



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

From the Minister

CONFIDENTIAL

The Rt Hon Francis Pym MC MP
Secretary of State for Foreign
and Commonwealth Affairs

4 February 1983

Dear Secretary of State

UHT MILK: EUROPEAN COURT JUDGEMENT

both in
box.
Thank you for your minutes of 3 and 4 February on this subject.

At yesterday's discussion in Cabinet it was accepted that we should need to impose immediately interim controls to prevent imports which did not satisfy the same strict health and hygiene requirements that, in the interests of public health, we apply to the production and processing of our own milk: and the Law Officers have now considered what is best legal means of achieving this.

I understand that after taking into account all the points put forward at yesterday's meeting of legal advisers the Solicitor-General has now taken the firm view that the right course is to use the powers in the Import, Export and Customs Power (Defence) Act 1939 to impose immediately a temporary ban on imports of UHT milk while action is taken to achieve a more permanent solution. He envisaged that action could also subsequently be taken, once the Judgement had been studied more fully, to remove the illegal aspects of our present regime by recourse to Section 123(A) of the 1955 Food and Drugs Act and to provide under Article 13 for inspection at ports: but the immediate step would be to maintain the status quo by keeping out milk imports by specific licensing.

In his view this would be perfectly defensible provided we made it clear at the same time that we accepted the Court's judgement; intended to move quickly to remove the illegal effect of our legislation; and were proposing to open the necessary discussions with the Commission and others as soon as possible. He clarified the position about recent rulings by the Attorney-General, which in no way conflicted with the course of action he proposed. He said that in his view recourse to the 1939 powers for UHT milk would be

/perfectly defensible both ...

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perfectly defensible both from a UK and European point of view and would in no way undermine the usefulness or acceptability of these powers; but his view was that any attempt to create an effective import control on the basis of Section 13 of the Food and Drugs 1955 Act would be legally shaky and open to immediate challenge.

I am bound to say that it seems to me that the approach the Solicitor-General has proposed is the only feasible one from a legal and practical standpoint; and I entirely agree with him and with you that we would need to make it clear immediately that we accepted the Court Judgement, would be complying with it and would open discussions as soon as possible with the Commission and others concerned. I would propose to make this clear in a statement on the day of the judgement, next Tuesday, 8 February.

You have suggested that, as an alternative, I should rely on the powers of Section 13 of the Food and Drugs Act to seek to create a control of health and hygiene standards of imports at the ports during the interim period. The Solicitor-General has now ruled that this would be legally untenable but, even if it were, it would not be acceptable from a practical and political point of view.

All it could enable us to do is to require certificates from the French or other authorities to accompany any milk that enters the UK; and we could apply tests to such milk. This has four immense defects. First, it suggests that we are prepared to rely on French certification: we are not; the fact is their authorities will certify anything. Second, simply because they will certify anything, such a requirement would be ineffective and large quantities of milk would flood in. I simply could not defend this on public health grounds. Third, if we made the certification requirements so very onerous that even the French could not sign certificates we should be seen to be blatantly defying the Court and erecting a total and unreasonable barrier to imports. The same would be true of any attempt to test every carton for potential contamination (which incidentally would entail very considerable staff and administrative costs). This would cause far more trouble in the Community than the action now proposed, which at least holds out the prospect of imports when we are satisfied that French processing plants and farms meet the requirements we apply to our own milk. Fourth, it would manifestly not be applying to imports the same conditions and procedures as we apply to our own milk - a principle on which the Solicitor-General rightly insists if we are to avoid further Community challenge.

I hope that on reflection you and Arthur Cockfield will agree that the 1939 Act should be used. Since we shall be using it for only a few weeks, pending primary legislation, and since we shall be using it for the very reason that it is the only power we have that enables

/us to comply with the ...

us to comply with the Court's judgement while still protecting public health, I simply do not accept that its use on this basis will imperil the future status of these powers, and it is clear that Ian Percival shares this view. We shall get into far worse trouble if we try by trickery to twist the powers in the Food and Drugs Act to achieve something they are clearly never intended to achieve.

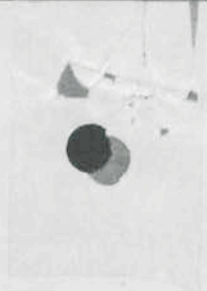
✓ I am copying this minute to the Prime Minister, to other Members of Cabinet and to Sir Robert Armstrong.

Yours sincerely

Robert Lorna

for PETER WALKER

(Approved by the Minister
and signed in his absence)



4 JAN 1955





FCS/83/23

MINISTER OF STATE FOR AGRICULTURE

Court Judgement of UHT Milk ^{with FERB}

1. We agreed in Cabinet this morning that something would have to be done to prevent uncontrolled imports of UHT milk from the Continent as from next week in the likely event that the European Court rules against us in the case on this matter. I understand that our Legal Advisers have been discussing the powers under which measures to prevent such uncontrolled imports could be taken.

2. I think I should make it quite clear now that I am firmly opposed to the use of the Import and Export and Customs (Defence) 1939 Act and its emergency powers in this case. The effect in the Community of using emergency powers would be quite disproportionate and add to the difficulties we already have. Moreover my Legal Advisers tell me that if we were to use it in a matter concerning intra-Community trade there would be a serious risk of challenge in the domestic courts on the grounds that we were taking action ultra vires the Act (which was an emergency measure passed because of the War). There might also be a case in the European Court. Any Court decision against our measures might diminish the legal force of the Act. This would be very damaging. As you know it is the only legal power we can at present use in some circumstances in which we need for reasons of our general policy to ban exports of arms and strategic materials to foreign countries (we used the Act for example in respect of Iran a few years ago). I am firmly of the view that we should not put at risk, in this case, this weapon in our armoury.

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3. I understand that you have powers under Section 13 of the Food and Drugs Act which could form the basis for purely interim measures designed to prevent uncontrolled imports while we work out with the Commission and Member States a permanent system implementing the Court judgement. I hope that you will be able to use these powers.

4. I am sending copies of this minute to the Prime Minister, the Chancellor of the Exchequer, the Secretaries of State for Trade, for Scotland, for Wales and for Northern Ireland, the Solicitor-General and Sir Robert Armstrong.

JP
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(FRANCIS PYM)

Foreign and Commonwealth Office
4 February 1983

4 FEB 1983





Prime Minister

A.J.C. $\frac{3}{2}$.

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FCS/83/20

MINISTER OF AGRICULTURE, FISHERIES AND FOOD

UHT Milk: The European Court Judgement

1. I understand that the European Court is expected to deliver its verdict in the UHT milk case on 8 February. Given the line taken by the Advocate General, it seems unlikely that the Court's judgement will endorse our present requirements. This will clearly raise a variety of important questions which will need to be considered between Departments in due course. But my purpose in writing to you now is to consider the most immediate problem of what our first public reaction should be when the judgement is promulgated. I have a particular interest in this since I shall be top for questions on 9 February when the subject could well be raised.
2. I am quite sure that, whatever our position on the substance of the matter, we must make it plain from the outset that we intend to comply with the Court's judgement. Any equivocation on this score will only encourage the Commission, the French and any other potential suppliers to our market to subject our subsequent actions to even more suspicious scrutiny than will in any event be the case. A clear statement of intention to comply will put us in a much stronger tactical position - and can, of course, be immediately qualified by any reservations we need to make on public health grounds.
3. Subject, then, to your views, I would propose to take the following line if questioned in the House on 9 February. I would say that we are still studying the full detail of the Court's judgement, and can therefore at this stage make only these two points:
 - (a) That we shall, of course, comply with the Court's judgement; and
 - (b) That there are [as the Court itself acknowledges] important issues of public health at stake which will require careful discussion with all parties concerned,



including the Commission and other Member States.

4. This sort of line should, I suggest, put us in the strongest tactical position and give us the greatest freedom of manoeuvre as we decide the substance of our reaction to the Court's verdict.

5. I am copying this letter to the other members of OD(E).

A handwritten signature in dark ink, appearing to be 'FP', with a horizontal line underneath.

(FRANCIS PYM)

Foreign and Commonwealth Office

3 February, 1983

5 FEB 1983

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