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From the Minister for Trade 's office

You will recall your discussion with Mr Trudeau on extra-territorial legislation. Both you & the Lord Chancellor said that the matter would have to be followed up. This letter is the result.

M O'D Alexander Esq
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2 July 1980

Dear Private Secretary

Mr Parkinson has read with interest your record of the Prime Minister's lunch-time discussion with Mr Trudeau on 25 June. As regards the passage on US extraterritorial jurisdiction he has commented that because there are a number of different cases in progress in the US courts the discussion inevitably became rather complex and at times a little confused. In particular, it might be possible to read into the remarks attributed to the Lord Chancellor, and to a lesser extent into the Prime Minister's final comment, a suggestion that the UK needed new legislation to counter the extraterritorial pretensions of the USA. This is in fact not so, and it might help if I set out the issues a little more fully for the record.

Disagreements with the US over their claims to jurisdiction are a persistent source of irritation, as our brief to the Prime Minister explained. One of the main current examples is the Westinghouse litigation against 29 US and non-US uranium producers for up to $6 billion damages for alleged international cartel activities in the early 1970's. As Sir John Ford explained at lunch, several of the non-US defendants including RTZ contest the jurisdiction of the US courts in this case and have refused to appear. Default judgments were entered against them early in 1979. The Court in Chicago wished to determine damages against them at once, which could have had the most serious implication for all these defendants, including RTZ who have substantial assets in the USA. In fact the damages hearing against the defaulting defendants has been put back until after the substantive trial in late 1981 following an Appeals Court decision last February on a petition of the appearing defendants, who feared prejudice to their own defence. This means that for the time being RTZ are not in the forefront of the case. HMG has so far submitted two briefs to the US courts on the position of RTZ and the issues of jurisdiction raised by it.

The case is exceptionally complex, and many different motions have been submitted to the courts over a period of years on various issues. At present a Canadian defendant (Gulf Canada) which had to appear is pleading with the strong support of the Canadian Government that it should not be penalised for failing to produce evidence required by the court because special Canadian regulations relating to the passing of information abroad about uranium prevented it from complying with the court order. Gulf and the Canadian government are also arguing that the Chicago court has no jurisdiction to hear the case. We agree with this argument but have not intervened again at this stage to support it, because we have no direct locus - as I have noted above RTZ are not appearing in this action and have therefore not been ordered to produce evidence, so that the motions which the court is currently considering do not involve them. However we expect the motion on jurisdiction to go to appeal, in which case the issue can be argued on a wider basis and we would propose to intervene again then. Meanwhile we and the Canadians have been keeping in close touch and we are in full agreement on our stance in relation to the case.

As to our powers to resist the extraterritorial application of US laws, we think we have done as much as is practically possible in the Protection of Trading Interests Act 1980, which received Royal Assent in March. The Act provides wide powers for HMG both to prohibit compliance by persons in the UK with objectionable measures taken by overseas countries which are for controlling international trade and have extraterritorial effect, and where necessary to block demands by such countries for commercial documents and information from the UK. The Act also renders overseas multiple damage judgments (including US civil antitrust judgments) unenforceable in the UK and provides a right for persons carrying on business in the UK to reclaim in our courts the penal element in such judgments.

We are satisfied that the Act goes as far as we could in countering US law in fields where we object to its impact on us. Our objective has been to arm ourselves with enough weapons to stand up to the US when we legitimately need to, but also to make them stop and think about the legitimacy of their attempts to enforce their laws abroad. If other countries - notably Canada and Australia - can be persuaded also to adopt similar measures (Australia has gone part of the way already) we will have gone a substantial way to stalemate American attempts to extend their jurisdiction, and will be in a position to discuss these questions with the Americans on an equal basis. There are signs, particularly in a recent speech by Reubin Askew, that the point is getting over. We are beginning the process of seeking with the US a better way of managing our jurisdictional and trade policy disagreements, based on co-operation and consultation, and as the Prime Minister has indicated will pursue this keenly.

I am copying this letter to the other recipients of yours.

Yours sincerely,

Keith Long

KEITH LONG
Private Secretary to the Minister for Trade
(CECIL PARKINSON)