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Secretary of State for Trade and Industry

DEPARTMENT OF TRADE AND INDUSTRY  
1-19 VICTORIA STREET  
LONDON SW1H 0ET  
TELEPHONE DIRECT LINE 01-215 5422  
SWITCHBOARD 01-215 7877

*DTI have asked for this letter to be suspended  
20/2/85*

27 February 1985

CONFIDENTIAL

Charles Powell Esq  
Private Secretary to the  
Prime Minister  
10 Downing Street  
London SW1

*Prime Minister  
A much smaller liability to  
HMGC than we feared.*

Dear Charles,

*But when the news of  
the company's liquidation becomes  
public, it may be treated by the  
Opposition as you sacrificing British  
jobs to earn President Reagan's  
favour.*

TRANSFER OF CARBON-CARBON TECHNOLOGY TO THE USSR: CONSARC ENGINEERING LIMITED

*Jarrow.  
CDP  
27/2*

The Prime Minister will wish to be aware of developments following Ministers' decision on 8 February to amend the Export of Goods (Control) Order to prohibit the export of the Carbon-Carbon manufacturing equipment remaining at Consarc's factory near Glasgow.

THE ECGD POSITION

2 It emerged last week, when the details of the company's own contracts became available to ECGD, that their liability to Consarc is much more limited than had been thought at the time of the Prime Minister's meeting. The effect of Consarc's contract with the Russians (which from the seller's point of view is extremely weak) read together with the ECGD guarantee is that ECGD is liable only for 90 per cent of the value of the goods which have been prevented from being shipped (because of denial of export licences) - some £400,000; and not 90 per cent of the entire contract value (some £7 million). The company has been informed.

EXPORT LICENCES

3 These have been refused and the company has been informed.

THE COMPANY'S POSITION

4 In the light of this information, the company has been advised by its lawyers that it cannot continue to trade. It originally told us that, unless we can agree today (27 February) to indemnify it, it will apply to the Court tomorrow (28 February) to appoint a Liquidator; and will issue a press





release. (It has subsequently told us that it will postpone a decision whether to apply for a liquidator until tomorrow evening). Officials have told the company, on the instruction of Ministers, that the relevant legislation does not provide for compensation and that it is the Department's long-standing practice not to compensate exporters for the effects of imposing export licence controls. A meeting in London between officials and the company has been arranged for tomorrow. If the company then argues that there are special grounds in this case why compensation should ~~not~~ be paid, officials will put them urgently to Ministers.

#### COMPENSATION

5 My Secretary of State has had legal advice that no legal liability should arise from the advice which the Department gave in 1982 that the goods were not subject to export licensing. The bare possibility of such liability cannot be completely excluded, since the company might argue that the Department's advice did not explicitly state that the law at the time might be amended at a future date. This slight possibility would justify an ex gratia payment, but against this must be set the fact that the company has conceded that it knew that the law could in fact be changed. There is otherwise no legal liability attaching to the actions of the Department. Quite apart from our legal liability, we expect the company to argue that we have a moral obligation to it on the basis that the decision was particularly intended to frustrate the export of the goods in this case and that the consequences fell unexpectedly heavily on this company. But to accept this argument would go against previous policy and would be difficult to distinguish from other cases. My Secretary of State will, however, consider what the company says about the question of possible compensation, or the liability of ECGD, in the light of the meeting with the company tomorrow. But there is a fair prospect, on the facts as we now know them, that there will be no case justifying an ex gratia payment, and the company will very soon go into liquidation, with the loss of about 75 jobs.

#### PUBLICITY

6 We must assume that this case will become public knowledge very shortly, whether or not the company apply for the appointment of a Liquidator. Suitable briefing is being prepared for the Prime Minister's Questions tomorrow.

7 I shall send you a further report as soon as possible answering the questions the Prime Minister asked at the meeting about the handling of this matter.





8 I am sending copies of this letter to Len Appleyard (Foreign and Commonwealth Office), Richard Mottram (Defence), Rachel Lomax (Treasury), John Graham (Scottish Office) and Richard Hatfield (Cabinet Office).

*Yours ever,*

*M C McCarthy*

M C McCARTHY  
Private Secretary

Saw willow  
Exports



CONDOR