

From Budget

1. I think I.C.I.

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Prime Minister ①



Have a red point and that unless we find some alternative help to Wilton - it will close -

No final decision is required by this confusing letter (the earlier letter - attached - is much clearer).

Treasury Chambers, Parliament Street, SW1P 3AG

But the Treasury are

01-233 3000

*Clive and I

6 July 1982

clearly moving towards

a conclusion not to help

Michael Scholar, Esq., happened to No.10 Downing Street

lunch with Robin

ICI. ICI ^{*}believe their

Wilton plant will be threatened.

Dear Michael, very concerned.

If it will help I will brief you orally on your return.

ICI AND NORTH SEA TAXATION/MS

MCS 6/7

In view of the Prime Minister's considerable interest in the discussions of the Mossmorran project last year which led to the introduction of Clause 129 (formerly Clause 119) of the Finance Bill, the Chancellor thought that she might welcome a report on the latest developments involving ICI, who are claiming that the Clause could jeopardise their operations at Wilton, putting some 9,000 jobs at risk.

The Prime Minister will remember that Clause 129 is intended to remove a tax anomaly to enable non-arm's length deals in ethane and mixed gas streams of which ethane is the largest single component to be valued for tax purposes by reference to a long-term price formula, comparable to what would be agreed in an arm's length deal. Ministers committed themselves to legislate in this year's Finance Bill and authorised the Revenue to agree valuations with Shell and Esso, subject of course to legislation being enacted.

ICI fears that the valuations under Clause 129 (and in particular the valuation of ethane for the Shell/Esso Mossmorran cracker) will be set at an unreasonably low level and that they will suffer a major competitive disadvantage which could put the long-term future of Wilton at risk.

In representations to the Finance Bill Standing Committee, ICI asked for three changes in the clause. The first of these (on taking fuel use into account in setting the price) was already implied in the legislation but has now been made explicit by an amendment at Committee stage. The second and third (to shorten the period for which a valuation would run and to limit the extension to mixed streams) would be contrary to the undertakings to Shell/Esso and BP, described in my earlier letter.

Further attempts have been made to convince ICI that the arm's length principle was being properly followed. But ICI's position has hardened meanwhile. They now argue that there is so much uncertainty in what arm's length parties would agree for ethane that the legislation should depart from the normal arm's length principle and instead place a floor on the valuation which would be linked to the price of some other fuel, such as heavy fuel oil. ICI's aim

/clearly

Perhaps we can
dis miss
BK. ^{not}
Dismissed with
PM's await
former Tm
letter.
MS 9/7



clearly is to ensure that Mossmorran does not go ahead. To make this change would leave inter-affiliate deals worse off than arm's length deals and go against Ministerial commitments.

Last Thursday, ICI told the Minister of State that they proposed to take out an originating summons in the High Court for a declaration that Clause 129 in principle or its implementation would be a state aid distorting competition contrary to Article 92 of the Treaty of Rome. Preliminary advice from the Law Officers' Department is that while there is a risk that ICI's case might succeed, on balance the Government was more likely to win. In particular it seemed unlikely that the argument that Clause 129 constituted a 'state aid' would succeed, (though it had to be agreed that ICI would be able to give it a run).

In the light of this threat from ICI Ministers have been considering what action to take. Ministers had looked earlier at possible forms of help for ICI to counterbalance what ICI see as an advantage for Shell, Esso and BP. ICI themselves suggested a scheme for rebating PRT paid by an oil producer to a petrochemical firm buying North Sea crude oil or naphtha made from it. But this, throws up a host of problems: it would not be a genuine tax rebate - it would be paid to someone other than the taxpayer concerned; there would have to be price controls to make sure that the benefit did not flow back to the oil company, and it would effectively be an operating subsidy. This would be very costly and would be likely to be much more vulnerable to EC objections than the current Finance Bill clause. None of the alternatives canvassed (public expenditure, administrative action and trade measures) proved attractive.

The Minister of State (Revenue) discussed next steps yesterday with the Minister of State, Department of Industry (Mr Kenneth Baker) and the Minister of State, Department of Energy (Mr Hamish Gray). They concluded that there could be no going back on the undertakings given to Shell/Esso and BP and that if ICI could not be persuaded to withdraw their threat it would be necessary to fight the action in the Courts. After consulting the Chancellor, Mr Wakeham reported this conclusion to Sir Robin Ibbs of ICI yesterday afternoon. He drew Sir Robin's attention to the fact that if ICI proceeded with litigation, the Government would have to stop further consideration of measures to help the petrochemical industry while action was proceeding. ICI asked about the benefits which were likely to flow from a further review. Treasury Ministers are now exploring with Department of Industry whether anything can be said about the likely outcome of a further review. Mr Wakeham promised to go back to ICI on this

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and invited them to talk to the Chancellor later this week (on Thursday). ICI have now indicated they are willing to defer legal action to Thursday, but they have said they see nothing

in the Government's response so far that will dissuade them from going ahead then. Ministers have tried and will continue to try to find a way of dissuading ICI from taking this action. But this will be difficult. (The Chancellor is to have a further meeting with Sir Robin Ibbs on Thursday morning. We will report the outcome to you.) Substantial changes or withdrawal would breach undertakings to other companies, and would risk the cancellation of Mossmorran and closure of Grangemouth. The Clause will be discussed in Report Stage of the Finance Bill in the middle of next week. While there may be strong criticism, Ministers do not believe there is serious risk of defeat.

There is one final point on ICI's claim that the Clause 129 will cause operations at Wilton to cease. The inter-departmental working group concluded that Wilton should still remain reasonably viable since ethane-based capacity is unlikely to take over completely from naphtha-based capacity. Although the European petrochemical industry is suffering from over-capacity and threat of competition from the Middle East, there are many European naphtha crackers less efficient than ICI's which ought to be more vulnerable. It is of course impossible to be certain and the Minister of State, Department of Industry (Mr. Kenneth Baker) has expressed the view that official advice may be over-sanguine on this point. But it is important to recognise that Mossmorran did not create this problem. It is expected to contribute less than 5 per cent of Western European capacity in 1985 (although a much larger proportion of UK capacity). If Wilton was unable to withstand competition from ethane and continuation of the tax anomaly had prevented Mossmorran from going ahead the UK petrochemical industry would be much the weaker in the long term.

I am copying this to the Private Secretaries of the Secretaries of State for Industry, Energy, Scotland and to the Attorney General.

Yours sincerely,

Jill Rutter

JILL RUTTER



Handing a further matter
they have said they are holding

USA JUL 1962

NEW YORK
JUL 19 1962

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