

.S. ANTR TRUST

ADVANCE COPIES \$20

ACTION AGAINST BRITISH AIRLINES

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MR GARDINER - ATTORNEY GENERAL'S OFFICE

VICTOR STREET

MR KNIGHTON } D/TRANSPORT
MR STEVENS }

MR BECKETT } DTI
MR AYLING }

MR COLES NO 10, DOWNING ST.

CONFIDENTIAL
DESKBY 250900Z
FM WASHINGTON 250450Z
TO IMMEDIATE F C O
TELNO 1765 OF 25 JUNE 1983.

IMMEDIATE

ADVANCE COPIES

LAKER: PTI ACT

SEIDEN HAS GIVEN MAYNARD AN ADVANCE COPY OF A STRONG WORDED NOTE WHICH THE STATE DEPARTMENT IS DUE TO HAND TO THE EMBASSY TOMORROW (TEXT IN MIFT). THIS ARGUES THAT THE PTI ORDER DIRECTLY CHALLENGES THE SOVEREIGN RIGHT OF THE UNITED STATES TO ENFORCE ITS LAWS: HINTS AT POSSIBLE ADVERSE CONSEQUENCES TO BRITISH CARRIERS AND THEIR ASSETS IN THIS COUNTRY: AND SAYS THAT THE DAMAGE CAN ONLY BE AVOIDED IF THE ORDER IS WITHDRAWN OR SUBSTANTIALLY MODIFIED, AND THE ATTENDANT PROBLEMS RESOLVED BY 1 JULY. IT CONCLUDES BY WELCOMING HMG'S DECISION TO SEND A NEGOTIATING TEAM TO WASHINGTON.

2. YOUR MESSAGE TO SHULTZ AND THE QUICK OFFER OF TALKS HAVE THUS SUCCEEDED IN KEEPING THE AMERICANS TALKING. THE NEGOTIATING TEAM ARE DOUBTLESS CONSIDERING OUR OBJECTIVES FOR NEXT WEEK'S TALKS. IT OCCURS TO US THAT AN IMMEDIATE AIM SHOULD BE TO GET THE AMERICANS TO POSTPONE THEIR DEADLINE TO BEYOND 4 JULY. THE OUTCOME IN THE COURT OF APPEAL MIGHT THEN ENABLE US TO MODIFY THE ORDER TO MEET SOME OF THEIR PREOCCUPATIONS WITHOUT COMPROMISING ON OUR BASIC PRINCIPLES.

AMERICAN OFFICIALS

3. IN ADDITION, IT IS CLEAR FROM OUR TALKS WITH AMERICAN OFFICIALS THAT THEY NEED A COMPREHENSIVE EXPLANATION OF WHY WE HAD NO ALTERNATIVE BUT TO MAKE AN ORDER. WE HAVE OF COURSE ALREADY DONE THIS IN GENERAL TERMS. BUT THE AMERICANS WANT THE DETAILED LEGAL ARGUMENTS TOO. GENERAL REFERENCES TO THE NEED TO SUPPORT OUR VIEWS ON BERMUDA 2 WILL NOT BE SUFFICIENT. THE AMERICANS STILL CANNOT UNDERSTAND, FOR EXAMPLE, WHY WE HAD TO CITE THE JUSTICE DEPARTMENT AND GRAND JURY IN THE SECTION 2 DIRECTION.

4. WE ALSO NEED TO EXPLAIN, IN DETAIL, WHY THE ORDER AND DIRECTIONS WILL NOT IN PRACTICE INTERFERE WITH THE GRAND JURY INVESTIGATION. WHATEVER OUR INTERPRETATION, THE AMERICANS GENUINELY BELIEVE THAT THE NON-PAPER PERMITS THE GRAND JURY TO PROCEED WITH THE LEG 1 INVESTIGATION WITHOUT ANY HINDRANCE. THE DEAL ON LEG 1 CONCERNS ONLY THE OUTCOME. IF IN FACT THE ORDER AND DIRECTIONS DO IMPOSE SOME RESTRICTIONS WE MUST BE READY TO DISCUSS THESE OPENLY WITH THE AMERICANS AND SEE IF THERE ARE ACCEPTABLE WAYS OF OVERCOMING THEM (SEE PARA 1(B) OF MY TELNO 1752). HERE TOO THE AMERICANS WILL BE AS CONCERNED WITH THE LEGAL DETAILS AS WITH OUR POLICY EXPLANATIONS.

RESIDENT CLERK PLEASE ALERT:

FCO: PS/S OF S, FREELAND (LEGAL ADVISER), ADAMS, GRAY (HAED).

D/TRANSPORT: KNIGHTON, STEVENS.

DTI: BECKETT, AYLING

10 DOWNING ST: COLES.

WRIGHT

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U.S. AIR TRUST

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Freeland

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TO IMMEDIATE FCO

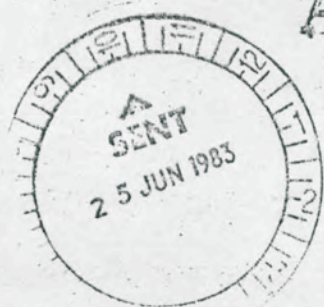
TELEGRAM NUMBER 1766 OF 25 JUNE 1983

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ADVANCE COPY~~

MIPT. LAKER: PTI ACT.

TEXT OF US NOTE.

BEGINS:



THE DEPARTMENT OF STATE NOTES THAT ON JUNE 24, 1983, THE UNITED KINGDOM SECRETARY OF STATE FOR TRADE PROMULGATED AN ORDER UNDER THE PROTECTION OF TRADING INTERESTS ACT (PTIA) AS WELL AS GENERAL DIRECTIONS TO AIR CARRIERS COMPELLING THEM TO TAKE CERTAIN STEPS IN COMPLYING WITH THAT ORDER.

THE ORDER AND DIRECTIVES CONSTITUTE A VIOLATION OF THE SOVEREIGNTY OF THE UNITED STATES AND A DISMAYING PUBLIC CHALLENGE TO UNITED STATES LAW. THEY APPEAR TO VIOLATE THE BILATERAL AVIATION AGREEMENT IN FORCE BETWEEN THE UNITED STATES AND THE UNITED KINGDOM (BERMUDA II) AND THE UNDERSTANDINGS EMBODIED IN THE NON-PAPER REACHED BETWEEN THE TWO GOVERNMENTS CONCERNING THE MANAGEMENT OF THE CURRENT UNITED STATES INVESTIGATION INTO ALLEGED VIOLATIONS OF OUR CRIMINAL LAW. THE ORDER AND DIRECTIVES, AND THE MANNER IN WHICH THEY WERE PROMULGATED, INTENSIFY PRE-EXISTING DIFFERENCES WHICH THE

UNITED STATES HAD UNDERSTOOD BOTH SIDES PREFERRED TO MITIGATE AND MANAGE THROUGH PRACTICAL COOPERATION. THEY APPEAR TO EXTEND THOSE DIFFERENCES TO A RANGE OF PROBLEMS WELL BEYOND THE TARIFFS AND INTO AREAS IN WHICH ACTUAL ANTITRUST PROBLEMS HAD NOT HERETOFORE EXISTED. THEY CREATE NEW AND, IN THE VIEW OF THE UNITED STATES, GRATUITOUS CONFLICTING REQUIREMENTS FOR THE PERSONS AND COMPANIES AFFECTED. MOREOVER, THEY SO DIRECTLY CHALLENGE THE SOVEREIGN RIGHT OF THE UNITED STATES TO ENFORCE ITS LAWS AND CARRY OUT CRIMINAL INVESTIGATIONS AND SO INTERFERE WITH THE CONDUCT OF THE PRESENT CRIMINAL INVESTIGATION CONTEMPLATED IN THE NON-PAPER AS TO CONSTITUTE AN IMPLICIT REPUDIATION THEREOF BY HER MAJESTY'S GOVERNMENT. THE DEPARTMENT PROTESTS THESE PROVOCATIVE ACTIONS.

THE DEPARTMENT MUST EMPHASIZE THAT IT IS UNACCEPTABLE FOR ANOTHER GOVERNMENT TO ISSUE A PUBLIC DIRECTIVE HAVING THE FORCE OF LAW REQUIRING PERSONS DOING BUSINESS IN THE UNITED STATES NEITHER TO COMPLY NOR PERMIT COMPLIANCE WITH THE LAWS OF THE UNITED STATES REGARDING THAT BUSINESS. THE GOVERNMENT OF THE UNITED STATES CAN NEITHER TOLERATE VIOLATIONS OF UNITED STATES ANTITRUST LAWS NOR FOREGO THEIR VIGOROUS ENFORCEMENT. THE PROVISIONS OF THE INTERNATIONAL AGREEMENTS BETWEEN THE UNITED STATES AND THE UNITED KINGDOM DO NOT IN ANY MANNER JUSTIFY SUCH AN INFRINGEMENT OF THE SOVEREIGNTY OF THE U.S. TO THE CONTRARY, UNDER BERMUDA II, THE OPERATING AUTHORITY GRANTED TO AIR CARRIERS SERVING THE U.S.-U.K. MARKET IS EXPRESSLY CONDITIONED ON COMPLIANCE WITH THE LAWS OF BOTH PARTIES AND MAY BE REVOKED FOR NONCOMPLIANCE. THE PTIA ORDER AND DIRECTIVES APPEAR TO MANDATE VIOLATION OF THE LEGAL REQUIREMENTS UPON WHICH THE OPERATING AUTHORITY IS PREMISED AND THEREFORE TO PLACE THAT AUTHORITY IN QUESTION. THEY MAY ALSO PLACE CARRIERS AND THEIR ASSETS IN THIS COUNTRY IN LEGAL JEOPARDY. THE CARRIERS MIGHT WELL HAVE PREFERRED TO RESPECT AND COMPLY WITH THE ANTITRUST LAWS OF THE UNITED STATES AND THE LAWFUL ORDERS OF UNITED STATES COURTS IN THE JURISDICTION OF WHICH THEY ARE PRESENT AND DOING BUSINESS. IT IS REGRETTABLE THAT THE UNITED KINGDOM SHOULD BE CREATING SUCH UNNECESSARY CONFLICTING REQUIREMENTS AND JEOPARDY.

MOREOVER, THE DEPARTMENT MUST EXPRESS DISMAY AT THE REFUSAL OF HER MAJESTY'S GOVERNMENT TO DELAY THIS SERIOUS AND POTENTIALLY DISRUPTIVE ACTION AND CONDUCT GENUINE PRIOR CONSULTATIONS WITH THE UNITED STATES. THAT REFUSAL PUTS INTO QUESTION THE WISDOM OF THE REPEATED DELAYS, CONSULTATIONS AND ADJUSTMENT MADE BY THE UNITED STATES IN THE ANTITRUST

ADJUSTMENT MADE BY THE UNITED STATES IN THE ANTITRUST INVESTIGATION TO DATE. IT IS DIFFICULT TO IMAGINE HOW THE UNITED KINGDOM COULD ENVISAGE ANTITRUST COOPERATION CONTINUING UNAFFECTED.

THE UNITED STATES BELIEVES THAT THE DAMAGE WHICH HER MAJESTY'S GOVERNMENT'S ACTION IS LIKELY TO CAUSE CAN BE LARGELY AVOIDED THROUGH PROMPT RECISSION OR SUBSTANTIAL MODIFICATION OF THE ORDER AND DIRECTIVES AND THROUGH ADDITIONAL STEPS TO DEAL WITH THE PROBLEMS THEY HAVE CREATED FOR THE PRESENT CRIMINAL INVESTIGATION. THE DEPARTMENT HOPES THAT THESE ACTIONS WOULD SUBSTANTIALLY REDUCE THE IMPEDIMENTS TO REACHING PROSPECTIVE ARRANGEMENTS FOR AVOIDING PROBLEMS IN THE AVIATION RELATED ANTITRUST AREA. THIS HOPE IS BASED NOT ONLY ON THE TRADITIONAL CLOSE U.S.-U.K. RELATIONS AND ABILITY TO SOLVE PROBLEMS COOPERATIVELY AND PRAGMATICALLY, BUT ALSO UPON THE CONVICTION THAT A LARGE MEASURE OF AGREEMENT IS RECORDED IN BERNUDA II ON THE COMPETITION POLICY TO GOVERN NORTH ATLANTIC AVIATION. THIS HAS BEEN LARGELY OBSCURED BY DIFFERENCES ON HOW TO HANDLE ALLEGED CONDUCT WHICH VIOLATES NOT ONLY UNITED STATES ANTITRUST LAWS BUT ALSO THE TERMS OF OUR AGREEMENT.

IN THIS LIGHT, THE DEPARTMENT WELCOMES THE DECISION OF HER MAJESTY'S GOVERNMENT TO DISPATCH A DELEGATION TO WASHINGTON. WHILE HER MAJESTY'S GOVERNMENT'S ACTIONS IMPLICITLY REPUDIATE THE RECENT NON-PAPER, THE DEPARTMENT OF JUSTICE IS PREPARED TO DELAY SETTING THOSE PROCEDURES ASIDE UNTIL JULY 1, IF HER MAJESTY'S GOVERNMENT WILL PROVIDE AN ASSURANCE THAT IT WILL USE ITS BEST EFFORTS TO PREVENT FURTHER PREJUDICE TO THE INVESTIGATIONS BY THE CONTINUING DELAYS. IN PARTICULAR, THE DEPARTMENT OF JUSTICE WILL REQUIRE AN ASSURANCE THAT THE UNITED KINGDOM WILL FACILITATE THE RETURN OF ANY DOCUMENTS REMOVED FROM THE UNITED STATES DURING THE PERIODS IN WHICH SUBPOENAS HAVE BEEN DELAYED, SUSPENDED, OR REVOKED AS A RESULT OF THE U.S.-U.K. CONSULTATIONS AND NON-PAPER. THE DEPARTMENT OF JUSTICE IS PREPARED TO CONTINUE THE NON-PAPER ARRANGEMENT IF THE ORDER AND DIRECTIVES ARE RESCINDED OR ADEQUATELY MODIFIED AND IF THE ATTENDANT PROBLEMS ARE RESOLVED BY JULY 1.

ENDS

RESIDENT CLERK PLEASE ALERT: FCO: PS/S OF S, FREELAND (LEGAL ADVISER), ADAMS, GRAY(MAED)

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