilateral trade) it could mean the withdrawal of the Soviets from the trade, particularly as they could almost certainly get all the goods they import from the UK from other sources.

Advantage

- (i) Access to UK ports is important to the Soviets primarily because of their cross trading activities from UK ports. If the charges were imposed on all Soviet ships and were such as to hinder their cross trading activities, it might make the Soviets more cooperative on the bilateral trade.

Regulation of Agreements

Some measure based on regulation of the joint liner service might be appropriate. This could take the form of prohibiting the movement of general cargo in the bilateral trade except by named vessels in the joint liner service, with a system for third flag carriers. Consideration would need to be given to some way of ensuring that British flag vessels were not fobbed off with poor value cargo.

Advantages

- (i) Reasonably uncomplicated to operate. Enforcement should only need to be pursued against those Soviet vessels outwith the joint liner service.

Disadvantages

- (i) Evasion could occur through transshipment or false declaration of cargoes.
- (ii) The system would be regarded as intrusive by the Soviets because it required them to operate their ships in a certain way which they may not consider advantageous.

E Regulation of Port Calls

There are two options here, as follows -

Regulation of calls in the bilateral trade

Advantage

- (i) Regulation of port calls is clearly simpler than regulation of cargoes and freight rates. (See paragraph 7B of the main paper).

Disadvantages

- (i) There would be no guarantee that UBC would pick up the remaining cargoes. The Soviets could well redirect it to Eastern Bloc third flag carriers.
- (ii) Evasion via transshipment would be relatively easy.

F Regulation of all Soviet port calls

This would have much the same advantages and disadvantages as the regulation of calls in the bilateral trade with the further considerations -

Advantage

It might be possible to draw some security benefits from such regulation - the Ministry of Defence could advise on this.

Disadvantages

There would be a greater risk of challenge under Article 6 if the measure was not confined to the bilateral trade, and threatened the Soviet's cross trading activities.

11

4 MAR 1961



SOVIET UNION



DEPARTMENT OF TRADE
1 VICTORIA STREET
LONDON SW1H 0ET

TELEPHONE DIRECT LINE 01 215 3781
SWITCHBOARD 01 215 7877

From the
Parliamentary Under Secretary of State

Peter Rees Esq QC MP
Minister of State
HM Treasury
Treasury Chambers
Parliament Street
London SW1P 3AG

NBPA 29/1

28 January 1981

Dear Peter,

ANGLO SOVIET JOINT MARITIME COMMISSION

Thank you for your letter of 9 January indicating that your officials would be prepared to co-operate with mine in developing contingency plans for use against the Soviets should we fail to increase the UK's share of the bilateral trade by consultation. You will also have noted Peter Blaker's letter of 4 January to me which also supports preparatory work on such measures.

In line with your and Peter's views, I have instructed my officials to draw up a paper outlining the options open to us. In doing so, I have instructed them to take into account the cost and staffing implications of any measures and Peter's point that such measures should be remedial rather than provocative. We will let you have a paper on our preliminary thinking as soon as possible. I am sending copies of this letter to the Prime Minister, members of MISC 19 and Sir Robert Armstrong.

*Yours sincerely,
David Trefgarne*

LORD TREFGARNE

Extract from the Daily Telegraph
28 January - "Freeze" on Russia to be
Eased.

By JOHN MILLER
Diplomatic Staff

BRITAIN has agreed to hold talks with the Soviet Union on renewing their long-standing cultural agreement despite the Soviet army's continued presence in Afghanistan. A Foreign Office and British Council team will go to Moscow in March.

The Foreign Office decision to re-negotiate the agreement was taken in close collaboration with No. 10 Downing Street and in no way reflected any shift in the Government's attitude to the Soviet occupation of Afghanistan.

In January last year, Whitehall "got tough" with the Kremlin over the invasion and effectively imposed cultural sanctions against the Soviet Union.

I understand that Lord Carrington, Foreign Secretary, was still anxious to maintain the machinery of the cultural agreement because he believed it provided the only framework for "getting Britain across" to the Russians.

The new agreement was not expected to be substantially different from previous ones and is likely to concentrate on routine exchanges of students and research workers.

TRADE TALKS

Offer accepted

NIGEL WADE in Moscow writes: The Soviet Union has accepted Britain's offer to resume discussions of the bilateral commission on economic and trade matters in London in May. The focus will be on openings for British firms in Russia's development of oil and gas.

There was no meeting of the ministerial-level commission last year, following Russia's invasion of Afghanistan.

010

*And MODS to see Soviet Union
na MAP 1st.*



Foreign and Commonwealth Office

London SW1A 2AH

From The Minister of State
Peter Blaker MP

14 January 1981

Dear David,

Norman Tebbit wrote to Douglas Hurd on 23 December about the outcome of the meeting of the Anglo-Soviet Joint Maritime Commission.

It is encouraging that the Soviet side appeared to take seriously our concern about flag share and have themselves put forward proposals which might lead to an improvement in the situation. Nevertheless I agree that it is not too early to consider what measures we might take under the 1974 Merchant Shipping Act if the Soviet side fails to live up to its promises, and I welcome your suggestion that officials should meet to develop proposals on a contingency basis.

We would see such counter-measures as a response to Soviet practices which are themselves in breach of the 1968 Treaty on Merchant Navigation. To put our action on the soundest footing the measures considered should therefore be in proportion to such breaches and justifiable as an appropriate response to Soviet practice.

The question of when any such measures might be introduced is something we shall need to consider when we see what progress, if any, is possible in the further meetings with the Soviet side that are planned.

I am copying this letter to the Prime Minister, members of MISC 19, Peter Rees and Sir Robert Armstrong.

*Yours truly,
Peter.*

The Lord Trefgarne
PUSS
Department of Trade
Victoria Street
LONDON SW1

attached

15 JAN 1981



Soviet Union



Treasury Chambers, Parliament Street, SW1P 3AG

The Lord Trefgarne
Parliamentary Under Secretary of State
Department of Trade
1 Victoria Street
SW1

Ly Hurd

9 January, 1981

John David

ANGLO-SOVIET JOINT MARITIME COMMISSION

at flag
I refer to the correspondence between Norman Tebbit and Douglas Hurd concerning the possibility of introducing countervailing measures against the Russians should they persist in their discriminatory policies against our shipping interests.

Customs and Excise will, of course, co-operate with your officials and others in developing contingency plans and they have indeed already participated in earlier discussions.

I should, however, place on record that some of the measures which have been contemplated could not be accommodated within normal Customs procedures and would therefore give rise to significant additional staffing demands. Given the reductions in staff that the Customs have already made and are expected to make in the future, there might well be difficulties in introducing such measures.

I am sending copies of this letter to the Prime Minister, Douglas Hurd, members of MISC 19 and Sir Robert Armstrong.

John David

PETER REES

Soviet Union



DEPARTMENT OF TRADE
1 VICTORIA STREET
LONDON SW1H 0ET

TELEPHONE DIRECT LINE 01 215 3781
SWITCHBOARD 01 215 7877

From the
Parliamentary Under Secretary of State

Mike Pattison
10 Downing Street
London SW1

23rd December 1980

Dear Mike,

ANGLO-SOVIET JOINT MARITIME COMMISSION

In his letter of 12 December Mr Tebbit drew the Prime Minister's attention to a problem in our bilateral shipping relations with the USSR. I now attach a copy of a letter from Mr Tebbit to Mr Hurd, which describes the result of the recent Anglo-Soviet Joint Maritime Commission, and the way we think we should now proceed.

Yours sincerely,

Anne Willcocks

ANNE WILLCOCKS
PRIVATE SECRETARY TO NORMAN TEBBIT

DEPARTMENT OF TRADE
1 VICTORIA STREET
LONDON W1R 0DT

TELEPHONE 01-236 8100
TELETYPE 01-236 8101



Information Leaflet No. 100

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Information Leaflet No. 100



DEPARTMENT OF TRADE
1 VICTORIA STREET
LONDON SW1H 0ET

TELEPHONE DIRECT LINE 01 215 3781
SWITCHBOARD 01 215 7877

From the
Parliamentary Under Secretary of State

Mr Douglas Hurd
Minister of State
Foreign and Commonwealth Office
Downing Street West
London SW1A 2AL

23rd December 1980

Prime Minister

*Mr Tebbit is making some
progress with the
Russians.*

D. Douglas,

ANGLO-SOVIET JOINT MARITIME COMMISSION

Thank you for your letter of 12 December.

The result of the Joint Maritime Commission was mixed. The Russians refused to make any concessions on freight-rates, in spite of the fact that our shipping line's need for an increase arises entirely from the delays they have been suffering in Leningrad, delays from which the Russians themselves admitted they could see no prospect of relief. We are thus still faced with the prospect that one of the British ships will have to be withdrawn from the trade, leading to a still further reduction in our flag share of the carryings.

On the other hand, the Russians professed to take seriously our concern over our flag share, and themselves proposed two steps which could (if they are serious) bring about an improvement:-

1. The possibility that part of the service might be moved from Leningrad to Riga, where there is less congestion, and where the Russians said they would be willing to give assurance of adequate cargoes; such a move might be combined with a switch to a different type of vessel.
2. A working Party at government level to examine ways in which the UK flag share of the bilateral general cargo trade might be raised.

In order to keep the Russians under pressure, we got them to agree to tight deadlines for both these initiatives. They recognise that in both cases we shall be looking for definite progress before the end of February. So by then we



should know whether they are genuinely prepared to take action to meet the concern we have expressed, or whether they are merely procrastinating.

All the discussions took place against the background of our threat to introduce national legislative requirements if we got no satisfaction by agreement. As you suggested in your letter, we said little about the precise measures we might take: but we made it clear that the powers existed in the Merchant Shipping Act 1974 which would enable us to set freight rates and to allocate cargoes or sailings between the two flags. We made no mention of our attitude to the 1968 Treaty. The Russians reacted predictably to our threat, protesting that they were not prepared to negotiate under duress, and claiming that any such action as we had mentioned would be contrary to the Treaty. In spite of this however they took more trouble to move towards our position than they have done in the past, and I think we can conclude that our threat had at least the initial effect that we wished.

I think we now need to proceed on two fronts. We shall be working with the Russians and with the British shipping line in the trade to see whether they are genuinely prepared to bring about by agreement the kind of improvements they have foreshadowed. However, all experience shows that it would be unsafe to assume that they will. I therefore believe we must develop measures of our own under Section 14 of the 1974 Act on a contingency basis. I shall welcome the co-operation of your officials in this task with mine, and I should also be grateful to Peter Rees for the co-operation of the Customs and Excise in these contingency plans.

I am copying this letter to the Prime Minister, members of MISC 19, Peter Rees and Sir Robert Armstrong.

J. Norman

NORMAN TEBBIT

See Under

ubs

MA



10 DOWNING STREET

From the Private Secretary

15 December 1980

UK/USSR Bilateral Shipping Relations

The Prime Minister has seen and taken note of the Parliamentary Under Secretary of State's letter to her of 12 December.

I am sending a copy of this letter to David Wright (Cabinet Office).

MA

A.U. Willcocks, Esq.,
Department of Trade.

CS



From the
Parliamentary Under Secretary of State

DEPARTMENT OF TRADE
1 VICTORIA STREET
LONDON SW1H 0ET

TELEPHONE DIRECT LINE 01 215 3781
SWITCHBOARD 01 215 7877

Prime Minister.

(2)

I imagine you will be content to see our negotiators
take as tough a line as is commercially sensible?

The Prime Minister
10 Downing Street
London SW1

12th December 1980 *mb*
12/11

2 Prime Minister.

mb

UK/USSR BILATERAL SHIPPING RELATIONS

I enclose a copy of a letter that I have sent to Douglas Hurd,
about a problem in our bilateral shipping relations with
the USSR.

I felt that you should be aware of the line we propose to
take on this, in view of the possible reaction.

[Handwritten signature]
Norman

NORMAN TEBBIT



DEPARTMENT OF TRADE
1 VICTORIA STREET
LONDON SW1H 0ET

TELEPHONE DIRECT LINE 01 215 3781
SWITCHBOARD 01 215 7877

From the
Parliamentary Under Secretary of State

CONFIDENTIAL

Mr Douglas Hurd
Minister of State
Foreign and Commonwealth Office
Downing Street
London SW1A 2AH

12th December 1980

D Douglas

UK/USSR BILATERAL SHIPPING RELATIONS

I am writing to warn you and our colleagues about a problem in our shipping relations with the USSR; namely the potential disappearance of all but a derisory token British participation in the carriage of the bilateral trade, as a result of Soviet refusal to allow sufficient freight rate increases and diversion of cargo away from British ships. If this happened we should have to decide whether or not we were prepared to accept it.

Our shipping relations with the USSR are governed by the 1968 Treaty on Merchant Navigation which commits each side to enable the other's ships to compete on "equal commercial conditions". But in practice the Treaty operates greatly to the Soviets' advantages, primarily because the Soviet government has always controlled access to all Soviet cargoes. It gives Soviet shipping free access to cross-trade business to and from our ports but none to British ships in the cross-trades to and from the USSR. As for the bilateral trade, although in 1977 we managed to obtain Soviet agreement to the principle of parity of carryings in the liner sector which handles most of our exports to the USSR, the UK company in the bilateral trade has for some years had difficulty in persuading the Soviets to agree to adequate freight rates; and is now close to being squeezed out. Discussions on the 1981 rate level have reached an impasse, the Soviets refusing to agree to the increase the British firm say it needs merely to eliminate its losses. Moreover the Soviets have been making inadequate cargoes available to the British company. The motives for their behaviour are unclear, but it would of course help their own lines if they drove UK tonnage out of the trade. If one of the British ships was withdrawn, UK flag participation in the



bilateral liner trade would be reduced from 15% to about 5%, which would render the agreement on parity of carryings meaningless.

The matter falls to be finally determined at the annual Joint Maritime Commission meeting, to be held in Moscow next week. There, officials will argue for adequate freight rates on their merits, but if this is unsuccessful, the only alternative to acquiescence in a blatantly unequal arrangement will be to indicate that HMG would have to consider countervailing measures designed to improve our share of the trade.

Any such measures would be taken under the Merchant Shipping Act 1974 which gives us the power to take counter measures when action by a foreign government is damaging or threatens to damage UK shipping or trading interests. It would enable us, for example, to make our own stipulations on the freight rates to be charged on outbound trade; and on its division between British and Russian vessels. We believe we can justify such action both under the criteria in the Act and in terms of the 1968 Treaty in view of the Soviet failure to accord our ships the "equal commercial conditions" that the Treaty requires.

It is difficult to gauge how the Soviets would react to any counter measures, and although there is a risk that they might retaliate commercially outside the shipping field, I think they would seek to avoid this for fear of jeopardising the advantages we give them in the cross trades. If the Soviets remained unyielding I would obviously need to ask Peter Rees for the co-operation of Customs and Excise in working out and giving effect to measures which would fulfil our political aims with the greatest administrative economy.

I am copying this letter to the members of MISC 19, Peter Rees and Sir Robert Armstrong, *and in view of the possible re-achans I have also let the Prime Minister know of our intentions*

Norman

CONFIDENTIAL



Foreign and Commonwealth Office

London SW1A 2AH

12 December 1980

From The Minister of State
Douglas Hurd CBE MP

NKPN yet

*Print 15/12
will report if required*

Dear Mr. Tebbit,

UK/USSR BILATERAL SHIPPING RELATIONS

Thank you for your letter of 12 December warning me about the problem which has arisen over freight rates in the UK/USSR liner trade.

As you point out, the 1968 Treaty on Merchant Navigation has never in practice given us the 'equal commercial conditions' it promises because of the nature of the Soviet system. I entirely agree that we should not allow the Soviet side to squeeze our share of the liner trade any further by insisting on rates which do not allow the British company concerned even to cover its costs. It is therefore right, if your officials fail to reach agreement next week, that they should make it absolutely clear to the Soviet delegation that we will have to consider measures to redress the balance.

I agree that the action you are considering under the Merchant Shipping Act 1974 would be defensible in terms of our Treaty obligations (although we must accept that the position is not entirely clear cut and the Soviet side would no doubt argue strongly that we were in breach of the 1968 Treaty). I suggest that we should in any case allow ourselves the maximum flexibility by not referring in next week's talks to the precise measures we have in mind. I see advantage, against the background of the situation in Poland and of our worries about the possible security threat posed to the UK by the Soviet merchant fleet, in leaving the Soviet delegation guessing about our attitude to the 1968 Treaty itself.

We shall, of course, need to look at the position again once your officials have reported. One point we may want to consider is whether there would be advantage in seeking to solve the problem at a higher level or perhaps in the wider trade context before we proceed to counter-measures.

I am sending copies of this letter to the members of MISC 19, Peter Rees and Robert Armstrong.

Yours sincerely
Charles Douglas Hurd
(Approved by Mr Hurd and signed for him in his absence by his Private Secretary)

Norman Tebbit Esq MP

CONFIDENTIAL

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