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



From the Minister

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Sir Patrick Mayhew QC MP
Solicitor General
Royal Courts of Justice
LONDON WC2A 2LL

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CDP
15/91

18 November 1986

Dear Solicitor General

FRENCH ACTION DISRUPTING UK LAMB TRADE

FILE WITH CDP

Thank you for your letter of 5 November 1986. In putting forward the suggestion that we might step up inspections of imports of golden delicious apples, I was mindful of the undoubted legal problems that could arise. But I am not clear that we should, as you suggest, need to be able to justify this under Article 36 of the Treaty. We should simply be enforcing the quality standards within the terms of Regulation 1035/72. Article 8 of that Regulation provides that, in order to establish whether produce conforms to the quality standards laid down, "a check shall be made by sampling at all marketing stages and during transport by the authorities appointed by each member state". Since this is a fully harmonised field, I understand that Article 36 would no longer be relevant. There would, however, remain the requirements of Article 30. The question would be whether our action on quality standards was justifiable under the provisions of the basic regulation or whether it amounted to a restriction on trade.

You say that we should face the likelihood of challenge in our Courts at the suit of French apple exporters. This underlines the dilemma. Why is it that the UK industry is unwilling to take similar action in the French Courts? It seems that the UK trade - rightly or wrongly are convinced that they are unlikely to succeed before the French Courts. Understandably they are therefore reluctant to risk the costs involved. I believe that we had some reasons for thinking, in the Bourgoin case, that the French Government was to some extent behind the action taken by the French trade.

There have been a number of striking instances where member states have shown themselves ready to forego, as you put it, "the high

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ground of legality" when confronted with political pressures from their own industry. The history of our relations with France on lamb is very clear witness of this. You will recall that it was the deliberate action of the French Government in refusing to respect the Treaty and the findings of the Court that led to the negotiation of the sheepmeat regime. The recent actions by the French customs are only the most recent manifestation of the readiness to flout the law.

In order to meet the pressures from our own industry, we need to have some sort of meaningful response. The proposition I made seemed to me an approach which would show that we were responsive to the interests of our own industry even though we should not be able, for obvious reasons, to draw any direct linkage.

What are the alternatives? To initiate action in the European Court is, we know, a long-winded process which cannot deal with immediate problems causing damage to our traders. The history of sheepmeat shows this. So does the history of the problem over cheap gas for the Dutch horticultural industry. It took five months for the Commission to find that the Dutch action was illegal. The Dutch Government has challenged the Commission ruling in the European Court and the case has still to be heard. In this instance the problem has receded because of the fall in the oil price. But a great deal of damage was done to our horticultural industry over the period when their Dutch competitors were being given a substantial competitive advantage.

I am attracted to your suggestion that we should be ready to indemnify a trader who sued the French Government in the French Courts, and I think officials should work this idea up.

In order to deal with the French complaints over lamb, the Commission are now suggesting the introduction of MCAs, even though this was never envisaged in this sector. Nor was it contemplated when the boqt was on the other foot and our industry was suffering as a result of high positive MCAs. I do not know how the discussions on this will come out next week. But we cannot assume that disruptive measures against our trade will not happen again. In this event, I think we do have to be clear how we respond.

I am copying this letter to the Prime Minister, Members of OD(E) Committee, to the Secretaries of State for Northern Ireland, Scotland and Wales, the Chief Whip, the Chief Whip in the House of Lords and Sir Robert Armstrong.

Yours Sincerely
C. J. J. J.

for

MICHAEL JOPLING
(Approved by the Minister
and signed in his absence)

