MT

CONFIDENTIAL FILING.

Dean Dove.

EUROPEAN POLICY

JANUARY 1985

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
~~18.1.85.~~							
~~21.1.85~~							
29.1.85							

PREM 19/1487

FILE

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10 DOWNING STREET

From the Private Secretary

29 January, 1985

Dear Dove

The Prime Minister has seen and noted your letter to me of 28 January. She would welcome a further report on the outcome of discussions with the proprietors of Dean Dove.

I am copying this letter to Peter Ricketts (Foreign and Commonwealth Office).

ANDREW TURNBULL

Andrew Lansley, Esq.,
Department of Trade and Industry

Prime Minister (2)
To note AT 28/1

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

JF7428
Secretary of State for Trade and Industry

28 January 1985

CONFIDENTIAL

Andrew Turnbull Esq
Private Secretary to the
Prime Minister
10 Downing Street
LONDON
SW1

Dear Andrew,

Thank you for your letter of 21 January in which you mentioned that the Prime Minister had enquired what Commissioner Sutherland had in mind when he offered to discuss various ways in which the withdrawal of aid could be brought about.

2 This question has been explored in Brussels and it seems that, if HMG were prepared to neutralise the illegal aid by converting it into a loan at commercial rates, the Commission would be flexible about the method by which the obligation was discharged. For example, the loan could be extended over 10-15 years and there might be a moratorium on the repayment of capital and interest for the first 3 years.

3 Dean Dove has now served a writ claiming damages for negligence against the Department. It is thought that this move is intended to put pressure on the Department to reach an early and generous accommodation and to find some way of compensating the Company for the withdrawal of aid which would be acceptable to them and the Commission. It is unlikely that the registration of the writ will lead to public comment at this stage and the Company have implied that they still wish to try to reach a negotiated settlement. Discussions are continuing and we shall keep you in touch with their outcome.

4 I am copying this letter to Peter Ricketts (FCO).

Yours ever,
Andrew Lansley

ANDREW D LANSLEY
Private Secretary

999-1

Europ. Pol: Dean Dove: Jan 1985

JVRART

10 DOWNING STREET

From the Private Secretary

21 January 1985

DEAN DOVE LIMITED

The Prime Minister has seen the telegram reporting Commissioner Sutherland's reply (UKREP telegram 88 of 14 January). She has noted that your Secretary of State doubts whether further Ministerial intervention would prove effective. The Prime Minister has noted that Commissioner Sutherland has offered to discuss various ways in which the withdrawal of aid to Dean Dove could be brought about. She has asked what he has in mind.

The Prime Minister has asked to be kept informed of the outcome of the further negotiations with the Sunflag Group.

I am copying this letter to Peter Ricketts in the Foreign and Commonwealth Office.

(ANDREW TURNBULL)

Callum McCarthy, Esq.,
Department of Trade and Industry.

Papers Please

PRIME MINISTER

DEAN DOVE LIMITED

Commissioner Sutherland has replied to Mr. Tebbit's letter - see text in the attached telegram. This makes clear that the Commission is bound by the terms of its previous decision and requires the aid given to Dean Dove to be withdrawn. The options are:

(i) Intervention by you with M. Delors

(ii) recovery from Dean Dove all the aid improperly given which would cause closure of the company and the loss of 200 jobs. Dean Dove's proprietors, the Sunflag Group, would then sue for damages and would probably win. DTI believe we would have no legal recourse against the Commission.

(iii) seek to negotiate a deal with Sunflag under which the money is recovered from Dean Dove but Sunflag is given £1.2 million of regional assistance for some other part of its activity in return for an assurance that they will not sue.

DTI and FCO do not believe that further intervention by you or other Ministers has much chance of success. Basically the Commission are right and the fault lies with the Department. The Commission are seeking to enforce the rules on state aid strictly and this is something we should be supporting in principle.

In any case, a decision does not have to be made at this stage as the next step is to see if Sunflag will accept the deal at (iii).

AT

ANDREW TURNBULL

18 January 1985

EUR. POL: Dear Dave: Jan 85.

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
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TELEPHONE DIRECT LINE 01-215 5422
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Secretary of State for Trade and Industry

17 January 1985

Andrew Turnbull Esq
Private Secretary to the
Prime Minister
10 Downing Street
London SW1

Dear Andrew,

DEAN DOVE LIMITED

Thank you for your letter of 14 January. attached

2 My Secretary of State wrote to Commissioner Sutherland on 11 January, and we have now received Commissioner Sutherland's reply (UKREP Telegram 88 of 14 January). This makes clear that the Commission is bound by the terms of its previous decision, and requires the aid given to Dean Dove to be withdrawn. We have discussed with Commission officials what leeway exists within this repeated decision, and whether any accommodation can be reached. It is clear, however, that we have no legal recourse against the Commission. For the moment we believe that no further Ministerial intervention would prove productive.

3 I shall let you know of any developments, including negotiations with the company.

4 I am copying this to Peter Ricketts (FCO).

Yours ever

Colin

M C McCARTHY
Private Secretary

JH4ASB

CONFIDENTIAL

file SH2ACB

10 DOWNING STREET

14 January, 1985

From the Private Secretary

Dean Dove

The Prime Minister has seen your letter to me of 11 January. She agrees that your Secretary of State should write urgently to Commissioner Sutherland along the lines proposed. She has suggested that the correspondence be copied to Lord Cockfield so that he can do what he can to help. The Prime Minister feels it would be better for her not to intervene personally at this stage but to wait and see what progress is made with Commissioner Sutherland. She has asked what remedy we would have against the Commission if they put HMG in a position where it is required to pay damages.

I am copying this leter to Peter Ricketts (Foreign and Commonwealth Office).

ANDREW TURNBULL

M. C. McCarthy, Esq.,
Department of Trade and Industry

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TO IMMEDIATE F C O
TELEGRAM NUMBER 088 OF 14 JANUARY.

DEAR DOVE.

FOLLOWING IS TEXT OF COMMISSIONER SUTHERLANDS REPLY TO MR TEBBIT'S LETTER OF 11 JANUARY:

"THANK YOU FOR YOUR LETTER OF 11 JANUARY 1985 CONCERNING THE COMMISSION'S DECISION OF 23 JULY 1984 RELATING TO DEAN DOVE LTD.

YOU WILL APPRECIATE THAT I AM BOUND BY THE TERMS OF THE DECISION TAKEN BY THE PREVIOUS COMMISSION ON 23 JULY 1984 UNDER WHICH THE AID IS TO BE WITHDRAWN. FURTHERMORE, I UNDERSTAND THAT IN NEGOTIATIONS WITH YOUR OFFICIALS OVER THE PAST SIX MONTHS AND IN ITS LETTER OF 27 DECEMBER 1984 DG IV HAS INDICATED THAT A PROPOSAL TO PHASE REPAYMENT OF THE AID OVER SEVEN YEARS OR TO CONVERT IT INTO A LOAN WHICH MOVES GRADUALLY TOWARDS COMMERCIAL TERMS IS INSUFFICIENT BECAUSE IT MERELY REDUCES THE INTENSITY OF THE AID WITHOUT ABOLISHING IT. YOU WILL BE AWARE THAT IN PREVIOUS COMMISSION DECISIONS ON SIMILAR CASES THE COMPANIES WERE NOT PERMITTED TO RETAIN ANY PART OF THE ECONOMIC ADVANTAGE OF THE AID.

I AM CONSCIOUS OF THE POLITICAL SENSITIVITY ATTACHING TO THIS CASE. HOWEVER, BECAUSE OF THE STRUCTURAL DIFFICULTIES OF THE SYNTHETIC FIBRE SECTOR AND THE FACT THAT THE COMMISSION WILL SHORTLY HAVE TO DECIDE ON A NUMBER OF SIMILAR CASES I AM OBLIGED TO MAINTAIN THE STRICT DISCIPLINE WHICH HAS GOVERNED AID TO THIS INDUSTRY SINCE 1977, AND TO ASK YOU TO ENSURE THAT THE AID IS WITHDRAWN. HOWEVER, I WOULD POINT OUT THAT THE AID CAN BE WITHDRAWN IN A NUMBER OF WAYS NOT ONLY THROUGH CONVERSION INTO COMMERCIAL LOAN.

??

I REGRET THAT THE CIRCUMSTANCES PRECLUDE A MORE FLEXIBLE REACTION BY THE COMMISSION.

MY SERVICES ARE, OF COURSE, AT YOUR DISPOSAL SHOULD YOU WISH TO DISCUSS APPROPRIATE WAYS OF CONFORMING TO THE COMMISSION'S DECISION".

— Ask him what ways he is referring to?
MB

FCO ADVANCE TO:

FCO - FAIRWEATHER, SAWERS.
CAB - STAPLETON, LAMBERT, BOWEN.
DTI - PS/SOFS, PS/MR LAMONT, MOUNTFIELD, CAMELL, D.W.F. JOHNSON, RILEY, BERRY, ARMSTRONG.

BUTLER
FRAME INDUSTRIAL
ECD(I)

CONFIDENTIAL

COPIES TO:
ADVANCED ADDRESSEES.

Foreign and Commonwealth Office

London SW1A 2AH

14 January 1985

DAT
2) MRBPM
CM.

Dear Charles,

Dean Dove

The Foreign Secretary has seen a copy of Callum McCarthy's letter of 11 January to Andrew Turnbull.

Sir Geoffrey welcomes the idea that Mr Tebbit should write to Mr Sutherland. He can well understand why the Prime Minister wishes to lend her support to this case. But rather than make it the subject of her first communication to the new President, he thinks it would be preferable to instruct Sir Michael Butler to raise the point with M. Delors in her name.

I am copying this letter to Callum McCarthy (DTI).

Yours ever,

Colin Budd

(C R Budd)
Private Secretary

C D Powell Esq
10 Downing Street

E.R.

(1)

PRIME MINISTER

If the Commission land us in danger - what remedy have we against them? MT

DEAN DOVE

Mr Tebbit mentioned to you after Cabinet yesterday the case of Dean Dove and you indicated that you might want to take up the matter with the President of the European Commission. Attached is a background note together with the draft of a message which Mr Tebbit proposes to send to Commissioner Sutherland. Also attached is a message which you could send to M. Delors if you so wished. Mr Tebbit has said that he would not wish to press you to write to M. Delors since the opportunity cost in terms of negotiating capital might be too high.

Charles and I feel that it is too early for you to involve M. Delors. It would be better to wait and see what success Mr Tebbit has with Commissioner Sutherland. But Mr Tebbit's letter should be copied to Lord Cockfield so that he knows what is going on and can help.

Agree? Yes - urgently MT

Mr Tebbit would also like to make clear that the high level of assistance granted to Dean Dove reflects the old system of regional aid, and we would now expect that a lower level of aid would be payable in relation to a project with this number of jobs.

Duty Clerk

AT.

11 January 1985

VC3ABE

OLO

NBPM AT 11/1

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

Secretary of State for Trade and Industry

~~Prime Minister~~ (1)
Charles and I suggest you delay your intervention in this case.
Agree? AT.

11 January 1985

Andrew Turnbull Esq
Private Secretary to the
Prime Minister
10 Downing Street
London SW1

AT 11/1 I am sure that it is too early for the Prime Minister to involve M. Delors. We should wait and see what success Mr. Tebbit has with the appropriate Commissioner. But Mr. Tebbit's letter should be copied to Lord Cockfield so that he knows what is afoot e on help. CDP 11/1

Dear Andrew,

When my Secretary of State spoke to the Prime Minister yesterday she asked for a note on the Dean Dove case and indicated that she wished to take this matter up with the President of the European Commission.

2 I enclose a background note, together with a draft which Mr Tebbit proposes to send to Commissioner Sutherland and a short message for the Prime Minister to send to M. Delors, should she so decide. My Secretary of State would not have asked the Prime Minister to write to M. Delors, nor would he now press her to write to M. Delors since the opportunity cost in terms of negotiating capital might be too high. He would also like it to be made clear that the high level of assistance granted to Dean Dove reflects the old system of regional assistance, and we would now hope that a lower level of aid would be payable in relation to a project with this number of jobs.

3 I am copying this letter with enclosures to Peter Ricketts at the FCO.

Yours ever,

Callum

M C McCARTHY
Private Secretary

JH4AQC

MESSAGE FROM THE PRIME MINISTER TO M. DELORS

I feel that I must write to ask you for your help in resolving an issue between my Government and the Commission concerning a company called Dean Dove, which is likely to lead to embarrassment out of all proportion to its cause.

2 Norman Tebbit has written to Commissioner Sutherland on the matter and I enclose a copy of his letter which explains the position. I should underline the fact that we are in no way attempting to avoid compliance with the Commission's Deicision but simply seeking to find a way of avoiding the adverse publicity which would result from Dean Dove closing, as a result of what will be seen as a Commission decision. If anything, Norman underestimates the likely reaction in this country.

3 May I ask you to look into this as a matter of urgency? I do want to avoid the new Commission starting out by a decision which, while it will not prevent the Government from being forced by the courts to pay moneys to the company, will cause great disquiet in this country.

JH4AQD

DRAFT MESSAGE TO MR SUTHERLAND

I am sorry to have to write to you so soon after your appointment on a matter which is in dispute between my Department and the Commission. Although it may seem relatively minor the situation which has arisen could cause considerable political embarrassment for both the United Kingdom and the Community.

2 As I think you may know, my Department through a genuine error made offers of assistance to a company called Dean Dove in 1982 and 1983 in connection with their man-made fibre yarn production facility. I accept that these offers contravened the Commission's man-made fibre guidelines. I should make clear that this was the result of an administrative error, which I do not seek to excuse. But we must all face the unpleasant circumstances of this error. The immediate outcome of it was a Decision of 23 July 1984 that the aid which had already been paid must be withdrawn and no further payments made. My Government accepted this decision. No further payments have been made and, with the knowledge of DGIV my Department has been in negotiations with the company on the method of withdrawal. Since the decision was notified to us we told your officials that we had suggested to Dean Dove that we might either convert the sums paid into a loan with interest which moved towards commercial terms or agree to phase repayment over seven years. We cannot be sure that the company will accept this, but the alternative suggested by the Commission is very bleak. Your officials say they are looking for immediate repayment with, in addition, interest in respect of the period during which the company has had the benefit of the grants or conversion to a loan with interest

on a fully commercial rate immediately.

3 Our latest discussion with the company shows such action would probably result in the closure of Dean Dove's yarn production and an associated texturising activity with a loss of some 200 jobs at Stanley in Durham, an area of very high unemployment. The company would then sue the Government to obtain damages from us on the basis that our mistake in acting contrary to the guidelines constitutes negligence. I am advised that they are likely to win. The sums involved in such an action are likely to be many times greater than the amounts of aid paid to the company.

4 If this occurs, I have no doubt that there will be considerable adverse publicity. The Commission will be blamed for the job losses, which will be ascribed to inflexible refusal to accommodate a genuine mistake. Such publicity is likely to be out of all proportion to the cause. In these circumstances I feel I must again ask you to consider allowing us to adopt the more flexible methods of withdrawing aid which we have proposed. If we do not, we are likely to have in the end to pay the company substantial sums, after a legal action which will bring discredit to the Commission, as well as to the Government. It is an unhappy position in which we find ourselves; but the line previously adopted by the Commission is likely to exaccerbate the problems, while not preventing our making payments. I hope you can reconsider this.

5 Time is, I am afraid of the essence. The company's Board meets early next week and a decision to close with the consequences I have indicated would become public knowledge immediately.

JH4AQB

DEAN DOVE LIMITED: BACKGROUND NOTE

Dean Dove Limited (DD) is a small man-made-fibre (mmf) yarn producer and texturiser. DD employ 200 people at Stanley, County Durham, a coal and steel (Consett) closure area, with a current male unemployment rate locally of 29%. DD forms part of the Sunflag Group, controlled by the Bhardwaj family of East African Asians, which also owns two clothing factories - one at Blyth and the other at Southend, each employing over 200 people.

2 The Treaty of Rome broadly prohibits Member States from giving financial assistance (state aid) without securing the Commission's prior approval. In 1982 and 1983 the Department of Trade and Industry formally offered DD £578,400 by way of Selective Financial Assistance (SFA) in addition to whatever would be their entitlement to Regional Development Grants (RDG) in respect of a yarn production project under their delegated authority from the Commission to grant regional aid. By the end of 1983, the Department had paid DD £931,400 (£338,400 of SFA; £593,000 of RDG). This left £240,000 of SFA outstanding, and some £300,000 of RDG to be claimed.

3 The problem over DD arises from the fact that the Commission issued some mmf state aid guidelines in 1977 which prohibit aid for projects (like DDs) which increase mmf yarn production capacity. Those guidelines override the Deprtment's 'delegated authority' to grant regional assistance. As a result of an administrative failure within the Department in 1977, the ban imposed by those mmf guidelines was not incorporated in the Departmental instructions dealing with granting regional assistance; and the point was not picked up when processing the DD case papers.

4 Acting in response to a complaint from the industry, the Commission made enquiries at the end of 1983 about the aid granted to DD. Despite protracted discussions (including contacts between the Secretary of State and Commissioner Andriessen) in which the Department advanced what were regarded as strong industrial and regional arguments for approving the aid and after going through the formal Treaty procedures, on 23 July 1984 the Commission reached a formal Decision (published on 27 October 1984) that the outstanding aid should not be paid and the aid that had already been paid should be withdrawn. There was no legal basis to contest that Decision.

5 The Department have endeavoured to come to an agreement

with DD to give effect to that Decision. The Department suggested the staged repayment of the grant already paid, perhaps with interest being payable on terms increasing to a commmercial rate. The effect of this on the company would be largely 'offset' by increased regional assistance of £1.2 million to DD's yarn texturising activities and to the Sunflag clothing company at Blyth where jobs might otherwise be at risk. This offset would be limited to the Department's 'delegated authority' and would not, therefore, be notifiable to the Commission. DD's first reaction was that this suggestion would not be acceptable; that the Company would have to be put into liquidation; and that the Company would sue the Department. Commission officials volunteered the view that the suggested staged repayment did not constitute full 'withdrawal' and would not be acceptable to Commissioners. A significant factor was that the Commission had just had their first success in securing withdrawal of aid - full repayment plus interest - by the Belgian textile company Fabelta, and they considered that they could not afford to undermine that precedent.

6 The present positon is that DD have been told the reaction of Commission officials, namely that the Commission seem determined to accept nothing less than full repayment with interest; that the Department has offered the maximum 'offset' it legally can; and tht the Department must therefore seek to implement the Commission's Decision, if not by agreement then by recourse to law in one way or another.

7 DD are now considering the stark choice before them of either full repayment plus interest 'offset' by the Department's best offer or liquidation. The latter would mean Mr Bhardwaj having to honour large personal guarantees to DD's bankers and, according to Mr Bhardwaj, the Sunflag Group deciding to honour all DD's other debts. There would then be an action for negligence brought against the Department, which I am advised we are likely to lose, and under which Mr Bhardwaj and the Sunflag Group would try to recoup their losses from us. There are risks for them in pursuing such an action, and DD might still opt to accept the Department's offer.

Department of Trade and Industry
10 January 1985

JH4AQA

FCS: 5H2ABW

10 DOWNING STREET

From the Principal Private Secretary

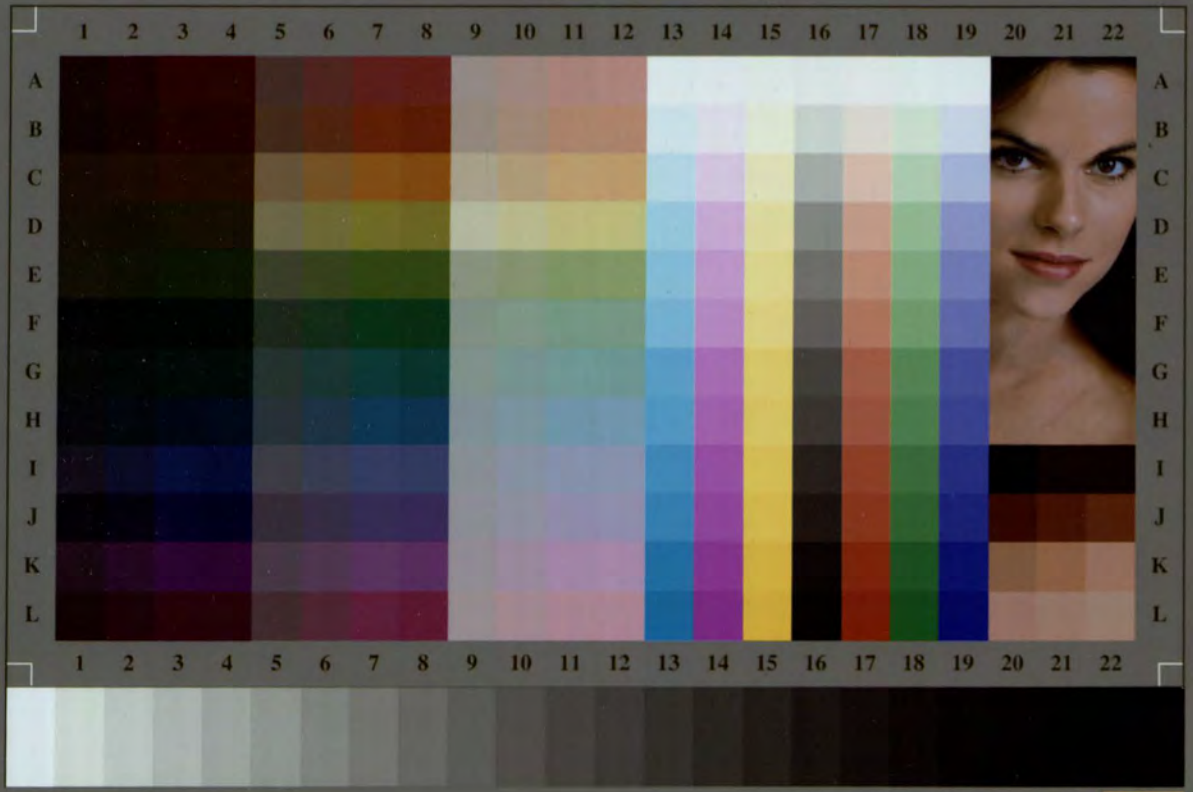
10 January, 1985

After Cabinet this morning, your Secretary of State mentioned to the Prime Minister the case of a company called Dean Dove which was about to go into liquidation and to sue the British Government because money had been paid to them in contravention of Community regulations and the European Commission were insisting that it should be recovered.

The Prime Minister said that it looked as if the European Commission were insisting on their pound of flesh at the cost of causing unemployment. She would be prepared to write immediately to Lord Cockfield, if he had any locus in the question, or to Monsieur Delors. Your Secretary of State said that he would consider this possibility and let the Prime Minister have an urgent note on the case.

F. E. R. BUTLER

M. C. McCarthy, Esq.
Department of Trade and Industry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