PRIME MINISTER

When I was asked to commission the studies in the attached report by officials, I believe that we were all concerned that strict observance of the accepted trading rules might somehow be giving us the worst of all worlds, whereas with only a little deviousness we could in fact secure the best. Now that I have read all forty-seven paragraphs of this report, I ask my colleagues to accept that neither version is a realistic assessment. I am impressed by three points.

First, officials have presented a number of possibilities for covert protection. They suggest these might be pursued further. I accept that they have probably identified the least unpromising material. I should,,however, be reluctant to elevate such possibilities into a serious policy option. Furthermore, I doubt the value of these measures of covert protection for particular product sectors which further investigation might select for experiment.

Second, I am not altogether surprised how little of substance should have been turned up. In slightly different terms, this exercise has been conducted for us twice before. I do not think it has much to do with easing the adjustment of declining industries or helping inherently viable industries to overcome short-term difficulties, whatever may be alleged in the conclusions (paragraph 38). Indeed I was interested that the CBI did not rise to this bait in the recent NEDC discussion on non-tariff barriers.

If we are seriously anxious about trading rules which imperil our freedom of action at this more fundamental level and which are written to suit the economies of others but not necessarily

our own, I suggest that we should bring that anxiety to bear on our current reflections on the merits of joining the EMS. The ability to determine our own sterling exchange rate is of paramount importance. It is fundamental in securing our trade balance, and could dwarf whatever might be secured by the laborious erection of non-tariff barriers.

Third, I am sure there is room for pragmatic action - either to secure our Treaty rights or to provide deliberate or open protection where we can. Quota and restraint arrangements - not mentioned in the paper - already provide more significant protection than any new standards regime or port controls could hope to afford. We should continue with this pragmatic course. Likewise we must maintain the strong anti-dumping unit in my Department. I can see that certain sectors may merit alternative shelter where helpful regimes are expiring and that we should look at these. We must continue to do all that we can to secure more patently open trade in the European Community. And of course if the Commission seem out of touch with political sense in a practical case like the London taxi we must respond sharply.

Such a pragmatic approach, however, is markedly different from enacting a deliberate framework of covert protection which it would be difficult to monitor and cost. So rather than inviting my colleagues to endorse officials' recommendations, I ask them simply to take note of the points which I have made above.

WJB

Department of Trade
1 Victoria Street
London, SW1H 0ET

23 December 1981

WJB

UNITED KINGDOM TRADING POLICY

Note by Officials

INTRODUCTION

1. At an ad hoc meeting of Ministers chaired by the Prime Minister on 8 September the Secretary of State for Trade was invited to arrange for a study to be carried out of possible ways in which the United Kingdom's trading arrangements both within the European Community and with the rest of the world could be made to work more to the United Kingdom's advantage (the relevant extract from Mr Lankester's letter of 9 September to Mr Kerr is annexed).

2. In response to this remit, this Note first sets out a number of general considerations relevant to the report as a whole and then -

i. reports on the progress made in introducing new non-tariff barriers in the four areas discussed when E Committee considered a similar exercise in June 1980 (E(80) 21st Meeting, Minute 3);

ii. assesses what further scope may exist for taking covert action to protect United Kingdom industries;

iii. considers how the Commission might be enabled or persuaded to improve their monitoring of illegal and unfair trading practices in other Community countries, and to take firmer action against such practices;

iv. briefly compares legal procedures for enforcing Community law in the United Kingdom and other member states; and considers whether any action might be taken in the United Kingdom to make Community law less immediately binding in our courts;

v. proposes conclusions and invites Ministerial endorsement or decisions as to further work.

3. The Note has been prepared under Cabinet Office chairmanship by a group of officials from the Departments of Trade, Industry and Employment, the Treasury, the Ministry of Agriculture, the Foreign and Commonwealth Office, the Lord Chancellor's Office, the Law Officers' Department and the Central Policy Review Staff.

GENERAL

4. There is an obvious potential conflict between 2(ii) and 2(iii) above ie between introducing further covert measures to protect United Kingdom industry and trying to get the Commission to take firmer action under the Treaty of Rome against similar practices in other Community countries. The risk of conflict would rise with the scale of any new covert action and its vulnerability to exposure. This does not mean that it is impossible to ride both horses simultaneously, and the need for defensive action by us will be the greater the less we are able to persuade the Commission to take effective action against others. However, any substantial strengthening of the present trade regulatory system to permit effective protection of all threatened sectors of British industries would not be compatible with the United Kingdom's obligations under Community law.

5. Officials have assumed, subject to further guidance, that Ministers would wish them to start by considering what steps might be taken to deal with known problems within the existing trade regulatory framework. This would stop short of any open breach of the United Kingdom's Community obligations but would not exclude bending the rules where we might hope to do so without being found out. Since much of this ground was gone over in last year's E Committee exercise the results of this new work are limited. Covert action on the scale envisaged could not be expected to have more than a marginal impact on imports, or to produce even these results quickly in some areas. Ministers may wish to consider the results of this work before deciding whether officials should organise a more comprehensive inventory, on a product by product basis, of the possibilities for covert action and identifying those where the conflict with other policies would not arise or could be minimised.

6. Certain other general points are also relevant -

i. it appears from a number of recent statements by the CBI, and from the debates that took place at their annual conference in October, that their members attach prime importance to the removal of the non-tariff barriers (NTBs) sheltering their competitors; they are not looking for protection against fair competition. Almost as important, they now reluctantly accept the distinction between the extensive but legitimate non-tariff requirements which have to be complied with and protectionist NTBs which are relatively fewer;

ii. in the negotiations on the 30 May mandate we have supported the Commission in giving a higher priority to completion of the internal market in goods and services. The Minister of State for Foreign and Commonwealth Affairs (Mr Hurd) made a major statement on the United Kingdom Presidency's programme and priorities for the development of the internal market in a European Parliament debate on 14 October. Working through the Commission against unfair competition from our partners would fit well with this approach and that of the CBI. Conversely, any substantial programme of covert action might be difficult to sustain for long without calling in question our good faith in publicly committing the the United Kingdom to collaborate in making a Community-wide common market for goods and services a reality;

iii. on the basis that British industry has generally more to gain from eliminating NTBs in its export markets than from creating or retaining them at home, the United Kingdom has supported the GATT code on non-tariff barriers and programmes for harmonisation of standards and related exercises within the Community. Nevertheless it has been our policy to defend United Kingdom requirements which have a protective effect where no gain can be seen from harmonisation. In some cases harmonisation would mean giving up national powers which might be incidentally useful for protective purposes. The possible need to retain such powers as well as the possibility of introducing new measures which would have some protective effect should be considered in the same pragmatic way without prejudicing the principle that overall priority should be given to harmonisation.

iv. it is in the nature of covert action that it cannot be prayed in aid publicly. This may diminish its political and presentational attractions; but if the desired result is brought about the intended beneficiaries, at least, may be expected to know what is going on.

FOLLOW-UP TO E COMMITTEE REMIT OF JUNE 1980

7. Progress on the four non-tariff barriers has been as follows -

The accelerated payment of VAT on imports

8. After discussion between the Prime Minister and the Chancellor of the Exchequer in the context of the 1981 Budget, it was decided that such a scheme, although superficially attractive, had many drawbacks and should not be proceeded with.

Sperm whale oil

9. Agreement was reached in the Council of Ministers in December 1980 on a Community ban on the import of sperm whale oil and products containing such oil. The ban will come into force in January 1982. Once the effect has worked through, this should provide some protection for the United Kingdom's tanning industry.

New National Safety Standards

10. Recognition by the Health and Safety Executive (HSE) of Safety Standards gives legal advantages to firms manufacturing to those standards who are likely to be British. Procedures for statutory recognition of 10 safety standards are now under way.

BS 4683 - Electrical Apparatus for flammable atmospheres
BS 4343 - Industrial Plugs and Sockets
BS 4752 - Circuit Breakers
BS 5419 - Air Break Switches
BS 1870 pt. 1 - Safety footwear
BS 5426 - Workwear

BS 1397 - Safety Belts
BS 697 - Rubber Gloves
BS 5240 - Safety Helmets
BS 5169 - Fusion Welded Air Receivers

11. Consultation will be completed by the end of this year. A difficulty is that some users and consumers are opposed because of the effect of recognition on the range of choice. In th light of this consultation a decision will be taken. Meanwhile other possibilities for recognition are being examined.

National Type Approval Scheme for Goods Vehicles

12. This scheme has now been adopted, and has put the United Kingdom on a similar footing to other member states in subjecting commercial vehicles to a series of tests before being sold here.

THE SCOPE FOR FURTHER COVERT PROTECTION OF UNITED KINGDOM INDUSTRIES

13. Officials have taken covert protection to mean protection afforded as the apparently incidental by-product of action undertaken for other purposes. The scope for such action would therefore lie in fields such as health and safety, consumer protection, national defence, public purchasing, environmental protection or the style of public administration: all fields in which national procedures while subject to limitations, are not completely excluded by the Treaty of Rome. We have not considered the possibility of subsidising United Kingdom industry and agriculture to match the aid given to their competitors by some member states. For the time being not all the Departments and agencies which could be involved have been consulted.

14. Certain constraints bear on what can be done:

i. given that covert measures would be a by-product of action undertaken for other purposes and that this latter action must conform with the relevant statutory instruments, it may not be possible to direct this form of protection at the areas where it would be most welcomed by the industries concerned;

ii. powers given for a particular purpose may not lawfully be used for other purposes. Importers could have recourse to the Courts and the Ombudsman and thereby obtain indirect or direct relief against misuse. Some of the Departments or agencies concerned are circumscribed by the legislation under which they operate and by the risk of challenge in the Courts from taking covert protectionist action - eg, in the occupational health and safety area. Even where Departments or agencies could use legitimate discretion in ways which would have a protectionist effect, in some cases a measure of public consultation would be inescapable before new regulations could be introduced. Furthermore, unless more staff were provided, the use of powers in this way would have the effect of diverting effort away from the primary functions of the Departments or agencies concerned.

iii. there would be some risk of retaliation from our trading partners, as well as of a challenge from the Commission and eventual adverse judgment by the European Court and there could be complaints from importers whose deliveries were delayed, with the possibility of actions for damages against HM Customs and Excise;

iv. protection of some United Kingdom firms might be achieved only at the expense of others if for example it had the effect of reducing the availability of cheaper imported inputs and components;

v. more central or local government staff would be needed to implement many of the protective measures identified if this had to be done without diverting effort away from existing tasks; alternatively priorities would need to be re-assessed and some existing work dropped to make room for the new;

vi. particularly in the case of agriculture, the comprehensive, detailed and directly applicable character of Community legislation, as well as the ready availability of legal remedies to individuals affected by infringements of this legislation, impose major restrictions on the scope for unilateral action.

Standards, testing and certification requirements

15. The formulation of improved national standards, the mandatory application of recognised standards (national, EC or internationally agreed standards) and the enforcement of national testing and certification procedures are measures which severally or collectively can be used to improve the efficiency of British manufacture. MISC 14 has already commissioned urgent studies for this purpose within the framework of existing legislation. They could be extended to afford marginal covert protection in some product sectors. However there are certain constraints common to the effective use of such measures for either purpose:

i. The mandatory application of standards and the enforcement of national testing and certification procedures is possible under existing statutes only if this contributes to their clear purpose - road safety, consumer protection, health and safety at work. In some cases, it may of course be practicable to serve both these safety interests and those of the manufacturers.

ii. Depending very much on the product concerned the formulation of unique national standards and more particularly their mandatory application can add to the production costs of British manufacturers wishing to serve both home and export markets.

iii. Both the GATT and the Treaty of Rome outlaw the use of standards as well as associated procedures for protective purposes, although Community jurisprudence is still in a formative stage in defining the frontier, under Article 36 of the Treaty. Moreover their use could fall foul of the competition Articles of the Treaty.

16. All these considerations would have to be taken into account on a product by product basis. As will be apparent from paragraphs 10-11 above, standards writing is a slow business; moreover sizeable additional resources (both public and private) could be involved.

Port Controls

17. We have explored the scope for using controls at the port as a non-tariff barrier. This might be possible in the few cases where import quotas, compulsory standards and special import arrangements exist. At present Customs lack the legal powers to enforce standards in ways which bear as heavily on imports as comparable regulations in other countries. For example, where mandatory technical standards exist governing the safety of machinery, the Customs have no authority to require that imports should satisfy these standards. It is not therefore possible, where individual foreign items are found to be unsafe, for action to be taken to ban the sale or importation of similar items until the defect has been eliminated. As a result imports have taken place of radio and telephone equipment which could not lawfully be operated in the United Kingdom. Other countries often require certificates of compliance with compulsory standards to be checked at ports. This requirement does not exist in the United Kingdom. Introducing controls of this kind would require further study. There have also been complaints by industry that, where import quotas exist eg in the case of textiles, the scale of checking by Customs at the port is not adequate to prevent evasion.

18. We have also explored the possibility of using import controls to supplement local consumer standards authorities' control of dangerous goods, particularly electrical goods. A system of certification of such goods could provide an effective non-tariff barrier. But such a system would give rise to a number of practical problems, would be vulnerable to challenge under the Treaty of Rome and would probably require new legislation. Given these uncertainties, this possibility does not look worth following up either as a non-tariff barrier or as a means of helping local consumer standards authorities.

19. We have also considered whether a similar result could be achieved not with more controls at the ports, but less. Some countries are believed to have set out to delay selected imports by reducing staff (or man hours) available for inspection, processing documentation etc and/or by closing points of entry for particular goods. Not only the basis on which HM Customs handle clearance but also the basis on which consignments are made up by shippers etc mean that it would be impossible to distinguish particular categories of goods in this way from

the generality of imports. Since any attempt to introduce selective impediments would in practice therefore lead rapidly to general congestion, not only would protest be widespread but also the measure could not be covert. Indeed where such practices have had perceptible effect elsewhere they have attracted the early attention of the Commission (eg Italy's closure of certain customs posts previously used for textile business).

Country of Origin Markings

20. Some sections of industry frequently suggest that compulsory country of origin marking should be required on a wider range of goods, or that it should be required at the time of entry into the United Kingdom rather than at the point of retail sale. This last requirement has been imposed by France. But since these French measures and the origin marking requirements announced this year by the United Kingdom for introduction in January 1982 are already both being challenged by the Commission, it does not seem fruitful to pursue this issue on a broad front at present. The French may be about to withdraw their measures.

Public Purchasing

21. Large sections of industry argue that more positive use could be made of public purchasing to promote competitive manufacture through such actions as framing tenders to suit United Kingdom producers, early notification of possible requirements, development contracts, use of certification schemes and the quoting of British Standards in specification.

22. The Government already uses these devices. They have to be treated with care, as any general move towards national purchasing within the Community would affect our industry's exports. Moreover, the GATT rules on public purchasing and Article 30 of the Treaty of Rome together with the EC Supplies Directive limit what we can be seen to be doing. The Commission have already begun to investigate the purchasing practices of United Kingdom local authorities; they have identified five cases and suspect that these may be only the beginning. So any scope for more intensive informal lobbying by Departments of local authorities' associations and nationalised industries would need to be treated with great care.

23. Officials conclude that there are particular areas in which the United Kingdom is already doing a good deal to help British industry; that, in view of the relatively high degree of transparency on public purchasing matters which prevails in the United Kingdom, there is little scope for systematic action beyond what is already being done; but that we should maintain our present approach domestically and, wherever possible, press the Commission to attack the practices of others.

Animal Health

24. The import restrictions recently imposed in connection with the move to a slaughter and compensation policy for Newcastle disease in poultry are under legal challenge by the Commission, who have now initiated proceedings against the United Kingdom in the European Court. The scope for similar unilateral action on animal health grounds in other fields is circumscribed by Community legislation, but could be examined further when the outcome of the Newcastle disease case is known.

Industries where existing Protective Regimes have disappeared or may disappear

25. Particular pressures for protection may be expected to emerge in respect of the following sections in which various existing buffers against competition from imports have disappeared or may do so in the near future:

i. Colour TV - when existing patent protection expires over the next four years;

ii. Telecommunications - the removal of the British Telecommunications monopoly on the supply and installation of equipment on the public telephone network is likely to make the United Kingdom market more open to imports;

iii. Electronic Computers - the ending of Government preference for ICL;

iv. Smelting and semi-manufacturer - pressure from the EC (which will be difficult to resist) to make concessions on aluminium and copper imports in agreements with state trading countries;

v. Milk - if the European Court finds against the present United Kingdom health and hygiene regulations which have the effect of impeding imports of liquid milk. Judgment is expected in the first half of 1982;

vi. Glasshouse Horticulture - temporary aid is currently provided to enable United Kingdom producers to withstand unfair competition from Dutch importers benefiting from preferential gas prices. The Commission called on the Netherlands Government to eliminate their subsidy by October 1982 and not to widen the differential with fuel prices charged to other Dutch users meanwhile. Ministers have recently decided to extend the United Kingdom aid for a further year;

vii. Poultrymeat and eggs - if the European Court finds against the United Kingdom measure introduced in August 1981.

Further work would be needed if a detailed appraisal of possible forms of protection were required.

OTHER PROTECTIVE MEASURES

EIB Tendering Procedures

26. Work is already in hand on improving United Kingdom manufacturers' performance in tendering for European Investment Bank (EIB) projects generally. Officials have examined the case for seeking to persuade the EIB to adopt a policy of confining the right to tender for EIB investment projects to the country where the project is located and the member states of the Community, thus eliminating competition from the rest of the world. On the sketchy information available United Kingdom firms might stand to win some £2-5 million of extra business a year from restricting the right to tender in this way. Certain industries eg process plant, might benefit particularly; and there might be political advantage in Ministers being able to point to such a change in EIB tendering procedures.

27. On the other hand, in 1980 some 45 per cent of the EIB's finance was raised outside the Community, much of it in those countries which would suffer most from such a change: USA, Japan, Austria and Switzerland. Our contacts in the

EIB believe that their future borrowing, especially in Japan and Switzerland and perhaps also in the US, might be adversely affected. Moreover to rule out US firms could undermine the viability of United Kingdom projects which rely at present on imports of US plant and machinery.

28. Our conclusion is that the potential gain of a formal change in policy is not worth the risk of hampering the EIB's ability to raise the funds it needs on the world's capital markets. But the United Kingdom's EIB Directors should support those who wish to see a greater degree of Community preference in tendering wherever possible.

Anti-dumping

29. Some industries feel that present Community procedures and practices make it too difficult to get anti-dumping duties imposed, and that some degree of protection is forfeited as a result. Such action cannot be covert since anti-dumping duties can only be imposed by the Community; but we are already doing what we can to help United Kingdom industries to make their case for Community action through the Department of Trade's Anti-dumping Unit, which gives general ad vice on procedure as well as help in the detailed preparation of individual anti-dumping cases and support at meetings with the Commission to consider cases.

COMMISSION ACTION AGAINST ILLEGAL AND UNFAIR PRACTICES IN INTRA-COMMUNITY TRADE

30. The following considerations bear upon the choice of action under this heading -

i. Detailed enquiries recently made of industry by the Department of Trade and NEDO have separately confirmed that although non-tariff requirements facing exporters are numerous and demanding they are not as extensively protectionist as is often suggested. Since extra staff would be required, both in member states and the Commission, to secure any significant reduction of such requirements (either, where they are justifiable, by promoting Community harmonisation or, where they are illegal, to discipline their use) the extra costs involved would have to be set against the likely benefits.

ii. The scope for more effective Commission action is limited by three factors in particular:

- a lack of precision, which is only gradually being supplied by judgements of the European Court and by Community directives, in some of the key provisions of the Treaty of Rome.

- the problems faced by the Commission in finding the necessary firm evidence on which to base any action. This explains why the Commission recently sought an extension of their powers of enquiry into public undertakings, but some member states including the United Kingdom have challenged this extension out of concern that the Commission should not improperly gain power at the expense of the Council and individual member states.

- difficulties in enforcing the Commission's rulings and the judgements of the European Court.

iii. Opinion in many member states is that only the effective control of state aids would have any significant economic impact on unfair (and sometimes illegal) conditions of trade within the internal market. We would not dissent. But more effective action on state aids depends on obtaining the support of member states as well as the agreement of the Commission.

31. Against this background, we have identified the following main possibilities -

i. the harmonisation of national standards and technical regulations under Article 100 is extremely slow and uncertain. With increased resources the programme could be speeded up. (Alternatively, involving less resources and with more certain effect, the Commission itself could cut through the undergrowth with the delegation of the necessary powers under Article 155: but the United Kingdom has not so far favoured such an extension of Commission power.)

ii. An alternative course to harmonisation of standards etc is embodied in the Commission's reaction to the so-called Cassis de Dijon judgement - very crudely that whatever is legitimately manufactured and marketed in one Member State must be allowed unimpeded access in the rest of the Community. If this were to spill over into accepting access for third country goods it would certainly encounter the opposition already offered by most Member States to proposals for simplifying testing and certification procedures for such trade once in free circulation. Within a strict Community context, however, it may be desirable to encourage the Commission to deploy that judgement selectively either to cut short political obstruction to harmonisation Directives (eg the French vetoes on whole type vehicle standards) or to side step altogether the need for harmonised standards. Given the variety of local conditions, particularly in an enlarged Community of Twelve, however, the judgement will not be regarded as a simple and complete answer to different national standards.

iii. the central registration of national technical requirements in one or more of a number of possible forms which could help the Commission to open disciplinary action (but to be effective it would be costly);

iv. mutual acceptability of testing and certification procedures, now largely secured on a bilateral basis with Commission encouragement, might be put on a multilateral footing within the Community, eg a Council resolution in robust enough terms to permit the Commission to intervene where progress was slow. For the United Kingdom to participate in this, we should need to make wider use of certification procedures;

v. The United Kingdom might support the recent German call for a comprehensive listing of state aids, with a view to the Commission's rigorously enforcing the Treaty to require the dismantling of many aids;

vi. agreement in the Council on a comprehensive set of decisions, by either sector or product, to regulate national state aids as has been done for export credit subsidies, steel, textile and shipbuilding aids. Experience in these fields suggest that Council decisions on these lines would greatly increase the effectiveness with which the Commission could exercise their existing powers.

If Ministers consider that any of these possibilities would be worth pursuing further work would be needed to explore them fully.

32. In addition the Minister of Agriculture has already called for a comprehensive attack on the problem posed by State aids in the agriculture sector, and will continue to press for effective action, taking full advantage of the Commission's own acknowledgement that reform of the common agricultural policy must include action on state aids.

33. Certain other measures, whose main effect would be to promote public confidence in the United Kingdom that the Commission were committed to free circulation and had the ability to implement it, could be taken straightaway. They might also marginally improve the Commission's effecitveness in this field. The Government might -

i. encourage closer contact between bodies representative of industry (particularly UNICE) and the Commission. The former might usefully take on some of the burden of eg identifying the more disruptive practices and the more useful areas for new common standards;

ii. encourage United Kingdom industry to make greater use of the Commission's willingness to act as an honest broker, ready to intervene on industry's behalf with the authorities of other member states informally and without legal prejudice. Such action would be useful in facilitating the mutual acceptance of slightly differing standards or in removing minor buraucratic hurdles or unintended obstacles;

iii. encourage the Commission to explain more fully the reasons for their decisions not to take up particular complaints. This might help business opinion to understand the constraints under which the Commission work and thus improve their confidence in the Commission;

iv. systematically offer the Commission suggestions on the relative priority they should give to the multitude of suspected infringements brought to their notice.

ENFORCEMENT OF COMMUNITY LAW IN THE DOMESTIC COURTS OF THE MEMBER STATES

34. The only provisions of Community law which may be relied on by individuals in domestic courts are those which have direct effect. They include provisions on the control of imports and the notification of state aids. If a provision has direct effect it is automatically enforceable in the courts of member states and takes precedence over conflicting domestic law.

35. For one or more of the following reasons, the enforceability of those provisions of law seems to be less effective in certain other member states than in the United Kingdom -

i. the existence of special administrative courts, with procedures favourable to the Government, to hear certain types of action against it;

ii. the delays inherent in legal proceedings and lack of an expedited procedure for urgent action especially in cases before administrative tribunals;

iii. the pressure put on individuals not to pursue claims in the domestic courts;

iv .the apparent reluctance of United Kingdom nationals to seek enforcement of their Community law rights in foreign courts;

v. the fact that the law in general is more easily enforceable in the United Kingdom than in other member states.

36. We have examined a number of ways in which Community law might be made less immediately effective in the United Kingdom. These include the creation of a special procedure for the hearing of actions alleging violation of directly effective Community law by the Government or the imposition of the requirement of consent by the Attorney-General or leave of the Court, both of which would be contrary to Community law; the transfer of all cases alleging breaches of international treaty obligations to the Chancery Division of the High Court where proceedings are generally more prolonged; action by the Govenment to bring about delays by its pleadings; and constitutionally more far reaching measures to set up special tribunals to deal with cases against the Government or to subject such cases to special substantive procedural rules. All these devices are open to practical objections and to the general objection of principle that the Government would be tampering with the law for reasons of expedience. Officials accordingly cannot recommend that any should be pursued.

37. On the other hand, in the majority of cases before the United Kingdom domestic courts where directly effective Community law is an issue, the Government will be able to secure delay by seeking a Reference to the European Court, provided that there is at least a colourable defence in Community law for the action it has taken. Proceedings before the Court can take up to a year, but the average delay is probably about 6 months. A decision to seek such a Reference can only be taken on a case by case basis.

CONCLUSIONS

General

38. There is a potential conflict between taking covert measures to protect United Kingdom industries and trying to get the Commission to act more firmly against similar trading practices in other member states. The one need not exclude the other; but the risk of conflict would increase with the scale of any

new covert action and its vulnerability to exposure. Given the Government's commitment to the maintenance of the open-trading system and United Kingdom industry's own apparent preference, if may be best to put the main emphasis on promoting more effective Commission action, while seeking means of providing limited extra protection within the existing trade regulatory framework to ease the adjustment of declining industries and to help inherently viable industries to overcome short term difficulties (paragraphs 4-6).

Follow-up to E Committee

39. The work done for E Committee last year identified the four most promising covert measures. Of these, one has since been ruled out by Ministers; two have been implemented; and the fourth (new national safety standards) is being pursued (paragraphs 7-12).

Scope for further covert protection

40. Of other possible measures, wider use by Government for regulatory purposes of British standards and national certification procedures appears to be most worth exploring. As noted, such an approach would take some time to work up. Further examination of the detailed possibilities would be needed, including the provision of the necessary resources. It might be found convenient to subsume that examination in the report being made to MISC 14 about strengthening the standards system. Further work would also be needed if Ministers wished to pursue the possibility of using port controls as a non-tariff barrier. (Paragraphs 13-24).

41. Further work would also be needed if it were thought necessary to devise alternative protection for certain industries where an existing protective regime is likely to be reduced or eliminated (paragraph 25).

Overt measures

42. We recommend that the United Kingdom's EIB Directors should support those who wish to see a greater degree of Community preference in tendering for EIB financial projects wherever possible, but that they should not seek a formal change of policy (paragraphs 26-28); and that we should continue to do what we can to help United Kingdom industries to make their case for Community anti-dumping action (paragraph 29).

Commission action against illegal and unfair practices in intra-Community trade

43. Although there are certain constraints on the Commission's capacity to act more vigorously against illegal and unfair trading practices in other member states the following possibilities would be worth pursuing (paragraphs 30 - 32) -

i. adoption of uniformed Community standards and technical regulations;

ii. Commission use of the Cassis de Dijon judgement to secure unimpeded access throughout the Community for whatever is legitimately manufactured and marketed in one Member State;

iii. central registration of national technical requirements;

iv. Community- wide agreement on mutual acceptability of testing and certification procedures;

v. comprehensive listing of state aids;

vi. continued action against state aids for agriculture;

vii. comprehensive decisions, by sector or product, to regulate state aids in areas not already covered.

44. In addition, a number of confidence building steps could be taken to reassure United Kingdom industry (paragraph 33) -

i. more contact between representative industry and the Commission;

ii. encouraging United Kingdom industry to make greater use of the Commission's willingness to intervene with other member states;

iii. encouraging the Commission to explain more fully the reasons for their decisions not to take up particular complaints;

iv. offering the Commission suggestions on the priorities they should give to examining infringements.

Enforcement of Community law in the domestic courts of the member states

45. The enforceability of Community law seems to be less effective in certain other member states than in the United Kingdom. None of the more radical devices examined as a means of bringing about the same effect in the United Kingdom can be recommended (paragraphs 34-36).

46. But in the majority of cases before the United Kingdom domestic courts where directly effective Community law is an issue, the Government will be able to secure delay by seeking a Reference to the European Court, provided there is at least a colourable defence in Community law for the action it has taken; this should be decided case by case (paragraph 37).

RECOMMENDATIONS

47. Ministers are invited to -

i. endorse the conclusions in paragraphs 38-46 above and instruct officials to proceed accordingly, reporting to the Secretary of State for Trade as necessary;

ii. decide whether further work should be done to explore -

a. the possible wider use by Government of British standards and national certification procedures and of using port controls as a non-tariff barrier (paragraphs 15-17);

b. alternative measures of protection for industries indentified in paragraph 25.

Cabinet Office

10 December 1981

CONFIDENTIAL

Prime Minister (2)

HLS 24/2

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn 3201

22 February 1982

PRIME MINISTER

UK TRADING POLICY AND THE PRACTICES OF OUR COMPETITORS

I have seen John Biffen's paper (E(82)10). Unless you or colleagues wish it I do not propose to attend the meeting at which this paper is to be taken, but there is one point which I feel I ought to mention. In paragraph 4 of his paper John Biffen endorses inter alia the recommendation in paragraph 43 ii of the report by officials (Annex I to the paper) ("Commission use of the Cassis de Dijon judgment to secure unimpeded access throughout the Community for whatever is legitimately manufactured and marketed in one Member State"). I would make two observations on this.

First, in my opinion the "Cassis" judgment does not establish a requirement for access throughout the Community for whatever is legitimately manufactured and marketed in one Member State. It is only the Commission who have sought to interpret the judgment in that sense. A recent judgment of the European Court suggests that that interpretation is incorrect. I therefore doubt whether the "Cassis" judgment could provide an effective tool were you and colleagues to decide to encourage the Commission to seek such a development in community law.

Second, you and colleagues will wish to consider whether it is generally in our interests to encourage such a development. I would merely recall that it would run counter to the main plank of the defence of our restrictions

/on

CONFIDENTIAL

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn

on the importation of UHT milk and cream - currently before the Court - and to what I imagine will be the defence of our restrictions on imports of poultrymeat - recently the subject of a Commission application to the Court. In the recent case, mentioned above, with a view to protecting our position in the UHT milk case, we argued before the Court that manufacture in accordance with the law of one member state did not of itself preclude import controls on health grounds in another member state - an argument which the Court approved.

I am sending copies of this minute to members of E Committee.

MH

CONFIDENTIAL

VS

bc Duguid

10 DOWNING STREET

From the Private Secretary

9 February 1982

United Kingdom Trading Policy

The Prime Minister was grateful for the Chancellor of the Exchequer's minute of 25 January, whose contents she has noted. She also saw earlier minutes from the Minister of Agriculture of 13 January and from the Secretary of State for Industry of 20 January.

The Prime Minister has commented on these papers:

"I still think that we have not begun to tackle the Japanese problem".

As you will know, this general issue of UK trading policy is for discussion at a meeting of E scheduled to take place later this month.

I am sending copies of this letter to Brian Fall (FCO), John Rhodes (Department of Trade), Jonathan Spencer (Department of Industry), Michael Arthur (Lord Privy Seal's Office), Robert Lowson (MAFF) and David Wright (Cabinet Office).

MCS

John Kerr, Esq.,
H.M. Treasury.

CONFIDENTIAL

VB

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Prime Minister

UNITED KINGDOM TRADING POLICY

1. I have seen a copy of John Biffen's minute to you of 23 December about UK trading policy and the Note by Officials accompanying it and also copies of Peter Walker's minute of 13 January, Patrick Jenkin's minute of 20 January and Geoffrey Howe's of 25 January.

2. I endorse John Biffen's view that we should not seek covert protection through the erection of additional non-tariff barriers. As Patrick Jenkin points out, there are major disadvantages in any attempt to effect covert protection on a major scale. This can only compromise our objective of eliminating barriers to our own exports in other markets and would do little to help with our own industries' adjustment problems. The report by officials brought out clearly the limited scope for achieving effective protective measures by this means and highlighted the risks involved in possible breach of our GATT and EC obligations. This of course applies equally to overt quota and restraint arrangements. Such measures carry with them an added risk of trade retaliation which experience has shown we cannot afford to ignore.

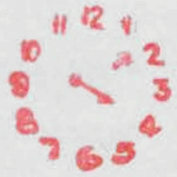
3. I do not however disagree with the view expressed by colleagues that we should do all we can on a pragmatic basis to make the Community trading system work more to our advantage, notably by continuing to press vigorously for better Community control of national aids to agriculture, by using the standards and certification system on the lines set out in the paper and by making a more determined attempt to removed NTBs in the EC. On this I was interested in Patrick Jenkin's suggestion that we should explore fully the possibility of making progress on the basis of the 'Cassis de Dijon' approach, given the slow pace of the Article 100 programme. I gather officials will be looking further at this. I also agree with him that we must do what we can to stimulate Commission action on the recent French measures aimed at 'reconquering' their internal market: a good start was made at the Foreign Affairs Council on 26 January, when the Commission agreed to produce an urgent report following expressions of concern by several Member States.

4. I have one final point about the reference in John Biffen's minute to the EMS. I agree with him that a competitive exchange rate is important for securing our trade position, but I do not accept that full EMS participation would prevent us from determining our exchange rate. Our partners have been able to adjust their parities within the EMS when necessary.

5. I am sending copies of the minute to recipients of the earlier correspondence.

4 February 1982

CONFIDENTIAL



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C.A.D.

Prime Minister (2)

To note at this stage. The whole issue is for discussion at a meeting of E later this month.

MCS 5/2

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

PRIME MINISTER

UNITED KINGDOM TRADING POLICY

I have seen the Secretary of State for Trade's minute to you of 23 December, and the official report accompanying it.

2. I think his assessment of the possibilities of any form of systematic invention or maintenance of non-tariff barriers (NTBs) is about right. In general, I support his conclusion that we should continue to act pragmatically. I do not think the report offers for the most part any new types of useful covert action. But this is scarcely surprising, since we are already well aware of the general possibilities open to us. That conclusion does not of itself tell us a great deal. In practice the actual options matter less than our attitude to specific cases: we must show that we are ready to consider a full range of options and if we decide to act, to act with determination.

3. Our main concern is to combat any notions held at home, or by our competitors, that we are a soft touch. We must ensure that we do not neglect the weapons we have available to attack or put pressure on other countries' non-tariff barriers, or to protect our industries against unacceptable competition here. In the past our approach has been unduly passive. When we see our interests threatened, we must be ready to act swiftly and decisively, to show people that we mean business. That strategy will inevitably mean we run greater risks than hitherto of

/retaliation or of

retaliation or of being declared out of court. But I think that is a price we should be prepared to pay.

4. The counterpart of that is that where we cannot take swift action we must stand ready to put our case to show that that decision has only been taken after full consideration of the options available. The report gives us some pointers - we should draw on them.

5. I do feel we can do more than simply note the points made. Certainly the conclusions on alternative protection for certain industries (paragraph 41); on the European Investment Bank (paragraph 42); on Commission and industry action (paragraphs 43 and 44); and on certain legal delays (paragraph 46) are, at the very least, worthy of consideration. We may wish to take further action on these points.

6. The report does not cover the scope for imposing perfectly legitimate import controls - for example, under Article XIX of the GATT where rapid import penetration threatens serious injury to domestic producers. I do not think this requires further study. But I do think we should remain alert to this possibility.

7. I would also like to comment on Peter Walker's letter of 13 January. I agree with him that our priority must be to get the Community to regulate and preferably much reduce the volume of national aids in agriculture. I suggest that in really blatant cases we should be prepared at least to consider the possibility of ourselves bringing an action in the European Court against an erring member state. I recognise that there may be legal as well as political difficulties in this, but even the threat of such an action may help to keep the Commission up to the mark.

/Second, as his

8. Second, as his letter implies, the option of subsidising our own industries should only be considered in the most exceptional cases. I certainly could not accept, as a general proposition, the view that in the last resort we must be prepared to match a competitor's subsidies. Subsidies to ailing firms or industries have to be paid for out of taxation which either directly or indirectly will impose a burden on efficient and competitive ones. So even in the rare cases where a good argument for a temporary subsidy can be made out, the money would have to be found from within agreed public expenditure ceilings.

9. I am sending copies of this minute to the Foreign Secretary, the Secretary of State for Trade, the Secretary of State for Industry, the Lord Privy Seal, the Minister of Agriculture, Sir Robert Armstrong and Alan Walters.

(G.H.)
25 January 1982

JU950

CONFIDENTIAL

PRIME MINISTER

UNITED KINGDOM TRADING POLICY

In circulating the report by officials on this subject which was commissioned at a meeting which you chaired on 4 September 1981, John Biffen invited colleagues to take note of the points in his covering letter rather than endorse the recommendations in the officials' report. I do not think that the report should be put on one side. Although there is much in John's remarks which which I can agree, the report does contain some lines of enquiry which should be pursued.

2 I am persuaded by the report that it is not right to think of a major campaign for covert protection. Because its impact would necessarily be haphazard, covert protection would be unlikely to help industries suffering the most competition from imports. Moreover, covert protection is difficult to organise effectively and, if carried to any great lengths, would not in fact remain covert and would thus invite legal challenge both at home and from the Commission; it would also encourage retaliation from Community partners whose legal systems and habits of mind would be likely to make their retaliation more effective than anything we might achieve. I also agree that economic measures which bear directly on imports, such as action on the exchange rate or quotas, would be more effective in reducing imports in aggregate, if such were our objective.

3 However, I am also conscious that there are many sectors of industry which are aggrieved by what they perceive as asymmetries in our trading arrangements which work to our disadvantage. Our partners' mandatory use of standards and their insistence on documentary evidence of compliance, which contrasts to our own relaxed approach, is one example. We should therefore explore those avenues mentioned in the report which look most promising.

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On the import side I would single out three:

i) accelerating VAT on imports;

ii) use of standards and certification;

iii) use of port controls.

I understand that Treasury officials have been asked to reconsider the timing of changing VAT on imports. I would like my officials to be associated with that exercise. Work on the uses of standards has already been set in hand by MISC 14. I would like to see further study of the use of port controls to ensure compliance with regulations such as, though not confined to, those involving health and safety. Industrialists find it difficult to understand how products whose use is illegal can be permitted to enter the country at all. The introduction of controls against this practice would have a significant psychological impact. We should not be put off looking at a commonsense step simply because legislation would be needed to make the change.

4 We should, in addition, remain alert to any opportunities which may arise to temper the wind to exposed sectors when this can be achieved as an incidental by-product of measures which are legitimate in their own terms, such as the ban on sperm whale oil.

5 On the export side, I am impressed by the range of options which the report presents (at paragraph 43) through which we could pursue a more positive line in the Community to remove non-tariff barriers. The fact that there are few feasible options on the import side should encourage us to push the export options in a determined way. In this as in some other areas of Community action, we have allowed ourselves to adopt an

ambivalent attitude on Commission initiatives, willing the ends - the completion of Community markets - but not the means which the Commission would need in order to achieve this task. I would like to see the fullest exploration of the "Cassis de Dijon" approach to non-tariff barriers which offers the prospect of more rapid progress than is being achieved by the Article 100 programme. I would also like urgent attention given to the problems which have arisen in connection with the Low Voltage Directive. Our manufacturers have registered their concern that this Directive be fully implemented.

6 Since the report was completed, I have noted the French initiative which they call "the reconquest of the internal market". This is a particular example of threatened protection by another Member country where we should be quick to support - or even to stimulate - action by the Commission.

7 I am copying this to recipients of John Biffen's minute of 23 December.

PJ

P J

20 January 1982

Department of Industry
Ashdown House
123 Victoria Street

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

Prime Minister

As you requested, I am arranging a meeting on this.

MLS 13/1

From the Minister

CONFIDENTIAL

MS

PRIME MINISTER

13 January 1982

UNITED KINGDOM TRADING POLICY

The Secretary of State for Trade sent me a copy of his minute to you of 23 December, commenting on the report by officials on UK trading policy.

I do not dissent from his recommendation that we should adopt a pragmatic approach on protection, rather than set out deliberately to provide covert protection wherever we can. I would, however, be very concerned if I thought that pragmatism could become a synonym for inaction, particularly in my own field of agricultural trade, where we face potentially very serious problems.

My concern is with the threat to our industry from subsidised competition from other member states of the Community. There is no doubt at all that the French in particular are determined to expand their agricultural exports by whatever means comes to hand, and our market is an obvious target for them. I have maintained the strongest pressures on the Commission to tackle effectively the whole problem of national aids. But the Community rules against them are often loose and ambiguous, and where they are strict they are seldom enforced effectively. At present a country which wants to attack another's market with subsidised exports and can afford the cost can usually find means of doing so.

/There are basically ...

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There are basically only three possible answers to challenges of this kind. One is to tighten up the Community's rules and ensure that they are enforced. I shall continue to do all I can to achieve this, but given the attitude of other member countries I am not hopeful of anything approaching total success. The second is to counter other people's subsidies with subsidies of our own; but that of course can be very costly. The third is to find other means of affording protection, as we have with our poultry health measures and with the public health measures which exclude imports of prepacked liquid milk. But both these measures are under challenge in the European Court, and although we have a strong case in law on both issues that does not guarantee success. Once Community law has been declared by the European Court it will of course be possible, because the European Communities Act makes Community Law the law of the land, for any one to secure immediate redress from our own courts against any attempt to give protection in breach of the law so declared.

This is an extremely difficult situation. As the Secretary of State for Trade says, we shall need to approach it pragmatically. We shall need to consider very carefully each step in the direction of harmonising legislation, so as not unnecessarily to make rods for our own backs. Where harmonisation is incomplete, we should be prepared to consider what use we can make of our national discretion in particular cases, even if this runs counter to our overall approach. And if all else fails, we shall need on occasions to subsidise our own industries so that they can withstand subsidised competition, just as we have had to do in the case of glasshouse horticulture. What we cannot in any circumstances do is simply to stand by and watch otherwise viable British industries be undermined or wiped out by subsidised competition.

I am sending a copy of this minute to the Chancellor of the Exchequer, the Secretary of State for Industry, the Secretary of State for Trade and the Lord Privy Seal, as well as to Sir Robert Armstrong and Alan Waters.

PETER WALKER

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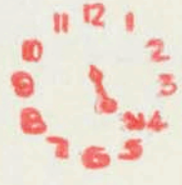

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dls

bc Duguid

10 DOWNING STREET

From the Private Secretary

11 January 1982

B/F 22/1/82 to MCS Re RTA arrangements

Trade Policy: Overseas Projects and Non-Tariff Barriers

The Prime Minister was grateful for your Secretary of State's minute of 23 December covering an official report on whether trading arrangements both within the European Community and with the rest of the world could work to the UK's advantage. She has also seen your letter to me of 15 December with the attached summary of how our main trade competitors direct their export efforts.

The Prime Minister has decided that she would like to hold a small meeting to discuss both of these papers together. Either I or Sir Robert Armstrong's office will be in touch with you and with the other departments concerned to set this up.

I am sending a copy of this letter to David Wright (Cabinet Office) and Gerry Spence (CPRS).

M. C. SCHOLAR

John Rhodes, Esq.,
Department of Trade.

CONFIDENTIAL

VLB

CONFIDENTIAL

Qa 05767

To: PRIME MINISTER

From: J R IBBS

7 January 1982

Prime Minister

(1)

I expect comments on the Trade papers from Industry and the Treasury, as well as from the Policy Unit.

Content for me to set up a meeting, as proposed?

MLS 8/1

Trade Policy: Overseas Projects and Non-Tariff Barriers

1. I read with interest the summary of the ways in which our main competitors direct their export efforts, attached to John Rhodes's minute to your Private Secretary, dated 15 December.

2. I agree that many of the policy instruments used in each country are unique to the particular combination of institutions and traditions which they have evolved over the years. But what sets us apart from our competitors is their success in first drawing up priorities and then articulating already available policies and programmes to achieve their objectives; I note from the paper that the West German Government (as well as the French and Japanese) has clear views on priorities for support. By contrast, the minute argues that we should 'be guided by the opportunities that the main UK companies want to pursue', and that 'the main problem is to encourage disparate UK interests to work together'. Neither the minute nor the paper proposes any further action aimed at bringing greater selection or coherence to the support of export projects by Government Departments. Yet, unless we do this, we run the risk of ceding our shares in important markets to aggressive and well co-ordinated competition. Continuing world recession, with low or no growth in developing countries, will exacerbate the situation.

3. We, like our competitors, have a variety of financial support instruments at our disposal: ECGD, the aid programme, the aid for trade provision, the Industry Act support. But available resources are being squeezed. It therefore makes sense to examine ways of deriving greater overall benefit from them through support of carefully chosen projects. At present a few large projects (such as the Paradip steel works) absorb

a large share of the available resources, without any systematic assessment of the overall cost and benefit to the UK economy. And a good deal of aid goes into declining sectors such as shipbuilding. Our work on space policy suggests that the success of sunrise industries such as satellites, communications systems and information technology depends heavily on exports and in particular gaining a foothold in the developing countries; this will require a degree of priority in Government support.

4. I have also seen the minute of 23 December by the Secretary of State for Trade covering an official report on how our trading arrangements both within the EC and with the rest of the world could be made to work to the UK's advantage. As with exports, he recommends no further action.

5. The report by officials identifies a number of small but useful initiatives which, if taken, would go some way to meeting the concerns you expressed when you asked the Secretary of State for this piece of work. In my view many of these proposals are worth pursuing and in particular those concerned with helping exports.

6. There is an important link with exports and the first paper. One factor in export success is to accelerate the dismantling of trade barriers erected by other countries, such as customs inspection and mandatory certification to safety standards. This is in line with the Secretary of State's own preference for removing obstacles to exports rather than taking covert protective action at home. Negotiating these barriers away is something which can only be done by the Government, from a position of strength. It cannot be achieved by industry on its own. It seems to me questionable whether present departmental attitudes, and fragmented organisation, will be effective in carrying this through.

7. More broadly, there is the question implicitly raised by both papers, whether Government policies are sufficiently geared to supporting those sectors and products where the UK has an opportunity to develop a competitive advantage, first in the home market and then overseas.

8. It would therefore seem desirable to discuss both papers together, whether at EX Committee or in some other forum. It should be possible to have a short paper drawing out the linkages and suggesting priorities for further action.

9. I am sending a copy of this minute to Sir Robert Armstrong.

Trade

10 DOWNING STREET

NOTE FOR THE FILE

Mr. Goodenough in the Cabinet Office telephoned to ask whether we were awaiting Cabinet Office advice.

I said that we were at present waiting to see whether CPRS would comment, and whether other Ministers would do so.

Cabinet Office will wait a few days, and will then put in advice on the basis of comments received.

MAP

30 December 1981

cc LCD.

10 DOWNING STREET

From the Private Secretary

30 December, 1981.

The Prime Minister has asked that the Attorney General should see the attached minutes from the Secretary of State for Trade and the Lord Chancellor, about certain aspects of a review of UK trading policy which has been undertaken by Department of Trade officials.

There may be a meeting of Ministers in due course to consider the recommendations of officials submitted by Mr. Biffen, but in the interim, the Prime Minister agreed with the Lord Chancellor's request that the papers should be seen by the Attorney.

M. A. PATTISON

Jim Nursaw, Esq.,
Law Officers' Department.

FROM:

THE RT. HON. LORD HAILSHAM OF ST. MARYLEBONE, C.H., F.R.S., D.C.L.

HOUSE OF LORDS,
SW1A 0PW

CONFIDENTIAL

Prime Minister

Prime Minister

The CPRS and the Policy Unit may well wish to put views to you on Mr Biffen's minute + paper (attached). Agree to wait until then before deciding whether a meeting is required to reach conclusions on officials' recommendations.

Yes mrf

United Kingdom Trading Policy

I have received John Biffen's minute to you of today's (para 47 of paper)? date to which is annexed a note by officials on United Kingdom Trading Policy. Since I am not a member of E Committee, this is the first that I have seen of the matter; and I must say at once that I am somewhat surprised that without consultation with the Lord Chancellor's Department officials should have been asked to consider whether any action might be taken to make Community law less immediately binding in our courts (paragraph 2(iv) of the note). My surprise increased when I looked at paragraph 36 of the Report. This paragraph canvassed the requirement of the Attorney General's or the court's consent to legal proceedings involving our treaty obligations, the transfer to the Chancery Division of all cases of the same class with a view to their prolongation, action by the Government to delay proceedings in court by protracting its pleadings, and other measures which can only be described as devices by the executive to tamper with the course of justice. These are steps which, if taken in the context of domestic proceedings, would be severely and rightly criticised by the court as an infringement by the executive of the independence and integrity of our judicial system. I am glad to see that officials have rejected these devices, but I feel that they should not have been asked even to consider them without my being consulted first, and had I been so consulted I would not have been a party to a decision to ask officials to consider ways of tampering with the procedure of the courts with a view to gaining economic or political advantage. If such measures were taken it would be difficult to overestimate the damage to the prestige of the Government and the sense of outrage which would permeate the judiciary and the whole legal profession.

Agree to our copying the papers to the Attorney?

MRS 24/12

Yes mrf

/Contd.

CONFIDENTIAL

I am sending a copy of this minute to John Biffen, but not to other recipients of his minute. I would, however, ask that the Attorney General be shown the papers.

H. of S. M.

23rd December, 1981