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DEPARTMENT OF TRADE AND INDUSTRY
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Secretary of State for Trade and Industry

7 May 1985

The Rt Hon Sir Geoffrey Howe QC MP
Secretary of State for Foreign
and Commonwealth Affairs
Foreign and Commonwealth Office
Downing Street
London SW1A 2AL

NBPM
CDR 715

Dear Geoffrey,

I have been reviewing our negotiating position on the draft EC directive on product liability, which has now been under discussion in Brussels for 9 years.

2 Our position to date has been to agree that harmonisation of EC laws on defective products, based on the concept of strict liability, is desirable; that this should incorporate a "development risks" defence; that there should be no financial limit on a manufacturer's total liability for a defect appearing in a series of identical products; and that the directive should not extend to liability for damage to property. Although we have regarded total harmonisation as the ideal, we have been prepared to accept a regime that would allow other Member States to introduce development risk liability, subject to a financial limit if they chose, and to consider further the case for including material damage within the scope of the directive.

3 We have tried for some years to negotiate a directive on these lines. But it is now clear that resistance (especially from France and Germany) to our favoured solution cannot be worn down. If we stick to our position as described above we will therefore end up with no directive and consequently no harmonisation. Some member states, including France, would then adopt strict national legislation, while others, such as Italy and Denmark, would retain their present lax regimes. The Council of Europe Convention (which allows no development risk defence) would then remain the only international agreement. This could pose problems for the UK, as non-signatories, because UK citizens would not be protected by it, while the Convention would give advantage to consumers from other Member States.

4 The UK would almost certainly become isolated as the only Member State not prepared to give any ground in attempting to reach a compromise, even though Germany has proved almost as resistant as

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us in moving away from their favoured position. But even Germany is prepared to give some ground in permitting other Member States to adopt regimes of their choice on the questions of development risks and financial limits. So the UK would be left with the blame for adopting an inflexible and obstructive attitude.

5 Neither would such an outcome be in the interests of our industry or our consumers. The consumer movement would accuse us of obstructing progress on the directive without making alternative proposals to protect consumers against defective products - an objective to which this and previous governments have given support ever since the thalidomide scandal and the subsequent reports of the Pearson and Law Commissions. There would also be concern among the more enlightened sectors of industry that the lack of any agreement on a basic product liability regime could lead to an uneven, unfair and unpredictable array of laws within the EC, and possibly to developments in UK common law that could be more detrimental to their interests than a negotiated directive.

6 I therefore propose to make a slight modification to our negotiating position in order to try to reach agreement in Brussels on a directive which, though not ideal, would at least achieve harmonisation of the concept of strict liability and allow us to incorporate a full development risk defence, and no financial limit, in UK law. The latest proposal from the Italian Presidency would allow Member States the option of introducing a financial limit regardless of whether they choose to impose development risk liability, but high enough for there to be no difference in effect from an unlimited liability system. The limit would apply for a transitional period (10 years), following which the Council would review the position on development risks and on financial limits.

7 All the recent proposals have suggested the inclusion of material damage within the scope of the directive, though it has been conceded that this should be limited to personal property and that there should be a minimum claim limit. Under these circumstances I propose that we should be prepared to go along with the views of other Member States on this point.

8 Given that there appears to be no sensible alternative, I hope that you and copy recipients will agree that we should be flexible enough in the forthcoming negotiations (including the Consumer Affairs Council on 14 May, where this subject will come up for debate) to be able to accept a compromise solution on the lines of the Presidency proposal. In accepting such a compromise we would, of course, make clear that there are a number of important points of detail that need to be resolved at Working Group level before we can lift our general reserve and agree to the adoption of this directive.

9 I am sending copies of this letter to the Prime Minister,

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members of OD(E), the Lord Chancellor, the Lord Advocate, Norman Fowler, Tom King and Sir Robert Armstrong. In view of the imminent discussion at the Council of Consumer Affairs Ministers, and of the debate on personal injury in the House of Lords on 8 May, I should be grateful if anyone who sees any difficulties with my proposals could let me know by the end of the week.

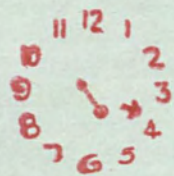
A handwritten signature in black ink, appearing to read 'Norman Tebbit', with a stylized initial 'N' and a horizontal line underneath.

NORMAN TEBBIT

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27 MAY 1985





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SECRETARY OF STATE FOR TRADE AND INDUSTRY

Draft EC Directive on Product Liability

1. Thank you for your letter of 7 ^{with CBP} May concerning your review of our negotiating position on the draft EC directive on product liability.
2. In view of the fact that our essential requirements would be met by the latest Presidency compromise, I agree that we should aim to reach agreement at the Consumer Affairs Council on 21 May on the basis set out in your letter.
3. I am sending copies of this minute to the Prime Minister, members of OD(E), the Lord Chancellor, the Lord Advocate, Norman Fowler, Tom King and Sir Robert Armstrong.

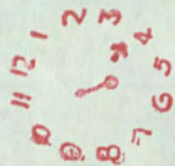
GEOFFREY HOWE

Foreign and Commonwealth Office

13 May 1985

EURO PA Budget

13 MAY 1985





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

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From the Minister

The Rt Hon Norman Tebbit MP
Secretary of State for Trade and Industry
Department of Trade and Industry
1-19 Victoria Street
London SW1H 0ET

*NBPM
OD 20/5*

20 May 1985

Norman Tebbit

DRAFT EC DIRECTIVE ON PRODUCT LIABILITY

I refer to your letter of 7 May to Geoffrey Howe concerning a review of the UK's negotiating position on the draft EC directive on product liability.

I support your proposals for flexibility by the UK in the forthcoming negotiations. However, in accepting such a compromise I agree that we should not lift our general reserve on the draft directive until various important points have been satisfactorily resolved. We are particularly concerned to ensure that manufactured foodstuffs are excluded (as primary agricultural products are already) from the scope of the draft directive when Working Group level discussions begin. I know that this has long been part of the UK's negotiating brief but I thought it worth pointing out once again the importance we attach to this issue in case it should be thought that pharmaceuticals were the only real problem that remain to be resolved.

I am sending copies of this letter to the Prime Minister, members of OD(E), the Lord Chancellor, the Lord Advocate, Tom King and Sir Robert Armstrong.

*James Evans
Michael*

MICHAEL JOPLING

Europa AT29

Budget



20 MAY 1985

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DEPARTMENT OF HEALTH AND SOCIAL SECURITY

Alexander Fleming House, Elephant & Castle, London SE1 6BY

Telephone 01-407 5522

From the Minister for Health

The Rt.Hon.Norman Tebbit.MP.
Secretary of State for Trade and Industry
Department of Trade and Industry
1-19 Victoria Street
London SW1H 0ET.

NBPM
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10/5

10 May 1985

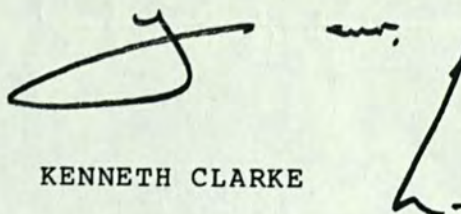
Dear Mr.

Your letter to Geoffrey Howe of 7 May proposing a modification of our negotiating position on the draft EC directive on product liability, was copied to Norman Fowler and I am responding.

As you know, product liability is of particular concern in the field of pharmaceuticals and my Department has therefore been closely involved in the preparation for negotiations throughout the last 9 years.

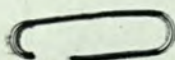
Our views on the revised negotiating position have been taken into account and I support the intended modifications. We are particularly interested in paragraph 8 of your letter. As you know, the "important points of detail" to which you refer largely concern pharmaceuticals and we certainly support the view that the UK should not lift our general reserve until these points are resolved at Working Group level.

I am sending copies of this letter to the Prime Minister, members of OD(E), the Lord Chancellor, the Lord Advocate, Geoffrey Howe, Tom King and Sir Robert Armstrong.


KENNETH CLARKE

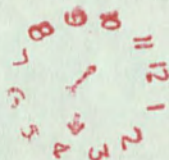
Mr Godber
Mr Kerin
Mr Hale
Mr Hagger

cc
Mr Hale
Mr Hagger
Mr Cox
Mr Bond



Budget: EURO POL 1429.

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10 MAY 1985

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