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PM/86/014

PRIME MINISTER

Prime Minister
We have now at last to
implement the ban on the import
of Krugerrands to which we agreed
at Nassau.
The Foreign Secretary wants a
legislative ban: the Trade Secretary
voluntary ban. Which do you support?

SOUTH AFRICA: CHOGM ACCORD - KRUGERRANDS

1. You will recall that the Nassau Communiqué contains the following commitment among the list of agreed economic measures against South Africa:

"a readiness to take unilaterally what action may be possible to preclude the import of Krugerrands".

2. We subsequently agreed (your Private Secretary's letter of 6 November) that in implementing that commitment we should not get out ahead of the United States and our Commonwealth partners and other members of the EC (though this is not a matter on which the EC has taken a position - it is to the Commonwealth that we have given our commitment). In addition to the United States, where an Executive Order banning the import of Krugerrands came into force on 11 October, many of the principal Commonwealth countries now have similar legislation in place. These include the key members of COMGEP (Australia, Tanzania, India, Nigeria), though Canada has not moved from the purely voluntary ban already in force before CHOGM. Further delay in declaring our own position is therefore becoming an embarrassment. The issue has been raised from both sides of the House on two of the last three occasions when the FCO has been top for Questions, and a decision needs to be reached before the Foreign Affairs debate on 23 April. The Commonwealth Secretary General has also recently raised the point with me.

3. I have discussed the position with Paul Channon, who recognises the need now to make clear what we propose to do.

But can't we
be involved fully
with the EC?
What's the
point of
legal ban
against S. Africa?
They can come in to
say that the
import ban
from here.
Is this in
line with
the camp
for - legal ban.

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4. There is, in my view, a strong domestic and international political case for a legislative ban to give effect to the commitment. There is, of course, no question of primary legislation. The necessary Order can be made at short notice under the Import, Export and Customs (Defence) Powers Act, 1939. It would be limited to the direct import of Krugerrands from South Africa in order to avoid complications which might arise in terms of our EC obligations if we sought to ban the import of all Krugerrands. Once the necessary Order was signed by an official in the DTI, Customs and Excise could implement the ban very rapidly.

5. Had we acted fairly soon after CHOGM, a voluntary ban might have been sufficient to requite the Nassau undertaking. The trade in Krugerrands, as you pointed out publicly at Nassau, is now very small and diminishing, as production has ceased. But after a lapse of nearly six months a simple voluntary ban risks leading our Commonwealth partners to impugn our good faith in volunteering the concession at Nassau but then failing to take effective action; they would not believe that it could be made to bite. It would be difficult now to argue that we were unable to take a step President Reagan took in October. We should be open to criticism just as we were preparing for the Commonwealth review in June and risk provoking our partners to take a tougher line over calls for further sanctions of a more objectionable kind.

6. In Paul Channon's view, however, a legislative ban would be a clear breach of the GATT. It would involve openly setting aside the fundamental GATT principle of non-discrimination, for political reasons. It could therefore be regarded as potentially harmful to our wider and more fundamental interest, as a nation dependent on trade, to uphold the GATT. In my view the risk of adverse effects on the GATT is unavoidable, given

/US action.



US action. But Paul Channon considers that our interest is not reduced because others have already decided to flout the GATT, and that it could be argued that, on the contrary, it is more important for us to defend it in such circumstances. Others, including the Americans, might, if challenged, invoke an exemption in the GATT for "gold and silver", but the GATT Secretariat Legal Advisers have given as their firm view that this refers only to bullion. The GATT problem is, however, not a question of direct commercial repercussions (although the South Africans could still decide to invoke the GATT dispute procedures), but that, once we ourselves have rejected a GATT commitment for political reasons, our own ability to invoke those commitments when our own interests are threatened will be weakened. For these reasons, Paul Channon believes that through a legislative ban we should risk long-term disadvantage for the sake of short-term purposes. He would however be prepared to go along with a voluntary ban.

7. A voluntary ban would take the form of an inspired PQ, exhorting importers not to buy Krugerrands, followed up by an official letter on similar lines to identified importers. This too would, strictly speaking, sit uneasily with our GATT obligations: but it would not undermine them so clearly or so prominently. The Department of Trade and Industry view is that we should, at least as a first step, see whether we can get away with this, before considering more drastic, legislative action. Paul Channon considers that a voluntary ban would put us in respectable, if somewhat select, company with the Canadians and would be sufficient to comply with the letter of what was proposed in Nassau, in a way compatible with the stress laid at the time, in your own press conference for example, on the phrase "what action may be possible" which was intended to take account of the limitations imposed by our international obligations. The flow of imports is, in any

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case, likely to diminish still further now that the South Africans have ceased minting Krugerrands. A voluntary ban could therefore set the seal on a further reduction of imports, as well as providing an effective psychological signal to the South African Government.

8. Paul Channon, without favouring either course of action, is prepared to support the "voluntary ban" in view of the difficult foreign policy considerations. He believes a legislative ban could be a sledgehammer to crack a nut and would carry too great a risk for our wider trade policy interests. Moreover, if we abandon our GATT commitments over this relatively minor issue, we would in his view be powerless to invoke them to help fend off subsequent pressure for more comprehensive and damaging sanctions.

9. We are thus faced with a clear political choice. I believe it would be unwise to risk being obliged to take two bites at this cherry. If we are to live up to our commitment after so long a delay, I consider that only a legislative ban would be completely convincing as a means of implementing the concession we volunteered at Nassau. Any lesser action on Krugerrands than the Americans - and many of our Commonwealth partners - have already taken would expose us to entirely avoidable criticism in what is any case going to be a very difficult period.

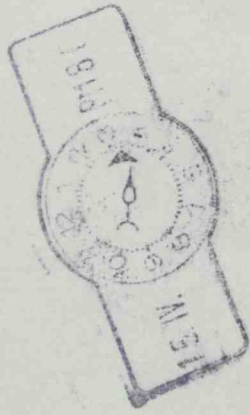
10. I am sending a copy of this minute to Paul Channon and Sir Robert Armstrong.

Foreign & Commonwealth Office
15 April 1986



GEOFFREY HOWE

SOUTH AFRICA Relations 1919.



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10 DOWNING STREET

From the Private Secretary

18 April 1986

SOUTH AFRICA: CHOGM ACCORD - KRUGERRANDS

The Prime Minister has considered the Foreign Secretary's minute of 15 April about the implementation of the commitment we undertook at the Commonwealth Heads of Government Meeting in Nassau to take action to preclude the import of Krugerrands. She accepts that the arguments are finely balanced but agrees with the Foreign Secretary that we shall have to proceed through a legislative ban if we are to implement our commitment convincingly.

I am copying this letter to Michael Gilbertson (Department of Trade and Industry) and Michael Stark (Cabinet Office).

CHARLES POWELL

Colin Budd, Esq.,
Foreign and Commonwealth Office.

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