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DEPARTMENT OF TRADE AND INDUSTRY

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Secretary of State for Trade and Industry

3 August 1983

The Rt Hon Sir Geoffrey Howe QC MP
Secretary of State for Foreign
and Commonwealth Affairs
Foreign and Commonwealth Office
Downing Street
London SW1A 2AL

Dear Geoffrey,

THE RENEWAL OF THE UNITED STATES EXPORT ADMINISTRATION ACT

Arthur Cockfield wrote to Francis Pym on 4 February outlining a proposed strategy to counter the use of the Export Administration Act to impose controls extraterritorially on companies in this country.

2 The first part of this strategy - to bring pressure to bear on the Administration and Congress to amend the EAA itself so as to remove its objectionable features - has been pursued with great vigour and some success. All those in positions of influence in Washington have been made aware of the UK point of view; and largely at our prompting the European Community and a number of other friendly countries have made strong representations on similar lines. There are clear signs that our efforts have influenced the debates in Congress in a favourable sense.

3 The other main element in Arthur Cockfield's intended strategy was the proposal that, unless the EAA was amended so as to remove its extraterritorial application, we should exercise our powers under the Protection of Trading Interests Act to declare the extraterritorial application of the EAA and similar US legislation to be contrary to UK trading interests; and follow this up with a general direction forbidding firms in this country from complying with such legislation.

4 Since then, matters have progressed slowly in Congress but there have been some encouraging developments. There has been strong support for 'contract sanctity' provisions which would severely restrict the President's power to impose foreign policy controls retroactively, as happened last year over the Siberian pipeline; while in the House of Representatives the latest version of the Bill would also restrict the extent to which foreign policy controls could be applied to the overseas subsidiaries of US companies.

5 The situation in Congress however remains fluid. Very different Bills are likely to emerge from the Senate and the House of Representatives; and a conference between the two Houses, probably in September, may well fail to resolve the differences before the present EAA expires at the end of September. In that case, the most likely outcome will be a simple extension of the present Act, with its extraterritorial features.

6 Your talks with Mr Shultz suggest that the Administration may be showing flexibility on the issue of retroactivity, but there is little sign of give, at least in the operative sections of the Bill, on the central point of extraterritorial application.

7 The Prime Minister said in her Press Conference at Williamsburg that if the EAA were not amended, we should have to consider carefully what we should do; and she recalled the fact that we had invoked the PTI Act last year in the Siberian pipeline case. Since then we have given further evidence of our determination to safeguard our interests by taking action under the PTI Act in the aviation anti-trust case. The view of our Embassy now is that it is not necessary, and could be counter-productive in our efforts to influence Congress, to be more explicit at this stage about using the PTI Act against the EAA.

8 In the circumstances, I see advantage in postponing a decision on the use of the PTI Act until after the holidays if we can. It will be much clearer by September whether the EAA is likely to be amended, and if so how. There is always the outside chance of developments which would require urgent Ministerial attention in August. But failing this, I would propose to bring before colleagues in September my assessment of the situation and suggestions as to how we respond.

9 I am sending copies of this to the Prime Minister, the Chancellor of the Exchequer, the Secretary of State for Defence, the Attorney General, other colleagues on OD and to Sir Robert Armstrong.

Yours Ed.,

Ed

USA : Visit of Prie President Bush
UK

June '87

Foreign and Commonwealth Office

London SW1A 2AH

*From The Minister of State*
Rt Hon Timothy Raison MP

9 August 1983

Dear Cecil

RENEWAL OF THE UNITED STATES EXPORT ADMINISTRATION ACT

Thank you for your letter of 3 August to Geoffrey Howe, who is on leave at present. Our officials have been closely in touch on this issue. I entirely agree with the line which you propose.

I am copying this letter to the recipients of yours.

Yours ever,

TIMOTHY RAISON

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*From the Secretary of State*

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The Rt Hon Francis Pym MC MP
Secretary of State for
Foreign and Commonwealth Affairs
Foreign and Commonwealth Office
Downing Street
London
SW1A 2AL

4 February 1983

Dear [illegible],

UNITED STATES TRADE CONTROLS: EXTRATERRITORIALITY

I am writing about our strategy to counter the United States claims to apply their controls on international trade and financial transactions extraterritorially.

In his despatch on "The Siberian Pipeline: Lessons for the Future", Sir Oliver Wright said:

> ".... when we see trouble brewing we .... must explain our concerns quickly and clearly to a wide audience .... We must not soft pedal as we .... have tended to do in the past .... we must be prepared to lobby loudly and informally and early in the process ....".

The need now arsies to put these principles into practice. The United States Export Administration Act, one of the principal United States domestic enabling powers, expires on 30 September and the renewal processes are starting in the United States Congress. Officials from our Departments, headed by one of my Deputy Secretaries and your Legal Adviser, have recently renewed discussions in Washington with senior officials in the Administration; and I have reviewed our strategy following their report.

Our first objective should be to have the revised United States Export Administration Act amended so as to remove the claim to extraterritorial jurisdiction. We must take all opportunities to put the arguments robustly to members of the United States Administration and of the Congress. I hope that colleagues will use any opportunity which presents itself for this: we will be glad to arrange for briefing.

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*From the Secretary of State*

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My officials are working with yours on a restatement of our position aimed to influence the renewal process in the Congress. We are urging other countries, both those affected last year by the Pipeline and others, such as Canada and Australia, who like us have a history of opposition to United States extra-territoriality, similarly to express their concerns. And we are encouraging representation from the European Community. Industry in the United States has strong concerns about the Act, particularly about the "trigger-happy" way in which this United States Administration and the previous one have resorted increasingly to using economic controls for foreign policy purposes; their concerns, while not identical to ours, overlap because subsidiaries of United States companies in our countries find it very troublesome to be caught between conflicting policies and laws.

A second objective is that the Administration should, as we have pressed them to do, remove the controls which now harm British companies which are United States subsidiaries: preventing or restricting trade with a number of countries (Cuba, Vietnam, Kampuchea, North Korea); and inhibiting their trade with the wealthy Arab countries, because of the United States regulations to counter the Arab Boycott. The complete failure by the United States side to respond in the recent talks to this practical request which we tabled fifteen months ago is a measure of their failure to tackle this matter with sufficient recognition of our objection to these intrustions on our sovereignty. I am pleased that you will be raising this with Vice President Bush. You will see that I have minuted the Prime Minister asking that she should herself underline our concern to him.

It is nonetheless apparent that there will be many voices in Washington, both in the Administration and in the Congress, against limiting the extraterritorial reach of the Export Administration Act. Moreover, this reach is also embodied in other United States statutes. During the coming weeks we need to establish that it is our purpose to resist any future extra-territorial exercise of these powers. Just as the United States may continue to make this claim of policy and law, so our policy and law rejects it. Unless and until we reach a better understanding on the matter, the use of the Protection of Trading Interests Act powers to resist United States encroachments needs to become the expected this.

We need to make it absolutely clear that we are no longer prepared to wait until the American Administration has inflicted damage on our companies, but that we will take measures in advance designed to head off such damage. We now need therefore to develop a more explicit statement of the counter-action we propose to take; and to put this to the United States at the time and in he way most likely to influence favourably the terms in which the United State Act is renewed. And if we fail to achieve

*From the Secretary of State*

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our objectives, and have to make use of the powers to protect our companies, the Administration and the Congress will have been fully forewarned.

I propose that we should decide now that, if the Export Administration Act (EEA) is not amended so that the powers cannot be applied extraterritorially, we should promptly make an Order under Section 1(1) of the PTI Act. This would specify that the extraterritorial application fo the EEA and other comparable United States laws and/or regulations made, or to be made, thereunder are damaging or would threaten to damage our trading interests. This could be accompanied by an Order under Section 1(2) of the Act, requiring persons carrying on business in the United Kingdom who are affected by such applications of the United States laws to notify me of this. At a later stage, we could proceed to a general Direction under Section 1(3), requiring such persons not to comply with the United States measures.

Such a Direction could be used in relation to existing United States measures of the kind I have referred to earlier which affect our trade, unless the Administration expresses itself willing to remove the extraterritorial aspects of these measures, as far as their discretion under statute permits.

I have also asked my officials to examine with yours whether it would be possible to make a general Direction under Section 1(3) in relation to future use of the United States enabling powers (both the EA Act and other similar powers) to apply controls to such companies. The great advantage of this would be that it would hold the line, legally and politically, in advance. Thus in a politically sensitive case, where we shared United States broad objectives but doubted or opposed their intention to employ economic sanctions, we would not face the choice between divisive objection and inaction in defence of our own interests.

I suggest that our officials should now make early recommendations on the best options to pursue; and the tactics and timing of conveying to the United States how we expect to proceed.

I am sending copies to the Prime Minister, the Chancellor of the Exchequer, the Secretary of State for Defence, the Secretary of State for Industry, the Attorney General, other colleagues on OD and to Sir Robert Armstrong.

LORD COCKFIELD