

PS/SOS [Mr Devent] 21

PS  
 PS/LADY YOUNG  
 PS/PUS  
 SIR C TICKELL  
 MR ADAMS  
 MR AUST, Legal Advisers  
 MR FREELAND, Legal Advisers  
 HD/MAED (2)  
 HD/NAD

IMMEDIATE

PS/S of S—  
 MR LAZARUS, PUS }  
 MR KNIGHTON } DEPT OF  
 MR FORTNAM } TRANSPORT  
 STEVENS }  
 MR AYLING (Sols) }  
 MR ROBERTS } DTI  
 MR SUNDERLAND }  
 MR BECKETT (Solicitors)  
 MR HEALCY (OT2)

MR COLES 10 DOWNING ST  
 MR GARDINER, ATTORNEY  
 GENERAL'S OFFICE

RESIDENT CLERK ✓  
 MR J THOMAS

ADVANCE COPY

DESKBY 020900Z  
 CONFIDENTIAL  
 FM WASHINGTON 020543Z JUNE 84  
 TO IMMEDIATE FCO  
 TELEGRAM NUMBER 1746 OF 2 JUN

YOUR TELEGRAMS 1033 AND 1034  
 LAKER: PRESIDENT REAGAN'S VISIT

THE AMERICANS ARE VERY CROSS ABOUT OUR PROPOSED NEW DIRECTION UNDER THE PROTECTION OF TRADING INTERESTS ACT, AND THE STATE DEPARTMENT CLAIM TO FEAR THAT ITS PUBLICATION ON 4 JUNE WOULD NECESSITATE A PUBLIC AMERICAN RESPONSE WHICH WOULD LEAD TO A MAJOR ROW AND SOUR THE PRESIDENT'S VISIT. THEY CANNOT UNDERSTAND WHY THE DIRECTION NEEDS TO BE ISSUED SO SOON, AND WHY IT HAS TO REPEAT LANGUAGE DRAWN FROM LAST YEAR'S DIRECTION WHICH THEY REGARDED AS GRAVELY OFFENSIVE TO THEIR SOVEREIGNTY. THE STATE DEPARTMENT CLAIM THAT OUR ACTION COULD DEAL A MORTAL BLOW TO THE PROGRESS WE HAVE BEEN MAKING IN THE WIDER TALKS ON EXTRATERRITORIALITY.

2. THE DETAILS ARE IN M.I.F.T. MY PEOPLE HAVE EXPLAINED THAT THE TIMING IS DICTATED BY THE HOUSE OF LORDS HEARINGS, AND THAT THE LANGUAGE OF THE DIRECTIVE REFLECTS LEGAL REQUIREMENTS ON WHICH WE ARE NOT COMPETENT TO SPECULATE. PROGRESS IN THE WIDER TALKS REMAINED IN THE INTERESTS OF BOTH SIDES, SO THAT WE COULD DO BETTER IN FUTURE. MEANWHILE WE ALL HAD TO MANAGE THE UPS AND DOWNS OF THE LAKER AFFAIR AS BEST WE COULD: WE TOO HAD HAD TO SWALLOW SURPRISES RECENTLY (THE CLASS ACTIONS AND LEG 5). THOUGH THE AMERICANS HAVE NOT ACCEPTED OUR ARGUMENTS, AND HAVE APPARENTLY SENT (UNSPECIFIED) INSTRUCTIONS TO THEIR EMBASSY IN LONDON, THERE ARE SLIGHT SIGNS OF A MORE MEASURED REACTION IN PARTS OF THE STATE AND JUSTICE DEPARTMENTS.

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3. I DO NOT MYSELF BELIEVE THAT THE PRESIDENT WILL WANT HIS LONDON VISIT TO BE MARRED BY A ROW: AND IT IS FOR THE LEGAL EXPERTS IN LONDON TO JUDGE WHAT IS ESSENTIAL TO SUSTAIN OUR CASE IN THE HOUSE OF LORDS. BUT THE RISK OF A ROW, OR OF A SETBACK TO THE WIDER TALKS, CANNOT BE DISCOUNTED ENTIRELY - HOWEVER CONTRARY THAT WOULD BE TO THE AMERICANS' OWN INTERESTS. THE RISK WOULD BE REDUCED OR ELIMINATED IF THE TWO POINTS OF PARTICULAR DIFFICULTY TO THE AMERICANS (PARA 7 AND B OF M.I.F.T.) COULD BE MODIFIED: AND THE STATE DEPARTMENT AT LEAST WOULD BE RELIEVED IF PUBLICATION OF THE DIRECTION COULD BE DELAYED UNTIL THE PRESIDENT HAS LEFT LONDON.

ADVANCE COPIES FCO: PS/SOFS, PS/PUS, ADAMS, J.THOMAS, GRAY (MAED)  
DTI: ROBERTS, AYLING (SOLS), HEALEY (OT2)  
DTP: KNIGHTON, STEVENS  
ATTORNEY GENERAL'S OFFICE: GARDINER

WRIGHT

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GRS 1150  
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 FM WASHINGTON 020547Z MAY 84  
 TO IMMEDIATE FCO  
 TELEGRAM NUMBER 1747 OF 2 JUNE

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LAKER: PRESIDENT REAGAN'S VISIT

1. COUNSELLOR (CAS) DISCUSSED THE PROPOSED DRAFT DIRECTION UNDER THE PTI ACT WITH SEIDEN (JUSTICE DEPARTMENT) AND TEAL (STATE DEPARTMENT). BOTH REQUESTED TIME IN WHICH TO STUDY THE TEXT AND CONSULT WITH THEIR SUPERIORS.
2. SUBSEQUENTLY KELLY (DEPUTY ASSISTANT SECRETARY, STATE DEPARTMENT) TELEPHONED MINISTER TO EXPRESS DISMAY AT THE SUBSTANCE OF THE PROPOSED DIRECTION AND THE METHOD OF CONSULTATION. KELLY SAID THAT LAWYERS IN BOTH THE JUSTICE DEPARTMENT AND STATE DEPARTMENT WERE EXTREMELY UPSET AT THE SUBSTANCE AND THE STATE DEPARTMENT IN PARTICULAR WERE CONCERNED THAT THE ISSUE MIGHT LEAD TO A MAJOR ROW COINCIDING WITH THE ARRIVAL OF THE PRESIDENT IN LONDON NEXT WEEK.
3. KELLY AND NILES SUBSEQUENTLY EXPANDED ON THE POINTS WHICH HAD GIVEN RISE TO THIS ADVERSE REACTION. IN A TELEPHONE CONVERSATION WITH MINISTER (COMMERCIAL), THESE WERE:
  - A) THERE WERE GRATUITOUS AND IN THE U S VIEW TOTALLY UNNECESSARY REFERENCES TO THE GRAND JURY IN THE TEXT OF THE DIRECTION. THESE HAD CAUSED GREAT IRRITATION IN THE JUSTICE DEPARTMENT.
  - B) DESPITE ASSURANCES TO THE CONTRARY, (PARA 2 OF FCO TELNO 1033) THE DIRECTION DID PURPORT TO RESTRICT ACCESS TO DOCUMENTS AND

BY THE ASSURANCES TO THE CONTRARY, (PARA 2 OF FCO TELNO 1033) THE DIRECTION DID PURPORT TO RESTRICT ACCESS TO DOCUMENTS AND INFORMATION ON U S TERRITORY. THE TEXT OF THE DIRECTION IN RELATION TO DOCUMENT AND COMMERCIAL INFORMATION WAS UNCHANGED FROM LAST YEAR'S DIRECTION (PARA 1 OF THE OPERATIVE SECTION OF THE PROPOSED TEXT.

C) THE TEXT AS A WHOLE WOULD GIVE FURTHER EXCUSES TO THE LAWYERS TO DISCOURAGE UK CITIZENS THAT MIGHT BE WILLING TO GIVE VOLUNTARY INFORMATION TO THE GRAND JURY.

D) THE STATE DEPARTMENT COULD NOT UNDERSTAND WHY THE DIRECTION HAD TO BE ISSUED ON 4 JUNE, WHEN THE CLASS ACTION'S WOULD NOT BEGIN TO BE HEARD IN THE U S COURTS UNTIL 11 JUNE, AND DOCUMENTS AND WITNESSES MIGHT NOT BE REQUIRED UNTIL WEEKS LATER.

4. THE STATE DEPARTMENT EMPHASISED THAT ASIDE FROM THESE PARTICULAR POINTS THE U S GOVERNMENT REGARDED THE PROCESS OF CONSULTATION AS WHOLLY INADEQUATE. TO BE ASKED TO COMMENT ON A TEXT ON A FRIDAY AFTERNOON IN ORDER TO ALLOW A DIRECTION TO BE ISSUED THE FOLLOWING MONDAY MORNING WAS NOT GENUINE CONSULTATION. IT WAS PARTICULARLY SURPRISING THAT HMG SHOULD ACT IN THIS WAY HAVING RECENTLY SIGNED A COMMITMENT IN THE OECD WHICH ENCOURAGED PROPER CONSULTATION ON SUCH MATTERS. THERE WAS A REAL RISK THAT THE U S WOULD WANT TO TERMINATE THE PROPOSED TALKS ON FUTURE ARRANGEMENTS FOR DEALING WITH ANTI-TRUST IN AVIATION AND THE WIDER DISCUSSION OF EXTRATERRITORIALITY.

5. BRAITHWAITE EXPLAINED THAT THE TIMING OF THE DIRECTION WAS DETERMINED PRIMARILY BY THE COMMENCEMENT OF THE HOUSE OF LORDS HEARING ON 5 JUNE. AND TERMINATION OF THE WIDER DISCUSSIONS OF EXTRATERRITORIALITY WOULD BE INCONSISTENT WITH THEIR PURPOSE WHICH WAS TO TRY AND PROVIDE A MEANS OF MANAGING DISPUTE WHICH WERE BOUND TO OCCUR.

6. SEIDEN SUBSEQUENTLY CONFIRMED TO MAYNARD THAT THERE WAS INDEED CONSIDERABLE ANGER ON THE U S SIDE AT BOTH THE SUBSTANCE OF THE DIRECTION AND THE WAY IN WHICH THE UK HAD CONSULTED ABOUT IT. MAYNARD POINTED OUT THAT THERE HAD LIKEWISE BEEN ANGER IN LONDON AT THE EXTENSION OF THE GRAND JURY INVESTIGATION INTO ALLEGED CAPACITY AGREEMENTS WHICH HAD BEEN REGARDED AS INCONSISTENT WITH THE NON-PAPER

BUT THESE THOUGHTS HAD BEEN SUPPRESSED IN ORDER TO PRESERVE SENSIBLE MANAGEMENT OF THE DISPUTE. SEIDEN RECOGNISED THAT IT WAS STILL INCUMBENT UPON BOTH SIDES TO TRY TO MANAGE THE PROBLEM. FURTHER ASSURANCES FROM HMG THAT THEY WOULD MAINTAIN EXISTING COOPERATION WITH RESPECT TO THE GRAND JURY COULD OVERCOME THE PARTICULAR PROBLEM. AT PARA 3(C) ABOVE, THIS WAS A MATTER OF DETAIL. SEIDEN SAID THAT TWO POINTS IN OUR TEXT CAUSED PARTICULAR CONCERN. THE FIRST WAS THE GRATUITOUS REFERENCES TO THE GRAND JURY. GIVEN THAT THE EXISTING DIRECTIONS WERE STILL VALID THE U S COULD NOT SEE ANY LEGITIMATE REASON WHY THE PROPOSED DIRECTION, WHICH WAS DESIGNED TO CLOSE A LOOP HOLE IN RELATION TO THE CLASS ACTIONS, SHOULD NEED TO INCLUDE REFERENCES TO THE DEPARTMENT OF JUSTICE'S INVESTIGATION. IF PARAGRAPH 2 OF THE DRAFT DIRECTION COULD BE AMENDED TO AVOID SUCH REFERENCES THIS WOULD BE HELPFUL. LIKEWISE IF IT WERE POSSIBLE TO AVOID THE

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THIS WOULD BE HELPFUL. LIKEWISE IF IT WERE POSSIBLE TO AVOID THE  
HISTORICAL PREAMBLE TO THE DIRECTION THIS TOO WOULD CONTRIBUTE  
TOWARDS A MORE MEASURED U S RESPONSE.

7. THE SECOND POINT OF CONCERN WAS THE REFERENCE TO COMMERCIAL  
INFORMATION. SEIDEN SAID THAT THE U S WERE TOTALLY SURPRISED  
THAT THE PROPOSED DIRECTION WAS VIRTUALLY IDENTICAL TO THE  
TEXT IN THE DIRECTION ISSUED LAST YEAR. HMG WAS WELL AWARE OF THE  
STRONG OBJECTIONS RAISED BY THE U S AT THAT TIME. THE UK HAD  
CONFIRMED THEN THAT THE DIRECTION DID REACH COMMERCIAL INFORMATION  
LOCATED IN THE U S AND IN PRACTICE ACCEPTED THAT THIS WOULD AFFECT  
U S LOCATED DOCUMENTS. INDEED HMG AS A CONSEQUENCE HAD PROVIDED  
CONSENTS FOR SUCH DOCUMENTS SO AS TO MEET THE DOT CONCERNS  
ABOUT THE GRAND JURY PROCESS. SEIDEN RECOGNISED THAT AS A MATTER  
OF PRACTICE HMG HAS COOPERATED WITH THE GRAND JURY BUT THE  
DEPARTMENT OF JUSTICE MUST TAKE EXCEPTION TO THIS RENEWED INTRUSION  
ON U S SOVEREIGNTY. THEY COULD NOT BE EXPECTED TO DISTINGUISH  
PUBLICLY BETWEEN U S RIGHTS IN A GRAND JURY AND IN CIVIL CASES.  
MOREOVER, AS HMG HAD RECOGNISED IN THE DISCUSSIONS LAST YEAR,  
THE U S COURTS AND THE DEPARTMENT OF JUSTICE HAD THE POWER  
TO INSIST ON THE PRODUCTION OF DOCUMENTS AND COMMERCIAL  
INFORMATION LOCATED IN THE U S. IN THESE CIRCUMSTANCES WHY DID THE  
UK CONTINUE TO ASSERT A CLAIM WHICH COULD NEVER BE MADE  
EFFECTIVE?

FCO PLEASE ADVANCE AS IN M I P T

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L. W. C. E. R.

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