

30 APR 1986

cc PS/Secretary of State (B&L)
 PS/Mr Bloomfield
 Mr Fell
 Mr McAllister ✓
 Mr Mayne
 Mr Bell - SIL
 Mr Gowdy
 Mr Hill - SIL
 Mr Dewberry
 Mr McCartney

PS/Dr Boyson (B&L)

MacBRIDE PRINCIPLES

1. In February 1986 Dr Boyson approved a summary of the Government's views on the MacBride Principles. (Copy at Tab A). This followed a request for a statement of the Government's view by American Brands (Gallahers) who were seeking the support of the US Securities and Exchange Commission in resisting a proposed shareholder resolution requiring the company's adherence to the Principles in respect of its operations in Northern Ireland. The Summary was forwarded to the company by the IDB.
2. The American Brands case was that the proposed shareholder resolution would require the company or its subsidiaries to violate the law of Northern Ireland. Under Securities and Exchange Commission rules a shareholder proposal can be excluded if the proposal would require violation of US law or "any law of any foreign jurisdiction" to which the company is subject. After some deliberation the Commission indicated to American Brands that it could exclude the resolution on the MacBride Principles.
3. However, the proposer of the shareholder resolution (the New York City Employees Retirement System - in effect Comptroller Goldin) has now lodged an application with the US District Court in New York for a judicial review of the SEC decision. The application for review is supported by a number of affidavits including a legal opinion from Mr Peter Archer QC MP to the effect that the MacBride Principles could be implemented in a manner which would not conflict with Northern Ireland law. A further affidavit from Dr C McCrudden, who is a member of the Standing Advisory Commission on Human Rights, expresses the same opinion. These views conflict with American Brands own legal advice and the views of the Fair Employment Agency.

4. Against this background American Brands has now asked for an affidavit confirming that the summary which the IDB forwarded to them in February 1986 does in fact represent the British Government's views on the MacBride Principles. They have also asked for a letter from the Minister essentially to the same effect, apparently on the grounds that this would have presentational advantages. The company does not anticipate oral testimony being required but this cannot be ruled out altogether. The UK Chairman of Gallahers has asked that the affidavit be available by close of play today.
5. Mr Goldin's application for judicial review of the SEC ruling is an unwelcome development particularly if it results in a court ruling that the proposed shareholder resolution is acceptable, for this would amount to an official endorsement of the MacBride Principles as not conflicting with Northern Ireland law. Clearly this would make it more difficult for companies to resist shareholder resolutions and would impede our attempts to block State legislation promoting the MacBride Principles. Ultimately, however, the legality or otherwise of any action which a US company may take consequent on acceptance of the MacBride Principles can only be properly determined first by the FEA and thereafter by a Northern Ireland court.
6. For the present, however, officials consider that we must accede to American Brands request for an affidavit. We have taken legal advice on the matter and we consider that an affidavit signed by a senior official and sworn before the US Consul-General in Belfast would suffice. It appears that an Assistant Secretary would be regarded as a competent official for this purpose and accordingly I propose to sign an affidavit on the lines of the draft at Tab 2.
7. As regards a letter by the Minister, officials consider that we should seek to resist such direct ministerial involvement. It remains to be seen how the judicial review will be conducted and there must be a risk, however small, that once joined in the legal process the Minister could be drawn into the dispute to an unwelcome degree. This view is shared by officials in DED and NIO and by our legal adviser. If

American Brands come back with some convincing argument to the contrary we can always reconsider.

8. Dr Boyson is asked to note this development and the proposed line of action. We will keep in touch with American Brands and will advise the Minister of any significant developments.

R Wilson

R WILSON

28 April 1986

FAIR EMPLOYMENT IN NORTHERN IRELAND AND THE MACBRIDE PRINCIPLES

1. This note provides a summary of the British Government's views on the MacBride Principles, which are being canvassed by the Irish National Caucus and certain groups in the United States.
2. The British Government is totally committed to the promotion of equality of opportunity in employment in Northern Ireland and has taken positive steps to give effect to this policy, including the introduction of fair employment legislation - the Fair Employment (Northern Ireland) Act 1976. The guiding principles of the Northern Ireland law are equality of opportunity, no discrimination on religious or political grounds and recruitment solely on merit.
3. Enforcement of the law is in the hands of an independent statutory body, the Fair Employment Agency for Northern Ireland. Agency rulings are legally enforceable.
4. The British Government has repeatedly made clear its commitment to achieving further progress in fair employment in Northern Ireland and is always mindful of the need to continually review its own stance on this difficult issue. The Fair Employment Agency is to receive additional resources and officials have reported recently on how existing policies might be made more comprehensive, consistent and effective. The way forward is now being considered in the light of that report. In addition the Anglo-Irish Agreement of November 1985 provides for the Irish Government to put forward in the Intergovernmental Conference views and proposals on the role of the Fair Employment Agency and other bodies involved in this field.
5. In view of the progress already made in the provision of fair employment in Northern Ireland, the existing legal requirements and Government's determination to secure further progress, the British Government considers the MacBride Principles to be

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unnecessary and their adoption undesirable. The Fair Employment Agency, as the body responsible for enforcement of the law in this area, has indicated that whilst a number of the Principles are consistent with Northern Ireland law, others (in particular Principles 7 and 8 and, depending on the manner of implementation, possibly Principle 1) are objectionable as requiring preferential and discriminatory treatment, and companies operating such principles would be held to be acting unlawfully.

6. To seek to superimpose the MacBride Principles on existing fair employment law in Northern Ireland therefore would create confusion and make difficulties for companies operating there. The Government is concerned that attempts to compel US firms to apply the MacBride Principles will damage the climate for badly needed US investment in Northern Ireland. In doing so they threaten to reduce employment opportunities for Catholic and Protestant alike. What Northern Ireland needs are more jobs, not a confusing variety of rules.
7. In May 1985, the Irish Prime Minister, Dr Fitzgerald, indicated that there was a campaign under way aimed at discouraging American investment in Northern Ireland and that those pursuing the campaign were inflicting "a grave injustice on both communities, nationalist and unionist." Similarly, the Deputy Prime Minister of the Irish Republic, Mr Spring, in a reference to what he described as the campaign "to force American money to be withdrawn from any firms operating here in which discrimination against the minority population is alleged to exist", expressed the view that "there are those who have a vested interest in seeing the total destruction of society in Northern Ireland and their campaign may be designed at depriving the people of Northern Ireland of much needed investment rather than any concern about discrimination."

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8. Pressure for adoption of the MacBride Principles also obscures the progress already made in fair employment in Northern Ireland and distorts the record of American firms located there. In his statement of 15 November 1985 welcoming the Anglo-Irish Agreement, President Reagan, said, "I am proud that Northern Ireland enterprises in which American money is involved are among the most progressive in promoting equal opportunity for all."

DRAFT FOR DISCUSSION

1. I Reginald Wilson of aged 18 years and upwards am an Assistant Secretary in the Department of Economic Development ("The Department") and am authorised to make this affidavit.
2. The Department is a department of the Crown in Northern Ireland.
3. The Industrial Development Board of Northern Ireland ("The IDB") is by virtue of the Industrial Development (Northern Ireland) Order 1982 a part of the Department of Economic Development.
4. By a letter dated 18 February 1986 and signed by Mr B W Musgrave the IDB furnished to Miss Louise Kendall of Messrs Herbert Smith & Company Solicitors of Watling House 35-37 Cannon Street London a note setting out the views of the British Government on the MacBride Principles. I beg to refer to the copy of the letter and note exhibited hereto and marked RW1 and 2 respectively.
5. I am authorised by the Department to confirm that the said note marked RW2 contains the views of the British Government on the MacBride Principles.

CIRCULATION

Mr Fell
 Mr McAllister
 Mr Mayne
 Mr Bell - SIL-F
 Mr Gowdy
 Mr Hill - SIL-F
 Mr Dewberry - F.
 Mr McCartney

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

----- x
 THE NEW YORK CITY EMPLOYEES'
 RETIREMENT SYSTEM,

Plaintiff,

-against-

AMERICAN BRANDS, INC.,

Defendant.
 ----- x

86 Civ. 3188 (RLC)

AFFIDAVIT IN
 OPPOSITION TO
 MOTION FOR PRELIMINARY
 INJUNCTION

UNITED KINGDOM OF GREAT BRITAIN AND
 NORTHERN IRELAND)

COUNTY OF THE CITY OF BELFAST)

CONSULATE GENERAL OF THE UNITED)
 STATES OF AMERICA)

ss.:

REGINALD WILSON, being duly sworn, states as follows:

1. I am an Assistant Secretary in the Department of Economic Development ("the Department") and am authorised to make this affidavit. My duties include the administration of matters relating to fair employment in pursuance of the functions conferred on the Department under the Fair Employment (Northern Ireland) Act 1976 ("the Act").
2. The Department is a department of Her Majesty's Government in Northern Ireland. The Department was formerly known as the Department of Manpower Services for Northern Ireland, and the Guide to Manpower Policy and Practice was published by it under the Act.
3. The Industrial Development Board of Northern Ireland ("The IDB") is a corporate body which functions as a part of the Department by virtue of the Industrial Development (Northern Ireland) Order 1982. A copy of the said Order is annexed hereto and marked RW1.

4. By a letter dated 18 February 1986 and signed by Mr B W Musgrave the IDB furnished to Miss Louise Kendall of Messrs Herbert Smith & Company Solicitors of Watling House 35-37 Cannon Street London a note setting out certain views of Her Majesty's Government (referred to in the said note as "the British Government") on the MacBride Principles. I beg to refer to the copy of the letter and note annexed hereto and marked RW2 and 3 respectively.
5. I am authorised by the Department to confirm that the views expressed in the said note marked RW3 regarding the MacBride Principles are the views of Her Majesty's Government.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
CONSUL OF THE CITY OF LONDON
THE CONSUL OF THE UNITED STATES OF AMERICA

Reginald Wilson
REGINALD WILSON

Sworn to before me this
29th day of April 1986

Marc E. Norman
Official Authorised to Administer Oaths
Vice Consul of the United States of America

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Vice Consul of the
United States of America