

IMMEDIATE

DESKBY 290730Z

Prime Minister (2)

Sir O Wright's assessment of the Laker talks. Tom King / Geoffrey Howe will report orally to Cabinet tomorrow.

U.S. ANTI TRUST

ADVANCE COPIES 23

ACTION AGAINST BRITISH AIRLINES

MR ADAMS

Legal Advisers  
Free Land

~~SIR I SINGH~~

MR FORTNAM - IAT 3/D/TRANSPORT

(1, VICTORIA STREET

MCS 29/6

MR AUST

MR GARDINER - ATTORNEY GENERAL'S OFFICE

HD/MAED

PS  
PS/LADY YOUNG  
PS/PUS  
MR EVANS

D.O.  
PS/SOPS  
MR LAZARUS  
MR KANIGATTEN } D/TRANSPORT

HD/NAD

RESIDENT CLERK

PS/SOPS  
MR ROBERTS  
MR SUNDERLAND  
MR BECKETT } DTI.  
D.O.

MR COLLET, No 10

GR 750

CONFIDENTIAL

DESKBY 290730Z

FM WASHINGTON 290200Z JUN 83

TO IMMEDIATE F C O

TELEGRAM NUMBER 1802 OF 28 JUNE

Read in file.

*[Handwritten signature]*

LAKER: THE NEXT STEPS.

1. WE ARE NOW AT THE CRITICAL POINT IN THIS ROUND. WE CAN HAVE NO DOUBT ABOUT THE AMERICANS' ANGER; THEY ALL BELIEVE THAT WE ARE ATTEMPTING AN UNWARRANTABLE INVASION OF THEIR SOVEREIGNTY, AND THAT BY OUR ACTIONS WE HAVE OVERTHROWN THE LONDON AGREEMENT NEGOTIATED LAST MONTH. IN THIS MOOD, THE LOGIC OF OUR ARGUMENTS TO THE CONTRARY IS NOT ENOUGH TO DISSUADE THEM. IT IS HOWEVER ALSO CLEAR THAT EVEN NOW THEY WOULD PREFER TO AVOID A BLAZING ROW WITH UNFORESEEABLE CONSEQUENCES. THEY ARE TALKING COOLLY AND CONSTRUCTIVELY TO OUR DELEGATION AND THEY HAVE INDEED SO FAR BEEN UNCHARACTERISTICALLY DISCREET WITH THEIR OWN PRESS, TO WHOM THEY HAVE SAID NOTHING. ALL THIS IS ENCOURAGING. BUT THEY HAVE STILL NOT GRASPED HOW DIFFICULT IT IS FOR US TO ACCOMMODATE THEM BECAUSE OF THE WAY THAT OVER THE YEARS AND IN THE PRESENT CASE THEY HAVE THEMSELVES REGULARLY ATTEMPTED TO INVAD E OUR SOVEREIGNTY. AND I FEAR THAT IF WE CANNOT DEMONSTRATE CONVINCINGLY AND SOON THAT WE ARE PREPARED TO GO A SIGNIFICANT DISTANCE TO MEET THEIR MOST IMPORTANT CONCERNS THEY WILL EXPLODE, WITH THE LIKELIHOOD OF A NO-HOLDS-BARRED PURSUIT OF OUR AIRLINES TO FOLLOW IN SHORT ORDER.

2. THERE IS NO TIDY SOLUTION. WE CLEARLY CANNOT COMPROMISE ON OUR PRINCIPLES ANY MORE THAN THEY CAN ON THEIRS. IT IS THEREFORE IN THE INTERESTS OF BOTH PARTIES TO PUT ON ONE SIDE FOR THE TIME BEING THE QUESTIONS OF PRINCIPLE AND CONCENTRATE ON PRACTICAL SOLUTIONS

THE INTERESTS OF BOTH PARTIES TO PUT ON ONE SIDE FOR THE TIME BEING THE QUESTIONS OF PRINCIPLE AND CONCENTRATE ON PRACTICAL SOLUTIONS TO THE PRACTICAL PROBLEMS. I AM SURE THAT THE AMERICANS WILL NOT ACCEPT BROAD ASSURANCES THAT IN PRACTICE OUR MEASURES WILL NOT HAVE THE EFFECTS TO WHICH THEY TAKE THE MOST PARTICULAR EXCEPTION. THEY WILL WANT SOMETHING IN WRITING, IN PUBLIC, AND WITH LEGAL EFFECT. ON THE OTHER HAND, ANY SOLUTION MUST BE CONSISTENT WITH THE JUSTIFIABLE CONCERN OF YOU AND YOUR COLLEAGUES NOT TO REVOKE OR AMEND THE ORDER AND DIRECTIONS SO RECENTLY MADE, NOT TO WEAKEN OUR POSITION OVER BERMUDA 2 AGAINST A POSSIBLE ARBITRATION, NOT TO DAMAGE THE LONDON NON-PAPER, AND NOT TO DIMINISH THE AIRLINES' CHANCE OF A SUCCESSFUL OUTCOME IN THE UK LEGAL PROCEEDINGS (ON WHICH SO MUCH DEPENDS FOR THEM). THE LONDON TEAM HAVE ALREADY MADE RECOMMENDATIONS WITH WHICH I AGREE (MY TELNO 1763). THESE SEEK TO PROVIDE A PRAGMATIC WAY OF DEALING WITH MOST OF THE DIFFICULTIES WHICH THE AMERICANS PROFESS OUR ACTIONS HAVE CREATED FOR THEM.

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3. I UNDERSTAND THAT YOU AND YOUR COLLEAGUES WILL BE CONSIDERING THE NEXT STEP ON 29 JUNE. I STRONGLY RECOMMEND THAT THE LONDON TEAM SHOULD BE GIVEN AUTHORITY TO DISCUSS SOME PRACTICAL PROPOSALS WITH THE AMERICANS. I DO NOT SUGGEST THAT THE AMERICANS SHOULD BE INVITED TO JOIN US IN DRAFTING ANY PUBLIC DOCUMENT WE MIGHT ISSUE. BUT THERE IS CLEARLY NO POINT IN PUBLISHING A DOCUMENT INTENDED TO BRING THE AMERICANS ALONGSIDE IF IT DOES NOT FULFILL THAT PURPOSE.

4. IN THEIR NOTE OF 25 JUNE (MY TELNO 1766) THE AMERICANS SET A DEADLINE OF 1 JULY. IF WE WERE IN SERIOUS NEGOTIATION WITH THEM, THEY COULD DOUBTLESS BE INDUCED TO LET THIS SLIP. BUT WE WILL HAVE TO MAKE THEM AN INTERESTING OFFER BY THURSDAY MORNING AT THE LATEST.

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5. ASSUMING WE NEGOTIATE THESE RAPIDS SUCCESSFULLY, THERE IS A REASONABLE CHANCE THAT THE LONDON AGREEMENT CAN BE OPERATED AS WE INTENDED. THE AMERICANS WILL ALSO HAVE LEARNED A SHARP LESSON ABOUT THE LENGTHS TO WHICH WE WILL GO TO DEFEND OURSELVES AND OUR COMPANIES AGAINST THE UNWARRANTED DEMANDS WITH WHICH AMERICAN LAW HAS FOR SO LONG CONFRONTED US. THAT SHOULD REINFORCE OUR ARGUMENT THAT WE NEED TO NEGOTIATE SOME MORE PERMANENT ARRANGEMENTS TO MINIMISE THE LIKELIHOOD THAT OUR PRESENT TROUBLES WILL RECUR IN THE FUTURE.

6. YOUR DECISION TO SEND THE LONDON TEAM WAS ESSENTIAL TO GET THE AMERICANS TO TALK. TO CLINCH THE DEAL, THE TEAM NOW NEED TO MAKE A SERIOUS OFFER AND NEGOTIATE IT FLEXIBLY. I HOPE YOU CAN GIVE THEM THAT AUTHORITY.

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FCO ADVANCE: PS/SOFS, PS/BARONESS YOUNG, PS/PUS, EVANS, ADAMS  
AUST LEGAL ADVISOR,  
D/TRANSPORT - PS/SOFS, LAZARUS, KNIGHTON, FORTNAM  
DTI - PS/SOFS, ROBERTS, SUNDERLAND, BECKETT  
LAW OFFICES DEPT - GARDINER  
NO 10 - COTES

*Prime Minister*

*I expect that Mr. King  
will report on progress at Cabinet*

*MR. COLES*

*No 10*

*Mr. Kibala*

*MR 28.  
6*

GR 920

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*tomorrow; in short*

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DESKBY 290730Z  
FM WASHINGTON 290205Z JUN 83  
TO IMMEDIATE FCO  
TELEGRAM NUMBER 1803 OF 28 JUNE



LAKER: PTI ACT

1. IN AN INFORMAL MEETING WITH FIVE MEMBERS OF THE AMERICAN TEAM STEVENS, BRAITHWAITE AND AYLING MADE THE POINTS IN PARAGRAPHS 4(2) AND 4(3) OF YOUR TELNO 1065. THE QUESTION OF NARROWING THE SECTION 1 DIRECTION TO TARIFF MATTERS WAS NOT RAISED BY THE US TEAM. THE MEETING CONCENTRATED ON PRACTICAL MATTERS RATHER THAN ISSUES OF PRINCIPLE AND SOVEREIGNTY.

2. IN SUMMARIZING THE CONCERNS THEY HAVE WITH THE CONSEQUENCES OF THE PTI ORDER AND DIRECTIONS FOR THE GRAND JURY INVESTIGATION THE US TEAM LAID PARTICULAR EMPHASIS ON THE FOLLOWING REQUESTS:

(I) THAT WE SHOULD ISSUE A CONSENT WHICH WOULD INDICATE THAT THE ONLY CONDUCT FORBIDDEN WAS THE ACT OF TRANSMITTING COMMERCIAL INFORMATION FROM THE UK OR PROVIDING DOCUMENTS IN THE UK:

(II) THAT THE SECTION 1 DIRECTION SHOULD BE MODIFIED IN RELATION TO ENFORCEMENT ACTION BY THE DEPARTMENT OF JUSTICE SO AS TO APPLY ONLY TO ENFORCEMENT ACTION IN THE UK AND SHOULD PERMIT A PERSON IN THE UK TO RESPOND VOLUNTARILY TO A REQUEST FROM THE DEPARTMENT OF JUSTICE.

UNDERLYING THE FIRST REQUEST, WHICH RELATES TO THE CONCERN OF THE DEPARTMENT OF JUSTICE TO OBTAIN DOCUMENTS AND TO SUBPOENA WITNESSES IN THE UNITED STATES, ARE THEIR CONSIDERABLE POWERS OF COMPULSION. THEY MADE IT CLEAR THAT THEY WOULD EXERCISE THESE POWERS REGARDLESS OF THE PTI DIRECTIONS: FOR EXAMPLE TO OBTAIN ANY FURTHER BA PAPERS THEY MIGHT NEED LOCATED IN THE US. THESE POWERS WOULD ALSO PERMIT THEM TO COMPEL THE ATTENDANCE OF UK NATIONALS IN THE UNITED STATES AS WITNESSES, EG FORMER OFFICERS AND EMPLOYEES OF LAKER AIRWAYS.

3. THE PURPOSE OF THE SECOND REQUEST IS EXPRESSLY TO LIMIT THE EFFECT OF THE SECTION 1 DIRECTION TO ENFORCEMENT ACTION BY THE DEPARTMENT OF JUSTICE SO AS TO MAKE IT CLEAR THAT THE DIRECTION DOES NOT COMPEL VIOLATION OF THE SHERMAN ACT ITSELF, AND TO PERMIT INDIVIDUALS IN THE UK TO RESPOND TO REQUESTS MADE BY THE DEPARTMENT OF JUSTICE IF THEY SO WISH.

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4. OUR WILLINGNESS TO GRANT FURTHER CONSENTS FOR US LOCATED DOCUMENTS AS SUGGESTED IN YOUR PARAGRAPH 4(2) WOULD BE MEANINGLESS BECAUSE OF THEIR POWERS WHILE REMAINING IN THEIR EYES A PROVOCATIVE INTRUSION ON OUR PART. WE CANVASSED THE POSSIBILITY OF AN ASSURANCE TO US AIRLINES IN THE UK ON THE LINES SUGGESTED IN YOUR PARAGRAPH 4(3) BUT THEY DOUBTED WHETHER US AIRLINES IN THE UK NEEDED SUCH AN ASSURANCE. THEY ARE NOT SEEKING POWERS OF INVESTIGATION IN THE UK BUT THEY DO WANT PEOPLE IN THE UK TO BE FREE TO RESPOND TO THEIR INVITATIONS, AND ONCE SUCH PEOPLE ARE ON US TERRITORY THE AMERICANS CONSIDER THEY HAVE A RIGHT TO SEEK COMMERCIAL INFORMATION FROM THEM.

5. THE US REQUESTS CONCENTRATE THROUGHOUT ON WHAT THEY NEED FOR THE GRAND JURY INVESTIGATION. ON LEG 1 THEY ACCEPT THAT WE DID NOT PROMISE ANY CO-OPERATION IN THE NON-PAPER, BUT EQUALLY THEY FEEL THAT WE ARE REPUDIATING THE SPIRIT OF THE NON-PAPER BY USING THE PTI ACT TO PUT NEW OBSTACLES IN THE WAY OF AN INVESTIGATION ABOUT WHICH THEY HAVE ALREADY GIVEN US ASSURANCES WHICH SHOULD GIVE US SOME DEGREE OF CONFIDENCE IN THE OUTCOME. IF WE INSIST ON TAKING NEW STEPS TO INTERFERE THEY WILL FEEL FREE TO ABANDON THEIR COMMITMENTS AND WITH IT THE NON-PAPER AS A WHOLE. THEY ARE NOT SEEKING A BLANK CHEQUE TO OBTAIN DOCUMENTS OR COMMERCIAL INFORMATION IN THE UK (YOUR PARA 5). THEY KNOW THIS WOULD BE UNACCEPTABLE. BUT THEY RESENT ANY NEW ATTEMPT ON OUR PART TO PREVENT THEM HAVING ACCESS TO DOCUMENTS OR COMMERCIAL INFORMATION IN THE US.

6. THE US REQUESTS WOULD LARGELY BE CATERED FOR IN THE CONSENT PROPOSALS WE HAVE ALREADY MADE, THOUGH IF THE AMERICANS DO NOT INSIST ON THE NARROWING OF THE SECTION 1 DIRECTION TO TARIFF QUESTIONS WE WOULD NOT NEED TO DEAL WITH THAT POINT. HOWEVER THEY MAY RETURN TO THE POINT SO WE STILL NEED TO BE READY TO DEAL WITH IT.

7. WE WOULD CLEARLY NEED TO DEAL WITH THE QUESTION YOU MENTION OF NOT PREJUDICING OUR POSITION UNDER BERMUDA 2. WE HAVE NOT DISCUSSED THIS WITH THE AMERICANS BUT ONE SOLUTION MIGHT BE TO REPLY TO THEIR NOTE BY REFERRING TO THE CONSULTATIONS AND RECORDING THAT THE CONSENT HAD BEEN GIVEN WITHOUT PREJUDICE TO THE POSITION OF HMG UNDER BERMUDA 2. THIS WOULD HAVE TO BE ON THE PRIOR UNDERSTANDING THAT THE NOTE COULD BE REFERRED TO IN PUBLIC AND WOULD NOT BE CHALLENGED.

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8. WE HAVE KEPT MATTERS IN PLAY. WE HAVE CONFIRMED THAT THE JULY 1 DEADLINE IS NOT IMMOVABLE PROVIDED THAT WE ARE IN SERIOUS NEGOTIATION WITH THEM. BUT WE SHALL NEED TO RESPOND POSITIVELY TO THEIR CONCERNS TOMORROW IF WE ARE TO MAINTAIN THE DIALOGUE.

FCO PLEASE ADVANCE: EVANS, ADAMS, AUST LEGAL ADVISOR, CHASE (MAED) D/TRANSPORT FOR KNIGHTON, FORTNAM. DTI FOR ROBERTS, BECKETT AND SUNDERLAND. LAW OFFICERS DEPT FOR GARDINER.

WRIGHT

U S ANTI TRUST ACTION AGAINST BRITISH AIRLINES

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MR J M HEALEY OT2 )  
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IAT/DEPT OF TRANSPORT (7)  
MR W KNIGHTON DEPT OF TRANSPORT  
(MARSHAM ST)  
LORD COCKFIELD CHANCELLOR OF  
THE DUCHY OF LANCASTER

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