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Foreign and Commonwealth Office

London SW1A 2AH

27 November 1985

CDP
27/11

Dear Michael,

Thank you for copying to me your letter of 4 November about the implementation of the Commonwealth Accord.

The Foreign Secretary agrees that we should not get ahead of others in imposing a ban on the import of Krugerrands. You will however be aware that the Americans have already acted. The importation of Krugerrands into the United States was prohibited with effect from 11 October: the South African Transactions Regulations promulgated to carry out the prohibition were published in the Federal Register on 15 October.

We understand that the Australians also intend to prohibit the importation of Krugerrands under customs regulations within the next few weeks. Our High Commission in Ottawa have reported that the Canadian Government has no plans to take legislative measures to implement a ban, since a "voluntary ban" encouraged among bankers and coin dealers since August is working effectively. The Canadians believe that this gives effect to the provisions of the Commonwealth Accord without challenging GATT. The Japanese, like the Canadians, are also operating a ban through administrative guidance to importers. We are asking overseas posts to report on action taken by any of the 27 Commonwealth countries (other than Canada) which are Contracting Parties (CPs) to the GATT (over a quarter of the total CPs) or by any of the give Nordic countries (all CPs).

We agree that we need to consider carefully the GATT implications of any ban on Krugerrands. Everything would hinge, of course, on whether the South Africans would be likely to bring a case against those parties which had imposed a ban. Opinions are divided. But the South Africans have told our mission to the UN in Geneva that they do not intend to seek a panel in the immediate future. And CPs are divided on the GATT-worthiness of a ban. We and the Americans believe the only defence we can mount is under Article XX(c), but even

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that would stretch the scope of that Article. Other CPs (Australia, Sweden, France) consider a ban might be justifiable under Article XXI. Japan (if it notifies - it has not yet done so formally) is likely to argue that a ban implemented by 'advice' is not in any case incompatible with GATT. The Canadians share this view.

We would certainly not want to turn GATT into a political forum but it is possible that even if the South Africans did call for a panel, a report in their favour would be likely to join a number of others that have not been implemented. Nonetheless such an outcome would further devalue the GATT dispute settlement and exemptions procedures, which are already under fire, not least from the USA.

It is quite clear that things are moving on the Krugerrands front, but it seems to us that it would be appropriate, and in line with the Prime Minister's direction, if we were to wait a little while longer to see how the situation in the GATT is developing, before considering further action.

We agree on the action proposed on the other issues raised in your letter.

I am copying this letter to Charles Powell (No 10) and to the Private Secretaries of members of OD Committee.

Yours Sincerely,

Colin Budd

(C R Budd)
Private Secretary

Michael Gilbertson Esq
PS/Secretary of State for Trade & Industry
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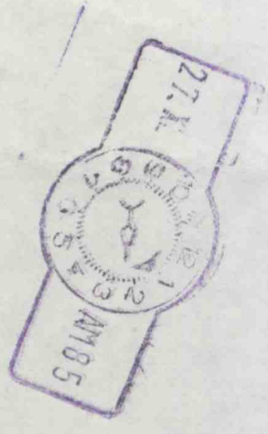
S. Africa : Relations

Pt 8



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PS/ *Secretary of State for Trade and Industry*

4 November 1985

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Yes pls

Prime Minister

Agree that we should not actually take action on Krugerrands until others do?

Agree to confirm existing practice on computer sales, which is what you said and intended in Nassau?

CDP 5/11

Charles Powell Esq
Private Secretary to the
Prime Minister
10 Downing Street
LONDON
SW1

Dear Charles

SOUTH AFRICA : IMPLEMENTATION OF NASSAU AGREEMENT.

My Secretary of State is implementing those parts of the Nassau Agreement which fall to the DTI in the light of the exchange of telegrams at the time (particularly FCO tel no 69 and Nassau tel nos 1 and 44) and the Prime Minister's line at her Press Conference at which she underlined the very limited extent of the new measures. In two areas, Krugerrands and computer exports, my Secretary of State believes he should adopt a different approach from literal interpretation of the Commonwealth Accord. He believes that such an approach would be consistent with the Prime Minister's remarks.

2 On Kruggerands, the Commonwealth Accord commits us to take "what action may be possible" to preclude the import of Krugerrands. (As the Prime Minister knows, the value of Krugerrands imported to the UK is very small - around £½m annually.) In UK and Community law, the imposition of a ban presents no difficulty. But under the General Agreement on Tariffs and Trade, a ban would appear to breach our obligations to South Africa (a GATT member). If we act, South Africa might try to enforce her rights, both provoking a damaging political row in GATT and rendering the UK liable to offer compensation or to suffer trade retaliation. Present indications are that South Africa probably would press a case if they thought (as we do) that their chances of winning it were fair. This would turn GATT into a political forum, with developing country members overruling GATT treaty law in order to pursue anti-apartheid policies. This could in turn increase pressure for wider trade sanctions against South Africa.

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3 Such considerations might discourage a South African reaction. A GATT case, even if brought only against one country, would implicate other GATT members who had also banned Krugerrands. This again might discourage South Africa from acting. But although the US and the Nordic countries have referred to the possibility of banning Krugerrands, neither they nor any Commonwealth country has yet announced implementation of a ban.

4 The fact that other countries have yet to make clear their intentions argues against the UK taking the lead in banning the import of Krugerrands. We shall keep in close touch with the Americans and Canadians in particular and could implement a ban within 24 hours, if necessary.

5 Although the Secretary of State would consult the Prime Minister and colleagues before taking action, a ban could be implemented by officials without Parliamentary discussion. The Administrative Instrument required would be brought to Parliament's attention by means of a Written Answer or even a Press Notice. We do not need to consult the Commission or our Community partners, since unlike GATT, the Community would treat the ban as a restriction on capital movements and not on trade in goods.

6 Unless the Prime Minister considers that deferment of action would not be consistent with the spirit of the Commonwealth Accord, we would recommend keeping pace with action in the US or Commonwealth.

7 We understand that Hong Kong, although a major importer of Krugerrands (over £10 million in 1984) would be prepared to join a ban but would not wish to be alone in such action.

8 The second area of particular difficulty concerns computer exports. As was pointed out in FCO telno 67, the reference to equipment "capable of use" by South African forces, if read literally, would preclude all computer sales to any South African customer. Such an interpretation, which goes well beyond existing practice or the recent EC agreement, would be extremely serious for our computer manufacturers, particularly ICL, who would be liable to lose in excess of £20m of exports per annum. Moreover, the DTI no longer has powers to control the export of low powered computers (of the high street store variety). The administration of such broad controls would in any event be very costly. Accordingly, my Secretary of State believes that we should seek an opportunity to reaffirm by an Arranged Question that we intend to interpret this provision of the Commonwealth Accord as being identical in effect to the restrictions we already place on the exports of computers to South Africa and which form part of the recent EC package of restrictive measures. The Prime Minister implied this in her statement in the House.

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9 Other provisions of the Accord present no major difficulties. Although the DTI has no existing powers to control the export of oil UK companies are subject to Government guidance only to sell North Sea oil to members of the International Energy Association and the EC. South Africa is not a member of the IEA and no additional steps appear necessary (beyond those agreed for the implementation of the EC measures of 10 September) to implement the Commonwealth Accord.

10 The ban on nuclear exports in the Commonwealth Agreement broadly conforms with our present ban on nuclear collaboration with South Africa. Exports of nuclear equipment and materials to all destinations are controlled by the DTI under existing powers but at present these embrace only certain types of nuclear technology. For reasons unconnected with the Commonwealth Accord, the FCO are currently considering the extension of these powers of control over nuclear technology to all destinations.

11 Finally, although there is no problem with the embargo on imports of arms and equipment, and almost none come in, the 400 or so open individual licences issued to firearms dealers will be modified so as no longer to be valid for imports from South Africa; applications for specific licences for firearms or ammunition originating in South Africa will be refused; and the armed forces and police will be advised against purchasing arms, ammunition, military vehicles and para-military equipment originating in South Africa. This should cause no problems.

12 I am copying this letter to the Private Secretaries of Ministers in OD and to Sir Robert Armstrong.

Yours ever,

Michael

MICHAEL GILBERTSON
Private Secretary

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