

Rt Hon Sir Michael Havers QC MP
Attorney General
Royal Courts of Justice
LONDON
WC2

22 May 1980

RESPONSE TO ILLEGAL SUBSIDISATION OF FRENCH AGRICULTURE

The French Government is widely reported as considering measures to support the incomes of French farmers if agreement on the 1980/81 prices package is not reached before 1 June. Firm information is not yet available, but they seem to have in mind mainly a straight hand-out of cash to farmers, perhaps combined with interest rate and repayment concessions on existing loans. Any such measures should, of course, be notified to the Commission for consideration as to their compatibility with the rules of the Treaty of Rome. They may, of course, be notified and be accepted. But they may not be notified; or they may be notified and, judged to be incompatible. The Commission's response, on past form, is unlikely to be firm or rapid.

In that situation we should have to consider what our own response should be. Measures which were not compatible with the Treaty of Rome would not only be illegal but would distort the terms of competition between France and the United Kingdom as well as other countries in the EEC. I believe that we should consider taking action on two fronts, but we would need to be absolutely sure of the legal position before we did so. I would very much like your advice on these legal points.

Firstly, I would like to know exactly how the Government would stand in regard to the law if we were to impose retaliatory duties on levies against French produce arriving here to offset what we calculated to be the illegal subsidies to that produce. As I understand it, there is no provision under the Treaty of Rome for countervailing action against illegal subsidies applied by another Member State. It is for the Commission to take action. I would be grateful for your confirmation that this is how you see the position.

Nevertheless, if we had recourse to such retaliatory measures, what would be the legal consequences for the British Government? Unless the measures were approved by the Commission, I take it that the main risk of challenge would come from angry traders who would take action against us in the British Courts. What form of action could they take and with what degree of success? Could we be faced with a final adverse judgment in our Courts (whether without or after a reference to the European Court) before the French subsidies against which we were retaliating had also been rescinded?

It seems unlikely that we could ourselves bring any action in the French Courts. An individual trader who could establish loss would be better placed. But the circumstances could allow us to refer direct to the European Court under Article 93:2 of the Treaty. I would be grateful for your advice and your assessment of our chances of success. I have been given to understand that the French judiciary would be unable to compel compliance with the law on the part of the French Government with the same force as our judiciary would exert with us in the United Kingdom. I would like to know if you will share that assessment.

We may have to face decisions on taking retaliatory measures as early as next week. I would therefore be grateful if you could give the matter your urgent consideration.

I am sending a copy of my letter to the Solicitor General, the Lord Advocate and the Solicitor General for Scotland.

PETER WALKER

It seems unlikely that we could ourselves bring any action in the French courts. An individual Frenchman who could not bring an action would be better placed, but the circumstances could allow it to bring an action in the French courts. I would be grateful for your views on this. I have been given the impression that you would be able to bring an action in the French courts. I would be grateful for your views on this. I would be grateful for your views on this.



We may have to face decisions on taking retaliatory measures in order to meet our obligations. I would be grateful if you could consider this.

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I am sending a copy of the letter to the Solicitor General, the Lord Advocate and the Solicitor General for Scotland.

Yours faithfully,
[Signature]