Delivered April 8 by British
Chancellor of the Exchequer
Nigel Lawson to Treasury Secretary
James Baker

AIDE MEMOIRE

1. The UK Government has noted with concern the Breaux Amendment (Amendment No. 50) to the Competitive Banking Act of 1987 (S. 790) which was approved by the US Senate on 27 March 1987. The Amendment is included in Section 201 (1) and (2) of the Bill.

2. The UK Government has not yet fully analysed the practical implications of the Amendment for British banks with interests in the United States. However, the Amendment seems likely to cause our banks, and other foreign banks, considerable difficulties. In particular, it overrides carefully negotiated sections of the International Banking Act (IBA) of 1978.

3. The Amendment is in two parts. The first part appears, though vaguely worded, to restrict seriously, for the next year, the non-banking activities of certain foreign banks in the United States which, consistent with the past practice of grandfathering of domestic financial institutions, were extended limited grandfather privileges under Section 8 (c) of the IBA. Specifically, Section 201 (1) of the Senate Bill would require that such grandfathered banks "shall not expand any (non-bank) activity in which it is engaged . . . and no such bank or company shall commence any new such activity".

4. The second part of the Amendment may be considerably more far-reaching in its impact. Under current law (Section 2 (h) of the Bank Holding Company Act as amended by Section 8 (e) of the IBA), foreign banks whose business is largely conducted outside the US can buy shares in non-banks incorporated outside the US, if the activities of the non-bank business are not principally in the US. The protection provided by Section 8 (e) of the IBA was intended to limit the extra-territorial nature and reach of the bank holding company legislation, and of the

regulatory arm of the Federal Government. It did not, however, permit foreign banks to engage in any way in financial activities in the United States that are impermissible to US banking organisations. The effect of the Breaux Amendment would be to override the IBA provisions: for a period of one year, foreign banks would not be able to purchase any additional shares in non-banks outside the United States, if the latter have any US activities.

5. The concept of a one-year moratorium is a central feature of S. 790; before the Breaux Amendment's additional foreign bank provisions, it would apply equally to foreign and domestic banks. However, adding the suspension of two key foreign bank provisions codified in the 1978 IBA, which were carefully designed to balance many national and international interests, creates a serious imbalance. The provisions of IBA relating to foreign banks were extensively considered by Congress and the regulatory agencies in four years of hearings. In negotiating these arrangements, the helpful position adopted by the Departments of State and Treasury, and the Federal Reserve Board, were much appreciated by the British Government of the day, by the Bank of England and by the UK financial community.

6. The UK Government wishes to emphasise that an override of the IBA provisions, under the terms of Section 201 (1) and (2) of S. 790, would be regarded as a serious development. It would welcome assurances that the US Administration will argue strongly against the Breaux Amendment, on much the same basis as at the time of the enactment of the IBA in 1978.

British Embassy

Washington