

**BY EMAIL ONLY**

Deputy P Ryan  
Chairman  
Corporate Service Panel  
States Assembly  
Jersey

Your ref: 513/14(1)

3 July 2008

Dear Deputy Ryan

Thank you for your letter of 25 June.

You will appreciate that the answers given below are subject to a fair degree of uncertainty and are a matter of judgement.

You asked whether the lifting of the ban on the importation of semen would weaken the Island's case for maintaining its controls on liquid milk importation and whether there was a link between the Island's closed herd and the EU not pursuing the complaint about liquid milk import restrictions in 2001.

This is difficult to judge. It is not clear on what basis the European Commission decided to close the complaint case in 2001 and how much weight they gave the argument on the need to maintain the genetic integrity of the herd.

That said, it is clear from the correspondence sent to the Commission, that the maintenance of the genetic integrity of the herd was considered by the Jersey authorities to be the main reason for the import restrictions. The letter from the UK Permanent Representation to the EU (UKRep) to the Commission of 27 February 2002 states clearly that:

The purpose of the licensing regime, in the face of the Island's special circumstances, is to ensure that the Island's unique closed herd can be sustained. This ensures the survival of the unique Jersey breed gene pool in the Island. There is a delicate balance between the size of the Island's herd and the ability to avoid inbreeding in a manner that would have the potential to undermine the genetic balance and productive efficiency of the herd."

Furthermore:

The present position in Jersey is the outcome of a long history in which, because of the uniqueness of the Island's herd, cultural factors play a significant part. In such a small Island, with such a small (in European terms) market size, special care has to be taken to strike a balance between all the relevant factors to ensure sustainability. There is no other way in which the viability of the herd, and thus the maintenance of the gene pool, can be assured. My authorities are firmly of the view that the aim of protecting the genetic integrity of the Jersey herd is an aim compatible with Community law.

The letter was backed up with an Annex entitled "The Jersey Cow – A National Treasure".

UKRep's follow-up letter of 14 May 2002 to the Commission, sets the position out if

anything, more starkly:

My authorities wish to emphasise that because the Jersey cattle population is a genetic resource of global significance, not only in broad terms but for the species as a whole, they believe that the Jersey authorities' approach to sustaining it over many years is wholly in line with the Commission's new Genetic Resources proposal designed to encourage "in situ" or "on farm" conservation projects. If the viability of the Island's small dairy industry...is jeopardised, the result would be an endangering of biological diversity in a species of supreme economic and social significance throughout the world. Indeed, the Jersey cattle population is a genetic resource of global significance, having been a closed herd for over 200 years. This is not only in breed terms but also for the species as a whole, and this fact is supported by international experts. The Jersey authorities therefore make the case strongly that any action by the Commission which could endanger the Jersey herd, would be inconsistent with the Commission's own specific, recently declared aim of safeguarding conservation of genetic resources, and, indeed, with the Community's approach to the Biodiversity Convention generally.

So, it is clear that the preservation of genetic integrity was the central plank in the case put previously. It is therefore not unreasonable to assume that should the ban on the importation of bovine semen be lifted and the import restrictions on liquid milk were to again be challenged, the Commission would want to explore why the reasons outlined in previous correspondence had changed. They would then evaluate those reasons and any other justifications given.

It would perhaps be useful to examine the possible reactions to the Commission to any argument to retain import restrictions which were not based on the need to maintain the genetic integrity of the herd.

The most recent indication of the Commission's likely attitude comes from their rejection in 2005 of the Isle of Man's application to invoke the safeguard measures in Protocol 3 and introduce a derogation allowing imports of milk to be restricted. In the case of the application to allow imports of milk to be restricted, the Commission were not persuaded by the Isle of Man's arguments that a minimum number of cows/dairy farms were needed in order to ensure the continuation of the sector. Nor were they convinced by the arguments that import controls would help maintain the environment and in particular the landscape. The Commission argued that innovation, becoming closer to the market and restructuring were more effective methods of protecting the dairy industry. Safeguard measures were supposed to be for temporary market disturbances, and that structural issues need structural solutions.

The Commission's attitude to the application made by the Isle of Man in 2005 to extend the derogation to allow for import licences for beef, veal and sheep meat for a final five year period<sup>[1]</sup> is also significant. The derogation had been in place for years and previous requests for extensions had been relatively routine. However, the Commission was much more reluctant to grant a derogation this time, and made clear that this was the final time the derogation would be extended. They considered that the import controls contributed to the inefficiencies of the sector and resulted in higher consumer prices. They considered it contrary to the long term sustainability of the sector and the reform agenda for the Common Agricultural Policy.

I am not in a position to state with any certainty whether the Commission's decision not to

pursue the complaint was based on scientific evidence, was due to the small scale of the issue (the market/industry) or a lack of resource to follow up every issue. All I can say is that taking account of the differences in the cases put forward by Jersey in 2001 in relation to the complaint investigated by the Commission, and the two applications from the Isle of Man and the different outcomes, in my opinion, the argument about the need to preserve the genetic integrity of the Jersey herd, was a significant contributing factor in the Commission's decision not to pursue the complaint about Jersey's import restrictions

You asked finally whether milk would never be imported if the Island retained the status quo and does not import semen. Firstly, I had understood that milk is not banned as your question implies – it is just controlled by an import licence system. The fact that there have been no large scale imports is because there have been no applications.

We should not lose sight of the fact that Jersey does not have a derogation granted under Protocol 3 of the Treaty of Accession to allow imports to be restricted. Therefore the legality of Jersey's import restrictions is rather a grey area and is subject to challenge as we saw in 2001. Any challenge brings risk, and there is a good chance that these discussions may rekindle interest. I think that on balance, any future challenge to the import restrictions which could not be countered by an argument about the genetic integrity of the Jersey herd is likely to be weaker.

The Commission's general attitudes to trade restrictions has also changed, as can be seen from their position in the negotiations in the Doha Development Round which is considerably more trade liberalising than it was previously. Balanced against that, is a recognition in the Commission, as can be seen in the proposals for the "Health Check" of the Common Agricultural Policy, that there are difficulties in maintaining a dairy sector in certain areas.

Taking these points together, plus the decisions of the Commission in relation to the Isle of Man in 2005, I think it is unlikely that maintaining the status quo of having a closed herd will necessarily guarantee that the Commission would allow the import restrictions to continue should there be another complaint. Should the import ban on bovine semen be lifted, if you wish to minimise the risk of the milk import issue being queried again by the Commission, it might be wise to ensure that the justification for imports of bovine semen includes clear arguments as to why semen imports are necessary for the long term genetic viability of the island herd, do not impact on its closed nature, and are necessary to prevent it from becoming too inbred.

I hope that these views have been of use.

(signed)

**Anne Freeman**  
**Head of Milk Team**

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- [\[1\]](#) Council Decision 2006/138/EC of 20 February 2006 extending the period of application of Decision 82/530/EEC authorising the United Kingdom to permit the Isle of Man authorities to apply a system of special import licences to sheepmeat and beef and veal