

To:

SECRETARY OF STATE

From:

SIR BRIAN HAYES

13 March 1986

cc Mr Morrison
Mr Clark
Mr Mountfield
Mr Rickford
Mr Murray (OR)
Mr Mallinson
Mr Whitaker
Mr Lunn
Mrs Jones OFT

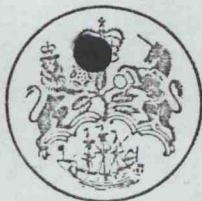
TRADE AND INDUSTRY COMMITTEE: TIN

A point of some difficulty arose before yesterday afternoon's hearing of the Trade and Industry Select Committee about tin. You will recall that the Committee had summoned Mrs Jones and Mr Lunn. You had agreed that I should write to the Chairman suggesting on your behalf that the best way forward would be for Mr Mountfield and me to give evidence instead. We heard from the Committee Clerk yesterday morning that the Committee would be happy to take evidence from Mr Mountfield and myself, but still wished to see Mrs Jones and Mr Lunn as well. You agreed that we should not object to this and so the four of us turned up in readiness to give evidence together.

2. When we did so, the Clerk came out from a deliberative session of the Committee to say that the Committee wished to take evidence from Mrs Jones and Mr Lunn first, and from Mr Mountfield and myself only when they had done so. The effect of this would of course be to prevent me from intervening if Mrs Jones or Mr Lunn were asked awkward questions or harried. I protested vigorously at this and asked to see the Chairman. Mr Warren came out and I put it to him that the Committee's proposal was contrary to what you had decided and, I understood, the Committee had agreed; that it was quite unprecedented for a Select Committee to decline to hear witnesses of senior rank when a Minister in charge of a Department had volunteered them;

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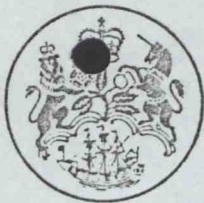
that it was essentially for you to decide who should give evidence for a Department; and that the Committee was seeking to prevent me from affording members of my staff, who were in a difficult situation, any necessary protection. Mr Warren said he would discuss the matter further with the Committee.

3. He then did so at some length. When he came out again he said that the Committee remained adamant. I need not however worry about their harrying Mrs Jones and Mr Lunn; they would deal with them gently and would accept any statement by them that they could not, or were instructed not to, answer certain questions.

4. At this point I had the option of decamping with all our witnesses, on the grounds that your decision about the giving of evidence was being flouted. I decided not to do so, since I did not think you would wish to provoke a confrontation of this sort, which would certainly have attracted much public attention and from which, in the last resort, I doubted whether the Government would emerge victorious. I therefore contented myself with a further protest.

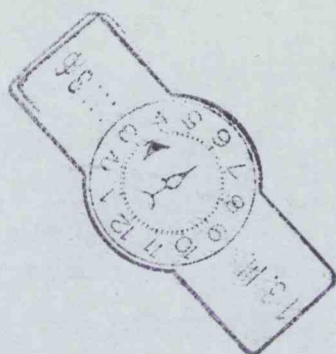
5. In the event the Committee kept to their word in questioning Mrs Jones and Mr Lunn, both of whom acquitted themselves admirably, firmly declining to answer several questions which went beyond what the Memorandum of Guidance or the confidentiality of International Tin Council proceedings permits.

6. The question now is whether any formal complaint should be made to the Committee Chairman. On the whole, I would advise against this. The Committee were obviously out to make the point that they, not you, should decide who gives evidence; and they would be able to argue that Mrs Jones and Mr Lunn were our named delegates to the International Tin Agreement and therefore deserved to be questioned separately. The point of principle is an important one; but there is no formal constraint on the Committee's powers to send for persons, and since they are formally within their rights I doubt whether any useful purpose would be served by a protest. The point is one for



the Government as a whole, however, and I am therefore sending copies of this minute to Sir Robert Armstrong, Mr Nigel Wicks, Mr Murdo Maclean, Mr David Morris and Mr Bob Hewes (MPO), with a request for comment if their views differ from mine.

ff BRIAN HAYES





Sir Brian Hayes KCB
Permanent Secretary

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET

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GTN 215)
(Switchboard) 01-215 7877

13 March 1986

Sir Robert Armstrong GCB CVO
Cabinet Office
70 Whitehall
LONDON SW1

Handwritten: 1) R. Fisher
2) DN
2) F

Dear Sir Robert,

SELECT COMMITTEE ON TRADE AND INDUSTRY

.... I enclose a copy of a minute I have sent to my Secretary of State, reporting a brush with the Select Committee for Trade and Industry yesterday about the way in which the Department's witnesses should give evidence to the Committee. As you will see, I have advised against making any formal protest to the Committee's Chairman. The point is one for the Government as a whole, however, and if you or other recipients dissent from this view I should therefore be grateful if you would let me know.

I am sending copies of this letter to Nigel Wicks, Murdo Maclean, David Morris and Bob Hewes (MPO).

Yours sincerely

pp BRIAN HAYES

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70 WHITEHALL, LONDON SW1A 2AS

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From the Secretary of the Cabinet and Head of the Home Civil Service

Sir Robert Armstrong GCB CVO

Ref. A086/875

14 March 1986

Dear Brian,

Select Committee on Trade and Industry

will request if req.

Thank you for your letter of 13 March enclosing a copy of your minute to you Secretary of State.

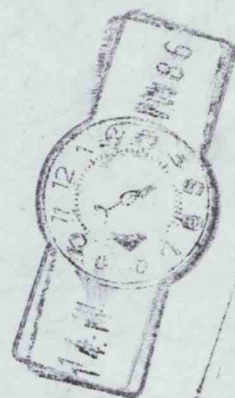
I do not think that the events reported in your minute constitute a very attractive precedent, but equally I do not think that the Government would be well-advised to make them a subject of a protest. It would be difficult to argue that what happened in this case was contrary to paragraph nine of the memorandum of guidance for officials appearing before Select Committees. The Trade and Industry Select Committee did invite named officials to appear. It was suggested to them that other officials could more appropriately give evidence to the Committee. The Committee insisted on the particular officials appearing before them and issued a formal order for their attendance. The officials concerned appeared before the Committee but scrupulously observed Ministerial instructions as to how they should answer questions.

If this were considered a precedent which other Committees sought to follow, it might be appropriate or necessary for the Government to seek to redraw the rules; but I am not inclined to suggest doing that in this instance.

I am sending a copy of this letter to Nigel Wicks, Murdo MacLean, David Morris and Bob Hewes.

*Yours are
Robert*

Sir Brian Hayes KCB





Sir Brian Hayes KCB
Permanent Secretary

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11 March 1986

FOR INFORMATION

Kenneth Warren Esq MP
Chairman
Select Committee on Trade and Industry
House of Commons
LONDON SW1

Sir Robert Armstrong
Mr Wicks
Mr Morris
Mr MacLean
Mr Steel
Mr Mountfield
Mr Rickford
Mr Mallinson
Mr Middleton IFA
Mr Lunn
Mrs Jones OFT
Mr Whitaker FRM
Mr Hewes MPO

Dear Mr. Warren,

I am sorry to learn that the Trade and Industry Select Committee felt that they were not receiving satisfactory answers from DTI officials during your session on tin on 4 March. I have discussed this with my Secretary of State and he feels that the best way forward would be for myself and Robin Mountfield (the Deputy Secretary responsible for tin) to attend and give evidence to the Committee at its session tomorrow, rather than Mrs Jones and Mr Lunn, who following last week's session have been summoned to attend.

When Mrs de Ste Croix wrote to Mr Lunn about tomorrow's session, she sent him the Committee's order to bring to tomorrow's session "all records and reports and warnings to Ministers concerning:

- a. risks being incurred by the Buffer Stock Manager;
- b. refusal by ITC personnel to supply information requested by British representatives at the ITC;
- c. Ministerial responses and instructions resulting from or concerning the above."

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My Secretary of State understands that the main point on which the Committee is focussing is the frequency and regularity of reports by officials to Ministers on the tin situation. He has therefore asked me to let you know the numbers of reports and briefs submitted by officials to Ministers during the relevant periods. They are as follows. Four such papers were submitted to Ministers between 1 July 1982 (when the Sixth International Tin Agreement came into force) and the end of 1982; three between March and December 1983; one in March 1984; and seven between June 1985 and the suspension of buffer stock operations on 24 October 1985.

My Secretary of State is anxious to give the Committee every assistance in his power, but has asked me to say that he very much regrets that he cannot go further than this and authorise the production of the documents referred to in the Committee's order. This is for two reasons. First, the papers in question include accounts of proceedings of the International Tin Council. These cannot be disclosed, for reasons of confidentiality which were described in the Department's memorandum of 3 March and by which the United Kingdom is bound as a Member State of the Council. Second, the papers also give, either explicitly or implicitly, advice to Ministers. It is, of course, an established convention that advice given to Ministers by their Departments should not be disclosed; and, as you know, paragraph 25(i) of the Memorandum of Guidance (GEN 80/38) instructs officials not to give evidence about or discuss the advice given to Ministers by their Departments.

I hope you and the Committee will understand the difficulty in which the Department is placed over this. Robin Mountfield and I will try to give all the help we can tomorrow.

*Yours sincerely,
Brian Hayes*

BRIAN HAYES



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Permanent Secretary

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Mr Wicks
Mr Morris
Mr MacLean
Mr Steel
Mr Mountfield
Mr Rickford
Mr Mallinson
Mr Middleton IFA
Mr Lunn
Mrs Jones OFT
Mr Whitaker FRM
Mr Hewes MPO

Dear Mr. Warren,

INTERNATIONAL TIN COUNCIL

I understand that at its session tomorrow the Committee have asked for evidence from a lawyer in the Department about certain legal aspects of the tin crisis. I believe that the questions that are likely to be raised concern, first, the status of the ITC under UK law, having regard to its activities as a trading organisation; and, second, the extent of the liabilities of the ITC and its member states in the present circumstances.

I have discussed this with my Secretary of State. He has agreed that if the Committee does wish to call a lawyer, he will be happy for Mr J R Mallinson (the Under Secretary (Legal) in the Department who has been the lawyer most closely concerned with the matter) to attend, accompanied by me. He has asked me to make it clear, however, that Mr Mallinson will be able to give evidence only on certain limited aspects of the questions raised.

There are two reasons for this. The first is that the questions have been the subject of extensive advice to Ministers and senior officials within the Department, and it would, of course, be contrary to convention and to the Memorandum of Guidance (GEN 80/35, paragraph 25(i)) for this

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If it would help the Committee, the Secretary of State would be happy that Mr Mallinson should give evidence to the Committee describing the content of the provisions of UK law which govern the status of the ITC (principally the International Tin Council (Immunities and Privileges) Order 1972, SI 1972/120, to which reference has already been made before the Committee). He would not however be able to provide any interpretation of these provisions or to describe how they may apply in the context of the tin crisis.

I should be very grateful to hear if the Committee would like Mr Mallinson to attend as a witness to give evidence on this basis.

*Cours sincerely,
Brian Hayes*

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11 March 1986

Murdo MacLean Esq
Private Secretary to the Chief Whip
House of Commons
LONDON SW1

Dear Murdo,

.... Following our conversation this afternoon I attach draft letters for me to send to Mr Kenneth Warren, in place of the previous drafts addressed to the Committee Clerk. I have tried to make the tone friendlier, without softening the substance; and I have now made it clear that the Secretary of State is sending Robin Mountfield and myself to give evidence tomorrow, in place of Enid Jones and Michael Lunn.

I am sending copies of this letter to Robert Armstrong, Nigel Wicks, David Morris and Henry Steel.

Yours ever,
Brian

BRIAN HAYES

CCB
RW Nargrave.
Better. I have
not yet discovered
from Rhonda what
happened when the
Chief Whip

Saw RW Warren
MD
11.3

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11 March 1986

Kenneth Warren Esq MP
Chairman
Select Committee on Trade and Industry
House of Commons
LONDON SW1A 0AA

INTERNATIONAL TIN COUNCIL

I understand that at its session tomorrow the Committee may wish to receive evidence from a lawyer in the Department about certain legal aspects of the tin crisis. I believe that the questions that are likely to be raised concern, first, the status of the ITC under UK law, having regard to its activities as a trading organisation; and, second, the extent of the liabilities of the ITC and its member states in the present circumstances.

I have discussed this with my Secretary of State. He has agreed that if the Committee does wish to call a lawyer, he will be happy for Mr J R Mallinson (the Under Secretary (Legal) in the Department who has been the lawyer most closely concerned with the matter) to attend, accompanied by me. He has asked me to make it clear, however, that Mr Mallinson will be able to give evidence only on certain limited aspects of the questions raised.

There are two reasons for this. The first is that the questions have been the subject of extensive advice to Ministers and senior officials within the Department, and it would, of course, be contrary to convention and to the Memorandum of Guidance (GEN 80/35, paragraph 25(i)) for this

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If it would help the Committee, the Secretary of State would be happy that Mr Mallinson should give evidence to the Committee describing the content of the provisions of UK law which govern the status of the ITC (principally the International Tin Council (Immunities and Privileges) Order 1972, SI 1972/120, to which reference has already been made before the Committee). He would not however be able to provide any interpretation of these provisions or to describe how they may apply in the context of the tin crisis.

I should be very grateful to hear if the Committee would like Mr Mallinson to attend as a witness to give evidence on this basis.

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House of Commons
LONDON SW1

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When Mrs de Ste Croix wrote to Mr Lunn about tomorrow's session, she sent him the Committee's order to bring to tomorrow's session "all records and reports and warnings to Ministers concerning:

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- b. refusal by ITC personnel to supply information requested by British representatives at the ITC;
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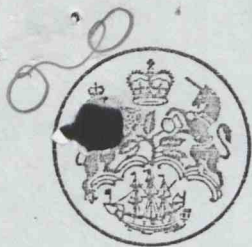


My Secretary of State understands that the main point on which the Committee is focussing is the frequency and regularity of reports by officials to Ministers on the tin situation. He has therefore asked me to let you know the numbers of reports and briefs submitted by officials to Ministers during the relevant periods. They are as follows. Four such papers were submitted to Ministers between 1 July 1982 (when the Sixth International Tin Agreement came into force) and the end of 1982; three during 1983; one during 1984; and seven between June 1985 and the suspension of buffer stock operations on 24 October 1985.

My Secretary of State is anxious to give the Committee every assistance in his power, but has asked me to say that he very much regrets that he cannot go further than this and authorise the production of the documents referred to in the Committee's order. This is for two reasons. First, the papers in question include accounts of proceedings of the International Tin Council. These cannot be disclosed, for reasons of confidentiality which were described in the Department's memorandum of 3 March and by which the United Kingdom is bound as a Member State of the Council. Second, the papers also give, either explicitly or implicitly, advice to Ministers. It is, of course, an established convention that advice given to Ministers by their Departments should not be disclosed; and, as you know, paragraph 25(i) of the Memorandum of Guidance (GEN 80/38) instructs officials not to give evidence about or discuss the advice given to Ministers by their Departments.

I hope you and the Committee will understand the difficulty in which the Department is placed over this. Robin Mountfield and I will try to give all the help we can tomorrow.

BRIAN HAYES



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NW

11 March 1986

Murdo MacLean Esq
Private Secretary to the Chief Whip
House of Commons
LONDON SW1A 0AA

R. Norgrave
I suggested to Rundle
let this right be made
less formal + more helpful
(without changing substance).

Dear Murdo

On X in the letter, Rundle says
the Cttee has asked for information in writing. Not to

Following this morning's discussion I have revised the draft letter for me to send to the Clerk to the Select Committee on Trade and Industry, in reply to Mrs de Ste Croix's letter of 4 March conveying the Committee's order to Mr Lunn to bring certain documents to tomorrow's session. I enclose a copy of the revised draft, which the Chief Whip may wish to show to the Select Committee's Chairman. I shall not despatch it until I hear from you, but I very much hope that this will be in time for me to observe the courtesies by writing today.

N.L.W.
11.3.

I circulated yesterday a further letter for me to send to Mrs de Ste Croix, setting out the basis on which a lawyer from this Department, Mr Mallinson, could give evidence tomorrow. The Law Officers have agreed to this draft. The Chief Whip may wish to show this also to the Select Committee's Chairman, and I enclose another copy for that purpose. Again, I shall not despatch the letter until I hear from you.

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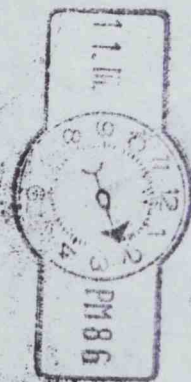


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Nigel Wicks, David Morris and Henry Steel.

Yours ever

Brian Hayes

rp BRIAN HAYES





Sir Brian Hayes KCB
Permanent Secretary

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11 March 1986

Mrs S A de Ste Croix
Clerk to the Committee
on Trade and Industry
Committee Office
House of Commons
LONDON SW1A 0AA

I am replying on behalf of Mr Lunn to the Committee's order, which you conveyed to him on 4 March, to bring to the Committee's session on Wednesday 12 March "all records of reports and warnings to Ministers concerning:

- a. risks being incurred by the Buffer Stock Manager;
- b. refusal by ITC personnel to supply information requested by British representatives at the ITC;
- c. Ministerial responses and instructions resulting from or concerning the above."

I am instructed by my Secretary of State to say that, while he wishes to give the Committee every assistance in his power, he is unable, in the light of the established conventions, to authorise the production of the documents concerned. This is for two reasons. First, the papers in question include accounts of proceedings of the International Tin Council. These cannot be disclosed, for reasons of confidentiality which were described in the

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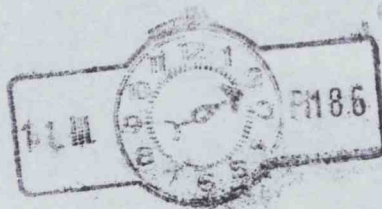


Department's memorandum of 3 March and by which the United Kingdom is bound as a Member State of the Council. Second, the papers also give, either explicitly or implicitly, advice to Ministers. It is an established convention that advice given to Ministers by their Departments should not be disclosed; and paragraph 25(i) of the Memorandum of Guidance (GEN 80/38) instructs officials not to give evidence about or discuss the advice given to Ministers by their Departments.

X
↑
My Secretary of State has considered whether there is any information he can give, in relation to the reports and briefs submitted to Ministers, which would help the Committee in its enquiries. He believes that it may help the Committee to know the frequency of such submissions. I am therefore authorised to inform the Committee that four such papers were submitted to Ministers between 1 July 1982 (when the 6th International Tin Agreement came into force) and the end of 1982; three during 1983; one during 1984; and seven between June 1985 and the suspension of buffer stock operations on 24 October 1985.

As you know, I shall be attending the Committee's hearing on the Secretary of State's instructions.

BRIAN HAYES





Sir Brian Hayes KCB
Permanent Secretary

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11 March 1986

Mrs S A de Ste Croix
Clerk to the Select Committee
on Trade and Industry
Committee Office
House of Commons
LONDON SW1A 0AA

INTERNATIONAL TIN COUNCIL

I understand that at its session on 12 March the Committee may wish to receive evidence from a lawyer in the Department about certain legal aspects of the tin crisis. I am informed that the questions that are likely to be raised concern firstly the status of the ITC under UK law, having regard to its activities as a trading organisation, and secondly the extent of the liabilities of the ITC and its member states in the present circumstances.

My Secretary of State has agreed that if the Committee does wish to call a lawyer, he will be prepared to authorise the attendance of Mr J R Mallinson (Under Secretary (Legal) in the Department who has been the lawyer most closely concerned with the matter) accompanied by me. At this stage, however, it is right for me to tell you that Mr Mallinson will be able to give evidence only on certain limited aspects of the questions raised.

There are two reasons for this. The first is that the questions have been the subject of extensive advice to Ministers and senior officials within the Department, and it would be contrary to convention and to the Memorandum of Guidance (GEN 80/35, paragraph 25(i)) for this advice to be

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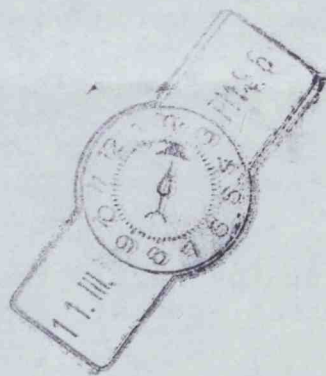
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9





Ps | Sir Brian Hayes KCB
Permanent Secretary

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Sir R Armstrong 10/3/86

Michael Stark

Ps | Sir Robert Armstrong GCB CVO
Cabinet Office

seen.
c. H. Norgrove.

CABINET OFFICE	
A	2581
10 MAR 1986	
FILING INSTRUCTION:	
FILE No.	

Dear Michael

I attach further material which Sir Brian proposes to send to the Trade and Industry Select Committee. I would appreciate your urgent comments: we hope to be able to write to the Committee early tomorrow.

I am sending copies of this letter to Henry Stal at the Law Officers' Department, to Mando Maclean and to David Morris.

Yours ever

Len Lussery

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19
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House of Commons
LONDON SW1A 0AA

I am replying on behalf of Mr Lunn to the Committee's order, which you conveyed to him on 4 March, to bring to the Committee's session on Wednesday 12 March "all records of reports and warnings to Ministers concerning:

- a. risks being incurred by the Buffer Stock Manager;
- b. refusal by ITC personnel to supply information requested by British representatives at the ITC;
- c. Ministerial responses and instructions resulting from or concerning the above."

I am instructed by my Secretary of State to say that, while he wishes to give the Committee every assistance in his power, he is unable, in the light of the established conventions, to authorise the production of the documents concerned. In paragraph 25(i) of the Memorandum of Guidance (GEN 80/38) officials are instructed not to give evidence about or discuss the advice given to Ministers by their Departments. The papers sought by the Committee are in part

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factual accounts of the position but also, either explicitly or implicitly, advice to Ministers. In so far as they are factual accounts they relate to proceedings of the International Tin Council which are immune from disclosure under the provisions of the Headquarters Agreement between HMG and the ITC, given effect to by the International Tin Council (Immunities and Privileges) Order 1972 (SI 1972. No 120). [The Secretary of State believes that it may help the Committee to have a record of the dates and nature of the reports made to Ministers during the relevant period, and has authorised me to provide such a record, which I enclose.]

....

As you know, Mrs Jones, Mr Lunn and I will be attending the Committee's hearing on the Secretary of State's instructions.

BRIAN HAYES



Reports to Ministers on tin from 1 July 1982 (the coming into force of the 6th International Tin Agreement) to 24 October 1985 (suspension of buffer stock operations)

1982

- 5 August Report on current situation and request for instructions for Special Session of the International Tin Council (ITC) on 9 August.
- 13 August Report on Special Session of 9 August.
- 6 October Report of ITC's quarterly session of 28-30 September 1982.
- 20 December Report of ITC's quarterly session of 14-16 December 1982.

1983

- 18 March Report of member states' reactions in the Buffer Finance Committee to HMG's proposals in relation to the activities of the Buffer Stock Manager. Request for instructions for ITC's March quarterly session.
- 4 May Report of EC co-ordination meeting of 28 April 1983, and request for further instructions on line to be taken in ITC.
- 21 December Brief for Ministerial visit to Thailand and Indonesia in January 1984, reporting on position in ITC.

1984

- 23/27 March Brief for Ministerial visit to Malaya and Singapore in April/May 1984, reporting on position in ITC.



1985

5 June	Brief for Ministerial visit to South East Asia in June/July 1985, reporting on position in ITC.
8 July	Report on impending difficulties in ITC's financial position.
13 September	Brief for Ministerial meeting on 18 September.
24 September	Report on meeting of Heads of Delegations on 23 September 1985.
30 September	Report on ITC quarterly session of 25-27 September.
4 October	Advice to Ministers
8 October	Further advice to Ministers.



Sir Brian Hayes KCB
Permanent Secretary

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET

Telephone (Direct dialling) 01-215)
GTN 215) 4438
(Switchboard) 01-215 7877

10 March 1986

Mrs S A de Ste Croix
Clerk to the Committee
Trade and Industry Select Committee
Committee Office
House of Commons
LONDON SW1A 0AA

CABINET OFFICE	
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10 MAR 1986	
FILING INSTRUCTIONS	
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: c- Mr Norgrove.

for tin

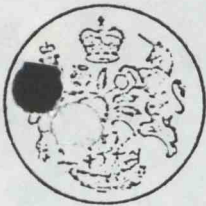
Dear Mrs. de Ste. Croix,

I am replying on behalf of Mrs Jones and Mr Lunn to the letters which you sent them on 5 March.

The answers to the Committee's questions are as follows. In accordance with normal practice, no formal instructions were given to Mrs Jones or Mr Lunn when they were appointed as United Kingdom delegates to the International Tin Council, nor were such instructions needed. Mrs Jones and Mr Lunn knew that they were expected to familiarise themselves with the recent history of the Council and with the positions adopted by Her Majesty's Government, and to conduct themselves in the Council in accordance with those positions. In doing so they in each case discussed the situation with their immediate predecessors and consulted senior officers. In 1983, after a period during which the United Kingdom had made intensive and unsuccessful attempts to secure a greater transparency in the operations of the buffer stock, both delegates in succession were reminded of the diplomatic aspects of continued efforts of this kind.

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These officers were under no specific requirements as to reporting the outcome of meetings of the International Tin Council. They knew however that matters requiring the attention of Ministers should be reported to them.

*Yours sincerely,
Brian Hayes*

BRIAN HAYES

CABINET OFFICE	
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RS
PS/SIR ROBERT ARMSTRONG

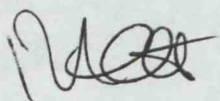


*It looks as though this is being handled
OK so far. M. Stock is keeping me in touch.*

TRADE AND INDUSTRY SELECT COMMITTEE: TIN COUNCIL

1. The attached report from the FT of 5 March indicates that DTI may have another confrontation brewing in the Select Committee. The Trade and Industry Committee are inquiring into the tin council crisis and took evidence on 4 March from DTI Ministers (Mr Clark and Mr Morrison) and officials (Mr Murray, Grade 3 and Mr Lunn, Grade 5).
2. The Committee have obviously formed the view that Ministers were not kept sufficiently informed about a worsening position leading up to the collapse of the Tin Council's position. They seem to be of the opinion that officials must have known what the position was and should have told Ministers more.
3. From discussions with DTI officials, it appears that the reason Ministers were not kept more informed was that in fact officials were not aware of the true position. Audited accounts available prior to the collapse failed to make clear that the buffer stock manager's liabilities for forward purchases of tin were not properly covered in the market. DTI is, however, in some difficulty as to what documents should be disclosed to the Committee. They are now proposing to make available to the Committee the relevant accounts, which the Committee has not previously seen. Other relevant documents cannot, however, be disclosed to the Committee without breaching our international obligations to the International Tin Council, which has various immunities as an independent international body, including immunity from disclosure of its proceedings. This has been explained to the Committee in the attached note (after taking advice from solicitors in DTI and FCO), but has not satisfied the Committee's desire to have more information. For DTI to ignore these international obligations could not be contemplated without the Foreign Secretary's agreement, since it could have repercussions for our relationship with other international organisations. Moreover, disclosure of the proceedings would risk disclosing the views of other member countries (including some of our EC partners). But in any case it is far from clear that these documents would satisfy the Committee's concern that Ministers had been inadequately informed.
4. Without further documents though the Committee clearly continues to feel that the full picture is not being disclosed to it. Mr Lunn and Mrs Jones (his predecessor in post) have been ordered to appear before the Committee next Wednesday. I understand that Sir Brian Hayes may appear with them. The exact line of questioning that the Committee will follow at that time is unclear.
5. There is one further factor that is relevant. There was I understand some difference of view between Departments in 1982 as to whether the UK should be a member of the Tin Council. The decision in favour of membership was eventually taken after consultation between the Prime Minister and Chancellor Schmidt.

6. Ministers and senior officials in DTI are still giving urgent consideration to how best to handle this matter and further consultations with FCO will be needed. There is no obvious solution to the difficulties; the only answer may be for DTI officials to continue to decline to provide information to the Committee, no doubt having rather a rough ride from the Committee in the process. I will keep in close touch with DTI as their thinking develops and will advise you if I think Sir Robert should intervene or if there is a possibility of a compromise which might require the Chief Whip's intervention.



R A C HEWES

5 March 1986.

Ministers kept in the dark about tin crisis

BY WALTER ELLIS

OFFICIALS at the Department of Trade and Industry were accused by a Commons Select Committee yesterday of refusing to keep ministers informed of the troubles of the international tin market both before and after the crisis broke last October. Mr Peter Morrison, the Trade Minister, was asked repeatedly during a session of the committee on trade and industry to give details on how much British tax payers

stood to lose as a result of the tin crisis. He did not answer and eventually admitted that only his officials possessed the necessary information. Sir Peter Emery, Conservative MP for Honiton, immediately said the situation was unbelievable. Mr Morrison replied: "It certainly has proved to be unfortunate." The committee then turned to Mr Michael Lunn, an assistant secretary at the depart-

ment concerned with tin issues. Could he give the information required? Mr Lunn said that the total sum of international indebtedness had been discussed by officials and the UK Government's possible losses had been assessed. Minister, however, had not been informed. Mr Robert Maxwell-Hyslop, the Tory member for Tiverton, and one of the committee's most formidable interrogators, asked Mr Lunn why he

had not told ministers. Mr Lunn replied: "The options for ministerial action to correct this situation were limited." The committee's chairman, Mr Kenneth Warren, Tory MP for Hastings and Rye, intervened to say that if mistakes had been made, the committee would prefer to know about it. It appeared that large amounts of tax-payers' money was just swilling around and no one was talking about it.



SELECT COMMITTEE ON TRADE AND INDUSTRY

NOTE BY DTI OFFICIALS ON CERTAIN LEGAL ASPECTS OF THE OPERATIONS OF THE INTERNATIONAL TIN COUNCIL

At its session on 19 February 1986, the Committee asked officials to prepare a note on the status and confidentiality of papers and proceedings of the ITC; and asked about the law governing the operations of the ITC.

Papers and Proceedings

There are two aspects of this question; firstly the responsibilities of the employees of the ITC in relation to its papers and proceedings, and secondly the responsibilities in that context of the Member States and the delegates to the ITC. These responsibilities are interconnected, but based on different rules.

2 Under Article 13.8 of the Sixth International Tin Agreement -

"No information concerning the administration or operation of this Agreement shall be revealed by the executive chairman, the manager, the Secretary or other staff of the Council, except as may be authorised by the Council or as is necessary for the proper discharge of their duties under this Agreement."

3 This paragraph has to be understood as covering disclosure of information to third parties, that is parties other than the Member States of the ITC and their delegates who (with certain exceptions relating to buffer stock activities, see below) have unrestricted access to all papers and proceedings of the ITC. In practice the paragraph is applied restrictively by the ITC who do not authorise disclosure to third parties.

4 Under Rule 12(d) of the Rules of Procedure of the ITC -

"All records of the proceedings of the Council shall be treated as confidential, both by the recipients of such records and the issuing body, unless the Council decides otherwise and shall be so marked."

Under Rule 16 of these Rules of Procedure -

"All sessions and meetings of the Council shall be private unless the Council decides that all or part of any session or meeting shall be public. Statements made in and documents presented to the private sessions and meetings shall be confidential."

This effectively places the ITC and its subsidiary organs, as well as Member States and their delegates, under an obligation not to disclose the course of proceedings to third parties unless the ITC as a whole resolves to make an exception. In practice



this is not done, all records are classified confidential.

5 The rules governing the operation of the buffer stock are even more restrictive as regards disclosure of information. Each Member State is required to designate a person to receive details of buffer stock operations and Rule 12 of the Buffer Stock Operational Rules provides as follows:-

"(a) Within a period of fifteen days following the end of each quarter the Manager shall forward to the designated persons of the Members a statement in a form approved by the Council of his operations relating to the quarter immediately preceding the quarter which has just ended.

(b) The delegates and designated persons receiving the quarterly statements under this Rule and persons to whom they communicate the statements shall maintain the confidential character of the contents and shall give such statements no publicity whatever.

(c) No officer of the Council shall provide any further information on the buffer stock in whatever form, explicit or implicit, except in sessions of the Council or in meetings to which all the delegates of the Members have been invited, and then only if the Council or such meeting agrees disclosure to be available."

6 The above rules, which form part of the constitution and working arrangements of the ITC, are complemented by certain provisions of the Headquarters Agreement between the ITC and HMG (Misc No 22 of 1971). Article 4 of this Agreement provides the archives of the Council are inviolable; "archives" are broadly defined and include all kinds of written material. Furthermore, the immunities required to be given under Article 8 of the Agreement would enable the ITC to resist any legal process to compel the disclosure of its records and proceedings. These provisions of the Agreement are given legal effect in the UK by the International Tin Council (Immunities and Privileges) Order 1972 (SI 1972 No. 120) - see in particular Articles 6 and 7(1). Apart from the immunity from jurisdiction of the Council itself, representatives to the Council and officers and experts of the Council enjoy immunity from jurisdiction for official acts under the Headquarters Agreement, Articles 16-19 and the Order, Articles 14-17. In practice, the ITC has not been prepared to waive any of the immunities attaching to its records and proceedings.

7 In the result, these rules mean that Ministers and officials of HMG are not in a position to disclose to the Committee any ITC papers or proceedings without the consent of the ITC; the same restriction applies to prevent oral or written evidence quoting from, or describing the substance of, such papers or proceedings. The fact that these papers and proceedings have through unofficial leaks come into the public domain does not alter the formal legal



position. With a view to assisting the Committee, officials have written again to the Executive Chairman of the ITC seeking ITC consent to the release of documents and details of proceedings; this request was put before the ITC as its session on 26 February but rejected.

Governing Law

8 It is understood that the Committee wishes to know whether or not the ITC operates under UK law.

9 There are two aspects to this. Firstly, the ITC is an international body having legal status and personality as a matter of international law - see Article 16.1 of ITA 6, the relevant part of which states -

"The Council shall have legal personality. It shall in particular have the capacity to contract"

10 Article 16.4 of this Agreement supplements the above by requiring the host Government (in this case HMG) to enter into the Headquarters Agreement referred to above, for the purposes inter alia of giving legal status to the ITC within the framework of UK law: this is done by means of Article 3 of the Headquarters Agreement and, as a matter of UK law, by Article 5 of the 1972 Order which provides that "The Council shall have the legal capacities of a body corporate". These include the capacity to contract.

11 Secondly, as regards the domestic operations of the ITC, there is no requirement in ITA 6 or elsewhere that the ITC's contracts (principally the contracts for the sale and purchase of tin and tin futures) be governed by UK law; in practice however a large proportion of its contracts are governed by UK law, including contracts entered into by the Buffer Stock Manager which are subject to the Rules of the London Metal Exchange.

DTI

3 March 1986