

Prime Minister.

Some aspects of the
letter are not very clear.

Foreign and Commonwealth Office

London SW1A 2AH

You may like me to arrange
for you to have a word with
the Foreign Secretary and Mr.
Hawkey some time after the
holidays.

27 July 1983

See John, -

A-J-C $\frac{28}{7}$

EC/Spain: Gibraltar

You asked for some background on where we stand over Gibraltar in the accession negotiations with Spain. I apologise in advance for its length - the subject is not straightforward.

Many Spanish restrictions on Gibraltar will be illegal under Community law if still in place when Spain accedes to the Community. (Some, eg prohibited air space, Algeciras ferry - do not fall within the scope of Community law and are not directly affected by it. They are not therefore further discussed here.) There is no warrant in Community law, and we should not therefore get support from our partners in the accession context, for demanding that they be lifted before accession. But we should be able to use the weight of the Community in insisting that all measures incompatible with Community law on accession must be lifted by then. In practice, because Spanish promises cannot be trusted, we must build into the accession process a tripwire such that if the border is not open as the date of accession approaches, we shall still be in a position to prevent accession by (for example) not depositing our instrument of ratification.

What we are trying to achieve

Against this background we aim in the accession negotiations, with the support of our partners, to secure acknowledgement by Spain that the Spanish restrictions on Gibraltar are incompatible with the obligations Spain will assume on entry to the Community, and will have to be removed by the time Spain accedes. Our approach has two stages. The first stage is to identify in the individual chapters of the negotiations the points at which Spanish restrictions in relation to Gibraltar conflict with Community law, and through the Community to make it clear to the Spaniards that until we have a satisfactory and explicit assurance that they recognise that this is so, and that the offending measures will be removed by the time of their accession, these chapters cannot be closed. This approach should enable us to build up, piece by piece, a solid position with the weight of the Community behind us based firmly on the requirements of Community law.

/There are



There are three main areas where Spanish measures potentially conflict with Community law - free movement of goods (covered in the External Relations chapter), free movement of persons and labour (covered in the Social Affairs chapter) and rights of establishment.

Where free movement of goods is concerned, Gibraltar - though a part of the Community - is not part of the customs territory of the Community to which the Customs Union applies. In addition it is not subject to the Common Commercial Policy and is excluded from the CAP and VAT.

Imports from Gibraltar to the Community are accordingly subject to the common regime for Community imports from outside the Community customs territory. Specifically, after accession Spain will be obliged to apply EC Regulation 288/82 on the Common Regime for Imports which requires that imports into the Community shall be free of restrictions, except for permitted tariffs and certain residual Quantitative Restrictions (QRs) authorised by the Regulation in its Annexes.

Spain will be entitled in principle to apply some QRs against Gibraltar after accession by agreement. But it is one thing to specify a list of QRs to be retained on non-liberalised products by agreement and another to impose a total block on the movement of goods across the frontier. Spain would still have to accept that Regulation 288/82 obliged her to lift her blanket embargo before seeking agreement to maintain specific QRs. In any case we believe (though DTI legal experts are still checking this) that under Community origin rules, Spain could only impose QRs against goods of Gibraltarian origin - of which there are none.

On free movement of labour, the Community will insist on a transitional period of at least 7 years before applying the provisions on the free movement of workers to seek employment. But the rest of the range of Community rules on free movement are expected to apply to Spain on her accession.

As regards rights of establishment, certain derogations were agreed between the Community and Spain when the chapter was concluded. Since the Lisbon Agreement then looked close to implementation (April 1982) and we did not wish to rock that boat, we did not ask the Community to seek specific Spanish assurances in this chapter. The Community did nonetheless state clearly that Spanish measures in force could create difficulties if maintained.

/The German



The German Presidency, with support from the Commission and Council Secretariat, and the tacit acquiescence of the other Member States, have at our instigation sought from the Spaniards in the negotiation of the External Relations chapter an undertaking on the removal of those measures which conflict with Spain's EC obligations. The Spaniards have shown willingness to discuss the language of an assurance on the free movement of goods, but have not yet come up with a satisfactory wording despite various formulations which the Presidency, in consultation with us, has offered. Moran's statement to the Senate Foreign Affairs Committee, which is the subject of Madrid telno 410, is ambiguous, but we are inclined to a more pessimistic interpretation than that in the telegram. Moran appears to be saying that whereas Spain will apply Regulation 288, she does not accept the Community's view that this would oblige her to lift the restrictions on the movement of goods at the frontier. This approach coincides with the evasive wording in the first Spanish reply to the Community on this point, which the Presidency made clear to them was unacceptable. We have now briefed the Greek Presidency both at official and Ministerial level on the background to make sure that they are ready to carry on where the German Presidency left off.

We will also be seeking similar action by the Greek Presidency in the context of the Social Affairs Chapter, due to be negotiated shortly, both as regards the free movement of persons and the free movement of workers. We are already in touch with the Commission about this, and have made it clear to them that Moran's statement makes it more important than ever for us to have absolutely watertight assurances from the Spaniards.

Without satisfactory Spanish assurances, we can - and intend to - prevent the conclusion of the External Relations and Social Affairs Chapters (Rights of Establishment was closed in mid-1982). We shall however need a more general, and public, Spanish assurance before we proceed to signature of the Accession Treaty. As a condition of signature, therefore, we intend to seek a public Spanish commitment (in a form which can be decided nearer the time) that they will open the frontier by a certain date (3 - 6 months) before actual accession. The purpose of this, the second stage of our approach, is to make sure that the Spanish assurances are bankable. If the border were not open by that date, we would refuse to ratify the Treaty (whether by not submitting it to Parliament for the necessary implementing legislation, or submitting it on the basis that the instruments of ratification would only be deposited once the frontier was open). We should thus keep entirely in our own hands

/whether or



hands whether or not Spain actually acceded, avoiding the danger of committing ourselves irrevocably to accession upon the strength only of Spanish promises about the restrictions. Precisely what course to adopt would depend on the circumstances at the time; we are pursuing this further with our legal advisers.

Attitude of our EC Partners

Our partners avoid taking sides over Gibraltar. They find colonial disputes embarrassing, and attach great importance to anchoring Spain firmly to Western Europe through the Community and NATO. They have gone along with us so far, partly because (to the extent that they have understood what we are up to) they have had to accept that our position is soundly based on the requirements of Community law (the support of the Commission and German Presidency has been invaluable in this respect), and partly because they have not yet been asked to do anything very active to help us. We have been careful to keep the whole exercise in low key, using legal and technical arguments, and have been successful in avoiding undue publicity. We have thus succeeded in incorporating an insistence on the removal of the frontier restrictions relevant to Community obligations into the Community's negotiating position almost by stealth; and the longer Member States go on giving it their tacit acquiescence, the more difficult it will be for them to defect if and when the going gets rough. And the going may easily get really quite rough, for example if the Spaniards harden the link they are making between British movement on Gibraltar and Spanish membership of NATO (in which they see NATO as the demandeur).

Yours

R B Bone

(R B Bone)
Private Secretary

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10 Downing Street



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10 DOWNING STREET

From the Private Secretary

1 August 1983

Thank you for your letter of 27 July about the position over Gibraltar in the accession negotiations with Spain.

The Prime Minister has noted the information in your letter and has asked to have a word with the Foreign Secretary and Mr. Hannay some time in September. I shall be in touch to arrange this.

(TIM FLESHER)

J E Holmes Esq
Foreign and Commonwealth Office

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29 JUL 1985



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