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December 16, 1985

To: Members of the Executive Board

From: The Secretary

Subject: Measures Taken by the United States Concerning South Africa

Attached is a memorandum dated December 6, 1985 from Mr. Dallara, together with attachments, relating to the regulations of the U.S. Government prohibiting financial institutions in the United States from making loans to the South African Government or its controlled entities, and from entering other financial arrangements. As stated in the memorandum, the prohibition was imposed for the purposes set forth in Executive Board Decision No. 144-(52/51).

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INTERNATIONAL MONETARY FUND
WASHINGTON D C 20431

EXECUTIVE DIRECTOR
United States

CABLE ADDRESS
INTERFUND

December 6, 1985

MEMORANDUM TO: The Secretary

FROM: *Charles Dallara*
Charles Dallara

SUBJECT: Notification of Restrictions Under Executive
Board Decision No. 144-(52/51)

Under the Fund's Executive Board Decision No. 144-(52/51), members imposing restrictions on payments and transfers solely related to the preservation of national or international security are required to notify the Fund of such restrictions. The United States Government has requested me to advise the Fund that the Department of the Treasury has issued the South African Transactions Regulations implementing Executive Order 12532 of September 9, 1985, which prohibits the making or approval of any loans by financial institutions in the United States to the Government of South Africa or to entities owned or controlled by that Government. The prohibition became effective November 11, 1985, and was imposed for the purposes set forth in Executive Board Decision No. 144-(52/51).

Copies of the Department of the Treasury's regulations and the Executive Order declaring a national emergency and ordering the actions taken are attached for your information.

Attachments

DEPARTMENT OF THE TREASURY
Office of Foreign Assets Control

31 CFR Part 545

South African Transactions
Regulations

Agency: Office of Foreign Assets
Control, Treasury.

Action: Final rule.

SUMMARY: The Office of Foreign Assets Control is amending the South African Transactions Regulations to prohibit financial institutions in the United States from making loans to the South African Government or its controlled entities, and for other purposes.

EFFECTIVE DATE: 12:01 a.m. Eastern Standard Time, November 11, 1985.

FOR FURTHER INFORMATION CONTACT: Marilyn L. Muench, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220; 202/376-0408.

SUPPLEMENTARY INFORMATION: On September 9, 1985, the President issued Executive Order 12532, finding that the policies and actions of the Government of South Africa constitute an unusual and extraordinary threat to the foreign policy and economy of the United States and invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*). Among other measures taken through the Executive Order, the President prohibited financial institutions in the United States from making or approving loans to the South African Government or its controlled entities, except in certain narrowly specified circumstances. The order delegated authority to implement the loan prohibitions to the Secretary of the Treasury. These amendments to the South African Transactions Regulations, including the definitions of certain terms used therein, have been adopted for the sole purpose of implementing the provisions of the Executive Order.

Since the regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply. Because the regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with Federal

Regulations. The information collection requests contained in this document are being submitted to the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Notice of OMB action on these requests will be published in the Federal Register.

List of Subjects in 31 CFR Part 545

South Africa, Imports, Krugerrands, Loans, Penalties, Reporting and recordkeeping requirements.

PART 545—AMENDED

31 CFR Chapter V, Part 545, is amended as set forth below:

1. The "Authority" citation for Part 545 is revised to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; E.O. 12532, 50 FR 36861, Sept. 9, 1985; E.O. 12535, 50 FR 40325, October 3, 1985.

2. The table of contents for Part 545 is amended by adding entries for § 545.202 to Subpart B, §§ 545.303-545.310 to Subpart C, §§ 545.404-545.410 to Subpart D, §§ 545.503 and 545.504 to Subpart E, and by adding a new Subpart I as follows:

Subpart B—Prohibitions

Sec.
545.202 Prohibition on loans to the Government of South Africa.

Subpart C—General Definitions

545.303 Importation.
545.304 Loan.
545.305 Financial institution.
545.306 The Government of South Africa; South African Government.
545.307 Entities controlled by the South African Government.
545.308 Person.
545.309 Entity.
545.310 Affiliate.

Subpart D—Interpretations

545.404 Rescheduling existing loans to the South African Government.
545.405 Trade related credits.
545.406 Loans through intermediaries.
545.407 Substitution of the South African Government as obligor.
545.408 Approval of loans by foreign affiliates.
545.409 Loan participations.
545.410 South African law.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

545.503 Loans for educational, housing, or health facilities.
545.504 Loans to benefit persons disadvantaged by the apartheid system.

Subpart I—Miscellaneous

545.801 Paperwork Reduction Act Notice.

3. New § 545.202 is added to read as follows:

§ 545.202 Prohibition on loans to the Government of South Africa.

(a) Except as authorized under this part, no financial institution in the United States may make or approve any loan, directly or indirectly, to the Government of South Africa as defined in this part.

(b) The prohibition in paragraph (a) of this section shall not apply to any loan which a financial institution in the United States is obligated to make under an agreement entered into before September 9, 1985.

4. Section 545.203 is revised to read as follows:

§ 545.203 Effective dates.

(a) The effective date of the prohibition in § 545.201 shall be 12:01 a.m. Eastern Daylight Time, October 11, 1985.

(b) The effective date of the prohibition in § 545.202 shall be 12:01 a.m. Eastern Standard Time, November 11, 1985.

5. New § 545.303 is added to read as follows:

§ 545.303 Importation.

The term "importation" means the bringing of any item within the jurisdictional limits of the United States with the intent to unlade it.

6. New § 545.304 is added to read as follows:

§ 545.304 Loan.

The term "loan" means any transfer or extension of funds or credit on the basis of an obligation to repay, or any assumption or guarantee of the obligation of another to repay an extension of funds or credit. The term "loan" includes, but is not limited to: Overdrafts; currency swaps; the purchase of debt securities issued by the South African Government after November 11, 1985; the purchase of a loan made by another person; the sale of financial assets subject to an agreement to repurchase; and a renewal or refinancing whereby funds or credits are transferred or extended to the South African Government. The term "loan" does not include reschedulings of existing loans under § 545.404.

7. New § 545.305 is added to read as follows:

§ 545.305 Financial institution.

The term "financial institution" means any entity engaged in the business of accepting deposits or making, transferring, holding, or brokering loans, including, but not limited to, banks, savings banks, trust companies, savings and loans associations, credit unions, securities brokers and dealers, investment companies, employee pension plans, holding companies of such institutions, and subsidiaries of any of the foregoing.

8. New § 545.306 is added to read as follows:

§ 545.306 Government of South Africa; South African Government.

The terms "Government of South Africa" and "South African Government" include the national government of South Africa; the South African Reserve Bank; the government of any political subdivision of South Africa; the government of any territory under the dominion of South Africa; the government of any "homeland" established under the apartheid system, including Bophuthatswana, Ciskei, Transkei, and Venda; and any entity controlled by the South African Government, as defined in § 545.307.

9. New § 545.307 is added to read as follows:

§ 545.307 Entity controlled by the South African Government.

The term "entity controlled by the South African Government" includes any corporation, partnership, association or other entity in which the South African Government owns a majority or controlling interest, any entity managed or substantially funded by that government, and any entity which is otherwise controlled by that government.

10. New § 545.308 is added to read as follows:

§ 545.308 Person.

The term "person" means an individual or an entity.

11. New § 545.309 is added to read as follows:

§ 545.309 Entity.

The term "entity" means a corporation, partnership, association, or other organization.

12. New § 545.310 is added to read as follows:

§ 545.310 Affiliate.

The term "affiliate" includes, but is not limited to, a branch or a subsidiary.

13. New § 545.404 is added to read as follows:

§ 545.404 Rescheduling existing loans to the South African Government.

Provided that no funds or credits are thereby transferred or extended to the Government of South Africa, § 545.202 does not prohibit a financial institution in the United States from rescheduling loans to the South African Government or otherwise extending the maturities of such loans, or from charging fees, or interest at commercially reasonable rates, in connection therewith.

14. New § 545.405 is added to read as follows:

§ 545.405 Trade related credits.

(a) Section 545.202 prohibits financial institutions in the United States from opening, issuing, or confirming letters of credit or similar trade credits for which the Government of South Africa is the account party, except those which have been fully collateralized in such institution by the South African Government in advance of payment. Section 545.202 also prohibits financial institutions in the United States from creating or discounting acceptances or similar instruments to provide financing for the South African Government, except acceptances which have been fully funded in such institutions by the South African Government in advance of creation or discounting.

(b) Section 545.202 does not prohibit financial institutions in the United States from opening, issuing, or confirming letters of credits or similar trade credits respecting exports of the South African Government. Section 545.202 does not prohibit financial institutions in the United States from creating or discounting acceptances respecting exports of the South African Government.

15. New § 545.406 is added to read as follows:

§ 545.406 Loans through intermediaries.

Section 545.202 prohibits a financial institution in the United States from making a loan to any person in the United States or a foreign country, where the institution has reason to believe that the loan is being obtained for or on behalf of the South African Government, and that the relevant funds or credit will be made available to the South African Government.

16. New § 545.407 is added to read as follows:

§ 545.407 Substitution of the South African Government as obligor.

Section 545.202 does not prohibit a financial institution in the United States

from complying with applicable laws, regulations or other directives of the South African Government requiring or permitting the South African Government to become the primary or secondary obligor with respect to an outstanding loan, provided that no funds or credits are thereby transferred or extended to the South African Government.

17. New § 545.408 is added to read as follows:

§ 545.408 Approval of loans by foreign affiliates.

Section 545.202 prohibits financial institutions in the United States from approving loans by their foreign affiliates to the South African Government.

18. New § 545.409 is added to read as follows:

§ 545.409 Loan participations.

Section 545.202 prohibits a financial institution in the United States from purchasing, or otherwise acquiring a participation in, all or part of any loan made by any other person or persons to the South African Government, regardless of the date of the original loan, unless such financial institution is obligated to make the purchase under an agreement entered into before September 9, 1985, or such acquisition is incidental to the purchase or acquisition of all of the assets of an institution that has made or acquired participations in such loans.

19. New § 545.410 is added to read as follows:

§ 545.410 South African law.

If, under applicable laws of South Africa, a financial institution in the United States cannot obtain enough information from a person in South Africa to enable it reasonably to conclude that a loan is not being obtained for or on behalf of the South African Government, § 545.202 prohibits the loan.

20. New § 545.503 is added to read as follows:

§ 545.503 Loans for educational, housing, or health facilities.

Specific licenses may be issued to financial institutions in the United States authorizing them to make loans to the South African Government, where the loans will be used to benefit all persons on a non-discriminatory basis, and where it is determined that the loans are for educational, housing, or health facilities.

21. New § 545.504 is added to read as follows:

§ 545.504 Loans to benefit persons disadvantaged by the apartheid system.

Specific licenses may be issued to financial institutions in the United States authorizing them to make loans to the South African Government, where it is determined that the loans will improve the welfare or expand the economic opportunities of persons in South Africa disadvantaged by the apartheid system. No such loan will be authorized to any apartheid enforcing entity.

22. New Subpart I, consisting of § 545.901 which is reserved, is added to read as follows:

Subpart I—Miscellaneous

§ 545.901 Paperwork Reduction Act Notice [Reserved.]

Dated: November 8, 1985.

Dennis M. O'Connell,

Director, Office of Foreign Assets Control.

Approved: November 8, 1985.

E.T. Stevenson,

Acting Assistant Secretary, Enforcement and Operations.

[FR Doc. 85-27009 Filed 11-12-85; 12:44 pm]

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Federal Register

Vol. 50, No. 175

Tuesday, September 10, 1985

Presidential Documents

Title 3—

Executive Order 12532 of September 9, 1985

The President

Prohibiting Trade and Certain Other Transactions Involving South Africa

By the authority vested in me as President by the Constitution and laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), the Foreign Assistance Act (22 U.S.C. 2151 *et seq.*), the United Nations Participation Act (22 U.S.C. 287), the Arms Export Control Act (22 U.S.C. 2751 *et seq.*), the Export Administration Act (50 U.S.C. App. 2401 *et seq.*), the Atomic Energy Act (42 U.S.C. 2011 *et seq.*), the Foreign Service Act (22 U.S.C. 3901 *et seq.*), the Federal Advisory Committee Act (5 U.S.C. App. I), Section 301 of Title 3 of the United States Code, and considering the measures which the United Nations Security Council has decided on or recommended in Security Council Resolutions No. 418 of November 4, 1977, No. 558 of December 13, 1984, and No. 569 of July 28, 1985, and considering that the policy and practice of apartheid are repugnant to the moral and political values of democratic and free societies and run counter to United States policies to promote democratic governments throughout the world and respect for human rights, and the policy of the United States to influence peaceful change in South Africa, as well as the threat posed to United States interests by recent events in that country,

I, RONALD REAGAN, President of the United States of America, find that the policies and actions of the Government of South Africa constitute an unusual and extraordinary threat to the foreign policy and economy of the United States and hereby declare a national emergency to deal with that threat.

Section 1. Except as otherwise provided in this section, the following transactions are prohibited effective October 11, 1985:

(a) The making or approval of any loans by financial institutions in the United States to the Government of South Africa or to entities owned or controlled by that Government. This prohibition shall enter into force on November 11, 1985. It shall not apply to (i) any loan or extension of credit for any educational, housing, or health facility which is available to all persons on a nondiscriminatory basis and which is located in a geographic area accessible to all population groups without any legal or administrative restriction; or (ii) any loan or extension of credit for which an agreement is entered into before the date of this Order.

The Secretary of the Treasury is hereby authorized to promulgate such rules and regulations as may be necessary to carry out this subsection. The initial rules and regulations shall be issued within sixty days. The Secretary of the Treasury may, in consultation with the Secretary of State, permit exceptions to this prohibition only if the Secretary of the Treasury determines that the loan or extension of credit will improve the welfare or expand the economic opportunities of persons in South Africa disadvantaged by the apartheid system, provided that no exception may be made for any apartheid enforcing entity.

(b) All exports of computers, computer software, or goods or technology intended to service computers to or for use by any of the following entities of the Government of South Africa:

(1) The military;

- (2) The police;
- (3) The prison system;
- (4) The national security agencies;
- (5) ARMSCOR and its subsidiaries or the weapons research activities of the Council for Scientific and Industrial Research;
- (6) The administering authorities for the black passbook and similar controls;
- (7) Any apartheid enforcing agency;
- (8) Any local or regional government or "homeland" entity which performs any function of any entity described in paragraphs (1) through (7).

The Secretary of Commerce is hereby authorized to promulgate such rules and regulations as may be necessary to carry out this subsection and to implement a system of end use verification to ensure that any computers exported directly or indirectly to South Africa will not be used by any entity set forth in this subsection.

(c)(1) Issuance of any license for the export to South Africa of goods or technology which are to be used in a nuclear production or utilization facility, or which, in the judgment of the Secretary of State, are likely to be diverted for use in such a facility; any authorization to engage, directly or indirectly, in the production of any special nuclear material in South Africa; any license for the export to South Africa of component parts or other items or substances especially relevant from the standpoint of export control because of their significance for nuclear explosive purposes; and any approval of retransfers to South Africa of any goods, technology, special nuclear material, components, items, or substances described in this section. The Secretaries of State, Energy, Commerce, and Treasury are hereby authorized to take such actions as may be necessary to carry out this subsection.

(2) Nothing in this section shall preclude assistance for International Atomic Energy Agency safeguards or IAEA programs generally available to its member states, or for technical programs for the purpose of reducing proliferation risks, such as for reducing the use of highly enriched uranium and activities envisaged by section 223 of the Nuclear Waste Policy Act (42 U.S.C. 10203) or for exports which the Secretary of State determines are necessary for humanitarian reasons to protect the public health and safety.

(d) The import into the United States of any arms, ammunition, or military vehicles produced in South Africa or of any manufacturing data for such articles. The Secretaries of State, Treasury, and Defense are hereby authorized to take such actions as may be necessary to carry out this subsection.

Sec. 2. (a) The majority of United States firms in South Africa have voluntarily adhered to fair labor principles which have benefitted those in South Africa who have been disadvantaged by the apartheid system. It is the policy of the United States to encourage strongly all United States firms in South Africa to follow this commendable example.

(b) Accordingly, no department or agency of the United States may intercede after December 31, 1985, with any foreign government regarding the export marketing activity in any country of any national of the United States employing more than 25 individuals in South Africa who does not adhere to the principles stated in subsection (c) with respect to that national's operations in South Africa. The Secretary of State shall promulgate regulations to further define the employers that will be subject to the requirements of this subsection and procedures to ensure that such nationals may register that they have adhered to the principles.

(c) The principles referred to in subsection (b) are as follows:

- (1) Desegregating the races in each employment facility;
- (2) Providing equal employment opportunity for all employees without regard to race or ethnic origin;

(3) Assuring that the pay system is applied to all employees without regard to race or ethnic origin;

(4) Establishing a minimum wage and salary structure based on the appropriate local minimum economic level which takes into account the needs of employees and their families;

(5) Increasing by appropriate means the number of persons in managerial, supervisory, administrative, clerical, and technical jobs who are disadvantaged by the apartheid system for the purpose of significantly increasing their representation in such jobs;

(6) Taking reasonable steps to improve the quality of employees' lives outside the work environment with respect to housing, transportation, schooling, recreation, and health;

(7) Implementing fair labor practices by recognizing the right of all employees, regardless of racial or other distinctions, to self-organization and to form, join, or assist labor organizations, freely and without penalty or reprisal, and recognizing the right to refrain from any such activity.

(d) United States nationals referred to in subsection (b) are encouraged to take reasonable measures to extend the scope of their influence on activities outside the workplace, by measures such as supporting the right of all businesses, regardless of the racial character of their owners or employees, to locate in urban areas, by influencing other companies in South Africa to follow the standards specified in subsection (c) and by supporting the freedom of mobility of all workers, regardless of race, to seek employment opportunities wherever they exist, and by making provision for adequate housing for families of employees within the proximity of the employee's place of work.

Sec. 3. The Secretary of State and the head of any other department or agency of the United States carrying out activities in South Africa shall promptly take, to the extent permitted by law, the necessary steps to ensure that the labor practices described in section (2)(c) are applied to their South African employees.

Sec. 4. The Secretary of State and the head of any other department or agency of the United States carrying out activities in South Africa shall, to the maximum extent practicable and to the extent permitted by law, in procuring goods or services in South Africa, make affirmative efforts to assist business enterprises having more than 50 percent beneficial ownership by persons in South Africa disadvantaged by the apartheid system.

Sec. 5. (a) The Secretary of State and the United States Trade Representative are directed to consult with other parties to the General Agreement on Tariffs and Trade with a view toward adopting a prohibition on the import of Krugerrands.

(b) The Secretary of the Treasury is directed to conduct a study to be completed within sixty days regarding the feasibility of minting and issuing gold coins with a view toward expeditiously seeking legislative authority to accomplish the goal of issuing such coins.

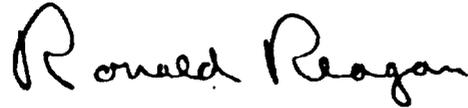
Sec. 6. In carrying out their respective functions and responsibilities under this Order, the Secretary of the Treasury and the Secretary of Commerce shall consult with the Secretary of State. Each such Secretary shall consult, as appropriate, with other government agencies and private persons.

Sec. 7. The Secretary of State shall establish, pursuant to appropriate legal authority, an Advisory Committee on South Africa to provide recommendations on measures to encourage peaceful change in South Africa. The Advisory Committee shall provide its initial report within twelve months.

Sec. 8. The Secretary of State is directed to take the steps necessary pursuant to the Foreign Assistance Act and related legislation to (a) increase the amount of internal scholarships provided to South Africans disadvantaged by the apartheid system up to \$8 million from funds made available for Fiscal

Year 1986, and (b) increase the amount allocated for South Africa from funds made available for Fiscal Year 1986 in the Human Rights Fund up to \$1.5 million. At least one-third of the latter amount shall be used for legal assistance for South Africans. Appropriate increases in the amounts made available for these purposes will be considered in future fiscal years.

Sec. 9. This Order is intended to express and implement the foreign policy of the United States. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.



THE WHITE HOUSE,
September 9, 1985.

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Editorial Note: For the text of the President's message to Congress and his remarks on signing Executive Order 12532, see the *Weekly Compilation of Presidential Documents* (vol. 21, No. 37).