BRITISH EMBASSY
WASHINGTON, D C
TELEPHONE: (202) 462-1340

FROM THE AMBASSADOR

9 May 1983

The Honorable
Clement J Zablocki
Chairman
House Committee on Foreign Affairs
2183 Rayburn House Office Bldg
WASHINGTON DC 20515

Dear Mr Zablocki,

I am writing to you about the Export Administration Act of 1979, and the various proposals for amending it which now lie before Congress.

This is an issue on which the British Government, and many other Governments allied to the United States feel strongly. I believe it is important that none of us should be in any doubt about the reasons for this. There are two aspects to the problem. The first concerns the foreign policy objectives of the allied governments. The second concerns the way in which these should be implemented, and the responsibilities of individual allied governments for ensuring that our common aims are pursued effectively.

I do not think that there can be any doubt that the British Government, and the other European allies, fully share the broad democratic aspirations of the United States, and the need to support our common defences against the actions of our potential adversaries. In particular, the British Government are at one with the United States on the need to prevent goods and technology of real strategic significance from falling into the hands of our potential adversaries. The British Government have an excellent record of enforcing commonly agreed strategic controls, and are currently participating fully with the United States and other allies, in COCOM and elsewhere, in a common search for improvements in the agreed systems of strategic controls.

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But if our common front against our potential adversaries is to be sustained, it is vital that we maintain the cohesion as well as the effectiveness of the Western alliance. This means that decisions which affect us all have to be taken on the basis of consent. In an alliance of democratic and sovereign nations there can be no question of one ally imposing its will upon another. This entails genuine consultation between the allies: and consultation inevitably means compromise and give and take.

Once policies have been agreed between the allies, it is for each of us to ensure that they are carried out by our own nationals and on our own territory. In the view of the British Government any controls effective in the United Kingdom must be imposed only by the British Government itself. And the enforcement of any such controls in the United Kingdom, whether under British policy or under policies agreed with Britain's allies, is similarly a matter for the British authorities. These are fundamental issues of sovereignty, directly affecting domestic interests, and they would be so regarded by any British Government.

The British Prime Minister and her colleagues have expressed their concern about these issues on a number of occasions both in public, and privately to the most senior members of the United States Administration. Thus Mrs Thatcher said in the House of Commons on 1 July 1982 that the British took what happened in the pipeline case very seriously. On the issue of contracts she added "The question is whether one very powerful nation can prevent existing contracts from being fulfilled. It is wrong that it should prevent these contracts from being fulfilled. It is also ultimately harmful to American interests ...". The Foreign and Commonwealth Secretary, Mr Pym, remarked last November that the consultations amongst the allies which preceded the dispute over the Siberian pipeline were not what they ought to have been. We recently told the American Chamber of Commerce in London that the "pipeline dispute showed how the application of extraterritorial legislation has profound disruptive effects, which cause serious damage to the companies and institutions involved and to the West as a whole. The pipeline dispute itself benefitted only the Russians". On 25 April 1983 he remarked that it would be unfortunate if the American Administration did not soften the impact of the new Export Administration Act, and commented that all the Europeans had made representations accordingly to the United States. The Minister of Trade, Mr Rees, told a meeting at the House of Commons on 14 April that legislation permitting the President "to impose export controls on companies registered and operating wholly outside of US jurisdiction ... is not only a clear infringement of the sovereignty of foreign nations, it is damaging to their industry and, indeed, to American industry. There can be no justification

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for this assertion of extraterritorial jurisdiction to which, so far as I know, no other country lays claim ... in the coming months we will continue to put our case forcibly, as will the European Community generally ... I hope that a sounder judgement will prevail and that we can avoid an escalating dispute".

I have taken the liberty of bringing these public statements to your attention in order to illustrate the extent of the concern which Ministers in Britain feel, and their desire to ensure that the new legislation now before Congress does not perpetuate a situation which could provide the occasion for another damaging dispute within the Alliance which could only benefit our adversaries.

The detailed objections of the British Government to the issues embodied in the Export Administration Act have been set out on a number of occasions in writing, most notably in a Note of 8 March 1983 which the Department of State undertook to convey to Congress. The European Community has also put in Notes dated 11 March and 28 April. I assume that these documents are available to you. However for convenience I will summarise the main detailed points at issue.

The Bill now before Congress leaves intact the provisions for extraterritorial jurisdiction which were present in the 1979 Act. The provision in the statement of policy that it is the intention of the United States to minimise the impact of foreign policy controls on allied or friendly countries is not matched by changes in the operative sections of the Act.

The new Bill continues to purport to apply to the subsidiaries of US companies abroad. It is the firm view of Her Majesty's Government that companies incorporated and operating in the United Kingdom must conform to the laws and policies of the United Kingdom. Such "national treatment" has indeed been a policy objective of successive United States Governments, who have objected to the imposition by foreign governments of discriminatory measures against US companies operating on their territories. It is not acceptable that the United States Government should seek to affect the operations of such companies in the United Kingdom directly, and without the agreement of Her Majesty's Government. I have little doubt that no US Administration, nor the United States Congress, nor the United States Courts, would entertain any claim by a foreign government to control the operations of foreign subsidiaries in the United States, even for good reasons of foreign policy and national security.

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The British Government has objected and does object to the assertion of United States control over goods and technology that have already legally left the United States, and been properly paid for. It is not acceptable that the United States Administration should attempt retrospectively to change the terms under which transactions have been made in order to make them illegal in response to some new development in the foreign policy of the United States.

I recognise that the provision in the new Bill for limited contract sanctity is an improvement on the previous Act. But the period of 270 days proposed, while appropriate for trade in commodities such as grain, is unlikely to be very significant in most transactions involving industrial goods. And the draft provides for this provision to be overridden at the discretion of the Administration.

The new draft also makes a new provision, which would empower the Administration to impose an import ban in punishment of "whoever" violates a US national security control. It is not clear whether this provision is intended to apply to countries or only to companies. Its application in practice would probably be contrary to the General Agreement on Trade and Tariffs to which both the United Kingdom and the United States are signatories. It would be as damaging to normal commercial relationships as an export ban. Insofar as it has been suggested that the use of an import ban should be restricted to foreign companies violating agreed Allied security controls, such as those which have been set up under COCOM, it would in addition usurp the enforcement responsibility of other Allied Governments who have undertaken to apply common policies in this area. It would not be acceptable to the British Government for a US sanction to be applied to a British company which had allegedly violated the rules of COCOM: that would be exclusively the responsibility of the British Government.

I would be happy to pursue these matters with you personally, should you so wish.

Oliver Wright

CONFIDENTIAL

FROM WASHINGTON 281950Z APR 83.
TO PRIORITY F C O
TELEGRAM NUMBER 1154 OF 28 APRIL
INFO PRIORITY BONN, PARIS, ROME, TOKYO, OTTAWA, UKREP BRUSSELS.

MY TELEGRAM NO 933: EXPORT ADMINISTRATION ACT: WILLIAMSBURG.

1. JOHN RAY (DEPUTY ASSISTANT SECRETARY, USTR'S OFFICE) HAS TOLD THE COMMERCIAL MINISTER THAT JUDGE CLARK AND OTHER WHITE HOUSE STAFF ARE ADVISING THE PRESIDENT THAT REPORTS OF EUROPEAN CONCERN FROM THE STATE DEPARTMENT AND OTHERS ARE EXAGGERATED, AND THAT THIS CONCERN IS NOT SHARED AT THE HIGHEST POLITICAL LEVELS IN EUROPE. HE THINKS IT NECESSARY FOR THE EUROPEAN VIEW TO BE EXPRESSED DIRECTLY TO THE PRESIDENT AT WILLIAMSBURG, IF IT IS NOT TO BE SWEPT ASIDE, WITH THE RISK OF SUBSEQUENT MISUNDERSTANDINGS. HIS CONFIDENCE SHOULD OF COURSE BE FULLY RESPECTED.

2. THE USTR, BROCK AND HIS PEOPLE ARE MUCH OPPOSED TO THE NEW DRAFT ACT: THEY ARE GRINDING THEIR OWN AXE. BUT RAY'S STORY FINDS SOME CONFIRMATION IN TODAY'S WASHINGTON POST, WHICH GIVES A PLAUSIBLE ACCOUNT (DOUBTLESS REFLECTING WHITE HOUSE BRIEFING) OF HOW CLARK, ASSISTED BY BRADY (COMMERCE) AND PERLE (DEFENSE) SUCCEEDED IN FORCING A STRONGER TEXT THROUGH A RELUCTANT BUREAUCRACY. THE POST ARTICLE CONCLUDES QUOTE CLARK KNOWS THAT TEMPORISING ON THE TRADE ISSUE OR ACCEPTING GUTTING AMENDMENTS WOULD WEAKEN REAGAN'S HAND AT THE FORTHCOMING WILLIAMSBURG ECONOMIC SUMMIT. ..... IT WOULD ALSO MAKE THE PRESIDENT LOOK FOOLISH IN THE LIGHT OF HIS USE OF SANCTIONS AGAINST US ALLIES TO HAMPER THE SIBERIAN GAS PIPELINE, AND HIS DEMAND FOR ALLIED CONCESSIONS IN RETURN FOR LIFTING THOSE SANCTIONS UNQUOTE.

3. YOU AND YOUR COLLEAGUES HAVE ALREADY MADE OUR VIEWS PLAIN IN PUBLIC. OUR EUROPEAN ALLIES ALSO SEEM AT LAST TO BE ON THE MOVE. THE COMMUNITY'S LATEST NOTE IS TO BE PRESENTED TOMORROW. THE STATE DEPARTMENT IS DUE, AT SENATOR HEINZ'S REQUEST, SHORTLY TO GIVE HIM A PAPER SETTING OUT THE REACTIONS OF AMERICA'S ALLIES TO EXPORT CONTROLS. WE ARE SEEKING TO ENSURE THAT THIS PAPER IS

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4. SO THE AMERICANS HAVE NO EXCUSE FOR NOT KNOWING WHAT WE ALL THINK. BUT THE PRESIDENT'S MEN STILL SEEM DETERMINED TO OBFUSCATE. IF THEY ARE NOT DOING BETTER BY WILLIAMSBURG, IT MAY STILL BE NECESSARY FOR THE PRIME MINISTER TO HAVE A FIRM WORD WITH MR REAGAN.

ADVANCES: PS/SIR R ARMSTRONG
BULLARD, EVANS, J C THOMAS (FCO)
LITTLER (TREASURY)
KNIGHTON, SUNDERLAND (DOT)

WRIGHT