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PART 2

CONFIDENTIAL FILING

UNCTAD V AND THE COMMON FUND.

SUBSEQUENT UNCTAD MEETINGS

UNITED NATIONS

PART 1: MAY 1979

PART 2: OCT 1987

PREM 19/3201

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
~~6.10.87~~							
~~11.10.87~~							
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CLOSED

Foreign and Commonwealth Office

London SW1A 2AH

2 May 1990

Dear Martin,

Common Fund

Mr Ridley wrote to the Foreign Secretary on 22 March about the merits of continued participation in the Common Fund. The Foreign Secretary thinks that the questions to which this gives rise should be considered by OD(E). If Mr Ridley agrees we suggest that the subject could be taken at the meeting of OD(E) on 17 May. It would be preferable for the matter not to be raised with the Commission before then.

I am copying this letter to Charles Powell (No 10), John Gieve (HM Treasury), Colin Pipe (Attorney General's Office), Andrew Lebrecht (MAFF) and to Sonia Phippard (Cabinet Office).

Yours ever,

(S L Gass)
Private Secretary

Martin Stanley Esq
PS/Secretary of State for
Trade & Industry

UN: UNCTAD & COMMON FUND Pt 2

chex.jp/tt1/7 **CONFIDENTIAL**

CCPC

Treasury Chambers, Parliament Street, SW1P 3AG
01-270 3000

26 April 1990

Rt Hon Nicholas Ridley MP
Secretary of State for Trade
and Industry
Department of Trade and Industry
1-19 Victoria Street
LONDON
SW1H 0ET

CDF 26/4

Dear Nick,

THE COMMON FUND

Thank you for copying to me your letter of 22 March to Douglas Hurd.

I share your concern at the position on the Common Fund. The combination of a less than stringent approach by the Executive Board to financial regulation, and a possible growth in demand for First Account facilities, is a troubling one. It was precisely in order to meet such a contingency that the option of withdrawal was kept open in November 1987.

The prospect of legal action by the Commission is as unappealing as it was two years ago, particularly in its bearing on competence. I take your point that we do not know whether the Commission would actually wish to take such action. However, I am advised that it would be open for other member states, as well as the Commission, to bring proceedings against us; so an assurance from the Commission would be no guarantee that we could proceed unchecked.

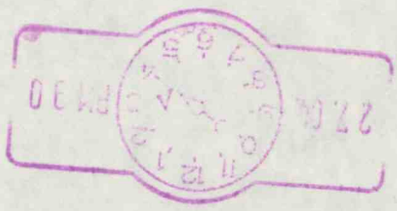
I am also concerned that any approach to the Commission might become more widely known than we would wish. In particular, if the less developed countries were to get wind of our intentions, it could undermine our credibility at a point in the Uruguay Round when we need to convince the LDCs that a successful conclusion to the Round is in their interests. It could also erode our influence in commodity agreements such as coffee and cocoa.

I hope that you will bear these potential pitfalls in mind when considering your approach to the Commission.

I am copying this letter to the Prime Minister, the Minister of Agriculture Fisheries and Food, the Attorney General and Sir Robin Butler.

Yours Ever,
John

JOHN MAJOR



UNITED NATIONS

UN/Common fund

Pt 2

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cc PC

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-936 6201

The Rt. Hon. Nicholas Ridley, MP,
Secretary of State for Trade & Industry,
1 Victoria Street,
London,
SW1

Privy Council Office
Chancellor of the Duchy

31 March 1990

Dear Nicholas.

COMMON FUND

Top.

Thank you for copying to me your letter of 22 March to Douglas Hurd.

Your letter rightly mentions advice given by me in October 1987 that there was a serious risk that unilateral withdrawal from the Common Fund Agreement would lead to an adverse decision in the European Court of Justice, and that the influence of an adverse decision in this case would foreseeably extend to other agreements, with consequent loss of freedom of action for Member States. The legal position has not improved since then, as you again rightly state. Nonetheless, the same cogent reasons for withdrawal remain. By all means, therefore, let us sound out the likely response from the Commission to our withdrawal, which we would intimate we would like to make. If, however, we learn that we would face a challenge in the ECJ we should then indeed consider seriously whether it would be wise to take the plunge. Our Representation in Brussels will be able to advise as to the appropriate level at which such an approach should be made, if it is to be of value.

I am copying this letter to the Prime Minister, the Foreign Secretary, the Chancellor of the Exchequer, the Minister of Agriculture, Fisheries and Food and to Sir Robin Butler.

Yours ever,

Patrick

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the department for Enterprise

CONFIDENTIAL

The Rt. Hon. Nicholas Ridley MP
Secretary of State for Trade and Industry

Rt Hon Douglas Hurd CBE MP
Secretary of State for
Foreign & Commonwealth Affairs
Foreign & Commonwealth Office
Downing Street
LONDON SW1

Department of Trade and Industry

1-19 Victoria Street
London SW1H 0ET

Enquiries
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Direct line 215 5622
Our ref
Your ref PE2AOT
Date 22 March 1990

Dear Douglas

THE COMMON FUND

1 As you know, the Common Fund was conceived in the 1970s, as the main instrument of an integrated programme for stabilising commodity markets. The Agreement to set up the Fund was finalised in 1980, and ratified by the UK in 1981, but did not come into force until last year. Under the Prime Minister's chairmanship, Ministers in late 1987 - early 1988 reviewed policy on the Fund and, in particular, whether we should withdraw.

2 The conclusion reached, on my predecessor's reluctant recommendation, was that we should not withdraw but instead work with like minded developed countries to neutralise the Fund's First Account (which permits Fund support of commodity agreements with market intervention provisions); to put emphasis on the Second Account (technical assistance); and to try to secure tight operational and financial rules. David Young's recommendation was based on two main factors: one was advice that UK withdrawal would be likely to prompt legal action against us by the European Commission which it would probably win, with the risk that Community competence in commodities and commodity agreements would be extended further. The other was a canvass of EC Ministers seeking their views on the possibility of withdrawal: none was prepared to do so but the aim of keeping the Fund's operation on limited and sensible lines was widely shared. The Prime Minister noted, however, that the option, if legally difficult, of eventual withdrawal remained open (her Private Secretary's letter of 23 February 1988 to DTI.)

3 I have been looking again at the position on the Common Fund. It troubles me, for two particular reasons.

Recycled Paper

4 First, it is so far proving very difficult to obtain agreement in the Fund's Executive Board to sufficiently tight operating and financial rules: whatever they say in private other developed countries are not always prepared in meetings to fight hard for commonsense.

5 Second, when the previous review was carried out it was the case that the only potential candidates for the First Account were the cocoa and rubber agreements but that in practice it was very unlikely that either would find itself in a position to apply for support. This is still so but I wonder if it will be for ever. A successful conclusion to the Uruguay Round at the end of this year will not neoessarily be of net benefit to LDCs: what they may gain on the tropical products roundabout they could lose on the swings of lower tariffs on other products reducing preferential margins under eg GSP and Lome. The Eighth UNCTAD Conference is due to be held in the summer of 1991 and however hard developed countries resist there will doubtless be much rhetoric about the Uruguay Round. The result could be a rekindling of LDC interest in commodity agreements.

6 I believe, therefore that we should seriously reconsider the withdrawal option. The substantive legal position has not improved from 2 years ago (and may even have worsened) but I do not think that, at least for the moment, that particular ground needs to be gone over again in detail. It appears that the advice about probable Commission legal action against us was based essentially on conjecture rather than any communication from them: the Commission was given a copy of David Young's letter to other EC member states but did not comment. I suggest that the best way to proceed would now be to approach the Commission discreetly and informally. We would, perhaps, say we are seriously considering withdrawal from the Common Fund, that we had not reached a final decision but that we expected to do so within a stipulated period of time. I would not propose that we repeat the attempt to persuade other member states to join us. I think a low key and limited approach of this kind would maximise the likelihood of the Commission's turning a blind eye to our proposed withdrawal.

7 If, however, the Commission were to make it clear that they would take legal action with a view to obtaining a European Court judgment that we were not entitled to withdraw then we would, of course, have to take that seriously into account in reaching our final decision.

8 I would be grateful to know if you and colleagues are content for me to proceed accordingly. In that event I would ask my officials, in consultation with departments, to

prepare the necessary instructions for the approach to the Commission.

9 I am copying this to the Prime Minister, the Chancellor of the Exchequer, the Minister of Agriculture, Fisheries and Food, the Attorney General and Sir Robin Butler.

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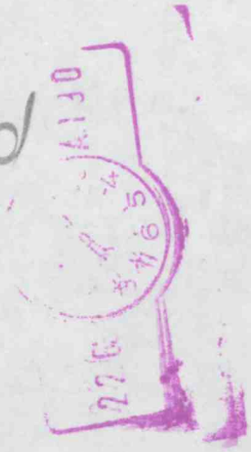
PR.



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Cc PC

MAFF

Ministry of Agriculture, Fisheries and Food
Whitehall Place, London SW1A 2HH

From the Minister

The Rt Hon Lord Young Of Graffham
Secretary of State for Trade and Industry
Department of Trade and Industry
1-19 Victoria Street
London
SW1H 0ET

CSO 17/5 17 May 1989

Dear David,

THE COMMON FUND

flat

Thank you for sending me a copy of your letter of 27 April to Geoffrey Howe.

I agree with your approach to the various meetings over the next few months. Opposition to the First Account is, of course, important in the context of the International Cocoa Agreement, which, as I mentioned in a letter to you of 8 March 1988, is a potential candidate for First Account Funding.

I also agree that we should support Amsterdam. The unsuitability of Paris has been reinforced by recent developments over the location of international commodity organisations currently in London.

I am copying this letter to recipients of yours.

Yours ever,

JL

JOHN MacGREGOR

UNITED NATIONS: Lamar Fund Pt 2

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the department for Enterprise

The Rt. Hon. Lord Young of Graffham
Secretary of State for Trade and Industry

The Rt Hon Sir Geoffrey Howe QC MP
Secretary of State for Foreign and
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Foreign and Commonwealth Office
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Direct line 215 5422
Our ref PS3ADF
Your ref
Date 27 April 1989

Dear Geoffrey,

THE COMMON FUND

When I reported the outcome of consultations within the Community on the Common Fund on 19 February last year it was envisaged that the Fund was likely to enter into force within a few months. Delay in ratification by sufficient countries has held this up for nearly a year but sufficient ratifications have now been received to bring the Fund into force during the summer. I am writing now to inform you and other colleagues of the likely timetable and to reaffirm the policy objectives which we agreed in February last year.

The terms of the Agreement require the 64 original signatories to meet to finalise formalities. That meeting is now proposed for 19 June with the first meeting of the Governing Council of the Fund to follow on 10-21 July. The first informal preparatory discussions between the OECD countries involved will take place on 9-10 May. In those discussions officials will be guided by the objectives which we agreed last year. Specific negotiating plans will be prepared and agreed between Departments before substantive negotiation begins in the Governing Council in July.

As we have already recognised there is no scope for preventing the Agreement coming into force nor, given the lack of Community support, can we contemplate withdrawing our

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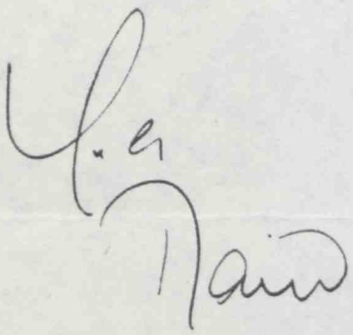
the department for Enterprise

ratification. Our task in the preparatory meeting will therefore be to lay the foundations for negotiating, in the Fund's Governing Council, rigorous operating procedures to minimise costs and the risk of contingent liability, while resisting any proposals to use the market intervention provisions of the Fund. We will also work to focus the Fund's resources on market development activities aimed at enabling producers to respond more effectively to consumer needs expressed through deregulated markets. We cannot alone insist on our point of view. But we shall be working with like-minded developed countries with the aim of achieving tight operating guidelines and limitation of the Fund's activities.

We agreed in February last year that we should let London's candidacy for the headquarters of the Fund lapse. The only alternative proposed is Amsterdam. I propose to support this, not least because it is less of a commercial threat to London than Paris would be. Community support for Amsterdam will tend to rule out the only Community candidate for managing director, a Dane. Since Denmark generally takes the opposite view to us over commodity policy, we should work to avoid a Danish managing director or deputy. We will also be working to ensure that the managing director is constrained by tight operating rules and that he or his deputy has appropriate financial and accounting expertise.

I am sending copies of this letter to the Prime Minister, Nigel Lawson, John MacGregor, Patrick Mayhew and to Sir Robin Butler.



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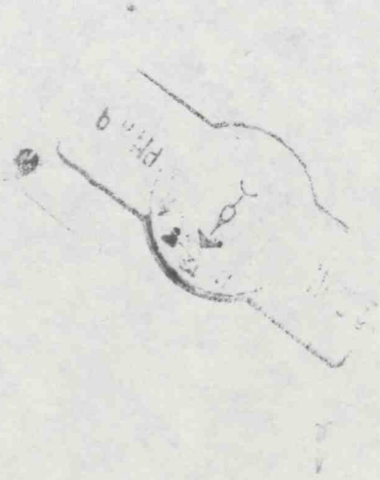

Charles Bowell Esq

With the compliments of

The Permanent Representative

United Kingdom Mission
to the United Nations,
845 Third Avenue,
New York, N.Y. 10022

S U M M A R Y

THE SUPERPOWERS AT THE UNITED NATIONS

1. The role of the superpowers and the relationship between them is critical for the UN. Recently the Organization has assumed a new importance in Soviet foreign policy. Despite set-backs at the last General Assembly, the Russians have made real progress in exploiting the UN for their own purposes. They will try again this year, strengthened by experience. (Paras 1-8)

2. The Americans have gone into retreat. The campaign against the UN led by the Heritage Foundation has bitten deep. The failure of the US to pay its dues in full has lowered American stock and influence. At the forthcoming General Assembly uncertainties, particularly over the Middle East, will be bedevilled by the Presidential elections. The next President (be it Bush or Dukakis) may show more appreciation of the Organization's potentialities. (Paras 9-13)

3. In the short term we should provide what leadership we can inside and outside the Twelve to keep the West together and the Americans with us. In the longer term we need to guide the new Administration into a more realistic understanding of what the UN can do for the United States and the West generally, and of the dangers of leaving the field to the Russians. (Paras 14-16)

UNITED KINGDOM MISSION TO THE
UNITED NATIONS
NEW YORK

15 June 1988

The Rt Hon
Sir Geoffrey Howe QC MP
etc etc etc
Foreign and Commonwealth Office
London

Sir

THE SUPERPOWERS AT THE UNITED NATIONS

The role of the superpowers, and the relationship between them, are both critical for the United Nations. It is not simply that their political and (in the case of the United States) economic weight exercise a major influence on debate and decisions. The Organization reflects the temperature of their relationship. When it is warm, the regional conflicts that are the staple of the UN agenda show signs of easing; when it is cool, problems harden and become more difficult. If the superpowers can agree or at least acquiesce, then the Organization can function as it should; when they cannot, business is effectively blocked (a point institutionalized in the veto in the Security Council). The negotiations over Iran/Iraq since early 1987 are a recent example of relative success followed by relative failure.

2. The United States has a position of commanding advantage if it wishes to use it. The purposes and principles of the Organization, as set out in the Charter, are squarely based on the Western political tradition: human rights, the freedom of the individual, self-determination, sovereign equality, peaceful resolution of disputes, the paramountcy of international law. In most regional disputes - the Middle East, Southern Africa, Latin America - the United States and the other main Western countries hold the keys. The Soviet Union and its allies with varying groups of other countries can form combinations against the West, but they are rarely durable. On the economic side, the Soviet Union has virtually nothing to offer. Soviet influence in the UN agencies has been minimal. In ECOSOC, the Russians have long been on the defensive.

3. It is therefore all the sadder that since my arrival in New York a year ago the Russians have made real progress at the United Nations

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while the Americans have almost carelessly gone into retreat. While the Russians have tried for their own reasons to use the United Nations as their window on the rest of the world, the Americans have looked elsewhere for the exercise of their foreign policy, and half closed the blinds on the United Nations. They have thereby done neither themselves nor the West any good.

4. The importance of the United Nations in Soviet policy has been apparent for some time. It emerged clearly during the Prime Minister's discussions with Mr Gorbachev in March 1987, and in practical terms in cooperation among the Five Permanent Members of the Security Council over the war between Iran and Iraq. The first full statement was in Mr Gorbachev's article in September 1987 on "The Realities and Guarantees of a Secure World", when he elaborated on the Soviet proposal for a Comprehensive System of International Peace and Security, and called for a strengthening of the Organization. His ideas were developed in his Foreign Minister's speech at the General Assembly a few days later. There Mr Shevardnadze set out thoughts for a new international order covering the world economy and the environment as well as peace and security.

5. As elaborated on this and other occasions Soviet proposals have wide scope. Their main focus is on reinforcement of the UN apparatus for dealing with issues of peace and war: in short disarmament, crises or breaches of the peace. To this end the Russians have suggested a hot line between the United Nations, the Permanent Members of the Security Council, and the Chairman of the Non-Aligned Movement; strengthening the role of the Secretary-General; wider use of UN observers and peacekeeping forces; a UN mechanism for verification; wider use of apparatus to achieve peaceful settlement of disputes, especially by the International Court of Justice; greater discussion of disarmament (including its relationship to development) in the Security Council; periodic meetings of the Security Council at Foreign Minister level and in regions of friction or tension; a revival of the Military Staff Committee of the Security Council; and a role for the Permanent Members as guarantors of regional security. They have also made proposals on human rights and economic matters: a new and concerted effort to alleviate the debt burden; the bringing of different national practices on human rights into line with international standards, with a Human Rights Conference in Moscow; a UN committee to coordinate criteria for such matters as family reunification; a fund for humanitarian cooperation at the United Nations; a UN tribunal to investigate terrorism; a programme on ecological security; a UN information programme to acquaint people with life in other countries; enhanced medical cooperation through the World Health Organization; and a World Space Organization.

6. These proposals may look more of a ragbag than they really are. Some are a reversion to the brave new world of 1945 when the Five Permanent Members could lay a plausible claim to be the world's policemen. Some are designed for the world gallery of non-aligned

/countries

countries where the Soviet Union has lost most of its magic. Some are defensive in character. Some look to embarrass the West. But a common feature is an effort to make use of the United Nations as a world forum, and to establish the Soviet Union as a prime interlocutor in all international affairs. The initial impact in New York was one of mild but not unfriendly scepticism. After all the Russians were still carrying their Afghan albatross. But feeling changed somewhat when the Russians put their money where their words were. On 16 October they announced that the Soviet Union would pay not only its outstanding contributions to the regular budget but also over a period of time its arrears to UN peacekeeping operations.

7. Even so I doubt if the Russians were happy with the results of the last General Assembly. In spite of enormous efforts they did badly on Afghanistan and Cambodia. Less expected, their proposal for a Comprehensive System of International Peace and Security did not achieve success. Many non-aligned countries were as suspicious as the West, and this seemed to throw the Russians off balance. Though they are preparing for another round on the Comprehensive System at the next Assembly (and continue to tell us how open they are to suggestions), few of their ideas have been followed up with vigour (an exception being the work carried out in the Secretariat at Soviet prompting on the monitoring of regional conflicts and verification). By and large their initiatives seem to have been launched without full appreciation of the difficulties and without proper purpose or flexibility.

8. This year there can be no doubt that they will try again, this time strengthened by experience. They told us privately last year that had it not been for Afghanistan, they would have the non-aligned eating out of their hands. They will now want to test this prediction, and to court others by applying their Afghan lesson to other regional conflicts. We have already had hints of this over Cambodia, Angola and Central America. Nor are the Russians limiting their efforts to the political side. They have raised their profile in ECOSOC, and recently told the Americans that they intended to participate fully in the work of the Specialized Agencies (on a par with their new attitude towards the international financial institutions). They have also taken advantage of the current Third Special Session on Disarmament to press for an enhanced role for the Security Council on disarmament issues. We can expect the Russians to project an impression of efficiency and commitment to the United Nations. I was struck by the effective way in which Mr Shevardnadze handled the UN part of his brief at your meeting with him last week, and by his generally constructive tone. His Permanent Representative is likewise a colleague with whom it is usually easy to work.

9. The general attitude adopted by the United States is in painful contrast. The United States is of course hydra-headed, especially in an election year. The White House (or National Security Council) can take one view; the State Department another; the Department of Justice a third; the US Delegation in New York yet another; and Congress seems accountable only to itself. There is no secret about these divisions of opinion. This year alone two major meetings of the Security Council had to be suspended to await final telephonic adjudication from Washington on whether the United States should veto or abstain. Inevitably the general impression is one of confusion, in which agencies and vested interests, notably the Israeli lobby, are in competition, domestic considerations count for more than international obligations, and policies are made as events unfold rather than determined in advance. In such a situation the good health and functioning of the United Nations look relatively unimportant in US foreign policy, and are too easily the victims of the changing power balance in Washington.

10. The reasons go back a long way. Indeed it can be argued that during their history the Americans have only given priority to multilateral considerations for relatively brief periods. During the 1980s as the balance within the United Nations changed against both the West and the East, so the United States became increasingly impatient with it and the causes it represented. Its shortcomings became increasingly obvious, and the Americans, who expect to be liked as well as to win, found the atmosphere less and less congenial. More recently the campaign against the Organization led by the Heritage Foundation and groups in Congress has bitten deep, and even my genial but peripatetic US colleague, with his personal links to the President, has sometimes been driven to despair. More generally the stand taken by the press that the United Nations should be judged according to how far it furthers specific US interests is widely noted and erodes confidence in US intentions.

11. In the last twelve months things have got worse. The financial crisis, precipitated by the refusal of the United States to pay its dues in full, and aggravated by the failure of the United States to honour the bargain of reform for money struck in December 1986, has lowered US stock and influence. The fuss over the closure of the PLO Observer Mission in New York isolated the United States from all its friends and allies except Israel, and called further into question its willingness to fulfil its obligations towards the Organization. As the main if not the only defenders of Israel, the Americans by their repeated vetoes of draft resolutions on the Middle East looked to be seeking to push the United Nations out of current efforts to advance a solution.

/12.

12. Not all the picture is bad. However much others may complain about US shortcomings and turpitudes, the United States is the most powerful country in the world, and the working of its political processes, for alltheir faults and irrationalities, is an object lesson in democracy. There has never been any enthusiasm to take the United Nations elsewhere. Everyone knows how volatile US attitudes and policies can be, and what is true today may be very different tomorrow. The improved relationship between the United States and the Soviet Union has anyway greatly eased pressure on the United States. The post-summit glow may last to the end of this year and into the next Administration. In an improved international atmosphere it is less easy to play the superpowers off against each other. Moreover their similarity of interest in many aspects of the work of the United Nations does not pass unnoticed. Both are, for example, at one in wishing to maintain the privileges of the Permanent Members under the Charter, in keeping down costs and improving efficiency, and in excluding a range of topics from the main UN agenda (for example strategic arms control). On regional issues there is patchy but still quite impressive evidence of superpower cooperation. By and large the Russians help the Americans, and the Americans help the Russians, where it suits them. It suited the Americans over Afghanistan where the United Nations provided a convenient framework for giving effect to understandings reached elsewhere. It appears to suit the Russians over current discussions on Cuban troop withdrawal from Angola. It may not still suit them to work together over ending the war between Iran and Iraq, but it certainly did in the past, and may do so again.

13. The forthcoming General Assembly does not look comfortable for the United States and its allies. Uncertainties, particularly over the Middle East, will be bedevilled by the Presidential elections, and no-one expects much leadership or even clear policies. But there is of course intense speculation about the attitudes likely to be taken by the next President and his Administration. Here there is some optimism. Vice-President Bush was US Permanent Representative in the early 1970s, and should at least be aware of the United Nations dimension and how the United States might make better use of it. For his part Governor Dukakis has shown a remarkable commitment to multilateralism. But even if the next President shows more understanding of what the United Nations could do for the United States, it would still take time for congressional pressures which have so damaged the current Administration, to change, in particular over full funding of the Organization. But changes there will certainly be. Policy towards South Africa is likely to be one of them. But that will bring little consolation to us.

/14.

14. I have left to the last the question of whether and what we should do if anything, particularly during the difficult months which lie ahead. One effect of the relative lack of success of both superpowers during the last General Assembly was to leave much of the field in negotiating with the non-aligned to the other Western countries, in particular to the Twelve. Under the Greek Presidency the Twelve are unlikely to be able to fill that gap as effectively as they did last year. But some responsible Western presence is essential, and during the Assembly we shall need to provide what leadership we can from within the Twelve to keep the West together and bring the Americans along with us. Our limitations are obvious, particularly over the Middle East where Israel remains a potent emotional factor.

15. In the longer term we can hope to have some influence on the new Administration's thinking on the United Nations. It is in our interest to see a measure of superpower cooperation which may provide us with opportunities to build on the work of the Five Permanent Members over the Iran/Iraq war and extend it into other fields. But as the Afghanistan negotiations showed, there are limits to the willingness of the superpowers to bring the United Nations, the Security Council and the other Permanent Members into problems which they would prefer to settle directly themselves.

16. More important, we need to guide the Americans into a more realistic understanding of what the United Nations is, of the enormous advantages they enjoy within it, of what it can do for them and the West generally, and of the dangers of leaving a kind of vacuum for the Russians. The United Nations is far from perfect and never will be. It holds up a mirror to international relations. But for many states it is the main place, if not the best place, to exert political power and influence. It helps form world opinion and to give it focus. None of us, not even the Americans, can afford to ignore or belittle it.

17. I am sending copies of this despatch to HM Ambassadors at Washington, Moscow, Paris and Peking and HM Permanent Representatives at UKMis Geneva and UKMis Vienna.

I am, Sir,
Yours faithfully,

Crispin Tickell

cc PS

MINISTRY OF AGRICULTURE, FISHERIES AND FOOD
WHITEHALL PLACE, LONDON SW1A 2HH

From the Minister

CSP
3/3

The Rt Hon Lord Young of Graffham
Secretary of State for Trade and Industry
1-19 Victoria Street
LONDON
SW1H OET

3 March 1988

Dear David,

THE COMMON FUND

Thank you for sending me a copy of your minute of 19 February to the Prime Minister. I have also seen Nigel Lawson's reply dated 25 February.

On the main substance I share your views and Nigel's further comments.

If deratification - or withdrawal - appears not a practicable option at this stage, then we must pursue our interests within the Agreement by ensuring that the First Account is in no position to stimulate further market intervention initiatives. Our leadership on this appears to be bringing results, at least within the Community.

My specific concern arises from current developments within the International Cocoa Agreement. As you note, it has no current need for external funding. Cocoa buffer stock purchases have just reached a new limit of 150,000 tonnes fully funded by levy payments. Predictably, the impact on the structural surplus and falling prices in the cocoa sector have been slight, but all this could create pressure to bring forward the Agreement's provision for a possible further round of buffer stock purchasing. Within the Cocoa Agreement we would naturally resist any such suggestion, but even the hope of an operational First Account would make this more difficult. There is therefore a very practical need to pursue vigorously your proposed strategy.

Yours ever,

JOHN MacGREGOR

UN - Unctad

PV2

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

28 February 1988

INTERNATIONAL JUTE AGREEMENT

The Prime Minister has been informed of the correspondence stemming from your Minister's letter proposing that we agree to a re-negotiation of the International Jute Agreement provided certain conditions are met.

The Prime Minister accepts this recommendation on the clear understanding that there will be no provisions in the Agreement to interfere with the operation of the market and that no new contingent liabilities arise.

I am copying this letter to the Private Secretary to the Foreign Secretary, the Chancellor of the Exchequer and to Sir Robin Butler.

C. D. Powell

Miss Marjorie Davies,
Office of the Minister for Trade.

(1)

PRIME MINISTER

INTERNATIONAL JUTE AGREEMENT

Alan Clark has proposed that we agree to a renegotiation of the International Jute Agreement, provided that there continue to be no provisions to interfere with the operation of the market (i.e. no buffer stock) and financial obligations remain limited to a contribution to the administrative costs. The Foreign Secretary and the Chancellor agree.

Content, provided we ensure that no new contingent liabilities arise?

Yes - but the proviso is absolute

CDP

Charles Powell

26 February 1988

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CCPC

Treasury Chambers, Parliament Street, SW1P 3AG
01-270 3000

25 February 1988

The Rt Hon Lord Young of Graffham
Secretary of State for Trade and Industry
1 - 19 Victoria Street
LONDON
SW1H OET

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THE COMMON FUND

Thank you for copying me your minute of 19 February to the Prime Minister. I have seen the reply dated 23 February from the Prime Minister's office.

It is disappointing - if somewhat predictable - that none of our main Community partners are prepared to deratify but I am glad to know that that they share some of our scepticism about the relevance of the First Account and see the case for placing more emphasis on the Second Account. We clearly need to build on this climate of opinion and the strategy which you propose will hopefully provide an effective means of achieving our objectives. We must be ready to supplement this, as you suggest, by using our influence within the Cocoa and Rubber Agreements to discourage association with the Fund's First Account. But ultimately if we fail to carry others with us, withdrawal is an option we may need to consider further, notwithstanding the risks it carries.

I understand that there are signs that the Commission are also of the view that the focus of the Fund's activities should fall on the Second Account. This is to be welcomed but we need to be careful that the Commission do not come forward with proposals for the Second Account which carry any of the drawbacks we have been seeking to avoid, in particular the danger of contingent liabilities.

I am copying this letter to the Prime Minister, Geoffrey Howe, John MacGregor, Patrick Mayhew and Sir Robin Butler.

Yours Nigel

NIGEL LAWSON

United Nations – UNCTAD
P12

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CONFIDENTIAL.

Treasury Chambers, Parliament Street, SW1P 3AG
01-270 3000

24 February 1988

The Hon. Alan Clark MP
Minister for Trade
Department of Trade and Industry
1 Victoria Street
LONDON
SW1

CDP
25/2

INTERNATIONAL JUTE AGREEMENT

Thank you for copying to me your letter of 18 February to Geoffrey Howe. I have seen Geoffrey's reply of 23 February.

As there is no prospect of blocking a Community mandate, I am reluctantly prepared to agree to your proposal that the UK should go along with the proposal that the EC enter renegotiations on the basis that any new agreement will not contain any provisions for market intervention and that contributions for projects will remain voluntary. I also agree of course that we should use our influence to ensure that no new contingent liabilities arise from any new agreement.

I am copying this letter to the Prime Minister, Geoffrey Howe, John MacGregor and Sir Robin Butler.

NIGEL LAWSON


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cc PC

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

23 February 1988

Dear Alison,

THE COMMON FUND

The Prime Minister has considered the Trade and Industry Secretary's minute of 19 February about his consultations with other EC Ministers on the possibility of deratification of the Common Fund. She agrees that, in the light of the reluctance of others to support deratification, we should now move to neutralise the First Account along the lines suggested by Lord Young in paragraphs 5 to 8 of his minute. We should also resist any attempts to extend Community competence in relation to the Fund. The Prime Minister notes that the option of eventual withdrawal still remains open to us (although beset with legal problems).

I am copying this letter to the Private Secretaries to the Foreign and Commonwealth Secretary, the Chancellor of the Exchequer, the Minister of Agriculture, the Attorney General and to Sir Robin Butler.

yours ever,

(C.D. POWELL)

Miss Alison Brimelow,
Department of Trade & Industry.

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cc BG

FCS/88/035

Agreed Treasury comments.
CBG

SECRETARY OF STATE FOR TRADE AND INDUSTRY

1. Thank you for your letter of 18 February in which you recommend that we should agree to enter renegotiations for a new International Jute Agreement, subject to certain caveats. I agree with your proposed approach.

2. As you say, we agreed in the 1986 commodity policy review that international agreements without market intervention provisions should be treated on an ad hoc basis according to their merits, though we should make certain that such agreements did not take on economic provisions. The present case falls squarely in this category.

3. The current IJA cannot yet be described as effective. But the main producers, Bangladesh and India, value it. The principal beneficiary of the IJA is Bangladesh: the tenth poorest country in the world, with a per capita GNP in 1985 of just US$150. It would be inconsistent with our aid policy were we seen to be withdrawing assistance relevant to its staple export, and such a move would be bound to trigger a strong adverse reaction. India too would be bound to react angrily. The potential damage would, I think, outweigh the modest annual financial saving of some $17,000 or roughly £10,000. I note, too, your comment that the Jute Council provides a forum in which to promote the interests of the UK trade.

/4.

4. In any case, it is clear that Community competence considerations ensure that we would be unable to sustain a negative approach to the IJA in the face of opposition from our EC partners. Our interests lie rather in maintaining their opposition to any attempt to give a new IJA economic provision. Past experience suggests this should prove an achievable objective.

5. I am copying this minute to the recipients of your letter.

(GEOFFREY HOWE)

Foreign and Commonwealth Office
23 February 1988

UNITED NATIONS:
UNCTAD Pt 2

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the department for Enterprise

Prime Minister

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As expected, others are not prepared to join us in de-ratifying. We never stop in our agreed strategy was to try to thwart the coming into effect of the First Account. We

PRIME MINISTER

THE COMMON FUND

Following your meeting on 10 November on the Common Fund, I wrote to a number of EC Ministers seeking their views on the possibility of deratification. All except Portugal have now replied and a summary of their reactions is attached.

2 None would be prepared to take the step of deratification. That confirms our concern that if the UK were to do so, we should be isolated in the Community and that, in turn, would make it very probable that the Commission would mount a challenge in the European Court.

3 Nevertheless, the consultation was useful in eliciting declarations from our main Community partners that they shared in some degree our scepticism about the continued relevance of the First Account. The generally expressed preference for putting more emphasis on the Second Account, providing assistance for development and diversification, would not solve all the problems. But there does appear to be a shift towards a more cautious approach on which we can build further.

4 It now seems probable that the required level of ratifications to bring the Fund into force will be reached this Summer. Before then, there will be discussions in the EC and OECD on how the Community and Group B should respond. It is imporant that we should have a clear strategy from the outset.

5 First, there are a number of basic principles to which we should seek as wide agreement as possible:

- both Accounts should be subject to stringent rules as regards eligible expenditure and operating procedures.
- calls for contributions should be kept to the minimum.
- tight limits and rigorous supervision should be applied to the expenses of administration.
- the operation of the Fund should be so drawn as to avoid contingent liabilities falling upon its members.

Not only are such principles desirable in themselves, their application would mean that the process of negotiating and agreeing the rules for the operation of the Fund would inevitably be lengthy.

6 Secondly, we must aim, with the help of sympathetic partners like the Germans, to neutralise the First Account. To freeze it formally would require 75% of eligible votes for a change in the Agreement. Since the developing countries will have some 60% of the votes that is unlikely to be possible but there are ways in which the First Account might be kept in abeyance. We can seek to defer discussion of the detailed operating rules without which the Account cannot become active until there is an agreed need for them. If it came to a vote on establishing rules for the ocnduct of business we can try to ensure that the necessary 75% was not reached. In parallel, we can use our membership of commodity agreements to dissuade them from associating with the Fund or seeking assistance. In practice only two Agreements, Cocoa and Rubber, are at present eligible and neither has so far shown any interest. Over and above this, we can encourage other Community colleagues to transfer to the Second Account all of the

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limited number of shares which the Articles of the Fund permit them to transfer from the First, thereby reducing its borrowing capacity.

7 Thirdly, in the case of the Second Account, we can seek to ensure not only that the merits of proposals for expenditure should be fully scrutinised but that activities should not duplicate those of other agencies.

8 There is nothing which we can do to prevent the Fund from coming into being. We can, however, try to ensure, as I have indicated, that it will be some time before it can operate, that its activities will be heavily circumscribed and that the First Account will not be used. In time, it may be more possible to persuade others to accept that the arrangements should be changed in a direction more acceptable to us or even brought to an end. We should also resist any attempts to extend Community competence in relation to the Fund.

9 I should mention that soon after our ratification of the Agreement, London was offered informally as a candidate for the site of the Common Fund headquarters. I propose that we now let that offer lapse. No formal action is required.

10 I am sending copies of this letter to the Foreign Secretary, the Chancellor, the Minister of Agriculture, the Attorney General and Sir Robin Butler.

DY

19 February 1988

Department of Trade & Industry

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the department for Enterprise

The Hon. Alan Clark MP
Minister for Trade

Department of Trade and Industry

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Rt Hon Sir Geoffrey Howe QC MP
Foreign Secretary
Foreign and Commonwealth Office
Downing Street
LONDON
SW1A 2AL

BF // Await comments from colleagues. CM

Direct line 01-215 5144
Our ref L01AHG
Your ref
Date 18 February 1988

Dear Geoffrey

I am writing about the International Jute Agreement (IJA) which expires on 9 January 1989. A decision has to be taken by the International Jute Council (IJC) whether to extend and/or renegotiate this UNCTAD 'other measures' (ie non price stabilisation) Agreement. I believe the UK should accept the line taken by the Commission and other Member States to agree to enter renegotiations on the basis that it will accept a new Agreement similar to the existing one, ie one that will not allow interference with the operation of the market, by such measures as Buffer Stocking arrangements, or does not move away from the concept of voluntary funding for projects; in short an Agreement in which the extent of members' obligations remains limited, as currently, to a contribution towards administrative costs.

The UK is constrained in its freedom of action by the participation of the Community in the Agreement. The IJA is a 'mixed Agreement' where both the Community and Member States have competence. It is subject to the PROBA 20 arrangement which requires the EC to negotiate from a common position, arrived at if necessary by qualified majority. Other Member States have already signified agreement to negotiating a new IJA and there are no prospects of blocking a Community mandate to renegotiate. The UK should therefore use its influence to ensure that any new Agreement does not operate against UK interests, remains modest in aims and costs, and does not introduce any contingent liabilities.

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Rt Hon Sir Geoffrey Howe QC MP February 1988

The administrative costs of the International Jute Organisation (IJO) set up under the Agreement have, since its inception in 1984, amounted to US$ 800,000 to US$ 900,000 per annum, funded equally by producers (5 members) and consumers (25), of which the UK contribution (based on trade shares) has averaged US$ 17,000. Staffed to the full complement agreed by the present IJC costs would probably be around US$ 1,100,000 a year (a UK share of around US$ 22,000). If a new Agreement is ratified our objective would be to seek to ensure no significant increase in this complement or costs. We beleive that other Member States and importing countries would share this objective. We would seek too to ensure no contingent liabilities under any new Agreement (there are none at present).

The IJA was the first 'other measures' Agreement to be implemented under the UNCTAD Integrated Programme for Commodities. The objectives of the current Agreement are to improve structural conditions in the jute market, improve its competitiveness, enlarge its markets, develop its quality and to develop production and trade to meet the requirements of world demand and supply. These are to be achieved through agricultural and industrial research and development and market promotion projects. The objectives also include the collection and dissemination of market information and the consideration (with no commitment to action) of such issues as the question of stabilisation of supply and demand and of competition with synthetics. When the organisation came into being it was expected to be able to take advantage of the Second Account of the Common Fund, but has had to rely for its projects on voluntary contributions. The resulting shortage of finance, as well as the necessity of developing good organisational procedures, led to a slow start to project work. The IJO, based in Dhaka, has not so far shown much result as agricultural projects, regarded as a first priority, have only got underway in the last year. We have made no contribution to project costs.

Nevertheless producers, primarily Bangladesh and India, but including Thailand, Nepal and China, pay high regard to the existence of the Agreement. Bangladesh was still dependent on jute for 56% of its export earnings in 1984/85, although its reliance on this has decreased over the period of the current Agreement.

The UK originally became involved largely as a damage limitation exercise, and this factor persists. Other EC Member States take a similar view, that although the IJO holds few, if any, benefits for them, the minimal costs of membership are outweighed by the political consequences of withdrawing. Other consumers (USA, Canada, Australia and the Nordics) are thought to share these views.

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the department for Enterprise

Rt Hon Sir Geoffrey Howe QC MP February 1988

During negotiation on the first Agreement some producers (notably Bangladesh) pressed strongly for the introduction of market stabilisation measures, ie Buffer Stocking. This was resisted by the consumers and there is no reason to believe any have softened their opinion. Belgium and the UK are by far the largest EC importers of jute and jute products. The UK retains only a very small manufacturing industry but has considerable merchanting interests. The IJC also provides a forum for addressing UK (and EC) concerns about infringements of trading rules by suppliers.

The approach outlined in my first two paragraphs is in line with the Inter-Departmental Review of Commodity Policy which concluded that existing Agreements without market intervention provisions should continue to be treated on their merits, as long as they did not provide a pretext for the introduction of market intervention measures.

I should be grateful if you would let me know by 23 February if you disagree with this approach.

I am copying this letter to the Prime Minister, Nigel Lawson, John MacGregor and Sir Robin Butler.

Yours ever

ALAN CLARK

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10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

14 December 1987

THE COMMON FUND

Thank you for your letter of 9 December and accompanying papers dealing with the background to our ratification of the Common Agreement, with the legal aspects of withdrawal from it and with our financial and legal obligations under the Cocoa and Natural Rubber Agreements. The Prime Minister has noted these carefully and is grateful.

I am copying this letter to Tony Galsworthy (Foreign and Commonwealth Office), Alex Allan (HM Treasury), Shirley Stagg (MAFF), Michael Saunders (Law Officers' Department) and Trevor Woolley (Cabinet Office).

(C.D. POWELL)

Stephen Ratcliffe, Esq.,
Department of Trade and Industry.

cc PC

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

PS/ *Secretary of State for Trade and Industry*

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9 December 1987

C D Powell Esq
10 Downing Street
London SW1A 2AA

Prime Minister
This is the review which you requested. It is unfortunate that the basic decisions on the Common Fund were taken so soon after the Government came into office and before we had determined in advance. Liabilities under future agreements do not look too bad CDP 10/12

Dear Charles,

THE COMMON FUND

Following my letter of 20 November, I am now able to let you have the results of the other work which was commissioned at the earlier meeting of Ministers on the Common Fund.

A I enclose a note setting out the main steps leading to the signature and ratification of the Common Fund Agreement, indicating the main issues which arose at each stage. As you will see, signature was a relatively formal step taken after some 4 years of detailed negotiation. By then, the UK was effectively committed to the Agreement, having participated fully in the special conferences and committees called to settle the terms under which the Fund would be created.

The context in which the final decisions were taken is important. The opportunity which the government had, on taking office in May 1979, to review the position and come to conclusions was even by then severely constrained. Most of the basic principles of the Fund had already been settled at a special negotiating conference. Furthermore, the change of government and the opening of UNCTAD V virtually coincided, putting pressure upon everyone for urgent decisions both on the continuation of the UK's commitment to the Fund in general and on the specific issue of making a voluntary pledge to the Second Account.

But timing apart, the decision to honour the previous commitment is understandable in the circumstances of the time. First, every other developed country, including the United States, had declared

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their support for the Fund. Secondly, although market intervention commodity agreements were viewed with suspicion because of their wider economic effects, no serious problems had been encountered in their operation. The tin buffer stock, for example, had been eliminated in 1976/77 and during the subsequent period, up to 1981, the market price for tin was consistently above the agreed intervention level. Had we then known what we have subsequently learnt from the painful experience of the tin crisis, in particular about the possibility of claims for contingent liabilities arising from alleged injuries to third parties, no doubt our decision and possibly that of other signatories would have been different. But that is with the advantage of hindsight. Even so, a number of problems and risks were foreseen and it is for that reason that the First Account is hedged about with substantial safeguards.

Community competence was a matter which gave rise to concern in connection with the future management of the Fund, rather than in relation to the possibility of unilateral deratification or withdrawal outside a common agreed EC position. However by the point at which it was proposed that the Community should sign the Common Fund Agreement, the European Court had already held that the Community had a measure of competence in relation to commodity agreements. That was clearly a factor which could not be ignored. But it would have been difficult, if not impossible, for the UK to have blocked Community participation at that time, the more so because by 1980 all member states had themselves signed and had effectively been acting as a group for some while. Nevertheless, the formula adopted, "participation alongside the member states" was seen as helpful to the extent that it could be used to defend the freedom of the UK and others to express separate views and to exercise their voting rights if the Fund came into operation.

B I am also enclosing a note on the legal aspects of withdrawal from the Common Fund Agreement prepared by legal advisers in interested Departments. This sets out in more detail, and confirms, the considerations which led to the view expressed in my Secretary of State's letter to Sir Geoffrey Howe of 29 September that, if the Commission were to challenge a UK withdrawal in the European Court of Justice, then the Court would be likely to rule in their favour. The note also considers the wider aspects of such proceedings.

C Also attached are notes on our financial and legal obligations under the Cocoa and Natural Rubber Agreements. It will be seen

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that these are now much more circumscribed as a result of the changes which we were able to obtain in the renegotiation of both agreements earlier this year.

I am copying this letter and enclosures to Tony Galsworthy (FCO), Alex Allen (HM Treasury), Shirley Stagg (MAFF), Michael Saunders (Law Officers Department) and Trevor Woolley (Cabinet Office).

Yours ever

Steph Ratcliffe

STEPHEN RATCLIFFE
Private Secretary

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THE COMMON FUND : STEPS LEADING TO SIGNATURE AND RATFICATION

The Common Fund was conceived as the central element in the Integrated Programme for Commodities (IPC), a comprehensive framework for commodities, launched at UNCTAD IV in 1976.

2 After prolonged argument, during which the US position changed from opposition to the Fund to support, agreement on the basic terms was reached on 20 March 1979 at the third session of a UN Negotiating Conference. The Conference was specifically intended to settle the issue in advance of UNCTAD V. The settlement included provision for compulsory contributions to a First Account of $400m. to support the financing of international buffer stocks and a voluntary Second Account to fund commodity development measures. The Conference established an Interim Committee open to all States Members of UNCTAD to draft the Articles of Agreement. The final Act was signed by the US, the nine member states of the EC and all other developed Group B countries.

The UK attitude

3 The change of government, following the election in May 1979, effectively coincided with the opening of UNCTAD V. The steering brief for the UK delegation was immediately put to incoming Ministers for approval. They were also advised of the results of the earlier negotiations on the Fund, of the likely size of the UK contribution to the First Account and of the need for an urgent decision on a contribution to the Second Account, to be announced at the Conference.

4 After discussion with officials, the Secretary of State for Trade said in a letter to the Foreign Secretary that he considered that the Common Fund was "quite erroneous in its conception" and would "fail in a wave of recriminations after a number of years", but that he accepted that it was a commitment which the Government should keep. He concluded that refraining from making a contribution to the Second Window would be politically unacceptable. The Chancellor of the Exchequer and the Secretary of State for Industry shared his scepticism but accepted that that the Government had to uphold the decision of its predecessor to contribute to the First Account and that there was no choice but to pledge a contribution to the Second. The Prime Minister and other Ministers endorsed the recommendations, with a reservation that no indication should be given of the size of the UK's contribution to the Second Account before the conclusion of an expenditure review.

Community involvement

5 Community involvement in the Common Fund was an issue raised in connection with the Interim Committee discussions which followed UNCTAD V. A material factor was considered to be the judgement by the European Court in October 1979, in relation to the International Rubber Agreement that such an agreement fell within the Common Commercial Policy and therefore necessarily involved a degree of Community competence. In a review of UK policy on International Commodity Agreements, in January 1980, Ministers were advised that British participation in a commodity agreement could no longer be considered in isolation from the participation of the Community as a

whole and that "in practice Community participation in any agreement with economic provisions will commit the United Kingdom".

6 Although the Common Fund was not itself the subject of the review, it was recognised that the establishment of Community competence in the rubber case had clear implications for the Fund. The Minister for Trade was advised that it was likely that the Community had acquired a measure of competence in relation to the Fund, which meant that the Community as such could become a member in addition to the member states. In Ministerial correspondence initiated by the Minister for Trade in April 1980, Ministers accepted that the Community could join but agreed that its rights and obligations as a member should be limited in ways which would discourage attempts by the Commission to extend competence. In particular, it was agreed that the Community should not be permitted to hold voting rights or to make contributions to either Account of the Fund. The essential concern was that member states should be able to continue to express their own views in Group B and in all matters relating to the Fund.

The Final Conference

7 The Minister for Trade headed the delegation to the Special Common Fund Conference held in June 1980 to settle the "Articles of Agreement". The main outstanding issues were the timing of contributions, the distribution of votes and a special clause to allow the US to join the Fund but to defer its payments until Congressional approval had been given. He reported the outcome in a letter of 1 July 1980 to the Lord Privy Seal. He said that what had emerged was relatively inexpensive financially and confirmed that decisions on the creation and operation of commodity agreements would continue to be taken by interested consuming and producing countries and not by the Fund administration alone.

Signature

8 Agreement on the text of the Treaty setting up the Fund was announced in Parliament on 2 July 1980. The UK signed the Agreement on 16 December 1980, following signature by the US and a number of other EC member states.

9 The Community signed the Agreement on 21 October 1981, reflecting a Council decision that the Community should participate alongside the member states.

Ratification

10 Following the making of an Immunities and Privileges order under the International Organisations Act, which was approved by both Houses in December 1981, the Agreement was ratified by the UK.

EEP Division
Department of Trade and Industry
November 1987

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

FOR ADVICE (AND DRAFT REPLY IF APPROPRIATE)
PLEASE BY: ASAP
IF DEADLINE CANNOT BE MET PLEASE PHONE IAN BENDELOW ON 215 5422

COPIES TO
PS/KC
PS/AC
PS/RA
PS/S&H
Mr Roberts
Mr Williams
Mr Knighton
Mr Hutton
Mr Corley
Mr Cooke
Mr Kerse
Sols.

10 November 1987

Dear Tim,

THE COMMON FUND

The Prime Minister held a meeting this morning to consider policy towards the Common Fund, on the basis of the paper circulated under cover of your Secretary of State's letter of 29 September to the Foreign Secretary. There were present the Foreign Secretary, the Chancellor of the Exchequer, your Secretary of State, the Minister for Agriculture, Fisheries and Food, the Attorney General and Mr Lavelle.

The Foreign Secretary said that the conditions required to bring the Common Fund into effect were likely to be met shortly. The situation had changed since the United Kingdom had ratified in 1981 and we now saw no need for the Fund. We had objections in particular to the First Account, whose intended function was to support the international buffer stock operations of international commodity organisations. There were grounds to think that our objections were shared by a good number of developed countries, as well as several developing countries, although they would be reluctant to speak up. The most straightforward course would be for the United Kingdom to de-ratify the Common Fund agreement or give notice of intention to withdraw. However, in both cases there were serious risks that the Commission of the European Communities would institute legal proceedings against us in the European Court. Legal advice was that we would probably lose, in which case we would be back where we started, with the additional risk that the Court's judgement might explicitly extend Community competence to Commodity Agreements. He recommended therefore a less direct approach. As a first step, we should approach selected European Community governments to see whether any of them would contemplate joining us in de-ratification. Assuming as was likely that they refused, we would then seek to enlist their support for steps designed to thwart the operation of the First Account.

The Trade and Industry Secretary supported this approach.

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The Attorney General confirmed that, if we were to de-ratify, the Commission would be likely to institute legal proceedings, on the grounds that our membership of the Common Fund was an aspect of the Common Commercial Policy of the European Community. The same would apply in the event of an attempt by the United Kingdom to withdraw. The Court would be likely to say that, because member states had agreed that the Community should participate alongside them, they had accepted a fetter upon their right to withdraw.

The following points were made in discussion:

- it had probably been a mistake to ratify the Common Fund Agreement in 1981. It was unclear to what extent Ministers had appreciated at that time the degree to which all future options for dissociating ourselves from the Common Fund would be constrained by agreement that the European Community should ratify as well as the member states.

- particular concern was expressed about the uncertainty over the precise extent of our financial obligations under the Common Fund.

- the only course fully consistent with the Government's deregulatory approach was to de-ratify or withdraw. That would be our first choice and we might still have to invoke one of these options. But the legal difficulties were a very serious constraint, as was the risk that the outcome of European Court proceedings would be to extend Community competence;

- this suggested that as a first step we should work to ensure that the First Account was still born or indefinitely frozen. There should be ample opportunity to delay implementation and press for substantial changes, provided we could enlist the support of others;

- were this to fail, we would still have the option of withdrawal. If a number of European Community member states were to make clear their intention to withdraw, the Commission would be less likely to institute legal proceedings.

- experience with the Common Fund should reinforce the Government's policy of avoiding further commodity agreements where possible. At the same time, a note should be prepared for the information of Ministers setting out the precise extent of our financial and legal obligations under the International Cocoa and Rubber Agreements.

Summing up the discussion, the Prime Minister said that Ministers were concerned to discover the extent to which our freedom of manoeuvre in relation to the Common Fund was constrained. It would be helpful for them to have a summary of the advice tendered at the time of the decision to join and ratify the Common Fund Agreement to see what lessons it

offered for the future. A further and fuller analysis of the legal aspects of withdrawal should also be prepared, as well as the note which had been requested on our obligations under existing Commodity Agreements. At the same time, approaches should be made to selected European Community governments to seek to persuade them to join us in de-ratifying the agreement. This seemed unlikely to succeed, but would prepare the ground for the second stage of seeking their co-operation in working to freeze the Fund's First Account. Much should be made in this approach of the risk of unquantified contingent liabilities under the Agreement, and it should be directed to Finance as well as Trade and Foreign Ministers. The Trade and Industry Secretary should circulate a draft text which, subject to comments, could act as the basis for our representations.

I should be grateful if your Department would co-ordinate the various studies and drafts requested above.

I am copying this letter to Tony Galsworthy (Foreign and Commonwealth Office), Alex Allan (H.M. Treasury), Shirley Stagg (Ministry of Agriculture, Fisheries and Food), Michael Saunders (Law Officers' Department) and Trevor Woolley (Cabinet Office).

Yours sincerely,

C D POWELL

Timothy Walker, Esq.
Department of Trade and Industry

LEGAL ASPECTS OF WITHDRAWAL FROM THE COMMON FUND

1. The purpose of this note is to set out, in more detail, the legal arguments and considerations relating to the possible withdrawal (which term here covers both deratification and withdrawal under Article 30 of the Common Fund Agreement) by the United Kingdom from the Common Fund. It expands upon Annex II to the Secretary of State for Trade and Industry's letter of 29 September and takes account of the legal advice in the Note on Community Competence included in the Review of Commodity Policy prepared last year. It is the firm opinion of UKREP that, should the UK withdraw, the Commission would take proceedings against the UK in the European Court of Justice. This note is structured to reflect how the arguments might be presented, and the Court may react, in those proceedings.

Background

2. The salient features of the Common Fund Agreement for the purposes of this note are these:

OBJECTIVES. The objectives of the Fund are:

(a) to serve as a key instrument in attaining the agreed objectives of the Integrated Programme for Commodities;

(b) to facilitate the conclusion and functioning of international commodity agreements, particularly concerning commodities of special interest to developing countries (Article 2).

FUNCTIONS. The functions of the Fund are:

(a) to contribute, through its First Account, to the financing of international buffer stocks and internationally co-ordinated national stocks, all within the framework of international commodity agreements;

(b) to finance, through its Second Account, commodity measures other than stocking;

(c) to promote co-ordination and consultation through its Second Account with regard to commodity measures other than stocking, and their financing, "with a view to providing a commodity focus" (whatever that may mean) (Article 3).

MEMBERSHIP. Membership is expressly open to intergovernmental organisations such as the EEC, but they "shall not be required to undertake any financial obligations to the Fund; nor shall they hold any vote" (Article 4 - inserted at the request of the EEC).

In addition to the shares in the Fund subscribed by the states parties to it on a compulsory footing, provision is made for voluntary contributions, both from states parties and intergovernmental organisations such as the EEC (Article 13).

MANAGEMENT. The Fund is managed by an executive board, reporting to the Governing Council in which all the powers of the Fund are vested (Article 20 and following). Voting on the Governing Council is confined to the states parties.

WITHDRAWAL. Members may withdraw on not less than twelve months' written notice (Article 30).

RATIFICATION. Ratification is possible up to eighteen months after entry into force of the Agreement, but not thereafter (Article 54).

ACCESSION. After the entry into force of the Agreement, states may accede to it not as of right, but only "upon such terms and conditions as are agreed between the Governing Council and [the relevant state]" (Article 56).

Withdrawal

3. The legal issues to be considered arise out of the relationship between the Common Fund and the Common Commercial Policy of the Community, exclusive competence for which is vested in the Community by Article 113 of the EEC Treaty; the obligations, if any, devolving on the Member States following the adoption of the 1981 decision that the Community should participate alongside Member States; and the extent to which the very general obligations prescribed by Article 5 of the EEC Treaty can be made to bite on membership of the Common Fund. The text of Articles 5 and 113 is attached.

4. The relevant jurisprudence of the Court is contained in Opinion 1/78, Rubber Agreement and Opinion 1/75, OECD Costs. The Court has held that commodity agreements are instruments of commercial policy within Article 113; a highly developed commercial policy cannot be restricted to measures of trade

liberalisation but must extend to measures, whatever their form, aimed at regulation of the world market, including the mechanism of buffer stocks. To the extent that the objectives of the relevant agreement as a whole fall within the concept of the Common Commercial Policy the Community will be exclusively competent. To the extent that the Member States are responsible for financial contributions, they may also be competent and can participate in the agreement together with the Community. But the mere fact that financial obligations are imposed on the Member States does not by itself imply their competence; the nature of the obligations and their place in the structure and objectives of the agreement have to be determined in each case.

5. The danger, as identified in the previous papers on this subject, is that the Community, through the agency of the EC Commission, would challenge the UK's withdrawal from the Common Fund Agreement by way of an application before the ECJ under Article 169 of the EC Treaty for failure to fulfil its obligations under the Treaty. Before commencing proceedings the Commission would give the UK the opportunity to submit its observations; if not satisfied with the response, the Commission would deliver a reasoned opinion setting a time limit for compliance by the UK with the conclusions of the opinion; failing compliance, proceedings would be launched. Since it could take between eighteen months and two years to bring the proceedings to a conclusion, the Commission might apply for interim measures to prevent the UK from withdrawing pending the final decision of the Court, in an attempt to obviate any need for the UK to negotiate the terms of its accession to the Agreement under Article 56,

following an adverse judgment delivered more than eighteen months after the entry in force of the Agreement.

The Commission's Case

6. The Commission can be expected to argue that participation by the Community in the Common Fund Agreement is part of the Community's Common Commercial Policy. The Court has held in its Opinion on the Rubber Agreement that the Common Commercial Policy includes participation by the Community in commodity agreements (with regulatory provisions including buffer stocks): the Common Commercial Policy is not limited to measures which control trade, such as customs tariffs and restrictions.

7. The Commission's likely line of argument can be seen from the position it has taken in the past. It has argued that the Community had to participate in the Common Fund under Article 113, because the Fund, having regard to its obligations and functions, would constitute a specific financial and co-ordinating instrument concerned with the regulation of international trade in commodities (stock financing via its First Account, financing of certain other measures via its Second Account). The Fund would support the commodity agreements of which by virtue of its Common Commercial Policy and in certain cases also of its Common Agricultural Policy the Community is or might become a member.

8. During the negotiations on the Agreement the Commission maintained that although the Fund was a purely financial institution, it was also indisputable that the dividing line

between what was and what was not a matter of commercial policy could not depend solely on the financial nature of the instrument in question. The Common Fund and the commodity agreements were complementary parts of a single structure (the Integrated Programme on Commodities), the essential purpose of which was to regulate commodity markets. The Commission also contended that since the respective powers of decision under the commodity agreements and the Fund were distinct, this was further justification for accepting, in order to make it practically effective at the operational level, the need for Community participation in the Fund.

9. The absence of financial contributions by the Community as such to the Common Fund is not a bar to Community competence, as the Court's Opinion on the Rubber Agreement indicates. Where a commodity agreement has been funded solely by Member States, the Court has held that Member States retain a degree of competence and are entitled to participate together with the Community. The Commission would argue that in the case of the Common Fund the Member States could not participate in the Agreement without the Community and vice versa. The Community has no votes under the Agreement, but the Member States do. Therefore Community action in relation to the Common Fund has to be on the basis of a common position. That position will only be effective, or its effectiveness maximised, if all the Member States are parties, so that their aggregate voting power can be marshalled in support of the Community position. The Commission would say that as part of the Common Commercial Policy the Community can therefore <u>in effect</u> compel Member States to join. Given the mixed and

arguably indivisible nature of the competence the act of the United Kingdom in withdrawing from the Common Fund would jeopardise the attainment of the objectives of the Common Commercial Policy contrary to Article 5 of the Treaty.

10. The Commission could also point to the Council decision of 16 September 1981 concerning the signing of the Common Fund Agreement by the Community (a copy of the Report relating to this decision is annexed). The Council agreed that the Community should participate alongside the Member States.

11. The Commission would argue that the decision was evidence of the intention that Member States and the Community participate in the Agreement together. The decision envisages that the Community will participate together with all the Member States, though it does not in its terms oblige any Member State to sign or ratify or not to withdraw since the decision is not directed to the Member States. It is in effect a precondition of Community participation that the Member States shall also themselves participate. In that sense, the decision, read together with Article 5, obliges the UK not to withdraw, even if the Common Fund falls outside the common commercial policy, so long as Community participation in the Agreement can be regarded as one of its tasks.

The UK's Response

12. The UK does not accept that the Common Fund Agreement is part of the Common Commercial Policy. It would not dispute that commodity agreements are such a part - this is history - but

would draw a distinction between commodity agreements and the Common Fund Agreement. The Common Fund is a financial institution and although related to commodity agreements is of a different character and purpose. The Fund does not as a matter of course play a part in the regulation of trade in the products for which the commodity agreements have responsibility. The provision of finance to international organisations which inter alia may fund commodity agreements does not itself regulate trade nor does it have as an objective the regulation of the world market, whether towards liberalisation or otherwise. The UK would argue that it is too remote from trade to be part of the Common Commercial Policy. The UK would also point out that the ratification of an international agreement was a sovereign act and even the Commission has acknowledged that Member States retain some competence in relation to the Fund. That competence is severable from the competence of the Community and other Member States. In order to have any substantive effect that competence must leave Member States free to conclude or stay out of an agreement.

13. As regards the decision of 16 September 1981 the UK would point out that the provision relates to signing, not ratification, was limited to the Community's participation and not Member States, and even that was "subject to its subsequent conclusion". While not denying that a measure of Community competence must exist in relation to the Common Fund - this must flow from the adoption of the decision - the UK would argue that this was limited to mere membership of the Fund; in particular, it does not extend to the making of voluntary contributions out

of the EC budget, unless competence to make such contributions can be derived from Article 113 (which we deny) or is specifically conferred by decision based on Article 235. As regards any argument concerning the continued participation of the UK in the Common Fund, the UK would reiterate its point that there is no decision of the Council requiring continued participation, and that it is not, as a matter of Community law or under terms of the Common Fund Agreement, necessary for all Member States and the Community to be parties to the Agreement. The respective powers of the Community and the Member States are parallel and divisible, and all the obligations of the Agreement within the respective competences of the Member States and the Commission may be undertaken without the necessary presence of the Member States.

14. The UK would argue that any financial contribution on the part of the Community must be agreed to unanimously, ie not under the formal budgetary procedures or as part of the Common Commercial Policy (under Article 113) but implicitly under Article 235. The extent of the Community's competence in the Common Fund is limited to voluntary contributions and even then to the extent unanimously agreed by the Member States. That competence is merely a nominal one at present though it can be increased (in parallel, and without decreasing Member States' competence). In support of its argument, the UK would refer to a Council statement of 1980 to the effect that the Council would have to decide upon any financial contribution and its decision should respect the position of all delegations.

The Court's Likely Response

15. The Court has not shown any disposition to limit the scope of the Common Commercial Policy, as recent case law demonstrates. It is more likely to build upon rather than restrict the notion of regulation of trade as it relates to commodity agreements. The Court will have regard to the reasons for setting up the Common Fund and its purpose being related to the commodity agreements (ie the Integrated Progamme) and the operational links in practice. It would probably not regard the funding arrangement provided by the Agreement as being too remote from the regulation of trade or the commodity agreements.

16. As regards the decision of 16 September 1981, it is more likely that the Court would give this a broad interpretation, and in particular would want to make meaningful the expression "participation in the Common Fund alongside the Member States". Such an interpretation might be supported by reference to the background and negotiation of the Common Fund Agreement. As regards the question of continued participation of Member States, if the Court holds that the Common Fund is part and parcel of the Common Commercial Policy, albeit with a remnant of Member States' competence, it is likely to find an obligation on the part of Member States to continue participation in the Common Fund in order to give effect to that policy. Member States must facilitate the achievement of the Community's tasks and must abstain from any measures which could jeopardise the attainment of the objectives of the Treaty.

Mr Bretherton/CA
Mr Emden/CRO

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EUROPEAN COMMUNITIES
THE COUNCIL

Brussels, 23 September 1981
(24.09)

9145/81

RESTREINT

PROBA 56

REPORT

from : Permanent Representatives Committee dated: 16 September 1981 to : Council	
No. prev. doc. 8945/81	No. Cion prop. 10766/80

Subject: COMMON FUND
- signing of the Agreement by the Community

1. Following the conclusion of the UNCTAD negotiations on a Common Fund for commodities and the agreement reached within the Council on the arrangements for possible Community participation in the Fund ([1]), the Commission submitted in October 1980 a Recommendation to the Council on Community participation in the Fund alongside the Member States and on the signing by the Community of the Agreement establishing the Fund.

2. In the light of the proceedings of the Working Party on Commodities and having noted that all Member States had already signed the Agreement, the Committee agreed to suggest that, as an "A" item on the agenda for a

([1]) Council Decision of 9 June 1980 (7647/80).

.../...

need to deal expressly with the practical arrangement operating under PROBA 20. PROBA 20 provides for the joint participation of the Community and the Member States in commodity agreements without prejudice to the legal position on competence. It does not apply to the Common Fund. But it is necessary to consider to what extent any ruling on competence, by virtue of its application of the legal position, might affect the political compromise reflected in PROBA 20. It is essentially a political question whether or not the Commission would feel obliged or wish to continue to apply the PROBA 20 instrument in the face of a favourable and positive judgment from the Court. So far as the UK is concerned, there are advantages and disadvantages in the PROBA 20 arrangement depending on the particular subject matter. It is understood that the political view is that on balance PROBA 20 is advantageous, in practice allowing the UK to speak for itself.

21. It is conceivable that if the Court found that financial/funding arrangements, such as the Common Fund, were capable of being part of the Common Commercial Policy, the Commission might push to extend its new found powers in the direction of other international financial agreements. Such agreements would have to be considered in the light of their own objectives and effects. But the UK would seek to restrict any adverse findings of the Court in the context of the Common Fund to financial agreements which were closely related to trade regulation matters.

Consequences of an Adverse Judgment

17. The view of legal advisers of interested Departments remains that it is likely that the Court would rule against the UK and that there is a substantial risk that the question of the extent of the Common Commercial Policy and consequent exclusive Community competence will be discussed by the Court.

18. As regards the Common Fund itself, it is possible that the Court would equate the position of the Fund to that of certain commodity agreements, to the effect that although Member States retain some competence the extent of that competence is in practice very little. Implicit in this statement is a recognition of the possibility that the Court will expand upon its Opinion in the Rubber case to particularise the respective competences to the detriment of Member States.

19. But officials do not consider that the Court's Opinion would prejudice our position on voluntary contributions. Even if the Court held that the Common Fund is as a whole part of the Common Commercial Policy and requires participation of both Member States and the Community, it would not remove from Member States the competence over their voluntary contributions to the Second Account. If however the Court held that the Common Fund was part of the Common Commercial Policy, the decision to make Community voluntary contributions could fall under Article 113 and therefore be decided by qualified majority.

20. It is unlikely in the present context that the Court would

INTERNATIONAL NATURAL RUBBER AGREEMENT

FINANCIAL AND LEGAL OBLIGATIONS

Current Position

1. The International Natural Rubber Agreement 1979 (INRA I) terminated on 23 October 1987. There is currently an interim period of unknown length during which certain of the financial rules of INRA 1979 will be implemented, ie sales are to be made from the Buffer Stock, but there will be no purchases. The Buffer Stock Manager (BSM) has been authorised by the INRO Council to dispose of rubber on a month-by-month basis to cover INRO's administrative costs during that period. If the price enters the "may sell" level, the BSM is empowered to sell additional rubber and he has to sell if the price reaches the "must sell" price.

2. The UK has contributed £5.735m towards buffer stock purchases, of which around £700,000 is to be refunded from recent sales under INRA I. It has also paid £155,000 in Administrative costs over the seven year existence of INRA I.

Alternatives for the Future

I) No INRA II

3. If INRA II does not enter into force, the Organisation will continue in existence merely to dipose of the remaining stock. Administrative costs will be financed from residual savings from the last year's contributions to the Administrative Account of the 1979 Agreement and sales from the Buffer Stock. There will therefore be no additional liability on the UK during the interim period. The level of subsequent refund to the UK will depend on prevailing market prices during the liquidation period.

II) INRA II

4. INRA 1987 (INRA II) could enter into force at any point from now, but this event is unlikely to occur before mid-1988.

5. If INRA II does enter into force the UK's obligations are as follows.

6. The maximum total size of the Buffer Stock under INRA II is 550,000 tonnes, including any carry-over from INRA I, and is a "real" asset as the BSM is empowered to buy only physical rubber, ie. no futures trading. Contributions to the Buffer Stock must be in cash, and the UK is obliged to make its payments as calculated in line with its world market trade share.

7. At UK insistence INRA II contains a new clause limiting the liabilities of members to the organisation or third parties to the extent of their contributions to a) the Administrative Account and b) the Buffer Stock Account. The obligations for the financing of these are clearly delineated.

8. The Council is also expressly barred from entering into contracts other than for physical rubber and from borrowing,

except in relation to the Common Fund. However in the latter case the Articles relating to contributions to the Buffer Stock clearly specify these must be in cash from members. Legal advice is that INRA II cannot, given the appropriate amended Articles in the new Agreement, take advantage of the First Account of the Common Fund.

Financial Estimates for INRA II

9. On the assumption that INRA II enters into force definitively after mid-1988, and taking the worst case scenario of rubber prices dropping into the may/must buy area and staying there for 5 years, the maximum cost to the UK, using current exchange rates is calculated as:

£2.500m for the purchase of additional rubber; But in the event of subsequent liquidation of INRA II sales of the Buffer stock will be refunded to members on a proportional basis;

£2.435m storage/insurance costs;

£0.110m administrative costs (estimated at current levels).

Contingent Liabilities for INRA II

10. There are no significant foreseeable contingent liabilities in INRA II.

11.(a) Any member might fail at any time to pay its contribution to the Administration Account. There is no reason to believe the UK is ever likely to be forced to pay any contribution in excess of its due amount, though in practice, members might agree to cover a shortfall in the Budget pro tem.

(b). Within the Buffer Stock Account there appear to be no contingent liabilities as the BSM must receive contributions from members before purchasing as he is empowered only to purchase physical rubber on cash terms.

(c) Potential Ultra Vires activity is covered legally as far as possible by the articles limiting members liability to contributions to the Administrative and Buffer Stock Accounts. The BSM must report all activity 30 days after the end of the month in which it takes place. In practice the UK trade always tells us when the BSM is entering the market, leaving little room for illegal trading.

CTPS Division
Department of Trade and Industry
November 1987

INTERNATIONAL COCOA AGREEMENT (ICCA '86)

Financial and Legal Obligations

1. The ICCA '86 entered into force on 20 January 1987 following completion of Parliamentary Procedures in sufficient countries, including the UK and other EC Member States, to fulfil the membership requirement. The European Community is also a member in its own right. Under the compromise arrangements for participation in international agreements the UK participates in the ICCA '86 on the basis of a co-ordinated EC position.

2. The UK's financial liability to the ICCA '86 is limited to its obligations towards the financing of the Administrative Budget and the Buffer Stock. As a result of the UK's initiative during the negotiations of the Agreement, there are no contingent liabilities.

3. The UK's contribution to the Administrative Budget is currently assessed at £43,000 for the 1987/88 cocoa year. The level of contributions is reviewed and fixed annually by the Cocoa Council which is the governing body of the Agreement.

4. Financing of the Buffer Stock is provided by imposition of a levy on trade with members, currently $45 per tonne, reducing to $30 per tonne from 1 January 1988. Importing members are responsible for applying the levy on first import of cocoa from non-member countries.

5. In the event of the ICCA '86 being terminated, any remaining buffer stock funds would be distributed among exporting and importing members.

Tropical Foods Division
Ministry of Agriculture,
Fisheries and Food

November 1987

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UNITED NATIONS

UNCTAD V + The Common Fund
Pt 2

cc PC

Foreign and Commonwealth Office

London SW1A 2AH

25 November 1987

CDP 25/11

Dear Stephen

The Common Fund

Thank you for copying to me your letter of 20 November to Charles Powell. I have also seen his reply of 21 November. The Foreign Secretary is content with the terms of the draft letter to certain Community Ministers seeking their views on deratification of the Common Fund Agreement.

In addition to our formal approach to other Member States, UKRep Brussels have recommended that we let the Commission know of the exercise: they are in any case likely to learn of it before long. We would support this recommendation, and would see no objection to UKRep passing a copy of the lobbying letter to interested Commission officials.

I am copying this letter to Charles Powell, Alex Allan, Shirley Stagg, Michael Saunders and Trevor Woolley.

Yours ever

(R N Culshaw)
Private Secretary

S Ratcliffe Esq
PS/Secretary of State for Trade
and Industry

UN. Unctad Pr 2

Cile SM
cc PC

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

21 November 1987

Dear Stephen,

THE COMMON FUND

Thank you for your letter of 20 November enclosing a draft letter to selected Community governments, seeking to persuade them to join us in de-ratifying the Common Fund Agreement. Subject to the views of colleagues, the Prime Minister is content with the draft.

I am copying this letter to Tony Galsworthy (Foreign and Commonwealth Office), Alex Allan (H M Treasury), Shirley Stagg (Ministry of Agriculture, Fisheries and Food), Michael Saunders (Law Officers' Department) and Trevor Woolley (Cabinet Office).

Yours sincerely,

Charles Powell

C. D. POWELL

Stephen Ratcliffe, Esq.,
Department of 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

PS/ *Secretary of State for Trade and Industry*

RESTRICTED

20 November 1987

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

Prime Minister
Agree the attached draft letter?
CDP 20/XI

Dear Charles,

THE COMMON FUND

In your letter of 10 November, recording the meeting on the Common Fund, one of the points for action was that my Secretary of State should circulate a draft of a letter to selected Community governments, seeking to persuade them to join us in de-ratifying the Agreement.

I enclose a text which has been prepared in conjunction with officials of all those departments whose Ministers attended the discussion. I am also enclosing the list of EC Ministers whom we recommend should be approached.

There is to be a meeting of officials in Brussels on 26 November to discuss the Community's position on the Common Fund. It would be helpful if the proposed letter could be sent early next week, so that the governments concerned were aware of our views.

The other action requested is in hand and I will forward the results as soon as possible.

I am copying this letter and enclosures to Tony Galsworthy (FCO), Alex Allan (HM Treasury), Shirley Stagg (MAFF), Michael Saunders (Law Officers' Department) and Trevor Woolley (Cabinet Office).

Yours sincerely
Stephen Ratcliffe

STEPHEN RATCLIFFE
Private Secretary

JG4BMF

DRAFT LETTER TO SELECTED EUROPEAN MINISTERS ON THE COMMON FUND

1. The announcement at UNCTAD VII by the USSR and certain other countries of their intention to ratify the Common Fund Agreement has brought closer the prospect that it will now come into force. Yet a number of countries, including some developing ones and even the UNCTAD Secretariat, have privately expressed scepticism about the continued relevance of the Fund, at least in its present form. Community colleagues at the Conference also indicated that they shared the view advanced by the British delegation that in the current circumstances the Fund does not make economic sense. The British statement in the closing Plenary Session suggested that, before steps were taken to bring the Common Fund into operation, all aspects of it should be examined very carefully. I am writing to you and some other colleagues now to seek your views on how we in the Community should respond to the new situation.

2. I think you are already familiar with the British position. Negotiations on the Fund began some ten years ago when attitudes towards market intervention commodity agreements were different and it was thought that a significant number of these agreements operating through the mechanism of buffer stocks could be negotiated. In the light of the performance of such agreements over the past decade, and in particular of our shared experience of the Tin Agreement, we are all more aware of the risks and the market distortions that are likely to result from their operation. Moreover, my Government no longer accepts the earlier view that the best way to help commodity-dependent countries is

to intervene in the operation of commodity markets. Rather, such countries need efficient markets, help in producing and marketing their commodities and, in many cases, assistance in diversifying out of over-reliance on one or two products, thus broadening the base of their economies. These considerations prompt the question whether the Common Fund, and the First Account in particular, still has any relevance.

3. There are other problems which would have to be faced if the Fund came into operation. First, although the Fund Agreement gives members considerable protection from contingent financial liabilities beyond the liability to pay the callable element of directly contributed capital, it does not safeguard members against the possibility of litigation by third parties for liabilities incurred by the Fund. Secondly, the Fund may come into operation and not be used - although even then its existence and the build-up of financial reserves could lead to undesirable continuing pressure for new agreements with buffer stocks. Only the Cocoa and Rubber Agreements have operational buffer stocks and are eligible therefore for association with the Fund, but to date neither of the relevant organisations has shown any specific interest in so doing. In that event a sizeable amount of capital will be tied up for the sole purpose of meeting the administrative and headquarters costs of the Fund. This would serve no-one's interests.

4. I do not see any realistic possibility of amending the Fund Agreement itself to remove these problems. Fundamental change would require a 75% majority and is unlikely to be achievable.

We could perhaps aim for an informal agreement severely restricting the way in which the First Account might be used, while looking closely at the basic conditions for borrowing and disbursement of money, and the drafting of financial control regulations. However, this would not provide a fully secure solution.

5. Against this background, the best way forward would, in our view, be for those countries that no longer feel that the Common Fund is likely to serve any real purpose to withdraw their instruments of ratification of the Agreement before the Fund comes into force. We would need to explain to the developing countries why we were taking this action, and pledge our continued support for their development in other ways. I suggest that we would wish to maintain in some form the voluntary pledges made to the Second Account which is of potential value to many commodity producing countries, as was implicitly recognised by the Council in the Community mandate for UNCTAD VII.

6. It seems to us that the arguments for deratification of the Fund Agreement are strong. It would also give a general signal that price intervention agreements are no longer considered desirable.

7. I would very much welcome your observations and would like to know your present attitude towards the Common Fund, in particular your view of deratification. In view of the wider aspects of the problem, I am sending copies of this letter to your colleagues in Ministries of Finance and External Affairs.

EUROPEAN MINISTERS

BELGIUM	M Herman de Croo *	Minister for External Trade
	M Guy Verhofstadt	Dep. Prime Minister & Minister of the Budget
	M Leo Tindemans	Minister for External Relations
	(Cabinet will continue until Dec.13 election)	
DENMARK	Mr Nils Wilhjelm *	Minister of Industry
	Mr Palle Simonsen	Minister of Finance
	Mr Uffe Elleman-Jensen	Minister of Foreign Affairs
FRANCE	S Alain Madelin *	Minister of Industry
	S Edouard Balladur	Minister of Economy, Finance and Privatisation
	S Jean-Bernard Raimond	Minister of Foreign Affairs
FRG	Dr Martin Bangemann *	Federal Minister of Economics
	Dr Gerhard Stoltenberg	Federal Minister of Finance
	Herr Hans-Dietrich Genscher	Federal Minister of Foreign Affairs
ITALY	On A Battaglia *	Minister for Industry
	On R Ruggiero	Minister for Foreign Trade
	On Giuliano Amato	Minister for the Treasury
	On Giulio Andreotti	Minister for Foreign Affairs
NETHERLANDS	Drs Rudolph de Korte *	Deputy Prime Minister & Minister for Economic Affairs
	Dr H O C R Ruding	Minister for Finance
	Mr H van den Broek	Minister for Foreign Affairs
PORTUGAL	Mr Luis de Mira Amaral *	Minister for Industry & Energy
	Mr Joaquim Martins Ferreira do Amaral	Minister for Trade & Tourism
	Dr Miguel Cadilhe	Minister for Finance
	Prof Joao de Deus Pinheiro	Minister for Foreign Affairs

*Principal addressee

UN : Unctad & Common fund Pr 2.

RESTRICTED

Cite DAS
cc PC

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

10 November 1987

Dear Tim,

THE COMMON FUND

The Prime Minister held a meeting this morning to consider policy towards the Common Fund, on the basis of the paper circulated under cover of your Secretary of State's letter of 29 September to the Foreign Secretary. There were present the Foreign Secretary, the Chancellor of the Exchequer, your Secretary of State, the Minister for Agriculture, Fisheries and Food, the Attorney General and Mr Lavelle.

The Foreign Secretary said that the conditions required to bring the Common Fund into effect were likely to be met shortly. The situation had changed since the United Kingdom had ratified in 1981 and we now saw no need for the Fund. We had objections in particular to the First Account, whose intended function was to support the international buffer stock operations of international commodity organisations. There were grounds to think that our objections were shared by a good number of developed countries, as well as several developing countries, although they would be reluctant to speak up. The most straightforward course would be for the United Kingdom to de-ratify the Common Fund agreement or give notice of intention to withdraw. However, in both cases there were serious risks that the Commission of the European Communities would institute legal proceedings against us in the European Court. Legal advice was that we would probably lose, in which case we would be back where we started, with the additional risk that the Court's judgement might explicitly extend Community competence to Commodity Agreements. He recommended therefore a less direct approach. As a first step, we should approach selected European Community governments to see whether any of them would contemplate joining us in de-ratification. Assuming as was likely that they refused, we would then seek to enlist their support for steps designed to thwart the operation of the First Account.

The Trade and Industry Secretary supported this approach.

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The Attorney General confirmed that, if we were to de-ratify, the Commission would be likely to institute legal proceedings, on the grounds that our membership of the Common Fund was an aspect of the Common Commercial Policy of the European Community. The same would apply in the event of an attempt by the United Kingdom to withdraw. The Court would be likely to say that, because member states had agreed that the Community should participate alongside them, they had accepted a fetter upon their right to withdraw.

The following points were made in discussion:

- it had probably been a mistake to ratify the Common Fund Agreement in 1981. It was unclear to what extent Ministers had appreciated at that time the degree to which all future options for dissociating ourselves from the Common Fund would be constrained by agreement that the European Community should ratify as well as the member states.

- particular concern was expressed about the uncertainty over the precise extent of our financial obligations under the Common Fund.

- the only course fully consistent with the Government's deregulatory approach was to de-ratify or withdraw. That would be our first choice and we might still have to invoke one of these options. But the legal difficulties were a very serious constraint, as was the risk that the outcome of European Court proceedings would be to extend Community competence;

- this suggested that as a first step we should work to ensure that the First Account was still born or indefinitely frozen. There should be ample opportunity to delay implementation and press for substantial changes, provided we could enlist the support of others;

- were this to fail, we would still have the option of withdrawal. If a number of European Community member states were to make clear their intention to withdraw, the Commission would be less likely to institute legal proceedings.

- experience with the Common Fund should reinforce the Government's policy of avoiding further commodity agreements where possible. At the same time, a note should be prepared for the information of Ministers setting out the precise extent of our financial and legal obligations under the International Cocoa and Rubber Agreements.

Summing up the discussion, the Prime Minister said that Ministers were concerned to discover the extent to which our freedom of manoeuvre in relation to the Common Fund was constrained. It would be helpful for them to have a summary of the advice tendered at the time of the decision to join and ratify the Common Fund Agreement to see what lessons it

offered for the future. A further and fuller analysis of the legal aspects of withdrawal should also be prepared, as well as the note which had been requested on our obligations under existing Commodity Agreements. At the same time, approaches should be made to selected European Community governments to seek to persuade them to join us in de-ratifying the agreement. This seemed unlikely to succeed, but would prepare the ground for the second stage of seeking their co-operation in working to freeze the Fund's First Account. Much should be made in this approach of the risk of unquantified contingent liabilities under the Agreement, and it should be directed to Finance as well as Trade and Foreign Ministers. The Trade and Industry Secretary should circulate a draft text which, subject to comments, could act as the basis for our representations.

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I should be grateful if your Department would co-ordinate the various studies and drafts requested above.

I am copying this letter to Tony Galsworthy (Foreign and Commonwealth Office), Alex Allan (H.M. Treasury), Shirley Stagg (Ministry of Agriculture, Fisheries and Food), Michael Saunders (Law Officers' Department) and Trevor Woolley (Cabinet Office).

Yours sincerely,

C D POWELL

Timothy Walker, Esq.
Department of Trade and Industry

SRWBBM

PRIME MINISTER

THE COMMON FUND

For seven years we have been happily working on the assumption that the Common Fund would never come into force because sufficient countries would not ratify it. Now all of a sudden it seems that they may do so (the Russians have unexpectedly announced that they will). We have to decide what to do and that is the purpose of tomorrow's meeting. Those attending are the Chancellor, the Foreign Secretary, the Secretary of State for Trade and Industry (who is the Minister principally responsible), the Minister of Agriculture and the Attorney General.

A letter from the Trade and Industry Secretary together with the supporting paper by officials and comments by Ministerial colleagues are in the folder and set out the problem in some detail (possibly greater than you need to absorb).

The Common Fund itself, while tiresome, is not too bad. The bit we like least of all is the so-called First Account, which is designed to provide a common pool of finance for buffer stocks for individual commodity agreements. Even with ratification of the Common Fund Agreement, there is no immediate likelihood that the First Account will be activated. The only two existing commodity agreements for buffer stocks do not have any obvious need to call on the First Account, and there are no other agreements immediately in prospect. However, the danger certainly exists that the First Account will one day be activated. And we need a strategy to avoid that.

Three main possibilities have been identified.

(i) De-ratification of the agreement. Under this, we would simply announce that we were going to withdraw the notification of ratification which we have already given. This would be the most clean cut solution and the most

consistent with our deregulatory approach. It would also save us the most money. But while it sounds jolly simple, on closer investigation it does have a number of problems. It might not actually stop the Common Fund from coming into force since sufficient countries might still ratify to bring it into force whatever we do. Moreover, it does look a bit indecisive first to ratify and then to de-ratify without having had any experience of the Fund in operation. A more immediate risk is that the lawyers, including the Attorney General, advise that the Commission could institute legal proceedings against us. They assess that we would probably lose. I understand that Alan Clark feels that there may be more support than officials think among other Community Ministers for de-ratification. All I can say is no one else has found traces of it and the likelihood must be that the others would be perfectly happy to see us take the heat.

(ii) We could try various procedural manoeuvres designed to stop the First Account from being activated. It would save us about half as much as de-ratification. This course is actually rather more likely to have support within the European Community where, for all the fine talk, there is not actually much enthusiasm for handing over money for the First Account. It might well succeed. But there is no guarantee that it will. On its own it does not, therefore, offer a satisfactory solution.

(iii) We could give notice, either now or later, of our intention to withdraw from the Common Fund (12 months' notice is required). This would in some ways be more easily defensible than de-ratification. We would be waiting until we had some experience of the way the Fund operates before taking the step of withdrawal. It also gives us more flexibility. We do not have to announce now that we intend to withdraw. But if it seemed likely that our efforts to stop activation of the First Account were likely to fail, we could then say that we propose to withdraw. There is some risk that this, too, would be challenged by the Commission in the European Court.

The Secretary of State for Trade and Industry is likely to argue for further consultations with other Community officials on how to prevent activation of the Common Fund and this will probably be supported by the Foreign Secretary. It does not really meet the requirements for a clear strategy. The best outcome might be to say that we should try to get the firmest possible commitment from other Community countries to take whatever action is necessary to prevent activation on First Account making clear that, if despite these efforts it seemed likely to be brought into force, we would promptly give notice of our intention to withdraw.

C.D.P.

(C. D. POWELL)
9 November 1987

010.

Qz 05969

CONFIDENTIAL

cc PC.

MR POWELL (No 10 Downing Street)

COMMON FUND : MEETING ON 10 NOVEMBER : EC ASPECTS

You may wish to be aware of two developments since the Ministerial correspondence on this subject.

First, we have UKREP views (UKREP Telno 3321). The main point to note is perhaps Sir David Hannay's belief that the Commission would be bound to start legal proceedings against us if we deratified unilaterally. The dangers of an adverse Court judgment, as described by the Attorney General, do therefore seem real.

Secondly, officials have considered the nature of a further lobbying exercise within the Community if this were judged a useful next step. A possible course would be a selective approach to like-minded member states at Ministerial level. Given the reluctance hitherto of other member states to contemplate deratification, the question put might best be whether they would be prepared to support measures designed to ensure that the first account of the Fund did not come into force, up to and including deratification. The Secretary of State for Trade may suggest an approach on these lines.

If Sir David Hannay is right that unilateral deratification would be bound to galvanise the Commission into legal proceedings, it seems also arguable that in such circumstances the Commission and other member states would find it less easy simultaneously to take action to render the first account of the Fund ineffective.

I am sending a copy of this minute to Trevor Woolley.

6 November 1987

R G LAVELLE

CONFIDENTIAL
FM UKREP BRUSSELS
TO PRIORITY FCO
TELNO 3321
OF 211840Z OCTOBER 87
INFO ROUTINE UKMIS GENEVA

YOUR TELNO 401: UNCTAD COMMON FUND

1. MY BEST GUESS ANSWERS TO THE FOUR QUESTIONS ARE AS FOLLOWS:

2. (A) WHAT WOULD THE COMMISSION'S LIKELY RESPONSE BE WERE THE UK TO WITHDRAW ITS RATIFICATION OF THE COMMON FUND AGREEMENT UNILATERALLY?

ALTHOUGH OUR RESERVATIONS ABOUT THE FUND ARE PROBABLY FAMILIAR TO SOME IN THE COMMISSION, WE DOUBT THEY HAVE CONSIDERED IN DETAIL THEIR RESPONSE TO A UK WITHDRAWAL.

3. THEIR REACTION WOULD BE NEGATIVE. AND ON THE ISSUE OF OUR RIGHT TO TAKE THIS ACTION UNILATERALLY I BELIEVE THEY WOULD INSTITUTE LEGAL PROCEDINGS AGAINST THE UK (FOR MORE ON THIS ASPECT, SEE ANSWER B BELOW). TWO BROAD FACTORS WOULD ACCOUNT FOR THE NEGATIVE REACTION ON POLICY GROUNDS. FIRST, COMMISSION OFFICIALS DO NOT EXPECT THE FIRST ACCOUNT TO BECOME OPERATIVE, AT LEAST NOT IN THE FORESEEABLE FUTURE. APART FROM THE TIME THAT IT WILL TAKE TO ESTABLISH THE COMMON FUND, THERE IS LITTLE PRESSURE FOR NEW COMMODITY AGREEMENTS WITH MARKET REGULATING MEASURES SUCH AS BUFFER STOCKS WHICH WOULD BE CANDIDATES FOR FIRST ACCOUNT FINANCING. NOR DO COMMISION OFFICIALS EXPECT THE TWO EXISTING BUFFER STOCK AGREEMENTS (COCOA AND RUBBER) TO SUBSCRIBE TO THE COMMON FUND. THIS WOULD REQUIRE A TREATY BETWEEN EACH COMMODITY ORGANISATION AND THE FUND TO WHICH THE COMMISSION DO NOT EXPECT THE MEMBERS OF THOSE AGREEMENTS TO AGREE. THE SECOND REASON IS THE HIGH SYMBOLIC VALUE THAT THE FUND HAS FOR DEVELOPING COUNTRIES.

4. TAKEN TOGETHER THESE WOULD LEAD THE COMMISSION TO THE CONCLUSION THAT WITHDRAWAL WOULD RESULT IN LITTLE GAIN, IN RETURN FOR THE LOSS OF MUCH GOOD WILL, AND THAT A BETTER COURSE OF ACTION WOULD BE TO WORK QUIETLY FRM WITHIN TO ENSURE THAT THE FIRST ACCOUNT WAS SUFFICIENTLY ANAESTHETIZED TO PREVENT IT FROM EVER BEING USED. BOOTH OF DG VIII HAS TOLD US IN CONFIDENCE (PLEASE PROTECT) THAT DADZIE (UNCTAD SECRETARY GENERAL) HAD TOLD HIM PRIVATELY THAT HE SHARES THE VIEW THAT THE FIRST ACCOUNT CAN BE WRITTEN OFF, AT LEAST FOR THE TIME BEING, THOUGH HE WOULD NOT BE PREPARED TO SAY SO OPENLY

BECAUSE OF THE FUNDS'S SYMBOLIC VALUE TO DEVELOPING COUNTRIES.

5. (B) WHAT WOULD BE THE LIKELIHOOD OF LEGAL ACTION OF THE TYPE FORESEEN BY OUR LAWYERS?

THE COMMISSION WOULD FEEL BOUND TO INSTITUTE LEGAL PROCEEDINGS AGAINST US IF WE DERATIFIED UNILATERALLY. IT IS COMMISSION POLICY TO SUSTAIN COMMUNITY COMPETENCE FULLY IN ANY AREA THAT COULD BE CONSIDERED TO BE PART OF EXTERNAL TRADE POLICY. IN AS MUCH AS THE COMMON FUND FORESEES PUBLIC FUNDING OF BUFFER STOCKS ETC TO INFLUENCE TRADE, IT FALLS INTO THIS CATEGORY. IF WE WERE TO TAKE NATIONAL ACTION, THE COMMISSION WOULD SEE IT AS A CHALLENGE TO THE TREATY THAT THEY COULD NOT IGNORE. AS FOR THE OUTCOME OF SUCH PROCEEDINGS, AND DESPITE THE COUNTER-ARGUMENTS WE COULD ADVANCE I CONCUR WITH THE VIEWS OF WHITEHALL LEGAL ADVISERS (PARA 8 OF ANNEX II OF THE OFFICIAL PAPER), THAT IT IS LIKELY THAT THE EUROPEAN COURT WOULD BE DISPOSED TO FIND AN OBLIGATION ON US TO RESUME OUR MEMBERSHIP. I NOTE THAT THE ATTORNEY-GENERAL HAS AGREED THAT THERE IS A SERIOUS RISK OF THIS RESULT.

6. (C) WHAT DO YOU THINK THE REACTION OF OTHER MEMBER STATES WOULD BE?

MY BEST ESTIMATE IS THT OTHER MEMBER STATES GENERALLY SHARE THE VIEWS SET OUT IN PARAS 3-4 ABOVE. THEIR REACTION MAY THEREFORE BE SIMILAR TO THAT PREDICTED FOR THE COMMISSION WITH THE ADDITION THAT THEY WOULD TEND OPENLY TO DISSOCIATE THEMSELVES FROM OUR POSITION AND LEAVE US TO TAKE THE HEAT WITH THE DEVELOPING COUNTRIES. IN ADDITION SOME MEMBER STATES WOULD NOT THANK US IF WE WERE RESPONSIBLE FOR A COURT CASE WHICH LED TO ANY EXTENSION OF COMMUNITY COMPETENCE.

7 (D) HAVE YOU ANY KNOWLEDGE OF OTHER MEMBER STATES' LIKELY RESPONSE TO THE PROSPECT OF THE COMMON FUND ENTERING INTO FORCE, EITHER WITH RESPECT TO THE FUND AS A WHOLE, OR TO THE INDIVIDUAL ACCOUNTS?
THERE HAS BEEN NO SUBSTANTIVE DISCUSSION IN BRUSSELS SINCE PREPARATION FOR UNCTAD VII IN JUNE, WHICH OF COURSE PRECEDED THE SOVIET ANNOUNCEMENT OF THEIR INTENTION TO RATIFY. AT THAT TIME, WHILE NO OTHER MEMBER STATE RELISHED THE PROSPECT OF THE COMMON FUND ENTERING INTO FORCE, THERE WAS NO SUPPORT FOR THE UK WISH TO DECLARE THE FIRST ACCOUNT DEAD AND BURIED AS A CONDITION FOR BRINGING A SECOND ACCOUNT TYPE FUND INTO FORCE. THIS CONDITION WAS THOUGHT TO BE TOO PROVOCATIVE TOWARDS DEVELOPING COUNTRIES. UKMIS GENEVA AND

OFFICIALS WHO ATTENDED THE TDB EARLIER THIS MONTH MAY BE BETTER PLACED TO PROVIDE AN UP TO DATE ASSESSMENT.

8. AS FOR FUTURE TACTICS, THERE MAY BE A BRIEF DISCUSSION IN THE COMMODITIES WORKING GROUP HERE ON 22 OCTOBER. THE COMMISSION INTEND (UNDER OTHER BUSINESS) TO FLAG THE ISSUE AS ONE WHICH NEEDS CAREFUL CONSIDERATION BEFORE THE OECD HIGH LEVEL COMMODITIES GROUP MEETS IN PARIS ON 7/8 DECEMBER, AND TO GIVE THEIR ASSESSMENT OF THE PRESENT POSITION. SUBSEQUENT DISCUSSION MAY PROVIDE CLUES TO ANY RETHINKING IN CAPITALS. HOWEVER, I SEE NO ADVANTAGE IN OUR RAISING THE POSSIBILITY OF DERATIFICATION IN THAT RELATIVELY LOW-LEVEL FORUM TOMORROW, WHICH WOULD PROBABLY PRODUCE (IF ANYTHING) SIMPLY A RESTATEMENT OF EARLIER VIEWS BY OTHER MEMBER STATES.

9. I HAVE SEEN MOUNTFIELD'S (HMT) LETTER TO ROBERTS (DTI) OF 15 OCTOBER, ENCLOSING A DRAFT PAPER AND PROPOSING ITS CIRCULATION TO OTHER EC OFFICIALS AND (PERHAPS) SUBSEQUENT MINISTERIAL DISCUSSION AT ECOFIN. I DOUBT THESE WILL PROVE THE MOST PRODUCTIVE TACTICS. IN MY VIEW, OUR FIRST STEP SHOULD BE TO ESTABLISH DISCREETLY WITH A FEW OF THE MORE LIKE-MINDED MEMBER STATES THE DEGREE TO WHICH THEY SHARE OUR CONCERNS AND THE EXTENT TO WHICH THEY MIGHT BE PREPARED TO ACT WITH US. TO LAUNCH A ROUND-ROBIN EXERCISE AND PERHAPS ENGAGE IN AN UNSTRUCTURED COUNCIL DISCUSSION IS LIKELY TO BE COUNTER-PRODUCTIVE SO I RECOMMEND THAT THE FIRST STEP SHOULD BE A ROUND OF MINISTERIAL-LEVEL CORRESPONDENCE, TARGETTED ON THE MOST LIKELY SUPPORTERS AND TAILORED TO THE PARTICULAR CONCERNS OF EACH.

HANNAY

YYYY

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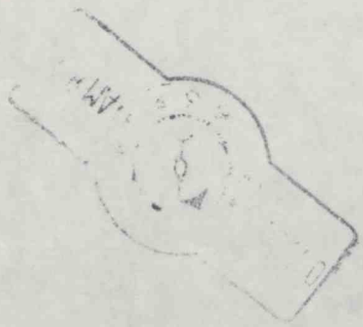

RF

10.00 am
on Tuesday
10th November

10 DOWNING STREET

CF

Cd. I [illegible]

to papers on

this yes

please

Tessa. Can do this pm

Andy

We need a meeting

on this - please tell

my letter of 4.

SSDTI, Chancellor, FCS,

MAFF, A-G, PTA

ATTORNEY GENERAL

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

The Rt. Hon. Lord Young of Graffham,
Secretary of State for Trade and Industry,
1, Victoria Street,
LONDON, SW1.

12 October 1987

Dear David,

THE COMMON FUND

I refer to your letter of 29 September to Geoffrey Howe. I have also seen his reply to you of 6 October and Nigel Lawson's letter of 5 October.

For the reasons given by officials in Annex II to the note accompanying your letter of 29 September, I think there is a serious risk that unilateral deratification by the United Kingdom will lead to an adverse decision in the European Court of Justice. I cannot evaluate that risk more precisely - the field is a novel one, and we have wholly respectable arguments to the contrary. What I can say, however, is that the influence of an adverse decision here would foreseeably extend to other Agreements, with consequent loss of freedom of action for Member States.

I am copying this letter to the Prime Minister, the Foreign Secretary, the Chancellor of the Exchequer, the Minister for Agriculture and Sir Robert Armstrong.

Yours ever.

U. NATIONS

common fund

PTZ

MINISTRY OF AGRICULTURE, FISHERIES AND FOOD
WHITEHALL PLACE, LONDON SW1A 2HH

From the Minister

The Rt Hon Lord Young of Graffham
Secretary of State for
Trade and Industry
Department of Trade and Industry
1-19 Victoria Street
LONDON
SW1H 0ET

12 October 1987

Dear David,

COMMON FUND FOR COMMODITIES

Thank you for copying to me your letter of 29 September to Geoffrey Howe enclosing a useful paper on the limited options available to us. I have also seen the responses from Geoffrey Howe and Nigel Lawson.

As you say, the cleanest solution is deratification, not withstanding the political and legal hazards which you outline. The risk involved must be a matter for judgement, which Geoffrey Howe is best placed to make. I note that he concludes we should not act unilaterally.

At the same time we must recognise the implications for the deregulatory policy on commodities we adopted last year. We drew back, I believe rightly, from pressing the issue when we agreed to join the new Cocoa Agreement, for much the same reasons as you gave in your letter of 28 September to Geoffrey Howe for joining the new Rubber Agreement. If we reach a similar conclusion about the Common Fund, where the Community's competence is much less, we would have to accept that we can make progress with our policy, if at all, only by persuasion, not example. I am taking into account your comments on the feasibility of achieving a withdrawal from the Fund at some later stage if we are not satisfied about its operation. On the legal and other arguments presented I conclude that this is not a very realistic option.

If we are to shelve the question of deratification for the moment, I suggest it would be in order to present within the Community our

UN: UNCTAD + Common Fund Pt 2

considered views on the Fund as vigorously as possible and on their own merits, without the distraction of a parallel debate about competence. This would also be consistent with our continuing efforts in individual commodity negotiations.

I am copying this letter to the Prime Minister, Geoffrey Howe, Nigel Lawson, the Attorney General and Sir Robert Armstrong.

Yours ever,

JH

JOHN MacGREGOR

CONFIDENTIAL

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

11 October 1987

THE COMMON FUND

The Prime Minister has seen your Secretary of State's letter of 29 September about United Kingdom policy towards the Common Fund, together with the comments by the Chancellor of the Exchequer and the Foreign and Commonwealth Secretary. Her own inclination is to give notice to withdraw. But she would like to have a fuller discussion of the options when she returns from CHOGM. We will arrange a meeting in due course.

I am copying this letter to the Private Secretaries to the Foreign Secretary, the Chancellor of the Exchequer, the Minister for Agriculture, Fisheries and Food, the Attorney-General and Sir Robert Armstrong.

CHARLES POWELL

Timothy Walker, Esq.,
Department of Trade and Industry.

CONFIDENTIAL

Foreign and Commonwealth Office

London SW1A 2AH

7 October 1987

Dear Dr. Walker,

The Common Fund

Please refer to the Foreign Secretary's minute of 6 October, ref FCS/87/211, to your Secretary of State. Unfortunately, a garble appeared at the foot of page 2, para 6, and the top of page 3. Please delete the top line of page 3, beginning "Our statement ...". I enclose an amended page 2, with apologies.

Copies of this go to recipients of the minute.

Yours ever,

John Line.

(J C Line)
Private Office

Dr T Walker
PS/Secretary of State
Department of Trade and Industry

4. Taking the legal points first, the views of Whitehall lawyers set out in Annex II of the enclosure to your letter are unchanged since 1986. Their assessment is that unilateral deratification by the UK would run the risk of an action before the European Court which we would be likely to lose. I regard this risk as strong: an adverse judgement would, at the least, force us to rejoin the Agreement. We would thus have made a pointless gesture, inviting criticism for no substantive reward.

5. But beyond this, I am concerned by the legal option that a ruling by the Court in respect of the Common Fund would run a significant risk, not only of extending Community competence as regards the Fund itself, but also of undermining the PROBA 20 arrangements which have served us well until now, and of enlarging the scope of the Community's competence in relation to mixed agreements generally. These are dangers which go far beyond commodity policy considerations alone, and which could extend into the whole realm of international financial institutions where one of our prime aims is to resist an extension of the Community's powers.

6. As regards the political drawbacks to deratification, we noted last year that no support could be expected from our Community or Group B partners. That remains true: the evidence at and since UNCTAD VII is that no-one else is prepared to consider pulling out. (I note what you say about Alan Clark's conversations in Geneva. But support for the UK's position "as stated at UNCTAD" does not represent support for deratification. Our statement there urged only careful consideration before the Fund was made operational.)

UNITED NATIONS: Common hand pt 2

(1)

PRIME MINISTER

THE COMMON FUND

Last summer the Russians and several other countries announced their intention to ratify the Common Fund for Commodities. This means there is a high and unwelcome possibility that, after seven years of delay, it may come into force. There are not at present sufficient individual commodity agreements with buffer stocks in force to lead to activation of the Common Fund's First Account (which was intended to provide a common pool of finance for buffer stocks). But the danger of that happening is a step closer.

We have of course already ratified the Common Fund ourselves but have always hoped that it would not come into force. Now that there is a risk that it will and that we shall be called on to contribute financially, the Trade and Industry Secretary has suggested that we should review our policy.

There are various options:

(i) deratification. This would sit most comfortably with our deregulatory approach although it should be noted that it would only delay not stop the Common Fund from coming into force. But it would be badly received by the developing countries. It could also be reversible. We went along with the European Community as a whole joining the Fund. If we now try to pull out, the Commission could take us to the ECJ. The Law Officers' advice is that we would lose and could find ourselves having to re-ratify;

(ii) we could give twelve months notice of intention to withdraw. This might be more credible than deratification since we would claim that it was actual experience of the operation of the Common Fund that led us to withdraw. It is certainly an option which should be kept open but again it could be open to legal challenge by the Commission.

(iii) we could try to delay implementation and press for substantive changes which would have the effect of a de facto freezing of the First Account. Meanwhile we would concentrate attention on the Second Account which is concerned with Technical Cooperation and relatively harmless. There would be no guarantee of success. But as pointed out above there are not sufficient commodity agreements in force to activate the First Account. It would not be such a sharp slap in the face to the developing countries.

The Foreign Secretary would prefer the third course. The Chancellor of the Exchequer seems prepared for that too, though via a rather more hawkish approach, viz:

- we should try to persuade our European partners that we should all deratify, recognising however that this will not succeed;

- we should then say that we shall only desist from deratification if the others join us in a major effort to sterilise the First Account;

- we should keep open the option of withdrawal if our campaign against the First Account fails.

The first step carries some risk of having our bluff called. It might be better to say that our preferred course would have been deratification, but we are prepared instead to work for freezing of the First Account.

Agree the Chancellor's approach, with this proposed modification?

C.D.P.

Dismiss. We have enough experience of these funds to give notice to withdraw. Part of our expenditure is that — on the ... Amendment ... other Europeans ratified

CHARLES POWELL
6 October 1987
VC2APW

UNITED NATIONS

UNCTAD

PT2

FCS/87/211

SECRETARY OF STATE FOR TRADE AND INDUSTRY

The Common Fund

1. Thank you for your letter of 29 September, seeking views on the policy we should adopt towards the Common Fund now that it seems likely to enter into force in the foreseeable future. You rightly focus our minds on the essential choice and suggest that the judgement is a fine one.

2. We last looked at this subject in connection with our broader view of commodity policy last year. While we recognised the problem the Common Fund posed for our deregulatory approach, we concluded that the political and legal arguments weighed against unilateral withdrawal of the UK's ratification. Now, as a result of moves by the USSR and others, we are faced with the same question in more immediate form and the same considerations apply.

3. Were there neither legal risks nor political costs, immediate deratification would have attractions. It would be consistent with some aspects of our deregulatory approach; it would be quick; and it would free us from any contingent liabilities under the Fund Agreement. On the other hand, we could not sink the Fund alone. And the political and legal arguments against deratification have if anything become stronger since we last considered the question.

/4.

4. Taking the legal points first, the views of Whitehall lawyers set out in Annex II of the enclosure to your letter are unchanged since 1986. Their assessment is that unilateral deratification by the UK would run the risk of an action before the European Court which we would be likely to lose. I regard this risk as strong: an adverse judgement would, at the least, force us to rejoin the Agreement. We would thus have made a pointless gesture, inviting criticism for no substantive reward.

5. But beyond this, I am concerned by the legal opinion that a ruling by the Court in respect of the Common Fund would run a significant risk, not only of extending Community competence as regards the Fund itself, but also of undermining the PROBA 20 arrangements which have served us well until now, and of enlarging the scope of the Community's competence in relation to mixed agreements generally. These are dangers which go far beyond commodity policy considerations alone, and which could extend into the whole realm of international financial institutions where one of our prime aims is to resist an extension of the Community's powers.

6. As regards the political drawbacks to deratification, we noted last year that no support could be expected from our Community or Group B partners. That remains true: the evidence at and since UNCTAD VII is that no-one else is prepared to consider pulling out. (I note what you say about Alan Clark's conversations in Geneva. But support for the UK's position "as stated at UNCTAD" does not represent support for deratification. before the Fund was made operational.)

/7.

Our statement there urged only careful consideration

7. Deratification by us would of course be much criticised in the developing world (and not just in the context of CHOGM). This matters because our friends there have the capacity directly to harm our economic interests, as Malaysia - a strong Common Fund supporter - did in 1981-82. Our canvassing of developing countries has revealed no readiness to share our views on the Fund. They see it as a symbol of our concern for their commodity problems. They also support it for their own interests, particularly in respect of the Second Account. An approving reference was even pressed on us in the recent Commonwealth Finance Minister's communiqué. And to the resulting storm of criticism our EC partners would be bound to add, by making it clear that while they shared our doubts on the substance, they thought they could achieve their aims by remaining within the Fund. Deratification would also hand a free propaganda gift to the Soviet Union; our action and their own recent signature of the Fund Agreement would invite unfavourable comparisons.

8. On legal and political grounds I therefore see the same or stronger arguments today for reaching a conclusion similar to our decision of last year. Far from being the cleanest solution, deratification or withdrawal would be likely to have difficult, complex and unwelcome consequences.

9. So I would argue that we should play it long. This will of course involve us in many lengthy rounds of negotiation. As you point out, there is considerable scope for working within the Fund's machinery, both to

/activities

activities. However there is widespread recognition among other Fund members that getting it on the road will take a long time. Even the UNCTAD Secretariat are speaking in terms of a three-year delay while financial and administrative regulations are thrashed out. The record of previous discussion on these subjects suggests that this may be an optimistic estimate.

10. In following this course we would aim to tie down the operations of the Fund's First Account as tightly as possible. We should aim to achieve a de facto indefinite freeze of that Account (I am inclined to doubt the feasibility of obtaining its formal abrogation, at least in the near future). Attention could then be concentrated on the Second Account, to which many developing countries give greater importance, and which sits quite well with our own policy of encouraging developing countries to respond to market forces rather than to rig them. We have of course made a public pledge of financial support for the Second Account.

11. We would have to present such a course of action as essentially positive in intent: an attempt to use scarce public resources to good purpose by creating a workable Common Fund from the present outdated, sketchy and unworkable design (as the officials' paper points out, it seems unlikely that the First Account could in practice become operational for lack of suitable commodity agreements willing to associate with it). We believe there are others who would understand and come to share

/our

our approach. In addition we should surely not lack good company within Group B in arguing for tight controls on the Fund's activities: experience of recent commodity negotiations suggests that any criticism would not be levelled at the UK alone.

12. I do not rule out the possibility that at some future stage we might conclude that we had to withdraw. That would be a decision dependent on the circumstances at the time. But for now, my conclusion is that we should not unilaterally deratify or withdraw from the Common Fund Agreement. We should instead follow your alternative course which I believe will leave us better off. We would work from within to modify and delay the Fund becoming operational, and reshape its balance and direction when it takes effect. It will, of course, be necessary to agree which Department should be responsible for any unquantifiable contingent liabilities.

13. Finally, one more argument. Unilateral UK deratification can only postpone, not prevent, the Fund's entry into force. It is surely in our interests to be in a position to exert some control over the Fund's activities. We should be in a stronger position to exert such control from within than from outside.

14. Copies go to the Prime Minister, the Chancellor of the Exchequer, the Minister for Agriculture, the Attorney-General and Sir Robert Armstrong.

(GEOFFREY HOWE)

Foreign and Commonwealth Office
6 October 1987

UN: UNCTAD, May 79

RJ8.70

Treasury Chambers, Parliament Street, SW1P 3AG
01-270 3000

5 October 1987

The Rt. Hon. Lord Young of Graffham
Secretary of State for Trade and Industry

ODP c/c.

Thank you for copying to me your letter of 29 September to Geoffrey Howe.

I very much agree that the only course which is fully consistent with our deregulatory policy and the statements we have made in international exchanges on the right approach to the commodity problem is deratification. There is an important lesson here for the International Trading Community, and we must be careful not to convey the impression of any weakening of confidence in it. I believe we have more to gain from showing that we remain true to our convictions than from appearing to be too ready to compromise.

At the same time, I recognise that if we are alone in deratifying, that might not be enough to prevent the Fund coming into operation, and we would not be there to influence its development in the least harmful direction.

Our best course therefore, in my view, is to make clear once again to our European partners that we feel we ought to deratify and invite them to join us. We should patiently restate our reasons for taking this view. If they will not join us, we should allow ourselves to be persuaded against deratification only if partners agree that maximum effort should be made to sterilize the First Account. We should make it clear, as you suggest, that if that attempt fails we shall be obliged to consider withdrawal. Certainly I agree that we should keep open the option of withdrawal if the outcome of developments in the Fund fails to meet key points.

I suggest we might aim for a discussion in the Foreign Affairs Council on 19/20 October. In preparation for that, if you agree, our officials might produce a note, which we could consider, for circulation to EC capitals.

I am copying this letter to the Prime Minister, Geoffrey Howe, John MacGregor, the Attorney General and Sir Robert Armstrong.

NIGEL LAWSON

Common Funds

5/77

PART 1 ends:-

SS/DTI TO FCS 29.9.V7

PART 2 begins:-

CH/EXQ TO SS/DTI 5.10.V7

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