



DEPARTMENT OF INDUSTRY
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From the
Minister of State

PS/Norman Tebbit MP

Tim Lankester Esq
Private Secretary to the
Prime Minister
10 Downing Street
Whitehall

den Tim

Mr Tebbit has asked, at the suggestion of the Solicitor General, that the Prime Minister should be made aware of an awkward and urgent issue which has arisen in the negotiations on measures to overcome the crisis in the European steel industries. The attached correspondence set out the background.

In essence an agreement has been reached in the Council of Ministers to impose production quotas on most (perhaps all) steel products in order to reverse the disastrous fall in steel prices which has put even the Community's most efficient steel makers into losses. Endeavours are being made in the face of reluctance on the part of the new French Government to finally agree on a timetable to eliminate state subsidies to steel industries which have restrained economic forces from bring about reductions in capacity to match demand.

It is essential to the success of the plan that steel producers publish price lists and abide by them. Otherwise there will be a further outbreak of discounting to unload steel produced in excess of quotas. It is proposed that enforcement of the requirement that producers do not undercut their own price lists should be undertaken in the first instance by EEC Commission officials acting under Article 95(1) ECSC and that this should be extended to cover steel distributors. Unless it is so extended the control would be ineffective. Enforcement requires that inspectors should have powers to inspect the books of such firms.

The Solicitor General has indicated to my Minister that he cannot advise that such powers could be properly exercised under Article 95(1) ECSC. No other Member State nor the Council's Legal Services has such reservations.

*Mr Prime Minister
The Solicitor General
is worried that the power
of entry could be challenged
in the European Court. But the
steel stock-holders are happy
with the proposal, and
other Governments do
not believe it is
ultra vires. Mr Tebbit
has accordingly ~~not~~
gone along
with it.*

23rd June 1981

*24/6
(This is
only a
temporary
measure.
Permanent
powers
of
entry
would
have to
be
taken
in new
legislation)*

Te



Without urgent action the BSC MacGregor plan cannot be achieved and substantial losses beyond those envisaged in the plan would be incurred. The industry and trades unions are in agreement with the proposals of the Commission. It would be for my Minister to defend in Parliament the proposed action, and this he is prepared to do.

Mr Tebbit believes that it is essential that the UK should not prevent an agreement in the Council tomorrow and that he must therefore agree to the proposed measures despite the Solicitor General's misgivings. He feels however that the Prime Minister should be aware of the Solicitor General's misgivings and his own intentions.

I am copying this letter (without attachments) to the Private Secretaries of all members of OD(E), the Chancellor of the Duchy of Lancaster, and the Solicitor General and to David Wright.

Yours sincerely
Peter Mason

PETER MASON
Private Secretary



RECEIVED IN
23 JUN 1981
OFFICE OF THE
MINISTER OF STATE

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn

23 June, 1981

Norman Tebbit, Esq., MP,
Minister of State,
Department of Industry,
Ashdown House,
123 Victoria Street,
London, SW1.

Dear Norman,

Sols
Mr Melville
WEG
B

I have considered your letter of 19 June as best I can in the time available (it arrived yesterday).

It seems that what is desired is powers of entry to ensure that no-one is selling steel too cheaply. No doubt that is why the inspector should have powers to go through the books and accounts - I suppose they will be looking in detail for all kinds of ways in which price has been disguised, e.g., by giving discounts, etc.

I really do not have anywhere near sufficient information to give to your proposals the kind of consideration which I have to give to the very frequent desires of other departments to have such powers and so I can not do as you ask, that is to say accept either the temporary powers - or more particularly the proposed permanent ones.

As to the temporary powers, you will, I know, bear in mind the doubts as to the vires of the proposal as a whole. As to the permanent ones I would hope that we would have the opportunity to discuss the implementing legislation in detail at a later stage.

If you or any of your officials would like to discuss this I shall be very happy to do so.

I am copying this letter to Members of OD(E), Francis Pym and Sir Robert Armstrong.

I am sorry that I cannot help. If there were more time I would like to do and do with other Departments - discuss other ways of achieving the same objectives - as seems possible here - but as you need an answer so quickly it has to be as above.

*Yours ever
Jan.*



Sols
PB
NEG

Foreign and Commonwealth Office
London SW1

22 June 1981

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OFFICE OF THE
MINISTER OF STATE

Dear Minister of State

APPLICATION OF ESCS PRICE RULES TO DISTRIBUTORS

I have seen your letter to Ian Percival of 19 June.

I believe that our policy objectives in the Community on steel require that we support the nine other Member States who are prepared to agree the prices decision for a temporary period while Member States implement a Commission recommendation under Article 63.3. The Commission's efforts to eliminate price cutting are essential to our attempts to reduce subsidies and restore the industry to profitability. I recognise that this poses the legal difficulties which you set out in your letter, but I understand that our representatives in Brussels have made several attempts to meet the points. In the last resort, they have been unable to carry other Member States with us and I agree that we cannot be in a minority of one in holding up a decision which we believe to be an essential part of the steel package, and vital to our industry. I think this is particularly true given that the Council legal services have produced an opinion which I understand is again supported by all other Member States that the Commission proposals can be justified on a temporary basis in the present circumstances.

/I recognise

Norman Tebbit Esq MP
Minister of State
Department of Industry
123 Victoria Street
London SW1E 6RB

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I recognise that right of entry is a sensitive issue but the objections to proceed under Article 95.1 are lessened by its temporary nature. But it will, of course, be for you to justify to Parliament our support for this measure.

I am copying this letter to members of OD(E), to Francis Pym, to Ian Percival, and to Sir R Armstrong.

Yours sincerely

Mr. Arthur

Approved by the Lord Privy Seal
and signed in his absence



From the
Minister of State
Norman Tebbit MP

DEPARTMENT OF INDUSTRY
ASHDOWN HOUSE
123 VICTORIA STREET
LONDON SW1E 6RB
TELEPHONE DIRECT LINE 01-2127691
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Sir Ian Percival QC MP
Solicitor General
Law Officers' Department
Royal Courts of Justice
Strand
WC2 2LL

19 June 1981

Dear Solicitor General,

STEEL: APPLICATION OF ECSC PRICING RULES TO DISTRIBUTORS

You have, I understand, expressed the view that it would not be a proper use of Article 95.1 ECSC to make a Commission decision in order to extend the ECSC pricing rules to distributors, since the power to make a recommendation to deal with such matters already exists under Article 63.3 ECSC. Your views on this question were not affected by the fact that the decision would be a temporary one, pending the implementation by Member States of a recommendation made under Article 63.3. However you considered that a decision which was expressed to be of a temporary nature and to be prompted by a real and immediate crisis would be less likely to create a damaging precedent.

The Commission in the meantime has produced a draft decision (of which I attach a copy, only available in French) to operate only until 30 June 1982 and referring to a parallel recommendation to Member States in the preamble, which describes the need for the decision in terms of the urgency of measures to improve the market situation and the time that will be needed to complete the legislative procedures in Member States to give effect to the recommendation.

Officials have, of course, insisted in Brussels that the UK's position must be reserved both because of the legal objections to the use of Article 95.1 and because of the added political sensitivity of giving rights of inspection (necessary for enforcement) when such rights would rise from a decision of doubtful legal propriety.

The Council Legal Services, speaking also on behalf of the Commission's Legal Services, took the view, however, that since it had now been demonstrated that there was a very urgent need for the immediate extension of the pricing rules



to distributors and that national legislative procedures to implement the recommendation would take a considerable time, the decision could be justified as a transitional measure compatible with the Treaty. No other Member State representative had any objection to raise to this procedure so that we were left in an isolated position; nor was there any disposition to consider the alternative - although we put it forward strongly - of using Article 95.3 and 4.

It was made clear that the decision and recommendation would be phrased in similar terms, *mutatis mutandis*, and implementation of the recommendation by Member States would take over from the decision. If experience of operating the decision showed that its provisions needed tightening or otherwise amending, this would be proposed - and by implication similar changes made to the recommendation. Discussion in Brussels has recognised the difficulty in the adoption of two Community instruments dealing with the same matters at the same time. It is expected that arrangements will be worked out to overcome this. One possibility is that this might be achieved by requiring implementation of the recommendation on 1 July 1982, immediately following the expiry of the decision.

It is vital that steel prices should rise if the crisis in the steel industry is to be resolved. To encourage this process the Commission is seeking better enforcement of the ECSC pricing rules which require transparency and non-discrimination in pricing. The present measure is designed to prevent clandestine price cutting through distributors. I therefore wish at the forthcoming Council on 24 June to be able to support the immediate implementation of what is a logical part of the package of measures to deal with the crisis in the steel industry.

The provision for the inspection of documents to verify observance of the pricing rules implies the right to enter premises but there is no prospect of securing the removal of this provision, which is regarded as essential to ensure that the measure is seen to be capable of enforcement and not to leave effective freedom for the unscrupulous. I recognise that right of entry is a very sensitive area. But the objections to proceeding under Article 95.1 are lessened by its temporary nature. We ought therefore to be able to argue the rights of entry point as essential to any effective prices regime. I should add that this is accepted by the UK National Association of Steel Stockholders. I hope, therefore, that you can accept the inclusion of this provision in the decision and in the subordinate legislation that will be required under section 2(2) of the European Communities Act to implement the recommendation.



I think it would be helpful to explain to Parliament the position on this and other aspects of the Community package to deal with the problems of steel and hope that it will be possible to do this early in July. A formal Parliamentary reserve could be maintained in the meantime, while indicating the UK Government's support for the proposal.

I am sorry that the force of events allows so little time but given our overall policy objectives and the need to take up a position on 24 June I see little alternative to proceeding on this basis.

I am copying this letter to Members of OD(E), Francis Pym and Sir Robert Armstrong.

Yours sincerely,

Heather Archer.

PP NORMAN TEBBIT
(Approved by the Minister
and signed in his absence)