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FROM J MCKERVILL
Security Policy & Operations Division
28 March 1990

cc PS/Minister of State (B&L)
PS/Mr Needham (B&L)
PS/PUS (B&L)
PS/Sir K Bloomfield
Mr Ledlie
Mr Burns
Mr Fell
Mr Wilson
Mr Alston
Mr Blackwell
Mr Dodds
Mr D J R Hill
Mr Daniell
Mr G McConnell
Mr Wolstencroft, DED
DARU

1. Mr Bell (see covering note 28/3/90)
2. PS/Secretary of State (B&L)

PETROL SMUGGLING

This submission is designed to report to the Secretary of State on the negotiations which have taken place with the Irish Side at official level on the subject of petrol smuggling and to make suggestions on how the matter should be further pursued.

2. As the Secretary of State will know a meeting of British and Irish officials took place in the Secretariat on 15 March. In addition to NIO and DED staff, HM Customs and Excise were represented on the British team in the person of the Belfast Collector. I fear the outcome of the meeting was disappointing to the extent that there was no reconciliation of the two sides' separate estimates of the extent of petrol smuggling. The Irish side still stand firm in their view that the amount of petrol smuggling lies somewhere in the range between IR £6m loss to the exchequer (3 million gallons smuggled per annum) and IR £11m (5.8m gallons) loss. This estimate is based on an extrapolation of various sightings of tankers near the border by Irish Revenue Commissioners (there is no certainty that the tankers contained petrol rather than some other oil product) a method of estimation,

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who reliability UK Customs and Excise officials treat with much scepticism. The British side's best estimate based on a detailed examination of supply figures by the NI oil industry, is that the level of smuggling is a maximum of 400,000 gallons per year. We are told that the Department of Economic Development's independent oil adviser believes that even this figure is on the high side.

HM Customs and Excise Involvement

3. There is very close co-operation between Customs officials north and south of the border. HM Customs and Excise in Northern Ireland have been assisting their colleagues in the Republic on the smuggling of hydrocarbon oils for the past nine months. In a response to a request from the special investigation unit in Dublin, they carried out an assessment 4-6 months ago which indicated that the main oil products being smuggled were gas, oil and kerosene - petrol smuggling was not a major factor.

4. Prior to the meeting in the Secretariat, the Belfast Collector attended, on 9 March, a meeting with Irish Customs Authorities when he undertook, under the terms of the Naples Convention, to assist in a petrol investigation and he has asked his counterparts for full information. This investigation should, we believe, provide the best estimate of the scale of the petrol smuggling problem. While the investigation could take several months, the Collector believes there should be early indications of the outcome in a month's time.

Irish Timetable Problems

5. At the last Anglo-Irish Conference meeting Irish Ministers informed the British side of their wish to include in their Finance Bill provisions covering possession of marked petrol. After enactment the Irish envisage that regulations would need to be drafted to implement the scheme. The Irish hope to introduce the Bill into the Dail at the end of March and consequently the end of April would probably be the last chance to insert a clause. The Irish are therefore anxious to reach an agreed position no later than the end of next month and have expressed some concern about the timescale of the Customs Authorities' investigations.

Need for GB Legislation

6. It has now become apparent that legislation may also be needed in the UK to give effect to the marking of petrol by the oil companies in Northern Ireland. The NI oil companies, when the subject of marking was first raised with them, said that they would be willing to participate in a voluntary marking scheme. More recent discussions between DED and the NI oil industry have however indicated a greater unwillingness on the part of the oil companies to co-operate in a voluntary scheme; thus the likely need to legislate.

7. NIO(L) is currently pursuing with legal advisers what form of legislative vehicle would be required; bill, Order in Council or regulation. Apart from the provision directed to the oil companies that a marker should be injected there might well need to be a supporting regime of offences of attempting to remove the marker and diverting unmarked petrol (of which a certain amount would have to be left in to Northern Ireland for supply to legitimate outlets in the south) to unauthorised destinations. Further the identity of the marker, and possibly technical aspects of its application, might be prescribed in subordinate regulations.

8. Ministers could well find it awkward to present any legislation as being introduced in response to an Irish request. Parliament would find it strange that the Government was introducing complicated legislation which would give rise to a number of awkward practical consequences for the NI oil industry (even despite Irish undertakings to meet the costs) in order to increase the revenues of the Irish Government. This is particularly so, given that it is generally recognised in Customs circles that the onus to prevent smuggling of a commodity is normally on the importing country.

9. On the other hand, given that the Irish are prepared to pay for a marking scheme in Northern Ireland it is difficult for the NIO to refuse to help the Irish Government to prevent this type of smuggling when it is known that some of the proceeds of the activity must be going into paramilitary coffers. The judgment Ministers will have to make must be based on an estimate of the value of

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petrol smuggling to paramilitaries set against the political difficulties of passing legislation, the practical difficulties of enforcing it and the problems it will cause for the oil companies in Northern Ireland.

The Way Forward

10. Irish Ministers will undoubtedly raise this subject at the Conference Meeting on 19 April, given the urgency of their legislative timetable. The Secretary of State will need to be clear what he should say to his Irish counterparts at that meeting. It would appear that there are three options open to him:-

- (i) write to Ministerial colleagues now to get their agreement that we should accommodate the Irish in this matter;
- (ii) refuse to meet the Irish request on the grounds that they have not come up with evidence to substantiate their estimate of the extent of petrol smuggling and that on the basis of British estimates, it would be too politically difficult for the British Government to introduce legislation in Parliament;
- (iii) ask the Irish to delay introducing legislation until the results of the Customs investigation is known.

I recommend option (iii).

11. Adopting option (i) would clearly be a signal to the Irish Government that we are keen to help them on this matter. It is improbable that the Secretary of State could, in the time available to meet the Irish Finance Bill timetable, get agreement from his Cabinet colleagues to go for a marker scheme. More significantly however the Secretary of State would be presenting to his colleagues an incomplete case. Treasury Ministers would, I imagine, be reluctant to give approval to a marking scheme without first getting the results of the current Customs investigation which, we hope, can be taken by both sides as the best achievable

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estimate. And the Department of Energy would not wish to rock the boat with the oil companies until it was clearer about the extent of the petrol smuggling problem.

12. Given that the Secretary of State's predecessor told Irish Ministers in May last year that, in principle, the British Government was keen to help the Irish in this matter, it would be very difficult politically for the Secretary of State to say to the Irish that we will not introduce a marker scheme (option ii). If the Secretary of State were to do so, he would be pre-empting the current Customs investigation. That examination might show that the problem is not as great as to merit introducing a marker scheme and that a refusal might therefore be the only eventual option open to Ministers. But at the moment we are a long way off from that.

13. The Irish will not like option (iii) though their opposition to it will not be as great as to an outright refusal. Clearly the Finance Bill would be a convenient legislative vehicle for them, but it would not be the end of the world to delay introducing legislation. As Irish officials noted in the last but one Secretariat discussion, separate legislation is always possible. Moreover, even were we to agree to the introduction of provisions in the Irish Finance Bill, the actual introduction of a marker scheme in Northern Ireland would be a long way off. As the oil companies have made it abundantly clear from the start, they would wish to carry out rigorous testing of any marker which will take a considerable length of time. This delay would be compounded by the time needed to take legislation through Parliament.

14. Option (iii) could also be defended as the reasonable course to take. Despite repeated requests for the Irish to provide evidence to back up their claims of the amount of petrol smuggling activity, nothing has been forthcoming. Faced with this lack of evidence it is hard to see how the Irish (and the onus is very much on them to produce a case) can expect the Secretary of State to persuade his colleagues to sign up to a marker scheme. Against that background it is rather irritating to see the Irish now trying to force the Secretary of State's hand by imposing rigid and unrealistic deadlines.

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Conclusion and Recommendation

15. The Secretary of State is invited to note:-
- (i) the outcome of the meeting between British and Irish officials in the Secretariat on 15 March;
 - (ii) the investigation currently being carried out by Customs authorities north and south of the border under the Naples Convention;
 - (iii) the Irish legislative timetable problems;
 - (iv) the likely need for legislation in the UK Parliament to direct the oil companies to mark petrol in Northern Ireland:

and against that background to accept the recommendation

- that the Irish Government should be asked to delay the introduction of legislation until the results of the Customs investigation is known.

16. Officials stand ready to discuss should the Secretary of State so wish.

(signed)

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