



From the Minister

CONFIDENTIAL

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

Prime Minister ②

Relevant to the Cabinet discussion.

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PRIME MINISTER

1 February 1984

MILK MARKETING ARRANGEMENTS AND THREATENED FEOGA DISALLOWANCE

1. I sent you a minute on 13 January describing the threat of disallowance arising as a result of the Milk Marketing Boards' pricing practices. Nigel Lawson and Geoffrey Howe have also commented. In view of the gravity of the matter I thought it would be right to bring you up to date with developments.

2. The first point is that, as you know, the Commission machine has taken longer than anticipated to clear the 1978 and 1979 account and as a result the story has leaked. The Commission Legal Services have however produced a helpful opinion arguing that it would be wrong for the Commission to disallow expenditure in the milk sector, at least in 1978 and 1979, since the Commission led the United Kingdom to believe that the MMBs' practices were acceptable by recognising the MMBs under the terms of the Community regulation and not subsequently withdrawing recognition. I hope that the 1978 and 1979 accounts will be cleared in our favour when the Commission meet to-day although I understand they may not complete discussion until next Wednesday, 8 February.

3. Secondly, the Commission have now opened European Court proceedings against the United Kingdom in the butter and skim case.

4. Thirdly, I saw the industry leaders on 17 January and told them in complete confidence about recent developments. I said that the disputed pricing practices would now have to be brought to an end as quickly as possible. However, in view of the risk of a leak I asked them to regard what I had said as strictly confidential and told them not to consult their members until I had had an opportunity to speak to them again. I shall be seeing them separately over the next two days and telling them formally that the disputed practices must be brought to an immediate end despite the commercial cost to them. I shall indicate that we are prepared to legislate if necessary.

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5. Fourthly, our lawyers have further considered the possibility of bringing the disputed practices to an end by legislative means. They have concluded that there is doubt as to whether we have powers to do this by domestic legislation. We are therefore in the process of seeking the Law Officers' views on whether Community law leaves the Government any scope for forcing an end to the practices in advance of a Court judgement; whether it would be safer to make primary legislation rather than an Order under the European Communities Act; and to what extent either would prejudice our case before the Court. However, my feeling is that we may have to take some risks on the legislative side if we are to bring to an end practices which are putting milk sector expenditure of £1 million a day in jeopardy. Nevertheless if we do this there will be a risk of challenge by our industry which could no doubt lead to a reference to the European Court.

6. Geoffrey Howe has suggested that we should open discussions with the Commission without delay with a view to exploring the possibility of a deal on the lines mooted in my minute of 13 January. I do not think it would be wise to embark on these delicate negotiations in advance of the clearance of the 1978 and 1979 accounts. Moreover given the legal uncertainties I would prefer to try and establish first whether the industry are willing to end the practices voluntarily - since this would be less prejudicial if a Court case has to be fought. However, as soon as the 1978 and 1979 accounts are cleared I shall arrange a without prejudice discussion with Mr Dalsager, Mr Tugendhat and appropriate Commission officials and explore the possibilities.

7. Nigel Lawson has emphasised that we should take a fundamental look at the present organisation of the Milk Marketing Boards and the powers they exercise. In my recent paper to Cabinet I have undertaken to conduct such an examination, but this will take time and I think it would be wrong to underestimate the risks and political difficulties of fundamental changes. This does not however rule out early changes to the Board's pricing practices.

8. I am copying this minute to members of E(A), the Foreign and Commonwealth Secretary, the Attorney General and the Secretary of the Cabinet.



MICHAEL JOPLING

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