

Legal argument around the retention of milk importation controls

Whether changing the law to allow the importation of cattle semen will mean that we cannot maintain our controls on importation of milk.

A complaint was made to the European Commission in 2001 that Jersey's import controls on liquid cows' milk are in breach of Community law, as it applies to Jersey.

Jersey defended the controls to the Commission, making a case which was based very largely on the argument that the controls are not in breach of Community Law because they can be justified, under exemptions provided by Community Law, on animal health grounds and as being necessary to protect genetic purity of the Jersey breed.

The Commission subsequently asked for clarification of the case but neither of the points raised by it concerned that aspect of the case. In response, Jersey, as well as addressing the two specific points, re-emphasised the importance of the Jersey cattle population as a genetic resource of global significance, having been a closed herd for 200 years.

In the event the Commission decided not to pursue the matter and so it is not known on what grounds the Commission's decision was taken nor, therefore, what the Commission thought of the strength of Jersey's case in general, or any particular aspect of it. But it is reasonable to assume that the closed herd point was at least a material consideration in that decision, and therefore, that if, in the future, a defence of the milk import restrictions had to be mounted without the closed herd argument, it would be a materially weaker defence.

However, the question may be academic.

I expect that if the States do not remove the ban, one of two things, or possibly both, may happen; either, one or more of the producers who support removal will mount a legal challenge or one or more of the major producers will eventually stop production because of their lack of confidence in their future of the industry without this important tool.

If a legal challenge succeeds, semen imports will be allowed.

If one or more of the major milk producers stops production, the remaining producers may be unable to satisfy the Island's demand as they would have to invest heavily and quickly to put in the infrastructure necessary to manage increased herd sizes. A shortfall in local production would result in the need to licence imports of liquid milk to meet demand. Once this happens a precedent for milk importation would be set that would be difficult if not impossible to reverse out of.