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Foreign and Commonwealth Office
London SW1

3 January 1980

David

BP/BNOC CRUDE OIL SALES

Thank you for your letter of 21 December. I appreciate that you will now wish to get on quickly with the negotiation of the new supply arrangements. We are agreed on most of the ground to be covered, including ring fencing, and I see no reason why detailed work should not proceed in those areas. We might put down on paper precisely how the clawback provisions could be drafted to minimise the EEC risks and to build on the helpful suggestions in points (i) and (ii) of your letter. I also welcome your offer of consultations, which would certainly be necessary if we were to envisage the exercise of clawback in a particular case; but I should like to reserve judgement on whether we should take such powers at all until we have had a chance to discuss the matter further.

I understand that we shall be considering in OD(E) on 16 January the energy aspects of the follow-up to the Dublin Council. The outstanding questions on clawback might usefully be considered at the same time. As you know, our partners consider that we should do more to help them in periods of tight supply, and seven of them agreed to a statement to that
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The Rt Hon David Howell MP
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effect in the minutes of the last Energy Council. Although we wish to avoid linkage between energy and the budget negotiations, we may find ourselves under continuing pressure to do something in this field. I imagine that this is one of the questions that you will be covering in your paper for OD(E) and I do not want to anticipate the discussion at this stage. But a proposal that we should now take powers to divert oil from our partners in such a situation must clearly be looked at in this wider political context, and I remain concerned about the danger of a leak.

More narrowly, it seems generally agreed that the only argument in favour of making provision for clawback is that it offers what you describe as a substantial potential contribution to our security of supply of up to 5 million tonnes per year at peak. How much of this potential benefit do you think might realistically be expected from measures, such as those suggested in your letter, which, while possibly leaving BP open to challenge under Articles 85 or 86 of the Treaty, seem not to restrict exports to other EEC countries? If the answer is a substantial amount, should we not content ourselves with that, and draft the agreement accordingly? If the answer is not very much, we are back in the position addressed in my letter of 18 December: clawback would involve restrictions on exports to our partners; our legal advice is that it could not be saved if it were so exercised and legally challenged; politically, it seems very probable that such an action would provoke legal challenge; and there is a danger that the challenge, once initiated, would go wider and take in other legally vulnerable aspects of the arrangements between BP and BNOC. The risk, which you qualify as residual, may be so in the sense that it would only materialise if clawback were exercised; but this is precisely the situation with which we are concerned. The risk is a substantial one and it remains in my view probable that the exercise of clawback in circumstances which restricted supplies of oil to our partners, would undermine rather than strengthen our overall security of supply.

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I am sending copies of this letter to the Prime Minister, all members of OD(E), the Lord Advocate and Sir Robert Armstrong.

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