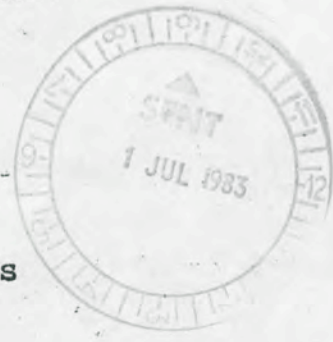


IMMEDIATE

PS
PS/LADY YOUNG
PS/PUS
MR EVANS
MR ADAMS
MR AUST, Legal Advisers
MR FREELAND, Legal Advisers
ED/MAED (2)
ED/NAD
M. Gray/MAED
~~RESIDENT CLERK~~



PS/MR KING
MR LAZARUS, PUS
MR KNIGHTON
MR FORTNAM

DEPT OF
TRANSPORT

MR ROBERTS
MR SUNDERLAND
MR BECKETT(Solicitors)

DTI

MR COLES
MR GARDINER,

10 DOWNING ST

ATTORNEY
GENERAL'S OFFICE

IMMEDIATE

C O N F I D E N T I A L

DESKBY 010730Z

FM WASHINGTON 010228Z JUL 83

TO IMMEDIATE F C O

TELEGRAM NUMBER 1842 OF 1 JULY

Mr. Scholer.
OR 1/7.

LAKER: PTI ACT: COMMENT

1. THE AMERICANS ARE STILL CLEARLY ANXIOUS TO AVOID A BREAK. THEY ARE PREPARED TO LEAVE THE NON-AGREEMENT IN EXISTENCE IF THEY POSSIBLY CAN. THEY RETAIN THEIR STRONG FEELINGS ABOUT THE WAY IN WHICH THE PTI ORDER APPEARS TO COMPEL VIOLATIONS OF AMERICAN LAW AND TO OBSTRUCT THE JUSTICE DEPARTMENT IN THE ENFORCEMENT OF THAT LAW, EVEN ON AMERICAN TERRITORY. THEY ARE OF COURSE PILING ON THE AGONY AS WE COME UP AGAINST THEIR DEADLINE IN ORDER TO SQUEEZE AS MUCH OUT OF US AS THEY CAN. WE NOW KNOW WHERE THEIR CHIEF CONCERNS LAY, BOTH OF PRINCIPLE AND OF PRACTICE. WE HAVE ALREADY GONE A LONG WAY TO MEET THEM WITHIN THE CONSTRAINTS IMPOSED BY THE NEED TO MAINTAIN OUR POSITION BEFORE THE COURT OF APPEAL AND BY A POSSIBLE ARBITRATION. WITHIN THOSE CONSTRAINTS, IT MAY NOT BE POSSIBLE TO CLOSE THE GAP SUFFICIENTLY TO SAVE THE NON-PAPER.

2. NEVERTHELESS WE RECOMMEND THAT OUR OFFER TOMORROW SHOULD GO NO FURTHER THAN THE FOLLOWING:

(A) SCOPE OF SECTION 1 DIRECTION:

WE SHOULD PROCEED AS PROPOSED IN PARA 3(A) OF YOUR TELNO 1081. WE SHALL NEED TO SHOW THE AMERICANS A TEXT, AS PROPOSED IN YOUR PARAGRAPH 5.

(B) COMMERCIAL INFORMATION HELD IN THE US BY US AIRLINES.

(D) COMMERCIAL INFORMATION HELD IN THE US BY US AIRLINES.
WE SHOULD REST WITH THE PROPOSAL IN PARA 4 OF YOUR TELNO 1076, AS
AMPLIFIED BY PARA 3(B) OF YOUR TELNO 1081. WE BELIEVE THIS SHOULD
SATISFY THE AMERICANS.

(:) COMMERCIAL INFORMATION HELD BY UK PERSONS IN THE USA.
THIS PRESENTS PROCEDURAL DIFFICULTIES. WE COULD OFFER TO DRAW
UP A LIST OF UK EMPLOYEES OF BA IN THE US WITH KNOWLEDGE OF TARIFF
DISCUSSIONS RELEVANT TO LEG 1, AND ISSUE SPECIFIC CONSENTS FOR EACH
OF THEM; OR WE COULD TELL THE AMERICANS THAT WE WOULD INVIDE BA TO
TELL US WHENEVER THEIR UK EMPLOYEES HERE RECEIVED A SOBPOENA, SO
THAT WE COULD PROVIDE THE NECESSARY CONSENT. THE AMERICANS MAY STILL
REGARD THIS AS AN UNACCEPTABLE CONSTRAINT ON THEIR LAW ENFORCEMENT
PROCEDURES; BUT MIGHT ACCEPT IT IF THEY WANT A SETTLEMENT. WITH
THIS REFINEMENT WE WOULD PROPOSE RESTING WITH THE PROPOSAL IN PARA
5 OF YOUR TELNO 1076.

(D) COMMERCIAL INFORMATION IN THE UK.
IF THE AMERICANS ARE RIGHT IN SAYING THAT THEY HAVE NO LEGAL POWER
TO REQUIRE TESTIMONY FROM INDIVIDUALS OUTSIDE AMERICA OTHER THAN
THEIR OWN NATIONALS AND RESIDENTS, THEIR REQUESTS PRESUMABLY CANNOT
BE TREATED AS REQUIREMENTS WITHIN THE MEANING OF SECTION 2(5) OF
THE PTI ACT. THEY WOULD NEED SOME FORMAL CONFIRMATION OF THIS,
PERHAPS IN THE FORM OF A LETTER. I ASSUME THAT WE WOULD NOT WISH
THEM TO PUBLISH IT, BUT THEY COULD REFER TO THEIR UNDERSTANDING
OF THE SCOPE OF THE PTI DIRECTION IN ANY REQUESTS THEY ADDRESS TO
INDIVIDUALS.

3. THESE CLARIFICATIONS MAY NOT BE SUFFICIENT TO DETER THE AMERICANS
FROM OVERTHROWING THE NON-PAPER. IF THEY LOOK LIKE DOING SO, STEVENS
WOULD - IF YOU AGREE - SAY THAT, IN AN ISSUE OF THIS IMPORTANCE, IT
WOULD BE QUITE WRONG FOR OUR UNDERSTANDING'S TO COLLAPSE AT OFFICIAL
LEVEL WITHOUT TAKING ADVANTAGE OF THE EARLY OPPORTUNITY FOR A PROPER
DISCUSSION AT POLITICAL LEVEL WHICH WILL OCCUR WHEN YOU MEET MR
SHULTZ ON 5 JULY. HE WOULD SAY THAT WE WOULD FIND IT HARD TO UNDER-
STAND IF THE AMERICANS TOOK ANY IRREVOCABLE STEPS BEFORE THEN. THIS
WOULD AT LEAST SERVE TO KEEP THE AMERICANS TALKING, AS WE HAVE
SUCCESSFULLY DONE SO FAR.

FCO ADVANCE:

FCO: EVANS, ADAMS, GRAY, CHASE, AUST

DTI: ROBERTS, BECKETT, SUNDERLAND

DTP: KNIGHTON, FORTNAM

LAW OFFICERS DEPT: GARDINER

WRIGHT