



Foreign and Commonwealth Office

London SW1A 2AH

PS/No 10

30 September 1989

Dear Private Secretary

EC BROADCASTING DIRECTIVE

1. Thank you for your letter of 29 September enclosing President Bush's message. *papers att*

2. After three years of silence, the US Administration have suddenly responded to last minute pressure from their industry about the Broadcasting Directive, and Mr Baker has, as a result, had several recent exchanges with the Foreign Secretary on the subject.

3. The Foreign Secretary has accordingly reviewed the issues, but concludes that the Broadcasting Directive, on which the Rhodes European Council wanted early progress, is on balance worth having. This was the consensus in OD(E) on 16 June and in Cabinet in 17 July. The Foreign Secretary shares the Home Secretary's view of the value of EC-wide arrangements to protect the UK against the growing threat of unacceptable, particularly pornographic, broadcasts. He also agrees with the DTI and Home Office judgement that the Directive will help prevent intra-EC barriers to trade being set up by the protectionists in the Community, and that this feature, as well as the proposed sensible agreed standards on advertising, will help British exporters. This is an industry-related measure, and not as President Bush suggests an encroachment by the Commission into the cultural field - it is for member states themselves to give effect to these provisions.

4. The downside is the quota provisions and the American concern about them - though they are of course the same as in the Council of Europe Convention. US fears are exaggerated: the considered view of our lawyers is that the current drafting of the relevant Articles in the Directive is so imprecise as to



have no effect in practice. The protectionists basically lost the battle: hence the French hesitation about accepting the text. Those in the US who are always looking for signs of a Fortress Europe - as they did over Banking - may cite this Directive too. But in an expanding market, where European production can never expect to meet rising demand, US broadcasting exports to Europe are likely to boom. And of course news and current affairs broadcasts fall outside the scope of the Directive, (so the President's reference to freedom of information is not justified).

5. It would of course be open to the US to take the EC to the GATT if they feel that the Community is acting contrary to international obligations: it is perhaps significant that the President's message does not claim this. Nor does he repeat the threat of possible retaliation which Baker raised with the Foreign Secretary in New York. While the outcome of any GATT case would be uncertain, it seems doubtful whether the US could show that they had in practice suffered any injury for which they were entitled to compensation. In any case, many of the programmes we export to the United States are joint ventures so retaliation would hit US producers.

6. In order to counter any suggestion that the quota provisions will be mandatory and effective, we are working for an appropriate interpretative statement for the Council minutes. It must be clear that subsidiarity applies: it will be for member states to decide how they interpret these provisions.

7. Unless the Prime Minister would prefer to delay a reply to the President until we know the outcome of Tuesday's Council, the Foreign Secretary would suggest a reply on the lines of the attached draft.

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8. Copies of this letter go to the other recipients of yours.

Yours sincerely
C S Ferguson

PP. J S Wall
 Private Secretary