DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
TELEPHONE DIRECT LINE 01-215 5422
SWITCHBOARD 01-215 7877

Secretary of State for Trade and Industry

13 December 1985

P A Graham Esq
Standard Chartered
38 Bishopgate
LONDON
EC2N 4DE

Dear Mr Graham,

Thank you for your letter of 6 December and for the telex which I understand you sent on 5 December to the Governments of all member countries of the Council. I am also replying, on behalf of the Prime Minister, to your letter to her of 2 December.

I share your view of the importance of resolving this problem, and as you know I have made clear the UK's view that member countries of the International Tin Council should state their readiness to meet their share of the Council's obligations. We are continuing our efforts in the International Tin Council and bilaterally, particularly in the European Community, to persuade other countries to recognise the urgency of finding an early solution to the problem. I have noted carefully the proposals contained in your letter of 6 December. I hope that the ITC will enter constructive discussions on the basis of these ideas.

I note your suggestion that the Government might consider revoking or varying the immunities enjoyed by the ITC, its members and others. As host to the International Tin Council the UK is bound by the Headquarters Agreement to maintain the immunities set out in that Agreement. This means that before the immunities could be changed the agreement of the ITC would be required. Thus only in the event of the termination of the Headquarters Agreement would these immunities lapse.

I appreciate the efforts you are making to assist in the search of a solution. I assure you that the UK Government for its part will continue to do everything it can to that end.

Yours sincerely

Leon Brittan

LEON BRITTAN

DW3AEK

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PS/ Secretary of State for Trade and Industry

13 December 1985

David Norgrove Esq
Private Secretary to the
Prime Minister
10 Downing Street
LONDON
SW1

Prime Minister 2
You asked to see this.
DLN 13/12

Dear David,

TIN : LETTER FROM PETER GRAHAM

... I attach a copy of the letter my Secretary of State has today sent to Mr Graham. This is in response to Mr Graham's letter of 2 December to the Prime Minister, as well as his letter of 6 December to Mr Brittan, and the telex which he sent to the Governments of all member countries of the ITC on 5 December.

2 I am copying this letter and enclosure to Peter Ricketts (FCO).

Yours ever,
Michael

MICHAEL GILBERTSON
Private Secretary

Encls

JF5ARN

999-1

Prime Minister

To note that Mr Graham is asking for the ITC's legal immunity to be lifted, No need to read.

DLW 21/1

C&BU

P.A. Graham
Senior Deputy Chairman

38, Bishopsgate,
London, EC2N 4DE.

Telephone 01-280 7500

20th January, 1986

The Rt.Hon. Leon Brittan QC., MP.,
Secretary of State for Trade and Industry,
Department of Trade and Industry,
1-19 Victoria Street,
SW1H OET.

Dear Mr. Brittan

I refer to my letter of the 19th December 1985. I am disappointed that the element of realism which I detected at that time has failed to materialise despite the sustained and constructive efforts of the Consortium. The ITC and most of the Member States are apparently intent on reneging on their obligations to the financial institutions which comprise the Consortium. Indeed none of the proposals which we have made has elicited any response other than a few unnecessary questions.

The Consortium is close to the point where legal recourse appears to be the only solution and I would request you to give further consideration to the question of revoking or varying to the extent (if any) necessary, any immunity enjoyed by the ITC., its members officers or others.

The immunity which the ITC has is provided for under an Order in Council pursuant to the International Organisations Act 1968. Section 1(6) of the 1968 Act provides inter alia that any Order in Council made under sub-section (2) or sub-section (5) of Section 1 shall be so framed as to secure that the privileges and immunities conferred by the Order are not greater in extent than those which, at the time when the Order takes effect, are required to be conferred in accordance with any agreement which the United Kingdom or Her Majesty's Government in the United Kingdom is then a party. Section 10 (3) of the 1968 Act expressly provides that any power conferred

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by any provision of that Act to make an Order in Council shall include power to revoke or vary the Order by a subsequent Order in Council made under that provision.

You pointed out that the U.K. is bound by the Headquarters Agreement to maintain the immunities set out in that agreement. With respect we cannot agree that, as a matter of English or even international law, Her Majesty's Government is in the circumstances bound to maintain those immunities to the fullest extent and under the most liberal interpretation.

The fundamental point which I would make on behalf of the Consortium, is that the immunity which the ITC has is conferred in order to enable it to conduct its activities pursuant to, and strictly within the objectives of, the Sixth International Tin Agreement.

The events of recent months and the information which has come to light concerning the activities of the ITC demonstrate not only that the ITC has failed so spectacularly to achieve its constitutional objectives, but that the manner in which it conducted its affairs with regard to the buffer stock are highly questionable. For the ITC now to be permitted to shelter behind its immunity would be a gross abuse of the purposes for which it was originally conferred and it seems very improbable that the immunity would originally have been conferred had it been known in respect of what transactions it might later be invoked.

On a specific point arising from the terms of the Headquarters Agreement, it is to be noted that Article 23 provides that the ITC when entering into certain contracts shall include an arbitration clause whereby any disputes arising out of the interpretation or execution of the contract may at the request of either party be submitted to private arbitration. As you know, the existence of compulsory arbitration has in this country always been regarded as the essential counter part of the immunity of international organisations from the jurisdiction of the Courts. Yet, by violating its treaty obligation in failing to submit to arbitration in qualifying contracts, the ITC may have rendered Article 23 of the Headquarters Agreement without effect. At the very least, it would seem appropriate for the immunity of the ITC to be revoked in respect of claims made under contracts in which the ITC should have inserted

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aribtration clauses.

I am grateful to you for giving this matter further consideration and look forward to your response.

Yours sincerely,

P.A.Graham.

VR.

c Gnt Hk

10 DOWNING STREET

From the Private Secretary 5 December 1985

You will have seen a copy of the enclosed letter from Mr. Peter Graham to the Prime Minister about lifting the immunity enjoyed by the ITC. The Prime Minister's own copy has not yet arrived here.

I doubt that it is for the Prime Minister to reply to this. I am sending this letter to you rather than to the Foreign and Commonwealth Office because I imagine you may wish to reply to it on advice from the Foreign Office, in order to keep a single channel of communication with the banks.

BF

I am copying this letter to Peter Rickett (Foreign and Commonwealth Office).

(DAVID NORGROVE)

Michael Gilbertson, Esq.,
Department of Trade and Industry.

2

10 DOWNING STREET

Prime Minister

Your own copy of this letter has not yet arrived.

The essence is the last sentence.

I have asked DTI / FCO to reply.

DGN
5/12

5 December 1985

I am writingon behalf of the Prime Minister to acknowledge your letter of 2 December. This is receiving attention and a reply will be sent to you as soon as possible.

I regret the delay in sending this acknowledgement to you: the top copy of your letter to the Prime Minister has not yet been received here.

(DAVID NORGROVE)

P.A. Graham, Esq.

Standard Chartered

38 Bishopsgate London EC2N 4DE Telephone 01-280 7500

From P A Graham
Senior Deputy Chairman

2nd December, 1985

The Rt.Hon. Margaret Thatcher, MP.,
Prime Minister,
10 Downing Street,
SW1A 2AL.

Dear Prime Minister

International Tin Council (ITC)

I am writing to you on behalf of a group of 16 financial institutions, the names of which are attached, which have, for a number of years, been financing the operations of the International Tin Council. I am sure that I have no need to describe the position which has arisen since the Tin Council's buffer stock manager ceased operations. I would only say that if no settlement of obligations is made, then the repercussions which will take place, not only in this country but elsewhere, go very wide indeed.

The Secretary of State for Trade and Industry indicated in his statement made on the 1st November 1985, and has since reiterated, that the British Government firmly believes that the objective of the member countries of the ITC should be to enable all ITC's legal commitments outstanding at the date the buffer stock manager declared he had no further funds to be met. He further said that no new commitments should be undertaken save in order to fulfil that objective. The ITC is indebted to the group of 16 financial institutions for approximately £342 million. Since the start of the crisis these institutions have put forward several alternative ways in which the ITC and its members might achieve a resolution of the ITC's problems but have met with little response.

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To date the ITC has seemed unwilling or unable to comply with its clear contractual obligation and it and its officers have failed to carry out the purposes for which the ITC was established. Nor has the ITC complied with the provisions of its own constituent instrument and the Headquarters Agreement under which it was permitted to do business in this country. In the light of this, and if it becomes clear that there is no move towards a constructive solution, the losses which the ITC is likely to cause to nationals of the United Kingdom and those doing business with the United Kingdom, would you, on behalf of Her Majesty's Government, consider revoking or varying, to the extent (if any) necessary, any immunity enjoyed by the ITC, its members, officers or others in order to enable all creditors full and equal access to the English courts and to permit due legal process to be carried out.

Yours sincerely,

P.A. Graham
Chairman, Group of 16 Banks' Working Party.

c.c. Rt.Hon. Sir Geoffrey Howe, QC., MP.
c.c. Rt.Hon. Leon Brittan, QC., MP.,

LIST OF GROUP OF 16 BANKS

Algemene Bank Nederland NV
Arab Banking Corporation
Arbuthnot Latham Bank Ltd.,
Australia & New Zealand Banking
Bangkok Bank Ltd.
Bank Bumiputra Malaysia Berhad
Bank of Nova Scotia
Bank of Tokyo Ltd.
Banque Indosuez
Central Trustee Savings Bank Ltd.,
Hambros Bank
Kleinwort Benson Limited
Malayan Banking Berhad
Metallgesellschaft Ltd.
Shearson Lehman Bros.
Standard Chartered Bank

Standard Chartered

38 Bishopsgate London EC2N 4DE Telephone 01-280 7500

ERD

PS

PS/Mr Renton
PS/Mr Eggar
Mr Braithwaite
Mr Mard

Pickett 2/12

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Senior Deputy Chairman

2nd December, 1985

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Algemene Bank Nederland NV
Arab Banking Corporation
Arbuthnot Latham Bank Ltd.,
Australia & New Zealand Banking
Bangkok Bank Ltd.
Bank Bumiputra Malaysia Berhad
Bank of Nova Scotia
Bank of Tokyo Ltd.
Banque Indosuez
Central Trustee Savings Bank Ltd.,
Hambros Bank
Kleinwort Benson Limited
Malayan Banking Berhad
Metallgesellschaft Ltd.
Shearson Lehman Bros.
Standard Chartered Bank