put to the ITC without prejudice to the legal positions of Member States: this would take between a week and fifteen days. The Secretary of State said that this timescale appeared rather too relaxed. Mr Murray said that it was really other Member States who were dragging their feet, rather than the Commission themselves. Mr Mountfield (DTI) said that if even a modest amount of progress were made this week by the Commission, the LME might well now stay closed until the end of the year.

2 The Solicitor-General commented on the legal position. He had had a paper from Henry Darwin, which he wanted to consider further. He felt that we should not reveal details of our legal advice to the Select Committee, if it was asked for, since this might prejudice our negotiating position. The Chancellor said that although it was true that EC Member States would not move until the Commission came forward with proposals, they were also being held back by the fact that they did not accept legal liability for the ITC's debts. He asked whether the Commission had any views on the legal liability of Member countries.

3 Mr Mallinson said that some EC Member States did accept our analysis, but would not say so publicly. There was also some sympathy for our view in the Commission legal services, but since the Commission was not a financial contributor to the ITA, it wanted to leave it to Member States to make up their own minds on this issue.

4 The Secretary of State said that the issue of legal liability was not cut and dried, and there were legal arguments to support the view that Member countries did not have legal liability. Indeed, if the UK were sued for the whole of the obligations, we would fall back on those arguments. Mr Mountfield (DTI) said that politically it would be difficult to argue against paying, if writs were brought against the UK, given that we had previously argued that each member of the ITC should pay its share of the obligations. The Secretary of State said, however, that our willingness to pay our share of the obligations was dependent on other countries being willing to do the same. Our willingness to pay our share did not depend on strict liability.

5 The Secretary of State raised the issue of a negotiated settlement. He suggested that this would involve the UK paying less than its share of the total obligations, assuming all countries were party to such a settlement. Mr Mountfield (DTI) explained that a negotiated settlement would mean that those who took part in it would be free from further legal action: those who did not take part would not be. The Secretary of State said that it would be reasonable to explore this option, though what was negotiatiable was not yet clear, and in the event may not be acceptable.

6 Mr Renton said that there might be tactical advantage in getting the Commission to lead in pressing for a negotiated settlement. The Chancellor said that he was happy for the possibilities of a negotiated settlement to be explored, but he had two reservations. First, a negotiated settlement would be inferior to our preferred option of getting all Member countries to pay their share of the obligations. We had not yet written

off our third option, and we might be prejudicing its chances were we now to raise the possibility of a negotiated settlement. Second, he said that a negotiated settlement would involve a partial repudiation of debt. It was important that the UK should get credit for having said strongly that all Member countries should pay their share. Mr MacMahon said they did not consider that a negotiated settlement would in the event set an unfortunate example to international debtors.

7 The Secretary of State said that while it was unlikely that we would succeed in achieving our preferred option, it was still tactically better if the pressure for a negotiated settlement was led by the Commission. In the meantime, we could continue to hold out for a "100%" settlement.

8 It was agreed that on 2 and 3 December in the ITC, the UK should continue to press for a "100%" settlement, while in the meantime talking to the Commission about the possibilities of a negotiated settlement. Talks with the Commission should be conducted initially "a deux", and the banks and brokers should be brought in later. Then, on, say, 4 December, the UK would be able to shift its stance to say that while it would favour a 100% settlement, in the light of international reluctance for this, it would fall in behind the Commission's plan for a negotiated settlement. The Secretary of State would put it a public statement immediately, reaffirming the UK's readiness to pay its share of the obligations and calling on the rest to do the same. Such a statement would shut the door on a possible future negotiated settlement.

9 There was some discussion of the merits of a negotiated settlement. Mr Mountfield (DTI) said that if the banks and brokers assessed their chances of successful legal actions to recover the ITC's debts as being less than even, they might well be attracted by a negotiated settlement. Mr Renton said that if a negotiated settlement could help stop the price of tin falling as much as it would do otherwise, the brokers' and bankers' losses would be reduced. Mr MacMahon considered that the banks would be inclined to accept a negotiated settlement which was even only moderately good from their point of view in the end.

10 The decision of the Commons Select Committee on Trade & Industry to examine the tin crisis was then discussed. Mr Mountfield (DTI) said there were three areas which would cause difficulties in terms of giving evidence to the Committee. First, there was the legal advice we had received. Second, there was the issue of how far officials had warned Ministers of the crisis as it had arisen. Third, there were the proceedings of the ITC, which were confidential. Mr Murray suggested that we should write to the Executive Chairman of the ITC on the last point, to get a definitive view from the ITC on whether its proceedings could be disclosed to the Committee. He said that if the Select Committee put its weight behind a negotiated settlement, it might be useful in helping to explain any policy change in this direction by the UK Government. It was agreed that the memo the Committee had asked for by 6 December should be produced. It was also agreed that on 4 or 5 December, the

Secretary of State should see Kenneth Warren MP, the Chairman of the Committee, to try to persuade him to defer the hearing. The Chancellor warned that the Select Committee would have wide-ranging powers to obtain documents. It would be necessary to examine in advance what documents this might cover, and what effect their disclosure might have. It would be very important to avoid having to defend a decision not to disclose documents to the Committee, on the floor of the House.

MICHAEL GILBERTSON
PS/SOS/DTI
Rm 803 V/S 215 5422

3 December 1985