



HOUSE OF LORDS,
SW1A 0PW

8 July 1985

NBM
ODP

My dear Norman:

EEC Product Liability Directive

I have been following with interest and with some anxiety what should be the closing stages in the negotiations of this Directive before its final adoption.

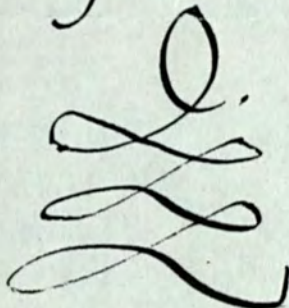
I understand that the only remaining reservation is the United Kingdom's reservation seeking the exclusion from the scope of the Directive, not only of primary agricultural products (which we have already been fortunate to achieve) but also of processed foodstuffs. As I said in my earlier letter of 12th June, I believe that any attempt to include any such further derogation would not only be wrong in principle, but could well upset the whole delicate compromise.

It seems from Michael Jopling's letter of 4th July that what the industry are seeking is an assurance that, if they have not been negligent in their selection and handling of the products which they have processed, they will not be liable under the Directive. I do not see how this is compatible with a Directive which is entirely based on the principle of strict liability. There will of course be times when it will be hard to draw a dividing line between a primary agricultural product and one which has been processed; but that is another question. The issue which confronts us is whether, once the

The Right Honourable
Norman Tebbit MP
Secretary of State for
Trade and Industry

products have been processed, there can be any escape for the manufacturer simply on the grounds that he has not been negligent in the selection and handling of the primary products; and to this there can surely be only one answer.

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

YRS:


LORD HAILSHAM OF ST. MARYLEBONE CH, F.R.S, D.C.L.

Euro PR: Budget Pt 30



Lord Advocate's Chambers
Fielden House
10 Great College Street
London SW1P 3SL

Telephone Direct Line 01-212 0100
Switchboard 01-212 7676

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

NBMM 10 July 1985

CDP
14/7.

EEC PRODUCT LIABILITY DIRECTIVE

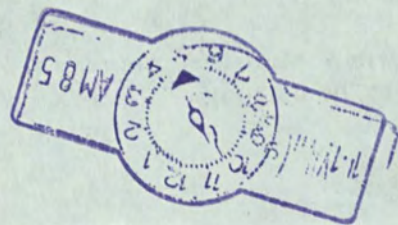
Quintin Hailsham's letter of 8 July discusses the request by the food industry for an assurance that they will not be liable for inherent defects in the raw materials used in processing food in the absence of negligence on the part of the processor.

I am in complete agreement with his conclusion that such a situation would not be compatible with the principle of strict liability which the Directive follows, and I cannot see that the presence or absence of negligence by the processor in choosing his raw materials would (or should) be relevant in deciding whether he was liable for a defective end product.

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

CAMERON OF LOCHBROOM

EUR. POL: Budget: PC30





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

From the Minister

4 July 1985

Rt Hon Norman Tebbit MP
Secretary of State for Trade and Industry
1-19 Victoria Street
LONDON SW1

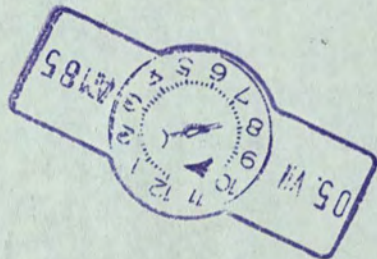
NRAM
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5/7

EC DIRECTIVE ON PRODUCT LIABILITY

I have now had an opportunity to put before the food industry recent developments on this proposed Directive, and to explain the Government's stance. Like other sectors of industry, they are far from happy with the Directive in its present form and are disturbed at being suddenly presented with what is, in effect, a fait accompli. I have, however, explained to them that, in the absence of a Directive, there would be a risk of stricter and increasingly divergent systems of liability in other Member States, and that the present package is, in general form, the best that is negotiable.

I accept that the food industry cannot expect more favourable treatment than the other sectors with particular problems to which you refer in your letter of 1 July. The food industry have, however, asked me - and this is not an unreasonable request - to establish that they are not worse treated than other sectors, and that, in particular, it is clear that they will not be liable for inherent defects in their raw materials which are in no way attributable to the processing they have undergone, and over which they have no control. There is a form of words which, I understand, is to be included in the Directive, specifying that the food sector products for which liability exists are those "which have undergone a processing of an industrial nature which could cause a defect in these products". I hope that this would mean that in a case where, for example, vegetables that have been processed only to the extent of being frozen or canned were found to contain chemicals introduced at the primary production stage, there would be no liability under this Directive for the manufacturer if he had exercised due care in the selection and handling of the primary products, because the defect was not caused by the manufacturing process. I understand, however, that there is some doubt about this. It is essential, in my view, that a formal interpretation of the legal position should be given, and if it is unfavourable, that we should insist on an amendment to the Directive.

~~Sent by cc. leg. Poland May 80~~



I shall make this point in replying to Lord Cockfield, and would be grateful if you would raise it at the Council on Monday.

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

Michael Jopling
M. Jopling

MICHAEL JOPLING

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NOPWA 10/1/85 CMO

DEPARTMENT OF TRADE AND INDUSTRY

1-19 VICTORIA STREET

LONDON SW1H 0ET

TELEPHONE DIRECT LINE 01-215 5422
SWITCHBOARD 01-215 7877

Secretary of State for Trade and Industry

1 July 1985

The Rt Hon Michael Jopling MP
Minister of Agriculture, Fisheries and Food
Ministry of Agriculture, Fisheries and Food
Whitehall Place
LONDON
SW1

Dear Michael,

EC DIRECTIVE ON PRODUCT LIABILITY

When you spoke to Alex Fletcher on Wednesday I understand you felt unable to agree to our request to lift your reserve on the inclusion of manufactured food stuffs in the Directive until you had consulted representatives of the industry.

2 I appreciate the difficulty that this request, made at such short notice, caused you but it has become essential to lift the reserve if we are not to lose the Directive. As you will see from the report of COREPER's meeting on 26 June the UK reserve is the only thing preventing agreement on the Directive. All other Member States want manufactured food-stuffs included. They all have important food and drink processing industries. Evidently they feel that any particular problems which this sector of their economy may experience with the Directive are not so serious as to outweigh its benefits to consumers and to the move towards an integrated internal market.

3 I have also come under pressure from industry on the Directive. On 26 June Alex Fletcher received a delegation from the CBI, whose views on the Directive have been expressed in two recent letters to us. The reasons for our rejection of the CBI's arguments against support for the compromise Directive are set out in my letter to Sir James Cleminson of 26 June.

4 I understand that at the meeting on 26 June with the CBI they rehearsed their arguments, and raised a number of concerns which particular sectors of industry feel to be important. Aerospace,

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building materials and industrial components were among those mentioned. Nevertheless the CBI reluctantly accepted that the Government now supports the Directive. They were therefore told that the Government hoped for agreement on any outstanding points as soon as possible.

5 I therefore hope that your consultations with the industry can be completed and the reserve lifted as quickly as possible.

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

A handwritten signature in cursive script, appearing to read 'Norman Tebbit', with a large initial 'N' and a flourish at the end.

NORMAN TEBBIT

JH5BEM

As



DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET 5662
Telephone (Direct dialling) 01-215)
GTN 215)
(Switchboard) 215 7877

From the Parliamentary Under Secretary of State
for Corporate and Consumer Affairs

NBPM
CDP
25/6

Rt Hon Michael Jopling MP
Minister of Agriculture, Fisheries
and Food
Whitehall Place
LONDON
SW1A 2HH

25 June 1985

John Michael

DRAFT EC DIRECTIVE ON PRODUCT LIABILITY

see p 29

You wrote to Norman Tebbit on 20 May supporting the proposal for flexibility by the UK in the forthcoming negotiations but reminding him that the exclusion of manufactured foodstuffs has been part of the UK's negotiating brief on the scope of the draft Directive, and that you attach importance to this issue. There is now a great deal of pressure in the working group to resolve all outstanding points of uncertainty quickly, since it is feared that the impetus towards a settlement may be lost for good if Member States' representatives are permitted to go on arguing about the details beyond this week.

Our negotiators have reported by telephone that the only outstanding UK reserve is on the question of manufactured foodstuffs, and furthermore that we are entirely alone in making this reservation. In the circumstances, may I ask you urgently to consider the points made by Qutin Hailsham in his letter to Norman Tebbit of 11 June, especially the third paragraph. This argument against the exclusion of any specific industries, given that the draft Directive now includes a development risks defence, appears to me compelling.

The Committee of Permanent Representatives will be considering product liability yet again at its meeting this week (on Wednesday). I very much hope that our representative can be instructed to lift the UK reservation about the inclusion of manufactured foodstuffs in the scope of the Directive. The urgency with which we are asked to reconsider this issue is not of my choosing and I am sorry to trouble you for a decision in such a hurry; but the point seems to be about difficulties in definition rather than one of substantial



importance to UK industry. So I cannot believe that we should risk holding up agreement at the eleventh hour for this reason.

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.

[Handwritten signature]
[Handwritten signature]

ALEX FLETCHER

PS/Secretary of State
PS/Minister for Trade
PS/Lord Lucas
PS/Sir Brian Hayes
Mr Caines
Mr Burbridge
Mr Wright - GP
Miss Lackey - ECIP
Mr Mathers - Sol
Mr Michell - Air
Mr Salvidge - I
Mr Gatland - CA
Miss Bell - V
Mr Seebohm - CTP
Mr Hayter - MEE
Mr Cheesman - SF
Mr Hope - on file

Buko Pa: Budget Pt 2

