

*original destroyed**4/4/82**Prime minister 2**From the Secretary of State*COVERING CONFIDENTIALCOMMERCIAL - IN CONFIDENCE

John Coles Esq  
 Private Secretary to the Prime Minister  
 10 Downing Street  
 London  
 SW1

2 August 1982

*Dear John,*

## SIBERIAN GAS PIPELINE

I attach a copy of the statement which my Secretary of State is making in the House of Lords this afternoon, at approximately 4.30 pm. An announcement that the statement is to be made is timed for just after 3.30 pm. The timings are to be explained by the potential commercial sensitivity of the statement on the Stock Exchange. The statement should, therefore, be given only very limited circulation by the Departments to whom I am also copying this letter.

Arrangements have been made to communicate the text of this statement to the West German, French, Italian, Japanese and United States governments, and the EC Commission. In addition, the Secretary of State hopes to arrange a meeting with the United States Ambassador at 6 pm, today.

Finally, I would be grateful if any initial Press inquiries following this statement could be re-routed to this Department.

Copies of this letter go to John Kerr (Treasury), Jonathan Spencer (Department of Industry) and Muir Russell (Scottish Office).

*Yours sincerely,*

JOHN RHODES  
 Private Secretary

COVERING CONFIDENTIALCOMMERCIAL - IN CONFIDENCE



STATEMENT: SIBERIAN GAS PIPELINE

With permission, I wish to make a Statement about the American export embargo as it affects companies in this country which have contracts connected with the Siberian Gas Pipeline.

As I made it clear in the Debate in your Lordships House on 26 July, the embargo in the terms in which it has been imposed is an attempt to interfere with existing contracts and is an unacceptable extension of American extra-territorial jurisdiction in a way which is repugnant in international law.



On 30 June I made an Order under Section 1(1) of the Protection of Trading Interests Act 1980 citing certain provisions of the Export Administration Regulations as measures which were damaging to the trading interests of the United Kingdom. I had hoped - and indeed still hope - that it would have been possible for an acceptable solution to be found to this problem; but despite strenuous efforts made by HMG the American Administration has not so far responded. In these circumstances I have decided that the trading interests of the United Kingdom require me to issue Directions under Section 1(3) of the Act to certain named British companies forbidding them to comply with the American embargo. I have therefore issued Directions today to the following companies, all of whom entered into contracts prior to the announcement of the United States embargo. The companies are:

John Brown Engineering Limited

Smith International (North Sea) Limited

Baker Oil Tools (United Kingdom) Limited

AAF Limited



I have, at this stage, limited action in this way as I have no wish to escalate this dispute. I would hope that the moderation of our approach would persuade the American Administration to think again. But I do wish to make it clear as I said in your Lordships House on 26 July that in the absence of a mutually acceptable solution I am determined to defend our own national interests.

Soviet Union

should operate. Therefore, I believe that we ought to insist that these two points go into the Bill. There seems to be general acceptance of that view in other parts of the House, and therefore I wish to press the amendment.

4.17 p.m.

On Question, Whether the said amendment (No. 37) shall be agreed to?

Their Lordships divided: Contents, 80; Not-Contents, 105.

#### DIVISION NO. 1

#### CONTENTS

Airedale, L.	Llewelyn-Davies of
Amulree, L.	Hastoe, B.—[Teller.]
Arduick, L.	Lloyd of Hampstead, L.
Aylestone, L.	Lovell-Davis, L.
Balogh, L.	McCarthy, L.
Banks, L.	McNair, L.
Beswick, L.	Molloy, L.
Bishopston, L.—[Teller.]	Oram, L.
Blease, L.	Paget of Northampton, L.
Blyton, L.	Peart, L.
Boston of Faversham, L.	Phillips, B.
Brockway, L.	Plant, L.
Bruce of Donington, L.	Ponsonby of Shulbrede, L.
Burton of Coventry, B.	Rathcreedan, L.
Byers, L.	Rhodes, L.
Collison, L.	Roberthall, L.
Cooper of Stockton Heath, L.	Rochester, L.
David, B.	Seear, B.
Davies of Leek, L.	Sefton of Garston, L.
Diamond, L.	Segal, L.
Elwyn-Jones, L.	Stedman, B.
Elystan-Morgan, L.	Stewart of Alvechurch, B.
Gaitskell, B.	Stewart of Fulham, L.
Gladwyn, L.	Stone, L.
Glenamara, L.	Strabolgi, L.
Gormley, L.	Strauss, L.
Hampton, L.	Taylor of Gryfe, L.
Harris of Greenwich, L.	Taylor of Mansfield, L.
Hatch of Lusby, L.	Underhill, L.
Hooson, L.	Wade, L.
Houghton of Sowerby, L.	Wallace of Coslany, L.
Howie of Troon, L.	Wedderburn of Charlton, L.
Hunt, L.	Wells-Pestell, L.
Jacques, L.	Whaddon, L.
Jeger, B.	White, B.
Jenkins of Putney, L.	Wigoder, L.
John-Mackie, L.	Willis, L.
Kagan, L.	Wilson of Langside, L.
Kilmarnock, L.	Winstanley, L.
Leatherland, L.	Wynne-Jones, L.
Listowel, E.	

#### NOT-CONTENTS

Aberdeen and Temair, M.	Craigavon, V.
Adeane, L.	Cullen of Ashbourne, L.
Airey of Abingdon, B.	Daventry, V.
Allerton, L.	Davidson, V.
Amphill, L.	De Freyne, L.
Auckland, L.	Denham, L.—[Teller.]
Avon, E.	Drumalbyn, L.
Balfour of Inchrye, L.	Ebbisham, L.
Belhaven and Stenton, L.	Ellenborough, L.
Bellwin, L.	Elles, B.
Belstead, L.	Elton, L.
Bessborough, E.	Energlyn, L.
Boyd-Carpenter, L.	Erroll of Hale, L.
Caccia, L.	Faithfull, B.
Campbell of Alloway, L.	Ferrers, E.
Campbell of Croy, L.	Forbes, L.
Chelwood, L.	Fortescue, E.
Cockfield, L.	Fraser of Kilmorack, L.
Cottesloe, L.	Gainford, L.

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Gardner of Parkes, B.	O'Neill of the Maine, L.
George-Brown, L.	Orkney, E.
Glanusk, L.	Penrhyn, L.
Glenarthur, L.	Plummer of
Grimston of Westbury, L.	St. Marylebone, L.
Hailsham of	Radnor, E.
Saint Marylebone, L.	Rankeillour, L.
Hankey, L.	Rawlinson of Ewell, L.
Hawke, L.	Redcliffe-Maud, L.
Henley, L.	Reigate, L.
Holderness, L.	Renton, L.
Hornsby-Smith, B.	Romney, E.
Hylton-Foster, B.	Rugby, L.
Ilchester, E.	St. John of Bletso, L.
Lane-Fox, B.	Sandford, L.
Lauderdale, E.	Sandys, L.—[Teller.]
Lawrence, L.	Selkirk, E.
Long, V.	Skelmersdale, L.
Lyell, L.	Soames, L.
McFadzean, L.	Somers, L.
Mackay of Clashfern, L.	Spens, L.
Macleod of Borve, B.	Stamp, L.
Mancroft, L.	Stodart of Leaston, L.
Marley, L.	Strathspey, L.
Marsh, L.	Swinfen, L.
Marshall of Leeds, L.	Trefgarne, L.
Massereene and Ferrard, V.	Trumpington, B.
Merrivale, L.	Vaux of Harrowden, L.
Milverton, L.	Vickers, B.
Morris, L.	Vivian, L.
Mottistone, L.	Ward of Witley, V.
Mountgarret, V.	Westbury, L.
Murton of Lindisfarne, L.	Wynford, L.
Norfolk, D.	Young, B.
Nugent of Guildford, L.	

Resolved in the negative, and amendment disagreed to accordingly.

(Amendment No. 38 not moved.)

### Siberian Gas Pipeline

4.26 p.m.

**The Secretary of State for Trade (Lord Cockfield):**

My Lords, with permission, I wish to make a statement about the American export embargo as it affects companies in this country which have contracts connected with the Siberian Gas Pipeline. As I made it clear in the debate in your Lordships' House on 26th July, the embargo in the terms in which it has been imposed is an attempt to interfere with existing contracts and is an unacceptable extension of American extra-territorial jurisdiction in a way which is repugnant in international law.

On 30th June I made an order under Section 1(1) of the Protection of Trading Interests Act 1980 citing certain provisions of the Export Administration Regulations as measures which were damaging to the trading interests of the United Kingdom. I had hoped—and indeed still hope—that it would have been possible for an acceptable solution to be found to this problem; but, despite strenuous efforts made by Her Majesty's Government, the American Administration has not so far responded.

In these circumstances I have decided that the trading interests of the United Kingdom require me to issue Directions under Section 1(3) of the Act to certain named British companies forbidding them to comply with the American embargo. I have therefore issued Directions today to the following companies, all of which entered into contracts prior to the announcement of

[LORD COCKFIELD.]

the United States embargo. The companies are: John Brown Engineering Limited, Smith International (North Sea) Limited, Baker Oil Tools (United Kingdom) Limited, and AAF Limited.

I have at this stage, limited action in this way as I have no wish to escalate this dispute. I should hope that the moderation of our approach would persuade the American Administration to think again. But I do wish to make it clear, as I said in your Lordships' House on 26th July, that in the absence of a mutually acceptable solution I am determined to defend our own national interests.

**Lord Ponsonby of Shulbrede:** My Lords, I should like to thank the noble Lord for making his Statement and for exercising his discretion in favour of the United Kingdom's trading interests by forbidding the companies concerned to comply with the American embargo. In doing so the Government have wisely followed the lead taken by the French Government, who have already openly ordered French companies to defy the American embargo, and the Italian Government, who have made clear their intention that the ban should be defied. I hope that the West German Government will follow the lead set by their other EEC partners.

As the noble Lord has said, the embargo is an unacceptable extension of American extra-territorial jurisdiction which is repugnant in international law. With this we agree, and we see it as ill-considered, unfair, and inconsistent that almost at the same time the United States Government should end its grain embargo against the Soviet Union as a result of intense pressure from United States farmers. We must wonder whether the embargo imposed by the American Government is likely to do more damage to Western Europe than to Eastern Europe. I am glad that the noble Lord has taken this action, because it has been constructive in ensuring that about 3,000 jobs will be preserved in particular parts of British industry.

**Baroness Seear:** My Lords, we also wish to thank the noble Lord for making the Statement in your Lordships' House, and to say that we support the action taken in rejecting the American embargo, and in the instruction that has been issued to the four named companies. The employment consequences of any such embargo would, of course, be serious. We also support the whole idea of the development of the pipe-line.

At the same time, we view with great concern the fact that this further disagreement has arisen with the United States at a time when it looks as if a trade war is all too close as a result of the steel dispute which is already going on. I am sure that the noble Lord will be able to tell us that Her Majesty's Government are pursuing as vigorously as they possibly can the means of finding a solution acceptable to the Americans. While we are protecting our short-term national interests in the step we are now taking, if we have further disputes with the United States our longer-term national interest could be seriously at risk.

**Lord Cockfield:** My Lords, I am most grateful to the noble Lord, Lord Ponsonby of Shulbrede, and to

the noble Baroness, Lady Seear, for what they say. It is, of course, true that the action taken by the American Administration has resulted in a degree of tension on trade matters. I have endeavoured to conduct our own affairs in a way which does not exacerbate that tension. It is important to underline the fact that the Western Alliance is of crucial importance to the United Kingdom, to Western Europe, and indeed to America herself, and we ought to do everything we can to avoid any damage to that alliance. It is for this reason that the action we have taken has deliberately been restrained and has set out only to protect our absolute trading interests.

It is true, as the noble Lord, Lord Ponsonby, said, that there are a large number of jobs at risk if in fact the embargo were obeyed by companies in this country. This is one of the major reasons why we have taken the action that we have. It is true also that one might be more than a little surprised that, at a time when the American Government have imposed this export embargo, they should also continue to ship large quantities of grain to the Soviet Union, and we think that it is quite inequitable that the American Government should do this while expecting its allies to bear the brunt of sanctions against the Soviet Union in the pipeline case. We do not regard this as even-handed treatment. I can assure the noble Baroness, Lady Seear, that we shall continue to do everything in our power to find an acceptable solution, not only to this dispute but to the steel dispute as well.

**Lord Taylor of Gryfe:** My Lords, from these Benches we very much welcome the Statement made by the Minister. May I assure him that the Statement will be even more than welcome in Clydebank where John Brown operates and where unemployment is close to 20 per cent. of the population of that town. I should like to ask the noble Lord one or two questions. The first is whether in fact, despite the delay in the execution and acceptance of this contract and the fact that export credit terms have changed in relation to the Soviet Union in the past few days, the contract will be recognised on the export terms on which the contract was originally based?

Secondly, I should like to encourage the noble Lord to negotiate with our American allies on a code of conduct on future contracts affecting United Kingdom and USSR or Eastern European trade applying to companies which enjoy US licensing arrangements, and perhaps the noble Lord can tell us the responsibilities of the US Government to US company subsidiaries in this country which are presently competing for trade with the USSR? Further, can the noble Lord tell us whether the US Government have any more power over US-owned companies such as Brown and Root and Highland Fabricators who are bidding for off-shore supplies business at the moment, and whether the constraints which they apply on the licensing arrangements will be similarly applicable to US subsidiaries? May I encourage the Minister to continue these negotiations so that we are not frustrated once contracts are signed and have some code recognised, so that people who are negotiating for contracts can feel secure and confident while doing so.

**Lord Cockfield:** My Lords, I am obliged to the noble Lord for what he says. So far as the first

point is concerned—namely, on delay in the execution of contracts—I am not aware that in fact any such delay has occurred. One of the reasons why it was necessary to issue the directions now was that if the directions were not issued such delay might occur. Therefore, I think up to date at any rate there has been no problem here. The question of the ECGD cover is a matter to be negotiated between the companies concerned and the Export Credits Guarantee Department.

The noble Lord also raised the much wider question of negotiation with our American allies on a code of conduct for dealing with commercial relations with the Soviet Union. This is an interesting suggestion but it is difficult to see just at the moment what its chances of success would be. The important thing is to dispose of the present disagreement which has arisen. The noble Lord also raised the question of United States subsidiaries who are competing for trade in the Soviet Union. Presumably he had in mind subsidiaries in this country of United States companies. Indeed, it is against such subsidiaries that the American export embargo might very well bite. This was one of the factors that we have taken into account in issuing directions.

**The Earl of Lauderdale:** My Lords, would my noble friend be able to say anything about the Government's attitude to some of the energy policy aspects of this matter, notably whether it is indeed the case that the Soviet gas component of Western European energy needs will not in fact be a critical component? Secondly, by way of restoring better relations with the United States in this area, would we not be well advised to support the proposal which has been made many times for a cross-Channel gas pipe-line so that Norwegian gas can be fed to the Continent as a sort of alternative supply? Is my noble friend aware that this is indeed one of the recommendations of the European scrutiny committee of this House published only last week?

**Lord Cockfield:** My Lords, I hope that my noble friend will forgive me if I say that I have enough difficulty dealing with the trans-Siberian pipe-line without having to deal with the cross-Channel pipe-line as well. So far as the wider issue he raised is concerned, my information is that the amount of gas coming through the Siberian pipeline, when completed, would not represent a major part of Western Europe's supplies, and of course there are strong arguments in favour of diversification of supplies in view of the uncertainties which we all know exist in this field.

**The Earl of Lauderdale:** My Lords, is my noble friend saying that the Government cannot really comment on the energy implications of the whole matter?

**Lord Cockfield:** My Lords, it is only right that I should make the point that the statement I have made relates to the American attempts to embargo supplies to the trans-Siberian gas pipeline. I should have thought that the question of a pipeline across the English Channel was somewhat remote, both geo-

graphically and in other senses. So far as the general energy question is concerned, I think I have answered the point my noble friend raised; namely, that the supplies coming through this pipeline, when complete, would not in fact be a major component of Western Europe's total supplies.

**Lord Rhodes:** I think this was necessary, my Lords, particularly in view of the legislation which the Reagan Government put through in June of this year covering re-exports of American strategic materials, although they were exported from a country other than the United States. Can the British Government be sued in American courts on this matter? I would comment that this is a long-standing worry to the Department of Trade; I remember in 1950 the Westinghouse argument on uranium when we were taken through the American courts. I congratulate the Minister on having done what he has.

**Lord Cockfield:** I am obliged to the noble Lord for those remarks, my Lords. I should not have thought it was open to one Government to sue another Government in its courts except by the consent of that Government.

### Employment Bill

Further considered on Report, on Clause 12.

4.43 p.m.

**Lord Jenkins of Putney** moved Amendment No. 39:

Page 16, line 21, at end insert—

("(5) A contract between two parties in which one party is required to be a member of an employers' association and the other part is required to be a member of a trade union is not voided or invalidated by this section.")

The noble Lord said: My Lords, I have made more than one attempt to get the Government off the hook in this matter and this amendment is a further attempt to that end. If I am right in thinking that the whole of the clause is not intended to intervene in contracts between two parties but essentially envisages a three-party situation, then the amendment, which is for the purpose of greater certainty and clarity, should be acceptable to the Government. It simply says that where you have a straightforward position between an employer and employee, the existence of a requirement to be a member of an employers' association or trade union does not invalidate the contract.

The amendment should commend itself to the Government because, as I understand it, the whole of the clause is to intervene in what I described as a three-party situation: for example, a contract between a local authority and a contractor, whereby the authority says to the contractor, "You shall", or "You shall not", as the case may be, "employ only members of a certain trade union", whereby the local authority concerned makes it, in other words, a condition of that contract that the other party shall employ—or not employ, as the case may be—certain people with or without a certain qualification.

That would not be a reasonable step to take, but that, I am fairly sure, is what the Government intend to do. One may dislike it and vote against it, or one can say,

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from the Government's point of view, that they are right to produce a clause on such a basis—if that is their objective. But if I am right in thinking that, virtually accidentally, in the course of so doing they have unintentionally also invalidated a straight contract between two parties and have made such a contract voidable under the clause, then I hope the Government will agree that the amendment makes the situation clearer and should be accepted.

**Lord Mackay of Clashfern:** My Lords, the provisions of Clause 12 are concerned with any term or condition of a contract for the supply of goods or services, and such a term or condition is made void if it purports to do the things mentioned in paragraphs (a) and (b). So it is a contract in which two parties are involved for the supply of goods or services, and I do not think the noble Lord, Lord Jenkins, is correct in saying that it is intended to apply only to a tripartite situation. The view of the Government is that the amendment is unnecessary for the purpose the noble Lord has in mind. The purpose of Clause 12 is to void requirements of the kind I have mentioned and it makes it unlawful to refuse to include a person on a tender list or award him a contract on the grounds that he does not recognise a trade union.

The second of these is, as far as we can see, entirely irrelevant to contracts between theatre managers and individual actors. The first may make void any requirement in an Equity contract that the theatre manager recognises Equity for the purposes of negotiations, assuming that it is a contract for the supply of goods or services. But in our view the amendment is unnecessary for the purpose the noble Lord has in mind and would introduce confusion into the provisions. I therefore hope your Lordships will not accept it.

**Lord Wedderburn of Charlton:** My Lords, I invite the Minister to think again on this subject and perhaps come back to it at Third Reading. We take no particular pleasure at this stage of the Bill—when one is not able or indeed willing to oppose its main thrust—in asking whether the Government are not impaled on the horns of a dilemma of their own making by introducing a certain amendment late in Committee. All Governments do that from time to time, but I cannot refrain from noting that I wondered where I had seen it when, in July, in the middle of Committee, it was brought to us, and then I found my *Financial Times* cutting of 28th May which more or less printed the clause as what the organisation Aims of Industry was urging on the Secretary of State. That cutting of 28th May sets it out for the noble and learned Lord, just as it does for me.

The Aims of Industry clause was introduced in the middle of July and the Government put forward the argument that they so disliked pressure—be it commercial under this clause or industrial under Clause 13, which is keyed in with it, like Clause 11—that they would not have people use either sort of pressure to require others to negotiate or even consult with trade unions. Then they had to draw up a liability along that boundary and it was perhaps inevitable that they should run along the boundary between contracts for the supply of goods and services, which were within the

area of the Bill, and contracts of service—or of employment, as they are usually called—which were not.

I come now to the problem with which the Government are faced and from which they will not escape, and which it seems to me is the root point of my noble friend's argument to both this amendment and some other amendments that are germane to the problem. This is why I ask the Government to look at it again, because it comes out in various parts of the Bill. Their problem is that, apparently without meaning to, they get into the area of causing to be invalid various types of clause and various types of pressure where the workers are in law those who have contracts for services—sometimes called self-employed or independent contractors—as opposed to the normal workers under a contract of employment. To the man in the street they are for the most part the same species, but the noble and learned Lord, and perhaps myself, as lawyers know that they are fundamentally different.

Therefore, if one drafts clauses where the unlawfulness and the impropriety attach to a situation defined by reference to a contract for services, then a large number of workers—a minority, but quite a large number—will come in, even if one does not intend it. There are of course the musicians, and their contractual arrangements, and all kinds of pressures and requirements, are dealt with in the contracts for services of musicians. There are also, of course, actors. I have not previously intervened to speak about actors because I declare an interest as the independent chairman of the London Theatre Council and the Provincial Theatre Council. I say merely that it is extremely disturbing to see the way in which the well-observed and normal operations of the theatre councils, of management on the one side of the table, and British Actors' Equity on the other, would have to be very carefully considered in relation to the clause, and would not be easy to operate. I think that that would be a fairly common view around the table, but I must not express it as anything other than my own view.

However, actors and musicians are not alone. Recently I had reason to be given evidence that in the petrochemical industry there is a very large amount of self-employment. That is true among draftsmen, and in many other areas of industry, where self-employment and contracts for services come up. English law being what it is—it might be better North of the Border—one cannot ever be quite sure. Consider, for example, the lorry driver who in 1968 was taken on and told, "You are the owner of the concrete lorry; go away and keep it up". Then he was paid sums that appeared to him to be wages, but he turned out to be an independent contractor. There are quite a few workers around who are in a rather awkward and difficult spot, and there have been many cases in the courts on this issue in recent years.

Surely the Government can find a way of avoiding what they appear to want to avoid, though the noble and learned Lord did not wholly convince me on this point. If the Government want to avoid the clause upsetting the agreed provisions in industry—where much self-employment arises and is recognised and dealt with by orderly arrangements, such as among musicians and actors—why do they not take away the clause over the Recess? They could also take away the amendments of the kind that my noble friend is