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PRIME MINISTER

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Prime Minister
The issue has, in effect,
been postponed for a week or two.
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NEW ZEALAND BUTTER

OD(E) discussed yesterday whether we should be prepared to take unilateral action if, because of French opposition, no acceptable long or short term arrangements can be agreed at next week's Agriculture Council for the continued import of New Zealand butter into the Community (the Minister of Agriculture's paper OD(E)(81)5 and the Chancellor of the Exchequer's letter to me of 17 February).

We agreed that if the Council cannot act because of a French veto, we should first encourage the Commission to make their own roll forward regulation. But because it is doubtful whether the Commission would be willing to take this course, for which the legal basis is anyway flimsy, we also reviewed the three options for unilateral UK action set out in the Official Note accompanying OD(E)(81)5. They are:-

- (i) To continue to admit New Zealand butter at a reduced rate of levy,
- (ii) To collect the full rate of levy, make the usual payment to Brussels but pay back to New Zealand the difference between the full and reduced levy, at a cost to the Exchequer of about £6.5 million a month,
- (iii) To collect the full levy, pay the difference to New Zealand but withhold an equivalent amount from our contribution to the Community Budget.

All involve a breach of Community law but option (i) is the most likely to lead to an early challenge in the UK courts. Equally all three would involve either an immediate or a contingent increase in public expenditure (though not in all cases the PSBR), and some might require domestic legislation to provide cover for our action. Option (ii) has the disadvantage that we would in effect be taking over what should be a Community obligation. Option (iii), recommended by the Minister of Agriculture, probably involves less legal objection than option (i) but even that, involving withholding part of our contribution to the Community Budget would be recognised to be a major step that should not be lightly taken.

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For these reasons the Sub-Committee explored the scope for unilateral action that would not bring us into immediate conflict with our Community obligations but would at the same time satisfy the overriding need to ensure that New Zealand's interests were safeguarded. We noted that sufficient stocks of New Zealand butter on which the reduced levy had already been paid were in the UK to cover a further 19 weeks supply. Since the levy is collected at the time of de-bonding, not at the time of arrival of the shipment, any refusal on our part to pay the full amount of the levy over to Brussels would not take practical effect until de-bonding took place. Provided the New Zealanders did not insist on de-bonding new shipments before present supplies were exhausted, the flow of butter to the UK market could therefore be maintained for several months without any of the options having to be invoked. Moreover, since levies are not due to be handed over for some weeks, we could anyway pursue option (iii) without acting illegally for some time. This in turn would postpone the initiation of any legal action by the Commission, giving us a breathing space to pursue a substantive agreement in the context of the price fixing negotiations.

We therefore decided to explain the situation immediately to the New Zealanders, making clear our determination to protect their interests and seeking their co-operation on the de-bonding issue.

If the New Zealanders are willing to go along with this line, the way will be open for us to follow the intermediate course I have described. If they are not, we shall need to decide quickly which of the options to adopt. The Minister of Agriculture will anyway need to make a clear statement in the House on his return from Brussels. We therefore instructed officials to look again into the relative merits of the three options for unilateral action, with particular reference to the possible need for domestic legislation, which we all realised would pose serious problems for the present Session.

I am copying this minute to the other members of OD(E) and to Sir Robert Armstrong.

SOAMES

19 February 1981