

CONFIDENTIAL



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10 DOWNING STREET

From the Private Secretary

7 February 1983

UHT MILK: EUROPEAN COURT JUDGEMENT

The Prime Minister held a meeting of Ministers at 1430 today to discuss the problem set out in the minutes of 3 and 4 February by the Foreign and Commonwealth Secretary and your Minister's reply of 4 February.

In addition to the Minister of Agriculture, Fisheries and Food, the following were present: the Secretary of State for Foreign and Commonwealth Affairs, the Chief Secretary, H.M. Treasury, the Secretary of State for Trade, the Solicitor General, Mr. Adam Butler and Lord Mansfield.

The Minister of Agriculture explained that the Government did not know what view the European Court would take in its imminent ruling but was planning for the contingency that it would rule that the present regime for protecting public health was too restrictive and would have to be changed. The United Kingdom would have no option but to comply with the law but had a right to protect public health. The intention would be to secure primary legislation which would permit continental milk which met United Kingdom standards to enter the country freely. In the meantime continental milk had to be kept out and the Minister had no powers to achieve this. He had therefore sought the advice of the Solicitor General on the best way of securing the temporary exclusion of continental milk and he had accepted that advice.

The Secretary of State for Trade said that the Solicitor General's proposal that reliance be placed on the 1939 Act carried the risk of a controversy which would go much wider than the agricultural field. The use of the alternative 1955 Act would be safer since its purpose was to protect the public health and it was not a general trade statute. Action under the 1955 Act would be defended by the Minister of Agriculture and any controversy that followed would be confined to agricultural interests. He therefore suggested that the right approach was to look at what could be done under the 1955 Act and then consider whether that would be sufficient.

/The Solicitor General

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The Solicitor General said that it was common ground that the Government had a duty to protect public health and that Article 36 of the Treaty of Rome permitted us to protect it. It was also common ground that, if, following the Court judgement on 8 February, imports of milk from the continent were permitted freely, the result would be chaos which the Government had a duty to prevent.

Against that background he had considered how best to prevent such imports for a temporary period. He stressed that his advice was given on the assumption that the period would indeed be temporary and that the Government intended to secure primary legislation in the shortest possible time. The procedure which he recommended for the temporary solution was, not to make direct use of the 1939 Act, but simply to remove milk from the list of products for which an open general licence was granted under a regulation made in 1954. He was strongly of the view, having considered the matter most carefully, that such a use of the powers derived from the 1939 Act would not be open to challenge in the English Courts. It was, furthermore, his view that there was no obvious way in which the Commission could challenge the procedure before the European Court. The use of the Minister's powers under the 1955 Act, by contrast, would be likely to appear so patently ultra vires that it would invite challenge.

The Foreign and Commonwealth Secretary said that clearly the Government had to be guided by the legal advice but the intended use of the 1939 Act - which had only been brought to his notice and that of the Secretary of State for Trade a few days earlier - had implications for general policy which he and the Trade Secretary felt obliged to bring to the Prime Minister's attention. It seemed to him that there was a distinct risk that the use of the 1939 Act would be challenged and, if it were, this could be damaging.

The Chief Secretary to the Treasury said that in his view the use of the 1955 Act was much more open to challenge than the use of the 1939 Act.

Lord Mansfield said that the use of the 1955 Act would require separate legislation in Scotland, and Mr. Butler said that the 1955 Act provided no legal defence in Northern Ireland. Differences in Northern Ireland's law had also led him to suggest to the Minister of Agriculture and the Secretary of State that, if the Solicitor General's proposed course of action were followed, cream and flavoured milk should also be withdrawn from the open general licence so that the present restrictions into Northern Ireland could be maintained. Specific licences could then be given freely for imports of cream and flavoured milk into Great Britain.

Summing up the discussion, the Prime Minister said that it was possible that the European Court would give the United Kingdom time to change its law to meet the Court's requirement. If so, a remedy should be sought through primary legislation and no temporary expedient should be adopted. If not, then the procedure suggested by the Solicitor General should be followed on the following understandings:

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- (i) the statement of explanation of the Government's actions would be agreed in advance with the Foreign and Commonwealth Secretary, the Secretary of State for Trade and the Chief Secretary to the Treasury;
- (ii) it would stress the temporary nature of the action taken;
- (iii) the use of the powers under the 1939 Act would be defended in Parliament and in public by the Minister of Agriculture, and not by the Secretary of State for Trade, in order to reduce the risk that the measure would be regarded as an action of commercial policy;
- (iv) the Minister of Agriculture would, before 7 March, circulate a paper on the permanent solution to the problem for discussion, if necessary, by the Ministers represented at today's meeting.

I am sending copies of this letter to the Private Secretaries to the Secretary of State for Foreign and Commonwealth Affairs, the Chief Secretary, H.M. Treasury, the Secretary of State for Trade, the Solicitor General, Minister of State for Northern Ireland, Lord Mansfield (Scottish Office) and to Mr. Hancock (Cabinet Office).

A. J. COLES

Robert Lowson, Esq.,
Ministry of Agriculture, Fisheries and Food.

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MR COLES

A.S.C. 7/2.

UHT MILK

I attach a draft Private Secretary letter to record the meeting at 2.30 pm today.

D.H.

D J S Hancock

7 February 1983.

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DRAFT

Private Secretary Letter.
To MAFF.

Copies to Private Secretaries to all the people at
the end of the minute.

UHT MILK: EUROPEAN COURT JUDGMENT

1. The Prime Minister held a meeting of Ministers
at 2.30 pm today to discuss the problem set out in
the minutes of 3 and 4 February by the Foreign and
Commonwealth Secretary and your Minister's reply of
4 February.

2. In addition to the Minister of Agriculture,
Fisheries and Food, the following were present:

The Secretary of State for Foreign and Commonwealth
Affairs

The Chief Secretary, Treasury

The Secretary of State for Trade

The Solicitor-General

Mr Adam Butler

Lord Mansfield

~~Mr Hancock of the Cabinet Office.~~

3. The Minister of Agriculture explained that the
Government did not know what ^{view} the European Court would
~~say~~ ^{take} but was planning for the contingency that it would
rule that the present regime for protecting public health
was too restrictive and would have to be changed. The
United Kingdom would have no option but to comply with
the law but had a right to protect public health. The

*in its imminent
ruling*

intention would be to secure primary legislation which would permit continental milk which met United Kingdom standards to enter the country freely. In the meantime continental milk had to be kept out and the Minister had no powers to ~~do so~~. ^{achieve this.} He had therefore sought the advice of the Solicitor-General on the best way of securing the temporary exclusion of continental milk and he had accepted that advice.

4. The Secretary of State for Trade ^{said} ~~explained~~ that the Solicitor-General's proposal that reliance be placed on the 1939 Act carried the risk of a controversy ^{which} ~~much~~ ^{would go much wider} ~~broader~~ than the agricultural field. The use of the alternative 1955 Act would be ~~much~~ safer since its purpose was to protect the public health and it was not a general trade statute. ~~an~~ ^{under} Action ~~Under~~ the 1955 Act would be defended by the Minister of Agriculture and any controversy that followed would be confined to ~~the~~ agricultural ^{interests.} ~~sphere~~. He therefore suggested that the right approach was to look at what could be done under the 1955 Act and then consider whether that would be sufficient.

5. The Solicitor-General said that it was common ground that the ^{Government had a duty} ~~United Kingdom was entitled~~ to protect ~~the~~ public health, and that Article 36 of the Treaty of Rome permitted us to protect it. It was also common ground that, if, following the Court judgment on 8 February, imports of milk from the continent were permitted freely, the result would be chaos which the

Government had a duty to prevent.

6. Against that background he had considered how best to prevent such imports for a temporary period. He stressed that his advice was given ~~entirely~~ on the assumption that the period would indeed be temporary and that the Government intended to secure primary legislation in the shortest possible time. The procedure which he recommended for the temporary solution was, not to make direct use of the 1939 Act, but simply to remove milk from the list of products for which an open general licence was granted under a regulation made in 1954. He was strongly of the view, having considered the matter most carefully, that such a use of the powers derived from the 1939 Act would not be open to challenge in the English courts. It was, ~~however~~ ^{furthermore,} his view that there was no obvious way in which the Commission could challenge the procedure before the European Court. The use of the Minister's powers under the 1955 Act ^{by contrast,} would be ~~quite a different matter and~~ ^{appear} likely to ^{be} so patently ultra vires that it would invite challenge.

7. The Foreign and Commonwealth Secretary said that clearly the Government had to be guided by the legal advice but the intended ^{use} ~~use~~ of the 1939 Act, - which had only been brought to his notice and that of the Secretary of State for Trade a few days earlier - had implications for general policy which he and the Trade Secretary felt obliged to bring to the Prime Minister's attention. It seemed to him that there was a distinct risk that the use of the 1939 Act would be challenged and, if it were,

this could be damaging.

8. The Chief Secretary to the Treasury said that in his view the use of the 1955 Act was much more open to challenge than the use of the 1939 Act.

9. Lord Mansfield said that the use of the 1955 Act would require separate legislation in Scotland, and Mr Butler said that the 1955 Act provided no legal defence in N. Ireland. Differences ⁱⁿ ~~in~~ N. Ireland's law had also led him to suggest to the Minister of Agriculture and the Secretary of State that, if the ^{proposed course of action were followed,} Solicitor-General's ~~advice were accepted,~~ cream and flavoured milk should also be withdrawn from the open general licence so that the present restrictions into N. Ireland could be maintained. Specific licences could then be given freely for ~~the~~ imports of cream and flavoured milk into Great Britain.

10. Summing up the discussion, the Prime Minister said that it was possible that the European Court would give the United Kingdom time to change its law to meet the Court's requirement. If so, a remedy should be sought through primary legislation and no temporary expedient should be adopted. If not, then the procedure suggested by the Solicitor-General should be followed on the following understandings: (the Government's actions)

- (i) ^{the} ~~a~~ statement of explanation of ~~our actions~~ ^{in advance} would be agreed ^{with} the Foreign and Commonwealth Secretary, the Secretary of State for Trade and the Chief Secretary to the Treasury;

- (ii) it would stress the temporary nature of the action taken;
- (iii) the use of the powers under the 1939 Act would be defended in Parliament and in public by the Minister of Agriculture, and not ^{by} the Secretary of State for Trade, in order to reduce the risk that the measure would be regarded as an action of commercial policy;
- (iv) the Minister of Agriculture would, before 7 March, circulate a paper on the ^{permanent} ~~Government's~~ solution to the problem for discussion ^{if necessary,} by the Ministers represented at today's meeting.

11. I am sending copies of this letter to the Private

Secretaries to: The Secretary of State for Foreign
and Commonwealth Affairs

The Chief Secretary, Treasury

The Secretary of State for Trade

The Solicitor General

The Hon. Adam Butler, MP (N. Ireland
Office)

and to: The

Lord Mansfield (Scottish Office)

~~and to:~~

and ^{to} Mr Hancock (Cabinet Office)

Mr Hancock

7 JAN 1983

