

MR COLMS

*1- General agreement but it would be useful if I could have a "tabloid" in charge 1- [unclear]*

*Other Ministers are being consulted over the weekend. If you and they are in contact with the minute we may not need a meeting on Monday.*

*Agree with recommendation in para. 9?*

*A.S.C. 4/2.*

UHT MILK: EUROPEAN COURT JUDGMENT

1. A meeting of Ministers has been arranged for Monday afternoon, 7 February, to consider what should be done to prevent uncontrolled imports of UHT milk from the Continent if the European Court rules that our present arrangements are unlawful. The judgment will be delivered early on the morning of Tuesday 8 February. The issue in question is discussed in the minutes of 3 and 4 February from the Foreign and Commonwealth Secretary to the Minister of Agriculture and in the Minister's reply of 4 February.

2. We do not know what precisely the judgment will say, but it is expected to condemn the existing United Kingdom restrictions on retail sales as they apply to other member states but to recognise the need for measures to protect public health. It may provide for the existing arrangements to be continued in force temporarily while a permanent new system of health protection is evolved. If so, Ministers will have time for further consideration of the matter. If not, there will be no protection against imports from other member states with effect from the time of the judgment. Decisions are therefore needed on Monday about the action to be taken by the United Kingdom in response to the judgment, assuming that it does not allow for the temporary continuation of our existing health control regime.

The Permanent Solution

3. The Minister of Agriculture's intention is to find a permanent solution to the problem which would impose the same health and hygienic requirements on milk producers in the United Kingdom and elsewhere in the Community. The substance of the Minister's proposals is set out in the extract from a recent letter at Annex A to this minute. The new regime will require primary legislation. We cannot say for certain how long it would take to prepare and enact this legislation even if Parliamentary time were not a constraint. It is very probable that the Commission would need to be satisfied that the terms of the new regime were consistent with the ruling of the European Court.

The Stop-Gap Solution

4. The Solicitor-General has been consulted about the powers available to the Government to control imports of milk in the interim period between the Court's judgment and the implementation of the permanent solution. He has advised that the best and most defensible solution would be as follows:-

- (i) immediately after the judgment of the European Court, to remove UHT milk from the open general licence granted under the 1954 order made under the Import and Export and Customs (Defence) 1939 Act. The effect would be to prohibit the importation of UHT milk without a specific licence;
- (ii) we should then negotiate with the Commission about the conditions under which specific licences would be available. The aim would be to subject producers



in other member states to the same conditions as apply to domestic producers;

- (iii) once the conditions attached to the grant of a specific licence had been promulgated, regulations should be made under Section 13 of the Food and Drugs Act 1955 in order to impose controls at the ports so that compliance could be checked.

The Solicitor-General's advice is recorded at Annex B.

5. The Foreign and Commonwealth Secretary and the Secretary of State for Trade have called attention to the risk that the use of the 1939 Act might be challenged. Any court decision against these new measures might diminish the legal force of the Act which is a vitally important legal power needed for reasons of general policy in other contexts. The Secretaries of State have asked whether the Food and Drugs Act 1955 could be used instead. The Solicitor General has given it as his opinion that the use of the 1955 Act would be much more open to challenge and is not able to advise the Government to rely on it except to the extent mentioned in paragraph 4(iii) above.

#### Presentation of the Introduction of Specific Licensing

6. A challenge to the 1939 Act resulting from its use in the manner recommended by the Solicitor General would be very much less likely if the presentation were as conciliatory to continental opinion as possible. It is therefore proposed that the Minister of Agriculture should make a statement stressing the following points:-



- (i) the United Kingdom accepted the Court's judgment;
- (ii) we intended to move quickly to remove the illegal effect of our legislation;
- (iii) a satisfactory solution would require new primary legislation which could not be enacted immediately;
- (iv) the intention would be to devise the new legislation so as to apply the same requirements to producers in the United Kingdom and in other member states;
- (v) the terms of the new scheme would be discussed with the Commission before enactment;
- (vi) in the meantime the Government had to continue to protect the public on health grounds and this was the sole reason for the temporary action taken.  
(In this section of the statement the greatest possible use would be made of any helpful remarks in the European Court's judgment.)

7. The precise wording of the statement cannot, of course, be settled until the terms of the Court's judgment are known. The text of the statement will be agreed by the Departments concerned before it is delivered.

#### Northern Ireland

8. The import regime for Northern Ireland is in one respect more restrictive than the existing regime for Great Britain - imports of UHT cream and flavoured milk are forbidden whereas they are permitted into Great Britain. A way of dealing with this complication is now being worked out by officials of the departments concerned.

Recommendation

9. Ministers are invited to agree that a temporary solution be implemented as recommended by the Solicitor General and that the presentation be handled as suggested in paragraphs 6 and 7 above.

10. Copies of this minute are being sent to the Private Secretaries of the Ministers invited to the meeting as listed below.

D.H.

D J S Hancock

4 February 1983

Distribution

Private Secretaries to:

Secretary of State for Foreign and Commonwealth Affairs  
Secretary of State for Northern Ireland  
Minister of Agriculture, Fisheries and Food  
Secretary of State for Scotland  
Secretary of State for Wales  
Chief Secretary, Treasury  
Secretary of State for Trade  
Solicitor General  
Sir Robert Armstrong.

ANNEX A

MEASURES PROPOSED BY THE MINISTER OF AGRICULTURE FISHERIES AND FOOD

1. The treatment plants in other Member States from which it is proposed to supply this country must be subject to individual authorisation under my control: I cannot rely on unsupported health certificates provided by other Member States.
2. Such authorisation must be conditional on inspection and approval by my inspectors to ensure that proper standards are being observed.
3. (Unless this is specifically ruled out by the judgment) this inspection and approval must, as in this country, extend to the farms supplying the treatment plants.
4. Individual consignments must be accompanied by an appropriate certificate to assure us that the necessary standards are being maintained.
5. My inspectors will need to make the necessary checks at the port to ensure that the certificates are valid.
6. In order to keep the administrative costs in reasonable bounds it will be necessary to specify the ports concerned.

NOTE OF A CONSULTATION HELD AT THE  
LAW OFFICERS' DEPARTMENT on 4 FEBRUARY, 1983

PRESENT: The Solicitor General  
K Chamberlain (FCO)  
J E Coleman (DOT)  
E Munir (MAFF)  
J Dixon (MAFF)  
W H Godwin (CO)  
C Wilson (LAD)  
M L Saunders (LOD)

UHT MILK

1. The Solicitor General emphasises that the Attorney General had not expressed grave doubts and warnings about the use of the Import, Export and Customs Powers (Defence) Act 1939. In two cases, the Attorney had in fact advised that that Act could be used but that it would be desirable to replace it by modern legislation as soon as possible. The Solicitor agreed wholeheartedly that it would be better and tidier to have new legislation but he had no doubt that the risks of a successful challenge to the use of the 1939 Act were negligible. The courts, on the few occasions on which they had considered the use of the 1939 Act, had not cast any doubts on its continued validity. The use of the Food and Drugs Act 1955 would be much more open to challenge.

2. The Solicitor General stressed that measures could only be taken to restrict importation of UHT milk for reasons of public health. It seemed to be accepted generally that the UK was not required in Community law to allow UHT milk into the United Kingdom without any checks as to its adequacy from the point of view of public health. In the Solicitor General's opinion, what we must try to do, in order to defend any system which is established in terms of Community law, is to put potential importers as nearly as possible in the same position as domestic

producers, taking into account the fact that they are not established in this country. We must of course not legislate extraterritorially. The Solicitor General suggested that we might achieve the aim of establishing a system which was defensible in terms of Community law by first, immediately after the Judgment of the European Court, removing UHT milk from the open general licence granted under the 1954 Order (made under the 1939 Act) thus prohibiting the importation of UHT milk without a specific licence. We will then as soon as possible enter into negotiations with the Commission to determine under what conditions the specific licence will be available. In those negotiations we would argue that it was reasonable and proportionate to subject foreign importers to the same conditions as applied to domestic producers. On completion of those negotiations we would then introduce the conditions to be attached to the grant of a specific licence and at the same time Regulations might be made under s.13 of the Food and Drugs Act 1955 imposing controls at the ports, including such matters as random sampling, requirements for marking and certification which would establish that goods have come from premises which have been tested and approved. It may well be, however, that the primary legislation which was being prepared would be enacted by this time. At some stage soon after the Judgment, the present restrictions on the sale of imported UHT milk would need to be lifted either by Regulations made under the 1955 Act or by an Order made under s.2(2) of the European Communities Act 1972.

3. The Solicitor General concluded that this scheme would require very careful presentation. The United Kingdom would make it clear that it would implement the Court's Judgment, that it would enter into urgent discussions with the Commission as to what restrictions could be imposed and that meanwhile there would be an import ban on UHT milk whilst these urgent



discussions were being undertaken. The Solicitor General said that if the discussions with the Commission did not arrive at a speedy and acceptable solution, we might have to introduce the licencing regime which we considered defensible in Community law and not maintain the absolute ban. It was reported that the Solicitor General for Scotland had not yet reached a final view. He would be discussing with officials in Scotland on Monday the eventual scheme envisaged and the powers under which it could be implemented.

LAW OFFICERS' DEPARTMENT

4th February, 1983.



Qz.03004

MR COLES

cc Sir Robert Armstrong

## UHT MILK: THE EUROPEAN COURT JUDGMENT

1. I refer to my minute of 4 February. The Secretary of State for Trade has asked for the meeting to go ahead as arranged at 2.30 this afternoon.

2. The fundamental reason why the Secretary of State is insisting on a discussion is, I understand, that the Department of Trade and not MAFF are answerable for the use of the 1939 Act. The Secretary of State fears that, once the Government agreed to use the 1939 Act in the manner proposed by the Solicitor General, MAFF would have no great incentive to replace the stop-gap measure by a permanent solution which satisfied the Commission.

3. It may therefore help to get agreement at this afternoon's meeting if the Prime Minister established that the proposals of the Minister of Agriculture and the Solicitor-General could only be accepted on two clear conditions:-

- (i) the text of the statement to be issued by the Minister of Agriculture tomorrow would be agreed in advance by the Department of Trade, the Treasury, the Foreign Office and the Solicitor-General;
- (ii) a paper by MAFF on the eventual solution to the problem should be considered by OD(E) not later than the end of March.

D.H.

7 February 1983.

D J S Hancock

MR. FLESHER

Meeting on imports of milk: 1430 Monday 7 February

The following will attend:

Foreign and Commonwealth Secretary  
Minister for Agriculture  
S/S Trade  
Solicitor General  
David Hancock.

The Chancellor is away all day, but the Chief Secretary will represent him. The Earl of Mansfield will represent the Secretary of State for Scotland. Wales will send nobody as they will all be in the House for First Order Questions. The NIO will send a representative, name yet to be submitted.

Sir Ian Percival will let us know on Monday whether we should invite the Lord Advocate.

4 February 1983