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Secretary of State for Trade and Industry

25 April 1986

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The Rt Hon Nigel Lawson MP
Chancellor of the Exchequer
HM Treasury
Parliament Street
LONDON
SW1

Prime Minister 2
DEW 25/4.

Dear Nigel,

**INTERNATIONAL TIN COUNCIL : LEGAL POSITION**

I am writing to bring you and other colleagues up to date on the current position on legal actions against the International Tin Council.

Earlier this week, the ITC settled the claims of Standard Chartered Bank and of Maclaine Watson, both of which had taken successful legal action against the ITC. As a result of the settlement of these claims, the ITC has no resources. Pending and potential legal actions against the ITC, and subsequently against the member countries, could result in total further claims of £300m or more.

... I attach at Annex A a note setting out the current legal position in more detail. From it you will see that the line our delegates are taking in the ITC is that, now the ITC has run out of resources, no legal cases should be defended by the ITC, whether or not the ITC believes it has immunity in such cases. Lawyers in my Department and to the ITC advise that such a course would not prejudice the legal position of member countries.

Against this background, you should know that Sir Adam Ridley came to see me on 15 April on behalf of the group of banks which do not have waivers of immunity in their loan agreements with the ITC - and therefore cannot enforce payment by the ITC. Sir Adam raised, on a strictly informal and without prejudice basis, the possibility of an out of court settlement with the UK for its share of the debt in return for an undertaking that no further action would be taken against us in such an event.

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Sir Adam said that he believed that the banks could sue the member countries on a joint and several basis, and it would therefore be open to them to sue the UK for the whole amount due.

I gave Sir Adam no indication that the UK was in any way eager to seek a settlement and stressed that unless all creditors, including brokers, could be brought into any agreement we would not be prepared even to consider it.

Separately, I understand that Professor Lauterpacht, acting for most of the creditor brokers, came to see the Legal Advisor to the Foreign and Commonwealth Office on 21 April, and explored a number of possibilities with officials, including the possibility of reopening negotiations with the ITC. He also urged on HMG the possibility of its taking up the cause of its own nationals who suffered loss as a result of the insolvency of the ITC by espousing an international claim on their behalf, and renewed the request (already turned down in responses to the banks) that HMG should revoke the immunity of the ITC. He was not encouraged to pursue this line. It is still not clear how the group of brokers intends to proceed, but its preference appears to be for negotiation rather than litigation, even though all the brokers are likely to see establishment of their claims through the arbitration procedure provided for in their contracts.

In my view therefore it is too early to contemplate a settlement, particularly whilst there is a possibility, however remote, that negotiations could be re-opened with the ITC. I am advised that the case of the banks against members countries is somewhat less strong than that of the brokers, and it would be illogical to conclude any agreement with the banks but not the brokers. I believe that we should let matters take their course for a while longer, at least until proceedings are served on the members states and the basis of the claims is apparent, meanwhile saying that we do not accept liability and will defend any actions which may be brought against us.

However, at the appropriate time I believe we should seriously consider whether an out of court settlement which covered all creditors might not be to our advantage. A settlement of all claims against the UK at 4 per cent of £300 million would cost £12 million. Such an outcome, if it could be negotiated, would be more advantageous than a successful claim against HMG for £300 million on a joint and several basis, ~~f~~for, as you know it would be optimistic to think in terms of recovering from other ITC member countries more than 50 per cent of the amount we were found liable to pay if a claim against us in the courts were successful.

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I will keep you and other colleagues informed of developments, and will not take any steps towards a negotiated settlement as outlined above without further consultation.

Copies of this letter go to the Prime Minister, the Foreign and Commonwealth Secretary, the Solicitor General and Sir Robert Armstrong.

Yours,

Paul

PAUL CHANNON



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ANNEX A

**THE INTERNATIONAL TIN COUNCIL**

## Legal Actions

### Present Position on Legal Actions

The creditors may be divided into four broad groups:

a The LME brokers, all of who it is believed have an arbitration clause in their contracts.

b Those to whom the ITC has commitments made in the context of dealing on the Kuala Lumpur tin market.

c The Standard Chartered Bank (SCB) which has a waiver of immunity in its loan clause, both in respect of jurisdiction and enforcement, so that it may enforce payment by the ITC.

d Other creditor banks which have not got such waivers and are therefore not in the favourable position of SCB.

2 A number of the brokers have already commenced arbitration hearings and Maclaine Watson & Co was granted liberty on 7 April to enforce an arbitration award in the same manner as a judgement of the court. The award of £3.2m covers only Maclaine Watson's margin claim. This claim has now been settled by the ITC. At least five other brokers have begun arbitration proceedings.

3 The Malaysia Smelting Corporation and the Datuk Keramat Smelting Co have also both commenced legal proceedings against the ITC in the High Court of Malaysia at Penang. It is likely that the position

of both these companies will be similar to that of the LME brokers although formal legal advice has not yet been received. Similar proceedings have been commenced in Singapore by Manilal & Sons (Malaya).

4 The Standard Chartered Bank has reached agreement with the ITC in relation to recovery of its loan plus interest totalling £10.6m, so that enforcement proceedings will not be necessary.

5 The position of the other banks is that although they claim that they have a case against the member countries of the ITC on a joint and several basis, proceedings have not as yet been started.

The ITC's Response to Claims

6 With the settlement of the Maclaine Watson and SCB cases, the assets of the ITC are now effectively exhausted as there is no unpledged tin remaining.

7 Although consideration was given in the ITC to offering creditors a settlement on a pari passu basis no such offer was made, both because the members were unable to agree on which creditors should be included in such an offer, and because some of the creditors indicated that they would not be prepared to go along with the proposal. The member countries were not prepared to agree to the appointment of a receiver, and because of the immunity of the ITC the creditors will not be in a position to put one in themselves.

8 Now the ITC resources are exhausted, and assuming it is not possible to re-open negotiations, it is likely that creditors will proceed against member countries although the brokers are first likely to establish their claims through arbitration. They have so far issued no proceedings in the High Court.

## ITC Policy on Defending Cases

9 The ITC is considering its policy on defending actions against it.

10 Actions brought by brokers who have arbitration clauses in their contracts will not be defended in principle, although they may be defended on points of detail. The position with regard to the Kuala Lumpur and Singapore cases has not yet been decided, but it appears that the ITC has no immunity in those two countries.

11 This leaves the cases where the banks do not have waivers of immunity. In such cases, should there be any now the ITC is without resources to meet claims, some ITC member countries may wish to defend them on the grounds that not to do so might be prejudicial to the immunity which they as member countries believe they possess against claims alleging liability for the debts of the ITC over and above its existing resources. We do not consider the defence of such cases would serve any purpose, but would be a waste of time and money. Hence UK delegates to the ITC will oppose the defence of such claims.

Department of Trade and Industry

23 April 1986