



10 DOWNING STREET

Prime Minister

(1)

Clause 129 is reached on Tuesday.  
Law Department officials believe the  
government's case is sound. The  
Attorney-General's view will be  
available on Monday.

Do you wish to intervene? If  
so I suggest we get John Wakeham  
and Peter Middleton in on Monday  
(the Chancellor is in Brussels until  
7-7.30 pm). Agree?

MUS 9/7

Will see A-G's views  
first, but I think we  
are in for trouble now

CONFIDENTIAL



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

9 July 1982

Michael Scholar Esq  
No.10 Downing Street

*Dear Michael,*

ICI AND NORTH SEA TAXATION

I wrote on 1 July and 6 July giving the background on ~~Clause~~ Clause 129 of the Finance Bill and the latest developments. I said we would report back following the Chancellor's further meeting with ICI this morning, which was intended as a last attempt to dissuade ICI from legal action.

ICI (led by Sir Robin Ibbs and Dr Harvey) once more expressed concern about additional capacity in ethylene going forward at Mossmorran in a situation of general over-capacity. They accepted that ethane had natural advantages as a feedstock. Wilton 6 was an efficient cracker, but in a glut those who survived were not always the most efficient but those with the deepest purse (including cross-subsidisation within companies or Government subsidy). They made it clear that the principle of the legislation was acceptable, but in practice, the range of possible prices was so wide, that they were concerned that it might enable the Inland Revenue to make valuations (in particular with Shell/Esso on Mossmorran) which would in ICI's view be unduly favourable. The only changes in the legislation which could therefore satisfy them would be either the insertion of a specific valuation 'floor' set at approximately heavy fuel oil value (which ICI agreed would depart from the arm's length principle), or the deferral of the Clause until some formula with similar effect could be worked out.

The Chancellor said that the Government had considered all ICI's representations very fully and carefully, but continued to believe that it would be right to legislate to remove an anomaly which discriminated against non-arm's length transactions. It was based on the arm's length principle. It was not a subsidy. The idea of a 'floor' was unacceptable;



CONFIDENTIAL



it would involve a clear breach of the arm's length principle. Deferment would put other projects (BP's cracker conversion at Grangemough) at risk, quite apart from Mossmorran; there seemed no principle on which it could be justified.

On legal action under Article 92 of the Treaty of Rome, he made it clear that the Government, having taken legal advice, believed its own case was sound. He could hold out no prospect that Ministers would do other than press on with the Clause as proposed. What ICI did was for them to decide, but he urged them to reflect carefully before taking the matter to court on the implications of provoking Commission interest in the UK petrochemical industry with results which might prove unwelcome for ICI.

ICI have since taken out an originating summons. We are taking further legal advice on the next steps and are briefing the press. We shall keep you informed.

*Yours sincerely,*

*Jill Rutter*

JILL RUTTER