



Prime Minister ⁽²⁾ *with*

To be aware

AT 15/11

Treasury Chambers, Parliament Street, SW1P 3AG

Andrew Turnbull Esq
10 Downing Street
LONDON SW1

15th November 1984

Dear Andrew,

ICI'S CASE ON ETHANE VALUATION

see pr 11

Margaret O'Mara wrote to you last on this subject on 16 December 1983 to report on a procedural hearing. A full account of the background was given in her letter to Michael Scholar of 15 July 1983 (copy attached). You will wish to be aware that the case is now coming up for its substantive hearing in the High Court which starts on Wednesday 14 November. It is expected to take about 4 weeks. The case is a very complex one. On the one hand it involves novel and evolving areas of the law (judicial review and European law). On the other, the technical factual issues of how ethane would be sold and for what price are also complex and subject to wide dispute by experts. We have as expert witnesses for the Crown retired directors of purchasing and of technical issues at BGC (Mr Cooper and Professor Roberts). We also have Mr Collett, an ex-employee of Shell responsible for selling gas giving expert evidence on the seller's view. Nevertheless, in an area where evidence is sparse and much is commercial in confidence and cannot be quoted, there remain a number of points open to dispute and argument. For these reasons, it is difficult to predict exactly how the case will develop or what approach the Court will adopt. Nothing has detracted from our own confidence in the strength of Government's case on merits, and we are satisfied that it should be well and fully presented. But our lawyers advise us that an eventual legal outcome in the Government favour cannot at this stage be regarded as certain.

The case will be heard in public and may well be the subject of press comment. But if it is raised, or if it is raised in Prime Minister's questions the line should be that no comment can be made while the matter is sub judice.

Yours sincerely,

Helel Goodman

H C GOODMAN
Private Secretary

* See the attached article from today's F.T.

Elon for Budget PL 13



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UK NEWS

ICI contests rivals' tax concessions

BY RAYMOND HUGHES, LAW COURTS CORRESPONDENT

IMPERIAL CHEMICAL Industries complained to the High Court yesterday that the Government had given tax concessions to its UK petrochemicals competitors in breach of English and European Community law.

Opening an unprecedented legal action, Mr Robert Alexander, QC, for ICI, accused the Government of engaging in "an unacceptable exercise in economic gymnastics" in giving what amounted to subsidies to Shell, Esso and British Petroleum.

Provisions had been introduced into the 1982 Finance Act solely for the benefit of the oil companies and appeared to have been "tailor-made" for them, said Mr Alexander.

They had been introduced after Shell and Esso had told the Government that, without its financial assistance, their petrochemicals plant at Mossmorran in Scotland would have to be abandoned.

Mr Alexander said ICI had protested to the Government that the 1982 arrangement — made when the market was depressed and companies were fighting for survival — would have serious adverse consequences for its own petrochemical plant at Wilton on Teesside,

with its 9,000 employees.

The arrangement related to the price at which North Sea companies could sell ethane gas to their petrochemical associates. Ethane is used to make ethylene which, in turn, is used in the manufacture of a range of petrochemical products.

ICI makes ethylene from naphtha, a substance not covered by the arrangement. The company said its oil rivals had been enabled to reduce their tax burden by selling ethane at about half the market price.

ICI asked Mr Justice Woolf to make a series of declarations to the effect that the Government was acting in breach of its statutory duty and in violation of the Treaty of Rome by giving the oil companies discriminatory aid which distorted competition and affected trade between EEC member states.

The Government had failed in its duty to get a ruling from the European Commission on whether the arrangement was compatible with EEC law, ICI contended.

It said that, under the 1975 Oil Taxation Act, the market price for North Sea oil and gas had been fixed for tax purposes at the mid-point of each month in respect of deliveries made in that month.

Under the 1982 provisions, oil companies could elect to have their sales valued not under the 1975 Act but under a procedure enabling them to choose a valuation date which could be the date of a contract made at any time during the preceding two years.

The effect was that the price accepted for tax purposes could be less than half the market price prevailing at the time the company made its choice.

Mr Alexander said Shell and Esso had begun the Mossmorran project in 1976, when forecasts of ethylene demand for the 1980s were high.

By 1981 the west European market was depressed and the costs of Mossmorran had risen from about £115m to about £500m.

Shell and Esso negotiated an arrangement with the Government which had the effect of reducing the oil companies' profits, and therefore their tax, so helping them to finance the Mossmorran project.

BP negotiated a similar arrangement in respect of its petrochemical plant at Grange-mouth.

Mr Alexander quoted Lord Bruce-Gardyne, then Economic Secretary to the Treasury, as

saying later that the oil companies had been "massaged" with a special tax regime.

ICI's counsel said the Government had declined on the ground of "taxpayer confidentiality" to disclose the ethane price the Revenue would regard as acceptable.

It was, however, clear that it had regarded the appropriate price as well under half that prevailing in 1982. The Government's expert evidence was that the appropriate price was about 10p a therm, when the market price was more than 20p a therm.

"We therefore have a position somewhat unusual in fiscal affairs—that the Revenue are contending that the right approach to the valuation of gas sold in 1982 under a new contract would lead to the same price as for gas sold under a 1975 contract," said Mr Alexander.

The irony was that by 1981 the Government had regarded North Sea gas prices as so unrepresentative of the market that it had imposed a windfall tax on the profits the British Gas Corporation had derived from those unrealistic prices.

The hearing, which is expected to last four weeks, continues today.